

IN THE SUPREME COURT OF THE STATE OF KANSAS

Kristin Butler and Scott Bozarth
v.
Shawnee Mission School District
Board of Education.
Attorney General Derek Schmidt,
Intervenor.

County Appealed From: **Johnson**
District Court Case No(s): **21CV2385**
Proceeding Under Chapter: **60**
Party Filing Appeal: **Schmidt**
Party or Parties Who Will Appear as Appellees: **Shawnee**
Mission School District Board of Education

DOCKETING STATEMENT - CIVIL

The docketing statement is used by the court to determine jurisdiction and to make calendar assignments under Rules 7.01(c) and 7.02(c). This is not a brief and should not contain argument or procedural motions.

1. **Civil Classification:** From the list of civil topic sub-types listed at the end of this form, choose the **one** which best describes the **primary** issue in this appeal.
Constitutional Law

2. **Proceedings in the District Court:**
 - a. Trial judge from whose decision this appeal is taken: **Hon. David W. Hauber**
 - b. List any other judge who has signed orders or conducted hearings in this matter:
None
 - c. Was this case disposed of in the district court by:
 Jury trial
 Bench trial
 Summary judgment
 Dismissal
 Other
 - d. Length of trial, measured in days (if applicable): **N/A**
 - e. State the name of each court reporter or transcriptionist who has reported or transcribed any or all of the record for the case on appeal. (This is not a substitute for a request for transcript served on the individual reporter or transcriptionist under Rule 3.03.)
Kelley Morrison
 - f. State the legal name of all entities that are NOT listed in the case caption (including corporations, associations, parent, subsidiary, or affiliate business entities) but are parties or have a direct involvement in the case on appeal: **N/A**

- g. State the name, address, telephone number, fax number, and e-mail address of every attorney who represented a party in district court if that attorney's name does NOT appear on the certificate of service attached to this docketing statement. Clearly identify each party represented.
All counsel are on certificate of service

3. **Jurisdiction:**

- a. Date journal entry, judgment form, or other appealable order filed: **July 15, 2021**
- b. Is the order appealed from a final order, *i.e.*, does it dispose of the action as to all claims by all parties? **Yes**
- c. If the order is not a final disposition as to all claims by all parties, did the district court direct the entry of judgment under K.S.A. 60-254(b)? **N/A**
 If not, state the basis on which the order is appealable.
-
- d. Date any posttrial motion filed: **July 21, 2021**
- e. Date disposition of any posttrial motion filed: **July 27, 2021**
- f. Date notice of appeal filed in district court: **July 21, 2021**
- g. Other relevant dates necessary to establish this court's jurisdiction to hear the appeal, *i.e.*, decisions of administrative agencies or municipal courts and appeals therefrom: **N/A**
- h. Statutory authority for appeal: **K.S.A. 60-2101(b)**
- i. Are there any proceedings in any other court or administrative agency, state or federal, which might impact this case or this court having jurisdiction (yes or no)? **No**
 If "yes," identify the court or agency in which the related proceeding is pending. List the case captions and the case or docket numbers.

4. **Constitutional Challenges to Statutes or Ordinances:**

- Was any statute or ordinance found to be unconstitutional by the district court (yes or no)? **Yes**
 If "yes," what statute or ordinance?
Kansas Senate Bill 40 (2021)

5. **Related Cases/Prior Appeals:**

- a. Is there any case now pending or about to be filed in the Kansas appellate courts which:
- (1) Arises from substantially the same case as this appeal (yes or no)? **No**
 If "yes," give case caption and docket number.
- (2) Involves an issue that is substantially the same as, similar to, or related to an issue in this appeal (yes or no)? **No**
 If "yes," give case caption and docket number.

- b. Has there been a prior appeal involving this case or controversy (yes or no)? No
If “yes,” give case caption and docket number.

6. Brief statement (less than one page), without argument, of the material facts. This is not intended to be a substitute for the factual statement that will appear in the brief.

This case was originally commenced by Plaintiffs Butler and Bozarth as the parents of children who attend schools in the Shawnee Mission School District. Butler and Bozarth invoked new procedures enacted by the Kansas Legislature in Senate Bill 40 only a few months earlier to seek review of the mask policy imposed by the school district in connection with the COVID-19 health emergency. Among other things, S.B. 40 provides procedures for those “aggrieved” by a school board policy to receive a hearing before the school board and file a civil action in district court.

In an order denying relief to the plaintiffs, the district court *sua sponte* raised questions about the constitutionality of S.B. 40, and invited the intervention of the Attorney General to defend the constitutionality of the law. The Attorney General subsequently intervened and filed a submission arguing that the matter was moot because of the expiration of the state of emergency, as well as defending the constitutionality of the law.

The district court issued a “Judgment and Final Order After Intervention by the Kansas Attorney General,” in which it again dismissed the matter as to the plaintiffs, but also declared S.B. 40 unconstitutional and “unenforceable.” According to the district court, “SB 40 is unenforceable through its enforcement provisions because it violates the separation of powers and it deprives the defendant of required due process.”

The district court denied a subsequent motion by the Attorney General to stay its decision pending appeal.

7. Concise statement of the issues proposed to be raised. You will not be bound by this statement but should include issues now contemplated. Avoid general statements such as “the judgment is not supported by the law.”

The district court improperly raised and ruled on nonjurisdictional constitutional issues *sua sponte*.

The district court incorrectly found that the constitutional issues were not moot, notwithstanding the expiration of the emergency declaration upon which the application of the law is expressly premised.

The district court incorrectly found that the parties had standing to raise moot constitutional issues.

The district court incorrectly found that S.B. 40 unconstitutionally encroached on judicial powers.

The district court incorrectly found that S.B. 40 was an unconstitutional violation of the due process rights of the school district.

The district court's holding that the entirety of S.B. 40 was "unenforceable" was overbroad because the law included multiple provisions unrelated to the constitutional violations found by the court, and it disregarded the severability clause in the law.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT

By: /s/ Brant M. Laue

Brant M. Laue, #16857

Solicitor General

Dwight R. Carswell, #25111

Deputy Solicitor General

Kurtis K. Wiard, #26373

Assistant Solicitor General

120 SW 10th Avenue, 2nd Floor

Topeka, Kansas 66612

Tel: (785) 296-2215

Fax: (785) 296-6296

brant.laue@ag.ks.gov

dwight.carswell@ag.ks.gov

kurtis.wiard@ag.ks.gov

CERTIFICATE OF SERVICE

I certify that a copy of this document has been served upon the following by e-mail on this 29th day of July, 2021:

Kristin Butler
6951 Hallet Street
Shawnee, KS 66216
kristinmariebutler@gmail.com
Pro Se

Scott Bozarth
6319 Antioch Road
Merriam, KS 66202
Scott.bozarth@yahoo.com
Pro Se

Rachel B. England
Shawnee Mission School District
8200 W. 71st Street
Shawnee Mission, KS 66204
rachelengland@smsd.org
Attorney for Defendants

/s/ Brant M. Laue