

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT**

BUTLER, KRISTIN, and
BOZARTH, SCOTT,
Plaintiffs/Petitioners,

v.

SHAWNEE MISSION SCHOOL
DISTRICT BOARD OF EDUCATION,
Defendant/Respondent.

Case No. 21CV2385
Chapter 60; Division 7

KANSAS ATTORNEY GENERAL
DEREK SCHMIDT,
Intervenor.

**ATTORNEY GENERAL'S MOTION FOR A STAY PENDING APPEAL
AND FOR EXPEDITED RULING**

Kansas Attorney General Derek Schmidt moves for a stay of this Court's July 15, 2021, order declaring 2021 Senate Bill 40 unenforceable and further moves for an expeditious ruling on this motion to stay. This Court's decision is creating unnecessary and disruptive confusion about the validity of other provisions of SB 40 not at issue in this case and so presumably not found to be unconstitutional and should therefore be stayed until the Kansas Supreme Court can address these issues.

K.S.A. 60-262(e) provides that this Court may grant a "stay on an appeal by the state, its officers or its agencies," without "requir[ing] a bond, obligation or other

security.” On the same date as this motion, the Attorney General is filing an appeal of this Court’s July 15, 2021, order to the Kansas Supreme Court.

A stay will not harm the Shawnee Mission School District because it does not currently suffer any injury as a result of SB 40. Rather, the school district (incorrectly) asserts that it may be subject to some injury in the future. Therefore, there is no reason not to stay this Court’s order until the Kansas Supreme Court decides the Attorney General’s appeal, which the Attorney General intends to pursue on an expedited basis.

If this Court’s order is not stayed, the confusion created by that order will persist and potentially hamper the State’s ability to respond to a future disaster emergency, inviting the very sort of “legal anarchy” that troubled the court. While the only purported constitutional infirmity identified by the Court involved the provision of SB 40 granting the requested relief if a court decision is not issued within seven days, the Court’s opinion broadly declares that all of SB 40 is “unenforceable.” But there are many provisions of SB 40 unconnected to the challenged judicial review process. For instance, Section 3 of SB 40 adds the Vice President of the Senate as an eighth member of the Legislative Coordinating Council. Surely there is no constitutional problem with this provision or any reason why it cannot be severed from the allegedly unconstitutional applications of SB 40, as the Legislature clearly intended in adopting a severability clause. But the broad language of the Court’s opinion creates uncertainty about this provision,

uncertainty that could produce harm given the various responsibilities of the LCC.
See K.S.A. 46-1201 *et seq.*

Other provisions of SB 40 reenact or amend the State's emergency management laws in ways completely unrelated to the challenged provision in Section 1, such as by providing that the Legislative Coordinating Council rather than the State Finance Council may extend a state of disaster emergency, allowing multiple 30-day extensions of a disaster emergency, changing procedures for animal health emergencies, altering the process for legislative review of executive orders, and placing limits on the Governor's authority to issue certain executive orders, to name just a few examples. If another emergency of any sort were to occur, this Court's order would create confusion about the validity of these provisions and harm the State's ability to respond to the disaster. The Court's order should therefore be stayed until the Kansas Supreme Court completes its review.

This Court retains jurisdiction to rule on this stay motion until the Attorney General docket the appeal. *See State v. Fritz*, 299 Kan. 153, 155, 321 P.3d 763 (2014) (citing *State v. Deadman*, 230 Kan. 793, 796-97, 640 P.2d 1266 (1982), for the proposition that a "district court loses jurisdiction over case after direct appeal docketed"). Given the unnecessary confusion created by this Court's order, the Attorney General intends to docket this matter quickly and therefore requests that the Court expeditiously rule on this motion to stay.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT

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CERTIFICATE OF SERVICE

I certify that a copy of this document has been served upon the following by e-mail on this 21st day of July, 2021:

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