

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

JANE DOE; and)	
CHRISSY MILLER,)	
)	
Plaintiff/Petitioner,)	24-0503-III
)	Chancellor Myles
vs.)	
)	
TENNESSEE DEPARTMENT OF)	
SAFETY AND HOMELAND)	
SECURITY; <i>et al.</i> ,)	
)	
Defendants/Respondents.)	

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR TEMPORARY INJUNCTION

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PRELIMINARY STATEMENT¹

The Plaintiffs in this action, Jane Doe and Chrissy Miller, are women who, like 4,786,973² other people in Tennessee, rely on state-issued driver licenses to go about their everyday lives—as identification to legally drive, vote, obtain employment and housing, among other things. However, unlike most other people who have driver licenses, Jane Doe is required to hold a driver license that contains sex designation information that does not match her sex characteristics, including her gender identity or appearance, and stands in opposition to her sincerely held beliefs. Defendants updated Ms. Miller’s driver license, but now require her to surrender her accurate driver license and instead carry a driver license that contains sex designation information that does not match her sex characteristics. Ms. Miller must surrender her accurate license by May 16, 2024 or Defendants will suspend Ms. Miller’s driving privileges.

The Defendants have issued an administrative rule which binds Ms. Doe and Ms. Miller while brazenly ignoring the proper statutory requirements under the Tennessee Uniform Administrative Procedures Act, denying Ms. Doe and Ms. Miller any recourse to obtain accurate identification that accords with their conscience. Defendants purport to base this rule on a novel interpretation of a definitional code provision that contains no enforcement mechanism and that does not direct Defendants to do anything. The code provision (“SB 1440”)³ that Defendants supposedly base the rule on is a definitional section that states that the word “sex” is defined

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Complaint.

² United States Department of Transportation Federal Highway Administration, Highway Statistics Series (amended February 2022), available at <https://www.fhwa.dot.gov/policyinformation/statistics/2019/dl1c.cfm>.

³ Codified in relevant part at Tennessee Code Annotated § 1-3-105(c).

throughout the Tennessee Code as “a person’s immutable biological sex as determined by anatomy and genetics existing at time of birth” and further indicates that “evidence of a person’s biological sex includes, **but is not limited to**, a government-issued identification document that accurately reflects a person’s sex listed on the person’s original birth certificate.” First Amend. Compl. ¶ 22 (emphasis added). Defendants’ rule states that “Pursuant to Public Chapter 486 [SB 1440]...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 birth certificate...”⁴

By this motion, Ms. Doe and Ms. Miller ask this Court to bar Defendants and those under their supervision from enforcing the void and unconstitutional rule against them while this action is pending. Ms. Doe and Ms. Miller are likely to succeed on the merits of their Tennessee Uniform Administrative Procedure Act claims. Each day the rule is in place and is enforced by Defendants, it inflicts severe and irreparable harm to Plaintiffs. The Defendants will not incur any harm if the void rule is not enforced while this case proceeds.

STATEMENT OF FACTS

All administrative rules must pass through certain procedures before becoming enforceable in Tennessee. *See* Tenn. Code Ann. §§ 4-5-202, -203, -206, -211. Defendants engaged in none of those requirements before declaring that they would no longer change sex designators on driver licenses for transgender people. First Amend. Compl. Ex. A (Tenn. Dept. of Safety & Homeland Security, Guidelines to Proof of Identity, DLP-302(E)(3), page 12). Until July 1, 2023, Defendants’ rule allowed a change of sex designator on a Tennessee driver license if an applicant submitted “a statement from the attending physician that necessary medical

⁴ Tenn. Dept. of Safety & Homeland Security, Guidelines to Proof of Identity, DLP-302(E)(3), page 12 (*revised* July 3, 2023) (hereinafter “Redefinition of Sex Rule”). First Amend. Compl. ¶ 32.

procedures to accomplish the change in gender are complete.” Tenn. Comp. R. & Regs. 1340-01-13-.12(6). Without repealing that rule or undergoing any statutorily mandated procedures to promulgate a new rule, Defendants instituted a ban on transgender persons changing the sex designator on their driver licenses:

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.

First Amend. Compl. Ex. A (Tenn. Dept. of Safety & Homeland Security, Guidelines to Proof of Identity, DLP-302(E)(3), page 12) (“Redefinition of Sex Rule”). The ban states that it is based on “Public Chapter 486 [SB 1440],” and then cites the language of that law: “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...‘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.” *Id.*

JANE DOE IS DENIED AN ACCURATE DRIVER LICENSE

Plaintiff Jane Doe is a transgender woman. Doe Decl. ¶ 6. Transgender people have a gender identity that differs from the sex they were assigned at birth. First Amend. Compl. ¶ 50. Modern medical and scientific understanding of sex includes 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. First Amend. Compl. ¶ 51.

Ms. Doe is treated by a physician for her medical condition—gender dysphoria—with hormone medication and has developed female secondary sex characteristics as a result of her medication. First Amend. Compl. ¶ 69. Ms. Doe’s gender identity is female. *Id.* And she is recognized as a woman in her day-to-day life. First Amend. Compl. ¶ 71. On February 23, 2024, Ms. Doe visited the driver license office located at 150 Plaza Circle, Athens, TN 37303 in order to update her existing Tennessee driver license to reflect her correct gender identity and sex as female. First Amend. Compl. ¶¶ 73-75. However, Ms. Doe’s request was denied due to Defendants’ new ban on transgender persons updating the sex designator on their driver licenses. First Amend. Compl. ¶ 76.

Ms. Doe felt humiliated and scared after being told that she could not update her driver license. Doe Decl. ¶ 16. She fears the danger she might face if someone confronts her about the conflict between her appearance and the information regarding the sex listed on her driver license. Doe Decl. ¶¶ 22-23, First Amend. Compl. ¶¶ 64-67. Ms. Doe’s fear is due to the fact she has been stigmatized, discriminated against, and harassed for many years based on people’s knowledge of her transgender status. Doe Decl. ¶¶ 19. Ms. Doe is also aware of the potential for violence to erupt when strangers learn she is transgender. Doe Decl. ¶ 23, *and see* First Amend. Compl. ¶¶ 64-67.

CHRISSY MILLER IS THREATENED WITH SUSPENSION OF DRIVING PRIVILEGES UNLESS SHE SURRENDERS HER ACCURATE DRIVER LICENSE

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.*

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. *Id.*

ARGUMENT

I. TEMPORARY INJUNCTION STANDARD

Rule 65.04(2) of the Tennessee Rules of Civil Procedure provides:

[a] temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

Tenn. R. Civ. Pro. 65.04(2). 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 injunction here.

II. PLAINTIFF JANE DOE IS LIKELY TO SUCCEED ON THE MERITS OF HER TENNESSEE UNIFORM ADMINISTRATIVE PROCEDURES ACT CLAIMS

In passing on the legal validity of a rule or order, the court shall declare the rule or order invalid only if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, was adopted without compliance with the rulemaking procedures provided for in this chapter or otherwise violates state or federal law.

Tenn. Code Ann. § 4-5-225(c).

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 Ms. 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, SB 1440, directly to 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—it concerns what Defendants do with the Ms. Doe’s and Ms. Miller’s private information. Ms. Doe’s and Ms. Miller’s only connection to the State in this relationship is through a driver license 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). 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 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,⁵ must issue through these formal procedures. *Mandela*, 978 S.W.2d at

⁵ 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

533. 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 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).

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.*

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), 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.”

B. Defendants’ Denial of an Updated Sex Designator on Jane Doe’s Driver License is Arbitrary and Capricious

Defendants’ denial of an updated sex designator to Ms. Doe and Ms. Miller is an arbitrary and capricious decision because it is merely based on Defendants’ ban on all transgender people updating the sex designator on their driver licenses post-July 1, 2023—no matter what evidence is provided by the applicant. The UAPA mandates a narrow and deferential standard for judicial review of administrative decisions. *Taylor v. Bd. of Admin., City of Memphis Ret. Sys.*, 681 S.W.3d 751, 754 (Tenn. 2023) (cleaned up). To survive review under the

UAPA, an administrative decision generally only needs to be supported by “substantial and material evidence.” *Id.*; Tenn. Code Ann. § 4-5-322(h)(5). Substantial and material evidence “is less than a preponderance of the evidence,” but “more than a scintilla or glimmer of evidence.” *StarLink Logistics Inc. v. ACC, LLC*, 494 S.W.3d 659, 669 (Tenn. 2016) (quotations omitted).

In other words, “substantial evidence” is such relevant evidence as a reasonable mind might accept to support a rational conclusion and to furnish a reasonably sound factual basis for the decision being reviewed. *McClellan v. Bd. of Regents of State Univ.*, 921 S.W.2d 684, 691 (Tenn. 1996); *S. Ry. v. State Bd. of Equalization*, 682 S.W.2d 196, 199 (Tenn. 1984). Although an administrative decision with adequate evidentiary support can still be invalidated under the UAPA as arbitrary and capricious, Tenn. Code Ann. § 4-5-322(h)(4), the decision must “amount [] to a clear error in judgment,” *Taylor*, 2023 WL 8542849, at *3 (Tenn. Dec. 8, 2023) (quoting *Moss v. Shelby Cnty. Civil Serv. Merit Bd.*, 665 S.W.3d 433, 441 (Tenn. 2023)). An administrative decision constitutes “a clear error in judgment” if it “is not based on any course of reasoning or exercise of judgment, or disregards the facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion.” *Id.*

Here, Defendants’ decision is not based on any course of reasoning. Defendants’ decision to deny Ms. Doe or Ms. Miller any recourse to update the sex designator on their driver licenses takes no considerations of evidence into account, for instance, whether Ms. Doe or Ms. Miller have medically transitioned, have female sex characteristics, a female gender identity, or whether there has been a legal determination of gender made through a court order or another government identification document.

Furthermore, Defendants act arbitrarily because there is no rational connection between which transgender people do get to have a driver license that accurately represents their sex

characteristics, and transgender people who are denied such a license. For instance, an inconsistent application of the Definition of Sex Rule will necessarily happen when individuals from other states whose laws allow their birth certificates and driver licenses to reflect the holder's gender identity will be able to obtain Tennessee driver licenses that match their gender identity and sex characteristics when they move to Tennessee. It is only if a transgender person has a birth certificate on file with Defendants, with a sex designator that is different from the designation on their current license—or was born in Tennessee—where the Redefinition of Sex Rule would be enforced. And that's only if the transgender person applies for a change after July 1, 2023. There is no equally applied reasoning. If you happen to be born in a state that allows sex designator changes on a birth certificate, and you've never lived in Tennessee and then you move here, then you are not subject to the Redefinition of Sex Rule. However, if you are unlucky enough to be from the only state in the country which does not allow transgender people to change the sex designator on their birth certificate or on their driver license, then the Redefinition of Sex Rule applies to you. Well, unless you changed the sex designator prior to July 1, 2023. The rule is not applied consistently or in a rational way.

Defendants' decision is not based on reason or judgment, it is a denial for any transgender people who either have a birth certificate on file with Defendants that reflects their sex assigned at birth—or who were born in a state which does not allow them to change the sex designator on their birth certificate—and who are seeking to change their gender marker post-July 1, 2023, regardless of their individual situation. Hence, Defendants' denial of an updated sex designator on Ms. Doe's and Ms. Miller's driver license is an arbitrary and capricious decision in violation of the UAPA and this Court should remand to the agency to reconsider based on Defendants' prior valid rule, Tenn. Comp. R. & Regs. 1340-01-13-.12(6).

III. REMAINING TEMPORARY INJUNCTION FACTORS WEIGH IN FAVOR OF GRANTING INJUNCTIVE RELIEF

Ms. Doe and Ms. Miller will suffer actual and imminent injury in the absence of injunctive relief. Defendants will suffer no harm by being prevented from enforcing a void rule. Furthermore, the interest of the public demands Defendants be restrained from unleashing an unlawful rule on Ms. Doe, Ms. Miller, and other transgender driver license applicants like them, without engaging in proper notice-and-comment rulemaking procedures.

A. Jane Doe and Chrissy Miller Suffer and Will Continue to Suffer Irreparable Harm

A plaintiff's harm from the denial of a [temporary] injunction is irreparable if it is not fully compensable by monetary damages. *Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 578 (6th Cir. 2002). No money damages can compensate Ms. Doe and Ms. Miller for their injuries. Ms. Doe and Ms. Miller will suffer actual and imminent injury in the form of emotional and psychological harm in the absence of injunctive relief. Ms. Doe's and Ms. Miller's harms include other tangible harms such as the risk of bodily harm and harassment every time they use a driver license that reveals their status as a transgender women. Further, without injunctive relief, Ms. Doe and Ms. Miller will be forced to reveal private medical information and deeply personal information about their bodies anytime they present their driver licenses.

Ms. Doe is forced to disclose intimate matters of personal concern and private medical information whenever she shows her Tennessee driver license which conflicts with her physical appearance and violates her right to privacy guaranteed under the Tennessee Constitution. The Redefinition of Sex Rule forces Ms. Doe to reveal her transgender status to complete strangers

despite her female sex characteristics where the release of the information (1) could lead to bodily harm, and (2) the information is of a sexual, personal, and humiliating nature.

Ms. Doe and Ms. Miller risk bodily harm, harassment, and discrimination every time they are forced to use a driver license that reveals their status as a transgender woman. 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. Doe and Ms. Miller are subject to these generally recognized dangers in Tennessee. 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. Transgender

people are over four times more likely than cisgender⁶ 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, [Transgender people over four times more likely than cisgender people to be victims of violent crime - Williams Institute \(ucla.edu\)](https://www.williamsinstitute.org/transgender-people-over-four-times-more-likely-than-cisgender-people-to-be-victims-of-violent-crime).

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

Ms. Miller has also personally experienced harassment and discrimination firsthand. She's 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

⁶ "Cisgender" is defined by Merriam-Webster Dictionary as: of, relating to, or being a person whose gender identity corresponds with the sex the person was identified as having at birth. (Available at <https://www.merriam-webster.com/dictionary/cisgender>).

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.

B. The Balance of Equities and the Public Interest Favor Injunctive Relief

Here, Ms. Doe and Ms. Miller face irreparable harm of bodily harm, harassment and discrimination every time they are forced to use a driver license which reveals their status as transgender women. Ms. Doe and Ms. Miller will be forced to reveal private medical information and deeply personal information when they must present their driver licenses to strangers. If they refuse to carry a driver license with an inaccurate sex designator, Ms. Doe and Ms. Miller will lose the right to drive and will be unable to travel to work, access needed medical care, go to grocery stores, and engage in other essential activities. Furthermore, under the Redefinition of Sex Rule, Ms. Doe and Ms. Miller must carry a state document which conflicts with their other

government identification—creating confusion and uncertainty which affects their ability to obtain work, open bank accounts, or vote, among other things. Weighed against the Defendants interest in enforcing a void rule, Ms. Doe and Ms. Miller clearly suffer on a vastly different level. The equities favor granting injunctive relief to Ms. Doe and Ms. Miller.

The public interest always favors lawful application of statutory authority. Defendants could have no public interest in enforcement of a void rule. Ms. Doe, Ms. Miller and the rest of the public could have few higher interests than proper execution of the law—especially where executive agencies are not tasked with legislating. That is a power best left to the legislative branch of Tennessee. Here, without injunctive relief, Defendants will be overstepping those vital separations of powers that Tennesseans rely on.

CONCLUSION

Ms. Doe and Ms. Miller are likely to succeed on the merits of their Tennessee Uniform Administrative Procedures Act claims, and they are suffering irreparable harm every day that Defendants' Redefinition of Sex Rule remains in force. The balance of the equities strongly favors an injunction, and an injunction is in the public interest. Accordingly, Ms. Doe and Ms. Miller respectfully request that the Court issue a temporary injunction barring Defendants and those under their supervision from enforcing the Redefinition of Sex Rule against Ms. Doe or Ms. Miller in this case while this action is pending.

Respectfully submitted,

/s/ Lucas Cameron-Vaughn

Lucas Cameron-Vaughn (36284)

Stella Yarbrough (33637)

Jeff Preptit (38451)

ACLU FOUNDATION OF TENNESSEE

P.O. Box 120160

Nashville, Tennessee 37212

(615) 320-7142

lucas@aclu-tn.org

syarbrough@aclu-tn.org

jpreptit@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 the Plaintiffs

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing has been forwarded via electronic mail to the following this 13th 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