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June 17, 2010

NOTICE OF CLAIMS PURSUANT TO K.S.A. 72-64b02(a)

Pat Saville
Secretary of the Kansas Senate
Room 374E, Capitol
Topeka, Kansas 66612-1504

Susan W. Kannarr
Chief Clerk of the Kansas House of Representatives
Office of the Chief Clerk
200 SW 10th Ave., Room 272-W
Topeka, Kansas 66612-1504

Re: Violation of Article VI of the Kansas Constitution

Dear Ms. Saville and Ms. Kannarr:

**“It is no use in saying, ‘We are doing our best.’
You have got to succeed in doing what is necessary.”**
-- Winston Churchill

Kansas public schools have been and remain chronically underfunded. From kindergarten to graduation, Kansas school children, including the individual plaintiffs here, fall victim to inadequate funding levels that fail to provide equal educational opportunities. As a result, the achievement gap persists, not all students are meeting target test scores, the dropout rate remains uncorrected, and another generation of Kansas kids complete the education cycle with less opportunity than the generation before. Gains achieved through prior litigation have been severely cut back. The promise of “an adequate education” remains elusive and unfulfilled. For these reasons, and as explained in more detail below, please consider this letter formal notice, pursuant to K.S.A. 72-64b02(a), of a violation of Article VI of the Kansas Constitution.

(1) **THE NAME AND ADDRESS OF THE PARTY OR PARTIES AND THE NAME AND ADDRESS OF THE PARTY'S OR PARTIES' ATTORNEY, IF ANY:**

Plaintiffs:

Unified School District No. 259
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("USD 259" or "Wichita")
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Wichita, KS 67202-1292

Unified School District No. 308
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Unified School District No. 500
Wyandotte County, Kansas
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Notice of Claims

June 17, 2010

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(2) A CONCISE STATEMENT OF THE FACTUAL BASIS OF THE ALLEGED VIOLATION, INCLUDING SUPPORTING DOCUMENTATION:

a. Historical Background

The Kansas Legislature is responsible for the current school funding crisis. On one hand, the Kansas legislature engages in massive tax cuts, refunds, and tax abatement, while claiming inadequate tax dollars on the other. [See Exhibit A]. At a time the legislature knew it would be short \$350 million and unable to provide adequate educational funding, a nation-wide economic recession further aggravated the already inadequate funding situation. While additional tax dollars have been delivered, in the most recent legislative session, the amount of money needed to provide an adequate education to Kansas school kids remains woefully inadequate.

Another contributing factor is the Kansas legislature's continual maneuvering to avoid a court determination of inadequate funding. The Kansas legislature maneuvers law changes without addressing the underlying inadequate funding, and then feigning "good faith compliance" and "mootness" in order to stay one budget year ahead of a court determination of unconstitutionality. A distinct pattern has emerged over the past fifty years and almost every school finance case follows it: First, affected individuals and districts challenge the legislature's failures; the court, now called to assess the legislature's actions (or lack thereof) indicates that the legislation will be overturned; before the court can do so, the legislature adopts new legislation; finally, the courts accept the legislative response as "a good-faith effort to solve constitutional problems" and releases its jurisdiction over the case. *See e.g., Mock v. Kansas*, Case No. 91-CV-1009, slip op. at 491 (Kan. Dist. Ct. Shawnee Co., Oct. 14, 1991; *Knowles v. School Bd. of Educ.*, 219 Kan. 271 (1976); *Caldwell v. State*, Case No. 50616, slip op. (Kan. Dist. Ct. Johnson Co., Aug. 30, 1972); *see also* Richard E. Levy, "Gunfight at the K-12 Corral: Legislative vs. Judicial Power in the Kansas School Finance Litigation," *University of Kansas Law Review*, May, 2006, at 1035-37 ("[N]ew legislation was initially upheld in Caldwell, it was invalidated in Knowles, and the legislation upheld in Knowles was invalidated in Mock.").

In order to put a stop to this all-too-predictable cycle, the courts must stop believing that the Legislature's amendments are suitable changes made in good faith. The focus should be on Article VI's requirement for adequate funding. The Legislature must provide the funds that Article VI mandates. The Legislature's continued maneuvering has created a never-ending, unconstitutional status quo. The Legislature continues, however, to avoid its Constitutional and statutory duties, and the situation becomes worse for each successive generation of Kansas kids.

The battle to compel the Legislature to provide adequate funding for education in Kansas is a long and complicated one. When the constitutional provisions currently at issue were inserted in the Kansas Constitution in 1966, "the people secure[d] to themselves what is of first importance by placing binding responsibility on the legislative, executive, and judiciary departments." *Mock v. Kansas*, Case No. 91-CV-1009, slip op. at 491 (Kan. Dist. Ct. Shawnee Co., Oct. 14, 1991) (citing the Education Amendments to the Kansas Constitution, Publication, No. 256, Dec. 1965, Kansas Legislative Council, pg 2). Yet, the Kansas Legislature has been unable to adequately fund education since the duty was bestowed upon it in 1966. The failures of the legislature continue to haunt the students of Kansas. Its past inability to adequately fund education has resulted in a current school funding scheme that woefully underfunds education. Without understanding the complex history of school finance in Kansas, one cannot understand the status quo of educational funding.

In 1972, in the district court case *Caldwell v. State*, Case No. 50616 (Kan. Dist. Ct. Johnson Co., Aug. 30, 1972), the court considered a school funding scheme that was largely based on local taxation. The court concluded that because the school funding scheme created interdistrict disparities, it was unconstitutional on equal protection grounds. The court noted that the legislation improperly tied a child's education to "the wealth of the district in which the child resides." *Id.* As a result, the Legislature enacted the School District Equalization Act (the "SDEA"). Because the SDEA addressed the district court's concerns, the court upheld the new statute as constitutional.

The SDEA was challenged almost immediately in *Knowles v. School Bd. of Educ.*, 219 Kan. 271 (1976). In *Knowles*, the legislature and courts played out the pattern established in *Caldwell*. The court determined that there were unequal benefits to school districts and unequal burdens on taxpayers. The court delayed its decision and allowed the legislature time to correct the problems with the SDEA. The legislature promptly amended the SDEA, and the court dismissed the case.

In *Knowles*, however, the plaintiffs appealed the district court's decision to dismiss the case. Eventually, the Supreme Court reversed the decision. It did not, as the district courts in *Caldwell* and *Knowles* had, automatically accept the amended law as a remedy to the original problems of *Knowles*. Instead, it stated, "[t]he right of persons to challenge the constitutional effect of a law upon their persons or property should not be aborted everytime the law is amended by the legislature." *See* 271 Kan. at 279. Rather than considering the amended school funding scheme, though, the Supreme Court remanded the case. The lower court eventually found the school funding scheme constitutional in 1981.

The SDEA was again challenged in *Mock v. State* in 1990. In advance of trial, Judge Bullock, who would later be instrumental in the *Montoy* decisions, ruled on questions of law implicated in this case. Bullock held that the Kansas legislature had a duty to provide an equal opportunity for children to receive an education. Because the SDEA largely relied on local funding, such as property taxes, to fund education, there were significant disparities among the districts. Though the pre-trial order did not consider the actual school financing law in this pre-trial decision, it was clear that the SDEA was likely to be found unconstitutional based on the standards Bullock put forth. In 1992, in response to Bullock's findings, the Kansas Legislature adopted the School District Financing and Quality Performance Act ("SDFQPA"), which was then found unconstitutional in 1993.

In *Unified School District Number 229 v. State*, 256 Kan. 232, 885 P.2d 1170 (1994), the Supreme Court finally reached the merits of a school finance case. This appeal stemmed from the finding that the SDFQPA was unconstitutional. In *U.S.D. 229*, the Supreme Court upheld the SDFQPA as constitutional. In doing so, it seemed, for the first time, the Legislature had created a school finance system that withstood judicial scrutiny. However, the decision gave heavy weight to the legislature's determination of what was "suitable" financing and set the stage for *Montoy I*.

The *Montoy* cases began in 1999, five years after previous challenges to the Legislature's school funding scheme. Plaintiffs filed a lawsuit against the State of Kansas, the Governor, the members of the Kansas State Board of Education, and the Commissioner of the Kansas State Department of Education alleging (1) a violation of Art. VI, § 6 of the Kansas Constitution; (2) a violation of equal rights protection under the Kansas Constitution; and (3) a violation of the substantive due process rights under the Kansas Constitution. In 2001, at the district court level, Judge Terry Bullock dismissed the challenge just prior to trial, finding that he was bound the *U.S.D. 229* holding that the legislature has the ultimate responsibility for determining what is suitable financing. *Montoy v. State of Kansas*, 275 Kan. 145, 62 P.3d 228 (2003) (*Montoy I*) (discussing *Unified School District No. 229 v. State*, 256 Kan. 232, 885 P.2d 1170 (1994)).

On appeal to the Supreme Court, Plaintiffs argued that the district court erred in dismissing their claims. In what ultimately became the first in a series of decisions in the *Montoy* cases, the Court found genuine issues of material fact to exist, and reversed and remanded the district court's decision. *Montoy I*, 275 Kan. at 145. Pivotal in that decision was the Court's finding that "the issue of suitability is not stagnant." *Id.* at 153 (citing *Unified School District No. 229*, 256 Kan. at 258).

On remand following a bench trial, the district court held that the SDFQPA, K.S.A. § 72-6405, "stands in blatant violation of Article VI of the Kansas Constitution." *Montoy v. State of Kansas*, No. 99-C-1738, 2003 WL 22902963, at *42 (Kan. Dist. Ct. Shawnee County, Dec. 2, 2003). This time, it was Defendants who appealed to the Supreme Court, and in *Montoy II*, the Supreme Court held that the public school financing formula adopted by the Legislature had "failed to meet its [Art. VI, § 6] burden." *Montoy II*, 278 Kan. at 771. In that decision, the Court mandated increased funding for Kansas schools; found that the then-current financing formula increased disparities in funding; and the formula was not based on any cost analysis but was

instead based on “political and other factors not relevant to education.” *Montoy II*, 278 Kan. at 775. The Court withheld its formal opinion pending corrective action by the Legislature, and stated that “[w]e have in this brief opinion endeavored to identify problem areas in the present formula as well as legislative changes in the immediate past that have contributed to the present funding deficiencies. We have done so in order that the legislature take steps it deems necessary to fulfill its constitutional responsibility.” *Id.* at 776.

In response to *Montoy II*, the Legislature enacted House Bill 2247, and on June 3, 2005, the Supreme Court issued its Opinion (supplemental to *Montoy II*) on the constitutionality of that bill. *Montoy v. State of Kansas*, 279 Kan. 817, 819, 112 P.3d 923 (*Montoy IV*). The Court held the funding scheme was not in compliance with the *Montoy II* decision because it did not appropriately consider (1) actual costs of providing adequate education and (2) the equity of the distribution of that funding. *Montoy IV*, 279 Kan. at 818. Thus, the Court ordered that the Legislature implement a minimum increase of \$285 million above the 2004-05 school year funding level for the 2005-06 school year. This amount was roughly one-third of the total increased funding needed to reach adequacy, as shown by the state’s own cost study. Thereafter, the Legislature again enacted changes to the school finance formula through Senate Bill 549.

The funding formula addressed by this Court three and one-half years ago in *Montoy V* provided \$755.6 million in additional funding to schools. This Court found that the legislative process was in substantial compliance with its previous orders. *Montoy V*, 282 Kan. at 24. The Court, however, specifically did not hold that the new funding scheme was constitutional. The Court considered two options available to it in 2006, and stated:

We recognize that we could remand this case to the district court to allow the plaintiffs to amend their pleading to challenge the new funding formula. However, we decline to do so, electing instead to end this litigation. We do so for two reasons.

First, we note the point made by the Chief Justice of the Ohio Supreme Court in *DeRolph v. State*: “A review of sixteen other state Supreme Court decisions that have declared their systems for funding public education unconstitutional reveals that a majority of those decisions remanded the case to a trial court. However, it is those states that have had the most difficulty producing a final plan that met the Supreme Court’s opinion of constitutionality. . . .”

Second, S.B. 549 is a 3-year plan; thus, it may take some time before the full financial impact of this new legislation is known, a factor which would be important in any consideration of whether it provides constitutionally suitable funding. Indeed, as the Board’s attorney pointed out at oral argument, we do not even know at this time how districts used the funding increase provided by the 2005 amendments.

Montoy V, 282 Kan. at 34-35. The Court dismissed the case without considering the amended legislation.

One point is clear from the historical background leading to this case; the legislature has been unable to meet its burden under the Constitution for almost as long as the burden has existed. When the legislature does adopt new legislation, the Kansas courts find themselves in a procedural and jurisdictional conundrum: the legislature's ability to adopt new legislation often creates a hardship on the courts, who are torn between retaining jurisdiction and analyzing the new statute or dismissing the case and allowing a new set of plaintiffs to challenge the new funding plan in the future. This pattern is not working. It is creating a situation in which the funding scheme only becomes worse. The Kansas court system needs to take a good look at the current situation; years of neglect have created an unsuitable funding scheme. Rather than allowing the legislature to simply adopt new legislation, and hope for the best, the courts need to retain jurisdiction until the Defendants have met their burdens.

b. Summary of Existing Problems

Defendants Have Specific Duties Under the Kansas Constitution and State and Federal Laws. The Kansas Constitution provides the Legislature with two specific duties related to education. First, it "shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law." Article VI, §1. Additionally, it "shall make suitable provision for finance of the educational interests of the state." Article VI, §6(b).

The Kansas Constitution imposes a general mandate that our educational system cannot be static or regressive, but must be one which "advance[s] to a better quality or state." *Montoy v. State of Kansas*, 278 Kan. 769, 773, 120 P.3d 306 (2005) (Montoy II). Two critical factors which must be taken into consideration before a school finance formula can be deemed constitutional are (1) actual costs of providing adequate education and (2) equity of distribution. *Montoy II*, 278 Kan. at 275; *Montoy v. State of Kansas*, 282 Kan. 9, 10, 138 P.3d 75 (2006) (Montoy V). Further, in order to be suitable financing, it must "meet the changing needs and conditions of our society." *Montoy v. State of Kansas*, No. 99-C-1738, at 23 (Kan. Dec. 2, 2003). This duty requires that the Legislature not improperly tie a child's education to "the wealth of the district in which the child resides." *See Caldwell*, Case No. 50616.

The Defendants also have specific duties under Kansas statutes. Specifically, the Defendants are currently in violation of three statutes:

- The Legislature has a duty to give education first priority in the budgeting process pursuant to K.S.A. 72-64c03.
- The Legislature has a duty to increase state aid to schools by not less than a percentage equal to the percentage increase in the Consumer Price Index (urban) during the preceding fiscal year pursuant to K.S.A. 72-64c04.

- The State Board of Education has the duty to certify payments and distribute capital outlay equalization payments to school districts pursuant to K.S.A. 72-8814(b).

Finally, the Defendants have a duty to educate students and comply with the No Child Left Behind Act of 2001, as amended (“NCLB”), and the Individuals with Disabilities Education Act, as amended (“IDEA”), including the Individuals with Disabilities Improvement Act of 2004 (“IDEIA”) (collectively, the “federal requirements”). It is the Legislature’s duty to ensure that the current funding level is high enough so that school districts can properly educate children to meet these federal requirements. Further, the standards of these federal requirements have increased. This has increased the costs of funding an adequate education. As such, the Legislature should be increasing the amount of money that goes into education, in order to meet the higher financial burden that the federal requirements impose.

Defendants Have Failed to Comply with Their Duties. Defendants have failed to comply with their duties under both the Kansas Constitution and statutes and have ignored the obligations imposed on them in the *Montoy* cases. Defendants have engaged in legislative enactments and budget allotments that failed to consider the (1) actual costs of providing adequate education and (2) equity of distribution. Accordingly, Plaintiffs are challenging the following actions by the Defendants as violations of Article VI of the Kansas Constitution (while this list is an inclusive list of actions taken by the Defendants in violation of the Kansas Constitution, as known by Plaintiffs at this point in time, this list is designed to properly put the Defendants on notice of the violation and is not meant to limit the scope of the litigation to only these actions):

- The Legislature adopted S.B. 549 knowing that it would create a budget deficit in 2009 and took no steps raise the revenue it knew it needed to cover the expenses. [See attached hereto as Exhibit B]. In fact, the Legislature reduced state revenue by cutting taxes and creating tax exemptions. [See attached hereto as Exhibit C]. These actions were in violation of Art. XI, § 4 which states: “[t]he legislature shall provide, at each regular session, for raising sufficient revenue to defray the current expenses of the state for two years.”
- The Legislature has failed to comply with K.S.A. 72-64c03 by failing to give education first priority in the budgeting process.
- The Legislature has failed to comply with K.S.A. 72-64c04 by failing to increase state aid to schools by not less than a percentage equal to the percentage increase in the Consumer Price Index (urban) during the preceding fiscal year.
- The enactment of S.B. 549 was unconstitutional because it did not adequately and equitably fund Kansas education.

- The enactment of S.B. 23 on February 12, 2009. S.B. 23 cut thirty-three dollars from the base state aid per pupil (lowering the base from \$4433 to \$4400), and reduced the funding for special education by one percent. [See attached hereto as Exhibit D]. This cut reduced school funding statewide in the amount of \$25,345,039 for fiscal year 2009.
- The March 31, 2009 enactment of H.B. 2354, which cut an *additional* \$33 from the base state aid per pupil (lowering it from \$4400 to \$4367), and cut an *additional* one percent from the special education budget. [See attached hereto as Exhibit E]. This cut reduced school funding statewide in the amount of \$27,009,474.
- The enactment of H.B. 2373 on May 7, 2009. It cut another \$87 from the base state aid per pupil (lowering it from \$4367 to \$4280), and purported to eliminate equalization aid for capital outlay. [See attached hereto as Exhibit F]. This cut reduced school funding statewide in the amount of \$54,630,111 for the cut to the base, and an additional \$22,338,825 for the loss of capital outlay equalization aid. The elimination of equalization for capital outlay, which does not affect wealthier districts, resulted in a \$22.3 million loss to poorer districts only. [See attached hereto as Exhibit G].
- Governor Mark Parkinson's approval of a budget allotment, which cut an *additional* \$39,327,580 from school funding on July 2, 2009. The budget allotment cut another \$62 from the base state aid per pupil, lowering it from \$4280 to \$4218. [See attached hereto as Exhibit H].
- Governor Mark Parkinson's approval of a second budget allotment on November 23, 2009, which cut another \$206 from the base state aid per pupil, lowering it from \$4218 to \$4012. [See attached hereto as Exhibit I]. It cut an *additional* \$134,355,363 from school funding.
- The State Board's failure to comply with its duties and certify capital outlay equalization aid payments pursuant to K.S.A. 72-8814 (b) has created an inequitable distribution of funds. We hereby demand the State Board comply with its duties and certify payments pursuant to K.S.A. 72-8814(b).
- Creating a situation in which there was no money to allocate to education by giving tax cuts, raising revenue, and consciously deciding not to take actions to raise more money to fund education.
- The BSAPP has not kept up with inflation and has not been increased based on requests and recommendations from the State Board and the 2010 Commission, the agency created by the Legislature to study and advise the Legislature on matters of school finance. [See attached hereto as Exhibit J].

- The current funding levels are not based on actual costs or estimated costs, and instead are based on, much like the legislation originally at issue in *Montoy*, a “political auction” (in which funding is agreed upon because it meets the level where political deals can be reached).
- The current legislation does not incorporate a cost-based budgeting system. In fact, the current system requires the State Board to reduce the BSAPP to match the amount of funding that is available rather than requiring the Legislature to raise the amount of money that it has deemed necessary to fund education.
- The Legislature has failed to increase school funding in order to meet the increased costs of educating children pursuant to the increased standards of the federal requirements. Sixty-three of the school buildings situated in the four plaintiff-districts did not make adequate yearly progress (“AYP”) under federal standards last year.

The actions represent the underlying, fundamental flaws in the school financing system that continue to exist despite the Legislature’s repeated attempts to alter the funding scheme. The underlying flaws include:

- A base state aid per pupil (“BSAPP”) that is inadequate to fund the required level of education for all students;
- At-risk weighting that is inadequate to fund the required level of education for at-risk students;
- Local Option Budgets (“LOBs”) that are no longer “local” and are required to be used for state mandated programs and requirements, but which are reliant upon the outcomes of local elections for adoption;
- LOBs which are not properly equalized to level the playing field between wealthy and poor districts ;
- Wealth disparities between the districts;
- Capital improvements funding (Bond and interest) provisions that are not properly equalized to to level the playing field between wealthy and poor districts;
- Capital outlay provisions that are not equalized at all for two years and then are not properly equalized to adequately fund education;
- Special education funding provisions that do not provide adequate funds to meet the required level of education for educating special education students and that pull funding away from general education students; and

- A school finance scheme that does not adequately fund education as shown by the state's own education cost studies. [See Augenblick and Myers (2002) and Legislative Post Audit Committee Cost Study Analyses (2006 as updated August 2008) attached hereto as Exhibit K].

These underlying flaws have created a situation in which there is not adequate funding to educate the following groups to the required standards:

- General education pupils;
- At-risk pupils;
- Special education pupils;
- Bilingual pupils; and
- Pupils from less-wealthy districts.

Defendants' Actions Have Created an Unconstitutional Scheme for Funding Education. In the usual circumstances, courts presume the constitutionality of statutes. *Mock*, at 489. However, "when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." *Unified School District No. 229 v. State*, 256 Kan. 232, 265, 885 P.2d 1170 (1994) (internal citations omitted). In terms of school financing, a line must be drawn somewhere – it is the duty of the legislature to determine what is "suitable" financing. *Id.* And "[u]nless the line drawn can be said to be 'very wide of any reasonable mark' it must be accepted on review." *Gorup v. Kansas Public Employees Retirement Sys*, 3 Kan. App. 2d 676 (1979) (internal citations omitted); *see also Unified School District No. 229*, 256 Kan. at 265 (internal citations omitted).

There are several reasons why the current funding scheme should not be entitled to a presumption of constitutionality. First, it is clear that "line drawn" by the Legislature is wide of a reasonable mark. The Kansas courts have clearly, through the *Montoy* cases, set out the requirements a school finance scheme must meet in order to be considered suitable. The Legislature's current funding scheme clearly does not meet those requirements; "it is very wide of any reasonable mark." Said another way, had the Legislature followed the mandates of the Constitution and *Montoy*, it could not have possibly arrived at the school funding scheme that currently exists. Therefore, plaintiffs should be entitled to a presumption that the status quo of school finance legislation is unconstitutional.

Similarly, the plaintiffs should be entitled to a presumption of unconstitutionality because the current situation is fundamentally similar to the unconstitutional legislation that was overturned in *Montoy III*. While the Supreme Court, in *Montoy V*, refused to determine whether the funding scheme at issue was constitutional, it refused, in part, because it could take years before the full financial impact of the legislation was known. The impact is apparent now; S.B.

549, with its three-year phase-in of additional funding, did not change the underlying flaws that existed when the *Montoy* suit was first filed. If S.B. 549 existed now as it did in *Montoy V*, it clearly would be unconstitutional based on its inability to comply with the mandates of the Supreme Court. Thus, it is clear that had the Supreme Court determined the constitutionality of S.B. 549, the legislation would have been overturned as unconstitutional.

Additionally, the Supreme Court dismissed the *Montoy* case because the legislature represented to the Court (and the children of Kansas) that the new three-year, phased-in funding scheme contained in S.B. 549 would remedy the constitutional deficiencies. The Court took them at their word and dismissed the case, without remand. The Legislature then waited two years and began cutting the promised funding back to levels that had clearly been shown to be inadequate in the *Montoy* trial. Since the state has chosen to renege on its representations to the Court concerning future levels of funding, the burden should be shifted to the State to show that such levels are indeed constitutional. This trial should be conducted as a continued “remedy phase” trial rather than forcing Plaintiffs to again prove that the prior school finance system (i.e. the system that existed prior to the enactment of S.B. 549) was unconstitutional to then be able to show that S.B. 549 did not fix the unconstitutionality.

Unfortunately, the current funding scheme has even more flaws than S.B. 549 did at its inception. S.B. 549, the Legislature’s cure-all to the unconstitutional funding scheme, was not even fully funded when the Legislature began cutting additional funds from education. The recent actions of Defendants have only compounded the constitutional flaws that existed in the school funding scheme at the time of *Montoy V*. Defendants have further retreated from their duties under the Constitution, state statutes, and the mandates of *Montoy*. The legislation at issue is so clearly unconstitutional, that it should not be entitled to a presumption of constitutionality.

c. Result of Defendants’ Breach

- Defendants’ cuts have reduced the funding levels that existed in 2008-09 by \$303,006,392. While the *Montoy* reforms have been cited as adding an estimated \$755.6 million to school funding, *Montoy V*, 282 Kan. at 19, the numerous cuts enacted thus far have reduced the funding provided by the *Montoy* reforms by 40%. [Exhibit L].
- Kansas students have failed to perform at an acceptable level on state wide assessments. For the 2008-2009 school year, Kansas did not meet the AYP requirements of the National Assessment of Educational Progress, which Kansas is required to participate in under NCLB. [See Kansas State Department of Education Report Card 2008-2009, attached hereto as Exhibit M].
 - While only 9.6% of white students did not test at a level of proficiency in reading and 12.3% did not test at a level of proficiency in math, more than 30% of the following students did not test at a level of basic proficiency in the 2008-2009 school year:

- Students with Disabilities (30.6% reading, 32.8% math);
 - English Language Learners (34.5% reading, 31.1% math); and
 - African-Americans (31.8% reading, 36.2% math).
- For the 2007-2008 school year, Kansas did not meet the AYP requirements of the National Assessment of Educational Progress, which Kansas is required to participate in under NCLB. [See Kansas State Department of Education Report Card 2007-2008, attached hereto as Exhibit N].
 - While only 11% of white students did not test at a level of proficiency in reading and 13.6% did not test at a level of proficiency in math, more than 30% of the following students did not test at a level of basic proficiency in the 2007-2008 school year:
 - Students with Disabilities (33.4% reading, 35.1% math);
 - English Language Learners (36.5% reading, 31.7% math);
 - African-Americans (32.9% reading, 38.7% math); and
 - Hispanics (31% reading).
 - Kansas is failing to meet its own AYP goals and federal standards under NCLB: sixty-three school buildings within the four plaintiff-districts did not make AYP.
 - Kansas schools do not have enough money to fund the education that state and federal laws require them to provide.
 - Wichita has considered the following drastic measures to meet budget: close its alternative schools; utilize a four-day school week; reduce its staff by eliminating paraprofessionals, custodial, security, and maintenance employees; and eliminate athletics, fine arts, and after school programs.
 - Hutchinson has considered: increase its class sizes; reducing library services and counseling services; eliminating FACS, music, art, all-day kindergarten, day care center, and school resource services; reducing technology; reducing staff, including custodial, clerical, and maintenance positions and nurses; and reducing student activities.
 - Kansas City has considered: eliminating music, drama, athletics, and student activities; utilizing a four-day school week; reducing maintenance and custodial staff; and limiting costs of transportation.

- Dodge City has considered: eliminating summer school, professional development activities, all-day kindergarten, athletics, and student activities; increasing class sizes; and limiting its maintenance staff.
- The failures of the Legislature have negatively affected school children in Kansas.

(3) A STATEMENT OF THE AMOUNT OF MONETARY DAMAGES AND SPECIFIC RELIEF REQUESTED:

The Plaintiffs request the following relief:

- A judgment declaring the current funding formula to be in violation of the Kansas Constitution;
- A permanent injunction prohibiting Defendants from administering, enforcing, funding, or otherwise implementing the unconstitutional provisions of the current funding formula;
- The reasonable attorneys' fees incurred in litigating this action;
- The costs of this action; and
- Such other just and equitable relief to which the Plaintiffs are entitled.

This Notice of Claims is sent pursuant to K.S.A. 72-64b02(a). Plaintiffs reserve their right to pursue any other claims they have against Defendants in this matter. Please do not hesitate to contact Plaintiffs' attorneys if you have any questions.

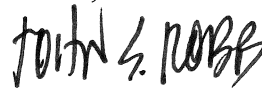
Sincerely,

Kutak Rock LLP



Alan L. Rupe

Somers, Robb & Robb



John S. Robb

Attachments