

1 IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

2 CIVIL DIVISION

3 PROTECT RURAL JOCO, LLC,
4 et al.,
5 Plaintiffs,

6 vs. Case No. 21CV2184

7 Division No. 2

8 CITY OF EDGERTON, KANSAS,
9 Defendant.

10

11 TRANSCRIPT OF PROCEEDINGS VIA ZOOM CONFERENCING

12 MOTION TO DISMISS

13 BE IT REMEMBERED that on the 7th day of
14 June, 2022, the above-entitled matter comes
15 on for hearing before the HONORABLE JAMES VANO,
16 Judge of Division 2 of the Tenth Judicial
17 District Court of the State of Kansas,
18 Olathe, Kansas.

16

17 APPEARANCES:

18 For the Plaintiffs:

19 Mr. Douglas J. Patterson
20 Property Law Firm, LLC
21 4630 West 137th Street
22 Suite 1000
23 Leawood, Kansas 66224

22 Ms. Michelle W. Burns
23 Burns Law, LLC
24 430 East Santa Fe Street
25 Suite 100-B
26 Olathe, Kansas 66061

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APPEARANCES (continued):

For the Defendant:

Mr. Todd A. Luckman
Stumbo Hanson, L.L.P.
2887 S.W. MacVicar Avenue
Topeka, Kansas 66611

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TRANSCRIPT OF PROCEEDINGS

THE COURT: This is Case No. 21CV2184 that's captioned Protect Rural JOCO, LLC, and others vs. the City of Edgerton, Kansas. Your appearances, please.

MR. PATTERSON: Doug Patterson on behalf of the plaintiffs.

MR. LUCKMAN: May it please the Court, Your Honor, Todd Luckman appearing on behalf of the City of Edgerton.

THE COURT: All right. This is -- I'm sorry for my squeaky chair if you can hear it. I've been trying to figure out where the squeak is coming from.

MR. PATTERSON: Don't worry. We can hear you.

THE COURT: I've sprayed enough WD40 -- plus I'm probably sitting in a rut. As long as I keep moving out of the rut, I fall back into it. I have sprayed enough WD40 under there that I shouldn't be slipping all over the place. I can't seem to get out from under the squeak from wherever it's coming from.

Anyway, this is City of Edgerton's motion to dismiss for standing grounds and failure to state a claim. I guess that's closely aligned to standing

1 being that the argument that these plaintiffs have no
2 cause of action.

3 So, Mr. Luckman, go ahead with any arguments you
4 want to make.

5 MR. LUCKMAN: Yeah. Thank you, Your
6 Honor.

7 As the defendants we do believe that this is a
8 matter that should be dismissed based upon what we've
9 outlined in the pleadings. And just as a summary
10 matter, I don't believe there is any difficulty in the
11 City agreeing for the purposes of this motion that the
12 facts in the petition can be granted in that it's
13 pretty apparent that the persons who are plaintiffs in
14 this case are adjoining landowners. None of them are
15 within the annexed area that is the subject of the
16 complaint so --

17 THE COURT: I thought there were
18 three -- three that were adjoining the proposed
19 annexation and then three that were -- that were a
20 little further out?

21 MR. LUCKMAN: Yes. I believe that's
22 correct, Your Honor. There is some who were directly
23 adjoining and some there are not but are within a
24 certain area. We don't believe it's relevant in
25 this -- in this instance that they are either adjoining

1 or separated by some nominal distance. It's merely a
2 question of either they are within the annexed area
3 itself as landowners being annexed or they are not a
4 party or not somebody who has standing to address the
5 Court as to the annexation issue and granted as it
6 being that they are not within the territory, that is
7 the only methodology that the case law in the statutes
8 allow for someone to assert their standing, meaning --
9 as illustrative to go through the history of this, in
10 that in 1966 the Kansas Supreme Court said without any
11 type of limitation whatsoever, it had -- it says, It
12 has never permitted a private individual to bring an
13 action attacking the legality of the corporate
14 existence of the City.

15 And that's how they deem any action about a
16 challenge to an annexation. They say an annexation is
17 the same as challenging the original incorporation of
18 the City or the boundaries that exist of the City.
19 It's not allowed. And you can trace this back to the
20 Kansas Constitution that the legislature has sole
21 authority over the area, the city limits, the creation
22 of the limits of municipalities.

23 So -- and that's the Constitutional delegation to
24 the legislature and the legislation in the statute has
25 said who they will allow to bring an action, and at the

1 time in 1966 they said the only one who can bring an
2 action would be the attorney general as a
3 representative the State.

4 And repeatedly, they have gone back to that as
5 being the base -- and the statute has been amended over
6 time to allow very limited exceptions to that direct
7 rule, which are in the statutes in 12-520 and 12-538
8 that certain cities that are within a -- the area of an
9 annexation can object and can bring action and the
10 people who again reside there along with the attorney
11 general.

12 So those are the three only -- these are the only
13 three entities that have standing to bring an
14 annexation challenge before this Court. And that is
15 held, too, Your Honor -- it has been held throughout
16 these cases I cited and up to, as I noted, I think the
17 key case here is the Board of County Commissioners, the
18 *Sumner County vs. the City of Mulvane*, which goes down
19 the line of many of the things that we're talking about
20 here.

21 One being that the County was found not to have
22 standing to bring a -- to contest the City's annexation
23 and it was a pretty extreme circumstance and certainly
24 more extreme than this one being that the -- the City
25 had consented annexation for the strip of land that was

1 very narrow and very lengthy to get this casino in its
2 city limits. It was clearly a flag annexation and
3 probably improper in that regard, but they still were
4 found not to have standing.

5 And I think if you reviewed the beginning of
6 this, the basis of it, how it developed in the years,
7 there is no answer to this, but for the fact that these
8 plaintiffs do not have standing to address this problem
9 that they contend occurred.

10 I think what the argument is from the defendants,
11 I guess, is case law, is twofold. One being that the
12 City itself recognizes the right to object in some
13 manner, but, as I think I showed in my reply, the
14 reason that they have these -- this ability to address
15 the -- the zoning issues is because the State statute
16 requires us when we rezone an annexed area, which
17 generally has to happen, that at that point we have --
18 we have got to give notice to adjoining landowners
19 because the zoning issue is different than the
20 annexation issue. Here --

21 THE COURT: That's where -- that's
22 where the 1,000 foot --

23 MR. LUCKMAN: Yeah 1,000 --

24 THE COURT: -- qualifier comes in.

25 MR. LUCKMAN: For the County people,

1 and 250 feet or 200 feet for people within the City.
2 So we recognize that we have to do it for the zoning
3 and we did do that, but that's not an issue that then
4 can be levied into a standing situation.

5 And -- and the only other argument was
6 essentially because of the way the statute is written,
7 the consent annexation was left out of the list of
8 annexations that could be challenged. Meaning (a)(1)
9 through (a)(6) under 12-520 said you can challenge
10 these only in these circumstances but it didn't say
11 (a)(7) at all.

12 And in that gap I think the plaintiffs are saying
13 because that doesn't say anything, it's now open
14 season. Anybody can sue anybody at any time if it is
15 consent annexation and I say it's just the opposite --

16 THE COURT: If it's an (a)(1) or an
17 (a)(3) or a combination (a)(1) through (4) or
18 whatever --

19 MR. LUCKMAN: Yeah.

20 THE COURT: -- the State through the --
21 on the relation of the Attorney General could still
22 challenge that, though?

23 MR. LUCKMAN: Yeah. Yeah, and that
24 would be --

25 THE COURT: Where is the authority for

1 that?

2 MR. LUCKMAN: Well, that would be -- I
3 am trying to track with the question, Your Honor. You
4 said -- I was going to -- any methodology (a)(1)
5 through (6)?

6 THE COURT: Right. Right. You were
7 eliminating any potential review for (a)(7), and I was
8 getting to that --

9 Mr. LUCKMAN: Yeah.

10 THE COURT: -- because I think there is
11 still a review under (a)(7) by the State --

12 MR. LUCKMAN: Yes. Yes, and I would
13 agree with that --

14 THE COURT: As well as --

15 MR. LUCKMAN: -- Your Honor.

16 THE COURT: As well as (a)(1) through
17 (6).

18 MR. LUCKMAN: Yes.

19 THE COURT: Even though the State is
20 not mentioned in 12-538.

21 MR. LUCKMAN: Yeah. I think that
22 reverts -- (a)(7)'s argument would be that it reverts
23 back to the state of the law before 2009 when I believe
24 these statutes were separated and that would -- the
25 State always has through its authority as the grantor

1 of the rights of annexation to challenge this as an
2 inherent right, and the only -- the only way it has
3 granted other cities and people within the boundaries
4 of the annexation and the authority is that it has
5 granted that through the statutes itself, and it did
6 not do so for (a) (7).

7 So I think what the defendants are saying is
8 because (a) (7) doesn't -- isn't in there, it's now just
9 like it's a common law cause of action of any kind --

10 THE COURT: So -- so there is no
11 statute that specifies that the State has some option
12 to challenge an annexation that you know of, there is
13 no time limit on that --

14 MR. LUCKMAN: No.

15 THE COURT: If it's just -- if it's a
16 political issue, then what do you do, wait for the next
17 attorney general and then have a *quo warranto* action
18 filed and invalidate the annexation?

19 MR. LUCKMAN: I -- yeah. Your Honor, I
20 did not research the timing for what the State would
21 have to do or what could it do. My -- my thought would
22 be just what you said. I think what the case law seems
23 to indicate is that the individual or somebody would
24 have to force the issue by, you know, a *quo warranto*
25 action, a mandamus action of some kind that they could

1 basically charge the AG with not proceeding in a timely
2 manner.

3 Where that leaves the City or somebody else in --
4 in kind of a reliance issue, you know, five or ten
5 years down the line, I haven't been able to track down
6 and I'll be glad to do so if that is part of what the
7 Court requires. But at this point, that's the best
8 answer I have.

9 THE COURT: Well, it looks like any
10 Court challenge under 12-538 for people that are
11 mentioned in 538, that's a 30-day -- 30-day window?

12 MR. LUCKMAN: Yes. Yeah, I believe so,
13 Your Honor. It explicitly says 30 days following
14 publication.

15 THE COURT: And what is it? Is it the
16 same 30 days from -- if the City went through this
17 process instead of doing it by -- oh, unilateral
18 action, if they went about it by making a petition to
19 the Board of County Commissioners --

20 MR. LUCKMAN: An island annexation at
21 that point?

22 THE COURT: What is the review time on
23 that kind, is it also a 30-day or 20-day window?

24 MR. LUCKMAN: I'm looking right now at
25 that, Your Honor, to see if I have that.

1 I'm sorry. It refers to the time period under
2 12-521, looks to be set by after that whole procedure
3 by KSA 19-223 which is a county appeal.

4 THE COURT: All right. And I'm
5 guessing that's a pretty short time.

6 MR. LUCKMAN: Yeah. It -- let's see,
7 written notice, 30 days, I'm sorry. Yes, it was 30
8 days as well.

9 THE COURT: What is interesting about
10 that segment -- section that you were reading on the --
11 under 12-521, is it specifically says, addresses the
12 adjacent land, landowners. Nothing in this subsection
13 shall be construed as granting the owner of land in
14 areas near or adjacent to land annexed pursuant to this
15 section the right to appeal.

16 MR. LUCKMAN: Yeah, I believe so, Your
17 Honor. Did that cover Your Honor's question about
18 that?

19 THE COURT: I think so. We might get
20 back to -- we might get back to that after I hear from
21 the --

22 MR. LUCKMAN: Yeah. And that was my
23 presentation Your Honor, so I will defer at this point
24 to the plaintiffs.

25 THE COURT: Okay. Who is going to do

1 this, Mr. Patterson, Ms. Burns?

2 MR. PATTERSON: Judge, I'll be doing
3 that. If I may?

4 THE COURT: Okay.

5 MR. PATTERSON: The position that the
6 City appears to be is that in the most egregious
7 position that an annexation that under our petition
8 must be deemed to be admitted but a *quo warranto*
9 annexation has been allowed which is disallowed under
10 KSA 12-520(g) that these parties agreed by that would
11 not have standing to bring an action.

12 I don't know what went through the legislature's
13 minds, but they specifically stated that in 12-538 they
14 enumerated that owners of land within the annexation
15 and the City could challenge the annexation if the
16 annexation was one within 12-520(a)(6), but they left
17 out (7) and that's what we're talking about and
18 therefore --

19 THE COURT: And why would -- I think
20 it's probably not consciously left out. If it was done
21 by consent, why would the owner of the land who just
22 consented to annexation be given a right to an appeal?
23 That just wouldn't make sense.

24 MR. PATTERSON: Well, not all of the
25 landowners in an annexation -- in a consent annexation

1 need to consent to it. There is technical difficulties
2 and not all of the owners within land annexed under --
3 let me -- let me put it this way: An annexation
4 authorized under 12-520(a)(2)(6) obviously are not
5 consent annexations. An adjoining consent, you're
6 right, the people that consented to the annexation
7 would not challenge it; however, those aggrieved by
8 that action should and can challenge the annexation.

9 In this case, as the petition states, that part
10 and parcel of the annexation was the rezoning of this
11 property. As a matter of fact, one of the rezoning
12 applications for the property was filed with the City
13 before the annexation was completed and so it was a --

14 THE COURT: That's not -- that's not
15 what this is. This isn't challenging the zoning
16 decision.

17 MR. PATTERSON: No. No. There is
18 another case on that. However --

19 THE COURT: Is that assigned to
20 somebody else?

21 MR. PATTERSON: Judge Gurney. Judge
22 Gurney.

23 THE COURT: Okay. And that's a lower
24 case number?

25 MR. PATTERSON: It's very close. We'll

1 get that case number for you.

2 Judge, you're kind of -- your audio is kind of in
3 and out. I'm not hearing some of your questions.

4 THE COURT: Well, yours is -- yours is
5 over modulated so how is that for a good audio report?
6 You're --

7 MR. PATTERSON: Yes.

8 THE COURT: You're three for three.

9 MR. PATTERSON: You're five and nine.

10 The authority, therefore, if the legislature
11 determined that the limitations of 12-538 would not
12 include consent annexations, the authority to challenge
13 that annexation by parties aggrieved by the action is
14 provided in 12-760 which is the standard if the parties
15 aggrieved -- if an aggrieved party is affected by a
16 final decision by a city, then that aggrieved party may
17 maintain an action in the District Court within 30
18 days. It's the standard zoning --

19 THE COURT: That's on zoning; that's
20 not on annexation.

21 MR. PATTERSON: Well, it doesn't -- it
22 isn't limited to zoning. 12-760 --

23 THE COURT: Well, let me get to it.
24 Let me get to it, 12-760. Let me see here. It talks
25 about the final decision, so that means you got to go

1 back to see what the subject is of this Chapter 56.
2 What would that be? That's the enabling legislation
3 for zoning and planning.

4 I think you're applying this to -- I don't -- the
5 statutory titles are not part of the statute, but the
6 use of the word "same" in the title makes me think it
7 is has to do with the same subject as the previous
8 section and that's more to zoning appeals and existing
9 uses of 758. 757(a) is special use and conditional use
10 permits. I think 760 looks like it's zoning and not
11 annexation.

12 MR. PATTERSON: Judge, it would -- it
13 allows an aggrieved party to maintain an action to
14 determine the use of the final decision whether it's
15 within the plans and zoning section or whether it's in
16 any other official action by a city including
17 annexation.

18 There is no -- up and above 12-760, there is no
19 limitation on the ability or restriction on the ability
20 of the aggrieved property owners to challenge an
21 annexation. 12-538 says it all in terms of the
22 challenge.

23 THE COURT: How about the fact unless
24 there is some specific statute granting the Court
25 jurisdiction to review that we don't have any authority

1 to review a legislative act which is a -- which is a
2 legislative function which is what annexation has been
3 called previously by the Kansas Supreme Court? It's a
4 legislative function.

5 MR. PATTERSON: It is a legislative
6 function --

7 THE COURT: Unless there is a specific
8 statute, doesn't separation of powers prohibit me from
9 doing anything?

10 MR. PATTERSON: I don't believe so,
11 Judge, because even a legislative action can be
12 challenged under those -- if it's unreasonable or
13 unconscionable, or in this case, illegal. The
14 legislative action can be challenged if it is illegal,
15 and the allegations in our petition are that it was an
16 illegal annexation using the corridor to get from the
17 west side of Gardner Road to the east side of Gardner
18 Road. It was illegal, and we're aggrieved by that.

19 We believe we can challenge under the very, very,
20 very limited ability to challenge the legislative
21 action. I believe we have met the burden here because
22 we're challenging the legality of the action, not that
23 it was fair or reasonable or a close call or anything
24 like that, it's illegal. And that's the allegation
25 that is contained within our petition.

1 THE COURT: And that would be something
2 for the State, the entity of the State on the relation
3 of the attorney general to bring an action in *quo*
4 *warranto* against the City that it's doing something
5 that it has no authority to do. Isn't that where the
6 review comes?

7 MR. PATTERSON: It could, but there --
8 the City -- the State brings *quo warranto* actions,
9 challenges to public or private actions all the time,
10 but there is nothing that limits or restricts or
11 prohibits the concurrent challenge by someone who is
12 truly aggrieved by the action. It's not an
13 inconclusive remedy. It is a remedy that the State has
14 but it is also a remedy that the illegal act of the
15 City is an action which a party aggrieved by that
16 action can bring, and that's what we've done, and we
17 have the authority because we're explicitly excluded
18 from the limitations of the ability to challenge in
19 that annexation under 12-538.

20 THE COURT: But you do have standing to
21 be heard and object and do you have standing to bring a
22 suit challenging a zoning decision, which this isn't?

23 MR. PATTERSON: This is not, but we do
24 have the challenge on the zoning.

25 I have that case number if you want it.

1 THE COURT: I'll write it down. Go
2 ahead.

3 MR. PATTERSON: Okay. It's 21CV02318.

4 THE COURT: 2138?

5 MR. PATTERSON: Yes.

6 THE COURT: Okay. Where I am really
7 having a problem here is I can see the illegality and
8 it sounds similar to that -- is the Neosho County case
9 that Mr. Luckman cited? But there was nobody bringing
10 that challenge -- with standing to bring that
11 challenge.

12 If it's a legislative function and they've done
13 it wrong -- it's like -- it's like the legislature
14 adopting statutes that cover more than one subject.
15 They are out there, but if nobody is challenging them,
16 they are out there and they are doing whatever. People
17 are following those different laws under one act that
18 reached out and did multiple topics or multiple
19 subjects.

20 In this case, if this is an illegal annexation
21 but the State is not challenging it, then your
22 plaintiffs are not within the annexed land and it's
23 certainly not a city. Your -- your LLC project or
24 Protect Rural Johnson County is not a city --

25 MR. PATTERSON: Yeah.

1 THE COURT: -- then I'm having a real
2 difficult time finding standing granted by statute that
3 gives me something to tie into what subject matter
4 jurisdiction is to actually hear them. There is -- it
5 doesn't seem like there is a common law, a common law
6 right to an action in the District Court that
7 challenges on a separation of powers action -- a
8 separation of powers problem and you got the -- the
9 District Court, you want to put in the position of
10 being a super city to say you -- we can't do this.
11 Whereas I think that's a function for the State since
12 the City is a creation of the -- of the legislature.

13 MR. PATTERSON: Well, you're right in
14 that the legislature just did that. They -- and I know
15 we're beating a dead horse to death here, but the
16 legislature was very clear on the limitations of the
17 ability to challenge an annexation, and 12-358, which
18 describes the first six types of annexations which can
19 occur. The seventh being a consent and there is no
20 limitation on it.

21 THE COURT: The interesting thing about
22 that statute is the way it's constructed. I'm -- I'd
23 have to read this multiple times to see if a city has
24 authority. You know, a nearby city has authority to
25 challenge an (a) (7) annexation, a consent annexation.

1 The way that sentence is constructed, any city
2 whose nearest boundary line is located within half a
3 mile of the land being so annexed, does the "so" refer
4 to (1) through (6), or does the "so" refer to any
5 annexation, including (7)? I don't know. But this --
6 that's not the case in front of us. You're not a city.

7 MR. PATTERSON: I don't think it would.

8 THE COURT: I don't know. What's
9 that -- what's that Neosho County case? Do you know a
10 cite on that? And, Mr. Patterson, I'd like to hear you
11 discuss that case and why it's distinguishable.

12 Do you have a cite on that, Mr. Luckman?

13 MR. LUCKMAN: Yeah. It's the city
14 of -- it's actually the *Board of County Commissioners*
15 *of Sumner County*.

16 THE COURT: *Sumner*, okay.

17 MR. LUCKMAN: And *City of Mulvane*. The
18 cite on that is 43 Kan App 2d -- and I'm sorry. It cut
19 off a page number. It's 43 Kan App 2d and 500, 500.

20 THE COURT: Okay. *City of Mulvane*. So
21 the board couldn't bring a *quo warranto* action, that
22 has to be done by the attorney general? Does the
23 county attorney have the right to do that, or just a
24 attorney general?

25 MR. LUCKMAN: If I remember correctly

1 from reading the opinion, Your Honor, it says the
2 county attorney could do it.

3 THE COURT: Because the board was not
4 an officer of the state?

5 MR. LUCKMAN: I think so. I think they
6 have to apply like everybody else with a written
7 mandamus.

8 THE COURT: Okay. Well, there at least
9 the strip was adjoining the City?

10 MR. LUCKMAN: (Nods head.)

11 THE COURT: And in your case you got
12 this strip that's an outlying strip, you're in
13 agreement that doesn't look like approved or authorized
14 by the statute?

15 MR. LUCKMAN: Your Honor, are you
16 talking about comparing the strip between the -- the
17 *Sumner County* case and ours?

18 THE COURT: Yes.

19 MR. LUCKMAN: Well, our -- if you look,
20 there is a map that is in the petition. The -- the
21 actual -- if you compare the two, I think the one in
22 Sumner County was several -- if I'm not mistaken,
23 several miles long.

24 I mean, it was strip that the city -- the casino
25 was miles away and what it did was it created this thin

1 strip that was -- okay. Here it is, 100 foot wide,
2 five-mile long strip, the lane connected to the
3 proposed casino. That is Sumner County.

4 In this, Your Honor, we have larger sections of
5 land but this is only -- and we would obviously dispute
6 the fact that's it's a -- you know, it's similar. The
7 connection is you can kind of see, when you look at the
8 map it narrows quite a bit but it starts out the same,
9 basically the same quarter section and then it narrows
10 down to where it touches so --

11 THE COURT: Uh-huh.

12 MR. LUCKMAN: -- you know, is it 600,
13 700 feet away? Yeah, probably. But it kind of slowly
14 narrows to that point where it touches. So the
15 distances are not comparable and, like I said, I don't
16 think that the facts behind that are relevant to what
17 Your Honor is thinking. It's probably not fair to me
18 to address that here but we're confident we have a good
19 answer to that question about the fact that meets the
20 statute as far as the value is concerned and that the
21 test that you're really doing. So it's apples and
22 oranges. We have no -- we're not doing a -- you know,
23 a five-mile long strip here.

24 THE COURT: Mr. Patterson, have you had
25 a chance to take a look at that case?

1 MR. PATTERSON: I have. I have. I
2 might add theoretically, Judge, that here we didn't
3 have this just one single annexation that was in
4 Sumner. We had two. One of which was the annexed area
5 on the west side of Gardner Road and then the
6 connection on the east Gardner Road with the corridor.

7 I've had a chance to -- I've reviewed the *Sumner*
8 case previously. I nonetheless believe that though it
9 is in the zoning actions, 12-760 gives the plaintiff
10 the standing to bring this action. Otherwise, on a --
11 in a truly admitted illegal annexation how are
12 aggrieved parties to receive any recourse?

13 THE COURT: The answer to the
14 rhetorical question is through their elections, that's
15 the legislative function, or through their elected
16 officials. If they are not in the city, they don't
17 participate in the election, I guess.

18 MR. PATTERSON: That's right. And by
19 that time huge buildings are built, annexation happens,
20 zoning occurs. The buildings are built. The --

21 THE COURT: Well --

22 MR. PATTERSON: -- are built.

23 THE COURT: Well, if you prove me
24 wrong, it won't be the first time.

25 MR. PATTERSON: I -- I take no glee in

1 that, Your Honor.

2 THE COURT: Well, I think the -- the
3 *Layle* case and the *Creegan* case made some good law.

4 I don't know. I just don't see that I can create
5 standing if this legislature isn't making that clear
6 and I really think your citation to 12-760 out of the
7 zoning statutes, I don't think that applies in this
8 case and in terms of the legislative function of the --
9 what's it called -- the unilateral annexation by the
10 City, as a legislative function. Whereas zoning, in
11 particular, I think is considered to be quasi
12 judicial --

13 MR. PATTERSON: It may very well be.

14 THE COURT: -- when they make zoning
15 decisions.

16 MR. PATTERSON: (Nods head.)

17 THE COURT: So I'm -- I'm in agreement
18 with the City though this looks like something that
19 should be reviewed, but without the challenge by the
20 State I don't see the standing. The unfortunate side
21 of that is the passage of time of how long it will take
22 time to get this reviewed elsewhere and maybe your --
23 your review in the other case on the zoning appeal
24 might go somewhere but I'm -- I just don't see that
25 there is standing. If there is no standing for these

1 people to bring the challenge to the annexation
2 decision, then there is no jurisdiction. There is no
3 claim that they can make. There is no statute and
4 there is -- it is what it is, and I can't create that
5 jurisdiction myself.

6 MR. PATTERSON: I understand.

7 THE COURT: All right?

8 MR. LUCKMAN: Your Honor, would you
9 require a journal entry so noting?

10 THE COURT: As quickly as you can get
11 it. So under rule -- Supreme Court Rule 170 you can
12 circulate a journal entry, essentially adopting the
13 arguments of the City that I don't think -- I think
14 12-538 was specifically to address challenging
15 annexations under 12-520, which is what this is, and it
16 doesn't include standing for the plaintiffs in this
17 case to make a challenge.

18 MR. LUCKMAN: Okay. I have that.

19 THE COURT: You can make the finding
20 that -- include the finding that I think that
21 annexations aren't legislative functions and that
22 limits the judicial review under separation of powers.

23 MR. LUCKMAN: Uh-huh.

24 THE COURT: Anything further to put on
25 the record?

1 MR. LUCKMAN: None. None for the
2 defendant.

3 MR. PATTERSON: Not for the plaintiffs,
4 Your Honor.

5 THE COURT: All right. For Teresa's
6 record, we'll go off the record. And I'll say you may
7 withdraw and just will say thank you and thank you for
8 your other folks being here and watching the sausage
9 being made, which is never a pleasant sight and,
10 Michelle, I hope everything is well with your family.

11 MS. BURNS: Thank you, Your Honor.

12 THE COURT: If there is nothing else,
13 you may withdraw. Have a good afternoon.

14 MR. PATTERSON: All right. Thank you,
15 Judge.

16 MR. LUCKMAN: Great. Thank you, Your
17 Honor.

18 (Whereupon, hearing adjourned.)

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CERTIFICATE

STATE OF KANSAS)
JOHNSON COUNTY)

ss:

I, Teresa Catalano-Johnson, a Certified Shorthand reporter of Kansas, and a regularly appointed, qualified and acting Official Court Reporter for the Tenth Judicial District of the State of Kansas, do hereby certify that as such Official Court Reporter, I was present at and reported in machine shorthand, the above and foregoing proceedings.

I further certify that a transcript of my shorthand notes was typed and that the foregoing transcript is a true and correct transcript of my notes in said proceedings to the best of my knowledge and ability.

Signed and filed with The Clerk of the District Court of Johnson County, Kansas.

/s/ Teresa Catalano-Johnson
Teresa Catalano-Johnson, RPR, CSR
Official Court Reporter
Kansas Supreme Court #1385