

IN THE DISTRICT COURT OF NEOSHO COUNTY, KANSAS
Sitting at Chanute

FILED

STATE OF KANSAS ex rel. DEREK
SCHMIDT, Attorney General of the State of
Kansas,

Plaintiff,

v.

SARAH L. SHIPMAN, in her official capacity
as Acting Secretary of Administration of the
State of Kansas,

Defendant.

(Pursuant to K.S.A. Chapter 60)

2015 SEP 22 AM 8 46

CLERK OF DISTRICT COURT
NEOSHO COUNTY, KANSAS

BY _____

Case No. 2015-CV-73

PETITION FOR INJUNCTIVE RELIEF

Plaintiff State of Kansas, by and through counsel, for its cause of action against Defendant Sarah L. Shipman in her official capacity as Acting Secretary of Administration of the State of Kansas, states:

NATURE OF THE ACTION

1. By filing this suit Plaintiff State of Kansas seeks to avoid any reduction of judicial salaries in violation of Article 3, § 13 of the Kansas Constitution, and to ensure the Kansas courts remain open and operating. Specifically, the State seeks to enjoin all parties from giving effect to the nonseverability clause in 2015 House Bill 2005, which could result in the elimination of all judicial branch funding for 2016 and 2017 in violation of Article 3, § 13 of the Kansas Constitution.

PARTIES

2. Plaintiff State of Kansas is a state governmental entity that has an interest in its courts remaining open, its Constitution being enforced (including the requirement that judicial salaries generally may not be reduced), and its chief law enforcement officer—the Attorney General—carrying out important court-related functions required under the Kansas Constitution and Kansas statutes.

3. Defendant Sarah L. Shipman, in her official capacity as Acting Secretary of Administration of the State of Kansas, is responsible for authorizing the distribution of funds appropriated by the legislature. She may be served with process at 1000 SW Jackson, Suite 500, Topeka, Kansas 66612.

JURISDICITON AND VENUE

4. This Court has jurisdiction under the statutory and common law of Kansas, particularly K.S.A. § 20-301.

5. Venue is proper in Neosho County, Kansas, because the cause of action, or some part thereof, arises in Neosho County, Kansas. *See* K.S.A. 60-602(2); 60-603(3). If all judicial funding were eliminated, the courthouses in Neosho County, Kansas, and across the State, would be significantly affected, thus injuring the State in that County.

BACKGROUND

6. In 2014, the Kansas Legislature passed Senate Substitute for House Bill 2338.

7. The Governor signed 2014 Senate Substitute into law as L. 2014, ch. 82.

8. Section 11 of 2014 Sen. Sub. for HB 2338 amended K.S.A. 20-329 to permit the judges in each district to select their chief judge rather than having the Kansas Supreme Court appoint the chief judges in all districts (hereinafter, “the Chief Judge Selection Clause”).

9. Section 43 of 2014 Sen. Sub. for HB 2338 enacted a “nonseverability clause” that stated: “The 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 Kansas Laws Ch. 82 (Sen. Sub. for H.B. 2338) § 43 (hereinafter “the 2014 Nonseverability Clause”).

10. On February 18, 2015, The Honorable Larry T. Solomon, Chief Judge of the 30th Judicial District, filed a lawsuit challenging the constitutionality of the Chief Judge Selection Clause. *Solomon v. Kansas*, Shawnee Cnty. Dist. Ct. Case No. 2015-CV-156 (*Solomon*)

11. On September 2, 2015, the district court in *Solomon* granted summary judgment to Plaintiff Chief Judge Solomon and held the Chief Judge Selection Clause was unconstitutional as a violation of the separation of powers doctrine of the Kansas Constitution. Plaintiff Chief Judge Solomon represented to the Court in his Petition that such a finding would result in a partial loss of funding for the judiciary by operation of the 2014 Nonseverability Clause. *Solomon* Pet. for Decl. J. ¶ 1. The court enforced the 2014 Nonseverability Clause and declared 2014 Sen. Sub. for HB 2338 invalid in its entirety. *Solomon* Mem. Decision & Order at 35.

12. While *Solomon* was pending but before the entry of summary judgment, the Legislature passed and the Governor signed into law 2015 House Bill 2005, which appropriates funds for the judicial branch for fiscal years 2016 and 2017. Section 29 of that bill contained a separate nonseverability clause, which stated:

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.

K.S.A. 20-1a18 (2015 HB 2005) (hereinafter, “the 2015 Nonseverability Clause”).

13. The *Solomon* court declined to address the effect of its ruling on any other law, even though by operation of the 2015 Nonseverability Clause, the invalidation of § 11 also arguably invalidates the entirety of 2015 HB 2005 and all judicial funding for fiscal years 2016 and 2017.

14. To avoid the risk of loss of all judicial branch funding that the court’s decision in *Solomon* has triggered, the State sought (with support of Plaintiff Chief Judge Solomon), and the district court granted, a stay of the judgment pending the State’s appeal of the decision. The State filed its notice of appeal on September 18, 2015.

15. Nevertheless, on September 4, 2015, Chief Judge Robert Fairchild of the 7th Judicial District, along with three other judges, two of whom (including Chief Judge Solomon) are chief judges in their respective districts, brought a second lawsuit, *Fairchild, et al. v. Kansas, Shawnee Cnty. Dist. Ct. Case No. 2015-CV-802 (Fairchild)*, challenging the constitutionality of the 2015 Nonseverability Clause. In their petition, the *Fairchild* plaintiffs allege four separate constitutional violations, any one of which if proven would be sufficient to invalidate the 2015 Nonseverability Clause. One of the constitutional violations asserted by the *Fairchild* plaintiffs is a violation of Article 3, § 13, of the Kansas Constitution, which forbids the reduction of judicial salaries in most circumstances.

16. In the present action, the attorney general asserts a claim (Count I) of a potential violation of Article 3, § 13 of the Kansas Constitution, that is functionally the same as the similar claim asserted by the *Fairchild* plaintiffs. The Attorney General asserts an additional claim

(Count II) based on potential harm the 2015 Nonseverability Clause could cause to his ability to perform his duties as Attorney General, a claim not asserted by the *Fairchild* plaintiffs.

17. Because of a conflict of interest, the Attorney General has appointed independent counsel to represent the State of Kansas in *Fairchild*. That case remains pending, and as of the date of the filing of this Petition no answer has been filed nor are any motions pending.

18. Because the district court in *Solomon* held unconstitutional the Chief Judge Selection Clause of 2014 Sen. Sub. for HB 2338, under 2015 HB 2005 there is an ever-present threat that judicial branch funding could be cut off before the Legislature returns for its next session beginning on January 11, 2016.

19. Key legislators have indicated that the Legislature did not intend through enactment of the 2015 Nonseverability Clause to eliminate funding for the judicial branch of state government. Nor did the Governor, who signed the 2015 Nonseverability Clause into law. None of the parties to this suit desire that outcome either. Thus, there appears to be a unanimous desire by all involved that the Nonseverability Clause should not operate to eliminate judicial branch funding.

20. It is the operation of the 2015 Nonseverability Clause in a manner that causes elimination of judicial branch funding for 2016 and 2017, not the existence of the clause itself, that threatens the constitutional harm. Although the district court's decision in *Solomon* is currently stayed by agreement of the parties, the stay could be lifted at any time to prevent the Chief Judge Selection Clause from taking effect on January 1, 2016. *See* 2014 Sen. Sub. for HB 2338, § 11 (“The district judge designated as chief judge by the supreme court on July 1, 2014, shall be allowed to serve as chief judge through January 1, 2016.”). A lifting of the stay would

render the 2015 Nonseverability Clause operable unless it is enjoined by the court or modified by the Legislature.

21. If the stay in *Solomon* were lifted, 2015 HB 2005 would require Defendant Secretary of Administration and Plaintiff State of Kansas to stop all judicial branch funding, which would wreak havoc throughout the State, including here in Neosho County.

**COUNT I
VIOLATION OF ARTICLE 3, § 13**

22. Each and every allegation set forth above is incorporated by reference as if fully set forth here.

23. Article 3, § 13 of the Kansas Constitution provides in part that, “The justices of the supreme court and judges of the district courts shall receive for their services such compensation as may be provided by law, *which shall not be diminished during their terms of office*, unless by general law applicable to all salaried officers of the state.” (Emphasis added)

24. If the 2015 Nonseverability Clause were given effect, and if any condition precedent that triggers it has occurred or occurs, the result would be immediate elimination of all judicial branch funding. If that were to occur while the Legislature is unable to immediately address the need for judicial funding because it is not in session, the 2015 Nonseverability Clause would require the State of Kansas, acting *inter alia* through Defendant Secretary of Administration, to cut off all funding to the judicial branch.

25. If operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017, then judicial salaries necessarily would be reduced in violation of Article 3, § 13.

26. If operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017, the resulting violation of Article 3, § 13 would

constitute irreparable harm. Because the State has an interest in its Constitution being enforced, an Article 3, § 13 violation would irreparably harm the State.

27. No action at law would provide an adequate remedy if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017.

28. The threatened injury to Plaintiff State of Kansas if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017 plainly outweighs whatever damage the proposed injunction may cause the opposing party.

29. Indeed, Defendant Secretary of Administration consents to entry of this temporary injunction, and as discussed above there appears to be a unanimous desire by all involved that the 2015 Nonseverability Clause should not operate to eliminate judicial branch funding.

30. Enjoining the parties from giving effect to the 2015 Nonseverability Clause would not be adverse to the public interest but instead would vindicate the public interest. The public interest strongly favors avoiding violation of the Kansas Constitution and preventing a shutdown of the judicial branch of state government that would occur if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017.

31. Injunctive relief would avoid these harms by preventing any operation of the 2015 Nonseverability Clause, including any operation that would result in elimination of all judicial branch funding for 2016 and 2017.

COUNT II
IMPAIRMENT OF THE ATTORNEY GENERAL'S CONSTITUTIONAL AND
STATUTORY DUTIES

32. Each and every allegation set forth above is incorporated by reference as if fully set forth here.

33. The Attorney General is a constitutional officer with numerous statutory and common law duties which can only be performed if the courts are open and operating. *See, e.g.,* K.S.A. 75-702; *see also generally State v. Finch*, 128 Kan. 665 (1929).

34. For example, the Attorney General has a statutory obligation, rooted in the Kansas Constitution, to protect the rights of victims of crime. Under the Kansas Constitution victims of crime are entitled to certain basic rights. *See* Kan. Const. Art. 15, § 15; *see also* K.S.A. 74-7333. The Attorney General is tasked with assisting in the protection of those rights. *See* K.S.A. 74-7337 (requiring Attorney General to appoint victims' rights coordinator). One way the Attorney General protects crime victims' constitutional rights is through the Crime Victims Assistance Fund, which relies on moneys credited to the fund from court fees. In the event all judicial funding were cut off, however, those funds would dry up.

35. If operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017, the resulting substantial disruption of the operation of the Kansas Court system would prevent the Attorney General from performing his legally required duties for an unspecified period of time, which would cause the Attorney General and the State irreparable harm.

36. No action at law would provide an adequate remedy if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017.

37. The threatened injury to Plaintiff State of Kansas if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017 plainly outweighs whatever damage the proposed injunction may cause the opposing party.

38. Indeed, Defendant Secretary of Administration consents to entry of this temporary injunction, and as discussed above there appears to be a unanimous desire by all involved that the 2015 Nonseverability Clause should not operate to eliminate judicial branch funding.

39. Enjoining the parties from giving effect to the 2015 Nonseverability Clause would not be adverse to the public interest but instead would vindicate the public interest. The public interest strongly favors preventing a shutdown of the judicial branch of state government that would occur if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017, and ensuring the Attorney General is able to perform his duties as required by law.

40. Injunctive relief would avoid these harms by preventing any operation of the 2015 Nonseverability Clause, including any operation that would result in elimination of all judicial branch funding for 2016 and 2017.

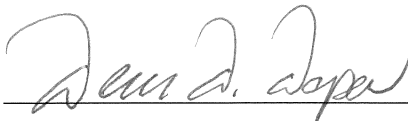
WHEREFORE, Plaintiff seeks the following relief:

a. A judgment and order enjoining all parties from giving effect to the non-severability provision in 2015 House Bill 2005.

b. Such other relief as this court deems just and equitable.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
DEREK SCHMIDT



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Attorney General

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Attorneys for Plaintiff State of Kansas

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v.


SARAH L. SHIPMAN, in her official capacity
as Acting Secretary of Administration of the
State of Kansas,

Defendant.

ENTRY OF APPEARANCE AND WAIVER OF ISSUANCE AND SERVICE OF
SUMMONS

I, Sarah L. Shipman, Secretary of Administration of the State of Kansas, the Defendant in the above entitled matter, hereby enter my voluntary general appearance herein and waive the issuance and service of summons upon me by the sheriff to the same extent and like effort as though summons had been personally served upon me. I also consent to venue in the District Court of Neosho County, and waive any objection to venue in that court.

I have received a copy of the petition to be filed in this matter and know that the action is for injunctive and other relief. I have also received the motion for temporary injunction and stay and the proposed order granting temporary injunction and stay to be filed in this matter.

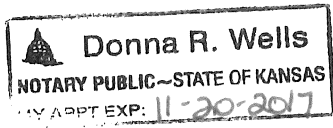


Sarah L. Shipman
Secretary, Kansas Department of Administration

ACKNOWLEDGMENT

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

The foregoing instrument was acknowledged before me this day of September 21,
2015, by Sarah L. Shipman, Kansas Secretary of Administration.



Donna R. Wells

NOTARY PUBLIC

IN THE DISTRICT COURT OF NEOSHO COUNTY, KANSAS
Sitting at Chanute

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SCHMIDT, Attorney General of the State of)
Kansas,)

Plaintiff,)

v.)

SARAH L. SHIPMAN, in her official capacity)
as Acting Secretary of Administration of the)
State of Kansas,)

Defendant.)

)

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CLERK OF DISTRICT COURT
NEOSHO COUNTY, KANSAS
BY _____
Case No. 2015-CV-13

MOTION FOR TEMPORARY INJUNCTION AND STAY

Under K.S.A. 60-901, *et seq.*, Plaintiff State of Kansas, by and through counsel, requests an order temporarily enjoining all parties from giving effect to the nonseverability provision in 2015 House Bill 2005 until March 15, 2016. By that time, the Legislature will be in session and will have had time to address the nonseverability provision in 2015 HB 2005, and the Legislature could readily address any threat of the judicial branch losing all funding. If the court grants the motion for temporary injunctive relief, the State also requests an order staying further proceedings in this case until March 15, 2016. In support of this motion, the State of Kansas states:

1. Plaintiff State of Kansas seeks to avoid the present threat of a total and immediate loss of judicial branch funding, and any resulting unconstitutional reduction of judicial salaries or interference with the Attorney General’s court-related duties.

BACKGROUND

2. In 2014, the Kansas Legislature passed Senate Substitute for House Bill 2338.

3. The Governor signed 2014 Sen. Sub. for HB 2338 into law as 2014 Kansas Laws ch. 82.

4. Section 11 of 2014 Sen. Sub. for HB 2338 amended K.S.A. 20-329 to permit the judges in each district to select their chief judge rather than having the Kansas Supreme Court appoint the chief judges in all districts (hereinafter, “the Chief Judge Selection Clause”).

5. Section 43 of 2014 Sen. Sub. for HB 2338 enacted a “nonseverability clause” that stated: “The 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 Kansas Laws Ch. 82 (Sen. Sub. for H.B. 2338) § 43 (hereinafter “the 2014 Nonseverability Clause”).

6. On February 18, 2015, The Honorable Larry T. Solomon, Chief Judge of the 30th Judicial District, filed a lawsuit challenging the constitutionality of the Chief Judge Selection Clause. *Solomon v. Kansas*, Shawnee Cnty. Dist. Ct. Case No. 2015-CV-156 (*Solomon*).

7. On September 2, 2015, the district court in *Solomon* granted summary judgment to Plaintiff Chief Judge Solomon and held the Chief Judge Selection Clause was unconstitutional as a violation of the separation of powers doctrine of the Kansas Constitution. Plaintiff Chief Judge Solomon represented to the Court in his Petition that such a finding would result in loss of funding for the judiciary by operation of the 2014 Nonseverability Clause. *Solomon* Pet. for Decl. J. ¶ 1. The court enforced the 2014 Nonseverability Clause and declared 2014 Sen. Sub. for HB 2338 invalid in its entirety. *Solomon* Mem. Decision & Order at 35.

8. While *Solomon* was pending but before the entry of summary judgment, the Legislature passed and the Governor signed into law 2015 HB 2005, which appropriates funds

for the judicial branch for fiscal years 2016 and 2017. Section 29 of that bill contained a separate nonseverability clause, which stated:

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.

K.S.A. 20-1a18 (2015 HB 2005) (hereinafter, “the 2015 Nonseverability Clause”).

9. The *Solomon* court declined to address the effect of its ruling on any other law, even though by operation of the 2015 Nonseverability Clause, the invalidation of § 11 also arguably invalidates the entirety of 2015 HB 2005 and all judicial funding for fiscal years 2016 and 2017.

10. To avoid the risk of loss of all judicial branch funding that the court’s decision in *Solomon* has triggered, the State sought (with support of Plaintiff Chief Judge Solomon), and the district court granted, a stay of the judgment pending the State’s appeal of the decision. The State filed its notice of appeal on September 18, 2015.

11. Nevertheless, on September 4, 2015, Chief Judge Robert Fairchild of the 7th Judicial District, along with three other judges, two of whom (including Chief Judge Solomon) are chief judges in their respective districts, brought a second lawsuit, *Fairchild, et al. v. Kansas*, Shawnee Cnty. Dist. Ct. Case No. 2015-CV-802 (*Fairchild*), challenging the constitutionality of the 2015 Nonseverability Clause. In their petition, the *Fairchild* plaintiffs allege four separate constitutional violations, any one of which would be sufficient to invalidate the 2015 Nonseverability Clause. One of the constitutional violations asserted by the *Fairchild* plaintiffs is

a violation of Article 3, § 13 of the Kansas Constitution, which forbids the reduction of judicial salaries in most circumstances.

12. Because the district court in *Solomon* held unconstitutional the Chief Judge Selection Clause of 2014 Sen. Sub. for HB 2338, under 2015 HB 2005 there is an ever-present threat that judicial branch funding could be cut off before the Legislature returns for its next session beginning on January 11, 2016.

13. If the 2015 Nonseverability Clause were given effect, and if any condition precedent that triggers it has occurred or occurs, the result would be immediate elimination of all judicial branch funding. If that were to occur while the Legislature is unable to immediately address the need for judicial funding because it is not in session, the 2015 Nonseverability Clause would require the State of Kansas, acting *inter alia* through Defendant Secretary of Administration, to cut off all funding to the judicial branch.

14. Such a result would necessarily and unavoidably violate Article 3, § 13, by unconstitutionally reducing judicial salaries. It also would prevent the Attorney General from performing his duties, including here in Neosho County.

15. Key legislators have indicated that the Legislature did not intend through enactment of the 2015 Nonseverability Clause to eliminate funding for the judicial branch of state government. Nor did the Governor, who signed the 2015 Nonseverability Clause into law. None of the parties to this suit desire that outcome either. Thus, there appears to be a unanimous desire by all involved that the 2015 Nonseverability Clause should not operate to eliminate judicial branch funding. See Ex. A, which includes, among others, Russell Berman, *The Court Case that Could Shut Down Kansas's Courts*, Atlantic, Sept. 5, 2015 (Senator King, Vice President of the Kansas Senate and architect of the 2015 Nonseverability Clause, stating ““There

is no desire to strike the funding of the judicial branch,’ ‘No one wants that. It’s not going to happen.’”); Edward M. Eveld, *Kansas Court Financing Isn’t In Jeopardy, Gov. Sam Brownback Says*, Kansas City Star, Sept. 4, 2015 (“‘We have a court system, and we’re going to have a court system,’ Brownback said”).

16. If the Legislature were in session at the time the 2015 Nonseverability Clause is triggered, a constitutional violation would not necessarily result because the Legislature could avoid the violation by immediately addressing judicial funding and thereby prevent an unconstitutional reduction in judicial salaries.

17. It is the operation of the 2015 Nonseverability Clause in a manner that causes elimination of judicial branch funding for 2016 and 2017, not the existence of the clause itself, that threatens the constitutional harm. Although the district court’s decision in *Solomon* is currently stayed by agreement of the parties, the stay could be lifted at any time to prevent the Chief Judge Selection Clause from taking effect on January 1, 2016. *See* Senate Substitute, § 11 (“The district judge designated as chief judge by the supreme court on July 1, 2014, shall be allowed to serve as chief judge through January 1, 2016.”). A lifting of the stay would render the 2015 Nonseverability Clause operable unless it is enjoined by the court or modified by the Legislature.

18. Under Article 2, § 8 of the Kansas Constitution, the Legislature will next convene in regular session on January 11, 2016.

MOTION FOR TEMPORARY INJUNCTION

19. Under K.S.A. 60-901, *et seq.*, the State moves this court for an order temporarily enjoining all parties from giving effect to the 2015 Nonseverability Clause, as described in paragraph 8 above, until March 15, 2016.

20. Kansas law requires a five-step analysis to determine whether a temporary injunction should be ordered: (1) substantial likelihood of success on the merits, (2) reasonable probability of irreparable future injury to the movant; (3) an action at law will not provide an adequate remedy; (4) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (5) the injunction, if issued, would not be adverse to the public interest. *See Steffes v. City of Lawrence*, 284 Kan. 380, 394-95 (2007); *Wichita Wire, Inc. v. Lenox*, 11 Kan. App. 2d 459, 462 (1986).

21. There is a substantial likelihood the State will prevail on the merits given the risk of total and immediate loss of all judicial branch funding, which would both reduce judicial salaries in violation of Article 3, § 13 of the Kansas Constitution, and substantially disrupt the operation of the Kansas court system, thereby impairing the Attorney General's ability to perform court-related duties rooted in the Kansas Constitution and statutes.

22. There is a reasonable probability the State will suffer irreparable future injury. If operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017, the resulting violation of Article 3, § 13 of the Kansas Constitution would constitute irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality) (noting that loss of constitutional freedoms “for even minimal periods of time, unquestionably constitutes irreparable injury”) (quoted in *Raven Dev. Co. v. Bd. of Cnty. Comm'rs of Shawnee Cnty.*, No. 01C 1306, 2001 WL 34117820, at *5 (Kan. Dist. Ct. Nov. 1, 2001)); *Adams By & Through Adams v. Baker*, 919 F. Supp. 1496, 1505 (D. Kan. 1996) (noting that “deprivation of a constitutional right is, itself, irreparable harm”); 11A Charles Alan Wright & Arthur A. Miller, *Fed. Prac. & Proc. Civ.* § 2948.1 (3d ed.) (“When an alleged deprivation of a constitutional right is involved, such as the right to free speech or freedom of religion, most courts hold that no

further showing of irreparable injury is necessary.”) Because the State has an interest in its Constitution being enforced, an Article 3, § 13 violation would irreparably harm the State. Moreover, the Attorney General, as the State’s chief law enforcement official, has authority to seek judicial relief from constitutional violations. *See, e.g., State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 879 (2008). Moreover, the elimination of judicial branch funding would cause irreparable harm to the Attorney General by rendering him unable to perform his legally required duties for an unspecified period of time.

23. No action at law would provide an adequate remedy if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017.

24. The threatened injury to the State outweighs whatever damage the proposed injunction may cause the Secretary of Administration. Indeed, Defendant Secretary of Administration consents to entry of this temporary injunction, and as discussed above there appears to be a unanimous desire by all involved that the 2015 Nonseverability Clause should not operate to eliminate judicial branch funding. *See Hollingsworth v. Perry*, 558 U.S. 183, 196 (2010) (concluding that balance of equities favored applicant for stay where applicants demonstrated a “threat of harm” and respondents did “not allege[] any harm”).

25. The requested temporary injunction would not be adverse to the public interest. Rather, the public interest strongly favors avoiding violation of the Kansas Constitution, ensuring the Attorney General is able to perform his duties as required by law, and preventing a shutdown of the judicial branch of state government that would occur if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017.

26. The requested temporary injunction would avoid these harms by preventing any operation of the 2015 Nonseverability Clause, including any operation that would result in elimination of all judicial branch funding for 2016 and 2017, until March 15, 2016, a time when the Legislature will have returned to session.

27. The requested temporary injunction would benefit both the parties and the public by allowing the Legislature an opportunity to revisit the 2015 Nonseverability Clause or, in the alternative, to promptly address the constitutional requirement for judicial funding in the event operation of the 2015 Nonseverability Clause would result in elimination of all judicial branch funding for 2016 and 2017 that has previously been approved.

MOTION TO STAY PROCEEDINGS

28. If the court grants the injunctive relief requested above, the State moves the Court for a stay of these proceedings until March 15, 2016.

29. This court has inherent authority to issue a stay. *See Harsch v. Miller*, 200 P.3d 467, 475 (Kan. 2009) (noting “the 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” (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936))).

30. Under this court’s inherent authority, a stay is appropriate to permit the Legislature to address the 2015 Nonseverability Clause. *See, e.g., Montoy v. State*, No. 99-C-1738, 2003 WL 22902963, at *50 (Kan. Dist. Ct. Dec. 2, 2003) (withholding for seven months final order and judgment finding that school funding scheme violated Article 6 of the Kansas Constitution to give the Legislature time to act); *Montoy v. State*, 120 P.3d 306, 310 (2005)

(withholding for four months formal opinion finding that the Legislature had failed to make suitable provisions for finance of public school system to give the Legislature time to act).

31. The entry of the temporary injunction would render the 2015 Nonseverability Clause wholly inoperable throughout the State until March 15, 2016. Because the Legislature will have reconvened in regular session prior to that date, entry of the temporary injunction would eliminate the certainty that operation of the 2015 Nonseverability Clause will result in elimination of all judicial branch funding for 2016 and 2017 because it will be possible for the Legislature either to revisit the 2015 Nonseverability Clause or to respond immediately to prevent any elimination of judicial branch funding that would otherwise result from its operation.

32. Counsel for Defendant Secretary of Administration has been consulted and has no objection to staying these proceedings until March 15, 2016.

WHEREFORE, Plaintiff State of Kansas seeks the following relief:

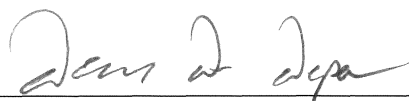
a. A temporary injunction enjoining all parties from giving effect to 2015 Nonseverability Clause, as described in paragraph 8 above, until March 15, 2016, at which time the Legislature will be in session and able to immediately restore funding to the judiciary if necessary.

b. A stay of these proceedings until March 15, 2016, or until further order of this court.

c. Such other relief as this court deems just and equitable.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
DEREK SCHMIDT



Derek Schmidt, KS Sup. Ct. No. 17781
Attorney General
Dennis D. Depew, KS Sup. Ct. No. 11605
Deputy Attorney General
Bryan C. Clark, KS Sup. Ct. No. 24717
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bryan.clark@ag.ks.gov

Attorneys for Plaintiff State of Kansas

EXHIBIT A

[Join Now](#) [Activate](#) [Sign In](#)

Derek Schmidt urges recusal of justices critical of law under review

Kansas AG to appeal lower court decision striking down 2014 law

Posted: September 19, 2015 - 11:47am

By Roxana Hegeman

The Associated Press

WICHITA — Justices who publicly criticized a 2014 law to strip the Kansas Supreme Court of its ability to appoint chief judges should not review the appeal in a lawsuit challenging the law's constitutionality, Kansas Attorney General Derek Schmidt said Friday.

The constitution "insists upon both legislative control of the purse strings and judicial independence," Schmidt, who filed a notice of appeal Friday in the recent court decision that struck down the 2014 law, said in a statement.

"From the standpoint of the attorney general's office ... I urge a healthy dose of humility and restraint by all involved in an effort to ease tensions and improve inter-branch cooperation."

The Republican-controlled Legislature stripped the justices of their ability to appoint chief district court judges in each of the state's 31 judicial districts, transferring the power to the district judges instead. The Legislature sought earlier this year to preserve the change by enacting another law saying that if the first policy is invalidated, the judicial branch's entire budget through June 2017 is "null and void."

Shawnee County District Judge Larry Hendricks struck down the 2014 law this month, calling it an unconstitutional interference, but put it on hold Schmidt's request. That temporarily ended the threat to the court system's funding.

Schmidt said he planned to formally ask the justices to recuse themselves from deciding the case because it directly involves their own power. He said he recognizes such a move would be unusual, but said there is precedent in Kansas and other states.

"Although I would prefer to avoid the crossfire between these two branches of government in which I do not serve, I cannot. My office is responsible for providing legal representation for the State when it is sued — even when it is sued by its own judges," Schmidt said. "As attorney general, I do not have the luxury of standing aside and watching events unfold."

When Republican Gov. Sam Brownback signed the measure into law in April 2014, the court issued a statement saying it weakened the state's "unified" court system. Of the seven current justices, only Brownback appointee Caleb Stegall started serving since then.

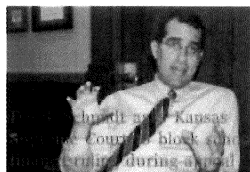
Even though the high court arguably would have a conflict of interest, Chief Justice Lawton Nuss said earlier this month, its members still might review the lawsuit. The high court was hearing arguments and conferring on other cases Friday; its spokeswoman had no immediate comment on Schmidt's request.

The attorney general also announced Friday that he planned to remove himself from a separate lawsuit in which three district court judges and a district judge are challenging the Legislature's authority to link judicial branch funding to the selection of chief judges. Schmidt cited a conflict of interest because he represents one of the plaintiffs in an unrelated case.

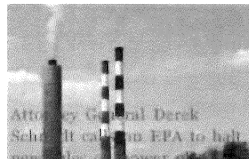
Kansas Senate Judiciary Committee Chairman Jeff King — who was an architect of the policy change at issue — insisted Friday that there is no intent in the Legislature to defund the judiciary.

The Independence Republican said legislators felt local control was important in 2014, and that this year's decision to tie in judicial funding was meant to give lawmakers a chance to re-evaluate how much money the judges receive if they don't have local control over its spending.

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Government & Politics SEPTEMBER 4, 2015

Kansas court financing isn't in jeopardy, Gov. Sam Brownback says



BY EDWARD M. EVELD
eeveld@kcstar.com

TOPEKA —

The funding of Kansas courts appeared to be briefly in question this week, but Gov. Sam Brownback gave assurances Friday that the court system is fully functional.

On Wednesday, Shawnee County District Judge Larry Hendricks struck down a 2014 law that transferred the power to appoint chief district judges from the Kansas Supreme Court to the judges in each of the state's 31 judicial districts.

Lawmakers were so adamant about the change in the selection process for chief judges last session that they approved another measure: If the policy was ruled invalid, the judicial branch's budget would be "null and void" through 2017.

At the request of Attorney General Derek Schmidt, Hendricks put his ruling on hold Thursday, which meant the court system's funding wasn't in jeopardy. Whether the 2014 law was unconstitutional interference will be hashed out in the appeals process.

"We have a court system, and we're going to have a court system," Brownback said Friday at a news conference.

The change in the selection process and the measure to halt funding were decried as legislative interference and an attack on the judiciary. Lawmakers said their intent was to create more local control in the court system. Brownback has only one appointee, Caleb Stegall, on the seven-member Supreme Court.

On Friday, Brownback said that the measure to halt funding wasn't unusual and that altering the selection process for chief judges wasn't interference.

"It's a legislative and executive function," he said.

The Associated Press reported earlier this week that although the Kansas Supreme Court would arguably have a conflict of interest, it still could review a challenge to the 2014 law.

"When some similar situations have arisen around the country, not necessarily on court funding, courts have invoked what they call 'the rule of necessity,'" Chief Justice Lawton Nuss said. "The alternative would be to move all those justices off the court and bring in seven strangers, and that just has not, over the course of many years, proven to be practical."

Asked Friday about the Supreme Court's status in eventually hearing the matter, Brownback said: "They will have to review their role in the process."

To reach Edward M. Eveld, call 816-234-4442 or send email to eeveld@kcstar.com. Twitter: [@eeveld](https://twitter.com/eeveld).



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Bill threatens to defund Kansas judicial branch

May 18, 2015, 5:17 p.m. Updated: 18 May 2015, 10:26 p.m.

Topeka — Kansas lawmakers are threatening to cut off all funding for the judicial branch of state government if the Kansas Supreme Court strikes down a law enacted last year spelling out how chief judges in the district courts are selected.

A lawsuit challenging the new system of selecting chief judges is currently pending in Shawnee County District Court.

House and Senate budget negotiators agreed to the language Monday in a bill that would fund the judicial branch for the next two years.

The language is similar to the judicial funding bill enacted last year. In that bill, lawmakers inserted a provision that says chief judges must be elected by the other judges in the district. It abolished the previous system in which the Kansas Supreme Court appointed the chief district judges.

Both last year's bill and the one being considered this year would contain a "non-severability" clause, meaning if one part of the bill is struck down by the courts, the entire bill, including its funding provisions for the courts, would also be struck down.

Sen. Jeff King, R-Independence, who chairs the Senate Judiciary Committee, said the issue about how chief judges are named is a matter of "local control" over district courts because chief judges have a great deal of discretion in allocating district court funds, hiring staff and even assigning cases to other judges.

"Having funding decisions decided at the level of government closest to the people is something I personally believe in, and was a policy behind the block grant bill we passed this year for schools," King said.

In February, Judge Larry T. Solomon, chief judge for the 30th Judicial District in Kingman County, filed a lawsuit seeking to strike down the new selection system as a violation of the separation of powers doctrine.

Article 3 of the Kansas Constitution gives the Supreme Court, "general administrative authority over all courts in this state."

Rep. Boog Highberger, D-Lawrence, who serves on the House Judiciary Committee, said he opposed the language.

"I think the judicial branch should be funded according to its needs, and not tied to any opinion or court decision," he said.

Highberger and other Democrats also questioned whether it is constitutional for one branch of government to effectively shut down another branch of government by taking away its funding.

Rep. John Carmichael, of Wichita, the ranking Democrat on the House Judiciary Committee, said he believes the language is meant to send another message to the courts.

"It leads me to only one conclusion, and that is that the Legislature is attempting once again to hold a gun to the head of the courts in an attempt to intimidate the courts into ruling in the school finance case in a way that pleases some members of the Legislature," Carmichael said.

Carmichael, an attorney who practices in Wichita, said the selection of judges has been a hot issue in the Sedgwick County District Court, where judges are elected in partisan races. For several years, he said, the chief judge of that court was a Democrat while the majority of judges on the bench were Republicans.

King denied the suggestion that the bill threatens to close down the court system if the Supreme Court strikes down the new selection policy.

"We're saying that the policy and the budget pieces are interlinked," King said. And if the Supreme Court should strike down the policy on naming chief judges, "then we would have to re-evaluate the budget based on knowing that we don't have that policy provision."

However, he did not say how the Legislature would do that if a ruling striking down the policy is issued when the Legislature is not in session.

The bill now goes to the floor of both chambers. And because it is a conference committee report, lawmakers can only vote yes or no on the bill, and they cannot offer any amendments.

Originally published at: <http://www2.ljworld.com/news/2015/may/18/bill-threatens-de-fund-kansas-judicial-branch/>

The Atlantic

POLITICS

The Court Case That Could Shut Down Kansas's Courts

A GOP law on judicial appointments has been thrown out, and now it's the judiciary itself that hangs in the balance.



Jeff King, the vice president of the Kansas Senate, defended a law that has jeopardized funding for state courts.
John Hanna / AP

RUSSELL BERMAN
SEP 5, 2015

What began as merely a fiscal mess in Kansas has become a full-blown judicial crisis.

On Wednesday, a district court ruled against the state, and threw out a 2014 law passed by Republicans that took the power of appointing chief judges away from the Kansas Supreme Court and handed it to local judges. But that rather simple question of judicial administration could have further-reaching consequences, thanks to a provision in a second law passed by the legislature earlier this spring that would cut off funding for the state's entire court system, if the 2014 law was struck down.

Kansas officials were so worried about the consequences of the court's decision that the state's attorney general, Derek Schmidt, successfully filed to have the ruling stayed until the courts rule on an appeal and the validity of the 2015 law.

My immediate concern ... is that the court does not appear to have decided the validity of a 'nonseverability' clause contained in a later statute, which means today's decision could effectively and immediately shut off all funding for the judicial branch of state government.

It is critical to keep the state judiciary operating.

We've previously covered Kansas's financial struggles, as a Republican experiment in conservative economic policy failed spectacularly, leaving the state deeply in the red. The fiscal crisis divided and, for a time, paralyzed the GOP-controlled legislature before lawmakers reluctantly agreed to nearly \$400 million in sales taxes earlier this year.

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Kansas's Failed Experiment

The current dispute flows from the budget battle: Ever since the state Supreme Court in 2014 ordered the legislature to increase funding for education, Governor Sam Brownback and his allies in Topeka have sought to wrest power over appointments from the Supreme Court and make it easier to replace judges. (A majority of the justices on the high court were appointed by Brownback's Democratic predecessor, Kathleen Sebelius.)

But critics of the legislature say Republican lawmakers have gone way too far, particularly when they crafted what one lawyer called “a draconian” contingency plan that sought to bully the courts into siding with them. “I think a fair word is extortion,” said Pedro Irigonegaray, a Kansas attorney representing Judge Larry Solomon, the chief judge who challenged the 2014 law on judicial appointments. “If you don’t do this, your salary is gone. That type of strong-arm technique did not happen by accident.” He and other lawyers have now filed a lawsuit challenging the second law in court. In a phone interview, Irigonegaray reminded me that he was born in Havana, Cuba. “This is the type of thing that we might see in a country that is undemocratic,” he said. “But in America, we deserve better.”

“I think a fair word is extortion. If you don’t do this, your salary is gone. That type of strong-arm technique did not happen by accident.”

To Jeff King, the vice president of the Kansas Senate, this is all much hyperventilation about nothing. “There is a *long* way to go in the process,” he told me. While Irigonegaray portrayed the 2015 law as vindictive, King said it merely extended the “nonseverability” of the 2014 measure—meaning

that the law had to be considered in a unified way, which is why the judiciary's budget came into play. Because the legal rulings and appeals would take many months, he said, the legislature had plenty of time to evaluate funding for the courts if the 2014 law was thrown. And he insisted that lawmakers would "absolutely, no question" take action to restore the judiciary in that event. "There is no desire to strike the funding of the judicial branch," King said. "No one wants that. It's not going to happen."

As for Irigonegaray, King said the well-known lawyer had a tendency "to sensationalize the mundane." "Pedro likes to make controversy where none exists," he said. King portrayed the broader fight over judicial appointments as one over local control: Republicans, he said, actually approved a higher overall budget for the courts, but they wanted district judges and county officials to have more say over how it was spent.

For now, Kansas's courts remain open. Crimes will be tried, lawsuits will be heard, rulings will be heard. But King's call for calm seems a bit overstated. For one, the state legislature just finished a spring session that, despite the complete one-party control of the government, was described as the most dysfunctional in decades. And the consequences of the court's ruling on Wednesday were so worrisome that not only did the state's Republican attorney general feel compelled to seek an emergency injunction, but he was joined by the lawyers who won the case to begin with. Had the stay not been granted, Irigonegaray said, "an independent branch of government would have ceased to exist. That's how dangerous this situation is."

ABOUT THE AUTHOR



RUSSELL BERMAN is a senior associate editor at *The Atlantic*, where he covers political news. He was previously a congressional reporter for *The Hill* and a Washington correspondent for *The New York Sun*.

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Politics & Government JUNE 1, 2015

Kansas Legislature passes court-funding bill with judge-selection provision



Bo Rader - The Wichita Eagle

BY BRYAN LOWRY
Eagle Topeka bureau

TOPEKA — The budget for courts will head to the governor's desk with a provision tying funding to a policy that lessens the power of the Kansas Supreme Court's chief justice.

That policy is being challenged in court.

HB 2005 passed the Kansas House by a 88-26 vote on Monday. It passed the Kansas Senate the previous day, 25-14.

The bill appropriates \$131.2 million for the judicial branch in fiscal year 2016, which begins in July, and \$138.5 million the following year.

It ties the funding to a policy established last year that changed the way judicial districts' chief judges are selected and gave them more authority over their districts' budgets.

Under the policy change, the judges in each judicial district pick their chief judge. Chief judges had been appointed by the Supreme Court.

The policy change faces a lawsuit in Shawnee County District Court and could be struck down in court.

The budget bill has a non-severability clause, which means that if any provision is struck down, the other provisions are as well. Some lawmakers see the non-severability clause as an attempt to keep the courts from rejecting the policy.

Rep. John Carmichael, D-Wichita, quipped that if a judge rules that provision unconstitutional, he'll also have to turn off the lights in the courthouse because there won't be money for the electric bill.

However, if the Legislature had not passed a judicial budget, furloughs for judicial employees could have started next week and courts could have faced closure in coming weeks.

Rep. Blaine Finch, R-Ottawa, called this a "devil's choice."

"We find ourselves and our courts held hostage," he said, comparing the legislation to extortion. Finch begrudgingly voted in favor of the legislation to prevent closure of courts, which he said would have a host of consequences, including the endangerment of people seeking protection from stalking orders.

Senate Vice President Jeff King, R-Independence, has said that the policy is meant to increase local control of courts, which he contended results in better use of public dollars.

"Just like last year, local control is very important to the Kansas Legislature in deciding judicial funding," he said last week. "If the court decides to strike down local control, we want the opportunity to re-evaluate judicial funding. That is literally the entirety of what we're doing in this provision."

Reach Bryan Lowry at 785-296-3006 or blowry@wichitaeagle.com. Follow him on Twitter: [@BryanLowry3](https://twitter.com/BryanLowry3).

HOW THEY VOTED

Here's how south-central Kansas lawmakers voted on the judicial budget bill. The House approved it 88-26 Monday. The Senate approved it 25-14 Sunday.

House

All area Republicans voted yes, except for Don Schroder, Hesston, who voted no, and these lawmakers who were absent: Mark Kahrs, Wichita; Les Mason, McPherson; Virgil Peck, Tyro.

All area Democrats voted no, except for Brandon Whipple, Wichita, who voted yes, and Carolyn Bridges and Roderick Houston, who were absent.

Senate

All area Republicans voted yes, except for Carolyn McGinn, Sedgwick, who voted no.

Oletha Faust-Goudeau, D-Wichita, voted no.

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Shane Velazquez

Wow! How the heck do you remove a chief justice who is abusing his/her position?

Obviously the legislature won't. So what is the remedy?

Does the U.S. Supreme Court end up removing that judge?

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John Ekstromer

Absolute power corrupting absolutely, and running amok in the process. This is what happens when one party runs anything.

Like · Reply · 1 · Jun 1, 2015 3:58pm



Donald Davidson · Topeka, Kansas

so much for the independence of the judicial branch.

Like · Reply · 2 · Jun 2, 2015 11:31am

IN THE DISTRICT COURT OF NEOSHO COUNTY, KANSAS
Sitting at Chanute

FILED

<p>STATE OF KANSAS ex rel. DEREK SCHMIDT, Attorney General of the State of Kansas,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SARAH L. SHIPMAN, in her official capacity as Acting Secretary of Administration of the State of Kansas,</p> <p style="text-align: right;">Defendant.</p> <hr style="width: 100%;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	
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2015 SEP 22 AM 8 46

CLERK OF DISTRICT COURT
NEOSHO COUNTY, KANSAS

BY _____

Case No. 2015-CV-73

ORDER GRANTING TEMPORARY INJUNCTION AND STAY

This matter comes before the Court on the State’s Motion for Temporary Injunction and Stay. After reviewing the State’s Petition and Motion, as well as the statements and representations of counsel and exhibits, the Court finds and concludes as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction under the statutory and common law of Kansas, particularly K.S.A. 20-301.

2. Venue is proper under the statutory and common law of the State of Kansas because the cause of action, or some part thereof, arises in Neosho County, Kansas. *See* K.S.A. 60-602(2); 60-603(3). In any event, Defendant consents to venue in Neosho County, Kansas, and has waived any objection thereto. *See Rauscher v. St. Benedict’s Coll.*, 212 Kan. 20, 23 (1973) (noting “improper venue is an affirmative defense which may be waived”); *State, Bd. of Regents, Univ. of Kansas Med. Ctr. v. Skinner*, 267 Kan. 808, 812 (1999) (same); *see also* K.S.A. 60-212(b)(3), (h).

FACTS JUDICIALLY NOTICED

3. In 2014, the Kansas Legislature passed Senate Substitute for House Bill 2338.

4. The Governor signed 2014 Sen. Sub. for HB 2338 into law as 2014 Kansas Laws ch. 82.

5. Section 11 of 2014 Sen. Sub. for HB 2338 amended K.S.A. 20-329 to permit the judges in each district to select their chief judge rather than having the Kansas Supreme Court appoint the chief judges in all districts (hereinafter, “the Chief Judge Selection Clause”).

6. Section 43 of 2014 Sen. Sub. for HB 2338 enacted a “nonseverability clause” that stated: “The 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 Kansas Laws Ch. 82 (Sen. Sub. for H.B. 2338) § 43 (hereinafter “the 2014 Nonseverability Clause”).

7. On February 18, 2015, The Honorable Larry T. Solomon, Chief Judge of the 30th Judicial District, filed a lawsuit challenging the constitutionality of the Chief Judge Selection Clause. *Solomon v. Kansas*, Shawnee Cnty. Dist. Ct. Case No. 2015-CV-156 (*Solomon*).

8. On September 2, 2015, the district court in *Solomon* granted summary judgment to Plaintiff Chief Judge Solomon and held the Chief Judge Selection Clause was unconstitutional as a violation of the separation of powers doctrine of the Kansas Constitution. Plaintiff Chief Judge Solomon represented to the Court in his Petition that such a finding would result in a partial loss of funding for the judiciary by operation of the 2014 Nonseverability Clause. *Solomon* Pet. for Decl. J. ¶ 1. The court enforced the 2014 Nonseverability Clause and declared 2014 Sen. Sub. for HB 2338 invalid in its entirety. *Solomon* Mem. Decision & Order at 35.

9. While *Solomon* was pending but before the entry of summary judgment, the Legislature passed and the Governor signed into law 2015 House Bill 2005, which appropriates funds for the judicial branch for fiscal years 2016 and 2017. Section 29 of that bill contained a separate nonseverability clause, which stated:

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.

K.S.A. 20-1a18 (2015 HB 2005) (hereinafter, “the 2015 Nonseverability Clause”).

10. The *Solomon* court declined to address the effect of its ruling on any other law, even though by operation of the 2015 Nonseverability Clause the invalidation of § 11 also arguably invalidates the entirety of 2015 HB 2005 and all judicial funding for fiscal years 2016 and 2017.

11. To avoid the risk of loss of all judicial branch funding that the court’s decision in *Solomon* has triggered, the State sought (with support of Plaintiff Chief Judge Solomon), and the district court granted, a stay of the judgment pending the State’s appeal of the decision. The State filed its notice of appeal on September 18, 2015.

12. In the present action, the Attorney General claims in Count I a potential violation of Article 3, § 13, of the Kansas Constitution. The Attorney General asserts an additional claim, Count II, based on potential harm the 2015 Nonseverability Clause could cause to his ability to perform his duties as Attorney General.

13. Because the district court in *Solomon* held unconstitutional the Chief Judge Selection Clause of 2014 Sen. Sub. for HB 2338, under 2015 HB 2005 there is an ever-present threat that judicial branch funding could be cut off before the Legislature returns for its next session.

14. Under Article 2, § 8, of the Kansas Constitution, the Legislature will next convene in regular session on January 11, 2016.

15. The Attorney General filed the present action on September 21, 2015, “to avoid any reduction of judicial salaries in violation of Article 3, § 13, of the Kansas Constitution, and to ensure the Kansas courts remain open and operating.” Petition, ¶ 1.

FINDINGS OF FACT

16. Key legislators have indicated that the Legislature did not intend through enactment of the 2015 Nonseverability Clause to eliminate funding for the judicial branch of state government. Nor did the Governor, who signed 2015 House Bill 2005 into law. None of the parties to this suit desire that outcome either. Thus, there appears to be a unanimous desire by all involved that the 2015 Nonseverability Clause should not operate to eliminate judicial branch funding. *See, e.g.*, Ex. A to State’s Petition.

17. If the 2015 Nonseverability Clause were given effect, and if any condition precedent that triggers it has occurred or occurs, the result would be immediate elimination of all judicial branch funding. If that were to occur while the Legislature is unable to immediately address the need for judicial funding because it is not in session, the 2015 Nonseverability Clause would require the State of Kansas, acting *inter alia* through Defendant Secretary of Administration, to cut off all funding to the judicial branch.

18. Such a result would necessarily and unavoidably violate Article 3, § 13, by unconstitutionally reducing judicial salaries. It also would prevent the Attorney General from performing his duties, including here in Neosho County.

19. If the Legislature were in session at the time the 2015 Nonseverability Clause is triggered, a constitutional violation would not necessarily result because the Legislature could avoid the violation by immediately addressing judicial funding and thereby prevent an unconstitutional reduction in judicial salaries.

20. It is the operation of the 2015 Nonseverability Clause in a manner that causes elimination of judicial branch funding for 2016 and 2017, not the existence of the clause itself, that threatens the constitutional harm. Although the district court's decision in *Solomon* is currently stayed by agreement of the parties, the stay could be lifted at any time, thus rendering the 2015 Nonseverability Clause operable unless it is enjoined by the court or modified by the Legislature.

21. Entry of the requested temporary injunction prevents any violation of Article 3, § 13, until at least March 15, 2016, by rendering the 2015 Nonseverability Clause inoperable until that date. Assertion of any constitutional violation after March 15, 2016, would be speculative at this time because it necessarily assumes action (or inaction) by the Legislature that has not yet occurred; thus, a stay of this action until that date is appropriate.

22. Defendant Secretary of Administration consents and agrees to entry of the temporary injunction and stay requested by the Attorney General.

CONCLUSIONS OF LAW—TEMPORARY INJUNCTION

23. Kansas law requires a five-step analysis to determine whether a temporary injunction should be ordered: (1) substantial likelihood of success on the merits, (2) reasonable

probability of irreparable future injury to the movant; (3) an action at law will not provide an adequate remedy; (4) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (5) the injunction, if issued, would not be adverse to the public interest. *See Steffes v. City of Lawrence*, 284 Kan. 380, 394-95 (2007); *Wichita Wire, Inc. v. Lenox*, 11 Kan. App. 2d 459, 462 (1986).

24. If operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017, then judicial salaries necessarily would be reduced in violation of Article 3, § 13. Moreover, the elimination of judicial branch funding would substantially disrupt the operation of the Kansas court system, thereby preventing the Attorney General from performing certain of his duties as required by law. Thus, the Plaintiff State of Kansas has a substantial likelihood of success on the merits.

25. If operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017, then the resulting violation of Article 3, § 13, would constitute irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality) (noting that loss of constitutional freedoms “for even minimal periods of time, unquestionably constitutes irreparable injury”) (quoted in *Raven Dev. Co. v. Bd. of Cnty. Comm’rs of Shawnee Cnty.*, No. 01C 1306, 2001 WL 34117820, at *5 (Kan. Dist. Ct. Nov. 1, 2001)); *Adams By & Through Adams v. Baker*, 919 F. Supp. 1496, 1505 (D. Kan. 1996) (noting that “deprivation of a constitutional right is, itself, irreparable harm”); 11A Charles Alan Wright & Arthur A. Miller, *Fed. Prac. & Proc. Civ.* § 2948.1 (3d ed.) (“When an alleged deprivation of a constitutional right is involved, such as the right to free speech or freedom of religion, most courts hold that no further showing of irreparable injury is necessary.”) Because the State has an interest in its Constitution being enforced, an Article 3, § 13 violation would irreparably harm the State.

Moreover, the Attorney General, as the State's chief law enforcement official, has authority to seek judicial relief from constitutional violations. *See, e.g., State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 879 (2008). The elimination of judicial branch funding would cause irreparable harm to the Attorney General by rendering him unable to perform his legally required duties for an unspecified period of time. Thus, there is a reasonable probability of irreparable future injury to the Plaintiff.

26. No action at law would provide an adequate remedy if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017.

27. The threatened injury to Plaintiff State of Kansas if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017 plainly outweighs whatever damage the proposed injunction may cause the opposing party. Indeed, Defendant Secretary of Administration consents to entry of this temporary injunction, and as discussed above there appears to be a unanimous desire by all involved that the 2015 Nonseverability Clause should not operate to eliminate judicial branch funding. *See Hollingsworth v. Perry*, 558 U.S. 183, 196 (2010) (concluding that balance of equities favored applicant for stay where applicants demonstrated a "threat of harm" and respondents did "not allege[] any harm").

28. Issuance of this temporary injunction would not be adverse to the public interest but instead would vindicate the public interest. The public interest strongly favors avoiding violation of the Kansas Constitution, ensuring the Attorney General is able to perform his duties as required by law, and preventing a shutdown of the judicial branch of state government that

would occur if operation of the 2015 Nonseverability Clause were to result in elimination of all judicial branch funding for 2016 and 2017.

29. The requested temporary injunction avoids these harms by preventing any operation of the 2015 Nonseverability Clause, including any operation that would result in elimination of all judicial branch funding for 2016 and 2017, until March 15, 2016, a time when the Legislature will have returned to session.

30. The requested temporary injunction benefits both the parties and the public by allowing the Legislature an opportunity to revisit the 2015 Nonseverability Clause or, in the alternative, to promptly address the constitutional requirement for judicial funding in the event operation of the 2015 Nonseverability Clause would result in elimination of all judicial branch funding for 2016 and 2017 that has previously been approved. Thus, the temporary injunction should be granted.

31. Because the temporary injunction prohibits the *parties*—both the State of Kansas and its Secretary of Administration—from giving effect to the 2015 Nonseverability Clause, the effect of this injunction is to prevent operation of the 2015 Nonseverability Clause throughout the State of Kansas.

CONCLUSIONS OF LAW—STAY

32. This court has inherent authority to stay proceedings. *See Harsch v. Miller*, 200 P.3d 467, 475 (Kan. 2009) (noting “the 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” (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936))); *see also, e.g., Montoy v. State*, No. 99-C-1738, 2003 WL 22902963, at *50 (Kan. Dist. Ct. Dec. 2, 2003) (withholding for seven months final order and judgment finding that

school funding scheme violated Article 6 of the Kansas Constitution to give the Legislature time to act); *Montoy v. State*, 120 P.3d 306, 310 (2005) (withholding for four months formal opinion finding that the Legislature had failed to make suitable provisions for finance of public school system to give the Legislature time to act).

33. The entry of the temporary injunction renders the 2015 Nonseverability Clause wholly inoperable throughout the State until March 15, 2016. Because the Legislature will have reconvened in regular session prior to that date, entry of the temporary injunction eliminates the certainty that operation of the 2015 Nonseverability Clause will result in elimination of all judicial branch funding for 2016 and 2017 because it will be possible for the Legislature either to revisit the 2015 Nonseverability Clause or to respond immediately to prevent any elimination of judicial branch funding that would otherwise result from its operation. Thus, any asserted harm from the existence of the 2015 Nonseverability Clause is rendered purely speculative until at least March 15, 2016.

34. The parties agree that these proceedings should be stayed until March 15, 2016.

35. For the foregoing reasons, a stay of these proceedings is warranted.

IT IS THEREFORE ORDERED AND DECREED THAT

A. All parties to this suit are enjoined from giving effect to the 2015 Nonseverability Clause, as defined in paragraph 9, above, until and through March 15, 2016.

B. Any further proceedings in this case are stayed until and through March 15, 2016, or until further order of the court.

C. On or before March 15, 2016, the parties shall file a status report with the Court regarding the need for further proceedings.

IT IS SO ORDERED.

Daryl D Ahlquist

Daryl D. Ahlquist, District Judge
District Court of Neosho County, Kansas
Chanute Division
102 S Lincoln
P O Box 889
Chanute, KS 66720

Certificate of Clerk of the District Court, The above is a true and correct copy of the original instrument filed on the 22nd day of Sept. 2015 and recorded in the Court of the 31st Judicial District Neosho County, Kansas, Dated this 22nd day of Sept. 2015.

Nicky Layton
Clerk



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