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June 2, 2014

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**VIA E-MAIL**

Honorable Franklin R. Theis  
Shawnee County District Court  
200 S.E. 7th Street, Room 324  
Topeka, KS 66603

Honorable Robert J. Fleming  
Labette County District Court  
201 South Central Street  
Parsons, KS 67357

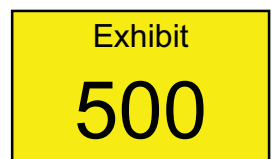
Honorable Jack L. Burr  
Sherman County District Court  
813 Broadway, Room 201  
Goodland, KS 67735

Re: *Gannon et al. v. State of Kansas*  
Case No.: 10-C-1569

Dear Honorable Judges,

With all due respect for the State and its counsel, Plaintiffs take issue with the letter submitted to this Panel on May 29, 2014.

In the May 29 letter, the State instructs this Panel how it must move forward, and in doing so, takes great liberties with the language of the Supreme Court's mandate. For instance, the State has stretched the Supreme Court's language in its opinion into a mandate to "dismiss the equity claim by July 1, 2014." But, that is not what the Court ordered. Instead, the Kansas Supreme Court ordered that *the Legislature* and not this Panel must take certain actions by July 1. *See Gannon v. State*, 298 Kan. 1107, 319 P.3d 1196, 1252 (2014). And, if the Legislature did truly comply with the Court's mandate as it contends, then "the panel *need not take any additional action* on this issue." *Id.* (emphasis added). If the Panel is instructed not to take further action, there is simply no requirement that it dismiss the equity claim by July 1, 2014. Plaintiffs do not understand the urgency behind the State's request that the equity claims be dismissed.



Frankly, and for good reason, Plaintiffs do not feel comfortable dismissing the equity claim from this lawsuit. And, there seems to be no good reason, at this time, to do so. Again, the Kansas Supreme Court did not require it, and instead concluded that if the Legislature fulfilled their obligations, no additional action was required.

On the other hand, there are significant motivations for the Panel to retain jurisdiction over the equity claims, especially in light of the State's forceful requests that this Panel dismiss the equity claim "as soon as possible." As this Panel recognized, the State has historically had no qualms with making representations to the courts in order to seek dismissal of a school funding case and then defaulting on those commitments. *See e.g. Gannon Decision*, 116 ("Nevertheless, the bottom line is that any funding short of a BSAPP of \$4433 through FY2009 was not in compliance with the commitment made in 2006 that resulted in dismissal of this suit's predecessor."); *Gannon Decision*, 117 ("In FY2009, the BSAPP was at \$4400, which, due to a cut, was \$33 below the commitment represented to the *Montoy* Court."). Such a result could be avoided here by following the Court's mandate and taking no additional action.

Additionally, short of any intentional acts by the Legislature to revoke the equalization funding provided in HB 2506, there are additional reasons for the Panel not to dismiss the equity claims. As Plaintiffs pointed out in their Response to Show Cause Order (dated 5-16-14), HB 2506 only funds an estimate of the LOB equalization money, calculated based on historical LOB usage by school districts. None of the parties know at this time whether HB 2506 truly provides full funding of LOB equalization. If it does not, Plaintiffs should have the opportunity to address those deficiencies. Moreover, because HB 2506 is not a certain bill, and may face one or more constitutional challenges that could disable the legislation as a whole, there is a possibility that HB 2506 will be deemed unconstitutionally void and the school districts will receive none of the equalization funding. In light of these potential issues that could arise later, this Panel should not dismiss the equity claims and should instead retain jurisdiction over them.

Plaintiffs are beginning to fear that the State is trying to continue an oft-repeated pattern in school finance cases. As Plaintiffs have repeatedly pointed out (originally in their June 17, 2010 Notice of Claims and most recently in their appellate briefing):

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.

Plaintiffs' Notice of Claims, Tr. Ex. 363, at 000014. This unfortunate pattern will continue if the Panel dismisses the equity claims now.


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If the State is correct, and equalization aid has now been fully funded, the proper course of action for this Panel, with regard to the equity claims, is to follow the mandate of the Kansas Supreme Court, and take no additional action. Nonetheless, if this Panel does choose to dismiss the equity claim from the lawsuit, which it is not required to do, Plaintiffs respectfully request that this Panel do so *without* prejudice.

Finally, it is Plaintiffs' position, consistent with their Motion for Judgment on the Record, that the Panel currently has enough information to determine that the current school funding system violates Article 6, Section 6 of the Kansas Constitution. In response, the State demands that the Panel "require the plaintiffs to make an election no later than June 11 whether they will rest their case on the existing record or not." Yet, this is not what the Kansas Supreme Court contemplated. Rather, the Court put this decision squarely in the hands of the Panel. It is the Panel's decision – and not the Plaintiffs' or the State's – whether to rely on the evidence presently in the record or to re-open for additional evidence. *Gannon*, 319 P.3d at 1252. Plaintiffs urge this Panel to determine that the current school funding system is unconstitutional, as can be readily ascertained from the extensive evidence already presented to this Panel. However, if this Panel determines that additional evidence is necessary, a decision which is within the Panel's sound discretion, Plaintiffs should have the same opportunities presented to the State to provide the Panel with additional information. Any other result would be patently prejudicial to Plaintiffs.

Respectfully submitted,

Kutak Rock LLP



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cc: Counsel for the State  
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