

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED

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DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

LUKE GANNON, by his next of friends)
and guardians, *et al.*,)
)
Plaintiffs/Appellees,)
)
v.)
)
STATE OF KANSAS,)
)
Defendant/Appellant.)

Case No. 18-113267-S



REPLY IN SUPPORT OF
MOTION FOR ISSUANCE OF THE MANDATE

Plaintiffs' response to the motion for issuance of the mandate is inaccurate and contradicts their prior representations to this Court. In *Gannon VI*, this Court explained that the Legislature had calculated a principal amount it believed necessary to reach the *Montoy* safe harbor and had phased in payment of this principal amount over a five-year period, from SY 2018-19 to SY 2022-23. *Gannon v. State*, 308 Kan. 372, 378, 388-89, 420 P.3d 477 (2018). *Gannon VI* held that this plan was deficient because it failed to account for inflation through the approaching school year and during the phase-in period. *Id.* at 374, 389-90. In *Gannon VII*, this Court held that the Legislature had satisfactorily remedied this deficiency "by increasing the specific base aid figure for each of the remaining four years of the remediation plan—SY 2019-20 through SY 2022-23." *Gannon v. State*, 309 Kan. 1185, 1197, 443 P.3d 294 (2019). Thus, *Gannon VII* recognized that the phase-in

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period would end with the 2022-23 school year and that constitutional adequacy would be achieved at that point, as has now occurred.

Everyone understood that. While Plaintiffs asked this Court to retain jurisdiction, they conceded in their *Gannon VII* brief that “once any phase-in period is successfully completed, then the State’s arguments that this Court should not retain jurisdiction would gain credence.” Brief of Appellees, *Gannon v. State*, No. 113267 (Kan.) (filed April 25, 2019).

Plaintiffs now claim that future funding increases based on the consumer price index are part of the phase-in period, but that claim is nonsensical. Those increases continue indefinitely. See K.S.A. 72-5132(e)(6) (“[F]or school year 2023-2023, and each school year thereafter, . . .”). If this Court were to retain jurisdiction until those funding increases were “successfully completed,” this Court would retain jurisdiction perpetually, which is clearly not what *Gannon VII* contemplated or what Plaintiffs requested at the time.

Plaintiffs’ alternative argument based on the July 1, 2027, sunset contained in K.S.A. 72-5176 is also unavailing. Either the Legislature will continue the existing school funding plan after that date or will adopt another school finance scheme. If the Legislature decides to modify the school finance formula—either at that time or at any other point in the future—the law would be entitled to a presumption of constitutionality. In *Gannon II*, this Court explained that the presumption did not apply only because a constitutional violation had already been demonstrated and that the State bore the burden of showing compliance during the

remedial stage. *Gannon v. State*, 303 Kan. 682, 708-09, 368 P.3d 1024 (2016). But now that the constitutional violation has been remedied, any party who might wish to challenge the school finance system in the future should bear the burden of proving an Article 6 violation through the normal legal process.

This Court has rightfully disclaimed any desire “to become a regular supervisor of Kansas’ school funding system.” *Gannon II*, 303 Kan. at 745. Indeed, doing so—as Plaintiffs urge—would raise serious separation of powers concerns. Now that constitutional compliance has been achieved, it is time for this case to end. The mandate should issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 8, 2023, the original and one copy of the above reply were hand filed with the Clerk of the Court, and copies were mailed to:

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