

IN THE SUPREME COURT OF KANSAS

GOVERNOR LAURA KELLY, in her)
official capacity,)
))
Petitioner,)
))
v.)
))
LEGISLATIVE COORDINATING)
COUNCIL, KANSAS HOUSE OF)
REPRESENTATIVES and)
KANSAS SENATE,)
))
Respondents.)

Case No. 122,765

MOTION FOR EX PARTE DISPOSITION

Petitioner, Governor Laura Kelly, moves that disposition of this urgent constitutional dispute proceed ex parte pursuant to Supreme Court Rule 9.01(c)(2), which provides that “if the right to relief is clear and it is apparent that no valid defense to the petition can be offered, relief may be granted ex parte.” This proceeding squarely presents a clear constitutional question. Governor Kelly challenges the Legislature’s attempt to delegate its emergency management oversight powers codified in K.S.A. 48-924(b)(3), 48-924(b)(5), and 48-925(b) to the Legislative Coordinating Council (“LCC”) and the LCC’s subsequent vote attempting to revoke Executive Order 20-18 as unconstitutional under the Kansas Constitution Article 2, §§ 14(a) and 20. The answer to this question not only makes clear Petitioner’s right to relief, as set forth in her petition and memorandum in support for this proceeding, but also the lack of any valid defense to Respondents’ unconstitutional action. The actions of the parties precipitating this constitutional crisis have occurred, been publicized, and need no further explanation for this Court to assess their constitutionality.

Petitioner has not located any instances where this Court has exercised its discretion under Supreme Court Rule 9.01(c)(2) to issue ex parte relief. Having otherwise met the requirements of

the Rule, Petitioner urges this Court to exercise that discretion in this case considering the following extraordinary circumstances:

1) the world, the United States, and the State of Kansas are facing an unprecedented and immediate threat to public health due to COVID-19;

2) Governor Laura Kelly lawfully exercised her powers to preserve and protect the public health by issuing Executive Order 20-18, which would minimize the number of Kansans contracting the disease, getting sick, and dying;

3) the Legislature unconstitutionally sought to delegate its oversight authority and the LCC illegitimately voted to revoke Executive Order 20-18, thereby causing confusion as to whether the protective measures in Executive Order 20-18 are still in effect,

4) such confusion is an immediate and significant threat to the health and safety of Kansans; and

5) such confusion occurs less than a week before the Easter holiday on which there is expected to be mass gatherings – Executive Order 20-18 implemented necessary limitations on mass gatherings to prevent spread of the COVID-19 disease sickening and killing more Kansans.

Without immediate and decisive action, such as the action Governor Kelly took in issuing Executive Order 20-18, the deadly and highly contagious COVID-19 will continue to spread and unnecessarily sicken and kill more Kansans. This is not speculation as evidenced by the ever-rising death toll, hospitalizations, and adverse economic impacts.¹

Now is the time for this Court to exercise its discretion and resolve the constitutional crisis Respondents have caused and issue an ex parte order for relief pursuant to Supreme Court Rule

¹ As of this filing, Kansas has suffered 1,046 COVID-19 cases, with 38 deaths. *See* https://public.tableau.com/profile/kdhe.epidemiology#!/vizhome/COVID19Data_15851817634470KSCCOVID-19CaseData (last visited April 8, 2020); *see also* "Coronavirus in the U.S.: Latest Map and Case Count", The New York Times, available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited April 8, 2020).

9.01(c)(2). In the alternative, Petitioner request this Court order Respondents to submit a response by 9:00 A.M. on April 10, 2020, pursuant to Supreme Court Rule 9.01(c)(3).

CONCLUSION

The Governor respectfully requests that this Court grant her request for relief ex parte or in the alternative, order Respondents to submit an answer by 9:00 A.M. on April 10, 2020, pursuant to Supreme Court Rule 9.01(c)(3).

RESPECTFULLY SUBMITTED

GOVERNOR LAURA KELLY

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CERTIFICATE OF SERVICE

I certify that on April 9, 2020, a true and correct copy of the above filing was served in accordance with Kansas Supreme Court Rule 9.01 and K.S.A. 60-205, on Respondents by e-mail with additional courtesy copies by personal service at the addresses of Respondents' state offices listed below, and further additional courtesy copies by personal service to Respondent's residences, not listed for privacy reasons to:

Senate President Susan Wagle

Susan.Wagle@senate.ks.gov

Statehouse, Room 333-E

300 SW 10th Avenue

Topeka, KS 66612

Kansas Senate

House Speaker Ron Ryckman, Jr.

Ron.Ryckman@house.ks.gov

Statehouse, Room 368-E

300 SW 10th Avenue

Topeka, KS 66612

Kansas House of Representatives and Legislative Coordinating Council

Courtesy copies to:

Director of Legislative Administrative Services Tom Day

Tom.Day@las.ks.gov

Statehouse, Room 551-S

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Revisor of Statutes Gordon Self

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