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

This case is before the Court again on two post remand motions. First, the State filed a *Motion and Memorandum to Alter and Amend the Panel's Opinion and Order on Remand.* The Plaintiffs filed a *Motion to Alter Judgment Regarding Panel's Previous Judgment Regarding Equity.* After review of the briefings, we do not believe either further hearing or oral argument would be necessary or of assistance to resolution of

the State's motion. This *Opinion* will address the State's motion. We will address the Plaintiffs' motion through a subsequent scheduling and/or order at an appropriate time.

The State hinges its motion on what properly can be construed, in hindsight, as, perhaps, too loose, obviously loosely edited, language in a paragraph on page eight in our December 30, 2014, *Memorandum Opinion and Order on Remand* as follows:

> "We believe the Plaintiffs' Proposed Findings of Fact attached to their pleadings for Judgment on the Existing Record speak the truth, as we also believed their original Proposed Findings of Fact spoke the truth. As before in our original *Opinion,* all facts, by whomever [sic] presented, could not reasonably be discussed individually. Facts inconsistent with our original *Opinion* and our *Opinion* issued following are rejected implicit[]ly."

How to handle the enormity of this record in some concise and understandable fashion was, and obviously remains, a major challenge. The State's assertion that evaluating this Panel's judgments forward from our initial *Opinion* entered January 11, 2013, and on remand December 30, 2014, cannot be evaluated lest the record

itself be scrutinized in depth is undoubtedly correct, but then such is the duty of those assigned to review any lower court judgment. We, here, expected no less and were such not to be done, or shortcuts taken, whatever judgment was subsequently entered would be a cause for concern. We have done what we believe best to facilitate that task.

Thus, the question is from the perspective of a trial court, which this Panel is: Do the *Opinions* issued adequately and soundly convey the basis for the conclusions reached?. We believe they do if one reads the *Opinions* with the idea that each word, sentence, and comma was intended to be crafted to convey both the findings and conclusions of the Court.

This case was simply not a case where it would be at all helpful to list the plethora of separately proffered facts and exhibits one by one followed by either a plus or minus representing whether it was true or false or relevant or not relevant. We harbor no doubt that the parties know why they did or did not

prevail on the issues raised. We had no doubt that the Kansas Supreme Court would be quite capable of authoritatively deciding the issues fully, fairly, and correctly on the record presented from our opinions reached.

In this case, except in the evaluation of certain evidence, by example, expert opinions and reports, which we thoroughly evaluated and discussed, the facts themselves were either matters of public record, *e.g.*, test scores and school funding sources and amounts, or otherwise involved opinions and evaluations of need by those deeply immersed in providing a public education to each student in the diverse K-12 student body statewide. As to the latter, the State presented not a single Kansas grounded educator that rebutted either the testimony or exhibits which advanced the need or the costs associated with that need, a need that was unanimously expressed. The case was not defended by the State on the basis of any lack of school district

efficiencies in delivering its diverse educational services.

The testimony of the State's two experts in opposition, Dr. Hanushek and Dr. Podgursky, was extensively discussed, evaluated, and ultimately rejected by us as controlling in the outcome of this case. As to the financial conclusions, the premises for those were fully discussed, such that if one accepts the evaluation premises adopted by us, or even if one does not, a proper factual conclusion can still be derived by adding, subtracting, multiplying, or dividing. This ability to deduce the dollar need remains true, such that even to change the school financial formula or attempt to insert, as did the State unsuccessfully, necessary, but separately paid, financial components of school financing in substitute, or as a stand-in, for the core financial needs shown necessary to deliver a K-12 education consistent with the "Rose factors" cannot undermine the underlying mathematics to the conclusions to be reached. Thus,

the facts or exhibits advanced by the State that sought credit where either no credit was due or sought blanket credit, where some sophistication of application, though not advanced, might warrant a limited credit against necessary financial obligations otherwise due, were found to be but pleas in avoidance.

The genesis of the paragraph of which the State complains rested in our belief that the facts that were advanced that could be seen as in opposition to our conclusions and findings were necessarily implicitly rejected while those that would support our holdings were implicitly accepted, making their identification or their listing simply an unnecessary redundancy. In other words, additional facts advanced to support or defeat an issue definitively decided or a principle distinctly declared on identified facts we believe needed no recognition nor discussion in that they may logically be deemed either not material or cumulative in terms of the decision reached. Perhaps, in this

particular case, that logic, at least as we expressed it, might be subject to creative mischief.

Accordingly, and in the interest of clarity, we withdraw the quoted portion from the paragraph noted that we deem prompted the State's motion. Throughout both *Opinions* we identified the certain facts or exhibits we deemed controlling and that would exemplify our acceptance or rejection of the premise or an issue raised and discussed the efficacy of any conflict or premise toward which they were asserted. We feel no need to go further than this either in the identification of supporting facts and exhibits or their discussion.

The result intended is that, as against our *Opinions,* the parties are free to attack the findings accepted or rejected by us with whatever facts in the record they deem material and relevant, but with the understanding that this Court looked at all the facts and either identified or discussed, or identified and discussed, only those necessary to the premise and

finding accepted or rejected by us, pushing all cumulative or not controlling facts aside.

Further, precedent to our December 30, 2014, *Opinion* we requested the parties proffer any and all evidence that they thought would be material were the Court to elect to hear new evidence relevant to the remanded issue. The Plaintiffs elected to proceed on the existing record. The State made its proffers over objection, but yet now apparently claims some reservoir of undisclosed evidence, yet still not proffered, that needs to be considered. We reject this latter overture as inconsistent with our directive and find even the facts now listed in its motion to alter or amend present nothing unknown or the objective or premise upon which they rest not previously thoroughly considered. We reviewed fully all the State's submissions and found none would aid, alter, or change our prior opinions.

However, the above said, we do, both for the sake of grammar and clarity, withdraw the paragraph that was

premised by the State as grounds for its motion. We do so to assure the understanding that the record upon which our *Order on Remand* was premised was confined to the original record on appeal and based on those facts and exhibits identified in our January 11, 2013 *Opinion* and such additional facts or matters subject of judicial notice as are explicitly identified in our December 30, 2014 *Memorandum Opinion and Order on Remand*.

Accordingly, except for the portion of the paragraph withdrawn, as shown by the amended page attached from our December 30, 2014 *Opinion*, the State's motion to alter or amend is denied.

By the agreement of the Panel, IT IS SO ORDERED, this 11th day of March, 2015.

Franklin R. Theis
Judge of the District Court,
Panel Member and Presiding Judge

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

premised by the State as grounds for its motion. We do so to assure the understanding that the record upon which our *Order on Remand* was premised was confined to the original record on appeal and based on those facts and exhibits identified in our January 11, 2013 *Opinion* and such additional facts or matters subject of judicial notice as are explicitly identified in our December 30, 2014 *Memorandum Opinion and Order on Remand*.

Accordingly, except for the portion of the paragraph withdrawn, as shown by the amended page attached from our December 30, 2014 *Opinion*, the State's motion to alter or amend is denied.

By the agreement of the Panel, IT IS SO ORDERED, this _____ day of _____, 2015.

Franklin R. Theis
Judge of the District Court,
Panel Member and Presiding Judge

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

Jack L. Burr
District Court Judge Retired,
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The State subsequently filed a *Motion in Support of Judgment Pursuant to K.S.A. 60-252(c)* to which the Plaintiffs responded. Plaintiffs on September 2nd filed a *First Supplemental Response to the Panel's Request for Information.*

We have concluded all these motions and arguments implicitly by our opinion following. We have limited our review to the past record, but where we deemed appropriate, we have taken judicial notice of subsequent documents and legislative action which we firmly believe are not reasonably subject to dispute.

[

Prior text withdrawn per *Order* of March _____, 2015.

] We diligently searched the