

IN THE SUPREME OF THE STATE OF KANSAS

Kristen Butler and Scott Bozarth,

Plaintiffs,

vs.

Shawnee Mission School District
Board of Education,

Defendant-Appellee,

Attorney General Derek Schmidt,

Intervenor-Appellant.

Case No. 21-124205-S

APPLICATION TO FILE AMICUS BRIEF

The Kansas Chamber of Commerce (“the Chamber”) seeks to file a friend of the Court brief because this appeal deals with a subject that has profound implications for the business of the entire State: the Legislature’s carefully-crafted amendments to the Kansas Emergency Management Act to, among other things, permit aggrieved parties to obtain meaningful judicial review of certain governmental emergency actions, including actions like those taken during the latest COVID-related emergency.

1. *Background.* This appeal involves challenges to the district court’s rulings concerning the constitutionality of the Legislature’s recent amendments to the Kansas Emergency Management Act (KEMA) in SB 40. The Chamber supported the SB 40 amendments to the KEMA through the legislative process, including by offering testimony urging revisions to earlier counterparts to the finally passed bill. In the underlying case, two citizens availed themselves of the SB 40 procedures to challenge the

Shawnee Mission School District Board of Education’s masking policies, unsuccessfully. The case is now before this Court because the district court, after denying the Plaintiffs’ requested relief, *sua sponte* raised concerns about due process and separation of powers, ultimately rejecting mootness and standing concerns raised by the Attorney General and purporting to broadly declare SB 40 unconstitutional and unenforceable.

2. *Authority.* Kansas Supreme Court Rule 6.06.

3. *Reasons.* The Kansas Chamber of Commerce continually strives to improve the economic climate for the benefit of every business and citizen, and to safeguard Kansas’s system of free, competitive enterprise. The Chamber is composed of hundreds of Kansas businesses of every size, and supports its members in legislative and regulatory matters at local, state, and federal levels.

4. Relevant here, the Chamber supported the enactment of SB 40 in the Legislature, including its provisions for expedited judicial review of governmental actions under a simplified process. As this Court’s Access to Justice Committee has observed, few ordinary citizens have the ability to navigate the legal system without hiring counsel. *See* Access to Justice Committee’s 2020 Assessment of Self-Represented Litigant Services study, available on the Court’s website at

<https://www.kscourts.org/About-the-Courts/Court-Administration/Access-to-Justice>.

While one approach to this problem is to increase *pro bono* representation or otherwise help self-represented litigants navigate our civil justice system, another is to make court procedures for judicial review and adjudication more accessible and expedited. The Legislature adopted this latter approach in SB 40, with the Chamber’s support. The

district court's underlying decision, however, declaring SB 40 and its enforcement provisions unconstitutional and unenforceable after *sua sponte* raising constitutional concerns, struck down the Legislature's effort to ensure meaningful and accessible judicial review, characterizing SB 40 as a supposed legislative encroachment on this Court's superintending authority over the Kansas Judicial Department. The Chamber seeks to file an *amicus* brief to provide the Court perspectives on this critical matter on behalf of its members, Kansas businesses and employers.

5. The Chamber requests leave to file its proposed *amicus* brief on or before September 16, 2021, *i.e.*, the date set by the Court's expedited briefing schedule order for the Attorney General to file his reply brief. The case has not been included on the Court's published September docket and, even if the case were set for oral argument on the Court's next scheduled docket, October 25-29, 2021, an *amicus* brief filed on or before September 16, 2021 would still meet the Rule 6.06(b)(1) requirement of being filed no later than 30 days before oral argument. Permitting the Chamber to file an *amicus* brief on or before September 16, 2021 therefore will not delay these proceedings.

6. All parties and *amici* have been served with a copy of this application.

For these reasons, the Kansas Chamber of Commerce respectfully makes this application to file a friend of the Court brief.

Respectfully submitted,

POLSINELLI PC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of September 2021, the above and foregoing Application was electronically filed with the Kansas Supreme Court using the Court’s electronic filing system, which will send a notice of electronic filing to registered participants, and a copy was electronically mailed to the following:

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