

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 103,978

H.S., et al.,
Petitioners,

v.

MARK PARKINSON, GOVERNOR, et al.,
Respondents.

ORDER

The petitioners, H.S., et al., have filed a petition for a writ of mandamus, temporary restraining order, and request for expedited disposition. After careful consideration, the petition is denied.

The petitioners are individuals with developmental disabilities, community developmental disability organizations, and community service providers. The respondents are Governor Mark Parkinson and other state officials and agencies. The petitioners allege that the November 23, 2009, allotment reduction for Fiscal Year 2010 cut state funding for community-based programs and services for the developmentally disabled in violation of state and federal constitutional, statutory, and regulatory provisions. The petitioners seek primarily injunctive relief: a temporary restraining


order and a preliminary and permanent injunction enjoining the respondents from further implementation of the FY 2010 allotment reductions to developmental disability programs and services administered by the respondent, the Department of Social and Rehabilitation Services, as well as a restoration of any funding affected by the FY 2010 allotment reduction.

This court's original jurisdiction in mandamus is provided by the Kansas Constitution. Kan. Const. art. 3, § 3 ("The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus[.]"). Our original jurisdiction in mandamus does not generally include jurisdiction to grant injunctive relief. See *Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 917, 128 P.3d 364 (2006) (citing *Collins v. York*, 175 Kan. 511, Syl. ¶ 2, 265 P.2d 313 [1954]). Further, although the petitioners also seek a declaratory judgment, this court has no original jurisdiction to grant a declaratory judgment where the consequential relief cannot be ordered under our original jurisdiction. See *Public Service Comm. of Kansas v. Kansas Gas & Electric Co.*, 121 Kan. 14, 246 P. 178 (1926) (mandamus brought to obtain judgment requiring a public utility to refrain from taking certain action essentially an injunction, not mandamus and, thus, not within court's original jurisdiction). See also *Johnson County Sports Authority v. Shanahan*, 210 Kan. 253, Syl. ¶ 3, 499 P.2d 1090 (1972) (where there is no consequential relief that can be ordered in mandamus the court has no original jurisdiction to enter a declaratory judgment construing the provisions of the statute or

determining its constitutionality). Finally, our review of the petition persuades us that this court's resolution of this matter would at least be hampered and would possibly be impeded by the absence of a factual record developed in the district court.

Under these circumstances, we are compelled to deny the petition.

BY ORDER OF THE COURT, this 8th day of April 2010.


ROBERT E. DAVIS
Chief Justice

J.J. Nuss and Biles not participating