IN THE SUPREME COURT OF THE STATE OF KANSAS

Case No. 15-113267-S

LUKE GANNON, *et al*,
Plaintiffs,

v.

THE STATE OF KANSAS,
Defendant.

County Appealed From:
District Court Shawnee County, Kansas, in the Matter of Proceedings Before the Three-Judge Panel Appointed Pursuant to K.S.A. 72-64b03 *in re* School Finance Litigation

District Court Case No.: 2010CV1569

Proceeding Under Chapter: 60

Party or Parties Who Will Appear as Appellees: UNIFIED SCHOOL DISTRICT NO. 259; UNIFIED SCHOOL DISTRICT NO. 308; UNIFIED SCHOOL DISTRICT NO. 443; and UNIFIED SCHOOL DISTRICT NO. 500

MOTION OF THE STATE OF KANSAS FOR STAY OF OPERATION AND ENFORCEMENT OF THE PANEL'S JUDGMENT

Pursuant to Supreme Court Rule 5.01, K.S.A. 2014 Supp. 60-262(f)(1), and K.S.A. 60-2101(b), the State of Kansas moves for an order staying the operation and enforcement of the judgment entered by the Three-Judge Panel ("Panel") on June 26, 2015. See attached "Memorandum Opinion and Order and Entry of Judgment Regarding Panel's Previous Judgment Regarding Equity and Plaintiffs' Motion for Declaratory Judgment and Injunctive Relief" (hereafter "Order").

An immediate stay is warranted in order to maintain the status quo while this Court reviews and considers the Panel's unprecedented ruling. Among other unprecedented aspects of the decision, the Panel declares unconstitutional the entire block grant school funding system the

Legislature adopted earlier this year, and then purports to revive repealed statutes, even though many of those provisions already have been repealed (effective date in April 2015) and Kansas Constitution Article 2, Section 16 imposes very clear and explicit requirements for any statute to be "revived," and those requirements do not authorize any court to "revive" a repealed statute. Furthermore, the Panel orders the immediate payment of approximately $50 million in State funds that legally cannot be disbursed as the Panel directs. Obviously, the Panel's unprecedented decision has massive implications for the State's budget and finances.

Finally, in a move that can only be perceived by the public and objective observers as cynical, calculated and unfortunately "political," the Panel issued its decision on the very day and barely one hour after the Legislature finally adjourned, *sine die*, for the 2015 session, notwithstanding that the Panel has had these issues before it for several months and had a hearing on these matters in early May. Given all of these circumstances, as well as the likelihood that this Court will identify errors in the Panel's decision on appeal, the public interest is not served by the extraordinary relief the Panel purports to order, some of which is supposed to occur in the next two days.

In many respects, to rule as it did here, the Panel had to ignore fundamental due process principles and rules of procedure that require pleadings, pretrial proceedings, discovery, and a trial. Indeed, the Panel declared unconstitutional legislation enacted less than three months ago, concluding that it violates *both* Article 6's adequacy and equity components after conducting a hearing (in early May) the ostensible purpose of which was to address the Plaintiff Districts' motion to alter and amend the Panel's December 30, 2014 decision. The Panel instead clearly addressed and ruled upon constitutional challenges to Kansas' school finance statutes enacted in

2015, statutes which by definition were never part of underlying the 2012 trial which resulted in the first appeal to this Court. *See Gannon v. State*, 298 Kan. 1107, 319 P.3d 1196 (2014).

In June 2014, after the remand from this Court, the Panel found that the State had substantially complied with this Court's mandate requiring remedy of public school finance equity infirmities. However, Plaintiff Districts asked the Panel to alter or amend this finding in early 2015. Then the Panel scheduled a May 7-8 hearing that "[would] be limited to equity and equity compliance," explaining: "We intend to consider the effect of all measures taken or not taken by State officials since the [*Gannon*] Mandate was issued that affect the equity aspects of the Mandate." Panel's April 20, 2015 e-mail to counsel. The State prepared accordingly.

This last school year the State provided approximately and distributed to local districts $138 million more in LOB and capital outlay aid in response to the Court's decision in *Gannon*. Exhibit 507, p. 2; L. 2014, ch. 93; 2015 House Substitute for Senate Bill 7, §§ 1(a) & 63(c)(2); 2015 Senate Substitute for HB 2353, §§ 8 & 63; 2015 House Substitute for SB 112, § 20(b) & (d). *See also* Opinion, at 47. This amount was *more than* the KSDE had estimated was necessary to comply with this Court's decision when the Legislature passed the legislation in 2014.

The Panel changed its mind just before the May 7-8 hearing, however, eschewing procedures designed to afford due process and overlooking that it lacked jurisdiction over the matters that are the subject of the State's docketed Article 6 adequacy appeal. *E.g.*, *State v. Fritz*, 299 Kan. 153, 155, 321 P.3d 763 (2014) (district court loses jurisdiction over case after direct appeal is docketed). On Friday, June 26, 2015, the Panel filed a "Memorandum Opinion and Order and Entry of Judgment Regarding Panel's Previous Judgment Regarding Equity and Plaintiffs' Motion for Declaratory Judgment and Injunctive Relief" (hereafter "Order"). In the

Order, the Panel reversed and withdrew its December 30, 2014 finding that the State had substantially complied with Article 6's equity requirements articulated in *Gannon*. *Id.* at 2-3.

HB 2353 and SB 112 *were not even written* until after the May 7-8 hearing, yet the Panel found portions of those laws unconstitutional in its June 26 order.

Remarkably, the Panel found 2015 House Substitute for Senate Bill 7 ("SB 7"), parts of 2015 House Substitute for Senate Bill 4 ("SB 4") and parts of 2015 Senate Substitute for HB 2353 ("HB 2353"), 2015 House Substitute for SB 112 ("SB 112"), each of which amended or supplemented SB 7, unconstitutional in violation of Art. 6, § 6(b) of the Kansas Constitution, but stayed "what would otherwise be the consequence demanded of our ruling pending appeal," subject to a "temporary restraining order." Order, pp. 62, 78-79.

The Panel's "temporary restraining order" (a misnomer if there ever was one) purports to require the following:

1. Additional supplemental general state aid ("LOB aid") and capital outlay state aid must be paid under the terms of the "before January 1, 2015" version of state aid statutes K.S.A. 72-6434 and K.S.A. 72-8814. Order, at 69-70.
2. The Kansas State Board of Education is made a party to the case now and, with the Kansas Secretary of Administration and Treasurer of the State of Kansas and "other executive official of the State of Kansas," is ordered to comply with the Panel's directive and enjoined from doing anything contrary. *Id.*
3. State funds necessary for payment of the additional capital outlay aid are "encumbered" for FY 2015 distribution. *Id.* at 70.
4. State funds necessary for payment of the additional FY 2015 LOB aid will be distributed from "FY 2016 revenues available for supplemental general state aid." *Id.* at 76. The

State understands these revenues are in SB 7's FY 2016 block grant appropriation because strictly speaking there is no longer separate supplemental general state aid under SB 7.

5. Distribution of general state aid in FY 2016 and FY 2017, under the Classroom Learning Assuring Student Success Act ("CLASS") adopted by SB 7, will be based upon weighted student count in the current school year in which distribution is to be made, not the weighted or unweighted student count in FY 2015 (the just completed 2014-15 school year). *Id.* at 58; and
6. LOB and capital outlay state aid portions of districts' block grants under CLASS must be calculated as the statutes providing for such aid existed before January 1, 2015. *Id.* at 67-68, 75-76.

Under these orders, the State must hold funds appropriated for other State programs or raise funds and then pay immediately to qualifying local districts about $16.6 million in capital outlay state aid and about $33.4 million in LOB aid. Order, at 29, 42-43. The Panel acknowledged that its order will require additional appropriations by the Legislature. *Id.* at 68, 76.

In another unprecedented and remarkable move, the Panel alternatively, entered orders that would rewrite SB 7 and associated subsequent legislation, striking and substituting language so that the School District Finance and Quality Performance Act ("SDFQPA"), K.S.A. 72-6405, *et seq.*, as it existed in January 1, 2015, replaced CLASS. Order, at 80-83. That portion of the decision looks precisely like a bill "markup" that takes place in the legislative process, with the Panel striking words, phrases and sentences to write the statute it prefers. The only possibly

positive thing that can be said about this part of the Panel's decision is that the Panel "stayed" implementation of these alternative orders for the time being. *Id.* at 79.

Using the words of the Plaintiff Districts' counsel, in the worst case, the "temporary restraining order" places Kansas on the road to educational "Armageddon" because non-severability provisions in SDFQPA and CLASS will leave no funding mechanisms. While less dramatic, if not stayed, the "temporary restraining order" will cause other irreparable harms, including violation of separation of powers, reduction of general state aid to all local districts and reductions in funding to some districts that are advantaged by SB 7, as amended.

I. Background of Motion and Appeal

This is an appeal from a judgment in a "school finance" case brought only against the State generally by four school districts – U.S.D. 259 in Wichita, U.S.D. 308 in Hutchinson, U.S.D. 443 in Dodge City and U.S.D. 500 in Kansas City, Kansas.

Plaintiff Districts asked the three-judge Panel, appointed under K.S.A. 72-64b03, to hold that the SDFQPA and the State's associated primary and secondary education appropriations violate Article 6, § 6 of the Kansas Constitution. After a bench trial in the summer of 2012, the Panel rejected most of the Plaintiff Districts' claims and arguments, but concluded: (1) the then failure to fully fund "equalization aid" in certain parts of the Act was unconstitutional and (2) the then amount of Base State Aid Per Pupil ("BSAPP") provided under the SDFQPA was unconstitutional. The Panel ordered full funding of Local Option Budget ("LOB") state equalization aid under K.S.A. 72-6434 and capital outlay equalization state aid under K.S.A. 72-8801, *et seq.* Rather than giving the State an opportunity to consider appropriate remedies, the Panel ordered the BSAPP be funded at $4492 for FY2014 and adjusted afterward to account for

inflation. The State appealed; and Plaintiff Districts cross-appealed asserting the BSAPP should be much higher than $4492.

On March 7, 2014 the Kansas Supreme Court issued its opinion. It affirmed, in part, the Panel's judgment concerning funding of LOB and capital outlay aid, holding that the Legislature needed to address inequities in the funding of this state aid. *Gannon,* 298 Kan. at 1176-89. However, the Court rejected the Panel's ordered "cures." It remanded to the Panel instructing that the State's response to the inequities was to "be measured by determining whether it sufficiently reduces the unreasonable, wealth-based disparity so the disparity becomes constitutionally acceptable, not whether the cure necessarily restores funding to the prior levels." *Id.* at 1181, 1188-89.

The Court reversed the Panel's judgment regarding SDFQPA's funding because the Panel had applied the wrong constitutional standard concerning adequacy of funding required under Article 6. It remanded the case to the Panel for findings and conclusions as to "whether the State met its duty to provide adequacy in public education as required under Article 6 of the Kansas Constitution[.]"*Id.* at 1199.

After the Supreme Court's decision, legislation was promptly passed which addressed the inequities found in the funding of capital outlay and LOB aid. On May 1, 2014, 2014 Senate Substitute for House Bill 2506 ("HB 2506") became law. 33 Kansas Register, No. 18, p. 438 (May 1, 2014). The KSDE had estimated and advised legislators that:

> a. The FY 2015 appropriation needed to provide 100 percent funding of Supplemental General State Aid, under the SDFQPA, was $103,865,000 if calculated with a base state aid per pupil of $4,433;
>
> b. An additional FY 2015 appropriation of approximately $5 million in Supplemental General State Aid was needed as a result of the ability of local school district to increase their local options budgets under HB 2506; and

c. One hundred percent funding of capital outlay state aid would amount to $25,200,786 in FY2015.

Exhibit 507, p. 2. Passing HB 2506 into law, the Legislature funded LOB state aid by providing $109,265,000 in additional funding appropriated during the 2014 legislative session. The Legislature appropriated capital outlay state aid, with "no limit," and the State's FY 2015 budget included $25,200,786 million for the aid.

The Panel conducted a hearing on June 11, 2014. At the conclusion of the hearing, the Panel announced the legislation complied with the Supreme Court's order regarding capital outlay and LOB aid.

On December 30, 2014, the Panel released its Memorandum Opinion and Order on Remand. It reaffirmed that the State had complied with the Supreme Court's order regarding capital outlay and LOB aid. However, the Panel entered a declaratory judgment that the Kansas public education financing system for grades K-12 failed to meet the adequacy test articulated in *Gannon*. It held the system—through structure and implementation—is not presently reasonably calculated to have all Kansas public education students meet or exceed the *Rose* factors and, therefore, is unconstitutional in violation of Article 6 of the Kansas Constitution. The Panel did not order any affirmative relief to "remedy" the violation that it found.

On January 23, 2015, the State filed a motion to alter and amend to obtain clarification of the Panel's December 30, 2014 order and additional findings of fact. K.S.A. 60-2102(b)(1) requires filing of a notice of appeal within 30 days of the entry of a decision finding a violation of Article 6 of the Kansas Constitution. On January 28, 2015, the State filed such notice of appeal.

On February 12, 2015, SB 4 became law. 34 Kansas Register, No. 7, p. 129 (Feb. 12, 2015). This law amended K.S.A. 2014 Supp. 72-8814 by directing a demand transfer of

$25,300,000 for capital outlay aid on February 20, 2015 and another transfer on June 20, 2015 of "the remaining amount of moneys to which the school districts are entitled to receive from the state general fund to the school district capital outlay state aid fund." *Id.*, p. 135, § 54(d).

But, on April 2, 2015, SB 7 became law. 34 Kansas Register, No. 14, p. 267 (April 2, 2015). Effective as of April 2, 2015, SB 7

- Appropriated an additional $27,350,000 for districts' general funds (effectively replacing reductions in BSAPP made by an allotment in 2015). SB 7, § 1(a).
- Amended the calculation of LOB aid in K.S.A. 2014 Supp. 72-6434. SB 7, § 38.
- Appropriated an additional $1,803,566 for FY2015 LOB aid. SB 7, § 1(a).
- Amended the calculation of capital outlay state aid in K.S.A. 2014 Supp. 72-8814 as amended by SB 4. SB 7, § 63(b).
- Authorized an additional $2,200,000 for FY15 capital outlay state aid. SB 7, § 63(c)(2).
- Appropriated $4,000,000 for distribution, through a new fund, to districts that show extraordinary needs. SB 7, § 1(b).
- Repealed both K.S.A. 2014 Supp. 72-6434 and K.S.A. 2014 Supp. 72-8814 as amended by SB 4. SB 7, § 80.

Also under SB 7, effective July 1, 2015, CLASS will replace the SDFQPA. SB 7, §§ 4-22; 81. CLASS changes K-12 public school finance, awaiting a complete overhaul of school finance formulas, by:

- Providing districts with fund flexibility at the district level; that is, funds can be transferred to the general fund of the district with no cap on the amount of the transfer. Excluded from this flexibility are three funds: bond and interest, special education, and the special retirement contributions fund. SB 7, § 62.
- For FY 2016, appropriation of $2,751,326,659 from the State General Fund (SGF) as a block grant to school districts. A demand transfer from the SGF to the School District Extraordinary Need Fund will be made in an amount not to exceed $12,292,000. An SGF appropriation of $500,000 will be made to the Information Technology Education Opportunities Account (a program to pay for credentialing

high school students in information technology fields, funded previously in the Board of Regents' budget). SB 7, § 2.

- For FY 2017, appropriation of $2,757,446,624 from the SGF as a block grant to school districts. A demand transfer from the SGF to the School District Extraordinary Need Fund will be made in an amount not to exceed $17,521,425. An SGF appropriation of $500,000 will be made to the Information Technology Education Opportunities Account. SB 7, § 3.

- The block grants for FY 2016 and FY 2017 include General State Aid equal to what school districts are entitled to receive for school year 2014-15, as adjusted by virtual school aid calculations and a 0.4 percent reduction for an Extraordinary Need Fund; supplemental general state aid and capital outlay state aid as adjusted in 2014-15; Virtual state aid as recalculated for FYs 2016 and 2017; Amounts attributable to the tax proceeds collected by school districts for the ancillary school facilities tax levy, the cost of living tax levy, and the declining enrollment tax levy; and KPERS employer obligations, as certified by KPERS. SB 7, §§ 4-22.

- Providing the funding for FY 2016 and FY 2017 above the General State Aid school districts were entitled to receive for school year 2014-15, as adjusted by virtual school aid calculations and a 0.4 percent reduction, is distributed to each district in proportion to the school district's enrollment. SB 7, § 6(f).

On March 11, 2015, the Panel entered a Memorandum Opinion and Order denying the State's Alter and Amend. On March 16, 2015, the State filed a second notice of appeal which included the March 11 order.

On March 16, 2015, Plaintiff Districts filed a Motion for Injunction and Declaratory Relief in which they asked the Panel to enjoin 2015 House Substitute for Senate Bill 7 ("SB 7"), a law which has substantively changed the Kansas public education financing system for grades K-12.

The hearing on Plaintiff Districts' Motion to Alter and Amend Panel's Previous Judgment Regarding Equity was conducted on May 7 and 8, 2015. After the hearing, HB 2353, § 8 and SB 112 §20 became law which effectively increased FY 2015 capital outlay and LOB aid by $1,756,400 and $1,976,818 respectively.

On June 26, 2015, almost immediately after the longest Kansas Legislative session in history concluded, the Panel issued its Order. The State filed its notice of appeal on the same date. See attached Notice of Appeal.

II. Argument

This Court stayed the Panel's judgment for the duration of the last appeal, with good reason. There is even more reason to stay the Panel's decision pending this appeal.

The immediate stay the State requests targets the Panel's "temporary restraining order" because the Panel itself stayed several aspects of its judgments in its June 26 Order. The "temporary restraining order," however, is to take immediate effect and suffers from several legal flaws. First, the "temporary restraining order" is no such thing. A temporary restraining order is designed to preserve the *status quo,* until a hearing on a whether a temporary injunction should be imposed. K.S.A. 60-903(b). *See State v. Alston,* 256 Kan. 571, 579, 887 P.2d 681 (1994); *Unified School Dist. v. McKinney*, 236 Kan. 224, 227, 689 P.2d 860 (1984). A temporary restraining order must not last, absent exceptional circumstances, more than 14 days. K.S.A. 60-903(b). Generally, a bond is required. *Id.*, 903(f). Similarly, a temporary injunction concerns the period before final judgment is entered. K.S.A. 60-902. *See also Wichita Wire, Inc. v. Lenox*, 11 Kan. App. 2d 459, 461, 726 P.2d 287 (1986) (temporary injunction is not proper if it effectively accomplishes the whole object of the suit without bringing the cause or claim to trial). Again, bond is generally required. K.S.A. 60-905(b).

The Panel's "temporary restraining order" is, in fact, simply part of the Panel's *final judgment* which the Panel has not stayed. If this Court does not stay the "temporary restraining order," that ruling is certain to produce some or all of the following adverse consequences:

1. Violation of separation of powers.

An affront to the constitutional powers of a branch of government is hard to quantify, but is by no measure insignificant. The confidence of the public in its institutions hangs in the balance here. Not only did the Panel time its ruling in a way that suggests "political" consideration, the ruling is unprecedented in its direct and substantial intrustion into the legislative process. The Panel's rulings should not take effect unless and until this Court, as the final arbiter of the Kansas Constitution, has had the opportunity to carefully consider and address all of the issues in play.

Ordering payment of state aid to districts is tantamount to ordering appropriations, a power granted to the Legislature and denied to the Judicial Branch. *See* Kan. Const., art. 2, §§ 1, 24 (power of appropriation is a core legislative power). Under Kansas law, the "legislative power" – which includes the power to tax – is a power vested exclusively in the legislature by Kan. Const., art. 2, §§ 1, 24. These provisions give the Legislature the exclusive power to pass, amend, and repeal statutes. *State ex rel. Stephan v. Finney*, 251 Kan. 559, 577, 836 P.2d 1169 (1992). *Accord, State ex. rel. Morrison v. Sebelius*, 285 Kan. 875, 179 P.3d 366 (2008). The power of appropriation is a core legislative power that is exercised when appropriations are "made by law." Kan. Const., art. 2, §§ 1, 24. Thus, an order compelling the Legislature to make appropriations necessarily and unconstitutionally usurps the legislative power. *See State ex. rel. Morrison v. Sebelius*, 285 Kan. 875, 898-99, 179 P.3d 366 (2008) ("[W]hen the legislature is considering legislation, a court cannot enjoin the legislature from passing a law. This is true whether such action by the legislature is in disregard of its clearly imposed constitutional duty or is the enactment of an unconstitutional law.") (internal quotations omitted).

Furthermore, the Panel lacks the power to segregate and encumber money in the State's general fund. K.S.A. 60-723(d) provides:

> All property, funds, credits and indebtedness of the state or of any agency of the state shall be exempt from garnishment, attachment, levy and execution and sale, and no judgment against the state or any agency of the state shall be a charge or lien on any such property, funds, credits or indebtedness.

2. *Reduction in 2016-17 funding for K-12 operational costs.*

SB 7 was enacted to maintain K-12 school funding at current levels for the next two years while the Legislature fully considers and explores the complicated methods and formulas for school funding, and then ultimately adopts a new system for the State's future. The law includes in its definition of general state aid the FY 2015 calculations of capital outlay and LOB state aid. SB 7, § 6(a)(1)(D). The funds appropriated do not allow for distribution of more or less capital outlay and LOB state aid because of changes in enrollments or student weightings in FY 2016 and 2017 or different levels of local districts' levies for capital outlay and LOB. *Id.*

However, the Panel's "temporary restraining order" is a game changer. The Panel clearly contemplates and expects that more money will be appropriated to cover any additional general state aid required by its orders, but the Panel did not order increased general state aid funding.

As a consequence FY 2016-17 funding for local districts' operational costs will be reduced in proportion to any increases in LOB or capital outlay state aid because of FY 2016-17 changes in enrollments and weightings. The districts unfairly impacted by the Panel's order are those which do not raise much LOB and capital outlay. For example, the Galena school district does not levy any capital outlay taxes and, therefore, receives no capital outlay state aid. Exhibit 3008, column "USD Total Actual Levies." If general state aid is prorated down to offset increased sums spent on LOB or capital outlay state aid, districts like Galena will be the losers.

3. *Reduction in funding to some districts.*

Plaintiff Districts are just four of 285 local districts. They lack standing to assert claims or demand remedies for these other districts. *See Hernandez-Carrera v. Carlson*, 547 F.3d 1237, 1255 (10th Cir. 2008) ("A plaintiff may challenge a statute . . . on an as-applied basis 'only insofar as it has an adverse impact on his own rights,'" *quoting County Court of Ulster County v. Allen*, 442 U.S. 140, 155 (1979)). *See also, State v. Thompson*, 221 Kan. 165, 172, 558 P.2d 1079 (1976) (holding that "unconstitutional governmental action can only be challenged by a person directly affected and such a challenge cannot be made by invoking the rights of others").

Plaintiff Districts' and the Panel's sentiments about SB 7 may not be shared by all 285 districts. For example, SB 7 changed the formula for funding virtual students. Some districts may be benefitted by that change. In fact, the Shawnee Mission District, which attempted to intervene in this case, disagrees with the relief the Plaintiff Districts sought and the Panel ordered. If nothing else, this divergence among the interests of various districts in the State illustrates the impropriety of treating this case as if it is a class action in which all Kansas school districts share the same views and positions.

The Panel's "temporary restraining order" inherently pits district against district. The "temporary restraining order" takes from some districts to give to others by requiring calculation of general state aid under 2016-17 enrollments and weightings. The local district which loses students in 2016-17 receives less general state aid as a result of the Panel's requirement. Such a district's average assessed value per pupil is increased, reducing its ability to get capital outlay and LOB state aid. Moreover, districts also lose the opportunity to continue to receive state aid even if they reduce their local tax levies for capital outlay and LOB.

However, Districts shorted or disadvantaged by the Panel's "temporary restraining order" have no remedy if the Panel's Order is not stayed and then subsequently reversed.

4. *Instability for local districts' FY 2016 budgeting.*

The "temporary restraining order" injects uncertainty into local district budgeting decisions. This likely will produce results that the Panel did not intend and, in process, force choices that reduce some districts willingness to fund programs or additional salaries.

Local districts must prepare and publish for public comment and vote to approve their 2015-16 school year budgets before mid-August 2015. The district boards will not know what to expect in available revenues. If the districts calculate their budgets assuming revenues ordered by the Panel and the Panel's judgments are reversed, even in part, districts intended to be advantaged by the "temporary restraining order" will be confronted with fewer funds than planned to meet commitments made during the budgeting process. Thus, some may conservatively choose to assume funding will ultimately be provided under CLASS. However districts disadvantaged by the "temporary restraining order" are likely forced to reduce spending on programs which they believe are valuable to their students' education, losing the advantages accorded them by CLASS, if the "temporary restraining order" is not stayed.

5. *Loss of all K-12 Funding.*

The SDFQPA is the only authority for state funding for K-12 operational expenses in FY 2015. CLASS assumed that mantle for FY 2016 and 2017. Also, the local districts' LOB taxing authority was provided exclusively by the SDFQPA and now CLASS. The Panel's conclusion that provisions in both the SDFQPA and CLASS are unconstitutional necessarily invalidates both acts in their entirety because both statutes include explicit non-severability provisions. Thus, the interrelated nature of the SDFQPA, *see* K.S.A. 72-6405(b), and now CLASS, *see* SB 7,

§ 22, may produce an earlier, if not immediate, halt to *all* state and local funding for K-12 schools.

As matters stand, the Panel has found K.S.A. 72-6434, as amended by SB 7 (LOB aid) [before it was absorbed into SB 7's block grants for FY 2016 and 2017], to be unconstitutional, and the Panel has purported to strike portions of the statute. The statute, however, is part of the SDFQPA which has a non-severability clause. The SDFQPA explicitly provides that if any part of the Act is found "invalid or unconstitutional," the entire Act is to be held invalid:

> "b) Except for the provisions of K.S.A. 75-2321, and amendments thereto, the provisions of the school district finance and quality performance act are not severable. Except for the provisions of K.S.A. 75-2321, and amendments thereto, if any provision of that act is stayed or is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would not have enacted the remainder of such act without such stayed, invalid or unconstitutional provision.

K.S.A. 72-6405(b).

In *Petrella v. Brownback*, 980 F. Supp. 2d 1293 (D. Kan. 2013), *aff'd* 2015 U.S. App. LEXIS 9088 (10th Cir. Kan. June 1, 2015), the federal court refused to enter a temporary injunction against the cap on the amount of LOB a district can vote and raise each year, K.S.A. 2014 Supp. 72-6434(a)(1), reasoning as follows:

> Specifically, the Court concludes that plaintiffs cannot show that their alleged harm in being subject to the LOB cap outweighs the harm to the State and to the public from an injunction against enforcement of the cap. The Court has previously analyzed the issue and concluded that the LOB cap is not severable from the rest of the statutory school funding scheme under Kansas law. Thus, because the school funding scheme may not be applied without the LOB cap, the injunction sought by plaintiffs would also completely upend the entire system of public education in Kansas. Such a result would work a tremendous hardship on public-school students and the rest of the public throughout Kansas, and that potential hardship easily outweighs plaintiffs' alleged harm from continued enforcement of the LOB cap pending the outcome of this litigation.

980 F. Supp. 2d at 1310.

The significance of the invalidation of the SDFQPA should be marginal because FY 2015 is over. However, the Panel relies on the SDFQPA to replace CLASS, the latter of which the Panel also found to be unconstitutional. In CLASS, the Legislature provided:

> New Sec. 22. (a) The provisions of sections 4 through 22 [CLASS], and amendments thereto, shall not be severable. If any provision of sections 4 through 22, and amendments thereto, is held to be invalid or unconstitutional by court order, all provisions of sections 4 through 22, and amendments thereto, shall be null and void. (emphasis added).

Thus, the Panel cannot selectively invalidate and rewrite parts of CLASS. The Legislature expressly retained the right to fashion statutes that govern the Kansas school finance system.

In spite of the non-severability clause in CLASS, the Panel purported to invalidate only certain provisions of the statute, including the provisions which provide the authority for distribution of LOB and capital outlay aid as part of the Act's block grants, and provisions which distribute general state aid based upon FY 2015 entitlements.

III. Relief Requested

Kansans – including students, parents, teachers, legislators, other government officials, and concerned citizens – recognize the importance of the Kansas constitutional goal of making suitable provision for finance of the educational interests of the State. There are many ways to achieve that goal, and appropriate processes for doing so. There are serious and substantial factual and legal disputes about whether that goal has been achieved. Unfortunately, the Panel's decision not only attempts to resolve those disputes but also orders extraordinary and unprecedented relief that may well exceed the bounds of judicial power. It is uncumbent upon this Court to ensure an orderly process for hearing this appeal and protecting the interests of all involved while this Court ultimately resolves the constitutional, legal, and factual issues in play.

The State has the right to appeal the Panel's conclusion that the State has violated Article 6, § 6 of the Kansas Constitution. K.S.A. 60-2101(b). The issues in this appeal are important, indeed compelling, and among the most fundamental to all Kansans.

The Panel's decision merits careful and deliberative review by this Court, and the State should not be put to a Hobson's Choice between proceeding with no operative school finance system or capitulating to the Panel's decision without this Court's review.

Pursuant to K.S.A. 2014 Supp. 60-262(f), the State respectfully requests that this Court grant an immediate stay that suspends all of the Panel's Order and maintains the real *status quo* until the Court can review the Panel's decision and issue its own mandate in this case. A stay may be granted under this Court's plenary powers, K.S.A. 20-101, K.S.A. 2014 Supp. 60-262(f) and/or K.S.A. 60-2101(b). No bond or other security may be required because this appeal and request is by the State of Kansas. K.S.A. 2014 Supp. 60-262(e).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS,
IN THE MATTER OF PROCEEDINGS BEFORE THE
THREE-JUDGE PANEL APPOINTED PURSUANT TO
K.S.A. 72-64b03 *IN RE* SCHOOL FINANCE
LITIGATION, to-wit:

LUKE GANNON, By his next friends and guardians, *et al*, Plaintiffs, vs. STATE OF KANSAS, Defendant.	Case No. 2010CV1569

MEMORANDUM OPINION AND ORDER AND ENTRY OF JUDGMENT ON PLAINTIFFS' MOTION TO ALTER JUDGMENT REGARDING PANEL'S PREVIOUS JUDGMENT REGARDING EQUITY AND PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

NATURE OF THESE PROCEEDINGS AND FINDINGS:

This matter is first before the Court on Plaintiffs' *Motion to Alter Judgment Regarding Panel's Previous Judgment Regarding Equity* set out on its previous judgment of December 30, 2014. The Court issued that *Opinion* in response to the directive of the

Kansas Supreme Court in its affirmance of this Panel's findings in regard to the State's obligations in regard to capital outlay state aid funding and supplemental general state aid (local option budget equalization) funding.

We 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. Because none of the further curative actions assured to be taken if necessary in the 2015 legislative session have been confirmed to have been taken, we now conclude that our finding in our December 30, 2014 *Opinion* of substantial compliance with *the Gannon* judgments on these issues was both premature and incorrect for reasons we will explain subsequently. We, therefore, withdraw our

previous finding of substantial compliance and reopen those equity compliance issues.

The Governor called for a K-12 school finance overhaul in his State of the State address on January 15, 2015 (Plaintiffs' Exhibit 650). Nevertheless, his budget included full funding of both capital outlay state aid and LOB state aid. (Plaintiffs' Exhibit 641, pps. 115-116). There were no pending or pre-filed bills to modify capital outlay state aid or LOB state aid, the first being 2015 SB71 filed on January 26, 2015. It purported to modify the formula for supplemental general (LOB) state aid by restructuring the average valuation per pupil (AVPP) array upon which a determination of eligibility is based. This senate bill was subsequently abandoned.

On February 5, 2015, based on a projected revenue shortfall in FY2015, the Governor exercised his allotment authority, which included an allotment against general state aid for unified school districts (USDs) in the amount of over $28 million, thus reducing

the prevailing base student aid per pupil (BSAPP) from $3852 to $3810. He conditioned implementation of the allotment on legislative action being taken *in lieu* to reform equalization aid formulas and "to stall" the increase of $54 million yet due in FY2015 for capital outlay state aid and LOB state aid per the existing formulas for their calculation (Plaintiffs' Exhibit 610). Shortly following the Governor's action, House Substitute for SB4 was passed (2/12/15), which "stalled" the FY2015 capital outlay state aid payments yet due by specifying a fixed payment amount for February 2015, and stalling any balance due until June 20, 2015. (*Id.* § 4).

On January 12th of this year, 2015 SB7, which then was a Senate bill dealing with information technology audits was introduced. It was eventually passed out of the Senate on February 25, 2015, 40-0 and was sent to the House and there referred to the House Appropriations Committee. On March 11, 2015, SB7, as had been passed by the Senate, was gutted by the House

Committee and the substance of what became House Substitute for SB7 was inserted as it substantially exists to this date. This substituted legislation passed in the House and was then referred back to the Senate for consideration and was passed March 16, 2015 by the Senate and signed by the Governor March 25th. It changed the formula for capital outlay state aid and restricted the amount of the final transfer of capital outlay state aid correspondingly (§ 63). It changed the LOB state aid formula (§ 38). The changes to both formulas 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*. This, in fact, occurred and the fiscal result can be compared.

The first proposed changes prompted the Plaintiffs to file a motion to alter or amend our equity findings, then the enactment of House Substitute for SB7 prompted a further motion from Plaintiffs on March 26, 2015 asking for a declaratory judgment finding 2015 House

Substitute for SB7 unconstitutional and asking for injunctive relief. By an *Order* dated April 30, 2015, the Kansas Supreme Court invoked the jurisdiction of this Court and tasked it with consideration of this latter motion as well as the pending Plaintiffs' motion to alter or amend its December 30, 2014, findings in regard to equity.

Accordingly, and after a hearing held on these motions on May 7-8, 2015 and requisite briefing of the issues, we, now, upon full consideration, find, for reasons as will be discussed subsequently, that 2015 House Substitute for SB7 violates Art. 6, § 6(b) of the Kansas Constitution, both in regard to its adequacy of funding and in its change of, and in its embedding of, inequities in the provision of capital outlay state aid and supplemental general state aid.

2015 House Substitute for SB7's changes to the capital outlay state aid funding formula and the formula for equalization funding under the local option budget authority necessarily embrace the question of

the State's compliance with the judgments of the Kansas Supreme Court in *Gannon*, as first raised by Plaintiffs' initial motion to alter our judgment in regard to equity as was expressed in our December 30, 2014, *Opinion*. We find, as well, that 2015 House Substitute for SB7's provisions relevant to those two pending equitable funding issues are not only unconstitutional on their face, but are also non-compliant with the noted March 14, 2014 judgment of the Kansas Supreme Court in regard to supplemental general state aid and capital outlay state aid.

We find that the "PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING *PLAINTIFFS' MOTION TO ALTER JUDGMENT REGARDING PANELS' PREVIOUS JUDGMENT REGARDING EQUITY*", which though limited in its proffered caption, also encompasses Plaintiffs' March 26th motion for declaratory and injunctive relief, all of which proffered facts and conclusions we hereby adopt as our own, unless otherwise specifically noted. The proffer accurately sets out the material and

relevant facts of record, the relevant and material exhibits, and supporting arguments which we adopt in support of our conclusions to be reached as we will expound upon following. Our concurrence with Plaintiffs only ends at their suggested request for an immediate injunctive remedy in regard to §§ 4-22 of House Substitute for SB7. While the basis advanced by Plaintiffs for such a remedy would exist, we currently decline to exercise that suggested remedy and others at this point in time as requested by Plaintiffs in ¶s 101, 103, 107, 110, 111, and 112 of their proffer.

DISCUSSION:

We find best practice dictates an examination first of 2015 House Substitute for SB7 in general. We propose to explain what its effect is; what its effect is in light of any findings on the remanded issue of the constitutional adequacy of the funding of our Kansas K-12 school system, which we had found in our January 11, 2013, *Opinion* was inadequate and which we reaffirmed as inadequate in our December 30, 2014,

Opinion and in an *Order* issued by us on March 11, 2015 on the State's motion to alter or amend that December 2014 *Opinion;* and what its effect is in light of its equitable (or inequitable) components, generally and specifically, as it deals with capital outlay state aid and LOB equalization state aid, which, too, reflect on the remanded questions of the State's compliance with the final judgments of the Kansas Supreme Court in *Gannon* in regard to these latter two component equitable funding mechanisms. As a matter of proceeding, we defer to the last the questions of House Substitute for SB7's overall effect on the adequacy of funding and any equity issues in general until after our specific discussion of the local option budget (LOB) and capital outlay components of House Substitute for SB7.

WHAT HOUSE SUBSTITUTE FOR SB7 DOES:

House Substitute for SB7, though promoted as a change and an improvement in K-12 funding, really encompasses - exclusive of its changes to the formulas

regarding capital outlay state aid and LOB supplemental state aid - what is no more than a freeze on USD operational funding for two years based on FY2015 (7/1/14-6/30/15) funding, with any increase in general state aid only coming by way of adding in, under the guise of operational funds, Kansas Public Employee Retirement System (KPERS) employer contributions for FY2016 and FY2017 to the "block" of funds provided. These KPERS contributions heretofore were made in separate line items of annual appropriation bills. (House Substitute for SB7, § 6(a)(6)). These included KPERS payments would show for FY2016 and FY2017 as increasing, but not due to employee headcounts, except incidentally, but rather to other legislative enactments requiring increased contributions to the KPERS pension fund in an attempt to reduce KPERS" publicly declared underfunded liabilities.

Nevertheless, if pending legislation is passed to retreat from the earlier adopted increases in the employer contributions as a budget reduction measure,

even the purported increase in FY2016 and FY2017 dollars in these "block" grant funds that are bolstered by these KPERS payments, and now bundled for delivery along with USD operational funds, will be less. (Testimony of Dale Dennis). This, in fact, has occurred. See 2015 House Substitute for SB112, §§ 114-115.

As we have always believed to be the case, KPERS contributions are not able to be used for general school district operations and pass straight through USDs to KPERS or are otherwise placed only temporarily in a school district's special retirement fund. (*Id.* § 69). We reiterate, from our past *Opinions*, KPERS contribution funds have either never been considered by experts or other competent professionals in evaluating the adequacy of K-12 school funding or, if so considered (Augenblick & Myers Study), such KPERs contributions were reflected as an add-on increase to the per pupil costs (BSAPP), not as an in-lieu of, or in substitute for, other needed funds projected by

these experts to reach a level of adequacy for K-12 school funding.

House Substitute for SB7 further carries an appropriated category of funds denominated as an "extraordinary need fund". (*Id.* § 17). However, the origin of this fund is not new money, but money *subtracted* (*Id.*: § 6(a)(6): "less") from what *would have otherwise been* in the amount of USD funds appropriated in "block" to the USDs' general funds before the subtraction. This subtraction is calculated at a 0.4% rate. (*Id.* § 6(a)(7)). This calculated subtraction amount is then placed in this separately denominated "extraordinary need fund".

The availability of monies in this extraordinary need fund to a USD is based on an application by a USD showing either "extraordinary enrollment increases", an "extraordinary" drop in property tax appraised values, or other unforeseen acts or circumstances that "substantially impact" an applying USD's budget. The fund is administered by the State Finance Council,

which is chaired by the Governor, and consists otherwise of legislative leaders. The law requires a majority vote of the Finance Council for a release of funds to a USD (*Id.* § 17). We find this school need evaluation, being entrusted to the State Finance Council, to be oddly placed. As placed, it appears to be more a state budget control device rather than a true needs assessing failsafe for a USD that finds itself with deficient revenues to obtain its educational objectives. The Kansas State Board of Education, at least in the first instance, has the constitutional duty of the oversight of USDs. The needs evaluation procedure adopted includes no part for that Board.

House Substitute for SB7's overall "block grant" funding is based on the FY2015 general state aid to USDs statewide (*Id.* § 6(a)(1)), FY2015 supplemental general state aid funding (*Id.* § 2), and FY2015 capital outlay state aid funding (*Id.* § 3). The legislature, by House Substitute for SB7, repeals the existing

School District Finance and Quality Performance Act, K.S.A. 72-6405 *et seq.* However, it grounds its block grant funding amounts for FY2016 and FY2017 on that Act's provisions, as amended by House Substitute for SB7, for determining the budget amounts to carry forward. The School District Finance and Quality Performance Act's structure included expert-designed weightings, which accommodated and provided for more revenues per pupil to USDs with subgroups deemed more expensive to educate. However, by freezing this FY2015 funding level for FY2016 and FY2017, the funding for these latter two fiscal years will not accommodate any such demographic changes in a school district's student makeup and, as noted, even changes in the number of fulltime equivalent (FTE) students in a USD overall are only discretionarily accommodated with increased funding when the enrollment increase is "extraordinary". The history of the trajectory of the Kansas K-12 school population has been up as has been

the demographic diversity of the K-12 student population.

By example, Plaintiff U.S.D. 500's estimated - but not clearly unusual - increase of 500 students per year would not be accommodated in FY2016 or FY2017, much less accommodated for the fact that students in that USD disproportionately fall into subgroups for which weightings would have provided an enhanced amount of state funds per pupil in order to fund the learning needs of those increased students that fell into subgroupings. (Testimony of Dr. Lane, Superintendent, USD 500, May 7-8, 2015 hearing). Without an overall decrease in weighted students, five hundred new students in FY2016 could project 834 weighted students, exclusive of special education, for funding purposes in USD 500. This is based on its ratio of unweighted to weighted students in FY2015 of 1 to 1.668. Plaintiffs' Exhibit 603: FY2015 Legal Max, col. 4(c), col. following col. 17(a)). At the current BSAPP of $3852, this could mean an additional cost to USD 500 of

$3,212,568 to educate these new students. At a BSAPP of $4980, which we found in our December 30, 2014 *Opinion* to be the inflation-adjusted BSAPP for a level of constitutional adequacy if weightings were not adjusted upwards, that cost would be $4,153,320. In FY2015, the USD 500 increase in students was 500, but, otherwise, due to weighting adjustments lowering the overall weighted student count, the net gain rose by just 277.7 students. Nevertheless, this latter increase alone would add $1,069,700 to the costs for their education. *See* Plaintiffs' Exhibit 618.

House Substitute for SB7 also purports to increase a USD's flexibility in the use of funds for overall operations by not requiring them to be placed in separate categorical funds, such as heretofore set aside for certain weighted funds or other funds such as a contingency reserve fund. Further, even if such funds are maintained separately, it permits essentially free transfer between funds at a USD's discretion to otherwise identify its most pressing needs. Only

excepted are funds for KPERS, bond and interest payments, and the local tax portion of special funds such as funds in a capital outlay fund that are generated from a special local mill levy for that specific use (*Id.* §§ 19,39,62). However, fund transfer flexibility has been substantially available since 2011 (K.S.A. 72-6460).

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 operational 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, it 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.

House Substitute for SB7 freezes changes made earlier by 2014 HB2506, such as elimination of the non-proficient weighting which would have otherwise produced $4,885,485 in FY2015 to eligible school districts. Otherwise, House Substitute for SB7 made changes to the statutory formulas for calculating LOB equalization payments (§ 38) and capital outlay state aid (§ 63) effective for FY2015 entitlements, producing reductions in FY2015 state aid for those two purposes.

These FY2015 reductions in dollars available are frozen going forward through FY2017.

Lastly, local school boards were given authority to increase their LOBs percentages, both by 2014 Senate Substitute for HB2506 and by 2015 House Substitute for SB7. For those that did not do so for FY2015, there is now a one shot opportunity that must be accomplished by July 1, 2015, if to be done at all. However, if done now, a school board's adoption or voter approval, where required, for such enhanced LOB authority - or any other change by the end of FY2015 by a USD, such as to merely raise its authority to the standard cap of 30% of its general fund from a lower percentage - will not make these new LOB revenues eligible for inclusion in determining LOB supplemental general state aid going forward, as such aid is based on the FY2015 amounts, which were adopted by the FY2015 LOB budgets *in 2014*. (*Id.*, §§ 12, 13). Hence, the revenues derivative of any increase in local property tax levy authority, while augmenting a USD's local option budget, still leaves,

a USD's dollar entitlement for supplemental general state aid at the FY2015 level. Further, its local property tax receipts are frozen going forward to an amount not greater than that raised for FY2015 or that which could have been raised for FY2016, regardless of property valuation changes (*Id.* § 12).

CAPITAL OUTLAY STATE AID FUNDING AND HOUSE SUBSTITUTE FOR SENATE BILL NO. 7:

This Panel determined, by its *Opinion* of January 13, 2013, that the total elimination of capital outlay state aid by the legislature, as K.S.A. 2013 Supp. 72-8814(c) then directed, created an unconstitutional wealth-based disparity in the availability of funds for capital outlay purposes between property tax wealthy districts and those less so. This ruling was affirmed on appeal. *Gannon v. State*, 298 Kan. 1107, 1175-1184 (2014). Consequently, the Kansas Supreme Court's enforcement directions to this Panel following that affirmance were expressed as follows:

> "We remand for the panel to enforce these affirmed equity rulings. Because the legislature should have an opportunity to

expeditiously address these inequities, its actions may require additional panel review. So we provide the following guidance to the panel:

1. As to capital outlay:

a. If by July 1, 2014, the legislature fully funds the capital outlay provision as contemplated in K.S.A.2013 Supp. 72-8814, the panel need not take any additional action on this issue.

b. If by July 1, 2014, the legislature acts to cure—whether by statutory amendment, less than full restoration of funding to prior levels, or otherwise—the panel must apply our test to determine whether that legislative action cures the inequities it found and which we have affirmed. More specifically, the panel must assess 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. If the legislative cure fails this test, the panel should enjoin its operation and enter such orders as the panel deems appropriate.

c. If by July 1, 2014, the legislature takes no curative action, the panel shall declare null and void that portion of K.S.A. 2013 Supp. 72-8814(c) prohibiting transfers from the state general fund to the school district capital outlay state aid fund. This will enable the funds envisioned by the statutory scheme to be available to school districts as intended.

> d. Ultimately, the panel must ensure the inequities in the present operation of the capital outlay statutes, K.S.A. 72-8801 *et seq.*, are cured."

Gannon at p. 1198.

Upon receiving the Kansas Supreme Court's *Mandate* on March 31, 2014, we scheduled a hearing on all affirmed equity issues for June 11, 2014. By that date the legislature had adjourned, but had responded to the Supreme Court's judgment by the enactment of Senate Substitute for HB2506, which amended K.S.A. (2013 Supp.) 72-8814(c), as follows, in its Section 47:

> "(c) The state board shall certify to the director of accounts and reports the entitlements of school districts determined under the provisions of subsection (b), and an amount equal thereto shall be transferred by the director from the state general fund to the school district capital outlay state aid fund for distribution to school districts~~, except that no transfers shall be made from the state general fund to the school district capital outlay state aid fund during the fiscal years ending June 30, 2013, June 30, 2014, June 30, 2015, or June 30, 2016~~. All transfers made in accordance with the provisions of this subjection shall be considered to be demand transfers from the state general fund."

The Legislature later in that session amended this section to maintain the bar through June 30, 2014. *See* L. 2014, ch. 143, § 112(c).

The 2014 legislature through Senate Substitute for HB2506 in its Section 7(j), also, as had been its practice prior to adding the prior restrictive proviso, made a "no limit" appropriation on the capital outlay state aid fund for FY2015, which then permitted the demand transfer from the general fund as provided for in its amended 72-8814(c) to proceed as intended. In other words, the capital outlay aid formula was allowed to operate as it was theretofore existing and intended, its revenues flowing from the formula without legislative alteration either by statute or appropriation.

The legislature had been provided an estimate of the effects of the adoption of Senate Substitute for HB2506 by a memorandum from the Kansas State Department of Education dated April 6, 2014. *See* Exhibit D State's *Notice of Full Equalization Funding . . . And*

to Dismiss the Equity Claims filed April 25, 2014. A slightly updated version of that memorandum was exampled at our June 11, 2014 hearing and is again before us now (Plaintiffs' Exhibit 507: April 17, 2014 Memorandum). As explained at our June 11, 2014 hearing, and again in our most recent hearing May 7-8, 2015, the estimates there presented of the average valuation per pupil (AVPP) for each USD used in that memorandum was based on the just - preceding year's - 2012-2013 - property valuations, with the current year's valuations upon which the formula was directed to operate for FY2015 - the 2013-2014 valuations - yet to be compiled. At our June 11, 2014, hearing, and in recognition that the Kansas State Department of Education's memorandum was but an estimate of the dollar revenues to be produced by the formula, 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 funded. 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 don'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. It's not reason when you consider the different legislatures that have looked at this, the different administrations. It's not factually based. It probably is a testament more to the difficulty in understanding, as I think we've all found, what Article 6 means than it is anything else.

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. The way that LOB is funded over the course of the year is you pay it over in installments. The last installment is paid and will be paid July and I don't think it is actually July 1, but after the first of July in 2015. It will be posted, for accounting reasons, June of 2015. 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 trued up at the end. Under the circumstances, we think it's appropriate for the panel to do what the supreme court has suggested, which is to do no more, which what

> does that do with this case as it goes with the equity? It dismisses it. And that's the relief that we are requesting."

At the June 11, 2014 hearing, this Panel made an oral finding of "substantial compliance" with the Kansas Supreme Court's judgment, but deferred entry of a formal ruling pending its overall *Opinion*, which would include the remanded issue of funding adequacy as well as our formal opinion on the remanded issues of compliance with the Kansas Supreme Court's judgments concerning capital outlay state aid and supplemental general state aid. Our *Opinion* of December 30, 2014 decided all remaining issues before us emanating from the Kansas Supreme Court's March 2014 *Gannon* mandate to us. Between June 11, 2014 and December 30, 2014 we received no advisories that the estimates advanced in June had changed.

As we set out earlier, on January 15, 2015, the Governor asked the 2015 legislature to change the State's school finance formula and to enact a block grant system in the interim pending consideration of

what changes should be made. The Governor's budget released January 15, 2015, reflected capital outlay state aid payable for FY2015 due of $45 million, which was what would have been what the existing formula as written would have delivered based on 2013-2014 valuations and the resulting average valuation per pupil (AVPP) calculations made. (Plaintiffs' Exhibit 701, Section 3: $45,629,725). On February 5, 2015, the Governor imposed the heretofore noted allotment, its ultimate implementation contingent on legislative action to reform equalization formulas and "to stall" FY2015 sums yet due.

By enacting House Substitute for SB7, the Kansas legislature, by the *Act's* § 63, altered the capital outlay formula then existing in K.S.A. (2014 Supp.) 72-8814, as had been modestly changed by House Substitute for SB4, § 54, passed February 12, 2015, which had only stalled those capital outlay state aid payments for FY2015. It did so by altering the starting point for the array of USDs' AVPP rankings from the lowest rather

than the median rankings and changing the percentage used to calculate the formula's capital outlay state aid such that the new array for USDs' AVPP returned only $27,059,866, or $18,569,859 less than otherwise due for FY2015 had the formula in place at the time of our hearing in June, 2014 been honored, thus closely conforming with the KSDE projections in its memorandums of April 2014 of $25,200,786. We are now advised this rise in dollar amount occurred because of a rise in assessed valuations for the 2013-2014 year and the fact many school districts were able to increase their capital outlay levies from the property tax reductions arising from the *anticipated* full funding of local option budget supplemental general state aid. However, that property valuations historically fluctuate both up and down is demonstrated by the State's Exhibit 3009. House Substitute for SB7 § 63 provided that the altered formula would be applied retroactively for FY2015, which sum then also set the amount of capital outlay

state aid to be paid going forward in each of FY2016 and FY2017.

The result of this change on USDs's anticipated, *and already budgeted*, receipts is evidenced in Exhibit 701, Section 1 and, specifically for capital outlay at Exhibit 701, Section 3. As the total loss of $18,569,859 in capital outlay state aid for FY2015 carries over for each of FY2016 and FY2017, that makes the reduction a re-occurring loss by all eligible USDs in each of those years going forward and the actual loss of eligibility by some. Further, in FY2015, because the KSDE, pursuant to its authority, and in anticipation of the full funding of the capital outlay state aid formula, had prior to the passage of House Substitute for SB4 and House Substitute for SB7 made some distributions of capital outlay state aid funds to USDs so entitled, some USDs then stood as overpaid in terms of this state aid. The total for all these USD overpayments is $1,756,400. See Exhibit 702. Further, House Substitute for SB7, by § 63(c), limited demand

transfer payments to no more than $27,502,000. However, we judicially notice that 2015 Senate Substitute for HB2353 has been enacted, which amended House Substitute for SB7 and raised the transfer payments by $1,756,100, effectively forgiving any overpayment. (§ 8(c)(2)). Further, we judicially notice 2015 House Substitute for SB112 at § 20(d), which forgives these overpayments.

It should be noted that § 63 seemingly conflicts with other sections. By example, § 4 of House Substitute for SB7 purports to hold USDs "harmless from any decreases to the final 2014-2015 amount of total state financial support" in FY2016 and FY2017, which as structured, includes capital outlay state aid. *Id.* § 6(a)(3). Further, this latter section, by reference, specifically refers to K.S.A. *2014 Supp.* 72-8814 prior to its repeal as the reference to determine a USD's capital outlay state aid entitlement, not to its § 63 and specifically not to its subsection § 63 (c)'s fund transfer limitations effective for FY2015 only.

Sections 4-22 of House Substitute for SB7 are denominated as the *Classroom Learning Assuring Student Success Act (CLASS)* and governs the FY2016 and FY2017 block grants. However, § 63, being part of that legislation, specifically controlling the FY2015 base of capital outlay funds to carry forward, has undermined these other noted sections. We are advised, and the exhibits and arguments advanced support, that the appropriations contained within House Substitute for SB7 (§ 1(a)) and the transfer limitations in § 63 (c) do not hold USDs harmless from the retroactive reductions in equalization aid in FY2015, but rather port the reductions forward for FY2016 and FY2017. Further, since the overpayments accommodated by 2015 Senate Substitute for HB 2353's amendment to § 63(c) did not comport with the amended formula, it appears those overpayments will not be carried forward in the base for FY2016 and FY2017.

Local capital outlay levy authority, including § 63, is repealed as of July 1, 2015 (§§ 80, 81). Any

existing USD levy resolutions, except those approved between May 1, 2014 and July 1, 2015, are not preserved (§ 78). Nevertheless, capital outlay tax levy authority is reenacted beginning July 1, 2015 (§ 79). In this light, it is significant as a matter of equity that no section of House Substitute for SB7 nor any other statute prevents any USD from levying its local capital outlay tax levy and the use of the revenues thereby produced. Thus, wealthier property tax USDs are not disadvantaged in the slightest by House Substitute for SB7, only USDs that have relied on capital outlay state aid to any degree are precluded from any capital outlay state aid above FY2015 amounts from any change in levy authority.

Though when first faced with a challenge to legislative change to the capital outlay state aid formula at the initiation of this lawsuit, the defect was the total elimination of such aid to otherwise eligible districts altogether. The challenge now is to legislative changes to the capital outlay aid formula

aimed at limiting the capital state aid entitlements of USDs. We believe the challenge is a distinction without a difference. In terms of the *Gannon* opinion of the Kansas Supreme Court in this case, the satisfaction of the judgment in relation to capital outlay state aid rested first in option "a", which was to fully fund the then-existing formula, which we now find is not the case.

Option "b" rested in legislative action "to cure - whether by statutory amendment, less than full restoration of funding to prior levels, or otherwise - . . . cures the inequities found. . . ." Here the legislature proffered the accomplishment of option "a" in 2014, but in 2015 it backtracked and now the evaluation of compliance falls into option "b".

Here, by altering the formula to modify the array of the AVPPs used to determine the extent of the entitlement, the amount of the entitlement for all those eligible has been reduced to some degree, even eliminated for some USDs, yet leaving the capital

outlay gains levy authority at full flower for those districts heretofore that were deemed to have no need. Further, any higher levy subsequent up to an 8 mill levy by a district heretofore receiving such aid would not be equalized if employed to make up for the reductions accomplished by § 63 of House Substitute for SB7. Again property wealthier districts - those not heretofore receiving 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. Cannibalization of a USD's other operating funds or needs, as we have previously discussed in earlier *Opinions,* would be likely to occur commensurate to the unsatisfied need. This disparity does not produce "reasonably equal access to substantially similar educational opportunity through similar tax effort".

Accordingly, we find § 63 of House Substitute for SB7 fails to comply with the *Gannon* judgment. One cannot cure an equity defect by allowing full authority

to tax and spend for some USDs to continue, yet reduce or eliminate the amount of such aid for the rest. While it might be suggested that what the legislature has done has merely provided less funding, which the Kansas Supreme Court under its "b" option might seem to have sanctioned, the legislature has, rather, by not restricting the authority of wealthier districts to keep and use the full revenues of such a levy, merely reduced, not cured, the wealth-based disparity found that disparity found unconstitutional in *Gannon*. We find such a solution stands equally - independent of the *Gannon* judgment - as yet maintaining an unjustifiable wealth based disparity. The legislature merely conformed the capital outlay state aid formula to the amount of money it wished to provide rather than, as has been its practice in the past, to either bar its funding or, as in the case of LOB equalization, prorate the funding.

If the history of the enforcement of *Brown v. Board of Education* has taught us anything, it is that a

judgment fundamentally grounded on principles of equality of opportunity cannot be satisfied by merely a proffer of a lesser degree of the same inequality. *See Gannon* Trial Court *Opinion*, pps. 240-242 (1/11/13).

Accordingly, we find the State failed to comply with the March 7, 2014 *Gannon* judgment in regard to capital outlay state aid.

SUPPLEMENTAL GENERAL STATE AID (LOCAL OPTION BUDGET EQUALIZATION) AND HOUSE SUBSTITUTE FOR SENATE BILL NO. 7:

House Substitute for SB7 reduces local option budget equalization funds that were to be due for FY2015 and then freezes that FY2015 state aid amount for FY2016 and FY2017. This aid is then incorporated into the "block" of funds provided to the USDs. While capital outlay levy authority for FY2016 and FY2017 and forward was reenacted by House Substitute for SB7 (§ 79), but without capital outlay state aid supplemental authority, House Substitute for SB7's LOB budget levy authority for USDs was restricted going forward, then abolished July 1, 2017. As noted earlier, it would

allow USDs one time authority, for those USDs not previously having done so, to increase their LOB percentage authority to be applied to their general fund budget, including the option to base it upon an LOB that could have been raised for FY2016, rather than what was raised by the LOB in FY2015. Whatever percentage or budget year base was established would then comprise a USD's LOB budget authority through FY2017. However, while any increased tax revenues received from local budget authority above the revenues generated from the FY2015 local option budget could be retained, such revenues would not be subject to inclusion in calculating supplemental general state aid entitlements. Such entitlements going forward are to be calculated from actual FY2015 entitlements as determined by the amended formula that was applied retroactively.

Thus, beyond the freeze of the base from which local option budget entitlements would be calculated and capped, § 38 of SB7 provides that the following

policy be implemented retroactively to determine the FY2015 LOB supplementation payments due by amending the heretofore existing formula for their calculation as shown following:

"Sec. 38. K.S.A. 2014 Supp. 72-6434 is hereby amended to read as follows: 72-6434. (a) ~~In each school year~~ *For school year 2014-2015,* each district that has adopted a local option budget is eligible for entitlement to an amount of supplemental general state aid. Except as provided by K.S.A. 2014 Supp. 72-6434b, and amendments thereto, entitlement of a district to supplemental general state aid shall be determined by the state board as provided in this subsection. The state board shall:

(1) Determine the amount of the assessed valuation per pupil in the preceding school year of each district in the state;

(2) rank the districts from low to high on the basis of the amounts of assessed valuation per pupil determined under *subsection (a)*(1);

(3) identify the amount of the assessed valuation per pupil located at the 81.2 percentile of the amounts ranked under *subsection (a)*(2);

(4) divide the assessed valuation per pupil of the district ~~in the preceding school year~~ *as determined under subsection (a)(1)* by the amount identified under *subsection (a)*(3);

(5) *(A)* ~~subtract the ratio obtained under (4) from 1.0. If the resulting ratio equals or exceeds 1.0, the eligibility of the district for entitlement to supplemental general state aid shall lapse. If the resulting ratio is less than 1.0, the district is entitled to receive supplemental general state aid in an amount which shall be determined by the state board by multiplying the amount of the local option budget of the district by such ratio. The product is the amount of supplemental general state aid the district is entitled to receive for the school year~~, *if the quotient obtained under subsection (a)(4) is less than one, subtract the quotient obtained under subsection (a)(4) from one, and multiply such difference by the amount of the local option budget of the school district; or*

(B) if the quotient obtained under subsection (a)(4) equals or exceeds one, the school district shall not be entitled to receive supplemental general state aid; and

(6) determine the amount of supplemental general state aid for each school district eligible to receive such state aid as follows:

(A) For those school districts ranked in the lowest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5), multiply the product calculated under subsection (a)(5)(A) by 97%;

(B) for those school districts ranked in the second lowest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5),

multiply the product calculated under subsection (a)(5)(A) by 95%;

(C) for those school districts ranked in the third lowest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5), multiply the product calculated under subsection (a)(5)(A) by 92%;

(D) for those school districts ranked in the second highest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5), multiply the product calculated under subsection (a)(5)(A) by 82%; and

(E) for those school districts ranked in the highest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5), multiply the product calculated under subsection (a)(5)(A) by 72%.

(b) If the amount of appropriations for supplemental general state aid is less than the amount each district is entitled to receive for the school year, the state board shall prorate the amount appropriated among the districts in proportion to the amount each district is entitled to receive.

(c) The state board shall prescribe the dates upon which the distribution of payments of supplemental general state aid to school districts shall be due. Payments of supplemental general state aid shall be distributed to districts on the dates prescribed by the state board. The state

board shall certify to the director of accounts and reports the amount due each district, and the director of accounts and reports shall draw a warrant on the state treasurer payable to the treasurer of the district. Upon receipt of the warrant, the treasurer of the district shall credit the amount thereof to the supplemental general fund of the district to be used for the purposes of such fund.

(d) If any amount of supplemental general state aid that is due to be paid during the month of June of a school year pursuant to the other provisions of this section is not paid on or before June 30 of such school year, then such payment shall be paid on or after the ensuing July 1, as soon as moneys are available therefor. Any payment of supplemental general state aid that is due to be paid during the month of June of a school year and that is paid to school districts on or after the ensuing July 1 shall be recorded and accounted for by school districts as a receipt for the school year ending on the preceding June 30.

(e)(1) Except as provided by paragraph (2), moneys received as supplemental general state aid shall be used to meet the requirements under the school performance accreditation system adopted by the state board, to provide programs and services required by law and to improve student performance.

(2) Amounts of supplemental general state aid attributable to any House Substitute for percentage over 25% of state financial aid determined for the current school year may be transferred to the capital improvements fund of the district and the capital outlay fund of the

district if such transfers are specified in the resolution authorizing the adoption of a local option budget in excess of 25%.

(f) For the purposes of determining the total amount of state moneys paid to school districts, all moneys appropriated as supplemental general state aid shall be deemed to be state moneys for educational and support services for school districts.

(g) For school year 2014-2015, for those school districts whose total assessed valuation for school year 2015-2016 is less than such district's total assessed valuation for school year 2014-2015, and the difference in total assessed valuation between school year 2014-2015 and school year 2015-2016 is an amount that is greater than 25% of the total assessed valuation of such district for school year 2014-2015, and such reduction in total assessed valuation is the direct result of the classification of tangible personal property within such district for property tax purposes pursuant to K.S.A. 2014 Supp. 79-507, and amendments thereto, the assessed valuation per pupil for purposes of determining supplemental general state aid shall be based on such school district's total assessed valuation for school year 2015-2016."

Exhibit 701, Section 2, demonstrates the effect of § 38 on USD's entitlements with the reduction in supplemental state aid to all eligible USDs totaling

$35,451,471. Thus, the reduction for FY2015 carries forward in each of FY2016 and FY2017 regardless of, by example, increases or decreases in AVPP, or any increase in LOB authority.

Again, just as with the mandated retroactive reduction in capital outlay state aid for FY2015, supplemental general state aid payments had been distributed in part by the Kansas State Board of Education in reliance on existing law, which would have created, by the reductions in entitlements, overpayments made to some districts. The total of overpayments for all USDs of supplemental general state aid stands at $1,976,818. *See* Exhibit 702. Further, as noted for capital outlay state aid, Section 4 of SB7 evidenced an intent to hold USDs harmless from FY2015 budget reductions made in 2015. However, § 38, being specific, nevertheless, would seemingly negate the intent expressed in § 4. However, we judicially notice a recent bill passed in the legislature (Senate Substitute for HB2353) which amended § 63 of House

Substitute for SB7, effectively forgiving overpayments for FY2015 of capital outlay state aid (§ 8), however, it amended § 38 at subsection (g) only, which would not affect supplemental general state aid overpayments. Nevertheless, 2015 House Substitute for SB 112, § 20(d), operates independently to forgive any overpayments both for supplemental general state aid as well as capital outlay state aid. Its § 20(b) also appropriates the monies to cover the amount of overpayments for LOB equalization overpayments.

This *Panel's Opinion* of January 11, 2013 found that while the LOB supplementation formula had not been changed, legislative appropriations had increasingly not been forthcoming to fund it fully, such that proration of the entitlements of those USDs having eligibility for such supplementation at and below the 81.2 percentile of the average property tax valuation per pupil array for each USD (AVPP) had occurred. Thus, at the time of that decision, only about 80% of each USD's entitlement was being paid to each USD so

entitled. We found, without further analysis of the 81.2 cap imposed on the equalization to be provided by the formula, that such proration created an unconstitutional wealth-based disparity between USDs. This finding was affirmed by the *Gannon Opinion* of March 14, 2014. The enforcement of this affirmed judgment was remanded to us with directions, as follows:

> "2. As to the local option budget and supplemental general state aid:
>
> a. If by July 1, 2014, the legislature fully funds the supplemental general state aid provision as contemplated in the existing SDFQPA, K.S.A. 72-6405 *et seq.*, without proration, the panel need not take any additional action on this issue.
>
> b. If by July 1, 2014, the legislature acts to cure—whether by statutory amendment, less than full restoration of funding to prior levels, or otherwise—the panel must apply our test to determine whether such action cures the inequities it found and which findings we have affirmed. If the panel then determines those inequities are not cured, it should enjoin operation of the local option budget funding mechanism, K.S.A.2013 Supp. 72-6433 and 72-6434, or enter such other orders as it deems appropriate.

> c. If by July 1, 2014, the legislature takes no curative action, the panel should enjoin operation of the local option budget funding mechanism, K.S.A. 2013 Supp. 72-6433 and 72-6434, or enter such other orders as it deems appropriate.
>
> d. Ultimately, the panel must ensure the inequities in the present operation of the local option budget and supplemental general state aid statutes are cured."

Gannon, 298 Kan. at 1198-1199.

Thus, much 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, again with the State's counsel's assurance of reconciliation with the formula if estimated amounts were amiss. Due to an increase in the 2013-14 property valuations which raised the AVPP 81.2 percentile threshold amount and the fact more USDs than originally anticipated raised their LOB percentages generally or did so pursuant to

the legislative authority granted in Senate Substitute for HB2506, the estimate given in the Kansas State Department of Education's Memorandum of April 17, 2014 to the legislature, and similarly provided to us (Exhibit 507), 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 conform to the money they wished to provide.

The new formula's reductions are not applied equally across the board in terms of the percentage of

reduction, as had been done by the prior prorations, but, rather, the reductions are more ratably structured, such that the reductions are progressively less the more property tax-poorer a district is. Notwithstanding, a ratably imposed inequity is still an inequity and still leaves a constitutionally unacceptable wealth-based disparity between USDs deemed without a need for such aid and those that have that need. Hence, Section 38, though more equitably styled, effectively represents a front door proration, rather than one implemented by an under appropriation of funds as before. Those that have no need for such aid are able to generate sufficient tax revenues with less tax levy while those needing such aid will require a greater tax levy to just stay even. Further, even an increase in the local option budget authority for such property poor districts going forward, implemented to make up for the shortfall going forward, is, as was discussed, not subject to supplementation. Critically, and immediate therefore, - because supplementation is

frozen at FY2015 entitlements - is the fact that no process exists for a USD to levy a tax that would equitably allow it to recover from or remedy the legislatively - imposed retroactive shortfall in FY2015, yet without such a tax increase, budget cuts or the cannibalization of funds intended for other purposes would occur - assuming such other purposed funds, in fact, were available and adequate to the need. No such hardship or negative choice exists by this legislation for USDs above the 81.2 percentile.

We find the condition created overall - and particularly its retroactive and carryover features - to represent a clear failure to accord "school districts reasonably equal access to substantially similar educational opportunity through similar tax effort". As we have multiple times concluded, money does make a difference. All USDs carefully and publicly assembled their budget needs for FY2015 in August 2014. Now only those USDs eligible to receive supplemental general state aid for FY2015 or capital

outlay state aid are expected to summarily shuffle or abandon these needs, yet those USDs that had no need for such aid, yet likewise budgeted in the best interest of their students locally, have had their choices honored. That disparity in choice between these two categories of school districts exists going forward through FY2017. That disparity will thus be likely to be exacerbated by the potential for increases in LOB authority for some, whereby the increasingly tax-wealthy districts will have their educational goals honored, preserved, and funded, including decisions in regard to holding cash reserves, while those needing aid will be at the burden of increased, but unsubsidized, taxation as their price of increased budgeting choice. Such choices, if made, will be borne by these local taxpayers alone.

As we said in regard to the State's approach post-*Gannon* to funding capital outlay state aid, we find the proffer of but a lesser degree of inequality does not satisfy either Art. 6, § 6(b) nor the *Gannon* court's

judgment in regard to funding supplemental general state aid. Further, it should be kept in mind that the eligibility cap for supplemental general state aid is at 81.2, which means there already exists a 18.8 percentile disparity between the wealthiest districts' tax effort per mill and their choices for the budgeted uses for such revenues and the first eligibility level for USD local option budget supplemental general state aid. Thus, "zero tolerance" has not been applied by us as the measuring stick or point of reference for measuring a wealth based disparity nor the freedom of local choice so accorded. Nevertheless, we would admit that were we unfettered in our decision making, we would find little room to deviate from a strict view in regards to tax equity nor the consequent equity in freedom of choice accorded by such equity since - among all the factors that could bear on school finance - tax equity is the least subjective of any. While there may be many areas where the money available per student may not, and need not, be equal - weightings being an

example - nevertheless, the ultimate goal of comparative equal educational opportunity is the same. While the effectiveness of a course of study or the quality of the person teaching it may not be assuredly controlled, a disparity in educational opportunity should not be allowed to arise from the difference in property tax wealth between school districts.

The formula adopted by § 38, while not dropping the eligibility threshold, *per se*, would have, but for the graduated reductions through quintiles, effectively reduced the eligibility cap to the 75.27 percentile had the reductions been accomplished by strict proration of the defunded amount. This would be near the eligibility threshold pre-existing the *Montoy* decisions. The threshold boast for eligibility to the 81.2 percentile level from the 75th percentile was one basis for that Court to find the legislative response to *Montoy* was in "substantial compliance" with those rulings such as to warrant dismissal of the *Montoy* case. *Montoy v. State*, 282 Kan. 9, 16-17 (2006).

Further, as we extensively discuss in our December 30, 2014 *Opinion*, the present use of backdoor funding through the LOB is now to the point whereby those LOB resources - because of the inadequacy in the funded base student aid (BSAPP) as weighted - are now necessarily employed and almost universally consumed in attempts to fund merely a constitutionally adequate - *Rose factors* compliant - education. This fact enhances the importance of tax equity principles and any failure in according it exacerbates inter-district disparity in being able to provide that constitutional standard of education - particularly since the employment of, and the dollar extent of, an LOB is, otherwise, voluntary.

Hence, to deprive property poor districts of LOB equalization aid and capital outlay state aid, for which there is no realistically *assured* tax base nor any equitably-based tax alternative for funding, turns the struggle for adequacy in many of these districts into ones of just survival. Here, the *promised* LOB

equalization aid for FY2015 allowed some poorer property tax districts to be able to use the mill levy savings garnered from their LOB supplementation aid for their capital outlay levy needs, all to the benefit of their schools and students. This appears to be a local choice that deserves to be honored, not undermined.

ADEQUACY AND EQUITY AND HOUSE SUBSTITUTE FOR SENATE BILL NO. 7:

As this Panel found in its original December 30, 2014 *Opinion* on the remand from the Kansas Supreme Court to re-evaluate our opinion concerning K-12 funding adequacy in light of the "Rose factors" and as we further affirmed in our March 11, 2015 *Opinion* on the State's motion to alter or amend our December 30, 2014 *Opinion,* the adequacy of State K-12 funding through FY2015 *was wholly constitutionally inadequate from any rational perspective.* Certainly, then, House Substitute for SB7, by its failure to provide funding consistent with the needs found in our *Opinion* of December 30, 2014 and by freezing the inadequacy we found existing through FY2015 for FY2016 and FY2017,

also stands, unquestionably, and unequivocally, as constitutionally inadequate in its funding.

Simply, just setting out the various funding parameters of House Substitute for SB7's "block" grants, less, as we have heretofore discussed, the KPERS pass through contributions inappropriately touted as a proper measure of constitutional adequacy, speaks our opinion of House Substitute for SB7's constitutional inadequacy in terms of K-12 funding. It represents only a new façade for a continuing lack of adequate funding.

Further, turning 0.4 of 1% of heretofore demonstrably needed funds into more or less a catastrophic events fund ("extraordinary need fund") only diminishes funding adequacy. Only 0.4 of 1% of the KPERS portion in that extraordinary need fund could be deemed new money. That fund is certainly not the "failsafe" funding mechanism as we envisioned the existence of one might be in our December 30, 2014 *Opinion*.

Too, House Substitute for SB7, by using its § 38 and § 63, and as amended by Senate Substitute for HB2353 at § 7 and § 8, to manipulate the FY2015 funding base for LOB equalization aid and capital outlay state aid, respectively, for carryover to FY2016 and FY2017 for House Substitute for SB7's §§ 4-22 CLASS Act block grants, makes, for reasons we have earlier discussed, the CLASS Act itself constitutionally inequitable.

Lastly, the funding for FY2016 and FY2017, being blind to any changes in the number and demographics of the K-12 student population going forward, except in "extraordinary" circumstances, stands as a particularly contrarian and arbitrary decipher of adequate funding and most likely will result in situational - feast or famine - funding inequities between school districts. See, by example, Plaintiffs' Exhibit 618. While those on the "feast" end of the distribution - because of the overall inadequacy of funding - will have "extra" needed revenues when their weighted student count decreases, those on the "famine" end of the

distribution - caused by an increase in weighted student count - will clearly suffer from a loss of educational opportunities due to the lack of funds to fund the needs generated from that increase in students, many of which students need, as all experts and educators concur and the expert designed weightings accommodate, more funding to meet these educational needs.

This particular aspect of the block grant - flat funding - mechanism for the distribution of school funding resources is so pernicious and its negative effects so immediate that we believe a temporary restraining order should be issued pending resolution of the appeal of our decisions that would at least mitigate these effects and somewhat maintain the status quo, at least to a point in time whereby conformity with the appropriation funding could not otherwise be reconciled. The temporary restraining order would require that any distribution of general state aid to any unified school district be based on the *weighted*

student count in the current school year in which a distribution is to be made pursuant to § 6 and § 7 of House Substitute for SB7, not merely the total money available that is based on the weighted or unweighted student count in school year 2014-15 (FY2015). Further enjoined would be the collection of repayments for any overages or the payment of any underages until such point whereby reconciliation of amounts directed by the particular appropriation act could not be had or otherwise upon further order of the court where the case was then pending. *See Id.*, § 8.

Our decision is based on Plaintiffs' Exhibit 618 which correctly analyzes what the effect of these fund distribution changes would be if based solely on money received in the past rather than based on weighted student counts in the year of distribution. Without such a restraining order conditioning distribution of the state funds based on the reality of current school year weighted students, the dollar shift is substantial. While the overall dollar cost to the

State by an increase in weighted students from FY2014 to FY2015 of 180 weighted students would have been $693,360 at a BSAPP of $3852, nevertheless, the effect of a distribution for FY2015 that had been fixed on FY2014 state receipts by each USD, rather than FY2015 weighted students, would have shifted $25,223,281 of state aid from USDs that had an increase in weighted students in FY2015 to USDs that reported less weighted students in FY2015. This would be in addition to the $693,360 lost to these USDs with increased student counts for which the State would have otherwise been obligated to fund for the increased weighted student counts in FY2015, but that would not be paid if the block grant - flat - funding - concept of House Substitute for SB7 had been in effect. Thus, the total loss of funds from those with imperative need for such funds due to increases in student count would be $25,916,641 if the same circumstances were to exist in student counts from FY2015 to FY2016.

This method of state aid distribution adopted by House Substitute for SB7, as just described, can find no accepted factual basis or any principle that has ever been approved by any court or supported by any expert or educator for determining the appropriate financing of Kansas K-12 schools. We believe our temporary restraining order meets all the tests for its entry as articulated in *Steffes v. City of Lawrence*, 284 Kan. 380, 395-396 (2007).

Otherwise, here, we can add nothing more in regard to adequacy or equity than what we have said herein or heretofore.

ORDER

House Substitute for SB No. 7, whether stripped or unstripped of its reliance on the inequity we have found in each of § 38 and § 63, would stand as unconstitutional in violation of Art. 6, § 6(b) of the Kansas Constitution through the lack of constitutional adequacy in its funding of the amounts necessary to

provide a constitutionally adequate – *Rose factors* compliant – education to all Kansas K-12 students.

We have noted the inappropriateness of the placement of the determination for USD requested relief through the "extraordinary relief fund" with the State Finance Council. In addition, we have noted the abject failure of the block grant funding procedure to accommodate ordinary increases in the K-12 student population or changes in that student population's demographics and the consequent total disregard of the opinion of experts and educators that opined the increased costs associated therewith and the reasons therefore.

We find these structural anomalies are principally grounded in, and relate more to, the inadequacy of assured funding overall, including the failure of that block grant funding structure to consider the costs that experts have detailed as necessary to provide a demographically varied student population with an education that can meet the *Rose factors* for *every* K-12

student. However, the ultimate resolution of these adequacy issues by the Kansas Supreme Court, if we are affirmed, should operate to alleviate these dislocations and they would then exist as temporary only. Hence, we find that a temporary restraining order as we previously described and the availability of an application to the State Finance Council for aid from the extraordinary need fund by a USD for relief from a burdening inequity, particularly, when coupled with our decisions in regard to § 38 and § 63, would probably provide effective and practical relief until the ultimate resolution of this case can be had without immediately upending House Substitute for SB7 altogether at this time. Accordingly, we stay what would otherwise be the consequence demanded of our ruling pending appeal.

Further, our choices of disposition in regard to § 38 and § 63 of House Substitute for Senate Bill No. 7, as amended by Senate Substitute for HB2353, as we will discuss subsequently, mitigates the need for a present

remedy prohibiting the rest of House Substitute for SB7 from going forward, which most likely would have resulted in the renewal of the pre-existing K-12 school financing formula before its purported repeal. Nevertheless, *more* uncertainty would have been created if the present funding provided in House Substitute for SB7 and its method of distribution became too uncertain, particularly, given all USDs' August budgeting deadline.

Nevertheless, as we have declared, and do declare, House Substitute for Senate Bill No. 7, as amended, does nothing to alleviate the unconstitutional inadequacy of funding as expressed in our *Opinions* but, rather, exacerbates it. Hence, we have considered and so declared its provisions in that regard as unconstitutional pursuant to the review of 2015 House Substitute for SB7, as amended by 2015 Senate Substitute for HB2353, which we believe was permitted to us by the Kansas Supreme Court's *Order* of April 30, 2015 and Plaintiffs' motion for a declaratory ruling in

that regard. Clearly, the overall issue of adequacy, as remanded to us, is ready for review, including the issue of House Substitute for Senate Bill No. 7's, as amended, constitutional funding adequacy or inadequacy and its means for distribution of constitutionally needed funds.

However, our decision to address House Substitute for Senate Bill No. 7's, as amended, equity components in its § 38 (supplemental general state aid - local option budget equalization) and in its § 63 (capital outlay state aid), as both are amended by Senate Substitute for HB2353, rests on entirely different grounds. While we have found these latter sections are unconstitutional in violation of Art. 6, § 6(b)'s incorporated equity principles, their mere existence and further operation also continues to impugn the judgments reached in *Gannon* in regard to those two forms of state aid.

While the Supreme Court suggested we enjoin capital outlay levy authority in the event of "no curative

action" being taken (*Gannon* at p. 1198, option "c"), more flexibility has been accorded our *Panel* if a "cure" was attempted under "b", but failed the equity test. To paraphrase, we may "enjoin [§ 63's] operation and enter such orders as we deem appropriate". *Id.* Nevertheless, as part "d" of the Court's directive to us states: "the panel must ensure the inequities in the present operation of the capital outlay statutes . . . are cured".

Accordingly, we strike as unconstitutional the entirety of § 63 of House Substitute for SB7; we strike § 54 of House Substitute for SB4; we strike § 79 of House Substitute for SB7; we strike § 78 of House Substitute for SB7; we strike the following from the repealing clause in § 80 of House Substitute for SB7:

> "Sec. 80. K.S.A. 2014 Supp. 72-6434, 72-6460 ~~and 72-8814, as amended by section 54 of 2015 House Substitute for Senate Bill No. 4~~ are hereby repealed.";

we strike the following from the repealing clause in § 81 of House Substitute for SB7:

"Sec. 81. From and after July 1, 2015, K.S.A. . . . ~~72-8801, 72-8801a, 72-8804~~ . . . ~~72-8814, as amended by section 63 of this act,~~ ~~72-8814b, 72-8815~~, . . . are hereby repealed.";

we strike § 8 of Senate Substitute for HB2353 in its entirety; we strike from § 14 of Senate Substitute for HB2353, the following:

"Sec. 14. K.S.A. 2014 Supp. 72-6434, as amended by section 38 of 2015 House Substitute for Senate Bill No. 7, ~~and 72-8814, as amended by section 63 of 2015 House Substitute for Senate Bill No. 7,~~ are hereby repealed;"

we strike from § 15 of Senate Substitute for HB2353, the following:

"Sec. 15. From and after July 1, 2015, K.S.A. 72-5423 *and* K.S.A. 2014 Supp. 72-1046b, as amended by section 29 of 2015 House Substitute for Senate Bill No. 7, 72-3715, as amended by section 36 of 2015 House Substitute for Senate Bill No. 7, 72-5413, 72-6434, as amended by section 7 of this act, ~~72-8814, as amended section 8 of this act,~~ 75-2319, as amended by section 72 of 2015 House Substitute for Senate Bill No. 7, 76-715a and 76-715b and Sections 5 and 6 of 2015 House Substitute for Senate Bill No. 7 are hereby repealed."' and

we strike from House Substitute for SB112, its § 20(c) as follows:

~~"(c) On the effective date of this act, notwithstanding the provisions of K.S.A. 72-~~

~~8814, as amended by section 63 of 2015 House Substitute for Senate Bill No. 7, prior to its repeal, or any other statute, during the fiscal year ending June 30, 2015, the director of accounts and reports shall transfer an amount not to exceed $3,958,900 from the state general fund to the school district capital outlay state aid fund. *Provided*, That the state board of education shall distribute such moneys to pay the remaining proportionate share of the entitlement to each school district as determined under the provisions of K.S.A. 72-8814(b), as amended by section 63 of 2015 House Substitute for Senate Bill No. 7, prior to its repeal."~~

We believe that the legislature would not have intended the statutes providing for a capital outlay levy and for its supplementation that pre-existed the passage of § 54 of House Substitute for SB4 or § 63 of House Substitute for SB7, as amended by Senate Substitute for HB2353, to be repealed if these 2015 legislative enactments were to be found unconstitutional. Thus, the effect to be given our "cure" here is to reinstate K.S.A. 72-8801 *et seq.* as these statutes existed prior to January 1, 2015. The reenactment of K.S.A. 72-8801 in § 79 of House Substitute for SB7 has been struck as well, since,

given our actions, it could be seen as a novation in authority, yet, if left to stand alone without the means to supplement capital outlay funds for less wealthy districts, it would be unconstitutional.

Our cure also is also consistent with the intent expressed in § 4 and § 6 (a)(3) of the *Class Act* as embedded in § 4 - § 22 of House Substitute for SB7. Our striking allows the operation of §§ 4-22 of House Substitute for SB7 to proceed, but with the block grant funds for FY2016 and FY2017 to include capital outlay state aid as calculated by K.S.A. 72-8801 *et seq.*, as it existed prior to January 1, 2015, to be part of the block grant concept, but not frozen in amount for FY2016 and FY2017 based on FY2015 entitlements. We recognize the need for the exercise of additional appropriation authority from the legislature for FY2016 and FY2017 amounts due, but rely on each legislator's solemn oath of office and respect for our constitutional form of government to provide such authority.

However, for FY2015, the Kansas State Board of Education is hereby directed to immediately, and before July 1, 2015, certify any balance of capital outlay state aid due for FY2015 as directed by K.S.A. 2014 Supp. 72-8814(c), and immediately, and before July 1, 2015, certify the entitlements of each school district so entitled pursuant to K.S.A. 2014 Supp. 72-8814(d). The Kansas Secretary of Administration shall forthwith honor such certifications and encumbrances by complying with K.S.A. 2014 Supp. 72-8814(c), K.S.A. 2014 Supp. 72-8814(d), and § 7(j) of 2014 Senate Substitute for House Bill No. 2506 and make such transfer and payments consistent with the certifications, which the Treasurer of the State of Kansas shall forthwith honor. The Kansas State Department of Education and any official thereof, the Kansas Department of Administration, its Secretary of Administration and any official or employee thereof, the Treasurer of the State of Kansas, and any other executive official of the State of Kansas are enjoined from issuing, following, or honoring any

other directive, practice, or policy in regard to these *Orders* that would, whether directly or indirectly, act to hinder, delay, offset, compromise, dilute, or diminish the effect or timely accomplishment of these *Orders*, including the, or an, exercise of authority granted, if any there be, by § 2 of 2015 Senate Substitute for HB2135.

Notwithstanding, upon any failure or defect in compliance with these *Orders*, and not as an excuse for any such failure or defect or in substitute for compliance with such *Orders*, our entry of judgment herein shall operate to certify such sums due and the unified school district recipients thereof as identified in Exhibit 701, Section 3 and Exhibit 702, such as to encumber such funds for FY2015.

In regard to supplemental general state aid (LOB equalization), we find the most appropriate, least disruptive, remedy for the continuing constitutional violation of equity principles in the funding of supplemental general state aid is to strike from § 38

of House Substitute for SB7 the language indicated as follows by its lining through:

"Sec. 38. K.S.A. 2014 Supp. 72-6434 is hereby amended to read as follows: 72-6434. (a) *For school year 2014-2015,* each district that has adopted a local option budget is eligible for entitlement to an amount of supplemental general state aid. Except as provided by K.S.A. 2014 Supp. 72-6434b, and amendments thereto, entitlement of a district to supplemental general state aid shall be determined by the state board as provided in this subsection. The state board shall:

(1) Determine the amount of the assessed valuation per pupil in the preceding school year of each district in the state;

(2) rank the districts from low to high on the basis of the amounts of assessed valuation per pupil determined under *subsection (a)*(1);

(3) identify the amount of the assessed valuation per pupil located at the 81.2 percentile of the amounts ranked under *subsection (a)*(2);

(4) divide the assessed valuation per pupil of the district *as determined under subsection (a)(1)* by the amount identified under *subsection (a)*(3);

(5)(A) if the quotient obtained under subsection (a)(4) is less than one, subtract the quotient obtained under subsection (a)(4) from one, and multiply such difference by the amount of the local option budget of the school district; or

(B) if the quotient obtained under subsection (a)(4) equals or exceeds one, the school district shall not be entitled to receive supplemental general state aid; ~~and~~

~~(6) determine the amount of supplemental general state aid for each school district eligible to receive such state aid as follows:~~

~~(A) For those school districts ranked in the lowest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5), multiply the product calculated under subsection (a)(5)(A) by 97%;~~

~~(B) for those school districts ranked in the second lowest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5), multiply the product calculated under subsection (a)(5)(A) by 95%;~~

~~(C) for those school districts ranked in the third lowest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5), multiply the product calculated under subsection (a)(5)(A) by 92%;~~

~~(D) for those school districts ranked in the second highest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5), multiply the product calculated under subsection~~

~~(a)(5)(A) by 82%; and~~

~~(B) for those school districts ranked in the highest quintile of those school districts eligible to receive supplemental general state aid under subsection (a)(5), multiply the product calculated under subsection (a)(5)(A) by 72%.~~

(b) If the amount of appropriations for supplemental general state aid is less than the amount each district is entitled to receive for the school year, the state board shall prorate the amount appropriated among the districts in proportion to the amount each district is entitled to receive.

(c) The state board shall prescribe the dates upon which the distribution of payments of supplemental general state aid to school districts shall be due. Payments of supplemental general state aid shall be distributed to districts on the dates prescribed by the state board. The state board shall certify to the director of accounts and reports the amount due each district, and the director of accounts and reports shall draw a warrant on the state treasurer payable to the treasurer of the district. Upon receipt of the warrant, the treasurer of the district shall credit the amount thereof to the supplemental general fund of the district to be used for the purposes of such fund.

(d) If any amount of supplemental general state aid that is due to be paid during the month of June of a school year pursuant to the other provisions of this section is not paid on or before June 30 of such school year, then such payment shall be paid on or after the

ensuing July 1, as soon as moneys are available therefor. Any payment of supplemental general state aid that is due to be paid during the month of June of a school year and that is paid to school districts on or after the ensuing July 1 shall be recorded and accounted for by school districts as a receipt for the school year ending on the preceding June 30.

(e)(1) Except as provided by paragraph (2), moneys received as supplemental general state aid shall be used to meet the requirements under the school performance accreditation system adopted by the state board, to provide programs and services required by law and to improve student performance.

(2) Amounts of supplemental general state aid attributable to any percentage over 25% of state financial aid determined for the current school year may be transferred to the capital improvements fund of the district and the capital outlay fund of the district if such transfers are specified in the resolution authorizing the adoption of a local option budget in excess of 25%.

(f) For the purposes of determining the total amount of state moneys paid to school districts, all moneys appropriated as supplemental general state aid shall be deemed to be state moneys for educational and support services for school districts.

(g) For school year 2014-2015, for those school districts whose total assessed valuation for school year 2015-2016 is less than such district's total assessed valuation for school year 2014-2015, and the difference in total

assessed valuation between school year 2014-2015 and school year 2015-2016 is an amount that is greater than 25% of the total assessed valuation of such district for school year 2014-2015, and such reduction in total assessed valuation is the direct result of the classification of tangible personal property within such district for property tax purposes pursuant to K.S.A. 2014 Supp. 79-507, and amendments thereto, the assessed valuation per pupil for purposes of determining supplemental general state aid shall be based on such school district's total assessed valuation for school year 2015-2016."

Accordingly, Section 38 (a)(6) of 2015 House Substitute for SB7 is held to be null and void. Further, Section 7(a)(6) of 2015 Senate Substitute for House Bill No. 2353, which amended House Substitute for SB7, § 38, and which text of said Section 7(a)(6) repeats that of Section 38 (a)(6) of House Substitute for SB7, is held to be null and void and we, accordingly, strike it from Senate Substitute for HB2353.

Further, we find that in the event that FY2015 supplemental general state aid yet due as calculated from the above formula, after the excise of its unconstitutional provisions, is not paid in FY2015 to a

USD so entitled, then the Kansas State Board of Education is enjoined to distribute a like sum as soon as possible on or after July 1, 2015 from FY 2016 revenues available for supplemental general state aid. Such distribution shall be credited pursuant to § 38(d) of House Substitute for SB7, as amended by § 7 of Senate Substitute for HB 2353, as a FY2015 receipt. Whether paid or unpaid, such sum there due shall, nevertheless, stand as received in FY2015 along with the prior receipts of such funds in FY2015 for the purposes of § 6(a) of House Substitute for SB7. Supplemental general state aid for FY2016 and for FY2017 shall conform to that corrected sum due for FY2015. Again, we recognize that an increase in FY2016 and FY2017 funds will be required, and, again, we rely on our Legislators' constitutional oath of office to do so.

We find this remedy regarding supplemental general state aid appropriate, both because it is constitutionally necessary and because it is the least

disruptive and most compatible with §§ 4-22 (CLASS ACT) going forward, given we are staying any remedy in reference to §§ 4-22 of that *Act*. An alternative would have been to strike all of § 38 and the repealing clause in § 81, to-wit: ". . . K.S.A. 72-6434, as amended by Section 38 of this act. . . .". However, unlike House Substitute for SB7's provisions relating to capital outlay as previously discussed, LOB authority, unlike capital outlay authority, would not continue independently outside of House Substitute for SB7's restrictions. Further, modifying, as we did, Section 38, and as it was amended, preserves the former § 38(g), now § 7(g) of Senate Substitute for HB2353, which we were unable to do with a similar section relating to capital outlay.

Further, for reasons discussed earlier, while we believe the block grant format used in SB7 is unconstitutional, we find our cures for § 38's and § 63's inequities and the temporary restraining orders issued mitigate the urgency for giving any immediate

effect to, or remedy in regard to, our ruling in regard to §§ 4-22 of House Substitute for SB7, as amended, pending Kansas Supreme Court review. We do find, and emphasize, that because of the overall constitutional inadequacy of funding to the K-12 school system - where, as friend of the court USD 512 asserts, even the resource-rich may find themselves revenue poor in terms of fulfilling their aspirations - the inequities in capital outlay state aid and LOB equalization funding are greatly exacerbated. Further, the failure of House Substitute for SB7, as amended, to provide LOB equalization aid above that received in FY2015 for otherwise eligible districts who might take the last opportunity given them by its § 12 authorization to raise their LOB levy percentage merely enhances the opportunity for increasing existing wealth based disparities. Thus, staying our rulings here - including our temporary restraining order regarding the parameters for distributing general state aid as defined in § 6 of House Substitute for SB7 - such as to

allow any State action to proceed that otherwise would result in even less equitable funding of any K-12 financing component, particularly, in FY2015, would, in our view, invoke immediate, most likely irreversible, harm to the K-12 school system and its students.

We strongly feel that, other than by our own order or an order of the Kansas Supreme Court, should any of the remedies or orders we have entered in lieu of setting aside §§ 4-22 of House Substitute for SB7 fail of implementation or not be accommodated otherwise such as through the extraordinary relief fund or appropriation - and whether from an error by us in their efficacy, a failure in those subject to the orders to act or comply, or in the implementation of any order, or a delay in final resolution of this case such that any Order entered by us, particularly in regard to the flat distribution of funds, can no longer accomplish its purpose - we find that the following alternative order, which we stay, shall apply. If the court before which this matter is then

pending finds such is the case, then our stay should, absent good cause to the contrary, be lifted.

that §§ 4-22, as well as §§ 38 and 63 of 2015 House Substitute for Senate Bill No. 7, as amended by 2015 Senate Substitute for HB2353, are struck as unconstitutional and null and void;

that such provisions and other sections in either noted enactment, other than appropriations, that depend upon or make reference to §§ 4-22 or § 38 or § 63 would not have been enacted, amended, or repealed had it been expected that §§ 4-22 and § 38 and § 63 would be declared unconstitutional;

that any remaining appropriated funds, yet undistributed, shall be distributed pursuant to the School District Finance and Quality Performance Act, K.S.A. 72-6405 *et seq.*, and K.S.A. 72-8801 *et seq.* as they existed on January 1, 2015;

all sections of 2015 House Substitute for Senate Bill No. 7 are struck, except as follows: Sections 1, 2, 3, 28, 34, 36, 58, 59, 68, 72, 77, and except as follows:

Sections 29, 37, 60, 73, and 74 of 2015 House Substitute for SB7 shall remain, altered as follows: struck from § 29 is "under the classroom learning assuring student success act, section 4 *et seq.*, and amendments thereto"; in § 37 the phrase "classroom learning assuring student success act, section 4 *et seq.*, and amendments thereto" shall be construed to refer to the pre-existing law, *i.e.*, the school district finance and quality performance act; striking from § 60: "for the purpose of the classroom learning assuring student success act, section 4, *et seq.* and amendments thereto"; and finding § 73 and § 74 shall remain except the term "Section 11" shall be construed to refer to K.S.A. 72-6431;

struck from § 81 of 2015 House Substitute for Senate Bill No. 7 is all therein but the following:

> "From and after July 1, 2015, K.S.A. . . . 72-8309, . . . 79-5105 . . . 72-978, 72-1046b, . . . 72-3711, . . . 72-3715, 72-3716, 72-5333b. . . . 72-8302, 72-8316 . . . 74-32,141 . . . 75-2319, 79-209x, 79-213. . . . are hereby repealed.";

struck from 2015 Senate Substitute for HB2353 is the following: Sections 3, 4, 7, 8, and 14;

struck from 2015 Senate Substitute for HB2353 § 5 is the following language "under the classroom learning assuring student success act, section 4 of 2015 House Substitute for Senate Bill No. 7 *et seq.*, and amendments thereto";

struck from 2015 Senate Substitute for HB2353 § 15 is the language lined through as follows:

> ". . . ~~72-6434, as amended by section 7 of this act, 72-8814, as amended by~~

~~section 8 of this act~~, . . . ~~and Section 5 and 6 of 2015 House Substitute for Senate Bill No. 7~~. . . ."; and

struck from 2015 House Substitute for Senate Bill No. 112 is § 20(c).

ENTRY OF JUDGMENT

Accordingly, judgment is entered in accordance with the foregoing *Memorandum Opinion and Order*. Our *Opinions* of December 30, 2014 and March 11, 2015 are hereby modified and supplemented accordingly. The Motions to Dismiss filed by the Kansas Secretary of Administration and the Kansas State Treasurer are overruled. However, Jim Clark's motion to dismiss him in his personal capacity is sustained effective July 1, 2015.

The Kansas State Board of Education is hereby joined as a party for the purpose of remedy, which is to be accomplished by our electronic delivery of a copy of this *Memorandum Opinion and Order* and *Entry of Judgment* on the State's counsel, including the Attorney General or an Assistant Attorney General. The

Plaintiffs may make further service of a copy of this *Opinion and Order* and *Entry of Judgment* as Plaintiffs deem necessary to assure its effectiveness.

This *Memorandum Opinion and Order and Entry of Judgment* shall be effective when filed with the Clerk of this Court and shall stand as the Court's *Entry of Judgment* and the *Order* of this Court for the purpose of enforcing the orders of this Court here made. No further journal entry is required.

IT IS SO ORDERED by this Panel, this 26th day of June, 2015.

Franklin R. Theis
Judge of the District Court
Panel Member

Robert J. Fleming
Judge of the District Court,
Panel Member

Jack L. Burr

District Court Judge Retired,
Panel Member

cc: Alan Rupe
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