

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

2015 FEB 18 P 12:54

LARRY T. SOLOMON, CHIEF JUDGE,
30TH JUDICIAL DISTRICT of the STATE OF KANSAS,

Plaintiff,

vs.

THE STATE OF KANSAS,

Defendant.

Case No. 2015CV156

Div 6

PETITION FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff, Larry T. Solomon, Chief Judge of the 30th Judicial District of the State of Kansas, and for his cause of action alleges and states as follows:

NATURE OF ACTION

1. This is an action under K.S.A. § 60-1704 seeking a judgment (a) declaring Section 11 of 2014 Senate Substitute for House Bill No. 2338 unconstitutional as a violation of Article III, Section I, of the Kansas Constitution and separation-of-powers doctrine, and (b) declaring all of 2014 Senate Substitute for House Bill 2338 [hereinafter "H.B. 2338"] invalid by virtue of Section 43 therein, which provides that, "[t]he provisions of this act are not severable. If any provision of this act is stayed or is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would not have enacted the remainder of such act without such stayed, invalid or unconstitutional provision." 2014 Session Laws of Kansas, Vol. 1, Chapter 82 at 582.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff Larry T. Solomon is the chief judge of the 30th Judicial District of the State of Kansas. He was first appointed as district judge of Division IV, 30th Judicial District, on June 14, 1989 by then-Governor Michael Hayden. Two years later, on July 1, 1991, the Kansas Supreme Court appointed Judge Solomon as chief judge of the 30th Judicial District, a position he has held for more than 23 years, having been reappointed bi-annually to date. At the request of the Kansas Supreme Court, Chief Judge Solomon has also served as a specially appointed member of the Kansas Court of Appeals and Kansas Supreme Court.

3. As a member of the Kansas judiciary and the chief judge of his district, Judge Solomon has a direct interest in the integrity and viability of the Kansas unified court system as well as the Kansas Supreme Court's vital role in administering the various courts comprising that system, including the district court of the 30th Judicial District. As Chief Judge of one of the district courts directly impacted by H.B. 2338, plaintiff's status, and other legal relations, are directly affected by the legislation, and thus he has standing to seek a declaration of H.B. 2338's invalidity pursuant to K.S.A. § 60-1704.

4. Defendant State of Kansas, admitted in 1861 as the 34th State of the United States of America, is a state governmental entity which may be served with process by serving Kansas Attorney General Derek Schmidt, at Memorial Hall, 2nd Floor, 120 SW 10th Avenue, Topeka, Kansas 66612-1597.

5. This Court has jurisdiction over this action pursuant to K.S.A. §60-1701.

6. Venue is proper in Shawnee County because the State of Kansas maintains its principal offices there and any orders implementing the subject legislation will emanate from Shawnee County.

**THE SUPREME COURT'S CONSTITUTIONAL
AUTHORITY TO ADMINISTER THE STATE'S
UNIFIED COURT SYSTEM**

7. Prior to 1972, the administration of the Kansas judicial system was badly fragmented, and there was no consensus on whether the Kansas Supreme Court possessed the overall authority to administer it. At the time, Article III, Section I of the Kansas Constitution did not explicitly grant that authority to the Supreme Court.

8. Any uncertainty was eliminated by the 1972 amendment to Article III, Section 1, which vests the judicial power of the state in “one supreme court, district courts, and such other courts as are provided by law.” K.S.A. Const. Art. 3, § 1. To administer that unified system, Article III, Section 1 also grants the Kansas Supreme Court “general administrative authority over all courts in this state.”

9. Pursuant to this general grant of constitutional authority to administer the state’s unified court system, the Kansas Supreme Court may promulgate and enforce reasonable rules regulating judicial administration and court procedure as necessary for the administration of justice.

10. When the Supreme Court chooses to exercise that authority with respect to a particular aspect of judicial administration, the Kansas Legislature is constitutionally proscribed from enacting any law that is in direct conflict with the Supreme Court’s exercise of authority. In that event, the Supreme Court’s exercise of authority must prevail under Article III, Section I of the Kansas Constitution as well as by virtue of the separation-of-powers doctrine, and, by definition, the Legislature’s action must be deemed unconstitutional. That is exactly the case with respect to Section 11 of H. B. 2338, which Governor Brownback signed into law on April 17, 2014, and which became effective on July 1, 2014.

**THE CHALLENGED LEGISLATION USURPS
THE EXERCISE OF THE SUPREME COURT'S
CONSTITUTIONAL AUTHORITY**

11. As part of its constitutional authority to administer the state's unified court system, the Kansas Supreme Court has long exercised its right to appoint the chief judges of the state's district courts. More particularly, Supreme Court Rule 107(a) provides that, "[t]he Supreme Court will appoint a chief judge in each judicial district." 2014 Kan. Ct. R. Annot. 107. Section 11 of H.B. 2338 is in direct conflict with this rule. Section 11 provides, in relevant part, that "[i]n every judicial district, the district court judges in such judicial district shall elect a district judge as chief judge who shall have general control over the assignment of cases within the district, subject to supervision by the supreme court. The procedure for such election shall be determined by the district court judges and adopted by district court rule." 2014 Session Laws of Kansas, Vol. 1, Chapter 82 at 544.

12. Accordingly, Section 11 of H.B. 2338 is a direct encroachment on the Kansas Supreme Court's constitutional authority to administer the judiciary of the State, and, as such, is, and should be declared, unconstitutional.

**THE LEGISLATION IS INVALID IN ITS ENTIRETY
BY VIRTUE OF ITS NON-SEVERABILITY PROVISION**

13. Section 43 of H.B. 2338 provides that, "[t]he provisions of this act are not severable. If any provision of this act is stayed or is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would not have enacted the remainder of such act without such stayed, invalid or unconstitutional provision." 2014 Session Laws of Kansas, Vol. 1, Chapter 82, at 582.

14. Accordingly, in the event that Section 11 of H.B. 2338 is adjudged unconstitutional for the reasons set forth above, the entire enactment is, and should be declared,

invalid because, by virtue of Section 43, it “shall be presumed conclusively that the legislature would not have enacted the remainder of such act without” Section 11.

PRAYER FOR RELIEF

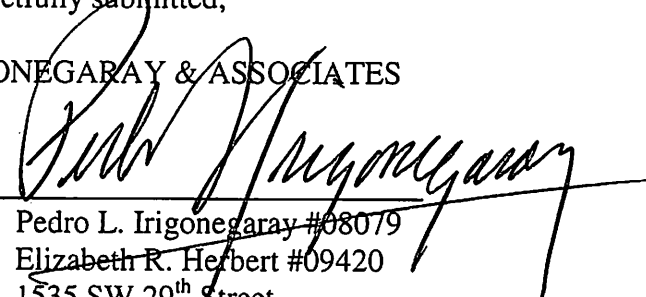
WHEREFORE, Plaintiff respectfully requests the following relief:

- a. A judgment and order declaring that Section 11 of 2014 Senate Substitute for House Bill 2338 is unconstitutional as a violation of Article III, Section I, of the Kansas Constitution and the separation-of-powers doctrine;
- b. A judgment and order declaring 2014 Senate Substitute for House Bill 2338 invalid in its entirety by operation of Section 43 thereof;
- c. The costs of this action; and
- d. Such other relief as this Court deems just and equitable.

Respectfully submitted,

IRIGONEGARAY & ASSOCIATES

By: _____


Pedro L. Irigonegaray #08079
Elizabeth R. Herbert #09420
1535 SW 29th Street
Topeka, KS 66611
785-267-6115; 785-267-9458 fax
pli@plilaw.com; erh@plilaw.com
Attorneys for Plaintiff