

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
THIRD JUDICIAL DISTRICT

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

2015 SEP -3 A 8:00

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

Plaintiff,)

Division 6

v.)

Case No. 2015-CV-156

THE STATE OF KANSAS,)

Defendant.)

EMERGENCY MOTION FOR STAY OF ORDER PENDING APPEAL

Pursuant to K.S.A. 2014 Supp. 60-262(e), the Defendant State of Kansas moves the Court for a stay of its September 2, 2015, order granting summary judgment to Plaintiff Chief Judge Solomon. In support of this motion, the State of Kansas states:

1. This Court’s order granting summary judgment to Chief Judge Solomon finds § 11 of 2014 Senate Substitute for House Bill 2338 unconstitutional as a violation of the separation of powers doctrine of the Kansas Constitution.

2. This Court’s order granting summary judgment to Chief Judge Solomon concludes that § 11 is not severable from the remainder of 2014 Senate Substitute for House Bill 2338, so that this law is invalidated in its entirety.

3. Section 29 of 2015 House Bill 2005 (HB 2005) provides:

Except as provided further, the provisions of this act are not severable, *nor are they severable from the provisions of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas.* If any provision of this act or of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas, 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 this act without such stayed, invalid or unconstitutional provision *and the provisions of this act are hereby declared to be null and void and shall have no force and effect*. If the appropriations to the judicial branch for fiscal year 2016 or fiscal year 2017 are reduced below the amounts appropriated in this act by any other act of the 2015 or 2016 regular session of the legislature, the provisions of this section are hereby declared to be null and void and shall have no force and effect and the provisions of this act and of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas, are declared to be severable.

(emphasis added).

4. Although this Court “decline[d]” to address the effect of its ruling on any other law, the invalidation of § 11 also arguably invalidates the entirety of 2015 HB 2005.

5. 2015 HB 2005 provides fiscal year 2016 and 2017 appropriations for the judicial branch, and so the invalidity of HB 2005 may lead to the loss of all judicial branch funding. This loss of funding would cause irreparable injury to both parties and the public at large.

6. Under K.S.A. 2014 Supp. 60-262(a), this Court’s judgment is automatically stayed for 14 days. *See* K.S.A. 2014 Supp. 60-262(a) (“Except as stated in this section, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry.”).

7. The State will immediately appeal this Court’s September 2, 2015, order granting summary judgment to Chief Judge Solomon.

8. K.S.A. 2014 Supp. 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.”

9. Further, this Court has inherent authority to issue a stay. *See Harsch v. Miller*, 288 Kan. 280, 288 (2009) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the

disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants.”); *Henry v. Stewart*, 203 Kan. 289, 292 (1969) (same).

10. Plaintiff’s counsel has been consulted and has no objection to a stay pending appeal.

11. A stay is appropriate under both K.S.A. 2014 Supp. 60-262(e) and this Court’s inherent authority, given the stakes if the non-severability provision of 2015 HB 2005 is enforced. The potential total and immediate loss of judicial branch funding is an outcome that neither party desires. Further, key legislators have indicated that such a drastic outcome was not the Legislature’s intent here. Given the potential consequences of this Court’s September 2, 2015, ruling, the parties’ expressed desires, the Legislature’s intent, and Plaintiff’s lack of opposition to a stay pending appeal, there is no cause to deny a stay in these circumstances.

12. If this Court denies this request, the State of Kansas will seek an immediate stay from the Supreme Court of Kansas, but there is no good reason for that to become necessary.

WHEREFORE, the State of Kansas respectfully requests that the Court enter an Order staying its order granting summary judgment to Chief Judge Solomon pending resolution of the State’s appeal of that order.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT

By: *Dwight Carswell*
Jeffrey A. Chanay, KS Sup. Ct. No. 12056
Chief Deputy Attorney General
Stephen R. McAllister, KS Sup. Ct. No. 15845
Solicitor General of Kansas
Dwight R. Carswell, KS Sup. Ct. No. 25111
Assistant Solicitor General

Memorial Building, 2nd Floor
120 SW 10th Ave.
Topeka, KS 66612-1597
Tel: (785) 296-2215
Fax: (785) 291-3767
Email: jeff.chanay@ag.ks.gov
stevermac@fastmail.fm
dwight.carswell@ag.ks.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of September, 2015, a true and correct copy of the above Motion for Extension of Time was mailed, postage prepaid, to:

Pedro L. Irigonegaray
Elizabeth R. Herbert
1535 SW 29th St.
Topeka, KS 66611

Randolph S. Sherman
Kaye Scholer, LLP
250 West 55th Street
New York, NY 10019

Matthew Menendez
Brennan Center for Justice
161 Ave. of the Americas, 12th Floor
New York, NY 10013

Attorneys for Plaintiff

With a chambers' copy delivered as per Local Rule to:

The Honorable Larry D. Hendricks
200 S.E. 7th St.
Topeka, KS 66603


Dwight R. Carswell