IN THE SUPREME COURT OF THE STATE OF KANSAS

FAITH RIVERA, et al.,

Plaintiffs-Appellees,

TOM ALONZO, et al.,

Plaintiffs-Appellees,

SUSAN FRICK, et al.,

Plaintiffs-Appellees,

v.

SCOTT SCHWAB, in his official capacity as Kansas Secretary of State, and MICHAEL ABBOTT, in his official capacity as Election Commissioner of Wyandotte County, Kansas,

Defendants-Appellants,

JAMIE SHEW, in his official capacity as Douglas County Clerk.

Defendant-Appellee.

Case No. 125092

RESPONSE TO SHOW CAUSE ORDER

This Court's April 28, 2022, show cause order directed Appellants to address whether this Court has jurisdiction over this appeal. Because the district court's April 25 decision constitutes a "final judgment" for purposes of K.S.A. 60-2101(b), jurisdiction is proper in this Court.

This Court has defined a "final judgment" as "one which finally decides and disposes of the entire merits of the controversy and reserves no further questions or directions for the future or further action of the court." *State ex rel. Bd. of Healing Arts v. Beyrle*, 262 Kan. 507, Syl. ¶ 2, 941 P.2d 371 (1997). The district court's decision meets this definition. It resolved all of the claims of the parties on the merits and left no further work for the district court to do. Indeed, the district court itself recognized that its order was final and would be reviewed by this Court. District Court Decision at 208 ("This Order shall remain in effect until completed or modified by the Kansas Supreme Court."); *id.* at 9 ("This court's decision will be reviewed by the Kansas Supreme Court and although this court strives to make the correct decision, the Kansas Supreme Court will have the final say.").

The district court explained that it was "retaining jurisdiction" but only "to ensure compliance with this order," which enjoined Defendants from "preparing for or administrating any primary or general congressional election under Ad Astra 2." District Court Decision at 208. Courts in other jurisdictions have held that an appeal does not divest a district court of jurisdiction to enforce an injunction. *See, e.g.*, *Kappa Sigma Fraternity v. Price-Williams*, 40 So. 3d 683, 691-92 (Ala. 2009) ("An appeal of an order imposing an injunction does not divest the trial court of jurisdiction to enforce its order if that order is not stayed pending appeal."); *N.L.R.B. v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 588 (6th Cir. 1987) ("Although a district court may not alter or enlarge the scope of its judgment pending appeal, it does retain jurisdiction to enforce the judgment."). That principle is consistent with

K.S.A. 60-262(a)(2), which provides that an appeal does not automatically stay an injunction. In other words, district courts as a matter of course maintain their jurisdiction to enforce injunctions while final orders are appealed.

The fact that a district court retains jurisdiction to enforce an injunction does not prevent the order from being a final judgment or render an appeal premature. *See, e.g.*, *Hudson v. Pittsylvania County, Va.*, 774 F.3d 231, 235 (4th Cir. 2014) ("[A] district court's continuing jurisdiction over its permanent injunction order does not render that order non-final . . . ."). Thus, the district court's statement that it was retaining jurisdiction to ensure compliance with its order does not prevent an appeal to this Court under K.S.A. 60-2101(b).

But even if the district court's April 25 decision were not a final judgment, this Court should nevertheless retain this appeal. The district court's decision grants an injunction and is therefore clearly appealable under K.S.A. 60-2102(a)(2). While an appeal under K.S.A. 60-2102(a)(2) goes to the Court of Appeals rather than this Court, K.S.A. 20-3018(a) provides that "[a]ny case within the jurisdiction of the court of appeals which is erroneously docketed in the supreme court shall be transferred by the supreme court to the court of appeals." But K.S.A. 20-3018(c) allows this Court "[a]t any time on its own motion" to "order the court of appeals to transfer any case before the court of appeals to the supreme court for review and final determination." Given the significance of this appeal and the need for an expedited decision from this Court, if this Court determines that the district court's decision was not a final judgment, it should transfer the appeal to the Court of

Appeals under K.S.A. 20-3018(a) and then retransfer it to this Court under K.S.A. 20-3018(c).

The fact that Appellants' notice of appeal was directed to this Court does not prevent this procedure. This Court has held that a reference to the incorrect appellate court in a notice of appeal does not render the notice insufficient. *See State v. Laurel*, 299 Kan. 668, 675, 325 P.3d 1154 (2014) (citing *Alliance Mutual Casualty Co. v. Boston Insurance Co.*, 196 Kan. 323, 326-27, 411 P.2d 616 (1966)). Nor is this a case where Appellants have changed their sole asserted statutory basis for appellate jurisdiction. *See State v. Berreth*, 294 Kan. 98, 273 P.3d 752 (2012). Appellants cited both K.S.A. 60-2101(b) and K.S.A. 60-2102(a)(2) in their docketing statement but explained that K.S.A. 60-2101(b) required a direct appeal to this Court. If this Court disagrees, Appellants' alternative asserted statutory basis for appeal, K.S.A. 60-2102(a)(2), remains.

In conclusion, this Court properly has jurisdiction under K.S.A. 60-2101(b) because the district court's decision was a "final judgment" that held a state statute unconstitutional. At the very least, the Court of Appeals has jurisdiction under K.S.A. 60-2102(a)(2) because this is an appeal from an order granting an injunction, and this Court can and should transfer the appeal to itself under K.S.A. 20-3018(c).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 2, 2022, the above response was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants, and a copy was electronically mailed to:

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