SPECIAL SESSION

Journal of the House

NINTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Thursday, June 30, 2005, 10:30 a.m.

The House met pursuant to adjournment with Speaker Mays in the chair.
The roll was called with 123 members present.
Rep. Showalter was excused on verified illness.
Rep. Pottorff was excused on excused absence by the Speaker.
Present later: Rep. Pottorff.

Prayer by Chaplain Chamberlain:

> God Almighty, Lord of heaven and of earth, we rise to offer our prayers to you this day and to seek your wisdom and your will. You are the God who faithfully hears and answers the prayers of your people. Hear us as we pray this day for the things that we need and the things that you think we need. For our ways are not your ways, O Lord. Our thinking, our words, and our actions are not yours: they are ours. You are not a God of coalitions or ideologies or strategies or parties or persuasions. You are a God of righteousness, justice, and mercy. Help us always remember that whatever side of an issue we stand on, we do not stand blameless before your presence.
>
> Send your blessing upon the people of Kansas and especially upon the servants in this chamber today. Grant us the humility to accept that to be ignorant of some things and mistaken in other things is the condition of our humanity. And in our humility, open our hearts to the prompting of your Spirit of truth so that in everything we do, we might live and move and have our being in you and in you alone. Amen.

The Pledge of Allegiance was led by Rep. Hayzlett.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

H. Sub. for SB 3, An act concerning schools and school districts; relating to school finance; relating to the powers and duties of the legislature, courts, state board of education and school districts in relation thereto; relating to litigation in relation thereto; making and concerning appropriations for the fiscal year ending June 30, 2006, for the department of education; amending K.S.A. 46-1222, 46-1224, 60-2106, 72-6405, as amended by section 19 of 2005 Senate Bill No. 43, 72-6412, as amended by section 15 of 2005 House Bill No. 2247, 72-6421, as amended by section 21 of 2005 House Bill No. 2247, 72-6426, 72-9509, as amended by section 41 of 2005 House Bill No. 2247, and 79-1801 and K.S.A. 2004 Supp. 72-6407, as amended by section 16 of 2005 Senate Bill No. 43, and 72-6434, as amended by section 24 of 2005 House Bill No. 2247, and section 2 of 2005 House Bill No. 2247, section 3 of 2005 House Bill No. 2247, section 18 of 2005 House Bill No. 2247, section 10 of 2005 Senate Bill No. 43, section 22 of 2005 Senate Bill No. 43, and section 23 of 2005 Senate Bill No. 43 and repealing the existing sections; also repealing K.S.A. 46-1223, 72-6433, as amended by section 17 of 2005 Senate Bill No. 43, section 12 of 2005 Senate Bill

No. 43, section 13 of 2005 Senate Bill No. 43, and section 20 of 2005 House Bill No. 2247, was considered on final action.

Call of the House was demanded.

On roll call, the vote was: Yeas 64; Nays 59; Present but not voting: 0; Absent or not voting: 2.

Yeas: Aurand, Beamer, Bethell, Brown, Brunk, Carlson, Carter, Dahl, DeCastro, Decker, Faber, Flower, Freeborn, George, Goico, Gordon, Grange, Hayzlett, C. Holmes, M. Holmes, Horst, Huebert, Humerickhouse, Hutchins, Huy, E. Johnson, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Knox, Krehbiel, Landwehr, Mast, Mays, McCreary, McLeland, Merrick, F. Miller, Jim Morrison, Judy Morrison, Myers, Neufeld, Newton, Novascone, O'Neal, Oharah, Olson, Otto, Peck, Pilcher-Cook, Powell, Powers, Roth, Schwab, Schwartz, Shultz, Siegfreid, Vickrey, Watkins, Weber, Wilk, Yoder.

Nays: Ballard, Burgess, Burroughs, Carlin, Colloton, Cox, Craft, Crow, Davis, Dillmore, Edmonds, Faust-Goudeau, Feuerborn, Flaharty, Flora, Garcia, Gatewood, Grant, Hawk, Henderson, Henry, Hill, Holland, Huff, Huntington, Jack, D. Johnson, Kirk, Kuether, Lane, Larkin, Light, Loganbill, Long, Loyd, Mah, McKinney, Menghini, M. Miller, O'Malley, Owens, Pauls, Peterson, Phelps, Ruff, Ruiz, Sawyer, B. Sharp, S. Sharp, Sloan, Storm, Svaty, Swenson, Thull, Treaster, Ward, Williams, Winn, Yonally.

Present but not voting: None.

Absent or not voting: Pottorff, Showalter.

The substitute bill passed, as amended.

EXPLANATIONS OF VOTE

MR. SPEAKER: I vote yes on **H. Sub. for SB 3** because I support Kansas schools. We are only spending money that we have, requiring no tax increases or spending cuts. In that respect we are being responsible. In my view this is the only politically expedient way to leave this special session having done something for school finance and having dealt with the fundamental problem at hand - a Kansas Supreme Court that is overreaching its authority. This crisis can only be dealt with by the people of Kansas. We must give them the opportunity. All political power is vested in the people.—FORREST KNOX, STEVE HUEBERT

MR. SPEAKER: I vote no on **H. Sub. for SB 3**. My red light is not a vote against education. It is a vote that respects the mandate of the court to meet certain standards for education, and a respect for the rule of law. With the array of amendments and the deficiency in appropriations this is bad law that will not advance the cause of education and may induce far worse consequences from the court. In my opinion this is a wasted vote because of the Brunk amendment. This bill will die with the constitutional amendment vote and we will be back to zero after eight days of futility.—TIM OWENS, JEFF JACK, BONNIE SHARP, JULIE MENGHINI, TERRIE HUNTINGTON

PROTEST

MR. SPEAKER: In accordance with Article 2, Section 10 of the Kansas Constitution, I hereby submit the following written protest on **H. Sub. for SB 3**. This protest contains the Augenblick and Myers Study Minority Report of Representative Ralph Tanner which was filed with the Legislative Educational Planning Committee on December 19, 2002.

It is my fear that the concerns of Representative Tanner have now come before the legislature and the people of Kansas in the recent ruling of the Supreme Court regarding school finance. There were no economic models or comparisons made on how to fund our Kansas schools. This report has cost the taxpayers of Kansas much more than the original $200,000 paid. A and M has never been, will never be our Guiding Light. I vote yes on **H. Sub. for SB 3** and no on A and M.

Memorandum
To: Members, the Republican House Caucus
From: Ralph Tanner
Re: The Attached Comment on the Augenblick and Myers Study

In a few days I shall be retired as a member of the Kansas Legislature. The demands on public funds are more urgent, however, than recent memory can recall. It is appropriate,

therefore, that I address you on the matter of education funding. I have chosen to do that in the context of a minority report which I filed with the Legislative Educational Planning Committee as we closed out the business of that Committee during the recently concluded Interim.

As an apology for the offense that some of you may take at this comment, let me say that no one in our chamber favors open and careful discourse on issues of public policy more than I. But my problem with the A and M "Study" is that it has utterly failed to present a balanced posture on the issues. It presents one side of the question only, which I abhor! Conscience and intellectual honesty cry out for a fuller approach to the issue. But I have not come at this thing from the point of view that I will supply that aspect of the equation. That is not a role that I choose to play. I will leave to you, obviously, the final decision on A and M.

This comment is among my final acts as Chair of the Education Committee. I wish all of you well in the coming session.

The Augenblick and Myers Study
A Minority Report by Rep. Ralph Tanner
Filed with the LEPC December 19, 2002

N.B. The following commentary is filed with the Legislative Educational Planning Committee as a part of its report on activities viewed in the 2002 Interim, and is intended as a minority report.

The Call for a Study

In the closing hours of the 2001 session of the legislature a conference committee report was signed by the conferees and prepared for presentation to the respective bodies of the session for their consideration. A disputed section of the report called for a study to be done looking at the "adequacy" of pre-K-12 funding. As chair of the conference committee, Rep. Tanner expressed strong reservations about the efficacy of such a study, but was persuaded by leadership in both the House and Senate to allow the provision to go forward in the committee report. Tanner's principle problem with the study was his belief that it would be little more than a reiteration of earlier calls by the education community for substantial increases in funding, and, basically, a piece of work to be used to lobby the legislature.

As the LEPC discussed the scope of the study prior to issuing a request for proposals, Tanner raised objections to the techniques proposed by A and M for testing the nature of opinion on adequacy through interviews and questionnaires of school-related personnel, and made a specific request that economists with the major research universities of the state be included among those whose opinions would be sought, with particular attention to affordability. A and M spokespersons did not choose to change their techniques, and the LEPC sustained this decision by accepting their proposal, over the objections of Rep. Tanner.

When the A and M study was delivered to the LEPC, Tanner's fears were quickly realized. According to Tanner, the report was flawed by a bias in the design of the study which sought opinions of the education community — teachers, principals and superintendents, and school board members — and did not include any economic feasibility questions related to the percentage of the gross state product or the total taxable resources of the state that were being expended on pre-K-12 education.

What the A and M study did include was a lobbying posture, and an expression of hope, or wishes, of the professional education community regarding an increase in expenditures for the state without any apparent regard for the state of the economy in Kansas. In this regard, it mirrored the requests of the State Board of Education in their earlier request for some $3 billion in new expenditures over a three year period, or the Governor's Task Force report which called for about one-third of that amount in new funding for the public schools. And so, if it accomplished anything of substance upon its release, it was that it raised expectations for new funding just at a time when revenue streams were being challenged on all fronts. None of the advocates for new funding felt called upon to suggest sources of revenue to meet these expectations. For example, the statement, "That's not our problem," was announced by representatives of the state school board when asked in a legislative hearing, "Where are we going to get the money?"

Simple economic tests might have been applied by A and M in search of the feasibility issue, or to determine the stance of the state of Kansas in relation to other states in the region. ***Education Week*** has published a report on "Adequacy" (January 10, 2002, p. 87) which shows that Kansas earned an "adequacy index" of 97.08, having a rating of 107% of the US average. The state's overall grade for adequacy reported in this publication is "B-85." It could be said that the LEPC developed an idea of what it wanted in the report — much more money — and then went out and found it. There was only one proposal received for the study.

Range of Cost in the A and M Report

It is appropriate here to discuss the fiscal impact of the A and M study on the state. If implemented, the overall costs of the study would add $850 million in new money to the state appropriation for pre-K-12 schools. It has been suggested that the totality of the sum could not be appropriated in one year, but should stretch over three years. Regardless of the space of time for total funding, the sum of the request to be added to the BSAPP represents $850 million. It should be assumed that this request is for new funding, not merely a recasting of current funds, or even a portion of current funding.

Revenue streams to support this level of new funding would not likely come from just one sort of tax, but from multiple tax sources. Nonetheless, for purposes of illustration, this writer will use three types of taxes, and will estimate what it would take in each of those three areas to fund the A and M request. (Estimates are attributed to the ***Wichita Eagle*** newspaper.)

This monetary request represents an increase of 35% in base state aid per pupil. If property tax were to fund this item, mill levies would increase from the current 20 mill levy to 60 mills. That would represent an increase in taxes on a $100,00 home of about $460 per year. If sales taxes were to fund the increase, the mill rate would go up from 5.3 percent to 7.6 on the dollar. Income taxes would increase by 47%. Actually, some combination of these rates would be required to reach the spending limit recommended by A and M.

The Constitutional Question

A further observation is in order regarding the constitutional mandate to the Kansas legislature and the "suitability" or "adequacy" issue. That observation goes to the question as to who is the appropriate authority to determine the answer to the question of adequacy.

The Kansas Constitution at Article 6, Section 6 (b) states, "The legislature shall make suitable provision for finance of the educational interests of the state." The document is silent on what constitutes "suitable," and suggests no authority on this issue save the legislature itself.

There are those who will insist that courts of law have an inherent right to determine the answer to this question under an "equal protection" theory. That answer seems obtuse, at best, and irrelevant. Courts do not have the power to levy taxes. Nothing in the evolution of an Anglo-American system of jurisprudence gives taxing authority to the courts. In recent days judicial activists would give the courts powers to levy taxes because of their unhappiness with the legislative process. But even the most liberal jurists have been constrained not to declare a levy, and have, instead, passed the issue to the legislature with the command that they (the legislature) address the matter. One wonders what the courts might do if the legislative body refused the recommendation of the court. Would they suffer themselves to be incarcerated in contempt of the court? Suffice it is to say that the power to tax is a legislative power, and it is not soon going to become a judicial function.

Moreover, the language in the constitution is less than mandatory insofar as its prescription to the legislature is concerned. The key word here is "suitable," a relative term, which appears to bear no relationship to adequacy.

This writer believes that the legislature is in the ascendancy when it comes to sorting out this issue, and will be sustained if it holds to its position. Sustained by whom? By itself, of course. It is a solution that must yield to a **political**, not to a judicial determination. It is a decision that derives from the branch of government most responsive to the voters. The doctrine of the separation of powers, if held to in a tenacious way, will serve as the final

arbiter in this argument. The professional educators of the world will not be happy about that result, but it is a sustainable posture.—TED POWERS

PROTEST

MR. SPEAKER: In accordance with Article 2, Section 10 of the Kansas Constitution, I hereby submit the following written protest on **H. Sub. for SB 3**.

As I cast my affirmative vote today for this bill it was done reluctantly. I still feel that the Court has overstepped their authority and explain why in the body of this protest.

During elections, we discuss and debate issues and the **PEOPLE** decide what they want by their vote. We cannot allow an unelected oligarchy to eliminate the people's voice. The people are above both the Legislature and the judicial branch. We take an oath to defend the constitution and there is no loophole allowing me to opt out for lack of integrity or courage.

Our forefathers died to give us our freedom and our constitution (the best in the world); I must stand fast to defend the PEOPLE against the overreaching judiciary.

The Supreme Court is doing one of two things: They are telling the Legislature that they must spend the $1 billion dollars because the Court orders it. This is clearly a violation of the separation of powers and illegal. Or they are playing politics and trying to bluff and bully the Legislature into spending more money and if they get some more they will drop the so-called Court order to spend $1 billion. This is just liberal politics by judges.

Our Country was founded on the principle of "No taxation without representation". The Boston Tea Party was a protest over that very principle. Our constitution clearly defines the separation of powers that were violated by the Supreme Court decision.

Who should make the final decision on interpreting the Constitution? In the case of Marbury v. Madison which was before the Supreme Court during President Thomas Jefferson's first term in office, the Supreme Court determined that it should make the final decision for all branches of government. Jefferson, however, strongly opposed judicial review because he thought it violated the principle of separation of powers. He proposed that each branch of government decide constitutional question for itself, only being responsible for their decisions to the voters.

Thomas Jefferson said "There is no danger I apprehend so much as the consolidation of our government by the noiseless and therefore un-alarming instrumentality of the Supreme Court."

Thomas Jefferson also said "Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction."

During elections, we discuss and debate issues and the people decide who they want to be their voice in Topeka by voting an individual into office. Policy is to be determined by the elected official's not unelected judges. If the judges want to make their personal policy preferences law, they need to resign from their judgeship and run for election to either the legislative or executive branch. The people decide policy with their votes for THESE officeholders. When a legislator casts a vote they are held responsible for it by the people. The people have access to their elected official and are able to discuss with them why the decision was made and with what information.

On this particular case, the Court is looking at one study. As legislators we do not make decisions by looking at just one person's opinion. We have hearings and are provided all sides of an issue. The Court is not designed to legislate.

In the Montoy case, the Court also would not allow attorneys to appear on behalf of the Legislature because it said the Legislature was not a party to the case. Just like the Legislature was not allowed to appear and state their case in the district Court. The Legislature does not intervene in judicial fact based cases.

Once we have reestablished the constitutional balance, we need to examine the Courts suggestions. The Supreme Court's policy preference is to take an additional $1 Billion from the citizens of Kansas. This would require an additional 4.5% sales tax increase, a 45-mill property tax increase, or a 45% income tax increase. This would cost a minimum of 20,000 jobs in Kansas. We are already losing population and this would accelerate that trend. We could then lose another congressional seat after the next consensus.

Our founding fathers considered the judiciary the weakest branch of government because

it could only decide issues that came before it, and had no real power other than its judgment. Meaning, if the Courts lack legitimacy and no one follows its decisions, it has no power. The Court's power lies in respect for its reasoning.

The Kansas Supreme Court has greatly endangered the judiciary by it's overreaching in the school finance case. The constitutional provisions giving the Legislature the sole power to enact laws and appropriate money are clear and emphatic, and are consistent with any third grader's understanding of our constitutional system of government. The language relied upon by the Supreme Court in the education article of the State Constitution hardly supports the kind of judicial intervention now being talked about by the Court. Even if one could agree that the education article creates some kind of justifiable standard upon which to gauge education funding, I do not think anyone can make the argument that the Court's action is justified in light of the clear constitutional mandates that the Legislature alone controls the purse.

The Supreme Court's opinion hardly reads like a well reasoned legal document, but more like a political manifesto written by school lobbyists. Because of its shabby reasoning and huge overreaching, it is hardly entitled to deference. To obey the Court simply because it is empowered to interpret the Constitution ignores the Legislature's role in our constitutional government, the presumption that all legislation is constitutional, and turns our state government over to an oligarchy of unelected lawyers in black robes. If the Court now has control over education funding, which comprises over half of state spending, then it effectively sets priorities in all areas of state government. This undermines the right of free people to govern themselves, and any lawyer worth his salt should recognize this. If a lawyer doesn't, then I suggest he is missing the forest for the trees.

Even if one were to agree with the Court's edict, compliance with its order is impossible. To comply with the Court's order is to comply with it in its entirety. To simply spend $147 million now and wait and see about later is just as contemptuous of the Court has refusing to bow now. Also, to comply with the order, which means a billion dollars in new money for schools, cannot be done without huge dislocations to our economy and state government. Our economy cannot afford a one billion dollar tax increase, (4 cent sales tax increase, doubling of the property tax, huge increase in income tax) and it is significant that those who are cheering the Courts order have refused to say how they would comply fully with the Court's mandate.

The Legislature has little to fear from defying the Court as the Court has few remedies available to it other than shutting down the schools, which would probably backfire on the Court. The Legislature, on the other hand, has many more weapons to strike back with, namely—passing a constitutional amendment getting the Court out of this business, passing a state law allowing the state treasurer to distribute school money, zero out funding for the Courts, passing a law eliminating Court jurisdiction over education article challenges, shutting down the government completely.

The Declaration of Independence said it was a right of the people to alter or abolish any government which failed to represent the people. I suggest that refusing to obey the Court is consistent with this principle. President Andrew Jackson once didn't like a decision of the US Supreme Court, and said, "The Supreme Court has made its decision, now let it enforce it." He has hardly been trashed by history.

The separation of powers was established for very important reasons. They distrusted governmental power and wanted checks and balances with the Judiciary having the power to determine the facts of a case. Let's consider some of the results of allowing judges to invade legislative authority.

In the Dred Scott case the U.S. Supreme Court decided that a slave whose Master died while Mr. Dred Scott was in a free state was still property to be returned to a slave state. Mr. Scott had lived in free states most of his life and once his master died, he was encouraged to sue for his freedom on the grounds of his prolonged residence in free states. This was not a Missouri Compromise legislative decision, but a judicial decision.

From Men in Black by Mark R. Levin, we learn that the Court was deciding whether Congress could enact a law that banned slavery in the land acquired in the Louisiana Purchase. The Court ruled that Scott was not a citizen of the United States and did not have standing to bring suit. Chief Justice Roger Taney wrote the majority opinion and argued

that when the Constitution was ratified, citizenship "was perfectly understood to be confined to the white race and that they alone constituted the sovereignty in the Government"[1]

Thus, blacks were not citizens. As Abraham Lincoln pointed out in a speech on June 26, 1857 the opposite was true. Lincoln cited the dissenting opinion of Supreme Court Justice Benjamin R. Curtis, who showed, "that in five of the then thirteen states, to wit, New Hampshire, Massachusetts, New York, New Jersey and North Carolina, free negroes were voters, and, in proportion to their numbers, had the same part in making the Constitution that the white people had."[2]

In other works, the "facts" Taney used to support his conclusion were simply wrong.

As for Scott's residence in free territory making him free, Taney rejected that argument, but with little explanation. He devoted only one page of his fifty-five-page opinion to the subject.[3]

On the final point, Taney concluded that the Fifth Amendment prohibited people from being deprived of life, liberty, or property without due process. Because slaves were property, any congressional ban on slavery in the territories of the Louisiana Purchase was unconstitutional because it would be a denial of property without due process.[4]

Taney's ruling ignored Article IV of the constitution, which, as Professor Michael McConnell (now a federal judge) has pointed out, "vests in Congress the power to adopt 'all needful Rules and Regulation' for the governance of the territories, and nothing in the language or history suggests that decisions about slavery are an exception. Under traditional canons of constitutional interpretation, the Court should have given effect to the Missouri Compromise and declared Dred Scott a free man."[5] Taney presumed, in McConnell's words, "that a statute can be unconstitutional because it violates unremunerated rights,"[6] in this case an unremunerated right to slavery. With typical activist flair, Taney overruled Congress's power to ban slavery in the territories and imposed his own view on the nation. He was not the last judge to impose his will on an unwilling nation.

McConnell quotes Justice Curtis's dissenting opinion in *Dred Scott*: "When a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is according to their own views of what it ought to mean."[7]

This is precisely the problem we face today.

We now have unelected judges legislating from the bench. When the voters of California decided to not pay illegal aliens welfare benefits, one judge made HIS personal policy preference law and ordered the taxpayers of California to pay. In Roe v Wade, a Supreme Court created a right to abortion. The Tenth Amendment reserves those decisions to the states. At the time, some states allowed abortion with restrictions and others did not. The US Supreme Court decided abortion on demand should be imposed on ALL states against the will of the people. Massachusetts Judges tried to impose homosexual marriage and we are now going through a backlash against an arrogant judiciary. In Nebraska, where 70% voted for traditional marriage, a judge decided not on the law, but on his own personal policy preference that the people of Nebraska must stand down. As elected representatives, we are the voice of the people. This is a battle between the People and the Court and we need to side with the people.

The Legislature's priorities should be as follows: pass a constitutional amendment getting the Court out of school funding, pass a constitutional amendment allowing for the direct election of all judges or requiring nomination by the Governor and confirmation by the

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[1] Dred Scott, 60 U.S. 425-26

[2] Abraham Lincoln's speech on Dred Scott, June 26, 1857. Available at www.teachingamericanhistory.org

[3] McPherson, 161

[4] Dred Scott, 60 U.S. 425-26

[5] Michael McConnell, "Symposium on Interpreting the Ninth Amendment: A Moral Realist Defense of Constitutional Democracy," 64 Chi.-Kent. L. Rev. 89, 101 (1988)

[6] Ibid

[7] Ibid

senate (get rid of liberal nominating commission), and passing a statute getting the state board out of distributing school dollars.

One final note, the Legislature may do everything the Court wants, have the Court finally declare the formula constitutional, and still get sued again like is happening in Arkansas. Our Founding Fathers were wise indeed and I will end with statements showing their wisdom:

"There is no danger I apprehend so much as the consolidation of our government by the noiseless and therefore unalarming instrumentality of the **Supreme Court**." —Thomas Jefferson to William Johnson, 1823. ME 15:421

"Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction."—Thomas Jefferson to Wilson Nicholas, 1803. ME 10:419

In the Federalist papers James Madison said, "The accumulation of all powers [of government] . . . in the same hands . . . [is] the very definition of tyranny." Madison termed the checks and balances the safeguards against government tyranny "auxiliary precautions." The primary control on the government, he emphasized, remains always with the people. In the final analysis, governmental decisions depend on the will of the society. If liberty is to be preserved, the will of the people must be grounded in the principles of justice and informed by the precepts of moral responsibility. Madison argues that "It is not sufficient to establish separation of powers on parchment only. Ambition must be made to counteract ambition. Because men are not angels, these very motives themselves must be employed to keep the departments of government within their limited, constitutional boundaries. Some representatives will be weak of mind or lacking in backbone." He said "enlightened statesmen will not always be at the helm." He was not naïve about the temptations of power and the charms of ambition that accompany political office. We must require the honor of those representatives whose "faithful discharge of their trust shall have established their title to a renewal of it."

"Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph." Thomas Paine, American Crisis No. 1, December 19, 1776

"One single object . . . [will merit] the endless gratitude of society: that of restraining the judges from usurping legislation." —Thomas Jefferson to Edward Livingston, 1825. ME 16:113

Thomas Paine, Rights of Man, 1791

"If, for the more wretched parts of the old world, we look a those which are in an advanced stage of improvement, we still find the greedy hand of government thrusting itself into every corner and crevice of industry, and grasping the spoil of the multitude. Invention is continually exercised, to furnish new pretenses for revenues and taxation. It watches prosperity as its prey and permits none to escape without tribute."

Thomas Jefferson, letter to Joseph Milligan, April 6, 1816

"To take from one, because it is thought his own industry and that of his fathers has acquired too much, in order to spare to others, who, or whose fathers, have not exercised equal industry and skill, is to violate arbitrarily the first principle of association, the guarantee to everyone the free exercise of his industry and the fruits acquired by it."

George Washington, letter to Edmund Randolph, July 31, 1795

"There is but one straight course, and that is to seek truth and pursue it steadily."

John Adams Trial of Boston Massacre December 4, 1770

"Facts are stubborn things; and whatever may be our wishes, our inclination, or the dictates of our passions, they cannot alter the state of facts and evidence."

Thomas Jefferson, letter to James Smith, December 8, 1822

"Man, once surrendering his reason, has no remaining guard against absurdities the most monstrous, and like a ship without a rudder, is the spot of every wind. With such persons, gullibility, which they call faith, takes the helm from the hand of reason and the mind becomes a wreck."

George Washington, letter to Robert Howe, August 17, 1779

"Few men have virtue to withstand the highest bidder."

Thomas Paine, Common Sense, 1776
"When we are planning for posterity, we ought to remember that virtue is not hereditary."

I particularly can appreciate the following Thomas Jefferson quote:

"I predict future happiness for Americans if they can prevent the government from wasting the labors of the people under the pretense of taking care of them."—BRENDA K. LANDWEHR

PROTEST

MR. SPEAKER: In accordance with Article 2, Section 10 of the Kansas Constitution, I hereby submit the following written protest on **H. Sub. for SB 3**.

It is with a very reluctant and heavy heart that I vote yes.

We are called to compromise when compromise is in the best interest of this process and the people we each serve. There is no better time to stand for principle than when the voice of the people is in danger of being muted. Reasonable people can reach different decisions in the critical hour that mandates us each to search and revisit our deepest-held beliefs.

We cannot underestimate the framework we lay for future generations. And we cannot underestimate the impact of succumbing to an order of appropriation - regardless of the path we take to get there. Previous generations left us with rich legacy scarred by painful sacrifice and unwavering resolve. We each see our sacrifice differently, but I wonder, what is the legacy we have forever written today? Have we taught our children that the only way to exercise inherent right is a forced purchase of it?

Not without great angst, we have willingly bypassed the wisdom with which we are compelled to make sound fiscal decisions to placate political need and buy back the Legislature's own birthright - the power of the purse.

We have spent a great deal today, Mr. Speaker . . . much more than money. And ironically, without knowing what it actually costs to educate a student in the state of Kansas.—KASHA KELLEY, ROBERT OLSON

On motion of Rep. Aurand, the House recessed until 2:00 p.m.

AFTERNOON SESSION

The House met pursuant to recess with Speaker Mays in the chair.

On motion of Rep. Aurand, the House resolved into Committee of the Whole, with Rep. Shultz in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Shultz, Committee of the Whole report, as follows, was adopted:

Recommended that committee report to **HCR 5003** be adopted; also, on motion of Rep. Jack be amended on page 1, in line 29, by striking "Any"; by striking all in lines 30 and 31; in line 32, by striking all before the quotation mark; in line 43, by striking all after the period;

On page 2, by striking all in line 1; in line 13, by striking all after the period; by striking all in lines 14 and 15;

Also, on motion of Rep. Grant to amend **HCR 5003**, Rep. Kinzer requested a ruling on the amendment being germane to the resolution. The Rules Chair ruled the amendment not germane, and the concurrent resolution be adopted as amended.

The House stood at ease until the sound of the gavel.

Speaker pro tem Merrick called the House to order.

MESSAGE FROM THE SENATE

The Senate nonconcurs in House amendments to **H. Sub. for SB 3**, requests a conference and has appointed Senators Schodorf, Vratil and Lee as conferees on the part of the Senate.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Aurand, the House acceded to the request of the Senate for a conference on **H. Sub. for SB 3**.

Speaker pro tem Merrick thereupon appointed Reps. Decker, O'Neal and Larkin as conferees on the part of the House.

On motion of Rep. Aurand, the House adjourned until 10:30 a.m., Friday, July 1, 2005.

CHARLENE SWANSON, *Journal Clerk.*

JANET E. JONES, *Chief Clerk.*

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