April 30, 2020

Sent via Electronic Mail Only (becky@sekmchd.com)
Rebecca Johnson, RN
Allen SEK Multi-County Health Department

Dear Director,

Thank you for your dedication to public health. Your work during the COVID-19 pandemic is worthwhile and noble.

This evening, Governor Kelly publicly declared her intention to end the statewide stay at home order, as it is currently written. As you embark on the monumental task of deciding whether to impose a local health order, Kansas Justice Institute\(^1\) respectfully asks you to carefully consider the following.

The COVID-19 pandemic, while serious, does not justify a potential local health order that violates the United States or Kansas Constitutions. It is just as important now, perhaps more so, to follow the rule of law. As a Kansas Supreme Court justice said recently, “public officials have an ongoing duty to adhere to the law. This duty doesn’t evaporate in a crisis—in fact, a crisis may heighten the duty.”

For example, a health order that limits speech raises serious constitutional issues. Courts have been crystal clear: any prior restraint of speech and expression bears a heavy presumption of invalidity. Similarly, a health order that severely, unreasonably, and/or arbitrarily restricts the right to assemble, or travel, implicates constitutional rights. In our view, a local health order should be narrowly tailored and use the least restrictive means possible to achieve its purpose.

In short, constitutional rights still exist during a pandemic. This analysis was buttressed by a federal court in Wichita, Kansas, recently. In that case, the court issued an emergency temporary restraining order involving social distancing and constitutional rights. See *First*

\(^1\) Kansas Justice Institute is a non-profit, public-interest litigation firm committed to protecting individual liberty and the constitutional rights of all Kansans.

Of course, the rights and issues mentioned here are not exclusive. We do not mean to imply these are the only rights worthy of protection, or that you are even considering such an improper order. We simply ask that you carefully take into consideration these general issues as you move forward.

In closing, KJI sincerely appreciates your hard work and dedication. Together, we will flatten this curve with our liberties intact.

/s/ Samuel G. MacRoberts  
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