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COPY

IN THE THIRD JUDICIAL DISTRICT
DISTRICT COURT OF SHAWNEE COUNTY
CIVIL DEPARTMENT

LUKE GANNON, *et al*,

Plaintiffs,

v.

THE STATE OF KANSAS,

Defendant.

Case No. 10 C 001569

Pursuant to Chapter 60

ANSWER TO AMENDED PETITION

Defendant, The State of Kansas ("State"), for its answer to the Amended Petition, states:

First Defense

1. Unless specifically admitted or otherwise responded to below, all allegations in the Amended Petition are denied.
2. The State currently lacks sufficient knowledge or information to admit or deny the allegations contained in paragraphs 1 – 38, 58c and 58d of the Amended Petition.
3. The allegations in paragraphs 39, 46 and 79 of the Amended Petition are admitted.
4. The allegations in paragraphs 52, 53, second sentence of 55, 58b, 58e, 59, 60, 62, 63, 64, and all subparts of 64 subparts except 64g, 65 - 69 and all subparts of 69, 74-78, 80, 81.

and all subparts of 81, 83 - 85, 87 - 91, 94, 96 - 97, 98 - 102, 104 - 100 (including that the State denies its school finance laws are subject to strict scrutiny), 108 - 109, 112, 114 are denied.

5. The allegations in paragraphs 52, the first sentence of 55, 56, 57d, 82 and 95 contain pure legal conclusions to which responsive pleading is not required.

6. Answering paragraph 40, it is admitted Kansas district courts are courts of general jurisdiction subject, in this case, to the provisions of K.S.A. 72-64b03. However, the State denies that the Court has subject matter jurisdiction over all the claims plaintiffs have attempted to state.

7. As phrased, plaintiffs' allegations in paragraph 41 must be denied. However, venue has been determined pursuant to K.S.A. 72-64b04.

8. Answering paragraph 42, plaintiffs have attempted to comply with K.S.A. 72-64b02(a), but failed by not providing a statement of monetary damages or specific relief requested and have requested different relief in the Petition and then the Amended Petition.

9. Answering paragraphs 43 - 45 and 47, most of the allegations in paragraphs 43-45 are denied, except that it is admitted aspects of the State's financing of public education have been the subject of litigation, on and off, since the early 1970s. Further, while reasonable persons can disagree about what is necessary to make suitable provision for funding of Kansas public education - maybe even justifying lawsuits, it was reckless for plaintiffs to have suggested that the Kansas legislature, much less the entire memberships all Kansas legislatures since 1972, systematically sought to evade the State's constitutional obligations.

10. Answering paragraph 48, the statement is incomplete and potentially misleading. Base State Aid Per Pupil (BSAPP) is used to calculate the state aid entitlements of local school districts. The School District Financed and Quality Performance Act (SDFQA) provides that if

appropriations in any school year for general state aid to school districts are not sufficient to pay districts' computed entitlements, the State Board of Education will reduce the BSAPP to the amount necessary to match general state aid entitlements of districts with the amount of general state aid then available.

11. Answering paragraph 49, it is admitted the Legislature set the BSAPP for fiscal year 2009-10 at \$4,492 effective May 29, 2008, subject to the provisions of K.S.A. 72-6410(b)(2). The Legislature's actions, however, do not imply the ultimately lower BSAPP for fiscal year 2009-10 was unconstitutional.

12. Answering paragraph 50 and its subparts, it is admitted appropriations in 2009 and the allotments process resulted in a BSAPP for fiscal year 2009-10 of \$4012. It is also admitted that appropriations and the allotment process in 2010 and 2011 reduced the State's general and supplemental aid, resulting in BSAPP for fiscal years 2010-11 of \$3937 and 2011-12 of \$3780. It is further admitted the appropriation for K.S.A. 72-8814's capital outlay aid for the fiscal year 2009-10 was removed by the allotment process or, in any event, was re-appropriated for the fiscal year 2010-11 and no appropriations were made for capital outlay aid for fiscal years 2010-11 and 2011-12. The allegations concerning certain proposed legislation are denied because none of the described bills became law. Allegations inconsistent with these admissions and statements, in paragraph 50 and its subparts are denied, including allegations that there has been or is an inequitable distribution of funding.

13. The general proposition, as expressed in paragraph 57, is denied. In particular, the State denies that it is failing to make the suitable provision for finance of K-12 education required by Kansas Constitution, Article 6.

14. It is admitted that a January 2006 Legislative Post Audit Study was conducted and its data was later extrapolated by the Legislative Division of Post Audit in 2008, who incorporated the 2006 study's assumptions and methodology for the extrapolation, to provide an estimate of funding necessary for the fiscal years through 2013-14. Other allegations in paragraph 57a about the study are denied.

15. The allegations in subparagraph 57b are denied, except that it is admitted, on July 15, 2009, the Kansas State Board of Education recommended state school funding for the fiscal year 2010-11 calculated with the BSAPP at \$4492 and other assumptions. The board's minutes report this would cost \$281,780,223 in general state, supplemental state, special education and other aid above then current 2009-10 K-12 appropriations.

16. The allegations in subparagraph 57c are denied, except that it is admitted, on July 13, 2010, the Kansas State Board of Education recommended state school funding for the fiscal year 2011-12. The board's minutes report this would cost \$471,761,017 in general state, supplemental state, special education and other aid above current 2010-11 K-12 appropriations.

17. The allegations in paragraph 58 are denied because the State presently lacks sufficient knowledge or information to confirm whether the "cost of education has increase[d]" because of inflation. Although inflation has doubtlessly increased the costs of some goods and services, the State denies that inflation makes or made its provisions for funding of K-12 public education unsuitable. Finally, it is admitted the BSAPP did not increase in the fiscal years 2009/10 and 2010/11.

18. Answering paragraph 61, it is admitted that the Legislature created the 2010 Commission for the purposes stated in K.S.A. 46-3401. The State believes the Commission recommended an increase in the BSAPP for the fiscal year 2009-10. The State is not aware of

any written requests or recommendations concerning school funding from the Commission concerning the funding of public education for the 2010/11 fiscal year, except in the Commission's report to the 2009 Legislature the majority of the Commission stated:

One recurring recommendation has been that multi-year funding as provided in the School District Finance and Quality Performance Act (the Act) has done a great deal to ensure the ongoing success of Kansas schools.

The Act mandated that state aid increases be based upon the Consumer Price Index - Urban. The law mandating this expires on June 30, 2010. The Commission recommends that the Legislature amend this law by extending it for three additional years which would require the total amount of state aid, except state aid for special education and related services, be increased by not less than a percentage equal to the percentage increase in the Consumer Price Index - Urban during the preceding fiscal year.

Allegations inconsistent with these statements are denied.

19. Answering paragraph 64g, appropriation for K.S.A. 72-8814's capital outlay aid for the fiscal year 2009-10 was removed by the allotment process or, in any event, was reappropriated for the fiscal year 2010-11. In 2010, the statute was repealed and reenacted with amended language stating "no transfers shall be made from the state general fund to the school district capital outlay state aid fund during the fiscal years ending June 30, 2011, or June 30, 2012." 2010 House Substitute of S.B. 572, § 144. However, it is denied that capital outlay aid was "underfunded."

20. Answering paragraphs 70 & 71, including their subparts, it is admitted that Plaintiff School Districts did not achieve AYP, as defined by under the NCLB act, for the 2007-08, 2008-09 and 2009-10 school years; but it is denied that Kansas is failing to make the suitable provision for finance of K-12 education required by Kansas Constitution, Article 6. In 2011-12, more than 50% of the state's budget was allocated to K-12 education. From the 2007-08 through the 2010-12 school years, billions of dollars have been spend for Kansas K-12 education. More

importantly, the most recent data shows, in 2011, the percent of students at standard or above in reading, math, and science increased; student achievement for subgroups continued to increase; and nearly all classes were taught by highly-qualified teachers. Further, student achievement in math, reading, and science continued to increase for the 11th year in a row.

21. Answering paragraph 73, it is admitted plaintiffs have attempted to assert claims as representatives of a class, but it is denied that class certification is proper and denied that a putative class has been properly identified.

22. Answering paragraph 86, it is admitted that on September 22, 2010 and after the completion of both the 2009-10 school year and the State's 2009-10 fiscal year, the State Board of Education delivered a "certification amount for the 2009-10 school year" by correspondence authored by the Deputy Commissioner of Education [Kansas State Department of Education]. It is denied that the "certification" was required by K.S.A. 72-8814(b) and denied that the State Board of Education's action constituted the certification of funds contemplated by K.S.A. 72-8814(b).

23. Answering paragraph 105, K.S.A. 72-64c03 (2005) provides: "The appropriation of moneys necessary to pay general state aid and supplemental general state aid under the school district finance and quality performance act and state aid for the provision of special education and related services under the special education for exceptional children act shall be given first priority in the legislative budgeting process and shall be paid first from existing state revenues."

Second Defense

24. This court lacks subject matter jurisdiction of all or some of plaintiffs' claims. In particular, plaintiffs have not alleged a justiciable claim or controversy because they have either

failed to show that they have standing as to all or part of their "counts," or that they have presented issues that are ripe for decision, not moot or presenting a political question.

Third Defense

26. Plaintiffs have failed to state a claim upon which relief can be granted, in whole or in part.

Fourth Defense

27. Immunity under the Eleventh Amendment of the United States Constitution bars the relief claimed for the alleged violation of the United States Constitution.

Fifth Defense

28. The State is immune from the alleged liability arising from its discretionary actions and decisions under the doctrine of governmental immunity.

Sixth Defense

29. The doctrine of laches bars all or part of plaintiffs' claims in Counts Two and Three of the Amended Petition. Any funds appropriated for capital outlay expense were re-appropriated for the State's fiscal years 2010-11 and 2011-12.


Seventh Defense

30. Plaintiff failed to comply with K.S. A. 72- 64b02(a) by not providing a statement of monetary damages or specific relief requested and requesting different relief in the Amended Petition.

THEREFORE, the State of Kansas requests the Court enter judgment in its favor, awards its costs - including its attorney fees where appropriate - and enter such other relief as the Court finds proper.

Respectfully submitted,

HITE, FANNING & HONEYMAN L.L.P.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of December, 2011, a true and correct copy of the above and foregoing **ANSWER TO AMENDED PETITION** was mailed, postage prepaid, and delivered by electronic mail to:

Mr. Alan L. Rupe
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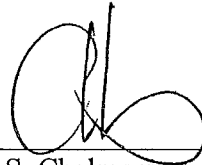
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And was mailed, postage prepaid, to:

The Honorable Franklin R. Theis
Shawnee County District Court
200 S.E. 7th Street, Room 324
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The Honorable Robert J. Fleming
Labette County District Court
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Parsons, KS 67357

The Honorable Jack L. Burr
Sherman District Court
813 Broadway, Room 201
Goodland, KS 67735

A handwritten signature in black ink, appearing to read 'A. S. Chalmers', is written over a horizontal line.

Arthur S. Chalmers