IN THE SUPREME COURT OF THE STATE OF KANSAS

LUKE GANNON, *et al*,
Plaintiffs,

v.

THE STATE OF KANSAS,
Defendant.

Case No. 15-113267-S

REPLY IN SUPPORT OF MOTION FOR STAY OF OPERATION AND ENFORCEMENT OF THE PANEL'S JUDGMENT

The Panel's "temporary restraining order" is the subject of the requested stay.

Plaintiff Districts argue the State admitted "during the May 2015 hearing that the funding scheme likely violates the adequacy component of Article 6 of the Kansas Constitution." This is not true as counsel for the Plaintiff Districts must know. Counsel for the State acknowledged that the present funding of CLASS in FY 2016 and 2017 likely does not satisfy the Panel's rulings concerning adequacy. But the Panel's adequacy rulings are wrong for several reasons which are subjects of this appeal.

Yet, the Panel stayed all aspects of its finding and judgments concerning Article 6 adequacy. Thus, Plaintiff Districts are engaged in a game of misdirection. The stakes are too great for this kind of argument.

The State Complied with *Gannon's* equity test.

This last school year the State provided and distributed to local districts approximately $138 million more in LOB and capital outlay aid in response to the Court's decision in *Gannon*. Exhibit 507, p. 2; L. 2014, ch. 93; 2015 House Substitute for Senate Bill 7, §§ 1(a) & 63(c)(2); 2015 Senate Substitute for HB 2353, §§8 & 63; 2015 House Substitute for SB 112, §20(b) & (d).

See also Opinion, at 47. This amount was *more than* the KSDE had estimated was necessary to comply with this Court's decision when the Legislature passed the legislation in 2014. More than what was anticipated when the Panel initially found the State had complied with the *Gannon* Article 6 equity mandate.

House Substitute for Senate Bill 7 ("SB 7"), as amended, does not change the fact that, through present local option budget and capital outlay state aid, districts have reasonably equal access to substantially similar educational opportunity through similar tax effort. SB 7 was an appropriate adjustment in light of circumstances, which artificially inflated state aid under old formulas. First, the AVPP of the hypothetical local district at the 81.2 percentile, used to calculate LOB state aid, spiked out of proportion with the general distribution of all districts' AVPP. Second, local districts opportunistically increased their capital outlay levies because of the property tax relief provided in 2014. These circumstances do not raise equity concerns.

The Panel ignored this and applied yet another bright-line test which holds constitutionally invalid *any* reduction in local option budget and capital outlay state aid from what had been budgeted, even if the budgeting was based upon flawed fiscal assumptions.

This Court emphasized: "We said in *U.S.D. No. 229* that a role of the courts in resolving an issue under Article 6, Section 6(b) is to determine whether the State has provided 'suitable financing,' and 'not whether the level of finance is optimal or the best policy.' 256 Kan. at 254." *Gannon v. State*, 298 Kan. 1107, 1173, 1149-50, 319 P.3d 1196 (2014). The Court reaffirmed: "Equity [is] not necessarily the equivalent of equality: '*Equity does not require the legislature to provide equal funding for each student or school district*'" and "wealth-based disparities should

not be measured against such mathematically precise standards." *Id.* at 1173, 1180 (emphasis added). The Panel's equity holding ignores this reasoning.

The Court articulated the equity test: "Our test for equity in K-12 public education finance is clarified and succinctly stated as follows: School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort." *Id.* at 1175. The Panel gave lip-service to the test. No evidence was presented to the Panel that any school district, including the four plaintiffs, is denied "reasonably similar access to substantially similar educational opportunity through similar tax effort" because of SB 7, as amended.

This Court stayed the Panel's judgment for the duration of the last appeal, with good reasons. Ultimately, the Panel's Article 6 judgments were affirmed in part, its remedies were not. There is even more reason to stay the Panel's decision pending this appeal.

Plaintiff Districts ignore the damage and unintended consequences of the Panel's "temporary restraining order" if it is not stayed.

The violation of separation of powers should not be ignored. Plaintiff Districts offer no good reason that this concern should not justify the requested stay. But Plaintiff Districts completely ignore that the "temporary restraining order" will result in reduction in 2016-17 funding for K-12 operational costs; reduction in funding to some districts; and instability for local districts' FY 2016 budgeting. Further, the biggest risk is that all K-12 Funding will be lost because the Panel has found SDFQPA and CLASS are both unconstitutional, as it used a "temporary restraining order" to rewrite parts of SB 7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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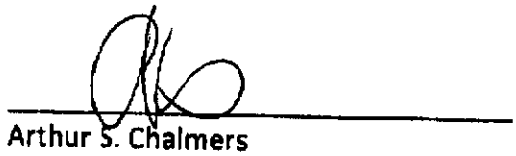

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