

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 113,267

LUKE GANNON, by his next friends and guardians, *et al.*,
Appellees,

v.

STATE OF KANSAS,
Appellant.

ORDER

Whether the legislature has met its duty, on behalf of the State, under Article 6 of the Kansas Constitution and has complied with this court's 2014 and 2016 decisions on public school finance remains in dispute in this appeal.

On February 11, 2016, this court issued its decision affirming in part and reversing in part the decision of the three-judge district court panel. See *Gannon v. State*, 303 Kan. 682, __ P.3d. __, 2016 WL 540725 (2016) (*Gannon II*).

Highly summarized, our decision provided in relevant part:

1. Article 6, § 6(b) of the Kansas Constitution imposes a duty on the legislature to "make suitable provision for finance of the educational interests of the state."
2. Article 6 contains both adequacy and equity requirements. In the context of this case, it necessitates that the legislature provide enough funds to ensure public school students receive a constitutionally adequate education and the funds' distribution does not result in unreasonable wealth-based disparities

among districts. See *Gannon v. State*, 298 Kan. 1107, 1163, 319 P.3d 1196 (2014) (*Gannon I*).

3. In *Gannon I* we affirmed the panel's 2013 holding that the State had failed to meet the constitutional equity requirement when it eliminated capital outlay state aid payments and reduced supplemental general state aid payments—to which school districts were statutorily entitled—beginning in fiscal year 2010. And we ordered the panel to ensure these inequities were cured on remand after it applied our more clearly defined equity standard.
4. On remand, the panel made various rulings, including a holding that despite recent legislation, the State failed to comply with our directive on equity articulated in *Gannon I*.
5. On appeal, we held in *Gannon II* that, among other things, the panel properly concluded the State failed to meet its burden in this remedial phase of the litigation to show it cured the inequities confirmed to exist in *Gannon I*: for either capital outlay or supplemental general state aid. En route to this holding, in *Gannon II* we also reiterated the sworn duty of all courts to review legislation for compliance with the constitution of the people of Kansas and confirmed their power to enforce their judicial holdings by imposing remedies.
6. Despite our affirmation in *Gannon II* of the panel's holdings that the State failed to cure the confirmed inequities, we declined to affirm its ordered remedies because they were premature.
7. Accordingly, on February 11, 2016, we stayed the issuance of our mandate to give the legislature—at the State's request—yet another, and substantial,

opportunity to craft a constitutionally suitable solution and minimize the threat of disruptions in funding for public education. But we cautioned that any funding system the legislature enacted must be demonstrated to be capable of meeting the equity requirements of Article 6—while not running afoul of the Article's adequacy requirement.

8. In further explanation of this temporary stay, we specifically held:

"In short, if by the close of fiscal year 2016, ending June 30, the State is unable to satisfactorily demonstrate to this court that the legislature has complied with the will of the people as expressed in Article 6 of their constitution through additional remedial legislation or otherwise, then a lifting of the stay of today's mandate will mean no constitutionally valid school finance system exists through which funds for fiscal year 2017 can lawfully be raised, distributed, or spent. . . . Without a constitutionally equitable school finance system, the schools in Kansas will be unable to operate beyond June 30. And because an unconstitutional system is invalid, efforts to implement it can be enjoined. . . . Accordingly, the legislature's chosen path during the 2016 session will ultimately determine whether Kansas students will be treated fairly and the schoolhouse doors will be open to them in August for the beginning of the 2016-2017 school year." 303 Kan. at 743-45.

9. In addition to staying the issuance of our mandate, we retained jurisdiction over the State's appeal and further stayed the adequacy portion of the appeal.

The 2016 legislature timely responded to our February 11 decision in *Gannon II*. Senate Substitute for H.B. 2655 was passed by both legislative chambers on March 24 and sent to the governor. The governor signed the bill on April 7.

Also on April 7 the appellant filed a "Notice of Legislative Cure" requesting, among other things, an expedited schedule if this court desired briefing, oral argument, or both.

In view of the urgency and impact of this case, the parties are hereby ordered to file briefs with this court on the following expedited schedule:

1. Appellant is ordered to serve and file a brief in response to this order no later than 5:00 p.m. on Monday, April 18, 2016;
2. Appellees' response brief to the appellant's brief shall be filed no later than 10 days after the filing of the appellant's response, but in no event beyond 5:00 p.m. on Thursday, April 28, 2016, if the State waits until April 18 to file its brief;
3. The briefs shall not exceed 50 pages exclusive of cover, table of contents, appendix, and certificate of service. The format of the briefs shall conform to Supreme Court Rule 6.07 (2015 Kan. Ct. R. Annot. 51), and briefs shall be filed in accordance with Supreme Court Rule 6.09(a) (2015 Kan. Ct. R. Annot. 53); and
4. Requests to exceed the page limits and requests for extension of time to file briefs will not be considered.

The parties' briefs should address whether the new legislation has complied with our *Gannon II* decision for curing the inequities we affirmed were present. Per *Gannon II*, those burdens during this remedial phase remain with the State. The briefs also should address the remedial action to be ordered, and upon what date it should take effect, if the court were to conclude compliance has not been achieved.

The parties are ordered to appear at 9:00 a.m. on Tuesday, May 10, 2016, to show cause why the court should or should not rule that the legislation complies with *Gannon II*'s equity ruling regarding Article 6. Because of the burden placed on the State, it will argue first and will be allowed 60 minutes for oral argument. It may reserve a portion of its time for rebuttal. Appellees will also be allowed 60 minutes for oral argument. This oral argument setting is firm. Motions to change the date and time will not be considered.

Our order of June 30, 2015, staying the panel's order regarding adequacy remains in effect until further determination by this court.

BY ORDER OF THE COURT this 8th day of April, 2016.

FOR THE COURT,

A handwritten signature in cursive script, appearing to read 'L. R. Nuss', written over a horizontal line.

Lawton R. Nuss
Chief Justice