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UPDATE 06/19/2017: Appeal No. 113,267: Luke Gannon, by his next friends and guardians, et al. v. State of Kansas

The Kansas Supreme Court has issued a scheduling order in this case for attorneys to submit briefs and set oral arguments. The court's scheduling order is attached.

Documents in this case are available online at http://www.kscourts.org/kansas-courts/supreme-court/Cases_of_interest/Cases/113267/default.asp

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IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 113,267

LUKE GANNON, BY HIS NEXT FRIENDS AND GUARDIANS, *et al.*,
Appellees,

v.

STATE OF KANSAS,
Appellant.

SCHEDULING ORDER

On March 2, 2017, this court held that the K-12 public education financing system known as the Classroom Learning Assuring Student Success Act (CLASS), through its structure and implementation, was not reasonably calculated to have all Kansas public education students meet or exceed the minimum constitutional standards of adequacy. *Gannon v. State*, 305 Kan. 850, 855-56, 390 P.3d 461 (2017) (*Gannon IV*).

CLASS's terms provided it was to expire on June 30, 2017, by which time a replacement financing formula was to have been studied, designed, and installed by the legislature. K.S.A. 2016 Supp. 72-6463(d); 305 Kan. at 854. Consistent with our past school finance decisions, we stayed our mandate until June 30 to give the State an opportunity to enact a new school financing system that complies with Article 6 of the Kansas Constitution. 305 Kan. at 856.

The legislature responded to our *Gannon IV* decision by passing Senate Bill No. 19 (S.B. 19) on June 5, 2017. On June 15, 2017, the governor signed S.B. 19. The next day, June 16, 2017, the State filed a "Notice of Legislative Cure" generally contending, among other things, that S.B. 19 is constitutional.

On June 19, 2017, this court held a scheduling conference by telephone. The appellees were represented by Alan L. Rupe and Jessica L. Skladzien, of Lewis Brisbois Bisgaard & Smith; and by John S. Robb, of Somers, Robb & Robb. The State was represented by Stephen R. McAllister, Solicitor General of Kansas; by Jeffrey A. Chanay, Chief Deputy Attorney General; and by Arthur S. Chalmers, of Hite, Fanning & Honeyman, LLP.

During the conference, the appellees advised they would argue that—contrary to the allegations made in the State's Notice of Legislative Cure—S.B. 19 is unconstitutional. The parties agreed during the conference that they must address whether S.B. 19 complies with Article 6 in both structure and implementation, as outlined in our prior decisions, as well as address the issues of adequacy and equity. The State bears the burden of establishing that compliance. *Gannon IV*, 305 Kan. at 856 (party asserting compliance with court decision ordering remedial action bears burden of establishing that compliance). And, as we have previously observed, the State would help its case by showing its work in how it determined that S.B. 19 complies with Article 6. See *Gannon v. State*, 303 Kan. 682, 743, 368 P.3d 1024 (2016).

The parties further agreed that they must also address what remedial action—if any—should be ordered, and upon what date it should take effect, if the court were to conclude constitutional compliance has not been achieved. In this context, the parties should be prepared to discuss the school districts' current financial obligations.

The topics mentioned above are not exclusive. The parties may include other relevant issues and arguments in their briefs.

During the conference, the parties also recognized the need to act expeditiously given the June 30 expiration date of CLASS and the July 1 start date of the school

districts' 2018 fiscal year. Toward that end, both parties proposed similar briefing and oral argument schedules. Chiefly based upon their recommended timelines, we order concurrent briefing and adopt the following expedited schedule:

- Each party shall file its first brief by 5 p.m. on Friday, June 30, 2017. Each brief shall be limited to 50 pages excluding the cover, table of contents, appendix, and certificate of service.
- Each party shall file its response brief by 5 p.m. on Friday, July 7, 2017. Each brief shall be limited to 25 pages excluding the cover, table of contents, appendix, and certificate of service.
- Format of the briefs shall conform to Supreme Court Rule 6.07 (2017 Kan. S. Ct. R. 37).

These deadlines and page limits are firm. Motions for extension of time or to extend page limits will be denied.

The parties are ordered to appear before this court at 9 a.m. on Tuesday, July 18, 2017, for oral argument. The State will argue first because it bears the burden of establishing constitutional compliance. *Gannon IV*, 305 Kan. at 856.

The State is granted a total of 60 minutes for oral argument and may reserve a portion of its time for rebuttal. Appellees are also granted 60 minutes for oral argument and will argue after the State concludes its main argument.

This oral argument setting is firm. Motions to change the date or time will be denied.

Consistent with their recommendations for timelines that extend resolution beyond June 30, both parties essentially requested that this court review S.B. 19 for constitutional

compliance before we take any further action. Given the legislature's efforts during the recent legislative session, we grant the parties' requests and allow S.B. 19 to go into effect, as provided by the legislature, until we have determined whether it satisfies Article 6's requirements. See *Harris v. Shanahan*, 192 Kan. 183, 207, 387 P.2d 771 (1963) ("In the final analysis, this court is the sole arbiter of the question [of] whether an act of the legislature is invalid under the Constitution of Kansas."). Consistent with the parties' previously noted opposing views on the act's constitutionality, this granting of their request should not be misconstrued as our prejudging that ultimate question. See *Southern Pacific Communications Co. v. A.T.&T.*, 740 F.2d 980, 991 (D.C. Cir. 1984) (it is presumed that a judge will not prejudge any case).

BY ORDER OF THE COURT this 19th day of June.

A handwritten signature in black ink, appearing to read 'L. R. Nuss', written over a horizontal line.

LAWTON R. NUSS
Chief Justice