NO. 113,267

IN THE SUPREME COURT OF THE STATE OF KANSAS

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

Plaintiffs/Appellees/Cross-Appellants,

vs.

STATE OF KANSAS,

Defendant/Appellant/Cross-Appellee.

BRIEF OF APPELLEES

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

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NATURE OF THE CASE

The State of Kansas frames this case as just another "school finance" lawsuit in which school districts ask for more money. With the adoption of Senate Bill 7, this case is no longer just about funding public education for Kansas schoolchildren. Recent legislative actions beg the following question:

> *When the Kansas Legislature refuses to comply with constitutional mandates that obligate them to take certain actions that were imposed upon them by the people of Kansas, does this Court have any authority to remedy the unconstitutional results of the Legislature's willful defiance?*

According to what this Court has already said and as the separation of powers doctrine dictates, the answer is an unqualified "yes."

The Kansas Constitution places an affirmative constitutional obligation on the Legislature to "make suitable provision for finance of the educational interests of the state." KAN. CONST., Art. 6; *Gannon v. State*, 298 Kan. 1107, 1141 (2014) ("[P]lain language in Article 6, Sections 1 and 6(b)" reflects "the assignment of mandatory constitutional duties to the Kansas Legislature."); *id.* at 1142 ("And the intent of the people of Kansas is unmistakable. They voted in 1966 to approve amendments to Article 6" that includes Sections 1 and 6 (and the mandatory constitutional obligations they impose)."); *id.* at 1147 (citing *Neeley v. West Orange-Cove*, 176 S.W.3d 746, 778 (Tex. 2005)) ("we specifically conclude that through Article 6 of the Kansas Constitution, the people of this state have assigned duties to the Kansas Legislature – which "both empower[] and obligate[]."").

The State of Kansas is currently failing to comply with these Article 6 obligations.

The State, once again, attempts to justify its failure by suggesting that the Kansas Constitution begins and ends with Article 2. The State claims that the Legislature can act with impunity in the exercise of its Article 2 appropriations power *even if it defies the constitutional obligations imposed on it by Article 6*. The State's counsel suggested to this Court (in an earlier oral argument in *Gannon*) that the Legislature could choose to appropriate *zero* dollars to education. The State's position defies rationality, defies this Court's previous orders, and defies the Kansas Constitution.

Hypotheticals demonstrate the point. Can the Legislature appropriate funds at such a low level that trials by jury cannot take place? No – Section 5 of the Kansas Bill of Rights provides that the "right of trial by jury shall be inviolate." Can the Legislature appropriate funds at such a low level that jury trials cannot take place within a reasonable period of time due to lack of court personnel? Again, no – Section 10 of the Kansas Bill of Rights provides that "the accused shall be allowed . . . a *speedy* public trial by an impartial jury. . . ." Can the Legislature appropriate funds at such low levels that *civil* trials must be unreasonably delayed due to lack of court personnel? Absolutely not – Section 18 of the Kansas Bill of Rights provides that "All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered *without delay*." These rights are guaranteed to the citizens of Kansas through their duly-enacted Constitution. The Kansas Constitution imposes a *positive duty* on the Legislature to use the appropriations power vested to it in Article 2 of that Constitution in a way that does not infringe the rights of Kansans.

Likewise, Article 6 of the Kansas Constitution places a *positive duty* on the Legislature to exercise its Article 2 appropriations power in such a way as to "make suitable provision for finance of the educational interests of the state." The State cannot be allowed to preserve the powers vested to the Legislature by Article 2 of the Constitution while wholeheartedly repudiating Article 6's demands on how that power must be exercised. Both articles of the Kansas Constitution must be given meaning. If the State is allowed to prevail on its theory (*i.e.*, that only Article 2 has meaning), the Legislature will be given the power to legislate, the power to appropriate, and the judiciary's power to review the constitutionality of the laws that the Legislature enacts. Any portion of the Constitution other than Article 2 will be rendered useless. But, as this Court has previously held, the judiciary is the "sole arbiter" as to "whether an act of the legislature is invalid under the Constitution of Kansas." *Gannon*, 298 Kan. at 1161. This Court has previously recognized that "*[h]owever delicate that duty may be*," this Court simply cannot surrender, ignore, or waive it. *Id.* (emphasis in original). The State's contrary position in this appeal is defiantly wrong.

This Court has previously determined that the State was not in compliance with its Article 6 constitutional obligations. This Court remanded this matter to the three-judge panel (the "Panel") to oversee the State's actions in curing those inequities. **The State refused to comply with its constitutional obligations and refused to fund Kansas public education in a manner that complies with the Kansas Constitution**. Justice *requires* this Court take immediate action to stop these on-going efforts by the State to dodge its constitutional obligations.

STATEMENT OF THE ISSUES

(1) The funding of Kansas public education has remained unconstitutionally funded for too long; justice *requires* an immediate remedy. The Panel did not err when it imposed its remedy set forth in the Panel's June 26, 2015 Order; that remedy should be enforced. Should this Court reject the Panel's remedy set forth in its June 26, 2015 Order, justice requires that this Court enter an immediate order granting Plaintiffs relief from S.B. 7, which is wholly unconstitutional.

(2) The Panel did not err when it followed this Court's March 7, 2014 mandate and applied the "equity test" to S.B. 7 nor did it err when it found that S.B. 7 did not meet the "equity test."

(3) This Court should retain jurisdiction of this case until the State wholly complies with its constitutional obligations.

(4) This Court should award Plaintiffs attorneys' fees for the State's bad faith attempts to dodge its constitutional obligations to fund public education in Kansas.

STATEMENT OF THE FACTS

A. The Historical Battle to Reach a Level of Constitutional Funding

This is not the first effort by school districts and students to compel the State to provide equitable and adequate funding for education in Kansas. And, while the individual students have been dismissed, the Plaintiff School Districts remain parties; they represent all Kansas school districts and have standing to bring claims regarding the State's violation of Article 6 in their own right. *Gannon*, 298 Kan. at 1131.

This lawsuit is best understood in the context of the long, often complicated, always controversial campaign to force the State to constitutionally fund public schools. This campaign began shortly after the 1966 adoption of the current provisions in the Kansas Constitution, described as follows:

> The present text of Article 6, the education article, dates from amendments made in 1966. House Concurrent Resolution No. 537 stated the intent of the legislature in seeking amendment of the education article: [t]hat the Kansas legislative council is hereby directed to make a study of the scope, function, and organization of the state in supervising education to comply with the constitutional requirement of a uniform system of public schools. . . .
>
> [B]y including an article on education in the original Kansas Constitution "the people secure[d] themselves what is of first importance by placing binding responsibilities on the legislative, executive, and judiciary departments. . . .
>
> [A] careful examination of the current text of the article reveals four, essential, clear, and unambiguous mandates from the people (the source of all power in our democratic form of government):
>
> > Section 1. Schools and related institutions and activities. The *legislature* shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools . . . which may be organized and changed in such manner as may be provided by law.
> >
> > Section 2. State board of education and state board of regents. (a) The *legislature* shall provide for a state board of education which shall have general supervision of public schools . . . all the educational interests *of the state*[.]
> >
> > Section 5. Local public schools. Local public schools under the *general supervision* of the state board of education shall be maintained, developed and operated by locally elected boards . . . .
> >
> > Section 6. Finance. (b) The legislature shall make suitable provision for finance of the educational interests of the state. *No* tuition shall be charged for attendance at any public school to pupils required by law to attend such school[.]

R.Vol.46, p.84 (Tr.Ex.1 (citing *Mock v. Kansas*, No. 91-CV-1009, at 491 (Kan. Dist. Ct. Shawnee Co. Oct. 14, 1991) (internal citations omitted))).

"[T]he intent of the people of Kansas" in adopting these amendments is "unmistakable" – through these amendments the people of Kansas imposed certain mandatory constitutional obligations upon the Legislature. *Gannon*, 298 Kan. at 1142. Nonetheless, the State has never wholeheartedly accepted these responsibilities. As a result, challenges to the school finance legislation began almost immediately after the adoption of the education amendments.

When Article 6 was ratified, school finance was controlled by the State School Foundation Fund Act. *Unified School District Number 229 v. State,* 256 Kan. 232, at 241-44 (1994) ("U.S.D. 229"). That Act was ultimately determined to be unconstitutional by the District Court of Johnson County in *Caldwell v. State,* Case No. 50616 (Johnson County District Court, slip op. August 30, 1972). *Id. Caldwell* reflects that the State has come full circle in its attempts to avoid its constitutional obligations. In *Caldwell,* the court found that the law failed to provide equalization aid sufficient to offset the disparity in either tax effort or per pupil operating expenditures "thereby making the educational system of the child essentially the function of, and dependent on, the wealth of the district in which the child resides." *Id.* The current appeal arises, at least in part, from the State's continued, improper efforts to make the educational system in Kansas dependent on the wealth of the district in which the child resides. However, since at least 1972, Kansas courts have recognized that an educational system dependent on the wealth of a local school district is both inequitable and unconstitutional. *See e.g.* R.Vol.14, p.1860 (Panel's 1/11/13 Order, p.141 ("Throughout, the litigation history concerning school finance in Kansas, wealth based disparities have been seen as an anathema, one to be condemned and disapproved . . .")).

In 1973, after *Caldwell* invalidated the State School Foundation Fund Act, the legislature enacted the School District Equalization Act ("SDEA"). *U.S.D. 229*, 256 Kan. at 241-44. Two years later, the constitutionality of the SDEA was challenged by numerous parties, including 41 unified school districts, in the matter of *Knowles v. State Board of Education*. *Id.* When the District Court of Chautauqua County found the Act unconstitutional, the legislature – in a pattern that has become all too familiar to the *Gannon* Plaintiffs – amended the Act. *Id.* Ultimately, following an appeal to the Supreme Court, the case was transferred to the District Court of Shawnee County where the district court ruled that the SDEA, as amended, was constitutional. *Id.* (citing *Knowles v. State Board of Education,* 77CV251 (Shawnee County District Court, slip op. January 26, 1981)).

The SDEA then became the subject of litigation again in 1990 when several school districts and individuals, including several of the plaintiffs in this action, challenged the constitutionality of the act in *Mock v. State of Kansas*. On October 14, 1991, the Honorable Terry L. Bullock issued an opinion answering 10 questions which formed governing rules of law applicable to the challenges. *Id.* (citing *Mock v. State of Kansas,* 91CV1009 (Shawnee County District Court, slip op. October 14, 1991)). The decision prompted the Governor and legislative leadership to appoint a task force to investigate legislative alternatives, which would satisfy the guidelines in the decision. This task force issued a report recommending a new formula granting each district the same base state aid per pupil ("BSAPP") and then allowing for certain adjustments for student needs and district size. *Id.* As a result, in 1992, the Legislature repealed the SDEA and enacted the School District Finance and Quality Performance Act ("SDFQPA"). *Id.*

The SDFQPA, originally adopted in 1992 in response to the *Mock* litigation, was the school finance formula that existed when the *Gannon* lawsuit was initially filed and when this Court first heard this matter on appeal. The first challenge to the constitutionality of the SDFQPA took place in *U.S.D. 229*, when the merits of a school finance case were reached by the Kansas Supreme Court for the first time. This Court upheld the SDFQPA as constitutional. *U.S.D. 229,* 256 Kan. at 275. The decision set the stage for the careful crafting of a thoroughly-vetted school finance formula (*i.e.*, the SDFQPA) that, if fully funded, would have resulted in the constitutional funding of public education in Kansas. But, to get there, the system needed fine-tuning – and that fine-tuning occurred through the *Montoy* litigation.

The *Montoy* litigation had a rough start. In 2001, the district court dismissed the challenge just prior to trial, incorrectly finding that it was bound by *U.S.D. 229* and that the legislature had the ultimate responsibility for determining what level of financing is suitable. *Montoy I*, 275 Kan. at. *Montoy v. State*, 275 Kan. 145, 152-53 (2003) (Montoy I)). However, on appeal to the Kansas Supreme Court, Plaintiffs successfully argued the district court erred in dismissing their claims. In what ultimately became the first in a series of decisions in the *Montoy* cases, this Court reversed and remanded the district court's decision. *Montoy I,* 275 Kan. at 156.

On remand, following a bench trial, the district court held that the SDFQPA stood "in blatant violation of Article VI of the Kansas Constitution." *Montoy v. State*, No. 99-1738, 2003 WL 22902963, at *42 (Kan. Dist. Ct. Dec. 2, 2003). The State appealed that decision to the Kansas Supreme Court, and, in *Montoy v. State*, 278 Kan. 769 (2005) (Montoy II), the Supreme Court held that the public school financing formula adopted by the Legislature had "failed to

meet its [Article 6] burden." *Montoy II*, 278 Kan. at 771. In that decision, the Court mandated increased funding for Kansas schools; found that the then-current financing formula increased disparities in funding; and determined the formula was not based on any cost analysis but was instead based on "political and other factors not relevant to education." *Montoy II*, 278 Kan. at 775. The Court withheld its formal opinion pending corrective action by the Legislature, stating "[w]e have in this brief opinion endeavored to identify problem areas in the present formula as well as legislative changes in the immediate past that have contributed to the present funding deficiencies. We have done so in order that the legislature take steps it deems necessary to fulfill its constitutional responsibility." *Montoy II*, 278 Kan. at 776.

In response to *Montoy II,* the Legislature enacted House Bill 2247, and on June 3, 2005, the Supreme Court issued its Opinion (supplemental to *Montoy II*) regarding the constitutionality of that bill. *Montoy v. State*, 279 Kan. 817, 819 (2005) (Montoy IV). The Court held the funding scheme was not in compliance with the *Montoy II* decision because it did not appropriately consider (1) the actual costs of providing an adequate education or (2) the equity of the distribution of that funding. *Montoy IV*, 279 Kan. at 818. The Court ordered the Legislature to implement a minimum increase of $285 million above the 2004-05 school year funding level for the 2005-06 school year. *Montoy IV*, 279 Kan. at 845.

As a result, the Legislature again enacted changes to the school finance formula through Senate Bill 549 ("S.B. 549"), which effectively ended the litigation and, had the State made good on its promises, would have provided $755.6 million in additional funding to schools. *Montoy v. State,* 282 Kan. 9, 18, 24 (2006) (Montoy V). Finding that the legislative process was in substantial compliance with its previous orders, the Court dismissed the case without

considering the constitutionality of S.B. 549 and specifically indicated its dismissal of the case was not to be interpreted as a determination that S.B. 549 was constitutional. *Montoy V*, 282 Kan. at 18-19, 24 ("The constitutionality of S.B. 549 is not before this court. It is new legislation and, if challenged, its constitutionality must be litigated in a new action filed in the district court.").

The Supreme Court's decision to dismiss the case was based on the assumption that the Legislature (1) had made genuine efforts to consider the costs of achieving adequate student outcomes across varied populations and settings in Kansas and (2) had gone to sufficient lengths to redesign the state school finance formula in ways that linked the funding to those costs. *Montoy V*, 282 Kan. at 23 ("The legislature has undertaken the responsibility to consider actual costs in providing a suitable system of school finance by commissioning the LPA to conduct an extensive cost study, creating the 2010 Commission to conduct extensive monitoring and oversight of the school finance system, and creating the School District Audit Team within LPA to conduct annual performance audits and monitor school district funding as directed by the 2010 Commission.").

Unfortunately, the State did not comply with the commitments it made to this Court in *Montoy*. R.Vol.14, p.1835-36 (Memorandum Opinion and Entry of Judgment, Filed 01/11/2013 ("Panel's 1/11/13 Order"), pp. 116-17 ("Nevertheless, the bottom line is that any funding short of a BSAPP of $4433 through FY2009 was not in compliance with the commitment made in 2006 that resulted in dismissal of this suit's predecessor.")). These failures led to the filing of the *Gannon* lawsuit.

B. The Continuing History of Educational Funding in Kansas Since *Montoy*

The *Montoy* case was dismissed as a result of the State's adoption of S.B. 549, which amended the SDFQPA and "materially and fundamentally changed the way K-12 is funded" in Kansas. *Montoy V*, 282 Kan. at 9. But, the battle regarding the proper funding of education in Kansas did not end with the State's amendments to the SDFQPA. Instead, it led to the filing of the *Gannon* case, which "found its genesis in the dismissal of *Montoy v. State*." R.Vol.14, p.1726 (Panel's 1/11/13 Order, p.7). In S.B. 549, the Legislature adopted a phased-in funding plan that provided additional funding over a period of three years (fiscal years 2007 to 2009) in order to comply with its constitutional obligations. Had the State funded that plan, this matter would likely not have been brought before the Kansas Supreme Court again. Instead, the State failed to appropriate the money needed to fund the plan in subsequent years and then began a series of unilateral cuts to education in the spring of 2009. These cuts were "not in compliance with the commitment made in 2006 that resulted in dismissal" of the *Montoy* case. R.Vol.14, p.1835-36 (Panel's 1/11/13 Order, p. 116-17). Thus, the *Gannon* lawsuit was filed as yet another effort to force the State to meet its constitutional obligations.

S.B. 549 would have provided $755.6 million in annual additional funding to schools. *Montoy V*, 282 Kan. at 18. Between the time this Court released jurisdiction of *Montoy* and the *Gannon* case was filed, the State had made $511 million in annual cuts to that additional funding. R.Vol.90, p.5486 (Tr.Ex.241); R.Vol.14, p.1794-95 (Panel's 1/11/13 Order, p. 75-76). The $511 million reduction in funds largely occurred through cuts to the BSAPP between fiscal years 2009 and 2012. *Id.*; R.Vol.33, p.1050; R.Vol.43, p.3328.

The State's underfunding of education forced local school districts to make up the difference between what was needed and what the State provided. The State significantly increased its reliance on local money to fund public education "from about 9 percent to almost 30 percent" between 1998 and 2012. R.Vol.32, pp.1007-08; R.Vol.33, p.1040. At the same time that the State increased reliance on local funds, however, it began to cut equalization aid available to school districts with low property wealth. LOB Supplemental General State Aid, for example, has not been fully funded since 2008-09. R.Vol.52, p.699 (Tr.Ex.36, at 142236). Between 2009-10 and the adoption of H.B. 2506, capital outlay state equalization aid was not being funded at all. R.Vol.32, p.1002; R.Vol.30, p.463. In reducing overall funding and equalization aid, the State not only broke its commitment to this Court, it also broke its commitment to all Kansas students. R.Vol.14, p.1948 (Panel's 1/11/13 Order, p. 229).

In response to the reductions in funding, Plaintiffs (and individual schoolchildren) filed the *Gannon* lawsuit seeking declaratory and injunctive relief alleging various causes of action. The Panel, consisting of Honorable Franklin R. Theis, Honorable Robert J. Fleming, and Honorable Jack L. Burr was assigned to hear the matter. The Panel conducted a 16-day bench trial to hear the issues raised by Plaintiffs' lawsuit. *Gannon*, 298 Kan. at 1111. The Panel ultimately held that "Plaintiffs have established beyond any question that the State's K-12 educational system now stands as unconstitutionally funded." Further, and relevant to this appeal, the Panel found that K.S.A. 72-8814 created an improper wealth disparity among school districts and that the lack of capital outlay state aid equalization payments further contributed to the unconstitutional underfunding. R.Vol.14, pp. 1860, 1922-23, 1947-48, 1952-53 (Panel's 1/11/13 Order, pp. 141, 203-204, 228-29, 233-34).

As relief for the unconstitutionalities that it found, the Panel enjoined the State from: (1) taking any action that would result in funding less than the revenue that would be derived from BSAPP of $4,492; (2) prorating the amount of supplemental general state aid provided to school districts pursuant to K.S.A. 72-6434 or otherwise funding supplemental general state aid less than what is provided for by statute; and (3) enforcing the current capital outlay funding statutes beyond July 1, 2013. R.Vol.14, p.1964-68 (Panel's 1/11/13 Order, pp. 245-49). The State appealed. R.Vol.15, pp.1977-1978.

On appeal, this Court affirmed the Panel's findings that the State created unconstitutional wealth-based disparities among school districts by eliminating all capital outlay state aid payments and prorating supplemental general state aid payments. The Court then remanded this matter to the Panel to enforce its holdings. *Gannon,* 298 Kan. at 1181, 1188, 1198.[1] Ultimately, on remand, the Panel concluded that the State was still not in compliance with the equity requirement of Article 6, resulting in this second appeal. *See* Kansas Supreme Court's July 24, 2015 Order, p. 1.

It did not appear that there would be substantial work for the Panel to do on the remanded issue of equity. In response to (and in apparent efforts to comply with) the March 7, 2014 Mandate (the "Mandate"), the Legislature adopted 2014 Senate Substitute for House Bill 2506 ("H.B. 2506"). The Panel subsequently asked the parties for their positions on H.B. 2506.

[1] Also in the first appeal, this Court addressed the Panel's holding that the State had failed to meet the adequacy requirement contained in Article 6 by underfunding public education between fiscal years 2009 and 2012. The adequacy issue, which was remanded to the Panel, is still pending, but is not being addressed by the Court at this time. *See* Kansas Supreme Court's July 24, 2015 Order. As a result, this brief is focused on the State's failure to meet the equity requirement of Article 6 through the actions taken during the 2014 and 2015 legislative sessions.

R.Vol. 140, p.6 (Plaintiffs' May 15, 2015 Proposed Findings of Fact and Conclusions of Law ("FOF")[2], ¶7).

In response, Plaintiffs voiced concerns about H.B. 2506, including that it did not provide for full funding of equalization and was instead based on estimates. R.Vol.20, p.2540-41 (Pls' Response to Show Cause Order, pp.2-3 ¶3.b); R.Vol. 140, pp. 6-7 (FOF ¶8). The State, however, assured the Panel of its intent to comply with the Mandate, representing to the Panel that H.B. 2506 "fully funded capital outlay equalization at the statutory level" and "actually exceeds the amount needed to 'fully fund' LOB equalization at the statutory level." *See* R.Vol.20, p.2521 (State's Response to Show Cause Order, p. 2); R.Vol. 140, pp. 6-7 (FOF ¶8).

On June 11, 2014, the Panel held a hearing to determine whether the State's adoption of H.B. 2506 complied with the Mandate. R.Vol. 140, pp. 7-8 (FOF ¶¶8-9). During that hearing, Plaintiffs – reiterating their concerns – predicted that H.B. 2506 would not be fully funded because of the State's looming financial problems. *See* R.Vol.45, pp. 5:18-6:6 (Transcript of 6/11/14 Hearing). Plaintiffs therefore asked the Panel to retain jurisdiction over the issue, stating:

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

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

[2] The Panel found Plaintiffs' FOF to be accurate and relevant and adopted them as their own findings. R.Vol.137, p.1426-27.

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

> Now, what happened here as it gets back to the legislature, the legislature has *Gannon*, it says fully fund. It goes to its agency, says how much does that mean. We can't know exactly, but tell us what that means, and we'll do that. We won't fund short of it, we'll go the full amount.
>
> I think what the legislature deserves is a pat on the back. I would hope that we are not into this idea that somehow we can't trust the legislature, we need to monitor them to the bitter end. That is unfair. . . .
>
> But there's a punch line to all of this on the dismissal issue and on the idea that, well, we are dealing with an estimate here . . . . So if we get to the end of the year and the 109 ends up being 108, then that money is shored back to the system. If the 109 ends up being 110, then in next year's appropriations, they just add a million on and it works in. So the way the system is set up, although we have an estimate, there's a way to true up the factor at the end.
>
> So we have compliance with that 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.

R.Vol.45, pp. 25:21-27:6 (Transcript of 6/11/14 Hearing); R.Vol. 140, pp. 6-7 (FOF ¶8).

Based on the State's representations, the Panel made an oral finding of "substantial compliance" with the Mandate at the June hearing. *Id.* at pp. 92:21-104:23. It deferred entry of a formal ruling on equity until it issued its ruling on the remanded adequacy issue. *Id.*; R.Vol. 140, p.7 (FOF ¶¶9-10). On December 30, 2014, the Panel issued its formal judgment. As to the equity issue, the Panel formally entered judgment in favor of the State, finding "the legislature substantially complied with their obligations in regard to supplemental state aid and capital outlay [through the adoption of H.B. 2506]." R.Vol.24, p.3053 (Memorandum Opinion and Order, Filed 12/30/2014 ("Panel's 12/30/14 Order"), p. 7); R.Vol. 140, p.7 (FOF ¶10).

However, as Plaintiffs predicted, almost immediately after the Panel's December 2014 order, the State began backtracking on the promises it made to the Court, the Plaintiffs, and the children of Kansas. R.Vol. 140, p.7 (FOF ¶11). Plaintiffs' stated fears materialized – the Legislature did not make sufficient appropriations to fully restore equalization aid, which the Legislature promised it would do when it adopted H.B. 2506. R.Vol. 140, p.7 (FOF ¶¶11-12).

Governor Brownback initially attempted to quell Plaintiffs' fears and included a plan to fully fund equalization aid in his January 15, 2015 budget recommendations. R.Vol.137, pp. 1530-32 (Memorandum Opinion and Entry of Judgment, Filed 06/26/2015 ("Panel's 6/26/15 Order"), pp. 24-26). He soon reversed course. *Id.* On February 5, 2015, the Governor announced an allotment of 1.5 percent for K-12 education, which was estimated to result in a $28,311,005.00 cut to Kansas' public schools. R.Vol. 140, p.7 (FOF ¶11). The Governor made the ultimate implementation of the allotment "contingent on legislative action to reform equalization formulas and 'to stall' FY 2015 sums yet due [under H.B. 2506]." *Id.*; R.Vol.137, p.1532 (Panel's 6/26/15 Order, p. 26).

The Legislature dutifully complied with the Governor's direction. On March 25, 2015, Governor Brownback signed Senate Bill No. 7 into law. R.Vol. 140, p.7 (FOF ¶12). That bill, among other things, revoked the current school finance system, including the provisions of H.B. 2506 that purported to fund and cure the equity issues. R. Vol. 140, pp. 7-8 (FOF ¶13). S.B. 7 only provides school districts a prorated amounted of capital outlay equalization and LOB equalization. *Id.* Notably, this puts the Plaintiffs right back where they started – these school districts are now only receiving a prorated amount of the equalization aid that was previously set forth in the applicable statutes.

On a larger level, S.B. 7 represented a conscious choice by the Legislature to avoid its constitutional obligations. The SDFQPA had existed since 1992. It had been thoroughly evaluated by the Supreme Court at least six times: in *U.S.D. 229*, in *Montoy I*, in *Montoy II*, in *Montoy IV*, in *Montoy V*, and again when this Court issued its first decision in *Gannon*. These decisions all resulted in the careful vetting and fine-tuning of the formula; a formula that, when fully funded, would arguably provide Kansas students with a suitable education in a manner that this Court had suggested was constitutional. But, in 2015, with no education-based reason for an amended formula, the Legislature tossed out 23 years of effort and – through S.B. 7 – adopted a new formula that merely froze funding at levels previously deemed unconstitutional. The Legislature wholly replaced a dynamic formula with a static block of funds.

On January 26, 2015, Plaintiffs submitted a Motion to Alter Judgment Regarding Panel's Previous Judgment Regarding Equity. R.Vol. 25, pp. 3233-76. That motion notified the Panel that the State had backed up on its promises in H.B. 2506. On March 26, 2015, Plaintiffs filed a Motion for Declaratory Judgment and Injunctive Relief, asking the Panel to invalidate S.B. 7, which repealed H.B. 2506's equity funding and froze operational funding for two years based on FY2015 funding. R.Vol. 130, pp. 12-43.

On May 7-8, 2015, the Panel held a hearing and took evidence regarding both of Plaintiffs' Motions. On June 26, 2015, the Panel issued an Order granting Plaintiffs' Motion to Alter, concluding that its finding that the State was in "substantial compliance" with the Mandate "was both premature and incorrect." R.Vol.137, p.1421 (Panel's 6/26/15 Order, p.2). The Panel found that the State's actions during the 2015 Legislative session essentially "reduced funding under each formula [*i.e.*, the capital outlay state aid formula and the LOB

state aid 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*." *Id.* at p.1424-25 (emphasis added).

Based on the evidence presented at the hearing, and the briefing provided by the parties, the Panel found 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." *Id.* As the Panel held:

> 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.*

R.Vol.137, p.1426-27 (Panel's 6/26/15 Order, pp. 7-8) (emphasis added). In reaching this conclusion, the Panel adopted Plaintiffs' proposed findings of fact and conclusions of law as their own. *Id.*

Although the Panel recognized that, based on these findings, it would be proper to permanently enjoin S.B. 7, the Panel instead exercised the authority granted to it by the Mandate to "*enter such orders as the panel deems appropriate*." *Gannon*, 298 Kan. at 1198 (emphasis added). Therefore, the Panel crafted a remedy that cured the State's continued failure to comply with Article 6's equity component by enjoining only parts of S.B. 7.

As to the equity issues, the Panel struck the provisions of S.B. 7 that affected capital outlay state aid, thereby "reinstat[ing] K.S.A. 72-8801 *et seq.* as these statutes existed prior to January 1, 2015." *Id.* at 65-67. As the Panel noted, its "cure" "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 – and "not frozen in amount for FY2016 and FY2017 based on FY2015 entitlements." *Id.* at 68. The Panel also certified that the sums due for capital outlay state aid in FY2015 as calculated pursuant to H.B. 2506 were due and owing to the school districts "such as to encumber such funds for FY2015." *Id.* at 70. Similarly, with regard to supplemental general state aid (LOB equalization), the Panel struck the provisions of S.B. 7 that affected that aid, restoring the prior formula for FY2016 and 2017 and directing the payment of the funding owed for FY2015 calculated pursuant to H.B. 2506. *Id.* at 70-76.

Following the State's appeal, on June 30, 2015, this Court stayed the Panel's Order while "recogniz[ing] the need for swift resolution of the equity portion of this case." Kansas Supreme Court's June 30, 2015 Order, p.1. This Court then ordered the present briefing on an expedited schedule. Kansas Supreme Court's July 24, 2015 Order, p.3.

C. Explanation of the Funding of Kansas Schools Under Operation of S.B. 7

S.B. 7 revoked the current school finance system (the SDFQPA), including the provisions of H.B. 2506 that purported to fund and cure the inequities identified by the Supreme Court in its Mandate. R.Vol. 140, pp. 7-8 (FOF ¶13). This factual statement briefly summarizes S.B. 7 (also referred to as the Classroom Learning Assuring Student Success Act or "CLASS") and its effects.

1. S.B. 7 Decreased Total Operational Funding Available to Plaintiffs

No school district will receive *more* money under the operation of S.B. 7. As Dale Dennis testified, the funds "now bundled for delivery" to the school districts "will be less." R.Vol.136, p.1430 (Panel's 6/26/15 Order, p. 11) (citing Testimony of Dale Dennis). The State has repeatedly attempted to make that claim and – should they do so in this appeal – those attempts should be disregarded. Any insistence by the State that funding has increased is inaccurate and misleading. *See e.g.* R.Vol. 140, pp. 28-29 (FOF ¶¶81-82).

The State, through sleight of hand, attempts to take credit for alleged "increases" in total funding. In fact, this funding is actually KPERS "pass through" funding. By operation of S.B. 7, the State will be providing an estimated total of $3,491,873,438 in education funding. R.Vol. 140, pp. 29-30 (FOF ¶¶84-85). The State claims that this is an increase of $59,504,051 over what the State expected to spend by operation of H.B. 2506. *Id.* Such an allegation is false. **None of this alleged increase in funding will go to Kansas classrooms.** All of that money and more ($79,799,997 to be exact), will be deposited into the general funds of the school districts only to be *immediately* moved to the proper accounts for purposes of dispersing KPERS State Aid. *Id.* The Panel properly concluded that there was simply no increase in operational funds caused by S.B. 7. R.Vol.137, pp. 1429-30, 1474 (Panel's 6/26/15 Order, pp. 10-11, 55). As the Panel correctly concluded, S.B. 7 "is no more than a freeze on USD operational funding for two years . . . with any increase in general state aid only coming by way of adding in, under the guise of operational funds, [KPERS] employer contributions . . . . [E]ven the purported increase in FY2016 and FY2017 dollars in these 'block' grant funds that are bolstered by these KPERS payments . . . will be less." *Id.* (emphasis added).

Even if the State had increased funding with KPERS payments (it did not), any additional KPERS funding has no effect on the equity or adequacy of public education funding. R.Vol. 140, p.30 (FOF ¶86). The Panel has – repeatedly and correctly – determined that KPERS funding, which involves a "pass-through accounting," provides no benefit to local school districts. R.Vol.24, p. 3050, 3107-08 (Panel's 12/30/14 Order, pp. 4, 61-62). The Panel recognized that these KPERS payments are nothing more than irrelevant propaganda intended to inflate the amounts of money that the public thinks is being spent on education all the while having no bearing on the State's constitutional requirement to provide an equitable and adequate education. R.Vol. 131, pp. 184-85 (Plaintiffs' Pre-Hearing Brief, Filed 05/04/15, pp. 36-37). This Court should too.

In addition, under the operation of S.B. 7, property-poor Kansas school districts will only receive a fraction of the full equalization funding that they expected to receive by operation of H.B. 2506, further reducing the funding that they will receive. R.Vol. 140, pp. 7-8 (FOF ¶13). Statewide, the Legislature reduced FY15 equalization funding by $53,734,035. *Id.*; Appendix A: Key Exhibits Submitted with Plaintiffs' 5/4/15 Pre-Hearing Brief, at Ex. 614; R.Vol. 131, at Pls' Ex. 614; R.Vol. 135, p.1411 (Order, filed 6/24/15, p.4) (admitting Ex. 614). The State intentionally and defiantly adopted S.B. 7 for this purpose, knowing it would provide less than full funding for the equalization mechanisms. R.Vol. 140, pp. 9-10 (FOF ¶19).

2. <u>The Extraordinary Needs Fund Will Provide No Relief for School Districts Receiving Decreased Operational Funding</u>

S.B. 7 provides for an "extraordinary need fund." R.Vol.137, pp. 1431-32 (Panel's 6/26/15 Order, pp. 12-13). The State will, presumably, tout this fund as "new" money available to Plaintiffs under S.B. 7 that was never previously available to them under the SDFQPA. But,

the origin of the "extraordinary need fund" is not *new* money. It is comprised of money *subtracted* from what the districts would have otherwise received. *Id.* The fund is akin to creating a pool of monies designed to help the extraordinary needs of the poor by placing a tax on welfare payments. To be entitled to the money, the district must show "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." *Id.* The fund is administered by the State Finance Council chaired by officials with a political motive: the Governor and other legislative leaders. *Id.* Much like the Panel, Plaintiffs find it odd that these political leaders are entrusted with determining a districts' funding. *Id.*

In its Order, the Panel predicated that the fund was "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." *Id.* That prediction has proven true. These political leaders have attended the meetings of the State Finance Council armed only with an indication of *how much money the State wants to spend*. Based on that amount alone – and not the actual needs of the districts – the State Finance Council has distributed only a portion of the fund back to the very schools from which it took the money in the first place. Worse yet, the State Finance Council has not masked its intent to, as the Panel predicted, act as a state budget control device. The Council has openly adjusted its definition of "extraordinary" during the meetings of the State Finance Council to come up with a definition that allows it to spend only what the Council *wants* to spend. The phrase "extraordinary needs" is a misnomer; the fund provides no relief from extraordinary circumstances, and any arguments by the State otherwise should be disregarded.

3. S.B. 7 Does Not Meet the Court's Equity Test As a Whole

The State adoption of S.B. 7, as a whole, was facially unconstitutional. S.B. 7 singled out districts that were entitled to equalization aid and targeted them (and them alone) for additional cuts to funding. R.Vol. 140, p.10 (FOF ¶21). The districts that qualify for capital outlay state aid and LOB state aid are already disadvantaged by circumstance; they have, on average, about 25% of the taxable wealth of districts that qualify for neither type of aid. *Id.* S.B. 7 specifically targeted those disadvantaged districts for additional funding cuts and results in an average cut in state aid to those districts that exceeds $100 per pupil. *Id.*

Because S.B. 7 froze funding levels, it removed the weightings that ensure equal educational opportunities for students that cost more to educate. R.Vol. 140, p.11 (FOF ¶24); *see also* Appx. A: Key Exhibits, at Ex. 623; R.Vol. 131, at Pls' Ex. 623; R.Vol. 135, p.1412 (Order, filed 6/24/15, p.5) (admitting Ex. 623). These weightings, such as the bilingual and at-risk weightings, ensured that districts with a higher number of disadvantaged students received the funding necessary to ensure that those students received the same educational opportunities as other students. R.Vol. 140, p.11 (FOF ¶24). *These weightings will no longer exist under S.B. 7.* School districts will no longer receive an amount of money specifically tailored to meet the needs of the students they are required to educate. The operation of S.B. 7 will ensure that some schools receive inadequate funding, promoting inequitable learning opportunities for disadvantaged students. *Id.* (FOF ¶25). Historically, this Court has not treated favorably the State's attempts to alter these built-in weightings when those attempts had no "cost basis" to support the alteration. *Montoy IV*, 279 Kan. at 831-833, 839. Yet, the State has offered no factual support (or any support at all) that would justify the elimination of the weightings.

4. The Capital Outlay Provision Contemplated in K.S.A. 2013 Supp. 72-8814 is Not Fully Funded Under S.B. 7

S.B. 7 does not fully fund the capital outlay provision contemplated in K.S.A. 2013 Supp. 72-8814. Instead, S.B. 7 recalculates the capital outlay equalization aid that school districts are entitled to for FY15 at a lower rate and then locks that lower amount into place for FY16-17. R.Vol. 140, p.12 (FOF ¶27); Appx. A: Key Exhibits, at Ex. 626 (explaining S.B. 7's changes to capital outlay equalization aid); R.Vol. 131, at Pls' Ex. 626; R.Vol. 135, p.1413 (Order, filed 6/24/15, p.6) (admitting Ex. 626). If the State fully funded K.S.A. 2013 Supp. 72-8814's capital outlay equalization provisions (as promised in H.B. 2506), Kansas school districts would have received $45,629,725 in capital outlay state aid; instead, under S.B. 7, Kansas school districts will only receive $27,302,502. R.Vol. 140, p.12 (FOF ¶¶28-29). The State is $18,327,223 short of fully funding K.S.A. 2013 Supp. 72-8814's capital outlay equalization provision. *Id.* (FOF ¶30). Under S.B. 7, every Kansas school district that was entitled to capital outlay state aid under H.B. 2506 will receive only a portion of that state aid for FY15-17. *Id.* at p.13 (FOF ¶32).

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

The adoption of S.B. 7 exacerbated already-existing inequities in the system by reducing funds available to the State's most vulnerable school districts (*i.e.* – those districts that rely on equalization aid). R.Vol. 140, pp.13-14 (FOF ¶¶34-35). These reductions, which the State incorrectly describes as *de minimis*, significantly impact Kansas school districts. *Id*. Moreover, the reductions, which cause further disparities between districts based on property wealth, do not cure the inequities that the Court found to exist at the time of its Mandate.

S.B. 7's distribution of capital outlay state aid will provide school districts with inequitable access to educational opportunity. R.Vol. 140, p.14 (FOF ¶38). Under S.B. 7, a school district must successfully have an election before July 1, 2015 to raise its capital outlay mill levy. *Id.* at p.15 (FOF ¶39). But, the election process, upon which the capital outlay provision within S.B. 7 is based, is inherently unfair, in part because it causes the constitutionality of the system to rise and fall on the whim of the local voters. *Id.* at p.15 (FOF ¶40). This voter discretion is further inequitable due to the correlation between a district's wealth and their ability to pass an election (as demonstrated in Plaintiffs' Equity Exhibits 503-504). *Id.*; Appx. A: Key Exhibits, at Ex. 503-504; R.Vol. 131, at Pls' Ex. 503-504; R.Vol. 135, p.1409 (Order, filed 6/24/15, p.2) (admitting Ex. 503-504).

Between 1995 and 2012, 48% of capital outlay elections failed. R.Vol. 140, p.15 (FOF ¶40); Appx. A: Key Exhibits, at Ex. 503-504; R.Vol. 131, at Pls' Ex. 503-504; R.Vol. 135, p.1409 (Order, filed 6/24/15, p.2) (admitting Ex. 503-504). Of those, all of the failed elections took place in a district with an AVPP below $100,000. *Id.* No capital outlay election failed in any district with an AVPP over $100,000. *Id.* However, 80% of the elections that took place in districts with an AVPP under $50,000 failed. *Id.*

S.B. 7's capital outlay state aid provision also provides school districts with inequitable educational opportunity. R.Vol. 140, pp. 15-18 (FOF ¶¶41, 43-44). The amount of capital outlay funding that a school district can raise – even when controlled to compare just those districts that exert similar tax effort – ranges dramatically. *Id.* Those inequities are exacerbated by the fact that, under S.B. 7, some districts can make up the difference between the capital outlay state aid they were entitled to under H.B. 2506 and the capital outlay state aid that they

will receive under S.B. 7, but others cannot. *Id.* The districts already levying 8 mills for capital outlay purposes and entitled to capital outlay state aid *cannot* increase their levy, but the districts that are not at the 8 mill maximum *can*.[3] *Id.* As demonstrated in Plaintiffs' Equity Exhibits 620-622, S.B. 7 creates further inequities between districts. Appx. A: Key Exhibits, at Ex. 620-622; R.Vol. 131, at Pls' Ex. 620-622; R.Vol. 135, p.1412 (Order, filed 6/24/15, p.5) (admitting Ex. 620-622).

S.B. 7's capital outlay state aid provision requires inequitable tax effort by local districts. R.Vol. 140, p.18 (FOF ¶45). Under S.B. 7, there is a wide variance of tax effort required by districts to raise capital outlay aid (as demonstrated in Plaintiffs' Equity Exhibit 624). *Id.* (FOF ¶46); Appx. A: Key Exhibits, at Ex. 624; R.Vol. 131, at Pls' Ex. 624; R.Vol. 135, p.1412 (Order, filed 6/24/15, p.5) (admitting Ex. 624). The Panel was factually justified in concluding that S.B. 7 did not meet the Court's equity test.

6. The Supplemental General State Aid Provision Contemplated in K.S.A. 72-6405 *et seq.* is Not Fully Funded Under S.B. 7

Under S.B. 7, the supplemental general state aid provision contemplated in K.S.A. 72-6405 *et seq.* is not fully funded. S.B. 7 recalculates the supplemental general state aid that school districts are entitled to for FY15 and then locks that equalization funding amount into place for FY16-17. R.Vol. 140, pp. 20-21 (FOF ¶53); Appx. A: Key Exhibits, at Ex. 627 (explaining changes to supplemental general state under S.B. 7); R.Vol. 131, at Pls' Ex. 627; R.Vol. 135, p.1413 (Order, filed 6/24/15, p.6) (admitting Ex. 627). If the State had fully funded

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

supplemental general state aid (as contemplated in K.S.A. 72-6405 *et seq.* and as required by H.B. 2506), Kansas school districts would have been entitled to $483,829,732 in supplemental general state aid. R.Vol. 140, p.21 (FOF ¶¶54-56). Instead, by operation of S.B. 7, Kansas school districts will only receive $448,422,920 in supplemental general state aid: a statewide *decrease* of $35,406,812. *Id.* Under S.B. 7, every school district entitled to supplemental general state aid under H.B. 2506 will receive only a portion of that state aid for FY15-17. *Id.*

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

The adoption of S.B. 7 exacerbates already-existing inequities in the system because it only reduced the funding available to the State's most vulnerable school districts (*i.e.* – those districts that rely on equalization aid). R.Vol. 140, p.22 (FOF ¶59). S.B. 7's supplemental general state aid provision provides school districts with inequitable access to educational opportunity; it simply locks in the supplemental general state aid received by the districts in 2014-2015 while relying on the same flawed, unfair election process that renders the capital outlay state aid provision inequitable. *Id*. at p.23 (FOF ¶63).

The supplemental general state aid provision within S.B. 7 provides school districts with inequitable educational opportunity. School district can raise dramatically different LOBs (as demonstrated in Plaintiffs' Equity Exhibits 630-631). R.Vol. 140, pp. 23-24 (FOF ¶64); Appx. A: Key Exhibits, at Ex. 630-631; R.Vol. 131, at Pls' Ex. 630-631; R.Vol. 135, p.1413 (Order, filed 6/24/15, p.6) (admitting Ex. 630-631). S.B. 7 then intensifies those inequities by allowing some districts to raise additional funding to make up for the deficit caused by S.B. 7, but preventing others from doing the same. R.Vol. 140, p.24 (FOF ¶64).

Under S.B. 7, the LOB provisions require inequitable tax effort by local school districts. R.Vol. 140, p.24 (FOF ¶66). They result in districts levying widely different mill levies and further result in a wide variance of tax effort required to raise capital outlay aid (as demonstrated in Plaintiffs' Equity Exhibit 625). *Id.* (FOF ¶67); Appx. A: Key Exhibits, at Ex. 625; R.Vol. 131, at Pls' Ex. 625; R.Vol. 135, p.1412 (Order, filed 6/24/15, p.5) (admitting Ex. 625). The mills levied for supplemental general state aid produce very different educational outcomes and raise significantly different levels of funding. R.Vol. 140, p.25 (FOF ¶68). S.B. 7 creates additional disparities between school districts because districts that were not using their full LOB authority for 2015 will not get additional equalization dollars if they raise their LOB to the maximum percentage. *Id.* at pp. 25-26 (FOF ¶69). Districts that had not previously had an election have now lost the ability to have one for the future (after June 1, 2015) and are frozen at the 30% level (rather than the 33% level previously available). *Id.* These disparities exacerbate the differences among school districts as to equalization aid and local mill levies required to reach substantially similar funding. *Id.* The Panel was factually justified in concluding that S.B. 7 did not meet the Court's equity test.

ARGUMENTS AND AUTHORITIES

A. Justice *Requires* An Immediate Remedy

1. The Mandatory Nature of Article 6 of the Kansas Constitution Requires Action to Remedy Any Violations of Its Provisions

The Kansas Constitution places an affirmative constitutional obligation upon the Kansas Legislature to "make suitable provision for finance of the educational interests of the state." KAN. CONST., Art. 6; *Gannon*, 298 Kan. at 1141-42, 1147. The State of Kansas is currently failing to comply with that obligation.

The positive, mandatory nature of Article 6 requires that the Kansas courts take action to remedy any violations of its provisions. This concept of a positive duty is not a novel concept; it is inherent in the concept of "checks and balances" in the American system familiar to any civics student. And, Article 6's positive duty demands a remedy even if it means encroaching upon the Legislature's appropriations power. Plaintiffs fully expect that the State will – as it has in all aspects of this litigation – continue to hide behind its Article 2 appropriations powers to justify its failure to comply with Article 6 of the Kansas Constitution. Given that the Panel's Order does not violate Article 2, does not encroach on the Legislature's appropriations power, and does comply with the Kansas Supreme Court's Mandate, *infra* at Arguments and Authorities §B.1.-B.2., it is unnecessary for this Court to determine whether Article 6 requires the Court to impose upon the Legislature's appropriations power. However, if this Court, for any reason, determines that the Panel's Order was inappropriate or otherwise rejects the Panel's proposed remedies for the State's violations of Article 6, this Court should disregard the State's overstated Article 2 arguments in crafting an appropriate remedy.

Just as the Legislature cannot use its appropriations power to violate the provisions of Sections 5, 10, and 18 of the Kansas Constitution, the State cannot use its Article 2 powers to violate Article 6 of the Kansas Constitution. But, the State demands that it can, even suggesting that if the Legislature wished to appropriate *zero* dollars to education it could do so. *Supra* at Nature of the Case. Allowing the State to preserve the powers vested to the Legislature by Article 2 of the Constitution while wholeheartedly repudiating Article 6's commands regarding how that power must be exercised would give the Legislature absolute discretion regarding school funding. This would violate the very language of Article 6, which "communicates a

clear intention not to give [the Legislature] absolute discretion in the finance of schools." *Gannon*, 298 Kan. at 1144 (emphasis added).

Plaintiffs do not seek to take away the Legislature's appropriations power. Instead, Plaintiffs seek to ensure compliance with Article 6, which represents the will of the people as enacted through the demanding constitutional amendment process. Passage of the education amendment required a two-thirds vote by both houses of the Kansas legislature and a majority vote of the people of Kansas. *See* KAN. CONST., Art. 14. The State – on the other hand – seeks to thwart the will of the people based solely on a majority vote of the Legislature in the exercise of its Article 2 appropriations power; this would allow the shifting whims of one or two legislators voting on a budget bill to outweigh the will of Kansans as enshrined in their properly amended Constitution. Such a result is untenable. As this Court previously held, "We conclude from this constitutional assignment of different roles to different entities that the people of Kansas wanted to ensure that the education of school children in their state is *not entirely dependent upon political influence or the voters' constant vigilance.*" *Gannon*, 298 Kan. at 1159 (emphasis added).

The rule of law requires that Article 6's constitutional mandates be upheld above all the shifting changes inherent in the democratic political process. From the Magna Carta to the passage of the United States' Bill of Rights to the (much later) enactment of Article 6 of the Kansas Constitution, obedience to the mandates of the people as enshrined in duly-enacted constitutions have been central to the concept of ordered liberty. As the Panel stated in its earlier decision, and as quoted approvingly by this Court, "[m]atters intended for permanence

are placed in constitutions for a reason – to protect them from the vagaries of politics or majority." *Gannon,* 298 Kan. at 1159.

As the Panel and this Court have repeatedly found, the State has been derelict in fulfilling the positive duty imposed upon it by Article 6 of the Kansas Constitution. The State must now be held accountable and must be required to comply with the Kansas Constitution. Article 6 demands that these violations be remedied. And, for the reasons identified below, the violations should be remedied *immediately.*

2. The Unconstitutionalities Present in the Current System Have Existed for Too Long and Must be Remedied *Immediately*

The funding of Kansas public education has remained unconstitutionally funded for too long. With the exception of the brief two-year period in which the State was judicially-required to increase funding to education immediately following *Montoy*, Kansas public education has been underfunded for at least a decade. **Justice *requires* an immediate remedy to this continued unconstitutionality.** Regardless of the Court's ultimate conclusion as to whether the Panel's suggested remedy was appropriate (it was, as shown below), this Court must take *immediate* action to remedy the unconstitutionalities that exist in the current funding system.

In March of 2014, this Court concluded that the State of Kansas was not meeting the affirmative obligation imposed upon it by Article 6 to provide an equitably funded education. It therefore ordered that the inequities be remedied no later than July 1, 2014. R.Vol. 140, pp. 4-5 (FOF ¶¶1-2). *More than a year later*, the inequities that this Court identified remain; no remedy has been adopted, enacted, or even suggested, by the State.

Instead, the State has continued its efforts to thwart compliance with the Kansas Constitution by adopting S.B. 7. To be clear, no one – not even the State – contends that S.B. 7

is a cure for the State's unconstitutional funding of education. Governor Brownback has admitted that this two-year period is – what he calls – "a timeout in the school finance wars" to allow the Legislature "sufficient time to write a new modern formula." R.Vol.131, at Pls' Ex. 650; R. Vol. 135, p.1415 (Order, Filed 6/24/15, p.8) (indicating Ex. 650 was admitted). This is particularly troublesome for multiple reasons.

First, there is simply no need to wholly rewrite a new formula. The SDFQPA had existed since 1992. During its existence, the Supreme Court thoroughly evaluated the formula at least six times: in *U.S.D. 229*, in *Montoy I*, in *Montoy II*, in *Montoy IV*, in *Montoy V*, and again when this Court issued its first decision in *Gannon*. These decisions all resulted in the careful vetting and fine-tuning of the formula; a formula that, when fully funded, would arguably provide Kansas students with a suitable education in a manner that this Court had suggested was constitutional. But, in 2015, with no reasonable explanation, the Legislature tossed out 23 years of effort and began an unnecessary campaign to re-write the whole formula. Completely re-writing the formula is unnecessary and – given the uncertainty as to when a new formula will be written and whether it will be constitutional – it is certainly not a "remedy" for the unconstitutionalities that this Court has required the State to cure. *See Montoy IV*, 279 Kan. at 821, 825-26 (citing *DeRolph v. State*, 2000 Ohio 437 (2000)) ("A remedy that is never enforced is truly not a remedy.")).

Second, a timeout in providing a constitutional education for Kansas schoolchildren is nothing more than a conscious decision by the State of Kansas to sacrifice the education of Kansas schoolchildren for at least two more years. Despite funding education at unconstitutional levels for five years, the State now asks for two more years to get it right.

Kansas students deserve more than a few years' worth of a constitutionally-appropriate education nestled in between court cases and cost studies; the Constitution demands more. Yet, year after year, Kansas students are given the same message: we will deal with this "soon." For Kansas students, "soon" cannot come soon enough. For a student who started kindergarten in a public school in Kansas in 2009-2010, a two-year "timeout" means sacrificing all of elementary school and at least a year of middle school before the State even *begins* to fund education constitutionally. Those seniors scheduled to graduate in 2016-17 (the last year of funding provided by S.B. 7) have not benefitted from a constitutionally-funded education since they were in the fifth grade. And, that constitutional education was only provided for two years following *Montoy*, when this Court forced it to comply with its constitutional obligations.

In the meantime, the State intends to *spend less* than the amount that the Panel has already held as unconstitutional and to *spend less* than it did in FY2014 (all the while falsely making claims that they are spending more money). To the extent that the State attempts to argue to this Court, as it did to the Panel, that it is spending more money on education, those arguments should be disregarded. R.Vol.137, pp. 1429-30, 1474 (Panel's 6/26/15 Order, pp. 10-11, 55 (S.B. 7 "is no more than a freeze on USD operational funding for two years based on FY 2015 (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." And, "even the purported increase in FY2016 and FY2017 dollars in these 'block' grant funds that are bolstered by these KPERS payments . . . will be less.") (emphasis added); *see also supra* at Statement of the Facts, §C.1.

3. The State's Efforts to Escape Review Should be Disregarded

Plaintiffs have presented substantial, competent evidence that S.B. 7 is wholly unconstitutional. *See e.g., supra* at Statement of the Facts, §C.2. The State asks this Court, in the face of that overwhelming evidence, to take no affirmative action to remedy that unconstitutionality. In fact, the State intends to use this appeal to take a second-shot at arguing that these issues are not justiciable. *See* State's Supplemental Docketing Statement, Filed 6-29-15, p. 9, ¶n. These improper attempts to evade judicial review must be disregarded. This Court has already expended significant effort analyzing and determining that these issues are justiciable and proper for judicial review. *Gannon*, 298 Kan. at 1197. Since these issues are properly before this Court, this Court "is the sole arbiter of the question of whether an act of the legislature [*i.e.* – the enactment of S.B. 7] is invalid under the Constitution of Kansas." *Gannon*, 298 Kan. at 1161. "*However delicate that duty may be, we are not at liberty to surrender, or to ignore it, or to waive it.*" *Id.*

If this Court were to waive its responsibilities and take no action to remedy the unconstitutionalities that it has already concluded are present in the system, it would be improperly issuing a non-binding, advisory opinion. *See State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 897 (2008) ("a declaratory action involves 'two disputants' . . . . upon whom the judgment would be binding . . . In contrast . . . advisory opinions . . . are 'merely an opinion'"). Such action would clearly violate the separation of powers doctrine. *Gannon*, 298 Kan. at 1119; *State ex rel. Morrison*, 285 Kan. at 898 ("A Kansas court issuing an advisory opinion would violate the separation of powers doctrine by exceeding its constitutional authority.").

Advisory opinions are illusory. Action is required. It is inherently necessary that this Court take action to cure the unconstitutionalities perpetuated that the State, which they willfully refuse to cure themselves. For the reasons set forth below, Plaintiffs respectfully request that this Court immediately revoke its July 20, 2015 Stay of the Panel's Order and enforce the remedy contained therein.

B. The Panel's Suggested Remedy is the Appropriate Remedy

The most efficient method of remedying the current unconstitutionality of the school finance formula is to lift this Court's July 30, 2015 Stay of the Panel's June 26, 2015 Order. The Panel's Order was appropriate, supported by competent factual findings, and constitutional. When the State refused to cure the inequities that this Court affirmed in its Mandate, the Panel – consistent with the Mandate, with the separation of powers doctrine, and with the obligations imposed upon it by the Kansas Constitution – was required to take action to remedy those still-existing inequities. Therefore, the Panel appropriately crafted a remedy designed to cure the inequities that this Court affirmed in its Mandate. In doing so, the Panel paid careful attention to issues related to the separation of powers, as this Court instructed. The State can identify no basis for invalidating the Panel's remedy and it should stand. Alternatively, should this Court, *for any reason*, reject the Panel's remedy set forth in its June 26, 2015 Order, justice requires that this Court enter an immediate order granting Plaintiffs' relief from S.B. 7. That legislation, as shown herein, is both wholly unconstitutional and in violation of this Court's Mandate.

1. The Panel Had Authority and Jurisdiction to Enter Its Order

Article 6, Section 6 of the Kansas Constitution places a positive duty on the Legislature to exercise its Article 2 appropriations power in such a way as to "make suitable provision for

finance of the educational interests of the state." In other words, even though Article 2 of the Constitution reserves appropriations power for the Legislature, the Legislature must appropriate in a manner that complies with the positive duty imposed on it by Article 6. If it fails to do so, the legislative action is subject to judicial review and the orders of the court remedying that failure.

In addition to this constitutional authority to review the State's compliance with Article 6, the Panel was given specific direction by this Court to do so. *State v. Collier*, 263 Kan. 629, 630, Syl. ¶ 4 (1998) ("It is axiomatic that on remand for further proceedings after a decision by an appellate court, the trial court must proceed in accordance with the mandate and the law of the case as established on appeal."); *Edwards v. State*, 31 Kan. App. 2d 778, 781 (2003) ("a district court may address those issues necessary to the resolution of the case that were left open by the appellate court's mandate"). In its Mandate, this Court tasked the Panel with ultimately ensuring that the inequities that were present in the funding formula at the time of the Mandate were cured. *Gannon*, 298 Kan. at 1198; R.Vol. 140, p.5 (FOF ¶3). The Mandate specifically required that the Panel monitor the State's "efforts to expeditiously address these inequities" and required that the Panel take further action if the State failed to address the inequities in a timely manner. *Gannon*, 298 Kan. at 1198-99.

The Mandate gave the State two choices: it could fully fund capital outlay and supplemental general state aid, pursuant to then-existing statutes, or it could "otherwise" cure the inequities. *Gannon*, 298 Kan. at 1198. Pursuant to the Mandate, the option chosen by the State would subject it to different levels of review – if the State fully funded the equalization mechanisms, "the Panel need not take any additional action." *Id.* Plaintiffs refer to this option

as the "safe harbor"; in its June 26, 2015 Order, the Panel referred to it as "option a." A second option allowed the State to "otherwise" cure the inequities, but if the State chose this option, the Panel *had* to take further action, including, *inter alia*, determining whether the legislative action met the Court's equity test. *Id.*

Ultimately, on remand, the Panel concluded – as to both capital outlay and supplemental general state aid – the State chose to "otherwise" cure the inequities. R.Vol.136, pp. 1452-55 (Panel's 6/26/15 Order, pp.33-36 (as to capital outlay state aid)); *id.* at 1466-73 (Panel's 6/26/15 Order, pp. 47-54 (as to supplemental general state aid)). This conclusion was based on the following competent evidence: Following the Mandate, and before the July 1 deadline, the legislature adopted H.B. 2506. R.Vol.136, pp. 1441-42 (Panel's 6/26/15 Order, pp.22-23); R.Vol. 140, p.5 (FOF ¶3). As to capital outlay state aid, Section 7(j) of H.B. 2506 "made a 'no limit' appropriation on the capital outlay state aid fund for FY2015" which allowed the capital outlay state aid formula to operate as contemplated in K.S.A. 2013 Supp. 72-8814. R.Vol.136, p.1442 (Panel's 6/26/15 Order, p.23). However, before full funding under H.B. 2506 was ever provided to the school districts, the State enacted S.B. 7. Section 63 of that bill "altered the capital outlay formula then existing in K.S.A. 2014 Supp. 72-8814." R.Vol.136, p.1446-47 (Panel's 6/26/15 Order, pp. 27-28). As a result, the Panel – referencing the Mandate – found that "the legislature proffered the accomplishment of option 'a' [*i.e.*, fully funding the capital outlay equalization] in 2014, but in 2015 it backtracked and now the evaluation of compliance falls into option 'b.'" R.Vol.136, p.1452 (Panel's 6/26/15 Order, p.33); *see also* R.Vol. 140, pp. 5-8, 12-13 (FOF ¶¶5-14, 26-33).

Similarly, H.B. 2506 took actions to purportedly fully fund supplemental general state aid, without proration. However, the State backtracked on the promises made in H.B. 2506, as described by the Panel as follows:

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

R.Vol.136, p.1465-73 (Panel's 6/26/15 Order, p. 46-54). Because the State backtracked on its promise to satisfy "Option 'a'" of the Mandate (*i.e.*, the safe harbor), the Panel properly concluded that it should analyze the State's compliance under "Option 'b,'" which required that the Panel take further action. *Id.*; *see also* R.Vol. 140, pp. 20-21 (FOF ¶¶ 52-58).

Because the Panel properly concluded that the State chose to "otherwise" cure the inequities that this Court identified and did not take advantage of the safe harbor, the Panel was obligated to apply the Court's equity test to the legislative cure (*i.e.* – S.B. 7). *Gannon*, 298 Kan. at 1198. It did and properly concluded that the State had failed to cure the inequities identified in the Mandate. R.Vol.136, p.1453, 1468. Those conclusions were supported by substantial, competent evidence. *Infra* at Arguments and Authorities § C.3.-C.4. The Panel

clearly had authority and jurisdiction to enter orders to cure these as-yet-uncured inequities. *See Gannon*, 298 Kan. at 1198 (the panel should . . . *enter such orders as the panel deems appropriate*") (emphasis added).

Furthermore, the Panel had broader authority to consider whether S.B. 7 as a whole violated the Kansas Constitution. On March 26, 2015, Plaintiffs filed a motion arguing that S.B. 7 was unconstitutional as a whole (not just related to the equity mechanisms) and requesting relief on that basis. R.Vol. 130, pp. 12-43. On April 30, 2015, this Court issued an Order giving the Panel explicit jurisdiction to resolve that March 26 Motion. Kansas Supreme Court's April 30, 2015 Order, p. 3. Therefore, the Panel had authority and jurisdiction to enter orders to cure the unconstitutionalities alleged by Plaintiffs in their March 26 Motion.

The Panel dutifully followed its constitutional obligations and the Supreme Court's instructions. Ultimately, it found in favor of Plaintiff, holding 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." R.Vol.136, p.1426 (Panel's 6/26/15 Order, p. 7). It then, in compliance with the Court's Mandate entered "*such orders as the panel deem[ed] appropriate*." *Gannon*, 298 Kan. at 1198. The Panel did not, despite the State's arguments otherwise, exceed its authority or jurisdiction in issuing its June 26, 2015 Order. *See e.g.* State's June 29, 2015 Supplemental Docketing Statement, p. 9, ¶¶ j.-k. <u>It simply followed this Court's directions.</u> This Court should uphold the Panel's findings, conclusions, and its proposed remedy.

2. The Panel Did Not Enter Any Orders that Violate the Separation of Powers Doctrine

The State has, throughout this litigation, repeatedly attacked the Panel and this Court for supposedly violating the separation of powers doctrine; in fact, it makes this accusation every time either court gives the Legislature direction. Should the State raise that argument on appeal, it should ring hollow. The Legislature seeks to maintain and preserve all authority and discretion for itself with regard to the amount of money spent on public education in Kansas. The Kansas Constitution does not provide the Legislature that power. *Gannon*, 298 Kan. at 1144 ("The 1966 legislature's insistence on keeping 'suitable' to specifically modify 'provision' communicates a clear intention not to give itself absolute discretion in the finance of schools."). And, the separation of powers doctrine is designed to prevent such a result. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." *Gannon,* 298 Kan. at 1137 (citing *Van Sickle v. Shanahan*, 212 Kan. 426, 445 (1973)). This Court should not allow the Legislature to accumulate all power regarding the funding of Kansas education when the Constitution explicitly dictates otherwise.

The Panel did not make any appropriations nor did it compel the Legislature to make appropriations. R.Vol.136, pp. 1479-1502 (Panel's 6/26/15 Order, pp. 60-83). The Panel simply did not violate the separation of powers doctrine. But, even if the Panel had made appropriations, it would not necessarily violate the separation of powers doctrine. It is incumbent upon the courts to take action to remedy violations of Article 6, even if it means encroaching upon the Legislature's appropriations power. Such a result is demanded by the positive nature of Article 6. *Supra* at Arguments and Authorities, §A.1.

The Panel, consistent with its constitutional duty to review the Legislature's actions and in response to the Mandate, found that the State was failing to comply with Article 6 of the Kansas Constitution. Pursuant to the Mandate, the Panel then entered an Order that sought to reconcile the Legislature's Article 2 appropriations power with the positive duty imposed on the use of that power by Article 6. This Court should uphold the Panel's Order and not allow the State to ignore the Mandate simply because this current Legislature would prefer to act unfettered by the positive duties imposed on it by the people of Kansas in their Constitution.

3. The Panel's Order Respected the Non-Severability Clause Adopted By the Legislature in S.B. 7 And Should Be Enforced

The State will likely argue that the Panel's suggested remedy, which includes an injunction against the enforcement of certain sections of S.B. 7 and the reinstatement of SDFQPA's "weightings," cannot act to "automatically reinstate the repealed statutes." *See, e.g.*, R.Vol.130, pp. 1479-1502. Presumably, the State will "sound the alarm" and tell this Court that affirming the Panel's remedy will result in an "Armageddon-like" scenario. But, this Court's legal precedents lead to the opposite result: enjoining S.B. 7 in the manner set forth in the Panel's Order results in the reinstatement of the SDFQPA, as amended by H.B. 2506. In *Sedlak v. Dick*, 256 Kan. 779 (1995), the Kansas Supreme Court restated this conclusion, which had first been reached in 1948:

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

256 Kan. at 805 (citing *City of Kansas City v. Robb*, 164 Kan. 577 (1948) and *State ex rel. Stephan v. Thiessen*, 228 Kan. 136 (1980)).

Thus, for the "Armageddon-like" scenario to play out, the State must prove that the Legislature would have wanted the entire LOB and capital outlay systems abolished, even without providing any substitute for those earlier provisions. Given the centrality of the State's recent reliance on local funding for the schools, such a proposition is absurd. The situation is analogous to that examined by this Court in *Topeka Cemetery Ass'n v. Schnellbacher*, 218 Kan. 39 (1975). In that case the Court found that the changes made by the law, which related to a Kansas law enforcement training center, dealt primarily with its funding. The Court found that "we cannot conclude that the legislature would have passed the repealing clauses if it had not provided substitutes for such statutes. Under such circumstances, the repealing clauses are also invalid." *Id.* at 45. Indeed, the Supreme Court reached the same conclusion in *Sedlak*, finding that there was no question that the legislature would not have repealed certain workers compensation statutes "if it had not provided a substitute for the repealed statutes. Thus, it follows that the repeal . . . is invalid, and these two statutes are still in full force and effect as they existed prior to the attempted . . . amendments." *Sedlak*, 256 Kan. at 805.

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

prior to the attempted … amendments." *Sedlak*, 256 Kan. at 805. Thus, the Panel's Order stands in conformity with this Court's precedents and should be enforced.

C. The Panel Properly Applied the Equity Test to S.B. 7

The Panel properly applied the equity test, as set forth by this Court in its Mandate, to S.B. 7 and that analysis should not be disturbed on appeal.

1. Scope of Appeal and Standard of Review

The issues before this Court raise mixed questions of fact and law, and a bifurcated standard of review is proper. If the State disputes any of the Panel's findings, the Court should apply a substantial competent evidence standard. *Gannon*, 298 Kan. 1182 (citing *Progressive Products, Inc. v. Swartz*, 292 Kan. 947, 966 (2011)). So long as the Panel's findings are supported by substantial competent evidence and support the Panel's conclusions of law, those findings should stand. *Id.* In reviewing the factual findings, this Court should not reweigh the evidence or assess the credibility of witnesses. *State v. Reiss*, 299 Kan. 291, 296 (2014). And, it should disregard any conflicting evidence or other inferences that might be drawn from the evidence. *Gannon*, 298 Kan. at 1182.

The Panel's conclusions of law based on its findings are subject to unlimited review. *Id.* (citing *Progressive Products*, 292 Kan. at 955). However, because this matter is now in the remedy phase, the State bears the burden of proof to show that the Legislature's actions "resulted in suitable provision for the financing of education as required by Article 6, §6." *See Montoy IV*, 279 Kan. at 821, 825-26. As the Panel concluded in its June 26, 2015 Order, the State has failed to meet this burden.

2. The Panel Properly Concluded that, on its Face, S.B. 7 Was Wholly Unconstitutional

On April 30, 2015, this Court gave the Panel explicit jurisdiction to resolve Plaintiffs' "March 26 motion for declaratory judgment and injunctive relief," specifically challenging the constitutionality of S.B. 7 as a whole (and not just related to the equity mechanisms). Kansas Supreme Court's April 30, 2015 Order, p. 3. The Panel appropriately agreed with Plaintiffs that S.B. 7 was unconstitutional on its face and did not err in reaching this conclusion.

The Panel found that, "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 . . . ." R.Vol.137, p.1433 (Panel's 6/26/15 Order, p. 14). Thus, as the Panel stated:

> [T]he 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.* 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.*

R.Vol.137, pp. 1475-79 (Panel's 6/26/15 Order, pp. 56-60 (emphasis added)). Indeed the Panel found this "flat funding mechanism" "*so pernicious and its negative effects so immediate"* that it issued a temporary restraining order (later stayed by this Court) in an attempt to mitigate those pernicious effects. *Id.*

S.B. 7 not only fails to cure the inequities found by the Panel and upheld by this Court, but creates new inequities by removing the "weightings" system from the formula that provided similar educational opportunities for students with differing costs of educating. As the Panel correctly found "[t]his method of state aid distribution … can find *no accepted factual basis or 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." *Id.* The Panel correctly concluded that S.B. 7 was, on its face, unconstitutional. And, the Panel's conclusion in this regard was supported by substantial competent evidence. *Supra* at Statement of the Facts, §C.2. There is no basis for disturbing the Panel's findings regarding the unconstitutionality of S.B. 7 on appeal.

Historically, this Court has recognized the necessity of these weightings; its has not treated favorably the State's attempts to alter these built-in weightings when those attempts had no "cost basis" to support the alteration. *Montoy IV*, 279 Kan. at 831-833, 839. Any level of funding that is not tied to these weightings only exacerbates the inequities in the system. *Id.* at 831-833. The State made no efforts to demonstrate that there was any cost-based or equity-driven reason for removing the weightings. Again, the Panel was justified in issuing its temporary restraining order. However, if this Court does, for some reason, determine that the Panel's TRO was improper, this Court must remedy the State's unconstitutional failure to consider the differing and changing costs of certain students and subgroups that are accounted for in the weightings under the SDFQPA. To comply with the equity test set forth in the Mandate, and to provide the equity demanded by the Kansas Constitution, these differing and changing costs must be accounted for in any funding formula.

3. The Panel Properly Concluded that the State's Adoption of S.B. 7 Did Not Comply with this Court's Mandate Regarding Capital Outlay

In its June 26, 2015 Order, the Panel concluded that S.B. 7 did not comply with the Court's Mandate as to capital outlay state aid. R.Vol.137, p.1453 (Panel's 6/26/15 Order, p. 34). The Panel did not err in reaching this decision.

The Panel properly concluded that the Legislature acted to "otherwise" cure the inequities that this Court found in its Mandate, and – as a result – the Panel was required to determine whether the legislative action (*i.e.*, S.B. 7) met the Court's equity test. *Gannon*, 298 Kan. at 1198. The Court specifically tasked the Panel with assessing "whether the capital outlay state aid – through structure and implementation – then gives school districts reasonably equal access to substantially similar educational opportunity through similar tax effort." *Id.* The Panel followed the instructions of the Mandate and applied that same test when analyzing whether the capital outlay provisions under the State's legislative cure (S.B. 7) met the equity test. R.Vol.137, pp. 1452-55 (Panel's 6/26/15 Order, pp. 33-36).

Ultimately, the Panel found that "§ 63 of House Substitute for SB 7 fails to comply with the *Gannon* judgment" and did not produce "reasonably equal access to substantially similar educational opportunity through similar tax effort." R.Vol.137, p.1453 (Panel's 6/26/15 Order, p. 34). The Panel appropriately found that the State had not fully funded capital outlay equalization as contemplated in K.S.A. 2013 Supp. 72-8814, and that the adoption of S.B. 7 exacerbated already existing inequities in the system because it only *reduced* funding available to the State's most vulnerable school districts (*i.e.*, those districts that rely on equalization aid). *Id.*

According to the Panel, S.B. 7 "maintain[s] an unjustifiable wealth based disparity." R.Vol.137, p.1453-54 (Panel's 6/26/15 Order, pp. 34-35). Under S.B. 7, the property wealthy districts that did not receive capital outlay state aid "remain unscathed, and only those that had demonstrated need are tasked with paying the price of the capital outlay state aid reductions." *Id.* These districts would be required to "[c]annibaliz[e] . . . other operating funds or needs . . . commensurate to the unsatisfied need." *Id.*

The Panel's conclusion in this regard was supported by substantial competent evidence. *Supra* at Statement of the Facts, §C.2.-C.4. This evidence supports the Panel's ultimate conclusion of law that "[t]his disparity does not produce 'reasonably equal access to substantially similar educational opportunity through similar tax effort." R.Vol.137, p.1453 (Panel's 6/26/15 Order, p. 34). This conclusion should not be disturbed on appeal.

4. The Panel Properly Concluded that the State's Adoption of S.B. 7 Did Not Comply with this Court's Mandate Regarding Supplemental General State Aid

In its June 26, 2015 Order, the Panel concluded that S.B. 7 did not comply with the Court's Mandate as to supplemental general state aid. R.Vol.137, p.1468 (Panel's 6/26/15 Order, p. 49). The Panel did not err in reaching this decision. The Panel appropriately applied the Court's equity test to determine whether S.B. 7 cured the inequities caused by the State's proration of supplemental general state aid. Ultimately, the Panel concluded that S.B. 7 did not meet the equity test, finding that the changes to supplemental general state aid caused by S.B. 7 "represent a clear failure to accord 'school districts reasonably equal access to substantially similar educational opportunity through similar tax effort.'" *Id.*

The State's decision to alter the operation of supplemental general state aid through S.B. 7 had significant, startling effects on a particularly vulnerable subset of school districts: property poor districts. Under the operation of S.B. 7, the funding necessary to educate students in these property poor school districts will be subject to the whim of local taxpayers. *See, e.g.*, R.Vol.137, p.1469 (Panel's 6/26/15 Order, p. 50). On the other hand, "the increasingly tax-wealthy districts will have their educational goals honored, preserved, and funded." *Id.* As the Panel noted, for property poor districts, the State's adoption of S.B.7 turned the struggle for adequacy into a struggle for survival. *Id.* at p.1471-72. This is not a permissible result under the Kansas Constitution. "[A] disparity in educational opportunity should not be allowed to arise from the difference in property tax wealth between school districts." *Id.* The Panel's conclusion in this regard was supported by substantial competent evidence. *Supra* at Statement of the Facts, §C.2., C.5.-C.6. The Panel's conclusion was appropriate and should be upheld.

5. The State Knowingly and Intentionally Adopted S.B. 7 To Provide Less Than Full Funding for the Equalization Mechanisms

The State knowingly and intentionally adopted S.B. 7 to provide less than full funding for the equalization mechanisms. R.Vol. 140, pp. 9-10 (FOF ¶19); *see also* R.Vol.130, p.76 ("Here, the Legislature's intention is evident . . . all of the parties agree that the Legislature did not want the districts to receive any more capital outlay and LOB state aid in FY2015 beyond the approximate $4 million the Legislature appropriated in S.B. 7. [Instead], the Legislature appropriated approximately $2.2 million more FY2015 capital outlay aid, knowing and intending SB 7 would reduce capital outlay aid under preexisting statute by about $18 million. Additionally, the Legislature declined to appropriate an additional $35.5 million in LOB aid needed to "fully fund" aid under K.S.A. 2014 Supp. 72-6434, repealed by S.B. 7.").

The State had indicated that the Legislature's intent in adopting S.B. 7 was to prevent the districts from receiving "any more capital outlay and LOB state aid in FY2015 beyond the approximate $4 million the Legislature appropriated in SB 7." R.Vol.130, p.76. The State's intent in adopting S.B. 7 alone violates the equity order of this Court. The Legislature's stated intent "'reflects no other reason than a choice based on the amount of funds desired to be made available' by the legislature." *Gannon*, 298 Kan. at 1185. And, "it logically follows that the inequity that equalization aid was designed to cure remains present." *Id.* Once again, "[t]he State points to nothing in the record demonstrating that the inequity was eliminated or lessened on its own or by other means." *Id.* The Panel appropriately found that this Court's order had been violated. R.Vol. 140, p.10 (FOF ¶20).

D. This Court Should Retain Jurisdiction Until the State Wholly Complies With its Constitutional Obligations

History shows the State has been unwilling to meet its burden under the Constitution for almost as long as the burden has existed. The State's continual maneuvering to avoid a court determination of inequitable funding presently continues and can be demonstrated through: (1) the passage of H.B. 2506 and representations made to the Panel that the equity funding mechanisms would be fully funded, thus securing a finding in its favor; (2) the near-immediate defunding of those equity funding mechanisms after the favorable ruling was obtained; and (3) the "freezing" and enshrining of these inequities for at least two more school years through the passage of S.B. 7. These actions have exacerbated funding problems and created a never-ending, unconstitutional status quo: any Constitutional and statutory duties are avoided and the situation continues for each successive generation of Kansas kids.

Consistently, the Legislature has demonstrated a pattern of changing the law without addressing the underlying deficiencies, all the while feigning "good faith compliance" and proclaiming "mootness" in order to stay one budget year ahead of a court determination of unconstitutionality. As Plaintiffs have pointed out:

> A distinct pattern has emerged over the past fifty years and almost every school finance case follows it: First, affected individuals and districts challenge the legislature's failures; the court, now called to assess the legislature's actions (or lack thereof) indicates that the legislation will be overturned; before the court can do so, the legislature adopts new legislation; finally, the courts accept the legislative response as a "good-faith effort to solve constitutional problems" and releases its jurisdiction over the case.

R.Vol.107, p.7090 (Tr.Ex.363, at 000014).

If the Legislature is allowed to once again dodge a finding of unconstitutionality, an all-too-familiar situation will repeat itself: this Court will be torn between retaining jurisdiction and analyzing the new statute or dismissing the case and allowing a new set of inadequately educated plaintiffs to challenge the new funding plan in the future. R.Vol.107, p.7092 (Tr.Ex.363, 000018).

In the past, the State has had no qualms with making representations to the Court in order to seek dismissal of a school funding case and then defaulting on those commitments. R.Vol.14, p.1835-36 (Panel's 1/11/13 Order, p. 116-17 ("Nevertheless, the bottom line is that any funding short of a BSAPP of $4433 through FY2009 was not in compliance with the commitment made in 2006 that resulted in dismissal of this suit's predecessor.")). As the Panel found in its most recent decision, "The State knew, at that time, that H.B. 2506 was 'dealing with an estimate' and that the State's compliance with the Supreme Court's mandate was contingent on 'true[ing] up' the numbers at the end of the year." R.Vol. 140, pp. 6-7 (FOF ¶8).

And yet, as the Panel also found, after obtaining a favorable judgment, "the State knowingly and intentionally adopted S.B. 7 to provide less than full funding for the equalization mechanisms." R.Vol. 140, pp. 9-10 (FOF ¶19). Given the long history of this case, and the State's maneuverings in the face of unfavorable rulings, in order to finally achieve constitutionality, this Court must retain jurisdiction over this matter until the State fulfills its constitutional obligations by complying with the Panel's Order as set forth below.

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

This Court has inherent power to sanction a party based on that party's conduct in bad faith, regardless of statutory provisions. *See e.g., Schoenholz v. Hinzman*, 295 Kan. 786, 787 (2012) (citing *Alpha Med. Clinic v. Anderson*, 280 Kan. 903, 926 (2006)) (courts have inherent powers to impose sanctions for bad-faith conduct, irrespective of statutory provisions).

As Plaintiffs have shown, the State has acted in bad faith by continually dodging its constitutional obligation to properly fund education in Kansas. R.Vol.14, p.1867 (Panel's 1/11/13 Order, p. 148 (the State acted with "what appears now to be an obvious and continuing pattern of disregard of constitutional funding obligations under Article 6")). Furthermore, the State's course of conduct since this Court's *Gannon* decision has essentially amounted to willful disobedience leading to unnecessary expenditures by Plaintiffs in seeking to enforce this Court's (and the Panel's) decisions. As the Panel found, in its December 2014 decision, it "held that the legislature's action through the enactment of 2014 Senate Substitute for HB2506's amendments and funding of those statutory schemes, *and accompanying assurances by the State's counsel of any necessary future supplemental action that could be required,* substantially complied with the Kansas Supreme Court's judgments in regard to those two

equitable funding statutes." R.Vol.136, p.1421 (Panel's 6/26/15 Order, p. 2 (emphasis added)). But, the promised "curative actions *assured to be taken*," were never taken. *Id.* (emphasis added). Instead, less than two months after the Panel found in favor of the State based on these assurances, the Governor instituted an allotment to K-12 funding which he stated could be replaced if the legislature acted "'to stall' the increase of $54 million yet due in FY2015 for capital outlay state aid and LOB state aid per the existing formulas…" R.Vol.136, p.1423 (Panel's 6/26/15 Order, p. 4). The legislature quickly complied, passing S.B. 4 which "stalled" the FY2015 capital outlay state aid payments, and then S.B. 7 which "reduced funding under each formula to substantially coincide with the estimates provided to this Panel in its June 11, 2014 hearing on compliance with the equity judgments rendered in *Gannon*." R.Vol.136, p.1424 (Panel's 6/26/15 Order, p. 5).

At that June 11, 2014 hearing, the State's counsel stated "I think what the legislature deserves is a pat on the back." R.Vol.136, p.1444 (Panel's 6/26/15 Order, p. 25). Plaintiffs wholeheartedly disagree. Allowing the State to continue behavior designed to thwart, avoid, and nullify this Court's orders without sanction will reward it for failing to meet its constitutional obligations.

The State's willingness to mislead the courts in its attempts to avoid its constitutional responsibilities is paired with a similar willingness to mislead the public with regards to education spending. For example, the State continues to trumpet alleged "record level" spending on education to the public, without telling the public that those increases, if they exist, provide no additional educational opportunities for students. *Supra* Statement of the Facts, §C.1. As the Panel appropriately found, "any increase in general state aid only come[s] by way

of adding in, *under the guise of operational funds*, Kansas Public Employee Retirement System (KPERS) employer contributions . . . ." R.Vol.136, p.1429 (Panel's 6/26/15 Order, p. 10 (emphasis added)). As the Panel noted, those increases were not an allowance for increasing "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." *Id.* As the Panel correctly found, based on testimony from the State's own expert, the districts will be receiving *less* money. R.Vol.136, p.1430 (Panel's 6/26/15 Order, p. 11). And, "KPERS contributions are not able to be used for general school district operations and pass straight through USDs to KPERS." *Id.*

The State's misleading math is even incorporated into the reporting requirements the State places on school districts. Districts are required to compare their current year's budget to the last two years' *actual* spending, a practice that always overestimates the district's available funds by failing to take into account additional enrollment that the districts must plan for to avoid the need to republish their budget due to expected enrollment increases. S.B. 7's operation distorts these required reports to an even greater extent. S.B. 7 requires that the supplemental general state aid, capital outlay state aid, *and KPERS* first be deposited to a district's general fund and then transferred to separate fund accounts. Because of this, the districts appear to have outlandishly high budgeted general funds compared to previous years' actual spending. With this sleight of hand, this "increase" is simply a deceptive mirage generated by the misleading reporting requirements imposed on the districts by the Legislature. This continued public deception is sanctionable conduct.

As the Panel found, the State "backtracked" on a promise to fully fund the equity formulas made to the Plaintiffs, the Panel, and Kansas schoolchildren and Plaintiffs were required to expend additional effort and funds to seek an order from the Panel altering its previous decision on equity, including extensive briefing and a two-day hearing. This Court should exercise its inherent power to sanction the State and award Plaintiffs' attorneys' fees.

Even absent bad faith on the part of the State, attorneys' fees would be appropriate because "plaintiffs have contributed to the vindication of important constitutional rights." *Claremont School Dist. v. Governor*, 144 N.H. 590, 598, 761 A.2d 389 (1999). Under similar circumstances, the Supreme Court of New Hampshire exercised its "inherent equitable powers" and awarded reasonable attorney's fees to plaintiff school districts. *Id.* This Court should do the same.

CONCLUSION

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

Dated this 1st day of September, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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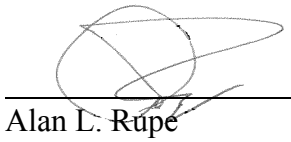


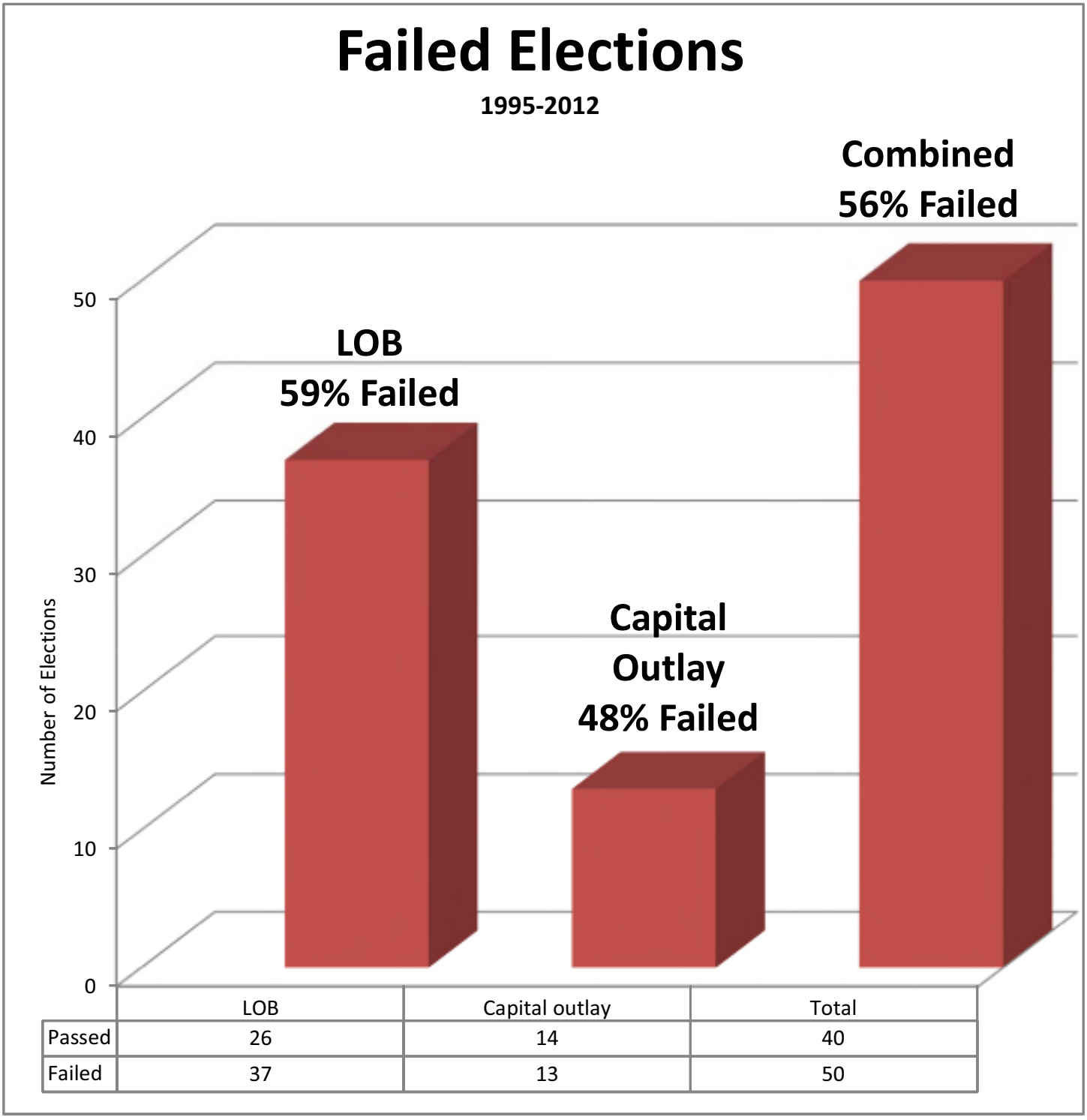
Alan L. Rupe

APPENDIX A:
Key Exhibits Submitted with Plaintiffs' 5/4/15 Pre-Hearing Brief

LOB and Capital Outlay

Failed Elections

1995-2012



	LOB	Capital outlay	Total
Passed	26	14	40
Failed	37	13	50

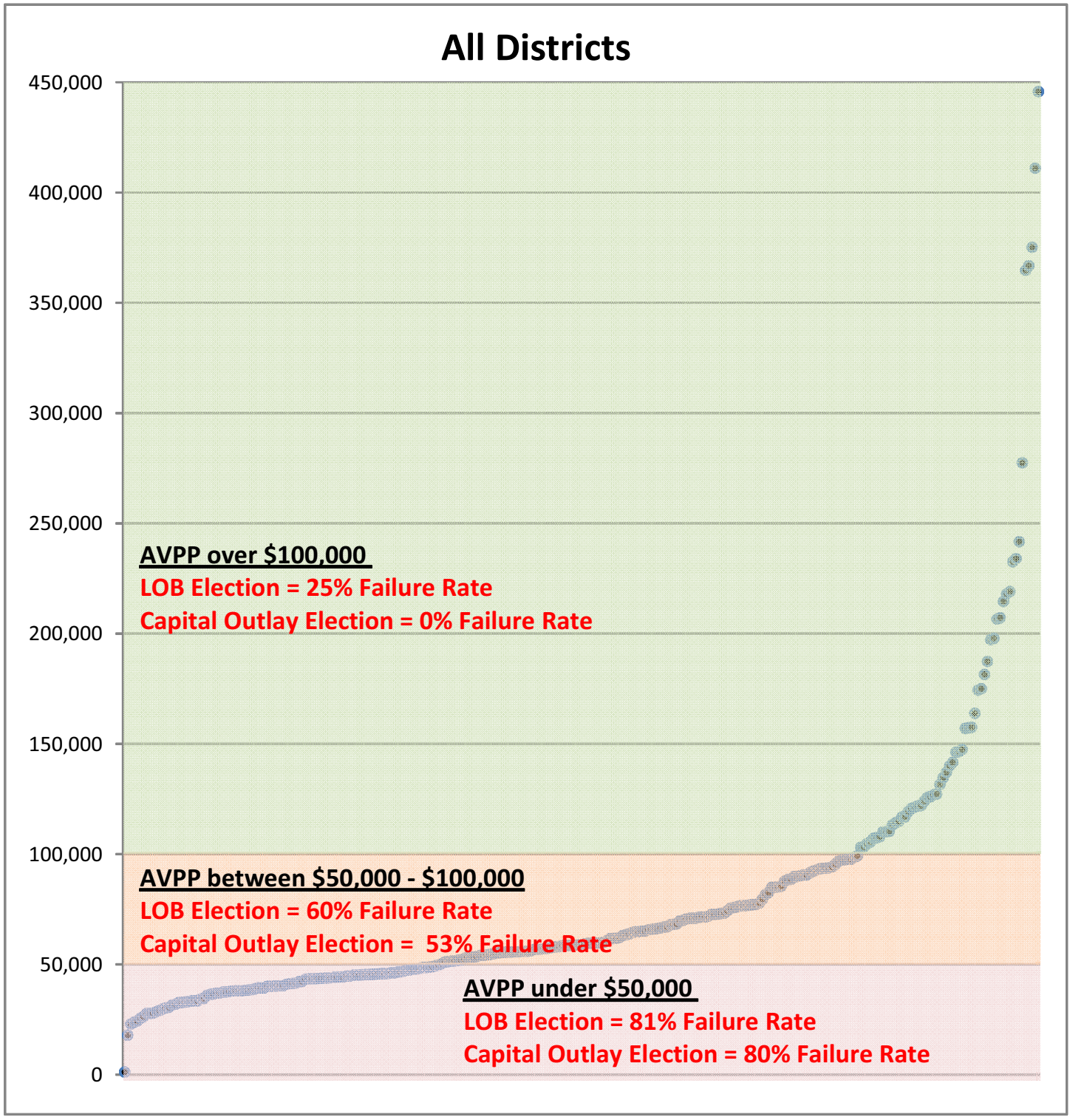
1995-2012 Election data from KASB

Exhibit
503

990267

SFFF000790

Assessed Valuation Per Pupil



1995-2012 Election data from KASB
AVPP data from Defendant Exhibit 1064, #F3, KSDE 2011-12 1EDLA255O

Exhibit
504

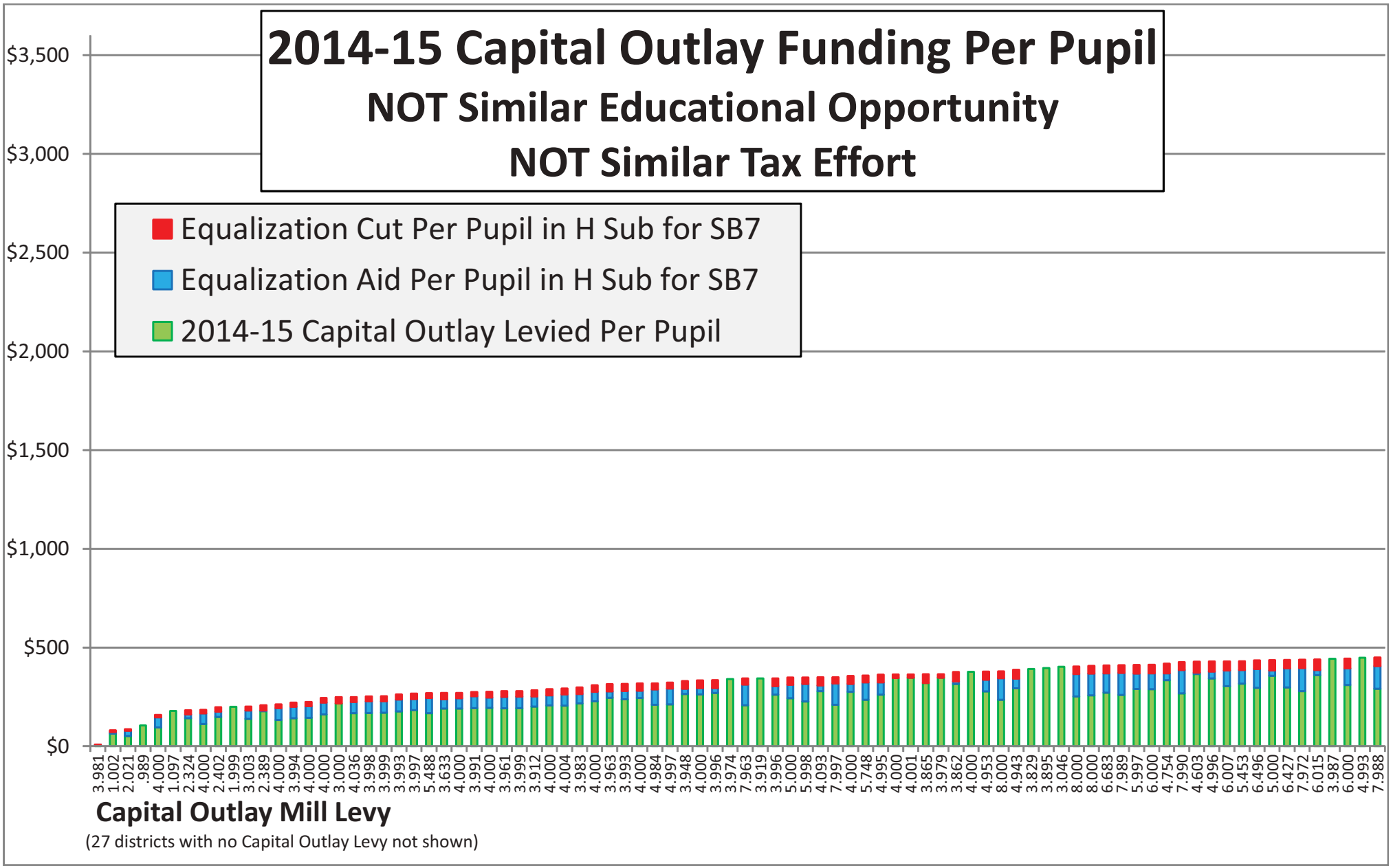
990267

EQUALIZATION AID

	CAPITAL OUTLAY	LOB
EXPECTATION		
HB 2506	FULL EQUALIZATION PER EXISTING FORMULA	FULL EQUALIZATION PER EXISTING FORMULA
	$45,629,725	$483,829,732
REALITY		
SBT	AMOUNT PRORATED DOWN	AMOUNT PRORATED DOWN
	$27,302,502	$448,422,920
LOSS	$18,327,223 40% LOSS	$35,406,812 7% LOSS
COMBINED LOSS	$53,734,035	
FUTURE REALITY	NO EQUALIZATION FOR INCREASED AMOUNTS	NO EQUALIZATION FOR INCREASED AMOUNTS

Exhibit
614

2014-15 Capital Outlay Funding Per Pupil
NOT Similar Educational Opportunity
NOT Similar Tax Effort



Capital Outlay Mill Levy

(27 districts with no Capital Outlay Levy not shown)

CHART PAGE 1

Data from KSDE SF15-109 and KSDE 2014-15 Capital Outlay Aid FY15.xlsx

Exhibit 620

990969

2014-15 Capital Outlay Funding Per Pupil
NOT Similar Educational Opportunity
NOT Similar Tax Effort

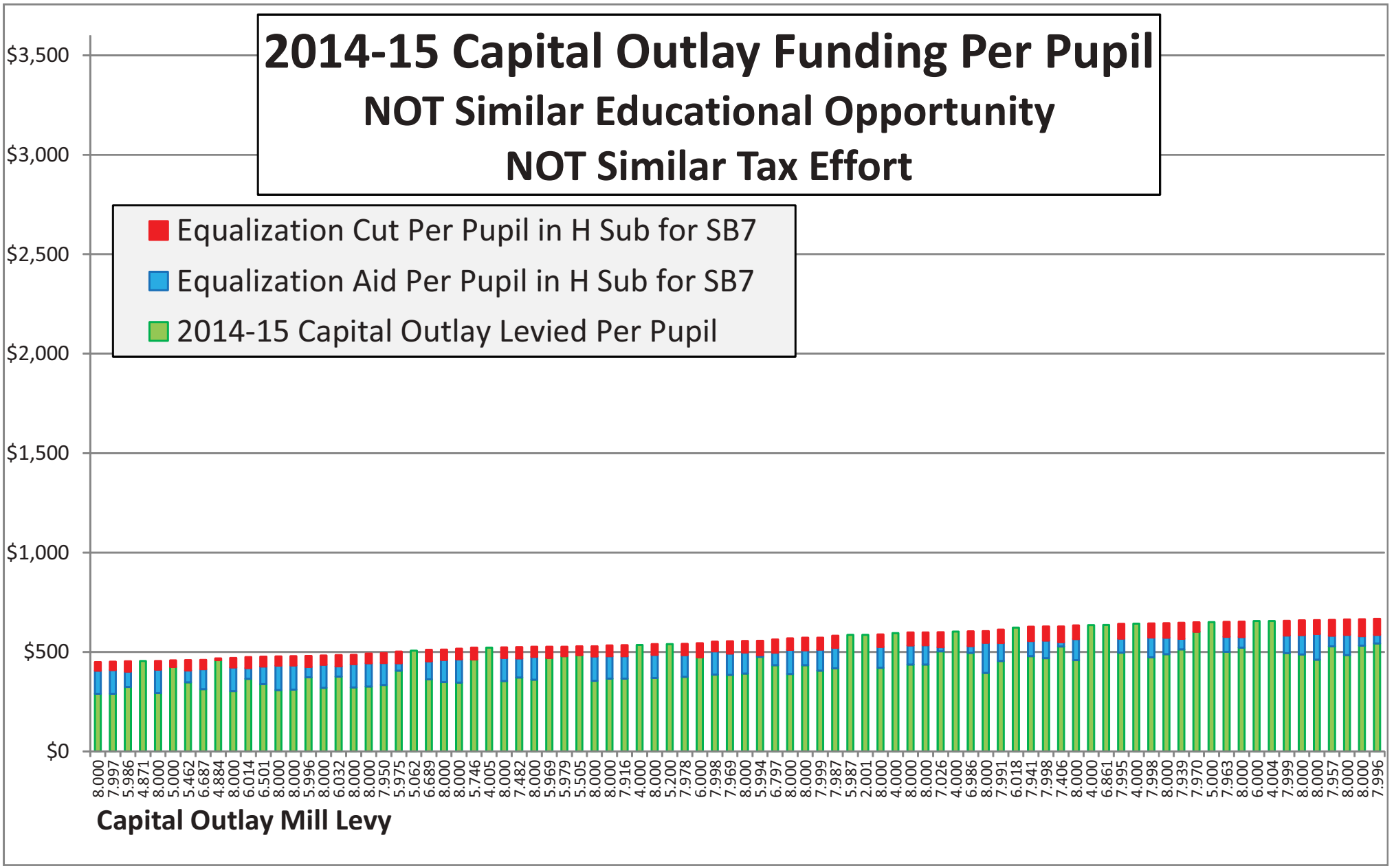


CHART PAGE 2

Data from KSDE SF15-109 and KSDE 2014-15 Capital Outlay Aid FY15.xlsx

Exhibit
620

990969

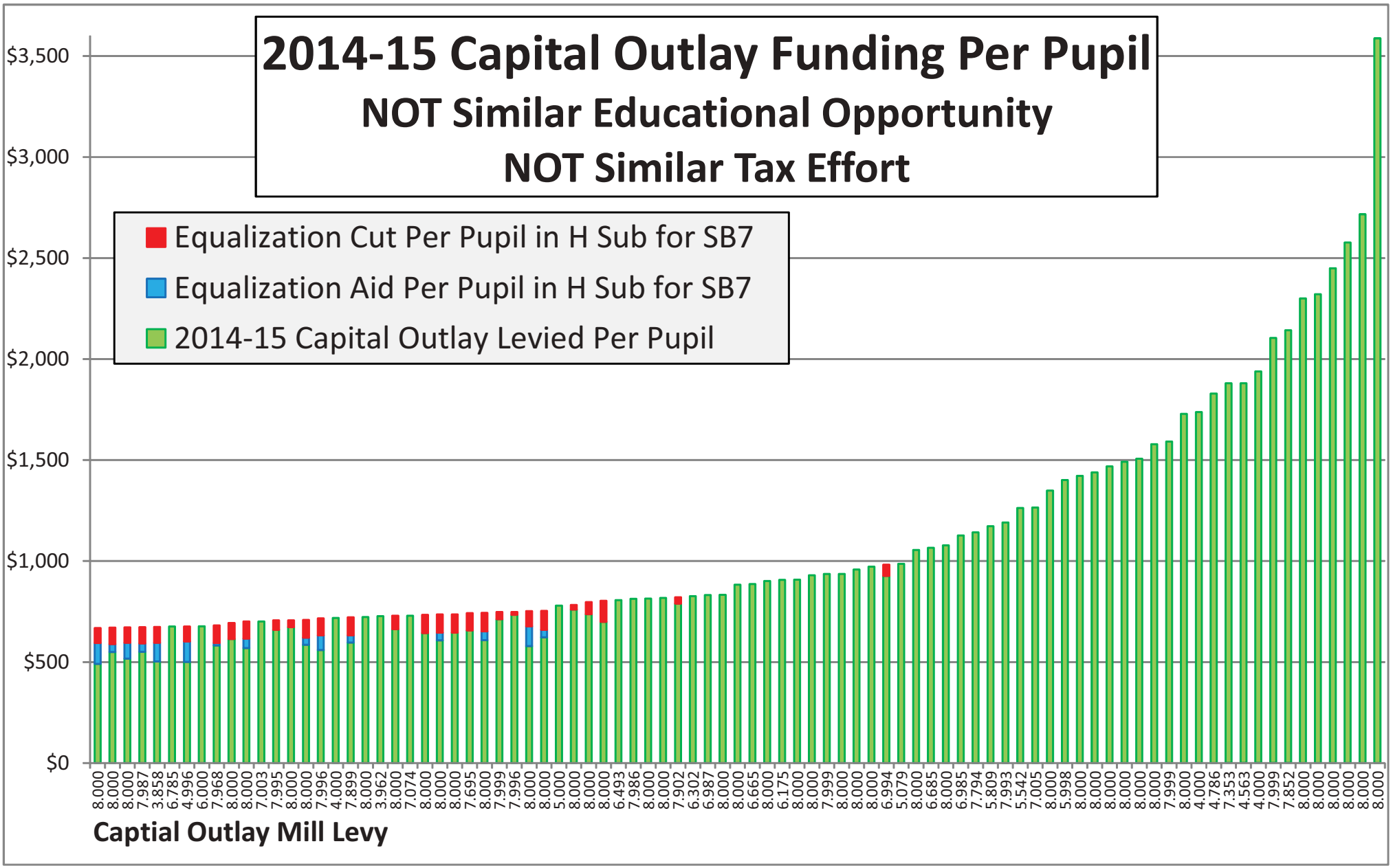


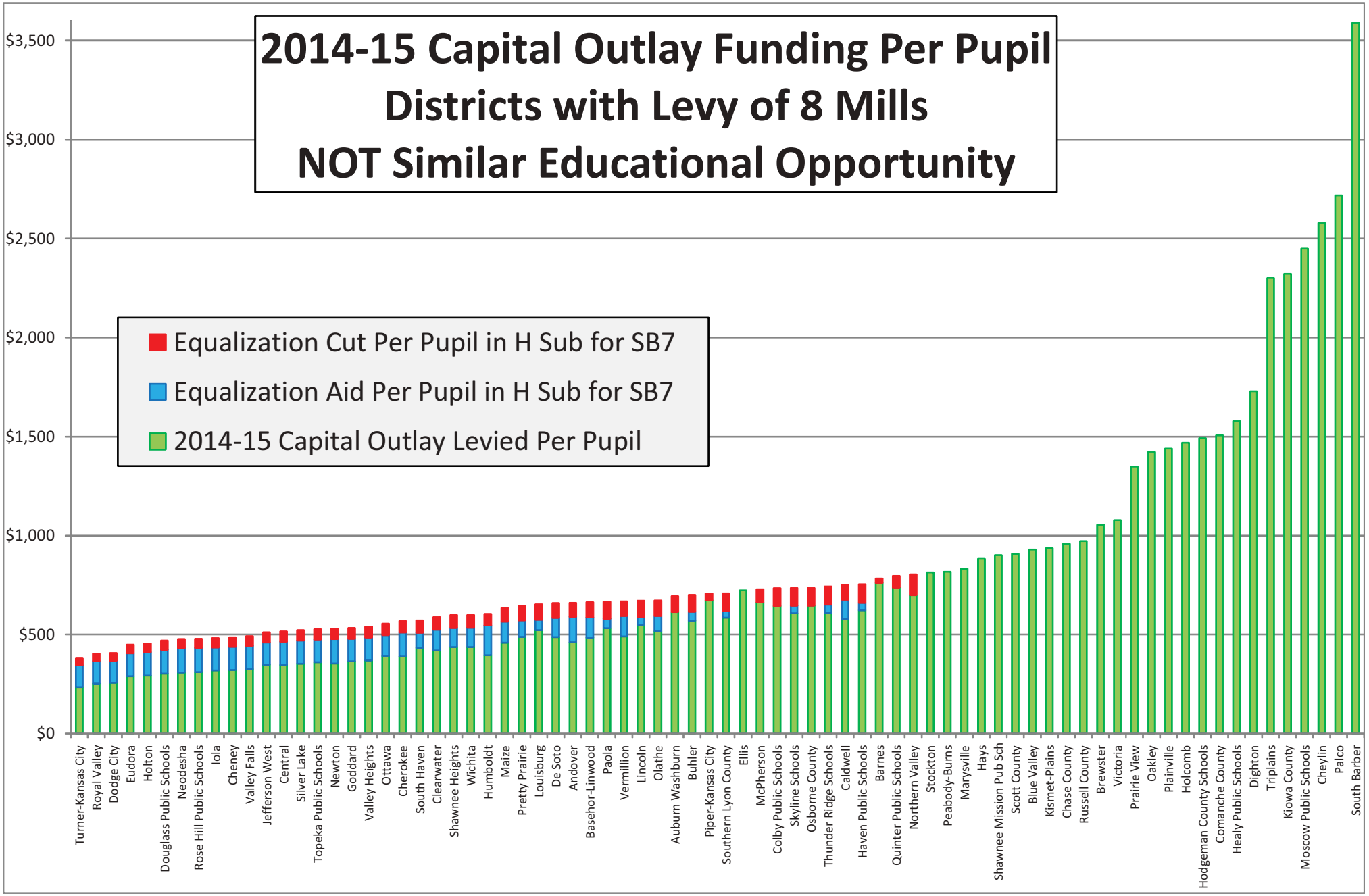
CHART PAGE 3

Data from KSDE SF15-109 and KSDE 2014-15 Capital Outlay Aid FY15.xlsx

Exhibit
620

990969

2014-15 Capital Outlay Funding Per Pupil
Districts with Levy of 8 Mills
NOT Similar Educational Opportunity

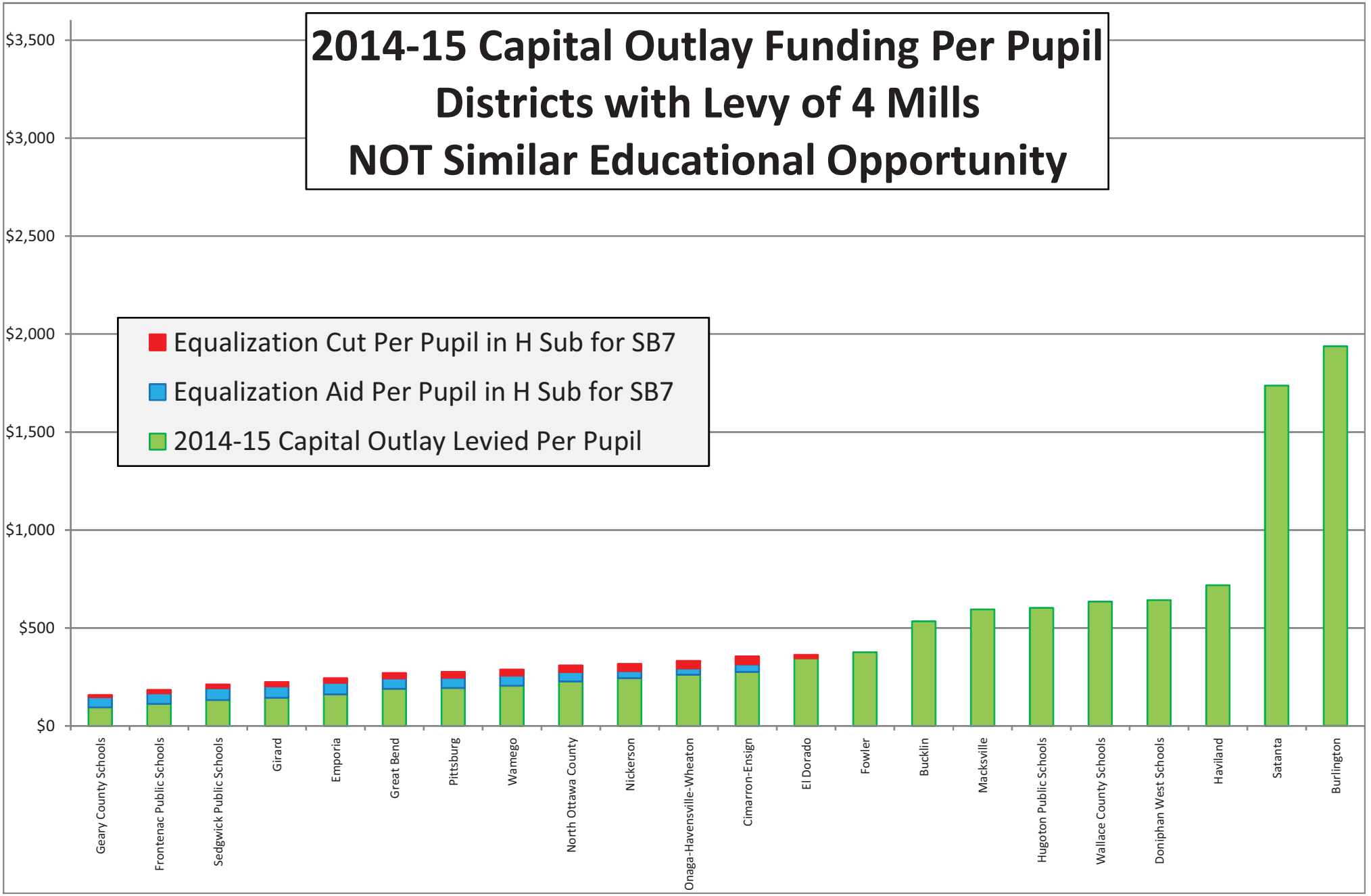


Data from KSDE SF15-109 and KSDE 2014-15 Capital Outlay Aid FY15.xlsx

Exhibit
621

990969

2014-15 Capital Outlay Funding Per Pupil
Districts with Levy of 4 Mills
NOT Similar Educational Opportunity



Data from KSDE SF15-109 and KSDE 2014-15 Capital Outlay Aid FY15.xlsx

Exhibit
622

990969

FY2016 and FY2017 School Finance Scheme

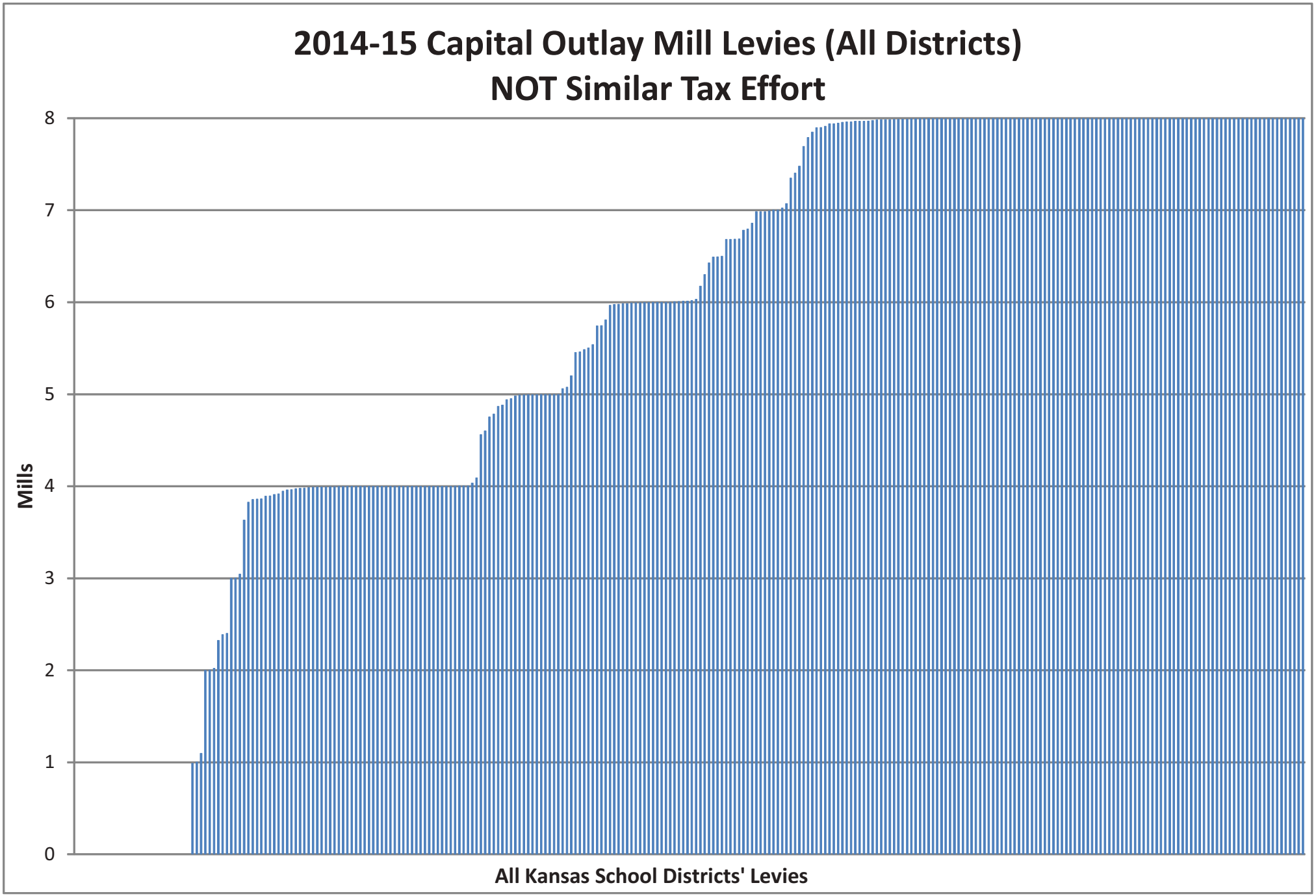
House Substitute for Senate Bill 7, Section 6(a)

1.	(1)			General State Aid received for FY2015
2.		(A)	–	FY2015 Ancillary local levy amount
3.		(B)	–	FY2015 Cost of Living local levy amount
4.		(C)	–	FY2015 Declining Enrollment local levy amount
5.		(D)	–	FY2015 Virtual Amount
6.	(2)		+	LOB Equalization Aid received for FY2015 as prorated down
7.	(3)		+	Capital Outlay Equalization Aid received for FY2015 as prorated down
8.	(4)	(A)	+	New Declining Enrollment local tax levied (no equalization)
9.		(B)	+	New Ancillary local tax levied (no equalization)
10.		(C)	+	New Cost of Living local tax levied (no equalization)
11.	(5)		+	New Virtual aid per new formula
12.	(6)		+	KPERS employer obligation as determined by statute
13.	(7)		–	0.4% of the amount determined under (1) above
14.			=	Block Grant Amount
15.			–	KPERS employer obligation (swept in and out)
16.			+	LOB local tax levied: no more than greater of (1) FY2015 LOB Budget adopted or (2) amount of LOB Budget that would have adopted for FY2016 (no equalization)
17.			+	Capital Outlay local tax levied: no more than 8 mills (no equalization)
18.			=	Operating Fund for Majority of School Operations
19.	Sec. 6(f)		+	Any excess Block Grant appropriation will be distributed in proportion to enrollment (per pupil)

Exhibit 623

990962

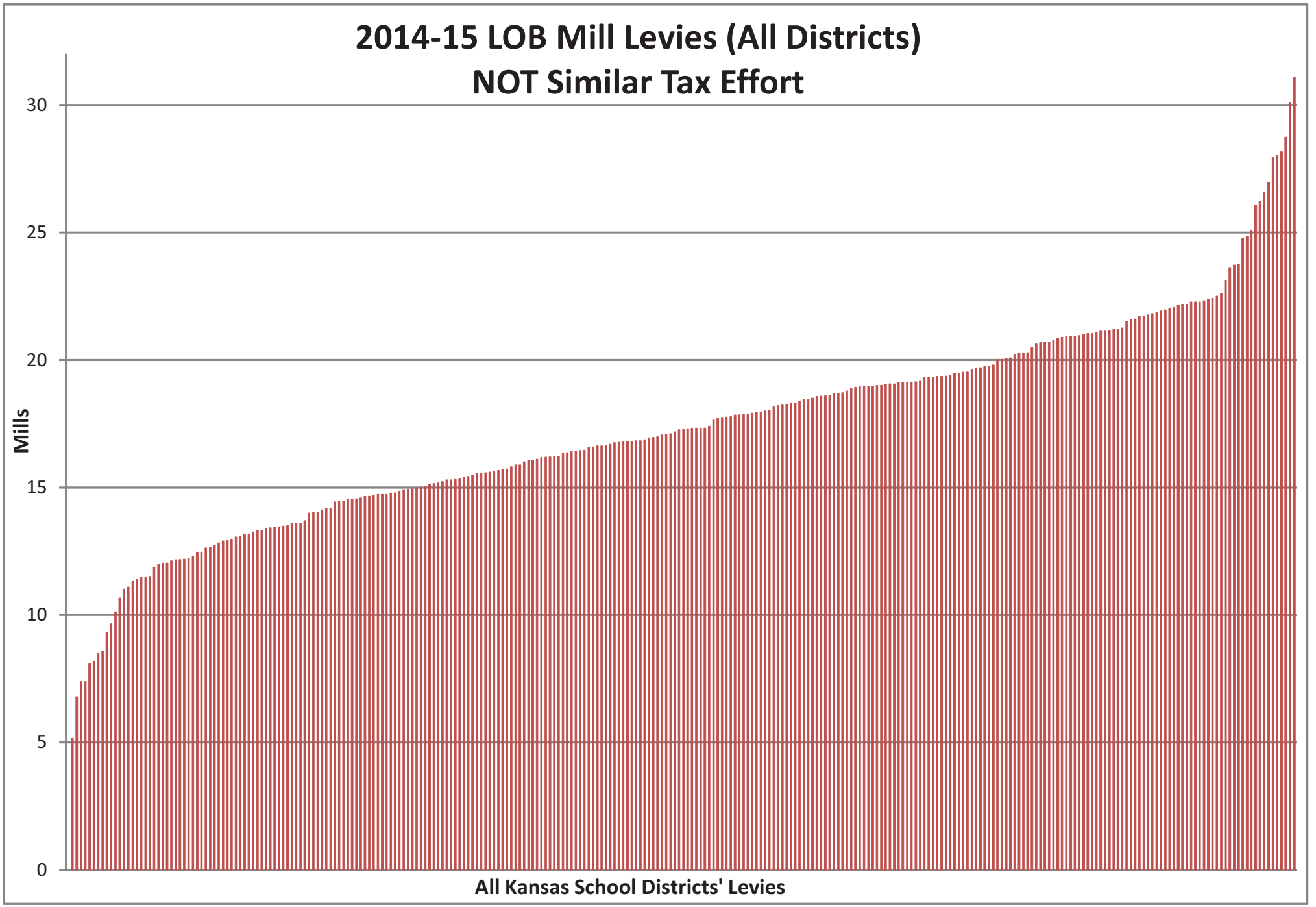
2014-15 Capital Outlay Mill Levies (All Districts)
NOT Similar Tax Effort



Data From KSDE 2014-15 Mill Levies Report

Exhibit
624

990932



Data from KSDE 2014-15 Mill Levies Report

Exhibit
625

990932

Equity Issues with Capital Outlay Equalization Aid and New Formula for 2014-2015 (Current School Year)

SDFQPA - K.S.A. 72-8814 Old Formula

How it works:

1. Round the Assessed Valuation Per Pupil (AVPP) of each district to the nearest $1,000.

2. Determine the ***MEDIAN*** rounded AVPP of all school districts. The median district gets a payment of additional Capital Outlay funding equal to 25% of the proceeds of their locally raised capital outlay taxes.

If median rounded AVPP is $66,000, and that district had an 8 mill levy raising $882,573 locally, their state capital outlay equalization payment would be $220,463 ($882,573 x 0.25).

3. For every $1,000 a district's rounded AVPP is higher than the median district's rounded AVPP their equalization payment decreases by 1%. For every $1,000 a district's rounded AVPP is lower than the median district's rounded AVPP, their equalization payment increases by 1%, up to a maximum of 100%.

AVPP	Equalization Payment
$1,000	90% x taxes raised locally
$20,000	71% x taxes raised locally
$25,000	66% x taxes raised locally
$26,000	65% x taxes raised locally
$64,000	27% x taxes raised locally
$65,000	26% x taxes raised locally
Median: $66,000	25% x taxes raised locally
$67,000	24% x taxes raised locally
$73,000	18% x taxes raised locally
$74,000	17% x taxes raised locally
$75,000	16% x taxes raised locally
$90,000	1% x taxes raised locally
$91,000 to $480,000	no equalization payment

Result:

Districts receive more funding for Capital Outlay than they would without the equalization payment. Districts with lower AVPP receive a larger percentage of equalization than districts with higher AVPP.

Issues:

1. After adding in the equalization payments, there is still a very large discrepancy in dollars raised per pupil per tax effort. Among districts with a mill levy of 8 mills, the Capital Outlay funding ranges from $379 to $3,588 per pupil. Among districts with a mill levy of 4 mills the Capital Outlay funding ranges from $158 to $1,938 per pupil.

2. This is the Safe Harbor set by Kansas Supreme Court but does not meet the Equity Test because districts do not have "reasonably equal access to substantially similar educational opportunity through similar tax effort".

House Substitute for Senate Bill 7 Section 63- Recalculates current year equalization funding then locks into Block Grants

How it works:

1. Round the Assessed Valuation Per Pupil (AVPP) of each district to the nearest $1,000.

2. Determine the ***LOWEST*** rounded AVPP of all school districts. The lowest district gets a payment of additional Capital Outlay funding equal to 75% of the proceeds of their locally raised Capital Outlay tax levy.

If lowest rounded AVPP is $1,000 (Ft. Leavenworth), and that district had a 3.981 mill levy raising $8,737 locally, their State Capital Outlay equalization payment would be $6,553 (8737 x 0.75).

3. For every $1,000 a district's rounded AVPP is higher than the lowest district's rounded AVPP their equalization payment decreases by 1%.

AVPP	Equalization Payment
Lowest: $1,000	75% x taxes raised locally
$20,000	56% x taxes raised locally
$25,000	51% x taxes raised locally
$26,000	50% x taxes raised locally
$63,000	13% x taxes raised locally
$64,000	12% x taxes raised locally
$65,000	11% x taxes raised locally
$66,000	10% x taxes raised locally
$67,000	9% x taxes raised locally
$73,000	3% x taxes raised locally
$74,000	2% x taxes raised locally
$75,000	1% x taxes raised locally
$76,000 to $480,000	no equalization payment

4. Equalization Aid may now be transferred to the district's General Fund rather than used only on Capital Outlay expenses.

Result:

The same as with SDFQPA, but the percentage of equalization is prorated downward and less districts receive equalization.

Issues:

1. Same two issues as with SDFQPA, except the funding gaps increase.

2. Districts already set their mill levies for the current year funding based on the expected equalization, and cannot go back and raise the mill levy to make up for the decreased equalization aid.

3. Equalization aid is locked into all future block grant funding at this level and will not increase or decrease despite changes in AVPP or changes in the amount of local tax levied. Districts that raise or lower their mill levy will not receive any more or less equalization aid.

4. This does not meet the Safe Harbor as set by the Kansas Supreme Court AND does not meet the Equity Test because districts do not have "reasonably equal access to substantially similar educational opportunity through similar tax effort".

Exhibit 626

990971

Equity Issues with LOB Equalization Aid and New Formula for 2014-2015 (Current School Year)

SDFQPA - K.S.A. 72-6434 Old Formula	House Substitute for Senate Bill 7 Section 38 Recalculates current year equalization funding then locks into Block Grants
How it Works: 1. Rank all districts based on last year's Assessed Valuation Per Pupil. 2. Each district below the 81.2 percentile of assessed valuation per pupil gets the amount state funding for their LOB budget that lowers their tax effort to equal the tax effort of the district at the 81.2 percentile of Assessed Valuation Per Pupil.	**How it Works:** 1. Rank all districts based on last year's Assessed Valuation Per Pupil (except selected districts can use their next year's AVPP). 2. Divide all districts below the 81.2 percentile into five equal groups. 3. Calculate the amount of each district's LOB budget that the state would fund if it funded the amount that would lower their tax effort to equal the tax effort of the district at the 81.2 percentile. Prorate that amount as follows: A. Lowest quintile: Districts receive 97% of the amount that would equalize them to the district at the 81.2 percentile. B. Second lowest quintile: Districts receive 95% of the amount that would equalize them to the district at the 81.2 percentile. C. Third lowest quintile: Districts receive 92% of the amount that would equalize them to the district at the 81.2 percentile. D. Second highest quintile: Districts receive 82% of the amount that would equalize them to the district at the 81.2 percentile. E. Highest quintile: Districts receive 72% of the amount that would equalize them to the district at the 81.2 percentile.
Result: All districts receiving equalization aid can raise the same dollars per pupil with the same tax effort as the district at the 81.2 percentile of Assessed Valuation Per Pupil.	**Result:** No districts receiving equalization aid can raise the same dollars per pupil with the same tax effort as even the district at the 81.2 percentile. Each quintile is equalized to a different level of Assessed Valuation Per Pupil.
Issues: 1. LOB is a percentage of each district's General Fund. The General Fund is not funded based on pupils but on weighted pupils. This still creates unequal tax effort since districts with more weightings have to raise more LOB dollars per pupil. 2. All districts above the 81.2 percentile can still raise more dollars per pupil with less tax effort than the "equalized" districts. 3. This is the Safe Harbor set by Kansas Supreme Court but does not meet the Equity Test because districts do not have "reasonably equal access to substantially similar educational opportunity through similar tax effort".	**Issues:** 1. Same three issues as SDFQPA, but with additional proration downward. 2. Districts already set their mill levies for the current year funding based on the expected equalization, and cannot go back and raise the mill levy to make up for the decreased equalization aid. 3. This requires cuts to school programs due to the decreased equalization aid. 4. Equalization aid is locked into all future block grant funding at this level and will not increase or decrease despite changes in Assessed Valuation Per Pupil or changes in the amount of local tax levied. Districts that raise or lower their mill levy will not receive any more or less equalization aid. 5. This does not meet the Safe Harbor as set by the Kansas Supreme Court AND does not meet the Equity Test because districts do not have "reasonably equal access to substantially similar educational opportunity through similar tax effort".

990965

Exhibit
627

2014-15 LOB Funding Per Weighted Pupil
NOT Similar Educational Opportunity
NOT Similar Tax Effort

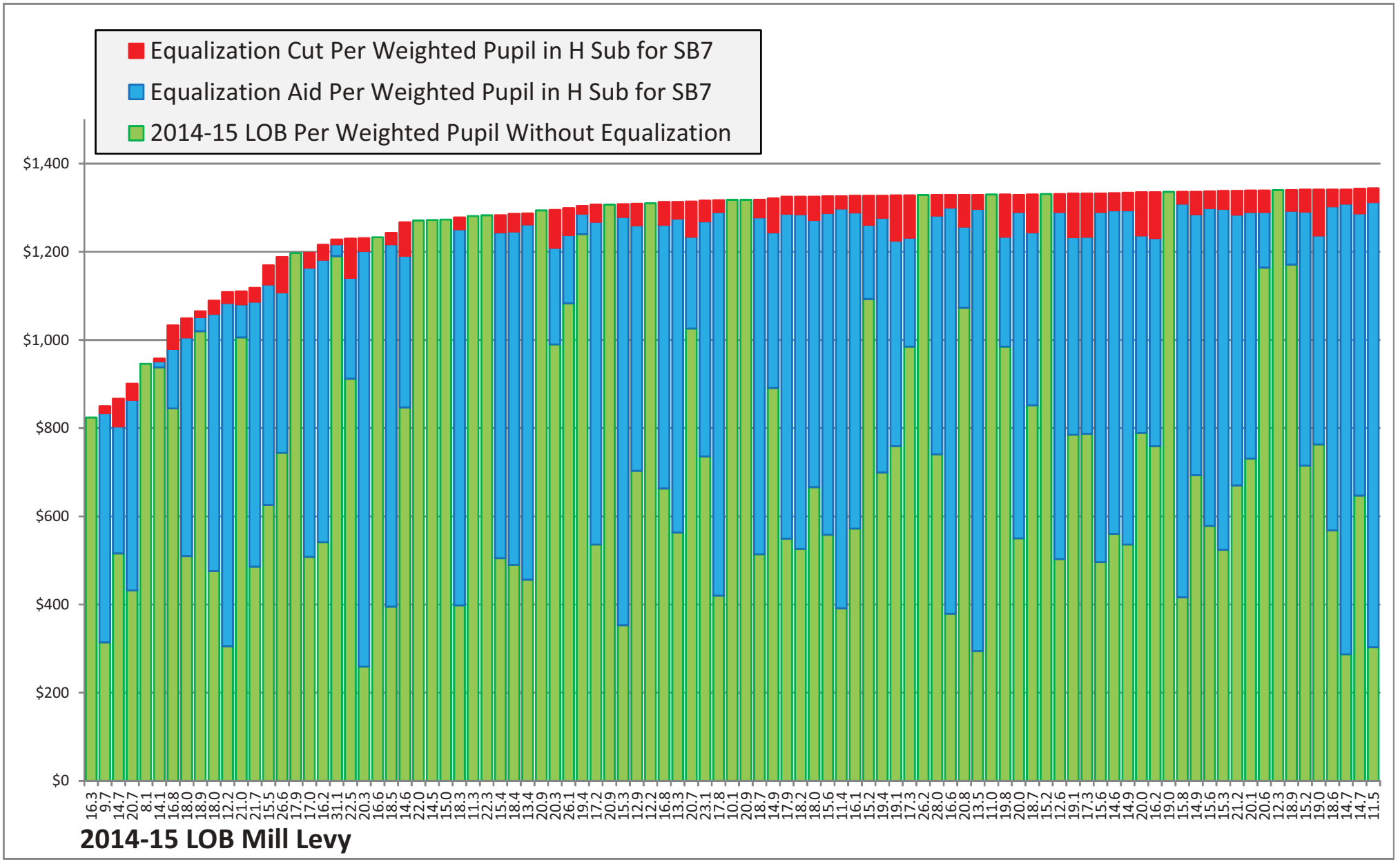


Exhibit 630

CHART PAGE 1

990976

2014-15 LOB Funding Per Weighted Pupil

NOT Similar Educational Opportunity

NOT Similar Tax Effort

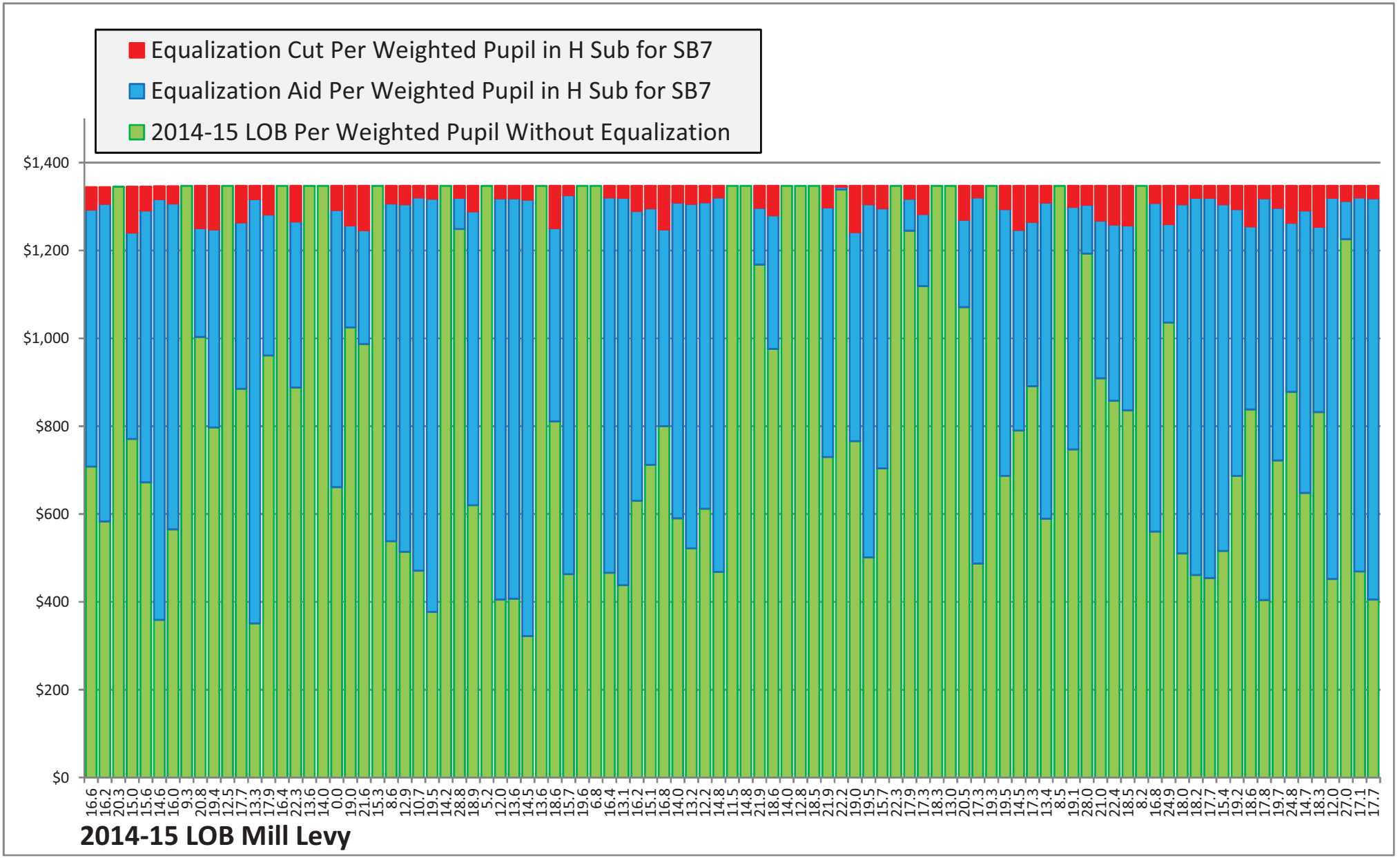


Exhibit 630

CHART PAGE 2

990976

2014-15 LOB Funding Per Weighted Pupil
NOT Similar Educational Opportunity
NOT Similar Tax Effort

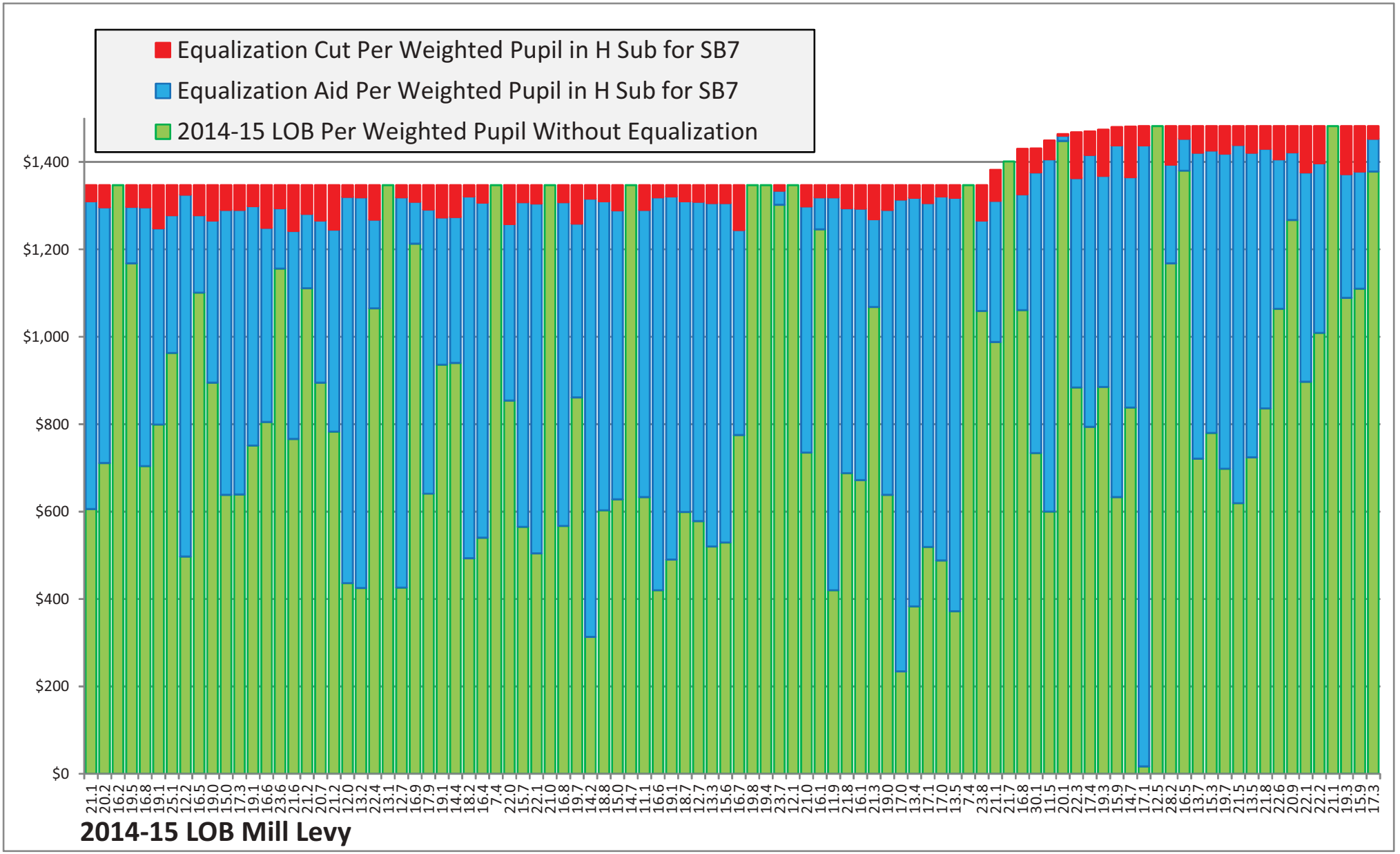
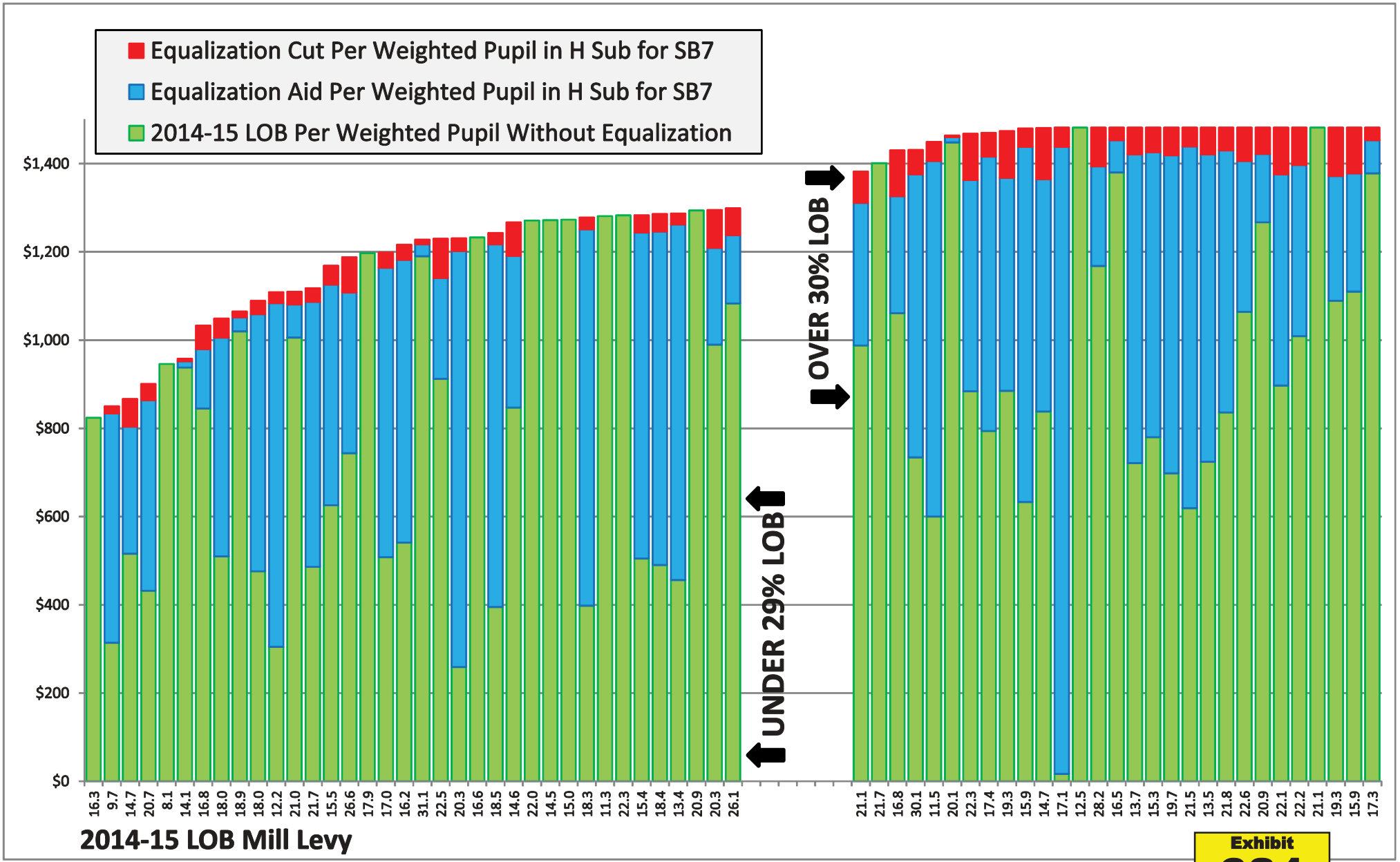


Exhibit 630

CHART PAGE 3

990976

2014-15 LOB Funding Per Weighted Pupil
Districts Under 29% and Over 30% LOB
NOT Similar Educational Opportunity, NOT Similar Tax Effort



Data from KSDE SF15-109, SF15-112 and 2014-2015 Mill Levies

Exhibit 631

990976