

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
)	Chancellor Myles
vs.)	
)	
TENNESSEE DEPARTMENT OF)	
SAFETY AND HOMELAND)	
SECURITY; <i>et al.</i> ,)	
)	
Defendants/Respondents.)	

REPLY IN SUPPORT OF PLAINTIFF CHRISSY MILLER’S EMERGENCY
MOTION FOR A TEMPORARY RESTRAINING ORDER

Plaintiff Chrissy Miller submits this Reply in Support of Emergency Motion for a
Temporary Restraining Order.

This Court should GRANT Chrissy Miller a temporary restraining order and enjoin Defendants from requiring her to surrender her driver license or suspend Ms. Miller's driving privileges on or before May 16, 2024, based on the fact that her current license correctly lists her sex as female. Ms. Miller faces immediate and irreparable injury absent relief from this Court because she risks bodily harm, harassment, and discrimination every time she is forced to reveal her private medical and deeply personal information to strangers. If Ms. Miller loses the right to drive, she will be unable to travel to work, medical care, grocery stores, and engage in other essential activities. This Court has clear jurisdiction over this matter as it is statutorily authorized to review "The legal validity or applicability of a...rule...of an agency....in a suit for a declaratory judgment in the chancery court of Davidson County" under Tenn. Code Ann. § 4-5-225. Tennessee law does not authorize Defendants to demand Chrissy Miller surrender her driver license or face suspension. And this Court should act to stop the enforcement of a void rule against Ms. Miller.

I. Chrissy Miller faces immediate and irreparable injury absent injunctive relief from this Court

Ms. Miller will suffer immediate and irreparable harm if this Court does not intervene. Ms. Miller risks bodily harm, harassment, and discrimination every time she is forced to use a driver license that reveals her status as a transgender woman. Moreover, Ms. Miller will be forced to reveal private medical information and deeply personal information anytime she must present her driver license to a stranger. Further, if Ms. Miller loses the right to drive she faces severe harm as she relies on her driver license to travel to work, access medical care, go to the grocery stores, and engage in other essential activities.

Defendants try to make hay out of the fact that Ms. Miller has announced her transition to her friends on Facebook. *See* Defs.' Resp. Ex. 2. However, this voluntary message to people who

already know Ms. Miller is a drastically different situation that the events that can occur when strangers learn that a person is transgender in an involuntary situation, especially in a rural area. Involuntary disclosure of a person's transgender status "exposes transgender individuals to a substantial risk of stigma, discrimination, intimidation, violence, and danger." *Arroyo v. Gonzalez*, 305 F. Supp. 3d at 333; *see also* F. V., 286 F. Supp. 3d at 1137. 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*, 146 F.Supp.3d at 856 (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. Miller is subject to these recognized dangers here in Tennessee.

Ms. Miller has personally experienced this harassment and discrimination firsthand. She has faced family rejection. Miller Decl. ¶ 11. Coworkers and employers have discriminated against her at work. Miller Decl. ¶¶ 13-16. Ms. Miller's experience shows that she faces harm if 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 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. 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). Ms. Miller drives to work and it is the only option as she lives in a rural area. Miller Decl. ¶ 44. She must drive to the grocery store to buy food. *Id.* Ms. Miller must drive several hundred miles several times a month in order to obtain necessary medical care. *Id.* Ms. Miller will not be able to access the essential requirements of her daily life without the use of a driver license.

Defendants argue that Ms. Miller cannot show immediate and irreparable harm because of “speculation.” However, there are no “ifs” as to whether Defendants will suspend her license if she does not surrender it and replace it with one with a sex designator that does not reflect her appearance or identity or other official government documents. Defendants have made it clear that they will proceed with suspending her license—in contravention of existing law. Defendants seek to suspend her license because they believe that the Department of Safety and Homeland Security as the government is better tasked to declare someone’s sex rather than the person themselves or their doctors. This Court must stop that manifest injustice from occurring to Ms. Miller at this preliminary stage pending further briefing and argument over this Matter.

II. This Court Has Jurisdiction Over This Matter

Whether to grant Ms. Miller injunctive relief is in the sound discretion of this Court. *See King v. Elrod*, 196 Tenn. 378, 384, 268 S.W.2d 103, 106 (1953). This Court has clear statutory jurisdiction over this matter under Tenn. Code Ann. 4-5-225, which states “[the question of] [t]he legal validity or applicability of a...rule...of an agency....in a suit for a declaratory judgment [lies] in the chancery court of Davidson County...” Ms. Miller alleges that Defendants are attempting to enforce a void rule against her, in excess of their statutory authority.

Defendants argue that Ms. Miller cannot bring her claim because she did not “first request a declaratory order from the Department, as required by Tenn. Code Ann § 4-5-225(b).” Defs.’ Resp. 10. Section B of the statute states that “A declaratory judgment shall not be rendered concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.” Tenn. Code Ann. § 4-5-225(b). Here, the clear language of the section shows that this provision applies to “statute[s], **rule[s]** or order[s].” *Id.* (emphasis added). However, because the Defendants did not promulgate the Redefinition of Sex Rule under the proper statutory procedures, they cannot now claim that it’s a “rule” subject to the requirements of Tenn. Code Ann. § 4-5-225(b). Defendants assert that the Redefinition of Sex Rule is a “policy” rather than a “rule” under the UAPA. Defs.’ Resp. I.B.1. Because the Defendants interpreted the Redefinition of Sex Rule as a “policy” there is no mechanism for Ms. Miller to seek a declaratory judgment from the agency because they claim it is not a “rule” and Tenn. Code Ann. § 4-5-225(b) by its plain language only applies to “statute[s], rule[s] or order[s].” As much as Defendants might like, they cannot write a word (i.e. “policy”) into the statute when the word is not there.

Defendants argue out of both sides of their mouth. On one hand, they argue this Court lacks jurisdiction because there was no contested case hearing. *See* Defs.’ Resp. I.A.3. Then, they cite to caselaw asserting that the Court does not have jurisdiction because a contested case hearing took place. Defendants cite to *Poursaied v. Tennessee Bd. of Nursing*, 643 S.W.3d 157, 165 (Tenn. Ct. App. 2021) for the principle that this Court cannot “act as both a trial court in an original action—by seeking a declaratory judgment—and an appellate court—by seeking review of agency action under the UAPA—at the same time,” Defs.’ Resp. 2 (asserting that a contested case hearing took place).

Defendants misapply the instruction of *Poursaied*. In that case, a nurse’s license was terminated in California by administrative default judgment after she failed to timely appear in front of an administrative board. After receiving news of the nurse’s termination, the Tennessee Department of Health filed administrative charges against her seeking to suspend her Tennessee license. The Tennessee administrative board granted a default judgment against the nurse when she failed to appear for her Tennessee administrative hearing—revoking her Tennessee nursing license. The nurse then filed a *pro se* petition for review in chancery court. Thereafter, the nurse filed a document titled “Tort Claim due to Damage to my health,” seeking monetary damages from the state because the state was allegedly “responsible for damage to [her] health as a result of this horrible crime against [her] constitutional rights which has damaged [her] health and reputations.” She also filed a motion for sanctions against the Board because it failed to respond to her petition for review. *Poursaied*, 643 S.W.3d at 153. The chancery court dismissed Ms. Poursaied’s claim for monetary damages based on its finding that it was an improper joinder of an original action with an administrative appeal. *Id.* at 165. The Court of Appeals affirmed the chancery court’s dismissal “because [Ms. Poursaied] impermissibly attempted to join her claim

for monetary damages with her petition for judicial review of the Board's decision to revoke her Tennessee registered nurse license.” In the case at bar, there is no claim for monetary damages and this is not a tort action. This is a declaratory judgment action explicitly authorized by statute.

Most importantly, this is an extremely early period in the litigation and there is no motion to dismiss before the Court. Chrissy Miller seeks emergency injunctive relief in a temporary restraining order. Plaintiffs maintain that whether there was a contested case hearing is an issue properly before this Court. After all, in Tennessee alternative pleadings are expressly permitted, regardless of consistency. *Barnes v. Barnes*, 193 S.W.3d 495, 501 (Tenn. 2006). Rule 8.05(2) of the Tennessee Rules of Civil Procedure, provides:

A party may set forth two (2) or more statements of a claim or defense alternately or hypothetically. When two (2) or more statements are made in the alternative and one (1) of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he or she has, regardless of consistency.

At this stage of the litigation, with no motion to dismiss before the Court, it is clear that the Court has jurisdiction to consider Ms. Miller’s motion for a temporary restraining order.

III. Tennessee Code Does Not Authorize Defendants to Demand Chrissy Miller Surrender Her Accurate Driver License or Face Suspension

Defendants argue that Tennessee agencies should be tasked with declaring the sex of Tennessee citizens. *See* Defs.’ Resp. 19 (stating “The Department correctly determined that Miller’s sex is male”). Defendants attempt to sidestep their lack of statutory authority by simply declaring that “The Department has followed the General Assembly’s clear statutory instruction to interpret ‘sex’” as though that statement alone makes it so. Defs.’ Resp. 1. Although Defendants cite to a few other states’ very recently enacted laws, some of which do authorize agency action, these laws are rather indicative of the fact that in recent years politicians have

sought to cast transgender people as a “wedge” issue, which has resulted in a wave of legislation aimed at ending the legal recognition of transgender people. *See* Nico Lang, *Here’s How A New of Legislation Aims to “Legally Erase” Trans People*, Them, March 29, 2024 available at <https://www.them.us/story/anti-trans-legislation-legally-erase-trans-people>; and *see* ACLU, *Mapping Attacks on LGBTQ Rights in U.S. State Legislatures in 2024*, available at <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024> (currently tracking 515 anti-lgbtq bills in the United States). However, the fact remains that Tenn. Code Ann. 1-3-105(c), by its plain terms, simply does not authorize any Tennessee agencies, including Defendants, to take action to require that people must have state-issued identification that reflects a sex as listed on their original birth certificate.

Tenn. Code Ann. §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 section defines “sex” in the code. It does not direct agency action. Further, it specifically clarifies that “evidence of a person’s biological sex”...“***is not limited to***, a government-issued identification document that accurately reflects a person’s sex listed on the person’s original birth certificate” *Id.* (emphasis added). The language is clear that nothing in this section requires Defendants to refuse to change sex designators on a driver license if the person’s current sex characteristics are different than the sex assigned at birth. The purpose of a driver license is to accurately identify the driver as someone who is qualified to drive—not to enforce a controversial government-mandated view of how people may identify something as personal as their sex.

This Court should stop Defendants from illegally enforcing their corrupted interpretation of a clear code section—an interpretation which is likely animated by bias against transgender people like Ms. Miller.

IV. Defendants Seek to Enforce an Invalid Rule Against Chrissy Miller

A. Defendants Ignored Statutory Requirements When Issuing the Redefinition of Sex Rule and Thus, It Is Void *Ab Initio*

The Redefinition of Sex Rule is void because it was issued *ultra vires*, outside of the statutory notice-and-comment requirements of the Tennessee Uniform Administrative Procedures Act and thus cannot be enforced against Ms. Doe or Ms. Miller.

1. The Redefinition of Sex Rule is a Rule Under the Tennessee Uniform Administrative Procedures Act

“[Rulemaking] is the process by which an agency lays down new prescriptions to govern the future conduct of those subject to its authority.” *Tennessee Cable Television Ass'n v. Tennessee Pub. Serv. Comm'n*, 844 S.W.2d 151, 161 (Tenn. Ct. App. 1992). And is essentially a legislative function. *Id.* In exercising their authority, Defendants can issue “policies” or “rules.” *See* Tenn. Code Ann. § 55-50-202. Under the Tennessee Uniform Administrative Procedures Act (UAPA), a “policy” is “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). By contrast, a “rule” means “any agency regulation, standard, statement, or document of general applicability that is not a policy” and that “describes the procedure or practice requirements of an agency,” but does not include “intra-agency memoranda” or “general policy statements that are substantially repetitious of existing law.” Tenn. Code Ann. § 4-5-102(12)(A), (B)(ii), (B)(iii). 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).

To determine whether the Redefinition of Sex Rule is a “rule” under the UAPA, the Court must determine first whether the statement is “an[] agency regulation, standard, statement, or document of general applicability” and second, whether it “concern[s] only the internal management of state government” or “affects private rights, privileges or procedures available to the public.” See *Emergency Med. Care Facilities, P.C. v. Div. of TennCare*, 671 S.W.3d 507, 513 (Tenn. 2023). An agency statement is “of general applicability,” when it is capable of being applied or is relevant to an entire class or category. *Id.* at 514. The Redefinition of Sex Rule clearly is. First, although Jane Doe and Ms. Miller bring this action to vindicate their rights, the Redefinition of Sex Rule applies to every member of a class—all transgender people seeking to change the sex designator on their driver license after July 1, 2023. And, that class is open to anyone who becomes a member of that class into the future. Thus, the Redefinition of Sex Rule is “of general applicability.”

Second, this Court must determine whether the Redefinition of Sex Rule falls into the internal-management exception. An agency statement that is generally applicable is excused from the UAPA’s rulemaking requirements if it “concern[s] only the internal management of state government” and does not “affect[] private rights, privileges or procedures available to the public.” *Emergency Med. Care Facilities*, 671 S.W.3d at 514-515 (citing Tenn. Code Ann. 4-5-102(12)(A)). Both requirements must be met for the exception to apply. *Id.* (citing *Mandela*, 978 S.W.2d at 534). An agency statement “concerns only the internal management of state government,” then, 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*,

671 S.W.3d at 515. The exception does not apply to the Redefinition of Sex Rule. The Redefinition of Sex Rule manages the way that the State negotiates a change of sex designator with a private person who is a driver license applicant. The Redefinition of Sex Rule does not merely concern the internal management of the Department, it applies a state statute, Tenn. Code Ann. § 1-3-105(c), directly to Ms. Miller or Ms. Doe and other transgender people without a mandate within the statute to do so. The Redefinition of Sex Rule does not just concern what Defendants do generally—it concerns what Defendants do with the Ms. Doe’s and Ms. Miller’s private information specifically. Ms. Doe’s and Ms. Miller’s only connection to the State in this relationship is through a driver license issued to them as private persons. Thus, the internal-management exception does not apply, and the Redefinition of Sex Rule is a “rule” subject to the notice and comment requirements of the UAPA.

Further, the Redefinition of Sex Rule revoked the private rights, privileges, and procedures that were available to Ms. Doe and Ms. Miller to change the sex designator on their driver licenses prior to July 1, 2023. Until that time, the procedures were governed by a previously promulgated rule that 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,” Tenn. Comp. R. & Regs. 1340-01-13-.12(6), a rule which has never been rescinded or revoked. The new Redefinition of Sex Rule states that “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 [sic] being consulted.” First Amend. Compl. ¶ 32. Because the Redefinition of Sex Rule abrogated the private rights of a certain class of the public

to change the sex designator on driver licenses, including Ms. Doe and Ms. Miller, it is a “rule” under the UAPA.

2. The Tennessee Uniform Administrative Procedures Act Requires Formal Notice and Public Hearing Before Promulgating a Rule Like the Redefinition of Sex Rule

As a rule, the Redefinition of Sex Rule must be promulgated through public notice, public hearing, approval by the attorney general, and filing with the secretary of state. *See* Tenn. Code Ann. §§ 4-5-202, -203, -206, -211. None of those requirements were met here. All rules, except emergency rules,¹ must issue through these formal procedures. *Mandela*, 978 S.W.2d at 533. This is not an emergency rule. Therefore, written notice of public hearings must be published on the administrative register website at least forty-five (45) days prior to hearing. Tenn. Code Ann. § 4-5-203. The notice must include (i) a statement of the time and place at which the hearing is to be held; (ii) the express terms of the rule being proposed, but a summary may be given if certain exceptions are met; (iii) insofar as practicable, a reference to the statutory authority pursuant to which the agency proposed to adopt the rule; and (iv) any additional matter that may be prescribed by statute applicable to the specific rule or class of rules under consideration. *See* Tenn. Code Ann. § 4-5-203(c).

At the hearing, the agency “shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration.” Tenn. Code Ann. § 4-5-204(a)(1). The agency shall keep minutes or a record of the hearing. *See* Tenn. Code Ann. § 4-5-204(b)(2). Then, the rule must be filed in the office of the attorney

¹ The UAPA gives agencies authority to promulgate emergency rules in certain enumerated circumstances. *Emergency Medical Care Facilities*, 671 S.W.3d at 511 n.2 (citing Tenn. Code Ann. § 4-5-208. Emergency rules “become effective immediately” but lapse after 180 days. *Id.* To make the rule permanent, the agency must promulgate the rule through ordinary rulemaking procedures. *Id.*

general and reporter, which shall review the legality and constitutionality of every rule filed. Tenn. Code Ann. § 4-5-211. Finally, before the rule can become effective, the secretary of state must file the rules of each agency in a convenient and accessible manner, with a citation of the authority pursuant to which it was adopted, and the time and date of filing to be maintained for public inspection. *See* Tenn. Code Ann. § 4-5-206(a)-(b). “Such procedures allow persons affected by proposed rules to make their voices heard in favor of or in opposition to such rules and to make such suggestions for changes.” *Cosby v. State Dep’t of Human Servs.*, No. M2003–02696–COA–R3–CV, 2005 WL 2217072, at *2 n. 5 (Tenn. Ct. App. Sept. 15, 2005).

3. Defendants Ignored Lawful Procedures and Did Not Properly Promulgate the Redefinition of Sex Rule and Thus It is Void *Ab Initio* Under Tennessee Law

The Redefinition of Sex Rule is a “rule” as defined by the UAPA, and should have been promulgated through notice-and-comment rulemaking. Failure to promulgate a rule as contemplated by the UAPA renders the rule void. Tenn. Code Ann. § 4-5-216; *Mandela v. Campbell*, 978 S.W.2d 531, 533 (Tenn. 1998). “Any agency rule not adopted in compliance with the provisions of [the UAPA] 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.” *Cosby*, 2005 WL 2217072, at *3 (quoting Tenn. Code. Ann. § 4–5–216). Defendants brazenly ignored these important statutory requirements. As such, this Court should enjoin enforcement of the Redefinition of Sex Rule against Ms. Doe and Ms. Miller as it violates the UAPA. Tennessee law is clear that the Redefinition of Sex Rule is void *ab initio* and cannot be used to deny Ms. Doe or Ms. Miller a driver license with a female sex designator. The prior rule, Tenn. Comp. R. & Regs. 1340-01-13-.12(6), which is still in legal effect, should govern and Ms. Doe and Ms. Miller should be allowed to change their sex designators to female upon submitting “statement[s]

from the attending physician that necessary medical procedures to accomplish the change in gender are complete.”

CONCLUSION

Plaintiff Chrissy Miller faces immediate and irreparable injury absent emergency injunctive relief from this Court. For the forgoing reasons, this Court should GRANT Chrissy Miller a temporary restraining order to enjoin Defendants from requiring her to surrender her driver license or suspend Ms. Miller’s driving privileges on or before May 16, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing Reply in Support of Plaintiff Chrissy Miller's Emergency Motion for a Temporary Restraining Order has been forwarded via electronic mail to the following this 13th day May of 2024.

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