

IN THE SUPREME COURT OF THE STATE OF KANSAS

LUKE GANNON,
By his next friends and guardians, *et al.*,

Plaintiffs-Appellees,

v.

STATE OF KANSAS, *et al.*,

Defendants-Appellants.

Case No.: 113,267

**PLAINTIFFS-APPELLEES' RESPONSE TO
MOTION TO BIFURCATE BRIEFING**

Plaintiffs-Appellees (“Plaintiffs”), by and through their undersigned counsel of record, respectfully request that the this Court either: (1) deny the motion to bifurcate briefing, or, alternatively (2) re-set the deadlines established in *Gannon v. State*, 306 Kan. 1170, 1238-39 (Oct. 2, 2017) (“Gannon V”). If this Court is inclined to re-set the deadlines in *Gannon V*, Plaintiffs would suggest the following dates:

- No later than Monday, May 7, 2018, the parties file concurrent briefs addressing any legislative remedy; and
- No later than Monday, May 14, 2018, the parties file responses concurrently.

This proposed briefing schedule will: (1) allow the parties to appropriately address all issues of adequacy and equity, which are intertwined and should not be bifurcated, in opening briefs; (2) allow the parties a reasonable period to respond to any bill adopted in the veto session; (3) allow the Court to retain the May 22, 2018 oral argument setting and to issue a decision before the expiration of the stay on June 30, 2018; and (4) preserve judicial

resources associated with briefing the equity violations currently present in 2018 Substitute for Senate Bill No. 423 (“S.B. 423”), which may be cured during the veto session.

In its current form, S.B. 423 violates the equity test at least two ways. Each of these equity violations could easily be cured during the veto session.

S.B. 423 first violates the equity test because it retains one of the four equity violations identified in *Gannon V*. See S.B. 423, Sec. 4. In *Gannon V*, this Court specifically held that the State’s decision to retain the protest petition and election process violated the equity test. *Gannon V*, 306 Kan. at 1213.

Second, S.B. 423 creates new equity issues by mandating that school districts adopt a Local Option Budget (“LOB”) that is equal to 15% of the district’s total foundation aid. See S.B. 423, Sec. 4(a). Converting the LOB from optional to mandatory is facially problematic because this Court warned the State to “remain cautious of challenges arising from an increased reliance upon LOB-generated funding (and less upon BASE-generate funding)[.]” *Gannon V*, 306 Kan. at 1212. Further compounding the issue, however, S.B. 423 *then* takes credit for that local (no-longer-optional) funding by including it in the base. S.B. 423, §2(t) (including the mandatory LOB in the definition of “Local foundation aid”). This does not provide an actual increase in the funding that a school district receives, but artificially inflates the base to make it appear much higher than it actually is.

In adopting these problematic provisions of S.B. 423, the State was not cautious of equity concerns. At least one legislator has commented on the failure to discuss these “surprises” in S.B. 423 (*i.e.*, the false-base-mandatory-LOB provisions, which were inserted

shortly before midnight on the day S.B. 423 was adopted, and appear to have caused the error in the bill that necessitates further action during the legislative session). *See* Exhibit A: “Rooker Review.” As a result, the Legislature did not fully consider the equity violations that result from this late, unvetted amendment to S.B. 423. If the false-base-mandatory-LOB provisions remain within S.B. 423, Plaintiffs intend to argue they violate the equity test.

Plaintiffs had hoped that the Legislature would adopt a bill that would comply with Article 6 of the Kansas Constitution well before the April 30, 2018 briefing deadline. Unfortunately, that did not occur. At this time, no one knows what the Legislature will do during the veto session. Even the Office of the Attorney General is not certain what action the Legislature will take, as made clear within its Motion.

Because the equity violations currently within S.B. 423 may be cured, it would preserve judicial resources for the parties to brief the bill that actually results from the veto session. For instance, there has been discussion that, during the veto session, the false-base-mandatory-LOB provisions may be removed from S.B. 423 altogether. If this occurs, it makes little sense for the parties to brief this issue on April 30, 2018 if the problematic provisions will be removed shortly thereafter. Instead, Plaintiffs suggest that the opening brief be delayed in its entirety until the legislative session has ended.

And, Plaintiffs would respectfully request that the briefing deadline be extended to May 7, 2018, so that they may have some time to review whatever bill results from the veto session before being required to file their brief. This would also give the State more time to finalize minutes for the meetings of the Senate Select Committee on Education Finance,

Senate Education Committee, House K-12 Education Budget Committee, House Education Committee, and House Judiciary Committee, and post them on kslegislature.org.¹

WHEREFORE, Plaintiffs respectfully request that this Court: (1) either deny the motion to bifurcate briefing, or, alternatively (2) re-set the briefing deadlines established in *Gannon V*, as follows:

- No later than Monday, May 7, 2018, the parties file concurrent briefs addressing any legislative remedy; and
- No later than Monday, May 14, 2018, the parties file responses concurrently.

Dated this 23rd day of April, 2018.

/s/ Alan L. Rupe

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¹ The Legislature has, this year, once again been derelict in providing minutes of its work so that the parties and Court may evaluate their efforts. Plaintiffs respectfully request that the State do this prior to the briefing deadline, whether it is April 30 or May 7, 2018.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2018, I electronically served the foregoing to:

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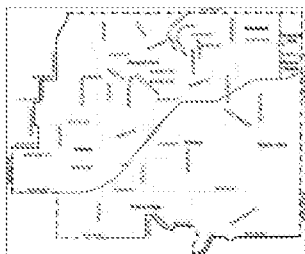
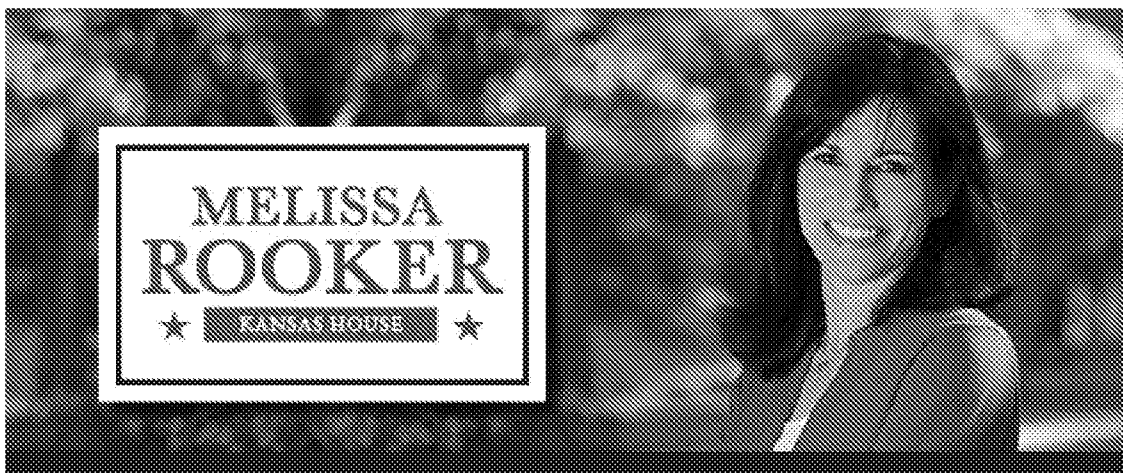
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Dear [REDACTED]

If you have followed the local news or social media in the last week, you have likely heard about a substantial drafting error in the school finance plan passed at the end of the legislative session. Substantial to the tune of \$80 million for 88 districts statewide, including Shawnee Mission. Unfortunately, SMSD also stands to lose an extra \$1.8 million due to the repeal of a statute embedded in the bill ([KSA 72-5144](#)).

How does an \$80 million mistake happen?

As the clock ran out on the regular session and Senate leadership obstructed meaningful progress, the House Speaker crafted a compromise plan to get the process moving. His draft was based on [HB 2445](#), but included the following changes:

- Adds a preamble (think Whereas and Wherefore statements) that defines the educational interests of the state and identifies total spending on wrap-around services that affect K-12 students, that is spent by state agencies other than the Department of Education (Department of Children and Families is a primary example).

Exhibit
A

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- Adopted the Senate position to pay for ACT/WorkKeys testing for all Kansas students at a cost of \$2.8 million
- Adopted the Senate position on teacher mentoring increases of \$500,000
- Adopted the Senate position on school districts' ability to issue bonds – the House plan would have removed the cap while the Senate softened the restrictions to allow more flexibility
- 15% mandatory minimum levy for Local Option Budgets (this is the section containing the problems)

Meetings were held on Friday, April 6, with legislative leaders to break the logjam because the Senate was obstructing progress and both legislative and court deadlines loomed. To his credit, Speaker Ron Ryckman talked to a broad cast of characters to see where a compromise could be found. This series of conversations was open door; literally, the door was open and a variety of people were in and out.

To be clear, this was not a bill but an amendment. Legislators work directly with the Revisor's staff to craft amendments. Bringing an amendment to the floor is routine business. We have seen a wide variety of major policies brought to the floor in this manner this year. As an example, we debated medical marijuana on the floor - a 116 page bill turned floor amendment that had not been through the committee process.

In the case of school finance, the two bills which were merged to create the amendment both had hearings and were passed by their respective chambers. Because 4 of the 5 changes inserted were directly from the Senate-passed bill (SB 423), it is still unknown to me who added the LOB component, the section causing the problem. The terms being discussed in the meeting I attended did not include the surprises found later.

- At no time was there discussion that the "effective base" was part of that plan.
- At no time was there discussion that the BSAPP funding numbers would be inflated by that 15%.
- At no time was there discussion that the LOB cap would be lowered to 30.5%.
- At no time was there discussion that the statute mentioned above (KSA 72-5144) would be repealed in this bill - this is the statute that causes 88 districts including SMSD to lose funds in addition to the \$80 million drafting error.

House debate began on the bill at approximately 10:30 am. It was 30 minutes before I was able to acquire a hard copy of the amendment and about an hour (11:22 am) when all Republican and Democrat members received a 2-page bill summary via email. Because these were existing bills that were being "married," language should not have been an issue.

No one knew about the drafting error embedded in the LOB provision until the Kansas Department of Education got the bill after it passed. I want to be very clear, even the people who support this provision were not aware of the drafting error. KSDE is tasked with producing district-by-district runs to show how implementation will affect every district. During this process, KSDE discovered that although the amendment appropriates the correct amount of total funding, the language missing from the LOB provision prevents \$80 million from being distributed to schools. Additionally, on Monday it was discovered that the repeal of K.S.A. 72-5144 will reduce funding from the Local Option Budget of 88 districts across the state.

Given the midnight deadline, the Senate filibuster and the intractability of the Senate leaders, getting even this flawed bill through was a step in the right direction compared to getting nothing done. It was not about "going home," it was about meeting the deadline set by the Supreme Court. We each have just one vote - it takes a total of 63 members of the House and 21 in the Senate to pass legislation. We can want what we want, but there always comes a time to work on compromise. Many clichés exist - comparing the legislative process to sausage making, not letting the perfect be the enemy of the good, politics is the art of the possible. In this case, all are applicable.

I appreciate the Governor's support for a trailer bill to correct the problems in this legislation. I am also proud that we have made the amount of progress made to date. Moving a majority towards the level of funding we managed to put in place – \$535 million – and correcting the equity problems cited by the court remain my focus.

For all the consternation caused by the mistakes in the bill, they are solvable problems. I have talked to many colleagues who are committed to moving the fix through the process as soon as we get back. Appropriate language is drafted and ready to go.

Please don't hesitate to contact me with questions or ideas about these or other legislative issues. It is my honor to serve you.

Sincerely,



Rep. Melissa Rooker
Kansas State Representative, District 25
Serving Northeast Johnson County



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Paid for by Rooker for State Representative, Shelia Davis, Treasurer,