

FILED

MAR 30 2015

HEATHER L. SMITH
CLERK OF APPELLATE COURTS

IN THE SUPREME COURT OF THE STATE OF KANSAS

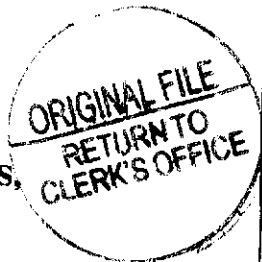
LUKE GANNON, et al,

Appellees

v.

THE STATE OF KANSAS,

Appellant.



VIA FACSMILE

Case No. 15-113267-S

RESPONSE TO PLAINTIFF'S MOTION TO STRIKE STATE'S SUPPLEMENTAL DOCKETING STATEMENT

Background to Supplemental Docketing Statement

On February 18, 2015, the State docketed its appeal after filing a notice of appeal from a December 30, 2014, Memorandum Opinion and Order on Remand ["Remand Order"] of the three-judge Panel appointed under K.S.A. 72-64b03 declaring unconstitutional the school finance system in Kansas. Prior to filing its notice of appeal, the State made a motion requesting the Panel to alter or amend its December 30 order by making explicit factual findings. The Panel had not ruled on that motion when the appeal was initially docketed.

On March 11, 2015, the Panel decided State's motion to alter and amend. The State timely filed a second notice of appeal on March 16, 2015. It then filed a Supplemental Docketing Statement on March 18, 2015.

Plaintiffs' Motion Should Be Denied

The State's right to file a notice of appeal and thereby secure this Court's jurisdiction to decide the State's appeal is under K.S.A. 60-2102(b)(1). Under this statute, the right to appeal applies to "preliminary and final decisions in which a statute of this state has been held

unconstitutional as a violation of Article 6 of the constitution of the state of Kansas pursuant to K.S.A. 72-64b03, and amendments thereto." *Id.*

Supreme Court Rule 2.04 required the State to docket its appeal by filing a docketing statement, with appropriate attachments, within 21 days after the notice of appeal has been filed. The State's Supplemental Docketing Statement satisfied this obligation.

Plaintiffs provide no authority for their motion to strike the State's docketing statement. In the most favorable light, their position is based only upon a misinterpretation of this Court's March 5, 2015 order.

The State brought the interlocutory nature of this appeal and then the pending motions to alter and amend the Remand Order to this Court's attention. The Court remanded "to the district court for resolutions of all pending post-trial motions, including the State's motion to alter and amend the December 30 order on the issue of adequacy and the Plaintiff's motion to alter the December 30 order on the issue of equity." Order, 3/5/15, p. 2. The Panel then ruled on the State's motion, but set a hearing on Plaintiffs' motion for May 7, 2015. This order is attached to the State's Supplemental Docketing Statement.

The State would have lost its right to appellate review of the Panel's March 11, 2015 order if it had failed to timely file a notice of appeal after the order was entered. The State is "mindful" that the adequacy issue appealed by the State and the equity issue are in "different stages of their resolution." Order, 3/5/15, p. 2. And more than 30 days will elapse between entry of the March 11 order and a ruling on plaintiffs' motion.

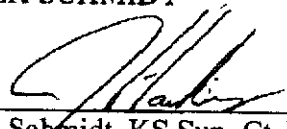
Of course, Plaintiffs' motion to alter the December 30 order is not affected by the State's latest notice of appeal or its supplemental docketing statement. The Panel retains jurisdiction to resolve the plaintiffs' motion.

Furthermore, this Court's stay of the briefing schedule remains in place. If there is an appeal from the Panel's orders on the equity issue, such appeal and this can be addressed together after the Panel's ruling on Plaintiffs' motion in the manner contemplated by this Court's March 5 order.

In short, Plaintiffs have shown no grounds to remand the adequacy issue to the Panel and their motion should be denied.

Respectfully submitted,

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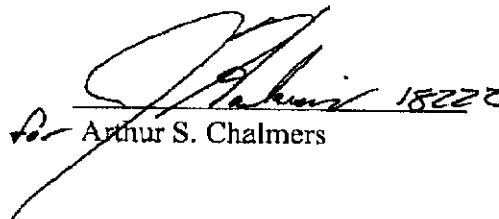
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30th day of March, 2015, a true and correct copy of the above and foregoing was mailed, postage prepaid, to:

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