

IN THE SUPREME COURT OF THE STATE OF KANSAS

LUKE GANNON, *et al.*,

Plaintiffs/Appellees,

v.

THE STATE OF KANSAS, *et al.*,

Defendants/Appellants.

Case No. 15-113,267-S

**MOTION TO STRIKE APPENDIX B TO PLAINTIFFS' BRIEF OR, IN THE  
ALTERNATIVE, TO CONSIDER THE APPENDIX  
ATTACHED TO THIS MOTION**

The State of Kansas hereby moves to strike Appendix B to Plaintiffs' Response Brief filed April 25, 2016, in particular the chart titled "Loss in LOB Equalization Due to Change in Methods," which is not a part of the record, was never presented to the Legislature, and is inaccurate in important respects. In the alternative, the State asks that the Court consider the attached Appendix, which contains a non-partisan, objective analysis of the very same data, and uses the same chart format, the Plaintiffs utilized. The chart in the State's Appendix, however, was not prepared by a party to the litigation, but by the non-partisan Legislative Research Department. That entity's analysis conclusively demonstrates that Plaintiffs' chart omits material factors, including the statutory cap on LOB and the equalizing effect of the "hold harmless" aid under HB 2655, and that those omissions render the Plaintiffs' chart inaccurate and, at best, misleading.

Plaintiffs' advocacy, presented as an appendix to their brief, should not be viewed or treated as competent evidence for this Court to consider. Plaintiffs' chart is not part of the record in this case, nor was it ever presented to the Legislature during consideration of HB 2655. In *Montoy v. State*, 282 Kan. 9, 21, 138 P.3d 755 (2006) (finding the Legislature substantially

complied with the Court's remedial orders), the Court limited its review of new legislation to evidence in the record and the legislative history of the new bill. Consideration of new "evidence" from Plaintiffs flaunts the approach of the *Montoy* Court and puts this Court in an untenable position of having a never-ending, never-closed, never-final record in this litigation because Plaintiffs can always append new material to their briefs.

This Court's February 11, 2016 Opinion urged the Legislature to "show[] its work" to demonstrate how any school finance cure satisfies the equity requirement of Article 6 of the Kansas Constitution. Slip op. at 74. In good faith, the Legislature went to extraordinary lengths to do so. Plaintiffs had the opportunity to present their views and arguments to the Legislature (in fact, two of the Plaintiff Districts testified in opposition to HB 2655) but did not present anything resembling the chart now offered in Appendix B. Instead, the Districts now ask this Court to act as a super-legislature to accept and weigh their new "evidence" when they denied the Kansas Legislature itself such an opportunity. Plaintiffs' new chart is wholly untested by either judicial or legislative process.

The State also objects to Plaintiffs' chart because it is inaccurate and misleading in important respects. Professional staff from the Office of Revisor of Statutes and the Legislative Research Department have reviewed the chart and identified three major problems with its accuracy: (1) the chart completely omits the hold harmless funds, which have a significant equalizing effect that materially changes the results and graphics on the chart, (2) the chart totally omits the extraordinary needs fund and its equalizing impact if distributed to the poorest districts, information that also materially changes the results and graphics on the chart, and (3) the chart utterly ignores the LOB cap, which also has an equalizing effect across the spectrum, and certainly at the higher end, again distorting the results shown and the graphics of the chart.

Eddie Penner, a Research Analyst with the Legislative Research Department, prepared a revised version of the chart to correct these omissions. The corrected chart, included in the Appendix to this Motion, demonstrates that HB 2655 allows districts to obtain reasonably equal access to funds through similar tax effort. In particular, just by comparing the blue and green lines on the chart in the Appendix the Court can see the actual equalization effects of HB 2655 in comparison to the old LOB formula that Plaintiffs continue to seek.

In summary, the State objects to the chart in Plaintiffs' Appendix B for both procedural (the chart is not "evidence") and substantive (the chart is inaccurate) reasons. Together, these reasons demonstrate why this Court should strike Appendix B. In the alternative, and on the theory that it is hard to "unring the bell," the State asks that the Court consider the attached Appendix, which clearly identifies the significant flaws in Plaintiffs' chart and accurately demonstrates the situation.

For these reasons, the State respectfully requests that this Court grant its motion to strike Appendix B to Plaintiffs' Response Brief or, in the alternative, consider the attached Appendix.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 5th day of May 2016, the above motion was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants, and copies were electronically mailed to:

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# **APPENDIX**

**AFFIDAVIT**

STATE OF KANSAS            )  
  )        ss:  
COUNTY OF SHAWNEE    )

EDDIE PENNER, after being duly sworn upon his oath, states as follows:

1. I am a research analyst, employed by the Kansas Legislative Research Department (KLRD). I have provided analysis on education and school finance legislation and policy for KLRD since 2014. KLRD provides nonpartisan, objective research and fiscal analysis for the Kansas Legislature.

2. On April 26, 2016, I met with staff from the Attorney General's Office, along with staff from the Revisor's Office and Legislative Counsel, to answer questions regarding HB 2655.

3. During the meeting, it was observed that the chart titled "Loss in LOB Equalization Due to Change in Methods" in Appendix B of the Plaintiffs' recently filed Response Brief in *Gannon v. State*, No. 113,267 did not include the following considerations:

*First*, the effects of the approximately \$62 million in hold harmless funding that is a part of HB 2655.

*Second*, the effects of the approximately \$15 million Extraordinary Need Funds, if the Kansas State Board of Education applies the funding so as to provide reasonably equal access to substantially similar educational opportunity through similar tax effort.

*Third*, the effects of the local option budget cap.

4. Following the meeting, I received a request from the Chairmen of the House Appropriations Committee and the Senate Ways and Means Committee to create a chart using Plaintiffs' 20 mill metric that includes the considerations identified above.

5. The chart I produced is attached as Exhibit 1 to this Affidavit. The chart includes the following additional data, which was not included in Plaintiffs' chart:

(a) The per pupil dollars of Equalization State Aid (Hold Harmless) for each school district.

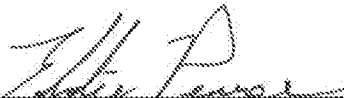
(b) The per pupil dollars of Extraordinary Need Funds, if the Kansas State Board of Education applies the approximately \$15 million of available funding so as to provide the poorest 20 percent of school districts with the entirety of the funding, which would amount to the amount of money generated by approximately 2.795 mills in each of those school districts.

(c) The effects of a local option budget cap at 33 percent, such that each school district's total per pupil dollar amount in the graph is the lower of: (1) the per pupil dollar amount allowed by a 33 percent local option budget cap or (2) the per pupil dollar amount provided by the sum of a 20 mill levy in the school district, any supplemental general state aid the school district would be entitled to receive, any Hold Harmless funds a school district would be entitled to receive, and any Extraordinary Need Funds that a school district would be entitled to receive in the scenario described above in (b).

6. All data used in this analysis is available in the following Kansas State Department of Education Spreadsheets: SF16-116, SF16-117, SF16-126, SF16-133, and FY 2016 Legal Max, which were available to the Legislature during the 2016 session.



**FURTHER AFFIANT SAITH NAUGHT.**

  
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Eddie Penner  
Research Analyst

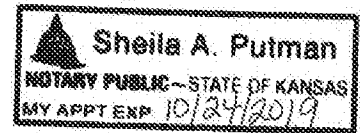
STATE OF KANSAS            )  
  )  
  )        ss:  
COUNTY OF SHAWNEE    )

**BE IT REMEMBERED**, that on this 4 day of May 2016, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came EDDIE PENNER, who is personally known to me as the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

**SUBSCRIBED AND SWORN TO** before me, a Notary Public, in the state and county aforesaid, on this 4 day of May 2016.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Appointment Expires: October 24, 2019



### LOB Equalization Comparing Two Methods

