

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7

LUKE GANNON, et al.,
Plaintiffs, }
vs. } Case No.: 2010-CV-1569
STATE OF KANSAS, }
Defendant. }

TRANSCRIPT OF HEARING

PROCEEDINGS had before the

Honorable Franklin R. Theis, the Honorable Jack L. Burr, and the Honorable Robert J. Fleming, Judges of the District Court, State of Kansas, in Shawnee County, Topeka, Kansas, on the 11th day of June, 2014.

APPEARANCES:

The Plaintiff, Mr. Luke Gannon, appeared by and through his counsel, Mr. Alan Rupe, Kutak Rock, 1605 North Waterfront Parkway, Suite 150, Wichita, Kansas 67206-6635; also present was Mr. John S. Robb and Ms. Jessica Skladzien.

The Defendant, State of Kansas, appeared by and through its counsel, Mr. Arthur Chalmers, Hite Fanning & Honeyman, 100 North Broadway, Suite 950, Wichita, Kansas 67202-2209; also present was Mr. Stephen McAllister. Mr. Jeffrey Chanay, and Ms. M.J. Willoughby.

JENNIFER L. OLSEN, Certified Shorthand Reporter
Third Judicial District, Division 12, 233-8200 X-4302

question. It's something the courts should stay out of. The courts disagreed with us.

But their discussion of it was not a you've been disrespectful, legislature, you've been discourteous, you've not followed your obligation, it rather was a considered discussion of what are the rights and responsibilities of different coequal branches of government and it included a recognition of separation of powers. It had in the comments about remedies that this panel should keep in mind, their concerns that were raised by the State about separation of powers. It included recognition of the *Neeley* case and others that talked about separation of powers and the presumption of constitutionality of conduct by the legislature. It was a decision that said, 'look, you haven't complied with the constitution. You need to get that straightened out. But it was not I think, and rightfully so, at the level of the rhetoric sometimes we hear from the other side.

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. It's not reason when you consider the different legislatures that have looked at this, the different administrations. It's not factually based. It probably is a testament more to the difficulty in understanding, as I think we've all found, what Article 6 means than it is anything else.

But there's a punch line to all of this on the dismissal issue and on the idea that, well, we are dealing with an estimate here. The way that LOB is funded over the course of the year is you pay it over in installments. The last installment is paid and will be paid July and I don't think it is actually July 1, but after the first of July in 2015. It will be posted, for accounting reasons, June of 2015. So if we get to the end of the year and the 109 ends up being 108, then that money is shored back to the system. If the 109 ends up being 110, then in next year's appropriations, they just add a million on and it works in. So the way the system is set up, although we have an estimate, there's a way to true

up the factor at the end.

So we have a compliance with what the mandate has instructed, full compliance by all recognition. There is no evidence to suggest anything opposite and a way to make sure we could have it trued up at the end. Under the circumstances, we think it's appropriate for the panel to do what the supreme court has suggested, which is to do no more, which what does that do with this case as it goes with the equity? It dismisses it. And that's the relief that we are requesting.

Those are the comments. I would like to put Mr. Dennis on to talk briefly about his schedule.

MR. RUPE: Can I address the dismissal issues before we get back to the equity?

JUDGE THEIS: Sure.

MR. RUPE: Well, I think the supreme court knows what they are doing and if they wanted the equity piece dismissed, they would have used those words. But they didn't use those words. They said do no more. They didn't say dismiss the case.

In 2009, the legislature cut and began cutting what amounted to, over a period of time, you heard it at trial, \$511 million out of a three-year plan that was the basis of this supreme court dismissing the

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1 JUDGE THEIS: The case is captioned *Luke*
2 *Gannon, et al., versus State of Kansas*, 10-C-1569.
3 It returns here to the Court to deal with a subject
4 on compliance with a judgment entered by the Kansas
5 Supreme Court that sustained this Court's findings in
6 certain equitable distribution of funds and the
7 provision of it. So I think we've received
8 everything you've submitted. The only thing that's
9 submitted late was one of the plaintiffs'
10 supplemental response, which dealt with a matter
11 which I thought would have been addressed on May 16th
12 so I doubt if the State has had time to respond to
13 that.

14 MR. McALLISTER: We've seen it, but we
15 haven't responded to it.

16 JUDGE THEIS: I have seen it, but I have
17 not responded to it either. So we'll proceed as we
18 can. I assume we'll go in regular order. Plaintiff
19 can proceed and then we'll hear from the State on the
20 issues raised. Any questions about procedure?

21 MR. CHALMERS: I do have a question, Your
22 Honor. I had listed what I thought were the issues
23 before the panel this afternoon. As our motion to
24 dismiss the individual plaintiffs, which I don't
25 think is opposed, that's as a result of the standing

1 decision by the supreme court. Then there is the
2 issue of compliance with the equity judgment and then
3 I have an issue which I captioned has to do with
4 plaintiffs' motion for judgment and that is, should
5 plaintiff have to rest first which is a request that
6 we're making of the Court. We would ask the Court to
7 decide whether they should rest their case before we
8 get to that issue. Be helpful to have that done
9 today.

10 But I mention that because we are not prepared to
11 talk about the motion for judgment. We don't think
12 that's ripe. We had not understood it was set for
13 hearing today.

14 JUDGE THEIS: It's not. I don't think any
15 of these orders were noticed up for setting. Some of
16 these are collateral ones but we'll take up what we
17 can and anything that deals with the scheduling
18 future proceedings and goes beyond equitable issue
19 or -- we'll probably certainly give everyone an
20 opportunity to reply. Probably not make too many
21 decisions on those today.

22 MR. CHALMERS: Thank you, Your Honor.

23 JUDGE THEIS: Did we get an appearance?

24 MR. RUPE: For the plaintiffs, Allen Rupe,
25 John Robb, and Jessica Skladzien.

1 MR. CHALMERS: For the defendant State,
2 Arthur Chalmers, Stephen McAllister, Jeff Chanay, and
3 M.J. Willoughby.

4 JUDGE THEIS: All right. Mr. Rupe.

5 MR. RUPE: Yes, probably, and no way.
6 Those are the answers to the questions. The first
7 question, it deals with whether the passage of the
8 legislation that brings us here today, whether those
9 funds -- which LOB equity and capital outlay
10 equalization were put back into the formula --
11 whether that comports with what the supreme court
12 asked to be done in one of their suggestions and as
13 we indicated in our brief, the answer to that is did
14 they put that money back. The answer is, yes, they
15 did. But the yes has a qualifier or some qualifiers
16 which brings us to probably as the second answer to
17 the first question.

18 The qualifiers are that the capital outlay
19 equalization and the LOB equalization in House Bill
20 2506 were based on estimates and as we have seen
21 since the passage of the legislation, those estimates
22 may not be all that accurate. The State may very
23 well run out of money and if they do, then in that
24 situation, we're looking at allotments and it was --
25 if you remember the history of school finance in

1 Kansas, it was an allotment that eliminated capital
2 outlay equalization once before. So we're qualifying
3 the yes with a probably, assuming the estimates are
4 accurate and assuming that the State money which, by
5 the way, it was reported yesterday that it was
6 reduced again, may not be available.

7 There is also the notion as a qualifier that this
8 legislation because it wasn't just doing what the
9 supreme court suggested in item one, it was doing
10 more than that, there's a possibility that the
11 legislation is subject to a constitutional attack in
12 about six different ways. We outline these in our
13 briefs but I'll briefly state it again.

14 The legislation has multiple subjects in a
15 substantive legislation. As you know because of the
16 line item veto, you can have that kind of multiple
17 subjects in an appropriations bill but what the
18 legislature did was tuck in some other substantive
19 legislation into the bill and you combine substantive
20 legislation with appropriations and that spells
21 possibly unconstitutional.

22 They eliminated, and I don't think anybody has
23 not heard of this, but they eliminated teacher due
24 process and we think as we outlined in our brief, it
25 may be subject to an attack. I understand the KNEA

1 has indicated they are about to do something with
2 this, but it may be subject to an attack that teacher
3 due process was removed without due process and that
4 would be one of the arguments.

5 There is this notion of the corporate scholarship
6 which may give rise to a claim by religious or by
7 organizations that religious organizations may be
8 able to control public dollars, public education
9 dollars. There has already been comments, I think
10 the state board of education lawyer was quoted on
11 this this morning but there's the notion that this
12 innovative schools' piece which expands the role of
13 innovative schools is an action that usurps the state
14 board of education power.

15 Along the same notion is the teacher licensure
16 provision that creates more exemptions from teacher
17 licensure through the legislature and the argument
18 would be that that also encroaches on the state
19 board's constitutional authority. So six ways from
20 Sunday, this legislation may be subject to some sort
21 of attack.

22 So back to the question that you may ask which is
23 did the legislature fully fund equalization
24 mechanisms that existed in the statute as the supreme
25 court suggested. We think the answer is probably

1 yes, with some qualification. But if the question is
2 do the equalization mechanisms in the current system
3 meet the *Gannon* equity test, the answer is absolutely
4 not. And let me kind of put it in context for you in
5 terms of some exhibits that I want to show you.

6 First, the equity perspective, you look at--

7 MR. CHALMERS: I want to interrupt and I
8 know I'm just making a record of it because I'm sure
9 you don't want to listen to it, but 508 and a series
10 of the exhibits, I don't know that I've ever seen
11 508, are new. They were submitted well after the
12 deadline on trying to raise objections to the equity
13 issues and the State does object.

14 JUDGE THEIS: Was that supplemental?

15 MR. CHALMERS: I don't know that this was
16 part of the supplemental, maybe it was.

17 MR. RUPE: 508 was not. I have -- here's
18 my list. I have -- if I may approach?

19 JUDGE THEIS: (Nodded head.)

20 MR. RUPE: We have -- all of these
21 exhibits were attached to what we filed except for
22 508 and 509. 509 is going to be simple. It's the
23 supreme court's language from *Gannon*.

24 MR. CHALMERS: So I'm clear, I just want
25 to raise an objection for the record that the time

1 has come and passed to now raise these sorts of
2 equity concerns. There are meritorious reasons why
3 it's inappropriate to get them in as well and I'll
4 talk to them later. But there was an order in place
5 that would have required the plaintiffs to come
6 forward with this if that was their position.
7 Instead, the position they took was that the State
8 had substantially complied to the supreme court's
9 equity mandate when they filed their response to the
10 show cause order initially and it could shortcut the
11 whole proceedings, I suppose, if the Court would
12 simply say it's too late, it's too little, and you've
13 made the acknowledgements that we needed to have made
14 and we just move on down the lot. So we do object.

15 JUDGE THEIS: Refresh me, Mr. Rupe. 500
16 through 507 were attached to which of your briefs?

17 MR. RUPE: Which brief did we attach it
18 to?

19 MS. SKLADIEN: The supplemental briefing.

20 MR. RUPE: The supplemental briefing.

21 JUDGE THEIS: That's the one that came in
22 June 9th?

23 MR. RUPE: Yeah, a couple of days ago. I
24 mean, I wish I could surprise everybody with great
25 remorse that I'm surprising people, but I'm not about

1 to tell anybody something they don't know. I mean,
2 what the equity perspective is is just a look at what
3 the equity situation is and it's based on available
4 data.

5 I understood that we are in the remedy phase so
6 I'm trying to be helpful to the Court on the second
7 question that the Court posed in your order which is
8 does the situation meet the supreme court's equity
9 test. So I came here in response to your order
10 prepared to address that. And the answer to that is,
11 no, it does not and that's what we've outlined in our
12 supplemental filing in response to your order.

13 I think the reason it's late is because we
14 reacted to your order and provided information on the
15 answer to your question on whether or not it met the
16 supreme court's equity test and that's what I'm going
17 to explain right now, if I can.

18 JUDGE FLEMING: You say at page three
19 though of your supplemental brief, "Plaintiff
20 respectfully requests that the panel not take any
21 action to cure the equity infirmities still present
22 until after the panel determines the adequacy
23 component."

24 MR. RUPE: That's true.

25 JUDGE FLEMING: It sounds like now you're

1 asking us to consider it today.

2 MR. RUPE: No, what I meant by that is
3 with regard to the mechanism suggested by the court
4 in their opinion, in the supreme court's opinion,
5 that we shut down the local option budget. We don't
6 think that should happen. We think they have
7 complied enough because the question was did they put
8 back capital outlay equalization and did they put
9 back LOB equalization and the answer to that question
10 is, yes, they did, now with the qualifiers I just
11 explained.

12 But your order suggested you wanted to know
13 whether the current system as it occurs with the
14 adoption of the house bill meets the *Gannon* equity
15 test and that's what you wanted to know and our
16 answer to that it doesn't.

17 JUDGE THEIS: I'm late. We decided we are
18 not quite as articulate as we thought we were so it
19 could have been a little expansion on there. We'll
20 hear what you have to say, but I'm not guaranteeing
21 you we'll consider it. We certainly wouldn't
22 consider it without an opportunity for the State, if
23 we do decide to consider it, full rights to come back
24 with whatever they want to.

25 MR. McALLISTER: Just weigh in briefly,

1 amplifying the State's objection, as we read the
2 supreme court's opinion, it says if we meet the
3 funding level set forth in the statutes before
4 July 1, then basically we are done on the equity. It
5 seems to me what they are trying to do now is say,
6 well, yes, you did but we want to change our
7 arguments and argue about some different things that
8 have never been part of this case previously. That's
9 kind of where we are.

10 JUDGE THEIS: I think the language was we
11 need do nothing.

12 MR. McALLISTER: Right.

13 JUDGE THEIS: Which we are entirely
14 capable of doing but, you know, it's ambiguous.

15 MR. RUPE: I want to reiterate our
16 position at this point with regard to doing nothing.
17 Doing nothing does not mean dismissing the equity
18 case and I would hope the Court would hear from us on
19 any argument about not dismissing the equity.

20 JUDGE THEIS: Well, there's a motion that
21 I assume that we can address today because it's been
22 addressed by both sides so we can take that question
23 up whether or not it will be dismissed.

24 MR. RUPE: Well, I don't think the *Gannon*
25 decision says that it should be dismissed. I think

1 it just simply says that nothing more should be done.

2 JUDGE THEIS: The question now is whether
3 we are going to hear what you have here and we will.

4 MR. RUPE: Okay. Then I'll continue on
5 with the notion of the perspective here. As you
6 know, the perspective would be that the statewide
7 local option budget is about a little over one
8 billion dollars. That's on the top line there. The
9 capital outlay is \$162 million for about 1.2 billion
10 number and that is -- the way that breaks down is in
11 terms of state aid and then local funding, the local
12 funding is \$737 million, and the local option budget
13 equalization aid from the State is 335. And the two
14 that we've marked with House Bill 2506, that's what
15 they put back. So in terms of the amount of money
16 involved in this equity, it is 115 million in the LOB
17 equalization and then the capital outlay equalization
18 that they put back 25 billion -- or million, and
19 that's under the entire amount of 1.2 billion.
20 That's not telling anybody what they don't know.

21 So look at this in terms of the *Gannon* equity
22 test and it has, as I read the Court's decision, has
23 three parts. Reasonably equal access to
24 substantially similar educational opportunity through
25 similar tax effort. That's what the Court said with

1 regard to the equity component. So if this Court
2 wants to hear if the current state of school finance
3 meets that test, we've got to look at that and our
4 answer to that is absolutely not and take first what
5 is in exhibit 503, which shows that local option
6 budget elections -- and remember, the LOB and the
7 capital outlay is subject to a protest petition and
8 an election, but the LOB to get above the 31 percent
9 is subject to an election and of the LOB elections,
10 59 percent of those failed. On capital outlay, the
11 failure is about 48 percent for a combined total of
12 56 percent.

13 Now, what we talked about at trial in terms of
14 equity, and what I think is set forth in exhibit 504,
15 is the notion of what I call gravity and that is the
16 poorer district you have, the property wealth, the
17 harder it is to get by those elections, to pass those
18 elections. So you look at the data on these
19 elections and you see that in districts that have an
20 assessed valuation per pupil of over a hundred
21 thousand dollars, 25 percent is the failure rate and
22 zero percent is the failure rate on capital outlay;
23 25 percent on LOB, zero percent on capital outlay.
24 That means 75 percent of the LOB elections and all of
25 the capital outlay elections pass if your assessed

1 value per pupil is over a hundred thousand dollars.
2 So it's easy to pass those elections.

3 Then you drop down to assessed valuation between
4 50 and a hundred thousand dollars and the LOB
5 elections fail 60 percent of the time. Capital
6 outlay elections fail 53 percent of the time.

7 JUDGE THEIS: What result though?

8 MR. RUPE: Huh?

9 JUDGE THEIS: To what result? When does
10 it become inequitable?

11 MR. RUPE: It becomes inequitable because
12 if you are in a district that is under \$50,000, you
13 have an 81 percent failure rate and a capital outlay
14 election of 80 percent failure rate. LOB 81 percent
15 and capital outlay 80 percent. I would submit to you
16 that it becomes inequitable when you line it up with
17 the supreme court's equity test and these districts
18 don't have reasonable access, reasonably equal access
19 to substantially similar educational opportunity
20 through similar tax effort. If you make it subject
21 to voter protest or make it subject to a vote in a
22 district that is property poor, you're not going to
23 pass that election and I'm not just telling you that,
24 I call it gravity, but the statistics support that
25 and look what wealthy districts can do. So when you

1 focus on the assessed value per pupil and the
2 valuation per pupil and the elections, you can see
3 the *Gannon* equity test doesn't line up with it.

4 So what about substantially similar educational
5 opportunity. Take a look at 502 and this is often
6 repeated information that was attached to our
7 filings, but in a capital outlay situation, Galena
8 can raise \$244 per pupil with an eight mill election
9 so this would be an equalized eight mill across the
10 state election. Meanwhile in Satanta, they can raise
11 \$4,384 per pupil. Similar result with the LOB in
12 exhibit 501 and this would be on the 31 percent to
13 move above and what you can raise and this is under
14 K.S.A. 72-6434. But in Burlington, 6.34, and in
15 Copeland, 3796, so the question is is that reasonable
16 access and the answer is absolutely not.

17 So if you put the current system in the second
18 inquiry by the supreme court, which was not only
19 doing what the legislature did but doing more of
20 which they did, does that, in response to your
21 question in your show cause order, does that meet the
22 supreme court's equity test. The answer is no, it
23 does not.

24 Now, I can -- I don't know if you want to break
25 this up and take this up first and then something

1 else next or you want me to just keep going.

2 JUDGE THEIS: The question is where are
3 you going?

4 MR. RUPE: Well, I would like to address
5 the question of whether the equity fix cures
6 inadequacy and we don't think it does. But you may
7 not want to hear that right now and I would like to
8 address the question of whether the equity piece,
9 because we answered the first question as yes and
10 probably yes, should be dismissed and I think the
11 answer to that is absolutely not.

12 JUDGE THEIS: Why don't you reserve that
13 until they argue their motion to dismiss.

14 MR. RUPE: Well, in terms of my discussion
15 of equity, I've done everything I came here to do by
16 outlining what I just outlined for you and the notion
17 that if the question is, the second question that
18 deals with otherwise, does it meet the test and the
19 answer is no.

20 JUDGE THEIS: Okay. Mr. Chalmers, is
21 there some portion of that you want to address?

22 MR. CHALMERS: Your Honors, it would be my
23 preference to address Mr. Rupe's argument to the
24 extent I can at this stage and to also present
25 argument as to how the house bill passed recently,

1 2506, satisfies the mandate of the supreme court. So
2 I would lump those together.

3 But I would also tell you that you had asked that
4 Dale Dennis be present. I think in particular
5 because of some of the statements made by counsel, it
6 would be helpful to have some testimony from Mr.
7 Dennis and I don't know if it would be appropriate
8 for me to put him on the stand now and get that
9 testimony done and let him move on down the block or
10 whether you would prefer to wait and hear what he
11 might say first. I don't anticipate it would be very
12 long either way.

13 JUDGE THEIS: Well, he's the author of
14 that memo which made the estimates and then he
15 corrected that memo so I suppose if we need some
16 authentication of what actually has been done from
17 somebody who knows what has been done, it might not
18 hurt.

19 MR. CHALMERS: My preference would be,
20 Your Honor, to quickly tell you what our position is
21 and then put Mr. Dennis on the stand to put the facts
22 straight, if that's acceptable to all.

23 JUDGE THEIS: Well, go ahead with your
24 argument and then we'll see.

25 MR. CHALMERS: All right. I suppose the

1 starting point is to tell you where I think we should
2 go and that is that at this juncture, given the
3 status of the record, given the house bill that the
4 panel should take judicial notice of, that in our
5 view is simply a matter of dismissing the equity
6 claim because the State has satisfied the mandate of
7 the supreme court.

8 But backing off from that for a moment and
9 starting kind of closer to the beginning, go back to
10 the pretrial conference order because it helps
11 define, I think, what it is that's before the panel.
12 In the pretrial conference order back on page 16
13 filed shortly before the trial that took place about
14 two years ago, there were a couple of claims that
15 were made by the plaintiffs. One were that the LOB
16 was underfunded and that was the argument that was
17 accepted by this panel that was then appealed and is
18 now down before the Court to see whether the State
19 has satisfied the judgment.

20 The second argument that was presented is whether
21 there was unequal LOB state aid. Now, that's the
22 argument that the aid was only being equalized to the
23 81 point second percentile. The argument was that
24 was inadequate.

25 That argument was presented. It was made to this

1 Court as part of the trial. I do not remember,
2 frankly, being an emphasized point by the plaintiffs.
3 The panel passed on those sorts of arguments in its
4 opinion and judgment and it was appealed.

5 What was not cross-appealed was the denial,
6 apparent denial by implication, perhaps it was done
7 expressly in your opinion, of their claim that if you
8 equalize at 81.2 percent, that is somehow
9 unacceptable.

10 As you remember, the order was that we would
11 fully fund the equalization and that would have
12 included funding it at 82 point -- or 81.2 so I would
13 understand that at least implicitly, the panel had
14 rejected that claim. There is no cross appeal filed
15 by the plaintiff on that point. There were many
16 other points that were filed on cross appeal by the
17 plaintiffs, none of which were successful and it goes
18 to the supreme court.

19 The supreme court then returns it on the mandate.
20 It's our position that it is the panel's obligation
21 not to turn back the clock, not to look at issues
22 that were not appealed that had been presented, but
23 rather to decide simply whether or not the State has,
24 per the directions of the Kansas Supreme Court,
25 satisfied the equity claim. We think it has.

1 And there appears to be a concession that there
2 has been full compliance as it relates to the capital
3 outlay equalization. That, of course, compliance is
4 found with the appropriation of no limit and with the
5 change in the statute that now has a transfer. So
6 whatever that number ends up being, there are monies
7 for a hundred percent equalization of capital outlay.

8 On the LOB, there is 109 million that was
9 appropriated. I don't know where the equity
10 perspective came up with 115 million, and that number
11 was based on a calculation done by the Kansas
12 Department of Education. Mr. Dennis will be here to
13 explain that.

14 But kind of a forecast of what he will say, we
15 can't know what that equalization number is until
16 about a year from now. There are variables that go
17 into knowing what LOB equalization and supplemental
18 general fund aid is. They start with what the
19 enrollment is and they go to the factors that will --
20 the weightings that will increase that enrollment
21 number. Then you have, ultimately, a decision made
22 by each district as to what LOB they will vote and
23 you have to have those numbers and we can't have
24 those until, frankly, next year because there are,
25 throughout the course of the year, things that take

1 place.

2 So by definition, you have to have, at the
3 beginning, an estimate and I'm not going to tell you
4 how Mr. Dennis did it. He can do that so I don't
5 duplicate what he will. He will tell you that. They
6 came up with \$109 million or a \$109 million dollar
7 figure for the equalization based on what they were
8 told by the state agency and the legislature funded
9 that fully. They didn't do anything less than that.

10 The *Gannon* case outlines that as it relates to
11 the LOB, that the panel must ensure that the
12 inequities of the present operation of LOB, and they
13 are now talking about the supplemental general state
14 aid, and it does so if by July 1 of this year, the
15 legislature fully funds the supplemental general
16 provision, and it has.

17 Now, if it didn't fully fund it, it could have
18 done the step two, step B under here -- I'm looking
19 at case, at the very tail end of it -- would have
20 done they could have funded it at some level and then
21 we could have gone into this analysis of, well, was
22 that good enough. Does it satisfy the test that Mr.
23 Rupe sets out. But you never reach that if you reach
24 the first step. Why is that? Well, because that's
25 the judgment that had been rendered. That's the

1 judgment that had been affirmed. Not something else.
2 That's what this Court has before it.

3 The issue of dismissal, Mr. Rupe I think may want
4 to talk about this some more so I may have more
5 comments or maybe Professor McAllister may have more
6 comment on it. But I think it's pretty simple and
7 it's simple in a couple different respects.

8 First, this school finance litigation I have come
9 to learn seems to kind of recycle. The same
10 arguments are presented. They fail, they are
11 presented again.

12 In the *Montoy* cases, the plaintiffs argued *Montoy*
13 ought to continue when it got to the issue of whether
14 or not there had been a satisfaction of remedy and
15 the court said, no, there has to be an end to
16 everything. You have substantially complied and they
17 dismissed the case.

18 In the *Gannon* case, they adopt the *Rose* factors.
19 They approve, I think, much of the *Rose* court's
20 reasoning out of Kentucky. In that case, the
21 district court, one of the things -- although the
22 district court I think is the author originally of
23 the factors -- one of the things that the district
24 court did that the Kentucky Supreme Court found was
25 improper was that it concluded it would continue to

1 monitor whether or not there had been compliance with
2 the *Rose* factors. It made itself something of a
3 super legislature. The Kentucky Supreme Court took a
4 look at it and said, no, you can't do that. That
5 would violate the fundamental separation of powers
6 and interests. And they then said we'll remand it
7 back. We'll do it, we won't do it, and they'll
8 dismiss the case. That's where we are at this point.

9 Now, there's been some hyperbole, and I don't
10 fault plaintiffs for this, I guess that's being an
11 advocate, where we hear how the State and I guess
12 multiple governors, many different individual
13 legislators, are all out to in some fashion or
14 another to not recognize and follow orders of the
15 court, not live up to the constitutional obligations
16 of Kansas, not provide suitable financing for
17 schools, and the argument is that, therefore, you
18 can't trust the State.

19 I was gratified, and I think we probably all were
20 gratified, to see in your opinion and in the opinion
21 by the Kansas Supreme Court there was a tenor of
22 cooperation among branches of government. We argued,
23 we argued before you it wasn't your place to overrule
24 parts of mine and we are here to argue before the
25 supreme court that this is inherently a political

1 question. It's something the courts should stay out
2 of. The courts disagreed with us.

3 But their discussion of it was not a you've been
4 disrespectful, legislature, you've been discourteous,
5 you've not followed your obligation, it rather was a
6 considered discussion of what are the rights and
7 responsibilities of different coequal branches of
8 government and it included a recognition of
9 separation of powers. It had in the comments about
10 remedies that this panel should keep in mind, their
11 concerns that were raised by the State about
12 separation of powers. It included recognition of the
13 *Neeley* case and others that talked about separation
14 of powers and the presumption of constitutionality of
15 conduct by the legislature. It was a decision that
16 said, look, you haven't complied with the
17 constitution. You need to get that straightened out.
18 But it was not I think, and rightfully so, at the
19 level of the rhetoric sometimes we hear from the
20 other side.

21 Now, what happened here as it gets back to the
22 legislature, the legislature has *Gannon*, it says
23 fully fund. It goes to its agency, says how much
24 does that mean. We can't know exactly, but tell us
25 what that means, and we'll do that. We won't fund

1 short of it, we'll go the full amount.

2 I think what the legislature deserves is a pat on
3 the back. I would hope that we are not into this
4 idea that somehow we can't trust the legislature, we
5 need to monitor them to the bitter end. That is
6 unfair. It's not reason when you consider the
7 different legislatures that have looked at this, the
8 different administrations. It's not factually based.
9 It probably is a testament more to the difficulty in
10 understanding, as I think we've all found, what
11 Article 6 means than it is anything else.

12 But there's a punch line to all of this on the
13 dismissal issue and on the idea that, well, we are
14 dealing with an estimate here. The way that LOB is
15 funded over the course of the year is you pay it over
16 in installments. The last installment is paid and
17 will be paid July and I don't think it is actually
18 July 1, but after the first of July in 2015. It will
19 be posted, for accounting reasons, June of 2015. So
20 if we get to the end of the year and the 109 ends up
21 being 108, then that money is shored back to the
22 system. If the 109 ends up being 110, then in next
23 year's appropriations, they just add a million on and
24 it works in. So the way the system is set up,
25 although we have an estimate, there's a way to true

1 up the factor at the end.

2 So we have a compliance with what the mandate has
3 instructed, full compliance by all recognition.
4 There is no evidence to suggest anything opposite and
5 a way to make sure we could have it trued up at the
6 end. Under the circumstances, we think it's
7 appropriate for the panel to do what the supreme
8 court has suggested, which is to do no more, which
9 what does that do with this case as it goes with the
10 equity? It dismisses it. And that's the relief that
11 we are requesting.

12 Those are the comments. I would like to put Mr.
13 Dennis on to talk briefly about his schedule.

14 MR. RUPE: Can I address the dismissal
15 issues before we get back to the equity?

16 JUDGE THEIS: Sure.

17 MR. RUPE: Well, I think the supreme court
18 knows what they are doing and if they wanted the
19 equity piece dismissed, they would have used those
20 words. But they didn't use those words. They said
21 do no more. They didn't say dismiss the case.

22 In 2009, the legislature cut and began cutting
23 what amounted to, over a period of time, you heard it
24 at trial, \$511 million out of a three-year plan that
25 was the basis of this supreme court dismissing the

1 *Montoy* case. I'm not sure Mr. Chalmers' statements
2 of legislative cooperation on the issue of cutting.
3 I understand what he's talking about, but I'm not
4 understanding that what he's talking about is
5 supported by historical action.

6 In June of 2010, four years ago, we filed our
7 notice of claim and in our notice of claim, we said
8 that a distinct pattern had emerged over the last
9 50 years and almost every school finance case follows
10 it. First, the affected individuals and districts
11 challenge the district of the legislative failure.
12 The court is now called to assess the legislative
13 action or lack of it indicates that the legislation
14 will be overturned. Before the court can do
15 anything, the legislature adopts new legislation and
16 then the court accepts the legislative response as a
17 good faith effort, releases its jurisdiction, and we
18 start the cycle all over again so.

19 In the spirit of cooperation, Mr. Chalmers was
20 talking about, it probably makes sense to cooperate
21 with the legislature and not dismiss the case but
22 trust and verify and suggest that the equity piece,
23 if you decide nothing more should be done, follow
24 what the supreme court says and say nothing more
25 should be done. But don't dismiss it. What's the

1 hurry? Why are they so anxious to get a dismissal of
2 the equity piece? Let's cooperate with the
3 legislature and see what they -- if they fulfill what
4 they said they'd do. That's cooperation. I don't
5 think we need to dismiss the case.

6 With regard to the action that is being taken
7 here today and the argument, in your e-mail, you
8 asked for us to advise you whether the supreme court
9 judgment in terms of equity and ramification, you
10 said be prepared to advise why it meets the supreme
11 court's judgment in terms of equity and ramifications
12 and you also said in your show cause order talking
13 about capital outlay and LOB equalization, such
14 dollar sums as provided and as will be distributed
15 standing alone meet any declared constitutional tests
16 of equity.

17 So that's why we are suggesting to you that if
18 you want to apply the measuring stick of the *Gannon*
19 equity test to what has been done overall, we don't
20 get there. But did they do the two things that the
21 supreme court suggested in item number one they do,
22 put back the LOB equitable equalization and the
23 capital outlay equalization, yes, they did that.
24 Don't dismiss this case. Cooperate with the
25 legislature and trust and verify.

1 JUDGE THEIS: Any objection to hearing
2 this?

3 JUDGE FLEMING: No.

4 JUDGE THEIS: Any objection to hearing
5 this?

6 JUDGE BURR: Sure.

7 MR. CHALMERS: Dale, you're around here
8 somewhere. Can I get you to come up to the stand?

9 DALE DENNIS,

10 called as a witness for the State, was duly sworn by
11 the reporter and testified under oath as follows:

12 JUDGE THEIS: Mr. Rupe, you don't have any
13 objection to hearing Mr. Dennis, do you?

14 MR. RUPE: As long as I get a chance to
15 ask him some questions.

16 JUDGE THEIS: That's the way it works.

17 MR. RUPE: Thank you, Your Honor.

18 DIRECT-EXAMINATION

19 BY MR. CHALMERS:

20 Q. Would you state your name for the record,
21 please.

22 A. Dale Dennis.

23 Q. And your occupation?

24 A. Deputy Commissioner of Education,
25 Department of Education.

1 Q. Mr. Dennis, you prepared a declaration that
2 is filed in this case, did you not? You prepared a
3 declaration at my request. It was then subsequently
4 filed; is that correct?

5 A. Yes, sir.

6 MR. CHALMERS: Your Honor, I don't plan on
7 going over the declaration. I thought that that has
8 already been in the record. I plan on just trying to
9 get to the issues beyond that unless you have some
10 interest in repeating what's already been said.

11 JUDGE THEIS: How many copies do you have
12 there?

13 MR. CHALMERS: What I have is a copy of
14 what's been marked as exhibit 507 and I've got
15 multiple copies for everyone and that's the
16 spreadsheet that goes with the affidavit that I
17 planned on introducing.

18 JUDGE THEIS: Sometimes it's easier to get
19 it than dig it up.

20 Q. (By Mr. Chalmers) Let me hand you, Mr.
21 Dennis, what has been marked as exhibit 507 and will
22 you identify that for the record, please.

23 MR. CHALMERS: If I may approach quickly?

24 A. That's a filed computer printout we did for
25 the legislature prior to their closing.

1 Q. (By Mr. Chalmers) And this printout and
2 memo that you prepared for the legislature, why was
3 that prepared?

4 A. To give the legislative body, prior to
5 making a decision, an estimate on the effects of the
6 plan they were looking at in trying to decide.

7 Q. Was your office asked to provide an
8 estimate of what it would be necessary to provide
9 full equalization of the LOB so -- well, actually
10 provide full funding of the supplemental general fund
11 aid?

12 A. To fund the current law, the answer is yes.

13 Q. Now, how does the State, stepping back from
14 that for a moment, determine what supplemental
15 general fund aid an individual district should
16 receive?

17 A. It depends upon the year and the situation
18 but in this year, we made the assumption in the
19 estimates that all districts that could go 30
20 percent, would go 30 percent and those that are at 31
21 currently would go to 31 percent. In addition to
22 that, there's a provision in that new law that you
23 can go to 33 percent if you're at 31 percent on
24 June 30th and we took that into account, but not by
25 individual districts but we did that as a group in

1 estimating the cost.

2 Q. Let me re-ask the question a little bit
3 differently because I'm not sure we were tracking.
4 In any given year, how do you figure out how much an
5 individual district gets in the supplemental funding?

6 A. In state aid entitlement?

7 Q. In the supplemental general funding, the
8 LOB equalization funding.

9 A. Okay. The law provides that you will
10 equalize it to 81.2 percent, whatever that valuation
11 is, and that changes yearly. That amount goes up.
12 Like for next year, it will be \$116,700. And you
13 equalize it to the 81.2 percentile. Anybody above
14 the 81.2 percentile would receive no supplemental
15 general state aid. Those below the 81.2 would get
16 state aid based upon their assessed valuation below
17 that level.

18 Q. How do you determine the assessed
19 valuation?

20 A. The assessed valuation is based on the
21 preceding year. It's provided to us by the county
22 officials through the Department of Property
23 Valuation and we take that information and divide it
24 by the enrollment to arrive at an amount per pupil.

25 Q. You talked about a 30, 31, and 33 percent

1 figure. That's 31, 33, and 30 percent of what?

2 A. The base for computing the local option
3 budget. Now, the reason I say the base for computing
4 it is because that's different than the general fund.
5 The base for computing the LOB is the adjusted
6 enrollment times 4,433 in the past, but in the
7 future, it's 4,490. Then you add special ed to that
8 and multiply it by 30 percent and anybody can go that
9 amount by board action. If you want to go above the
10 30 percent and go to 31, you have to have a vote of
11 the people.

12 Q. How do you determine at the state level
13 what the adjusted enrollment is?

14 A. The school districts submit that and then
15 the school districts, we audit them, every district.

16 Q. And adjusted enrollment, that includes not
17 only just the head count of kids but it also includes
18 the weightings that apply?

19 A. Yes, sir.

20 Q. When is it that you get the information
21 from the school districts as to what their head
22 counts are in enrollments?

23 A. It's based on September 20th. We'll get it
24 in about mid October and then we'll analyze that and
25 we'll get numbers that are reasonably accurate prior

1 to audit in mid November.

2 Q. And when is the audit conducted?

3 A. The audits are conducted through the school
4 year. We'll start with that as soon as we get the
5 information and that is, we try to conclude that by
6 about May 1st.

7 Q. What happens if you've got a kid between
8 August and mid October that transfers in? Are they
9 included in the head count?

10 A. Not unless they were there on
11 September 20th.

12 Q. Before September 20, there is
13 modifications?

14 A. Before September 20th, a student would be
15 counted. After September 20th, they are not.

16 Q. When does the State finally know the exact
17 number that it needs to be able to provide a hundred
18 percent equalization, the LOB?

19 A. That amount is determined about right now.

20 Q. It would be in June?

21 A. Yes.

22 Q. So to know what the exact equalization is,
23 we are talking about sometime in June of 2015 for the
24 fiscal year '15?

25 A. Because they are audited and it has to be

1 processed and then in addition to that, each time you
2 change adjusted valuation, you may change the local
3 option budget because that's a factor, a part of it.

4 Q. Well, the local option budget, is every
5 district required to have 30 percent?

6 A. No.

7 Q. How do they determine what their LOB is,
8 each individual district?

9 A. That's determined by the local board of
10 education and based upon their needs and also how
11 much they choose to levy.

12 Q. When does that have to be communicated to
13 the State?

14 A. They will include that in their budget and,
15 technically, it has to be submitted to us by August
16 the 25th.

17 Q. So by sometime August 25th, the State
18 should know what the LOB's have been that have been
19 voted by the various districts; is that right?

20 A. I appreciate the word should because
21 there's bound to be somebody that's a little bit late
22 or for some reason, there's been a little problem.
23 But we'll get the budgets all in by usually Labor
24 Day.

25 Q. As of today's date, here we are in June, we

1 don't know what the individual districts will vote
2 the LOB's, do we?

3 A. No, you have to estimate that as best you
4 can and hope you're correct, sir.

5 Q. In the house bill that was just passed,
6 were there provisions that changed the statute that
7 allowed a school district to adopt the LOB that was
8 the average LOB in the state?

9 A. That was passed several years ago, sir, and
10 that's correct and that's 30 percent so any --
11 there's some definitions there that caused some of
12 that, but the bottom line is any district can go to
13 30 percent if the board chooses to. Some choose not
14 to because of the mill rate.

15 Q. Now, if they choose to go to the average,
16 which I guess is now 30 percent, does that require an
17 election?

18 A. No.

19 Q. And the election we talked about under the
20 new law, under House Bill 2506, what are the election
21 requirements? Could you refresh our recollection?

22 A. Yes, sir. If you're at 31 percent by
23 June 30th, the board, by their own motion, can go to
24 33 percent for one year. In year two, anybody then
25 in that group would have to have a mail ballot

1 election and that's important. It's a mail ballot
2 election specifically by statute.

3 Q. What was the deadline or is the deadline
4 for the election for those districts that were not
5 already at 31 percent?

6 A. They would have to have it complete and
7 certified by June 30th of this month.

8 Q. This month, so if my math is on, another 15
9 or so days?

10 A. Yes, sir.

11 Q. Do you know if there have been districts
12 that have placed the LOB equalization up for election
13 to try to go to the 33 or 32 number?

14 A. There's been a few smaller districts that
15 have done that and will be voting the latter part of
16 this month.

17 Q. How many districts are there before
18 whatever happens on these elections that were at
19 31 percent?

20 A. As I recall, 14.

21 Q. So you've got 14 districts that were
22 approximately at 31 percent, give or take a district,
23 and you've got maybe, what, less than a half dozen
24 that may want to also be at 33 percent. Is that your
25 present understanding?

1 A. Well, those that are at 31 and already
2 voted on, it's highly likely, sir, that since they
3 have one year, their board can take the action. They
4 can -- it's highly likely they will go to 33 but next
5 year, a year from now, they have to vote to retain
6 that.

7 Q. I knew that. Just talking about those
8 districts that may be at 33 percent at the -- after
9 June 30 of this year, are we talking about those 14
10 or so plus the possibility of another six?

11 A. The answer is yes but, there are other
12 districts during this school year could choose to
13 have a mail ballot election if they choose during the
14 school year. They'll have to coordinate that and
15 work that out with their county officials.

16 Q. That would be for the subsequent year?

17 A. Yeah. Yes.

18 Q. I want to talk to you about how you
19 calculated \$109 million. That was your
20 recommendation, was it not, to the legislature that
21 if the legislature were to fund LOB equalization to
22 \$109 million, that that would be full equalization?

23 A. Yes, sir.

24 Q. How did you calculate that?

25 A. We did a printout which showed what it

1 would be if everybody went to the maximum of their
2 authorized by law now; 30 or 31 percent. Then we
3 took into account in the new law, they took away
4 money for part-time at-risk students so we had to
5 take that into account because that has an effect on
6 adjusted enrollment. We also -- we eliminated non
7 proficient at-risk. That's part of adjusted
8 enrollment. We had to take a percentage of that out
9 and then we added back in money for the raising the
10 base for computing the LOB from 4,433 to 4,490 and
11 then we added money, \$5 million, to take care of the
12 districts that may go from 31 to 33. Those 14
13 districts, it allowed five million for that. Then we
14 allowed \$2 and-a-half million for enrollment growth
15 and that totals about \$109.3 million, give or take a
16 couple of dollars.

17 Q. Enrollment growth meaning not only heads
18 but also change in demographics?

19 A. Well, that number, weighting at-risk
20 students. Not necessarily at-risk, but the adjusted
21 enrollment which includes numerous things, bilingual,
22 at-risk, transportation, et cetera.

23 Q. If we look at exhibit 507 for a moment and
24 turn to the very last page. There is a column five
25 that has a number what I read to be roughly 94

1 thousand, five-- or 94.5 million; is that correct?

2 A. 94 million; 468,000 plus, that's correct,
3 sir.

4 Q. You said it exactly. And that's the number
5 then you indicated that you calculated when you
6 assumed that all districts were at 30 percent based
7 on historical --

8 A. Not precise. That is what they would have
9 been funded had we funded it for the current year.
10 That's current year's fund-ages.

11 Q. What that means is that the same
12 demographics, same number of kids, the same base
13 number to do the calculation, that produces that
14 number?

15 A. Yeah, that's for the current year.

16 Q. And then that was the number then that you
17 made modifications from to work to the 109 plus
18 million; is that correct?

19 A. That is correct, sir.

20 Q. Now, then if I look at exhibit 507, the
21 third page where you've got budget adjustments?

22 A. Yes, sir.

23 Q. Now, we are at a number of roughly a 103.8
24 million. How did you get to that number?

25 A. That's what it would cost for the current

1 year if you take -- if everybody is at 30 percent or
2 those at 31, those 14 districts, that's the maximum
3 they would have received this year had we funded
4 everything in full and everybody had gone their
5 maximum.

6 Q. So that's the next number you used in your
7 calculation?

8 A. Yes, sir. That was the basis to start
9 with.

10 Q. Now, then you've got in parentheses on this
11 page and that's to indicate those are negative
12 numbers; is that correct?

13 A. That's the changes the legislature made
14 that reduced those areas.

15 Q. I want to just talk about one of them
16 because I think that probably answers all of the
17 questions, but we'll talk about reduce the at-risk
18 weightings for part-time kids and for students over
19 19 years of age. That has a cost associated to it in
20 terms of a reduction of almost \$3.4 million; is that
21 correct?

22 A. That's correct.

23 Q. Now, how much of that would have been paid
24 in LOB?

25 A. About 30 percent.

1 Q. Okay. And we are talking about
2 equalization, LOB equalization?

3 A. Yeah, 30 percent, that's how it would
4 affect it because 30 percent of that would run over
5 into the adjusted -- to the budget base for the LOB.

6 Q. So when we look at these negative numbers
7 and you made the adjustments that you made, basically
8 you made an adjustment by reducing the 103 by
9 approximately 30 percent of those figures; is that
10 correct?

11 A. Yes, you could look at it that way, yes,
12 sir.

13 Q. And then you added in the other two items
14 that are listed, the additional classrooms, state
15 aid, and the supplemental general state aid for four
16 and five million. Could you describe to the panel
17 what that means?

18 A. The base for computing the LOB has been
19 4,433 for several years. They changed it to 4,490
20 and we believe that will cost about \$4 million to do
21 that. The second one is going from 31 to 33 percent
22 will cost an additional \$5 million and the reason you
23 can estimate that reasonably close is those at 31 can
24 go to 33 on board motion without a vote.

25 JUDGE THEIS: Those are full figures;

1 right?

2 MR. CHALMERS: Yes, I think so, Your
3 Honor.

4 Q. (By Mr. Chalmers) Those are full figures?

5 A. The four million and five million are full
6 figures, that's correct, sir.

7 JUDGE THEIS: You were taking the
8 30 percent off the bracket ones; right?

9 MR. CHALMERS: That's correct.

10 Q. (By Mr. Chalmers) Now, you did that
11 calculation and then you came up with 109 because you
12 added, what, some more that maybe isn't on this
13 exhibit. What was it that you added in addition to
14 that?

15 A. We held out a small amount, about 2.5
16 million, for growth and enrollment. Our enrollment
17 has been growing slightly each year and that's due to
18 number of -- head count and the number of kids in
19 poverty.

20 Q. Now, this exhibit was prepared April 17th
21 of this year. Some time has passed. Your
22 projections in terms of the usage of LOB, have you
23 learned any information that would suggest that
24 your -- what would be voted on for LOB was mistaken
25 one way or the other?

1 A. Not in state aid.

2 Q. And when you say not in state aid, that
3 raises the question where has it been different?

4 A. You don't know what 286 boards are going to
5 do, but we try to project that and if we were doing
6 the estimates today, probably wouldn't change them.

7 Q. And that's having some awareness now of the
8 elections that have taken place and those that
9 haven't?

10 A. The election that took place for a very
11 small district was small dollar amounts,
12 insignificant dollars.

13 Q. And what you've been able to learn about
14 those districts, those 14 or so that were at
15 31 percent, have your estimates on what their likely
16 LOB adoption would be, do they line up with what
17 you've made provision for, this additional five
18 million?

19 A. Yes, sir. Based on those that we've talked
20 to, the answer is yes. Because many can do that
21 without raising a mill levy because it's a small
22 amount of money, two percentage points.

23 Q. We won't know the final answer to that as
24 to what they have ultimately done until sometime in
25 August or September; is that right?

1 A. That's correct. Be up in September before
2 we really know.

3 Q. How -- once the LOB is -- aid is -- the
4 supplemental general state aid, to be technical, is
5 calculated, how is it distributed to the districts?

6 A. It's distributed through the school year,
7 three or four times through the school year but about
8 three times I could recall, but the fourth one, the
9 final one is not made until around July the 8th, 9th,
10 and 10th and then the schools are required to record
11 it on June 30th. So the final will be come up with
12 8th, 9th, 10th of July.

13 Q. So the final payment is made into the
14 following fiscal year?

15 A. Yes, sir.

16 Q. But booked this year?

17 A. That's correct, sir. That's by statute,
18 sir.

19 Q. You prepared a previous memo that is one
20 before exhibit 507 on another date and I think there
21 were some changes in that memo to the one that was
22 507. What were those changes?

23 A. Well, we did about a hundred, sir, so I'm
24 not sure which one you're referring to.

25 Q. All right. Well, let me see if I can get

1 at it this way. Of the ones that you did that came
2 up with the recommendation of 109 million or so in
3 equalization, has that number ever changed?

4 A. Well, it changed with each printout, sir.

5 Q. And the number on exhibit 507, if we use
6 this as a printout, by way of an example, what was
7 the recommended equalization as of April 17, 2014?

8 A. Well, the purpose of this was to comply
9 with the statute as written, 81.2 percent
10 equalization.

11 Q. And mine may not be a very good question.
12 Let me focus on the last page of exhibit 507 under
13 the column of nine which is Proposed Additional
14 Maximum LOB Aid, a Hundred Percent Funding. What is
15 that column?

16 A. That is the total amount of state aid that
17 would be required on the LOB if every district in the
18 state went the maximum.

19 Q. And so by this calculation, it could be
20 \$114.5 million would be what the State's bill would
21 be for equalization; is that right?

22 A. Yup, if all districts went the maximum
23 which will not be the case.

24 Q. That's what I was going to ask you. Why is
25 that different than the 109?

1 A. Because some boards will not go the
2 maximum. Some boards will choose to probably reduce
3 property tax instead of raise the budget.

4 Q. We also know that some boards probably at
5 this point can't go to the 33 percent as well; is
6 that correct?

7 A. Well, no, the gist -- no, very few boards
8 can go to 33. There wouldn't be over those 14 if you
9 had the election, so it won't amount to more than
10 maybe -- it would be less than 20.

11 Q. How comfortable today are you with \$109
12 million estimate?

13 A. I wouldn't change it today, sir.

14 Q. Can you give me a plus or minus?

15 A. Oh, that appropriation is well over
16 400-and-some million. You know, we could be off by a
17 half or two or three-tenths of a percent, but if it
18 is, it's taken care of in the July payment.

19 MR. CHALMERS: Thank you. I don't have
20 any other questions.

21 **CROSS-EXAMINATION**

22 BY MR. RUPE:

23 Q. Why would a board not increase their LOB,
24 what are the reasons?

25 A. Yes, sir. The biggest issue that we hear

1 about is property tax.

2 Q. Meaning what?

3 A. They may have to raise their property tax
4 to do it and they choose not to do that.

5 Q. And why would they choose not to do it?

6 A. Because they believe that the taxpayers
7 would not support that in their district.

8 Q. And in your observation, is that any how,
9 any way related to the property wealth of those
10 districts that choose not to do it because the voters
11 would not accept it?

12 A. It's a combination of that, sir, and the
13 philosophy of the district. It's a combination of
14 the two.

15 Q. So we can agree that property wealth is a
16 reason that boards choose, in part, not to raise the
17 LOB?

18 A. Yes.

19 Q. Now, let's talk a little bit about some
20 terms that Mr. Chalmers used and I'm sure he didn't
21 intend to do this, but is the LOB today in Kansas a
22 hundred percent equalized?

23 A. Not a hundred percent equalized, it's 81.2
24 percent equalized. It complies with the statute, but
25 it's not a hundred percent equalized.

1 Q. So when Mr. Chalmers says a hundred percent
2 fully funded, what is that percentage point?

3 A. That's funding the statute as the
4 legislature adopted.

5 Q. To 81.2 percent?

6 A. 81.2, that's correct, sir.

7 Q. So in Kansas, a hundred percent fully
8 funded means 81 percent -- 81.2 percent?

9 A. If you're referring to the statute, that
10 would be correct.

11 Q. And by the way, on that last page, that 114
12 million, 548 number, what is that?

13 A. That was based on the assumption that
14 everybody would go the maximum, 30 or 31 percent
15 or -- yes.

16 Q. So that would be the most equalization you
17 could get?

18 A. And, sir, there will always be a few that
19 won't do that.

20 Q. Okay.

21 A. And we had to take that into account.

22 Q. If you were reporting that number in a
23 rounded number, would that be 115 million?

24 A. Probably 115.6 would be, that would be
25 rounded when we are hurting.

1 Q. If I don't know if you're like my kids and
2 listen to anything I said when I was talking earlier
3 but let me kind of go through a couple of things. Do
4 you agree with the concept that the poorer property
5 value in a district, the harder it is to pass a
6 capital outlay or LOB election?

7 A. As a general rule, the answer to that is
8 yes. This year it may be a little bit different
9 because if you're -- like one district I can think
10 of, they are going to get enough LOB state aid that
11 their mill levy will go down and then they'll raise
12 capital outlay but the total will stay about the
13 same, you with me. And there will be a lot of them
14 that will do that, if you'll notice the printout in
15 the last column, property value reduction is
16 substantial for some districts.

17 Q. In terms of the amount of money that can be
18 spent if we focus on that for a second and talk about
19 equity, a large part of the equity conversation deals
20 with where the money comes from, whether it comes
21 from the state or whether it comes from the local
22 folks?

23 A. Yes, sir.

24 Q. Right? You've indicated that the matters
25 you put in your affidavit are estimates although they

1 are your best estimates; right?

2 A. Yes, sir.

3 Q. Look into the future and let's just pin
4 down this date. Look into the future. At what point
5 in the future can you look back and tell how far off
6 or how accurate your estimates were?

7 A. It will be a gradual process but the final
8 will be a year from now.

9 Q. So June--

10 A. Next June.

11 Q. -- of 2015?

12 A. Yes, sir. Because we're just now getting
13 all the local effort or local revenue in and getting
14 that information in and we'll finalize it. I hope
15 they'll have it done when I get back.

16 Q. What is the State General Fund Profile?

17 A. That's -- I'm not involved in the State
18 General Fund Profile, sir. That's done by --
19 primarily, it's in the governor's budget and it --
20 also, some of that is done as part of the consensus
21 revenue estimates, but I'm not a part of that.

22 Q. And in terms of the terms allotment, do you
23 know what that is?

24 A. Yes, sir.

25 Q. What is it?

1 A. It's a reduction in appropriation.

2 Q. And does that have anything to do with the
3 ending balance?

4 A. It could, yes, sir.

5 Q. Explain to the panel how it could.

6 A. If it drops below a certain amount like a
7 hundred million, the governor has authority to issue
8 allotments.

9 Q. When does that occur?

10 A. When the -- I think it's the budget
11 director estimates that the dollar amount will fall
12 below a hundred mill.

13 Q. And do you recall when it was the last time
14 that that capital outlay equalization was eliminated
15 as part of an allotment process?

16 A. I don't know about the term allotment
17 process that was the date, but I think the last date
18 that was funded was 2008 and '9.

19 Q. What process do you recall it being
20 eliminated in if it wasn't eliminated in the
21 allotment process?

22 A. It was eliminated, I believe, through the
23 appropriation process by the legislature.

24 Q. So I guess in terms of whether the money is
25 actually received, you don't know that until it is

1 actually received; right?

2 A. You mean until we receive it?

3 Q. Yes.

4 A. We have an appropriation and until somebody
5 with authority says we don't have it, we proceed
6 accordingly and if at some point down the line
7 somebody says that we're going to cut it and they
8 have authority to do it, then you live with what's
9 left.

10 Q. If the allotment is below a hundred
11 mill -- I'm sorry. If the state general fund is
12 below a hundred mill, is an allotment possible?

13 A. Yes, sir.

14 Q. And if it were at 56, would that increase
15 the possibility?

16 A. Anytime you go below a hundred, why, the
17 governor has the authority.

18 Q. Take a look at exhibit 501, if you would,
19 please.

20 MS. SKLADZIEN: Can you see this?

21 Q. (By Mr. Rupe) I just want to make sure
22 that I'm on track with this and you're familiar with
23 the effort needed for the maximum LOB?

24 A. Concept, yes, sir.

25 Q. And I want to focus on mill levies. If we

1 were going to fully fund to 31 percent, it would take
2 6.34 mill increase in Burlington and a 37.96 mill
3 increase in Copeland. Do you agree with that?

4 MR. CHALMERS: Objection, Your Honor.
5 Foundation has not been laid for that. The exhibits
6 that have been provided show dated information and he
7 doesn't have a basis to respond to that.

8 MR. RUPE: Based on his experience. He
9 said he was familiar with it. I'm asking him if it's
10 consistent.

11 MR. CHALMERS: You asked him if those are
12 the numbers. You know these numbers are from, what,
13 three years ago.

14 MR. RUPE: If I were giving current
15 numbers, Art, you would be objecting because I've got
16 new data that you hadn't seen so.

17 MR. CHALMERS: Well, I also didn't see
18 this graph.

19 JUDGE THEIS: You can ask questions on a
20 hypothetical if that's what you're going to do.

21 MR. RUPE: Okay.

22 Q. (By Mr. Rupe) Go ahead.

23 A. The chart at the top says to fund the
24 maximum 31 percent LOB. I assume then that would be
25 the increase in the mill eight to go to 31 from what?

1 Is that what it says.

2 Q. That's the total. Assume with me it's the
3 total.

4 A. Total. I don't know the exact mill levy,
5 but they have an exceptionally high valuation so
6 their mill levy will be exceptionally low. That's
7 true because they have the power plant.

8 Q. In their backyard.

9 A. Yeah.

10 Q. And a district that is a high poverty
11 district or a low property wealth district like
12 Copeland would take 37.96 to get there?

13 A. Yeah. There's another piece of that that's
14 important because the low enrollment weighting, your
15 adjusted enrollment is going to be higher so your
16 budget would be higher proportionally because each
17 student in Copeland would probably be counted as
18 1.85, 1.9 so the adjusted enrollment would be higher
19 so their budget would be higher -- would be
20 proportionally in Burlington, but they would have the
21 higher mill rate, that's true.

22 Q. Would you say the folks in Burlington and
23 the folks in Copeland have similar equal access?

24 MR. CHALMERS: I think that's a loaded
25 legal question. I object to the way it's phrased but

1 it's certainly ambiguous. I don't know what it
2 means.

3 A. It will take more mils--

4 MR. RUPE: I think I know what it means.
5 The supreme court used it.

6 JUDGE THEIS: Well, I'm going to sustain
7 the objection.

8 Q. (By Mr. Rupe) What is the reason there is
9 such a difference between Copeland and Burlington in
10 terms of what they can raise?

11 A. Assessed valuation per pupil.

12 Q. What's that?

13 A. The dollars you raise taxes on, the dollars
14 you use to determine the amount of state aid and it's
15 always more difficult for a poor, low valuation
16 district to go up than it is one very, very rich.

17 Q. What do you mean to go up?

18 A. To raise their LOB.

19 Q. Through either the local board or an
20 election?

21 A. Either one. But this, in most cases in the
22 past it would have been -- except those 14 districts,
23 it's gets to 30 percent and it's more difficult would
24 be expected for the low valuation districts to get
25 there and the mill levy will be higher.

1 Q. Then let's go to 502, if we could, and I
2 want to focus on capital outlay just for a second.
3 But assume with me that every district levied the
4 eight mils and the eight mils is what's statutory
5 available for them to raise; right?

6 A. Yes, sir. If the petition -- if the
7 resolution is not petitioned, that's correct.

8 Q. And assume further they receive full
9 equalization pursuant to the statute. Where does
10 Galena fall in that?

11 A. Galena will be low. They are an
12 exceptionally low valuation district. Their state
13 aid will be exceptionally high, but that statute
14 provides that you'll take the mill rate times the
15 valuation times the state aid ratio. But that will
16 not be near as high as Satanta who has gas and oil
17 and the difference between those two is probably
18 20,000 assessed value to 500,000.

19 Q. Okay. And would that -- does this comport
20 with your understanding in Galena, it would be 244
21 and in Satanta, it would be 4,384?

22 A. I don't know the calculations but the
23 concept, it will be less in Galena by far than it
24 will -- but I don't know about the calculations.

25 Q. So you would just describe it as less by

1 far?

2 A. Yes.

3 Q. In your office, do you -- does the
4 department of ed track the LOB and capital outlay
5 elections?

6 A. Only, sir, if they pass or not, not -- if
7 they pass because it affects state aid calculations
8 but if they fail, we would not particularly track it.

9 Q. Okay. And do you know if the Kansas
10 Association of School Boards tracks the elections
11 that fail?

12 A. No, I don't. The reason I say that, sir, a
13 local board can have an election and if -- they don't
14 have to get permission, they don't have to ask
15 anybody. The board does it and they do their thing.
16 If it passes, they get it. If it fails, they don't
17 and they will tell us if it passes, of course.

18 Q. I just want your observation from the years
19 you've been doing what you've been doing. If an
20 election were not required, would there be more
21 school districts at 31 percent or 33 percent?

22 A. The answer is yes, if the formula was
23 funded. The formula has got to be funded or it
24 wouldn't make any difference much.

25 MR. RUPE: That's all I have. Thank you.

1 JUDGE THEIS: How long do you have?

2 MR. CHALMERS: I was hoping five minutes,
3 but if you want to take a break and come back.

4 JUDGE THEIS: Do you have time to stay
5 with us, Mr. Dennis?

6 A. I'll stay as long as you say so.

7 JUDGE THEIS: I don't want to keep anybody
8 captive.

9 A. That will be fine, sir.

10 JUDGE THEIS: Can we have 20 minutes here
11 to take a break?

12 (THEREUPON, a 20-minute recess was held at
13 2:55 p.m.)

14 **REDIRECT-EXAMINATION**

15 BY MR. CHALMERS:

16 Q. Mr. Dennis, could you dig up exhibit 50.
17 That's your April 11, 2014, memo in the attachments.

18 A. Yes, sir.

19 Q. And to maybe help illustrate what your
20 chart means, I want to go through just a few of the
21 or a couple of districts and for simplicity's sake,
22 what I take is the next to the last page and it shows
23 some Sedgwick County districts, one of which is
24 Wichita. Can you find that for me?

25 A. Yes, sir.

1 Q. Now, if we look at column one where it
2 shows the Proposed General Fund Increase, and then it
3 shows a figure of basically a million dollars plus to
4 Wichita, what does that mean?

5 A. That's the estimated amount that would be
6 raised for Wichita by raising the base state aid per
7 pupil from 3,838 to 3,852.

8 Q. So in the budget by increasing the BSAPP or
9 the base, what it does is increase the amount that
10 Wichita would get from state funds?

11 A. That would be correct, sir.

12 Q. Then if we go to the next column which is
13 the Proposed At-Risk Reduction, that is a number that
14 shows how much less then Wichita would get if you
15 reduce some of the at-risk kids from the weightings;
16 is that correct?

17 A. Yes, that's the result of the not counting
18 part-time at-risk students or adults, those over 20
19 or over.

20 Q. Where that impacts the LOB is is the LOB
21 basically gives you about, well, 30 percent more on
22 top of, on top of your general fund that you can have
23 a possibility of raise; is that right?

24 A. Yeah. I wouldn't say it necessarily the
25 general fund because you've got a different base but

1 it would be 30 percent of the adjusted enrollment
2 base.

3 Q. The BSAPP is higher?

4 A. Yeah.

5 Q. So if you -- when you were using your
6 calculations, if we were to talk about Wichita by way
7 of illustration, instead of using the \$750,000
8 number, you would use something -- if we were looking
9 at it at a micro district level about 30 percent?

10 A. Round number, yes, sir.

11 Q. And the non proficient student has a number
12 of roughly 400,000. That's the same analysis in
13 terms of taking 30 percent of it?

14 A. Yes, sir.

15 Q. And then the Proposed General Fund
16 Adjustments, which our columns one through three just
17 added; is that right?

18 A. Correct, sir.

19 Q. Then you've got Proposed Additional LOB Aid
20 at a hundred percent and it works out to being \$11.9
21 million roughly and that was what again?

22 A. That's what we would -- we owe them this
23 year if we had funded the formula as provided by law.

24 Q. If we had funded it at the 81.2 percentile?

25 A. Yes, sir.

1 Q. And if we had given Wichita whatever its
2 percentage share was in terms of state funds, based
3 on its current enrollment, based on its demographics
4 and other weightings, it would be roughly about this
5 \$12 million more that it would receive from the
6 state?

7 A. Yes, sir.

8 Q. The next category is the Proposed Capital
9 Outlay Aid and what is that?

10 A. That's what they would receive in state
11 capital outlay aid and that's computed by multiplying
12 the mill rate times the assessed valuation and times
13 their state aid ratio which is provided and laid out
14 by law.

15 Q. In stepping back and looking again and it
16 tells us what we have to do which is fully fund, if
17 we were trying to turn back the clock and figure out
18 a year before, what it would be necessary to fully
19 fund Wichita or Sedgwick County at the 81.2
20 percentile, for LOB it would be the 11.9 plus
21 million?

22 A. Yes, sir.

23 Q. And it would have been the 3.5 plus million
24 to the capital outlay?

25 A. Yes, sir.

1 Q. Now because we are in today's world, we've
2 got to make adjustments so you had to make those
3 additional estimates. How are those estimates in
4 terms of trying to figure out how much more there
5 might be required for this year included on this
6 schedule then or are they?

7 A. Well, on the LOB, we've already discussed
8 that where we just assumed everything would go 30 or
9 31 and then made the property adjustments for the
10 things you found in columns two and three and in
11 enrollment adjustment.

12 Capital outlay, we take the mill rate times the
13 valuation times the state aid ratio and you get X
14 number of dollars. This formula, by statute, is
15 interesting in that it's on a demand transfer. It
16 doesn't take an appropriation to fund. That comes
17 out of -- off the top.

18 Q. You mean if it's been appropriated with no
19 limit, it just comes off the top?

20 A. Yes. There's a limit covered by the
21 formula, but my point is it's not a direct
22 appropriation. It's by -- supposed to be funded like
23 we do bond interests, demand transferred.

24 Q. Now, continuing on to column eight
25 concerning Wichita is a figure about 1.7 million for

1 the proposed LOB classroom fund and that's if we used
2 the higher base that's provided for in the statute;
3 right?

4 A. That's correct, plus the adjusted
5 enrollment changes because of the at-risk and the non
6 proficient and virtual, et cetera.

7 Q. Now, this assumes a 30-percent LOB; is that
8 right?

9 A. Yes, sir.

10 Q. And so if Wichita were to go 25, that
11 number would be lower. If it were to go 33, it would
12 be higher; is that right?

13 A. Yes, sir. But this year, it would be
14 pretty near impossible to go to 33 because they'd
15 have to--

16 Q. We talked about that.

17 A. Yeah.

18 Q. It's too late perhaps by way of election?

19 A. Yeah.

20 Q. Then we have these next two columns which
21 is Proposed Maximum LOB Aid and it has for Wichita,
22 the number of 12.8 million roughly. What does that
23 mean?

24 A. That's the state aid they would receive
25 when the formula is funded at 81.2 percent

1 equalization based on these estimates for the next
2 school year.

3 Q. Okay. And that's based on these estimates,
4 the maximum formula?

5 A. Yup.

6 Q. Or the maximum amount. Now, when we added
7 that all up at the bottom, it came up to roughly
8 114.5 and so that's an estimate but it's higher than
9 your 109 and we've already talked about that, haven't
10 we?

11 A. That's correct, sir.

12 Q. And the reason for that change or that
13 difference is because what?

14 A. Some districts will not go the maximum.

15 Q. Then you've got the last column which is
16 the Proposed Property Tax Relief and it shows that
17 11.07 million in proposed property tax relief. What
18 is that column?

19 A. Okay. If your state aid, sir, goes up 12.8
20 million and your budget can only go up 1.7, then the
21 only option left is to lower the property tax and
22 that's what the amount would go to lower the property
23 tax in this fund.

24 Q. Now, there was -- was there a problem that
25 the legislature was confronted with which is if it

1 kept the LOB cap at 30 percent, then what you would
2 have is simply the state providing money but a
3 mandatory reduction in property tax because of the
4 way the system was set up?

5 A. There will be a mandatory reduction in
6 property tax for the LOB in many districts. You can
7 see that in column number ten.

8 Q. And so I worked through that in my head,
9 see if I've got it right. If my current levy is set
10 to produce a hundred dollars, and I wasn't receiving
11 any state equalization but now I'm receiving \$50 in
12 state equalization, that I can't have a whole 150
13 unless you increase the cap?

14 A. That's correct. You have to increase the
15 cap or the property taxes going down and even if you
16 do increase the cap a percentage point or two, you
17 still may have districts whose property tax goes down
18 because they can't spend it.

19 Q. So those districts that can choose to go to
20 30 percent, then they may have -- don't choose to go
21 the 30 percent, they may have more property tax
22 relief than is represented in exhibit 501, column
23 ten; is that right?

24 A. It would be small depending on what
25 district it is, but when you reduce your LOB, you

1 also reduce your share of state aid. The state is
2 only willing to share -- pay their proportional share
3 if you lower the LOB and you apply the percentage,
4 the state aid would come down some. Not all of it,
5 but some of it.

6 Q. Now, I want to pick just a couple more
7 quickly, if we move down a little bit further to,
8 let's say, Cheney. That's, again, in Sedgwick
9 County. That's district 268. Do you see what I'm
10 talking about?

11 A. Yes, sir.

12 Q. Now, it says a smaller district. It has a
13 general fund increase of \$16,000. But the
14 descriptions -- the way it works are the same; is
15 that right, as we talked about Sedgwick County?

16 A. Yes, sir.

17 Q. So I'm going to push across and I'm going
18 to talk about column eight, nine, and ten. Eight
19 shows that the proposed additional LOB -- maybe I
20 didn't use such a good example. It doesn't make a
21 difference. If I look at column five for a second,
22 that's the one that shows that they'll get, what,
23 \$246,000 in additional LOB aid; is that correct?

24 A. That's what they would have gotten this
25 year had we funded the law as provided.

1 Q. Okay. And that's -- the column nine would
2 be the 257 that they would get?

3 A. That is what they would get next year
4 estimated based if they go the maximum 30 percent.

5 Q. Now, this shows under column eight that
6 there would only be a \$17,000 increase at the
7 30 percent and at the base is 490 and that most of it
8 would go to property tax relief. Why is that?

9 A. Because they are probably at 30 percent
10 right now so the increase in the LOB would only be
11 17,000, but the state aid is going up 257 so it's got
12 to go for property tax relief. No additional
13 spending of consequence.

14 Q. Now, let's go to the last one on that page
15 so that we can contrast things and that's exhibit --
16 or excuse me, that's district 208 and that's
17 WaKeeney, Trego County, and there are some zeros
18 here. There's a zero in column five and a zero in
19 column six. Why is that?

20 A. Okay. In column five, they would not --
21 they either -- they don't have -- they are not
22 entitled. They are in the top 19 percent or
23 18.8 percent so they are in the top category above
24 the 81.2 so they are not entitled to any state aid
25 for their LOB. In column nine, they don't have a

1 capital outlay levy or they are not qualified for any
2 state aid and capital outlay.

3 Q. Now, this document that is exhibit 507 does
4 not show the percentages of what sort of state aid
5 that the individual districts receive; is that
6 correct?

7 A. That's correct.

8 Q. We would have to look at another document
9 to do that?

10 A. That's correct.

11 Q. But I want to talk to you about that
12 concept for a second. And in talking to you in that
13 context also as it relates to exhibit 501, this local
14 effort needed for maximum LOB budget, the formula for
15 LOB equalization is a mathematical formula; is that
16 right?

17 A. Yes, sir.

18 Q. Run real quickly, just summarize it. I
19 know the panel probably knows it. Please bear with
20 me. How do you work that formula?

21 A. It's to get the maximum amount of the LOB,
22 you multiply the adjusted enrollment times the base
23 amount per pupil that's for LOB which is different
24 than the base and state aid for people it's 4,433 at
25 the time we are talking about. Be 4,490 next year.

1 Then we add special ed to that and multiply it by the
2 30 percent.

3 For computing the state aid, it's just anybody --
4 it's a gradual percentage reduction at 81.2 percent,
5 theoretically zero. The poorer you are, the more
6 equalization you get.

7 Q. So if I am at the very bottom in assessed
8 property values in my district, then you take the
9 number -- you take where I am in relation to the
10 district at the 81st-point-second percentile, you
11 take that relationship and you subtract it from one
12 and that gives you what your percentage is; right?

13 A. What you do, you take the assessed
14 valuation school district, divide it by the
15 81.2 percentile, which in the coming year it will be
16 \$116,700, you get that amount, that answer,
17 multiply-- subtract by one and the remainder is state
18 aid.

19 Q. And so I'm at the bottom. I run through
20 this formula and I get 70 percent of my LOB is funded
21 by the state and that then gives me, what, the same
22 ability to raise per mill property taxes as the
23 district at the 81-point-second percentile?

24 A. In essence, the answer is yes.

25 Q. If we think of that as purchasing power,

1 then what you have is the purchasing power for these
2 districts from the poorest appraised value up to the
3 81st-point-second percentile, with that aid as to LOB
4 is the same purchasing power?

5 A. If you count all the adjusted valuations,
6 in essence, they are treated like their assessed
7 valuation is at the 81st percentile.

8 Q. Now, then we've got exhibit 501 and it's
9 talking about local efforts needed for maximum LOB
10 budget and they've defined maximum LOB budget as
11 being the 81 percentile local budget. Now, when you
12 were talking about that a second ago, to figure out
13 how much money to get to that 31 percent, you've got
14 to figure back in the weightings, don't you?

15 A. Yes, sir.

16 Q. So if I'm a district that has high
17 weightings, maybe I'm a small district and that
18 allots me, because of my size, some additional
19 weightings, then I have per pupil, per individual kid
20 running around the school, I've got the ability to
21 raise more through my 31 percent than a district that
22 has low weightings?

23 A. Yes, sir.

24 Q. And when you look at the ability again to
25 get to the 31st percentile and you don't make

1 adjustments for those weighting differences, that's
2 what produces this kind of skewed result, isn't it?

3 A. That's part of it.

4 Q. What else is there?

5 A. Well, your assessed valuation. If you're
6 above the 81st percentile, then it's -- in essence,
7 you're all on property tax at that point. You get
8 state aid, but it's still on property taxes because
9 we only equalize you to the 81st percentile.

10 Q. Now in that exhibit 501, what Mr. Rupe has
11 described as the poorest of the poor is Copeland
12 district. That's U.S.D. 476. Are you familiar with
13 that district?

14 A. Yes, sir, to some degree.

15 Q. Now, in exhibit 501 that's been filed with
16 the Court, and I know that you don't have it in front
17 of you, it shows that the equalization aid that that
18 district received --

19 JUDGE THEIS: Give us a number on that
20 one.

21 MR. CHALMERS: That would be 476, Your
22 Honor, in the backup to exhibit 501. It's the very
23 last page.

24 Q. (By Mr. Chalmers) It shows that the state
25 LOB rate, that is what was paid in equalization, was

1 about seven and-a-half percent. So what would
2 that -- does that sound about right in terms of your
3 recollection as to what it would get in terms of
4 equalization?

5 A. Yes.

6 Q. So that puts it pretty close to that
7 district at the 81st-point-5 percent, wouldn't it?

8 A. Fairly close, yes, sir.

9 Q. And so in the scheme of Kansas assessed
10 values, well, Copeland is one of the richer counties,
11 richer districts, isn't it?

12 A. Well, that depends on where you live and
13 who you are but, see, this would probably put them
14 somewhere in, oh, 75th percentile, 70 to 75th
15 percentile because 81st is nothing. So it would be
16 below that so somewhere around the 75th percentile.

17 Q. Then if you compare Burlington, you say it
18 depends on where you live. You've got a power plant
19 in Burlington; right?

20 A. Yes.

21 Q. That doesn't mean people living in
22 Burlington are individually wealthy, does it?

23 A. No, sir.

24 Q. Let me talk to you about capital outlay
25 which is exhibit 502 for a moment and, again, if we

1 are just talking the math in how you calculate what
2 the equalization is for the capital outlay, the
3 supplemental aid for capital outlay, how do you
4 arrive at capital outlay?

5 A. In capital outlay, you take the mill rate
6 times the assessed valuation, get the dollars that
7 will produce and those dollars you produce, you'll
8 multiply it by the ratio of state aid and the state
9 aid ratio is based on the following formula. The
10 median is 25 percent and the richer you are, each
11 thousand dollars richer, you drop a percent, each
12 thousand dollars poorer, you add a percent.

13 Q. Now this technique you talked about for
14 equalization, is that the one that's been in place
15 since *Montoy*?

16 A. This one was not -- well, yes, it goes back
17 to about that. We only did this for a few years. It
18 wasn't very long. Couple years, three, capital
19 outlay.

20 Q. Your point is it wasn't funded for a period
21 of time?

22 A. Yes.

23 Q. But the formula itself in the statutes --

24 A. It's been there for a while, yes.

25 Q. Likewise, the equalization that produces

1 whatever you get when you talk about what you
2 actually purchase as opposed to purchasing power,
3 that formula was there when *Montoy* was decided; is
4 that right?

5 A. Yup, yes, sir.

6 Q. By your calculations, both of those
7 equalizations both for the capital outlay and for the
8 LOB, they have been fully funded at the levels in the
9 statutes; is that correct?

10 A. For the next school year the statutory
11 amount, the answer is yes.

12 Q. Just one other quick point.

13 MR. CHALMERS: Your Honor, if there are
14 other things that I didn't go over to your
15 satisfaction in this chart, I would be happy to go
16 back to it.

17 JUDGE BURR: I'm satisfied.

18 JUDGE THEIS: If I have a question, I'll
19 ask.

20 Q. (By Mr. Chalmers) Just to finish up and
21 sit down and that is, you were asked by Mr. Rupe
22 about the allotment process. You're not going to
23 suggest that there is going to be an allotment this
24 year, are you?

25 A. I didn't say -- no, sir. The question was

1 what the law says.

2 Q. In fact, states, including Kansas, borrow
3 money, don't they?

4 A. Yes, sir.

5 MR. CHALMERS: I don't have anything else.

6 **RECROSS-EXAMINATION**

7 BY MR. RUPE:

8 Q. But we've used the allotment process before
9 in Kansas, haven't we?

10 A. Yes, sir. We have, and any money you
11 borrow has to be repaid by the end of the fiscal
12 year.

13 MR. RUPE: I don't have any other
14 questions.

15 JUDGE THEIS: What generates the property
16 tax relief? How does that work?

17 A. On this printout, Judge, what happens is a
18 school district maybe we will say like Wichita was at
19 30 percent, so we didn't fund the state aid, so what
20 we didn't fund, they levied the property tax, raised
21 their property tax. Now we are going to fund it so
22 they'll force the property tax down and they are at
23 30 percent roughly, got a million-seven to go, so it
24 will force the property tax down and they -- nothing
25 they can do about that now except down the road, they

1 could have an election, mail ballot election to raise
2 the amount, but it's three percentage points. But
3 anybody that's maxed out at 30 percent and can't go
4 any higher than that, next year where column number
5 nine is higher than column eight, the property tax
6 will go down.

7 JUDGE THEIS: Substitution funds?

8 A. We are substituting the property tax that
9 were state aid, we haven't paid, that's correct, sir.

10 JUDGE THEIS: Essentially takes the burden
11 off the locals and takes it to the state?

12 A. Yes. Yes, sir, because it just depends on
13 the community, but it takes the property tax burden
14 off of those districts that have been -- some would
15 have gone ahead and went the 30 percent and ate the
16 property tax and some chose not to depending on the
17 local board and their feeling. But this case now, it
18 would be funded so the property tax would be forced
19 to go down for the LOB.

20 JUDGE THEIS: Can I ask you a question
21 about they use the formula, but they changed, they
22 changed the mechanics to arrive at it; correct?

23 A. They changed the mechanism to arrive at it
24 primarily, yes, about three things. One, they raised
25 the base from 4,433 to 4,490 for computing it and

1 they also, they eliminated those three things in --
2 those three in the brackets that we looked at, the
3 part-time kids at-risk and the non proficient at-risk
4 and virtual, kid virtual school kids, they excluded
5 those calculations when they computed the LOB.

6 JUDGE THEIS: But for the removal, it
7 would have been higher; correct?

8 A. Yes, sir. Yes, sir.

9 JUDGE THEIS: And the non proficient
10 student, was that something that came from the Kansas
11 Department of Education?

12 A. No, sir. No, sir, that was a legislative
13 policy decision and what that boils down to, that's
14 \$5 million, 4.88 million or something like that. The
15 bottom line is that is for students who are not on
16 free lunch who didn't meet proficiency on state
17 assessment. That's what that money was for and
18 that's been eliminated.

19 JUDGE THEIS: Did that just drop out of
20 the sky or is that something that's been passed and
21 working on?

22 A. That was in the -- it came about as a
23 result of the legislative process in umpteen
24 printouts. That was the decision that was made.

25 JUDGE THEIS: It came out--

1 A. Well, we did a lot of different printouts
2 for this and the legislators that was making this
3 decision, that was one of their -- one of the
4 programs they thought they could drop out and they
5 chose to drop it out and -- for the non proficient,
6 but that's kids that are not on free lunch that
7 didn't meet proficiency.

8 JUDGE THEIS: Was that just in regard to
9 this particular bill?

10 A. Yes, sir. It also it took them out of the
11 general fund. When you take them out of the general
12 fund, reduce the weighting and affected the LOB.
13 General fund was the big effect.

14 JUDGE THEIS: If that provision were to
15 disappear at some point in the future, what would be
16 the effect this year?

17 A. What they did, it disappeared this year and
18 that had the effect of reducing the state aid about
19 4.88 million.

20 JUDGE THEIS: What if the provision would
21 disappear? What if the statute were not found to
22 be -- that wasn't --

23 A. Okay. Then what would happen, it would go
24 back. It would just go back and what that would do,
25 they have about a \$5 million increase in general

1 state aid and about a million and-a-half dollar
2 increase in LOB.

3 JUDGE THEIS: And that would -- would that
4 require school districts to do anything?

5 A. Not necessarily. It depends on when the
6 decision is made. If the decision is made before
7 they do their budget where they could adjust it, then
8 it would already be done. If it's made later, then
9 what they would have to do in all honesty for a
10 general state aid, they would have to republish their
11 budgets.

12 JUDGE THEIS: That's publication?

13 A. Publication. It's not unique. A lot of
14 times they will miss their estimates and have to
15 republish. You can do that in the law because of
16 state aid.

17 JUDGE THEIS: The same would be for the
18 older students at-risk?

19 A. Yes, it would be the same thing. Just a
20 smaller amount, that's the difference, yup.

21 JUDGE THEIS: Is that fifth-year seniors
22 or --

23 A. No. A lot of that, Judge, is adults that
24 didn't accept the responsibility when they were in
25 school and they are older. Then they realize I've

1 kind of messed up and I need to apply myself.

2 JUDGE THEIS: Is it a GED program?

3 A. Pardon?

4 JUDGE THEIS: Is it a GED?

5 A. No, it's not a GED. Many kids want the
6 high school diploma, the adults, and we have quite a
7 few what's called adult learnings centers that are
8 operated indirectly by school districts. We count
9 those kids' enrollment. They fund them. They are
10 not counted as at-risk though. They don't get
11 at-risk money for it. They may be 20 to
12 50-years-old, but it's people who want a high school
13 diploma and lot of times, Judge, it's tied to
14 employment. They want a job and they can't get one
15 without a diploma.

16 JUDGE THEIS: Did that just drop out of
17 the sky too?

18 A. No, I wouldn't say -- well, it's a part of
19 legislative process, you know. It wasn't something
20 that the state board or somebody recommended, but it
21 was just a part of the legislative process and I
22 wouldn't say it dropped out of the sky, but in that
23 vicinity. It's in that vicinity, Judge.

24 JUDGE THEIS: Been simmering for a period
25 of time?

1 A. No. Mostly this year. Mostly this year.

2 JUDGE THEIS: Could you manage to stay
3 just a little while longer because we may be talking
4 about future scheduling.

5 A. Yes, sir.

6 JUDGE THEIS: You may play a part, maybe.

7 A. I would be glad to, sir.

8 JUDGE THEIS: Thank you.

9 THE WITNESS: Art, you want this?

10 MR. CHALMERS: If you would leave that up
11 there, please.

12 I don't know exactly where we are in the
13 proceedings at this point, Your Honor. I know that I
14 had hoped to kind of put on some testimony from Mr.
15 Dennis to -- what I think is the issue of whether or
16 not we had satisfied the supreme court's mandate.

17 I did have some very limited comments about some
18 things Mr. Rupe said in his beginning concerning --
19 well, in particular, some of the things that we've
20 been talking about now that I don't think are
21 relevant that I would like to address at some point
22 if this is the appropriate time to do that.

23 JUDGE THEIS: Okay. Sure. Are you good
24 with that, Mr. Rupe?

25 MR. RUPE: I'm not sure what this is other

1 than --

2 JUDGE THEIS: More or less closing.

3 MR. RUPE: He's identified something I've
4 said that he doesn't think is relevant that he wants
5 to argue with but --

6 JUDGE THEIS: We'll find out, won't we?

7 JUDGE BURR: Well, it's kind of like
8 closing.

9 MR. CHALMERS: Where, frankly, what I did
10 was I broke off in my outline to present Mr. Dennis'
11 testimony and I had just a couple more things to say
12 in trying to bring this case back, I think, to what
13 the real issue is because in all respects, I think
14 we've gone into a big detour here. We are now
15 talking about it seems as if whether there is, as
16 I've talked about before, some sort of equity
17 challenge to the current equalization. It isn't a
18 hundred percent, at a hundred percent. It's at
19 81.2 percent. And that's what *Gannon* said we're
20 supposed to do and that's what the mandate says.
21 That's where we are.

22 But there are also some arguments made that we
23 ought to wait just because there are potential
24 constitutional challenges and those arguments were
25 kind of raised for the first time on Monday. I can't

1 say that I have a complete answer to all of that but
2 there are some things I would like the panel to think
3 about and they dovetail with, frankly, the argument
4 that Mr. Rupe wants to go back and redo what he lost
5 at trial on.

6 We now have, according to this chart that's up
7 there, exhibit 501, four named plaintiffs that are
8 districts that all fit right in the middle in
9 equalization and we're talking about things for which
10 these folks don't have any standing to talk about.
11 What *Gannon* does say is that standing is a concept
12 that continues through the entire process and there
13 it continued from pleading and then gets to the time
14 of trial and that becomes pivotal, but it also
15 extends at all junctures and it is there and it's
16 underpinned by the notion that you need to have an
17 actual controversy to keep on the opposite side and
18 also, I think on the notion that we also don't want
19 to put courts in the position where they are just
20 opining on things in a vacuum.

21 Here, you've got the question of two extremes.
22 These folks don't fit in any of the extremes. You've
23 got an argument being made that there's a single
24 issue that maybe that things were lumped together,
25 but there's nothing that was lumped together in this

1 case that they've challenged as being
2 unconstitutional that, frankly, they would have
3 standing to present and follow my logic here for a
4 moment.

5 These four districts don't want to have no funds.
6 If they are on any side of the issue here, they are
7 on the side of let's make sure that this act is
8 enforced. We want the equalization. And there may
9 be things they don't like about it personally, but
10 they don't have a stake in the fight. They would be
11 in the same position as the State. What you need to
12 have if you're going to have somebody challenging
13 here, you need somebody else on the other side,
14 somebody who I suppose may say, look, I'm aggrieved
15 by this act because I'm a teacher and I have lost my
16 due process rights and you don't have that.

17 Likewise, you don't have a teacher to talk about
18 the due process rights. You don't have a teacher to
19 talk about licensing and you talk about the state
20 department of education's rights being infringed on,
21 these districts don't represent the state department
22 of education.

23 And the religious interference deal is, at best,
24 not ripe if it ever becomes ripe. I don't know that
25 these districts would be the parties that would be

1 aggrieved any way in their theory. I can't in all
2 honesty tell you that I understand it. What I can
3 tell you is that none of these plaintiffs are the
4 parties to make those sorts of claims and it would be
5 inappropriate without someone who's actually made a
6 claim. In fact, they don't even make the claim, they
7 just say there's a possibility. It would be
8 inappropriate to allow that to find its way into this
9 litigation for two reasons.

10 First, beyond the fact of the scanning issue,
11 first is because if we delay things on the
12 possibility that something might happen, there is no
13 ending for it. We've already heard that it's going
14 to be until this time next year that we'll know if
15 there is full equalization so we wait until then and
16 then we are into another year and now we are waiting
17 until then next year and you never stop.

18 And then, secondly, it's speculative that there
19 ever is going to be a challenge to this and there is
20 the rule in Kansas that legislation is presumed to be
21 constitutional so I don't think we can ignore that
22 presumption on speculation to allow folks that have
23 no standing make this claim to delay conclusion of
24 this case.

25 And Mr. Rupe says, well, why does the State so

1 desperately want the suit to be ended. I guess I
2 can't think of a case I've defended where I haven't
3 wanted a claim against my client to be terminated. I
4 don't think that's unusual or inappropriate. I think
5 the better question is why does the plaintiff so
6 desperately want to try to keep its foot in the door,
7 particularly when it doesn't have a right to do that.

8 If the supreme court says do no more, how is that
9 different from a dismissal. I don't understand the
10 distinction and I think that in either respect,
11 either do no more or dismiss means this panel, once
12 it has found the state has satisfied its obligation,
13 it probably should terminate that part of the case.
14 So those were the other limited comments I wanted to
15 make.

16 MR. RUPE: Briefly if I may, Your Honor.

17 JUDGE THEIS: Yes.

18 MR. RUPE: It may be just me but I
19 absolutely see a history of the legislature coming
20 forward with a program, the court dismissing the
21 case, and the legislature backing up on what they
22 said they would do and that just happened and it
23 happened to the tune of \$511 million after *Montoy* and
24 after the court dismissed based on a legislative plan
25 that the legislature then started cutting after the

1 case was dismissed.

2 If it doesn't matter, I don't think we dismiss
3 this case because Mr. Chalmers always asks for it. I
4 think we dismiss this case only when the order of the
5 supreme court has been followed and what's to keep
6 the legislature, if you dismiss the equity piece,
7 from through allotment or through new legislation or
8 whatever, backing up on what they've done? I think
9 it's trust and verified. That's all we are asking
10 for. And this is directly from the supreme court's
11 opinion and I don't think it is something that we
12 should ignore or claim is lack of standing or
13 irrelevant.

14 The supreme court says in the *Gannon* opinion,
15 quote, "Any cure will be measured by determining
16 whether it sufficiently reduces the unreasonable
17 wealth base disparity so the disparity then becomes
18 constitutionally acceptable, not whether the cure
19 necessarily restores funding to the prior level."
20 That's what they said.

21 So the question that you have to resolve is,
22 first, is what question are we asking and then,
23 secondly, what is the answer and if you say did they
24 put back what they were supposed to put back as
25 suggested in point one by the supreme court, then

1 it's probably, yes, subject to the qualifications.
2 But if you're looking at the entire equity of the
3 changes here, it doesn't come close and the answer is
4 no.

5 That -- we didn't come here and not follow your
6 direction because what you wanted us to do in your
7 order to show cause and scheduling order was to
8 identify those areas where the legislation may be
9 subject to challenge and we're interested in that.
10 Whether we have the standing to do it or not, you're
11 concerned about it because you want to make sure that
12 put back if it stays, stays. Our folks are concerned
13 that if somebody comes along with a challenge based
14 on teacher tenure or due process or those other
15 things we identified, that that legislation sinks and
16 the little money -- the money that we got, it's not
17 little, but the money we got from capital outlay
18 equalization and LOB equalization will sink with it.
19 So that's our concern. That's why we are here
20 answering your questions on what you want.

21 So back to the original concept. If your
22 question is did they put it back, the answer is yes,
23 probably yes. Is the system overall equitable; no.

24 (THEREUPON, a discussion was held between
25 the panel of judges.)

1 JUDGE THEIS: Is there an agreement that
2 the individual claim is to be dismissed?

3 MR. RUPE: Yes, I think we did agree on an
4 order.

5 JUDGE THEIS: Do you have that?

6 MR. RUPE: Or we haven't agreed on an
7 order, sorry.

8 MR. CHALMERS: I think the plaintiffs took
9 the position there needed to be a dismissal without
10 prejudice. Our position is they are just dismissed.

11 MS. SKLADZIEN: A dismissal without
12 prejudice to the equity portion.

13 JUDGE THEIS: Well, essentially, the
14 supreme court shows there is no standing which is a
15 jurisdictional issue so it's without prejudice
16 because if they never visited here so... we won't be
17 gone long. You might think about what you are asking
18 us to do next.

19 (THEREUPON, there was a ten-minute recess
20 held at four o'clock.)

21 JUDGE THEIS: We agreed Judge Fleming will
22 speak for the Court on the one part. I have a few
23 words on another part. If Judge Burr wants to chime
24 in, he will.

25 JUDGE FLEMING: I'm reading from page 108

1 and 109 of the court's opinion. That follows the
2 remaining for consideration of the equity issues.
3 "As to capital outlay, if by July 1st, 2014, the
4 legislature fully funds the capital outlay provisions
5 as contemplated in K.S.A. 2013 Supp. 72-8814, the
6 panel need take no additional action on this issue."

7 Based upon the positions of the parties as
8 announced in response to the show cause order and
9 based upon the testimony of Mr. Dennis given here
10 today, we find that the legislature has complied and
11 that no additional action of this panel is required
12 on that issue.

13 Regarding the supplemental state aid, the same --
14 the supreme court used the same language, "If by
15 July 1st, 2014, the legislature fully funds the
16 supplemental general state aid provision, the panel
17 need take no additional action on that issue," and we
18 so find.

19 JUDGE THEIS: All right. When we sent the
20 e-mail out, they ordered a show cause. You indicated
21 you wanted some comment on house bill -- senate
22 substitute for House Bill 2506, which has passed, the
23 reason for that is because it had a litany of issues
24 in it. The plaintiffs did not -- and that would have
25 been due, I believe it would have been by May 16th

1 and the point of that was for both the plaintiff and
2 the State to respond to it because it may have
3 consequences. In other words, third parties might be
4 able to attack this bill and knock it out of the way
5 and knock out the appropriations that we're dealing
6 with here today, in which case, what Judge Fleming
7 said would be in jeopardy.

8 I understand, Mr. Chalmers, from your argument
9 you don't necessarily request additional time and
10 that I'm free to go ahead and rule on that particular
11 issue now; is that correct?

12 MR. CHALMERS: Yes, Your Honor.

13 JUDGE THEIS: As we understand it, this is
14 not to say there is an issue, not to take a position
15 on the issue. The issue would be framed by *State, ex*
16 *rel. Stephan versus Carlin*, 229 Kan. 665, a 1981
17 case, and that was just a preliminary case. The
18 final judgment was in 230 Kan. 252, same caption,
19 1981, in Article 2, section (16) and I believe
20 Article 1, (14) which the former involves multiple
21 subjects in the bill and the other involves the
22 governor's authority to veto the matter.

23 But we've looked at this bill. It has a severed
24 bill provision that says, you know, it can be deemed
25 that -- any section that was found constitutional,

1 the rest of the bill would be passed or vice versa.

2 Further, at the time that this bill was passed,
3 the legislature had the judgment of the supreme court
4 finding that -- affirming this panel's judgment that
5 the supplemental state aid and the capital outlay
6 they had would have been effective and affirmed our
7 judgments on those and remanded them back.

8 We think the appropriations would stand,
9 notwithstanding a third-party challenge. We think
10 that the presumption that the legislature recognized
11 it's the Court's judgment and as public officials, we
12 follow the law and honor the judgment of the supreme
13 court. We wouldn't think anything otherwise if they
14 would comply and they have, as Judge Fleming noted.

15 Further, with the severability provision, we
16 think that regardless of what happens with any other
17 provisions or any other argument made, that
18 appropriations here would stand so we are comfortable
19 with senate substitute for house bill 2506 and its
20 appropriation provisions at issue here would not be
21 wiped out in any collateral suit. So with that
22 barrier removed, I really don't think there is
23 anything standing in the way of what we said today.

24 The question now is what we want to do. The
25 State, you've -- plaintiffs, if I understand it at

1 this point, want to rely on the record presented at
2 trial and for to us make additional findings in terms
3 of the adequacy based on the existing record. State
4 responded, as I understand it, with some objection to
5 that and --

6 JUDGE FLEMING: They want to present
7 additional evidence.

8 MR. RUPE: We would like to do a reply,
9 Your Honor. The local rules say no on a reply, but
10 we would like some time to do a reply to their--

11 JUDGE THEIS: I'm not cutting you off, I'm
12 just reciting what we have so far.

13 MR. RUPE: Okay.

14 JUDGE THEIS: That's the plan. We'll hear
15 what you say today, but today, we're not going to set
16 a schedule. We've not determined yet whether we'll
17 rely on the record or any other means to make
18 decisions. Mainly today is to hear what you want to
19 do as far as you've expressed it and if you want to
20 reply, you're free to do so and then we'll make an
21 independent decision later as to any scheduling if we
22 find it requires concerning the adequacy issues.

23 MR. RUPE: All we need is a timeframe.
24 I'm sorry, Your Honor. All we need is a timeframe in
25 which to file that reply so if we could have like ten

1 days from today.

2 JUDGE THEIS: All right. That's fine.
3 Let's assume that we are -- let's just throw things
4 out for a minute and assume we are going to do
5 something in the future. If so, what would the time
6 lines be for that, do you have any idea?

7 MR. RUPE: I think it would depend on
8 whether the future involves additional discovery or
9 simply reconvening.

10 JUDGE THEIS: Well, either or. Give me an
11 estimate.

12 MR. RUPE: I think we are probably into
13 fall, late summer.

14 JUDGE THEIS: Mr. Chalmers.

15 MR. CHALMERS: I don't disagree with Mr.
16 Rupe that we're into fall. Given Mr. Dennis'
17 testimony, if we want real numbers on what funding
18 levels will be, it's not practical to think that we
19 are going to have much of that information until
20 October. If I understand correctly, we don't know
21 what the LOB votes are, we don't know what districts
22 have chosen so as a reality and I think it is
23 necessary to talk about present current funding.
24 Probably sometime in November, late November, is the
25 first time we would be able to set a hearing on that.

1 JUDGE THEIS: I want to ask Mr. Dennis a
2 question if I can. You don't need to come up, Mr.
3 Dennis, just so you can hear me.

4 My understanding is that there were -- there are
5 testing results have been out and on your website;
6 correct?

7 WITNESS DENNIS: For prior years, yes,
8 sir. This year's--

9 JUDGE THEIS: Not this year's.

10 WITNESS DENNIS: Not this year's because
11 it's a new test and the University of Kansas had
12 trouble with their computer system with a brand new
13 test so six national experts recommended it not be
14 made public because of that, but prior years are and
15 it's out there.

16 JUDGE THEIS: In addition to the 2012,
17 2013 statistics that would be publicly available, are
18 there any other documents that would impact this case
19 that are publicly available?

20 WITNESS DENNIS: I can't think of anything
21 particularly that I know of, sir, that--

22 JUDGE THEIS: This case was concluded by
23 an opinion that was entered in January of 2013 which
24 was, you know, over -- well over a year ago. The
25 question is what -- is there any information -- the

1 statutory changes since that time, do you have a
2 publication that deals with those or whether they
3 exist or whether they don't?

4 WITNESS DENNIS: We would be glad to
5 provide any information you might need. Most of it
6 is on web, but if you want state assessments in some
7 particular way, Judge, we'll do our best to get it.

8 JUDGE THEIS: I don't shop Amazon and I
9 don't surf the web very well so.

10 WITNESS DENNIS: All you have to do is say
11 the word. We'll get you what you need as far as
12 that's concerned.

13 JUDGE THEIS: My question is, well, you
14 know in terms of time whether we would -- and I'll be
15 candid with the lawyers, there may be some things we
16 can judicially notice and if somebody has some
17 quibble with them, we may have to discuss it later.
18 But I would be interested in what statutory changes
19 are made like in 2506, we had the non proficient was
20 a change in two instances and I couldn't think of any
21 other right off and then I understand they may --
22 this time they may have repealed 6410(b), or whatever
23 it is regarding fixing.

24 WITNESS DENNIS: The one change that
25 doesn't appreciate the equity issue or anything like

1 to, but the 20 mill levy that schools levy as part of
2 the general fund, which is about 560, \$760 million,
3 next year that will come into the state and the
4 state, then we'll redistribute it where in the past
5 it's kept locally, and we deduct it in state aid. It
6 won't change the equity at the local level at all,
7 just they build the money in.

8 JUDGE THEIS: Get the big interest on it.

9 WITNESS DENNIS: Yes, maybe a tenth of a
10 percent, but you are correct, sir. But the
11 assessment results is all out there and graduation
12 rates, dropout rates are out on the web. But if
13 there's something you want, we'll fix you up a little
14 notebook.

15 JUDGE THEIS: What do counsel think about
16 that, Mr. Chalmers?

17 MR. CHALMERS: Your Honor, I have every
18 faith with the department of education. I know that
19 the legislative research also has those sorts of
20 documentation and summaries. There is routinely a
21 book prepared and it talks about that, the
22 legislators, that information would be available.
23 But, frankly, I think we can probably between counsel
24 agree to what the changes are and let you know.

25 JUDGE THEIS: Pardon me?

1 MR. CHALMERS: I think probably between
2 counsel, we can agree what the changes in the statute
3 from the time of the trial to this date. We can
4 probably reach an agreement.

5 JUDGE THEIS: I was thinking so you guys
6 don't have to argue, both of you. I think Mr. Dennis
7 is okay so if he sends it, as long as he doesn't send
8 something that you think is inappropriate. So if you
9 have something that you want to send us, why don't
10 you send it to counsel first and if they don't
11 squawk, then they can send it to us.

12 WITNESS DENNIS: If you like, sir, we also
13 can send you the education summary. It's research
14 department and if we put this together, just a
15 summary of educational legislation. We can do that
16 and we'll send you the test scores if you would like.

17 JUDGE THEIS: I would like to know the
18 test scores and--

19 MR. CHALMERS: If I may comment on that,
20 and I hope I'm not speaking out of school with Mr.
21 Dennis, but it's my understanding that if we are
22 talking about the recent test scores, you're going to
23 run into two problems.

24 JUDGE THEIS: I'm not talking about the
25 2014's.

1 MR. CHALMERS: Okay.

2 MR. RUPE: I've got ten days on the reply.
3 How soon do you want this information from Mr.
4 Dennis?

5 JUDGE THEIS: The sooner the better. I
6 mean, it's not going to be tomorrow under any
7 circumstances.

8 MR. RUPE: You'll get it to counsel and
9 then we'll agree on it and get it to you.

10 JUDGE THEIS: Essentially, the stuff that
11 would be fairly, you know, undisputed, if you wanted
12 to have evidence on it, that might be a consideration
13 but we would like to see it first and then you can --
14 if there's some problem with it later -- my only
15 inquiry is whether you have an actual objection to us
16 seeing it and then later, if we use it in some way we
17 shouldn't, then we give you the opportunity to say,
18 bad boy. Okay?

19 MR. RUPE: I won't phrase it quite like
20 that but.

21 JUDGE THEIS: Bad, bad boy.

22 JUDGE FLEMING: Somebody needs to
23 memorialize our findings.

24 MR. McALLISTER: I was going to ask that
25 question actually in terms of what you're doing

1 today, can we just be clear and then we can put
2 together an order to help. So are we dismissing the
3 individual plaintiffs?

4 JUDGE THEIS: They are dismissed.

5 MR. RUPE: Without prejudice?

6 MR. McALLISTER: Without prejudice.

7 JUDGE THEIS: Without prejudice, which
8 they would have to be or they've never existed
9 pursuant to the ruling.

10 MR. McALLISTER: Then our motion was also
11 to dismiss the equity claims. I know you've said we
12 are fully funded, but are we taking no action, are we
13 dismissing?

14 JUDGE FLEMING: We are doing what the
15 supreme court said, we are taking no further action.

16 MR. McALLISTER: Okay.

17 JUDGE THEIS: Which would be--

18 MR. McALLISTER: I understand. I just
19 wanted to be clear that we are going to track with
20 what you were thinking.

21 JUDGE FLEMING: Are you volunteering to
22 memorialize this?

23 MR. CHALMERS: We are.

24 JUDGE THEIS: Then we'll get your reply
25 in, what, ten days?

1 MR. RUPE: Ten days from today, that would
2 be great.

3 JUDGE THEIS: Send us all a copy.

4 MR. McALLISTER: I was going to say, Your
5 Honor, after the reply is in.

6 JUDGE THEIS: Tell us how to pronounce
7 Jessica's last name. We would like to know that.

8 MR. RUPE: When I learn it, I'll tell you.

9 JUDGE THEIS: Send it.

10 JUDGE FLEMING: If you have additional
11 charts with numbers, fax them instead of e-mailing.
12 My printer ran for an hour and 45 minutes yesterday.

13 MS. SKLADZIEN: I will fax them to you.

14 MR. McALLISTER: Your Honor, so depending
15 on the reply, you'll make some kind of decision then
16 about how we'll proceed, but you're not contemplating
17 making a final judgment on the record because we have
18 not substantively briefed that. We've objected to
19 the proposed procedure.

20 JUDGE THEIS: The supreme court told us we
21 could do as we chose. So first, we are going to
22 choose.

23 JUDGE BURR: Yeah, we haven't chosen yet.

24 JUDGE THEIS: We haven't chosen. That's
25 part of the review. If we choose to do it without

1 anything further, without anymore, we'll deal with
2 that. And if we do, we'll advise you and if we
3 don't, then we'll get organized to meet in August or
4 September.

5 MR. CHALMERS: Here's our -- my concern,
6 so my cards are on the table and that is, will the
7 State have the opportunity if the panel were to
8 decide we don't need anymore to submit its proposed
9 findings and conclusions based on then the present
10 record?

11 JUDGE THEIS: I would assume that you may
12 want to do that but if, of course, we decide to do it
13 on the record, it might not encompass any of your
14 submissions so.

15 MR. CHALMERS: I understand that.

16 JUDGE THEIS: So if you want to do that,
17 maybe you ought to do that.

18 MR. CHALMERS: All right.

19 JUDGE THEIS: Well--

20 MR. RUPE: I can't think of anything else
21 we need to do.

22 JUDGE THEIS: It's like unexpected
23 company, we enjoyed it.

24 (THEREUPON, the proceeding concluded.)

25

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