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CLERK OF THE APPELLATE COURT
CASE NUMBER: 113267

IN THE SUPREME COURT OF THE STATE OF KANSAS

15-113267-S

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

Appellees/Plaintiffs,

v.

STATE OF KANSAS, *et al.*,

Appellants/Defendants.

County Appealed From: Shawnee

District Court Case No.: 10-C-1569

REPLY IN SUPPORT OF MOTION TO MODIFY COURT'S ORDER TO CLARIFY CERTAIN LANGUAGE

I. The Parties Are Interpreting the Court's Language Differently; Due to the Procedural Posture of this Case, Any Confusion Should be Addressed Up-Front

The State denies that clarification of the Court's Order is necessary, but admits that the parties have two very different interpretations of the Order. Plaintiffs interpret the language at issue, from *Gannon II*, to convey that "obvious" compliance would require the State to cure the existing inequities for FY15 going forward. The State, as Plaintiffs assumed, interprets this language to mean that it is only required to cure the inequities for FY17. The State's interpretation, however, highlights the necessity of Plaintiffs' Motion and the necessity of further guidance from the Court.

Relying on the language cited by the State adds no clarity to the situation. The State first points to the Court's language regarding the potential that schools would be unable to operate beyond June 30, absent appropriate action by the State. But, the Court's discussion of the consequences of the State's inaction (*i.e.*, "the schools in Kansas will be *unable to operate beyond June 30*") does not provide the clarity that Plaintiffs are requesting.

Likewise, looking to the out-of-state cases the Court cited does not provide Plaintiffs with the guidance requested. Procedurally, none of those cases are similar to this one. In each of those cases, the courts were ordering injunctive relief in a procedural posture similar to *Gannon I*. The Court did not enter an order for injunctive relief in *Gannon II* – it gave the State a second chance to actually comply with its previous order for injunctive relief in *Gannon I*. Should the State be allowed to skirt compliance with the *Gannon I* order simply because it chose not to comply with it? Using the interpretation of *Gannon II* suggested by the State, this Court will tell the State "yes." Further, the State will understand that, moving forward, if it wishes to avoid compliance with any order for injunctive relief, it should simply ignore the order. There will be no penalty for such a course of action; instead, the State will be rewarded. Here, the State will be allowed to escape its obligations to provide a constitutionally equitable system for <u>two more years</u>.

II. Plaintiffs Do Not Seek to Expand Their Claims

While it is ultimately irrelevant to the resolution of Plaintiffs' Motion, Plaintiffs believe it is necessary to respond to certain inaccuracies included in the State's Response. Plaintiffs have not expanded any of their claims. Plaintiffs are not now, for the first time, seeking equalization aid for FY15 and FY16. **<u>That is the remedy that this Court ordered in *Gannon I*.</u>**

Likewise, Plaintiffs are not asking this Court to "resurrect expired appropriations bills." The State claims that "monies appropriated in fiscal year 2015 have been re-appropriated and monies appropriated in fiscal year 2016 are insufficient." But, those arguments are meritless because the Panel entered an order that encumbered those funds for FY15 and FY16. That order has not been ruled on, but *Gannon II* makes clear that it could be enforced following a lift of the June 30, 2015 stay. *See, e.g.*, Order, Exhibit A to Plaintiffs' Motion ("Ex. A"), at at pp. 71-72; *see also* Ex. A, at

pp. 77-80 (dissent of Johnson, J., listing reasons why the Panel's Order is constitutionally sound and should be upheld). If the State chose to re-appropriate money that was encumbered by the Panel's Order, this situation seems to be one of its own making. The *Hyre* case cited by the State supports this conclusion. As the Panel pointed out in analyzing *Hyre*, the rule only applies if the funds are not encumbered. *See* R. Vol. 14, p. 1922 (Panel's Original Decision, at p. 203 (citing *Hyre v. Sullivan*, 171 Kan. 309 (1951)) ("Unless encumbered, the availability of the appropriated funds for the purpose expires after the period for which the appropriation was made.")). Because the Panel's Order encumbered the funds for FY15 and FY16, the problems raised by the State are inapplicable.

III. Plaintiffs' Interpretation Poses No Practical Concerns

The State asserts that it was would be impractical to remedy the unconstitutionalities for FY15 and FY16. This proposition, while entirely irrelevant to what the Court intended by its language in *Gannon II*, overcomplicates a simple matter.

While Plaintiffs appreciate the paternalistic care for the districts that the State exhibits in its brief, those concerns are not at issue here. For instance, the State contends that if the additional LOB aid is distributed to local districts, that money would go unspent and "would only operate to reduce the aid the district receives the following year." While it is true that any excess money would be maintained in the fund, K.S.A. 2014 Supp. 72-6433(j)(4), the amount of money available to the school district the next year would not be decreased. Rather, *less of the LOB money would be funded through local money*. In other words, the local district taxpayers would finally see the relief that they anticipated seeing after the adoption of H.B. 2506. As Plaintiffs and this Court have attempted to explain to the State repeatedly, supplemental general state aid is not about total money needed.

The purpose of supplemental general state aid is to lower the district's mill levies, not to increase their total revenues. Ex. A, at p. 48.

Similarly, the argument that districts would "improvidently" use the "last-minute funds" as quickly as possible is insulting. All "required maintenance" has not "long since been made." The needs that the districts had in FY15 still exist. All that is missing are the funds necessary to address those needs. This is especially true as to capital outlay funds. When the State chose not to fully fund the equalization of capital outlay and reduced the aid available to districts, it did nothing to address the capital outlay needs that remained.

Finally, to the extent that the State contends that – due to "finite" financial resources – "valuable state programs will suffer substantial cuts." This may very well be true. But, that is the very result that Kansas law demands: 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. Therefore, this argument is not persuasive.

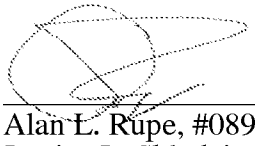
IV. Conclusion

Because the Court is giving the State a second chance to do what it should have done ***in response to the March mandate*** and because compliance with the March mandate would have required action for FY15 going forward, Plaintiffs interpret the Court's "obvious" cure language to mean that the State would be in compliance with Article 6 of the Kansas Constitution as to equity if the Legislature: (1) revives the relevant portions of the SDFQPA and H.B. 2506 that resulted in fully funding supplemental general state aid as contemplated in K.S.A. 72-6405 *et seq.*; (2) revives the relevant portions of the SDFQPA and H.B. 2506 that resulted in fully funding capital outlay state aid as contemplated in K.S.A. 2013 Supp. 72-8814; (3) makes appropriations necessary to fully fund

those equalization mechanisms for FY15, FY16, and FY17; and (4) properly distributes those funds to the appropriate school districts. The State disagrees. But, this only serves to demonstrate that modification of the Court's Order to clarify the meaning of language is necessary to give the State appropriate direction moving forward.

Dated this 26th day of February, 2016.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

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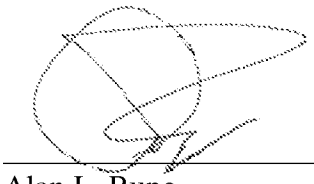

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