

ORIGINAL PROCEEDING
IN THE SUPREME COURT OF THE STATE OF KANSAS

HON. ROBERT J. FREDERICK,)
HON. MICHAEL F. POWERS,)
HON. MERLIN G. WHEELER,)
HON. STEVEN L. HORNBAKER,)
JOHN DOE 1,)
JOHN DOE 2, and)
JANE DOE 1,)
))
Petitioners,)
))
v.)
))
THE KANSAS LEGISLATURE)
(INCLUDING THE)
HOUSE OF REPRESENTATIVES)
AND THE SENATE),)
))
Respondent.)
_____)

Case No. _____
Pursuant to Chapter 60

PETITION FOR WRIT OF MANDAMUS AND QUO WARRANTO

Petitioners, by and through their attorneys, individually and on behalf of the judges, justices, and nonjudicial employees of the Kansas Judicial Branch, state and allege as follows:

NATURE OF THE SUIT

1. The State of Kansas, by historical actions and chronic inaction of the Legislature, has deprived the Kansas Judicial Branch of adequate funding to a degree that violates the Separation-of-Powers Doctrine, Article III, Section I, of the Kansas Constitution, and the express statutory requirements of K.S.A. 75-5551. This deprivation of funding has undermined the

ability of the district and appellate courts in Kansas to function as a coequal, independent branch of the republican government guaranteed by the Kansas Constitution. Petitioners seek to remedy the constitutional and statutory violations by requesting the Court direct the Legislature to perform its clear duty to appropriate the funds necessary to fulfill the budget of the Kansas Judicial Branch.

PARTIES

2. Petitioner Robert J. Frederick is employed by the Kansas Judicial Branch and serves as Chief Judge of the Twenty-Fifth Judicial District.

3. Petitioner Michael F. Powers is employed by the Kansas Judicial Branch and serves as Chief Judge of the Eighth Judicial District.

4. Petitioner Merlin G. Wheeler is employed by the Kansas Judicial Branch and serves as Chief Judge of the Fifth Judicial District.

5. Petitioner Steven L. Hornbaker is employed by the Kansas Judicial Branch and serves as a District Court Judge in the Eighth Judicial District.

6. Petitioner John Doe #1 is employed by the Kansas Judicial Branch and serves as a District Court Judge in Eastern Kansas.

7. Petitioner John Doe #2 is employed by the Kansas Judicial Branch and serves as a District Magistrate Judge in Western Kansas.

8. Petitioner Jane Doe #1 is employed by the Kansas Judicial Branch and serves as an Administrative Assistant.

9. Petitioners are active judges and nonjudicial employees of the Kansas Judicial Branch (collectively, the “Judicial Branch”).

10. Respondent Kansas Legislature (comprised of the Kansas House of Representatives and the Kansas Senate, collectively the “Legislature”) is a state governmental body that can be served through its presiding officers, Senate President Susan Wagle, 333-E Capitol Building, and Speaker of the House Ron Ryckman, Jr., at 368-W Capitol Building, Topeka, Kansas 66612.

11. The Legislature has considered budgets and appropriated funds that have determined the levels of compensation and employment of judges, justices, and nonjudicial employees of the Judicial Branch.

JURISDICTION AND VENUE

12. This is an original action in *quo warranto*, K.S.A. 60-1201, *et seq.*, and mandamus K.S.A. 60-801, *et seq.*

13. This Court possesses original jurisdiction over these proceedings. Kan. Constit. Art. 3, § 3; Supreme Court Rule 9.01.

14. Venue is proper in this Court. *See generally* K.S.A. 60-603.

15. As further described in the Memorandum in Support accompanying this Petition,¹ the Court should exercise its original jurisdiction over this matter because the case presents legal issues of significant public concern; the relevant facts are set forth herein with citation to

¹ Submitted in accordance with Kansas Supreme Court Rule 9.01(a), together with documentary evidence supporting the facts alleged.

supporting documentary evidence; economy of the judiciary and the parties will be served by the exercise of this Court's jurisdiction; and there is compelling need for an expeditious, authoritative adjudication of the important legal claims herein.

16. As further described in the Memorandum in Support accompanying this Petition, these claims are justiciable in this Court by operation of the Rule of Necessity.

CLAIMS AND REMEDIES

Judicial Branch and Separation of Powers

17. The Kansas Constitution embraces the principle that each branch of government enjoys separate powers to perform its constitutional function independent of the other branches, without which, one branch of government could dominate and eliminate the ability of the other branch from meeting its obligations in a democracy.

18. The Judicial Branch must be an independent, coequal branch of government, insulated from the political dynamics of the Executive and Legislative Branches and fear of reprisals for doing its job.

The Legislature has Consistently Underfunded the Judicial Branch

19. The Legislature controls the Judicial Branch's funding, and thereby the operations and staffing of the Judicial Branch and compensation of its judges and nonjudicial employees, whose salaries comprise over 90% of the Judicial Branch budget.

20. The Legislature has engaged in chronic, persistent disregard of the demonstrated funding needs of the Judicial Branch, in contravention of the Kansas Constitution and market compensation policies enacted by the State of Kansas.

21. To date, the Legislature has not fulfilled its constitutional duty to consider the funding needs of the Judicial Branch objectively, fairly, and independently of unrelated political agendas so that the Judicial Branch can provide adequate compensation to its judicial and nonjudicial employees, adequately staff its courts, and fund its operations.

The Legislature's Consistent Underfunding of the Judicial Branch Violates its Clear Legal Duty Under the Kansas Constitution and Statutes

22. The Legislature's consistent failure to provide adequate funding to the Judicial Branch has caused excessive employee turnover, prevented the hiring and retention of judges, forced court closings, and impaired the functioning of the Judicial Branch.

23. The significant historic underfunding of the Judicial Branch by prior legislatures and the persistent refusal of the current Legislature, over the recommendation of the Governor, to fully fund the Judicial Branch's budget requests have significantly interfered with the Judicial Branch's ability to function as an independent branch of government.

24. The Legislature has a clear legal duty to observe the separation of powers inherent in our republican form of government.

25. The Legislature has a clear legal duty and positive requirement to ensure that funds appropriated to the Judicial Branch of government: (a) are sufficient for it to carry out its constitutional mandate to administer justice without delay; (b) prevent diminution of judicial compensation; and (c) meet the statutory compensation policies enacted by the Kansas Legislature.

26. The Legislature's duty to appropriate a constitutionally and statutorily adequate level of funding to the Judicial Branch is nondiscretionary.

27. The failure of the Legislature to consider properly the funding needs of the Judicial Branch alleged in this Petition and the accompanying Memorandum in Support is constitutionally unjustifiable and contrary to the legislatively enacted compensation statutes.

28. By failing to consider the funding needs of the Judicial Branch objectively, fairly, pursuant to the statutory compensation factors, and independent of unrelated policies and political agendas, the Legislature has violated the bedrock principle of the separation of powers in a manner that impairs the functioning of the Judiciary as a separate, independent, coequal branch of a democratic government and transgresses the constitutional separation-of-powers doctrine.

Original Action for Mandamus and *Quo Warranto* is Appropriate

29. An original action in mandamus is an appropriate procedure for compelling an official to perform a specified duty.² Where the issue is one of significant public concern,³ such as compelling a constitutional level of funding to ensure a functional and independent judiciary as part of a tripartite republican form of government, this Court may properly entertain an action and provide an authoritative interpretation of the law to guide and direct the Legislature in its administration of the public business.

30. A writ of *quo warranto* may issue to remedy a violation of the separation of powers resulting from the Legislature's interference with the powers of the Judicial Branch.⁴ As alleged here, the Legislature has impaired the power and independence of the Judicial Branch by virtue of

² K.S.A. 60-801; *Legislative Coordinating Council v. Stanley*, 264 Kan. 690, 697, 957 P.2d 379 (1998).

³ *Wilson v. Sebelius*, 276 Kan. 87, 90, 72 P.3d 553 (2003).

⁴ *See*, K.S.A. 60-1202(1); *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 880, 179 P.3d 366, 373 (2008).

the Legislature's failure or refusal to provide constitutionally adequate funding through its control over the Judicial Branch's budget.⁵ Relief in *quo warranto* is appropriate to prevent the Legislature from usurping the power of the independent judiciary, intruding into its function, or unlawfully holding the Judicial Branch hostage through chronic underfunding, conditional funding, and constitutionally and statutorily inadequate appropriations, including the current budgetary appropriations.

31. Petitioners, as individual members of the Kansas Judicial Branch sworn to uphold the constitution, and as representatives of the Kansas Judicial Branch suffering from the impairment imposed on them by the Legislature, have standing to assert these claims.

32. In accordance with K.S.A. 20-158, the Judicial Branch has submitted to the Legislature enhanced budget requests in 2017, 2018, and 2019 aimed at raising the compensation of its judges, justices, and nonjudicial employees to competitive market levels, and adequately staffing the workload of the courts and funding its operating and personnel needs.

33. These budget requests demonstrate the Judicial Branch's objective need and document the funding necessary to meet weighted caseload requirements, fill positions left vacant due to lack of funding, and raise compensation to market levels in accordance with Article 3, Sec. 13 of the Kansas Constitution and K.S.A. 75-5551. These budget requests, and specifically the Current Request, which the Chief Justice has presented along with documentary support, satisfying

⁵ See, e.g., *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45, 64, 687 P.2d 622 (1984) (statute allowing legislature to adopt, modify, or revoke administrative rules and regulations by concurrent resolution was unconstitutional usurpation of executive powers).

the statutorily required considerations of market-based compensation, represent the constitutional minimum funding level necessary.

34. When the Judicial Branch Budget Requests are made consistent with statutory directives, are based on objective market data, and result from demonstrated funding needs, the Legislature has the constitutional and statutory duty to consider these needs and appropriate the necessary funds.

35. The Legislature, without *any* justification—let alone constitutionally or statutorily defensible justification—has refused to provide this necessary minimum level of funding and has instead persisted in an effort to exercise power over the Judicial Branch.

36. Petitioners pray that the Court will determine that the Legislature's inadequate appropriation of funds to the Judiciary violates the separation of powers guaranteed by our republican form of government.

37. Petitioners seek relief in the form of a writ of *quo warranto* to prevent the Legislature from continued interference with the power of the independent judiciary, intruding into its function, or unlawfully holding the Judicial Branch hostage through chronic underfunding, conditional funding, and constitutionally inadequate appropriations, including the current budgetary appropriations, or cuts to the Current Request.

38. Petitioners pray the Court direct the Legislature to perform its duty to approve the Judicial Branch's Current Request, including the enhancements necessary to remedy the past, chronic underfunding and comply with statutory market-compensation requirements.

39. Full, expedient, and authoritative relief is not available in the district court, and because the underlying facts are supplied herein, this Court should exercise its discretion to consider this critical issue of statewide importance under its original jurisdiction.

PRAYER FOR RELIEF

40. WHEREFORE, and for the reasons set forth in the accompanying Memorandum in Support, Petitioners pray for the following relief:

a. A determination that the Legislature's inadequate appropriation of funds to the Judiciary violates the separation of powers guaranteed by our republican form of government and Kansas's constitutional anti-diminution and statutory market compensation requirements;

b. An injunction prohibiting the Legislature from administering, enforcing, funding, or otherwise implementing the unconstitutional and statutorily invalid provisions of the current budgetary appropriations;

c. An order restoring the separation of powers and enabling the Judicial Branch to carry out its constitutional mandates by directing the Legislature to fund the Judicial Branch in accordance with constitutional and statutory requirements – specifically by:

(i) supplementing the appropriation for FY 2019 through June 1, 2020, in accord with the 2018 Budget Request; and

(ii) approving the base funding and supplemental enhancements sought in and supported by the Judicial Branch Current Request for FY 2020 and 2021 (effective July 1, 2020), as submitted by the Chief Justice in September 2019;

d. The reasonable attorneys' fees incurred in litigating this action;

- e. The costs of this action; and
- f. Such other relief as this Court deems just and equitable.

Dated this 20th day of December, 2019.

REX A. SHARP, P.A.

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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

The undersigned certifies that on December 20, 2019, a true and correct copy of the above and foregoing was served as per Kan. Sup. Ct. R. 1.1(a) and 9.01 and K.S.A. 60-205(B)(2)(B)(i) by delivering a copy to Respondents' Offices as follows:

Senate President Susan Wagle
Capitol Building, Room 333-E
Topeka, Kansas 66612

House Speaker Ron Ryckman, Jr.,
Capitol Building, Room 368-W
Topeka, Kansas 66612

/s/ Rex A. Sharp

Rex. A. Sharp