

IN THE SUPREME COURT OF THE STATE OF KANSAS

*Butler, Kristen, and Bozarth, Scott,*  
*Plaintiffs,*  
*V.*  
*Shawnee Mission School District Board*  
*of Education,*  
*Appellee*  
*Attorney General Derek Schmidt*  
*Appellant*

Case No. 21-124205-S

APPLICATION TO FILE AMICUS BRIEF BY JOHNSON COUNTY PLAINTIFFS IN  
21cv01942 REFERRED TO BY THE BLUE VALLEY AMICUS BRIEF AS THE BAKER  
PLAINTIFFS

The plaintiffs in a pending Johnson County SB40 lawsuit 21cv01942 in Division 7 of the Tenth Judicial District make application to file an amicus brief because this appeal deals with application and constitutionality of SB40 and concerns the issues raised by the Blue Valley Unified School District’s amicus brief.

1. Background. The plaintiffs in 21cv01942 are comprised of parents Terri E. Baker, Joshua Snider, CarrieAnn Baumgarten, Rebecca Campbell, Julie Myrick, Holly J. Rook, Mathew Couch, and Laura Klingensmith along with their respective children. Suit was brought against the Olathe School district and the Blue Valley school district. The Blue Valley Unified School District, in its amicus brief, calls them “the Baker plaintiffs” (Blue Valley brief, p.4). Blue Valley makes numerous arguments about the “Baker plaintiffs” as well as its purported difficulties it says it experienced due to these parents exercising their SB40 rights. *Id.* at p. 5 (“Ms Baker’s legal counsel argued....”). But Blue Valley asserted in its amicus that these plaintiffs asserting SB40 claims were abusing Blue Valley. Blue Valley claimed they “abused” SB40 by filing their individual grievances for their student children. *Id.* at p. 6. Blue Valley

cited an example of this “abuse” by arguing the parents should not be permitted to file *individual* grievances as applied to their own student but instead can only facially challenge Blue Valley’s policy. *Id.* As will be demonstrated in the amicus brief, a parent can only file an individualized grievance as applied to her own child (and not on behalf of other children), a plaintiff is permitted to join other causes of action with an SB40 claim, and the school districts created their own respective self-inflicted “hearing officer” procedure which not only complicated the process but was completely contrary to the procedure set out in SB40 which required a hearing before a quorum of the board – not a hired attorney or school employee called “hearing officer. Last, Blue Valley entirely omits any consideration of the children who suffered loss of education, as well as experiencing medical issues, in being required to mask under Blue Valley’s policy.

2. Authority. Supreme Court Rule 6.06.

3. Reasons. Blue Valley asserts that the Kansas legislature has improperly “interfered with Blue Valley’s ability to set COVID mitigation policy by establishing a strict scrutiny standard....” *Id.* at p.11. Understandably, Blue Valley does not articulate how providing these specific parents with mask exemptions for their children would have any effect on its mitigation policy – as Blue Valley already allows an unlimited number of exemptions for medical or other areas. These plaintiffs will argue that the Kansas legislature is perfectly authorized to require that as applied to a student in view of the harm to students in the deprivation of education and their health. The Blue Valley plaintiffs are clearly affected by this appeal. And it would be unfair to allow Blue Valley to file its amicus brief setting out its position, particularly when a fair amount of print was devoted to impugning or otherwise demeaning the plaintiffs, their motives, and the factual underpinnings of their claims. The

plaintiffs will point out in their amicus brief that Blue Valley, as well as every other school district's purported burdens were self-inflicted due to an improper insertion of a "hearing officer" proceeding rather than what SB40 actually required – a grievance hearing before the quorum of a board. And as will be pointed out, these plaintiffs have pending claims for the violation of their privacy rights as the third party hired attorney conducted publicized Zoom meetings which was not a board meeting under SB40. The arguments raised by the Attorney General regarding Division 7's bias and appearance of bias are also pending in the plaintiffs' motion to change judge.

4. The Amicus brief is anticipated to present arguments and perspective either not advanced by the parties but also to rebut many of the factual allegations stated by Blue Valley in its amicus brief. These plaintiffs are the real reason for SB40 – this isn't about these school districts but about the best interests of these children.

5. The plaintiffs propose that the deadline for this brief be on a date providing at least 30 days before oral argument pursuant to Rule 6.06(b)(1). Plaintiffs would file their brief at the latest of one day after the Court grants leave to file the brief.

6. All parties and amici have been served with a copy of this application. For these reasons the JOCO plaintiffs in 21cv01942 makes this application to file a friend of the court brief.

By: /s/Linus L. Baker  
Linus L. Baker, Kansas 18197  
6732 West 185th Terrace  
Stilwell, KS 66085-8922  
Telephone: 913.486.3913  
Fax: 913.232.8734  
E-Mail: [linusbaker@prodigy.net](mailto:linusbaker@prodigy.net)  
Attorney for the plaintiffs

Certificate of Service

A copy of the above was notified electronically by the Court to all parties pursuant to Administrative Order 268.

<p>Miriam E. C. Bailey            900 West 48th Place, Suite 900            Kansas City, MO 64112            816-753-1000            Fax: 816-753-1536            mbailey@polsinelli.com            Attorneys for Kansas Chamber of Commerce</p>	<p>Scott Bozarth            6319 Antioch Road            Merriam, KS 66202            scott.bozarth@yahoo.com            Plaintiff.</p> <p>Kristin Butler            6951 Hallet Street            Shawnee, KS 66216            kristinmarie.butler@gmail.com            Plaintiff</p>
<p>Samuel G. MacRoberts            Kansas Justice Institute            12980 Metcalf Avenue, Suite 130            Overland Park, Kansas 66213            Sam.MacRoberts@KansasJusticeInstitute.</p>	<p>Gregory P. Goheen            McAnany, Van Cleave &amp; Phillips, P.A.            10 E. Cambridge Circle Dr.            Kansas City, KS 66103            ggoheen@mvplaw.com</p> <p>Rachel B. England            8200 W. 71st Street            Shawnee Mission, KS 66204            rachelengland@smsd.org            Attorneys for Shawnee Mission</p>
<p>W. Joseph Hatley            Spencer Fane LLP            1000 Walnut, Suite 1400            Kansas City, MO 64106            jhatley@spencerfane.com            Attorney for Blue Valley</p>	<p>Brant M. Laue, Solicitor General            Office of Attorney General Derek Schmidt            Memorial Hall, 2nd Floor            120 SW 10th Avenue Kansas City, KS 66103            Topeka, KS 66612            ksagappealsoffice@ag.ks.gov            brant.laue@ag.ks.gov            Attorney General of the State of Kansas</p>

/s/ Linus L. Baker