

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 113,267

LUKE GANNON, BY HIS NEXT FRIENDS AND GUARDIANS, *et al.*,
Appellees,

v.

STATE OF KANSAS,
Appellant.

ORDER

Today at 1:36 p.m. the State filed a "Notice Regarding Oral Argument." Among other things, it notifies the court and counsel that Jeffrey R. King intends to present oral argument tomorrow morning on behalf of the Legislative Coordinating Council of the State of Kansas. The Notice states in relevant part:

"On the authorization and request of the Legislative Coordinating Council of the State of Kansas ('LCC'), see Exhibit A, and consistent with past practice in *Montoy v. State*, 282 Kan. 9, 138 P.3d 755 (2006) (*Montoy IV*), the Attorney General of Kansas has appointed Jeffrey R. King, *counsel for the LCC*, as a Special Assistant Attorney General for the limited purpose of presenting oral argument on July 18, 2017, *on behalf of the LCC*, a component of the State." (Emphases added.)

Exhibit A is an undated letter containing the electronic signature of Susan Wagle, president of the Kansas Senate. The letter provides in relevant part that in June "the LCC authorized Mr. King to represent *the LCC* in briefing and oral argument on the *Gannon v.*

State school finance litigation." (Emphasis added.) Like the State, the president cites to *Montoy IV* as precedent for allowing him to make oral argument on the LCC's behalf.

The State's Notice also advises that as "counsel for the LCC" King will argue for at least 25 minutes of the State's 60 minutes and Solicitor General Stephen R. McAllister as "counsel for State of Kansas" will argue for at least 25 of the remaining minutes.

The Notice is of no effect for several reasons. First, King previously was allowed to file an amicus curiae brief in this litigation on behalf of the LCC. By Supreme Court Rule, an amicus curiae, *e.g.*, the LCC, is not entitled to oral argument. See Supreme Court Rule 6.06(d) (2017 Kan. S. Ct. R. 37). Second, *Montoy IV* is not "consistent" with the stated intentions of King or the State. There, McAllister did file an amicus brief on behalf of the amicus curiae LCC. But while he was allowed to make oral argument, he did so only after he made clear on the record he was appearing as a special assistant attorney general "on behalf of the State of Kansas"—not the LCC.

Accordingly, on present showing, King shall not be allowed to make oral argument as stated in the Notice.

BY ORDER OF THE COURT this 17th day of July, 2017.

A handwritten signature in black ink, appearing to read 'Lawton R. Nuss', written over a horizontal line.

LAWTON R. NUSS
Chief Justice