

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

RESPONSE TO MOTION TO STRIKE

The Districts' "Motion to Strike" should be rejected. The challenged statements in Section II.A of the State's Response Brief accurately reflect the official legislative minutes of the Senate Select Committee on Education Finance and the officially transcribed testimony of Commissioner Randy Watson, all of which is contained in the SB 19 legislative history.¹ Furthermore, even if there is a discrepancy between the precise wording of the official legislative minutes and the unofficial transcript the Districts have prepared of the May 22, 2017 testimony, any such discrepancy does not alter or undermine the State's fundamental point that the State Board of Education did not derive its almost \$900 million budget request from an assessment of the costs necessary to achieve the *Rose* standards.

¹ The Legislature, through its own counsel, may submit a filing regarding the official legislative minutes. The Attorney General's office had no role in preparing or approving the minutes of Legislature, nor does any potential discrepancy or error in the minutes affect the fundamental point the State is making about the Board's budget request.

The video of the State Board of Education’s July 12, 2016, meeting—whether viewed in its entirety or just the portion the State invited and now urges this Court to review—conclusively demonstrates that the Board’s funding recommendation was wholly derived from the panel’s recommended BSAPP prior to this Court’s ruling in *Gannon IV*. At the beginning of a roughly half-hour discussion on the recommended base,² a Board member stated: “I am interested in taking leadership, and saying we need to know what it will cost to educate kids. *And I don’t know the answer to that, by the way.* And whatever it is we need to ask for it.” Exhibit C to Districts’ Motion to Strike at 14:4-8 (emphasis added). Deputy Education Commissioner Dale Dennis responded: “Mr. Chairman, the District Court opinion, that is a three judge panel mentioned three numbers, or two numbers \$4,654 to be precise, I round that off, and the other one was 49 something.” *Id.* at 14:10-14.

After Deputy Commissioner Dennis confirmed a Board member’s statement that “adequacy is a total unknown,” the Board member replied: “But the District Court came up with 46 or 49.” *Id.* at 14:16-20. Deputy Commissioner Dennis responded: “\$4,650 in one case and \$4,980 in another, but it depends on what you do, if you just go straight, I think the \$4,650 is what would be, what you would go to comparable.” *Id.* at 14:21-25. Following a brief discussion of inflation, a Board member, in order to “start the ball rolling,” proposed using the \$4,650 figure for the

² As the Districts note, the Board went on to discuss other funding issues, but the Board’s discussion of the recommended BSAPP began at 1:38:20 and culminated in a vote at 2:10:45 of the video. *See* <https://www.youtube.com/watch?v=wFmypo4uw&feature=youtu.be>. (July 12, 2016 SBOE meeting, evening session).

2017-18 school year and simply adding an additional \$500 to the base state aid for 2018-19. The Board eventually adopted that approach as its budget recommendation. *Id.* at 17:5-8.

Thus, the \$4,650 figure came directly from the panel opinion, and the Board offered no reasoned explanation for that figure other than reliance on the panel's analysis, which this Court has already held to be "not complete." *See Gannon v. State*, 305 Kan. 850, 916, 390 P.3d 461 (2017) (*Gannon IV*). By now arguing that the Board's funding request represents the amount necessary to comply with Article 6, the Districts once again display their exclusive and improper fixation on base state aid and their continuing defense of the panel's erroneous decision to refuse to consider any other sources of funding.

Lastly, the Board's "Kansans Can" vision to "lead[] the world in the success of each student" necessarily and obviously exceeds the *Rose* standards. In *Gannon IV*, this Court reiterated that the "*Gannon I* test for adequacy is one of minimal standards" and that "[w]hether the legislature satisfies the test by exceeding the *Rose* standards is up to that deliberative body—and ultimately, the people of Kansas who elect its members to office." *Id.* at 917-18. While the Board's endorsement of a lofty vision is both understandable and admirable as an aspirational goal, "leading the world" in public education success cannot be the Article 6 standard. The Kansas Legislature was not obligated to fund the Board's aspirational goal; the Legislature was only obligated to meet the constitutional standard. Kansas K-12 education, while an important part of the State's budget, is not the only critical program that must be

funded. The Kansas Constitution is not a bankruptcy pact, nor does it require the virtually impossible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of July 2017, the above Response 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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