

**BEFORE THE TENNESSEE DEPARTMENT OF SAFETY
AND HOMELAND SECURITY**

IN THE MATTER OF:)
)
JANE DOE and CHRISSY MILLER,)
Petitioners.)

PETITION FOR DECLARATORY ORDER AND MEMORANDUM OF LAW

Petitioners, Jane Doe and Chrissy Miller, by and through counsel, bring the following Petition for Declaratory Order pursuant to Tennessee Code Annotated § 4-5-223 and the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Tenn. Comp. R. & Regs. 1360-04-01-.07. Petitioners ask the Tennessee Department of Safety and Homeland Security to issue a declaratory order as to the validity or applicability of a statute, rule or order, as follows:

1. Summary of relief requested:

The Petitioners request a declaratory order from the Tennessee Department of Safety and Homeland Security declaring that:

- a. The Tennessee Department of Safety and Homeland Security does not have the statutory authority under Tennessee Code Annotated § 1-3-105(c) to deny any and all procedures to transgender people to change the sex marker on driver licenses.
- b. DLP-302(E)(3) operates as a rule and was adopted without compliance with the rulemaking procedures provided for by the Tennessee Uniform Administrative Procedures Act (“UAPA”).
- c. DLP-302(E)(3) exceeds the statutory authority of the Tennessee Department of Safety and Homeland Security because it is not authorized by the text of Tennessee Code Annotated § 1-3-105(c).

- d. Tennessee Code Annotated § 1-3-105(c) does not ban transgender people from changing the sex marker on driver licenses.
- e. The actions taken by the Tennessee Department of Safety and Homeland Security are invalid and null and void because they are *ultra vires* and outside the scope of authority proscribed and granted to the Tennessee Department of Safety and Homeland Security by the Tennessee General Assembly.
- f. The decision to deny Petitioners a change to their sex markers on their driver licenses was arbitrary and capricious.
- g. Tenn. Comp. R. & Regs. 1340-01-13-.12(6) governs sex marker changes on driver licenses and under this rule, Jane Doe and Chrissy Miller should be able to change their sex marker.
- h. Chrissy Miller does not need to surrender her driver license with a female sex marker.
- i. Petitioners' sex markers should be immediately changed to female on their driver licenses.

2. Agency rule, order, or statutory provision on which declaratory order is sought:

- Tennessee Code Annotated § 1-3-105(c), which states in pertinent part:

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. Comp. R. & Regs. 1340-01-13-.12(6), which states in pertinent part:

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.

- DLP-302(E)(3), which states in pertinent part:

Gender Changes: Pursuant to Public Chapter 486 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.

3. Statement of the facts of the controversy and description of how this rule, order or statute affects or should affect the Petitioners:

1. The Department of Safety and Homeland Security, Commissioner Jeff Long, and Assistant Commissioner Michael Hogan (together, “the Department”) 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, DLP-302(E)(3), that prevents transgender applicants, including Petitioners Jane Doe and Chrissy Miller, from receiving licenses that accurately reflect their gender identity and sex characteristics.

2. Under DLP-302(E)(3), 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—regardless of their current sex characteristics and appearance.

3. The text of DLP-302(E)(3) does not define any uniform process for the Department 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 1 (Complaint Ex. A). The effect of DLP-302(E)(3) is the denial of all transgender applicants' requests to update a sex designator on driver licenses post-July 1, 2023.

4. Petitioner Jane Doe has been harmed by DLP-302(E)(3) and the actions of the Department and its commissioners. Ms. Doe's request to update her sex designator to female was denied by the Department 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.

5. Petitioner Chrissy Miller has been harmed by DLP-302(E)(3) and the actions of the Department and its commissioners. 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 Assistant Commissioner 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 1 (Complaint Ex. C).

6. No statute authorizes DLP-302(E)(3).

7. The Department violated the Tennessee Uniform Administrative Procedures Act ("UAPA") by failing to promulgate DLP-302(E)(3) through the proper notice-and-comment process.

8. As such, DLP-302(E)(3) is void, of no effect, and unenforceable.

9. The Department's decision to ban any update of the sex designators for transgender people on driver licenses, including Ms. Doe's and Ms. Miller's, because they are transgender is arbitrary and capricious and violates the UAPA.

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

11. 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 DLP-302(E)(3), the Department sent a letter demanding Ms. Miller surrender her accurate driver license or face suspension of her driving privileges by May 16, 2024. *See* Exhibit 1 (Complaint Ex. C).

12. Petitioners filed an initial Complaint in the Chancery Court of Davidson County on April 23, 2024 seeking relief from the actions of the Department.

13. Chancellor Myles in Part III of the Chancery Court of Davidson County enjoined the Department and its commissioners from requiring Ms. Miller to surrender her current driver license or suspending her driving privileges for failure to surrender her current driver license because it lists her sex as female. Exhibit 2 (May 14, 2024 Order Granting Plaintiffs' Emergency Motion for Temporary Restraining Order) and Exhibit 3 (June 24, 2024 Order Granting In Part And Denying In Part Plaintiffs' Motion For Temporary Injunction).

14. The Court stayed the case until November 12, 2024 to allow Petitioners to file this Petition for Declaratory Order, and for the Department to respond if at all. *See* Exhibit 4 (Sept. 17, 2024 Chancellor’s Order Staying Case).

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

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

17. 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.

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

19. 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.

The Department issued DLP-302(E)(3) in Violation of the Notice and Comment Requirements Under the Tennessee Uniform Administrative Procedures Act

20. 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 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).

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

22. SB 1440 became effective on July 1, 2023 and is codified at Tenn. Code Ann. § 1-3-105(c).

23. Prior to passage of SB 1440, the Legislature had never defined sex uniformly in the code in Tennessee since its founding.

24. There is no enforcement mechanism contained in Tenn. Code Ann. § 1-3-105(c).

25. Tenn. Code Ann. § 1-3-105(c) does not authorize or direct action by the Department.

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

27. Since 1996, *see* Exhibit 1 (Complaint Ex. A.17), and prior to the enactment of SB 1440, the Department, 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.”

28. The Department has 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).

29. On July 3, 2023, the Department issued a document to employees titled “Guidelines to Proof of Identity” and referenced as DLP-302(E)(3) indicating 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.” *See* Ex. 1 (Complaint Ex. A).

30. DLP-302(E)(3) reads:¹

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.

31. Jane Doe and Chrissy Miller assert that DLP-302 is a “rule” under the UAPA.

32. The Department is primarily responsible for the creation, distribution, and enforcement of DLP-302(E)(3).

33. DLP-302(E)(3) was never promulgated by notice-and-comment rulemaking procedures under the UAPA.

¹ 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).

34. In fact, the Department made no public declaration or acknowledgment concerning the adoption of DLP-302(E)(3) whatsoever, and a copy of the regulation was only obtained through a public records request.

35. Under DLP-302(E)(3), there is no uniform procedure for determining what is considered an original birth certificate, the Department does 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* Ex. 1 (Complaint Ex. A).

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

37. 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 accurate sex designator.

38. Upon information and belief, the 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 DLP-302(E)(3) and will reject an application for an updated sex designator on a driver license containing such a discrepancy.

39. There is no process by which an applicant can administratively appeal the Department's decision to reject an application for an updated sex designator on a driver license. Exhibit 1 (Complaint Exs. B and C).

40. As a result of DLP-302(E)(3), there is no existing process 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 as in their day-to-day lives, and that reflects their current sex characteristics.

41. DLP-302(E)(3) denies all transgender applicants accurate driver licenses post-July 1, 2023, 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.

42. Many states allow transgender individuals to amend their birth certificates to accurately reflect their gender identity. Tennessee does not.

43. 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>

Transgender People and Gender Dysphoria

44. 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.

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

46. We all have identities—whether it be as a mother, father, brother, sister, doctor, lawyer—identities reflect actual experiences and feelings about oneself in the world.

47. 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.

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

49. 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.

50. 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.

51. Research has identified that determination of sex is far more complex than what is seen on genital exam at birth. 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.

52. 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).

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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 hormone therapy 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.

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

60. 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.

61. 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.

62. 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, open a bank account, apply for a credit card, board a plane, rent an apartment or buy a house.

63. It is estimated that 1.6 million people identify as transgender in the United States, or 1.9% of the population.² Approximately 30,800 Tennesseans are estimated to be transgender.³

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

65. 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;

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

² 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>).

³ *Ibid.*

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.

66. 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.

67. Transgender people are over four times more likely than non-transgender 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/>.

Jane Doe Has Experienced Harm as a Direct Result of DLP-302(E)(3)

68. Petitioner 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.

69. 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 physical sex characteristics as other women.

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

71. 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 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.

72. 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.

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

74. Ms. Doe sought to update her existing Tennessee driver license to reflect her correct gender identity of female, and female sex characteristics.

75. 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.

76. 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 DLP-302(E)(3) 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.

77. 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.

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

Chrissy Miller Has Experienced Direct Harm As A Result Of DLP-302(E)(3)

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

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

81. 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.

82. 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.

83. 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.

84. 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.

85. 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.

86. Ms. Miller then legally updated the sex designator on her Ohio birth certificate to "female" on November 28, 2023. Ex. 1 (Complaint Ex. 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).

87. 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.

88. 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.

89. 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.

90. 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 due to DLP-302(E)(3).

91. 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.

92. 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.

93. 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.

94. 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.

95. 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.

Ex. 1 (Complaint Ex. C).

A. The Department Of Safety And Homeland Security's, Commissioner Jeff Long's, And Assistant Commissioner Michael Hogan's Actions To Deny Sex Marker Changes On Tennessee Drivers Based On The License Holder's Transgender Status Have Never Been Authorized By Tennessee Statute.

The Tennessee Department of Safety and Homeland Security (“the Department”) is an agency of the State of Tennessee that is responsible for promulgating and adopting rules and regulations pertaining to the licensing of persons to operate motor vehicles. The Department asserts the purported authority under its document DLP-302 to deny any sex marker changes on driver licenses held by transgender people in Tennessee. The only statute cited to arguably provide legislative authority for DLP-302(E)(3) is Tennessee Code Annotated § 1-3-105(c). *See* Ex. 1 (Complaint Ex. A). However, there is no enforcement mechanism contained in Tennessee Code Annotated § 1-3-105(c).

DLP-302(E)(3) regurgitates the text of Tennessee Code Annotated § 1-3-105(c), and states:

Gender Changes: Pursuant to Public Chapter 486 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.

Administrative agencies have only such power as is granted them by statute, and any action which is not authorized by the statutes is a nullity. *General Portland, Inc. v. Chattanooga–Hamilton County Air Pollution Control Bd.*, 560 S.W.2d 910, 913 (Tenn. Ct. App. 1976). The ordinary and plain meaning of Tennessee Code Annotated § 1-3-105(c) has no enforcement language, and gives exceptions to sole reliance on an original birth certificate as proof of sex. It states that in certain situations, proof of sex does not require an original birth certificate as made express by the terms “unless the context otherwise requires” and concludes that “evidence” of a person’s sex “is not limited to” a person’s original birth certificate. Words matter and DLP-302(E)(3) is contrary to the plain language in Tennessee Code Annotated § 1-3-105(c). Further, there is no language in the statute that confers upon the Department any authority to review, approve, enforce, or otherwise decide a person’s sex or to deny a class of person’s accurate driver licenses based on an ideological viewpoint about transgender people’s embodiment.

To be sure, the Department has authority to issue driver licenses that contain certain information. Tenn. Code Ann. § 55-50-331(b)(1). The Department *is* authorized to obtain an application from a potential licensee with certain information (including sex). Tenn. Code Ann. § 55-50-321(c)(1)(A). However, it is the applicant who certifies their identification information, not the Department. Tenn. Code Ann. § 55-50-321(b). No statute gives the Department statutory authority to enforce Tennessee Code Annotated § 1-3-105(c) or deny any and all sex marker changes to transgender Tennesseans. In fact, it is more accurate for identification to match a transgender person as the sex they embody today rather than the sex assigned to them at birth. A blanket ban on all transgender people changing the sex marker on their driver licenses is at odds

with the plain language of Tennessee Code Annotated § 1-3-105(c) and has no other statutory authority.

B. The Department's DLP-302 Document Was Improperly Promulgated under the Tennessee Uniform Administrative Procedures Act And Is Void.

Moreover, because the Department does not have any statutory authority to ban all sex marker changes on Tennessee driver licenses because the applicant is transgender, the Department's action in adopting DLP-302(E)(3) is likewise invalid, void and of no force or effect. Further, in addition to the lack of statutory authority referenced above, DLP-302(E)(3) is also invalid because it constitutes a "rule" as that term is defined in the UAPA that was never adopted in compliance with the UAPA's rulemaking procedures. *See* Tenn. Code Ann. § 4-5-216.

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. 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.

DLP-302(E)(3) 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 purports to implement Tenn. Code Ann. § 1-3-105(c) 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.” DLP-302(E)(3) was not adopted in compliance with the procedures for rulemaking under the UAPA and is thus void and of no effect.

C. The Department’s Action Violates The UAPA Because It Is Arbitrary And Capricious

The agency should reverse or modify the Department’s decision denying Ms. Doe’s and Ms. Miller’s requests to update the sex designator on their driver licenses under DLP-302(E)(3) because it is arbitrary and capricious. *See* Tenn. Code Ann. § 4-5-322. The Department’s 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 current sex post-July 1, 2023—no matter what evidence is provided by the applicant. The Department doesn’t even follow their own Rule Tenn. Comp. R. & Regs. 1340-01-13-.12(6). 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.

Furthermore, the Department acted 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. 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 the Department, 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 DLP-302(E)(3) 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 DLP-302(E)(3). 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 and (now) on their driver license, and that person applies to change their sex designator after July 1, 2023, then DLP-302(E)(3) applies. DLP-302(E)(3) is not applied consistently or in a rational way.

The Department's decisions are arbitrary and capricious across-the-board denials for Ms. Doe and Ms. Miller, regardless of their individual situations, medical treatment, female sex characteristics, and/or whether they present and live their lives as women. As such, the decisions should be reversed or modified.

Respectfully submitted,

/s/ Lucas Cameron-Vaughn

Lucas Cameron-Vaughn (36284)

Stella Yarbrough (33637)

ACLU FOUNDATION OF TENNESSEE

P.O. Box 120160

Nashville, Tennessee 37212

(615) 645-5067

lucas@aclu-tn.org

syarbrough@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

Attorneys for Petitioners Jane Doe and Chrissy Miller

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:

Cody Brandon
Steven Griffin
Liz Evan
Office of the Tennessee
Attorney General and Reporter
P. O. Box 20207
Nashville, TN 37202
(615) 532-7400
Cody.Brandon@ag.tn.gov
Steven.Griffin@ag.tn.gov
Liz.Evan@ag.tn.gov

Attorneys for Respondents

DATE: Sept. 20, 2024

/s/ Lucas Cameron-Vaughn
Lucas Cameron-Vaughn