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No. 113,908

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In the Supreme Court of the State of Kansas

Luke Gannon, et al.,
Plaintiffs-Appellees,

v.

State of Kansas, et al.,
Defendant-Appellants.

Appeal From Appointed Panel
Presiding in the District Court of Shawnee County, Kansas

Honorable Franklin R. Theis
Honorable Robert J. Fleming
Honorable Jack L. Burr

District Court Case No. 10C001569

BRIEF OF APPELLEE STATE OF KANSAS

Stephen R. McAllister, KS Sup. Ct. No. 15845
Solicitor General of Kansas
Memorial Bldg., 2nd Floor
120 SW 10th Avenue
Topeka, Kansas 66612-1597
Tel: (785) 296-2215
Counsel for Defendant State of Kansas

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120 SW 10th Avenue
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Tel: (785) 296-2215
Counsel for Defendant State of Kansas

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NATURE OF THE CASE AND APPEAL

This is an ancillary appeal concerning “school finance” litigation brought against the State by only four school districts—U.S.D. 259 in Wichita, U.S.D. 308 in Hutchinson, U.S.D. 443 in Dodge City, and U.S.D. 500 in Kansas City, Kansas (“Districts”)—alleging that the State failed to comply with its obligations under Article 6, § 6 of the Kansas Constitution.

After a trial, an appeal to this Court, remand, and entry of a new judgment, U.S.D. 512 in Shawnee Mission sought to intervene as an additional plaintiff. R. Vol. 28, p. 3597. The Panel denied U.S.D. 512’s motion, R. Vol. 130, pp. 110-15, and U.S.D. 512 appealed. R. Vol. 134, pp. 1404-07.

ISSUE ON APPEAL

Whether U.S.D. 512 should be permitted to intervene in this lawsuit and, if so, in what capacity?

STATEMENT OF FACTS

U.S.D. 512’s statement of the facts is argumentative and contains a misleading description of the distribution of general state aid and expenditures per pupil. However, these problems can be overlooked because the statement has little to do with the key facts regarding the State’s position on U.S.D. 512’s motion to intervene.

The key facts are:

1. U.S.D. 512 seeks to intervene *as a plaintiff*, and would allege and hope to prove, if allowed to intervene, the following:

Article 6 of the Kansas Constitution compels the legislature to provide for the educational interests of the State of Kansas and further commands it to make suitable provision for the financing of said educational interests.

The current funding scheme is unconstitutional for failure to adequately and equitably fund Kansas education.

U.S.D. 512 has suffered and continues to suffer injury, including underfunding, as a result of Defendant's violation of Article 6, § 6 of the Kansas Constitution.

U.S.D. 512 has suffered adverse educational outcomes as a result of Defendant's violation of Article 6, § 6 of the Kansas Constitution, and its students have thereby been deprived of a constitutional education.

R. Vol. 28, p. 3617.

2. On August 31, 2015, this Court entered an order that if U.S.D. 512 is granted intervention, U.S.D. 512 shall be allocated time to present oral argument in the "equity" appeal (in Case No. 113,267), and that U.S.D. 512's time for oral argument shall be taken from the time otherwise accorded to the State. *Gannon v. State*, No. 113,908, Supreme Court Order, 8/31/15, p. 3.

ARGUMENT

The State has no objection to intervention by U.S.D. 512 *if and only if* U.S.D. 512's time for oral argument is allocated as part of the Plaintiffs' time, because U.S.D. 512 is not aligned with the State, is not part of the State in this action, and ultimately seeks (like the Plaintiffs) to argue that the current funding system is unconstitutional. If, however, intervention by U.S.D. 512 would result in reduction of the State's time for oral argument or otherwise procedurally disadvantage the State, then the State would object to the intervention.

On the central points in the State's appeal, U.S.D. 512 and the Plaintiff Districts are in total alignment. U.S.D. 512 does not oppose, rather it agrees, with the Panel's contentions that present provision of financing Kansas educational interests violates both

the adequacy and equity component of Article 6, § 6 of the Kansas Constitution. The State understands that U.S.D. 512 also agrees the Panel possesses the power to enter the injunctive relief described in the Panel's June 26, 2015 Order. *See R. Vol. 28, p. 3618* (U.S.D. 512's proposed petition seeking similar injunctive relief). U.S.D. 512's counsel explicitly asserts that U.S.D. 512 does not "defend the status quo." Brief of Shawnee Mission Unified School District No. 512, p. 13. Although U.S.D. 512 would have the courts order a remedy different from, in some respects, the Panel's remedy, U.S.D. 512 nonetheless maintains the funding scheme of SB 7 is unconstitutional. Thus, at the end of the day, U.S.D. 512 is aligned with the four Plaintiffs challenging the existing school finance system, and not with the State.

Any variation between the positions of U.S.D. 512 and the four Plaintiff Districts on an appropriate remedy only demonstrates that all local districts are not similarly situated and, as a result, the Plaintiff Districts' requested relief is not in the best interest of each and every district. Such variation, however, emphatically is not *any* justification for treating U.S.D. 512 as a Defendant whose interests are aligned with the State, and thus justification for siphoning off the argument time which the State otherwise would have for presenting its position in the pending appeals. This case involves important policy concerns that could, in reality, involve hundreds of millions of State dollars, if not more than \$1 billion. U.S.D. 512 is not "the State" here. Thus, how can "due process" possibly be furthered by limiting the State's oral argument time in order that U.S.D. 512 may present oral argument in favor of its own interests?

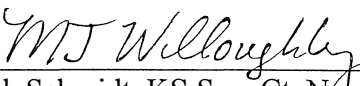
If the Court permits U.S.D. 512 to intervene—which in the abstract the State neither opposes nor takes a position on—U.S.D. 512 (a *school district*, for goodness

sake) should be joined as an additional *Plaintiff*. Any time allocated to U.S.D. 512 for oral argument should come only from the Plaintiffs in this case, not from the State. Due process requires no less, nor does common sense. If the Court denies U.S.D. 512's request to intervene, U.S.D. 512 can always file an amicus brief to express its views, and perhaps even request and obtain an enlargement of the page limit for such a brief.

Ultimately, the State has no desire to share oral argument time with U.S.D. 512, nor to limit the State's time because of U.S.D. 512's intervention, effectively as an additional *Plaintiff*. Due process strongly counsels against forcing the State into such an untenable position.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT

By: 
Derek Schmidt, KS Sup. Ct. No. 17781
Attorney General of Kansas
Jeffrey A. Chanay, KS Sup. Ct. No. 12056
Chief Deputy Attorney General
Stephen R. McAllister, KS Sup. Ct. No. 15845
Solicitor General of Kansas
M. J. Willoughby, KS Sup. Ct. No. 14059
Assistant Attorney General
Dwight Carswell, KS Sup. Ct. No. 25111
Assistant Solicitor General
Memorial Bldg., 2nd Floor
120 SW 10th Avenue
Topeka, Kansas 66612-1597
Tel: (785) 296-2215
Fax: (785) 291-3767
Email: jeff.chanay@ag.ks.gov
steve.mcallister@trqlaw.com
mj.willoughby@ag.ks.gov
dwight.carswell@ag.ks.gov

And

Arthur S. Chalmers, KS Sup. Ct. No. 11088
Gaye B. Tibbets, KS Sup. Ct. No. 13240
Jerry D. Hawkins, KS Sup. Ct. No. 18222
Rachel E. Lomas, KS Sup. Ct. No. 23767
HITE, FANNING & HONEYMAN, LLP
100 North Broadway, Suite 950
Wichita, Kansas 67202
Tel: (316) 265-7741
Fax: (316) 267-7803
E-mail: chalmers@hitefanning.com
tibbets@hitefanning.com
hawkins@hitefanning.com
lomas@hitefanning.com

Attorneys for the State of Kansas

CERTIFICATE OF SERVICE

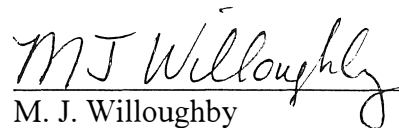
The undersigned hereby certifies that on the 14th day of September 2015, true and correct copies of the above and foregoing BRIEF OF APPELLEE were mailed, postage prepaid, to:

Mr. Alan L. Rupe
Alan L. Rupe
Jessica L. Skladzien
Mark A. Kanaga
LEWIS BRISBOIS BISGAARD & SMITH
1605 North Waterfront Parkway, Suite 150
Wichita, KS 67206-6634
Alan.Rupe@lewisbrisbois.com
Jessica.Skladzien@lewisbrisbois.com
Mark.Kanaga@lewisbrisbois.com

John S. Robb
Somers, Robb & Robb
110 East Broadway
Newton, KS 67114-0544
johnrobb@robblaw.com
Attorneys for Plaintiffs

Steve Phillips
Assistant Attorney General
OFFICE OF ATTORNEY GENERAL DEREK SCHMIDT
120 S.W. 10th, 2nd Floor
Topeka, KS 66612
steve.phillips@ag.ks.gov
Attorney for State Treasurer Ron Estes

Philip R. Michael
Daniel J. Carroll
Kansas Department of Administration
1000 SW Jackson, Suite 500
Topeka, KS 66612
philip.michael@da.ks.gov
dan.carroll@da.ks.gov
Attorneys for Secretary of Administration Jim Clark


M. J. Willoughby