

NO. 113,267

IN THE SUPREME COURT OF THE STATE OF KANSAS

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

Plaintiffs/Appellees,

vs.

STATE OF KANSAS, *et al.*,

Defendants/Appellants.

RESPONSE BRIEF OF APPELLEES

Appeal from the District Court of Shawnee County, Kansas
Honorable Judges Franklin R. Theis, Robert J. Fleming, and Jack L. Burr
Case No. 10-c-1569

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“To avoid deciding the case because of “legislative discretion,” “legislative function,” etc. would be a denigration of our own constitutional duty. To allow the General Assembly (or, in point of fact, the Executive) to decide whether its actions are constitutional is
literally unthinkable.”

Montoy v. State of Kansas, 279 Kan. 817, 828 (2005) (“Montoy IV”)

NATURE OF THE CASE

When the State and the Legislature refuse to comply with the constitutional obligations imposed upon them by Article 6, does this Court have any authority to remedy the resulting unconstitutionality? The State contends “no.” But, based on this Court’s precedent and the separation of powers doctrine, the answer is clearly “yes.” The thrust of the State’s briefing is that this Court should – in the face of the State’s repeated failures to adopt a school finance scheme that comports with this Court’s equity test – do nothing. This Court has already rejected these exact arguments in a school finance lawsuit when “a separation of powers issue” arose “during the remedial phase.” *Montoy v. State of Kansas*, 279 Kan. 817, 829 (2005) (“Montoy IV”). There, this Court set forth the parameters for this type of review, stating:

Judicial monitoring in the remedial phase can help check political process defects and ensure that meaningful relief effectuates the court’s decision.

Thus, when these defects lead to a continued constitutional violation, judicial action is entirely consistent with the separation of powers principles and the judicial role. Although state constitutions may commit educational matters to the legislative and executive branches, if these branches fail to fulfill such duties in a constitutional manner, ‘the Court too must accept its continuing constitutional responsibility . . . for overview . . . of compliance with the constitutional imperative.’

“Nor should doubts about the court’s equitable power to spur legislative action or to reject deficient legislation impede judicious over-sight. An active judicial role in monitoring remedy formulation is well-rooted in the courts’ equitable powers. **As long as such power is exercised only after legislative noncompliance, it is entirely appropriate.**”

Id. at 828-29 (internal citations omitted; bold emphasis added).

When the State adopted House Substitute for Senate Bill 7 (“S.B. 7”), it adopted legislation that failed this Court’s equity test. If this Court does not review the constitutionality of S.B. 7, it will “offend the separation of powers doctrine.” *Montoy IV*, 279 Kan. at 822.

As this Court has already stated:

[W]e do not quarrel with the legislature's authority. We simply recognize that the final decision as to the constitutionality of legislation rests exclusively with the courts. Although the balance of power may be delicate, ever since *Marbury v. Madison*, it has been settled that the judiciary's sworn duty includes judicial review of legislation for constitutional infirmity. We are not at liberty to abdicate our own constitutional duty.

Again, like arguments have been raised in other state courts. Other state courts consistently reaffirm their authority, indeed their duty, to engage in judicial review and, when necessary, compel the legislative and executive branches to conform their actions to that which the constitution requires.

For example, in *Lake View Sch. Dist. no. 25 v. Huckabee*, **the court reviewed legislation passed after its 1994 determination that the Arkansas school financing system violated the education provisions of that state's constitution.** The Arkansas Supreme Court stated:

“This court's refusal to review school funding under our state constitution would be a complete abrogation of our judicial responsibility and would work a severe disservice to the people of this state. **We refuse to close our eyes or turn a deaf ear to claims of a dereliction of duty in the field of education**”

Id. at 826-28 (internal citations omitted; bold emphasis added)

This Court has previously determined that the State was not in compliance with its Article 6 constitutional obligations because the funding distributed for purposes of funding K-12 public education was not distributed equitably. Therefore, this Court remanded the matter to the three-judge panel (the “Panel”) to oversee the State's adoption of a remedy for those inequities. **The State refuses to comply with its constitutional obligations and refuses to equitably fund Kansas public education in a manner that complies with the Kansas Constitution.** Justice *requires* this Court take immediate action to stop these on-going efforts by the State to dodge its constitutional obligations.

STATEMENT OF THE FACTS

Plaintiffs generally dispute the State's Statement of Facts, which are largely irrelevant and differ significantly from the findings of fact entered by the Panel. Those findings are entitled to deference on appeal. So long as the Panel's findings are supported by substantial competent evidence and support the Panel's conclusions of law, those findings should stand. *Gannon*, 298 Kan. 1107, 1182 (2014). This Court should not reweigh the evidence or assess the credibility of witnesses. *State v. Reiss*, 299 Kan. 291, 296 (2014). And, it should disregard any conflicting evidence or other inferences that might be drawn from the evidence. *Gannon*, 298 Kan. at 1182. Specific disputes regarding the State's Statement of the Facts are set forth here:

A. Relying on KSDE Estimates, the State Failed to Fully Fund the Statutory Equalization Mechanisms

The State contends that it increased capital outlay and LOB aid by \$140 million in response to *Gannon*. This is misleading. The State did not increase the amount of equalization aid to which the districts were entitled – rather, the State *finally* started paying districts the equalization aid to which they were already statutorily-entitled. The State claims credit for providing “more” equalization aid than it did in FY2014. *See e.g.*, State's Brief, at p. 35. *Of course* the State paid more equalization aid in FY2015 than it did in previous years: the State's outright failure to pay the equalization aid was what originally led to this Court declaring that the State was in violation of the Kansas Constitution. *Gannon*, 298 Kan. at 1197. The State cannot take away aid from districts, give them back only a portion of it, and then claim that the districts are better off than they originally were. But, that is exactly what the State is attempting to do.

Even the State's payment of "more" equalization aid in FY2015 falls short; despite representing to the Panel that it would fully fund equalization aid, the State paid only a portion of the equalization aid that was due to the districts by operation of then-existing statutes. The State now attempts to justify this pro-ration of the equalization aid because the pro-rated amount "roughly aligns" with the KSDE's estimates of what H.B. 2506 would cost the State. *See, e.g.,* State's Brief, at p. 11. Factually, the State's position on appeal ignores the following facts:

1. The State was always aware that the KSDE estimates were just that – estimates.

The State suggests that it was not immediately apparent that "the formulas in place [*i.e.*, H.B. 2506] would exceed the original KSDE estimates." State's Brief, at p. 5. The State was well aware – from the time it enacted H.B. 2506 – that the legislation was based on estimates and it was possible that the actual amounts of equalization funding due to districts would exceed those estimates. Plaintiffs certainly were aware of this and repeatedly voiced their concerns that, because H.B. 2506 was based on estimates, the State would not fully fund the bill. *See, e.g.,* R.Vol. 20, pp. 2540-2541; R.Vol. 25, pp. 3233-3276.

On June 11, 2014, the Panel held a hearing to determine whether the State's adoption of H.B. 2506 complied with the Mandate. R.Vol. 140, pp. 7-8 (FOF ¶¶8-9). During that hearing, Plaintiffs again raised their concerns regarding H.B. 2506's reliance on estimates with the Panel and with the State. R.Vol.45, pp. 5:18-6:6 (stating "the capital outlay equalization and the LOB equalization in House Bill 2506 were based on estimates and as we have seen since the passage of the legislation, those estimates may not be all that accurate"). To allow the Panel to address

the possibility that H.B. 2506 would not be fully funded, Plaintiffs asked the Panel to retain jurisdiction over the equity piece of this litigation, stating:

In the spirit of cooperation, Mr. Chalmers was talking about, it probably makes sense to cooperate with the legislature and not dismiss the case but trust and verify and suggest that the equity piece, if you decide nothing more should be done, follow what the supreme court says and say nothing more should be done. But don't dismiss it. What's the hurry? Why are they so anxious to get a dismissal of the equity piece? Let's cooperate with the legislature and see what they – if they fulfill what they said they'd do. That's cooperation. I don't think we need to dismiss the case.

Id. at pp. 28:19-29:5.

At that hearing, the State repeated its assurances that it intended to comply with the Mandate and *that the State recognized that the formula was based on estimates*. The State's counsel advised the Panel, as follows:

Now, what happened here as it gets back to the legislature, the legislature has *Gannon*, it says fully fund. It goes to its agency, says how much does that mean. We can't know exactly, but tell us what that means, and we'll do that. We won't fund short of it, **we'll go the full amount**.

I think what the legislature deserves is a pat on the back. I would hope that we are not into this idea that somehow we can't trust the legislature, we need to monitor them to the bitter end. That is unfair. . . .

But there's a punch line to all of this on the dismissal issue and on the idea that, well, we are dealing with an estimate here So if we get to the end of the year and the 109 ends up being 108, then that money is shored back to the system. If the 109 ends up being 110, then in next year's appropriations, they just add a million on and it works in. **So the way the system is set up, although we have an estimate, there's a way to true up the factor at the end.**

So we have compliance with what the mandate has instructed, full compliance by all recognition. There is no evidence to suggest anything opposite and a way to make sure we could have it true up at the end.

R.Vol.45, pp. 25:21-27:6 (emphasis added); R.Vol. 140, pp. 6-7 (FOF ¶8).

The State recognized, from the beginning, “that the Kansas State Department of Education’s memorandum was but an estimate of the dollar revenues to be produced by the formula.” R.Vol. 136, p. 1443. Any suggestion otherwise should be disregarded by this Court.

Moreover, the State’s reliance on estimates to fund H.B. 2506 is entirely consistent with how the State historically has funded public education in Kansas. Because of the SDFQPA’s reliance on enrollment to determine a district’s funding, the estimates are not always entirely accurate. R.Vol. 138, p.142:1-14. And, this certainly would not have been the first time that the Legislature had “made an appropriation based on an estimate” and later “learned that the estimate was inconsistent with the reality.” *Id.* Dale Dennis testified that this had happened “on numerous occasions.” *Id.* In the past, however, when faced with incorrect estimates, the State reacted appropriately, “by increasing the amount of its aid.” *Id.* This time, and with no credible explanation, the State refused to “true up” the amounts at the end of the year as it promised the Panel it would. R.Vol.45, pp. 25:21-27:6. The State should not be able to escape its constitutional obligations merely because the school finance legislation that it adopted is based on estimates, which the State was entirely aware could require additional funding above and beyond what the KSDE initially estimated.

2. Funding only the KSDE estimates did not fully fund the equalization statutes.

Regardless of whether S.B. 7 meets the Court’s equity test (it does not), there is no dispute that S.B. 7 did not fully fund K.S.A. 2013 Supp. 72-8814 or K.S.A. 72-6405 *et seq.* for FY2015. Therefore, the State was not in compliance with “Option A” of the Court’s Mandate, which provided a “safe harbor” for the State if it fully funded the equalization statutes. *Gannon*, 298 Kan. at 1198-99; Pls’ Opening Brief, pp. 36-37.

S.B. 7 did not fully fund the capital outlay provision contemplated in K.S.A. 2013 Supp. 72-8814. S.B. 7 recalculated the capital outlay equalization aid that school districts were entitled to for FY15 at a lower rate and then locked that lower amount into place for FY16-17. R.Vol. 140, p.12 (FOF ¶27); R.Vol. 131, at Pls' Ex. 626; R.Vol. 135, p.1413 (admitting Ex. 626); R.Vol.136, pp.1446-47. While the Legislature initially feigned an intent to fully fund the capital outlay equalization by way of H.B. 2506, in 2015 "it backtracked." R.Vol.136, p.1452; *see also* R.Vol. 140, pp. 5-8, 12-13 (FOF ¶¶5-14, 26-33). If the State had not backtracked and had fully funded K.S.A. 2013 Supp. 72-8814's capital outlay equalization provisions (as promised in H.B. 2506), Kansas school districts would have received \$45,629,725 in capital outlay state aid. Instead, under S.B. 7, Kansas school districts only received \$27,302,502. R.Vol. 140, p.12 (FOF ¶¶28-29). The State was \$18,327,223 short of fully funding K.S.A. 2013 Supp. 72-8814's capital outlay equalization provision. *Id.* (FOF ¶30).

S.B. 7 did not fully fund the supplemental general state aid provision contemplated in K.S.A. 72-6405 et seq. S.B. 7 recalculated the supplemental general state aid that school districts were entitled to for FY15 and then locked that equalization funding amount into place for FY16-17. R.Vol. 140, pp. 20-21 (FOF ¶53); R.Vol. 131, at Pls' Ex. 627; R.Vol. 135, p.1413 (admitting Ex. 627). If the State had fully funded supplemental general state aid (as contemplated in K.S.A. 72-6405 et seq. and as required by H.B. 2506), Kansas school districts would have been entitled to \$483,829,732 in supplemental general state aid. R.Vol. 140, p.21 (FOF ¶¶54-56). Instead, by operation of S.B. 7, Kansas school districts will only receive \$448,422,920 in supplemental general state aid: a statewide *decrease* of \$35,406,812. *Id.*

In the world of civil litigation, the State's actions would give rise to a claim for promissory estoppel. The State promised school districts a certain level of funding, allowed them to prepare their budgets and rely on that promise to their detriment, and then – at the last minute – switched out the full funding of equalization aid for a prorated amount. As a point of reference, this Court has already determined that when the State, with no cost-based justification, prorated the equalization aid paid to school districts in FY2011 to provide only 91.7% of the supplemental general state aid that was due under the formula, the State's actions were unconstitutional. *Gannon*, 298 Kan. at 1183. Here, the State took nearly identical action, and with no cost-based justification, it only paid “about 92.7% of the dollars which would have otherwise been due had the then-existing FY2015 formula been followed.” R.Vol. 136, p.1466. Supplemental general state aid was not fully funded.

3. Whether S.B. 7 “roughly aligns” with the KSDE estimates does not negate the fact that the State has, with no cost-based justification, again pro-rated equalization aid; an act condemned by this Court.

The State's entire brief is built on the following factual fallacy: that the adoption of S.B. 7 comported with this Court's Mandate because “[t]he amounts of equalization aid under SB 7 parallel and exceed the amounts KSDE estimated would be necessary to comply with *Gannon*.” State's Brief, p.1. But, this is no justification for why the State has, again, prorated equalization aid – not based on a reduced need for equalization – but rather, based on “the amount of funds” that the Legislature “desired to be made available.” *Gannon*, 298 Kan. at 1185. This Court has already condemned that act. Specifically, this Court instructed the State that it could not, arbitrarily and with no cost-based justification, prorate the equalization aid to only provide 91.7% of the supplemental general state aid due. *Gannon*, 298 Kan. at 1183.

So, in response, what did the State do? **It prorated the equalization aid to only provide 92.7% of the supplemental general state aid due.** R.Vol. 136, p.1466. The State's arguments are nothing more than an excuse for why it did exactly what this Court has already told it not to do and should be disregarded.

B. The State's Vague, Generalized Statements that S.B. 7 Increased Funding to School Districts Are False

The State vaguely suggests that funding will increase under the operation of S.B. 7. *See* State's Brief, at p. 7. This is demonstrably false. No school district will receive *more* money under the operation of S.B. 7. As Dale Dennis testified, the funds "now bundled for delivery" to the school districts "will be less." R.Vol.136, p.1430. Any insistence by the State that funding has increased is inaccurate and misleading. *See, e.g.*, R.Vol. 140, pp. 28-29 (FOF ¶¶81-82); Pls' Opening Brief, pp. 20-21.

This assertion is also inconsistent with the State's admissions that there was a "difference between the local districts' budgeted FY2015 LOB and the revenue available in FY2015." State's Brief, at pp. 25-26. The State makes no attempt to reconcile these two very different positions. In any case, the funding available to school districts decreased under S.B. 7.

And, those decreases should not be dismissed as "small" or "marginal" as the State contends. When the State was only providing 91.7% of the supplemental general state aid that was due under the formula, this Court intervened because the State's actions were unconstitutional. *Gannon*, 298 Kan. at 1183. S.B. 7 (and its associated decreases in funding) are to be judged as *remedies* for the State's long-standing failure to sufficiently fund the equalization mechanisms in the SDFQPA. But, S.B. 7 puts the Plaintiffs right back where they started – school districts are now only receiving a prorated amount of the equalization aid that

was previously set forth in the applicable statutes. S.B. 7 cures nothing; it returns the school districts to a prorated equalization system that this Court has already found unconstitutional. Thus, the absolute value of the reduction of the equalization funds provided by the State due to the operation of S.B. 7 simply misses the point; this Court required the State to “sufficiently reduce[] the unreasonable, wealth-based disparity so the disparity then becomes constitutionally acceptable” *Gannon*, 298 Kan. at 1181, 1189-99. S.B. 7 does not achieve that reduction, and this Court should ignore the State’s attempt to divert attention from this fact.

C. Any Levy Increases By the School Districts Were Logical, Anticipated, and Authorized by the Statutory Language

The State complains, in its brief, that the school districts “opportunistically increased their capital outlay levies.” State’s Brief, at p. 2. Given the tone of its briefing, it appears that the State finds something improper about school districts increasing their capital outlay mill levy in FY2015. State’s Brief, at p. 6. Yet, the purpose of adopting H.B. 2506 was, in part, to *fully fund* the capital outlay statute to operate as contemplated in K.S.A. 2013 Supp. 72-8814. As contemplated in K.S.A. 2013 Supp. 72-8814, school districts were able to levy up to 8 mills for purposes of capital outlay. R.Vol. 46, p.64. No school district improperly levied more than 8 mills pursuant to the capital outlay statute and the State does not make that claim. State’s Brief, at p.6.

It is true that because the State was finally providing the statutory equalization aid, the districts were able to increase the funding available to meet capital outlay needs without putting an additional burden on local taxpayers. This is the original purpose of equalization aid. And, it was an obvious result given the State’s previous decision to withhold equalization aid. The State has effectively opened a cold bottle of water, placed it in front of the dehydrated school

districts, and acted surprised when they drank. School districts should not be punished because the State chose to fully fund the capital outlay statute – which, as the State repeatedly points out, was just one way that it could potentially comply with the Court’s Mandate – without considering the very likely possibility that school districts would increase their mill levies.

D. Cash Balances Are Not a Substitute for a Constitutionally-Funded School Finance System

The State defends the unconstitutionality of S.B. 7 by arguing that local school districts “could have absorbed the differences between the local districts’ budgeted FY2015 LOB revenue and the revenue available under SB 7 by drawing against the cash balances in their LOB fund cash reserves.” State’s Brief, at p. 26. Again, the State is confusing the adequacy of the total money available to school districts with the equity of the distribution of that money. Moreover, the State, in making these arguments, is abdicating its constitutional responsibility, as the Panel has repeatedly pointed out:

The State consistently points to USDs contingency reserve funds as widely available. However, as we have pointed out in previous *Opinions*, the source of these contingency reserve funds comes principally out of operations funds, which have been, and are, inadequate to the task overall. Article 6 of the Kansas Constitution places the responsibility for operating and maintaining Kansas schools with local school boards to be overseen by the Kansas State Board of Education. The legislature is principally directed to assure the necessary funding for K-12 education. As Dr. Lane of USD 500 testified, its costs over a million dollars a day to run that school district, its contingency reserves holding approximately a 30 day supply of cash. To assert that local school boards should abandon their constitutional duties to K-12 students by failing to hedge the risks inherent in inadequate funding through maintaining reserve funds so as to continue their constitutional duties as long as possible in the face of the failure of others to fulfill theirs is a grossly misplaced proposition. If funding is inadequate to begin with, fund flexibility is merely a question of which funds should be used first, not which funds can be used better.

R.Vol. 136, pp. 1436-1437.

Cash reserves exist for legitimate, fiscally responsible reasons and are a necessary part of cash management for school districts. R.Vol. 140, pp. 10-11 (FOF ¶¶22-23). Cash balances are not properly considered as “offsets” for the disequalizing effects of S.B. 7 and have no equalizing effect on the amount of tax effort districts must expend in order to provide equal access to substantially similar educational opportunity. *Id.* Like the Panel, this Court should not require the districts to cannibalize cash balances in order to make up for cuts to equalization aid made by S.B. 7. *Id.*

This is especially true in light of the State’s continued, repeated efforts to reduce the overall funding available to Kansas school districts. School district administrators are facing constantly shrinking funds to educate an ever-growing number of increasingly-harder-to-educate students. Kansas school districts have faced over \$511 million in cuts annually since FY2009. R.Vol. 14, pp. 1788-89; R.Vol. 90, p. 5486. They are now facing a three-year freeze in funding that eliminates any cost-based system that recognizes the differing costs of students, further compounding those decreased funds. In the face of unstable and ever-decreasing state funding, cash balances are even more important. The State should not be able to require school districts to exhaust their cash reserves just because the State does not want to comply with its constitutional obligation.

E. The Legislature Intentionally Adopted S.B. 7 to Fund the Amount of Funds that it Desired to be Made Available

The State knowingly and intentionally adopted S.B. 7 to provide less than full funding for the equalization mechanisms. R.Vol. 140, pp. 9-10 (FOF ¶19). The State admits that “the Legislature *did not want* the districts to receive any more capital outlay and LOB state aid in FY2015 beyond the approximate \$4 million the Legislature appropriated in S.B. 7.” R.Vol.130,

p.76 (emphasis added). Based on this admission, the Panel entered a factual finding that the State’s intentions in adoption of S.B. 7 were as the State described. R.Vol. 140, pp. 9-10 (FOF ¶19). That factual finding should not be disturbed.

Much like prior legislative actions condemned by this Court, the adoption of S.B. 7 “reflects no other reason than a choice based on the amount of funds desired to be made available.” *Gannon*, 298 Kan. at 1185. Any other alleged motivations set forth by the State should be disregarded. *Id.* at 1182. For instance, the State’s feigned reliance on the “precipitous increase in the 81.2 percentile AVPP” should not be accepted by this Court as a valid explanation for the adoption of S.B. 7. Rather, the facts clearly demonstrate that the State should expect an annual “spike” in AVPPs among Kansas school districts. The chart below demonstrates the historical increase in the median AVPP that has consistently occurred since at least FY2009:

Year	Median AVPP	% Change from Prior Year	% Change from 2009-10	81.2 Percentile AVPP	% Change from Prior Year	% Change from 2009-10
2009-10	\$57,721			\$99,359		
2010-11	\$58,941	2%	2%	\$104,228	5%	5%
2011-12	\$61,287	4%	6%	\$110,295	6%	11%
2012-13	\$64,588	5%	12%	\$109,257	-1%	10%
2013-14	\$66,391	3%	15%	\$116,700	7%	17%
2014-15	\$68,634	3%	19%	\$123,689	6%	24%

State’s Brief, at Appx. B, p. 6; R.Vol. 143, pp. 1896-1902 (State’s Ex. 3009); Appendix A: KSDE Assessed Valuation Report for 2014-15.¹

¹ This public information is available at http://www.ksde.org/Portals/0/School%20Finance/reports_and_publications/AssessedVal/assessedvalreport2014.xlsx.

Nor should this Court be persuaded that the “spike” does not affect equity. As the chart demonstrates, the AVPP increases even more steadily for the wealthiest districts. While the median AVPP has increased 19% since 2009-10, the wealthiest districts (as measured by AVPP) had their AVPP increase 24% in the same time period. This is not a new trend. In December of 2003, Judge Bullock drew a similar conclusion after analyzing data from 1998 to 2002:

It is also important to note that from 1998 to 2002, the wealthiest school district in the State had its assessed valuation, or “capital outlay purchasing power,” increase 108 percent while the poorest district in the State actually lost 30 percent in valuation over the same time period. The statewide median during those five years showed an increase of 18 percent. The inescapable factual conclusion is that those who had the capital outlay advantage of high purchasing power in the first place have had that inequitable advantage increase over the past five years.

Montoy v. State, No. 99-C-1738, 2003 WL 22902693, *35 (Kan. Dist. Ct. Dec. 2, 2003).

Over the past five years, the purchasing power of the wealthiest districts has increased at a faster rate than the purchasing power of the property-poor school districts. Yet, the State would have this Court believe that there is no evidence that any district needed the equalization aid expected under H.B. 2506. State’s Brief, at p. 28. Such an argument ignores the realities of the wealth disparities between districts and the purpose of equalization aid. The State knew AVPPs would increase when it adopted H.B. 2506 – and it knew those AVPPs would increase in an inequitable manner, boosting the purchasing power of those districts that needed more purchasing power the least. Knowing all of this, the State chose to adopt S.B. 7, which only reduced the funding available to the most vulnerable school districts. R.Vol. 137, pp. 1452-55.

It is appropriate for this Court to take judicial notice of this information pursuant to K.S.A. 60-409.

Likewise, this Court should not be persuaded that the State adopted S.B. 7 because a *single*, wealthy district (Blue Valley) was receiving equalization aid. State’s Brief, at p. 10. If it is so “curious” that Blue Valley – which is, as the State admitted, “no doubt the wealthiest in the state by every measure but AVPP” – receives LOB aid *and* the State somehow thought that was an inappropriate result, why would the State have adopted S.B. 7 which still provided Blue Valley with \$2,400,352 in LOB aid in FY2015? The State’s argument that it changed the entire school finance scheme because a single, wealthy district received LOB aid is not credible.

None of the State’s alleged motivations negate the unconstitutionality of S.B. 7. And, none of them are credible. As this Panel found and as the State admitted, the Legislature again made decisions regarding the funding of K-12 education based solely on the amount of funds desired to be made available. This is impermissible. *See Gannon*, 298 Kan. at 1185.

ARGUMENTS AND AUTHORITIES

A. The State Improperly Attempts to Shift Their Burden to Plaintiffs

The State contends that “the question” in this appeal is “whether any remaining wealth-based disparities are ‘unreasonable.’” State’s Brief, at p. 16. Not only does the State improperly attempt to morph the equity test², it also assumes that the State is entitled to a presumption of constitutionality. It is not.

This Court has thoroughly assessed which party has the burden of proof in a matter in which “a challenge has been made to the constitutionality of school finance systems and a separation of powers issue has arisen during the remedial phase.” *Montoy IV*, 279 Kan. at 828.

² The test is not whether wealth-based disparities, which the State admits remain, are “unreasonable.” The test, as set forth by this Court, is whether districts have reasonably equal access to substantially similar educational opportunity through similar tax effort. *See e.g.* Brief, at p. 19 (identifying the equity test as “the correct legal standard”).

The *Montoy* litigation, and especially this Court’s opinion in *Montoy IV*, is especially instructive here. In *Montoy*, this Court entered an opinion that “the legislature had failed to make suitable provision for finance of the public school system and, thus, had failed to meet the burden imposed by Article 6, § 6 of the Kansas Constitution.” *Id.* at 818-19 (citing *Montoy v. State*, 278 Kan. 769 (“Montoy II”)). Following that finding, this Court “stayed the issuance of the mandate to allow the legislature a reasonable time to correct the constitutional infirmity in the then existing financing formula.” *Id.* at 818-19. The Legislature then adopted 2005 House Bill 2247 (“H.B. 2247”). In *Montoy IV*, this Court reviewed H.B. 2247 “to determine whether it complie[d] with [the] January 3, 2005, opinion and [brought] the state’s school financing formula into compliance with Article 6, § 6 of the Kansas Constitution.” *Id.* Procedurally, this case is nearly identical to *Montoy IV*.

In *Montoy IV*, the State had to defend its purported fix (H.B. 2247), and in doing so, argued that it “should enjoy a presumption of constitutionality and the burden of proof should be upon the plaintiffs to demonstrate otherwise.” *Id.* at 822-23. In response to that argument, this Court stated:

The State’s next argument . . . has already been rejected. While this presumption normally applies to initial review of statutes, in this case we have already determined the financing formula does not comply with Article 6, § 6. H.B. 2247 was passed because this court ordered remedial action. **The State now presents its remedy for our determination of whether it complies with our order.**

The Ohio Supreme Court faced the same argument after the Ohio Legislature passed school finance legislation in response to the court’s ruling that the system was unconstitutional. It also rejected the argument, stating:

“The legislature has the power to draft legislation, and the court has the power to determine whether that legislation complies with the Constitution. *However, while it is for the General*

Assembly to legislate a remedy, courts do possess the authority to enforce their orders, since the power to declare a particular law or enactment unconstitutional must include the power to require a revision of that enactment, to ensure that it is then constitutional. If it did not, then the power to find a particular Act unconstitutional would be a nullity. As a result there would be no enforceable remedy. A remedy that is never enforced is truly not a remedy.”

Typically, a party asserting compliance with a court decision ordering remedial action bears the burden of establishing that compliance.

Id. at 825-26 (internal citations omitted; bold emphasis added).

Here, just like in *Montoy IV*, the State’s “presumption of constitutionality” arguments should be disregarded. This is not a situation in which this Court is doing an initial review of statutes. Rather, the State is now presenting S.B. 7 to this Court for a determination as to whether it complied with the Mandate. The burden is on the State to show that it did.

B. The Panel Properly Applied the Equity Test Set Forth by this Court in its Mandate and Determined that S.B. 7 Did Not Meet that Test

The Mandate gave the State two choices: it could fully fund capital outlay and supplemental general state aid, pursuant to then-existing statutes, or it could “otherwise” cure the inequities. *Gannon*, 298 Kan. at 1198. Pursuant to the Mandate, the option chosen by the State would subject it to different levels of review – if the State fully funded the equalization mechanisms, “the Panel need not take any additional action.” *Id.* Plaintiffs refer to this option as the “safe harbor”; in its June 26, 2015 Order, the Panel referred to it as “option a.” A second option allowed the State to “otherwise” cure the inequities, but if the State chose this option, the Panel *had* to take further action, including, *inter alia*, determining whether the legislative action met the Court’s equity test. *Id.*

Ultimately, on remand, the Panel concluded – as to both capital outlay and supplemental general state aid – that the State chose to “otherwise” cure the inequities. R.Vol.136, pp. 1452-55 (as to capital outlay state aid); *id.* at 1466-73 (as to supplemental general state aid). This conclusion was based on undisputable, competent evidence: Following the Mandate, and before the July 1 deadline, the legislature adopted H.B. 2506. R.Vol.136, pp. 1441-42; R.Vol. 140, p.5 (FOF ¶3). As to capital outlay state aid, Section 7(j) of H.B. 2506 “made a ‘no limit’ appropriation on the capital outlay state aid fund for FY2015” which allowed the capital outlay state aid formula to operate as contemplated in K.S.A. 2013 Supp. 72-8814. R.Vol.136, p.1442. However, before full funding under H.B. 2506 was ever provided to the school districts, the State enacted S.B. 7, which did not fully fund the equalization mechanisms as the Mandate required. *Supra* Statement of the Facts §A.2. Instead, in S.B. 7, the State backtracked on the promises made in H.B. 2506, as described by the Panel as follows:

[M]uch as was the case with capital outlay state aid, an end to prorating and the full funding of the then-existing statute would have satisfied the judgment by option “a.” Again, as was the case with Senate Substitute for HB2506’s funding of capital outlay state aid, we relied on its funding of the supplemental general state aid estimated amounts, against with the State’s counsel’s assurance of reconciliation with the formula if estimated amounts were amiss. Due to [several factors], the estimate given in the Kansas State Department of Education’s Memorandum of April 17, 2014 . . . was short of the reality. However, rather than following through on option “a” with a supplemental appropriation to make up the difference, the 2015 legislature changed the LOB equalization formula, such that what would have been due in normal course for operation of the existing formula was reduced down to about 92.7% of the dollars which would have otherwise been due had the then-existing FY2015 formula been followed. The amount derived from the amended formula backtracks funding to approximate the April 2014 estimates. Rather than causing proration of the entitlement by underfunding as done in the past, the legislature amended the formula to confirm to the money they wished to provide.

R.Vol.136, p.1465-73.

1. The Panel Applied this Court's Equity Test

Because the Panel properly concluded that the State chose to “otherwise” cure the inequities that this Court identified, it was obligated to apply the Court’s equity test to the legislative cure (*i.e.* – S.B. 7). *Gannon*, 298 Kan. at 1198. It did (and properly concluded that the State failed to cure the inequities identified in the Mandate). R.Vol.136, pp.1453, 1468. The State now argues that the Panel did not “faithfully” apply the equity test and instead only gave it “lip-service.” This assertion is false.

To support its argument, the State points to the Panel’s statement that “were we unfettered in our decision making, we would find little room to deviate from the strict view in regards to tax equity nor the consequent equity in freedom of choice accorded by such equity.” State’s Brief, pp. 17-19. The mere acknowledgment by the Panel that they would have crafted a stricter equity test is not an admission that the Panel did not faithfully apply the test set forth by this Court. To the contrary, the Panel made clear that “zero tolerance” has never been “the measuring stick” used by the Panel. R.Vol. 136, p. 1471.

Ultimately, the Panel found, through S.B. 7, the Legislature had “merely reduced, not cured, the wealth-based disparity found . . . unconstitutional in *Gannon*. *Id.* at pp.1449, 1454-55. Contrary to the State’s mischaracterization, this is *not* a finding that anything less than “full funding” is unconstitutional. Rather, it is a finding that, because the State retracted H.B. 2506’s full funding of the equalization mechanisms, the Panel was required by this Court’s mandate to determine whether what the State *did* do “sufficiently reduce[d] the unreasonable, wealth-based disparity so the disparity then bec[ame] constitutionally acceptable.” *Gannon*, 298 Kan. at 1181, 1189-99. The Panel, *faithfully applying the equity test*, correctly determined that it did

not. R.Vol.137, p.1426-27. The Panel appropriately applied the equity test in reaching its decision.

2. Under S.B. 7, Capital Outlay State Aid Does Not Give School Districts Reasonably Equal Access to Substantially Similar Educational Opportunity Through Similar Tax Effort

In its June 26, 2015 Order, the Panel concluded that S.B. 7 did not comply with the Court's Mandate as to capital outlay state aid. R.Vol.137, p.1453. The Panel properly concluded that the Legislature acted to "otherwise" cure the inequities that this Court found in its Mandate, and – as a result – the Panel was required to determine whether the legislative action (*i.e.*, S.B. 7) met the Court's equity test. *Gannon*, 298 Kan. at 1198. The Court specifically tasked the Panel with assessing "whether the capital outlay state aid – through structure and implementation – then gives school districts reasonably equal access to substantially similar educational opportunity through similar tax effort." *Id.*

The Panel followed the instructions of the Mandate and applied the proper equity test when analyzing whether the capital outlay provisions under the State's legislative cure (S.B. 7) met the equity test. R.Vol.137, pp. 1452-55. Ultimately, the Panel found that "§ 63 of House Substitute for SB 7 fails to comply with the *Gannon* judgment" and did not produce "reasonably equal access to substantially similar educational opportunity through similar tax effort." R.Vol.137, p.1453. The Panel found that S.B. 7 failed each of the three parts of the equity test.

First, the Panel found that school districts did not have **reasonably equal access** to substantially similar educational opportunity. R.Vol. 140, p.14 (FOF ¶38). Under S.B. 7, a school district must successfully have had an election before July 1, 2015 to raise its capital outlay mill levy. *Id.* at p.15 (FOF ¶39). But, the election process, upon which the capital outlay

provision within S.B. 7 is based, is inherently unfair, in part because it causes the constitutionality of the system to rise and fall on the whim of the local voters. *Id.* at p.15 (FOF ¶40).

The Panel found that this voter discretion is further inequitable due to the correlation between a district's wealth and their ability to pass an election (as demonstrated in Plaintiffs' Equity Exhibits 503-504). *Id.*; R.Vol. 131, at Pls' Ex. 503-504; R.Vol. 135, p.1409 (admitting Ex. 503-504). Between 1995 and 2012, 48% of capital outlay elections failed. R.Vol. 140, p.15 (FOF ¶40); R.Vol. 131, at Pls' Ex. 503-504; R.Vol. 135, p.1409 (admitting Ex. 503-504). Of those, all of the failed elections took place in a district with an AVPP below \$100,000. *Id.* No capital outlay election failed in any district with an AVPP over \$100,000. *Id.* However, 80% of the elections that took place in districts with an AVPP under \$50,000 failed. *Id.*

Next, the Panel found that the **educational opportunity** to which the school districts had access was not **substantially similar**. R.Vol. 140, pp. 15-18 (FOF ¶¶41, 43-44). The amount of capital outlay funding that a school district can raise – even when controlled to compare just those districts that exert similar tax effort – ranges dramatically. *Id.* Those inequities are exacerbated by the fact that, under S.B. 7, some districts can make up the difference between the capital outlay state aid they were entitled to under H.B. 2506 and the capital outlay state aid that they will receive under S.B. 7, but others cannot. *Id.* The districts already levying 8 mills for capital outlay purposes and entitled to capital outlay state aid *cannot* increase their levy, but the districts that are not at the 8 mill maximum *can*.³ *Id.* As

³ Unfortunately, while these districts can raise the capital outlay mill levy to attempt to counterbalance this cut, districts *cannot* increase the amount of capital outlay state aid that they will receive by operation of S.B. 7. That number is locked in at the FY15 level regardless of whether the district raises their mill levy. R.Vol. 140, at pp. 17-18 (FOF ¶43 n.10).

demonstrated in Plaintiffs' Equity Exhibits 620-622, S.B. 7 creates further inequities between districts. R.Vol. 131, at Pls' Ex. 620-622; R.Vol. 135, p.1412 (admitting Ex. 620-622).

Finally, the Panel found that similar educational opportunity could not be achieved **through similar tax effort**. R.Vol. 140, p.18 (FOF ¶45). Under S.B. 7, there is a wide variance of tax effort required by districts to raise capital outlay aid (as demonstrated in Plaintiffs' Equity Exhibit 624). *Id.* (FOF ¶46); R.Vol. 131, at Pls' Ex. 624; R.Vol. 135, p.1412 (admitting Ex. 624).

In sum, the Panel found that S.B. 7 did not meet any of the three prongs of this Court's equity test. To the contrary, the adoption of S.B. 7 only worked to exacerbate already existing inequities in the system by only reducing the funding available to the State's most vulnerable school districts (*i.e.*, those districts that rely on equalization aid). R.Vol. 137, p. 1453; R.Vol. 140, pp.13-14 (FOF ¶¶34-35). As a result, the property wealthy districts that did not receive capital outlay state aid "remain unscathed, and only those that had demonstrated need are tasked with paying the price of the capital outlay state aid reductions." R.Vol. 137, pp. 1453-54. These districts would be required to "[c]annibaliz[e] . . . other operating funds or needs . . . commensurate to the unsatisfied need." *Id.*

The evidence supports the Panel's ultimate conclusion of law that S.B. 7's capital outlay state aid provision "does not produce 'reasonably equal access to substantially similar educational opportunity through similar tax effort.'" R.Vol.137, p.1453 (Panel's 6/26/15 Order, p. 34). The Panel was factually justified in concluding that S.B. 7 did not meet the Court's equity test. This conclusion should not be disturbed on appeal.

3. Under S.B. 7, Supplemental General State Aid Does Not Give School Districts Reasonably Equal Access to Substantially Similar Educational Opportunity Through Similar Tax Effort

The State's decision to alter the operation of supplemental general state aid through S.B. 7 had significant, startling effects on a particularly vulnerable subset of school districts: property poor districts. Under the operation of S.B. 7, the funding necessary to educate students in these property poor school districts will be subject to the whim of local taxpayers. *See, e.g.*, R.Vol.137, p.1469. On the other hand, "the increasingly tax-wealthy districts will have their educational goals honored, preserved, and funded." *Id.* For property poor districts, the State's adoption of S.B.7 turned the struggle for adequacy into a struggle for survival. *Id.* at p.1471-72. As measured by this Court's equity test, this is not a permissible result under the Kansas Constitution. *Id.*; R.Vol.137, p.1468 (S.B. 7's changes to supplemental general state aid "represent a clear failure to accord 'school districts reasonably equal access to substantially similar educational opportunity through similar tax effort'").

Applying this Court's equity test, the Panel found that school districts did not have **reasonably equal access** to substantially similar educational opportunity. Rather, S.B. 7 simply locks in the supplemental general state aid received by the districts in 2014-2015 while relying on the same flawed, unfair election process that renders the capital outlay state aid provision inequitable. *Id.* at p.23 (FOF ¶63). These inequities are compounded because districts that were not using their full LOB authority for 2015 will not get additional equalization dollars if they raise their LOB to the maximum percentage. *Id.* at pp. 25-26 (FOF ¶69). Districts that had not previously had an election have now lost the ability to have one for the future and are frozen

at the 30% level (rather than the 33% level previously available), exacerbating the unequal access to equalization aid among the districts. *Id.*

Next, the Panel found that the **educational opportunity** to which the school districts had access was not **substantially similar**. School district can raise dramatically different LOBs. R.Vol. 140, pp. 23-24 (FOF ¶64); R.Vol. 131, at Pls' Ex. 630-631; R.Vol. 135, p.1413 (admitting Ex. 630-631). S.B. 7 then intensifies those inequities by allowing some districts to raise additional funding to make up for the deficit caused by S.B. 7, but preventing others from doing the same. R.Vol. 140, p.24 (FOF ¶64).

Finally, the Panel found that similar educational opportunity could not be achieved **through similar tax effort**. R.Vol. 140, p.24 (FOF ¶66). Instead, districts levy widely different mill levies. *Id.* (FOF ¶67); R.Vol. 131, at Pls' Ex. 625; R.Vol. 135, p.1412 (admitting Ex. 625). The mills levied for supplemental general state aid produce very different educational outcomes and raise significantly different levels of funding. R.Vol. 140, p.25 (FOF ¶68).

The adoption of S.B. 7 did not meet the equity test; instead it only exacerbated the already-existing inequities in the system by reducing the funding available to the State's most vulnerable school districts (*i.e.* – those districts that rely on equalization aid). R.Vol. 140, p.22 (FOF ¶59). The Panel was factually justified in concluding that S.B. 7 did not meet the Court's equity test and that conclusion should be affirmed.

C. The State Does Not Challenge the Panel's Findings That S.B. 7's Removal of the Weightings Violates the Kansas Constitution – An Equally Valid Basis for the Panel's Remedy

Because S.B. 7 froze funding levels, it removed the weightings that ensure equal educational opportunities for students that cost more to educate. R.Vol. 140, p.11 (FOF ¶24);

R.Vol. 131, at Pls' Ex. 623; R.Vol. 135, p.1412 (admitting Ex. 623). These weightings, such as the bilingual and at-risk weightings, ensured that districts with a higher number of disadvantaged students received the funding necessary to ensure that those students received the same educational opportunities as other students. R.Vol. 140, p.11 (FOF ¶24). *These weightings will no longer exist under S.B. 7.* School districts will no longer receive an amount of money specifically tailored to meet the needs of the students they are required to educate. The operation of S.B. 7 will ensure that some schools receive inadequate funding, promoting inequitable learning opportunities for disadvantaged students. *Id.* (FOF ¶25).

The State does not challenge these findings anywhere in its Brief, waiving any argument the State might make to the Panel's "weightings" findings. Those findings should stand and this Court should disregard any conflicting evidence or other inferences that the State would argue might be drawn from the evidence. *Gannon*, 298 Kan. at 1182.

D. The State's Motivations for Adopting S.B. 7 are Irrelevant in Determining Whether the Bill Meets the Equity Test

The State asks this Court to excuse the State's failure to meet the equity test because, when it adopted S.B. 7, the State thought (with no credible evidence supporting the "thought") that "additional funds were not necessary to preserve 'reasonably equal access to substantially similar educational opportunity through similar tax effort.'" State's Brief, at p. 24. In so arguing the State asks this Court to allow the Legislature to determine whether its own actions were constitutional. **To do so is "literally unthinkable."** *Montoy IV*, 279 Kan. at 828 (italicized emphasis in original).

The constitutionality of S.B. 7 is not measured by the validity of the reasons that led to its adoption. Regardless of the State's motivations behind the adoption of S.B. 7, the relevant

inquiry is: **do districts have reasonably equal access to substantially similar educational opportunity through similar tax effort?** See e.g. Brief, at p. 19 (identifying the equity test as “the correct legal standard”). The answer, quite clearly, is no. And, even if the State’s motivations were relevant to this Court’s inquiry, the State’s motivations are not as it represents on appeal. The Panel, based on an earlier admission by the State, has entered a competent factual finding that the State knowingly and intentionally adopted S.B. 7 to provide less than full funding for the equalization mechanisms. R.Vol. 140, pp. 9-10 (FOF ¶19); R.Vol.130, p.76 (“Here, the Legislature’s intention is evident . . . all of the parties agree that the Legislature did not want the districts to receive any more capital outlay and LOB state aid in FY2015 beyond the approximate \$4 million the Legislature appropriated in S.B. 7.”). That competent evidence supports the Panel’s legal conclusion that the Legislature’s stated intent, which “‘reflects no other reason than a choice based on the amount of funds desired to be made available’ by the legislature,” is impermissible. R.Vol. 140, pp. 10; *Gannon*, 298 Kan. at 1185.

E. The State Cannot Use the KSDE as a Scapegoat for its Failure to Provide Equitable Funding

The Kansas Constitution places an affirmative constitutional obligation on the Legislature to “make suitable provision for finance of the educational interests of the state.” KAN. CONST., Art. 6; *Gannon*, 298 Kan. at 1141 (“[P]lain language in Article 6, Sections 1 and 6(b)” reflects “the assignment of mandatory constitutional duties to the Kansas Legislature.”); *id.* at 1142 (“And the intent of the people of Kansas is unmistakable. They voted in 1966 to approve amendments to Article 6” that includes Sections 1 and 6 (and the mandatory constitutional obligations they impose.”); *id.* at 1147 (citing *Neeley v. West Orange-Cove*, 176 S.W.3d 746, 778 (Tex. 2005)) (“we specifically conclude that through Article 6 of the Kansas

Constitution, the people of this state have assigned duties to the Kansas Legislature – which “both empower[] and obligate[.]”). No similar financial burdens or funding responsibilities were placed on the KSDE. KAN. CONST., Art. 6. Yet, the State repeatedly attempts to blame the KSDE for the State’s failure to comply with the Mandate. Those attempts should be disregarded.

F. A Declaratory Judgment Would be an Inappropriate Remedy at this Phase in the Litigation

The State contends that, if this Court finds an equity violation, the remedy should be limited to declaratory relief. State’s Brief at pp. 42-46. The State’s arguments in this regard outright ignore the procedural posture of this case. For instance, the State cites numerous cases analyzing court opinions that, “in the first instance,” find that the funding scheme is unconstitutional. *See e.g.*, Brief, at p. 46. This fails to acknowledge the current procedural posture: This is not an appeal challenging the constitutionality of a school finance formula “in the first instance.” Rather, this is a matter in the remedial phase. And, the arguments raised by the State have already been rejected by this Court when they arise in the remedial phase (like here). This Court has stated the following regarding challenges made to the constitutionality of school finance systems when “a separation of powers issue” arises “during the remedial phase”:

Judicial monitoring in the remedial phase can help check political process defects and ensure that meaningful relief effectuates the court’s decision.

Thus, when these defects lead to a continued constitutional violation, judicial action is entirely consistent with the separation of powers principles and the judicial role. Although state constitutions may commit educational matters to the legislative and executive branches, if these branches fail to fulfill such duties in a constitutional manner, ‘the Court too must accept its continuing constitutional responsibility . . . for overview . . . of compliance with the constitutional imperative.’

“Nor should doubts about the court’s equitable power to spur legislative action or to reject deficient legislation impede judicious over-sight. An active judicial role in monitoring remedy formulation is well-rooted in the courts’ equitable powers. **As long as such power is exercised only after legislative noncompliance, it is entirely appropriate.**”

Montoy IV, 279 Kan. at 828-29 (internal citations omitted; bold emphasis added).

Again, *Montoy IV*, which arose under procedurally identical circumstances, is on point. In *Montoy IV*, like it does now, the State argued that the Court could not review the constitutionality of the remedial bill (there, H.B. 2247; here, S.B. 7) because doing so “would offend the separation of powers doctrine and the carefully calibrated system of checks and balances among our three branches of government.” *Montoy IV*, 279 Kan. at 822. Just as this Court should do now, the *Montoy IV* Court disregarded this argument, stating:

[W]e do not quarrel with the legislature’s authority. We simply recognize that the final decision as to the constitutionality of legislation rests exclusively with the courts. Although the balance of power may be delicate, ever since *Marbury v. Madison*, it has been settled that the judiciary’s sworn duty includes judicial review of legislation for constitutional infirmity. We are not at liberty to abdicate our own constitutional duty.

Again, like arguments have been raised in other state courts. Other state courts consistently reaffirm their authority, indeed their duty, to engage in judicial review and, when necessary, compel the legislative and executive branches to conform their actions to that which the constitution requires.

For example, in *Lake View Sch. Dist. no. 25 v. Huckabee*, **the court reviewed legislation passed after its 1994 determination that the Arkansas school financing system violated the education provisions of that state’s constitution.** The Arkansas Supreme Court stated:

“This court’s refusal to review school funding under our state constitution would be a complete abrogation of our judicial responsibility and would work a severe disservice to the people of this state. **We refuse to close our eyes or turn a deaf ear to claims of a dereliction of duty in the field of education**”

Id. at 826-28 (internal citations omitted; bold emphasis added).

G. The Panel Appropriately Entered a Specific Remedy to Cure the Ongoing Unconstitutionalities

1. The Panel had authority to enter a specific remedy.

The Panel did not err when it imposed a specific remedy. Like the Panel, this Court, in *Montoy IV*, did not – as the State asks it to do now – just enter a declaratory judgment that the proposed remedy was unconstitutional. Instead, because of the State’s unsatisfactory response to the *Montoy II* decision, the Court ordered specific, remedial action. In doing so, it was “guided not only by . . . Article 6, § 6” of the constitution, but also by “the present realities and common sense.” *Montoy IV*, 279 Kan. at 843-44. The Court noted that it could not “continue to ask current Kansas students to ‘be patient.’ The time for their education is now.” *Id.* at 845-46. The same declaration should be made for current Kansas students. Plaintiffs’ Opening Brief, pp. 32-33.

The *Montoy IV* Court was very specific in how the constitutional inequities then-present should be remedied; it ordered:

[A]dditional funding must be made available for the 2005-06 school year to assist in meeting the school districts’ immediate needs We further conclude, after careful consideration, that at least one-third of the \$853 million amount reported to the Board in July of 2002 (A&M study’s cost adjusted for inflation) shall be funded for the 2005-06 school year.

Specifically, no later than July 1, 2005, for the 2005-06 school year, the legislature shall implement a minimum increase of \$285 million above the funding level for the 2004-05 school year, which includes the \$142 million presently contemplated in H.B. 2247. In deference to the cost study analysis mandated by the legislature in H.B. 2247, the implementation beyond the 2005-06 school year will be contingent upon the results of the study directed by H.B. 2247 and this opinion.

Id. at 844-46.

Given the procedural posture of this case, the Panel had the authority to enter a specific remedy to cure the ongoing unconstitutionality that the State repeatedly refuses to address.

2. The remedy entered by the Panel was appropriate.

The Panel's relief comports with Kansas law. Specifically, the appropriation of moneys for the school districts "shall be given first priority and be paid first from existing state revenues." K.S.A. 72-64c03. The Panel has only ordered what state law demands: that the State use the already-accumulated state revenues in the general fund to constitutionally fund K-12 education.

The Panel's remedy is not, as the State suggests, "unprecedented." Courts regularly exercise their power to enforce judgments that require funding to be reallocated from one governmental budgetary line item to another. For example, in *Jones v. Gusman*, 2013 WL 2458817 (E.D. La. Jun. 6, 2013), a district court found that inmates in a Louisiana prison were being housed in an unconstitutional fashion. The City of New Orleans opposed a consent decree agreed to by the Plaintiffs and the Orleans Parish Sheriff because the "consent judgment require[d] a 'diversion of funds' that w[ould] adversely affect public safety and the welfare of the [City's] citizens" because it might require cuts to police or fire personnel." *Id.* at *32. The City also argued that the only other alternative would be to raise taxes, and that the Court lacked the power to require the City to raise taxes. *Id.* at *33. The court rejected these arguments, stating that "The Court has no intention of ordering the City, the Sheriff, or any other political entity, for that matter, to raise taxes . . . To the extent our elected political leaders intend to house inmates at OPP facilities, however, these facilities must meet constitutional and statutory minimum requirements." *Id.* Nonetheless, the court was willing to enforce the consent decree

because the political entity still retained the power to choose how to raise the funds necessary to comply with the consent decree, either through reallocation or taxation. This decision was consistent with earlier Fifth Circuit precedent holding that “[i]t is well established that inadequate funding will not excuse the perpetuation of unconstitutional conditions of confinement.’ A state’s constitutional duties toward those involuntarily confined in its facilities does not wax and wane based on the state budget.” *Advocacy Center for Elderly and Disabled v. Louisiana Dept. of Health and Hospitals*, 731 F.Supp.2d 603, 626 (E.D. La. 2010), quoting *Smith v. Sullivan*, 611 F.2d 1039, 1043-44 (5th Cir.1980).

Similarly, the State’s constitutional duties as to education do not wax and wane based on the state budget. There is currently money available in the State General Fund to be used to fund education, consistent with the Panel’s Order. No appropriations are needed for this purpose. *See e.g.*, R.Vol. 136, p. 1487-1489 (only requiring distribution of funds and not requiring additional appropriations).

The State’s insistence that the Panel made appropriations should be disregarded. The Panel merely acknowledged that, going forward (for FY2016 and FY2017), the State would need to make appropriations to comply with its constitutional obligations. R.Vol. 136, p. 1487. It did not order those appropriations; rather, it indicated that it would “rely on each legislator’s solemn oath of office and respect for our constitutional form of government to provide such authority.” *Id.* This is no different than the remedy imposed by this Court in *Montoy IV*. 279 Kan. at 844-46 (ordering that “the legislature shall implement a minimum increase of \$285 million above the funding level for the 2004-05 school year, which includes the \$142 million presently contemplated in H.B. 2247”).

Moreover, Plaintiffs' requested relief is specifically contemplated by the Supreme Court's March 2014 mandate. The Supreme Court empowered this Panel, on a finding that the legislative "cure" failed to meet the Court's equity test, to "enjoin the operation" of the legislative "cure" and "enter such other orders as it deems appropriate." *Gannon*, 298 Kan. at 1198-99. Indeed, with regard to LOB equalization, the Supreme Court empowered this Panel to enter an order "enjoining the operation of the local option budget funding mechanism" if the State had failed to cure the inequities found in the LOB system. *Id.* at 1199. The Panel's relief is much less drastic and should not be disturbed on appeal.

3. This Court has already held that these Plaintiffs have standing to assert these claims.

The State contends that the Plaintiffs lack standing to assert the claims remedied by the Panel. State's Brief, p. 47. This Court has already dismissed this argument and determined that "the plaintiff districts have standing to bring the Article 6 claims in their own right." *Gannon*, 298 Kan. at 1131. Thus, the State's citation to cases regarding standing in an "as-applied" constitutional challenge are inapposite.⁴ Whether the Plaintiffs have standing is a separate question from whether the Panel's remedy was appropriate. And, the remedy was appropriate. This Court instructed the Panel to monitor the State's compliance with the Mandate and ensure (on a statewide basis) that school districts had "reasonably equal access to substantially similar educational opportunity through similar tax effort." *Gannon*, 298 Kan. at 1198-99. The Panel did so – and, when it determined that S.B. 7 did not comply with the Mandate, it entered a specific, remedial order designed to comply with the Mandate. The State's arguments should be disregarded.

⁴ Additionally, the Panel found that S.B. 7 was facially unconstitutional. R.Vol, 137, pp. 1426-27.

4. The Panel complied with all applicable procedural requirements before entering the temporary restraining order.

The State (and others) have suggested that the Panel had no authority to enter a temporary restraining order because it did not follow procedural requirements. *See e.g.*, State's Brief, at p. 34. This is false. Pursuant to Kansas law, a court may enter a temporary injunction "after reasonable notice to the party to be enjoined and an opportunity to be heard." K.S.A. 60-905. On March 13, 2015, the Panel gave *all parties* the following reasonable notice:

Further, be advised that upon motion of the Plaintiffs or the State or upon the Court's own motion, with or without notice, the Court may agree or elect to impose such temporary orders to protect the status quo and to assure the availability of relief, if any, that might be accorded should the Court deem relief warranted.

R.Vol. 128, p. 19.

The State was not only provided with reasonable notice of the temporary restraining order, it was also provided with an opportunity to be heard. Within the same order that the Panel provided the State with notice of a temporary restraining order, it also provided a scheduling order for evidentiary matters, a period in which the parties were allowed to conduct discovery, a briefing schedule, a hearing date. R.Vol. 128, p. 17-20. The State participated in the discovery period. R.Vol. 133, pp. 1219-23 (State's April 1, 2014 Disclosure of Testimony and Exhibits). It submitted at least two substantive written submissions in anticipation of the hearing. *See* R.Vol. 130, pp. 63-99 (State's Response to Plaintiff Districts' Motion for Declaratory Judgment and Injunctive Relief); R.Vol. 134, pp. 1032-1071 (State's Supplemental Response to Plaintiffs' Motion to Alter and Amend). The State's attorneys attended the two-day hearing, where they examined witnesses on behalf of the State, cross-examined Plaintiffs' witnesses, and provided argument. R.Vol. 138-139, pp. 1-400. At the hearing, the State asked

for the admission of certain exhibits, which were ultimately admitted. R. Vol. 136, pp. 1420, 1429. After the hearing, the State filed a supplemental post-hearing brief, substantively addressing the issues raised at the hearing. R. Vol. 134, pp. 1322-1396. The State was afforded significant opportunity to be heard. In fact, the State was afforded more due process than was required prior to the entry of the Panel's temporary restraining order. *St. David's Episcopal Church v. Westboro Baptist Church*, 22 Kan. App. 2d 537, 542-43 (1996).

5. The Panel's remedy will not result in a loss of all K-12 funding.

As Plaintiffs predicted, the State has "sounded the alarm" and told this Court that affirming the Panel's remedy will result in an "Armageddon-like" scenario; "killing the patient in order to provide a cure for an ailment." State's Brief, at p. 52. This Court should ignore the hype and focus on its previous legal precedents leading to an opposite result: enjoining S.B. 7 in the manner set forth in the Panel's Order results in the reinstatement of the SDFQPA, as amended by H.B. 2506.

In *Sedlak v. Dick*, 256 Kan. 779 (1995), the Kansas Supreme Court restated this conclusion, which had first been reached in 1948:

Where a legislative act expressly repealing an existing statute, and providing a substitute therefor, is invalid, the repealing clause is also invalid unless it appears that the legislature would have passed the repealing clause even if it had not provided a substitute for the statute repealed.

256 Kan. at 805 (citing *City of Kansas City v. Robb*, 164 Kan. 577 (1948) and *State ex rel. Stephan v. Thiessen*, 228 Kan. 136 (1980)). Thus, to lose all K-12 funding as the State has predicted would happen, the State must prove that the Legislature would have wanted the entire LOB and capital outlay systems abolished, even without providing any substitute for those earlier provisions. Given the centrality of the State's recent reliance on local funding for the

schools, such a proposition is absurd. The situation is analogous to that examined by this Court in *Topeka Cemetery Ass'n v. Schnellbacher*, 218 Kan. 39 (1975). In that case the Court found that the changes made by the law, which related to a Kansas law enforcement training center, dealt primarily with its funding. The Court found that “we cannot conclude that the legislature would have passed the repealing clauses if it had not provided substitutes for such statutes. Under such circumstances, the repealing clauses are also invalid.” *Id.* at 45. Indeed, the Supreme Court reached the same conclusion in *Sedlak*, finding that there was no question that the legislature would not have repealed certain workers compensation statutes “if it had not provided a substitute for the repealed statutes. Thus, it follows that the repeal . . . is invalid, and these two statutes are still in full force and effect as they existed prior to the attempted . . . amendments.” *Sedlak*, 256 Kan. at 805.

The State simply fails to recognize the effect of the Panel’s Order regarding S.B. 7, although it is straightforward: (1) S.B. 7 is unconstitutional and invalid; and (2) the severability clauses in S.B. 7 prove that the Legislature would not have intended to repeal the SDFQPA without providing a substitute. It is simply not credible that the State would have repealed the SDFQPA without providing a substitute school finance system (which it is constitutionally required to provide). R.Vol. 140, p.36 (FOF ¶¶105-06). Under the clear precedent set forth in *Sedlak* and the other cases cited by the State, if S.B. 7 is invalid, the repeal of the SDFQPA is also invalid and the provisions of the SDFQPA “are still in full force and effect as they existed prior to the attempted . . . amendments.” *Sedlak*, 256 Kan. at 805. Thus, the Panel’s Order stands in conformity with this Court’s precedents and should be enforced.

H. Any Relief, Interim or Permanent, Must Meet the Equity Test

The State suggests that this Court should overlook any constitutional deficiencies with S.B. 7 because it is a temporary replacement while the State “studies and develops a new school finance system.” State’s Brief, at p. 1. Nothing in Article 6 of the Kansas Constitution provides an exception for interim funding systems. Likewise, nothing in the Mandate expressed such an exception. *Gannon*, 298 Kan. at 1198-99.

Thus, even assuming that the State truly adopted S.B. 7 to fund education until the State could “study and develop a new formula,” that does nothing to abdicate the State of its Article 6 obligations. The State has been on notice that it needs to constantly monitor the constitutionality of its school finance legislation since 1994 when this Court first held: “The issue of [the suitability of the school finance system] is not stagnant; past history teaches that *this issue must be closely monitored.*” *U.S.D. 229 v. State*, 256 Kan. 232, 258 (1994). This Court reminded the State of its obligation to closely monitor school finance legislation in the *Montoy* litigation in 2003 and 2005. *Montoy v. State*, 275 Kan. 145, 153 (2003) (citing *U.S.D. 229*, 256 Kan. at 258); *Montoy II*, 278 Kan. at 771-72. Yet, the State has waited until 2015, five years into the *Gannon* litigation, to finally “study” its school finance legislation. The State’s purported explanation for its decision to adopt S.B. 7 is nothing more than an admission that it has wholly failed to comport with the oft-repeated requirement that it must constantly monitor the constitutionality of the funding. There is no reason that the State’s enactment of S.B. 7 should be immune from the requirements of the Kansas Constitution.

I. This Court Should Exercise Its Inherent Power to Issue Sanctions and Award Plaintiffs' Attorneys' Fees

This Court has inherent power to sanction a party based on that party's conduct in bad faith, regardless of statutory provisions. *See e.g., Schoenholz v. Hinzman*, 295 Kan. 786, 787 (2012) (citing *Alpha Med. Clinic v. Anderson*, 280 Kan. 903, 926 (2006)) (courts have inherent powers to impose sanctions for bad-faith conduct, irrespective of statutory provisions). As Plaintiffs have shown, the State has acted in bad faith by continually dodging its constitutional obligation to properly fund education in Kansas. R.Vol.14, p.1867 (the State acted with "what appears now to be an obvious and continuing pattern of disregard of constitutional funding obligations under Article 6"). Furthermore, the State's course of conduct since this Court's *Gannon* decision has essentially amounted to willful disobedience leading to unnecessary expenditures by Plaintiffs in seeking to enforce this Court's (and the Panel's) decisions. As the Panel found, in its December 2014 decision, it "held that the legislature's action through the enactment of 2014 Senate Substitute for HB2506's amendments and funding of those statutory schemes, *and accompanying assurances by the State's counsel of any necessary future supplemental action that could be required*, substantially complied with the Kansas Supreme Court's judgments in regard to those two equitable funding statutes." R.Vol.136, p.1421 (emphasis added). But, the promised "curative actions *assured to be taken*," were never taken. *Id.* (emphasis added). Instead, less than two months after the Panel found in favor of the State based on these assurances, the Governor instituted an allotment to K-12 funding which he stated could be replaced if the legislature acted "to stall' the increase of \$54 million yet due in FY2015 for capital outlay state aid and LOB state aid per the existing formulas" R.Vol.136, p.1423. The legislature quickly complied, passing S.B. 4 which "stalled" the

FY2015 capital outlay state aid payments, and then S.B. 7 which “reduced funding under each formula to substantially coincide with the estimates provided to this Panel in its June 11, 2014 hearing on compliance with the equity judgments rendered in *Gannon*.” R.Vol.136, p.1424.

At that June 11, 2014 hearing, the State’s counsel stated “I think what the legislature deserves is a pat on the back.” R.Vol.136, p.1444. Plaintiffs wholeheartedly disagree. Allowing the State to continue behavior designed to thwart, avoid, and nullify this Court’s orders without sanction will reward it for failing to meet its constitutional obligations.

Even absent bad faith on the part of the State, attorneys’ fees would be appropriate because “plaintiffs have contributed to the vindication of important constitutional rights.” *Claremont School Dist. v. Governor*, 144 N.H. 590, 598, 761 A.2d 389 (1999). Under similar circumstances, the Supreme Court of New Hampshire exercised its “inherent equitable powers” and awarded reasonable attorney’s fees to plaintiff school districts. *Id.* This Court has the inherent authority to award attorneys’ fees regardless of the statutory authority. *In re Vioxx Products Liability Litig.*, 760 F. Supp. 2d 640, 647-49 (E.D. La. 2010); *In re Nuvaring Products Liability Litig.*, 2014 WL 7271959, *2 (E.D. Mo. Dec. 18, 2014).

CONCLUSION

For reasons stated above, Plaintiffs request this Court: (1) immediately lift its Stay of the Panel’s Order and enforce the remedy contained therein; (2) order each Kansas school district to resubmit their budgets consistent with the Panel’s Order; (3) order the Kansas State Department of Education to re-distribute funding consistent with the Panel’s Order; (4) retain jurisdiction of this matter to ensure the State’s compliance with that remedy; and (5) award Plaintiffs attorneys’ fees.

Dated this 1st day of October, 2015.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of October, 2015, I sent two copies of the foregoing to each the following addresses via U.S. First Class Mail, postage prepaid to:


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APPENDIX A:
KSDE Assessed Valuation Report for 2014-15

Available at:

http://www.ksde.org/Portals/0/School%20Finance/reports_and_publications/AssessedVal/assessedvalreport2014.xlsx

5/21/2015		KANSAS STATE DEPARTMENT OF EDUCATION ASSESSED VALUATION REPORT FOR 2014-2015						
USD#	USD Name	County Name	2014-15 FTE Enrollment (incl MILT & VIRT)	2014-15 Total Valuation	2014-15 Total Valuation Per Pupil	2014-15 General Fund Valuation	2014-15 LOB/BI Valuation	2014-15 LOB/BI Valuation Per Pupil
D0101	Erie-Galesburg	Neosho	535.5	35,816,823	66,885	32,320,455	35,816,823	66,885
D0102	Cimarron-Ensign	Gray	642.8	44,868,032	69,801	42,130,048	44,344,407	68,986
D0103	Cheylin	Cheyenne	137.0	44,254,222	323,024	43,025,491	44,130,059	322,117
D0105	Rawlins County	Rawlins	323.5	29,348,862	90,723	26,990,658	27,615,820	85,366
D0106	Western Plains	Ness	118.0	50,518,948	428,127	49,042,599	50,332,266	426,545
D0107	Rock Hills	Jewell	279.5	34,509,513	123,469	31,610,255	34,509,513	123,469
D0108	Washington Co. Schools	Washington	344.0	30,265,869	87,982	27,623,592	30,265,869	87,982
D0109	Republic County	Republic	470.3	41,807,065	88,894	37,982,050	41,540,540	88,328
D0110	Thunder Ridge Schools	Phillips	218.0	17,281,144	79,271	15,678,821	17,281,144	79,271
D0111	Doniphan West Schools	Doniphan	319.0	53,438,342	167,518	51,141,339	52,028,782	163,100
D0112	Central Plains	Ellsworth	494.2	104,717,928	211,894	100,751,852	104,439,111	211,330
D0113	Prairie Hills	Nemaha	1,085.9	86,678,217	79,822	80,969,136	86,183,085	79,366
D0114	Riverside	Doniphan	644.6	35,645,875	55,299	32,617,030	32,283,908	50,084
D0115	Nemaha Central	Nemaha	545.9	65,029,016	119,123	61,388,549	63,723,290	116,731
D0200	Greeley County Schools	Greeley	244.4	31,866,769	130,388	30,513,563	31,866,769	130,388
D0202	Turner-Kansas City	Wyandotte	3,969.6	118,924,008	29,959	104,532,849	117,368,581	29,567
D0203	Piper-Kansas City	Wyandotte	1,897.0	171,074,669	90,182	162,250,176	159,195,388	83,920
D0204	Bonner Springs	Wyandotte	2,526.1	161,943,668	64,108	150,980,988	156,974,306	62,141
D0205	Bluestem	Butler	507.8	34,531,256	68,002	30,892,920	34,531,256	68,002
D0206	Remington-Whitewater	Butler	490.9	43,703,559	89,027	40,609,831	43,703,559	89,027
D0207	Ft Leavenworth	Leavenworth	1,738.9	2,178,352	1,253	2,178,352	2,178,352	1,253
D0208	Wakeeney	Trego	370.3	61,715,863	166,664	58,571,342	61,470,123	166,001
D0209	Moscow Public Schools	Stevens	190.7	58,399,289	306,236	57,824,068	58,399,289	306,236
D0210	Hugoton Public Schools	Stevens	1,058.3	158,720,346	149,977	154,693,156	158,720,346	149,977
D0211	Norton Community Schools	Norton	689.1	44,751,638	64,942	40,567,356	44,366,752	64,384
D0212	Northern Valley	Norton	170.0	14,912,499	87,721	14,045,316	14,852,726	87,369
D0214	Ulysses	Grant	1,715.6	221,624,870	129,182	215,724,808	221,624,870	129,182
D0215	Lakin	Kearny	642.1	115,965,636	180,604	113,569,428	115,921,511	180,535
D0216	Deerfield	Kearny	197.0	45,927,442	233,134	45,130,876	45,927,442	233,134
D0217	Rolla	Morton	184.6	50,096,933	271,381	49,416,346	50,096,933	271,381
D0218	Elkhart	Morton	988.1	65,592,049	66,382	63,443,806	65,592,049	66,382
D0219	Minneola	Clark	248.5	21,565,125	86,781	20,662,354	21,441,595	86,284
D0220	Ashland	Clark	194.6	26,294,733	135,122	25,132,318	26,189,570	134,582
D0223	Barnes	Washington	341.0	35,625,337	104,473	33,164,050	35,625,337	104,473
D0224	Clifton-Clyde	Washington	314.0	26,810,064	85,382	24,892,719	26,680,744	84,971
D0225	Fowler	Meade	154.5	15,094,187	97,697	14,251,437	15,091,249	97,678
D0226	Meade	Meade	396.2	65,336,529	164,908	63,361,601	65,291,859	164,795
D0227	Hodgeman County Schools	Hodgeman	287.0	55,348,465	192,852	53,575,846	55,348,465	192,852
D0229	Blue Valley	Johnson	21,375.1	2,485,440,081	116,277	2,402,576,238	2,485,440,081	116,277
D0230	Spring Hill	Johnson	3,174.8	145,382,388	45,793	135,180,933	145,382,388	45,793
D0231	Gardner Edgerton	Johnson	5,359.5	251,132,706	46,857	233,352,714	248,331,877	46,335
D0232	De Soto	Johnson	6,752.1	412,028,288	61,022	388,019,164	411,968,524	61,013
D0233	Olathe	Johnson	27,601.4	1,804,506,472	65,377	1,703,066,609	1,787,298,923	64,754
D0234	Fort Scott	Bourbon	1,819.1	74,850,080	41,147	64,191,666	74,383,120	40,890
D0235	Uniontown	Bourbon	435.0	14,651,558	33,682	12,585,678	14,651,558	33,682
D0237	Smith Center	Smith	390.7	29,315,220	75,033	26,413,682	28,955,345	74,111
D0239	North Ottawa County	Ottawa	605.8	35,277,235	58,232	32,111,497	35,156,973	58,034
D0240	Twin Valley	Ottawa	604.4	29,957,599	49,566	27,579,822	29,957,599	49,566
D0241	Wallace County Schools	Wallace	185.5	30,169,938	162,641	28,911,379	30,156,540	162,569
D0242	Weskan	Wallace	95.7	9,904,978	103,500	9,642,576	9,904,978	103,500
D0243	Lebo-Waverly	Coffey	452.5	26,641,883	58,877	24,041,583	26,641,883	58,877
D0244	Burlington	Coffey	821.0	397,850,753	484,593	393,899,294	397,850,753	484,593
D0245	LeRoy-Gridley	Coffey	214.1	23,783,635	111,087	22,185,069	23,783,635	111,087

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USD#	USD Name	County Name	2014-15 FTE Enrollment (incl MILT & VIRT)	2014-15 Total Valuation	2014-15 Total Valuation Per Pupil	2014-15 General Fund Valuation	2014-15 LOB/BI Valuation	2014-15 LOB/BI Valuation Per Pupil
D0246	Northeast	Crawford	486.5	17,992,431	36,983	14,154,292	17,992,431	36,983
D0247	Cherokee	Crawford	563.9	30,186,314	53,531	25,946,908	30,186,314	53,531
D0248	Girard	Crawford	980.5	35,811,929	36,524	30,912,119	35,523,836	36,230
D0249	Frontenac Public Schools	Crawford	875.5	25,063,045	28,627	21,519,830	24,986,922	28,540
D0250	Pittsburg	Crawford	2,873.2	142,615,452	49,636	124,537,323	139,944,149	48,707
D0251	North Lyon County	Lyon	406.1	86,151,624	212,144	83,082,963	86,151,624	212,144
D0252	Southern Lyon County	Lyon	502.0	37,932,284	75,562	35,167,405	37,932,284	75,562
D0253	Emporia	Lyon	4,271.8	173,684,114	40,658	154,664,216	172,136,783	40,296
D0254	Barber County North	Barber	441.0	67,369,134	152,764	63,871,976	66,218,745	150,156
D0255	South Barber	Barber	225.0	106,524,124	473,441	104,865,051	106,078,596	471,460
D0256	Marmaton Valley	Allen	276.5	18,242,538	65,977	16,702,602	18,242,538	65,977
D0257	Iola	Allen	1,263.3	51,266,281	40,581	43,632,077	50,770,477	40,189
D0258	Humboldt	Allen	763.5	29,415,331	38,527	26,771,582	29,276,535	38,345
D0259	Wichita	Sedgwick	47,254.4	2,596,344,151	54,944	2,349,526,283	2,571,313,572	54,414
D0260	Derby	Sedgwick	6,448.4	392,727,553	60,903	366,264,809	392,727,553	60,903
D0261	Haysville	Sedgwick	5,196.9	136,251,386	26,218	117,073,583	135,776,642	26,126
D0262	Valley Center Pub Sch	Sedgwick	2,707.5	120,381,723	44,462	108,242,493	120,381,723	44,462
D0263	Mulvane	Sedgwick	1,747.9	105,517,734	60,368	96,938,506	105,256,200	60,219
D0264	Clearwater	Sedgwick	1,132.8	59,568,216	52,585	54,639,972	59,545,535	52,565
D0265	Goddard	Sedgwick	5,222.1	238,063,778	45,588	216,055,936	238,063,778	45,588
D0266	Maize	Sedgwick	6,843.1	372,313,030	54,407	344,737,519	372,313,030	54,407
D0267	Renwick	Sedgwick	1,874.0	109,812,186	58,598	102,693,373	109,812,186	58,598
D0268	Cheney	Sedgwick	760.1	30,856,943	40,596	27,704,914	30,616,491	40,280
D0269	Palco	Rooks	108.1	43,306,766	400,618	42,422,785	43,133,827	399,018
D0270	Plainville	Rooks	369.5	67,654,713	183,098	65,214,308	66,618,199	180,293
D0271	Stockton	Rooks	292.5	30,623,842	104,697	28,502,109	29,869,699	102,119
D0272	Waconda	Mitchell	297.0	27,633,538	93,042	24,712,670	25,371,805	85,427
D0273	Beloit	Mitchell	768.0	56,254,121	73,248	51,413,696	53,127,420	69,176
D0274	Oakley	Logan	366.1	67,911,950	185,501	65,312,940	66,993,748	182,993
D0275	Triplains	Logan	68.0	23,490,334	345,446	23,013,421	23,375,988	343,765
D0281	Graham County	Graham	391.2	55,014,839	140,631	52,294,407	54,541,026	139,420
D0282	West Elk	Elk	317.5	19,908,229	62,703	16,915,959	19,908,229	62,703
D0283	Elk Valley	Elk	140.0	12,236,498	87,404	11,437,006	12,236,498	87,404
D0284	Chase County	Chase	344.5	43,837,231	127,249	40,782,847	43,635,474	126,663
D0285	Cedar Vale	Chautauqua	163.6	7,748,782	47,364	6,872,651	7,748,782	47,364
D0286	Chautauqua Co Community	Chautauqua	358.7	22,985,886	64,081	20,292,771	22,985,886	64,081
D0287	West Franklin	Franklin	553.5	38,684,809	69,891	33,893,766	38,684,809	69,891
D0288	Central Heights	Franklin	560.0	24,526,777	43,798	21,703,656	24,526,777	43,798
D0289	Wellsville	Franklin	767.0	48,307,306	62,982	44,089,712	48,307,306	62,982
D0290	Ottawa	Franklin	2,405.4	119,197,290	49,554	107,448,128	117,096,901	48,681
D0291	Grinnell Public Schools	Gove	82.5	26,384,515	319,812	25,750,953	26,384,515	319,812
D0292	Wheatland	Gove	106.5	16,613,966	156,000	15,690,346	16,613,966	156,000
D0293	Quinter Public Schools	Gove	286.5	26,592,978	92,820	25,195,812	26,592,978	92,820
D0294	Oberlin	Decatur	332.0	38,904,203	117,181	35,834,480	38,904,203	117,181
D0297	St Francis Comm Sch	Cheyenne	277.0	29,501,691	106,504	27,210,664	29,495,875	106,483
D0298	Lincoln	Lincoln	333.1	23,943,471	71,881	21,568,552	23,850,186	71,601
D0299	Sylvan Grove	Lincoln	221.3	22,727,573	102,700	20,780,930	22,490,736	101,630
D0300	Comanche County	Comanche	312.0	61,492,130	197,090	59,491,106	61,101,717	195,839
D0303	Ness City	Ness	293.9	60,990,736	207,522	59,133,349	60,386,254	205,465
D0305	Salina	Saline	7,002.8	435,161,671	62,141	395,264,406	432,798,342	61,804
D0306	Southeast Of Saline	Saline	697.9	64,681,038	92,680	61,798,446	64,681,038	92,680
D0307	Ell-Saline	Saline	476.1	21,589,743	45,347	19,909,832	21,589,743	45,347
D0308	Hutchinson Public Schools	Reno	4,836.7	207,404,501	42,881	179,045,134	205,257,092	42,437

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D0309	Nickerson	Reno	1,110.5	68,372,104	61,569	61,822,319	67,870,790	61,117
D0310	Fairfield	Reno	274.5	40,215,432	146,504	37,721,113	40,215,432	146,504
D0311	Pretty Prairie	Reno	272.4	16,838,440	61,815	15,287,787	16,802,377	61,683
D0312	Haven Public Schools	Reno	908.4	67,193,764	73,969	62,166,715	67,139,258	73,909
D0313	Buhler	Reno	2,127.5	153,232,030	72,024	142,583,058	152,228,633	71,553
D0314	Brewster	Thomas	111.0	14,643,995	131,928	14,040,835	14,632,483	131,824
D0315	Colby Public Schools	Thomas	902.7	75,182,508	83,286	69,685,989	73,869,552	81,832
D0316	Golden Plains	Thomas	181.9	15,687,466	86,242	14,888,531	15,635,913	85,959
D0320	Wamego	Pottawatomie	1,494.8	77,056,306	51,550	70,628,797	77,056,306	51,550
D0321	Kaw Valley	Pottawatomie	1,121.4	296,504,894	264,406	291,004,856	296,504,894	264,406
D0322	Onaga-Havensville-Wheaton	Pottawatomie	304.5	20,685,524	67,933	18,747,894	20,313,122	66,710
D0323	Rock Creek	Pottawatomie	902.1	46,241,882	51,260	41,730,968	46,241,882	51,260
D0325	Phillipsburg	Phillips	591.0	28,726,788	48,607	25,437,920	28,726,788	48,607
D0326	Logan	Phillips	152.5	17,219,259	112,913	16,223,288	17,180,056	112,656
D0327	Ellsworth	Ellsworth	592.0	42,874,538	72,423	38,723,853	40,689,765	68,733
D0329	Mill Creek Valley	Wabaunsee	453.5	38,490,037	84,873	35,163,122	37,897,390	83,566
D0330	Mission Valley	Wabaunsee	454.0	35,061,949	77,229	31,524,054	34,661,174	76,346
D0331	Kingman - Norwich	Kingman	937.7	70,484,983	75,168	64,282,610	67,235,550	71,703
D0332	Cunningham	Kingman	157.8	67,432,794	427,331	65,949,128	66,371,940	420,608
D0333	Concordia	Cloud	1,016.0	53,187,251	52,350	46,969,829	48,977,540	48,206
D0334	Southern Cloud	Cloud	232.0	21,149,961	91,164	19,625,747	21,058,432	90,769
D0335	North Jackson	Jackson	376.0	18,161,230	48,301	16,317,013	18,157,050	48,290
D0336	Holton	Jackson	1,118.5	42,364,961	37,877	37,105,003	42,228,018	37,754
D0337	Royal Valley	Jackson	871.5	28,938,647	33,206	25,506,073	28,932,645	33,199
D0338	Valley Falls	Jefferson	386.0	16,062,924	41,614	14,066,651	16,062,924	41,614
D0339	Jefferson County North	Jefferson	420.0	17,879,675	42,571	15,880,166	17,879,675	42,571
D0340	Jefferson West	Jefferson	822.0	37,196,599	45,251	32,852,954	37,196,599	45,251
D0341	Oskaloosa Public Schools	Jefferson	534.5	25,702,344	48,087	22,309,454	25,702,344	48,087
D0342	McLouth	Jefferson	490.1	29,654,755	60,508	26,594,877	29,654,755	60,508
D0343	Perry Public Schools	Jefferson	759.1	57,714,588	76,030	52,972,297	57,714,588	76,030
D0344	Pleasanton	Linn	360.5	13,258,102	36,777	11,292,070	13,258,102	36,777
D0345	Seaman	Shawnee	3,762.8	227,693,613	60,512	210,670,994	225,741,151	59,993
D0346	Jayhawk	Linn	514.5	32,199,834	62,585	28,139,559	32,199,834	62,585
D0347	Kinsley-Offerle	Edwards	333.5	25,886,370	77,620	23,701,754	25,686,650	77,021
D0348	Baldwin City	Douglas	1,336.2	76,326,447	57,122	69,877,384	76,326,447	57,122
D0349	Stafford	Stafford	262.9	22,457,625	85,423	20,910,163	22,046,169	83,858
D0350	St John-Hudson	Stafford	345.0	43,932,235	127,340	41,935,722	42,948,159	124,487
D0351	Macksville	Stafford	240.9	39,966,114	165,903	38,752,938	39,595,633	164,365
D0352	Goodland	Sherman	1,046.5	75,870,241	72,499	70,150,013	73,384,304	70,124
D0353	Wellington	Sumner	1,558.0	67,726,680	43,470	59,447,286	66,007,632	42,367
D0355	Ellinwood Public Schools	Barton	414.2	41,633,249	100,515	38,911,662	41,572,377	100,368
D0356	Conway Springs	Sumner	480.5	21,495,910	44,737	19,301,746	20,864,782	43,423
D0357	Belle Plaine	Sumner	599.8	22,018,454	36,710	18,964,164	21,748,491	36,260
D0358	Oxford	Sumner	353.0	17,510,751	49,606	15,706,317	17,176,084	48,657
D0359	Argonia Public Schools	Sumner	165.9	14,733,619	88,810	13,696,547	14,480,030	87,282
D0360	Caldwell	Sumner	247.0	17,946,041	72,656	16,385,978	17,864,472	72,326
D0361	Anthony-Harper	Harper	847.8	113,861,569	134,302	108,691,227	111,410,960	131,412
D0362	Prairie View	Linn	868.1	153,372,210	176,676	146,953,211	153,372,210	176,676
D0363	Holcomb	Finney	953.1	174,309,323	182,887	172,183,110	174,295,076	182,872
D0364	Marysville	Marshall	707.8	74,668,783	105,494	69,542,669	73,640,057	104,041
D0365	Garnett	Anderson	1,022.0	68,501,968	67,027	62,070,975	68,193,222	66,725
D0366	Woodson	Woodson	430.6	31,376,452	72,867	28,483,121	31,376,452	72,867
D0367	Osawatomie	Miami	1,171.0	43,153,047	36,851	37,608,152	42,742,215	36,501

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D0368	Paola	Miami	1,931.0	128,942,899	66,775	119,039,167	128,615,773	66,606
D0369	Burrton	Harvey	225.5	17,998,077	79,814	16,646,166	17,993,993	79,796
D0371	Montezuma	Gray	241.8	19,175,914	79,305	17,902,356	19,175,914	79,305
D0372	Silver Lake	Shawnee	688.5	30,615,184	44,466	27,804,305	30,615,184	44,466
D0373	Newton	Harvey	3,395.3	152,739,038	44,985	134,844,493	149,587,228	44,057
D0374	Sublette	Haskell	488.2	113,065,172	231,596	111,122,142	113,065,172	231,596
D0375	Circle	Butler	1,882.6	172,186,852	91,462	164,535,781	172,011,136	91,369
D0376	Sterling	Rice	520.4	28,976,470	55,681	26,376,185	28,211,092	54,210
D0377	Atchison Co Comm Schools	Atchison	580.0	51,623,420	89,006	47,439,098	48,827,090	84,185
D0378	Riley County	Riley	656.5	42,347,682	64,505	38,504,675	42,347,682	64,505
D0379	Clay Center	Clay	1,336.9	82,505,369	61,714	74,575,089	78,166,284	58,468
D0380	Vermillion	Marshall	518.0	32,259,317	62,277	29,660,090	32,203,767	62,169
D0381	Spearville	Ford	338.5	22,430,254	66,264	21,343,090	22,355,528	66,043
D0382	Pratt	Pratt	1,170.7	93,498,188	79,865	85,930,748	83,811,556	71,591
D0383	Manhattan-Ogden	Riley	6,077.5	607,585,031	99,973	570,988,162	594,730,224	97,858
D0384	Blue Valley	Riley	180.0	18,726,928	104,038	16,816,660	18,726,928	104,038
D0385	Andover	Butler	5,656.1	285,389,072	50,457	266,453,608	285,376,035	50,455
D0386	Madison-Virgil	Greenwood	228.5	16,283,693	71,263	14,825,934	16,283,693	71,263
D0387	Altoona-Midway	Wilson	209.5	22,849,680	109,068	21,151,318	22,849,680	109,068
D0388	Ellis	Ellis	411.0	38,305,166	93,200	35,716,687	37,250,346	90,633
D0389	Eureka	Greenwood	636.5	31,137,858	48,920	25,944,945	31,071,805	48,817
D0390	Hamilton	Greenwood	88.0	9,383,751	106,634	8,816,114	9,383,751	106,634
D0392	Osborne County	Osborne	280.1	23,621,102	84,331	21,477,705	23,204,447	82,843
D0393	Solomon	Dickinson	326.0	23,032,072	70,651	21,233,732	21,991,983	67,460
D0394	Rose Hill Public Schools	Butler	1,603.1	62,414,938	38,934	55,762,033	62,274,634	38,846
D0395	LaCrosse	Rush	291.0	27,312,601	93,858	24,976,295	27,312,601	93,858
D0396	Douglass Public Schools	Butler	684.0	25,756,254	37,655	22,659,804	25,438,514	37,191
D0397	Centre	Marion	482.8	22,927,599	47,489	21,466,164	22,700,028	47,017
D0398	Peabody-Burns	Marion	254.0	27,265,218	107,343	25,104,086	27,001,667	106,306
D0399	Paradise	Russell	117.8	33,023,321	280,334	32,290,166	32,955,452	279,758
D0400	Smoky Valley	McPherson	916.3	60,800,349	66,354	54,879,328	60,800,349	66,354
D0401	Chase-Raymond	Rice	164.5	27,569,133	167,594	26,829,357	26,537,944	161,325
D0402	Augusta	Butler	2,173.7	82,865,033	38,122	72,867,000	82,003,771	37,725
D0403	Otis-Bison	Rush	230.5	29,329,045	127,241	27,864,351	29,329,045	127,241
D0404	Riverton	Cherokee	730.9	35,641,956	48,764	32,177,871	35,641,956	48,764
D0405	Lyons	Rice	793.9	41,008,573	51,655	37,391,074	40,443,888	50,943
D0407	Russell County	Russell	762.7	96,654,981	126,727	90,900,860	94,568,730	123,992
D0408	Marion-Florence	Marion	486.0	32,469,193	66,809	28,529,527	31,472,076	64,757
D0409	Atchison Public Schools	Atchison	1,582.5	87,545,491	55,321	78,076,087	76,801,849	48,532
D0410	Durham-Hillsboro-Lehigh	Marion	545.7	36,648,654	67,159	33,020,261	35,654,713	65,338
D0411	Goessel	Marion	276.1	13,531,975	49,011	12,172,154	13,325,686	48,264
D0412	Hoxie Community Schools	Sheridan	339.0	41,018,607	120,999	38,755,772	40,496,211	119,458
D0413	Chanute Public Schools	Neosho	1,782.8	99,431,199	55,772	89,584,244	99,431,199	55,772
D0415	Hiawatha	Brown	837.2	88,715,691	105,967	83,240,935	86,723,269	103,587
D0416	Louisburg	Miami	1,661.5	110,321,657	66,399	102,599,856	110,321,657	66,399
D0417	Morris County	Morris	710.8	56,949,196	80,120	51,154,784	56,949,196	80,120
D0418	McPherson	McPherson	2,281.8	189,030,010	82,842	176,795,775	189,030,010	82,842
D0419	Canton-Galva	McPherson	357.5	31,864,434	89,131	29,328,672	31,864,434	89,131
D0420	Osage City	Osage	631.0	27,076,489	42,910	23,685,227	26,798,216	42,469
D0421	Lyndon	Osage	399.5	19,971,866	49,992	17,302,703	19,729,750	49,386
D0422	Kiowa County	Kiowa	333.8	71,456,641	214,070	69,895,568	67,835,814	203,223
D0423	Moundridge	McPherson	406.2	40,474,857	99,643	37,644,248	40,474,857	99,643
D0426	Pike Valley	Republic	205.5	16,982,092	82,638	15,754,923	16,883,935	82,160

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D0428	Great Bend	Barton	3,018.5	147,334,268	48,810	131,613,916	144,166,495	47,761
D0429	Troy Public Schools	Doniphan	317.0	20,912,024	65,969	19,116,556	20,106,273	63,427
D0430	South Brown County	Brown	545.5	27,040,320	49,570	24,105,135	26,619,115	48,798
D0431	Hoisington	Barton	694.0	47,418,715	68,327	43,797,672	47,317,062	68,180
D0432	Victoria	Ellis	281.0	37,658,825	134,017	35,764,107	37,658,825	134,017
D0434	Santa Fe Trail	Osage	994.8	47,127,204	47,374	41,467,797	47,037,694	47,284
D0435	Abilene	Dickinson	1,570.9	78,911,316	50,233	71,167,832	78,539,455	49,996
D0436	Caney Valley	Montgomery	742.9	32,719,392	44,043	28,673,996	32,594,906	43,875
D0437	Auburn Washburn	Shawnee	5,918.1	453,280,972	76,592	425,834,550	453,280,972	76,592
D0438	Skyline Schools	Pratt	406.0	31,647,399	77,949	30,494,313	30,389,596	74,851
D0439	Sedgwick Public Schools	Harvey	483.9	16,989,077	35,109	15,264,055	16,683,385	34,477
D0440	Halstead	Harvey	761.9	39,321,667	51,610	35,307,920	39,179,163	51,423
D0443	Dodge City	Ford	6,401.6	208,865,837	32,627	189,088,237	207,432,331	32,403
D0444	Little River	Rice	321.8	39,316,502	122,177	37,960,261	39,193,729	121,795
D0445	Coffeyville	Montgomery	1,660.0	129,680,344	78,121	117,717,833	128,446,462	77,377
D0446	Independence	Montgomery	1,938.8	100,468,229	51,820	88,457,113	100,169,324	51,666
D0447	Cherryvale	Montgomery	897.7	25,849,634	28,795	21,930,750	25,758,400	28,694
D0448	Inman	McPherson	420.3	33,130,549	78,826	31,014,352	33,120,160	78,801
D0449	Easton	Leavenworth	620.1	34,112,418	55,011	30,991,827	34,112,418	55,011
D0450	Shawnee Heights	Shawnee	3,500.1	191,263,858	54,645	174,251,338	191,263,858	54,645
D0452	Stanton County	Stanton	425.1	80,714,832	189,873	78,874,665	80,714,832	189,873
D0453	Leavenworth	Leavenworth	3,642.5	183,244,590	50,307	161,866,106	182,068,659	49,985
D0454	Burlingame Public School	Osage	301.1	11,481,377	38,131	9,806,182	11,450,003	38,027
D0456	Marais Des Cygnes Valley	Osage	254.5	16,349,439	64,241	14,815,897	16,331,811	64,172
D0457	Garden City	Finney	7,213.4	352,749,866	48,902	330,703,615	347,174,325	48,129
D0458	Basehor-Linwood	Leavenworth	2,320.0	126,866,579	54,684	116,465,978	125,955,702	54,291
D0459	Bucklin	Ford	224.1	31,291,242	139,631	29,918,293	31,192,987	139,192
D0460	Hesston	Harvey	798.0	42,033,873	52,674	39,053,192	41,749,535	52,318
D0461	Neodesha	Wilson	678.0	26,240,533	38,703	22,856,346	26,240,533	38,703
D0462	Central	Cowley	310.4	13,688,080	44,098	11,781,582	13,688,080	44,098
D0463	Udall	Cowley	331.0	18,513,985	55,933	16,603,446	18,513,985	55,933
D0464	Tonganoxie	Leavenworth	1,907.5	94,766,897	49,681	86,310,605	94,748,976	49,672
D0465	Winfield	Cowley	2,192.4	104,515,544	47,672	92,263,864	103,502,883	47,210
D0466	Scott County	Scott	910.0	102,020,434	112,110	97,382,255	100,638,517	110,592
D0467	Leoti	Wichita	405.0	41,482,475	102,426	39,437,832	41,233,515	101,811
D0468	Healy Public Schools	Lane	67.8	15,759,939	232,447	15,412,129	15,687,916	231,385
D0469	Lansing	Leavenworth	2,534.6	119,476,644	47,138	109,874,090	116,846,640	46,101
D0470	Arkansas City	Cowley	2,768.1	86,046,027	31,085	72,083,824	84,884,527	30,665
D0471	Dexter	Cowley	145.0	7,746,594	53,425	7,131,790	7,746,594	53,425
D0473	Chapman	Dickinson	1,048.0	71,825,752	68,536	66,211,669	71,825,752	68,536
D0474	Haviland	Kiowa	101.3	19,896,118	196,408	19,207,328	19,381,895	191,332
D0475	Geary County Schools	Geary	8,114.7	222,135,650	27,374	201,280,244	205,053,626	25,269
D0476	Copeland	Gray	103.0	18,888,643	183,385	18,225,391	18,888,643	183,385
D0477	Ingalls	Gray	227.0	25,075,254	110,464	24,367,068	25,075,254	110,464
D0479	Crest	Anderson	197.5	16,257,789	82,318	14,903,415	16,257,789	82,318
D0480	Liberal	Seward	4,721.5	167,036,978	35,378	153,576,662	167,036,978	35,378
D0481	Rural Vista	Dickinson	291.0	29,465,511	101,256	27,217,384	29,465,511	101,256
D0482	Dighton	Lane	232.0	52,864,115	227,863	51,292,209	52,841,360	227,764
D0483	Kismet-Plains	Seward	699.5	82,022,685	117,259	79,700,323	81,868,692	117,039
D0484	Fredonia	Wilson	651.9	40,583,875	62,255	35,628,282	40,548,230	62,200
D0487	Herington	Dickinson	466.1	20,093,302	43,109	17,176,677	20,093,302	43,109
D0489	Hays	Ellis	2,851.6	310,726,148	108,966	291,914,335	310,180,498	108,774
D0490	El Dorado	Butler	1,882.0	164,222,858	87,260	153,077,969	162,699,369	86,450

