

IN THE SUPREME COURT OF THE STATE OF KANSAS

CASE NO. 113,267

LUKE GANNON,
By his next friends and guardians, *et al.*,

Plaintiffs/Appellees,

County Appealed From: Shawnee

v.

District Court Case No.: 10-C-1569

STATE OF KANSAS, *et al.*

Defendants/Appellants.

RESPONSE TO STATE'S JANUARY 25, 2017 RULE 6.09 LETTER

With a two-page letter, the State seeks to reverse all previous school finance decisions, and to throw aside the Kansas Codes of Civil and Appellate Procedure. It relies solely on the U.S. Department of Education's "Executive Summary," not the "persuasive or controlling authority" Rule 6.09 requires. This Court should disregard the Executive Summary and the State's arguments that money does not matter.

The Summary was never subjected to the fact-finding process of litigation. On appeal, there has been no opportunity to examine the validity of the Summary, its assumptions, or its data. Had it been available at trial, it would have likely been excluded. Even assuming the State found a proper witness to introduce it, K.S.A. 60-419 (requiring personal knowledge); 60-460 (hearsay inadmissible), the Summary's findings are irrelevant. The Summary addresses only narrowly-defined questions regarding the implementation of SIG-funded intervention models with multiple cautions about its limitations. *See* ES-6 (demographics "not representative of schools nationwide"), ES-14 ("our impact estimates only apply to schools near the SIG eligibility cutoff..."). Plaintiffs are not seeking to implement SIG-funded intervention models or asking the State to "dump" "non-targeted" funds into schools. Any marginally relevant information in the Summary would be outweighed by its potential prejudice. *See State v. Leitner*, 272 Kan. 398, 415 (2001) (court may exclude evidence if risk of unfair prejudice outweighs probative value); *Gentile v. Cty. of Suffolk*, 129 F.R.D. 435, 461 (E.D.N.Y.1990) (discussing prejudices caused by government reports).

Even if the Summary were admissible or its conclusions relevant, it does not support the State's arguments. Unrebutted, substantial, competent evidence demonstrates that reduced funding to education negatively impacts student achievement. Pls' Supplemental Brief, 8-12-16, pp.45-47. There is no "highly debatable" issue in Kansas as to whether money makes a difference. *Money matters*. This conclusion cannot be ignored because the State plucks data from the Summary and vastly overstates its meaning.

With the proper funding, educators can implement the strategies necessary to provide Kansas schoolchildren the education the Constitution promises them. Plaintiffs are entitled to the relief that they seek in this appeal; the Executive Summary does not change that.

Dated this 31st day of January, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2017, I electronically served the foregoing to:

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