



speech, and the right of association in connection with a recall petition concerning a public official and a matter of local government. See K.S.A. 60-5320(d).

Most immediately, the filing of this motion stays Plaintiff's pending Certified Application for *Ex Parte* Temporary Restraining Order and Amended Certified Application for *Ex Parte* Temporary Restraining Order. K.S.A. 60-5320(e)(2) provides: "Except as provided by subsection (e)(1), all discovery, motions or other pending hearings shall be stayed upon the filing of the motion to strike."

Plaintiff's TRO application is a pending motion/hearing request within the plain language of the statute. It seeks an *ex parte* order restraining Defendants, named circulators, and any other person from circulating the recall petition. That is the very petitioning activity on which the Verified Petition is based. Accordingly, the TRO application is suspended upon the filing of this motion unless and until the Court enters a good-cause order under K.S.A. 60-5320 (e)(2) permitting a specified motion or a hearing to proceed.

In support, Defendant Wagner states as follows.

**I. Nature of the case**

Plaintiff is the Bourbon County Clerk and County Election Officer. Plaintiff filed this action seeking declaratory and injunctive relief against, among others, Kyle R. Parks, Kevin Wagner, and Lyle K. Owenby, identified in the Petition as the "Recall Committee."

Plaintiff alleges that the Recall Committee submitted proposed recall petitions concerning Plaintiff's public office, that a recall petition is being circulated, and that the petition should be declared invalid and enjoined.

Plaintiff's requested relief includes orders enjoining circulation of the recall petition, certification of signatures, any recall election based on the petition, and certification of any recall-election result.

Plaintiff also filed a Certified Application for *Ex Parte* Temporary Restraining Order under K.S.A. 60-903 and an Amended Certified Application for *Ex Parte* Temporary Restraining Order seeking an immediate order prohibiting Defendants, named circulators, sponsors, and any other person from circulating the recall petition. The Petition and TRO applications therefore seek judicial relief directed at speech, association, and petitioning activity concerning whether an elected public official should remain in office.

## **II. K.S.A. 60-5320 is triggered by Plaintiff's claims**

K.S.A. 60-5320(d) provides: "A party may bring a motion to strike the claim if a claim is based on, relates to or is in response to a party's exercise of the right of free speech, right to petition or right of association."

The statute defines "claim" broadly to include any "lawsuit, cause of action, claim, crossclaim, counterclaim or other judicial pleading or filing requesting relief." K.S.A. 60-5320(c)(1). Plaintiff's Verified Petition is a "claim" because it is a lawsuit and judicial pleading requesting declaratory and injunctive relief. Plaintiff's TRO application is likewise a judicial filing requesting relief against Defendant Wagner and others.

The statute defines "exercise of the right of association" as "a communication between individuals who join together to collectively express, promote, pursue or defend common interests," K.S.A. 60-5320(c)(3); "exercise of the right of free speech" as "a communication made in connection with a public issue or issue of public interest,"

K.S.A. 60-5320(c)(4); and "exercise of the right to petition" to include "a communication in or pertaining to . . . an official proceeding, other than a judicial proceeding, to administer the law; . . . a communication in connection with an issue under consideration or review by a legislative, executive, judicial or other governmental or official proceeding; . . . and any other communication or conduct that falls within the protection of the right to petition the government under the constitution of the United States or the constitution of the state of Kansas." K.S.A. 60-5320(c)(5).

A "governmental proceeding" includes "a proceeding . . . by an officer, official or body or political subdivision of this state." K.S.A. 60-5320(c)(6). An "official proceeding" includes "any type of administrative, executive, legislative or judicial proceeding that may be conducted before a public servant." K.S.A. 60-5320(c)(9). "Public servant" includes the county attorney. K.S.A. 60-5320(c)(10)(D).

The Petition and TRO request are based on, relate to, or respond to Defendant Wagner's protected exercise of the right of association because the claims arise from his joining with the recall committee in communication in the form of a recall petition to collectively, with the rest of the recall committee, to express, promote, or pursue a common interest in the recall of Plaintiff. The Petition itself alleges that the Recall Committee formed collectively to submit a recall petition. (Petition para. 22) Plaintiff has therefore pleaded the associational nature of the challenged conduct.

The Petition and TRO are also based on, relate to, or respond to Defendant Wagner's protected exercise of the right of free speech because the claims seek to stop communication made in connection with a public issue or issue of public interest. The recall petition concerns a "public issue or issue of public interest" because it relates to

“the government” and to “a public official.” K.S.A. 60-5320(c)(7)(C)–(D). Plaintiff is the Bourbon County Clerk and County Election Officer. The recall petition concerns her performance in public office. The public issue element is therefore satisfied on the face of Plaintiff’s own pleadings.

The Petition and TRO are further based on, relate to, or respond to Defendant Wagner’s protected exercise of the right to petition. This matter involves a governmental and/or official proceeding in which the county attorney has statutory duties. See Petition Para. 22-26) It also involved rights that fall within the constitutionally protected petition right.

Defendant Wagner has therefore met his initial burden to make a *prima facie* showing that Plaintiff’s claims concern Defendant Wagner’s exercise of the right of free speech, right to petition, and/or right of association. K.S.A. 60-5320(d).

### **III. The filing of this motion stays the TRO application and other proceedings**

K.S.A. 60-5320(e)(2) provides:

Except as provided by subsection (e)(1), all discovery, motions or other pending hearings shall be stayed upon the filing of the motion to strike. The stay of discovery shall remain in effect until the entry of the order ruling on the motion except that the court, on motion and for good cause shown, may order that specified discovery, motions or other pending hearings be conducted.

Plaintiff’s Certified Application for *Ex Parte* Temporary Restraining Order is a pending motion or requested hearing within the meaning of K.S.A. 60-5320(e)(2). The TRO application seeks emergency injunctive relief stopping circulation of the recall petition. That requested relief directly targets the activity protected by K.S.A. 60-5320: petitioning, speech, and association concerning a public official and a public issue.

The statutory stay is automatic. It arises “upon the filing of the motion to strike.” K.S.A. 60-5320(e)(2).

The TRO application therefore cannot be heard or granted merely because it was filed under K.S.A. 60-903. The specific statutory stay in K.S.A. 60-5320 governs claims and motions directed at protected petitioning, speech, and association. K.S.A. 60-903 supplies the general procedure for temporary restraining orders. K.S.A. 60-5320 supplies the specific procedure where a claim is based on, relates to, or responds to protected public participation. Both statutes can be harmonized by applying K.S.A. 60-5320 first: once a motion to strike is filed, a TRO motion is stayed unless the Court enters a good-cause order permitted by K.S.A. 60-5320(e).

The Court may, on motion and for good cause shown, order that specified discovery, motions, or other pending hearings be conducted. K.S.A. 60-5320(e)(2). Unless and until such a motion is made, good-cause is shown, and an order is entered, Plaintiff’s TRO application and any hearing on that application are stayed.

Defendant Wagner therefore requests that the Court enter an order confirming the statutory stay and declining to hear or rule on Plaintiff’s TRO application while this motion to strike is pending, except as expressly permitted by K.S.A. 60-5320(e).

#### **IV. The Court must apply the statutory burden-shifting procedure**

K.S.A. 60-5320(d) establishes the procedure for deciding this motion.

First, Defendant Wagner must make a *prima facie* case showing that the claim concerns the exercise of the right of free speech, right to petition, or right of association. For the reasons stated above, that burden is satisfied by Plaintiff’s own allegations, filings, and requested relief.

Second, the burden shifts to Plaintiff to establish a likelihood of prevailing on the claim by presenting substantial competent evidence to support a *prima facie* case. The statute provides: “If the moving party meets the burden, the burden shifts to the responding party to establish a likelihood of prevailing on the claim by presenting substantial competent evidence to support a prima facie case.” K.S.A. 60-5320(d).

The Court must consider the pleadings and supporting and opposing affidavits stating the facts on which liability or defense is based. K.S.A. 60-5320(d).

The Court should not proceed directly to the TRO analysis under K.S.A. 60-903 without first applying the Public Speech Protection Act. Plaintiff cannot obtain emergency restraint of protected recall-petition activity unless she first overcomes the statutory motion-to-strike framework or obtains a proper good-cause order under K.S.A. 60-5320(e).

**A. No statutory exception removes this action from K.S.A. 60-5320**

K.S.A. 60-5320(h) identifies exceptions to the statute. This action is not an enforcement action brought in the name of the State of Kansas or a political subdivision by the Attorney General or a district or county attorney. K.S.A. 60-5320(h)(1).

Plaintiff is the elected official whose recall is at issue. The Bourbon County Attorney is a defendant, not the plaintiff.

This action is not a commercial claim against a person primarily engaged in selling or leasing goods or services. K.S.A. 60-5320(h)(2).

This action is not a claim brought under the Kansas Insurance Code or arising out of an insurance contract. K.S.A. 60-5320(h)(3).

**B. K.S.A. 25-4322(d) does not displace K.S.A. 60-5320**

Plaintiff invokes K.S.A. 25-4322(d), which provides that injunction proceedings to restrain a recall election must be commenced within 30 days after the county or district attorney's decision. Defendant Wagner does not contend that K.S.A. 25-4322(d) can never authorize an injunction proceeding concerning a recall election. The point is procedural and statutory: when such an injunction proceeding is based on, relates to, or responds to protected petitioning, speech, or association, K.S.A. 60-5320 also applies.

K.S.A. 25-4322(d) is a timing statute for commencing recall-related proceedings. K.S.A. 60-5320 is a later-enacted procedural statute governing claims directed at protected public participation. The two statutes are readily harmonized. Plaintiff may commence a timely recall-related injunction action, but once a defendant makes a *prima facie* showing under K.S.A. 60-5320(d), Plaintiff must satisfy K.S.A. 60-5320's burden-shifting standard before the litigation may proceed.

Likewise, Plaintiff may request temporary relief under K.S.A. 60-903, but once this motion is filed, K.S.A. 60-5320(e)(2) stays that application unless the Court makes the good-cause determination permitted by the statute.

**C. Plaintiff cannot avoid K.S.A. 60-5320 by labeling the recall petition "invalid"**

Plaintiff's pleadings repeatedly characterize the recall petition as invalid. But K.S.A. 60-5320 is triggered by what the claim is based on, relates to, or responds to—not by whether Plaintiff believes the protected activity is ultimately meritorious, valid, or legally sufficient.

The merits question arises only after Defendant Wagner satisfies his *prima facie* burden. Now Plaintiff must establish a likelihood of prevailing by substantial competent evidence, not my merely labeling to the petition invalid. Treating Plaintiff's merits

allegations as enough to avoid K.S.A. 60-5320 would collapse the statute's two-step procedure and defeat the statutory stay. The statute requires the opposite. The motion to strike is filed first; motions, discovery, and pending hearings are stayed; the Court determines whether the claim concerns protected activity; and only then does the Court decide whether Plaintiff has met her burden of showing a likelihood of prevailing.

**V. Confirmation of stay**

Defendant Wagner further requests that the Court enforce the statutory stay immediately and confirm that Plaintiff's TRO application and any hearing on it are stayed unless and until the Court enters a good-cause order under K.S.A. 60-5320(e). A hearing on this motion must be held not more than 30 days after service of the motion. K.S.A. 60-5320(d).

WHEREFORE, Defendant Kevin Wagner respectfully requests that the Court:

A. Enter an immediate order confirming that, upon the filing of this motion, Plaintiff's Certified Application for *Ex Parte* Temporary Restraining Order, Amended Certified Application for *Ex Parte* Temporary Restraining Order, and any hearing on that application are stayed under K.S.A. 60-5320(e)(2);

B. Stay all discovery, motions, and other pending hearings except as expressly permitted by K.S.A. 60-5320(e);

C. Set this motion for hearing not more than 30 days after service, as required by K.S.A. 60-5320(d);

D. Strike Plaintiff's Verified Petition for Declaratory Judgment and Injunctive Relief;

E. Strike Plaintiff's request for *Ex Parte* Temporary Restraining Order and any related injunctive relief;

F. Award Defendant Kevin Wagner his costs of litigation and reasonable attorney fees under K.S.A. 60-5320(g);

G. Award such additional relief, including sanctions, as the Court determines necessary under K.S.A. 60-5320(g); and

H. Grant such further relief as the Court deems just and proper.

Respectfully submitted,  
ADAMS JONES LAW FIRM, P.A.

By: /s/ Patrick B. Hughes  
Patrick B. Hughes, #16648  
*Attorney for Kevin Wagner*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of May, 2026, the above and foregoing was filed via the Kansas Courts e-filing system, which will send notice of electronic filing to counsel of record.

/s/ Patrick B. Hughes