Reversal of the Kansas Tax "Experiment": The Social Limits of Supply-Side

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Abstract

In 2012, Kansas Republicans, led by Governor Sam Brownback, passed a radical supply-side tax cutting package that cut income tax rates, eliminated the top income tax bracket, eliminated various deductions and credits, and (most controversially) fully eliminated state income tax on many business owners. However, five years later, a supermajority of Republicans and Democrats voted over Brownback's veto to repeal the tax cuts. This research asks: What would lead tax cutting Republicans to embrace a tax increase? To answer this question, this dissertation draws on over two years of ethnographic material, including 110 in-depth interviews, ethnographic observations, and newspaper and legislative document analysis. This project argues the tax cuts in Kansas could not be sustained because there are social limits to supply-side tax reforms. In this project, I examine the structural and institutional conditions under which neoliberal tax reforms provokes a countermovement for social protection. I argue that this occurs in the absence of financialization, which has allowed Republicans nationally to continue to pursue massive tax cuts while paying very little political cost. However, in Kansas, the Republican Party paid a large political price for their devotion to the tax policy. As a consequence of this, economic policies were repoliticized and brought into the realm of public debate, thus fostering a renewed sense of 'fiscal citizenship' across the state. This dissertation explores this process of repoliticization and countermovement in three critical institutional areas impacted by the tax cuts: public education, small businesses, and economic forecasting.

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Timeline of Events

June 1, 2010 ~ Sam Brownback officially announces run for Kansas Governor

November 2, 2010 ~ Brownback wins general election over Democrat Tom Holland

November 2, 2010 ~ School funding lawsuit (Gannon v. Kansas) is filed

May 20, 2011 ~ Brownback announces review of the Kansas tax code

May 28, 2011 ~ Brownback cuts budget including over $100M from public schools; eliminates funding for the Kansas Arts Commission

Tax Cuts Introduced and Passed

September 21, 2011 ~ Brownback announces income tax cut

January 11, 2012 ~ In state of the state address, Brownback asks legislature to enact his tax cut

January 19, 2012 ~ Arthur Laffer testifies in support of the Brownback tax cut

March 13, 2012 ~ House version passes 68-52

March 21, 2012 ~ Senate kills the bill then resurrects it and passes it, 29-11

May 9, 2012 ~ House votes to concur with the senate and passes the tax bill to Governor

May 22, 2012 ~ Brownback signs HB 2117 into law

August 7, 2012 ~ Moderates defeated in Republican primaries

January 1, 2013 ~ Brownback tax cuts take effect

January 11, 2013 ~ Kansas district trial court rules school funding levels are unconstitutional

June 13, 2013 ~ Brownback signs second round of income tax cuts and signs sales tax increase

March 7, 2014 ~ Kansas Supreme Court rules school funding is unconstitutional

April 21, 2014 ~ Brownback signs HB 2506, addressing the Supreme Court ruling

May 1, 2014 ~ Moody’s downgrades Kansas’ credit rating

August 6, 2014 ~ S&P downgrades Kansas’ credit rating

November 4, 2014 ~ Brownback wins reelection over Democrat Paul Davis

Signs of Crisis

November 10, 2014 ~ Consensus Revenue Estimates show budget shortfall of $715 million

December 30, 2014 ~ Kansas district trial court again rules school funding unconstitutional

March 25, 2015 ~ Brownback signs SB 7 replacing the old school funding formula with block grants

June 5, 2015 ~ State workers receive notification of possible furloughs because of unbalanced state budget

June 16, 2015 ~ Brownback signs sales tax increase to end record 113-day legislative session

June 26, 2015 ~ Kansas District trial court rules block grant school funding unconstitutional

October 6, 2015 ~ Kansas pays $2.6M to Alvarez & Marsal to perform an efficiency study

November 6, 2015 ~ Consensus Revenue Estimating Committee lowers revenue estimates again by $159M

December 16, 2015 ~ KDOT announces it issued a record $400M in bonds

January 12, 2016 ~ Alvarez & Marsal releases results of efficiency study

February 11, 2016 ~ Kansas Supreme Court finds the block grant school funding scheme unconstitutional

April 7, 2016 ~ Brownback signs HB 2655, addressing the Supreme Court ruling

April 20, 2016 ~ Consensus Revenue Estimating Committee revises revenue projections down another $286M

May 3, 2016 ~ Moody's again downgrades Kansas' credit outlook from stable to negative

May 27, 2016 ~ Kansas finds block grant school funding scheme unconstitutional

June 23, 2016 ~ Special session of the Legislature is called to address school funding

June 27, 2016 ~ Brownback signs latest bill addressing school funding

July 26, 2016 ~ S&P again downgrades Kansas' credit rating

Repeal Effort Begins

August 2, 2016 ~ Moderates see big gains in the Republican primaries

November 10, 2016 ~ Consensus Revenue Estimating Committee lowers revenue estimates again by $355M

February 17, 2017 ~ Kansas Legislature passes repeal of the Brownback tax cuts

February 22, 2017 ~ Brownback vetoes the repeal bill

February 22, 2017 ~ Legislature fails to override the governor's veto

March 2, 2017 ~ Kansas Supreme Court again rules the state is unconstitutionally underfunding schools

April 26, 2017 ~ Trump Administration releases its plan to cut taxes. Many see parallels with Kansas

June 5/6, 201 ~ Kansas Legislature again pass a bill to repeal the Brownback tax cuts

June 6, 2017 ~ Brownback announces he will veto the bill

June 6, 2017 ~ Kansas Legislature successfully overrides the veto and repeals the tax cuts

June 15, 2017 ~ Brownback signs latest school funding bill; block grant funding ends

Brownback Exits

July 26, 2017 ~ Brownback nominated to be Ambassador-at-large for religious freedom

October 2, 2017 ~ Supreme Court rules Kansas still not in compliance with school funding

October 4, 2017 ~ Brownback confirmation hearing held

December 20, 2017 ~ Republicans pass the Tax Cuts and Jobs Act (TCJA)

January 24, 2018 ~ Brownback confirmed for ambassador position; Lt. Gov Jeff Colyer assumes governorship

Chapter One:
Introduction

"*If justice ever existed in Kansas' scheme of taxation, time and change have wrought sad havoc with it…"* (Boyle 1908:10).

This dissertation is about one of the most significant trends in American politics: tax cuts. Specifically, this dissertation is about supply-side tax cuts and their social aftermath. In this dissertation I examine the critical case of Kansas which, in 2012, embarked on a self-described "experiment" in supply-side economics. Governor Sam Brownback, who proposed the policy, promised it would be a "shot of adrenaline" into the state's economy by incentivizing businesses to expand and hire more workers. Instead of the policy delivering on its supply-side promises, the state was thrown into fiscal crisis and five years after the policy was implemented, the Republican supermajority in the Kansas legisalture repealed it. The primary question I seek to address in this study is: Why did Republicans in Kansas abandon their signature policy?

The surprising thing about supply-side tax policy in Kansas is not that Republicans implemented it, but that they repealed it. For decades, the Republican Party has been oriented towards lowering or eliminating taxes. On an even larger scale, since the ratification of the Sixteenth Amendment, anti-tax groups and activists have tried to repeal the federal income tax (Martin 2010, 2013). In Kansas, these historical forces collided in a way that saw the Republican Party achieve a version of a long-standing policy goal: eliminating the income tax. Why, after achieving a monumental policy victory, would Republicans reverse course and vote (over the Republican governor's veto) to repeal the policy and pass the largest tax increase in state history?

Following Karl Polanyi, I argue that explaining the policy *reversal* requires paying attention to the constraints imposed by institutional and social arrangements. The tax cuts in Kansas created widespread social and economic instability. As Kansans grappled with understanding the fiscal crisis created by the tax cuts, they also grappled with the political and social forces found in the economy. Neoliberalism, understood broadly as free-market based economic reforms, depoliticizes the economy (Block 1990) and erodes citizenship (Somers 2008). Neoliberalism equates "the economy" with free-markets and citizenship with market exchange and in so doing, obfuscates the role of politics and the state in supporting even free-market economies. However, by destabilizing social and economic institutions, I argue that the Kansas tax cuts *repoliticized* the economy by revealing the role of politics in free-market reforms. Further, supporters of the tax cuts recognized the destabilizing impact of the policy and attempted to obfuscate the connection between policy and effect. However, these efforts fell short as Kansans connected the budget crisis directly with the tax cut policy. Thus, by repoliticizing the economy, the tax cuts promoted a resurgence of *fiscal citizenship* across the state.

I identify three main areas that institutionally contributed to the policy reversal. First, small businesses in the state forced the reversal of the policy by rejecting the tax cuts. Rhetorically, the tax cuts were aimed at boosting small businesses. In practice, the tax cuts benefited only a few business owners in the state. Moreover, the ensuing budget cuts damaged core institutions that business, especially small businesses, rely on. Chief among these institutions were schools. Schools forced the reversal of the policy in two ways. Budgets cuts caused by the tax cuts resulted in school districts in Kansas suing the state to restore funding, a lawsuit which put an absolute limit on how far Republicans could shrink education spending.

However, because schools are central community organizations, the visible effects of budget cuts on schools reverberated throughout local communities, including impacting businesses. The Brownback administration attempted to obfuscate these negative effects in various ways by releasing statistics and economic projections showing the tax cuts were working. However, the administration's use of data in defense of the tax cuts lost its sway over many lawmakers and citizens and, as a result, the tax cuts could no longer withstand political pressure and were reversed. While these three areas do not exhaust every explanation for the reversal, they emerged as most prominent and relevant over the course of the tax cutting episode.

This dissertation illuminates the structural, social, and institutional constraints to market liberal policy initiatives. My argument is that these three areas represent critical "sites" in understanding the Kansas tax cuts. Further, I argue that these three sites are important because of their institutional relation to each other and to taxation. In other words, the tax cut's effects on any one site are not enough to explain the policy's reversal. I also argue these three areas are primary sites for understanding neoliberalism more generally. Tax cuts are not the only neoliberal policy, but tax cuts, and supply-side tax cuts in particular, have arguably been the most important instantiation of American neoliberalism (Prasad 2012; Campbell 2001). A focus on businesses (Akard 1992; Harvey 2005), a focus on public spending (Prasad 2006; Pierson 1994), and a focus on ideas and knowledge (Campbell and Pedersen 2001; Brown 2015; Peck 2010) have all been examined with respect to neoliberalism and tax cuts. Further, these three areas roughly align with the three main "faces" of neoliberalism: its political face, bureaucratic face, and its intellectual face (Mudge 2008:704-707; see also Centeno and Cohen 2012). A novelty of this study is that I examine all three sites simultaneously with one case using a multi-sited ethnographic case study approach. Following the program of fiscal sociology, I highlight the links between these areas in order to emphasize the "social embeddedness of fiscal relations" (Martin 2019) created by taxes. Thus, this study brings forward how these sites are assembled and entwined with the tax structure of the state.

Kansas and the Republican Tax Cutting Legacy

In an op-ed for the *Wall Street Journal*, Governor Sam Brownback declared that the Kansas tax policy was "rooted in the Reagan formula" (Brownback 2014). At the signing ceremony for the law, Brownback remarked, "[W]hen Ronald Reagan cut taxes in the early '80s, many people called the tax cuts too big, too bold, too expensive. But those cuts ignited an era of prosperity in America. By enacting them, Reagan showed his faith – but not in the government. It was in the American people. Reagan proved that given a bit of economic freedom and opportunity, the American people would accomplish things no government program could ever imagine. And they did. My faith is in the people of Kansas, not its government. I believe the people will do incredible things." By linking his tax cuts to Reagan, Brownback situated the Kansas tax cuts firmly in the supply-side, tax-cutting legacy of the modern Republican Party.

The Republican Party has not always been the party of tax cuts. Prior to Reagan, the Republican Party was the party of balanced budget (Prasad 2012). However, Republicans found electoral success in tax cuts and, building off their perceived popularity following Proposition 13 (Martin 2008), they have followed a tax-cuts-at-all-costs approach to tax reform. This is most clearly seen in the GOP's embrace of supply-side economics. Free-market, supply-side ideas initially consisted of a variety of non-inflationary policy proposals, from worker trainer programs to deregulation (Krippner 2011:93). Tax cuts were one of four noninflationary policy suggestions offered by the Republican Study Committee, chaired at the time by future Heritage Foundation president Ed Feulner (Jones 2012:264). Moreover, supply-side economics was associated with a view of monetary policy that suggested a combination of stimulus (tax cuts) and restraint (tight monetary policy). However, over time, and particularly during the Reagan administration, supply-side ideas narrowed to mean essentially tax cuts and tax cuts alone (Krippner 2011:93). Tax cuts were, according to supply-side economist Robert Mundell, supposed to provide an economic stimulus by freeing up capital for business to invest in hiring which would both lower unemployment as well as reduce inflation. Supply-siders also claimed tax cuts would boost productivity and savings rates. However, Keynesian economists held that large tax cuts would sharply increase the deficit, something Republicans at the time were keen to avoid. The "Laffer Curve" solved this conundrum, at least in theory. By claiming that tax cuts will stimulate economic activity, and thus generate more revenue for the tax state, the government would have more revenue to fund essential services. In other words, the tax cuts would pay for themselves.

However, instead of providing the economic stimulus that supply-siders had predicted, as Reagan advisor David Stockman explained, "even the most outlandishly optimistic forecast available [showed] triple-digit deficits… as far as the eye could see into the future" (Stockman 2013[1986]:361). After Reagan, the U.S. entered an "age of deficits" (Morgan 2009:2). The deficit under Reagan ballooned from $700 billion in 1981 to over $3 trillion by the end of his presidency. Increasing deficits were exactly what business groups had feared and why, as Prasad (2006:61) points out, businesses initially lobbied against the broad-based tax cuts for individuals. Business groups and others were worried that increased deficits would create a "crowding out" of the market that would put government and capital in competition, ultimately raising interest rates (Krippner 2011:94). However, this scenario never occurred. In the land of deficits, the Reagan administration found a savior in global capital markets. The Reagan administration inadvertently stumbled on a way to finance deficits by opening to foreign (mostly Japanese) capital.

Republicans were spooked by the size of the deficit and the Reagan administration began considering tax increases a mere two months after the passage of the ERTA tax cuts (Brownlee 2016:188). However, in the 1990s, Republicans in state government rediscovered the political potential of tax cuts and eventually the local-level "tax cut fever" found its way into the national GOP (Prasad 2018:150-153). Politically, the lesson that Republicans learned from the Reagan tax cuts was, as Dick Cheney purportedly said, "Reagan proved deficits don't matter" (Martin 2008:133). However, the enormous deficits produced by the supply-side strategy meant global finance became more important. The tension, or contradiction, inherent in the tax state was not resolved, but rather delayed. Indeed, financialization has become so critical in delaying fiscal crisis that Wolfgang Streeck suggests the tax state has given way to a "debt state" meaning "a state which covers a large, possibly rising, part of its expenditure through borrowing rather than taxation, thereby accumulating a debt mountain that it has to finance with an ever greater share of its revenue" (Streeck 2017:72-73). In some ways, the "debt state," is another term for the "neoliberal" state since, as Harvey points out, neoliberalization "has meant the financialization of everything" (2005:33).

Reliance on debt creates the eventual conditions for extreme austerity, or the "voluntary deflation in which the economy adjusts through the reduction of wages, prices, and public spending to restore competitiveness" with the purported goal of "restoring" business confidence (Blyth 2013:2). Austerity is a form of politics as well as an economic program (Streeck 2013). Artificially constraining the fiscal capacity of the state through the combination of low taxes coupled with sustained or increasing expenditures has created a climate of "permanent austerity"

(Pierson 2002). Debt operates similarly to inflation by allowing the state to commit resources not yet available (Streeck 2017:36). Debt also, like inflation, gives the illusion of economic growth which can be used to tame legitimation crises (Streeck 2017:45-46). However, in the long-term, debt can also exacerbate legitimation crises by making it difficult or unattractive for policymakers to allocate resources from old to new programs since mandatory expenditures tend to consume most of the budget (Schäfer and Streeck 2013:2). The consequence of this is an overall decline in fiscal discretion as more and more of the budget gets taken up by mandatory spending on previous programs with slow maturation rates (Streeck and Mertens 2013:28). Less discretion over spending results in diminished "fiscal democracy," or capacity for the public to exercise choice over spending (Genschel and Schwarz 2013). Debt is an attractive option for lawmakers because of the public often wants both government services and low taxes (Block 2009). As sociologist Monica Prasad notes, "when a democracy is not forced to choose between higher taxes and lower spending, it chooses neither" (2018:15).

The case of Kansas, however, represents what happens when a democracy *is* forced to choose. The comparison to the Reagan tax cuts is important for revealing the critical factor for explaining the reversal of the tax cuts: institutional context. In many ways, the Kansas tax plan is similar to other Republican tax cuts. For instance, the Kansas tax cuts both lowered the marginal rates for the personal income tax brackets as well as eliminated the top bracket entirely. This mirrored Reagan's 1981 tax reform, the Economic Recovery Tax Act (ERTA), which saw the top marginal rate reduced from 50 percent down to 28 percent and saw the total number of brackets reduced from 15 to just two. However, one of the critical differences between Kansas and previous supply-side tax policies is the institutional constraints of limited deficit capacity. In the absence of finance and its capacity to depoliticize tax cuts, social institutions are exposed to the full effects of austerity. The inability to finance the tax cuts with debt, I argue, helps explain why the experience of the tax cuts in Kansas became more salient and thus provoked a movement to reverse the policy. As sociologist Bob Jessop explains, "whenever the naïve belief in the principle of efficient markets is confounded by experience, neoliberals pragmatically endorse a state of economic emergency that authorizes state action and the creation of fiat money" (2014:217). The U.S. federal government employs debt to delay fiscal crisis at the national-level, but most state governments are constitutionally obligated to balance their budgets annually and are unable to run massive deficits. Republicans, including Sam Brownback, often positively endorsed the state level limits to debt. As Brownback said during his infamous Morning Joe interview, "Fortunately, at the state level, you've got to balance your budget. You can't just print money yet or anything else." But "just printing money" through issuing debt is the crucial factors which allows Republicans to pursue and politically survive massive supply-side tax cuts.

However, the level of government is only one way the Kansas tax cuts differed from previous conservative tax policies. Significantly, this policy was an attempt to *fully eliminate* the income tax. Except for Alaska, no other U.S. state has repealed their income tax. And, with the case of Alaska, the 1980 repeal occurred because of dramatic changes in the state's political economy as a massive influx of oil revenue found its way into state coffers after the completion of the Trans-Alaska oil pipeline.[1] The Kansas tax plan was more ideologically driven. Kansas eliminated the income tax solely on the *promise* of future supply-side gains. This is what makes the Kansas tax cutting experiment the clearest attempt yet to make supply-side true.

[1] After Alaska repealed the state income tax in 1980, there have been various attempts to reinstate it. A joint special committee in 1986 did not recommend reinstating it, in 1987 and 1989 two different bills also died. More recently, with the fall in oil prices, Alaskans have again been grappling with whether to reinstate an income tax. As of the writing of this dissertation, that debate is still ongoing.

Secondly, the Kansas tax cuts represent something new in that they provoked widespread backlash and were eventually repealed by a Republican-dominated state legislature. Mostly state and local tax reductions fail to make national news; yet because of the boldness of the Kansas tax plan, the state had a great deal of attention placed on it. This is no doubt due in part to the fact that the Governor described his tax reform as “a real live experiment” in conservative supply-side economics. Brownback was clear that this tax plan was supposed to be a model; a “red-state model,” as he put it. "My focus is to create a red-state model that allows the Republican ticket to say, 'See, we've got a different way, and it works,'" he told the *Wall Street Journal* (King, Jr. and Peters 2013). Not only was this the goal of Brownback, but the Republican Party and anti-tax activists all were excited to point to Kansas. Speaking on the Kansas tax cuts, Senate Republican leader Mitch McConnell said, “This is exactly the sort of thing we want to do here, in Washington, but can't, at least for now” (King, Jr. and Peters 2013). Similarly, Grover Norquist, President of Americans for Tax Reform, pointed to Kansas saying, “Kansas is the future. Kansas is the model” (ReasonTV 2015). And Arthur Laffer, who was a consultant on the Kansas tax cuts along with Stephen Moore, declared the tax cuts “A revolution in a cornfield… Truly revolutionary” (Gowen 2011). So the expectations for the Kansas reform was very high and all involved expressed a great deal of confidence. Brownback, in the same *Wall Street Journal* interview confidently said, “We've got a series of blue states raising taxes and a series of red states cutting… Now let's watch and see what happens” (King, Jr. and Peters 2013).

These high expectations made the reversal of the tax cuts merely five years after they passed all the more difficult for supply-side adherents. For instance, only two years after Norquist declared that “Kansas is the model,” he reversed course, saying, “Kansas is an outlier… If you’re a Republican looking for a model, Kansas is not the model” (Berman 2017). And

Arthur Laffer, after praising the "revolution in a cornfield," also reversed course, saying the state "sucks." "Look at it," he continued, Kansas "doesn't have beaches, it doesn't have palm trees. It doesn't really have a low tax, what is it now, 4.9%, something like that. Take a look at my state, Tennessee. We have the lowest tax burden of any state in the nation, we have the highest growth in employment as a percentage of population of any state in the nation in the last 12 months, we have a budget surplus of $2 billion. Two billion dollars in this little crappy state!" (Rushe 2017). In Kansas, the visibility of the policy, coupled with the visibility of the policy's negative effects, created the structural conditions for a counter-movement.

Fiscal Sociology and Countermovements

Fiscal sociologists argue that taxes are important for understanding social relations (Martin, Mehrotra, and Prasad 2009). Taxes form the basis of a dynamic and ongoing relationship between citizens and the state. In short, taxes are the manifestation of the social contract (Martin, Mehrotra, and Prasad 2009). But taxes are more than just a medium of relations. Tax relations illuminate important aspects of social life and help "define the social and cultural meaning of citizenship" (Mehrotra 2017:285). As Isaac Martin explains, tax policy can "reorient social relations and redirect social exchange" (2019). It follows, then, that specific fiscal approaches reorient social relations and redirect social exchanges in specific, differing ways. This study is particularly interested in understanding how supply-side policy approaches impact or transform social relations. Understanding this process is important because, since Reagan, supply-side has become the leading approach to tax reform for the Republican Party.[2]

[2] To be sure, the Republican Party is not alone in embracing tax policies that could be called neoliberal or supply-side (Berman and Pagnucco 2010). Sociologist Stephanie Mudge (2018), for instance, argues that traditionally leftist parties came to embrace the expansion of the market in the 1980s, bringing the left and right closer together in terms of economic policies.[2] While this is true, there are still important differences between the GOP's embrace of supply-side and the fiscal policies of Democrats and moderate Republicans. Among the most salient difference is the emphasis on the growth potential of tax cuts, meaning lowering

While supply-side is politically narrow in this sense, it is still worth understanding because it produces such massive *effects*. Supply-side tax reforms often result is drastic changes to a tax structure, from lowering rates to eliminating high-income tax brackets and eliminating deductions and credits. The result of drastic supply-side tax reforms translates into dramatic changes to everything government funds. As Monica Prasad explains, “tax cuts affect everything the state can do, by threatening state capacity itself” (2012:352). But more than altering a state’s tax structure, supply-side reforms also change the social *relations* between the “tax state,” public, and the economy. In other words, it instantiates a new form of social contract.

In addition to altering the structure of the tax state, supply-side tax reforms fundamentally alter the social relations of the tax state. Where the Keynesian tax state is one that attempts to navigate the twin perils of accumulation and legitimation (O’Connor 2002), a neoliberal tax state attempts to maintain legitimation *through* accumulation. As a paradigm, supply-side relocates political and social relations to markets, rather than public institutions. This does not necessarily mean that supply-side is anti-state. On one level, supply-side actually aspires to be *pro*-tax state. Chief supply-side economist Arthur Laffer, for instance, famously predicted tax cuts will generate *more* in tax revenue for the government. However, in practice supply-side is very much anti-tax state, a mechanism used for “starving the beast” by restricting government revenues so much that government is forced to shrink. This view is best associated with anti-tax activist

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the rates or eliminating tax brackets will result in increased economic activity which will result in economic growth. Importantly, this view also necessitates the elimination of the type of tax policies that Democrats and moderates tend to favor: special tax breaks and incentives. The tax code is full of “loopholes,” favored by Democrats and Republicans alike (Howard 1997). Tax incentives and tax deductions, such as the home mortgage interest deduction or the state and local tax (SALT) deduction, eat into the tax base. These carve outs go against the dominant “efficiency-based” tax perspective of conservative economists; that of “lowering the rates and broadening the base” (Christensen 2017). As opposed to the efficiency-based perspective on tax policy, supply-siders “promoted a distinct and rather extreme set of ideas about tax policy, which only to a limited degree overlapped with mainstream efficiency-centered economic analysis” (Christensen 2017:40).

Grover Norquist who famously said his goal is to shrink government enough to drown it in a bathtub.

Economic and political sociologists following the work of Karl Polanyi have long noted that economic life is deeply embedded in social relations and therefore there are *social* limits to market-based reforms. Yet, the long-term project of market liberals has been to disembed the market to create an autonomous, self-regulating market. However, as Polanyi noted, attempts to disembed economic relations are a “stark utopia” (2001:3) and are doomed to fail. The central tension in Polanyi’s thought is between his view that market liberalism attempts to disembed market relations from social arraignments and that economic relations are always embedded (Gemici 2007). However, according to sociologist Fred Block and Margaret Somers, Polanyi did not suggest market relations could ever be truly disembedded; rather they are “ideationally disembedded,” meaning that markets are *re-embeded* in different institutional, social, and political arrangements (Block and Somers 2014:155). In other words, dis-embedding is a creative act on the part of market liberalism. Polanyi saw market-liberalism of his day, a precursor to modern-day neoliberalism (Fraser 2011:139), as potentially a source of reembedding that creates institutional arrangements that expose people to increasingly harsh market forces that require them to adjust without public assistance. In other words, market relations are always embedded, but they can be embedded in different institutional arrangements that expose people to the harshness of the market to different degrees.

Dis- or re-embedding creates enormous social, political, and economic instability. Consequently, Polanyi argues, as people are exposed to the effects of neoliberal re-embedding, there is always the possibility of a countermovement for social protection from market forces. “Robbed of the protective covering of cultural institutions,” Polanyi writes (2001:76), “human beings would perish from the effects of social exposure; they would die as the victims of acute social dislocation." The countermovement, Polanyi explained, "can be personified as the action of two organizing principles in society… The one was the principle of economic liberalism, aiming at the establishment of a self-regulating market… the other was the principle of social protection aiming at conservation of man and nature" (2001:138-139). The clash of these two principles leads to "deep-seated institutional strain" (2001:140). However, Polanyi's concept of a countermovement was historically situated and meant to explain a *specific* historical juncture (Kentikelensi 2018:41). As Michael Burawoy importantly notes, "We should not turn Polanyi's double movement into an inexorable law. We need to examine the conditions for its operation" (2003:244). John Dewey also suggests a similar reading of a countermovement, writing "it is not instructive to say that a social movement to one extreme always ends by calling out a swing of the pendulum in the other direction, that there are radicals as well as conservative reactions. The question is one of specific fact." (1929:816).[3] In other words, while a double-movement may be a more generalized process, any given double-movement is specific and context-dependent. Any analysis of a double-movement must ground that analysis in that movement's context. However, Polanyi's insight also affords a greater understanding of contemporary responses to market liberalism. As Block and Somers summarize, the double-movement is created as "market fundamentalists and their allies attempt to construct their ideal world of a self-regulating market system, the destabilizing consequences set off countervailing movements by other groups in society who recognize the need to protect themselves and others from exposure to unmediated market forces" (2014:10).

[3] Dewey's point here is more general and *not* in direct response to Polanyi.

A countermovement does not mean a social movement (Burawoy 2003; Kentikelenis 2018). Rather, it refers to broader social and cultural responses to marketization. Polanyi's concept of the countermovement has been critiqued for being overly normative (Konings 2015), functionalist (Offe 1998:40) and fetishizing society (see Block 2008). Indeed, Polanyi contributes to this misunderstanding by writing that the "countermove against economic liberalism and laissez-faire possessed all the unmistakable characteristics of a spontaneous reaction" (2001:156). However, the ambiguities in Polanyi's thought has proven to be constructive for theorizing contemporary market liberalism (Holmes 2012:471). By suggesting a countermovement is the result of a "spontaneous reaction," Polanyi ignores how this response occurs. In other words, he obscures what social mechanisms bring the countermovement about (Kentikelenis 2018:41). In this study, rather than view the social response to the fiscal crisis in Kansas as arising spontaneously, I argue this countermovement is supported by a pragmatist-inspired social mechanism of collective problem solving.

A pragmatist mechanism is thus "composed of chains or aggregations of actors confronting problem situations and mobilizing more or less habitual responses" (Gross 2009:368). In the case of Kansas, the "chains or aggregations" are seen in the relations between various institutions. The tax cut created a massive problem for many Kansans. Had the effects of the tax cut been isolated only to schools, for example, it is possible the experience of the policy would not have been problematic enough to provoke a larger social response. According to Gross, understanding how mechanisms operate "requires that we grasp how the relevant individuals understand the situations before them and act on those understandings, helping thereby to enact the mechanism" (2009:369).

The analysis in this dissertation proceeds along this line. Taxation is “one of the most widely and persistently experienced relationships that individuals have with their government” (Mehrotra 2017:285). But the centrality of taxes means attempts at institutional change face important constraints. As a formal institution, taxation supports a number of other institutions and organizations which must adapt in response to changes in taxation. I argue the process of adaptation can support or constrain changes in the dominant institution (taxation) based on how that change is experienced by relevant individuals in other institutions and organizations. In the case of the Kansas tax cuts, no sector benefited from the change, thus in every sector, individuals understood the tax cuts as creating a problematic situation which needed to be solved. The effect of this collective problem-solving, in Kansas at least, resulted in a countermovement. By tracing how the tax cuts were experienced in different institutional sectors, I follow recent Polanyian-inspired work which argued analysts “need to adequately trace the micro-foundations of countermovements by grounding analyses in actors’ purposive behavior” (Kentikelenis 2018:42). Actors in Kansas understood the tax cuts as creating a problematic situation. Brownback himself even understood the problematic situation created by the tax cuts, which is why he tried to desperately to obfuscate the effects. Actors in Kansas understood the tax cuts as problematic precisely because of closely knit institutional arrangements at the local level.

Recent theoretical work on countermovements has suggested the concept should be grounded in an understanding of concrete social practices. Empirically, this has meant grounding the analysis of countermovements in local contexts (Kentikelenis 2018). For Polanyi, reactions against the market are rooted in the local (Burawoy 2003:240). And in Kansas, localized experiences of the fiscal crisis, exemplified by the responses of local businesses and schools, shaped the response across the state and hastened the policy’s reversal.

But if extreme supply-side tax cuts provoke responses for social protection, why have other large tax cuts, such as the Reagan or Bush tax cuts, not created the same response? Afterall, the Bush tax cuts had a broad base of public support despite the tax cuts only benefiting the economic elite (Bartels 2005; Hacker and Pierson 2005). Following Burawoy's call to examine the conditions under which a type of countermovement arises (2003:244), I ask under what conditions do tax cuts provoke a countermovement? My argument is supply-side punctures the social limits of fiscal relations in the absence of the depoliticizing capacity of financialization. As Krippner notes, depoliticization removes certain questions from the realm of debate "to the realm of fate" (2011:145). And the politics of the economy is particularly susceptible to depoliticization when the market is invoked as a quasi-natural force or even as a deity (Cox 2016). In Kansas, the severity of the fiscal crisis, coupled with the lack of financialization, *re*politicized the economy by bringing economic policy back into the realm of political debate.

Fiscal Citizenship

In repoliticizing the economy, the Kansas tax cuts reinvigorated a sense of fiscal citizenship across the state. Fiscal citizenship, originally coined by economist Richard Musgrave in 1996, but recently elaborated by Lawrence Zelenak (2013), refers to the practice of taxpaying as well as becoming informed about tax and spending policies (Zelenak 2013:17). As Zelenak argues, the process of taxpaying serves "the important civic purpose of recognizing and formalizing the financial responsibilities of citizenship" (2013:4). Neoliberalism broadly opposed a fully democratic idea of citizenship (Somers 2008; Brown 2015). According to political philosopher Wendy Brown, "when the domain of the political itself is rendered in economic terms, the foundation vanishes for citizenship concerned with public things and the common good" (2015:38). The Kansas tax cuts were an assault of fiscal citizenship in two main ways. First, the tax cuts fully exempted business owners from paying the highly visible income tax, thus eliminating owner's capacity to exercise fiscal citizenship. But secondly, Brownback began promoting less visible sales and consumption taxes. Visibility and invisibility of taxes have consequences for fiscal citizenship because it is the visibility of a tax which "calls the taxpayer's attention to his [sic] status as a taxpayer and a purchaser of civilization" (Zelenak 2013:4).

Taxation has often been neglected in contemporary understandings of citizenship, but the erosion of the tax base through neoliberal economic policies corresponds with a weakening of citizenship (Turner 2016:685). Neoliberalism and market liberalism *contractualizes* citizenship and "collapses the boundaries that protect the public sphere and civil society from market penetration" (Somers 2008:2-3). Somewhat paradoxically, the tax cuts in Kansas promoted a citizenship concerned with public things and reestablished the boundary between the public sphere and the market.[4] Both the design of the policy, as well as its discursive components ("shot of adrenaline," "experiment"), Kansans were primed to identify and trace the fiscal crisis back to the tax cuts, despite the variety of techniques the Brownback administration used to claim otherwise.

Data and Methods

I conducted an ethnographic case study in Kansas between 2006 and 2009. Case studies are an in-depth research approach that utilizes various methods and data sources to investigate

[4] Wendy Brown (2015) also notes the neoliberal erosion of citizenship. According to Brown, the "replacement of citizenship defined as concern with the public good by citizenship reduced to the citizen as *homo oeconomicus* also eliminates the very idea of a people, a demos asserting its collective political sovereignty" (2015:39).

and capture the complexity of the object of study and situate it within its broader context (Yin 2014:16; Stake 1995). Though a case study is an investigation of a single social phenomenon, cases are often an "instance of a broader phenomenon" (Orum, Feagin, and Sjoberg 1991:2). It is up to the researcher to distinguish what the larger issues the case informs (Luker 2008:51-75). A case is always an instance of *something* and single case studies are appropriate when the given case is a critical or extreme case of a culturally or sociologically important phenomenon (Yin 2014:51-53). Cases can be an instance of a population or a case can be an instance of a conceptual property (Abbott 1992:53).

For this dissertation, I view Kansas as an exemplary instance of supply-side economics and neoliberal policies. The tax policy passed in Kansas is the clearest attempt yet to make the idea of supply-side economics true (Mazerov 2018). Moreover, case studies are often crucial for "anticipating the range of objective possibilities that could follow" from the case (Sjoberg, Williams, Vaughn, and Sjoberg 1991:67). While the tax policy in Kansas was repealed, several elements were adopted nationally by the Republicans in the 2017 Tax Cuts and Jobs Act (TCJA). As such, Kansas is not only a critical case in understanding neoliberal politics it is also crucial for understanding the possible effects of the TCJA.

Even though cases are often a single phenomenon, they are also multi-faceted. Thus, case studies rely on various sources of data that are brought into conversation with each other and used to understand each facet of the case. Data for this dissertation are drawn primarily from 110 interviews conducted over the course of my field work with a variety of informants, consisting of Brownback administration officials, current and former Kansas lawmakers, school district officials, local chambers of commerce, think tank staff, and staff of special interest and lobbying firms. Table 1 provides an overview of my informants. Interviews were conducted both in-person and by phone and were recorded with participant's consent. The average length of an interview was 61 minutes, though interviews ranged from 148 minutes to the shortest of 10 minutes. In cases where my informant declined to be recorded, notes were taken during the interview or immediately following the conclusion of the interview. I also asked participants if they consented to have their full name used in this project. In cases where my informant declined, I have used an anonymized pseudonym or simply refer to their organization. Additionally, because this fieldwork took place over two years, the context in which informants provided information changes in ways that might make it difficult or impossible to know what may prove harmful (Pacewicz 2016:319). As such, I have exercised an abundance of caution and used my best judgement to anonymize respondents even in cases where they granted permission to be identified at the time. The study was submitted and approved by the IRB at the University of Kansas.[5]

Table 1 Research Participants

Sector	Number	Percent of Total	By Type	Number
School Organizations	21	19%	Education Advocacy Organizations	3
			School Officials	18
Business Organizations	26	24%	Chambers of Commerce	21
			Other Business	5
Advocacy Organizations	19	17%	N/A	19
Lawmakers (Current and Former)	31	28%	Senators	10
			Representatives	21
Administration Officials	8	7%	N/A	8
Miscellaneous	5	5%	N/A	5
TOTAL	**110**	**100%**		110

[5] The IRB identification numbers for this study are: STUDY00003554 (CR00004888, CR00006048, CR00007396); STUDY00141747.

I sampled participants differently depending on their affiliation. However, my sampling strategy broadly followed the “theoretical sampling” technique of grounded theory. This approach highlights that it is “concepts and not people” that are sampled (Corbin and Strauss 2015:135). Marcus notes a similar technique called “follow the practice” (Marcus 1995:105-113) where you follow the movement of your case through different contexts. This process is essentially question-driven; researchers “go to places, persons, and situations that will provide information about the concepts they want to learn more about” (Corbin and Strauss 2015:135). This sampling technique allows for flexibility in answering the research question because it allows the researcher to adjust the parameters of the study in light of either new information or the occurrence of new events. This flexible research design also allows for “abduction,” allowing me the opportunity to incorporate surprises or anomalous during the research process (Tavory and Timmermans 2014). I continued interviewing until I reached saturation, meaning that no new categories, themes, or theoretical leads were emerging. My research design focused on the policy domain of the Kansas tax cuts. Within this domain, my analysis focused on actors, organizations, and practices centrally involved in the policy. I allowed the policy actors most crucial to understanding the policy to emerge inductively and abductively over the course of my research.

Respondents were drawn from different institutional groups that emerged over the course of my research. Once these themes, or groups, emerged as important to the study, they transformed from themes to sites. This multi-sited approach (Macrus 1995) then allowed me to investigate the relationship actors and organizations in each site had with the state’s fiscal crisis. To study these sites more systematically, I purposively sampled actors in each area using theoretical sampling as well as with other well-known sampling strategies. For instance, I purposively sampled policymakers by identifying key lawmakers associated with fiscal policy. I focused on members of the Kansas House and Senate taxation committees. Of the possible 23 lawmakers on the House Tax Committee and 9 on the Senate Tax Committee, I conducted interviews with 17 representatives and four senators. Additionally, I interviewed former lawmakers sampled primarily through a snowball technique. I also used snowball sampling for interviews conducted with representatives of many of the policy and advocacy organizations. Kansas is a small state and the number of lobbyists is small enough that I was able to gain referrals from respondents. I sampled local chambers of commerce using criterion sampling. My focus on chambers emerged abductively (Tavory and Timmermans 2014) from observations in tax committee. The criteria I imposed for sampling chambers was based on their political activity and their representation of local business communities. The chambers I interviewed were the largest and most politically active chambers across the state. Finally, school district officials were randomly sampled.[6] Using a list of all districts in Kansas, districts were randomly sampled based on their student population and the change in enrollment. This produced six different categories (small/increasing; medium/increasing; large/increasing; small/decreasing; medium/decreasing; large/decreasing) from which districts were sampled.

Interviews, however, are not the only data source I rely on. I triangulated my interview data with ethnographic observations conducted at Kansas House and Senate tax committee hearings as well as rallies and other events centered around the tax cuts. I also conducted numerous informal conversations around the state and around the Kansas statehouse. Additionally, I collected and analyzed local newspaper accounts, blog posts, and Twitter posts over the period of the policy (2009-2017). I collected budget documents and policy handouts

[6] This portion of the project was done with the collaboration and support of Emily Rauscher.

produced by state agencies and other policy actors, such as think tanks. Finally, I also use public opinion and survey data produced by the Docking Institute at Fort Hays State University.

Interviews were transcribed and coded for emergent themes using Atlas.ti. According to a grounded theory approach, coding usually proceeds in three main phases. Open coding, the search for themes that can be developed further, is followed by axial coding where the researcher systematically examines a promising theme (Tavory and Timmermans 2014:53-54). Axial coding then gives way to selective coding "in which the researcher works out one theme in a more formal theoretical way" (Tavory and Timmermans 2014:54). However, coding is also a "cyclical act" (Saldaña 2016:9). Thus, the findings of selective coding often motivated me to return to the field or to the data where the coding process began again.

Chapter Two:
How We Got Here

Sam Brownback came into office committed to reforming the state's income tax. To understand how dramatic the 2012 tax cut was, both politically and in terms of policy, this chapter traces the history of the Kansas income tax and the legislative process of how Brownback got the tax cuts passed. This chapter shows two things. First, in terms of policy, the tax cuts diverged sharply from the historical development of the income tax. Kansas has historically relied on the "three-legged stool" approach to taxes, exemplified by an approximately even distribution of property, sales, and income taxes. The 2012 tax reforms essentially removed one of the legs of the stool. And second, while Republicans are committed to lowering taxes, in Kansas, intra-Republican splits between moderates and conservatives created a legislative hurdle for Brownback. Instead of tax cuts gaining majority Republican support, the size of the tax cuts split the Party, forcing conservative legislators to enact innovative maneuvers to ensure the passage of the tax cut policy.

Establishing the Kansas Income Tax

Kansas's tax structure consists largely of three main taxes: sales tax, income taxes, and property taxes. Established in 1859, the property tax is the oldest tax in the state. Indeed, property tax is the oldest tax in America. And like the country as a whole, at one point the state financed its whole operation solely on property taxes. However, a combination of economic crises, changing expectations about the role of government, and federal policies eventually led to changes in the general property tax, and thus a diversification of the overall tax structure of the state. By the early 1900s, there was a general trend away from funding government administration towards funding state services. For instance, Eric Englund's 1925 report, *The Trend of Real Estate Taxation in Kansas from 1910 to 1923*, details that, while taxes levied for the purposes of administration increased 6.5 percent during those years, taxes levied for the purposes of education rose 84.8 percent and for roads by 100.1 percent (Fischer 1996:151). As expenditures on schools and highways increased, so too did property taxes, particularly on farm land. Between 1910 and 1923, tax on farms increased 167.8 percent (Fischer 1996:150). As a result of high farm taxes, farmers – an important constituency in Kansas – began rallying for lower property taxes.

In 1929, the Kansas Tax Commission released another report which, unlike an earlier 1901 report, focused not on how to remake the property tax, but instead focused on identifying other potential sources of revenue, specifically an income tax and a severance tax on oil and gas (Fischer 1996:156). Eric Englund's report concluded by recommending Kansas adopt an income tax (Fischer 1996:147). The merits of the income tax, according to the Commission report, rested on the taxpayer's ability to pay based on income as well as its ability to tax money not captured under the property tax (Fischer 1996:155). They recommended implementing a graduated income tax starting at 1.5 percent on the first $1,000 of income and increasing to 5 percent on income greater than $10,000 (Fischer 1996:156). In addition to an income tax, the commission also recommended implementing a 2 percent severance tax on oil and gas and mineral production. This tax would help fund schools (the commission recommended using one-third of the collected revenue to return to school districts) thus lowering the property tax (Fischer 1996:156). The commission also considered, but ended up rejecting, recommending a sales tax and a bank tax. These taxes, particularly the sales tax, were said to have merit, but in the end the commission decided they would be nearly impossible to implement effectively (Fischer

1996:157). Not all of the 1929 Commission's recommendations were taken up immediately. The recommendations in the report, nonetheless, laid the foundation for the modern Kansas tax structure.

Beginning in the 1930s, partially as a result of the commission report and partially because of other political factors, Kansas' tax system began to change and become more diversified. The development of the Kansas income tax is strongly tied to the emergence of Kansas populism in the late 1880s and early 1980s. Populists emerged in Kansas in the wake of agricultural collapse in the early 1880s. Faced with drought which caused crops to fail, grain prices and land values to all fall, many farmers, already saddled with debts,[7] lost their farms to foreclosure.

Motivated by a sentiment that the state had not done enough to help during the farm crisis, farmers began to organize a political movement aimed at creating egalitarian reforms and challenging Republican dominance in the state. The movement, which eventually became the People's Party, advocated for a variety of political and economic reforms. Among the list of reforms the populists wished to advanced included tax reform. Specifically, the populists believed existing tax policy unfairly benefited the wealthy. The property tax, which was still the only tax at the time, fell heaviest on farmers while other major landholders, especially the

[7] Two major agricultural disasters struck Kansas prior to the rise of populism. First, was the drought of 1860 and second was the grasshopper invasion of 1874. These disasters might have put people off from migrating to Kanas except pamphlets and brochures sent to people back east convinced enough people that the drought was an anomaly – a once-in-a-lifetime event. And, for a time it seemed like it might be the case. In the late 1870s and early 1880s, the amount of rain *did* increase. This, by accounts, lead to a general overabundance of confidence in the future. As McNall explains, "Convinced that their prosperity depended on the railroad line, towns would compete with one another over the size of the bond issue they were willing to underwrite" 1988:75). As such, some towns held amounts of debt that exceeded the assessed value of the entire town (McNall 1988:75). Farmers, too, felt comfortable taking on huge amounts of debt. McNall notes that in 1890, for instance, 60.23 percent of all acres in Kansas were mortgaged (Compared to 28.86 percent nationally). Further, the amount of debt on Kansas farmland stood at $175 million compared to just $90.5 million in neighboring Nebraska. This bubble eventually burst, setting up the state for the populist farmer movement.

railroads, were usually not taxed. Populists advocated for taxes on railroads and bondholders, but, additionally, they also strongly advocated for a graduated income tax.

In the 1890s, the populists swept into power in Kansas. However, it would take time before they would attempt to implement their ideas into policy, particularly with taxes. Indeed, "Kansas progressives… showed little interest in a state income tax before 1919" (Flentje and Aistrup 2010:177). By 1919, however, Progressive Republican Governor Henry Allen proposed enacting a graduated income tax and the legislature passed an amendment that would have allowed the state to levy a personal income tax. But in 1920, Kansas voters rejected the amendment (Flentje and Aistrup 2010:177). Another income tax amendment was proposed in 1923 by Democratic governor Jonathon Davis. However, this time the legislature, dominated by Republicans, rejected the idea (Flentje and Aistrup 2010:177).

By 1924, however, major agricultural lobbying groups, such as the Kansas Farm Bureau, became involved in the fight for the income tax and began lobbying lawmakers to enact an income tax as a way to appease the property tax burden on farmers (Flentje and Aistrup 2010:177). As a result of this lobbying pressure, progressive Republican Clyde Reed, elected governor in 1928, promised to enact an income tax. The legislature approved an amendment to be put to Kansas voters who again rejected it in a 1930 referendum. The Farm Bureau, aided by the Kansas Chamber of Commerce, however, continued to lobby hard for the legislature to resubmit the amendment to voters. In 1930, Democrat Harry Woodring was elected and the called for resubmission of the income tax question to voters. The appeal for resubmission succeeded in passing the legislature again. The income tax vote was held in 1932, which was also a gubernatorial election year. Woodring and his opponent, Republican Alf Landon who would win the election. When the income tax question was finally voted on, the fourth attempt at passing it, voters approved the adoption of a state income tax with 58 percent of the vote (Fischer 1996:159). Landon took the income tax vote as a mandate and, while the income tax ran into resistance from business groups who lobbied instead for a sales tax, on the last day of the session, Governor Landon signed the bill and introduced a personal income tax and a corporate income tax (Flentje and Aistrup 2010:178). The initial income tax was a graduated income tax from 1 percent of income up to $2,000 up to 4 percent on income over $7,000 (Fischer 1996:160). Corporate income was taxed at 2 percent (Fischer 1996:16).

The Three-Legged Stool

The new state income tax, as well as the state sales tax which was introduced in 1937, effectively diversified the state's tax structure, reducing Kansas' dependence on the property tax. For instance, in FY 1930, the property tax comprised 82 percent of state and local taxes in Kansas. In FY 2017, however, property taxes comprised only 34 percent (Kansas Legislative Research Department 2017). While there were adjustments over time, the state's income, sales, and property tax rates remained largely unchanged for decades. However the most impactful changes that have occurred to the tax structure have occurred largely due to school finance litigation, and in particular the 1992 school finance lawsuit. The 1992 lawsuit is noteworthy because it creates the tax structure that Brownback tried to change in 2012. The 1992 lawsuit will be discussed further in Chapter Five, however, for now it is worth explaining that the 1992 lawsuit established what is known as the "three-legged stool."

Prior to the 1992 school funding lawsuit, school property tax rates across the state varied dramatically, from a low of 9.12 mills in Burlington, where the state's only nuclear power plant is located, to a high of 97.69 mills in Parsons, Kansas (Kansas Legislative Research Department

2017:1). This discrepancy in mill rates meant that taxpayers in Burlington were paying significantly less than taxpayers in Parsons to generate the same amount of property tax dollars. For instance, for a property in Burlington with an assessed valuation of $50,000, the property tax bill would be around $456. However, the same valued property in Parsons would generate a property tax bill of around $4,885.[8] The 1992 school finance legislation removed this discrepancy by establishing a uniform mill levy across the state. In equalizing mill rates, the 1992 school funding law fundamentally changed the composition of the Kansas tax structure, particularly from the point of view of the taxpayer. The post-1992 tax system established an approximately even distribution of tax burden across state and local property, sales, and income taxes. In FY 2000, for instance, property taxes accounted for 31.3 percent of state and local tax revenue while income taxes accounted for 27 percent and sales taxes accounted for 28.6 (Kansas Legislative Research Department 2000:8).

This relative balance between the three taxes resulted from the 1992 school finance law, but it was also institutionalized by the 1995 Governor's Tax Equity Task Force. The Task Force set out several objectives and recommendations for policymakers. Among the eleven objectives, the Task Force emphasized Kansas needs to "maintain its enviable reputation as a fiscally responsible state" and any future "tax revision should not unduly erode the tax base" because "Kansans should be able to rely upon a stable tax policy" (1995:13). The Task Force summarized their findings by stressing "The state and local tax system should be balanced and diversified. A diversified tax system offers a blend of economic tradeoffs. Because all revenue sources have their weaknesses, a balanced tax system will reduce the magnitude of problems caused by over reliance on a single tax source. It will also result in lower rates on each tax and reduce the

[8] For a discussion of the politics of property tax assessment, see Martin (2008:)

pressure of competition from other states that have lower rates for a particular tax" (1995:13). The balanced and diversified approach to tax policy in Kansas, established by the 1992 school funding lawsuit and institutionalized in 1995 persisted, more or less unchanged, until the election of Sam Brownback.

"There gets to be a point in time when the consequences of not raising taxes is greater than raising them."

The 1995 Report on Tax Equity also highlighted that "revenue system must be able to weather economic recessions to preserve some stability in the funding of essential services" (1995:12). A three-legged stool approach to fiscal policy "should help stability in times of economic uncertainty," the Report suggested. However, the size and scope of the Great Recession pushed this claim to its limit.

Like many other states, the Great Recession hit Kansas hard. In FY 2010, 34 states, Kansas included, had budget imbalances greater than 10 percent of their budget (National Conference of State Legislatures 2009). Job losses exacerbated budget deficits. Between November 2007 and July 2009, Kansas' unemployment numbers doubled from 4 percent to nearly 8 percent. With mounting unemployment, states lost out on revenue from income tax revenues. With the loss of jobs came a loss of revenue for the state in the form of lost income tax receipts. Reduced purchasing power among the public also translated into lower sales tax receipts. States across America responded to the Recession in a variety of different ways, either by enacting mid-year across-the-board budget cuts or increasing revenue through increased taxation (Campbell and Sances 2013). Lawmakers responded to Kansas' fiscal situation by enacting both tax increases and budget cuts. However, Kansas was also forced to resort to short-term borrowing. Short-term borrowing usually takes the form of a certificate of indebtedness which operates essentially as an "IOU" for certificate holders.

On Monday February 16, 2009, state budget director Duane Goossen indicated that the state had only $10.4 million in the state treasury – well short of the $24 million needed by *that* Friday for the state to make payroll and begin issuing income tax refunds. Democratic Governor Kathleen Sebelius, who had indicated she did not want a tax increase, requested from the State Finance Council a certificate of indebtedness to transfer $225 Million from other state funds into the State General. However, her request, which would usually be routine, faced stiff opposition from Republican leaders in the House and Senate. The Republican leadership, Steve Morris in the Senate and Mike O'Neal in the House, exploited the partisan makeup of the State Finance Council (6 Republicans and 3 Democrats) to force Sebelius to sign the GOP's budget-rescission bill, cutting $300 million from the current year's budget, before the transfer would be approved. The Republican leadership's argument was that it was illegal for the governor to issue new debt before the budget was balanced.[9] The bill, which Sebelius claimed awaited a veto, made large, across-the-board cuts to all state spending (3.4 percent reduction in total), including K-12 education. It was the K-12 cuts that Sebelius declared unacceptable, particularly because there was only four months left in the school year. However, not wanting to be responsible for being unable to issue tax refunds or pay public employees, Sebelius signed the budget cuts, but line-item vetoing some of the steepest cuts to education.

During the 2009 legislative session, rumors were circulated widely that Sebelius could be tapped as Obama's Secretary of Health and Human Services. Those rumors proved to be true and Sebelius resigned her position as Kansas governor on April 28, 2009. She was succeeded by her

[9] However, the council had previously allowed the state to borrow twice before during that fiscal year in the amounts of $550 million and $250 million (the Governor had requested $400M, but the GOP only allowed $250M).

lieutenant Governor Mark Parkinson, former chairman of the Kansas Republican Party who switched to the Democratic Party to be Sebelius' running mate in 2006. Sebelius had succeeded in balancing the budget through a combination of budget cuts and other transfers before her departure. However, the following year's budget was still projected to be unbalanced. The rest of the 2009 session was devoted to resolving the projected $328 million dollar projected budget shortfall. In his first and only address[10] to the legislature, Parkinson urged "shared sacrifice" to balance the budget (Carpenter 2009a). A week later the senate sent Parkinson a budget bill which included a mix of budget cuts (2.75 percent across-the-board cut) and tax increases ($61 million) and revenue pulled from other sources.[11]

By June 2009 it was clear Parkinson's proposal would be inadequate and even more budget cuts would be needed. Parkinson decided to address the budget cuts himself rather than call a special legislative session. On the last day of the 2009 fiscal year, Parkinson announced another round of budget cuts, followed in quick succession by a further 2 percent cut to government agencies and still another round of cuts ($259 million) in November 2009. In total, over five rounds of allotments, approximately $1 billion was cut from the budget in 2009 under Democrats Sebelius and Parkinson. The last round of budget cuts, however, hit what Parkinson called "basic services," prompting him to apologize to Kansans, saying he was "genuinely sorry" (Associated Press 2009). These cuts hit public employees and education spending particularly hard, forcing public employees to take unpaid furloughs and schools to absorb another $36 million in cuts. In response to the extreme austerity caused by the fiscal crisis, Parkinson urged

[10] The speech was seen as hugely successful not least because he delivered it without the help of a teleprompter. Many of the legislators remarked how passionate the governor seemed, passion which no doubt helped his legislative agenda during this tough time.

[11] "The legislation includes a series of one-time revenue enhancements, including $50 million in casino development fees and the withholding of $25 million promised to local governments to offset business tax cuts. The last-minute $61 million tax measure is anchored by a $35 million state tax amnesty program and $8 million in reductions to tax credits for businesses and others" (Carpenter 2009b).

Kansans to “dig deep” and contribute to churches and charities to lessen the impact (Rothschild 2009).

After several rounds of budget cuts, however, discussions began in the Kansas legislature over the question of whether a tax increase would be necessary to fund basic government services. Parkinson, who still was faced with a budget shortfall of $300 million on the eve of the 2010 legislative session, promised to not cut education further and indicated he would entertain the idea of a tax increase to help balance the budget. “There gets to be a point in time,” Parkinson said, “when the consequences of not raising taxes is greater than raising them” (Carlson 2010).

When the 2010 legislative session began, Parkinson proposed a temporary one-cent sales tax increase as well as an increase to the cigarette tax. Parkinson’s tax bill raised an estimated $308 million in sales tax by taking the sales tax from 5.3 percent to 6.3 percent. After three years, the sales tax was schedule to drop to 5.7 percent with 0.4 percent going to further fund the state highway fund. In addition to the sales tax increase, Parkinson also requested $69 million in extra tobacco taxes in the form of a 79 cent per pack increase to the cigarette tax. Along with Kansas, thirteen other states (and the District of Columbia) adopted temporary tax measures between 2008 and 2011 in response to the recession (Francis and Moore 2014). However, for Democrats and Republicans, adopting a sales tax increase was cause for concern. Democrats objected to the state relying on regressive sales taxes to further fund government. Republicans, such as House Speaker Mike O’Neal, asserted, “Raising taxes, either directly or through elimination of tax incentives for business expansion and development, would stifle growth and recovery by taking precious capital out of the hands of the businesses that remain” (Carpenter 2010a). In contrast to O’Neal’s view, however, Wichita State University economist John Wong produced a report which claimed that the economic consequences of more budget cuts would outweigh any job losses from increasing the sales tax. According to the report, a higher sales tax would diminish economic output by $363 million compared to $420 million if the state pursued further budget cuts. Wong's report was met with resistance from conservative economists, such as Art Hall, who would have input in the development of Brownback tax policy. The powerful Kansas Chamber of Commerce also came out against the tax increase and criticized legislators who supported it, saying, "the Legislature has failed to address the needs and wishes of the business community. It has instead catered to the needs of those at the government trough" (Rothschild 2010a). Despite these political challenges, the reality of the budget became nearly overwhelming. In April 2010, for instance, revenue forecasts were revised downward which showed a larger projected shortfall of $510 million, up from $450 million. For supporters of Parkinson's plan, the budget shortfall made the case for passing the temporary sales tax. Opponents, however, continued to insist raising the sales tax, even temporarily, would hurt small businesses and dissuade them from hiring.

In the end, Parkinson's plan prevailed and the legislature enacted the sales tax increase. Conservative Republicans, who had been united against the tax increase, continued to oppose it as a job killer. House Speaker, Mike O'Neal said after the sales tax increase passed that it was just "big government digging into the pockets of hard-working Kansans in an attempt to make government stronger at the expense of the private sector" (Carpenter 2010b). Conservative Senator Susan Wagle argued that a higher sales tax would encourage sales tax avoidance in the form of people crossing the border to do their shopping in Missouri. The sales tax hike also riled the Kansas Chamber, who vowed to punish those lawmakers who voted it: "In the coming weeks, we will be working tirelessly to expose those who voted to impose higher taxes on job creators and families" (Rothschild 2010b). Likewise, the state director for the Kansas chapter of the National Federation of Independent Businesses (NFIB) said "Our members are furious with lawmakers for raising taxes now" (Rothschild 2010c). Moderate Republicans and Democrats, however, praised the Governor and the tax increase. Indeed, after casting his vote in favor of the tax increase, Democrat Tom Hawk remarked, "Perhaps I won't be popular, but I think perhaps it's my chance to do what is right" (Hollingsworth 2010). The new sales tax rate took effect July 1, 2010.

The political battle over the temporary sales tax increase is an important episode because it directly establishes the context in which the Brownback tax cuts take place. While conservative lawmakers and political groups railed against Parkinson's proposed sales tax, these same actors would quickly change their tune. As Brownback would begin to make the case for the radical reduction in state income tax, many of the same conservative lawmakers and lobbyists would shift towards *advocating for* higher sales taxes as a way to buy down the state income tax.

The Election of Sam Brownback

Governor Parkinson stayed true to his word and refused to run for Governor in 2010. Instead, Democratic state senator Tom Holland ran against the U.S. Senator from Kansas, Sam Brownback. Brownback is a seasoned and ambitious politician. He got his political start in 1986 when he was appointed as the Secretary of Agriculture for the State of Kansas. In 1994 Brownback was elected to the U.S. House of Representatives. Then, in a special election in 1996 to replace Senator Bob Dole's vacated seat, Brownback was elected to the U.S. Senate defeating both Sheila Frahm (who was appointed to that seat by Bob Dole and backed by the GOP establishment) and Democrat Jill Docking in the general election. In 1998 Brownback again ran for the Senate seat, winning reelection for a full six-year term. He was reelected again 2004. In 2006, Brownback took aim at the presidency. During his presidential campaign, he described himself as "an economic, a fiscal, a social and a compassionate conservative" (Sidoti 2007). Brownback's presidential run, however, was lackluster and ended even before the Iowa caucuses. He dropped out and ended up endorsing John McCain.

After his unsuccessful 2008 presidential campaign, Brownback turned his attention back to Kansas. Brownback had promised to only serve two terms in the U.S. and towards the end of 2008, he announced he would be retiring in 2010. But he was not done with political office. On June 1, 2010 Brownback officially announced he was running for governor of Kansas. As his running mate, Brownback chose Jeff Colyer, a medical doctor who had previously served in the Kansas House of Representatives and Senate.

Brownback easily[12] won the GOP primary and during his victory speech declared, "We can't keep going down the path of more taxes, more regulation and more litigation" (Diepenbrock 2010). As the general election campaign began, Brownback unveiled the "Roadmap for Kansas," which included five goals Brownback would prioritize as governor. These goals included increase net personal income, increase private sector employment, increase the percentage of fourth graders reading at grade level, increase the percentage of high school graduates who are college or career ready, and decrease the percentage of Kansas' children who live in poverty. Tom Holland, for his part, labeled Brownback's plan the "roadmap to ruin." In addition to the "Roadmap," Brownback also indicated that he would rewrite the school finance formula, freeze state spending, and establish an "Office of the Repealer." Indeed, the Office of

[12] Brownback's primary opponent was Joan Heffington. Brownback won the primary with over 80 percent of the vote.

the Repealer garnered national media attention and was a centerpiece of his campaign. "People just love the idea," Brownback said remarked (Davey 2010).

Brownback had made his name nationally championing socially conservative causes, such as opposition to abortion or same-sex marriage. However, during the gubernatorial campaign, Brownback made regulatory and fiscal policy his main priority. For instance, during his campaign bus tour around the state, Brownback told a group of real estate agents in Wichita that he wanted to reform the tax system and in Manhattan he laid out his plan for rural 'free opportunity zones' (Associated Press 2010a). However, his view on taxes was not unfamiliar. While he was still a U.S. Senator and chairman of the Senate Appropriations committee, Brownback proposed using the District of Columbia as a "laboratory" for testing out the merits of a 'flat tax.'[13] Washington, D.C., Brownback said, would be a perfect location to try out this experiment because it was not a state, though he did suggest that "If D.C. feels bad about being a laboratory in the federal district sense of it, then I would offer to pair them with Kansas," (Washington Times 2006). Brownback would later echo this type of language, famously referring to his tax policy as an "experiment."

In the end, the campaign for governor was never very close. Brownback never polled below 50 percent and he also out-fund raised his Democratic opponent $1.2 million to $282,741 by the end of July 2010 (Associated Press 2010b). Brownback won the election decidedly, winning with 63.3 percent of the vote (to Holland's 32.2 percent).[14] Brownback's campaign and subsequent victory was seen, even at the time, as a turning point in Kansas politics. The state was moving away from its politically moderate roots. Indeed, popular imagery from political commentators like Thomas Frank (2004) aside, Brownback was the first conservative elected to

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[13] A flat tax refers to a regressive tax system that applies the same tax rate to every taxpayer regardless of their level of income.

[14] Brownback also outraised and outspend Holland; Brownback spent 2.68 million compared to $660,000 for Holland.

the governorship “in at least half a century” (Sulzberger 2010). Moderates and conservatives in the Republican Party in Kansas have battled for the soul of state for decades, but Brownback’s victory seemed so decisive that out-going governor Mark Parkinson[15] declared, “there will never again, ever, be a moderate Republican governor. Those days are over” (Sulzberger 2010).

Brownback Takes Aim at Taxes

After his victory, Governor-elect Brownback saw his number one priority as establishing a “growth agenda” for a state which was still reeling from the Great Recession (Carpenter 2010c). Indeed, in January 2011, prior to Brownback’s swearing-in, Kansas’ projected budget shortfall stood at $550 million. However, the state’s economy was starting to recover and tax receipts began to come in above forecasted projections. In February 2011, for instance, the projected deficit was lowered to $492 million. However, in line with conservative economic principals, Brownback identified the state’s tax policy as ripe for reform. “What I have said is we need to look at the overall tax structure in this state and see whether we’ve got the right mix of income, sales and property taxes, which I’m not convinced we have the right mix to have a pro-growth position,” he said after his election victory (Rothschild 2010d). State income taxes are not a particularly hated tax. Indeed, public opinion polls have “routinely indicated that the public rates [the state income tax] as the most acceptable form of taxation” (Brunori 2016:81). Of the portfolio of taxes that state and local governments use to generate revenue, the property tax has the longest history of being the most hated (Martin 2008; Fisher 1996). However, Brownback was focused on the income tax, explaining “I'm interested in is reducing those taxes that hinder

[15] Parkinson had, earlier in the Brownback/Holland campaign, tried to sway the electorate towards moderation by stating at a fundraiser, "The future of the state is great provided that we stay on this path that we've been on, which is a centrist government that is pretty reasonable, that balances budgets, but makes wise investments… If we continue on that path as opposed to bumper-sticker solutions of the far left or the far right, I think we will do very well as a state” (Associated Press 2012a).

growth in Kansas, and not all tax cuts are created equal when it comes to growth policies… The individual income tax is, probably of any thing, the most sensitive area to growth" (Milburn 2010).

During the transition period before he took office, Brownback appointed a variety of officials to help develop the policies he would pursue as governor, including the tax policy. Among those officials serving on the transition team was Nick Jordan, who the Governor would later appoint as Secretary of Revenue. Jordan was an enthusiastic supporter of the Governor and the tax plan. During the transition, Jordan was quoted as saying "Our tax policy will play an important role in making our state's economy globally competitive" (Carpenter 2010d). It was during this transition period that the foundation of Brownback's tax policy began to take shape. Jordan, who served on the transition team, recalled,

> During the transition time period and other times, we looked at other states across the country, and what states are really seeing growth in their economy, meaning jobs, company relocations and entrepreneurship, which is another thing I was big on in the Kansas Senate… So we looked around the country on those three facts: Who's doing the job creation? How's the population in-migration and out-migration? And then how do you develop an environment for small business that really helps them grow? We saw that the states like Florida, Texas in particular… and South Dakota, all of those states have a zero personal income tax… So, we thought, okay, how do we move that way, how do we start moving that way, and started developing this package to lower personal income taxes and particularly on small business.[16]

Another important actor in the development of the tax policy was Brownback's Budget Director, Steve Anderson. Anderson, who had previously worked at Americans for Prosperity (AFP) preparing "model" state budgets, often criticized states, such as Kansas, for "unconstrained" state spending and promoted deep income tax cuts (Rothschild 2011a). Anderson and Jordan, along with others, would become the team responsible for crafting the Governor's plan.

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[16] Interview conducted March 29, 2016

During his first State of the State, Brownback declared a “reset” to the tax code: “[W]e need a tax code that encourages investment, income growth, and job creation. I pledge to work with the Legislature on resetting our tax code, particularly with an eye toward lowering income tax rates” (Kansas State Library n.d.). Keeping with his campaign promise to freeze state spending, Brownback suggested cutting total state spending by $750 million declaring, "Our public finances strain under the weight of commitments beyond our present means,” (Hanna 2011a).

To fulfil his ambitious conservative agenda, Brownback pursued several different proposals, such as cutting state employee pay by 7.5 percent, eliminating state funding for the arts, move the state’s Human Rights Commission into the Attorney General’s office, repeal in-state tuition for undocumented students, reduce the EITC, and abolish the State Board of Education and the University Board of Regents. Many of these types of proposals went nowhere and were primarily meant to “send a message” or signal to state agencies that government had changed. The newly elected conservatives were testing out their ideas and seeing what was possible. While many of these proposed rules were not passed, or even introduced, legislatively there was a flurry of rule changes. For instance, the House altered a rule which now allowed caucus meetings to be held secretly, away from the public or press. The House also adopted a pay-as-you-go, or “paygo,” rule which would require spending increases to be matched by cuts elsewhere (Rothschild 2011b). All of this was part of what one reporter for *Stateline* described as “the boldest agenda of any governor in the nation” (Gramlich 2012).

As the momentum towards tax income tax cuts increased, the Brownback administration and its political allies, such as the Kansas Chamber of Commerce, began to shift their rhetoric regarding other taxes. For instance, while the Kansas Chamber of Commerce had struggled against the temporary sales tax in 2010, the Chamber shifted towards *favoring* the sales tax in order to reduce or eliminate the income tax. This change in tone surprised even many conservatives who had made repeal of the sales tax their top priority (Rothschild 2011c). Additionally, there was a shift in rhetoric among lawmakers regarding the overall competitiveness of Kansas' economy. Some outside organizations, such as the Council on State Taxation, issued state rankings showing Kansas near the bottom on business tax competitiveness. House Speaker Mike O'Neal said the report "really points to the fact that Kansas needs to get more competitive." O'Neal began to push for a bill that "would cut individual and corporate income taxes as tax revenues to the state grow. Under the bill, the top corporate tax rate could drop from 7 percent to 3.5 percent, and the individual income tax could be phased out completely" (Rothschild 2011d). This was the initial bill that would eventually become the "march to zero."

Building Support for the Tax Cuts

Policymaking is not a straightforward process, and this is particularly true with the Kansas tax cuts. On May 20, 2011, at the end of his first legislative session, Brownback announced he would begin reviewing the tax code. As mentioned above, during the 2012 session there was a proposal to lower corporate taxes and eliminate the income tax. That proposal, however, stalled before the end of the session. "I think there's a combination of things that need to be looked at," Brownback said in announcing the review of the tax code. "[B]ut to me the tax that's one of the most sensitive for economic growth is the state income tax… To look at the total picture is what we want to do, with an eye toward getting the state income tax down" (Hanna 2011b). The review was being led by Revenue Secretary Nick Jordan and Commerce Secretary

Pat George. However, Brownback also said he would be consulting “leading thinkers” (Hanna 2011c) from Kansas and nationally during the process.

Brownback began drafting a proposal in May 2011 in preparation for the 2012 session. Mike O’Neal, who had been pushing for tax cuts during the 2011 session, indicated that House Republicans would “really want to push” for this plan in the 2012 session (Hanna 2011c). The Senate, however, was much more cautions. Senate President Steve Morris, for instance, did not believe there was enough support in the Senate for such a drastic tax reduction plan. Morris, for instance, had said the 2011 House proposal was “was not exactly well received” (Hanna 2011c). Whereas O’Neal and Morris had been in sync in opposing Sebelius’ request for the certificate of indebtedness, the income tax proposal was creating division between the two chambers. The House, under O’Neal, was ready to push the Governor’s tax plan. The Senate, under the control of moderate Republicans, was ready to resist what they saw as a reckless policy.

By July 2011, Nick Jordan had formed the group tasked with reviewing the tax code. The group included, among others, Richard Cram, the head of policy and research at the Kansas Revenue Department, Steve Stotts, the director of taxation, leaders of the House and Senate tax committees, and various agency heads (Rothschild 2011e). Additionally, national-level conservative tax reformers were also consulted. Chief among them were Arthur Laffer and Stephen Moore, supply-side gurus who helped craft the original supply-side tax reforms under Reagan. Laffer and his associates never produced any tailored reports or analyses for the Kansas tax policy. Instead, Laffer drew on more general supply-side analyses he had completed in the annual “Rich States, Poor States,” report produced for the American Legislative Exchange Council (ALEC). In 2011, Sam Brownback wrote the foreword to “Rich States, Poor States,” writing that the report should be “required reading” for governors who “can and must start to change our country's economic course by providing an environment that rewards our citizens for their efforts and their risks" (Laffer, Moore, and Williams 2011:viii). This was the course Brownback had charted for Kansas. Kansas' tax reform was being cast squarely in the supply-side tradition. "To those who doubt their research," Brownback noted, "I encourage you to watch Kansas during the next few years as we work to reset the state's course on taxes and let our citizens once again be the engine of economic growth."

In the Fall of 2011, Brownback began to lay out more clearly his vision of tax reform as well as its justification. In August, Brownback was the keynote speaker at the Kansas Policy Institute's (KPI) annual dinner banquet.[17] During his speech, entitled "Creating Jobs Through Fundamental Tax Reform," (Rothschild 2011f)[18] Brownback laid out his vision of tax reform as well as the justification. The justification was clearly couched in neoclassical economics. Brownback, at the event, said, "People act economically rational. We've got to create a rationale for people to grow here and be here" (Rothschild 2011f). Brownback put great faith in the income tax's ability to modify people's behaviors. Indeed, one of the first tax plans Brownback signed was the elimination of income taxes for residents of small towns. That bill designated 50 of the state's counties as "rural opportunity zones," was Brownback's approach to incentivizing people to move to rural areas of the state.[19]

Meanwhile, the work of the tax review committee had commenced. Their deliberations, however, were kept secret and details were scant. Local media, such as the *Lawrence Journal-World*, made Kansas Open Records request regarding the committee's deliberations, only to be

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[17] The KPI is a conservative, free-market think tank thought to be primarily funded by the Wichita-based Koch Brothers.
[18] "Tickets to the event are $3,000 for a "personal freedom sponsor," which includes a reception, dinner, a copy of "Rich States, Poor States" with a foreword written by Brownback, and top listing in the program; $2,000 for a "free market sponsor," which includes the same features except prominent listing in the program. A "limited government sponsorship" includes reception and dinner and listing in the program, and individual tickets for a general reception and dinner are $85 each" (Rothschild 2011f).
[19] People who moved to those counties from outside of Kansas were exempt from paying Kansas income tax from 2012 to 2016. Additionally, those counties could opt in and join the state in subsidizing those new residents' college loans.

denied. In an editorial, the *Lawrence Journal-World* wrote, “because no meetings of the tax group have been announced or open to the public, work on a potential major change in how Kansas does business — and the names of those working on the plan — apparently will remain secret, at least for the time being” (Lawrence Journal-World 2011). Other lawmakers also expressed concern over the lack of transparency. Senate President Steve Morris, for instance, announced he would be forming his own tax study committee and would seek public input on how to reduce taxes. “Right now, there are a lot of ideas being floated around, but what they all seem to be missing is citizen input. This isn’t something that should be done behind closed doors by a bunch of bureaucrats” (Rothschild 2011g). In response to these allegations of secrecy, Brownback felt the need to respond, saying the tax plan was “not being developed clandestinely,” (Rothschild 2011h).

While the details of the plan were not forthcoming, the Brownback administration was building support for the plan. A group called “Kansans for No Income Tax,” headed by Ashley McMillan, a former executive director of the Kansas Republican Party, was created to “educate” Kansans about the benefits of eliminating the income tax. The group never attracted many members, only about 260, but they did engage in a statewide bus tour (Associated Press 2011). Revenue Secretary Nick Jordan also went on listening tour in across Kansas to build support for the tax cuts. And by late September 2011, the tax committee announced it was close to offering up its proposals. The head of the commission, Revenue Secretary Nick Jordan excitedly remarked that the proposal would make other states stand up and say “wow” (Rothschild 2011i).

The Plan is Revealed

In January 2012, the Kansas legislature reconvened in Topeka, marking the start of the 2012 legislative session. On January 11, 2012, Brownback delivered his annual State of the State address, where he formally unveiled the details of the tax plan. Brownback announced

> I'm proposing a major step in overhauling our state tax code to make it fairer, flatter, and simpler. My tax plan will lower individual income tax rates for all Kansans. It brings the highest tax rate down from 6.45 percent to 4.9 percent, the second lowest in the region — and lowers the bottom tax bracket to 3 percent. My plan also eliminates individual state income tax on most small business income. As we modernize our tax code and lower everyone's rates, it is also time to level the playing field and simplify state taxes by eliminating income tax credits, deductions, and exemptions ─ while expanding assistance to low-income Kansans through programs that are more effective and accountable. I firmly believe these reforms will set the stage for strong economic growth in Kansas – and will put more money into the pockets of Kansas families and businesses. Growth that will allow us to further reduce tax rates and increase our competitiveness. Growth that will see people move to Kansas instead of leaving our state. With that in mind, I ask the legislature to limit further growth in government expenditures to no more than 2 percent a year — and devote all additional revenues to reductions in state tax rates. This will get us ever closer to the pro-growth states with no state income taxes — which are among the country's strongest economic performers. It also will enable us to keep the lid on state sales tax and property tax rates by providing robust economic growth. Let's put our "lost decade" in the rear view mirror and speed ahead — at 75 miles per hour — to make this decade the decade of growth and job creation.

Brownback's original plan called for lowering personal income tax rates, eliminating business income taxes, and eliminating 23 tax credits, exemptions, and itemized deductions, such as the EITC, the rebate for sales tax on food, the tax credit for families that adopt, the child care and dependent care deductions, the charitable contributions deduction, and the home mortgage interest rate deduction, among others (Milburn 2012a). The plan also made permanent the temporary sales tax passed by Parkinson in 2010.

Proposing to eliminate almost every itemized deduction and credit in the Kansas tax code was "Reagan-style reform on steroids" (Sullivan 2012). Anti-tax groups hailed Brownback's proposal, saying it would boost the economy and give a pay raise to all Kansans. Democrats and moderate Republicans, however, were warier of the plan, particularly the elimination of the EITC and other programs for the poor and low income. Numbers produced by the Kansas Department of Revenue, and released by the Democrats, showed Kansas taxpayers with incomes of $25,000 or less would see their taxes increase $156 on average while filers with incomes of $250,000 or more would pay $5,239 on average less (Rothschild 2012a). The Brownback administration attempted to downplay this, though, with Revenue Secretary Nick Jordan claiming it was "inaccurate to say that this is hurting low-income people" because the analysis did not take into account the extra money that the state would be investing into social service programs (Hanna 2012a). Arthur Laffer, who was paid $75,000[20] by the state to advise the tax plan and make celebrity appearances, came to the state at different points during the 2012. Much of the questioning turned on the tax increases on the poor as a result of Brownback's plan. Laffer brushed this aside, arguing that criticism was unfounded because everyone would benefit from the jobs created by the new business-friendly tax plan. "It's not a class warfare issue," Laffer alleged, "It's how you get to prosperity for everyone" (Rothschild 2012c).

As the legislative session began, the coming success of Brownback's tax plan was far from given. Opposition from school groups, religious groups, and labor groups intensified as the effects of the tax plan became clearer. In fact, House Republicans released a statement saying they were in favor of lowering taxes, but they also wanted a plan that did not increase taxes on "lower-income Kansans" (Rothschild 2012d). And in February 2012, House Democratic leader Paul Davis confidently asserted "The governor's legislative agenda, basically, is in the emergency room right now" (Carpenter 2012a).

[20] One Democratic lawmaker suggested this amount be deducted from Brownback's budget (Rothschild 2012b).

Competing Versions of the Bill

Kansas House Republicans released their version of the Governor's tax plan towards the end of January and there were familiar elements to Brownback's proposed tax policy, though the House plan did not eliminate the EITC. The House plan also kept Parkinson's temporary sales tax expiring as scheduled while Brownback had proposed making permanent the new 6.3 percent rate. Brownback said he was open to suggestions, but maintained that income tax rates needed to be lowered to spur economic growth (Rothschild 2012d).

By March, there were several different versions[21] of the tax plan in circulation. The first version of the tax bill passed the House on March 13 after a five hour debate.[22] However, the Senate was still not on board, so the House's strategy was to pass something palatable enough to moderate Senate Republicans to begin conference committee negotiations. "The bill I like is the bill that gets agreed to in conference committee, because that means that we've got the Senate onboard with tax reform," House Speaker Mike O'Neal remarked (Milburn 2012b). However, conservative Republicans in the House expressed disapproval at this tax bill and they began crafting another version which would accelerate income tax rate reductions. One Representative was quoted, saying, "In reality, this bill is not a sprint to zero income tax but rather an apathetic, dawdling saunter" (Milburn 2012c).

In the Senate, the Committee on Assessment and Taxation endorsed a tax cut plan that would have cut revenue by $1.89 billion, far more than both the House and Governor's tax plans.[23] This bill advanced out of committee and, on March 20, the Senate began a contentious

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[21] In response, House Republicans unveiled a new plan, this time keeping the EITC but lowering the state's contribution from 19 percent to 9. The House plan, though, also included a provision that would sweep $351 million from the Kansas Department of Transportation (KDOT) program known as T-Works (Transportation Works for Kansas). Analysis of the House GOP plan, though, also showed that it hit the poorest Kansans like the Brownback plan. The amended House GOP plan early in the process kept taxes from going up on all income groups except those who earned $25,000 or less.

[22] This vote was 68-53.

[23] The Senate plan was $15 million more expensive than the Governor's plan and $1.89 billion more expensive than the House plan, cutting income tax revenue by $1.89 billion compared to $776 million in the House plan

floor debate during which many of the deductions and credits Brownback had proposed to eliminate were reinstated through floor amendments. Senators offering these amendments were deliberately attempting to increase the overall cost of the tax cut in order to kill the bill, a practice known in the statehouse as “Christmas-treeing” a bill. As Senate President Morris remembered, “That bill came to the Senate floor, and we knew that it was bad public policy, that we wouldn’t support it, but during debate on the floor there were several amendments that were offered, mainly by moderate Republicans and Democrats. One of those amendments was to put back in the deduction for mortgage interest… probably a couple more, but that made the fiscal impact even worse than what it was when it came out of the Senate Tax Committee.”[24] In other words, moderates believed if the tax cut bill was more expensive than projected, the Governor would be forced to veto the bill. And the Senate tax plan became very expensive. Indeed, one legislative memo revealed that Kansas would have to attract 420,000 new people to the state with enough disposable income to equal the lost revenue from the tax cuts (Rothschild 2012e). Supporters of the Brownback plan were appalled at the moderate’s strategy. Conservative senator Julia Lynn, for instance, bemoaned, “This body has systematically and deliberately picked apart a bill that is meant to address serious issues in our state. It’s not a joke” (Rothschild 2012f).

The Death and Resurrection of Brownback’s Tax Policy

After the bill had been “Christmas-treed” up, senators began to vote and at first the moderate’s strategy appeared successful. The bill was defeated by a 20-20 tie. However, two hours later, Senator Brungardt made a motion to reconsider the bill. The motion was approved

[24] Interview conducted June 26, 2017.

and there was a second vote. This time, several senators switched their votes and the bill passed, 29-11 (see Table 2). What happened in those intervening hours is the subject of some controversy. However, what is generally agreed upon by all parties is that Brownback exerted a considerable amount of pressure on Morris. As Brownback recalled, "We were pushing every bit we could. And I have been for about two years pushing on tax reform. We're not [making threats], but we are pushing every bit we can" (Rothschild 2012g). Moderates described Brownback's influence slightly differently. Senator Brungardt, for instance, indicated many some of his moderate Republican colleagues "felt like they were getting beat up a little bit" (Rothschild 2012g). Senate President Steve Morris recalled those intervening hours as a desperate attempt by Brownback to keep the tax cuts afloat. According to Morris,

> [W]hen we finished debate they ended up killing the bill, but I was presiding, and my assistant shortly after the vote came to tell me that the governor had to talk to me on the phone. So I stepped down and Vice-President Vratil took the chair, and I went into my office, got on the phone with the governor. He immediately started pleading with me for us to reconsider. With the Senate rules at the time—and I assume it's the same way today—if you pass something you have 24 hours to reconsider or if you kill something you have 24 hours to reconsider and do another vote. And he pleaded and pleaded with me to reconsider. He was saying, "I know it's terrible public policy. It would bankrupt the state. We can't have that for the coming while, but we just need something to go to conference." As I mentioned it was toward the end of the session, and there were no other tax bills in conference. And he said, "We have to have a bill in conference so that we have something to work with." And we talked for several minutes, and I finally agreed to ask our colleagues to reconsider with the understanding that this bill would never become law. It was just a means to try to negotiate something better.[25]

Morris' recollection of Brownback's appeal matches O'Neal's view that the best tax bill is the one "that gets agreed to in conference committee." However, both the House and the Senate were aiming for different outcomes in the conference committee. According to Morris, he believed getting the bill to a conference committee could moderate the tax cuts. For House

[25] Interview conducted June 26, 2017

members, however, the conference committee presented an opportunity to pass even more dramatic tax cuts.

Table 2 Senators Who Switched Their Votes

	Vote 1		Vote 2	
	Yeas	*Nays*	*Yeas*	*Nays*
1	Abrams	Brungardt	Abrams	Faust-Goudeau
2	Apple	Emler	Apple	Francisco
3	Bruce	Faust-Goudeau	Bruce	Haley
4	Donovan	Francisco	**Brungardt***	Hensley
5	King	Haley	Donovan	Holland
6	Love	Hensley	**Emler**	Kelly
7	Lynn	Holland	**Huntington***	Kultala
8	Marshall	Huntington*	**Kelsey**	Owens*
9	Masterson	Kelly	King	Reitz
10	Merrick	Kelsey	**Longbine**	A. Schmidt
11	Olson	Kultala	Love	Vratil*
12	Ostmeyer	Longbine	Lynn	
13	Petersen	McGinn*	Marshall	
14	Pilcher-Cook	Morris*	Masterson	
15	Pyle	Owens*	**McGinn***	
16	V. Schmidt*	Reitz	Merrick	
17	Schodorf	A. Schmidt	**Morris***	
18	Steineger	Teichman	Olson	
19	Taddiken	Umbarger	Ostmeyer	
20	Wagle	Vratil*	Petersen	
21			Pilcher-Cook	
22			Pyle	
23			V. Schmidt*	
24			Schodorf*	
25			Steineger	
26			Taddiken	
27			**Teichman**	
28			**Umbarger**	
29			Wagle	

(*) = senators targeted for defeated by the Kansas Chamber of Commerce (Rothschild 2012h).

Conference committees are ad hoc committee formed in order to reconcile differences in legislation between the House and the Senate. The conference committee on taxation began March 27, just prior to the legislature's spring recess. While the legislature was adjourned, however, the Consensus Revenue Estimating Group (CRE) released its revised revenue forecast. The Consensus Revenue Estimating group is composed of state officials from the Division of the Budget, Kansas Legislative Research Department, Department of Revenue, as well as consulting economists from three of the state's universities (University of Kansas, Kansas State University, and Wichita State University). This groups convenes twice each year, in the fall and the spring, to issue a revenue forecast for the state. The fall forecast, released before December 4, is adjusted in the spring, before April 20. While lawmakers were on break, the CRE released their revised forecast, adjusting their projections upwards by $252 million. At that point, Kansas had already received $72 million above the December forecast, so the CRE's upward adjustment appeared fitting. However, the April forecast adjustment was not able to incorporate any possible effects from the tax cut bill being debated in the conference committee. Yet, the improved revenue forecast made a case for conservatives that Kansas had additional revenue to pay for the cut.

While the legislature was still adjourned, Brownback appeared on a panel titled "Tax Policies for 4% Growth," hosted by the George W. Bush Presidential Center (2012). During his appearance, Brownback spoke enthusiastically about the policy he was crafting in Kansas. In particular, Brownback described what he saw as the most exciting aspect of the tax policy: the pass through exemption. "A flat tax with a small business accelerator, where you take the tax totally off of your Sub S's or LLCs so you really get your acceleration. This is like shooting adrenaline into the heart of growing the economy by taking that tax off of small business where most of your job creation is," Brownback said.[26] Brownback concluded his talk by suggesting the

[26] George W. Bush Presidential Center. 2012. "Tax Policies for 4% Growth: Evidence From the States, American History, Markets, and Nations." April 10 (http://bushcenter.imgix.net/legacy/Tax%20Policies%20for%204%25%20Growth%20-Transcript.pdf). Accessed February 14, 2019.

need for big, bold policies, “Most of the political space is occupied by incremental time where you can only propose an incremental solution to something. The public is scared now. They’re scared for the future of their country. You could go across the state of Kansas, get a crowd of any 100 people and ask, ‘How many of you are scared for the future of your country?’ You’ll get 90 percent of the hands shoot up… [N]ow is the time the public is ready to engage tough discussion and real, major solutions. Now’s the time to be bold and aggressive with good, thoughtful plans.”

“Legislative Poker:” How the Tax Plan Passed

While Brownback was focusing on the income tax, moderate Republicans and Democrats tried to suggest Kansas should focus instead on reducing property taxes. As the legislature reconvened on April 25, 2012, the moderate Republican leadership in the Senate declared, based on public hearings during the legislative break, there was not public desire for income tax cuts. Rather, as Senate Majority Leader Jay Emler said, constituents were “asking about property taxes being lowered," (Rothschild 2012i). Emler’s perspective was corroborated by a GOP-commissioned poll of Kansas Republican voters taken in January which revealed 45 percent of respondents wanted property taxes lowered while only 27 percent wanted lower income taxes.[27] (Rothschild 2012i). The “Kansas Speaks” public opinion poll, conducted by the non-partisan Docking Institute at Fort Hays State University in Hays, also substantiated that Kansans wanted property tax reduction. According to the survey, 50 percent of respondents claimed they wanted the property tax somewhat or significantly decreased. In contrast, only 33 percent responded they wanted to income tax significantly or somewhat decreased. And of that 33 percent, the majority (68 percent) indicated their preference was to decrease income taxes only somewhat. Nearly half

[27] The poll also revealed 16 percent wanted lower sales taxes.

of respondents indicated they wanted the income tax to remain at the current rate. Moreover, as demonstrated in Table 3, the preference for changes in taxes did not vary dramatically by party. Thus, among the general public *and Republican voters*, there was not a strong preference for income tax cuts.

Table 3 Tax Preference by Political Party, 2012

	Income Tax			Sales Tax			Property Tax		
	Republican	Independent	Democrat	Republican	Independent	Democrat	Republican	Independent	Democrat
Significantly Increased	1%	3%	6%	2%	2%	2%	0%	1%	2%
Somewhat Increased	9%	11%	25%	20%	20%	22%	3%	4%	10%
Remain the Same	52%	45%	48%	48%	46%	46%	40%	39%	48%
Somewhat Decreased	27%	29%	14%	20%	22%	21%	34%	35%	25%
Significantly Decreased	12%	13%	7%	8%	10%	9%	23%	21%	15%

Source: 2012 Kansas Speaks Survey

Brownback, for his part, indicated he understood the public's preference for property tax reductions. However, he also said he did not believe cutting the property tax would spur economic growth (Rothschild 2012e). Instead, Brownback urged the legislature forward on income tax cuts in a *Topeka Capital-Journal* op-ed, "Now the Legislature has the opportunity to enact significant tax reform and prevent another lost decade of economic decline. Empowered by a tax policy that is built on liberty and rewards hard work, we can accelerate economic growth, create well-paying jobs, increase family and community stability, and reduce the number of children living in poverty" (Brownback 2012a).

By April 26, the conference committee had agreed to a plan. The first conference bill cut individual income tax rates, gradually eliminated income taxes on business over five-years, and allowed the sales tax to revert back to 5.7 percent. Brownback urged lawmakers to vote for the conference version of the bill, "It's got the key pro-growth features that I think are important," Brownback said (Rothschild 2012j). Members of the committee, however, delayed introducing the legislation until Legislative Research determined the bill's fiscal impact. When the KLRD released their analysis, it revealed the tax cuts would lead to a massive deficit in three years, eliminating the current surplus of $612 million and saddling the state with a $911 million deficit. Of course, those most wedded to the idea of tax cuts dismissed the threat of deficits. For Brownback's supporters, the promise of supply-side growth negated the threat of deficits. Les Donovan, chair of the Senate tax committee, for instance, remarked, "What if the governor's idea really does work? These numbers will be blown away" (Rothschild 2012k). However, the size of the projected deficit gave enough Republicans pause that the conference committee reentered negotiations.

Former governor Mark Parkinson had commented on the eve of Brownback's inauguration, that the days of moderate political leadership in Kansas were over. Parkinson was not alone in holding this view and in a demonstration of how dramatically Kansas' political culture was shifting under Brownback, a group of 50 former Republican state legislators calling themselves "Traditional Republicans for Common Sense," began issuing strongly worded statements against the governor and the tax cuts. Criticizing the deficits that would occur under the plan, former representative Rochelle Chronister, a member of Traditional Republicans, said the group of former lawmakers had "a moral obligation to the citizens of this state. If we want to ensure our long-term success then we cannot mortgage our children's future. Every farmer will tell you that you reap what you sow. Our children's future and the stability of our state are too important to gamble away with accounting tricks and the newest fad from a Washington, DC think tank" (The Gardner News 2012).

As the process advanced, lawmakers offered various suggestions and tweaks to the tax bill. Les Donovan and House tax chair Richard Carlson, for instance, suggested implementing a temporary top tax bracket or drawing out setting out a longer timeframe for the elimination of business income taxes. These tweaks were in the effort of trying to calm fears among moderates and gather enough support to pass the tax cuts. However, budgetary analyses still showed the bill producing large deficits. The KLRD produced another round of fiscal estimates, this time showing a $712 million deficit. Secretary of Revenue Nick Jordan and Budget Director Steve Anderson, however, strongly disputed these numbers. The tax cuts, they said, would boost the economy, invalidating KLRD's projections. "We are not playing games with these numbers. We are confident in our methodology," Jordan responded (Rothschild 2012l). However, budget projections which persistently demonstrated large deficits were still a barrier to many moderate senators, including Senate President Steve Morris who remarked "We can't do something that we can't afford," (Rothschild 2012l).

On May 9, both the House and the Senate were scheduled to debate the most recent conference committee tax bill. By the point, the two chambers were essentially ready to call the other's bluff. The Senate, however, was in a weaker position than the House because the Senate, the upper chamber, had passed a version of the tax bill. This gave Mike O'Neal leverage as the House could simply vote to concur with the Senate version of the bill to send it to the Governor. As the House was more inclined to pass tax reform at almost any cost, this was a move O'Neal had indicated he would be willing to make. Brownback, however, said he preferred the legislature pass the conference committee version of the bill. Addressing the House Republican caucus (without Senate leadership's knowledge) before the House convened, Brownback said, "I think it would be better if we did the conference report, but I am not the least bit confident that's going to get to me, and then we're left with nothing… I think it would help stimulate the legitimate discussions and negotiations taking place between the House and Senate on taxes if you were to concur with the Senate package that is in front of you today. I think that would be a better route to go" (Rothschild 2012m). The Governor, however, also said he would sign any version of the tax bill. His spokesperson, Sherriene Jones-Sontag released a statement saying that if the House voted to concur with the senate bill, that they "have looked at the numbers and could make it work" (Rothschild 2012n).

In a situation the *Lawrence Journal-World* called "legislative poker" (Rothschild 2012n), the Senate took up the conference bill first. House leadership was closely following Senate proceedings to gauge their next move. Senate leadership was also trying to move quickly. As the House came to order, Representative Richard Carlson made a motion to concur with the Senate bill. Carlson moved quickly because, as he would later recount to *The Wichita Eagle*, "The Senate informally told us they were going to kill the conference committee report and not allow any tax reform or discussion to tax place" (Wistrom and Lefler 2012). After Carlson's motion to concur, Representative Tom Moxley made an opposing motion which set a debate over the measure. This was important because, as Sheryl Spalding recalled, "We came into session, and I don't remember who was the first one there, but Tom Moxley was holding the floor, just talking. I remember going out to take a break just in the hallways, because he was just talking and talking, not saying anything really, just holding the floor. I went out and John Vratil, Senator Vratil happened to be out there at the same time, and he said, 'Just hold the floor. Make sure you guys hold the floor.' And I said, 'Okay,' and I still didn't have a clue really what was going on, but I knew they were talking about taxes."[28]

However, only about ten minutes later, Representative Kinzer made a priority motion to force a vote on the motion to concur. At that point, Moxley tried to make a motion to adjourn the House, fearing what was about to happen. But Mike O'Neal loudly declared Moxley out of order, which forced a vote. The House voted and the bill passed 67-51. Almost immediately the House moved towards final action on the bill. To delay the final vote, Democrats demanded a "call of the house," which pauses voting, locks the doors of the chamber and forces representatives to remain seated at their desks. Any wayward members who are absent are forcibly returned to cast their vote. Democrats had demanded the call because some Democratic members were absent. The call of the house was in place for less than an hour, however, when O'Neal invoked rule 2508, determining that reasonable effort had been made to secure the missing members, and raised the call. Democrats objected but were unsuccessful and the motion to concur was passed.

Across the capitol building, the Senate was engaged in a tax debate of their own. Conservative senators had decided to stall, and gave long speeches and explanations over their vote, essentially filibustering to give the House enough time to vote. Sensing time was running out, Senate Vice President John Vratil interrupted Senator King's explanation of vote and attempted to force a vote. Senate President Morris agreed with Vratil, ruling the conservative senators out of order. This angered the conservatives, who appealed the ruling and postponed the vote even more. The delay tactics worked, however, and before the Senate could force a vote on

[28] Interview conducted July 26, 2016

the conference committee bill, Morris announced that the House had voted to concur with the Senate version and declared the Senate's vote moot.

Back in the House, moderate Republicans and Democrats expressed disbelief at O'Neal's maneuver to concur with the Senate. Lawmakers described it as "completely undemocratic," and a "dark, sad day" (Marso 2012). Representative Moxley, who had tried to stall the vote, also commented that "people who have been in that House observing this process for 37 years have never seen what we heard here today" (Marso 2012). O'Neal defended his decision, issuing a statement after the vote, "Today the House took necessary action to ensure Kansas is moving in the right direction when it comes to reforming our state's income tax policy. The Senate has made it clear they do not want to reform taxes this session, and we hope this will encourage them to reconsider giving the tax conference committee report further consideration" (Marso 2012). The boldness of O'Neal's move, though, earned him praise from members of the Brownback administration. As O'Neal was leaving the Chamber that evening, Budget Director Steve Anderson stopped him in the hallway: "We really appreciate that. We'll always remember it," Anderson said (Marso 2012).

In Kansas, once a bill has been passed by the legislature, governors have up to ten days to sign it. During this period, after the dramatic passage of the tax cuts, Brownback issued a statement recommending that legislators "continue their work on reforming our state's tax policy and to consider some of the alternatives I proposed in my original pro-growth tax reform to offset the cost" (*Wichita Eagle* 2012). And the conference committee did continue to meet, even offering an alternative tax bill on May 16. Brownback urged lawmakers to pass this new tax policy quickly, however this angered many conservatives in Brownback's own caucus. "[Brownback] asked us to do something and we did it. What's the problem? Why doesn't he sign it?" conservative state representative Owen Donahoe asked (Rothschild 2012o). At this point, Brownback, who had indicated he could make the tax plan work, was still aware of the size of the revenue shortfalls that were about to occur. The May 16 conference tax bill would have been a smaller tax cut. However, on May 18 the Senate voted 21-18 to not take up discussion of the new conference committee report, which effectively ended the tax debate for the session and essentially guaranteed Brownback would sign the more aggressive tax cut bill.[29] Brownback, staying true to his word, announced plans to hold a signing ceremony for the tax cuts (Rothschild 2012p). Democrats and moderate Republicans urged the governor to veto the bill. John Vratil, the Senate Vice President, remarked, "The governor has told numerous senators that the state cannot afford House Bill 2117. The bill on his desk could well bankrupt the state and lead to massive cuts in our classrooms, roads and public safety. It is the governor's responsibility to the state of Kansas to veto House Bill 2117" (Rothschild 2012p). Republicans for Common Sense spokesperson Rochelle Chronister also urged Brownback to veto, "We support tax cuts and have voted for a number of them over the years, but you have to pay for them and roll them out responsibly… The governor's tax plan does neither. Instead, it smacks of Washington-style irresponsible spending that places us on a dangerous path, which will have future generations paying for this mistake" (Rothschild 2012q). Brownback refused. "It is unfortunate that the

[29] During the period of time between when the House passed the tax cuts and when Brownback signed them, there were different incentives offered to try to entice moderate senators to support the tax cuts. Brownback indicated he offered moderates a "global" agreement which increased funding for schools in exchange for support of the May 16 conference tax bill (Hanna 2012b). Mike O'Neal seemed to corroborate this version in my interview with him. As O'Neal described, "We literally spent the next 10 days making all sorts of offers to the Senate that they turned down. And I'll tell you how bizarre it got. So the House in 2012 was far more conservative than the Senate. And we have a senator on the Conference Committee who is a Johnson County moderate Republican who is all about the schools… They've got to think they're in the Twilight Zone, because here is a conservative House throwing money literally at the Senate, giving the Senate, particularly the one senator, exactly what he's always wanted, and they're over there going there's fifty friggin' million dollars on the table, take it. And the Senate turns it down, because they were bound and determined that they were not going to give this governor a tax relief bill, I guess. They'd have to explain to you why they stonewalled us for 10 days. And I think they thought at the end of the day that this bill is just too rich for even this governor to sign—he won't sign it. Well, Sam did what he said he was going to do. He said, 'This bill is on my desk. I want tax relief this year. If you don't like this version, send me another version, but if you don't I'm going to sign the bill on the tenth day.' And he signed it on the tenth day" (Interview conducted October 21, 2016).

Kansas Senate has refused even to debate a tax compromise bill that would have provided Kansans tax relief. However, strengthening the Kansas economy cannot wait," he said (Rothschild 2012p). While noting that the tax policy he was about to sign was not exactly what he had originally advocated, he still viewed it as positive "pro-growth" tax reform "that will create tens of thousands of jobs and will make our state the best place in America to start and grow a small business" (Rothschild 2012r). "We're going to be able to do this." (Wistrom 2012a). On May 22, 2012 Brownback signed the tax bill into law.

The bill included several different provisions. First, it collapsed Kansas's three income tax brackets into two. The lowest tax bracket for taxable income above $15,000 for single filers was lowered from 3.5 percent to 3 percent. The middle tax bracket for incomes between $15,000 and $30,000 was lowered from 6.25 percent to 4.9 percent. And the top bracket for incomes above $30,000 was eliminated altogether. The bill also eliminated 20 tax credits and deductions, though not as many as originally intended. However, the credit for adoption expenses, child care expenditures, and the homestead program (which gave renters a property tax refund) were eliminated. The plan also increased the standard deduction for a single filer from $4,500 to $9,000. But the crown jewel of the tax cut was the total and immediate elimination of income tax on non-wage business income. Filers that reported income from pass-through businesses, such as LLCs, subchapter S corporations, or sole proprietorships were now exempt from state income tax. And during the press conference prior to signing the tax bill, Brownback remarked,

> We will soon will have a new, bold course in our state tax policy based on the people's ability to work, invent, and create – not the government's ability to tax and redistribute… Now all major policy changes, just like changes in life, are met with understandable criticisms and skepticisms. But let me say clearly: we will meet the needs of our schools, and our most vulnerable, and our roads will get built. Now when Ronald Reagan cut taxes in the early '80s, many people called the tax cuts too big, too bold, too expensive. But those cuts ignited an era of prosperity in America. By enacting them, Reagan showed

> his faith – but not in the government. It was in the American people. Reagan proved that given a bit of economic freedom and opportunity, the American people would accomplish things no government program could ever imagine. And they did. My faith is in the people of Kansas, not its government. I believe the people will do incredible things. Today's legislation will create tens of thousands of new jobs and help to make Kansas the best place in America to start and grow a small business… After one of the sessions – and it was difficult – I was driving out of the parking lot here in my Kansas-made car and a guy was walking in front of me and he saw that it was me and he looked back and he yelled at me and he said "We need jobs!" And I thought: that's what this is all about. This is about jobs. This is about private sector creating of jobs; it's about the fundamental private sector job creating machine which is small business and taking the tax off of that and unleashing it to grow and create the jobs that this man was yelling for and that we need for our citizens. So with that, I'm going to sign this bill. I'm excited about the prospects for it and I'm very thankful how God has blessed our state and I pray that he continues to do so.[30]

Brownback was joined at the signing ceremony by members of the legislature and his cabinet, as well as lobbyists from Americans For Prosperity (AFP) and the Kansas Policy Institute (KPI), who handed out a white paper detailing the economic benefits that would stem from the tax cuts. (Rothschild 2012s). Brownback's office, for their part, released their projections for the dynamically scored effects of the tax cuts: 22,900 new jobs, 35,740 new residents to the state, and $2 billion in additional disposable income for state residents (Rothschild 2012s). According to Nick Jordan, these were the numbers upon which the success of the tax cuts would be judged (Wistrom 2012a).

After the signing, Brownback began making the media rounds to tout the state's bold, new policy. And it was during his June 19 appearance on MSNBC's *Morning Joe*, where Brownback would utter the phrase that would come to define the policy. During the interview, Brownback explained, "On taxes, you need to get your overall rates down and you need to get your social manipulation out of it, in my estimation to create growth. And we'll see how it works. We'll have a real-live experiment… You'll get a chance to see how this impacts a

[30] "Governor Brownback delivers statement prior to signing pro-growth tax legislation," YouTube video, 5m 43s, "Gov. Sam Brownback," May 22, 2012 (https://www.youtube.com/watch?v=1IcjomHACsk).

particular experimental area and I think Kansas is going to do well."[31] Describing the tax policy as an "experiment" would come to haunt Brownback over the rest of his tenure as governor. Indeed, during a 2014 interview with the *NewsHour* on PBS during his re-election campaign, Brownback would confess, "Yeah, I shouldn't have used that word [experiment]. But the good news is, it's working well."[32]

Just Getting Started

As part of his media onslaught, Brownback penned an op-ed in the *Wichita Eagle*, writing, in part, "Our new pro-growth tax policy will be like a shot of adrenaline into the heart of the Kansas economy. It will pave the way to the creation of tens of thousands of new jobs, bring tens of thousands of people to Kansas, and help make our state the best place in America to start and grow a small business. It will leave more than a billion dollars in the hands of Kansans. An expanding economy and growing population will directly benefit our schools and local governments. We will continue to work to provide a business environment that will keep our state regionally and globally competitive. We will continue to reform state government so that it is more efficient, effective and responsive to our citizens' needs. We will continue to meet the needs of our state's most vulnerable. We will continue to provide for high-quality schools. But most of all, we will continue to strive to make our state even better. Kansas' lost decade is over. No longer will we be satisfied with our children moving to another state for better opportunities. No longer will we accept having the highest tax burden in the region. Now is the time to grow

[31] "Kansas Gov. Sam Brownback on MSNBC's Morning Joe," YouTube video, 8m 39s, "Republican Governor's Association," June 19, 2012 (https://www.youtube.com/watch?v=juDv41jovEA).
[32] "Kansas political races leave Republican candidates in peril," YouTube video, 9m, 2s, "PBS NewsHour," September 27, 2014 (https://www.youtube.com/watch?v=y73sefUafm4).

our economy, not state government, and that's what our policies will do. We are just getting started in Kansas, but we are off the sidelines and in the game" (Brownback 2012b).

Indeed, Brownback *was* just getting started. Because of the difficulties moderate Republicans posed in the Senate for Brownback's agenda, Brownback and his allies set their sights on purging moderate Republicans from the legislature during the Republican primaries. Brownback, aided by the Kansas GOP as well as the Kansas Chamber of Commerce, launched a campaign to unseat moderates in the party and replace them with more conservative Republicans. It is highly unusual, even more so for Kansas, for a sitting governor to target members of his own party for defeat.[33] Yet that is exactly what happened. "Because of the alliance in the state Senate between Democrats and some Republicans that join together to promote a Democrat agenda, the primary election has effectively become the general. Therefore, I am going to be involved in a limited number of primaries," Brownback justified (Rothschild 2012t). The primary campaign unfolded "with the sound and fury of a military mopping up operation" (Smith 2013:124). Advertisements, primarily in the form of mailed flyers, framed moderate Republicans as allied with liberal Democrats. For instance, one moderate Republican former state senator relayed to me that "one of the things Americans for Prosperity sent out was a postcard this big [gestures] and it had Obama's picture, Pelosi's picture and me in the middle. And we were supposed to be there together, and they said that this guy supports Obama. I never had and I don't now, but that was the postcard they sent out to tell people that I was doing that, and people in this area and a lot of the Republicans just hated Obama, but it was not true, but they sent it out. And they'll do it again. They're going to continue to do that sort of politics. They

[33] In response to this aggressive type of politics, many moderate Republicans mention that Brownback "brought Washington-style politics to Kansas," meaning he brought hard-ball politics to a state traditionally not know for that. Indeed, this helps understand how Brownback bested Morris, who admitted he "certainly underestimated what the governor was willing to do" (Rothschild 2012r).

can send it out. It doesn't have to be true. If you get it out there and people see it and they believe it—I've got relatives down in central Kansas down along 160. They think, oh well, this happened and this happened, and it didn't. So I have to tell them, 'No, it didn't. It's not true.' 'Well, why is it out here like this?' I said, 'Because they're trying to win the election.' It's all about winning and it's all about money. It's pretty ugly, but it's reality."[34]

To try to salvage a moderate politics in Kansas, former moderate Republican Governor Bill Graves returned to Kansas to try to help the more moderate candidates after Brownback began endorsing very conservative challengers (Associated Press 2012b). Yet, it was too little, too late. Moderate Republicans targeted by conservative forces, such as Steve Morris, Tim Owens, Roger Reitz, Bob Marshall, Dwayne Umbarger, Pete Brungardt, Dick Kelsy, Jean Schodorf, and Ruth Teichman, were all defeated. "I think that is what you had, is the market functioned on Tuesday," said Brownback after the primary (Rothschild 2012u).

In the November general election, Republicans saw predictable victories and entering the 2013 legislative session, conservatives held 75 of 84 House seats as well as 27 of 40 Senate seats. Brownback now faced essentially zero resistance to his conservative agenda in the legislature. However, he still had the realities of budgetary and fiscal constraints to deal with. An ever so slight adjustment of expectations among administration officials began to reflect the reality of the size and scope of the tax cuts. Budget Director Steve Anderson, for instance, made it clear that they would "make the tax cuts work," but also wanted it known that the tax plan the governor signed was not the one he originally advocated for (Rothschild 2012z). Moreover, on December 5, at a forum in Overland Park, Brownback said he hoped the legislature would look for ways to pay for the tax cut and acknowledged, now, a "hard dip" in revenues (Associated

[34] Interview conducted June 1, 2016

Press 2012c). Again, explaining that moderate Republicans had sabotaged his original tax plan, Brownback urged the legislature to “do some of the pay fors that I proposed last year” (Associated Press 2012c). The realities of the gathering fiscal storm on the horizon found Brownback attempting to shift blame before the tax cuts had even gone into effect. However, he was resolute on one point in particular: “What I am not going to do — and what I won’t sign — is putting taxes back on small businesses and raising the income tax rate back up… Certainty is a key issue on tax policy” (Associated Press 2012c). Brownback’s obstinacy on this point would eventually sour Brownback’s relationship with the legislature.

Brownback had succeeded in passing his tax cuts and, in the process, radically remaking the state politically and fiscally. National-level conservative Republicans praised Brownback for these changes, particularly on taxes. Speaking on the Kansas tax cuts, Senate Republican leader Mitch McConnell said, “This is exactly the sort of thing we want to do here, in Washington” (King, Jr. and Peters 2013). Similarly, Grover Norquist, President of Americans for Tax Reform, pointed to Kansas saying, “Kansas is the future. Kansas is the model” (ReasonTV 2015). Brownback himself was enthusiastic about the policy. During his 2013 State of the State Address, Brownback declared, “In important ways, our state is going against the tide... When I started as governor, we had the highest state income tax in the region, now we have the 2nd lowest and I want us to take it to zero. Look out Texas, here comes Kansas!”

Conclusion

This chapter has provided a history of the development and passage of the Brownback tax cuts. The 1981 Reagan tax cuts were developed largely in response to perceived public opinion (Prasad 2012). However, in the absence of strong popular support for tax cuts in Kansas, Republicans leveraged various institutional mechanism to pass an unpopular and fiscally unsustainable policy. Not only did Brownback's reforms dramatically alter the formal institution of the tax structure, he also altered the informal, or symbolic, institution of the three-legged stool. Both of these institutions, the formal and the informal, importantly constrained the ability of the tax cuts to stick. And in the coming chapters, I explore in-depth how these various institutions constrained Brownback and ultimately contributed to the policy's reversal.

Chapter Three:
Small Businesses Reject the Tax Cut

"I just want to emphasize that I actually benefitted greatly from this tax law. In fact, the amount of state income tax I paid last year was less than five percent of what it would have been had there not been this LLC exclusion. And I didn't employ anyone else because I'm not in the kind of business I can." It was already three hours into the House Taxation Committee hearing when Doug Albin, a small business owner from WaKeeney, Kansas, stood up to deliver his testimony. Doug had come to Topeka to provide input on a tax bill which would repeal much of the Brownback tax cuts, including eliminating the pass-through provision, which had come to be known as the "LLC loophole."

"I guess that's really mainly what I have to say," Doug concluded as he reached into his pocket and pulled out a folded piece of paper. "And I also wanted to let you know that I'm so hopeful that you will overturn this in an effort to partially rebalance our budget that I brought my first quarter of Kansas income tax that I will approve if you reinstate the taxes on these types of businesses. So I'll lay this up here because I don't know who to give it to." Doug walked up to committee chair Steven Johnson and laid down the envelope with the check inside as several onlookers laughed and applauded his gesture. "Do we have anyone from the Department of Revenue still here?" joked Steven Johnson.

Doug was one of several people who had come to testify in support of repealing the tax cuts. However, his testimony was particularly compelling because he represented many small business owners who had been directly targeted as the primary beneficiaries of this tax policy. When Doug, and others like him, vocalized their opposition to the policy, lawmakers and media took notice. In this chapter, I examine how small businesses responded to the tax cuts. As this chapter's opening anecdote illustrates, many small business owners were *pro-repeal*. This chapter argues that that tax cuts fragmented business interests in Kansas because of the discrepancy in rhetoric and material benefit. The Brownback administration rhetorically targeted small businesses as the main beneficiaries of the tax cut, yet in practice it was primarily large businesses who benefited most. Moreover, the ensuing budget cuts hit services that actual small businesses heavily rely on. The tension created between rhetorical and material conditions fractured business interests and this unevenness created the institutional conditions that enabled small businesses to take a pro-repeal position.

The Small Business Accelerator and the "LLC Loophole"

"Is that evil?" asked Nick Jordan while explaining the pass-through carveout (Rothschild 2012l). He continued, "The goal is to grow small businesses." Governor Brownback and the supporters of the tax cut framed their policy first and foremost as a tax cut for small businesses. The tax cuts, according to Brownback, would "help to make Kansas the best place in America to start and grow a small business."[35] There were a number of reasons why the Brownback administration focused on small businesses. First, Brownback justified the policy's emphasis on small businesses through a type of populist rhetoric. Brownback, for instance, reasoned, "We do a lot for big companies to come into the state. The problem of it is, that's not where most people work. What have we done for the small ones? The answer is basically, we're taxing the brains out of them" (Carpenter 2012b). For Brownback, the small business aspect of his tax policy was a great leveler.[36] Big businesses have lobbyists and can secure large tax breaks where small

[35] Gov. Sam Brownback, "Governor Brownback Delivers Statement Prior to Signing Pro-Growth Tax Legislation," YouTube Video, 5m 43s, May 22, 2012 (https://www.youtube.com/watch?v=1IcjomHACsk).
[36] Nick Jordan also emphasized the populist aspect of the tax cuts by highlighting differences in access to capital between small and big businesses. As Jordan explained to me, "I know the governor and I and others are out doing speeches all the time, and it is consistent that every time we do a speech or meet with a group anywhere in the state, several people come up afterwards and

businesses do not. By zeroing out income taxes for small businesses, Brownback was essentially fighting for "the little guy."

Brownback's populism, at least at the level of discourse, contends that big businesses have a corrupting influence on the state by eroding the tax base with special interest tax incentives. During an appearance at the George W. Bush Presidential Center where he touted the new income tax cuts in Kansas, Brownback recalled, "When we first went after it, we said, 'Okay, we're going to abolish the income tax, and we're going to go to a flat tax, just a whole system.' Well, then everybody that had something stuck in the income tax code came out of the woodwork and said, 'Okay, except for this deduction for this group,' for General Motors, for the farmers, for oil and gas. You just got eaten alive by everybody that had the code, for their little area, just the way they wanted it."[37] Historically, tax incentives state governments use to lure big businesses to a state carve out holes in the tax structure. Moreover, these are often specific incentives for that business which are the result of lobbying and political influence, something small businesses generally lack. Conservatives generally believe in a neoclassical "broad base, low rates" approach to tax policy. A "broad base is one that includes all or most income (or spending), whereas a narrow tax base means that significant parts of income are excluded from the base through deductions or exemptions" (Christensen 2017:31). Thus, business incentives unnecessarily reduce the base. Brownback saw this policy as leveling the playing field by

say, 'Thank you. I'm a small business. I was able to hire a couple of people thanks to the savings or buy some equipment I've been looking for, for years.' Small businesses had an extremely hard time getting loans and banks to help them with capital they need to grow their businesses. So now we've come along and a lot of these small businesses are really appreciative, because now they've got some capital flow that helps them grow their business" (Interview conducted March 29, 2016). Jordan also penned an op-ed in the *Wichita Eagle* with the magnanimous title, "Tax Policy is Helping Small Business Grow." This op-ed is a sustained argument in favor of the small business benefits of the tax policy. In Jordan's op-ed are echoes of everything the Brownback administration had been saying about the tax policy, namely that Kansas small businesses "have had a difficult time finding capital to grow. Many are entrepreneurs who don't qualify for many of the incentives available to large corporations" (Jordan 2016).

[37] George W. Bush Presidential Center. 2012. "Tax Policies for 4% Growth: Evidence From the States, American History, Markets, and Nations." April 10 (http://bushcenter.imgix.net/legacy/Tax%20Policies%20for%204%25%20Growth%20-Transcript.pdf). Accessed February 14, 2019.

providing a massive tax incentive for small business. However, the irony of exempting pass-throughs from income taxes is that Brownback was shrinking the base, just for a different group of businesses.

The second major justification for targeting small businesses was economic growth. Small businesses were framed as the main actor in "the myth of the business friendly economy" (Lotesta 2018). For Brownback and his advisors, "small businesses are the engine of job creation and capital investment."[38] Outside advisors, namely Art Hall, also contributed to this narrative by providing evidence suggesting that small businesses generate faster job growth.[39] By liberating small businesses from taxes, Brownback hoped to kickstart the state's economy.[40] Brownback, for instance, referred to the post-2012 tax structure as "A flat tax with a small business accelerator, where you take the tax totally off of your Sub S's or LLCs so you really get your acceleration. This is like shooting adrenaline into the heart of growing the economy by taking that tax off of small business where most of your job creation is."[41] Framing a tax cut as benefiting small businesses is not itself new or revolutionary. Indeed, this is often a group that politicians will hold up as among the most deserving. However, crafting a tax policy specifically to target small business *is* new and makes the small business rejection of the policy even more interesting.

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[38] Testimony given to the Senate Assessment and Taxation Committee, January 12, 2012

[39] The handout that accompanies Hall's testimony has a picture of the garage in Palo Alta, CA where Hewlett-Packard was founded. This image represents the entrepreneurial worldview held by those in Brownback's orbit. In this sense, the Brownback tax cuts were trying to fundamentally change society towards greater entrepreneurialism. The significance of the HP garage is that Silicon Valley represents an ideal-typical model for a society founded on entrepreneurial principles. In this scenario, everyone is involved in trying to start and grow a business and take risks and they wear their failures as badges on their sleeves.

[40] Elsewhere Brownback remarked that "For small business, which is your primary job-creating machine, [the tax policy] will have a very dynamic growth effect" (Hanna 2012b).

[41] George W. Bush Presidential Center. 2012. "Tax Policies for 4% Growth: Evidence From the States, American History, Markets, and Nations." April 10 (http://bushcenter.imgix.net/legacy/Tax%20Policies%20for%204%25%20Growth%20-Transcript.pdf). Accessed February 14, 2019.

To target small businesses, the Brownback administration focused on pass-through, sometimes called flow-through, businesses. Pass-throughs refer to a type of business structure in which business income passes to the business owners, who then pay personal income tax on those earnings. Only the owner of a pass-through entity, unlike a c-corporations which is subject to corporate income tax, is taxed on business revenue. There are a number of different types of business entities which fall under the umbrella of pass-through businesses, such as sole proprietorships, partnerships, and S-corporations. However, perhaps the most well-known pass-through is a limited liability corporation, or LLC. Indeed, in Kansas the term “LLC loophole” became a framing devise many critics of the policy used to describe the whole tax policy, a phrase supporters of the tax policy strongly disputed.[42]

The LLC as a business formation was first created in Wyoming in 1977. LLCs were not widely used, however, until federal tax changes incentivized their growth. For instance, in 1980 only 20.7 percent of business income was earned through a pass through, but this increased to 54.2 percent by 2011 (Cooper, McClelland, Pearce, Prisinzano, Sullivan, Yagan, Zidar, and Zwick 2016:92). There are several reasons why a business would organize itself this way, but perhaps the most prescient tax reason is that individual income tax rates are often lower than corporate tax rates.[43] Various tax reforms passed in the 1980s lowered individual rates relative to corporate income tax rates strongly incentivized this type of business structure (Hertel-Fernandez and Skocpol 2015:8). Today, the LLC is the most popular business organization and outpace the creation of C-corporations nearly two to one (Chrisman 2009:460; see also Travis 2019). Pass

[42] For instance, conservative senator Ty Masterson explained, “People who are against it call it ‘the LLC loophole.’ The truth is it’s a small business exemption. It’s an exemption that’s purposed for behavior just like you would create a mortgage deduction to incent people to buy housing or you would exempt sales tax for nonprofits… Our tax code has all types of exemptions within it, all aimed towards behavior. So, the goal was to exempt small business, because that’s the main employer… By calling it an “LLC loophole,” is you create the connotation that it's some kind of getting by with something, there’s a loophole, there’s a way to get around” (Interview conducted February 14, 2017).

[43] LLCs specifically have been used to great extent by landlords and property owners largely as a means to personal legal protections (Travis 2019).

through income is paid both to the federal government and the state government, however after 2012 this group was exempted from Kansas income tax. Post-2012, only wage earners were required to pay income tax. This "revolutionary" (Dickinson, Mazza, and Keenan 2012) type of tax structure is unique and no other state has ever offered this provision (Johnson and Mazerov 2012).

Both the populist and economic growth justifications Brownback offered, however, faced challenges even from fellow conservatives. For instance, while Brownback saw his tax reform as helping small business compete, by creating a new tax exemption Brownback infracted the conservative "low rates, broad base" tax principle. This principle formed the basis of the "tax reform movement" and is primarily about creating efficient tax systems. Reflecting the larger shift from Keynesian to neoclassical economics, a low rate, broad base approach to taxation argues that taxes create "wedges" between the before and after-tax prices of economic activity. Wedges create distortions by altering the economic choices of individuals and thus give rise to inefficient allocation of resources (Christensen 2017:36). Efficiency, in this case, also implies that market-mechanisms, rather than governments, can allocate resources better, thus policies should aim to emulate markets or cede decisions to markets. Tax systems should try to "conform" to markets (Christensen 2017:6). An efficient tax system, according to this view, would reduce (or eliminate) the distorting effects of taxes by subjecting everyone (base) to the same level (rate) of tax. In terms of policy, this means marginal rates should be lowered and the base should be broader by eliminating deductions and exemptions (Christensen 2017:6). In many ways, the Kansas tax reform (as it was initially proposed) seemed to comport with this approach. However, in carving out an exemption for small businesses it transgressed the broad base principle. Several national conservative tax figures pointed this out, primarily from the Tax

Foundation, who warned the pass-through carve out will “encourage economically inefficient” activities (Robyn 2012). However, in transgressing this principle, Brownback was tipping his hand towards supply-side, rather than just efficiency, tax reform.[44] This is consistent with Christensen’s point that supply-side tax reforms are different than market-conforming policies; supply-side being a much more extreme version of neoclassical economic ideas (2017:39-40).

The second major hurdle to the policy’s justification was the rhetorical slippage between “small business” and pass-through business. The Kansas tax cuts did not address corporate taxes, and instead eliminated taxes on owners of pass-through businesses which were regularly conflated with small businesses.[45] Rhetoric aside, however, not only “small” businesses are organized as pass throughs.[46] Defining “small business” is challenging and there have been a variety of suggestions offered for how best to classify businesses by size (Bean 1996:11).[47] However, according to the U.S. Small Business Administration, a small business is defined as a business with fewer than 500 employees. For many, this definition does not resonate to how we culturally view small businesses, as primarily “mom and pop” stores rooted in local

[44] Brownback was very explicit about the supply-side nature of this tax cut. Dave Trabert of the Kansas Policy Institute interviewed Brownback for his book on the Kansas tax cuts (I attempted on numerous occasions to secure an interview with Brownback but was never granted one). Trabert quotes Brownback as saying, “I’m a friend of Art Laffer and I’ve worked with Art for a long period of time. I believed in the Reagan tax cuts. I saw them. I saw their impact on the economy. I had been working with [Art Laffer] after I made these kinds of proposals when I was in the Congress, going to a flat-tax system nationwide. Paul Ryan was on my staff, who’s committed to supply-side, I am too. That’s what we need” (2018:18).

[45] Again, according to Trabert’s book, Jordan indicated their goal was to eventually zero out corporate income taxes too: “We wanted to go to zero, no corporate income tax eventually, but those with large tax credits wanted to keep them” (2018:30-31).

[46] Supporters of the tax cuts conceded this point. For instance, Mike O’Neal told me, “I say small businesses. Some of them are not so small, but their structure is more of a small business model. You’re an LLC. You’re a Subchapter S. You’re a family-owned corporation operating under Subchapter S or a sole proprietor. The lion’s share of those are truly small businesses, but I would acknowledge that there are some LLCs out there that most people would say, ‘Well, that’s not small. They’re actually pretty big.’ But it’s targeting small businesses. Kansas is really a small business state. Most of them are supplying the needs and wants of the local community or larger manufacturers and larger companies in the state. But primarily you’d describe us as a state of small business versus big business” (Interview conducted October 21, 2016).

[47] The complication of defining a small business is found in whether you take employees, revenue, industry, or business structure into account. The SBA definition of fewer than 500 employees obviously takes the first definition into account. Though for many, 500 still seems like a large business, but where do you draw the cutoff point? Others have advocated taking industry into account – for example an ice cream shop with 200 employees would obviously be a huge ice cream shop, but an airline manufacturer with 200 employees might be considered a small airline manufacturer by industry standards. But this difficulty has also found its way into overall assessments of the SBA itself. For instance, in 1977, a report titled “What is a Small Business?” concluded the SBA had no idea, writing “Little wonder that the SBA has had considerable difficulty in conveying to the Congress and to the public, just what is meant by ‘small business’” (Bean 2001:98). The political difficulty in defining a small business is expertly chronicled by historian Jonathan Bean (1996, 2001).

communities. A similar disconnect occurs between small businesses and pass-through businesses. A pass-through business refers to how a business is structured, not its size (by any definition). But by associating pass-throughs and small businesses, Brownback was framing his policy as helping the local mom and pop stores, instead of large businesses in the state which are structured as pass-throughs. Indeed, large businesses account for most of the economic activity associated with pass-through businesses. Pass-throughs with revenue over $10 million account for only 0.4 percent of all pass-through businesses, but they account for 60 percent of pass-through revenues and 42 percent of pass-through incomes (Marron 2011:6).

Kansas-based Koch Industries, one of the state's largest businesses, is structured as a pass-through. For many in the state, including some lawmakers, this was not a coincidence.[48] As senator Tom Holland explained, targeting pass-throughs "is why I derisively refer to this as the Koch tax plan, because you're talking about uber-wealthy people. Forget about Charles. I'm sure he makes out like a bandit on this thing, because if you think about it, that whole Koch Industries deal they had down there, that's a conglomerate. It's probably a C-corporation, but all the individual items in there—their cattle holdings, they make spandex, they do a whole bunch of different things—all those are LLCs, they're non c-corp entities. So, all those little companies, which are actually some that are incredibly big themselves, billions of size annual revenue

[48] To my knowledge, David or Charles Koch never made any public comments about the tax cuts. However, in January 2017, Steve Feilmeir, CFO of Koch Industries, expressed public support ending the pass-through exemption. "There needs to be more equality in how the tax gets applied. You can't have half the state exempt and the other half not exempt," he said (Roberts 2017). Feilmeir, however, also disputed claims that the Koch's wrote or advocated for the tax cuts in Kansas. "People just assume that Koch is in Topeka pulling puppet strings. That is not accurate," he claimed (Roberts 2017). The Koch's, however, have historically been the top donors to Brownback's various electoral campaigns (Sharlet 2008:267). Their support for Brownback has sometimes veered into scandalous territory, exemplified by the Triad Management scandal in his 1996 U.S. Senate campaign (Mayer 2016:144-145). Koch Industries, also, has been a large supporter of Americans For Prosperity and the Kansas Chamber of Commerce. Indeed, they are a "Cornerstone Member" of the chamber and donated over $120,000 to the Chamber's PAC in July and October 2016 during the primary and general elections in Kansas to try to defeat moderate Republicans and Democrats (Lowry 2017a). While Feilmeir said that Koch was not "pulling puppet strings," Democratic lawmakers believed otherwise. Indeed, during one school funding debate, Democrat Tom Burroughs wondered if "this isn't the great state of Kansas. Maybe this is the great state of the Chamber of Commerce" (Hancock 2015a).

themselves, like Georgia-Pacific."[49] This fact was pointed out to Kansas Secretary of Revenue Nick Jordan, who responded, "I don't know the structure of Koch Industries. We didn't write this for them. We wrote this for small business" (Shields 2012a).

The administration was claiming the tax cut would be a boon for business in the state and many businesses were initially optimistic. Conservative anti-tax groups such as Americans for Prosperity or the National Federation of Independent Businesses (NFIB) gushed at the new tax law. Dan Murray, head of the Kansas chapter of the National Federation of Independent Businesses, was quoted as saying, "Small business, which accounts for most employers in this state, are overwhelmingly in favor of eliminating the income tax on the many business entities which are organized as LLCs, S corporations and sole proprietorships" (Rothschild 2012s).[50] And Derrick Sontag of Americans for Prosperity said, "The move to lower the individual income tax is an acknowledgement of the undeniable fact that low income tax states achieve much higher levels of economic growth as compared to high income tax taxes" (Wistrom 2012a). Some small business owners also thought the tax cuts would help. One business owner told a local reporter, "From a business perspective, it definitely helps small businesses" (Siebenmark 2012).[51] In my interviews as well, several chamber executives recalled feeling initially optimistic. "It was pretty widely accepted by the businesses that it would be helpful," remembered the Dodge City chamber.[52] The Garden City Chamber likewise recalled that "on paper it looked like a really nice idea. It really did. It helped some of those business owners

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[49] Interview conducted February 2, 2017

[50] The National Federation of Independent Businesses (NFIB), which often claims to speak for small business nationally, has become a powerful conservative advocacy organization. Indeed, "in 2005 Republican members of Congress identified it as the most powerful congressional lobby" (Kazee, Lipsky, Martin 2008). Yet the NFIB is not a trade or peak association. Instead, it is a lobbying firm devoted to ultraconservative policy positions, and often misrepresents not only the views of small business owners more generally, but even its own members (Domhoff 2015:30).

[51] In line with the local chamber's views of guarded optimism, this small business owner also cautioned that "Tax policy doesn't affect when we hire. We're hiring when the business dictates we need to hire" (Siebenmark 2012).

[52] Interview conducted July 18, 2017

looking to take advantage of a new tax system. It looked nice."[53] The Pittsburg Chamber described the initial feeling as one of "guarded optimism."[54] And the Hays Area Chamber director, who took over in 2011, also remembered being open to the idea of the tax cuts, "What we have been doing hasn't been working. Let's give it a try."[55] However, this sense of optimism was guarded. Chambers also recalled wondering whether the tax cuts were too big. "I do think, at that time even, we heard concerns of we still have to operate the state, so is it too drastic of a cut to begin with," said the Dodge City Chamber. The Hays Chamber also remembered, "There were some concerns, from an economic development side." And the Pittsburg Chamber explained "There was also a natural skepticism because business owners and business leaders understand as well as anybody else that you've got to make the bottom line work and in order to be able to do that you've got to be able to cover your expenses."[56]

The cultural and symbolic significance of small businesses affords legitimacy to policies that are cast as addressing the needs of small businesses. This is particularly true when it comes to tax cuts. The cultural deference given to small business owners played an important role in their impressive reversal of fortunes that began in 1970s (Bögenhold and Stabler 1991; Steinmetz and Wright 1989). Due in part to the financial insecurity and the rise of the postindustrial service sector created through neoliberal restructuring of the economy (Blackford 2003; Harvey 2005), politicians cast small firms as both more adaptable to changing economic conditions and as key indicators of a growing economy (Goss 2015[1991]). Thus, lawmakers claimed taxes and regulations on small businesses must be eliminated in order to generate economic growth (Dannreuther and Perren 2013). But in claiming to speak for small businesses,

[53] Interview conducted May 14, 2018
[54] Interview conducted June 5, 2018
[55] Interview conducted July 20, 2017
[56] Interview conducted June 5, 2018

politicians created a “small business” constituency and their interests. The amorphous definition of small business allows political rhetoric to stick. As Danreuther and Perren explain, “Politicians that use the small firm construct are not really representing a tangible political constituency” (2013:172). Rather, they are discursively constructing an interest group that serves as a legitimating mechanism for neoliberal, market-based economic policies. This allows small businesses to become “a repository of ideas and sentiments supportive of capitalism” (Bechhoffer and Elliott 1985:181).

However, small businesses are also politically significant. Both political parties in the United States claim to speak for small businesses, however in popular imagery and academic research this constituency is viewed as overwhelmingly conservative (Aldrich, Zimmer, and Jones 1986; Bechhofer and Elliott 1978; Kidder and Martin 2012; Sears and Citrin 1985; Hertel-Fernandez and Skocpol 2015; Johnston 2003). Small business owners, historically, have been cast as “pathological” right-wing reactionaries who oppose the state at all costs (Weiss 1988:31-54). For instance, Richard Hofstadter summarized the “typical” small business owner as “a parochial and archaic opponent of liberal ideas, a supporter of vigilante groups and of right-wing cranks” (quoted in Bean 1996:10). Antonio Gramsci derided small businesses as the “latest incarnation of ‘fascism’” (1977:374). More recently, Pierre Bourdieu scoffed that “it is no accident that the adjective *petit* (small) or one of its synonyms can be applied to everything the petit bourgeois says, thinks, does, has or is, even to his morality” (1984:338, emphasis original). Sociological research does suggest members of the petite bourgeois tend to be more conservative than economic elites (Barton 1985; Brint 1985; Mizruchi 1989). Yet, in Kansas, this group mobilized to secure the repeal of the tax cuts.

This chapter challenges the view of a radically conservative small business class. Small business is often "spoken for" by various political interests. However, in the case of the repeal of the Kansas tax cuts, the gap between how pro-tax cut politicians framed small business, and how small businesses themselves reacted to the cuts, became apparent. However, in the case of the repeal of the Kansas tax cuts, a fracturing occurred between the construction of small business interests and small business interests themselves. In the following sections, I elaborate how the political construction of small business differed from how small business owners viewed the effects of the tax cuts.

Public Opinion, Small Business, and Taxes

Conservative political figures and various interest organizations were making claims about what small business owners in Kansas thought about the tax cuts. While many business owners expressed a sense of "guarded optimism" about the policy, in this section I argue small business owners were not overwhelmingly in favor of the elimination of the income tax. At best, owners were split on the issue. Further, any support business owners offered towards the tax cuts came with caveats that services would not suffer. Support for the tax cuts, in other words, was contingent on the *consequences* of the policy.

Americans overwhelmingly view small business positively. Opinion polls reveal 96 percent of Americans hold a positive view of small businesses compared to only 53 percent who hold a positive view of big business (Newport 2016). Crucially, support for small business is essentially bipartisan as Republicans and Democrats, who differ on their support for big business, both rate small businesses very favorably.[57] This positive view of small business is

[57] According to this poll, 57 percent of Republicans and 48 percent of Democrats hold a positive view of big business. Comparatively, 97 percent of Republicans and 96 percent of Democrats hold positive views of small businesses (Newport 2016).

repeated in Kansas. In 2009, prior to Brownback's election, statewide opinion polling found 55 percent of respondents favored reducing taxes on small businesses while 52 percent favored increasing taxes on large businesses. The following year, the same opinion polling found a similar split with 52.8 percent of respondents indicating taxes on small businesses should be decreased. This begins to change in 2011 when 44.6 percent of respondents believed small business taxes should be reduced and 62.5 percent believed taxes on large corporations should be increased. However, by 2016 there was a spike in the percentage of Kansans indicating they favored an increase taxes on small businesses. In 2016, 21 percent indicated a preference for taxes on small business to be increased and by spring 2017 that had grown to 25 percent. In the Fall 2017 wave, this percent begins to drop, which corresponds with the repeal of the tax cuts in June 2017. This indicates the tax policy had high salience for many Kansans. Moreover, when asked directly about support for repealing the "LLC loophole," a large majority of Kansans (both Republican and Democrat) supported eliminating that provision of the tax policy (Table 4).[58] Likewise, the change in public opinion corresponds with certain anecdotal evidence from lawmakers. Representative Stephanie Clayton, for example, said her constituents "were kind of cagey about [the tax policy] in 2012, hated it in 2014, and have a virulent hatred for it now. And

[58] Looking at the cross-tab of support for increasing taxes on small businesses and support for closing the LLC loophole shows a somewhat puzzling pattern. For example, 134 respondents indicated support for closing the exemption and also decreasing taxes on small businesses. Possibly these are very astute political observers who know that LLCs do not equate to small businesses. More likely, however, is that this strange demonstrates the success of critic's political messaging associated with the "LLC loophole," which was the wording used specifically in the survey questions.

	Increase	Remain Same	Decrease	DK/Ref	TOTAL
Support	113	98	134	10	355
Neutral	4	16	20	1	41
Oppose	14	31	59	4	108
DK/Ref	4	7	23	5	39
TOTAL	135	152	236	20	543

my constituents are some of the most wealthy and educated people in the state of Kansas, so they benefit the most from this tax plan, and they think it's garbage."[59]

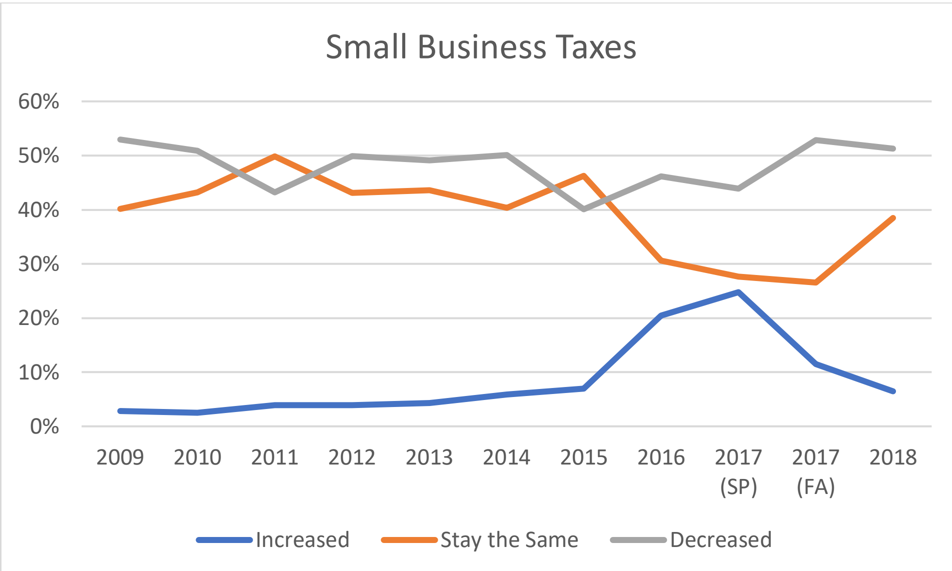

Figure 1 Public Opinion on Taxes on Small Business, Percentage
Source: Kansas Speaks Survey, Docking Institute, Fort Hays State University

Table 4 Support for Closing the LLC Pass-through exemption by Political Party

	Republican	Independent	Democrat	DK/Ref	TOTAL
Support	139	68	134	10	351
Neutral	23	8	9	1	41
Oppose	53	23	24	5	105
DK/REF	19	6	4	9	38
TOTAL	234	105	171	25	535

Source: Kansas Speaks Survey, Spring 2017, Docking Institute, Fort Hays State University

Public opinion on taxes tends to be messy and inconsistent, which explains why the study of public opinion and taxes has tended to lag research on elites and taxes (Campbell 2009:48). And if one believes that Brownback was responding public opinion in cutting taxes, there is certainly some supportive evidence. But Brownback made no indication the business tax cuts

[59] Interview conducted December 22, 2016

were made to appease public opinion. Rather, taxes on small businesses were eliminated to jumpstart the Kansas economy.

In early 2012, prior to the tax cuts passage, the Overland Park Chamber of Commerce commissioned a survey of business owners in Johnson County, Kansas.[60] Business owners were asked their opinion on whether property, sales, and income tax rates should change. A majority of Johnson County business owners expressed a preference for all taxes to remain at their current rates. However, a third of Johnson County business owners did indicate a preference for income tax cuts. Additionally, in follow up questions, business owners were asked which taxes they liked paying the least. Of the three taxes, most said the income tax was the least liked, with 43 percent. The property tax followed with 33 percent and the sales tax with 14 percent. This would seem to indicate a base of support among business owners, at least in the richest part of the state, for the Brownback administration's plan.

However, instructively, the community scan also asked about support for the reduction or elimination of the income tax, which was what Brownback was proposing. Half of respondents were asked if they would support the total elimination of corporate or personal income tax if it meant a reduction in state services and the other half were asked if they would support simply reducing the same taxes if it also resulted in service reductions. The responses to both sets of questions, however, mirror each other. For those asked about cutting income tax rates, only 24 percent supported the measure while 65 percent opposed. For those asked about eliminating the income tax, again only 23 percent indicated support while 65 percent opposed. This is largely because business owners in Johnson County believed the taxes they paid were appropriate for the services they valued. A majority (64 percent) of business owners indicated that for the services

[60] In total, 693 business owners were surveyed between January 23 and February 3, 2012.

they received, the amount they paid in tax was about right while only 26 percent believed their taxes were too high.

Table 5 Johnson County Business Owners Tax Preferences

	Increased	Decreased	Stay the Same
Sales	22%	19%	54%
Income	8%	33%	54%
Property	10%	27%	57%

Source: Johnson County, Kansas Online Business Survey[61]

In addition to polling business owners, the Chamber asked the same questions to registered voters in Johnson County, allowing a comparison between the views of business owners and the general public on taxes.[62] Results indicate that business owners do not necessarily hold more extreme or conservative views compared to the general public. When asked which taxes should be increased, decreased, or remain the same, general voters follow a similar pattern as business owners. The majority of respondents indicate a preference of tax levels to remain the same, though there is also some appetite for lower income and property taxes. The tax that voters least liked to pay was the property tax (41 percent) followed closely by the income tax (37 percent) and then the sales tax (18 percent). Moreover, Johnson County voters indicated that they would also be unwilling to support the reduction or elimination of the income tax if it meant loss of services. The half that were asked about income tax reduction opposed it 66 to 28 percent while those asked about elimination opposed it 65 to 29 percent. Thus, on many tax-related items, the general public and business owners were complimentary.

[61] Overland Park Chamber of Commerce. N.D. "Johnson County, Kansas Online Business Survey" p. 17 (http://opchamber.org/clientuploads/community_scan/OP%20Chamber%20Foundation-JoCo%20Interview%20Results-Business.pdf).
[62] Survey conducted between January 22 and the 24th

Table 6 Johnson County Voters Tax Preferences

	Increased	Decreased	Stay the Same
Sales	12%	24%	64%
Income	10%	27%	62%
Property	8%	30%	61%

Source: Johnson County, Kansas Registered Voters Survey[63]

Table 7 General Kansan Tax Preferences, 2012

	Increased	Decreased	Stay the Same
Sales	21%	30%	47%
Income	16%	34%	48%
Property	6%	51%	41%

Source: Kansas Speaks Survey, 2012, Docking Institute, Fort Hays State University

The Johnson County community scan survey, while not representative of the entire state, still provides valuable insight into how Kansans came to evaluate the Brownback tax cuts in one of the most economically and politically influential parts of the state. However, statewide opinion polling shows Johnson County residents were not outliers. Across Kansas, there was a strong preference for tax rates to remain at their current rate as they are with only a third of respondents indicating a preference for sales or income taxes to be decreased (see Table 7). By far the main difference between the statewide survey and the Johnson County survey is in property taxes. While 30 percent of Johnson County residents wanted property taxes cut, statewide over half of respondents felt property taxes should be lowered.

[63] Overland Park Chamber of Commerce. N.D. "Johnson County, Kansas," p. 17 (http://opchamber.org/clientuploads/community_scan/OP%20Chamber%20Foundation-JoCo%20Interview%20Results-Voters.pdf).

Public opinion polling on taxes often asks whether respondents would like to see taxes increased or decreased. When asked this question without regard to the specific fiscal context of the responders, most people will indicate preference for lower taxes. As such, these types of survey results are more indicative of the degree of *tolerance* for the existing tax system rather than an accurate reading of how the public want rates to be altered (Citrin 1979:114). Thus, we can infer from these survey results that business owners and the public had a high degree of tolerance for the existing tax system. Furthermore, both business owners and the general public were unwilling to support tax cuts if it meant valued services would be reduced.

But what services did those in Johnson County indicate were their top priorities? Here again there are similarities between business owners and the general public. Education and local schools topped the priority list for both groups. Registered voters were asked to rank a variety of priorities for elected officials to consider. The top ranked priority, with 43 percent, was K-12 education followed by economic development and job growth with 37 percent. These were also the top two concerns for businesses. The top priority for owners was economic development with 57 percent followed by K-12 education with 51 percent. But not only was education a top priority, respondents indicated a willingness to pay higher taxes to support these services. Among those surveyed, 80 percent of voters and 81 percent of owners indicated strong support for tax increases for K-12 education. In addition to education, however, infrastructure was also a high priority. Among business owners, the quality of the roads and highways was a top priority for 22 percent and a high priority for another 74 percent. Similarly, among general voters, infrastructure was a top priority for 15 percent and a high priority for 77 percent. Both groups also indicated a willingness to increase their taxes to pay for improved infrastructure. A total of 75 percent of business owners and 67 percent of voters supported tax increase for roads.

The picture that emerges from this community scan is one of support for public goods and an expressed *willingness* to pay for those goods. Put another way, Kansans did not support a tax cut if it meant services would be cut and they would be willing to pay more to support those services. These findings support recent research in sociology and political science which demonstrates that, contrary to political rhetoric, most Americans are generally pro-tax (Williamson 2017; Pearson 2014). The community scan survey demonstrates that pro-tax persuasion is also found among business owners. Moreover, the pro-tax opinions expressed in the survey were eventually backed up by political action on the part of voters and many business owners.

What Did the Tax Cut Actually Do for Small Business?

Rhetorically, Brownback's tax policy was devised to benefit small businesses. Moreover, benefit for small businesses was also the primary metric the administration used to claim the tax cuts were "working." In particular, the governor's administration drew on business filings from the Secretary of State's office to claim the tax cuts were responsible for record new small business growth. For example, in a February 2017 press release, the Secretary of State's office boasted, "Since taking office in 2010, Secretary Kobach presided over a 29 percent increase of business entities throughout the state. Secretary Kobach said: 'The pace of small business formation in Kansas continues to be strong'."[64] And it is true that business filings increased. Below, Table 8 recreates the latest business formation chart from the Brownback-era Secretary of State's office.

[64] Kansas Secretary of state news release (NR_2017_2_8), February 8, 2017

Table 8 Kansas Secretary of State Business Formation Report Summary

Filings	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Domestic	13,354	12,811	12,387	13,024	13,646	15,008	15,469	15,780	17,298	18,147
Foreign	3,427	3,368	3,034	2,960	3,136	3,461	3,381	3,523	3,622	3,422
Reinstatement	4,001	4,107	3,881	3,762	3,978	3,675	4,513	3,849	3,472	3,589
Dissolution	1,647	1,814	1,829	1,839	2,035	2,168	2,303	2,676	3,038	3,054
Withdrawals	805	869	873	883	958	975	984	1,159	1,210	1,313
Forfeitures	9,320	11,670	12,043	12,917	13,037	11,824	14,120	11,321	11,402	12,539
Annual Reports	115,616	122,473	127,119	128,614	135,817	134,439	141,886	150,636	157,909	164,176
Entities in Existence	132,397	138,652	142,540	144,598	152,599	152,908	160,736	170,489	179,066	187,305
Net Domestic*	5,583	2,565	1,523	1,147	1,594	3,716	2,575	4,473	5,120	4,830

* Net domestic number arrived at by taking the sum of domestic and reinstatement and subtracting dissolution, withdrawals, and forfeitures.

The administration focused exclusively on the top line of this chart – the number of domestic filings.[65] This chart, however, obscures more than it reveals. While domestic filings increased, so too did dissolutions, withdrawals, and forfeitures. Net domestic filings increased over the course of the tax cuts but were still lower than pre-recession net domestic filings. Moreover, the number of domestic filings in this report is not broken down into *types* of businesses. But pass-through businesses also did not receive the "shot of adrenaline" that Brownback had promised.

According to the Governor's Consensus Revenue Estimating Group's Final Recommendations report, the tax cuts did not stimulate growth in either the number or rate of pass through business. As Table 9 demonstrates, while the number of pass through entities did increase, the rate of new pass through entities was not sustained and did not surpass the rate of growth prior to the recession. The rate of new pass through entities peaked in 2012, the year the tax cuts were passed (but before they took effect), but then declined. The rate of new pass

[65] As Nick Jordan said in response to the number of business filers, "This is a policy that's going to grow the very backbone of your economy, and by growing these numbers, we're saying, 'Hey, guess what? We did it'" (Associated Press 2015a).

through creation in 2014, for instance, was less than in 2011, before the tax plan was in effect. Moreover, this rate of pass through business formation did not outpace neighboring states or the country. In Kansas between 2012 and 2015, the percentage of growth in sole proprietorships was 2.8 percent and the percentage of growth in S corporations and partnerships was 4.1 percent (Mazerov 2018). The rate of growth among S corporations and partnerships in Kansas surpassed only Missouri (2.6 percent) among the neighboring states. The growth in new sole proprietorships fared only slightly better against neighboring states, but was still below Colorado and Oklahoma and well below the U.S. average of 6.2 percent (Mazerov 2018).

Table 9 Pass-Through Businesses by Year, 2007-2014

Tax Year	Number of Entities	Rate of New Pass Through Growth over Previous Year	Number of W-2's
2007	74,648	N/A	449,047
2008	77,053	3.2%	465,665
2009	78,348	1.7%	420,814
2010	80,278	2.5%	469,386
2011	82,616	2.9%	508,449
2012	85,400	3.4%	536,946
2013	87,943	3.0%	579,002
2014	90,084	2.4%	605,943

Source: Governor's Consensus Revenue Estimating Working Group Final Recommendations

Additionally, the number of new pass through entities was likely the result of tax avoidance. This was illustrated by high-profile and highly paid university athletic coaches in the state received large percentages of their compensation paid to their pass throughs. The University of Kansas men's basketball coach, Bill Self, for instance, earned $230,000 in salary from the university in 2012. Because this was salary, he would pay income tax on it. However, he also received $2.75 million paid to "BCLT II," the name of his LLC (Margolies and Zeff 2016). This income was totally tax free. Many economists, particularly conservative economists from the Tax Foundation, highlighted the tax avoidance incentive created by the Kansas tax cuts. Tax avoidance, as opposed to tax evasion, refers to taking action to lessen tax liability. Tax evasion, on the other hand, refers to the failure to pay required tax. Tax evasion is illegal while tax avoidance is legal and, in many cases, encouraged.[66] However, from the point of view of a state government, the results look the same: less tax money. At the time, the Tax Foundation wrote that the 2012 Kansas tax cuts "creates an incentive for businesses to structure as pass-throughs for tax reasons, even if it might be unwise to do so for non-tax reasons" (Robyn 2012). And after the tax bill passed, Gary Allerheiligen, who was head of the Kansas Society of CPAs for several years and helped advise the creation of the tax policy, argued that legislators needed to go back and fix the tax avoidance "hiccup" (Shields 2012b).

The tax avoidance "hiccup" has to do with how pass-through businesses, specifically LLCs, are structured. The owner of an LLC could pay themselves a salary from their business. In that case, the business owner would pay income tax on the salary just like any other paid employee. However, the owner of the LLC could also pay out their business income as profits and avoid taxes entirely. And initial research has largely supported the claim that the tax cuts incentivized tax avoidance. Turner and Blagg, for instance, conclude that the Kansas tax law did not create job growth nor did it incentivize new business formation. Indeed, they observe "a small net loss" in jobs which they speculate is associated with tax avoidance. "Some workers could be leaving establishment employment in order to become self-employed. A switching from

[66] As a result of the fiscal crisis, Kansas also had to raise sales taxes. This was done on groceries as well. Economists have also found that high sales taxes lead to tax avoidance, especially in border counties as people would go across state lines to buy groceries and cigarettes. Thus, the Kansas tax cuts created multiple avenues for people to engage in tax avoidance.

employer-based work to self-employment without new hires underscores an excess burden aspect of the policy: *it may reallocate economic activity but not increase it*" (Turner and Blagg 2018:1040, emphasis mine). Other economic research has attempted to estimate the size of tax avoidance. Economists have demonstrated that pass through businesses in Kansas show a $400 dollar decrease in wages compared to control states (DeBacker, Heim, Ramnath, and Ross 2017:17). This result suggests "that although we see an increase in the share of sole proprietors in Kansas, this increase appears more consistent with income shifting rather than with new business activity" (DeBacker et al. 2017:19).

Some local chambers of commerce, namely the Kansas City, Kansas (KCK) Chamber, tried unsuccessfully to advocate for eliminating this provision for LLCs specifically. As the KCK Chamber saw it, the "LLC loophole" referred specifically to the ability of LLC business owners to avoid paying income taxes by paying profits instead of salaries. In a policy letter to state legislators, the KCK Chamber explained, "The law was not intended to have a person (e.g. LLC member) classify all of their income as profits, thereby avoiding Kansas taxes completely. After all, profits of LLC's and partnerships are subject to federal income taxes. Therefore, we support fixing the 'LLC loophole' to create equity across all small business pass through corporate structures. However, we do not support taxing the 'true' profits of small business, including the profits of S Corporations."[67] The KCK Chamber's position was unusually nuanced. For the KCK Chamber, the "LLC loophole" (as they interpreted that phrase) was unfair and they supported its repeal. However, they still supported the tax exemption for what they referred to as "true pass through income," understood as profit above salary. However, that degree of nuance often gets lost in political debates and the KCK chamber's policy position largely fell on deaf ears.

[67] Memo dated May 21, 2015

But reclassifying salaries as profits to avoid taxes was only one way the Kansas tax cuts incentivized tax avoidance. Because the 2012 tax reform created a split in how business income was taxed (eliminating pass-through income but not corporate income from taxes), the tax policy incentivized corporations to restructure as pass-through businesses. The incentive to switch business structure was demonstrated by the actions of some policymakers, even those critical of it. Senator Tom Holland, for instance, who ran unsuccessfully against Brownback in 2010, explained he reclassified his business as a result of the tax change. “Full disclosure, my company… we are a Minnesota-registered C-corporation. I voted against this legislation. I’ve always spoken against it. I will vote to repeal it in a heartbeat. But I am also a rational actor. So when this thing passed I ran out and, like the other thousand businesspeople, I set up my own LLC. So I am able to shield a significant amount… In essence, I use basically the LLC to charge my C-corp basically a management consulting fee… Then because it’s pass-through I flow it down to me through my individual income return as non-taxable income.”[68]

Although the process Holland describes is not exactly switching between business structures, it provides evidence of the tax avoidance incentive created by the policy. Furthermore, several C-corporations switched (see Table 10). True, the policy did not incentivize sustained switching. The number of entities that switch to a pass-through in 2014 is roughly equivalent to the number that switched in 2010 and 2011 before the policy was implemented. However, in the policy’s first year, there is a noticeable bump where 575 entities switch, an increase of approximately 68 percent over the previous year. While these data provide a glimpse of how many corporations switched, it does not reveal which *specific* corporations switched. In other words, we cannot tell how much revenue was lost to the state from corporate tax

[68] Personal interview, February 2, 2017

avoidance. However, as a social process, the percent increase in 2013 is significant because research tends to suggest C-corporations very infrequently switch from more to less complex organization (Cole and Sokolyk 2015). Thus, the increase in switchers suggests the potential tax savings was worth the effort required to restructure.

Table 10 Number of C-Corp to Pass-Through "Switchers"

Tax Year	Number of C-Corp Entities	Number of Entities that Switched to a Pass-through
TY2010	28,532	346
TY2011	28,240	353
TY2012	28,187	343
TY2013	28,532	575
TY2014	26,949	369

Source: Governor's Consensus Revenue Estimating Working Group Final Recommendations

The tax policy incentivized tax avoidance, however the actual tax savings to business owners varied dramatically. Table 3.8 shows the breakdown of estimated tax savings per filer by net business income. The total number of filers in tax year 2013 was 333,771. Of those filers, the 176,920 (53.01 percent) with business income under $25,000 saved an estimated $158 in taxes. Conversely, the 2,274 filers (0.68 percent) with net business income over $500,000 saved $38,310 in taxes. Tax savings for business owners translated into revenue lost to the state. For the group of filers with business income under $25,000, the tax cuts translated into $24,98,944 of lost revenue. For the group of filers with business income over $500,000, the state forfeited $87,116,265. Put another way, less than one percent of filers who benefited from the pass-through exemption represented 42.4 percent of all the lost revenue to the state.

Table 11 Business Income by Business Income Category, FY13-16

	TY2013			TY2014			TY2015			TY2016		
Business Income Category	Returns (% of Total)	Business Income	Average Business Income	Returns (% of Total)	Business Income	Average Business Income	Returns (% of Total)	Business Income	Average Business Income	Returns (% of Total)	Business Income	Average Business Income
Less than $0	94,024 (28.2%)	($1,905,553,701)	($20,267)	89,723 (27.1%)	($1,964,842,547)	($21,899)	95,771 (28.6%)	($1,692,274,707)	($17,670)	103,839 (30.7%)	($3,332181228)	($32,090)
$0 - $25,000	176,920 (53.0%)	$1,014,601,175	$5,735	178,006 (53.7%)	$1,176,584,851	$6,610	179,194 (53.4%)	$1,163,486,594	$6,493	176,516 (52.3%)	$1,131,978,743	$6,413
$25,000 - $50,000	26,909 (8.1%)	$905,758,824	$33,600	26,837 (8.1%)	$951,952,788	$35,472	26,013 (7.8%)	$919,980,167	$35,366	25,216 (7.5%)	$890,704,192	$35,323
$50,000 - $75,000	11,510 (3.4%)	$683,700,846	$59,401	11,846 (3.6%)	$723,876,863	$61,107	11,192 (3.3%)	$684,206,221	$61,134	10,426 (3.1%)	$635,906,961	$60,992
$75,000 - $100,000	6,313 (1.9%)	$529,955,115	$83,947	6,350 (1.9%)	$547,770,785	$86,263	5,827 (1.7%)	$503,564,291	$86,419	5,558 (1.6%)	$480,174,559	$86,393
$100,000 - $250,000	12,021 (3.6%)	$1,790,192,973	$148,922	12,073 (3.6%)	$1,848,266,058	$153,091	11,245 (3.4%)	$1,730568,392	$153,897	10,529 (3.1%)	$1,617,453,491	$153,619
$250,000 – $500,000	3,800 (1.1%)	$1,267,658,355	$333,594	3,904 (1.2%)	$1,337,945,342	$342,711	3,727 (1.1%)	$1,285,451,940	$344,903	3,455 (1.0%)	$1,191,340,993	$344,816
$500,000 and Over	2,274 (0.7%)	$3,156,386,390	$1,388,033	2,435 (0.7%)	$3,441,967,099	$1,413,539	2,432 (0.7%)	$3,432,156,755	$1,411,249	2,287 (0.7%)	$3,430,695,577	$1,500,086
TOTAL	333,771			331,174			335,401			337,826		

Source: Kansas Legislative Research Department

However, the data also reveal another important aspect of the 2012 tax reform. While most filers saw only minor tax savings, others actually saw their taxes *increase* as a result of the tax cuts. Approximately 94,000 filers, or 28.17 percent, saw their taxes increase by an average of $559. The tax increase for this group is largely the result of eliminating certain deductions, namely the loss carryforward provision, which prevented owners from claiming business losses as a deduction on their taxes.[69] All told, in the first year of the tax cuts, 81 percent of filers saw their taxes either increase or the savings were negligible.

The inequality in tax savings across businesses became part of the political debate over the repeal of the tax cuts and is exemplified in an exchange during a House tax committee testimony. Mike Bosworth, president and owner of NorthWind Technical Services in Sabetha, Kansas, testified in opposition to repealing the tax cuts, stating if the policy was eliminated he would have to "find a way" to make up the $50,000 in extra expenses. In response, ranking Democrat on the Committee, Tom Sawyer, asked Bosworth, "If I'm reading your testimony right, your taxes are about $50,000. Is that right?"

"It's about – not exactly – but in that neighborhood."

"Okay, so that means you made over a million dollar last year to pay that."

"That would be correct," Bosworth replied.

"So… out of that million dollars, you can't find $50,000?"

"That is an interesting observation. Because of the money that we took in, at first I told you that the federal government is going to take about $450,000 of that. Did you know that?"

"I'm asking you the question. That's not really what we do," Sawyer responded calmly as other committee members chuckled softly.

[69] Investigative reporting from the *New York Times* revealed Donald Trump used the loss carry forward deduction to essentially avoid paying federal income taxes for over 18 years (Confessore and Appelbaum 2016).

"In your statement, you said we had a million dollars, but we don't actually really have a million dollars…."

"Well, obviously," Sawyer interjected, "you are making over a million dollars if, *if*, it's going to cost you $50,000. You have to have over a million dollars in taxable income to pay that."

"Yes," Mike conceded. "And when that $50,000 comes through it's going to get passed, like I said we have profit-sharing for our employees, the profits will go down and they'll get less."

This somewhat tense exchange highlights the politicization of the business tax cuts. Many local chambers and small business owners advocated for the repeal of the cuts, but not all did. Mike Bosworth opposed the repeal and urged lawmakers to find other ways of balancing the budget. While his testimony claims repeal would hurt his business and his employees, the disclosure of his million-dollar income reveals his personal financial stake in the policy continuation. Those who advocated for sustaining the cuts, if not done for ideological reasons, primarily stood to benefit the most financially.

The key point is that the tax cuts produced an uneven material benefit for businesses. Most business owners did not substantively benefit from the 2012 tax reform, with some even having to pay more in taxes. Those who did benefit the most were more inclined to oppose repeal efforts. While this may seem like a basic point, it is important because often "business interests" are painted with an overly broad brush. The uneven distribution of tax savings highlights the variation within this key constituency. Moreover, it is this variation in material benefit, coupled with the ensuing impact from budget cuts, which facilitated the fracturing of business interests.

What Was Behind the Anti-Tax Cut Advocacy?

I now examine the main themes that emerged from interviews with local chambers of commerce and observations of small business owners in their testimonies to taxation committees. Not all small business actors took the pro-repeal stance. However, several did and, crucially, they were the most highly visible. For instance, the *Kansas City Star* ran a story in 2016, "They Get Kansas Tax Breaks, and They 'Feel Like Freeloaders'" profiling several pro-repeal business owners in the state. (Montgomery 2016). Likewise, *The Guardian* also wrote in 2017 that "the business owners Brownback targeted [with the tax cuts] are… unimpressed" (Rushe 2017). Thus, it is instructive to understand the ways in which those in the business community in Kansas understood their pro-repeal stance. The Brownback administration viewed the causes of economic activity differently than "on the ground" economic actors. This schism between the Brownback administration and local economic actors expanded over time as the policy not only failed to provide meaningful tax savings to most businesses, but actively worked at cross-purposes to discourage the initial goals of the policy.

The Coalition of Local Chambers and the Kansas Chamber of Commerce

Chambers of commerce are said to be the "voice" of businesses. As sociologist C. Wright Mills noted, "Such power as the local business community has is organized in the Chamber of Commerce, to which most small businessmen belong" (2002[1951]:49). However, over the course of the Brownback tax cuts, the business community spoke with two, often opposing voices. Instead of uniting in support of the tax policy, business interests fractured. The state chamber of commerce was steadfast in its support of the policy while local chambers primarily advocated for repeal. This fracturing, I argue, is best explained by the embeddedness of local chambers in their communities (Pacewicz 2016). Local chambers described the state chamber as abandoning local business communities in favor of large corporations. Moreover, they saw the state chamber as an antagonistic political force promoting radical and immoderate politics. As a result, several chambers withdrew their membership from the state chamber and organized into different coalitions or regional networks, such as the Southwest Chamber Alliance and the Chamber of Commerce Executives of Kansas, often simply referred to as "the coalition" of local chambers.

The coalition is made up of local chambers of various sizes from across the state. Some of these chambers are large and politically active, such as the Overland Park or Lawrence chambers. Others, however, are smaller and usually avoid taking strong political positions. Smaller chambers, for instance, usually (but not always) avoid publishing policy positions or other legislative agenda statements. As the Ellis chamber explained, "The general consensus… is that we stay out of politics."[70] The reason small chambers avoid politics is to avoid antagonizing local relationships. As another chamber told me, "In the smaller communities, we will start losing membership if we get too politically active."[71] Likewise, the Atchison chamber explained, "In a small community like this, you can make enemies really fast."[72]

The coalition grew in importance as the political activity of the Kansas Chamber strained relations with local chambers. While the coalition came together and was active during the repeal battle, it was not the original cause of the coalition's formation. The coalition already existed and had previously voiced support for tax increases. For instance, in 2010, the "gang of 14," as the

[70] Interview conducted April 5, 2018
[71] Interview with the Hays Area Chamber of Commerce conducted July 20, 2017
[72] Interview conducted December 22, 2017

coalition[73] was called, sent a letter to state legislators stating they supported tax increases to protect core services, such as schools and roads, at risk of being cut due to recessionary budget shortfalls. “If revenue must be enhanced for basic government services, our chambers can support rational state revenue enhancements,” the letter read (Rothschild 2010e). In response to this open letter, the Kansas Chamber of Commerce rebuked the local chambers, stating they were “disappointed to see a small minority of its members – 14 of 80 local chambers of commerce – send a letter to legislative leadership saying they believe their business members don’t pay enough in taxes” (Gardener News 2010). The Kansas Chamber’s response prompted several local chambers to abandon the state chamber, an exodus which continued over the course of the tax cut battle. For most local chambers, withdraw from the state chamber has not resulted in any negative impacts. In fact, for some it has even been beneficial. As one local chamber told me, “We actually have had our own members stay members with us when they find out we have dropped our membership with the state chamber.”[74] Likewise, another local chamber representative said, “I also have people who are members because we are not a member of the state chamber. I have both sides.”[75] Some local chambers stayed for strategic purposes. The Overland Park Chamber explained while several local chambers “have dropped their membership, because they saw the Kansas Chamber going off in a direction that didn’t coincide with their positions on issues,” they decided not to withdraw “just so that we can at least have a seat at the table, whether it’s a good one or not, mostly not.”[76] The Overland Park Chamber’s

[73] The Chambers in the 2010 Coalition were: Arkansas City, Dodge City, Emporia Area, Grant County, Greater Kansas City, Greater Topeka, Hutchinson-Reno County, Hays Area, Kansas City, Kan., Manhattan Area, Northeast Johnson County, Olathe, Overland Park and Salina Area.
[74] Interview with the Hays Area Chamber of Commerce conducted July 20, 2017
[75] Interview with the Atchison Chamber of Commerce conducted December 22, 2017
[76] Interview conducted May 12, 2016.

involvement with the Kansas Chamber, however, did not preclude their involvement in the coalition.

In both 2010 and after 2012, local chambers pragmatically voiced support for tax increases, primarily to maintain funding for schools and roads. The weakening of public institutions and infrastructure was the impetus for the formation of the Coalition in the first place. As the Topeka Chamber explained, “it boils down to the fact that, really back in 2010, this narrative to the effect of all businesses cared about are lower taxes took root and was being propagated by a number of groups. But those of us who are business organizations on the ground, as opposed to ideological organizations, we know that the facts out here are a different. That businesses really do care about workforce, good roads, they care if your community has a hospital that isn’t about to close, and they care that they’re reading in the papers that your schools are tragically underfunded. Those are the sorts of things that do matter to businesses. And so, on that basis, this coalition came together to try to stand up an alternate narrative that we felt was more true to what real business people are thinking.”[77]

The emphasis on infrastructure and school funding as public investments was an organizing principle for the coalition’s repeal efforts. For instance, in 2015, the coalition addressed a letter to Brownback, stating, “Some contend Kansas businesses will only be satisfied once they are no longer asked to pay income taxes. The business community in Kansas is not a monolithic block, though. We want to remind you that there is another very real voice of business in Kansas that supports a multi-faceted approach… Responsible business people understand, though, that tax dollars fairly assessed and properly expended are an investment in the kind of State we want for ourselves, our customers, our employees and our children.”[78] These

[77] Interview conducted July 21, 2017
[78] Letter dated April 29, 2015.

themes were repeated again in a 2016 when the coalition wrote, "Our Kansas local chambers, governed by local businesses, believe it is critical to emphasize how statewide decisions impact efforts to attract and retain jobs in cities across our state." The Coalition "encourages and supports a balanced and stable tax policy that is fiscally responsible, creates a competitive and pro-growth business environment, and allows for local maintenance of essential services and key quality of life factors."[79] Moreover, the coalition's increasing political activity was not driving chambers away. Instead, the number of coalition chambers increased from 14 in 2010 to 22 by 2016.[80]

Fracturing between state and local chambers also resulted from the view that the Kansas Chamber gave preference to large industries at the expense of local communities. As the Junction City Chamber explained, "economic development directors have the responsibility of understanding how their constituents need to operate and what is important to them… So, when the Kansas Chamber decides to endorse a tax policy that only benefits very large industries… that is not supporting the bulk of your membership across the state as chambers because the bulk of the chambers across the state are not metro chambers. So, it just stands to reason that that tax policy is not a fit for most of their members."[81] Moreover, because the state chamber was preferencing large industries, some local chambers felt the Kansas Chamber treated them condescendingly. For instance, the Liberal, Kansas Chamber recalled a meeting with Kansas Chamber representatives where they were told "they didn't even know why the local chambers

[79] Letter dated March 3, 2016.
[80] The political activity of local chambers was garnering attention, not only from lawmakers, but also from other moderate political organizations in the state. Of particular note is the recognition the coalition of chambers received from the MainStream Coalition who recognized the Coalition of local chambers at a fundraising dinner, stating the local chambers "sent a signed letter to the Kansas political leadership, arguing for balanced revenue streams (including income taxes), strong local community control, an end to budget shell games stealing from highway funds to cover revenue losses, and strong funding for public education… For the bravery to stand up, and the conscience to speak out, we are proud to honor them at our event (MainStream Coalition 2015a).
[81] Interview conducted April 17, 2018

needed or wanted to be a member of the Kansas Chamber. That was their answer to us. So we all said 'okay I guess we won't be then.' It's not doing us any good and they don't care about us at all obviously from what you've said. So most of us quit. I think everybody out here, I don't think anybody is a Kansas Chamber member."[82]

The Liberal Chamber's decision to leave was reinforced by the state chamber's political activity. "After a couple of political campaigns that they [the Kansas Chamber] absolutely trashed our candidates, I had my chamber members calling me saying 'are you a Kansas Chamber member? Because if you are I'm dropping my membership.' So everybody out here was pretty upset with that. I am not a Chamber member for those reasons."[83] This encounter between the Liberal Chamber and the Kansas Chamber demonstrates that the split was intensely political, not just a disagreement over how to achieve economic growth. Indeed, many local chambers viewed the state chamber as exclusively a political force. According to the Ottawa Chamber, they "have consciously divested and separated ourselves from the state chamber which tends to be more of a political institution than an advocacy for commerce."[84] Instead, the Ottawa Chamber was a member of the coalition because they felt has "a more moderate approach and speaks with a stronger voice in terms of small businesses, business development, and commerce in our state."[85]

The state chamber engaged in aggressive and ideological political campaigns across the state. It was the Kansas Chamber, for instance, which led the campaign to defeat moderate Republicans in 2012. This type of political campaigning further antagonized local and state chamber relations. For instance, the Pittsburg, Kansas chamber explained that in a local House

[82] Interview conducted May 5, 2018
[83] Interview conducted May 5, 2018
[84] Interview conducted March 28, 2018
[85] Interview conducted March 28, 2018

election, "the state chamber was very active in unseating a popular incumbent. And very aggressive billboards against her. And in very small print at the bottom it said 'paid for by the Kansas chamber.' Well, people who don't understand the difference between the Pittsburg Chamber, or the Lawrence Chamber and the state chamber thought it was us, so it was causing a lot of confusion on just who was funding that… So our board at the time just felt that to be able to assure our members that their membership dollars were not going to support that, that we would need to not be a member of the state chamber."[86]

Local chambers saw the state chamber as simultaneously preferencing large industry and belittling small businesses. But from the state chamber's perspective, however, the fracturing process looked different. The state chamber saw the state-local split through a more ideological lens. From the state chamber's point of view, local chambers are "more community organization driven, because they will have both a private sector and public sector component to them… The state chamber is 99.9 percent private sector businesses. There are many things and issues that we have in common. There are some that we don't have in common because of the different makeup with the local chambers having maybe more a public influence. There are some local chambers who actually their leadership is dominated on the public sector side, whether it's school districts or whether it's hospitals, whatever, and that's fine. But it just shows the difference between how they operate and how we operate as essentially private sector."[87] Thus, for the state chamber, preferencing large industry equated to advocating and advancing private sector policy positions. Local chambers, by contrast, are seen as "tainted" by the involvement of public sector actors, such as school district officials, who distort the pro-business effectiveness of local chambers.[88]

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[86] Interview conducted June 5, 2018

[87] Interview conducted October 21, 2016

[88] Despite the "99.9 percent" private sector composition of the state chamber, even their membership began to sour on the tax cuts. According to the Kansas Chamber's 2017 annual survey of business owners in the state, "the business community split

While the most significant split was between the state and local chambers, not all local chambers were united in repeal efforts. The most significant outlier among local chambers was the Wichita Chamber of Commerce who consistently supported the tax cuts. Even after the repeal of the tax cuts in 2017, the Wichita Chamber's policy agenda still supports "long-term state tax structure reform including reduction/elimination of personal income tax" (Wichita Regional Chamber of Commerce 2019). Moreover, unlike other chambers, the Wichita Chamber provided unwavering support for the tax cuts in committee testimonies in 2012. Other local chambers, such as Overland Park or the Greater Kansas City chamber, also provided committee testimony, though they appeared either as neutral or opposed to the reform. The Overland Park chamber's testimony urged caution, stating "Before embarking on a measure as large as what is proposed in HB 2560, we respectfully urge you as policymakers to take the time to fully understand the bill's future impact on our State."[89] The Wichita Chamber, however, claimed the tax cuts were necessary for the future of the state. The Wichita Chamber was "confident [the tax cuts] would lead to job creation and a more vibrant economy in Kansas. We also believe that this legislation would create a more efficient and productive system of taxation that incentivizes production from both firms and individual citizens." [90] As proof, the Wichita Chamber noted that "One has to look no further than to our neighbor, Oklahoma, to see how an aggressive and innovative approach to tax policy and economic growth impacts jobs, state GDP and overall prosperity."[91]

Other local chambers understood the Wichita Chamber's pro-tax cut policy agenda as primarily driven by the influence of Koch Industries, also located in Wichita. However, the

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almost evenly" on the question of repeal of the 2012 income tax cuts, with 39 percent saying the pass-through portion should be repealed and 42 percent saying it should not be repealed (the survey having a margin of error of 3 points) (Hancock 2017a).

[89] Testimony, February 8, 2012

[90] Testimony February 8, 2012

[91] Testimony February 8, 2012

Wichita Chamber claimed this was a misrepresentation. The Wichita Chamber rejected this view because "what that suggests is that we don't run our own government relations shop here, that Koch does. That is incorrect because Koch is one member and I've got 1,799 other ones. And Koch also does not strong arm. They put a lot of money behind the political things they want done but they do it directly. They don't do it through us. They support the chamber of commerce because the chamber of comer takes pro-business positions which are usually reasonable, low tax rates."[92] The Wichita Chamber claimed to represent the broad view of all its members. As the chamber representative continued, "I think generally our member's view is that too much wealth is being tied up in taxes and government… [W]e're not de facto anti-tax. We are – and when I say 'we,' this is what I hear from the majority of our members – we are anti-high tax when we feel like we're not getting much out of it. And when we see opportunity where that money could be directed into actually growing an economy and driving job growth and attracting people to the state. If you can't do it, Topeka, let us keep our money and let us do it ourselves, is the attitude I hear."[93]

Community Embeddedness and Quality of Life

The tax policy split business interests in the state along various fault lines, primarily between state and local chambers, but also between local chambers. However, the Wichita Chamber was unique not only for their general pro-tax cut stance, but also for the reasons why they took this stance. Pro-repeal chambers justified their positions by appealing to the overall business climate of the state, including community amenities. The Wichita Chamber, however, justified their tax cut position exclusively in terms of shareholder value. All chambers of

[92] Interview conducted May 31, 2018
[93] Interview conducted May 31, 2018

commerce invoke their membership to justify and legitimate their legislative agendas. And, as mentioned in the coalition's letter, emphasis on the importance of community and quality of life for local businesses was a primary theme for many chambers who took a pro-repeal stance. Quality of life in this sense is best understood as the public goods and services that a community attractive to businesses and workers. However, following Milton Friedman's famous claim that a firm's only social responsibility is to increase profits (1970), the Wichita Chamber claimed that "While firms have an obligation to their employees and the communities in which they operate," the Wichita Chamber testified in 2012, "they also have an obligation to their shareholders and members."[94]

The firm-centric view, however, was not widespread and many chambers of commerce and business owners drew the link between support for services and raising taxes. For instance, during a House taxation committee hearing, Melinda Boeken stood up to deliver her testimony in favor of repealing the tax cuts. "I have farmed with my husband for 27 years in Ellsworth County," Melinda testified. "And I am also a registered Republican, so I'm not a Democrat up here pushing a liberal agenda." However, Melinda felt so strongly that the tax cuts should be repealed, she testified that she and her husband "have chosen to be paid a wage from the farm and pay W-2 taxes on those earnings. We feel that it is very important that we all contribute to ensure that we maintain good schools and infrastructure in our communities and state. Without everyone contributing to these programs, we will lose them and the high standard of living we have enjoyed in the state of Kansas."[95] Business owners also used the language of quality of life in situating their pro-repeal position. For instance, Trace Walker, a business owner from Salina, Kansas testified before the House taxation committee that "there are many things in which

[94] Testimony February 8, 2012
[95] Testimony March 15, 2016

government should not be involved, there are some things that only government can do and those are important to our quality of life… Although my company benefitted from the 2012 tax plan, if reinstating the tax on businesses is necessary for our state government to meet its obligations and invest for the future then I would urge you to do so."[96] These statements compliment the statewide public opinion polls found state residents and business owners were unwilling to sacrifice spending on schools and infrastructure for lower taxes. Further, these testimonies exemplify the link owners drew between taxes paid and services.

The quality of life emphasis of the coalition and local chambers was repeated in several interviews and policy agenda statements. For instance, the 2016 coalition statement state they support a balanced and stable tax policy that is fiscally responsible, creates a competitive and pro-growth business environment, and allows for local maintenance of essential services and key quality of life factors."[97] Additionally, the Overland Park Chamber "believed that quality of life was really the driving factor in analyzing taxes, analyzing where people wanted to live, where they wanted to locate their businesses, and part of that was an obligation to pay for it… The services, the environment, not just education, but public safety, roads, all the government services that you typically think of that were important to us here in driving the quality of life in Johnson County and the state of Kansas was worth paying for, and they were happy to do it."[98] This was echoed again by the Manhattan Chamber who said, "There was such a recognition that this needed to change. The decline in funding for education, the decline in funding for schools, both K-12 and higher education, the roads – those issues made it such that the businesses recognized that this needed to happen."[99]

[96] Testimony March 15, 2016
[97] Letter dated March 3, 2016
[98] Interview conducted May 12, 2016
[99] Interview conducted July 5, 2017

Chambers, as business organization, had to strike a balance in advocating for repeal. These business groups were careful to add the caveat that nobody *liked* paying taxes. “I don’t care who you are, nobody wants high taxes,” one pro-repeal chamber executive told me.[100] For these business organizations, however, basic public services, such as public education and infrastructure, were critical both in conducting commerce and attracting new businesses to the community. As the Salina Chamber explained, “Those types of quality of life pieces really go a long way in attracting companies and retaining talent and attracting talent.”[101]

Education was arguably the most important public good for business owners. Schools and universities across Kansas suffered large budget cuts resulting from the recession and exacerbated by the tax cuts. Because of workforce needs, business groups are supportive of schools in normal times in most communities. Indeed, some local chambers had programs in local schools to help direct workforce development. For example, the Salina Chamber explained, “We worked with the high school to create several different curriculums and pathways that line up with, for example, cabinetry companies here in town. So that woodworking, that cabinetry, that basic manufacturing, those companies have gone in and talked to a school district and talked with the teachers and instructors and said this is what we need from a student who is interested in manufacturing or cabinet making when they graduate from high school and they want to go to the workforce, this is the skillset we need.” [102]

Beyond these direct connections between local businesses and schools, public education is important to chambers and businesses for two main reasons. Chambers of commerce viewed schools as providing workforce training and therefore make their communities attractive to

[100] Interview conducted December 22, 2017
[101] Interview conducted May 8, 2018
[102] Interview conducted May 8, 2018

employers and employees. For chamber and economic development actors, workforce development has become the number one issue. As a member of the Kansas Economic Development Alliance (KEDA) mentioned, “workforce is of paramount importance and if you have an underfunded or poorly funded education system, all that does is kill you in the long term.”[103] Many chambers believe a well-funded education program and a well-trained, intelligent workforce helps grow the state’s economy and attract business to Kansas. Good schools are a higher priority for small businesses than tax cuts. Even the Kansas Chamber of Commerce noted, “As the most significant consumers of the ultimate educational product of the state, Kansas businesses and industries have a huge stake in the quest to provide our Kansas students with the classroom resources they need to become college and career ready.”[104]

The emphasis businesses and chambers place on education is reinforced by school districts themselves. Kansas City, Kansas schools superintendent Cynthia Lane, for instance, remarked in testimony that businesses across Kansas “expect and demand strong schools, both to support their employees and their families, and to provide a qualified workforce. Doing the right thing for public schools is also doing the right thing for the economy.”[105] Likewise, Gary Menke of the Topeka School District stated that their “prudent and efficient” budgeting “is complimented by our public/private partnerships with businesses in our community and our role as contractor for goods and services necessary to support the district’s functions and school operations.”[106]

More than providing human capital for local businesses, schools *as institutions* are important for local businesses because of their purchasing power. The Ottawa Chamber recalled

[103] Interview conducted May 11, 2018
[104] Testimony given March 10, 2015 to the Senate Ways & Means Committee
[105] Testimony given March 10, 2015 to the Senate Ways and Means Committee
[106] Testimony given March 9, 2015 to the House Appropriations Committee

a local business owner who makes school trophies and awards. According to the chamber, the owner explained "he loses way more business because the schools aren't funded… than he ever made in the tax cuts that he received."[107] Likewise, in Pittsburg, Kansas, the chamber explained "so many of our businesses derive at least a portion of their business from Pittsburg State University."[108] Cuts to these institutions ripple across communities and negatively impact businesses. If schools (and school employees) have less financial capacity to pump into the local community, then businesses suffer and sales tax revenues fall. Business expressed this point in their pro-repeal arguments.

At the signing ceremony for the tax cut bill, Brownback remarked that "all major policy changes, just like changes in life, are met with understandable criticisms and skepticisms. But let me say clearly, we will meet the needs of our schools, and our most vulnerable, and our roads will get built."[109] He was aware school funding was a major concern among state residents. However, he did not appreciate the extent to which the business community identified schools as fundamental to the well-being of their communities. Arthur Laffer and Steven Moore also dismissed these concerns, prioritizing tax cuts. "The quality of schools also matters as does the state's highway system, but it takes years for those policies to pay dividends, while cutting taxes can have a near immediate and permanent impact, which is why we have advised Oklahoma, Kansas and other states to cut their income tax rates if they want the most effective immediate and lasting boost to their states' economies" (Laffer and Moore 2012:18). While supply-siders were willing to sacrifice school funding for a hoped-for "near immediate and permanent" economic boost, business owners saw the Brownback tax cuts as an attack on the very

[107] Interview conducted March 28, 2018
[108] Interview conducted June 5, 2018
[109] "Governor Brownback delivers statement prior to signing pro-growth tax legislation," YouTube video, 5m 43s, "Gov. Sam Brownback," May 22, 2012 (https://www.youtube.com/watch?v=1IcjomHACsk)

foundations of their communities. Business owner and Democratic Representative Adam Lusker charged that the tax cuts “are systematically dismantling communities in the state of Kansas.”[110]

Decision-Making

In addition to maintaining quality of life, chambers believed the Brownback administration was operating ideologically rather than possessing a grounded understanding of how businesses actually operate. Brownback based the tax cuts on the supply-side view that businesses will increase economic investment or relocate *solely* because of lower taxes. As Brownback remarked, “People act economically rational. We’ve got to create a rationale for people to grow here and be here” (Rothschild 2011f). Supply-side suggests businesses would be motivated to relocate to Kansas purely because tax rates were low. But according to local chambers, this misunderstands the actual rationale of most businesses.

According to chamber and economic development representatives, businesses do not make decisions about locating, moving, or expanding their operation exclusively, or even primarily, based on tax considerations. The Ottawa Chamber explained that the businesses they speak with are “first are most concerned about what a community has to offer to the families that are going to be their employees and what a community has to offer in way of education… And usually, and this is almost quantifiable, they never ask about taxes until about sixth of seventh on the list. It’s not a priority for them. At some point they’re going to figure out the taxes, but the first thing they want to know is workforce, housing, amenities, schools, those types of things.[111] Likewise, the Overland Park Chamber noted taxes “are not at the top of the list when businesses

[110] Testimony delivered to the House Taxation Committee, March 15, 2016
[111] Interview conducted March 28, 2018

are looking for a place to locate. They may be in the top five, six, seven or eight, but it was not the determining factor."[112]

Brownback was making bold economic predictions about the power of a zero tax rate to lure businesses to Kansas solely out of rational economic self-interest. However, chambers rejected this view. "The companies, first and foremost, are focused on the availability of a ready workforce… Then there are other factors that have to do with the quality of life."[113] In pressing only for lower taxes, Brownback distorted the decision-making process that business owners and those who work on recruiting business to the state actually go through. Furthermore, the effects of the tax cuts damaged the things that businesses owners actually identified as important for business decisions regarding relocation or expansion.

Business owners themselves were more apt to emphasize demand-side considerations when making decisions. For instance, a Wichita-based sign-making business owner testified, "When I look back to 2012 when the current tax plan was adopted, we had 22 employees, and today we have 25. I attribute this increase to responding to the demand for our products and services, not to lower state income taxes. The statistician would say that our employment is up 14 percent, and the economist would say we created three new jobs. But in my world, we added employees as we sold more signs, not because we set out to create jobs."[114] This perspective was shared by many lawmakers who also own businesses. Moderate Republican business owner Mark Hutton, for instance, stated during a 2015 taxation committee hearing that "employers will only hire when they have a job to perform and that is driven by demand for a product or service."[115] "I have been told I'm just a business man who doesn't understand economics,"

[112] Interview conducted May 12, 2016
[113] Interview conducted July 21, 2017
[114] Testimony given to the House taxation committee, January 19, 2017
[115] Andy Marso (@andymarso), "Hutton: 'Employers will only hire when they have a job to perform and that is driven by demand for product or service'," Twitter, June 5, 2015, 1:01 p.m., https://twitter.com/andymarso/status/606913879864524802.

Hutton continued. “That might be true. But I’d say we’re dealing with economists who don’t know anything about business.”[116]

By shifting the focus to demand-side, rather than supply-side, business owners and chamber executives undercut the very justification for the Brownback tax cuts. Lowering (or eliminating) taxes on business owners may provide extra money on hand, but those tax savings do not immediately translate into purchasing new equipment or hiring more people. The recent Trump tax cut, modeled on the Kansas experiment, has provided evidence of this point. Instead of investing in new equipment and hiring more people, most businesses bought back their stock to drive up its price. Growth requires demand rather than just a supply-side incentive.

In addition to emphasizing that the Brownback administration undertook tax reform purely out of ideological commitments, there was frustration among many economic development professionals that they were never consulted on the tax policy’s development. According to the Ottawa chamber, “at no time were chamber executive’s opinions sought on the best way to develop commerce. It was just a philosophy that the best way to do it was to cut taxes. But nobody ever asked the people that do this professionally everyday what is the best way to approach this.”[117] Likewise, the Junction City chamber recalled the Kansas Economic Development Council (KEDA) asking to have a seat on Brownback’s council of economic advisors. “And we literally asked why is there not a person from KEDA on that council, on that advisory council as a boots on the ground? Let us have somebody there that is in trenches that is working with these bodies who knows what they’re saying. No, that was an absolute non-

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[116] Andy Marso (@andymarso), “Hutton: ‘I have been told I'm just a biz man who doesn't know anything about econ. That might be true....’ #ksleg,” Twitter, June 5, 2015, 1:03 p.m., https://twitter.com/andymarso/status/606914186304577536; Andy Marso (@andymarso), “Hutton: ‘... But I'd say we're dealing with economists who don't know anything about biz.’ #ksleg,” Twitter, June 5, 2015, 1:03 p.m., https://twitter.com/andymarso/status/606914260862537728.

[117] Interview conducted March 28, 2018

starter."[118] In addition to not being consulted, the economic development community was shut out of the process.

Businesses seek out communities with well-funded public infrastructure rather than communities (or states) with low tax rates. As sociologist Cristobal Young has argued, for many businesses, place becomes a form of capital (2018:67-95). Having communities where people want to live is a decided business advantage. And many of the qualities of a community that attract people and businesses are publicly-funded goods. In a fiscal environment where taxes were cut so severely, these very quality of life amenities were jeopardized or damaged which hurt the ability of economic development organizations to recruit new businesses and could motivate some business to exit. Thus, the tax cuts actually undermined the very stated goal of the tax cuts to grow jobs and bring in new businesses.

Reputation and Stability

Another way chambers saw the administration's tax policy as betraying business was the damage done to the state's reputation. Contrary to the Brownback administration's desire to create an attractive business climate in Kansas, many chambers and businesses viewed the tax policy as a deterrent. Specifically, chambers identified two ways the tax policy actually deterred businesses.

Negative media coverage of Kansas's fiscal crisis, plus Brownback's own claim that the policy was an "experiment," did not instill confidence among businesses. After the tax plan was passed, Brownback travelled to other states to sell the tax plan. For instance, in an October 2012 appearance in Colorado, Brownback "invite[d] anybody here to move to Kansas, so you hunt

[118] Interview conducted April 17, 2018

pheasant, have a good time, and if you're an LLC, or sub-S, or sole proprietorship, zero state income tax. Zero state income tax in the state of Kansas" (Rothschild 2012v). However, despite Brownback's salesmanship, the instability created by the tax policy undercut any of his rhetoric. Chambers suggested that the fiscal instability of the state sent a message to businesses that the policy would not last. This point was made clearly by the Manhattan Chamber of Commerce who observed that the tax cuts were "Everyone recognized that what Kansas was doing was unsustainable. And when you develop and environment that's not predictable, not stable, that's uncertain, then that decreases people's willingness to invest… they don't know what the future tax policy is really going to look like. And therefore, they were hesitant to invest."[119]

The damage to the state's reputation was particularly evident for the Junction City Chamber. As she recalled, "One Saturday morning I'm at home and I get a phone call. And it's this friend of mine and she says 'You will never believe in a million years what I'm watching. I'm sitting here in my sister's kitchen watching TV while we make breakfast. I'm watching ads on Maine TV saying do not let happen in Maine what happened in the State of Kansas.' So we are – the state that I've worked 27 years of my career to try to build and grow – we're being used in another state in this country as an example of what not to do. How does that make you feel?"[120]

The state's reputation was tarnished by the tax cuts. Businesses, like most onlookers, saw how the tax cuts created a fiscal crisis in Kansas, sewing doubts to whether the policy would last. Businesses, in other words, because they value stability and predictability, were not willing to invest or move because of the tax cuts if they believed the policy would be repealed. In Kansas, the lack of stability created by the tax cuts deterred businesses from expanding or relocating to

[119] Interview conducted July 5, 2017
[120] Interview conducted April 17, 2018.

the state. As the Lawrence Chamber noted, "[T]he current tax policy, I think, is actually a detriment, because we are in a bit of a dysfunctional state, so businesses like predictability. They'd be fine with paying their fair share. They just need to know what that is so they can predict it, plan for it. When they look at other states they may have your more typical tax structure versus no taxes for your LLCs, but that's not a deterrent for them to go to that state, when here you can see the writing's on the wall for change, and that's the worst thing you want from an economic standpoint is lack of predictability."[121] The same emphasis on stability and predictability was mentioned by the Olathe Chamber during a House Taxation Committee hearing where they testified, "we have consistently held the position that predictability and stability are vital to a strong business climate. To that end, we are hearing concerns from members that the pass-through exemption should be revisited on grounds of tax fairness as well as its contribution to budget instability."[122]

The Brownback administration attempted to recast how the tax cuts were framed in a bid to mitigate the appearance of instability and fiscal mismanagement. "Maybe we need to start a 'believe it' campaign," Brownback said of the tax policy (Rothschild 2012w).[123] However, public relation campaigns did nothing to address the actual structural imbalance created by the tax cuts. Moreover, the tax cuts undermined the efforts of economic development professionals. The tax cuts tarnished the state's reputation and created political and economic instability. Both

[121] Interview conducted May 4, 2016

[122] Testimony January 19, 2017

[123] As part of the effort to publicize the tax cuts, the Brownback administration sent a mailer to 146,000 business owners across the state letting them know about the tax cuts. The brochure was described by the *Lawrence Journal-World*: "One side of the blue and gold brochure says the tax cuts make the state's income tax system "fairer, flatter and simpler." It goes on to say, "this bold action" will "provide a jolt of adrenaline to the heart of the Kansas economy," and it includes a quote from a *Wall Street Journal* editorial praising the changes and a quote from Brownback" (Rothschild 2012x). Democrats objected to the flyer because they saw it as a campaign flyer paid for with taxpayer funds. The flyer was sent out early November 2012, just prior to the election. The Department of Revenue spent $52,000 on the flyers. Brownback defended it, however, saying, "The tax mailer was sent to educate business owners affected by the change in tax policy prior to the next tax year… For income tax cuts to work businesses particularly have to reinvest the money in their companies and employees. How can they do this if they don't know about the changes?" (Rothschild 2012x).

of these consequences made it more difficult for economic development actors to attract businesses to Kansas. Brownback had put his faith solely in tax cuts; that the policy alone would bring businesses to the state. This was not the case. Brownback's approach to tax policy ignored the effort of actual people who build relationships with businesses and work to grow the state's economy. In short, Brownback privileged tax policy above people.

Budget Cuts

Brownback viewed the tax policy as sufficient for attracting businesses to Kansas. This contrasted with what business groups understood as necessary for growing local economies. This tension is exemplified by the resentment local chambers felt towards budget cuts for the Kansas Department of Commerce. The tax cuts did not promote economic growth in the state, nor did they incentivize businesses to relocate. What they did, however, was erode the state's capacity to attract businesses by cutting budgets for development agencies, like Commerce. In other words, the tax cuts worked at cross-purposes to the stated goals of the policy. The Department of Commerce suffered significant budget cuts resulting in the loss of agency employees.[124] According to administrative data (Kansas Department of Administration 2017), Commerce had 418 full-time (FTE) employees in 2009. By 2017, the number of FTE employees was down to a mere 137. This reduction was not the largest among public agencies during Brownback's governorship. The Brownback administration reduced the number of employees at the Department of Transportation from 3,151 FTE employees in 2009 to 1,899 in 2017, and the

[124] Staff layoffs and threats of furloughs became a chronic problem during the tax cuts. Low staffing levels have haunted many agencies in Kansas. As mentioned in Chapter Four, the Department of Revenue was hard hit, but so were many of the state prisons. Indeed, the Kansas Department of Corrections (KDOC) also suffered massive budget cuts and high staff turnover and vacancy rates. According to a report by KDOC, for FY2020 there are 323, or 9.2 percent, of staff positions across the Kansas prison system that are unfilled (Werholtz 2019). Low staffing levels were to blame for three prison riots which took place in different prisons.

Department of Children and Families from 3,670 employees in 2009 to 2,024 in 2017. Nonetheless, staff reductions at Commerce were noticeable and severe. And for some chambers, their experience with fiscal crisis was through changes with this agency. For instance, the Dodge City Chamber remarked that "Probably the only thing that I have experienced, more as an economic development organization, is the lack of funding that the Kansas Department of Commerce has been receiving and the cutbacks that they've had to make on helping with assistance programs and doing the marketing."[125]

Local chambers across Kansas spoke in near-apocalyptic terms, using terms like "crypt" and "decimated," to explain the extent of Commerce's budget cuts. The Ottawa Chamber explained that the Department of Commerce is now "like a crypt compared to what it was prior to 2012 when it was robust and a lot of people. Now they've got rows of cubicles where nobody is working and they're just open, vacant. I like to say that Commerce has just been gutted"[126] The Junction City Chamber, likewise, recalled "There was a point in time when the Kansas Department of Commerce was just an incredible staffed, well-run, well-organized machine in this state. And it was just unbelievable to be able to partner with them and work on things. To this day, the people that they have on staff, that are left, are still very professional, their heart is in it and they're doing their level best to do what they can for us." However, because of budget cuts, "the Department of Commerce has been so entirely decimated by either not filing positions or attrition or left because of politics or whatever the reason for it may be, finance or whatever – that… [t]here's just not enough of them to effectively do what we need to do."[127]

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[125] Interview conducted July 18, 2017
[126] Interview conducted March 28, 2018
[127] Interview conducted April 17, 2018

Eliminating positions at the Department of Commerce was consequential because this agency is tasked primarily with attracting new businesses to Kansas and aligning them with local communities. Fewer staff meant fewer opportunities for local communities. Several chambers recalled that they have seen opportunities disappear as a result of the lower staffing at Commerce. As the Ottawa Chamber explained to me, "The Department of Commerce was a big source of where we would get leads for companies that were not in Kansas but looking to locate here… That work just isn't happening now. They just don't have the workforce in the Department of Commerce to provide this assistance back to communities."[128] Additionally, the Topeka Chamber of Commerce recalled, "[H]istorically we've collaborated with the Department of Commerce to land prospective businesses... It was a pretty good working relationship. But if you were to graph that out, the number of leads coming out of the Department of Commerce is like carbon-dating or something, it's just been halved and halved and halved until we didn't get any leads out of Commerce last year. It used to be many, maybe 10 or 15 a year or something. But it's really fallen off… They have been crippled in their ability to collaborate with communities like ours to attract businesses. At this point they're not even a meaningful partner in that."[129]

The Department of Commerce supported the local chamber's views. "I've worked in [the Department of Commerce] for eighteen years," one agency representative explained. "Only three of those eighteen years we've had status quo budget… The other fifteen we've had budget cuts. Eventually that does take its toll."[130] Similar to the local chambers, the Department of Commerce also expressed frustration at the emphasis Brownback placed on tax cuts instead of economic

[128] Interview conducted March 28, 2018
[129] Interview conducted July 21, 2017
[130] Interview conducted October 23, 2017

development staff. "Governor Brownback comes in and we're in the middle of the recession, we've been facing budget cuts as a state, and then to rejuvenate the economy, or kickstart it, we put in these tax credits that everybody thinks will be an incentive and business will grow and next year it will get better. And it didn't. We've had budget cuts. We had recruitment staff get cut. People retired and because of budget cuts we weren't allowed to backfill positions. We had, at one time, six recruitment staff. I now have two full time and two part-time, and the two part-time are contract workers. If you go from six to three, it's hard to be a high performer on recruitment."[131] The severe understaffing at the Department of Commerce also motivated the Kansas Economic Development Alliance (KEDA) to make re-staffing the Department a top legislative priority.[132]

Referring to the diminished staff at the Department of Commerce, the Junction City chamber explained it was not the agency's fault. "I would say it is the fault of leadership of the state not recognizing the importance of those people in that division."[133] The cuts to the Department of Commerce reveal perhaps the largest disconnect between business interests and Brownback. The administration's view was that tax cut and consequent rational self-interest alone would be the primary means to draw businesses to Kansas. However, those most actively involved in local economic development stressed the relationships and people-power needed to attract new businesses.

[131] Interview conducted October 23, 2017
[132] Interview conducted February 15, 2018
[133] Interview conducted April 17, 2018

Interpreting Business Political Action

The pro-repeal views of business owners surprised both Republican and Democratic lawmakers initially. Former Republican state senator Jeff King, for instance, gave testimony to the House Tax committee in support of eliminating the pass-through exemption. During his testimony, King said the "guiding principle that I always heard when I started on the [Senate] tax committee was, as long as you serve on the tax committee, no one will ever ask you to raise their own taxes. What has amazed me about this bill that we have in front of us today, what's amazed me about the LLC loophole, is some of the leading business men and women in my district, some of the most conservative people I know in my district, some of the most active Republicans I know in my district – and Democrats as well – have told me… 'Jeff, you go back up to Topeka, I want you to tell them to tax me. Put the tax back on my business'."[134] Similarly, Tom Sawyer, the ranking Democrat on the House Tax committee explained that usually supporting tax increases was like going to the dentist to have a tooth pulled. However, he recalled that "some business owners actually drove six hours to come up here and say, 'tax me.' That's a pretty big phenomenon. It's just an amazing thing you don't see. Tax increases are never really popular. So I thought it was pretty astonishing. And, still, even this year, I get emails, I get phone calls, people saying, 'tax me,' which is just pretty unusual."[135] Small business interests in the state took political action to secure the repeal of the tax cuts. But how lawmakers interpreted *why* small businesses were taking this position differed between supporters and critics of the tax policy.

Several lawmakers in the Kansas legislature directly benefited from the 2012 tax cuts. According to reporting by the *Wichita Eagle*, 70 percent of lawmakers, or their spouses, had

[134] Testimony given to the House Taxation committee, March 15, 2016
[135] Interview conducted February 6, 2017

business holdings that were eligible for the pass-through exemption (Lowry 2016).[136] This is not unusual since state level politicians tend to come from the business world. One nationwide survey found nearly one-third (30 percent) of state lawmakers were business owners, and another 14 percent were attorneys (presumably also self-employed) (National Conference of State Legislatures 2015). While many Kansas lawmakers benefited from the tax cuts, this direct personal gain did not seem to translate into opposing repeal. Indeed, several lawmakers, such as Tom Holland, took advantage of the pass-through provision while remaining critical of it. As Republican representative Daniel Hawkins, who sits on the House Taxation committee, explained, "My company is an S-corporation… we're getting tax breaks. But quite frankly, I'm for repealing the pass-through tax exemption. So I find it interesting sometimes the media wants to portray the politicians here, the representatives and senators, as well they've all got some bias or special interest, whether they're a business owner or something, they want to keep their tax breaks. Well, you know a lot of us who have been for the repeal of that have LLCs and S-corps."[137]

While pass-through business holdings certainly could have incentivized some lawmakers to oppose repealing the tax cuts, I argue instead that the high percentage of lawmakers who held pass-through business income actually helped with the repeal effort. In this case, the number of business owners in the legislature meant lawmakers were personally familiar with the effects of policy in their own businesses. Thus, there was less need for the business owners and chambers to try to convince lawmakers that the tax cuts were not helping businesses because lawmakers themselves were not hiring more workers. For instance, Democratic representative Adam Lusker,

[136] In the Kansas Senate, 35 of 40 members held a business entity that benefitted from the tax policy. In the Kansas House, 79 of 125 members also held pass-through business income. Governor Brownback's spouse, Mary Brownback, also held an LLC – SFI LLC.

[137] Interview conducted March 24, 2017

who owns Lusker Masonry, LLC, testified that "In 2013 when our accountant told us that we no longer had to pay state income tax, I viewed it as a nice bonus. Had I known then the devastating effects it would have on Kansas, I don't think I would have been so happy."[138]

Lawmakers who owned pass-through businesses generalized from their own experiences to inform their understanding of how the policy was working.[139] Lawmakers drew on this experience when interpreting the pro-repeal perspectives on business owners in committees and elsewhere.[140] But familiarity with how businesses operate was still refracted through an ideological lens. For some, business experience naturally led them to take business owner's claims on face value. Democrat Jim Gartner recalled his days as a lobbyist prior to becoming an elected official, "When I was a lobbyist, I was a sole-proprietor. I took advantage… A sole-proprietor under that exemption didn't have to pay state income tax. So I took advantage of it. Did I hire anybody? No. Did I invest that money? No, I invested it in my pocket and went on a vacation."[141] For Gartner, his experience with the tax cut, particularly in not hiring any workers or reinvesting into his business, led him to be skeptical of the administration's claims of how business owners were using the extra tax savings.

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[138] Testimony, March 15, 2016

[139] Holding a pass-through business helped lawmakers see the effects of the policy. However, it is also possible that the type of business mattered as well. Again, for Adam Lusker, his beliefs about the tax policy were formed not only by his experience with the policy, but with how the budget cuts were impacting his business. As he explained in the same testimony, "we have primarily built schools. We have also built many projects at several colleges in Southeast Kansas. Large projects that were in full or in part funded through state dollars." In this way, Lusker, as a business owner and lawmaker, was stating a view very similar to chamber executives from Ottawa and Pittsburg listed above. Lusker's point was that businesses suffer as a result of budget cuts, particularly ones that hit schools.

[140] Committee testimonies were not the only way lawmakers heard from business owners about the tax policy. Indeed, several lawmakers heard directly from business owners in their own district regarding the tax cuts. As Representative Steven Johnson told me, "I think [business owners] see that erosion. Interestingly enough, the largest number that I'm getting it from are accountants who not only see their business but they see what everyone else is doing, and I think they've got a pretty good case and a pretty good perspective to say, 'We're not seeing this add jobs. We're not seeing this add investment on the whole. We're absolutely seeing cases, but on the whole we are seeing this as a way to not pay income tax, and unfortunately on balance it is more avoidance than growth that we are seeing'" (Interview conducted February 1, 2017). Likewise, Republican representative Tom Phillips, a Republican from Manhattan explained, "By and large, business owners back home who come and talk to me are saying this tax policy is not right and not fair. Whether they're doctors, dentists, lawyers, they're saying it's not right that I'm paying zero taxes and all my W-2 employees are paying taxes" (Interview conducted February 20, 2017).

[141] Interview conducted March 24, 2017

However, for other, more conservative lawmakers, their business experience translated into a suspicion of the owner's claims. In contrast to many moderate and Democratic lawmakers, who tended to see businesses advocating out of "enlightened" self-interest, many conservative lawmakers viewed businesses as advocating out of pure self-interest. Specifically, conservative lawmakers saw pro-repeal business owners as actually lobbying to restore lost tax privileges. In the 2012 tax reform, Kansas eliminated the loss carry forward provision.[142] As a Kansas Department of Revenue memo outlined, the 2012 tax reform bill "includes provisions which prohibit individuals from deducting losses arising from these categories. Beginning in tax year 2013, these deductions will only be available to corporations that are subject to the Kansas corporate income tax, i.e. C corporations. One of the deductions that will not be available to individuals is the net operating loss deduction."[143] The net operating loss deduction is important for many businesses, especially when they are still new.[144] If a business loses money in a given year, they are generally allowed to claim that loss against current year's taxable income, reducing their tax liability.[145]

For many conservative lawmakers, restoring tax code privileges, such as net operating loss, was key to understanding business efforts to secure repeal of the policy. This view was

[142] The net operating loss refers to the deduction a business can take when expenses are greater than revenues. In addition to small businesses not being able to deduct losses, this also occurred with farmers. Testimony provided by the Kansas Livestock Association (KLA) in 2014 points to this. While the KLA believed the tax reforms to be positive, they note, "As a result of the 2012 changes to the Kansas income tax code, ordinary, pass-through business income was exempted from the Kansas income tax. This change also meant Schedule F (farm income) losses no longer could be used to reduce capital gains income from the sale of cull cows, bulls, sows, boars, ewes, rams, etc. Therefore, in a year where a farm or ranch has an operational loss, it will also incur a tax bill on capital gains that it would not have had prior to the 2012 income tax law changes. Unlike other capital gains that may be associated with a small business, sale of culled breeding livestock is a regular and often systematic occurrence that is factored into a producer's cash flow and income statements" (Testimony provided to the House Taxation Committee, February 18, 2014).

[143] Kansas Department of Revenue, Memo, Notice 12-08 "Net Operating Losses," (https://www.ksrevenue.org/taxnotices/notice12-08.pdf).

[144] The net operating loss provision of the tax code was established with the Revenue Act of 1918. Historically, losses could be carried forward up to 20 years and back up to 2 years, though recent tax reforms have altered this. The net operating loss is the provision of the tax code that allowed Trump to avoid paying taxes for up to two decades (Barstow, Craig, Buettner, and Twohey 2016)

[145] The Kansas tax reforms eliminated the net operating loss provision for pass-through businesses. The Trump tax cuts of 2017 also altered the net operating loss for pass-throughs, reducing the deduction to 80 percent of taxable income. Additionally, the TCJA eliminated the loss carryback provision, only allowing businesses to carry forward losses and not apply them retroactively.

exemplified most clearly by conservative Republican Ty Masterson, a business owner from Andover, Kansas. According to Masterson, “You’ve got to follow the money. You’re not just talking about adding the tax to the income. The big key of what they’re talking about is adding the losses back. If you’re a business that pulls back parallel losses, those that are small business people that are for [repeal], a good majority of them will actually pay less tax with the tax on but parallel losses applied… So you’ll find a lot of these guys that are small business people that are for reversing it are people that need to write losses off.”[146] Making a similar point, freshman conservative representative Abraham Rafie stated, “There’s often things below the surface… With pass through income entities that the LLC exemption or loophole, effects, when the rate dropped to zero, when they were made completely exempt… at the same time, the ability to remove losses was also taken away because why do you need losses in order to be able to pay no income taxes anyway. That ability to have a loss is valuable.”[147]

For conservatives like Masterson and Rafie, business advocacy was primarily about restoring personal tax privileges, not about restoring funding for state services. While Masterson acknowledged some small business owners were altruistically lobbying for the repeal of the tax cuts, he believed “they’re the minority.”[148] Substantially, the difference between how conservatives and moderates interpreted business action was a difference between self-interest and “enlightened” self-interest. Moderates believed businesses were acting out of enlightened self-interest; advocating for the repeal the tax cuts to stabilize the state’s economy, even if meant they personally would pay more in taxes. However, conservatives believed businesses were acting more selfishly and out of pure self-interest. The tax cuts had eliminated a valuable tax

[146] Interview conducted February 14, 2017.
[147] Interview conducted May 9, 2017.
[148] Interview conducted February 14, 2017.

deduction and businesses were lobbying to restore their own tax privileges. Loss of net operating loss did result in some businesses paying more in taxes than they otherwise would (Table 11). Thus, it is likely that at least *some* businesses were motivated by an interest to restore net operating losses, regardless of the broader fiscal crisis. However, my data tends to support the enlightened self-interest explanation for business action.

Conclusion

Somewhat ironically, sociologists and conservative politicians have both tended to view small businesses similarly; that is, both have tended to regard small businesses as a constituency supportive of very conservative, anti-tax political positions. In this chapter I have argued this view of small business gets it wrong. Small businesses are not *a priori* anti-tax or anti-state. That is, their class location does not determine their views towards taxes. Instead, I suggest an institutionalist perspective best captures how small businesses relates towards the state through taxation. According to Prasad, the historical institutionalist literature has shown that "institutions structure the incentives of actors in ways that cannot be reduced to the social origins of the actor" (2006:23). Thus, according to an historical institutionalist perspective, taxes structure small business incentives in complex and sometimes contradictory ways. Dramatic and sudden changes in the institution of taxation reveal how this works. In Kansas, the sudden elimination of taxes on a certain business type (pass-throughs) dramatically changed the incentive structure for businesses. But instead of incentivizing businesses to maintain the policy, the effects of the policy (budget cuts and austerity), incentivized businesses to advocate for the reversal of the policy. Over the period of time when the tax cuts were in place, business owner's social or class locations did not change; the institution changed. Thus, the shift towards pro-tax political action is a result of the institutional transformation.

Chapter Four:
How School Funding Shaped Repeal Efforts

This chapter examines the instrumental role of schools in shaping and reshaping the tax structure of the state. This chapter argues that schools contributed to the repeal of the tax cuts by constraining Brownback's ability to remake the tax code in direct and indirect ways. Directly, school districts brought lawsuits against the state in response to school funding cuts which represented a formal limit to how far Brownback could continue to cut taxes. Schools constrained tax reform indirectly, as well due to their central position in many communities. Schools are essential to the identity and culture of Kansas towns. Thus, the effects of the tax cuts on schools were visible and drew people's attention to the financial difficulties in the state.

Sociologists have noted the importance of school funding battles in state Republican politics (Kincaid 2016). And the school funding lawsuits in Kansas are part of a larger trend of public education employees protesting lack of adequate school funding in Republican-dominated states. School funding across many states has not returned to pre-Recession levels (Leachman, Masterson, and Figueroa 2017). For instance, Oklahoma cut its funding per pupil by 28.2 percent between fiscal years 2008 and 2018 (Leachman, Masterson, and Figueroa 2017). Many of the other states that saw protests also saw their pupil funding cut dramatically during the same period; Arizona (13.6 percent), Kentucky (15.8 percent), West Virginia (11.4 percent). Moreover, many of these states also exacerbated these recession-mandated education funding cuts with tax cuts. In response, in the spring of 2018, five states - West Virginia, Arizona, Colorado, Oklahoma, and Kentucky - had teacher protests for higher public education funding

(Blanc 2019). Fully five percent of all K-12 public education workers participated in the strike, the largest number in a quarter century (Kerrissey 2018).

Despite a decline in per pupil funding of 9.9 percent between 2008 and 2018 (Leachman, Masterson, and Figueroa 2017), Kansas teachers did not strike. However, many of the same conditions in other states were found in Kansas. The last and only time teachers in Kansas went on strike was in 1973 (Bowers 1984). School districts in Kansas took a different approach and utilized legal system to bring about political pressure. This chapter examines the school funding battle in Kansas since the Recession. I argue that the school funding battle, and particularly the strategy of using the court, was a main driver of the decision to reverse the tax cuts.

History of School Finance and Litigation in Kansas

Education is the largest single expenditure in Kansas' general fund, accounting for well over half of the state's annual budget. Like most states, in the past Kansas relied heavily on local property taxes to fund public education. Prior to 1937, state funding for education accounted for approximately five percent of all education spending in the state (Berger 1998:4). However, state funding has increased to over 60 percent of the state general fund in FY17. Not all states fund their education primarily through the state general fund and several states still rely heavily on local taxes. However, in Kansas the goal of distributing funds via a state funding formula is designed to create a more equal funding across the state's districts. This has not always manifested in practice and Kansas has seen several lawsuits over school funding in past decades.

During the 1960s, Kansas implemented a variety of school reforms. For instance, the 1963 School Unification Act radically reorganized schools across the state by consolidating districts. Kansas went from 8,624 in the 1940s to 349 by 1966. However, the most consequential reform occurred in 1966 when Kansas amended the state's constitution to adopt Article 6 which enshrines the state's obligations to public education. Section 6 has been at the center of most legal disputes. Section 6 states that the Kansas legislature "shall make suitable provision for finance of the educational interests of the state." Much of the fight over education in Kansas has revolved around interpretations of what a "suitable" level of funding means (Flentje and Aistrup 2010:184). The first phase of school finance litigation began in the early 1970s with *Caldwell v. State* (Baker and Green 2005). For present purposes, however, it is useful to begin with the *Mock v. Kansas* decision in 1992.

In 1973, in the wake of the *Caldwell v. State* lawsuit, Kansas passed the School District Equalization Act (SDEA) which increased the amount of funding the state provided to poorer districts while decreasing the amount of funding it provided to wealthier districts (Thompson, Honeyman, and Wood 1993:38). Every district receiving state aid was required to also raise local funds equal to 1.5 percent of the district's wealth. If the amount raised locally was less than $936 per pupil for districts with enrollment of less than 400 students and $728 per pupil for districts above 1,300 enrolled students, then state aid made up the difference (Berger 1998:11). Additionally, the SDEA placed a cap on the increase of spending for certain districts. Districts above the median in spending were allowed to increase their budget 5 percent per year while districts that were below the median could increase their spending to either 5 percent above the median or 15 percent from the previous year (Baker and Green 2005:3).

Critics identified two major flaws in the SDEA, however. First, it allowed wealthy districts to essentially forego state aid and raise all funds locally. Wealthy districts could, for instance, levy a 3 percent local tax and spend more per pupil than poorer districts levying the same 3 percent *and* receiving state aid. Also, by allowing wealthy districts to increase budget spending by 5 percent and prohibiting poorer districts from catching up, the SDEA perpetuated inequality among districts (Berger 1998:12).

In 1974, a lawsuit brought by a group of taxpayers and 42 school districts challenged the constitutionality of the SDEA. A local district court found the SDEA unconstitutional and in response to the ruling, the Kansas Legislature changed the definition of district wealth, upping the amount required for local contribution from 1.5 percent to 1.7 percent, and changed the budget limitation from 5 percent to 10 or 15 (Berger 1998:14). Additionally, in 1978 the Legislature repealed the 15 percent alternative cap on budget increase and in 1979 repealed the cap altogether. This had a dramatic effect on district inequality. Kansas schools went from being among the most equitable in the country to among the most inequitable by 1987 (Berger 1998:15).

By the late 1980s and early 1990s, several lawsuits had been brought against the SDEA by up to 42 different districts. The final straw for the SDEA was a dramatic tax cut by Democratic Governor Joan Finney who cut $19 million from state aid to schools in 1990 (Berger 1998:17). These various lawsuits were consolidated into one case, *Mock v. Kansas*, that was presided over by Judge Terry Bullock. Instead of taking the case to trial, however, Judge Bullock convened an unorthodox conference with legislative leaders on October 14, 1991. During the conference Judge Bullock laid out his pre-trial opinion (presented in a rhetorical question-and-answer format) that the legislature has the "sole and absolute duty to establish, maintain, and finance public schools" (Berger 1998:20). And further, the legislature has the duty to provide both equitable distribution of funding across districts as well as adequate funding.

Judge Bullock agreed to delay a trial if the legislature agreed to take up school funding in the 1992 session. Legislative leaders agreed to these terms and Governor Finney immediately convened a task force on school funding. The debate over school funding was arduous and quickly turned into a debate over taxes. Indeed, so heated was the debate that the tax discussions prompted a tax revolt secessionist movement in southwest Kansas (McCormick 1995). Though not an easy process,[149] the recommendations from the task force were eventually passed as the 1992 School District Finance and Quality Performance Act. This act was a "landmark event" (Tallman 1993:1) that dramatically changed both how schools were funded and the makeup of the state's tax structure.

The "Three-Legged Stool:" How the 1992 School Finance Law Changed the Tax Structure

The 1992 school finance act is important because it dramatically changes the state's tax structure. Prior to the 1992 school finance law, general fund property tax levies ranged from 9.12 mills[150] in Burlington to 97.69 mills in Parsons (Kansas Legislative Research Department 2012a). The 1992 law equalized mill levies across the state establishing a uniform rate of 32 mills. This rate was stepped up to 33 mills in 1993 and eventually 35 mills in 1995. Equalizing mill levies also raised other state revenue sources. By lowering property tax rates, the school funding act also raised $138 million in new income taxes and $305 million in new sales taxes (Berger 1998:25). Increasing income and sales taxes decreased the state's reliance on property taxes. Prior to the 1992 law, property taxes comprised 38.7 percent of general fund revenue while sales taxes comprised 22.7 percent and income taxes comprised 21.1 percent. After the implementation of the 1992 law, the reliance on the property tax began to decline putting a more equal balance between the three main revenue sources. Thus, in FY98, property tax comprised

[149] For a detailed history of the legislative process leading up to the 1992 school finance act, see Tallman 1993.
[150] A mill is equal to one dollar per $1,000 in assessed valuation. This unequal situation meant that people in Burlington were only having to pay about $9 dollars per $1,000 in assessed value while people in Parsons were having to pay about $97 dollars per $1,000 in assessed value.

30.9 percent, sales tax was 28.1 percent, and income tax was 28 percent (Kansas Legislative Research Department 2010:5).

The relative balance between the three main sources of income was a product of the 1992 school funding law and came to be known as the “three-legged stool” approach. This approach to public finances in Kansas is not a formal rule, but rather is an informal institution which has guided state tax policy since the mid-1990s. In 1995, Governor Bill Graves established a Governor’s Tax Equity Task Force and instructed the group to study the “current mix of statewide property taxes, sales taxes, and income taxes” (Executive Order No. 95-178). The task force returned its report laying out the ideal of a “three-legged stool” for the state’s tax structure and urging the state to maintain its “enviable reputation as a fiscally responsible state” (Governor’s Tax Equity Task Force 1995:11). To do this, the report recommends a “balanced and diversified” tax structure because “a balanced tax system will reduce the magnitude of problems caused by over reliance on a single tax source (Governors Tax Equity Task Force 1995:13). Likewise, this approach to taxes “should help stability in times of economic uncertainty and avoid the need for hasty, unexpected tax increases or service reductions” (Governors Tax Equity Task Force 1995:13). The report also lays out recommendations for future tax reform by noting “Kansans should be able to rely upon a stable tax policy” that “should not unduly erode the tax base” (Governors Tax Equity Task Force 1995:12-13). A “three-legged stool” approach to tax policy in Kansas would persist roughly unchanged until Brownback’s tax reform push in 2012. Moreover, the three-legged stool would become an important heuristic device for opponents of the tax cuts to draw upon.

The 1992 school finance reform is also important because it established the legal interpretation of the Constitution that increasingly antagonized Republicans in the legislature.

Article 6, Section 6 states the legislature must provide a “suitable” education. Prior to 1992, no lawsuit challenging the school funding system in Kansas had ever reached a conclusion, meaning the courts had never ruled what the Constitution requires (Tallman 1993:7). Thus, in finally offering an interpretation of the constitution, Bullock set a precedent for how future school funding cases would be judged. This is particularly true when it comes to interpreting equity and adequacy. Equity, according to the court’s opinion, means that “each child has a claim to receive that educational opportunity which is neither greater nor less than that of any other child” (Berger 1998:20). Importantly, however, this did not mean an *even* amount of funding per pupil. Bullock notes that the cost of educating a child will differ based on differing characteristics. For instance, the cost associated with transportation or English-language acquisition might mean that a suitable education requires more money for certain pupils. And by adequacy, the court found, would primarily be about suitability (Kansas Office of Revisor of Statutes 2016:3). In other words, as Judge Bullock wrote, “should total legislative funding fall to a level which the Court, in enforcing the Constitution, finds to be inadequate for a 'suitable' . . . or minimally adequate education, a violation of the 'suitable' provision would occur” (Berger 1998:20).[151]

To briefly summarize: the 1992 school funding lawsuit helped to establish two important institutions which would come to constrain Brownback’s attempts to remake the tax structure. The new school funding approach created an informal institution – the three-legged stool – as well as formal institutions in the form of legal interpretations of the adequate and equitable approach to funding schools. Both of these institutions play a role, but the adequate and equitable

[151] Further, in his opinion, Bullock “asserts a strong role for the court” (Berger 1998:21). That is, Bullock’s opinion creates a role by which the Court is the arbiter for determining both equity and adequacy, and not the legislature. This is important because, as will be mentioned below, the legislature grew increasingly antagonistic towards the judiciary over the course of the Brownback tax cuts.

provisions play a noticeable role in the next major school funding lawsuit that becomes intertwined with Brownback's tax cuts: the *Gannon* lawsuit.

The Gannon Lawsuit

The school funding formula established in 1992 persisted into Brownback's tenure as governor. However, that does not mean school funding litigation ceased. Lawsuits[152] in the intervening years were primarily about fine-tuning different weighting categories. After a series of these lawsuits, by 2008, the base state aid per pupil funding amount had increased to $4,400 (Kansas Legislative Research Department 2016:8). In 2008, the legislature also approved (but never funded), future increases to the base state aid which set the amount at $4,492. These moves by the legislature satisfied the court and *Montoy* was dismissed in 2009 (Daniel 2016:1605). However, 2008 was also the height of the Great Recession which meant Kansas was unable to fund the increases to the base state aid amount and would instead have to cut education spending.

Nearly all states cut education spending as a result of the Recession. The amount cut, however, differed and Kansas was among the 12[153] states that cut public education the sharpest. Kansas' state-funding formula per student declined 9.9 percent between 2008 and 2018 (Leachman, Masterson, and Figueroa 2017). During the 2010 legislative session, after delaying cuts to education, the structural balance to the budget became too large. Governor Mark

[152] The school funding formula established an equation for distributing per pupil funds and included weights for certain types of students. For instance, students who needed extra transportation or students who needed extra English language learning were weighted to provide extra money for these services. In 1999, another lawsuit, *Montoy*, was filed over under-funding in some of the weighted categories. The *Montoy* case lasted several years and in 2003, Judge Bullock in the Shawnee District Court found the state's funding scheme to be unconstitutional. The state appealed and in 2005 the Supreme Court agreed with the lower court opinion and found the state to be unconstitutionally underfunding the schools. In response the legislature passed HB 2247 which added $140 million in new funding. This amount did not satisfy the court and during a special summer session the legislature approved SB 43 and authorized another $147 million. The following year, in 2006, the legislature again passed another school funding increase. This law, SB 549, made several changes to parts of the formula as well as increased funding by $466 million over the next three years (Kansas Office of Revisor of Statutes 2016:9).
[153] The other states included in this list are Oklahoma (-28.2%), Texas (-16.2%), Kentucky (15.8%), Alabama (-15.3%), Arizona (13.6%), West Virginia (-11.4%), Mississippi (-11.1%), Utah (-10.1%), Michigan (-9.2%), North Carolina (-7.9%), and Idaho (-7.0%) (Leachman, Masterson, and Figueroa 2017).

Parkinson, who had just taken over for Kathleen Sebelius, ordered $38 million in cuts to K-12 in May 2009, another $40 million in cuts in July 2009, and again another $36 million in November 2009. By the 2010-2011 school year, base state aid had fallen to $3,937. After Brownback was elected, he further cut funding to schools. In May 2011, Brownback signed what was known as the "largest cut to schools," cutting K-12 funding by another $104 million. These deep cuts, coupled with the reduced revenue from the tax cuts, meant Kansas was unable to restore education funding to pre-recession levels.[154]

In response to this series of budget cuts, schools[155] filed another lawsuit, *Gannon v. Kansas*, to force the state restore funding. The first ruling was handed down in January 2013, just as the Brownback tax cuts went into effect. In the ruling, a District Court Panel determined that Kansas was violating the constitution by underfunding schools. The court ordered the legislature to increase funding back to the base level demanded by statute - $4,492. The Court was not ordering the legislature to increase school funding at this point – rather, they were ordering the legislature to fund education at the level demanded by the 2008 statute.

The state, however, argued the budget cuts were necessary because of declining tax revenue and, as such, increasing school funding would burden the state's economy and budget. The court, however, rejected this argument. Only a few months earlier Kansas had passed the Brownback tax cuts and this was not lost on the court. In their decision, the court wrote,

[154] In Kansas, the tax cuts are nearly solely responsible for the inability to restore education spending. However, it should be noted that several states (29 in fact) fund public education at less than pre-recession levels (Leachman, Masterson, and Figueroa 2017).

[155] Four districts – Wichita, Dodge City, Hutchinson, and Kansas City, Kansas, are plaintiffs in the case. There are 286 school districts in Kansas and approximately 50 of those districts are co-sponsers in the case as members of Schools for Fair Funding, the organization that formed behind the *Gannon* lawsuit. Later, there was another group, the Kansas Coalition for Fair Funding, which also formed. The group, intentionally branding itself similarly to the Schools for Fair Funding, formed to advocate for a constitutional amendment that would limit the amount of funding for K-12 in the state. This is not the only group that formed that had a similar name to an anti-Brownback group. Similar to the moderate MainStream Coalition, the Kansas Chamber of Commerce formed a PAC called the MAIN Street Kansas PAC. And under this PAC, the Kansas Chamber sent out mailers attacking moderate lawmakers. This was meant to create confusion and, at least partially, succeeded. In a post, the MainStream Coalition had to explain the difference and noted, "One [MainStream Coalition] supporter even went so far as to tell us they would no longer vote moderate, because 'our' postcards used such despicable smearing tactics" (MainStream Coalition 2016).

> It seems completely illogical that the State can argue that a reduction in education funding was necessitated by the downturn in the economy and the state's diminishing resources and at the same time cut taxes further, thereby further reducing the sources of revenue on the basis of a hope that doing so will create a boost to the state's economy at some point in the future. *It appears to us that the only certain result from the tax cut will be a further reduction of existing resources available and from a cause, unlike the "Great Recession" which had a cause external to Kansas, this is homespun, hence, self-inflicted.* While the Legislature has said that educational funding is a priority, the passage of the tax cut bill suggests otherwise...[156]

In making this argument, the court further antagonized itself towards Brownback and conservatives in the legislature. In response to this ruling, the state appealed to the Kansas Supreme Court. Brownback dismissed as myth that his tax cuts were responsible for impacting the school funding stream: "One of the great myths," Brownback remarked, "is that you can't cut taxes and invest in education" (Kansas City Star 2014).

The District Court decision was released just prior to the 2013 legislative session and Brownback took aim at the Court during his State of the State address. Brownback called for a change in how Supreme Court justices were appointed, recommending Justices be selected either by a general election or by governor appointments.[157] However, changing the selection of justices was only one in a number of options conservatives floated in an attempt to remove the constraints (both political and budgetary) imposed by schools. Indeed, one of the first options floated was to try to change the Kansas constitution and get voter approval by April to stop the funding increase by changing the definitions of equitable and adequate (Rothschild 2013a).

The appeals process took over a year, but in March 2014 the Kansas Supreme Court agreed with the lower court and ruled that Kansas was underfunding its public schools. The Court also reaffirmed the earlier ruling that Section 6 of the Kansas Constitution contained both

[156] Gannon v. Kansas, 2013 Shawnee County District Court, Case No. 10C1569, p. 226-227 (http://www.shawneecourt.org/DocumentCenter/View/457), emphasis added.
[157] Currently, the way in which Kansas choses its Supreme Court justices is a nominating committee provides a list of three people to the Governor to choose from.

an adequacy and equity component. Further, the Court essentially sought to operationalize these more abstract concepts for the legislature, determining that adequacy would be satisfied when Kansas schools meet or exceeded the "Rose Standards[158]" (Kansas Office of Revisor of Statutes 2017:2) and equity would be satisfied when all school districts "have reasonably equal access to substantially similar educational opportunity through similar tax effort" (Kansas Office of Revisor of Statutes 2016:11).

A few weeks after the Court's decision, Brownback signed a law addressing the Supreme Court's ruling on equity.[159] In June, the district court panel ruled that the additional funding was sufficient to meet the equity portion of the case, however, the ruling on the adequacy portion of the law came in December after Brownback won re-election. A panel of judges at the District Court in Topeka affirmed the previous ruling that the State had "substantially complied" with the equity portion of the ruling (Kansas Office of Revisor of Statutes 2016:12). However, it also ruled that the overall level of funding for schools was inadequate and thus unconstitutional. While it did not provide a direct amount of money the legislature should allocate, they did suggest a base state aid amount of $4,654 could be adequate. Again, the Court pointed to the tax cuts in their ruling. "[W]e understand the self-imposed fiscal dilemma now facing the State of Kansas, both with or without this Opinion… Since the obligations here declared emanate from

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[158] The Rose Standards come out of a 1989 Kentucky Supreme Court case, *Rose v. Council for Better Education*. These standards consist of seven[158] skills that children should attain from a public education. These Standards had been mentioned by the Kansas Supreme Court in previous cases, namely in *Mock* and *Montoy*. And the Supreme Court noted that the state already included similar language. However, this was a clearly defined guideline offered by the Court for the legislature to follow.

[159] The bill did two main things. First, it codified the Rose standards as the metric for evaluating educational capacities for Kansas schools. Second, it appropriated an additional $109.3 million to general state aid as well as transferring $25.2 million from the state's general fund to school capital outlay funds (Kansas Office of Revisor of Statutes 2016:12). These two things are the funding-related aspects of the bill. The bill did more. It also made other, non-funding decisions to education policy. During the Senate debate on the bill, various amendments were added and approved that made their way into the final bill. One such amendment was offered by Susan Wagle that repealed teacher tenure, a law that had been on the books since 1957. Kansas' tenure law provides due-process hearings for teachers who have been with a district for three or more years before they can be fired or have their contract non-renewed. Additionally, the bill also included a 70 percent tax credit for corporations that contribute to scholarship funds.

our Kansas Constitution, avoidance is not an option," the Justices wrote. Again, the state appealed the decision to the state Supreme Court.

While the *Gannon* lawsuit was filed before the Brownback tax cuts, these two events become inexorably linked. This is partially due to the dual nature of public finance; Brownback had radically remade the state's tax structure at the same time being hindered in his ability to remake expenditures. But another way the tax cuts and school funding became linked is through the Brownback administration's response to *Gannon*. Instead of increasing funding or trying to change the funding formula, conservatives opted simply to repeal the funding formula.

A "Timeout in the School Finance Wars:" Block Grants and the Repeal of the 1992 School Finance Formula

Governor Brownback, in his 2015 State of the State address, gave legislators two instructions for how to deal with school finance: "My suggestion is simple, and I believe necessary---a timeout in the school finance wars. In this two-year budget, the Legislature should appropriate money directly to school districts, so it can be spent where it is needed most, and that's in the classroom. At the same time, the Legislature should repeal the existing school finance formula and allow itself sufficient time to write a new modern formula that meets our needs for great 21st Century schools."

Despite the call for a "timeout," Brownback immediately re-escalated "the school finance wars" by blaming the school funding formula for the state's current budget woes saying. "The dramatic increase in state education funding that has occurred over the last four years is unsustainable," Brownback said (Office of the Governor 2015). In February 2015, Brownback announced another round of budget allotments, this time cutting $44.5 million from K-12 and higher education. Not only did Brownback make mid-year budget cuts to K-12, but he also supported repealing the funding formula and implementing block grants. In a memo titled "The Beauty of the Block Grant" (July 8, 2015), Brownback extolled the benefits of block grants: "The beauty of the block grant lies in the flexibility it provides to those closest to the classroom: parents and teachers. Local schools now have the flexibility to invest state funding where it will most benefit the individual needs of their students."[160]

The Brownback administration was trying to frame the state's current school funding formula as a deterrent to "accountability and efficiency." Brownback highlighted as "symptomatic of the inherent flaws in the current formula," (Office of the Governor 2015) a $48,000 piano purchased by Sumner Academy. "That money could and should have been used to hire another teacher to reduce class sizes and help improve academic achievement," he declared (Office of the Governor 2015). The formula, Brownback bemoaned, locked in "automatic, massive increases in spending unrelated to actual student populations or improved student achievement."[161] However, many of these "flaws" in the school funding formula that Brownback and fellow conservatives noted misrepresented the actual accounting and budgetary processes of school districts. Nevertheless, claims that the funding formula was "broken" continued to gain momentum. Senate President, conservative Susan Wagle asserted, "The formula is broken in that we are no longer talking about student outcomes and student achievement. We're fighting for money" (Shorman 2015a). And in committee testimony, the Kansas Policy Institute asserted "The K-12 funding formula is irreparably broken."[162]

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[160] Memo dated July 8, 2015
[161] January 15, 2015 State of the State
[162] Testimony given March 9, 2016 to the House Appropriations Committee

Public school advocates, however, pushed back against conservative's characterization of the formula. The problem was not the formula, they insisted, rather the lack of funding. Mark Desetti of the Kansas National Education Association testified, "The formula is not broken; it is underfunded and we would urge the legislature to get about the business of restoring the state's revenue stream and then restoring the cuts made to education in the aftermath of the recession and the tax cuts."[163] A focus on Brownback's tax cuts dominated the testimonies of school advocates during the debate on the block grants. In a 2015 testimony from the Topeka Public Schools, they drew on the three-legged stool approach to fiscal policy, saying, "A sound tax system is one where sales tax, property tax and income tax are balanced. Cutting state income taxes without providing offsetting revenues is shifting the burden for funding schools to local taxpayers and thereby further dis-equalizing Kansas' education system."[164] The Hutchinson school district also testified that Kansas needed "a tax policy that will sustain and provide financial support to school districts in Kansas."[165] And the Lawrence Public School district stated that "State tax policy should be balanced and sustainable... State revenues should come from a balanced and equitable mix of sources: sales, income, and property taxes" (Lawrence Public Schools n.d.). Devin Wilson, of the Shawnee Mission School District's PTA, testified, "We encourage committee members to focus on policies that will address the root cause of our K12 school finance dilemma. Consider 'going back to work full time and picking up some hours at IncomeTax LLC'."[166] And Mark Tallman noted, "If we're going to rethink what we're doing for education many of our members believe we're also going to have to rethink tax policy as well" (Cooper 2015a).

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[163] Testimony given March 9, 2015 to the House Appropriations Committee
[164] Testimony given March 9, 2015 to the House Appropriations Committee
[165] Testimony given March 9, 2015 to the house Appropriations Committee
[166] Testimony given March 10, 2015 to the Senate Ways and Means Committee

The Brownback administration respond to claims they were underfunding public education by simply denying it. When Brownback signed the tax cuts into law, he promised they would not lead to a reduction in school funding or other states services. Instead, the Brownback administration claimed they had actually *increased* overall school funding. However, a second claim, which seemed to undercut the first, was that school districts were being inefficient in using those dollars. Instead of spending money on school administration or building costs, funding should be directed "in the classroom" (Trabert and O'Neal 2015). Schools were receiving more money than they ever had, they reasoned, yet schools were still demanding more money.

These arguments, however, ignored two crucial things. First, while the amount of money being classified as school spending *did* increase, this was largely due to an accounting maneuver that reclassified KPERS payments as school funding.[167] In a clear example of how policy design can contribute to deceiving the public in ways that "discourage active citizenship" (Schneider and Ingram 1997:5), KPERS payments were reclassified and distributed to districts in their general fund. As Dale Dennis, the Deputy Commissioner of Fiscal and Administrative Services at the Kansas Department of Education explained, "It used to be on KPERS, we write a check and walk down the street and give it to KPERS. We did it electronically, but the same thing. Now, we have to send it to school districts based on the amount they would be entitled to get that the state's paying on their behalf. Then they send it straight back to KPERS."[168] And the KPERs money is only in district accounts for a very short amount of time. "The employer portion, the state-funded portion of KPERS, is in our bank account about one second," explained the Topeka school district. "I'll get an email that says your KPERS payment hit. In less than two minutes

[167] The change also moved bonded interest payments through the districts as well.
[168] Personal Interview conducted August 29, 2017

another email or notice will come that says its withdrawn."[169] Of course, conservatives in the legislature had been making the argument that spending needed to be for the "classroom." To stay consistent, they began to argue that KPERS payments *were* classroom spending. As Ty Masteron noted, "The money that we spend for the retirement of the teacher is a classroom expense" (Associated Press 2015b).

The second crucial element this argument ignored was the actual process Kansas schools use for allocating funding within districts. Kansas schools use a system of fund accounting, meaning expenditures are tied to a specific fund, such as the general fund, special revenue funds, capital outlay funds, and debt funds (Kansas State Department of Education 2015). These funds are governed by strict rules concerning the expenditures that came come out of each fund and what kinds of transfers, if any, are allowed between funds. Thus, money allocated by the funding formula to capital outlay, for example, must be used on expenditures classified as capital outlay. Often, this does not include salaries for staff or resources for instruction.

Proponents of the block grant were framing it as an issue of local control, allowing school districts to do what they want this their funding.[170] However, fund accounting is a system designed primarily for accountability. In a fund accounting system, allocated dollars have to be spent on their intended purpose. Mark Desetti of the Kansas National Education Association testified in regards to fund accounting, saying that "the use of these so-called 'silos' was intended to create accountability. When it was found that bilingual students needed additional resources, bilingual weighting was created and later adjusted. That money has a purpose. And you should expect to see that it is used for that purpose."[171]

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[169] Interview conducted December 22, 2017
[170] Interview with Mike O'Neal, October 21, 2016
[171] Testimony given March 9, 2015 to the House Appropriations Committee

A common justification from Brownback and other conservatives regarding school funding cuts was the amount of cash school districts have on hand. "School districts are estimated to have approximately $381 million in reserve fund balances to help them offset the smaller than expected increase in state funding," Brownback said after the February 2015 round of budget cuts (Lowry 2015a). However, often the amount of cash on hand is what districts are legally required to maintain. According to the Olathe district, "The law says I have to have on hand an extra bond payment. If I think, I make two bond payments a year. I have to have a third one just in reserves. That one bond payment for me, one six-month payment is $30 million. When I'm at the end of my fiscal year on June 30th, and I've got money in the bank from my September payment, and I got to keep that one extra one on hand. I have $60 million sitting in the bank and they're like, 'Well see, they don't need more taxes. They're not spending what they have.' I can't use that to pay teachers' salaries. I can't buy a pencil out of that. I've got to keep it sitting there for that bond payment. It's called fund accounting. I have 31 different little funds, and they all have a different reason for the money to be there, and what I'm allowed to spend it on."[172]

Conservatives recognized these rules and had been trying to change them. For instance, Mike O'Neal noted that when he was in the legislature he "championed a bill that broke down all those silos. You can move money around. You've got a little extra at-risk money? Move it over here if you need it. And then they did away with the formula and went with block grants, which is the ultimate in local control. There we're just going to send you a check. Knock yourself out, spend it any way you want, because we're tired of this argument that there's not enough money for this."[173] Kansas did loosen restrictions slightly over the course of the school funding battle,

[172] Interview conducted November 23, 2017
[173] Interview conducted October 21, 2016

for instance allowing districts to pay certain salaries out of capital outlay. However, they still had to be spent on staff involved in the maintenance of district property and equipment, such as bus drivers and custodians. While districts were allowed to do this, not all districts did. As I was told by the Fredonia school district, “just because they say you can do things does not mean it's a good decision.”[174] And it was not a good decision for many school districts not only because of the lack of transparency involved in allocating funds outside of traditional accounts, but because districts saw it as fiscally irresponsible. According to the Herington district, “In a capital outlay thinking, I think anyone would tell you it’s much better to put money away and save it for projects down the road instead of having to pay interest on a loan, like a bonded interest project. Sometimes the accounts do get up high but that’s based upon our needs and our fiscally responsibly ways of doing things.”[175]

An underlying impetus behind breaking down the fund accounting system has to do with district cash balances. Some funds allow districts to rollover money from one year to the next. General fund expenditures need to be spent to zero, but money for capital outlay, for instance, can be rolled over. For school districts, like Herington, this rollover capacity is used to build up reserves for large purchases in the future. This is also the case with the Coffeyville District who explained, “One of the things that we get hit with down here and have gotten questioned about is, well, how come your capital outlay is a million dollars? And all I have to do is say, well, on my high school I’ve got four rooftop units and it’s a building that’s almost a hundred years old. And I’ve only got four big rooftop units. And if I were to replace just one of those units that were all put in at the same time, about 18 years ago, I can’t just replace the unit I have to replace the duct work and everything that goes *with* the unit because they are undersized. And that one unit alone

[174] Interview conducted February 9, 2018
[175] Interview conducted September 21, 2018

would cost about $450,000. So when I tell somebody that the one air conditioning unit that I have is almost half a million dollars and you're wondering how come I have a million dollars in my capital outlay, you really ought to be wondering how come I don't have two or three million dollars in the capital outlay."[176] Districts also build up their reserves to guard against "unknown unknown" future expenditures: "Something's going to break. I don't know what it's going to be. I don't know if it's going to be a $20,000 Suburban or a $30,000 Suburban that I'm going to have to replace. Or if it's going to be a $120,000 boiler system someplace."[177] Building up cash reserves provides a cushion not only for known future expenses coming up, such as new bus purchases or re-roofing a building, but also for unknown expenses which may occur during the year.

However, for conservatives, the amount of cash on hand proved school districts were disingenuous about their needs. Mike O'Neal, for instance, told me, "On any given day there's a billion dollars sitting out there in funds that the school districts could write a check for right now over the lunch hour, and it's sitting there in reserves. Okay, well, good, you're saving money. I like that. That's probably prudent. Just don't let me hear that you don't have enough money to pay a teacher reimbursement... I don't want to hear that story anymore… That is a narrative where they ramp up these false crises in order to get more money."[178] The Kansas Policy Institute echoed this sentiment in a House Appropriations committee meeting, stating "Hundreds of millions more might make the institutions happy (until they want more)."[179] And Dave Trabert of the KPI testified that "The current practice of allowing unlimited accumulation of carryover cash reserves demonstrates that school funding has been higher than needed to fund current

[176] Interview conducted October 5, 2018
[177] Interview with the Ellsworth school district conducted September 28, 2018
[178] Interview conducted October 21, 2016
[179] Testimony given March 9, 2015 to the House Appropriations Committee

operations, which in turn causes taxes to be higher than necessary or causes funding to be diverted from other services."[180] Brownback even circulated a document among conservative lawmakers claiming to show school districts had $381 million in "flexible" funds that they could tap into to lessen the brunt of the budget cuts (Lowry 2015b). In other words, conservatives were charging school districts with being greedy and inefficient[181] by maintaining high cash reserves.

In total dollars, school district cash reserves have grown in recent years. For instance, as demonstrated in Figure 2, in the 2010-11 school year, school districts carried over collectively $1.5 billion from the previous school year's budget. In the 2016-2017 school year, this increased to $1.7 billion. However, as Figure 2 also demonstrates, the percent carried over from the previous year's budget actually declined slightly, from 31 percent in 2011-2012 to 29 percent in 2015-2016. This is indicative of districts using more of their reserve funds in response to budget cuts.

The carry over balance also belies the variation that exists among districts. An efficiency study commissioned by the legislature and conducted by the consulting group Alvarez & Marsel (A&M), provided recommendations regarding district carry over funds and suggested the amount of cash should correspond to the degree of assessed risk. Minimal risk translated into 10 percent carryover; low to moderate risk translated into 11-15 percent; and moderate to high ranged 15-25 percent; and high risk was 25 percent and over (2016:173). In 2014, A&M found 68 districts with cash balances currently less than 10 percent of operating budget; 77 with 10-15 percent; 92 with 15-25 percent; and 49 with over 25 percent (2016:173-174). Thus, half of school districts were already meeting the A&M recommendation of 15 percent and lower cash reserve. All

[180] Testimony given March 11, 2016 to the Senate Ways & Means Committee

[181] Another report commissioned by the Legislature and released in 2018 was charged with determining how efficiently Kansas school districts operated. The report, conducted through WestEd by Dr. Lori Taylor of Texas A&M, found that Kansas schools produced "nearly 96% of their potential output" (2018:63). In other words, Kansas schools were maximizing their resources nearly 100 percent.

others, as Mark Tallman noted, "appear to believe the Kansas fiscal situation is at least "moderately" risky, given years of revenue shortfalls, credit downgrades, budget reductions and disappearing ending balances" (2016).[182] As the North Ottawa district explained to me, "It's hard to plan for the future in education given the fact that the last ten years we've seen nothing but cuts."[183]

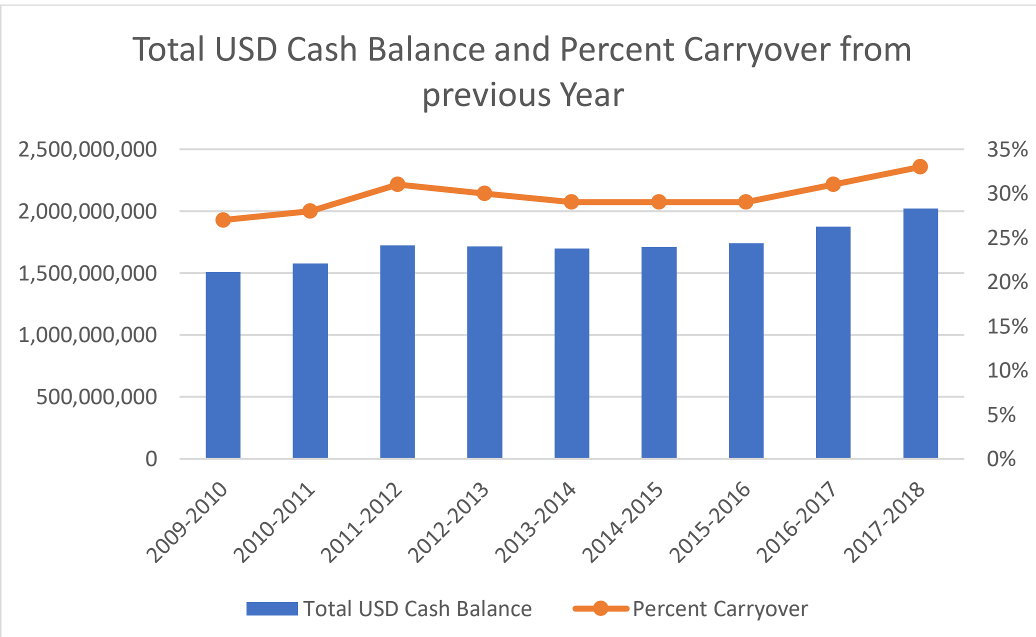

Figure 2 Total USD Cash Balances and Percent Carried Over from Previous Year
Source: Kansas Department of Education School Finance Reports

However, despite the school district's attempts at explaining the budgeting process to lawmakers, claims of inefficiency and waste formed an implicit, or even explicit, foundation for implementing block grants. In March 2015, Republicans revealed the block grant funding scheme, which repealed the 1992 school funding formula. The block grants froze the amount of funding each district received at the current funding level regardless of changes in enrollment.[184]

[182] After the tax cuts were repealed and the new funding formula was implemented, Mark Tallman also recommended to school districts to begin "prudently" reducing their cash reserves (Tallman 2017).
[183] Interview conducted October 3, 2018
[184] Additionally, districts that were experiencing an increasing student population would also not be able to plan for increased per-pupil funding and would instead have to apply to the State Finance Council for extra funding to cover the costs associated with increasing student enrollments.

The block grants would come with "no strings attached," allowing districts to distribute money as they saw fit, untethered to fund requirements. The block grants were proposed for two years as a way to give lawmakers time to craft a new funding formula. Lawmakers moved quickly on the block grants, taking only 12 days from the introduction of the bill to signing.[185]

After the block grant formula was passed, the bill again went to the courts for review.[186] In June of 2015, another three-judge panel ruled that the block grants were unconstitutional and ordered the state to immediately pay $49.6 million to districts. Brownback again went after the courts, claiming the court had "taken upon itself the powers specifically and clearly assigned to the legislative and executive branches of government. In doing so, it has replaced the judgment of Kansas voters with the judgment of unelected activist judges" (Hancock 2015b). The primary basis for finding the block grants unconstitutional turned on the "laundered" KPERS payments. The Court acknowledged this in their decision, writing, "KPERS contribution funds have either

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[185] To speed the bill along, lawmakers turned to a controversial legislative maneuver known as the "gut and go." The House took up the education bill first and Speaker Merrick ran the bill through the House Appropriations committee. Reactions to the change in school finance were swift and predictably split among school groups and conservative groups. In the House appropriations committee testimony over the change, the only three groups that testified in favor were the Kansas Chamber of Commerce, Kansas Policy Institute, and Kansans for Liberty. The day after testimony in the committee, Ron Ryckman, appropriations committee chair, then moved the discussion onto Senate Bill 7 – a bill that had previously been passed by the Senate on February 25 and addressed information technology audits. This motion to consider SB7 was opened and closed then there was a motion to replace the contents of SB7 with the school funding bill. The gut and go maneuver in this case would allow the committee to strip out (gut) the contents of SB7 and replace it with the school finance funding bill. Because SB7 had already been approved by the senate, if SB7 was passed by the House, the senate could vote to concur with the house-passed SB7 and send it to the governor (go). After the gut and go passed out of the House appropriations committee, and the full House took it up the next day and passed it 64-57 followed by the senate (25-14).

[186] Kansas filed another appeal in the funding lawsuit asking the Supreme Court to again review the lower court's opinion. The state had appealed immediately after the December ruling to the lower court, but they refused the appeal. The Supreme Court heard the appeal, but they also had to decide whether the dramatic changes to the funding formula brought on by the block grants would actually halt the *Gannon* lawsuit. The schools involved in the *Gannon* lawsuit also tried to block the implementation of the new block grant system by appealing to the lower court. And, indeed, a three-judge panel indicated during the legislative debate on the school funding formula that they might intervene to block the implementation of the new formula while the *Gannon* case was pending. This did not sit well with conservative lawmakers. Ty Masterson, for instance, said "It is shocking to have a court say they are going to interfere with the legislative process" (Cooper 2015b). This further escalated the tensions that had been growing between the legislature and the courts. And in response, conservatives began to actively threaten the court. The legislature passed a series of bills aimed at punishing the courts. For instance, one law, which the Governor signed, threatened the funding of the judiciary if the Supreme Court overturned a 2014 Kansas law that changed the way judges were selected. The 2014 law took away the authority from the Supreme Court to appoint chief judges of the district courts and allowed district courts to appoint chief judges themselves (Eligon 2015). Another bill lowered the mandatory age of retirement for judges and yet other listed "attempting to usurp the power of the legislature or executive branch of government" as grounds to impeach a Supreme Court justice (Hancock 2015f).

never been considered by experts or other competent professionals in evaluating the adequacy of K-12 school funding or, if so considered ... such KPERs contributions were reflected as an add-on increase to the per pupil costs, not as an in-lieu of, or in substitute for, other needed funds" (Hancock 2015b). In other words, KPERS payments cannot be counted towards adequate or equal education. However, the state appeals for relief from having to repay districts, which the Supreme Court granted, relieving the state from the requirement to repay $49.6 million.

Addressing Equity within the Block Grants

The lower courts had found the block grants unconstitutional and in February 2016, the State Supreme Court issued their ruling upholding the lower court and struck down the block grants. The Court then gave the legislature until June 30 to fix the inequities in the block grant system or else schools would be shutdown starting July 1. This further antagonized the legislature's relationship with the courts. For conservatives, they continued to claim that the "power of the purse" lay with the state legislature and the court's rulings forcing the legislature to increase funding usurped that power.[187] As Dale Dennis explained to me, "Some policymakers thought appropriation money was the legislature's business and not the court… There's still quite a few people around who believe that but the court has spoken and that decision has already been made."[188]

The legislature introduced a new bill aimed at satisfying the courts in March. This bill added very little new money to school funding, but instead focused on the equalization aspect by changing the state's equalization formula. At the urging of the Education Commissioner Randy

[187] Indeed, legislators began to consider very dramatic actions. While also debating the new school funding legislation, the Senate also passed a bill that would have made "usurping the power of the legislature" grounds for impeaching a Supreme Court judge (Hanna 2016).
[188] Interview conducted August 29, 2017

Watson, they inserted a “hold harmless” provision which meant no district would receive less money than they were getting with the block grant formula, and 23 districts would see increases. The new plan utilized median property valuation per pupil rather than average property valuation per pupil and, according to legislative analysis, the plan did indeed narrow the disparity between districts. However, the biggest question mark hanging over the plan was whether or not it would be enough to satisfy the courts and stop the schools from closing. Brownback signed the law on April 7 and the Supreme Court announced it would hold the next round of hearings on May 10.

During the hearing, the state’s main argument was that the court should not find the whole formula unconstitutional and if it had further issues with parts of the law, just those should be addressed. “No one,” the state argued, “except apparently the plaintiffs now, wants to close the schools. There’s no reason for the court to strike the entire funding system” (Hancock 2016a). The court, however, was unconvinced and on May 27 ruled that the recent school funding changes that the legislature passed still did not meet the standard for equitability. Further, the court also struck down the severability clause, the clause that the legislature had inserted that said that if the court found one part of the law unconstitutional, it would not apply to the whole law.[189]

To respond to the latest ruling, Brownback called a special session of the legislature. Some lawmakers, however, were not waiting for the special session to begin to address the possibility of the court closing the schools. Senator Jeff King, for instance, announced that he would be drafting an amendment to the state’s constitution that would block the court from being

[189] Reaction from the Governor and other conservatives was swift. “The court is engaging in political brinkmanship with this ruling, and the cost will be borne by our children,” said Brownback (Hancock 2016a). House Speaker Ray Merrick was more bombastic, “The court has yet again demonstrated it is the most political body in the state of Kansas. Dumping the ruling at 5 p.m. the day before a long weekend and holding children hostage. This despite the fact that the legislature acted in good faith to equalize the record amounts of money going to schools. This court is planning to shut down schools over less than 1 percent of the total education budget. Frankly, I find their actions disgraceful and hope Kansas voters will remember this in November when deciding whether these Justices should be retained” (Hancock 2016a).

able to shutter the state's public schools. Similarly, the state's Attorney General, Derek Schmidt, filed a motion to get the court to back off its threat to close the schools, writing "To prevent harm to Kansas schoolchildren, their families, and the many Kansans who otherwise rely on having schools open and operating—who are not part of this dispute among the three branches of their government— the State respectfully requests this Court withdraw its twice-repeated warning that it may enter an order that would result in the closing of Kansas public schools."[190]

The Democrats, for their part, announced their own plan which involved returning to the old funding formula as well as funding the increase needed for equalizing district's local option budgets by cutting various other programs, namely a $13 million job creation program at the Department of Commerce, $3 million from TANF, and $15.2 million from an extraordinary need fund. In response, the House Republicans responded by issuing a statement, "While it's nice that the Democrats finally came up with an idea other than voting no, their plan would force the state of Kansas to break binding commitments already made with job creators" (Hancock 2016b).

The special session lasted only two days. The plan, put forward and approved by the House (116-6) and then the Senate just an hour later (38-1) reinstated the supplemental general state aid formula as it existed prior to SB 7 and added $38 million to the formula to fund it. After it was passed, Brownback signed the bill saying, "This is something I agree with. When I called the special session, my effort was focused on making sure that we could get something to pass that would satisfy the court and keep them from closing the schools. That will happen" (Hancock 2016c). The Kansas Supreme Court accepted the legislature's school funding change from the special session which essentially satisfied the "equity" portion of the case. Next, the court would

[190] Gannon v. Kansas, Case No. 15-113,267-S (https://ag.ks.gov/docs/default-source/documents/gannon-motion-for-rehearing-or-modification.pdf?sfvrsn=4), p. 1.

turn its attention to the adequacy portion. The court announced the date for the next stage of the school funding case for September 21.

Still Unconstitutional

After the September 21 round of arguments in the school funding case were heard, the Supreme Court announced its decision in March 2017. In a unanimous decision, the Kansas Supreme Court again ruled that school funding was unconstitutionally low. It gave the legislature until June 30 to address it and again issued the threat to close the schools on July 1 if the legislature did not act. The Court gave no exact amount of money that it suggested would be enough to meet the constitutional requirements, however the Kansas Department of Education suggested the amount should be about $841 million.

The latest school funding decision was made after the November 2016 election which saw a return to more moderate lawmakers into the legislature. After the ruling, many pro-education groups made the connection between the moderates and the eventual repeal of the tax cuts with the hope of addressing the school funding issue. For instance, the attorney for the school districts, Alan Rupe, said after the ruling, “Many Kansans associate Governor Brownback’s tax cuts with the state’s inability to fund basic state programs and agencies, as well as education. The new, more moderate Legislature has already suggested that it will repeal some of the tax cuts put into place by Governor Brownback. This would go a long way in not only allowing Kansas to address the inadequacies in education funding, but also in addressing the overwhelming budget deficit that Kansas is currently facing” (Hancock 2017b). Additionally, Kansas Families for Education, another education group, issued a statement saying, “It has now become abundantly clear that Kansas must turn away from the road to ruin that the Brownback tax policy has been leading us on for too long and return to responsible budgeting that allows us to fund our priorities" (Hancock 2017c).

School funding and the income tax cuts had become closely linked, not only in the public's imagination, but also in lawmaker's responses. For instance, during the 2017 legislative session, lawmakers attempted a "mega" bill that addressed both issues simultaneously.[191] Democrats and Republicans, however, both objected to the "mega" bill for different reasons. Democrats, such as Ed Trimmer, objected that the two issues should be handled separately: "I don't think we should be talking about tax policy in education policy. They should be two separate issues" (Moore 2017). Conservatives, on the other hand, objected that linking income taxes directly to school funding would make voting for future income tax cuts impossible. Instead of dealing with these issues together, the legislature opted to separate them and passed a school funding bill on June 5. The bill, which ended the block grants and reestablished a school funding formula essentially returned Kansas to the formula as it existed prior to the block grants. However, it did increase funding by approximately $317 million over two years. Brownback reluctantly signed the law, saying that "The Legislature missed an opportunity to substantially improve the K-12 funding system," (Hancock 2017d).

The school funding formula obliges a certain level of public spending. In seeking to eliminate, or at least dramatically alter, the formula, Brownback hoped to eliminate or change the institutional constraints imposed by the funding formula. In political science, scholars have noted that politicians in any given legislative session operate under the rules of "yesterday's legislators" (Steuerle 2010:876). This is particularly true when it comes to spending

[191] The increase in taxes in the bill would be used to pay for school funding. The bill, requested by Ron Ryckman, would have increased funding to schools by $280 million over two years and increased taxes approximately $1 billion over two years. However, it would have also established a new policy of sending all state income taxes to school funding.

commitments. Expenditure-side commitments constrain the fiscal discretion of future lawmakers by committing greater shares of the budget to mandatory spending, including payments on debt interest (Pierson 1998, 2002; Streeck and Mertens 2013; Genschel and Schwarz 2013). In many cases, the growing share of mandated expenses constrains the state's ability to address the possible changing interests and priorities of the citizenry (Streeck and Mertens 2013:27). The declining share of fiscal discretion is often seen as pre-empting "fiscal democracy," or the ability for citizens to exercise choice through the budget and public finances (Steuerle 2010:876; Genschel and Schwarz 2013:59). If a greater and greater share of the budget is tied up in mandatory expenses, the capacity for citizens to exercise their choice through future public finances recedes. However, mandated expenses also place a constraint on tax cutting politicians. Fiscal democracy can be pre-empted by increasing shares of mandated expenses, but those mandated expenses are still an expression of the general public. In this case, the spending commitments of "yesterday's legislators" are more of a protection against austerity rather than a cause of it.

Public Opinion and School Funding

To this point, the school funding narrative has primarily been about elites – lawmakers and judges battling over the interpretation of adequate and equitable funding. But the battle over school funding in Kansas also manifested visibly in communities. In the following two sections, I draw on public opinion and interview data to better understand the state's inability to address school funding in the context of the tax cuts. I argue that the effects of school budget cuts were a primary way most Kansans experienced the state's fiscal crisis. Diminished funding for schools linked the revenue and expenditure side of public finances for many Kansans, a central component for developing fiscal consciousness according to Zelnak (2013). Moreover, school funding is among the public investments that are the most salient and most highly rated among most Americans (Williamson 2017:86). According to public opinion data, the same is true in Kansas.

Conveniently, the Kansas Speaks survey asked the same version of a school funding question between 2009 and 2013, allowing for a comparison over a period of time. In 2009, half of the respondents indicated that state funding for K-12 education in Kansas should be increased while 40 percent responded it should be decreased. In 2010, the responses were again very similar (52 percent increase, 39 percent decrease). Thus, while the schools took initial legal action against the state as a result of funding cuts during the recession, the general public seems to not have reacted to the Parkinson-era budget cuts. In other words, the school funding cuts as a result of the recession were less salient to the general public than the *inability* of the state to remedy those cuts under Brownback. We can see further evidence of this in the 2012 and 2013 waves of the Kansas Speaks survey (Figure 3). In 2012, the percent favoring an increase in state school funding rose to 56 percent and in 2013 it increased again to 65 percent. Correspondingly, the percent indicating a preference for decreasing stat funding dropped to 27 percent in 2013.

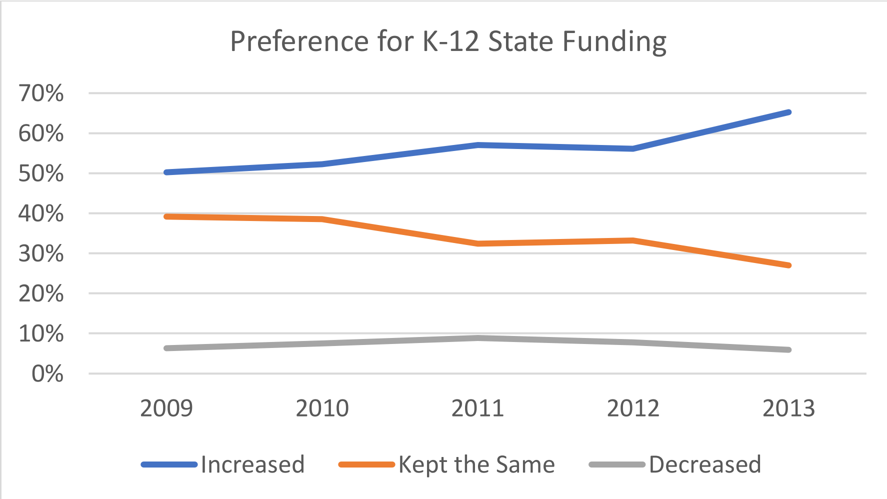

Figure 3 Preference for State Funding for K-12 Education
Source: Kansas Speaks Survey, 2009-2013

The emphasis on asking about *state* funding in these questions is important. After all, as mentioned earlier in the chapter, Kansas schools were historically funded by local property taxes before the equalization of mill levies. However, on the whole, Kansans support the formula-based approach to funding schools in the state. For instance, when asked in 2016 if schools should rely more on property taxes or more on state funding, 60 percent of those surveyed responded that schools should rely more on money from the state and only 27 percent said they should rely more on local property taxes.

Beyond asking about general support for funding for schools in Kansas, what did the public think about school districts taking legal action against the state? Of those surveyed in the 2013 wave of the Kansas Speaks survey, a majority supported the districts' legal action, 54 to 35 percent. Furthermore, even a large percent of Republican voters supported the districts. Table 12 illustrates support for the school districts' lawsuit by political affiliation. While 60 percent of Republicans opposed legal action by the districts, nearly 40 percent supported them. Furthermore, Republicans were half of those who were unsure. However, when surveyed in the

2015 wave, a plurality (45 percent) indicated they still preferred the legislature rather than the courts (30 percent) to determine the suitable amount of funding for schools.

Table 12 Support for School District Legal Action by Party

	Yes	No	DK/REF	TOTAL
Republican	192 (38%)	196 (60%)	53 (50%)	441 (47%)
Independent	127 (25%)	65 (20%	25 (24%)	217 (23%)
Democrat	176 (35%)	52 (16%)	18 (17%)	246 (26%)
DK/REF	14 (3%)	12 (4%)	9 (9%)	35 (4%)
TOTAL	509 (54%)	325 (35%)	105 (11%)	939 (100%)

Source: 2013 Kansas Speaks Survey

While a majority of those in the state supported school districts, what did they think of how lawmakers were responding? The most consequential change to school funding under Brownback was the block grant program, a move most Kansans opposed. When asked whether they approved or disapproved of the block grants, 49 percent opposed it and 30 percent favored and 22 percent were not sure.

Taken together, Kansans largely favored the current formula approach to funding schools rather than a block grant but increasingly saw the need for the state to increase the amount of money to schools. Further, they favored districts taking legal action to achieve that end. In the following section, I examine the experience of school districts in Kansas to argue that school funding cuts highlighted the degree of the fiscal crisis for folks. In other words, school funding cuts were a highly visible effect of the state's fiscal crisis.

How Did School Funding Decline Impact School Districts?

In the media, stories of school funding cuts forcing Kansas schools, such as Carney Valley (Tobias 2016), to switch from five to four-day weeks made state and national headlines.

However, this was not the norm as fewer than ten districts reduced the number of school days per week. Among the districts I interviewed, none went to four-day weeks although all had discussed it at some point. Slightly more common was shortening the overall school year, particularly during the 2014-15 school year when Brownback cut $28 million in February 2015 (in the middle of the school year) forcing districts such as Concordia and Twin Valley to end their year early (Associated Press 2015c). The February 2015 round of cuts effected Johnson County school districts particularly hard with the Olathe, Shawnee Mission and Blue Valley school districts hit with $5 million of the $28 million in cuts. (Cooper 2015a). Johnson County districts, because of their wealth, often had enough reserves to fund the rest of the school year. However, not all districts were so lucky and six districts across the state ended their school year early due to budget cuts.

Brownback's school funding allotments exacerbated the long-term trend of districts scheduling fewer school days per year. When controlling for stable differences between districts in length of the school year, the average school year in Kansas is 6 days shorter for teachers and 12 days shorter for students compared to 1996. The trend has been towards shorter school years, but there are two noticeable inflection points which exacerbate the trend. As noted in Figure 4, in 2008 and 2014 the number of days dips more dramatically indicating district responses diminished revenue.

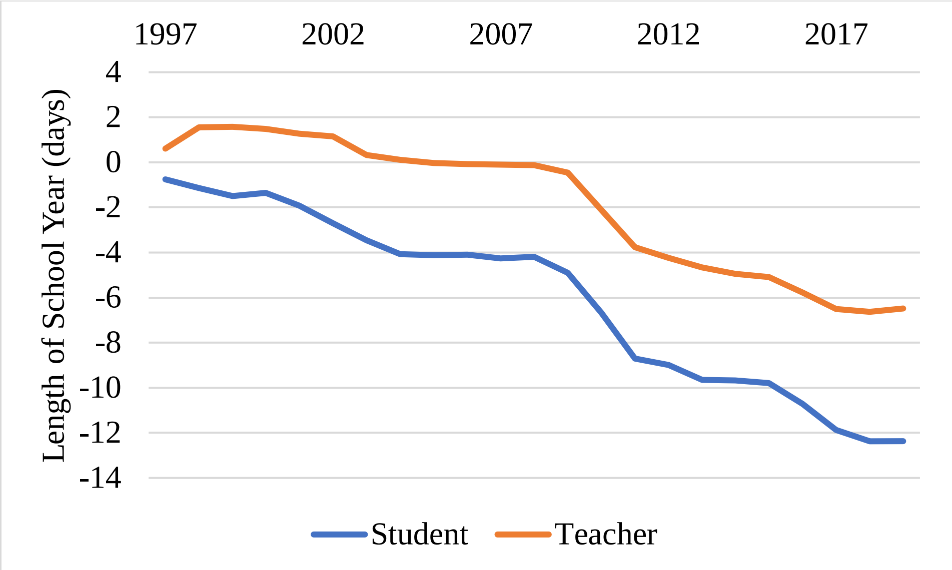

Figure 4 Averange Length of Kansas School Year, 1997-2017 (Days)
Source: Kansas Association of School Boards (KASB)
+ Thanks to Emily Rauscher for creating this graph

Community and District Staffing

Budget cuts put school districts under enormous financial strain. Shorter days and shorter school years were some ways districts attempted to adjust. But cutting back on school days can only go so far before districts have to address staffing. School districts see their staff as their main resource. As I was told by the Topeka school district, “We’re a people-driven business.”[192] The people-centered nature of schools comes not only from the main function of schools (educating children), but also in terms of budgeting. The majority (around 70 percent) of a district’s budget goes toward staff salaries which means budget cuts also affect staffing levels.[193] Reducing staff is sometimes done for practical accounting reasons. As the Neodesha district explained, “The staff cut is the cleanest, easiest way to guarantee that you know how much your budget's going to be decreased. You now, because you've got those figures right there.”[194]

[192] Interview conducted December 22, 2017
[193] Interview with the Ellsworth School district conducted September 28, 2018 where I was told, “About 70 percent of our budget goes towards people.”
[194] Interview conducted January 30, 2018

However, among the school districts I spoke with, nearly all avoided directly laying off or firing teachers and other staff members. As the Topeka district explained, “Nobody likes reduction in force and, knock on wood and thank God we didn’t have to do that. We didn’t have to fire anybody. But we didn’t replace people.”[195] Instead, districts reduced staff primarily through attrition. Teachers and staff that retired or relocated were simply not replaced during lean budget years.

School districts make an effort to keep the effects of budget cuts away from the classroom. Conservative lawmakers and school district officials both spoke abount money being spent “in the classroom.” However, school districts had a broader view of what counts as “in the classroom.” According to the Herington school district, “I think every dollar we spend really impacts our overall operations and anytime our operations are better it impacts students in a positive way.”[196] However, when resources are drastically reduced, districts have to triage the budget which meant prioritizing cuts away from direct classroom spending. As the Olathe school district explained to me, “We laid off some custodians. We did reduce those ranks. That's the one layoff we did. Teacher wise, we didn't. You circle the wagon. You try to protect the classroom as much as you can. First you try to do everything else, before you affect the classroom.”[197] The Baldwin City district echoed this view, saying, “We have cut some teaching positions in the district… our number one priority was to try not to directly affect classrooms by the cuts. Now that's always up for your own definition of whether it’s effecting the classroom or not, but our idea was, we were trying to find ways to make cuts that would be least effective to the classroom as we could.”[198]

[195] Interview conducted December 22, 2017
[196] Interview conducted September 21, 2018
[197] Interview conducted November 23, 2017
[198] Interview conducted November 28, 2017

Prioritizing “direct” classroom expenses, such as teacher salaries, meant support staff and administration positions are particularly vulnerable. For instance, the McPherson school district characterized this tension very well, stating, “Our board, when they made cuts and reductions, lowering things that would sooner support learning than would be actual direct instruction. Counseling staffs may not be as robust as we'd like them to be. Staffing in media centers now, we staff a classified employee and have one librarian or media specialist covers all of our elementary schools. Those are things that kids and parents don't see directly. Can't say they don't impact what goes on with kids, but as far as what was delivered in classrooms, we really haven't reduced much of that.”[199] In other words, for the McPherson district, while they recognized that positions like librarians did impact kids, and thus could be considered “in the classroom,” there was a marked delineation between more primary classroom positions and more periphery positions.

Likewise, the McPherson district’s experience also highlights that the positions most at risk of elimination were often counselors and librarians. This was common for the districts I interviewed and statewide data indicates this was also common across all school districts. Counselors, for instance, dropped as 6.7 percent between 2007-08 and 2016-17. The number of counselors did recover in the 2016-17 school year, though the total number of these positions is still below pre-recession levels. Likewise, librarian positions declined nearly 35 percent across the same time period. Unlike counselors, library positions have not seen any recovery in recent years. Instead, librarian positions have tended to become district-wide positions where one librarian will split their time across all the schools in a district. “We used to have a high school

[199] Interview conducted February 1, 2018

librarian and an elementary librarian. We now only have a district wide librarian," explained the Neodesha district.[200]

Table 13 Change in Student and Staff Numbers, 2007-08 to 2016-17

	2016-2017	2015-2016	2014-2015	2013-2014	2012-2013	2011-2012	2010-2011	2009-2010	2008-2009	2007-2008	Percent Change between 2007-08 and 2016-2017
Total Guidance Counselors	**1,040.5**	**956.0**	‡	‡	**1,122.5**	**1,071.0**	**1,060.9**	**1,081.3**	**1,122.5**	**1,115.5**	6.7 percent decrease
Total Library and Media	**587.2**	**550.9**	**677.0**	**675.8**	**742.4**	**734.5**	**797.3**	**839.9**	**893.8**	**895.4**	34.4 percent decrease
School Administrators	**1,854.3**	**1,751.5**	**1,899.1**	**1,880.9**	**1,858.9**	**1,874.0**	**1,807.3**	**1,821.9**	**1,867.1**	**1,852.8**	0.8 percent increase
School Administrative Support Staff	**2,128.5**	**2,065.9**	**2,120.0**	**2,094.3**	**2,039.8**	**2,101.0**	**2,052.4**	**2,162.3**	**2,182.6**	**2,160.1**	1.5 percent decrease
Student Support Services Staff	**4,293.4**	**4,027.0**	**4,472.3**	**4,421.0**	**2,474.2**	**4,193.3**	**4,258.6**	**3,485.1**	**1,555.7**	**1,759.0**	144.1 percent increase
Total Students	**494,347**	**495,884**	**497,275**	**486,423**	**488,736**	**486,108**	**483,701**	**474,489**	**471,060**	**468,295**	5.6 percent increase
Free and Reduced Lunch Students	**235,849**	**240,209**	**244,604**	**246,032**	**240,836**	**235,362**	**228,641**	**214,437**	**202,060**	**186,948**	26.2 percent increase
IEP Students	**72,359**	**70,759**	**69,817**	**67,996**	**67,254**	**65,558**	**66,851**	**66,219**	**65,722**	**65,712**	10.1 percent increase
ELL Students	‡	‡	**47,209**	**45,530**	**42,590**	**41,052**	**39,323**	**38,011**	**34,096**	**31,760**	48.6 percent increase*
Total FTE Teachers	**36,193.3**	**34,778.5**	**36,185.0**	**38,152.9**	**33,879.7**	**37,407.3**	**34,643.8**	**34,700.1**	**35,871.3**	**35,346.8**	2.4 percent increase

Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD)
*= This change calculated until the 2014-2015 school year because of missing data
‡ = indicates that the data do not meet NCES data quality standards.

School districts tried to conceal the effects of budget cuts, but for some public education advocates this was a point of frustration. According to Judith Deedy, who formed the public education advocacy organization Game On for Kansas Schools, "[Superintendents] work so hard to hide the impacts [of budget cuts]. They keep the cuts as far away from the classroom as possible. And it's like against their DNA to admit what they're not able to do. They don't want to publicly say, 'Yeah we know we're letting our kids down. We know our class sizes need to be smaller. I know I need para's in more of my classrooms or I know we need more tech support, I

[200] Interview conducted January 30, 2018

know we need more counselors.' But they don't want to come out and say that."[201] And for Deedy and others[202] like her, keeping cuts away from the classroom obscures the true extent of the damage being done to public schools. "That's a thing that an average parent doesn't recognize. There's still someone in their library, you know? So it has been a real challenge for our side is to help people understand what's happening because it's hard to see. So your class size went up a few. Whatever. And if your kid is in kindergarten, you don't even know what your classroom looked like six years ago. You don't even know you're getting screwed."[203] For many public education advocates, concealing the effects of budget cuts by prioritizing certain positions actually makes it harder for parents and the general public to see the effects. While school librarian positions have been reduced statewide by nearly 35 percent, at some point during the day there is still someone in the library. The presence of someone in the library obscures that the position has dramatically changed.

Even though non-teaching positons, such as librarians, were most likely to be eliminated, this does not mean that teacher positions remained filled.[204] Teaching positions were particularly vulnerable to attrition (retirements and resignations). Indeed, teachers are leaving Kansas en masse. In recent years, the number of teachers leaving Kansas has nearly doubled (Kansas Department of Education 2016). In the 2012-13 school year, 413 teachers left Kansas. But by the 2015-16 school year, the number of exiting teachers had grown to 831. The number of teachers

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[201] Interview conducted March 12, 2018

[202] This perspective was echoed by many at the Rally to Restore Revenue held in Lawrence on March 25, 2017. One woman in attendance at the rally told me she was there because "I have three daughters in public school. So it started with looking at education and just how everything was falling apart and class sizes were ridiculous. The stories my daughters were coming home with were ridiculous…. When there's such tremendous class size, so nearly 30 growing, energetic, highly-spirited kids in classroom and one adult, there's bound to be behavior issues… So, just the stories of fights breaking out. And one adult cannot manage a classroom of kids. We need to fund it so that there's an assistant and there's student teachers, just manageable classrooms."

[203] Interview conducted March 12, 2018

[204] Kansas also had a high number of turnover in superintendents. Over 60 districts had new leadership for the 2016-2017 school year, the highest turnover of superintendents in the state's history (Tobias 2016).

who left the profession also grew from 669 in 2012-13 to 1,075 in 2015-16. Finally, data show that retirements increased from 2,084 to 2,693 in the same years. Thus, during lean budget years, school districts can take advantage of a larger trend in the state which makes budget savings easier to anticipate.

However, this data does not reveal the reasons teachers are leaving. As the teacher vacancy report notes, teachers may leave the profession or the state for a variety of personal reasons which may not be directly tied to budget cuts. However, a likely reason for teacher vacancies is wage stagnation and low entry pay, which are directly tied to school funding cuts.[205] Indeed, the National Education Association's 2015-2016 ranking of teacher salaries places Kansas 45th with an average salary in 2016 of $47,755, well below the national average of $58,353 (National Education Association 2017). Of course, Kansas' pay ranks higher than some neighboring states, such as Oklahoma, but is still below other neighboring states, namely Missouri (which the NEA ranked 22nd). The difference in teacher salaries across states increases competition for teachers. According to the Olathe district, "We're losing teachers across the border, because of the changes in state pension here, the lack of funding, our salary schedules have not kept pace with inflation. It's more attractive for some to work over in Lee's Summit, [Missouri] right across the border than it would be here right now. It never used to be that way, so that's created a new recruitment issue."[206] And indeed, Missouri school districts appear to have benefits from Kansas' budget problems.[207] In 2011, for instance, only 85 applications for

[205] According to the KASB's survey of districts, with the increase in school funding that came in 2017, most of this increase (80 percent) was spent on teacher salaries (Tallman 2018).
[206] Interview conducted November 23, 2017
[207] Indeed, Missouri school districts, such as the Independence, Missouri school district took out billboard advertisements in Kansas encouraging Kansas teachers to apply. This was also widely covered in local media (Zeff 2015; Glas 2015). For many, Missouri districts advertising in Kansas was a sign of how bad the fiscal and budgetary situation in Kansas had become.

Missouri teaching licenses were filed from a Kansas address, but over the following three years those numbers nearly doubled (Zeff 2015).

The increase in teacher vacancies has occurred even as student enrollments have grown. In 2006-2007, there were 444,879 students enrolled in K-12 with a pupil/teacher ratio of 14.7 (Kansas Statistical Abstract 2008:169). However, by 2017-2018, the number of students had grown to 477,978 and the pupil/teacher ratio had increased to 15.5 (Kansas Statistical Abstract 2018:179). And student enrollment is projected to continue growing which adds to district's long-term anxieties. For instance, the Haysville school district told me, "This budget cut time has caused a lot of people to avoid the area of education. And one of the things we're really worried about on the horizon is a tremendous teacher shortage. If you look at the number of people enrolled in teacher programs now, there's not enough to replace those who are eligible to retire. That's not even people leaving the state, this is just actually enough people being trained to replace the normal workers that would retire. So it's got us very nervous."[208]

Classroom Materials

While districts directed budget cuts away from the classroom, some "in the classroom" expenses, such as textbooks or software renewals, were eliminated. The North Ottawa district, for instance, "was spending probably $35,000 a year in software renewals. We knocked that down to $25,000. I said let's go through and pick out what you think you can have and what you don't need to have."[209] Likewise, the Ellsworth school district, "just didn't order textbooks for a while. If you adopt textbooks for K-12 math, you could be talking $35-$45,000. That's a teacher's salary. And we felt that our people were more important than getting a new textbook

[208] Interview conducted December 15, 2017
[209] Interview conducted October 3, 2018

after six years. So we just used the textbook for seven years. That was kind of the mindset; just save, save, save."[210] Wallace County also described this delay tactic, "So we're trying to look at options on how to get by for a couple years without having to chunk out a $30,000 math curriculum, per say. And we found avenues to still meet the requirements we need to meet without having to spend that money. May have to copy a few more things, things like that. That was kind of a biggie. Again, that's sort of a delay tactic. Hopefully we get our feet back under us and we can look back and renew some of the areas we have to renew, but we'll see if the moneys there."[211]

The decision to delay purchasing textbooks was common among school districts in Kansas. As Figure 5 illustrates, total textbook purchases in the state have declined dramatically since the recession. Textbook purchases peaked in 2007-08 before declining. By the 2015-16 school year, textbook purchases were still below pre-recession levels. This indicates that most districts prioritized spending in other areas due to limited revenue. Part of the explanation for cutting materials has to do with the sheer cost of items like technology and textbooks. According to the Neodesha school district, "like many districts, technology's forcing us to spend a lot of money in that area that maybe, you know. It's kind of a black hole that you have to keep feeding I think."[212]

[210] Interview conducted September 28, 2018
[211] Interview conducted December 18, 2017
[212] Interview conducted January 30, 2018

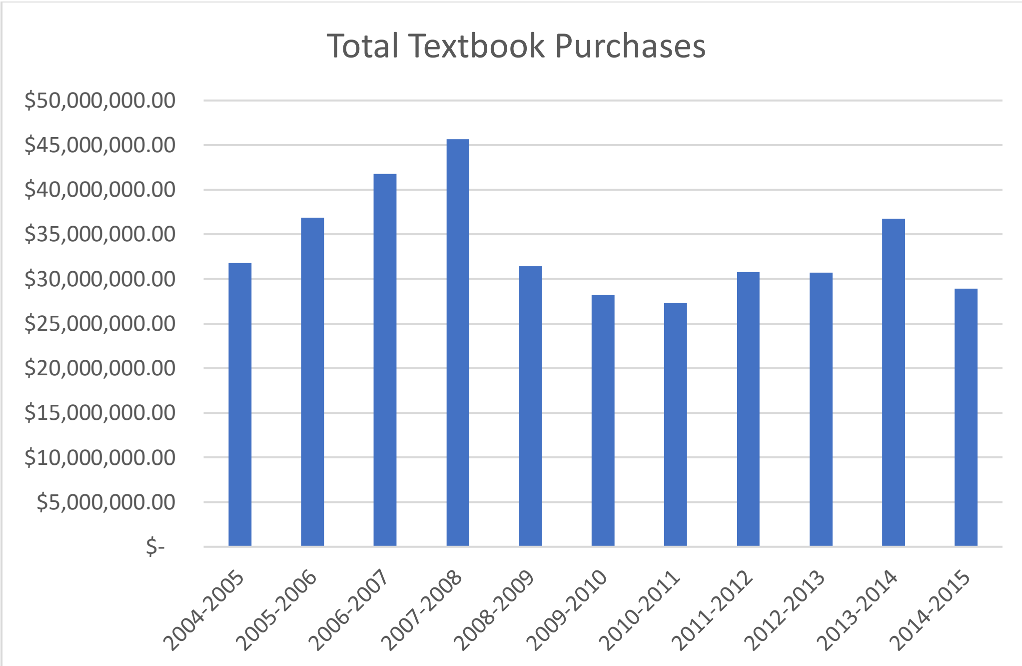

Figure 5 Kansas School District Textbook Purchases, Total, 2004-2015
Source: Testimony given to the Special Committee on K-12 Student Success; Dale Dennis, Deputy Commissioner of Education, December 9, 2015

Economic and Cultural Consequences to School Funding Cuts

Stagnant teacher pay or the elimination of school positions effects both the school district and the wider communities. As teachers leave and those positions are not refilled, it creates ripple effects. Political scientist Katherine Cramer notes that often, particularly in very rural areas, the prominence of public school employees can create resentment (2016:131). However, among my interviewees, there was a sense that school funding cuts were a net-negative for the community. As the Ottawa Chamber explained "When our taxes were cut and school funding was cut, we feel that in the community. We sensed resentment in our teachers who live and work among us and it's like the legislature wasn't validating them or validating the work they were doing."[213] But the negative aspects of school funding cuts also were economic. School districts are often among the largest employers in a community. To my knowledge, there is not a single

[213] Interview conducted March 28, 2018.

source for ascertaining the largest employers across communities. However, based on information available from local chambers and interviews with districts, school districts are often in the top five largest single employers in a community. For example, in 2016 in Johnson County, two of the top five employers in the county were school districts; Shawnee Mission (3,400) and Blue Valley (3,226) (Overland Park Chamber of Commerce n.d.). Likewise, the Wichita Public School District is the fourth largest employer in the Wichita metropolitan area (Wichita Business Journal 2018). In Montgomery County, the Oswego and Yorkville School Districts are the second and third largest employers respectively (Bachman 2017). In interviews, the Coffeyville district mentioned they are the fourth largest employer in that community[214] and the Herington district told me they are their town's second largest employer.[215] Thus, budget cuts to schools translate directly into fewer jobs and fewer overall resources in that community.

In addition to the loss of economic resources, diminished school funding has a profound impact on the identity and culture of a community. The loss of a school, particularly in rural areas, "means the loss of a very important source of community identity" (Cramer 2016:102; see also Kearns, Lewis, McCreanor, and Witten 2009). Often this source of identity is located in the physical school buildings and district activities, namely sports. As Judith Deedy, the founder of the public education advocacy organization Game On for Kansas Schools, noted, "A lot of people understand that when a school shuts down, the community shuts down. Without even talking about it, they understand that the schools are the center of their community in a lot of different ways, whether it's cheering on the football team or it's the nicest, biggest building in town for a lot of different communities."[216] In interviews, school district officials relayed the

[214] Interview conducted October 5, 2018
[215] Interview conducted September 21, 2018
[216] Interview conducted March 12, 2018

distress associated with having to close school buildings. "It was a really difficult decision. Those schools have been around for a long time. The people that had children there were very passionate about those schools… We had lots of people at our board meetings not happy with that decision. And ultimately, our board voted a split decision. It was five to two, to close those buildings in the end."[217] Ultimately, in Baldwin City, the buildings were closed and sold. Closing these two schools, schools that many in the community probably attended, translated into the loss of a piece of that town's identity.

District activities, such as sports, are also an important social component of communities, particularly for smaller communities. As one school district official told me, "The smaller the community, the more important [school sports] are."[218] Budget cuts put this at risk as well. Data compiled by the Kansas Center for Economic Growth indicates that "roughly 30 percent of districts have reduced or eliminated a wide range of programs and activities" such as sports or art and music programs (2014:6). Sports are valued enough in communities that most districts I spoke with avoided eliminating team sports. However, some districts did cut sports with less participation, such as the Perry school district who told me, "Girl's golf was an example of a sport that we didn't have anymore, because we didn't have good participation. It cost us a lot more than what it was bringing in, in terms of paying for coaches."[219] Likewise, in Herington, "During the decline, about five years ago, baseball and softball were eliminated from the high school sports. And there was a lot of anger about that."[220]

Again, school districts prioritize keeping the effects of budget cuts away from the classroom. But some districts view the "classroom" more holistically, encompassing nearly all

[217] Interview conducted November 28, 2017
[218] Interview with the Herington district conducted September 21, 2017
[219] Interview conducted January 31, 2018
[220] Interview conducted September 21, 2017

that a district offers, including sports. The principal of Hutchinson middle school, for instance, testified, "Athletics and activities are essential for all students, especially those at-risk. Hundreds of students at Hutchinson Middle School would lose the opportunity to participate after school with a trained coach in a positive environment. This will not only affect the students athletically, as we all know that students who participate in activities do much better in the classroom. For example, if we can get an at-risk student out for a sport, there is a great chance their grades and classroom performance will improve."[221] For some school districts, then, viewing activity spending as an "in the classroom" expense justified keeping the program instead of eliminating it for budget reasons.

Even if a district kept a sport or activity, though, there were still aspects of sport that may have to change. In some cases, the changes were related to transportation to and from extracurricular activities. Some districts, such as the Wallace School District, mentioned they will now "combine vehicle trips on some of their trips instead of whatever they had planned."[222] Likewise, the Haysville school district also recalled that cutting transportation for students who stay late for athletics or other activities

> was one of the first ones that the committee and everyone agreed, those are extracurricular, so they're not directly affecting the classroom. And that was the big point on that, so they felt like they could take away those activity routes and not pay for those anymore and use those savings because it wasn't necessary for a kid to get a good education to participate in those. Now it's not that they weren't important. It's not that everybody here doesn't like activities, doesn't like sports. Heck, we've got a home basketball tonight and it'll be packed. But everybody looked at that and said, 'We don't want to cut anything else in the classroom, and we don't want a cut that affects every student. This would only affect those involved in activities, those involved in sports, athletics. And parents can come pick their kids up after practice.' So it was tough, because the community was a little upset, and it took some educating there.[223]

[221] Testimony given March 9, 2015 to the House Appropriations Committee
[222] Interview conducted December 18, 2017
[223] Interview conducted December 15, 2017

Budget cuts create tensions within school districts as administrators prioritize programs. In the case of Haysville, administrators determined that cutting transport routes would create less impact than another cut to an "in the classroom" expenditure. But "in the classroom" spending, while the primary logic guiding how schools respond to budget cuts, districts also are aware of the broader community. Districts are acutely aware that community members will respond, often with derision, at any changes the district makes. While this required some education on the part of the district, it is also further evidence that the changes occurring in school districts alerted the wider community to the severity of the state's fiscal crisis.

In other cases, however, districts rely on the community to help support changes to school activities. This is particularly true if districts implement activity fees. According to the Haysville school district, "I will tell you when we cut back on the activity routes, the athletics and activity routes in the evening, I actually received some checks from individuals. One from an individual who lives in Texas that had attended school here and had heard we were cutting those out. And he thought his $100 could help us to keep those. And he said in his letter, he wrote a letter to the board that said, 'I know my $100 is not enough to keep it all, but maybe if we get enough people to participate, you can keep those evening routes.' So there was some outpouring from the public."[224] Likewise, the Coffeyville school district noted, "We relied a little bit more on the booster club and things like that and they stepped up and helped out. So that provided additional supplies, materials and stuff for our athletic programs which allowed us to reduce those budgets down more to augment what we had reduced in the classroom supplies."[225]

But, of course, not all districts are in communities with the capacity for strong community financial support. The Galena School District, among the poorest in the state,

[224] Interview conducted December 15, 2017
[225] Interview conducted October 5, 2018

explained, “fees are a huge inequity and I don't know what you do about it. Nobody talks about fees but it's a big deal.”[226] Some other districts, like Perry-Lecompton, instituted fees for athletics in response to budget cuts but tried to offer support for students disadvantaged by the new fee structure: “I think ours ended up being pretty modest, I think around maybe $50 per sport or something like that… We had some people donate money so if kids really couldn't afford it and they wanted to play, they kind of filled out a scholarship application. If they qualified, then we used that money that was set aside to go for them.”[227] The differences in fees for sports demonstrates an important point: budget cuts to K-12 impact all school districts, but they impact districts differently based on community response capacity. In wealthier districts, parents can volunteer time and money to school activities whereas in poorer districts this is not always the case. The school funding formula contains mechanisms to equalize certain per pupil expenditures, but it does not contain mechanisms for equalizing parental time and resources.

Interestingly, community support for school activities, while appreciated, is still a small portion of the overall district budget. The Topeka School District expressed this sentiment, “[A]t a legislative meeting recently one of the superintendents in Shawnee County had brought up the point, in that period of the block grants, we had parents stepping up and saying ‘We’ll pay for the bus to the state championship for baseball.’ But he said, ‘I didn’t have one person step up and say don’t let go of that custodian.’ I don’t have a group that says hey let us buy the toilet paper for the school for January through June. It’s not human nature. Folks will get on board to support those extracurricular things but you gotta have a clean building. And no parent organization is going to go let’s have a fundraiser for custodial supplies.[228] While community groups will offer

[226] Interview conducted March 1, 2018
[227] Interview conducted January 31, 2018
[228] Interview conducted December 22, 2017

support to schools in times of budget cuts, sometimes the effects of the cuts are more invisible, hidden away in fewer custodial supplies or in the increased demand on a diminished staff. These effects are, by the design of school district officials, often the first causalities of budget cuts. But they are also less visible. When budget cuts begin to effect student experiences, even if it is extracurricular activities, this makes the effects of the cuts more visible and salient for community members.

Conclusion

Brownback's efforts to reshape the state were constrained by formal institutional obligations enshrined in the constitution. However, these efforts were also constrained by the informal, and symbolic place of schools in Kansas. The opacity of school budgeting was an institutional barrier to communicating the severity of the fiscal crisis. This was made even more difficult by the accounting maneuvers the Brownback administration undertook to funnel different funds to school district general funds to make it look as if funding to schools had increased. However, the visibility and severity of the effects of budget cuts eventually overcame any techniques meant to misdirect attention away from the tax cuts. In communities across Kansas, the effects to schools highlighted the financial challenges facing the state. And in response, people mobilized to protect the institution and eventuated the reversal of the tax cuts. This ultimately affirmed what school advocates in the state believed. As Judith Deedy of Game On explained, "I thought maybe we're wrong, maybe Kansans really do care more about tax policy than they care about their public schools. And the 2016 election, to me, was the bellwether on that. I mean that was the answer. And, no we don't put tax policy first. We put our communities and our schools first."[229]

[229] Interview conducted March 12, 2018

Chapter Five:
Honest Answers

"It's time for Kansans to demand an honest answer to a simple question," wrote the editorial board of the *Topeka Capital-Journal* (2015). "Why don't we have any money?" By mid-2016, the fiscal crisis in Kansas was particularly acute. During the 2015 legislative session – the longest in state history – the conservative-dominated legislature struggled to balance the budget and, instead of addressing the income tax cuts, instead raised sales taxes and other sin taxes in a desperate attempt to salvage Brownback's experiment. As the fiscal crisis worsened, pressure mounted on Brownback to explain why the tax cuts had not produce the promised "shot of adrenaline" to the state's economy.

In this chapter, I explain how the Brownback administration obfuscated the effects of the tax cuts on the state budget. The pursuit of honest answers among the media, policy makers, and activist groups developed into an clash between competing knowledge claims expressed through various presentations and *interpretations* of that data. In legislative committees, blog posts, and reports, the clash of data in pursuit of answers to the fiscal crisis was embedded in a set of bureaucratic practices that political actors use to construct or generate 'truths.' Focusing on these micro-level political practices is key for uncovering how certain political ideologies, specifically neoliberalism, have "the means of making itself true, empirically falsifiable" (Bourdieu 1999:95). In other words, this set of practices are "aimed at creating the conditions for realizing and operating of the 'theory'" (Bourdieu 1999:95). The state did not start to see effects of the tax cuts reflected in the state's budget for at least a year as state officials were able to draw on state cash reserves and accounting maneuvers to buy even more time. However, Kansans eventually recognized and experienced the effects of the tax cuts. In response, the Brownback administration attempted, ultimately unsuccessfully, to divert attention from the tax cuts and towards other explanations for the state's fiscal crisis.

The Red-State Model: Building and Managing Expectations

A commitment to tax cuts has been the central, unifying position of the Republican Party since Ronald Reagan (Martin 2008:126-145; Block 2009). As current Senate Republican leader Mitch McConnell noted, "The one thing that unites Republicans from Maine to Mississippi is tax cuts," (Kenworthy 2009:30). As such, there were enormous expectations that the Kansas tax cuts would "create a red-state model that allows the Republican ticket to say, 'See, we've got a different way, and it works'," as Brownback told the *Wall Street Journal* (King Jr. and Peters 2013). National Republican figures, such as Mitch McConnell and Grover Norquist, initially gave favorable, glowing endorsements of the policy. McConnell said, "This is exactly the sort of thing we want to do here, in Washington" (King, Jr. and Peters 2013). Similarly, Norquist exclaimed, "Kansas is the future. Kansas is the model" (ReasonTV 2015).[230] And Arthur Laffer, who worked with the governor, asserted "Brownback and his whole gang there, it's an amazing they're doing. Truly revolutionary" (Gowen 2011). "It's a revolution in a cornfield," said Laffer.

Governor Brownback, also, essentially staked his political future on the success of the tax cuts. Several pundits observed that Brownback was likely pursuing such dramatic tax cuts in part to position himself for another presidential run. Likewise, by bringing in Arthur Laffer, Brownback was symbolically associating himself with Reagan's tax-cutting legacy.[231] And in an

[230] Elsewhere, Norquist also remarked that Kansas "provided a model, a successful model, that will phase out the income tax" (Lillis 2014).
[231] Brownback even travelled to the Reagan Ranch, Rancho del Cielo in Santa Barbara, California to celebrate the 35 anniversary of the Reagan tax cuts in the summer of 2016. Governor Brownback was the featured speaker of the event hosted by the Young

op-ed in the *Wall Street Journal*, Brownback described his policy as “rooted in the Reagan formula” (Brownback 2014). In other words, he cast the tax policy in Kansas as carrying the torch of Reagan and Republican tax policy.

The excitement surrounding the tax cuts lead supporters to make enthusiastic predictions. At a small business forum in Overland Park, Kansas just months after Brownback signed the tax bill, Arthur Laffer predicted the tax cuts would produce “enormous prosperity” in Kansas and “in a decade” (Wistrom 2012b). Elsewhere, however, Laffer and Stephen Moore had suggested they advised states like Kansas and Oklahoma to cut taxes because tax cuts produce “near immediate and permanent” economic impact (Laffer and Moore 2012). Secretary of Revenue Nick Jordan, however, was more optimistic and aggressive, predicting the tax cuts would produce noticeable economic growth in three years (Winstrom 2012b). And, of course, Brownback famously described the tax cuts as a “shot of adrenaline,” indicating near-immediate results. But enthusiastic predictions were not only found in exaggerated claims, they were also ensconced in concrete and quantitative predictions for economic growth. As mentioned earlier, the Brownback administration claimed the tax plan would create 22,900 new jobs, bring in 35,740 new state residents, and generate $2 billion in disposable income for state residents. During his re-election campaign in 2014, Brownback doubled-down on these estimates, increasing promised job growth from 22,900 to 100,000 – 25,000 per year during his second term.

Brownback and his supporters claimed these numbers were the product of economic models and analysis, not ideological posturing. “It’s not a left-wing, right-wing thing. It’s economics,” Laffer said (Winstrom 2012b). A handout submitted to House and Senate tax committees in early 2012 titled “The Brownback Pro-Growth Tax Plan,” boasts that economic

America’s Foundation. Brownback was honored for carrying on Reagan’s vision of “increased freedom through lower taxes and less regulation.”

data “show states with zero personal income tax significantly outperform states with the highest personal income tax rates.”[232] This claim comes directly from Arthur Laffer’s *Eureka! How to Fix California* (2012). In *Eureka!*, he claims that states without income taxes grow their economies faster than states with income taxes. He also contends that zero income tax states outperform other states’ gross state product, job growth, and population growth. True to his supply-side approach, *Eureka!* also claims that the nine states without a state income tax generate over 120 percent more state and local tax revenue compared to states with an income tax. Laffer’s claims were used by the Brownback administration to justify and legitimate the policy and several pages from the book were included in various policy materials. Laffer never produced any analyses directly for Kansas, though he was paid $75,000 to consult and make appearances in Kansas. However, his supply-side assumptions were built directly into the Kansas tax cuts. This is even more apparent when it came to forecasting future state revenue.

Fiscal Notes: Static and Dynamic Scoring

Lawmakers often approve budget expenditures prior to the arrival of tax revenue. This temporal imbalance means lawmakers rely heavily on revenue forecasting to set state budgets. Revenue forecasting refers to “the predicted impact of a change in policy on aggregate revenues” (Auerbach 2005:423). It is the “lynchpin” that holds together the process of determining who pays and who benefits from government services (Krause, Lewis, and Douglas 2013:273). However, revenue forecasting, like other forms of forecasting, is an uncertain and imprecise process. Economic sociologists have grown increasingly interested in forecasting as an epistemic and political practice (Beckert 2016; Dix 2019; Reichmann 2013). In this literature, forecasts are

[232] Presented to the House Taxation Committee, January 12, 2012

"a special case of expectation building" (Reichmann 2013:854) which inspire political and economic actors to make decisions about future outcomes they cannot know (Beckert 2016:218). Their imprecision coupled with the power to shape the future means forecasts are "inherently political" (Beckert 2016:239).

Before the tax cuts were passed the Kansas Legislative Research Department (KLRD) produced numerous forecasts estimating the cost of the tax bill. The KLRD estimated the tax cuts would reduce revenues by $4.5 billion, generating expected budget deficits between $712 million and $2.5 billion over the next six years. The Brownback administration, however, rejected this forecast and the KLRD's methods, opting instead for the more optimistic forecast from the Department of Revenue (Hanna 2012c). Brownback's spokesperson, Sherriene Jones-Sontag issued a statement accusing the KLRD of producing misleading numbers, charging that "The KLRD outlook cited by those who support the status quo is simply wrong, and they know it" (Carpenter 2012c). After the tax bill passed the legislature (but before Brownback signed it), budget director Steve Anderson also announced he would release an alternative budget projection based on "dynamic scoring" (Rothschild 2012y).

Dynamic scoring refers, essentially, to incorporating macroeconomic effects into estimating how policy changes will impact the budget beyond just the initial cost to government. Other forms of revenue forecasting, so-called static scoring, simply calculate the expected cost to government if a tax cut is passed. In static scoring, other macroeconomic factors, or changes in behavior attributable to the policy, are not calculated in the revenue estimation. However, in dynamic scoring, forecasters attempt to estimate how a tax cut will incentivize either consumers to increase their spending or businesses to invest more. These estimates are fed into the model to produce a more "accurate" cost to government. In other words, a tax cut lets people keep more of their money which should increase economic activity. The state can then recapture some of the cost of a tax cut from increased sales tax revenue. As one of Brownback's former advisors explained to me, tax cut dollars are kept "in the sphere of Kansas economy, not just buried in the ground somewhere, which we knew that no one's burying it in the ground. That's why when people talk about, well, they did dynamic scoring, well, that's why we did dynamic scoring. Nobody buries it in the ground."[233]

Dynamic scoring is itself not necessarily partisan. However, the main draw for dynamic scoring is that it potentially makes large tax cuts appear cheaper. This is suggestive of one its biggest weaknesses: its susceptibility to political influence (Auerbach 2005). Because dynamic scoring relies so heavily on assumptions of how individuals and businesses will respond to changes in fiscal policy, if supply-side assumptions are fed into the model then supply-side outcomes are "proven" by the model. Dynamic scoring, in other words, is the technique often used to justify the commonly heard phrase that tax cuts will pay for themselves. And as Monica Prasad notes, it is "essentially the Laffer curve under a different name" (2018:153).[234]

Kansas employs static, rather than dynamic, scoring is used in official state forecasts.[235] Thus, the Brownback administration relied heavily on outside organizations to produce dynamic

[233] Interview conducted February 2, 2017

[234] Nationally, Republicans have waged a quiet campaign to get dynamic scoring instituted in official forecasting at the CBO since the early 1990s. As Monica Prasad explains, "Republicans had been trying to get dynamic scoring made officials since the days of the Contract with America, but there was too much skepticism about it, including among audiences that Republicans cared about, such as financial markets" (2018:153). However, in 2015, Republicans were able to realize this goal and implemented a new rule which now requires the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) to build forecasts and estimate effects using dynamic scoring. Dynamic scoring is also a highly contested device. For instance, in 2018, the Democrats regained the U.S. House of Representatives and as part of their proposed rule changes are proposing to eliminate the use of dynamic scoring. In the states, too, dynamic scoring has become more common. One analysis found that 21 state legislative bodies used dynamic scoring in budgetary and policy analysis (Bluestone and Bourdeaux 2015). Moreover, the report notes that "state level dynamic models are largely 'supply side' models" (Bluestone and Bourdeaux 2015:8).

[235] Various bills have been introduced to try to institute dynamic scoring in the state's forecasting process, but they were never referred out of committee. One such bill was HB 2351, introduced February 2011, but died in committee without a hearing June 2012. But the wording of this bill is instructive. The bill would have required the preparation of fiscal notes to "include estimated changes in economic output, employment, capital stock and tax revenues expected to result from enactment of the proposed legislation. Such analysis shall include behavioral assumptions regarding how consumers, businesses and other economic entities would be expected to react if the proposed legislation were to be enacted."

estimates while simultaneously attempting to discredit and delegitimize the KLRD. Reliance on outside organizations for favorable estimate was necessary because the numbers being produced by the KLRD were based on the *administration's own numbers*. The KLRD does not have the independent capacity to estimate the fiscal impacts associated with changes in a law, they must be directed by a lawmaker and provided numbers by different parts of the administration, namely the Department of Revenue and the Division of the Budget. The dynamically scored analysis Anderson claimed he would produce was purchased from one of the major dynamic scoring companies, which was never publicly released because the models' fiscal estimates were so incoherent. Thus, it is difficult to determine exactly where the numbers Brownback released at the bill signing actually came from.

However, other outside groups, namely the Kansas Policy Institute (KPI), produced and released dynamic analyses of Brownback's tax cuts. The KPI used the KS-STAMP (Kansas State Analysis Modelling Program) model, developed by the Beacon Hill Institute, a free-market think tank located at Suffolk University (Davidson, Tuerck, Bachman, and Head 2012). The KPI ran two dynamic analyses, a "standard" model and a "pass-through model."[236] The KPI's dynamic analysis dramatically reduced the size of the tax cut compared to the static forecast (Table 14). In the "standard" model, dynamic scoring reduced the overall cost of the tax cut by $533 million over six years compared to the KLRD estimate. The "pass-through" model reduced the cost of the tax cut even more, by $612 million over six years. Moreover, these models forecast job growth, population growth, and other metrics. For instance, in the "standard" model, the tax cuts were predicted to increase employment by 41,690, increase population by 34,907, increase wages by $364 a year, and increase disposable income by $1.8 billion. The "pass-through"

[236] The "standard" model applied to individuals while the "pass-through" model tried to capture the dynamic effects of the elimination of the income tax on pass-through businesses. The "pass-through" model was modelled as a corporate income tax cut.

model, likewise, predicted increased employment of 33,430, increased population to the state by 28,516, gross wage growth of $277 and $1.6 billion in new disposable income. The numbers that Brownback released (22,900 new jobs, 35,740 new residents, and $2 billion in disposable income), while different, are very similar to the dynamic analysis produced by KPI. However, again, these were not official estimates and were not used in official state forecasts. Rather, many in the Brownback administration used these outside numbers to simultaneously bolster the tax plan *and* discredit official forecasters.

Table 14 Static vs. Dynamic Scoring of the Kansas Tax Cuts

	KLRD	KPI Standard	KPI Pass-through
6-Year Total	(4,539.1)	(4,006.1)	(3,927.4)
Amount Above KLRD	N/A	$533.0	$611.8

Source: Kansas Policy Institute, “A Thousand Flowers Blooming,” 2017

Consensus Revenue Estimates

The battle over fiscal note estimates was only the start of an antagonistic relationship between supporters of the tax plan and official state forecasters. Once the KLRD determines the fiscal impact of a bill are determined, those estimates are incorporated into the larger forecast for the overall budget. Kansas generates state revenue forecasts through the Consensus Revenue Estimating Group (CRE), a group made up of representatives from the Department of Revenue, the Division of the Budget, the Legislative Research Department, as well as economists from Kansas State University, Wichita State University, and the University of Kansas. The activities of the CRE include what sociologist Werner Reichmann terms “epistemic participation,” meaning the CRE incorporates “knowledge about an object that aims at the object itself *participating* in the epistemic process” (2013:872-873). This group meets twice a year, first in

November to issue the fiscal year forecast, and again in April to revise the estimates. These meetings are private and not open to the public or subject to open records requests.

Every state has a process to estimate expected tax revenue. Kansas forecasts ahead two years, while some states, such as Alaska, forecast up to a decade in advance (Reuben and Randall 2017). In general, there are three ways states estimate revenue: either the legislative and executive branches independently generate a revenue forecasts, a single state agency produces a forecast, or multiple agencies come to a consensus (Mikesell and Ross 2014:190-192). Twenty-five states, including Kansas, use the consensus approach, which is what most experts recommend (McNichol 2014). The objective of the consensus approach is to "produce a single forecast that emerges from cooperative work between legislative and executive branches, thereby producing a reliable and accepted budget constraint for development and adoption of state expenditure programs" (Mikesell and Ross 2014:192). There is not a clear link between which process a state uses and its accuracy (Pew Center on the States and the Nelson A. Rockefeller Institute of Government 2011:5). However, often the consensus process is designed to shield the forecasting process from political interference.

Revenue forecasting must strike a delicate balance. Since budgets are built on expected revenues, revenue forecasters face the dilemma of either issuing more conservative forecasts that underestimate the amount of expected revenue (which would make potential mid-year budget adjustments less painful), or more optimistic forecasts that allow lawmakers to appropriate more money to more parts of the budget. Overly optimistic forecasts, however, mean budget cuts are more drastic if revenues do not meet expectations. The professional norm among revenue forecasters is to forecast conservatively. In budget forecasting, politics is viewed as potentially biasing estimates since politicians are incentivized to push for more optimistic forecasts which allow them to appropriate more money for electoral promises (Krause, Lewis, and Douglas 2013). This strategy is particularly prevalent with term-limited lawmakers in the legislative and executive branches (Krause, Lewis, and Douglas 2013:272). But overestimation is less common and state revenue forecasters tend to bias their forecasts downward (Mikesell and Ross 2014:189). However, there are contextual factors that influence estimation. For instance, during recessions, states often overestimate. During the 1990-1992 recession, 25 percent of state forecasts were short by five percent or greater. However, by the Great Recession, 70 percent of state forecasts overestimated by five percent of higher (Pew Center on the States and the Nelson A. Rockefeller Institute of Government 2011:4) with the median overestimation at 10.2 percent (Pew Center on the States and the Nelson A. Rockefeller Institute of Government 2011:8).

A consensus approach is largely designed to weaken the direct influence of political power on revenue forecasts. However, in some cases, as in Kansas, members of the estimating group are political appointees. In Kansas, the heads of the Department of Revenue and the Division of the Budget are both appointed by the governor. Thus, even a consensus revenue approach is never fully shielded from politics. Moreover, Brownback's appointees for both Revenue (Nick Jordan) and the Budget (Anderson followed by Sullivan) were outspoken supporters of the tax cuts. By statute, only the head of the Research Department and the Budget have to come to consensus.[237] While the proceedings of the CRE meetings are closed, apparently given the outcome, the Governor's appointees secured unreasonably optimistic projections for the policy.

Missed Projections

[237] Interview with Shawn Sullivan, conducted July 7, 2016

Starting with the November 2014 revenue estimation report, missed revenue projections became highly politicized. The November 2014 revenue estimate, released shortly after Brownback's re-election, necessitated immediate action and in December, Brownback announced another round of budget cuts. These cuts pushed the current shortfall into the following fiscal year, making it easier to balance the current budget but increasing the deficit for the coming year, from $436 million to $648 million.

Part of the reason for the missed revenue projections was Kansas's new, unique tax structure. No state had exempted pass-through business income before which made estimating the effects of the policy challenging. As Nick Jordan told *The Wall Street Journal*, "Our out-year forecasts are pretty much guesses" (King Jr. and Peters 2013). This was confirmed in a November 2018 CRE memo (after the repeal of the tax cuts), which explained, "A recent analysis of tax year 2017 returns conducted by the Department of Revenue confirms that the restoration of the tax to non-wage business income is an important part of the story with respect to growth in this tax source that has occurred since FY 2017; just as the exemption of such income was the major reason receipts were not meeting expectations during the years it was in place. The analysis also confirmed that a large portion of the liability associated with taxing non-wage income is coming from taxpayers in the recently restored upper income bracket" (Kansas Legislative Research Department 2018). Moreover, Raney Gilliland, Director of the Kansas Legislative Research Department, reported that revenue estimates during the tax cut years "did not accurately reflect reality" (Hancock 2018). He added, "We were significantly underestimating the tax policy changes. We do believe that the estimates for the impact of 2012 tax law changes were understated" (Carpenter 2018).

Of course, the irony of missed revenue projections is that they are based on information provided by the Budget Director and the Department of Revenue. As former state budget director Duane Goossen wrote, “Nothing gets into the CRE without agreement from the governor’s budget director. Everything in the CRE is based on tax information brought by the Secretary of Revenue” (2016). This fact was also mentioned in the November 2012 CRE memo, where the consensus group noted “there is no evidence that the fiscal notes provided by the Department of Revenue at the time the legislation was enacted should be changed significantly relative to the short run or through the end of the current forecast period in FY 2014” (Kansas Legislative Research Department 2012b). Thus, the Brownback administration’s attacks on the revenue estimation process ignored, perhaps knowingly, the role of his own administration in producing the forecasts. Moreover, these revenue projections were made using static scoring. Had official state forecasted been producing with dynamic scoring, as the Brownback administration proposed, revenue forecasts would have been larger by hundreds of millions of dollars.

Sociologist Jens Beckert (2016) notes that economic forecasting is not an exact science and precision is unlikely. However, the political expectation is that forecasts be at least “directionally correct, such that the revenues on balance are able to meet that expenditure commitment that is there and not have a chronic direction of either being over or under.”[238] During the period of the tax cuts, and particularly after the November 2014 memo, Kansas chronically underestimated revenue (see Figure 6). This meant Brownback had to balance the budget through a combination of cuts, fund transfers, and using cash reserves. Mid-year budget cuts particularly affected schools and universities while fund transfers came almost exclusively

[238] Interview with Steven Johnson conducted February 1, 2017

from the highway fund.[239] Indeed, the governor transferred so much money out of the highway over the course of the tax cuts that the Kansas Department of Transportation (KDOT) was forced to delay or cancel several planned road work projects. For instance, in April 2016, KDOT either delayed or cancelled 25 projects through fiscal year 2019. "Previously-programmed modernization and expansion projects will be delayed until remaining State Highway Fund revenues allow or new money is made available," KDOT said in the news release.[240] Later that year, in November, KDOT announced the delay or cancellation of 24 more road projects (Shaar 2016). Ten more delayed or cancelled projects were again announced in December (Moxley 2016). Sweeps from the highway fund dramatically reduced KDOT's ability to address the infrastructure needs of Kansas. According to testimony by Kansas Secretary of Transportation Richard Carlson, KDOT projected by fiscal year 2019 they would have enough funding to only repair 235 miles of road, a decrease from over 1,800 miles in fiscal year 2014.

[239] Fund sweeps were not the only fiscal consequences for KDOT or the highway fund. In 2015, the Brownback administration increased the amount of bonds KDOT could issue, and thus the amount of outstanding debt that KDOT could issue. Kansas then immediately sold $400 million in bonds which increased KDOT's debt limit. Many critics saw this as using KDOT as a "credit card," increasing debt at KDOT in order to keep sweeping funds from KDOT, thus balancing the budget and preserving the tax cuts.

[240] Kansas Department of Transportation. 2016. "KDOT to Delay Expansion, Modernization Projects" April 20 (https://www.ksdot.org/Assets/wwwksdotorg/Headquarters/PDF_Files/pressrelease2016/April_20_Report.pdf). Accessed March 14, 2019.

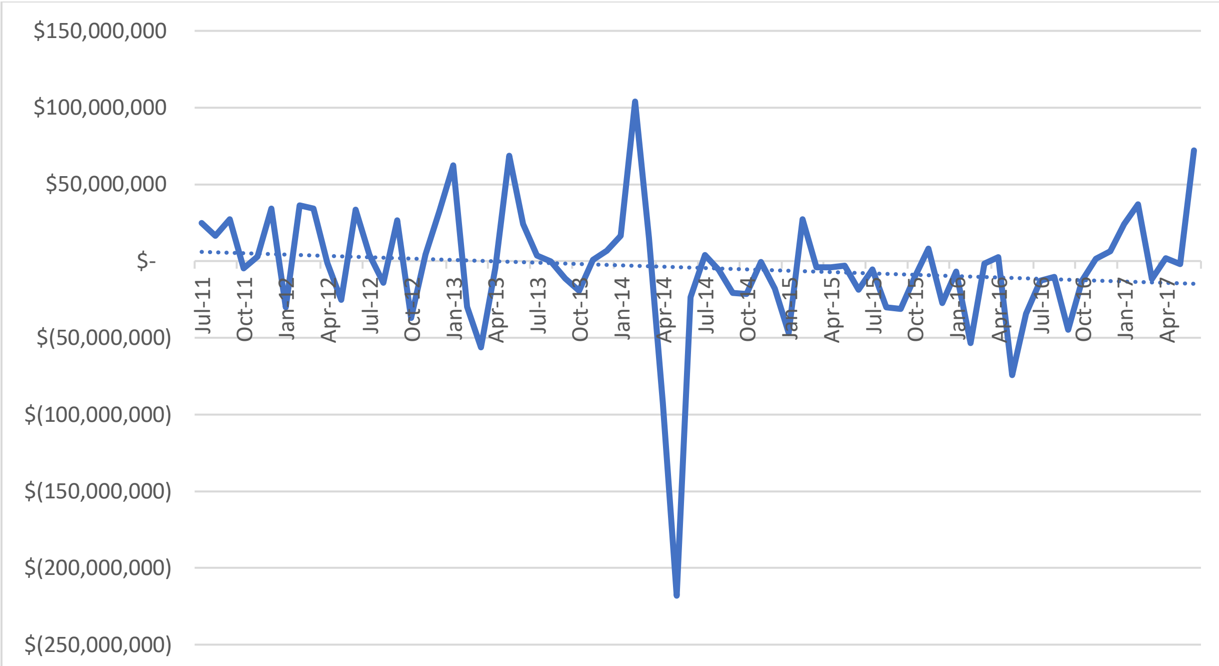

Figure 6 Difference between Forecasted Revenue and Actual Revenue (Total Taxes Only), FY 12-17
Source: Kansas Division of the Budget, State General Fund (SGF) Revenue Receipts

For many in the state, missed revenue projections amplified the fiscal crisis. As Mike O'Neal told me, "Whatever their reasons… they're being overly optimistic with the revenue projections and it's making us look bad."[241] O'Neal continued, "[T]his month after month after month of the estimators missing that and missing it on the high side, it makes the state look terrible. Number one, at the very minimum, it makes our estimators look like idiots, and they're not, by the way. But it also sends a message that there's something fundamentally wrong in the state and we need to fix it when in fact if you look at the big picture we're going, no, actually we're growing. We're just not growing at the pace that these estimators thought we would be growing."[242] For supporters of the tax cuts, missed revenue projections were undermining the rhetoric that the tax cuts were working. And a minority of conservative legislators suspected that

[241] Interview conducted October 21, 2016
[242] Interview conducted October 21, 2016

forecasters were purposefully underestimating revenue in order to sabotage the policy. Conservative senator Julia Lynn, for instance, suggested, "you've got some pretty good brain power in there [the CRE], but the estimates were always set too high. There were many of us who thought, after we kind of figured it out, that that was done on purpose, for political reasons because a lot of people didn't like what our governor was doing."[243]

Media Coverage

More common among supporters of the tax cuts than charges of conspiracy was frustration with media coverage of the missed monthly revenue projections. As Ty Masterson explained, "you hear this every month in the media, we missed our revenue projections. So the perception built in the public is that we've lost money."[244] Media coverage was indeed important to communicating the scope of the fiscal crisis. For instance, at the "Rally to Restore Revenue," held in Lawrence,[245] many attendees explained they got their information about the state budget from local news sources, such as the *Lawrence Journal-World*, *Kansas Public Radio*, and the *Topeka Capital-Journal*.[246] While attendees were not necessarily representative of Kansans across the state, it still demonstrates the importance of media coverage to the salience of the fiscal crisis.[247]

There was an unresolved tension in the Brownback administration's relationship with the media. On one hand, media coverage was important for publicity. As Nick Jordan explained, "We've had a lot of articles in the *Wall Street Journal* about this tax policy—positive articles.

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[243] Interview conducted February 20, 2017

[244] Interview conducted February 14, 2017

[245] The rally was held March 25, 2017

[246] Some at the rally also indicated they received information about the state's budget crisis directly from their senator and representative in the form of the lawmaker's newsletter.

[247] Of course, the media was important to *communicating* the fiscal crisis and those at the rally were not there because of the media coverage. Those at the rally were primarily there because of a concern with what the tax cuts had done for school funding.

Forbes has done several articles—positive—about the tax policy. I know the governor has been on almost every one of the major networks in talk shows and stuff in New York and that area. So nationally we've gotten fairly good media coverage of the tax policy. Our state media has been more on the negative side, but nationally it's been pretty good."[248] But the administration also blamed the media, primarily local media, for negative press coverage. This was particularly true of the coverage of missed monthly revenue projections. As Brownback lamented in an interview with *The Kansas City Star*, "I guess Missouri doesn't even do a monthly [revenue projection] because I never see their numbers coming out on a monthly basis … and every month it's a huge headline in *The Kansas City Star* about it's off this much. Well, that has impact on people" (Lowry and Woodall 2016). While Brownback emphasized the negative coverage from *The Kansas City Star*, it was not only the newspaper critical of the governor. Indeed, as one journalist observed, "They [the Brownback administration] may be pissed off at the *Capital-Journal*, the *Journal-World*, the *Kansas City Star*,[249] but those are not the only papers that are critical of the governor and particularly tax policy. If you look at some of the rural Western Kansas papers, they are far more aggressive. The Garden City paper, the Hutch[250] paper and so on, they are brutal, and these are rural Kansas papers. They are brutal in their condemnation of the governor's tax policy."[251]

Negative, "brutal," coverage of the policy did have an effect. Clay Barker, executive director of the Kansas Republican Party, explained "A lot of Republicans pride themselves on

[248] Interview conducted March 29, 2016
[249] *The Kansas City Star*, in particular, drew the ire and condemnation of many in the Brownback administration. The Kansas City Star, along with *The Wichita Eagle*, are owned by the same company, McClatchy. Some members of Brownback's administration suggested that the negative media attention that the McClatchy papers were giving Brownback stemmed from Brownback's anti-LGTBQ views. Kevin McClatchy, CEO of McClatchy, came out as gay in a 2012 *New York Times* interview. For some in Brownback's administration, McClatchy's sexual orientation biased his view of everything Brownback did, including the tax cuts.
[250] Hutchinson, Kansas
[251] Interview conducted May 20, 2016

fiscal policy management. It makes them feel uncomfortable when they keep seeing the report, revenue estimate and revenue didn't match," (Associated Press 2016a). Barker's perspective was complimented by Republican Jim Eschrich, who testified that "the public's perception, right or wrong, is that the state's finances are in serious trouble."[252] Eschrich urged lawmakers to close the pass-through exemption for political reasons, in order to preserve a Republican majority in Topeka. "I want to assure everyone on the committee I do not make this recommendation lightly," Eschrich continued. "I have pass through income, so depending on how you close the loophole I may end paying state income taxes. I'm okay with that added burden if it helps steady an antsy electorate and preserves the Republican Party's legislative influence in Topeka." Eschrich's prediction about Kansas Republicans "reaping the whirlwind" of the upcoming elections turned out to be exceedingly accurate.[253]

To curb negative coverage of the tax policy, and thus change public perception, Brownback met with newspaper editors around Kansas. As one journalist recounted, Brownback "met with [the editor] to talk about tax policy for this specific thing, to explain to him that the tax policy is working and here are the documents and here are the charts that show it's all working."[254] Veteran political reporter Peter Hancock of the *Lawrence Journal-World* recounted a similar meeting with the governor (Hancock 2016d). In these meetings, Brownback attempted to shift attention away from the tax policy and toward what he regarded as the real cause of the budget crisis: unfavorable economic conditions. But Brownback was not alone in diverting blame away from the policy. Tax cut supporters made similar claims about the cause of Kansas's

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[252] Testimony given March 15, 2016 to the House Taxation Committee
[253] Eschrich's later actions, however, cast a certain degree of doubt on his sincerity to roll back the tax cuts. In 2017, Eschrich filed to run against moderate Republican Tom Cox. Eschrich, who would be unsuccessful in his campaign, decided to run to unseat Cox because "[Cox] actually voted for the single largest tax increase in our state's history and Medicaid eligibility expansion, the latter requiring still another tax increase" (Senter 20170.
[254] Interview conducted May 20, 2016

budget woes in editorials and op-eds, in online newspaper comment sections, on Twitter, and in blog posts. For instance, Stephen Moore of the Heritage Foundation (who also had input on the development of the Kansas tax cuts), wrote an editorial in *The Kansas City Star* refuting a critical analysis of the tax cuts by Paul Krugman. The *Star* published Moore's column until another editor, Yael Abouhalkah, noted discrepancies in Moore's data. In response, the *Star* issued a correction and vowed never to publish anything from Stephen Moore again (Lee 2014).

Of course, for Brownback and other conservatives, the mainstream media is already perceived as unfair to conservatives. And Brownback's allies believed the media was particularly unfair to him. Senator Ty Masterson, complained, "The media, for whatever reason, they hate Brownback, sure seem to. He can't get a positive story to save his life."[255] Likewise, Mike O'Neal said, "And our governor, bless his heart, good man, heart's in the right place, poor messaging. He got behind the messaging early on and just can't catch a break. He'll literally absolutely try to get out there. He'll have charts and graphs. And the media just doesn't like him, just doesn't like him. Part of that is Sam's own fault and part of it is maybe not the best messaging strategy or initiative or whatever."[256] Likewise, Brownback's former Budget Director, Steve Anderson, blamed the media for unfair coverage of the policy, testifying "Every time a bill like this gets traction the media sends out a 'tax cuts aren't working' message that we would be naïve to believe is not heard by both existing businesses thinking of expanding in Kansas and those pondering a potential move to the state."[257]

In addition to efforts to manage public perceptions through the media, Brownback also convened a task force to examine how to "reform" the revenue estimation process. The taskforce

[255] Interview conducted February 14, 2017
[256] Interview conducted October 21, 2016
[257] Testimony given to Senate Assessment and Taxation Committee, March 12, 2015

consisted of representatives from private sector organizations who were tasked with evaluating and recommending improvements to the revenue estimating process. The task force's final report, released October 2016, contained a number of policy recommendations, such as changing the composition of the CRE, investing in new software, and utilizing different statistical methods like time series or causal models. However, the committee also recommended ending the monthly reporting of revenue collection. The official reason the task force gave was to "avoid trend analysis bias in revising future official estimates."[258] However, it was also meant to eliminate negative media coverage.

To date, though, the task force's recommendations have not been adopted. Had Brownback decided to stop issuing monthly revenue estimating reports, it would not have been the first economic report he withheld. It is unusual for state governors to have a council of economic advisers, yet in 2010 Brownback created one with the mission to coordinate strategic planning and economic development resources, evaluate state policies and agency performances and conduct research on economic development-related topics, such as state, tax competitiveness and regulatory structure.[259] Part of the council's task was producing quarterly economic reports about the Kansas's economy. However, in 2015 as the fiscal crisis worsened, the council stopped putting these reports online (though they were still produced for the administration). But by September 2016, the council stopped producing these reports altogether (Carpenter 2016).

Brownback and his allies insisted the tax policy was not responsible for the state's financial woes. Rather, they believed the tax policy was the victim of poor media coverage and a poor economic climate. As Nick Jordan explained, media coverage is generally "a snapshot,"

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[258] Governor's Consensus Revenue Estimating Working Group Final Recommendations, Final Report, October 6, 2016, P. 6 (https://budget.kansas.gov/wp-content/uploads/fy2017-cons-rev-est-workgroup-rpt.pdf).

[259] The council of economic advisors was designed to replace "Kansas, Inc.," a nonpartisan state agency created in 1986 to "strategically build a strong, diversified economy promoting new and existing industries" (Kansas Historical Society n.d.).

meaning it does not capture the long-term fluctuation in revenue over time. “My point being,” he said, “when you look month to month you go, oh my god, they’re under again, oh my god, they’re under, but when you look at the end of the year you’re going to find out, well, they were probably within a percent or less than what they had forecast. Now, there are years it’s been worse than that, that we’ve missed it worse than that, and the reason I say that is… sometimes it’s an economic situation.”[260] Mike O’Neal echoed this point, saying “the Governor’s Task Force said, well, quit doing these monthly reports, and, of course, the first thing the media thinks of is what are they hiding? Why wouldn’t you tell us what the monthly reports are? Well, the monthly reports are meaningless, because they’re just a one-month snapshot.”[261] According to conservatives, media reporting on missed revenue projections not only created an “unnecessary” sense of crisis, but they were missing the “real” reason for the state’s fiscal crisis: the Obama economy.

Diverting Blame

Discrediting the revenue forecasting process and withholding economic reports could only go so far. Eventually, the Brownback administration had to explain why chronic budget shortfalls were *not* the result of the tax cuts. At the heart of the Brownback administration’s attempts to divert blame away from the tax cuts were a variety of techniques and arguments that muddled the search for an answer to the question, “Why don’t we have any money?” Did Kansas not have sufficient money for essential public services because of the tax cuts or, as the Brownback administration claimed, was the state was in difficult financial straits because of outside economic forces?

[260] Interview conducted March 29, 2016
[261] Interview conducted October 21, 2016

Affirming the Policy, Abandoning the Time Frame

One of the rhetorical techniques Brownback and his allies used to divert blame away from the tax cuts was to simply double-down on claims that the tax cuts were working. For instance, Brownback claimed, "Our objective on that piece of the tax cuts worked… Record small business formation when it was declining nationwide" (Hancock 2017e). Fellow conservatives in the House and Senate also insisted on the success of the policy. Conservative Representative Kasha Kelley declared "this is not a tax plan that has failed. This is a tax plan that is taking some time to take root, as all new things do" (Hancock 2015e). And former chair of the senate taxation committee, Les Donovan, was still sure the tax plan would work eventually, "but it doesn't happen as fast as you all would like to see it. Never has; never will" (Hancock 2015c). And Ty Masterson summarized the success of the policy by explaining "If the experiment was to leave more money with the people it's clearly worked. If the experiment was to grow government it clearly hasn't… And I would contend the purpose was not to grow government."[262]

Affirming the policy often involved clarifying how the policy was working. Supporters claimed the policy was "hobbled by a misunderstanding of what the tax cuts were trying to accomplish" (Boyes and Slivinski 2017, emphasis mine). They claimed the policy was about job growth, not overall fiscal stability.[263] However, many of these claims were false or misleading. As mentioned previously, the number of new businesses were likely the product of tax avoidance measures. However, claims of record job growth were also false. The rate of job growth in

[262] Interview conducted February 14, 2017
[263] Some supporters of the tax cuts did use growing tax revenues as evidence of the tax plan's supply-side effects. Tax revenues fell over $700 million in the first year after the tax cuts were passed. Tax revenues did gradually increase, but stayed well below where they were pre-2012.

Kansas lagged other states in the region and its labor force participation also did not increase (Mazerov 2018).

Conservative advocacy groups, such as the Kansas Policy Institute and the Kansas Chamber of Commerce, claimed the policy was a success. In a March 2015 testimony, Eric Stafford of the Kansas Chamber testified that “The tax cuts passed by the legislature are working…. We respectfully ask the legislature to fully consider a balanced budget based on existing resources before resorting to increasing the burden on Kansas taxpayers.”[264] The KPI also asserted the policy success in committee testimonies, but also expanded its reach online. In a series of blog posts, it sought to refute and discredit the claims of tax cut opponents. One such instance is a blog post from October 20, 2014 titled “Debunking distorted claims about tax reform and the Kansas budget” which claims to refute the “most egregiously misleading claims” of tax cut opponents by discrediting opponent’s methods and presenting various data from the U.S. Census to support their conclusions (Kansas Policy Institute 2014).

Affirming the Kansas policy as a successful model for other states and the national government was exceptionally important for the tax cut movement. Arthur Laffer and Stephen Moore not only defended the Kansas tax plan (which they both helped advise), but claimed the plan was delivering “sweet supply-side revenge for tax cutters” (Laffer and Moore 2016). “Superman, Wyatt Earp and Dorothy are cheering like mad in heaven” because of the tax reforms, they insisted. “Just wait and see what happens when these pro-growth policies have had sufficient time to have their full supply-side effects materialize” (Laffer and Moore 2016). In private conversations, Laffer preached patience as well. According to the *Washington Post*, Brownback called Laffer worried about whether the tax cuts were performing as expected. Laffer

[264] Testimony delivered to the Senate Assessment and Taxation Committee, March 12, 2015

counseled Brownback to be patient and the growth will come. “Kansas is doing just fine,” he said (Tankersley 2015).

Brownback’s past statements, particularly his use of the word “experiment,” became an obstacle for supporters. Indeed, he expressed regret at using the term “experiment” to describe the tax policy. “I wish I could take that back, because I don’t consider this an experiment” (Goldfarb 2014). Additionally, in an interview with *PBS Newshour*, Brownback remarked, “Yeah, I shouldn't have used that word [experiment]. But the good news is, it's working well” (Benen 2014). Brownback’s “shot of adrenaline” comment likewise backfired. When the tax cuts failed to produce immediate economic growth, in order to affirm the policy was working, tax cut supporters dramatically shifted their time horizons. Instead of a “shot of adrenaline,” supporters argued it would take decades for the tax cuts to produce growth. Budget director Shawn Sullivan, for instance, explained, “this is more of a long-term deal or investment.”[265] Likewise, Dave Trabert argued, “There’s an economic lifecycle. It doesn’t happen overnight. Politicians might wish that it would be a shot of adrenaline. In terms of enthusiasm, I’d need to start thinking about things differently, sure, but is it going to show up on the job reports? No, not right away. It’s going to take years—years! Bad messaging, bad, bad messaging.”[266] And Mike O’Neal was even more pointed, saying “Shame on the governor for saying this will be a shot of adrenaline to the Kansas economy… You can turn your car in a pretty tight radius. You can’t turn an aircraft carrier in a real tight radius. It just takes longer. This is a big machine we’re talking about here and for us to get this economy turned around where it needs to go this is not going to take days or weeks or months, it’s going to take years.”[267]

[265] Interview conducted July 7, 2016
[266] Interview conducted April 20, 2016
[267] Interview conducted October 21, 2016

The most sustained attempt at affirming the policy is found in a KPI report titled "A Thousand Flowers Blooming." In it, the authors suggest that "in tax policy, patience is a virtue. It can take upwards of five years for tax policy's effects to be fully seen" (Boyes and Slivinski 2017:4). While the report was released nearly five years after the policy was enacted, the authors try to salvage the policy by arguing policymakers were measuring its impacts incorrectly. The reason the tax cuts had not produced the expected job growth, particularly from pass-through businesses, was because job growth was being measured with Bureau of Labor Statistics (BLS) data and not Bureau of Economic Analysis (BEA) statistics. However, as former Republican representative Mark Hutton pointed out, this is essentially a meaningless distinction because there is "no perceptible change in employment trends" between the two sources.[268] However, setting aside whether BLS or BEA statistics are more reliable, what this technique accomplishes politically is to introduce *confusion* and delay political judgement on the policy.

Blaming Outside Economic Forces

Another technique Brownback and his allies used to divert blame away from the tax policy was to cast the policy as a victim of a bad economy. "You recall the comment about the Kansas economy is a three-legged stool," Brownback explained. "You've got agriculture, oil and gas, and aviation… So your three primary legs of the Kansas economy have been in great difficulty all together." (Hancock 2016e).[269] Budget Director Shawn Sullivan echoed the three-legged stool metaphor as well, saying "[Farm income and oil and gas] are two sectors we rely heavily on… and both are in a significant downturn. Then aviation is kind of our third rail… So

[268] Testimony given to the House Taxation Committee, January 19, 2017

[269] Brownback repeated this again, saying, "The base of the Kansas economy is the old three-legged stool, and that continues to be the base of the economy. And that base has really been struggling," (Hancock 2016f).

we’re in a significant challenge because of those three things.”[270] The Brownback administration invoked the state’s economic conditions whenever there was bad budgetary, particularly when Moody’s and S&P downgraded Kansas’s credit rating in 2014 and 2016. After one downgrade, Brownback said, “We've got a lot of financial strain that's going to be continuing just because of oil and gas, and agriculture in particular” (Hancock 2016g). Likewise, Secretary of Revenue Nick Jordan argued it was “pretty obvious that it’s oil and ag economies. Those people, they aren’t working. They’re being laid off or their profits are down” (Associated Press 2016b).

It is true that oil and gas, as well as agricultural commodity prices, have declined in recent years. For instance, in 2011, Kansas farmers received $7.03 for a bushel of wheat. By 2016, that price had declined to $3.20 (Institute for Policy and Social Research 2017:55). Likewise, the overall number of barrels of oil produced in Kansas declined from 43,750,558 in 2012 to 37,939,713 by 2016 (Institute for Policy and Social Research 2017:267). However, taken together these two industries are only a small share of the overall Kansas economy and thus contribute only a small portion to the state’s general fund. In fiscal year 2012, revenue from oil and gas was only 1.7 percent of all tax receipts and just 3.8 percent of all excise tax receipts (Kansas Legislative Research Department 2013). Additionally, analysts for Moody’s indicated they did not consider Kansas’ economy to be “energy reliant” (Hancock 2016e).

Yet party experts invoked dynamic scoring to claim reduced commodity prices produced larger negative effects on the budget. For instance, a Kansas Department of Revenue economist explained, “You have to consider dynamic effects. How is a person going to react with less money in their pocket? How is that going to affect a consumer’s behavior? And when we say that, that’s what we’re speaking of when we talk about oil and gas hurting, is that obviously

[270] Interview conducted July 7, 2016

we'll see decreased severance taxes, but it also does not help in terms of income taxes, it does not help in terms of sales taxes, because simply those workers will have less money to spend."[271] All of this is, no doubt, true. Reduced commodity prices do create ripple effects through the whole economy. However, as former budget director Duane Goossen explained, "The income that people are making from farms, it's not so much the recession that's pulling things down, because that income is exempted anyway. All farm income, no income tax on it, and many, many agriculture-related businesses that feed off of farm economy stuff are set up as LLCs or in some way structured so that the income coming through those things and passing through to individuals is not taxed."[272] In other words, declining farm commodity prices were irrelevant to the state's overall budget because farm income had already been exempted from income tax. But the search for alternative explanations for the budget crisis was driven by confidence in supply-side theory. As the same Department of Revenue economist explained, "Think about the theory. Tax policy is not supposed to hurt. Lowering taxes isn't supposed to hurt anyone. So the theory says that in no way, shape or form are tax cuts going to impede growth. So if growth is slowing down, what effects could be lurking that are stunting our potential growth?"[273] In other words, if supply-side theory states that tax cuts in no way could impede economic growth, the cause of problem must lie elsewhere.

Articulating a divide between supply-side theory and a specific tax policy deemphasizes the policy. Brownback and his allies spent years predicting immediate and explosive growth, but as the fiscal crisis continued, supporters changed tact and began to describe the relative *weakness* of tax policy in the face of economic forces. According to Stephen Moore, tax cuts "don't have

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[271] Interview conducted April 21, 2016
[272] Interview conducted July 21, 2016
[273] Interview conducted April 21, 2016

magical powers" (Sheppard 2014). And Arthur Laffer also claimed that "taxes are not 100 percent of everything" (Curry 2017). By deemphasizing the policy and highlighting economic forces, party experts protected the underlying supply-side idea. It was important for supporters to cast the policy as a victim of "abnormal" economic conditions because, as Brownback explained, the theory stated "if you get a kind of normal economic situation, that as you cut income taxes, you'll gain it back in sales. That was the theory" (Hancock 2016d). The tax cuts were not to blame, rather the state was the victim of economic circumstances beyond its control.

"We Do Not Have a Revenue Problem, We Have a Spending Problem"

Finally, supporters of the tax cuts highlighted unrestrained government spending as the true cause of Kansas's budget crisis. As KPI's Dave Trabert explained, "Kansas has a budget problem because you can't have a conservative tax plan and a liberal spending plan. That's it in a nutshell."[274] Blaming unchecked government spending dovetailed with the related argument that the tax policy was not what Brownback had originally intended. According to supporters, the original tax policy was revenue neutral because it included a variety of "pay fors" which were eliminated by moderate Republicans during the 2012 session. Put simply, Kansas would not be in a budget crisis if spending had been cut to match lower revenues. This argument was summed up in the oft-repeated phrase that the state "does not have a revenue problem, it has a spending problem." Conservatives have long condemned the size of government. However, in the context of the state's fiscal crisis, this refrain became an explanation for the policy's outcome. As Jonathan Williams of the American Legislative Exchange Council (ALEC) wrote, the true problem with Kansas was "the failure to rein in state spending that would ultimately lead to

[274] Interview conducted April 20, 2016

revenue problems for Kansas down the road" (Williams and Wilterdink 2017:4). However, according to supply-side theory, Kansas *should* have seen increased tax revenues after the tax cuts were enacted. Indeed, Brownback initially described the tax plan as "close to revenue neutral" despite projections showing otherwise (Associated Press 2012d).

As lawmakers struggled to balance the budget, conservative Republicans, collectively assembled as the "Kansas Truth Caucus," increasingly asserted spending should be cut before any tax increases were considered. For instance, in response to an early 2017 bill to repeal Brownback's tax cuts (a bill he later vetoed), the Kansas Truth Caucus stated, "This week, liberal Republicans[275] and Democrats, voted to raise taxes on hard-working Kansans who are already struggling to make ends meet… Instead of living with its means, the Kansas Legislature, decided to pass the largest tax increase in state history… Raising taxes without any real effort to reduce spending is counter not only to Republican principles, but also to common sense" (Kansas Truth Caucus 2017a). Likewise, conservative Senator and Truth Caucus member Ty Masterson explained, "When people talk about currently the budget crisis of the state being related to this massive tax cut, well, it's a crisis to the government, but it's not a crisis to its people. So when they say, 'Kansas is in a budget crisis,' you're not talking about *Kansans*, the people, you're talking about *Kansas*, the government… As long as you match your revenues and expenditures – that's what the crisis is, is making sure those two sides match."[276]

While the Truth Caucus' claim is perhaps actuarially true, in practice it ignores that Kansas *did* cut spending dramatically after the Great Recession. For instance, after the recession, Governor Parkinson made approximately $1 billion in budget cuts and Brownback issued nine

[275] The phrase "liberal Republican" is a key misnomer because it echoes, but goes beyond, another common phrase, RINO (Republican in Name Only). Many of the moderate Republicans were labelled RINOs or liberal Republicans by conservatives. Some of the conservative's suspicions were confirmed in early 2019 when several moderate Republicans, chiefly senator Barbara Bollier and representative Stephanie Clayton switched from the GOP to the Democratic Party
[276] Interview conducted February 14, 2017

rounds of budget cuts between May 2011 and June 2016. Furthermore, state general fund expenditures only increased 0.3 percent between FY 2012 and FY 2016 (Mazerov 2018). However, conservatives charged the budget crisis was driven by lack of political will. According to Dave Trabert, "the budget deficit means we want to spend more than our revenue is going to be. That's a budget deficit. I want to spend more. Be honest with people. Just be honest. I want to spend more."[277] Likewise, Steve Anderson, former budget director, testified that "Spending must be reduced to levels that are in line with the resources available."[278] And the Kansas Chamber testified, "The Kansas Chamber remains a strong advocate of the tax cuts passed by the legislature and supports efforts to continue with statutory reductions in income taxes. Unfortunately, the tax cuts of 2012 and 2013 were not accompanied by sufficient reductions in government spending which resulted in the draw-down of cash reserves and a budget deficit next fiscal year."[279] This point, however, belies the supply-side justification that tax cuts "pay for themselves." More cynically, blaming government spending is about "starving the beast," an approach made famous by Grover Norquist who remarked that he did not hate government, he just wanted to shrink it to the size where he could "drown it in a bathtub."

State governments are legally required to balance their budgets. While Kansas did cut spending, ultimately tax increases were needed to balance the budget. The intra-party battle between cutting spending and balancing the budget played out most dramatically during the 2015 legislative session, which, at 113 days, is the longest in state history. The large downward revenue forecast in November 2014 put the conservative-dominated legislature in a structural bind. How much could the budget be cut without raising taxes? And if taxes had to be increased,

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[277] Interview conducted April 20, 2016
[278] Testimony given to the Senate Assessment and Taxation Committee, March 12, 2015
[279] Testimony given to the Senate Assessment and Taxation Committee, March 12, 2015

which taxes? To escape this contradiction, the Brownback administration justified ex post facto a shift from taxes on production towards taxes on consumption.[280] In his 2015 budget, Brownback signaled that Kansas "will continue our march to zero income taxes. Because the states with no income tax consistently grow faster than those with high income taxes."[281] However, Brownback's proposed budget also called for dramatic tax increases on cigarettes (from 79 cents to $2.29 a pack) and liquor (from 8 percent to 12 percent).

Brownback's anti-tax allies were unimpressed. His former budget director, Steve Anderson, testified against the governor, saying "First, we should look at cutting spending" (Associated Press 2015d).[282] Grover Norquist also remarked, "The fact is, so called 'sin taxes' like the cigarette tax and alcohol tax disproportionately impact consumers who can afford the tax increase least" (Shorman 2015b). Norquist is not wrong on this point. Sales tax generally, and sin taxes specifically, are regressive and target those with the least disposable income. However, Brownback defended the tax increase on the grounds that sales taxes allowed consumers to exercise *choice*. His spokesperson, Eileen Hawley, remarked their "approach for the budget is philosophically aligned with what the governor has said before, that Kansas will be a low-income tax state. In the long-term, consumption taxes are a better, more reliable option than income taxes and the governor will continue the transition from a tax on productivity to consumption taxes. Sales taxes remain the one tax that people have the most control over, choosing how and when to spend their money" (Shorman 2015b). And Secretary of Revenue Nick Jordan said "You can't get out of a tax on productivity, but you can on consumption… You

[280] There is evidence Brownback's discourse shifted to talking about "production" and "consumption" taxes as early as 2013. Brownback was quoted in February 2013, saying "Going from a slow growth to pro-growth state involves tax policy that is difficult. You're moving really from taxing the production side of the equation to the consumption side of the equation, and that is difficult," (Rothschild 2013b). This quote, however, was made in the context of proposing to make Parkinson's sales tax increases permanent.
[281] State of the State address, given January 15, 2016
[282] Testimony given to the House Taxation Committee, February 18, 2015

can decide how you're going to spend your money and what you're going to spend it on" (Associated Press 2015e).

However, as the former budget director Duane Goossen noted, "people don't have a choice on whether to buy food, and people don't have a choice on whether to buy basic necessities, and all those things are subject to a sales tax right now, which is why this gets lower-income people much harder."[283] Economic studies confirmed higher sales taxes, especially on groceries, incentivized Kansans who live on the border to make more purchases in neighboring states. A one percent increase in the difference in sales tax on food was associated with a $101 per person per year decline in food consumption, costing the state $345 million in forfeited tx revenue (Srithongrung 2016). Republicans did increase sales tax during the 2015 legislative session, from 6.15 percent to 6.5 percent. To save face, Brownback reckoned, "Some would have you believe this bill represents a tax increase, and that is not accurate. When looked at in totality, from 2012 to 2015, as I stated at the outset, Kansans are paying less in taxes and continue to move off of income taxes to consumption-based taxes" (Hancock 2015d).[284]

Counter-Voices

A coalition of moderate counter-voices emerged in response to efforts by conservatives to divert attention away from the tax cuts. This coalition, comprised of various public sector and industry groups, assigned blame for Kansas's budget crisis solely to the tax cuts. The administration's blame diverting techniques were meant to safeguard the income tax cuts from repeal by limiting the range of options available to lawmakers for addressing the budget crisis. In

[283] Interview conducted July 21, 2016

[284] Brownback's 2015 statement here echoes his statement from 2013 when the legislature also raised sales taxes. After Brownback signed the law that permanently set the sales tax rate at 6.15 percent, Brownback, trying to quell dissent in the conservative ranks, declared the sales tax increase was still "an absolute tax cut" (Rothschild 2013c).

other words, if the administration could convince legislators that Kansas really did have a spending problem, then the policy solutions would avoid repeal. This became clear during a tense 2015 Republican caucus meeting where budget director Shawn Sullivan gave lawmakers three options for balancing the budget: the governor could veto the entire budget, he could line-item veto certain items in the budget, or he could issue allotments. All three options were "horrible" Sullivan said (Lowry 2015c).

In response, various groups such as the Kansas Center for Economic Growth (KCEG), Kansas Action for Children (KAC), the Contractor's Association, and Kansas National Education Association (KNEA), American Federation of Teachers (AFT), and Kansas Organization of State Employees "came together and said there's a fourth option here that nobody is talking about, and that's repeal the Brownback tax plan."[285] The "Option Four" coalition was led primarily by the KCEG. Founded in January 2013 after the tax cuts had passed, the KCEG acted as an ideological counterweight to groups like the Kansas Policy Institute. The former head of KCEG explained, "There wasn't a counter-voice, a true counter-voice to Kansas Policy Institute or other proponents of the march to zero."[286] Duane Goossen, also of the KCEG, explained that "KPI and others are telling a different story, and certainly the Department of Revenue when they say the story is oil prices are down and it's Obama who has killed the economy which has then affected Kansas, that's a different narrative which we try to punch holes in and say, no, it's not, that's not how it happened, that's not what's going on here."[287]

Groups like the KCEG shaped another story about the Kansas tax cuts through testimony in House and Senate committees, in reports and blog posts, and in presentations in communities

[285] Interview with Heidi Holliday conducted October 5, 2017
[286] Interview conducted February 25, 2016.
[287] Interview conducted July 21, 2016

across the state.[288] As Annie McKay explained, the KCEG had "a three-pronged approach, which was continuing to work at the statehouse and producing research and analysis, but getting out on the road and kind of building those bases out around the state… I've spent a lot of time on the road in the last three years."[289] Among moderate legislators (Republican and Democrat), the KCEG was an invaluable resource. For instance, Democratic representative Monica Murnan said "I cannot stress *enough* – stress, stress, stress, stress – the importance of the Kansas Center for Economic Growth and their part in changing the tide."[290] But even more than providing information for lawmakers, getting everyday Kansans involved and educated about state government was critical for building support for repeal. For McKay, public ambivalence around tax issues was part of how the policy was passed in the first place: "One of the reasons why this sailed through in 2012 and to some extent was greased in 2013 was because we didn't have enough people participating in the conversation… So, we just started talking about it in ways, I think, that made it very plain, very easily accessible for folks, and you slowly started seeing people catch on and talking about it in ways that they hadn't before."[291] In other words, a deficit of fiscal citizenship prepared the ground for the Brownback tax cuts.

Another organization, Game On for Kansas Schools, also formed with the purpose of providing information on school funding to counter KPI's information.[292] "To me, very clearly, there was a game being played, but we just weren't fielding a team," Deedy explained. "At that point, Kansas Policy Institute were very active. They were running ads in newspapers with

[288] During Brownback's tenure, politically moderate organizations began to hold numerous events around the state. Many of these events involved several of the same groups, such as the MainStream Coalition, KCEG, Kansas InterFaith Action, Women For Kansas, as well as others.
[289] Interview conducted February 25, 2016
[290] Interview conducted April 25, 2019
[291] Interview conducted February 25, 2016
[292] In a symbolic victory, Deedy described, "Our first walk, Heather was mentally and emotionally drained and the weather had stunk, it was like freezing rain and her feet were killing her. And on the last day of her walk, I was texting her as our Facebook likes passed Kansas Policy Institute's Facebook likes."

distorted statistics on school testing… We were trying to push back with accurate information."[293] Similar to KCEG, Game On also travelled around Kansas giving presentations to local school boards and communities. As their reputation grew they were invited to site council meetings and engaged directly with communities. Deedy recalled, "The superintendent had us out to Pratt, so we visited Pratt and talked to that community and went to the rotary club meeting at noon, and spoke to school board members in the evening and the community after that. So we just did a number of things like that. And we just continued to push back against the spin that was coming out of Topeka and just trying to encourage parents to be active participants… Then we started lobbying and testifying directly on bills."[294]

In addition to meetings with legislators, testifying, and travelling around the state, groups like the KCEG and Game On were also a resource for the media.[295] The Brownback administration became infamous for its lack of transparency. Indeed, a series of reports about the secretiveness of the Kansas government netted the *Kansas City Star* a series of industry awards.[296] In reflecting on covering Brownback, one reporter explained, "Mostly what I get fired up about is not necessarily the policy but the misdirection, the concealment, the lack of transparency in exactly what they're cooking up..."[297] As the Brownback administration concealed reports and obfuscated the political process, groups like the KCEG became important

[293] Interview conducted March 12, 2018
[294] Interview conducted March 12, 2018
[295] The role of media here also extends to social media and the comment sections of newspaper articles. As a member of the MainStream Coalition remarked, "KPI will respond to anything anyone says all the time, all over the Internet."[295] The eagerness to respond was also noted by Judith Deedy who described the battle to keep Dave Trabert out of the Game On Facebook group. Deedy explained, "Dave would have another stinking editorial and we started chiming in in the comments section. And, again, just pushing back with the real numbers or the rest of the story… We knew he was in the newspaper, he was in committee, and he was *everywhere*. So we just started pushing back… After a while, we would be posting information and Dave would come on to our Facebook page and he would post his own articles and I would delete those. He could engage all he wanted and argue his points, but he couldn't just post his articles. And he protested that, but we worked hard to build this audience and now our audience is bigger than yours and you're not taking it. You want your article to get out there, you build your own Facebook audience."
[296] The series won, among others, an Eppy, the "First Amendment" category of the national Associated Press Media Editors (APME), and was a finalist for a Pulitzer prize.
[297] Interview conducted May 20, 2016

resources for reporters. As the former head of the KCEG explained, "If you go back to 2012 and you look at the conversation in the statehouse press corps amongst media about what the proposal was, it was not widely understood… But you didn't have media saying 'boy, that sounds a little like over-promising,' or 'I'm going to need you to show me the numbers on this.' And three years later you have statehouse press corps that the moment the revenue numbers come out, they are pulling it apart. Oftentimes they're texting me saying, 'Do you have it yet? We want to see it,' or 'Have you seen the spreadsheet yet?' They're trained to get on this stuff."[298]

Counter-voices both amplified and provided evidence for the perspective that the tax cuts were to blame for the state's fiscal crisis. Counter-voices also helped foster a more critical media in the state.[299] As Annie McKay explained, "in effect this failed experiment has also created a whole new set of voices, beyond the Kansas Center for Economic Growth. It's created a whole new set of voices and trained individuals to pore over and scrutinize the evidence as it comes out. I think, whether it be this policy or any policy, it's actually done a great deal for transparency and for bringing more information out into the light of day and helping not just policymakers but I think Kansans make more informed decisions."[300] Counter-voice groups provided the media and the general public with explanations for the fiscal crisis when the Brownback administration provided only obfuscation.

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[298] Interview conducted February 25, 2016

[299] Conservatives, such as Ty Masterson, lamented that "Kansas still has old-school media: your local paper, your evening news. It is not as prolific with the alternative sources of information as some of the rest of us. So you have those dominant media sources, and, to give some credit, they don't particularly know either. They're reading somebody's version of what happened." In other words, the lack of an "alternative media," for Masterson, made the perspective of groups like the KCEG more powerful because they could convince reporters. This view, of course, denies any agency on the part of reporters. However, it also helps explain *The Sentinel*, one of the first Kansas-specific "alternative news" sources that began in January 2017. Founded by the Kansas Policy Institute, *The Sentinel* claims it "examines statements from state and local government officials and mainstream media outlets, providing supplemental information so that readers are better able to make their own informed decisions about matters of public policy." But it primarily is about rooting out what they see as bias in mainstream media reporting.

[300] Interview conducted February 25, 2016

Lawmaker's Decision-Making Processes and the Search for Honest Answers

Counter-voices, particularly in legislative committees, provided valuable information for lawmakers that they may not otherwise have had access to. In other words, counter-voices increased lawmakers' range of options for addressing the fiscal crisis. However, this also created a dilemma: lawmakers were now hearing *opposing* claims about the tax cuts. One side was providing evidence that the tax cuts were *not* working and were solely responsible for the fiscal crisis. The other side provided evidence that the tax cuts *were* working, but the state's budget crisis was the result of outside economic forces or unrestrained spending. Lawmakers in Kansas, as in many other states, are part-time citizen legislators, meaning they are not professional politicians. Lawmakers are also usually not experts in a given area, particularly on tax. Thus, in a context of competing claims, how do lawmakers search for "honest answers?"

Committees and Testimonies

Committees are an important part of the legislative and policymaking process. Committee hearings, in particular, are key sources of information for lawmakers (Burstein 2014:135). As Baumgartner and Jones explain, "While there are other avenues of access for information and ideas to enter the legislative process… committees remain the major institution for bringing information to bear on lawmaking matters" (2015:88). Moreover, information provided through testimonies "does indeed affect enactment" of a policy (Burstein 2014:158). In short, a legislative committee, while certainly not the only method lawmakers gain information, "remains the lynchpin" of lawmaking in legislatures (Baumgartner and Jones 2015:88). The role of information in committees has received little sociological attention until recently. Sociologist

Paul Burstein’s analysis of the impact of testimony on policy enactment is, as he claims, “the first study of information provided at hearings” (2014:158). However, opening the black box of committees can help political sociologists understand how lawmakers use resources and make decisions. Burstein encourages future researchers to address “more about how legislators acquire information… and what types of information matter most” (2014:158). In this section, I take up this goal and examine how lawmakers decide between differing testimonies.

Committee hearings usually proceed in a standard way; the committee chair will call the meeting to order and welcome everyone before a revisor summarizes the bill. Those in attendance are a usual cadre of lobbyists and local reporters. Occasionally, other lawmakers will attend if the hearing is on a particularly important bill. After the revisors summarizes the bill, the chair invites conferees to provide testimony before allowing lawmakers to ask questions of the conferees. Before a session begins, lawmakers indicate their committee preferences. The Speaker of the House or the Senate President take lawmaker’s preferences into account when doling out committee assignments. However, lawmakers do not always get their preferred committees. House members usually serve on three committees and senators serve on a variety of committees and subcommittees. Conferees must submit their testimony in advance of the hearing, though rules vary slightly between committees on how many copies must be provided and how far in advance they must be submitted. Some committees require only electronic versions while others require anywhere from 10 to 50 hard copies delivered to the office of the committee chair. Burstein’s (2014) analysis of committee testimonies finds supporters and opponents make differing arguments. Supporters of a bill are more likely to highlight the importance of addressing the problem while opponents are more likely to cast doubt on the efficacy of supporter’s proposed solutions to the problem (Burstein 2014:158). However, I argue the *sequence* of supporters and opponents matters just as much as the content of the testimony. Because committees are important sources of information, the chair of the committee is in a position to influence the flow of information. As representative Monica Murnan explained, "Never, never, never underestimate the power of a committee chair."[301] One veteran lobbyist explained "You will have committees that will be meeting on taxes or the budget or something and they will allow these very conservative organizations, say the Chamber of Commerce, Americans for Prosperity, Kansas Policy Institute, they will give them a lot of time. Sometimes they'll give them their entire meeting to make a presentation. And then when they have legislation, everybody wants to testify, those who would be in opposition to those positions and that legislation get maybe two or three minutes apiece. So the leadership has been able to control a lot of the information that happens in front of legislative committees."[302]

Other conferees also described the asymmetries in allotted time during their committee experience. Game On's Judith Deedy recalled the hostility she faced while giving testimony: "In 2014, those years, it was not receptive. And you could see they weren't listening. They wouldn't look at you."[303] Another conferee reflected on his experience testifying on a bill that would have moved school board elections to the fall, making them more partisan. It was a bill that generated controversy and thus, generated several testimonies: 66 in fact. Of those, only 7 were proponents of the bill. "In spite of the overwhelming opposition, Senator Holmes started oral testimony with the 7 sole proponents of SB 171… When this was done, Senator Holmes only had time for two opponents. When they had spoken, he noted that time was up" (MainStream Coalition 2015b). In other words, Holmes leveraged his position as committee chair to control how and when

[301] Interview conducted April 25, 2019
[302] Interview conducted September 1, 2016
[303] Interview conducted March 12, 2018

information was presented to the committee, both for the sake of fellow lawmakers and for those in attendance, particularly political reporters who often report on legislative committee activity.

In 2017, after moderates retook the legislature, new House tax committee chair Steven Johnson ran committee hearings much differently than Senator Holmes and even differently than his predecessor, Marvin Kleeb. For instance, in a January 19 committee hearing, Johnson remarked, "To have more give and take, and to recognize that some folks travelled from just a bit of a distance, we'll move back and forth between proponents and opponents. My idea, roughly, is to have 30 minutes of proponent testimony followed by 30 minutes of opponent testimony so there's a chance to have some dialogue through that."[304] Johnson, was consciously structuring the order of testimony to appear fair and not shut out either side.

The order of testimonies is also important because there are different types of testimonies. Some testimonies come from legislative experts, namely the Kansas Legislative Research Department or the Department of Revenue. There are also testimonies from advocacy groups and individuals. Often, advocacy organizations augment their committee testimonies with individual meetings with legislators. Thus, legislators are not only hearing information or their perspectives in committees. However, for individuals, the committee is often their only point of communication and contact. In the following sections, I focus on the advocacy testimonies because these are the testimonies where interpretation is particularly prevalent.

Do Testimonies Matter?

Advocacy groups provide testimony in order to exert some influence on the outcome of a bill. Groups or individuals appear before the committee as either proponents or opponents,

[304] House tax committee, January 19, 2017

though occasionally conferees will be listed as neutral, meaning they are simply providing information. While researchers have found that testimonies influence policy outcomes, critics of this perspective tend to view committee testimonies as "stage-managed spectacles" where testimony is simply a rehearsed performance and power is really exerted behind closed doors (Burstein 2014:136). If the staged-performance perspective is true, then lawmakers should not find testimonies meaningful. However, based on my interviews, I find most lawmakers believe testimonies matter. Yet, they matter in different ways. Most commonly, testimonies matter because they communicate what lawmakers see as "real-world" impact; that is, lawmakers value testimony because they value understanding how a proposed bill will affect people across the state.

Burstein notes that conferees will often tell anecdotal stories instead of relying on empirical evidence (2014:148). For some lawmakers, anecdotal and personal stories are a *preferred* form of testimony. Representative Hawkins, for instance, explained, "Tax is a boring subject. How do you make tax sexy? How do you make it to where anybody is interested in it?... If you can tell a story and you can put emotion with it, and it touches people, then you're going to move that needle whatever direction you're trying to move it."[305] Another representative, John Eplee, echoed this sentiment, explaining "I like to have one proponent come in and present the big picture data, the trend in the data and their opinion and how they spin the data. Then to have examples that are up close and personal how it effects one business or how it effects a group of businesses owned by one individual. I think that's pretty compelling because then it personalizes

[305] Interview conducted March 24, 2017

it."[306] Senator Masterson also viewed testimonies from the general public as more valuable, saying "some of the most effective ones are the citizenry that show up and testify."[307]

For other lawmakers, however, testimonies matter only occasionally. Representative Tom Sawyer, for instance, said "On some issues [testimonies] matter a lot. On issues where people aren't very familiar, committee members, it can make a big difference. Most of the time I would say, though, it's small. There may be something in that testimony that causes somebody to move a little bit in one direction when there's something they just didn't know that's kind of earth-moving, but for the most part the testimony makes very little difference."[308] Likewise, Representative Eplee noted, "There are some issues in which, I'm not going to lie to you, my mind is made up before I walk in the door that day. Generally I try really hard to fight that… But I'm not going to fib to you there are times when I think I bring more to the table than that opponent or proponent does in their testimony and I may kind of shut them out or I may be on my iPhone checking messages or I may not listen very well. But generally I feel like that's what I was voted in to do, so I try hard to listen even if I have forgone conclusions."[309] Still for other lawmakers, they will tune out because they know the political perspective of the conferee. Representative Wolfe Moore, for instance, explained, "Every bit of evidence points to the fact that [the tax cut] is not working but it's destroying our state… I've never been in a situation where the truth was so obvious, yet we still have a group of people saying 'Oh no, it's working.' To me it's like looking up in the sky and I'm saying 'Oh, that's a blue sky' and they're saying 'I know you think it's blue, but that's really a green sky.' I mean, it's that obvious to me."[310]

306 Interview conducted March 24, 2017
307 Interview conducted February 14, 2017
308 Interview conducted February 6, 2017
309 Interview conducted March 24, 2017
310 Interview conducted February 20, 2017

Lawmakers use testimony to gauge possible policy impacts. For instance, Representative Francis explained, "For instance, a lot of times we'll have people testify that will be personally affected by the tax change. Sometimes their passion makes a difference. You know, we're all compassionate people and that can make a difference. Sometimes we have a preconceived notion of how something works and how it effects different things and the testimony will change our preconceived notion."[311] The personal perspective was a major reason that lawmakers valued testimony. Representative Thimesch explained, "Oh yeah, [testimony] does [matter] because they're making statements about how it's affecting them."[312] Likewise, Representative Ohaebosim said, "you have to understand, any action that we take on the committee, it effects the entire state… So if we're talking about taxes on businesses, you want to hear from people who are in it before you actually make a decision. We can speculate and we can read reports and all of that, but if we don't have testimony from people who actually do the work it won't be helpful to make a decision."[313]

For some lawmakers on the committee, however, repetition becomes a problem. Representative Hawkins explained, "Where [testimony] hurts is when you have an issue where you have thirteen conferees all saying the same thing. After about the first two, it's hard to pay attention when they're talking about the same exact thing, saying the same thing, objecting to the same thing… After a while it doesn't make any difference."[314] In many ways, it should not be surprising that legislators value committee testimony. The Kansas legislature is made up of part-time legislators and often members are assigned to committees based on tangential

[311] Interview conducted March 23, 2017
[312] Interview conducted March 23, 2017
[313] Interview conducted March 23, 2017
[314] Interview conducted March 24, 2017

qualifications.[315] For instance, a legislator from a farming community might be assigned a spot on the agriculture committee while an accountant might be assigned to the tax committee. Thus, many legislators find themselves in need of information provided by conferees.

Discerning Between Testimonies

Testimony is not only about providing information: it is about providing *conflicting* information. That is, there are proponents and opponents both trying to affect the outcome of a bill. And in the case of taxation, this often involves interpreting data for the committee. As Representative Eplee, remarked, “The one thing that I have been just blown away by since being here is how people can take fairly similar datasets and arrive at polar opposite conclusions… It’s mind-blowing.”[316] And because many lawmakers who sit on specialized committees are themselves not specialists in the area, how do lawmakers understand the information they receive in committees?

Within the taxation committees, tax cut supporters and opponents cast doubt on each other’s claims and sometimes their character. For instance, Dave Trabert of the KPI testified “Those who oppose tax reform will likely continue using misleading information to claim that the Kansas economy is not better off since tax reform… It’s easy to make unchallenged claims sound legitimate, so we encourage the Committee to gather those with differing views and allow us to question each other’s claims. We have a standing invitation to Duane Goossen and the

[315] In the House, the speaker of the house asks what committees members are interested in being on and then takes that into account. Another thing the speaker has to take into account is time. Committees meet at pre-determined times, so members need to choose committees they can be placed on. All representatives, for instance, must sit on a 9am, a 1:30pm, and a 3:30pm committee.

[316] Interview conducted March 24, 2017

Kansas Center for Economic Growth to join us in a public discussion but they refuse. Kansas Policy Institute stands ready to defend our work at any time."[317]

Between these two extremes, lawmakers commonly pick a middle point to help them decide. As Democratic representative Jim Kelly explained, "you've got two version of what actually happened. One saying [the tax cuts were] successful and one saying it's not… So you have to try to sort out, I have in my mind what I think happened. And I think parts of it that maybe there's been some success with. You hear testimony from individuals who say this has helped my company, this has done this. You hear testimony and comments from other business people who say it hasn't made that big a difference I should be paying tax. It's just kind of a balance and just trying to look at what they're comparing because it's never apples to apples that I see."[318] In other words, Kelly, a critic of the tax cuts, does not doubt the testimony of conferees who believe the tax cuts helped their business. Instead, he uses their testimony in contrast with opponent testimony to construct an understanding of the situation. Senator Masterson also adopted this approach, saying "The truth is always somewhere in the middle, it seems like, between the two sides."[319]

The mid-point strategy assumes conferees come in with a bias or agenda that colors their view of the issue; that it is all about framing. Representative Hawkins explained this view well, saying "Everybody has a bias. So you got to sift through that. And I would say probably somewhere in between is where the truth lies. This side is not necessarily telling all the truth; this side's not telling all the truth. So we have to come up with somewhere in between where we believe the truth is."[320] Likewise, Representative Francis made a similar point when he

[317] Testimony given to the House Taxation Committee, May 7, 2015
[318] Interview conducted March 24, 2017
[319] Interview conducted February 14, 2017
[320] Interview conducted March 24, 2017

explained, “I think every time we’re dealing with an issue, we discern between the different competing testimonies differently based upon what the subject matter is. You know, one of my favorite sayings up here, one of the things that I hold in my mind, is Mark Twain that one time said there’s ‘lies, damn lies, and statistics.’ And at the Capitol, and I’m sure it’s much worse in Washington D.C., the people with competing interests are very good at framing their issue and selecting the data that supports their case.”[321] For lawmakers, assuming a bias or agenda or the part of conferees is particularly important in tax debates which heavily rely on statistics. Freshman Republican representative Adam Smith explained, “You know, I learned early on in my time as a county commissioner, it’s kind of like quoting the Bible, people will pull what they want to out of statistics and data. You can analyze anything to make it say what you want to.”[322] In short, lawmakers assume conferees provide information in testimony which makes the best case for their side while hiding information that challenges their position. Lawmakers also believe no single conferee possesses a full view of the issue being debated. Instead of being arbiters of which claim is totally correct, lawmakers assume there must be some truth in every testimony; that a conferee is each providing a piece of the puzzle.

However, lawmakers also do not assume each conferee is providing equally truthful claims. Thus, a second approach lawmakers use in committees is a “trust, but verify” approach.[323] Many lawmakers will accept there is a degree or truth in what any conferee is saying, but will then try to verify those claims with non-partisan sources, such as the Legislative Research Department. While some of the most conservative members of the legislature

[321] Interview conducted March 23, 2017

[322] Interview conducted February 20, 2017

[323] The dictum “trust but verify” was made famous by Reagan during negotiations with Russia over disarmament. Barton Swain explains the phrase “entered American usage when Reagan’s adviser on Russian affairs, Suzanne Massie, was preparing the president for talks with Mikhail Gorbachev in 1986. Perhaps Reagan ought to learn a few Russian proverbs, Massie suggested, and the one he liked best was “Doveryai no proveryai” — trust, but verify” (Swaim 2016).

expressed doubt about the nonpartisan nature of the KLRD, accusing them of intentionally inflating the revenue estimates to sabotage the tax policy, most legislators understood the KLRD allows them to do their jobs properly. Representative Adam Smith, for instance, said, "We have a great resource in the Legislative Research Department… You can say 'Hey, this guy gave me this number and said it was doing this, this guy gave me a different number, which they're both accurate numbers but this guy said it means the trend is going this way, so give me the history, like the last five or ten years, on both these numbers so I can analyze them and see where they're going.' None of us could do this job up here properly if it wasn't for the Research Department."[324] In this case, the value of the KLRD is their lack of affiliation with an interest group.

Other agencies beyond the KLRD were also important in verifying conferee testimony. Democratic representative Tom Sawyer, for instance, explained "Kansas Department of Labor puts out a monthly jobs report, and Kansas has been lagging month after month after month this past year and has been for most of the last four years lagging the nation, but particularly in the last year it's been pretty bad. So we see those actual job stats. So when Dave Trabert comes in and tries to say, 'We're creating all these jobs,' we're like, 'Well, wait a second, our own Kansas Department of Labor stats don't jive with what you're trying to tell us.' That's kind of what we have to look at when anybody comes in with their stats is also compare them to other sources and see how they hold up."[325] The tax committee chair, Steven Johnson, likewise emphasized the importance of job numbers. "If you're going to tell me [the tax policy] has produced jobs, there's a quarterly report on wages and employment from the Department of Labor. You should be able to show me where the jobs are. If you don't show me where the jobs are I'm going to assume

[324] Interview conducted February 20, 2017
[325] Interview conducted February 6, 2017

they're not there, particularly if you're in a position to be able to access that information. So if you're in the Department of Revenue you would have access to data from the Department of Labor."[326]

But seeking verification is an uneven practice because in many cases the conferee is already known already to committee members. This is particularly true of advocacy organizations who are regularly in the statehouse. Sometimes this familiarity breeds boredom because lawmakers anticipate the conferee's perspective on the bill. However, this level of familiarity also reveals another important aspect to the relationship between testimony and lawmakers: lawmakers come to *trust* certain voices. Democratic representative Wolfe Moore, for instance, explained that "When the League of Kansas Municipalities comes forward and gives testimony, that's a group that I can trust. I don't have to agree with them, but I can trust that what they're saying, I can take it to the bank."[327] Likewise, representative Richard Proehl, noted, "Part of it, you learn the people that are testifying. Some of them are brand new and that's different. But the ones that you've known for a period of time then you build a comfort zone with them and that makes a lot of difference. Because they're not just there on one issue, you're seeing them day in and day out on a whole array of issues and you pretty well learn which ones you can count on to tell you the straight and narrow if it."[328] The chair of the House tax committee, Steven Johnson, also remarked, "I try to boil it down and say whose frame of the numbers do I believe is the most accurate and truthful? Now, two equally competent people can come down on different sides of that issue, and that is not certainly the only way to measure it. Some will measure it through relationships and talking with people and knowing how they think and react,

[326] Interview conducted February 1, 2017
[327] Interview conducted February 20, 2017
[328] Interview conducted May 9, 2017

and that's another very valid way to do it, but that's what I then seek."[329] For Johnson, it is a combination of trust in people and trust in numbers. In other words, numbers are not produced in a vacuum; lawmakers tie the production and interpretations of numbers directly to the source of those numbers and the person delivering them. To decide whose frame is more truthful, legislators first determine if they find the conferee trustworthy.

The importance of trust is demonstrated by efforts to *undermine* the trustworthiness of certain conferees. For instance, Duane Goossen, a former Kansas budget director under both Republican and Democratic governors, became a preeminent critic of the Brownback tax policy, gaining recognition through his popular blog posts and he eventually joined the KCEG as a fellow. In the view of many lawmakers, Goossen's professional biography as a former budget director under both Republican and Democratic governors made him a trustworthy figure. For instance, Representative Tom Phillips said, "For me, this has gone on since 2012, so five years. And Duane Goossen, has pretty much said the same thing from day one and everything he has said has come to pass. So, I think his credibility has been on target."[330]Yet, Goossen's stature also meant efforts to undermine his trustworthiness increased as repeal efforts grew. Budget Director Shawn Sullivan, for instance, wrote an op-ed in *The Emporia Gazette*, claiming Goossen's "budget record is abysmally flawed." Sullivan criticized Goossen's record, writing, "He is the only budget director in history to have ignored the constitutional requirement for a positive state general fund balance when he ended the 2010 state fiscal year with a negative $27 million balance" (Sullivan 2014). This was a criticism echoed by other conservative groups, such as KPI, who noted "The Goossen era not only saw reserves drop by more than $750 million, he and Governor Parkinson gave Kansas an illegal negative ending balance in their last full fiscal

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[329] Interview conducted February 1, 2017
[330] Interview conducted February 20, 2017

year in office!" (Kansas Policy Institute 2016). These attacks were meant to undermine the trust lawmakers and the media had in Goossen. Supporters of the tax cuts sensed repeal was imminent and by obfuscating the public's search for answers and attacking the other side, supporters ultimately hoped to delay the inevitable.

Conclusion

Joseph Schumpeter, who first proposed the program of fiscal sociology, memorably translated Rudolph Goldscheid's claim that "the budget is the skeleton of the state stripped of all misleading ideologies" (Schumpeter 1991:100). Schumpeter suggested that studying a state's budget is the best starting point to investigate government action as opposed to the rhetoric or ideology of state actors. However, there is an alternative way to understand Schumpeter's point. True, in one sense a state's budget *is* stripped of ideology. After all, if the government claims to be increasing funding to education, for example, and yet budget numbers prove the opposite, then the budget is a truer reflection of state priorities. But in another sense the budget is never stripped of ideology and instead *reflects* ideology.

I argue this was the case in Kansas. By building supply-side ideology into the budget process using dynamic scoring, Brownback ultimately hoped to obscure the cause of the fiscal crisis. However, this was an imperfect process. In obfuscating the search for the cause of the budget crisis, Brownback possibly delayed the policy's reversal, but it was not enough to save it from being repealed. The effects of the tax cuts, witnessed through missed revenue projections, budget cuts, and credit downgrades, undermined conservative's claims. Brownback's allies offered competing explanations for the budget crisis, but these explanations did not satisfy the public or legislators, primarily due to efforts from newly organized groups who built trustworthy relationships with legislators and provided different interpretations of the crisis.

Chapter Six:
The Experiment Implodes

The preceding chapters have explained how important political actors constrained the Brownback administration's ability to radically remake the state's tax structure. From small businesses and schools, to lobbyists and lawmakers were impacted by Brownback's tax policy and responded it. In short, the Brownback administration promised too much and delivered too little to all these sectors, actively harming them by imposing draconian austerity measures. After five years, Kansans had had enough. Many critics of the tax policy predicted early on that the experiment would not survive because the tax cuts created an unsustainable and structurally unbalanced budget. However, the effort to repeal the policy was not straightforward and nearly failed. In this chapter I detail the final legislative struggle to repeal the experiment.

Battle Lines

Democrats and moderate Republicans made significant electoral gains in the 2016 primary and general elections. The vast majority of these new legislators campaigned on repealing the tax cuts. This immediately reconfigured the battle lines for the 2017 session. Since 2013, Brownback had enjoyed overwhelming conservative support in the legislature. However, the absence of this support after the 2016 election made Brownback and the policy vulnerable. During his 2017 State of the State Address, Brownback anticipated the fight to come and sought to stifle any expectation he would easily comply with altering or eliminating his signature pokicy. "As a state," Brownback said in his address, "we have pioneered new ground on small business policy. Kansas was the first state in the nation to pass such a small-business tax policy focused on lifting the income tax burden from job creators… President-elect Trump's tax plan targets small businesses. Speaker Ryan's tax plan targets small businesses in much the same way as we did. Other states, most notably Missouri, are looking at how to create an economic atmosphere for private sector job growth. The biggest creators of jobs in Kansas and America are small businesses. Hurting them puts us at a competitive disadvantage. The purpose of our small business tax cut has been to increase the number of small businesses and increase private sector job growth. That policy has worked."[331]

Brownback's determination on the eve of the 2017 session, however, was not an isolated sentiment. Since the tax cuts took effect, he had made it clear he would veto any attempt at repealing them. As mentioned earlier, Brownback went into the 2013 session declaring "What I am not going to do – and what I won't sign – is putting taxes back on small businesses and raising the income tax rate back up" (Associated Press 2012c). However, as the 2017 session began, it was clear to many that Brownback faced a serious threat of losing his signature policy. What was less certain was the shape the repeal of the policy would take. It seemed likely that the pass-through exemption would be eliminated. Republican Senator Jim Denning, who became the majority leader in the Senator for the 2017 session, for instance, remarked he was "100 percent confident" Brownback would allow the repeal of the pass-through reduction (Hancock 2016h). Even other traditional Brownback allies, such as Koch Industries, seemed to acquiesce to the repeal of the business exemption. In an interview with the *Kansas City Business Journal*, Koch Industries CFO and executive vice president Steve Feilmeier remarked that Koch did not support Brownback's efforts to preserve the exemption and accused the governor of "mismanaging the fiscal condition of the state" (Roberts 2017).

[331] State of the State Address, January 10, 2017

While allies such as Koch were advocating a narrow repeal focused only on the business exemption, other groups were advocating the repeal of *all* aspects of the policy: eliminating the pass-through exemption, ending the march to zero, restoring a third income tax bracket, and reinstating many of the credits and deductions.[332] Those advocating this position organized behind the "Rise Up, Kansas" coalition headed by the KCEG, the backed by education groups, public employee groups, and infrastructure groups.[333] The "Rise Up, Kansas" tax plan was developed with input from the Institute on Taxation and Economic Policy (ITEP) and called for a "comprehensive" repeal of the tax cuts.[334] The Brownback administration, however, attacked the plan, saying "Liberal special interest groups have long called for 'wealthy' small business owners to pay their 'fair share.' But today, the true victims of their tax and spend proposals were revealed. They are the receptionists, nurses, police officers, and others members of the middle class, working hard every day to put gas in the tank and money in their pockets to provide for themselves and their families" (Hancock 2016i). Thus, the battle over the tax plan became a battle over some conservatives allowing a narrow repeal versus moderate opponents advocating for a comprehensive repeal, while Brownback tried to salvage the entirety of the policy.

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[332] Brownback seemed to be aware he stood a good chance of losing the policy. At the start of the 2017 session, senator Jim Denning observed that Brownback "knows that there's a strong will to completely repeal the pass-through policy." And Brownback, while not publicly offering any suggestions, noted he wanted to work with the legislature to make sure he could keep that part of the policy specifically. "We want to maintain the heart of this, which is small business," Brownback said (Lowry 2017b).

[333] As the former head of the KCEG explained to me, this coalition formed first in April 2016 as the "Option Four" Coalition. The name, "Option Four," was named in reference to Brownback and his budget director laying out three options for how to address the state's budget crisis. However, none of these options involved repeal of the tax cuts. Thus, the "Option Four" coalition formed with the message that repeal of the tax cuts could balance the budget. The coalition renamed itself the "Rise Up" coalition with the unveiling of the plan.

[334] The KCEG ran 72 different models with ITEP in Fall 2016 to find a plan that would be the most appealing to lawmakers.

The First Repeal Effort

Lawmakers set their sights on addressing taxes early in the legislative session. In February 2017, conservative chair of the Senate Taxation Committee, Caryn Tyson, announced hearings on a bill that repealed only the business exemption.[335] During testimony on the bill, conferees were split between those who thought this plan still went too far in reversing the tax cuts and those who suggested it did not go far enough. Brownback, however, blasted the bill, saying it "needlessly harms the real people that serve as the lifeblood of Kansas. It punishes the middle class — teachers, police officers and nurses — working hard to provide for their families and serve their communities. It punishes job-creators, the backbone of our Kansas economy" (Hanckock 2017f). The bill advanced out of the committee on a voice vote, however support among legislators soon fell away and the party leadership scrapped a floor debate on the bill.

Despite this temporary setback, legislative momentum was growing towards ending the Brownback experiment. Brownback lamented that the early moves by the legislature were "going against national trends. It's going against what's in the best interest of Kansas to grow" (Hanna 2017a). After the party called off the senate debate, they returned to committee to consider alternative tax bills. Meanwhile, the house pushed forward with their own repeal efforts. Many of the early bills introduced in the House Taxation committee were versions of the "Rise Up, Kansas" tax plan, and were thus more comprehensive than the narrower senate plan. The House bills largely did three main things – reinstated a third bracket and raise the rates, eliminated the LLC exemption, and ended the march to zero. The "Rise Up, Kansas" coalition projected their proposal would raise $700 million dollars, an amount closer to what

[335] The bill was SB 147

representatives believed was needed to balance the budget.[336] The House Tax committee quickly referred the bill to the floor of the House for a vote, which occurred February 15. Voting on a major piece of legislation so early in the session is basically unheard of in Kansas. Thus, the pace which the bill advanced to the floor of the House signaled that the newly elected legislators were serious about address the tax policy. After surprisingly little debate on the bill, the House passed it by a vote of 83-39. Ranking Democrat on the House Tax committee, Tom Sawyer, remarked that the vote sent "a clear message to the governor that the House is serious, and we're going to try to fix this mess that he's created" (Hancock 2017g).

In the Kansas legislature, bills are often voted on twice; an initial vote to gauge support and then a final, official vote. By statute, there must be a day between votes, though this rule can often be suspended. After the initial vote, Republican Steven Johnson remarked, "We had 83. We'll certainly see what it is tomorrow. I'm sure there will be a lot of discussions that continue from here until tomorrow's vote" (Shorman 2017b). The number 83 was significant because it was one vote shy of a veto-proof majority. Lawmakers in both chambers anticipated Brownback's veto and thus had the task of not only building majority support for a repeal, but a veto-proof supermajority. This meant the House had to secure 84 votes and the Senate had to secure 27.

Brownback, again, voiced his displeasure after the House vote, singling out the newly elected moderates. "While on the campaign trail many of these representatives pledged to raise taxes on the wealthy, but now they are attempting to tax everyday Kansans. It doesn't have to be

[336] As the Topeka Capital-Journal reported, members on the House taxation committee, by an informal show of hands, indicated that they want to raise between $900 million and $1.2 billion over two years, with some Democrats and GOP moderates willing to raise $1.5 billion (Shorman 2017a).

this way. I will continue the fight to keep your income taxes low."[337] Brownback also blamed the small business community for not doing enough and urged the NFIB to lobby lawmakers to reject the House bill. The lobbying pressure appeared to work since the following day, on the bill's final action, support for the bill dropped to 76-46. This was still enough for the bill to pass, but was further away from a veto-proof majority.

Senate debate on the House bill began February 17.[338] Conservative senators mostly lambasted the bill and accused fellow lawmakers of not cutting spending. However, moderate Republicans urged their colleagues to vote for the bill, saying they thought this bill was the best chance they would have. The bill garnered enough initial support to pass, prompting Republican senator Jim Denning to make a motion for emergency final action, meaning the Senate would vote immediately rather than waiting until the following day. The bill passed on final action, 22-18, below the 27 needed for a veto-proof majority.

After the bill passed both chambers, commenters across the state began speculating how Brownback would respond. Some wondered whether, to save face, Brownback would let the bill stand, meaning the bill would automatically become law without his signature. The *Lawrence Journal-World* urged the Governor to do this. "In this case," the editorial team wrote, "the right thing for [Brownback] to do is nothing at all" (J-W Editorial Staff 2017). The *Topeka Capital-Journal* also editorialized that he "should recognize that his state is ready try something new. He should let the bill pass" (Capital-Journal Editorial Board 2017a). And *The Emporia Gazette* wrote that "Hopefully, instead [Brownback] just signs it" (Hacker 2017).

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[337] Kornada, Stephen. "Gov. Brownback's statement on the House tax plan. He doesn't explicitly say he would not sign it, which he said earlier today. #ksleg." February 15, 2017, 2:31pm. (https://twitter.com/kprkoranda/status/831994420232933380). Accessed April 7, 2019.

[338] In a slightly unusual move, 2178 went straight from the House to the Senate floor and bypassed the Senate tax committee. Senate President Susan Wagle, however, defended the move by saying that the Senate tax committee had already held numerous hearings on tax bills and was familiar with the contents.

The hope that Brownback would sign the bill was wishful thinking. The Kansas Chamber of Commerce held its annual dinner on the evening of February 21, the day he officially received the bill, and used this high-profile setting to announce his veto. During his remarks, Brownback announced, to enthusiastic applause, that he would veto the bill. “I won’t sign it and I will veto this bill,” the Governor said, adding that policy like this “is what causes people to move to other states” (Carpenter 2017a). He continued, asking “the people in this room to help us sustain this veto. This is bad policy for Kansas. This will hurt growth in this state. At the same time the administration in Washington is moving to cut taxes, we’d be raising” (Carpenter 2017a).

The next morning, Brownback officially signed the veto.[339] “I've been against income tax increases as long as I've been in public life,” he said during the public signing (Hanna 2017b). He was particularly incensed at the portion of the tax bill that repealed the pass-through provision. “I don’t think there’s been a fair presentation of [the policy]. We’ve offered adjustments, as I’ve noted. We pioneered this field. You’ve seen other places go to it now” (Hancock 2017h). He continued, “Income tax increases aren’t being considered, that I can find,

[339] Brownback’s veto statement, titled “Protecting Kansas Workers and Families,” said, “Since the pioneers moved westward across the country and settled this fertile ground, our state has always held a promise for those who came here—that through dedication and hard work your standing in life can improve. One of my primary goals as Governor is to make it easier for Kansans to thrive and to accomplish their dreams. That is precisely why we cut income taxes on all Kansans several years ago, working to make Kansas the best state in America to raise a family and grow a business. Last week, both chambers of the Kansas legislature voted to raise taxes on Kansans making over $15,000. Not only did they raise taxes on single Kansans earning more than $9.74 an hour, but they did so before even passing a budget. By doing this, legislators said that the hard-working people of Kansas must find savings in their own personal budgets before their elected representatives can be bothered to find savings in the state’s budget. This mindset is unacceptable. I am vetoing HB 2178, the punitive tax increase on working Kansans. I am vetoing it because the legislature failed to fulfill my request that they find savings and efficiencies before asking the people of Kansas for more taxes. I am vetoing it because Kansas families deserve to keep more of their hard-earned cash. I am vetoing it because it is retroactive and thus incredibly unfair. Legislators who voted for this largest tax hike in Kansas history will try to persuade you that it is primarily a tax on wealthy business owners. This is false. Rather, this bill is an assault on the pocketbooks of the middle class. These legislators campaigned saying they were going to raise some other guy’s taxes. But when the votes were finally cast, they raised yours. Above all else, we must remember that tax dollars do not belong to the government. They belong to the families, individuals, and job-creators who earn a paycheck. It is wrong for government to take more tax dollars than are absolutely necessary to provide for the core functions of the state. Should the legislature override this veto, Kansans are the ones who will pay the price. It doesn’t have to be this way; there is another option. My budget proposal does not target Kansas families or the working class, but still achieves structural balance. I urge you to call your legislator and tell them to find savings in government before asking you and your family for more money. After all, it’s your money, not the government’s. As the stewards of your tax dollars, legislators must be fiscally responsible with your money. It is not too late; the legislature still has time to choose fiscal responsibility over tax increases on Kansas families.”

in any red state… Speaker (Paul) Ryan and President Trump both have a small business tax proposal that would cut small business taxes in half, because that's your job-creating machine" (Hancock 2017i).

After Brownback's veto, the bill returned to the House. After reading out the governor's veto message, Steven Johnson made the motion to override the veto. After a short floor debate, the House voted 82-41 for override, short of what was needed. However, two representatives were absent during in the first round of voting, so lawmakers initiated a call of the house, forcing everyone to cast a vote. One lawmaker, Republican Bradley Ralph, voted to support the override, increasing the votes to 83. Only one vote more was required. The other missing lawmaker, Republican Pete DeGraaf, returned to the chamber and cast his vote in support of override and applause broke out in the chamber. However, it was quickly stamped out as DeGraff immediately changed his vote back to a "No," saying that he had been "joking."[340] The vote count still stood at 83. The voting period was being held open as lawmakers furiously lobbied to get one more vote. These appeals eventually worked and Republican Clay Aurand switched his vote, breaking the necessary 84 vote threshold. Explanations of vote continued afterwards, inspiring more lawmakers to switch to "Yes," such as Republican Blaine Finch. The final vote to override Brownback veto was 85-40.

The House had demonstrated there was enough support to both pass a repeal bill *and* protect it from Brownback's veto. There was still uncertainty, however, about how much support override had in the senate. Around 2pm that same afternoon, Senate Republicans caucused to discuss their veto override strategy. Senator Longbine indicated he would vote for override,

[340] Shorman, Jonathan. "DeGraaf initial aye vote was apparently a joke #ksleg." February 22, 2017, 8:20am (https://twitter.com/jonshorman/status/834437828562006016). Accessed April 7, 2019.

however senators Jim Denning and Susan Wagle indicated they would not. They also made clear it clear, however, they were unhappy with Brownback's proposed budget. Senator Denning, for instance, said Brownback's budget was "insulting to me. I don't even want to waste my time with it" (Hancock 2017j). Contrary to House rhetoric that this bill was the best shot at repeal, Denning suggested it would not be "the last train out of the station."[341] When the Senate came to order, Senator Ty Masterson introduced the motion for override (even though he did not support repeal) and after about an hour of debate, the Senate voted 24-16 in favor of override, three votes shy of the 27 votes necessary. The effort to repeal the Brownback tax cuts had failed.

The Second Repeal

After the unsuccessful attempt of lawmakers to override Brownback's veto, legislative action on taxes grew quiet. However, around this time, rumors began to spread of a possible appointment for Brownback in the Trump administration.[342] These rumors weakened what little influence Brownback still had in the statehouse. For instance, Susan Wagle responded to the news of Brownback's possible departure, saying "We're feeling that we have the responsibility to fix the budget — without him" (Hanna 2017c).

After the veto, and with speculation of a possible Brownback exit,[343] lawmakers began to entertain a wide variety of possible tax bills, including a flat tax.[344] For instance, the Senate tax committee passed a flat tax bill which only generated an estimated $296 million in the current fiscal year and $356 million the following fiscal year (well short of the amount needed to address

[341] Shorman, Jonathan. "Denning: this isn't the last train out of the station #ksleg." February 22, 2019, 12:15pm. (https://twitter.com/jonshorman/status/834496909821747200). Accessed April 7, 2019.
[342] Initial rumors suggested Brownback might be up for the position of U.S. ambassador to the United Nations agency for food and agriculture in Rome.
[343] Or a "Brexit."
[344] A flat tax refers to a tax system in which everyone is subject to the same tax rate. Flat tax supporters argue this is a fair system, however, like a sales tax, in practice it is regressive and overburdens lower income taxpayers.

the budget shortfall). The flat tax bill eliminated the pass-through exemption and established a flat income tax rate of 4.6 percent. Unlike the previous House bill, this bill actually gained Brownback's endorsement. "The Senate's flat tax legislation creates a single low tax rate for Kansans, solving today's budget challenges without unnecessarily harming economic growth in Kansas. If the legislature sends a bill to my desk similar in nature to 214, I will sign it," he announced (Hancock 2017k). This was noteworthy because it was the first time Brownback signaled any willingness to modify his tax policy. "I'd rather have the LLC exemption," Brownback said. "What I'm saying is there are other pro-growth concepts in your tax policy, and one of the things that I think we need to have long-term for the state of Kansas is as much pro-growth opportunity as possible" (Hancock 2017l).

Despite Brownback's apparent willingness to sign a flat tax bill, there was little interest among senators for it. Support quickly fell away during floor debate and the bill was defeated. After the vote, Jim Denning was asked what was next, replying, "Beats me," (Hancock 2017m). After the flat tax defeat, the legislature adjourned for their spring recess, during which the CRE released their revenue forecast adjustments showing an $889 million dollar budget shortfall for the following two fiscal years.

The increased shortfall added extra urgency to the repeal effort. As lawmakers returned from their recess, senate Republicans revealed they had moved on from the flat tax. The new senate tax bill was strikingly similar to the House bill Brownback had already vetoed, but did not include the retroactive portion that Denning had originally objected to (Shorman 2017c). Part of the reason the legislature returned to the House bill was institutional: both chambers had already voted on it. "We voted to pass something like that already. This will probably be something similar," said Dan Kerschen, the vice chairman of the Senate tax committee (Shorman 2017c).

Additionally, because this bill had already passed both chambers, the House bill could be used as a vehicle for a conference committee.

The first tax proposal to come out of the conference committee was indeed a modified HB 2178 bill.[345] Unlike the House bill, however, this plan phased in the top tax rate over two years and eliminated the retroactive portion, which made new tax rates effective July 1, instead of retroactive to January 1. The plan also eliminated the pass-through exemption. As a result, this bill raised $879 million over the next two years (less than the $1 billion that HB 2178 raised). This was a problem for some legislators. Nevertheless, the committee agreed to the plan and the Senate debated it first. In the Republican caucus meetings prior to the debate, however, it became clear that senators had misjudged the level of support the bill had and cancelled the debate. “At the beginning of the day we thought we had consensus, and at the end of the day we didn’t,” said Jim Denning (Hancock 2017n).

In their caucus, the Democrats also announced they would not support the bill because it did not raise enough to cover the shortfall. With the exception of the failed flat tax, conservatives were going to oppose any bill that repealed the tax policy. This meant moderate Republicans and Democrats were in a position of power. However, this coalition also created tension. Democrats believed they could hold out for a bill that fully addressed the budget while moderate Republicans did not want to raise taxes more than necessary. As Senate vice president Jeff Longbine described the situation, “We have people who don’t think the tax bill raises enough and we have people, if it raises more than that, they don’t want to vote. So we’ve got a teeter-totter and we’re trying to find the balance” (Shorman 2017d). Striking this balance would require a lot of negotiation and false starts over the next several months.

[345] This bill would have set the lowest bracket still at the current 2.7 percent, taxed income of $30,000 to $100,000 at 5.25 percent (up from 4.6 percent), and taxed income over $100,000 at 5.45 percent.

False Starts and Stalemates

The current projected budget deficit of $900 million did not include the anticipated funding needed to satisfy the school funding lawsuit. Elsewhere in the legislature, lawmakers were working on a plan that increased school funding to $750 million (an amount that the attorney for the school districts said was still not enough). Democrats were adamant that any tax bill should generate enough money to cover both the budget shortfall and the increase in school funding. “We ought to be able to put a revenue package together that will solve the self-inflicted budget crisis that we’ve had as a result of the income tax cuts while at the same time appropriating enough money to comply with the court order in the Gannon case,” Democratic Senate leader Anthony Hensley explained (Hancock 2017n). However, Senate leadership disagreed and Senator Jim Denning indicated that he was going to pursue separate bills to balance the budget and fund education (Shorman 2017d).

The next conference committee bill generated $1.1 billion over two years. The House debated the bill first, but again leadership scrapped debate because of Democratic opposition. Democrats continued to withhold their support because they wanted to know how much revenue the school funding bill would require. Republicans, even some moderate Republicans, began to balk at what they saw as Democratic overreach. “That was the Democrats’ best bill,” said House Speaker Pro Tem Scott Schwab (Hancock 2017o). Tom Sawyer conceded that the move by the Democrats was “a risk,” but they were holding out for something better (Shorman 2017e).[346]

[346] What Democrats were holding out for was “a 2-percent pay raise for state employees” as well as “more beds at Osawatomie,” the state hospital. However, Democrat’s insistence to address taxes only after school funding created a stalemate in the legislature. In the new stalemate, the Senate tax committee again began to consider a flat tax bill of 4.4 percent (Hancock 2017), a move that baffled and surprised many. “You understand the definition of insanity is doing the same thing over and over and expecting a different result? Well, that’s more or less what describes this effort to pass a flat tax,” said Anthony Hensley (Shorman 2017e).

The next tax debate was held on May 10. This bill was another version of the previous House bill. Again, however, this bill was defeated in the Senate, 18-22. Two Democrats voted in favor of this bill, though the rest voted against it as they held out for school funding. Conservative Republicans also voted against it, though notably, Jim Denning voted in favor of this bill, saying it was "Probably the most difficult decision I'll make in my career."[347] This bill's defeat was disheartening for many moderates. Senate Vice President Longbine said afterwards "I think we went backwards today" (Hancock 2017p).

The tax stalemate was creating ripple effects across the legislature. For example, when the education committee reconvened, they dramatically cut the amount of funding allocated for the new school funding formula. Previously, the committee provided an increase of $750 million dollars over five years. But in the absence of a tax bill, lawmakers questioned whether they should commit to that level of funding. Based on previously debated tax bills, as well as a view of what was politically possible, the education committee slashed the amount of money allocated to the formula to $280 million over the next two years.

To try to break the legislative impasse, the next offer made in the tax conference committee was simply a straight repeal of the 2012 tax law. "I'm speechless," said Senate tax committee chair Caryn Tyson (Hancock 2017q). "Definitely, not a move I anticipated based off of previous votes. This is a considerable increase on individuals, not just businesses, which I'm sure you're fully aware," Tyson continued (Carpenter 2017b). Ranking Democrat, Tom Holland, was also suspicious of this proposal, saying "I'm really disappointed, quite honestly, this offer is being brought to the table today because we have in no way resolved what we want to spend on schools" (Hancock 2017r).

[347] Shorman, Jonathan. "Denning will be YES. 'Probably the most difficult decision I'll make in my career' #ksleg." May 10, 2017, 2:40pm (https://twitter.com/jonshorman/status/862422029915521030). Accessed April 7, 2019.

The conference committee did not reconvene again until three days later and, despite the original shock of the proposal, the committee agreed to debate the bill. Newspaper editorials, namely *The Topeka Capital-Journal*, voiced their support of this proposal and urged lawmakers to pass it (Capital-Journal Editorial Board 2017b). However, in conference committees, both sides must agree on which chamber will vote on the bill first. While the conference committee agreed to the bill, House negotiators suddenly withdrew their offer because they were under the impression the bill would be heard simultaneously in the House and Senate. However, senate leadership wanted the House to vote first, a position they rejected and pulled their support for the bill.

The conference committee scheduled their next meeting on May 22, which was the fifth anniversary of Brownback signing the tax law. The House offered their latest plan, SB 30, which raised as much revenue as any tax bill that had been previously debated, about $1.2 billion. Again, many Democrats were hesitant to support the bill because of outstanding school funding issues. However, in the Democratic caucus before the debate, Democrats were told to vote their conscience.[348] The conference committee signed off on the bill and the House debated it that evening. However, the bill was defeated, 53-68. Both parties could not agree within their own ranks on the bill; 14 of 40 Democrats and 39 of 85 Republicans supported this bill. The coalition of moderate Republicans and Democrats began to strain. Prior to the House debate on SB 30, moderate Republicans allegedly told House Democratic Leader Jim Ward they needed between 20 and 25 Democrats to support this bill. If not, Ward recalled, they said “it probably means they would do the rest of their work with the conservatives as much as they could” (Shorman 2017f).

[348] Shorman, Jonathan. “Ward speaking now. Says Dems were concerned about not doing schools first, says Dems were told to vote conscience #ksleg.” May 22, 2017, 5:48pm (https://twitter.com/jonshorman/status/866818180093804545). Accessed April 7, 2019.

Moderate Republican's threat to work with conservative Republicans was reinforced by the Kansas Truth Caucus' tax plan. Supported by 40 conservatives in the House and Senate, the Truth Caucus' tax plan, named the "Republican Balanced Budget Solution," was the conservative's way of saying "there is another way" (Carpenter 2017c). "As we approach Memorial Day, those controlling this Legislature are no closer to a solution than they were in January. We have a simple, straightforward plan that balances our budget without increasing the burden on hard-working Kansans," Truth Caucus representative Ty Masterson said (Carpenter 2017c). The Truth Caucus tax plan was designed on the conservative notion that Kansas had a spending problem, not a revenue problem. "The benchmark of the Kansas Republican Balanced Budget," the Caucus proclaimed, "is controlling the growth of government by eliminating new and unnecessary spending" (Kansas Truth Caucus 2017b).

The Women's Caucus and Breaking the Legislative Stalemate

On May 24, the hundredth day of the session, legislative leadership scheduled debate for both the latest tax bill *and* the school finance bill.[349] The previous evening, the tax conference committee had agreed to a bill that raised $1.2 billion in revenue, eliminated the LLC exemption, and reestablished a third bracket.[350] The Senate reconvened for a debate on taxes at 10:15pm and, within an hour, passed the tax bill, 26-14. Minutes later, the House took up the same bill.

[349] When the House came to order, they debated school funding first. During the debate, Democrat Ed Trimmer offered an amendment to increase school funding to $600 million. Without this amendment, the Democrats argued, the Supreme Court would continue to rule against the state in the Gannon lawsuit. Trimmer's amendment failed, however as Republicans argued it would require an even greater tax increase than any tax bill that had previously come out of the tax conference committee. After over four hours of floor debate, the House voted to pass the new funding formula, 81-40. After the Memorial Day weekend, the Senate took up their own school finance bill. While the Senate was debating school funding, the tax conference committee met again met and negotiated the next bill. As Trimmer did in the House, Democratic Senator Anthony Hensley offered an amendment that would have increased the funding level for the Senate school funding bill; but again, just like in the House, this amendment went down 16-23. However, the Senate did pass a school funding bill, 23-16. Because the two bills, differed, however, the school bill also went to a conference committee.

[350] This bill set bracket rates at 2.9 percent, 4.9 percent, and 5.2 percent. The bill also automatically increased rates in 2018 to 3.1 percent, 5.25 percent, and 5.7 percent.

The initial vote count was 59-59. Bills need 63 votes to pass, so a call of the House was initiated, forcing wayward members to cast a vote. However, during the call votes began to drop off and the bill failed, 37-85. This latest defeat signaled that the stalemate was now in the House, rather than the Senate. "We sent [the house] a solid bill with basically a veto-proof message last night, and they turned it down. So the tax policy is all on their shoulders at this point in time," said Jim Denning, who had voted for the bill in the Senate (Shorman and Woodall 2017a).

The legislature had just entered June and frustrations among lawmakers were intensifying. The deadlock was testing the relations between lawmakers and leadership and between moderate Republicans and Democrats. Representative Stephanie Clayton, for instance, remarked on Twitter, "I do currently have unprintable thoughts re: Leadership" (Shorman and Woodall 2017a). Additionally, relations between the house and Senate were souring. Senate leadership believed they had done their job by passing a near-veto proof tax bill. "The Senate's got its work done for the most part. Just waiting on the House… They're stuck on tax policy," said Jim Denning (Shorman and Woodall 2017b). Moreover, each day beyond the expected session length further strained the budget. "It's $43,000 a day. We're out of money. People are going to have to start compromising and figuring out what they can live with," said Senate vice president Jeff Longbine (Carpenter 2017d).

In this climate of frustration, tax bills that had little political support were being introduced to try to move the process forward. One such tax bill, introduced by Democrat Jeff Pittman, would incrementally increase tax on each dollar for those in the upper income bracket. "This is straight out of the *Communist Manifesto*. Is Karl Marx the original author of this new tax proposal?" retorted Jeff Glendening of Americans for Prosperity (Carpenter 2017d). Another proposal which emerged during this stalemate was the so-called "mega bill" which was fashioned to address taxes and school funding in the same bill. This proposal increased school funding by $280 million and raised approximately $1 billion in new revenue over two years. However, it also directly tied income taxes to school funding. The conference committee approved the bill, though the Democrats on the committee refused to sign off on the proposal. The House debated the mega bill first, though it had very little support from both conservative Republicans and Democrats. Democrats objected claiming it still did not allocate enough for school funding. Conservative Republicans, however, opposed directly tying income taxes to school funding, which they believed would make it impossible to cut income taxes in the future. After a short floor debate, the mega-bill was defeated, 32-91.

The mega-bill's failure is important because it created the opportunity for lawmakers to introduce the "women's caucus's" tax bill. The women's caucus was a bi-partisan, informal group of women lawmakers in the House that began meeting in late May during the legislative stalemate. Many lawmakers, particularly newly elected Democrats and moderate Republicans, were frustrated not only with the legislature's inactivity, but also with the lack of information coming from Senate and House leadership. As Monica Murnan explained, "There was nothing to vote on, there was nothing to have as a solution. So a couple of women, Stephanie Clayton and Cindy Holscher, they knew each other from the Kansas City area and at that time Stephanie was in the Republican Party and they sent out a text to a bunch of women and said, 'Hey let's just talk'."[351] Once this group of women began meeting, they realized they were hearing different explanations for the stalemate from leadership. "I kind of equate it to a bunch of moms who get together after school and realize their kids aren't quite telling them the truth," Monica Murnan recalled.[352] Over the course of several meetings, the women's caucus grew in number as more

[351] Interview conducted April 25, 2019
[352] Interview conducted April 25, 2019

women were invited and the group eventually began proposing solutions for how to break the tax deadlock. During meetings, women in the group discussed what was important for them to include in a tax policy and, using sticky notes, the women ranked the issues and voted on them, eventually coming to a kind of consensus. While the women's caucus never formally wrote a tax bill or introduced an amendment, they crafted a tax policy that raised approximately $1.3 billion, removed the pass-through exemption, and reinstated a third income tax bracket (at 5.9 percent). Importantly, the women's caucus bill also reinstated several important tax credits, such as the child care credit and renter's credit, which were eliminated in 2012. This is consistent with sociological research that argues women are more likely to advocate for children's issues (Paxton, Kunovich, and Hughes 2007).

Once the women's caucus settled on a plan, they invited others into the group, such as Representatives Steven Johnson and Tom Sawyer, as well as analysts from the Kansas Legislative Research Department to produce fiscal notes and revenue projections for their proposal. When the mega bill was defeated, women's caucus members regrouped with members of the tax committee who were representing the House in the conference committee. During that meeting the top rate of the women's caucus bill was lowered to 5.7 percent in order to ensure the plan appealed Republican senators who believed 5.9 percent was too high. The House negotiating team agreed to adopt the women's caucus position as the official House position and carried it into the next conference committee meeting.

After the conference committee signed off on the bill, the parties caucused before the debate. In the House Democratic caucus, Democrats agreed they would support the tax bill. In the Republican House caucus, there was some disappointment that the Democrats appeared to have come out the winners. "I feel like we're rolling over and giving up," Representative

Thimesch said.[353] The House reconvened around 6:30pm and debated the school funding formula (now separated from the income tax bill) first. After a short debate, the House approved the funding bill, 67-55.[354] After the House passed school funding, it moved to the Senate. In the Republican Senate caucus before debate, the two majority leaders, Susan Wagle and Jim Denning, both indicated they would support the school funding bill. Denning said he would not vote for the tax plan if the school funding plan failed.[355] This essentially sealed the success of both taxes and school funding. The Senate reconvened around 8:30pm to debate school funding while the House began debate on the tax bill. Several senators still voiced concern that the amount of money appropriated to the new funding formula was inadequate, however the debate was short the Senate passed the funding bill 23-17.[356]

Simultaneously in the House, debate on the women's caucus tax plan had started. Representative Tom Sawyer indicated he would support the plan, signaling Democratic support. The initial vote on the tax bill was 62-57. After a call of the House was initiated, the vote tally increased to 69-52. After the House approved the tax policy, the Senate began debate on the tax bill around 10:30pm. Conservatives in the Senate threated to filibuster in a vain attempt to sink the tax increase. This never materialized, however, and after a two hour debate, the Senate approve the tax increase, 26-14.

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[353] Salazar, Daniel. 2017. "'I feel like we're rolling over and giving up," another GOP rep. says. #ksleg." June 5, 2017, 4:09pm (https://twitter.com/imdanielsalazar/status/871866561644171273). Accessed April 13, 2019.

[354] The debate lasted only about thirty minutes. Democrat Ed Trimmer voiced his concerns again, saying that the bill will not satisfy the courts. Melissa Rooker countered, saying "I share concerns about the funding level and the tax credit scholarship expansion, but am more alarmed at the uncertainty we face without a constitutional funding formula. Absent an approved formula, the state would not be allowed to distribute even one dollar on July 1" (Carpenter 2017e).

[355] Salazar, Daniel. 2017. "Denning and Wagle say they'll vote for school finance bill. Denning notes he won't vote for tax plan if school finance bill fails. #ksleg." June 5, 2017, 6:10pm (https://twitter.com/imdanielsalazar/status/871896986554912768). Accessed April 13, 2019.

[356] The initial vote tally was 20-14. A call of the senate was initiated, forcing senators into a vote. Senators Hilderbrand, Lynn, and Sykes all votes yes, Senator Masterson voted no. This brought the final tally to 23-17.

Brownback had announced his first veto with flair during the Kansas Chamber of Commerce dinner. However, his second veto announcement was less conspicuous. Two minutes after the Senate approved the repeal bill, at 12:22am, Brownback tweeted his intention to veto it. "I will veto SB 30 for the sake of Kansas workers, Kansas families, and Kansas job creators," he tweeted (Zeff 2017).[357] The relatively meager response from Brownback at this vote indicated to some lawmakers that an override was basically assured.

The following day, June 6, Brownback officially signed the veto and House and Senate leadership announced they would again vote to override. The senate convened at 6:30pm and Senate Vice President Longbine announced the veto override attempt, saying he saw no other path forward. In February, the first veto attempt had failed in the Senate by three votes. However, during this round of voting, the Senate approved the override with 27 votes, the minimum necessary. After the Senate overrode Brownback's veto, the motion moved to the House. The initial vote tally stood at 84-35, the exact minimum needed to override the

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[357] The tweet linked to a longer veto message which read, "I appreciate the efforts of legislators as they continue to work towards balancing the budget, building a school funding formula that puts students first, and ultimately closing out the 2017 legislative session. Given that this tax package was assembled and passed just today, I hope to avoid any unnecessary delays by announcing that I will veto Senate Bill 30, allowing the legislature sufficient time to address its many deficiencies and harmful impacts on Kansas families. We have worked hard in Kansas to move our tax policy to a pro-growth orientation. This bill undoes much of that progress. It will substantially damage job creation and leave our citizens poorer in the future. Earlier this year, I vetoed a tax increase that threatened to crush the Kansas economy, punishing individual Kansans and their families. Today, with Senate Bill 30, the legislature is looking to hike rates on Kansans even higher. Senate Bill 30 is a $1.2 billion tax hike, making it the largest in state history. This is bad for Kansas and bad for the many Kansans who would have more of their hard-earned money taken from them. Additionally, this tax increase is still retroactive and will affect individual families and small businesses in the 2017 tax year. Retroactively applying new taxes in the middle of the year is irresponsible and will harm families and individuals who are working to make ends meet. The people of Kansas deserve clarity in understanding how this bill will impact their families:

Senate Bill 30 is the largest tax increase in state history.

This bill hikes taxes $1.22 billion over two years, compared to the previously vetoed $1.04 billion tax hike in HB 2178.

Low-income Kansans will be hit hardest because the low-income exclusion is cut in half.

The bottom bracket marginal tax rate will increase by 14.8%.

The middle bracket marginal tax rates will increase by 14.1%.

The top bracket marginal tax rate will increase by 23.9%.

Small businesses will lose their exemption for non-wage business income, instead paying up to 5.7% as they strive to create jobs and economic growth. Instead of imposing draconian tax increases on Kansas families, we must enact a pro-growth tax policy. Many alternative ideas have been discussed, and I believe there is a better solution. I have made many proposals, and several ideas have been considered by the legislature. We can and we must balance our budget without negatively harming Kansans. Once again, I remain committed to working with the legislature to develop a plan that balances our budget without permanently harming hard-working Kansans. Senate Bill 30 and its $1.2 billion tax hike is not the solution, and I will veto it for the sake of Kansas workers, Kansas families, and Kansas job creators."

Governor's veto. After it became clear the measure would succeed, lawmakers began to switch their votes to support the override and the final vote in the House was 88-31. The Kansas legislature had officially repealed the 2012 Brownback tax experiment.

The following morning, Brownback somberly addressed the veto override. Drawing on many of the themes he and his administration had been using to justify the policy over the past three years, Brownback remarked,

> *It's been a long, difficult session. Unfortunately, when you get towards these sort of sessions, at the end, things sometimes don't go as well as they should. My estimation I think the tax policy move last night with the legislature was the wrong move. I think it's wrong for the long term view of the State of Kansas, I think it's wrong for growth. I don't think it's going to be a positive for this state moving down the road. What we've tried to do the last number of years is get Kansas in a more pro-growth position. We've been declining as a percent of the population in the country. We haven't had a robust economic activity and we tried to move in a place and in a way that would be pro-growth so that we could attract more people, attract more businesses, attract more opportunities. And that was working and we were seeing that attraction and particular attracting in the region and in particular on the Missouri border. We've seen record small-business creation taking place. We've seen record private-sector employment. We've seen record low for the last 17 years unemployment rates for the state of Kansas. On the private sector side at the same time that the public sector side has not been growing or has been smaller because long-term growth and the key to America isn't building government; it's providing more opportunities for people. That's the long-term opportunity, that's the long term vision, that's the long term opportunity this country and what's always been the best for it is to provide that chance, provide that choice, let a person get out there and try and they may fail. But you hope to get a lot of people trying and eventually end up with your good, large employers like Garmin, other groups in the state. Or, what's more typical, a whole lot of small businesses that are having three people or five people that work with them. And for years I've heard people say, 'Well, you give all the subsidy to big business, what about me?' And this is somebody that hires two people, that's been in their community for 50 years and they're saying 'You know, I'm kind of struggling out here and you guys have put a lot of regulation and taxes on me.' And so what we did, coming into office, is to say 'Let's give the small business guy a break. Let's not tax him.' And in all our economic modeling that showed a very strong growth of jobs taking place with it. So we did; took the tax off small business. Record number of small businesses for six years in a row. As I mentioned, record private sector job growth in the state of Kansas off of that policy. People saying they didn't like that policy, they said 'No we don't like that model, we think that gets abused and wanted to tighten that up,' which I was fine with doing. But instead, what happened was it was not tightened up, it was taken away altogether. And now you're going to see small businesses taxed at 5.7 percent*

> *income tax rates, and you're going to see the creation and the number of them go down substantially. And you're going to see the migration from other neighboring states into Kansas slow down substantially. And this is not to our long-term benefit. This isn't the right way to go. There was another way. And we kept working with people but that just wasn't in the cards and was difficult to happen, and you get late in the session and I think a number of people threw their hands up and said 'This is the only way to go.' And the unfortunate thing is it's a bad way to go and we're going to have long-term negative consequences for the economy of the state, for the people of Kansas, going this route. I regret that. I think that's bad for the long-term trajectory of this state. It's a decision that was made. It's a decision that will be implemented. And we will handle and deal with that. A lot of people made it about me, but it's not about me – it's about Kansas, it's about the future of this state. It's about which way we want to go. Do we want to be a high tax, low growth or no growth state? Or a pro-growth state that over time – and these things take time, you have to take the variables of commodity prices and the complexities of an economy, which are substantial. Economies aren't single entity creatures that one thing happens and everything blossoms off of it. It's multiple sets of factors and we've had commodity crisis prices over the last three or four years. And those have a big impact on us and we continue to have slow performance in our aviation sector, the business jet sector. Those sales, they continue to be down. So you have fundamentals of this economy that have poorly performed over the last several years, but you can't blame a tax policy on that. Those are global forces that create and cause that. So I think we've taken a big step backwards. I think it's the wrong philosophy to implement, but you get late in the session and things like this happen and move forward as people don't see another option or another way. And I understand that. I've been a legislator and I can understand the difficulties of doing that job and we've got a number of fine people in the legislature trying to do their level best that they can. I just think this is the wrong way for us to go.*

Brownback Exits

After the repeal of Brownback's signature policy, conservatives began predicting the dire consequences of the tax increase. Brownback issued a statement saying, "This session marks a drastic departure from fiscal restraint. I trust that future legislatures will return to a pro-growth orientation that will once again set Kansas on the path toward becoming the best state in America to raise a family and grow a business." (Koranda 2017). The new Secretary of Revenue, Sam Williams, wrote an op-ed criticizing the "largest in state history" tax increase (Williams 2017). Conservative Senator Ty Masterson also wrote an op-ed, predicting that small businesses "will see significant reductions to their bottom lines… This means all small businesses in Kansas, from your hair dresser to your lawn mower, will now be burdened with a retroactive tax increase, which is sure to cripple job creation and economic growth" (Masterson 2017). Moderate Republicans, however, explained their vote for a tax increase as the responsible thing to do. Don Hineman, moderate Republican leader in the House, wrote, "Though raising taxes is never easy, it was unfortunately the only responsible option available" (Hineman 2017).

Brownback bet his political career on the success of the tax cuts. But as the tax policy failed, Brownback's popularity plummeted. Brownback left office with an approval rating of only 27 percent. Perhaps mercifully, Donald Trump nominated him to serve as the ambassador at-large for religious freedom. Though his nomination would be a long, drawn-out process, Brownback was confirmed in January 2018. Prior to exiting the role he held since 2010, the governor declared a day of prayer and fasting for his last day in office. He asked Kansans to pray for him "before God takes me on to the next part of my journey."

Structurally, much of the 2012 tax experiment was undone. The pass-through exemption and the "march to zero" trigger mechanism were both eliminated, and a third bracket was reinstated. However, the state's tax structure is still not the same as it was prior to Brownback. The top tax rate remains lower than before the cuts. Moreover, while the women's caucus plan reinstated several key tax credits and deductions, not all of them were restored. Thus, elements of Brownback's tax changes persist. But as much as Brownback's legacy has shaped the state, the Kansas tax cutting experiment has helped shaped the national debate on taxes nationally. In the aftermath of repeal, political figures and pundits across the country and across the political spectrum debated the efficacy and meaning of the Kansas tax cuts. Politically, the Kansas "experiment" has imposed is now itself as an integral part of the contemporary debates over American tax politics.

Chapter Seven: Conclusion

This dissertation has examined a critical case of one of the most significant issues in American politics. Tax cuts, and particularly supply-side tax cuts, have become entrenched in the Republican Party since Ronald Reagan (Martin 2008; Prasad 2018). And the Republican allegiance to supply-side has persisted, despite overwhelming evidence that tax cuts do not perform as promised (Tanden 2013; Atkinson 2006). This contradiction – between evidence of supply-side failure and Republican allegiance to tax cutting – was particularly acute in 2017. The Kansas tax cuts were repealed in June 2017 and only a few months later, Trump and congressional Republicans unveiled their latest tax reform proposal, a supply-side policy with strong, identifiable connections to the Kansas tax policy. In this concluding chapter, I briefly sketch how Kansas has shaped the national discourse on taxes and discuss what the Kansas tax cutting episode might mean for the politics of tax cuts going forward.

Kansas and the Tax Cuts and Jobs Act

"It's amazing to me that a tax cut in Kansas was the dominant tax debate in this nation over the last five years," Brownback remarked (Hanna 2017d). Since they were passed in 2012, the Kansas tax cuts have arguably shaped the national debate on taxes. The commentaries and debates about taxes increased in the period after the repeal and preceding Trump's tax reform. The similarities between the TCJA and the Kansas tax cuts are not coincidental. Indeed, Brownback himself gave an interview to the *Wall Street Journal* after Donald Trump's election urging him to follow the Kansas model (Rubin and Connors 2016). Brownback further predicted that "you will see a lot of places start to tinker with, how do you stimulate small-business growth using this pass-through tax model" (Hanna 2017d). And in September 2017, Donald Trump unveiled his tax reform proposal, a sweeping overhaul of the federal tax code that drew components from Kansas. Like the Kansas tax cuts, Trump's tax proposal reduced rates but did not eliminate any brackets. Rather, it eliminated or reduced various tax credits and deductions, and lowered the corporate tax rate. However, the loudest echoes of Kansas in the TCJA is the reduction of income taxes for pass-through business owners, the signature component of Brownback's policy.

Media framing of Trump's tax proposal highlighted the role of Kansas. Several media outlets all ran variations of the same headline: *Is Donald Trump about to turn America into Kansas?; Trump's Tax Plan Has Echoes of the Kansas Tax Cut Experiment*; *The GOP Tried Trump-Style Tax Cuts in Kansas. What a Mess*; *Trump Models U.S. Economy on Kansas. That's a Mistake*; and *Kansas Tried a Tax Plan Similar to Trump's. It Failed*. Additionally, the Kansas tax cuts have also deemed a "cautionary tale" that lawmakers should learn from: *Kansas' 2012 Tax Cut Experiment Could Serve as a Cautionary Tale*; *What Happened in Kansas is a Cautionary Tale for Connecticut*; *Brownback's Kansas Should be 'Cautionary Tale' on Taxes, says Missouri's McCaskill*; and *Kansas's Ravaged Economy a Cautionary Tale as Trump Plans Huge Tax Cuts for Rich*.

Democrats in Washington also capitalized on the comparison. Senate Democrats, for instance, held a mock trial for the Kansas tax cuts in November 2017. Key Democratic local political figures, such as state representative Jim Ward, and other experts appeared before the committee and answered questions about what happened in the state. Chair of the Democratic Policy and Communications Committee, Debbie Stabenow, remarked that, "Today, we heard from experts including Kansans who lived through and fought back against a hurtful tax experiment that is very similar to today's Republican tax plan." Likewise, Democratic Senator Elizabeth Warren, who sat on the committee, claimed that what happened in Kansas is "exactly what the Republicans in Washington are trying to do now for the whole country." "We've seen the movie and we know how it ends," she concluded.

Republicans, on the other hand, have distanced themselves and the TCJA from the Kansas experiment. In the aftermath of the Kansas repeal, national Republican and anti-tax figures disarticulated any comparisons between Kansas and their new tax proposal. Efforts to disarticulate the comparison between Kansas and the Republican tax proposal feel particularly hard on congressional Republicans from Kansas. Two of the most high-profile Kansas Representative wrote opinion pieces claiming the TCJA was nothing like what happened in Kansas. Kansas Representative Lynn Jenkins, for instance, claimed in a press release that "While some may try to compare this tax reform framework to what was tried in Kansas, the truth is these two reforms could not be more different" (Jenkins 2017a). Further, she wrote in a *Fox News* opinion column, "Let me say this again: we are not zeroing out the pass-through rate as Kansas did" (Jenkins 2017b). Likewise, in the *Wall Street Journal*, Kansas Representative Ron Estes repeated many of the same claims related to oil and gas revenues and unrestrained spending to assure readers the tax cuts were not responsible for the state's fiscal crisis. "The truth is that Kansas' tax cuts simply aren't comparable with the GOP's pro-growth national plan because they aren't structured the same," he claims (Estes 2017). Alfredo Ortiz, the President and CEO of the Job Creators Network, echoed this point in another *Fox News* op-ed writing, "This isn't to say that Kansas' income tax cut could not have been designed better. Rather than eliminating the small-business tax rate entirely, policymakers should have simply cut it deeply, so it could still capture revenue from ensuing economic growth." Yet, Ortiz still affirms the overall policy, writing favorably that revenues in the state did start to increase after an initial dip. "Kansas demonstrates that even an imperfect tax cut can still raise incomes and revenues," he writes. "Imagine what a great one could do" (Ortiz 2017).

Other experts distanced themselves completely from the Kansas experiment in the wake of repeal. For instance, only two years after Grover Norquist declared that "Kansas is the model," he reversed course, saying, "Kansas is an outlier… If you're a Republican looking for a model, Kansas is not the model" (Berman 2017). And Arthur Laffer, after praising the "revolution in a cornfield," also reversed course, saying the state "sucks." "Look at it," he continued, Kansas "doesn't have beaches, it doesn't have palm trees. It doesn't really have a low tax, what is it now, 4.9%, something like that" (Rushe 2017). Instead of focusing on Kansas, tax cut supporters championed the experience of other states, primarily North Carolina (Norquist 2018; Williams and Wilterdink 2017:17). This was summarized succinctly in a column written by the Kansas and North Carolina directors for Americans for Prosperity. "By pairing tax cuts with fiscally responsible spending, North Carolina is showing the nation the right way to do tax reform," they wrote (Glendening and Gravely 2018).

Perhaps nowhere does the rehabilitation of the Kansas tax policy get as sustained a treatment as in KPI Director Dave Trabert's book, *What Was Really the Matter with the Kansas Tax Plan*. The subtitle of the book, *The Undoing of a Good Idea*, is telling in this case. The book was favorably reviewed by supply-side advocates such as Grover Norquist and Stephen Moore and copies of the book were sent to every legislator in the country (Smith 2018). This book built on the work that Trabert and the Kansas Policy Institute had been doing in the statehouse for years. The Heritage Foundation also held a symposium on the Kansas tax cuts organized around the release of Dave Trabert's book. This panel featured not only Trabert, but Stephen Moore and Grover Norquist. Moore, who introduced the panel, said at the start that the Kansas tax cuts became "a cause célèbre for the left that somehow everything had gone wrong in Kansas… This idea that this was some kind of a massive failure is simply a mythology."[358]

The Republican Party continues to embrace massive tax cuts and Kansas has, at least in the near-term, not been a deterrent. Yet the experience at the local level has diverged sharply from the national tax cut story (Prasad 2018:158-159). For many observers, the Kansas Republican Party's ties to the tax cut were a political liability. The Republican nominee for governor, Kris Kobach, began his campaign on June 8 – the day after the legislature voted to repeal the tax cuts – by promising to reinstate the Brownback tax cuts if elected (Lefler 2017). Kobach's opponent, Democrat Laura Kelly, was an outspoken critic of the tax plan and after Kelly's victory, many observers attributed Kobach's loss, in part, to his embrace of the tax cuts. Additionally, several Kansas Republicans made national headlines in December 2018 when four moderate Republican women announced they were leaving the Republican Party and joining the Democrats, in large part because of their experience with the tax cuts.[359]

An End to the Permanent Tax Revolt?

Joseph Schumpeter argued that the "full fruitfulness of [fiscal sociology] is seen particularly at those turning points… during which existing forms begin to die off and to change into something new, and which always involve a crisis of the old fiscal methods" (1991:101). It is my contention that we are at one of these turning points. And if Schumpeter is correct, the

[358] "What Was Really the Matter with the Kansas Tax Plan: The Undoing of a Good Idea," YouTube Video, 53m 29s, "The Heritage Foundation," April 11, 2018 (https://www.youtube.com/watch?time_continue=286&v=vBZtq3Wn-fw).
[359] The four Republicans who switched were Stephanie Clayton, Dinah Sykes, Barbara Bollier, and Joy Koesten.

policy reversal in Kansas may be indicative of a crisis of the "old fiscal methods" of neoliberalism and supply-side economics. In this dissertation, I have posed this question by asking whether Kansas represent an end to the permanent tax revolt. Fiscal sociologists argue that the conservative tax cut movement was born out of local economic and political concerns. Homeowners, dissatisfied with modernized assessment techniques, and exposed to the harsh realities of the housing market, mobilized against the property tax (Martin 2008). Entrepreneurial politicians seized on the dissatisfaction of property taxes to build a movement based around tax cutting more generally. A cohort of conservative leaders, forged in the Proposition 13 battle, have kept this policy alive against the odds (Martin 2008:133). Structurally, inflation provided an opportunity for supply-side tax cut ideas to be implemented (Krippner 2011). The Reagan tax cuts did not create the economic growth promised or hoped for, and instead ballooned the deficit. However, buoyed by foreign investment, Republicans learned the valuable political lesson that deficits did not matter.

Tax cuts became an ideal policy for lawmakers looking to appeal to an ambivalent electorate that professes to like small government, but loves the services government provides (Prasad 2018:214-215). As sociologist Monica Prasad notes, "when a democracy is not forced to choose between higher taxes and lower spending, it chooses neither" (2018:15). The case of Kansas, however, is one in which, structurally, people *were* forced to choose. Recent work in fiscal sociology and political science has noted that, contrary to political rhetoric, people generally hold pro-tax views (Pearson 2014; Williamson 2017). This research has contributed to this literature by illustrating that people not only hold pro-tax views, but will *act* on those views in certain contexts.

However, this choice came at an enormous cost. The state's economy and institutions suffered terribly over the course of the Brownback experiment. The Kansas tax cuts represent a neoliberal policy, in this case supply-side, taken to its most extreme. Political debates over the economy are characterized by "precisely how far efficiency may be allowed to govern social life" (Streeck 2012:8). In the case of Kansas, the encroachment of economic efficiency into social life ran up against its limits. This is not to say tax cuts have not gone too far in the past. On the heels of the Reaganomics revolution, the political economists Bennett Harrison and Barry Bluestone argued presciently that supply-side economics would fail because it violated tenets of human nature (1988:172). Humans, they suggest, tend to be risk-adverse and seek out stability. Reagan's tax cutting program would not succeed, they suggest, because "the revolution has created too much personal and family insecurity and too much social and economic instability" (1988:175). According to Harrison and Bluestone, "as more and more citizens become aware of the instability of the economy and their own growing insecurity within it, the door is opened – at least a crack – to a radical departure from both the standard policies of the Democrats and the supply-side nostrums of the conservatives" (1988:170). Of the prospect, Harrison and Bluestone were "cautiously optimistic" (1988:195). Ultimately, however, this optimism was misplaced (Peck 2002:203). Supply-side approaches to taxes and the economy have persisted despite repeated failures.

From the perspective of 1988, the Reagan revolution looked doomed. However, as Prasad argues, the politics of tax cutting succeeded in the long run because it failed in the short run (2018:147). "Because of that failure, Republicans came to learn over the next two decades that there was no longer a political or economic price to pay for creating deficits" (Prasad 2018:147). Debt has provided the illusion of stability, truncating the public's capacity to experience the tax state's contradictions. However, states are structurally incapable of running deficits and this constraint has run up against Republican efforts to continue cutting local taxes. After Reagan, the GOP did not immediately become the party of tax cuts. Republican state legislators and governors rediscovered tax cutting in the 1990s (Prasad 2018:150-155). And with renewed electoral success, the national Republican Party, led by Newt Gingrich, made tax cuts central to the party platform. Yet continuous tax cuts are unsustainable without a turn towards finance. Kansas exemplifies the structural limits to tax cut when capacity for deficits is eliminated. The Kansas tax cuts exposed the contradictions found in the tax state (O'Conner 1973), contradictions that at other levels are papered over through the expansion of debt (Streeck 2017; Krippner 2011). Nationally, institutional capacity for debt affords "delaying" this crisis (Streeck 2017). Kansas did not have this capacity. Had it, the tax cuts may well have continued for much longer.

However, there may be limits to how long Republicans can buy tax cuts with debt at the national level. Prior to the GOP's embrace of debt, Republicans were the party of balanced budgets (Prasad 2012). The GOP's focus on balanced budgets was still alive even after Reagan signed the ERTA. The Reagan tax cuts produce a dramatic increase in deficits which, in turn, produced "a moment of genuine fear within the administration and the country" (Prasad 2018:147). Yet, the deficits did not damage the GOP politically. As Dick Cheney remarked, "Reagan proved that deficits don't matter" (Martin 2008:133). With the most recent Republican tax cuts, however, the deficit has increased to record levels. In January 2019, the Congressional Budget Office (CBO) projected that the federal deficit would hit $1 trillion by 2022.[360] While there is academic debate about the extent to which deficits negatively impact economic growth,

[360] Congressional Budget Office. 2019. "The Budget and Economic Outlook: 2019-2029." Washington, DC (https://www.cbo.gov/system/files?file=2019-01/54918-Outlook.pdf).

what is indisputable is that debt reduces state capacity and continues to eat away at capacity into the future. Future policymakers must allocate more and more of the budget to interest payments, reducing the amount of discretionary money to spend on new policies or programs. In other words, debt is a threat to "fiscal democracy" (Streeck and Mertens 2013:27).

Highlighting the role debt plays in affording tax cuts nationally, this dissertation has lent supportive evidence to the delayed crisis of neoliberalism thesis (Streeck 2017). It is not that neoliberalism or supply-side tax cuts are an idea that overpowers opposing economic ideas. Rather, the contradictions of neoliberalism are genuinely too much to bear and cause social damage when they are implemented. Nationally (and globally), however, this crisis has effectively been delayed. But in a context where the institutional mechanisms for delaying the crisis are exhausted or otherwise nonexistent, as in Kansas, a countermovement for social protection can occur. The permanent tax revolt has not persisted by fiat, but rather has persisted due to institutional arrangements.

Fiscal Citizenship and the Social Limits of Neoliberalism

There have been two central arguments throughout this dissertation. Neoliberalism, as manifest through the mechanism of supply-side tax cuts, attempts to depoliticize the economy. I have argued the noticeable failure of the Kansas tax cuts, in essence, *repoliticized* the economy. However, depoliticization is somewhat of a misnomer (Krippner 2011:144-145). Polanyi's central insight is that economic issues are always embedded in social and political institutions and thus the economy is never really apolitical. However, *attempts* at depoliticizing, or disembedding, the economy do occur. In other words, neoliberal policymakers attempt to obfuscate the political aspect of neoliberalism equating "the economy" with neoliberal policies, a constructive process where social relations are re-embedded in market institutions. As Krippner explains, “depoliticization is accomplished not by fiat but through institutional innovation” (2011:145). The Brownback administration made multiple, ultimately futile, attempts at obfuscating the feedback effects of the policy in order to maintain the depoliticized façade of the policy. The contradiction between the administration’s rhetoric and the public’s experience of the tax cuts became unsustainable and created the institutional conditions for the rediscovery of the politicization of tax cuts.

Drawing on the historical institutionalist literature, the second central argument in this dissertation is that policies create citizens (Campbell 2003). In other words, policies symbolically create constituencies and reinforce those constituencies by allocating resources to them (Pierson 1994). Allocating resources creates a group invested in the continuation of that policy. Cases of policy feedback, however, tend to focus on cases where the policy successfully creates a constituency invested in the policy’s survival. I have argued that not only do policies create citizens, but that reversing a policy can also create citizens. My point echoes similar arguments about how various constituencies respond to a real or perceived policy threat (Martin 2013; Campbell 2003). Sociologist Isaac Martin (2013), for instance, argues that policy threats, defined as the loss of economic or personal security attributable to a real or anticipated change in policy, tend to provoke social movement responses. I argue the Brownback tax cuts were experienced by political and economic actors in Kansas as a policy threat and institutional mobilizations in response to the threat fostered a renewed sense of “fiscal citizenship” (Zelenak 2013). Market fundamentalism is about hollowing out citizenship more generally, and fiscal citizenship more specifically (see Somers 2008). But in threatening the stability of the state, the policy created citizens - not by allocating resources to a specific group, but through the response from various institutions and groups as they struggled to maintain stability. In becoming invested in repealing the policy, the policy fostered citizenship. These two currents – repoliticization and fiscal citizenship – are connected. The opposite is also true; depoliticization dulls citizenship.

That taxes and citizenship are so tightly connected is important. Sociologist Daniel Bell argued in 1976 for the need to establish a liberal public philosophy to justify taxation for financing the public sector, what Bell termed the public household (1996:220-282). However, 40 years later we still lack such a theory (Block 2011). For Daniel Bell, fiscal crisis extended into the realm of culture where Americans seemed resistant to embracing taxes. Recent work in fiscal sociology and political science has challenged this base view that Americans are fundamentally opposed to taxes (Williamson 2017; Pearson 2014; Martin and Nations 2018), yet America still lacks a public pro-tax story. A fundamentally important aspect of what happened in Kansas, however, is the development of a philosophy of the public household. But it was not a philosophy articulated by academics, politicians, or journalists. Instead, it was developed out of practice in response to the absence of taxes and the structural threat to the public sector. Kansas, of all places, may provide an unlikely blueprint for answering Daniel Bell's call in our contemporary period. Whether the Kansas tax repeal story can be repeated elsewhere is yet to be seen.

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