

ELECTRONICALLY FILED
2026 Aug 17 AM 11:02
CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: DG-2026-CV-000237
IN THE SEVENTH JUDICIAL DISTRICT
DOUGLAS COUNTY DISTRICT COURT
CIVIL DEPARTMENT

DANIEL DOE and MATTHEW MOE,	)	
Plaintiffs,	)	
v.	)	
	)	Case No. DG-2026-CV-000112
KRIS KOBACH, STATE OF KANSAS,	)	Division 4
et al.,	)	
	)	
Defendants.	)	
_____	)	

JAMIE MICHELLE MILLER	)	
Plaintiff,	)	
v.	)	
	)	Case No. DG-2026-CV-000237
KRIS KOBACH, STATE OF KANSAS,	)	Division 4
et al.,	)	
	)	
Defendants.	)	
_____	)	

Journal Entry and Memorandum Decision Regarding
July 29, 2026, Hearing on Motions
And
Consolidation

NOW on this 29th day of July, 2026, DG-2026-CV-237 ("237") is before the Court on Plaintiff's Motion for Temporary Injunction filed June 23, 2026. The State filed its Response July 13, 2026. Also on the docket is DG-2026-CV-112 ("112") as part of the pending consideration of the State of Kansas request to consolidate these two matters.

Plaintiff appeared in person and with counsel, David J. Brown. The State of Kansas appeared by and through counsel, Attorney General Kris Kobach and Deputy Attorney General James Rodriguez. The Kansas Department of Revenue appeared through counsel, Ted Smith. Plaintiffs in 112 appeared by counsel Harper Seldin.

On July 24, 2026, the parties in 237 were heard regarding a discovery dispute and, towards resolution of that issue, the Court inquired as to the basis upon which Plaintiff would argue for her temporary injunction. After inquiry by the Court, the parties agreed Plaintiff would limit the basis for her request for a temporary injunction to the invalidation of her driver's license to the Kansas Judicial Review Act, K.S.A. 77-601, *et seq.*, regarding the notice and procedure utilized by the Kansas Department of Revenue in taking that action.

WHEREUPON, the parties – having filed a written stipulation regarding the evidence to be admitted on the Motion for Temporary Injunction, the same being accepted by the Court – proceeded to make legal argument. The Court took the matter under advisement.

WHEREUPON, regarding the issue of consolidation, after hearing from all counsel and acknowledging receipt/review of the State's Supplemental Memorandum, the Court determined that matter should be taken under advisement.

Findings of Fact and Ruling in 237

For anyone attempting to interface with a government agency regarding some decision affecting a protected interest, the bane of those efforts often lies in the notice and procedures employed by the agency. Due Process is nothing more (and nothing less) than the right to meaningful notice of what action the Government intends to take/has taken with respect to some personal interest and a meaningful opportunity to be heard.

When the government fails to make sufficiently clear what action is going to occur, when it will occur and what steps one must take to be heard on that action, Due Process has not been afforded.

Findings of Fact

- 1) Plaintiff was born a biological male. In Douglas County Case No. DG-2024-CV-117, Plaintiff obtained an "Order for Permanent Recognition of Gender and Amendment of Birth Record" ("Order Recognizing Gender") which included a pronouncement that "Petitioner's GENDER be changed to FEMALE" and further ordered that "upon proper application, an amended birth certificate be issued to reflect Petitioner's new GENDER as FEMALE." The KDOR record reveals that Plaintiff presented this Order Recognizing Gender" to KDOR and, on March 10, 2017, KDOR issued a driver's license indicating Plaintiff's gender as female. That status was unchanged until the events giving rise to this challenge arose.

It is worth pausing to note – this Court has no idea whether that Order, or any other argument that Plaintiff might present to KDOR, will succeed in persuading KDOR whether the gender marker on her driver's license should reflect male or female. That is not the subject of this decision. This decision is about the process, not the subject matter of the underlying dispute.

- 2) On **February 24, 2026**, KDOR sent a letter to Plaintiff that stated, in relevant part:
 - a. A new law would be going into effect February 26, 2026;
 - b. If the gender/sex marker on Plaintiff's "current credential" does not match her sex assigned at birth, the credential would no longer be valid;
 - c. If Plaintiff believed KDOR had sent her the notice in error (i.e., she had a reason to challenge the factual determination of KDOR that the law applied to her), she could appeal pursuant to K.S.A. 8-259;
 - d. Filing an appeal would not preserve the validity of the current credential;
- 3) While not stated explicitly in the letter, per the procedures referenced in K.S.A. 8-259 (directing the person to the Kansas Judicial Review Act, K.S.A. 77-601, et seq.), Jamie Miller would have had until **March 26, 2026**, to initiate her appeal.
- 4) Six days before that appeal deadline, KDOR sent a second letter to Plaintiff dated **March 20, 2026**, that stated, in relevant part:
 - a. The law that prompted the first letter had gone into effect February 26, 2026;
 - b. The law is currently under review by a court but no court order presently affects implementation;
 - c. Despite this, the Attorney General's Office agreed to a grace period for compliance that would expire March 25, 2026;
 - d. Plaintiff may be required to update her credential but no enforcement action would occur until after March 25, 2026;
 - e. If Plaintiff believed KDOR had sent her the notice in error (i.e., she had reason to challenge the factual determination of KDOR that the law applied to her), appeal rights were available pursuant to K.S.A. 8-259.
 - f. Filing an appeal would not preserve the validity of the current credential.
- 5) While not stated explicitly in the letter, per the KJRA, **April 21, 2026** (the 30th day falling on a Sunday) would be the deadline for an appeal under those instructions.
- 6) On **March 26, 2026**, KDOR entered the following action in its records: "Applicant has been invalidated due to SB244 requirement. Record should be updated from female to male along with any additional changes which may be required." This is contrary to the information that KDOR had communicated to Plaintiff that her driver's license would be invalidated effective February 26, 2026.
- 7) Fourteen days prior to the expiration of the appeal time described in the March 20 letter, KDOR sent her a letter dated **April 7, 2026**, that stated, in relevant part:
 - a. Her Kansas driver's license status has been invalidated (no information as to the effective date of this action);

- b. Contrary to the earlier notices saying that her credential would be invalidated regardless of her action, this notice stated *Plaintiff's inaction* “resulted in invalidation of [her] credential”;
 - c. Without reference to a statute, procedure or deadline, the notice informed Plaintiff that she could still obtain a review and “final determination” by contacting KDOR via phone call or email.
- 8) Plaintiff called and emailed KDOR to request her appeal and received only a generic “email received” confirmation.
- 9) Plaintiff filed her Petition in the 237 case **April 24, 2026**, 14 days after receiving notice that final agency action had occurred. That Petition included a claim for procedural Due Process violations in the invalidation of her driver’s license;
- 10) On **April 27, 2026**, Plaintiff filed her Amended (Verified) Petition that included the same claims.

Conclusions of Law

Jurisdiction under the KJRA depends on timely application for relief. Timely application from relief is calculated from the date of the final agency action or order that purports to determine the legal rights of one or more specific persons. K.S.A. 77-602(e). A challenge pursuant to the KJRA must occur within 30 days of that date. K.S.A. 77-613(b).

In this case, the final agency action occurred, at the earliest, when KDOR acted to invalidate Plaintiff’s driver’s license (March 26, 2026) and, at the latest, when KDOR notified Plaintiff that this action had occurred (April 7, 2026). Thirty days from March 26, 2026, is April 25, 2026. Plaintiff filed her first Petition April 24, 2026. Pursuant to K.S.A. 60-215(c)(2), the effective date of filing of that Amended Petition is April 24, 2026. The Petition is timely and this Court has jurisdiction.

The burden of proving that an agency action was invalid is on the party asserting invalidity. K.S.A. 77-621(a)(1). Under subsection (b)(2) of that same statute, “the validity of agency action shall be determined in accordance with the standards of judicial review provided in this section, as applied to the agency action at the time it was taken.”

Pursuant to K.S.A. 77-621(c)(5), the court should grant relief only if the agency has engaged in an unlawful procedure or has failed to follow prescribed procedure. Here, KDOR first offered the statutory review procedure pursuant to K.S.A. 8-239. But, then, it reset the start clock on that procedure. And, then, in its final letter, it abandoned reference to the statute and offered a generic review with no description and no instruction on how or when such a review must be requested or occur.

The determination of whether Jamie Miller was subject to having her driver's license invalidated was not a ministerial function. KDOR decided how to make that determination and engaged in a fact-finding process to reach its conclusion. When that occurs, due process attaches. See Bratton v. City of Atchison, 376 P.3d 95, p. 14 (2016).

To obtain a temporary restraining order, Plaintiff must be able to establish each of the following:

- (1) a substantial likelihood of eventually prevailing on the merits (of her KJRA claim);
- (2) a reasonable probability exists that Plaintiff will suffer irreparable injury without an injunction;
- (3) Plaintiff lacks an adequate legal remedy, such as damages;
- (4) the threat of injury to Plaintiff outweighs whatever harm the injunction may cause the opposing party; and
- (5) the injunction will not be against the public interest.

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

Substantial Likelihood of Prevailing

Plaintiff challenges the KDOR process on two levels. First, she claims she was entitled to a pre-deprivation opportunity to be heard on the threatened loss of her ability to drive. Second, she claims (and it appears) she was never given meaningful notice of how she could even request a post-deprivation hearing. She communicated with KDOR as instructed by the April 7 letter but received no further instructions on how to challenge the invalidation of her driver's license.

A logical reading of the plain language of the three notices KDOR sent to Plaintiff (February 24, March 20, April 7) can be summarized as follows:

- February 24 – Your license is going to be invalid as a matter of law as of February 26, 2026 and you have 30 days to request a hearing;
- March 20 – Even though we told you your license would be invalid before the date of this letter, that won't be enforced until after March 25, 2026. You have 30 days to request a hearing;
- April 7 – We sent you previous notice that you had until March 25, 2026, to request a hearing but “[your i]naction on this matter resulted in the invalidation of your credential.” If you want a final review, call or email.

More summarily, the notices can be read as “your license *will be* invalid in two days, you can appeal, no, wait, your license isn't invalid *yet*, you can appeal, no, wait, your license *has been* invalidated because you didn't do anything to appeal but if you want to appeal, call us.”

This is not “meaningful notice” and there was never “meaningful opportunity” to be heard before or after the invalidation of Plaintiff's driver's license. This is not a procedure defined by any statute.

Kansas law establishes the following:

3. In driver's license suspension or revocation cases, the Due Process Clause does not require perfect procedures, but the fundamental requirement of Due Process is the opportunity to be heard at a meaningful time and in a meaningful manner. In making the determination regarding what process is due in driver's license revocation cases, courts should weigh the varying interests of the State and the licensee.

4. The United States Supreme Court in Mackey v. Montrym, 443 U.S. 1, 10, 99 S.Ct. 2612, 61 L.Ed.2d 321 (1979), adopted the balancing test expressed in Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), to determine whether the state procedural law relating to driver's license suspension and revocation denied licensee due process of law: The court weights three factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and, third, the government's interest, including the function and burdens involved.

6. Prior to the 2001 amendments to K.S.A. 8-1001 et seq., a person refusing to submit to a test for intoxication ran the risk of having his or her license suspended at the conclusion of the initial administration hearing without the opportunity to present testimony from "relevant witnesses" and, in some cases, without the opportunity to cross-examine relevant witnesses. Thus, decisions of this court in Wulfschle v. Kansas Dept. of Revenue, 234 Kan. 241, 671 P.2d 547 (1983), and Carson v. Division of Vehicles, 237 Kan. 166, 699 P.2d 447 (1985), held, *inter alia*, that such licensees were denied procedural due process of law.

8. Our earlier decisions in Wulfschle v. Kansas Dept. of Revenue, 234 Kan. 241, 671 P.2d 547 (1983) and Carson v. Division of Vehicles, 237 Kan. 166, 699 P.2d 447 (1985), are superseded in part by the statutory enactment of [a statute that permits] a licensee is provided with notice and the opportunity for a meaningful hearing before any official action is taken against his or her driver's license.

Kempke v. Kansas Department of Revenue, 281 Kan. 770, Syl.Par. 3, 4 and 6 (2006).

Driving privileges are implicated by KDOR's action here and Kansas recognizes that these privileges are entitled to Due Process. Not only is Kansas law clear on this point, but, in the face of the notices provided, it is difficult to logically conclude otherwise. That is, the Court questions why KDOR even sent notices in these circumstances but, having sent notices, it cannot now claim no Due Process rights attach.

Moreover, application of the rationale from Kempke leads to the conclusion that the lack of post-invalidation process of driving privileges where an agency is making a factual determination that

is not otherwise addressed by some other aspect of the procedure leading to the suspension (as in the case of habitual violator suspensions) is not likely permitted. See Kempke, 281 Kan. at 776. Thus, it appears this is the type of action that would require pre-invalidation hearing before Due Process is satisfied.

But, for purposes of the pending request for temporary relief, whether the Court ultimately decides that post-invalidation opportunity will suffice, at this stage, invalidation occurred and neither pre- nor post-deprivation opportunity was extended to Plaintiff. The April 7 notice is the final notice and after following the instructions, no information on how to obtain a review or "final determination" was forthcoming.

Irreparable Injury

Courts have consistently noted that "[b]ecause a showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction, the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered." Dominion Video Satellite, Inc. v. Echostar Satellite Corp., 356 F.3d 1256, 1260 (10th Cir. 2004). Likewise, because "a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal." 356 F.3d at 1261.

In determining whether a party shows it will suffer an irreparable future injury, the party must only demonstrate that a "reasonable probability" of injury exists. Steffes, 284 Kan. at 395, 160 P.3d 843. The "reasonable probability" standard is a much lower burden than the applicable burden of proof at a trial. Idbeis v. Wichita Surgical Specialists, 285 Kan. 485, 492, 173 P.3d 642 (2007). Requiring proof of certainty of irreparable harm is too high of a standard for parties seeking injunctions. Board of Leavenworth County Comm'rs v. Whitson, 281 Kan. 678, 684, 132 P.3d 920 (2006). Yet purely speculative harm will not suffice. RoDa Drilling Co. v. Siegal, 552 F.3d 1203, 1210 (10th Cir. 2009). Because an injunction is an equitable remedy, it does not issue automatically and is not meant "to restrain an act the injurious consequences of which are merely trifling." Weinberger v. Romero-Barcelo, 456 U.S. 305, 311, 102 S. Ct. 1798, 72 L. Ed. 2d 91 (1982).

State ex rel. Kobach v. Harper, 65 Kan.App.2d 680, 691 (2025)

Plaintiff submitted a "Timeline of Harms Resulting from SB 244" ("Timeline") as Exhibit 1 to her Motion. That document was admitted by stipulation (and thus not subject to cross-examination).

The Timeline recites a variety of consequences that have been visited upon Plaintiff as a result of no longer having a valid driver's license – inability to legally drive, incurring costs of replacement transportation that doesn't require a driver's license (an electric bike) and insurance for same, numerous instances and ongoing necessity to seek out assistance from family or others to provide transportation when the bike won't reasonably serve the purpose, being confronted with questions about her manner of identification in various settings. In short, the loss of a valid driver's license

has caused a not insignificant disruption to the time, cost and manner of managing activities of daily living. The disruption to one's life resulting from invalidation of a driver's license is both an understandable and foreseeable consequence – one which KDOR no doubt appreciates and was likely trying to help Plaintiff avoid with the notices that it sent.

Whether these list of consequences – for purposes of a temporary injunction – demonstrate a reasonable probability that Plaintiff will suffer irreparable harm if her license remains invalid while this case is pending may be subject to dispute. But, what is not susceptible of dispute is that it is well established that the deprivation of constitutional rights “unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976).

Here, Plaintiff was deprived of her constitutional Due Process right to be heard on KDOR's decision to invalidate her driver's license. Plaintiff has come to this Court to obtain enforcement and remedy for loss of that right. The final hearing in this matter will resolve the issue but, in the interim, given that it appears likely she will succeed on her claim that she was deprived of her Due Process, the only way to avoid the irreparable harm is to grant her a temporary injunction until the matter can be finally determined.

Lack of Adequate Remedy

For the reasons already explained, Plaintiff has met this element. No other remedy will suffice.

Threat of Injury to Plaintiff Outweighs Whatever Harm Injunction May Cause

Given the procedural posture of the case and the matters at issue in the pending request for a Temporary Injunction, the Court is not “enjoin[ing]... statutes enacted by representatives of its people” (quoting from the citation at page 29 of the State's Response). Whether SB244 will be enjoined will be determined by this Court after the trial on those claims. No part of this Order should be interpreted as pronouncing on any aspect of those arguments. Rather, the Court has concluded that, for this Plaintiff, given these notices and the absence of any timely opportunity to be heard, there has been injury to Plaintiff's Constitutional right of Due Process.

Injunction Not Against Public Interest

The injury identified in this request for temporary injunction is limited to the claims brought by Jamie Miller. The temporary injunction affects only the driving privileges of Jamie Miller. The remedy is being applied because of the likely harm done to her Due Process interests. No other member of the public is affected. There is no more injury here than would arise for any petition

for relief under the KJRA. As already noted, given the absence of any argument that Jamie Miller poses a threat to public safety whether her driver's license identifies her as a male or female, the State has not presented any evidence that the public interest is jeopardized by such temporary relief.

For all of the foregoing reasons, Plaintiff's Motion for Temporary Injunction is Granted. The KDOR action invalidating Jamie Miller's driver's license is hereby set aside until further order of the Court.

Consolidation Ruling in Both Cases

In opposing the State's request for consolidation of these cases, Plaintiff's counsel in 237 proffered at the hearing on July 29, that he anticipates *maybe* half a day's worth of evidence for his client's case in chief. This suggests little in the way of anticipated discovery. He asked the court to consider the burden that would be imposed on his client if she had to sit through the days of evidence that Plaintiffs in 112 expect to present. For their part, Plaintiffs in 112 emphasized that they opposed consolidation if it limited their already reserved time for evidence or affected the current pre-trial and trial schedule in their case.

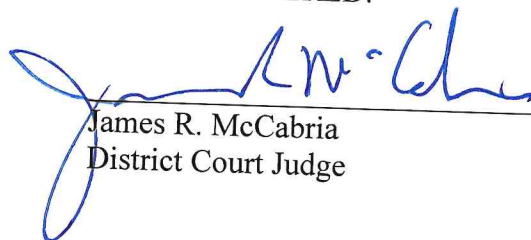
These two concerns can be fairly managed. If Plaintiff in 237 anticipates little in the way of evidence, and plans to rely primarily on legal argument, then an abbreviated discovery schedule should not prove prejudicial. And, if she only needs an additional half day (or even a full day) to present evidence, the present schedule is flexible enough to accommodate that without detracting from the time reserved for the 112 Plaintiffs.

Whatever differences exist between the two cases, with the disposition of the KJRA claims on a temporary basis, Plaintiffs arguments are so materially similar that the State would essentially be left to present its evidence and arguments twice were the cases not consolidated for trial purposes. That burden would exceed that of any challenge that consolidation would impose on Plaintiffs.

The State's Motion to Consolidate is granted as follows: Pursuant to K.S.A. 60-242(a)(1), the Court finds that the balance of efficiency and fairness weighs in favor of joining these cases for trial with 112. That trial is presently scheduled for Tuesday, September 29 – Friday, October 2, 2026. The matter is set for argument October 7, 2026.

The parties can explore scheduling evidence at a joint future pre-trial hearing. If an additional day of evidence or argument is required, that will be accommodated. Discovery in 237 shall be completed by September 18, 2026.

IT IS SO ORDERED.


James R. McCabria
District Court Judge