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CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: DG-2026-CV-000112
PII COMPLIANT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
SEVENTH JUDICIAL DISTRICT

Daniel Doe and Matthew Moe; Plaintiffs	)	
	)	Case No. DG-2026-CV-000112
v.	)	Division 4
	)	
State of Kansas, ex rel. Kris Kobach, Attorney General, et al. Defendants	)	

Memorandum Decision

Every party in every lawsuit is entitled to full process and deliberation – in proportion to the issues at hand. When a party seeks to invalidate a State law on an accelerated, abbreviated process, how courts proceed in such circumstances is of grave importance to every citizen. A court that is too quick to assume too much about the facts or possible impacts of a law risks the appearance of either political bias or a lack of appreciation for the value and importance of the full, fair deliberative process in such circumstances.

Contemporary with the filing of their Petition challenging the Constitutionality of Kansas Senate Bill 244 ("SB 244"), Plaintiffs requested a Temporary Restraining Order that would enjoin enforcement of the Act throughout the State during the pendency of this lawsuit.

After three hours of argument, over a hundred pages of briefing and exhibits, reviewing dozens of cases cited by the parties and its own research (to include multiple drafts with inconsistent outcomes), the conclusion became self-evident - this Court simply does not have the information the law requires to enter a Temporary Restraining Order at this stage of the proceedings.

The lawsuit was filed February 26, 2026. The Court heard argument March 6, 2026. Plaintiffs appeared by counsel Harper Seldin and Heather St. Clair. Defendant State of Kansas appeared by Attorney General Kris Kobach. The Department of Administration appeared by counsel Jordan Brewer. The Department of Revenue appeared by counsel Ted Smith.

Nature of the Challenge and
Request for Temporary Restraining Order

Plaintiffs in this litigation assert that SB 244, recently passed by the Kansas Legislature and effective February 26, 2026, violates the Kansas Constitution in several respects. Plaintiffs seek a Temporary Restraining Order preventing enforcement of its provisions while this litigation is pending.

To succeed on their request for a Temporary Restraining Order, Plaintiffs must:

1) **Demonstrate a likelihood of success on the merits of their claims.** Those claims, as articulated in the Petition are as follows:

a) Section 18 of the Kansas Bill of Rights **(Procedural Due Process and Right to Personal Autonomy)**;
b) Sections 1 and 2 of the Kansas Bill of Rights (**Right to Informational Privacy**)
c) Sections 1 and 2 of the Kansas Bill of Rights (**Right to Equality under the Law**)
d) Section 11 of the Kansas Bill of Rights (**Right to Free Expression**) and
e) Section 16 of the Kansas Constitution (**Violation of Single Subject and Clear Title**).

2) **Make a showing of immediate and irreparable harm;**

3) **Make a showing that threatened injury to Plaintiffs will outweigh any harm that will inure to Defendants;**

4) **Make a showing that the requested relief serves the public interest;** and

5) **No other adequate remedy is available.**

League of Women Voters of Kansas v. Schwab, 318 Kan. 777, 791-792 (2024).

The burden rests with Plaintiffs and if they fail to meet that burden on any one of these five necessary elements, injunctive relief would be improper as a matter of law. State ex rel. Kobach v. Harper, 65 Kan.App.2d 680, 687 (2025). For reasons discussed below, based on the matters presented thus far, the Court finds that Plaintiffs fall short on the first two elements. Since this is fatal to the request, the Court offers no comments on the remaining elements.

Who to Believe?

The Attorney General says the restroom component of the Act was necessary to protect Kansans from encounters that invade their sense of security, privacy and tradition. No examples of actual encounters have been offered to the Court.

Plaintiffs say that obeying the law will lead to encounters that invade not only their sense of self but also the sense of security and privacy of those they will encounter in the assigned restroom. No examples of actual encounters with others having occurred or ongoing were presented to the Court.

As relates to the driver's license/birth certificate component of the Act, the Attorney General says misidentification by law enforcement or first-responders will be avoided; that the State's records will be more accurate and reflect the information the State deems important and will assist in correct assessments for public benefits. No particular examples were offered.

Plaintiffs express concern their jobs and their safety will be at risk if they have to display one of these documents to an employer or in some other setting. Daniel discloses that at some earlier point in time in life, before he began hormone therapy, he was "often" yelled at if he used a restroom assigned for females. Matthew relays how use of a restroom assigned to females (he has used male restrooms exclusively since 2019) caused him to feel the worst about himself.

Each side tells the Court "harm will happen" to their side no matter what the Court does. But the Court cannot fairly analyze important concepts like injury to **personal autonomy, informational privacy or equality under the law** (or even determine whether they apply) without examining well-developed factual scenarios that have been subjected to challenge and debate. Courts should not exercise the tremendous power of an injunction on speculation. See Harper, 65 Kan.App.2d at 687 (use sparingly).

Moreover, with the caution that we are at the preliminary stage of the proceedings, the following cases (on their own facts and the cases cited therein) persuade this Court that it cannot say with confidence whether Plaintiffs fundamental rights arguments will ultimately prevail on the merits :

- Jones v. Critchfield, 803 F.Supp.3d 1078 (D. Idaho 2025)(denial of preliminary injunction to enjoin enforcement of law restricting state university bathroom usage to biological sex in face of claims of information privacy and equal protection, noting the issue of transgender status as a quasi-suspect class is undergoing present development);

- Roe v. Critchfield, 137 F.4th 912, 925 (9th Cir. 2025)(affirming denial of temporary injunction to enjoin enforcement of law restricting high school bathroom usage to biological sex, claims of informational privacy and equal protection);
- Trump v. Orr, 146 S.Ct. 44 (2025)(finding government was likely to succeed in defense of equal protection claim challenging changes to policy requiring passport to reflect gender assigned at birth);
- Hodes & Nauser, MDs v. Stanek, 318 Kan. 995, 1013 (2024)(it would be improper to "completely ignore[] the fact that this court's analysis in *Hodes I* examined the inalienable natural right to personal autonomy in the specific context of abortion, which necessarily limited the scope of its holding");
- United States v. Skrmetti, 605 U.S. 495 (2025)(upholding Tennessee's prohibition on puberty blockers and hormone therapy for treating gender dysphoria, gender identity disorder or gender incongruence in minors on a rational basis review).

To be clear, the Court understands Plaintiffs are proceeding on State Constitutional claims. They have either failed to cite persuasive cases of similar nature/subject matter that recognize such rights in this context or they cite Kansas cases that look to federal precedent to help inform the contours of the State right (and thus federal caselaw is at least persuasively relevant). Since there are no direct cases on point, the request is for this Court to now draw the conclusion that Kansas law does (or will) recognize these rights in this context. But, that does not appear to have been established and should not be assessed on an abbreviated schedule.

If it is not clear what rights are properly implicated, the Court cannot discern the standard of review (strict scrutiny or some lesser standard) that would apply to reach any conclusion about the likelihood of success on the merits.

The **Single Subject/Clear Title** challenge is likewise one that is full of nuance and complexity. The parties argue over the breadth of the phrase "identification of biological sex." Without a more complete understanding and examination of the legislative process and history by which this Act came to exist, the Court has no means to determine this claim on such a limited basis.

A review of just a few cases over a long history reveals this to be the case. Kansas v. Barrett, 27 Kan. 213 (1882) (title of bill under which the statute was enacted focused on "the manufacture and sale of intoxicating liquors" without any reference in the title to the portion of the bill making it "unlawful for any person to get intoxicated"); State ex rel. Dole v. Kirchner, 182 Kan. 622, 322 P.2d 759 (1958) (oil and gas severance tax statutes void because title of act failed to clearly express its subject); State ex rel. Fatzer v. Shanahan, 178 Kan. 400, 286

P.2d 742 (1955) (repealing two diverse sets of statutes because it addressed two distinct subjects); State ex rel. Stephan v. Carlin, 229 Kan. 665, 630 P.2d 709 (1981).

Finally, the Court is not overlooking the **due process** challenge. But, the Court views the beginning point of that analysis differently than what Plaintiffs have argued. On its face, it appears that, as written, any person aggrieved by the enforcement of the Act has a means to pursue a remedy that comports with Due Process.

Facial Challenge Means No Possible Valid Application

When the relief sought (statewide injunction) reaches beyond the particular circumstances of plaintiff, they must satisfy the standards for a facial challenge. John Doe No. 1 v. Reed, 561 U.S. 186, 194 (2010). "A facial challenge is 'the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.'" State v. Jones, 313 Kan. 917 (2021).

In hearing the arguments of each side, the Court is struck by a basic assumption each side makes about the other – that our "lesser angels" drive our choices. Yet, the very paucity of actual examples that *either side* has put forward in *any* of the arguments suggests the opposite – that the vast majority of Kansans are tolerant, understanding, accepting and generally supportive of each other and that the vast majority of transgender persons have experienced this as Kansans.

Plaintiffs fear reprisal by employers and acquaintances that may not know their biological gender but learn of it by forced use of assigned restrooms or incidental disclosure by use of their identification documents. For Plaintiffs to succeed on this facial challenge to the law, the Court would have to accept that nearly every assertion or predicted adverse outcome that Plaintiffs offer is true and would be true in every instance across the State to support the assertion that there is no way this law can be enforced without causing harm to the interests that Plaintiffs have put forward. The Court reviewed the declarations of both Dr. Scheim and Dr. Turpin. Suffice to say, opinions of experts, untested by cross-examination or opportunity for competing views, carry little weight, especially when the topics do not appear to be exclusively the province of expert understanding.

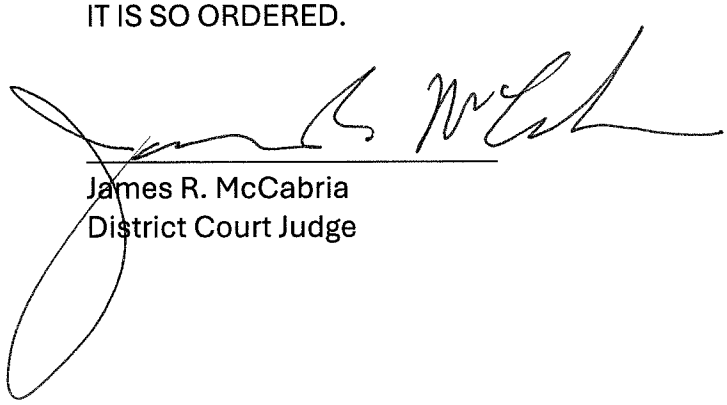
This Court declines the invitation to assume that every employer who values and respects an employee would react in every instance by firing or harassing that employee. Or that every acquaintance would react with disfavor to having this information revealed to them. Or that every restroom visit is fraught with the potential for violence or embarrassment if this law is not immediately suspended. Or, especially, to assume the Legislature intended to promote such negative experiences when the law was passed. With this conclusion of the

Court, Plaintiffs have not demonstrated that enforcement of this Act will necessarily, in all instances, result in Constitutional violations.

Each side will have ample opportunity to buttress these issues – and all issues - in the coming weeks. But, as it stands, the evidence does not support the requested relief. The Motion for a Temporary Injunction is denied.

The parties are directed to appear for a case management conference at 9 a.m. on Wednesday, March 18, 2026. If either party believes they cannot appear without undue hardship at that time, they should notify the opposing side and consult about dates and times that work for both sides on March 18, 19 or 20, and the Court will endeavor to accommodate any such request.

IT IS SO ORDERED.



James R. McCabria
District Court Judge