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IN THE  
COURT OF APPEALS OF INDIANA

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No. 23A-PL-00899

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INDIANA BUREAU OF MOTOR  
VEHICLES and JOE B. HOAGE,  
in his official capacity as  
Commissioner of the Indiana Bureau  
of Motor Vehicles,

Appellants,

v.

FITZ SIMMONS, et al.,

Appellees.

Appeal from the Monroe  
County Circuit Court VI,

Trial Court Case No.  
53C06-2106-PL-001347,

The Honorable  
Holly M. Harvey,  
Judge.

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**RESPONSE TO PETITION FOR REHEARING**

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**STATEMENT OF THE ISSUES**

Whether the Court should revisit its holding that the term “gender” in Indiana Code § 9-24-11-5(a)(6) refers to the biological state of being either male or female.

## ARGUMENT

At the heart of this case is a dispute over the meaning of “gender” in Indiana Code § 9-24-11-5(a)(6)—specifically, does it refer to the “biological state of being either male or female,” or to “how a person identifies themselves based on an internal sense”? Op. 9. This Court held that Title 9 uses the term “gender” synonymously with the term “sex” to refer to “the biological division of being either female or male.” Op. 16. On rehearing, plaintiffs seek to relitigate that definitional issue. Plaintiffs request that the Court avoid describing gender (and sex) as a “biological division,” arguing that this description is “unsupported” and that revising it would “not change this Court’s ultimate holdings.” Pet. for Reh’g 4, 10. That is incorrect.

First, as reflected in this Court’s opinion and parties’ briefs, the dispute here concerns whether, in Title 9 of the Indiana Code, “gender” refers to a biological division between male and female, or to an inner sense of identity. *See* Op. 9; Appellants’ Br. 25–28; Appellees’ Br. 22–23, 25–27; Reply 14–18. One of the arguments that plaintiffs made—and lost—was that “gender” and “sex” refer to “gender identity” or “behavioral/cultural traits” instead of the binary, “biological” division of male and female. Appellees’ Br. 22–23, 25–27. Yet plaintiffs make that same argument again here, arguing it is wrong to view “gender” or “sex” as referring to “two (and only two) distinctive divisions” based on “biology.” Pet. for Reh’g 5, 7. Removing any references to “biological division” as plaintiffs request would indeed change this Court’s holding.

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Second, the sources cited in the Court’s opinion (and in the Bureau’s briefs) refute the claim that the Court’s holding is “unsupported.” Pet. for Reh’g 4. For example, one dictionary offers as a definition of “gender” “[e]ither of the two divisions, designated female and male, by which most organisms are classified on the basis of their reproductive organs and functions; sex.” Op. 11 (quoting *Gender*, The American Heritage Dictionary, <https://www.ahdictionary.com/word/search.html?q=gender>). As other courts have recognized, a definition that refers to reproductive organs and functions necessarily references a “biological” concept. *E.g.*, *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 812 (11th Cir. 2022) (en banc). Plaintiffs offer no explanation of how it could refer to anything else. And while genetic abnormalities may very rarely disrupt the ordinary expression of sex, that does not alter that the term “gender” refers to a biological characteristic. *See* Reply 16–17.

The Court should decline plaintiffs’ invitation to revisit its holding. It is not going “beyond the text of the statute” to unpack what a statutory term—here, “gender”—means. Pet. for Reh’g 7. That is the essence of statutory interpretation. *See, e.g.*, *Rainbow Realty Grp., Inc. v. Carter*, 131 N.E.3d 168, 174 (Ind. 2019) (using dictionary definitions to give content to a statutory term). “Until the legislature tells us otherwise,” *id.*, the Court should adhere to the ordinary meaning of “gender” in Title 9. Policy debates about whether Title 9 should be “overhaul[ed]” to allow for individual expression of gender identity must be left to “the political process.” *Ind. Alcohol & Tobacco Comm’n v. Spirited Sales, LLC*, 79 N.E.3d 371, 383 (Ind. 2017). In the

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meantime, nothing prevents plaintiffs—like all other eligible persons in Indiana—  
from obtaining driver’s licenses and credentials from the Bureau.

**CONCLUSION**

The Court should deny the petition for rehearing.

Respectfully submitted,

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**WORD COUNT CERTIFICATE**

I verify that this brief contains no more than 4,200 words, as required under  
Indiana Appellate Rule 44(E).

/s/ James A. Barta  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2024, I electronically filed the foregoing document using the Indiana E-filing System (IEFS). I also certify that on May 22, 2024, the foregoing document was served upon the following persons using the IEFS:

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