

IN THE SUPREME COURT OF THE STATE OF KANSAS

FILED
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DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS

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

Plaintiffs-Appellees,

Case No. 18-113267-S

v.

STATE OF KANSAS,

Defendants-Appellant.



APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to Kansas Supreme Court Rule 6.06, Kansas Governor Laura Kelly (“Governor Kelly”) hereby respectfully applies for leave to file an *amicus curiae* brief in the above-captioned case in opposition to the Attorney General’s Motion asking this Court to release jurisdiction of this appeal. The overarching reason why this Court should retain jurisdiction is that deficiencies in education to current students cannot be redressed by funding remediation to the benefit of future students – that is, this Court should retain jurisdiction to protect the constitutional rights of students today and tomorrow, not just students tomorrow.

Governor Laura Kelly was elected Governor of the State of Kansas in November of 2018, and reelected in November of 2022. *See, e.g.*, Kansas Secretary Of State 2018 General Election Official Vote Totals,

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https://www.sos.ks.gov/elections/18elec/2018_General_Election_Official_Votes_Cast.pdf (last visited Nov. 3, 2023); *see also* Kansas Secretary Of State 2022

General Election Official Votes Totals,

<https://sos.ks.gov/elections/22elec/2022-General-Official-Vote-Totals.pdf> (last

visited Nov. 3, 2023). She is the duly elected and authorized head of the executive branch of the State of Kansas whose powers are vested by the Kansas Constitution and statutes. *See, e.g.*, Kan. Const. art. 1; *see also* Kan. Stat. Ann. § 75-101, et seq. Governor Kelly is vested with the supreme executive power of the State of Kansas, and she is responsible for the enforcement of the laws of the State of Kansas. Kan. Const. art. 1, § 3.

School finance litigation has spanned decades with the *Montoy* line of cases and now the *Gannon* cases. At issue is the constitutional mandate in article 6, § 6 of the Kansas Constitution requiring the Legislature to “make suitable provision for finance of the educational interests of the state.” As head of the executive branch and responsible for enforcement of the laws of this state, Governor Kelly has a vested interest in making sure a coequal branch of Government fulfills its constitutional mandate of prime importance – providing suitable funding necessary for educating future generations of Kansans. The Governor plays an important role in proposing a budget to meet the constitutional funding requirement for the educational interests of the state, but

the actual constitutional requirement falls on the Legislature. And adjudication of whether the Legislature has met this constitutional requirement is vested solely with the judicial branch. The history of this case and of the *Montoy* cases reflects that compliance with this constitutional standard has eluded the Legislature absent judicial intervention. The glaring question is why must this Court retain jurisdiction as opposed to future plaintiffs first seeking redress before a three-judge panel per K.S.A. 72-5633? The answer is time. If the Legislature fails to meet the constitutional standard, there is real, not imagined harm to Kansas students in lost learning and other opportunities because of insufficient funding of public schools. As Justice Johnson noted in *Gannon V*, failure to provide suitable school funding, at that time what was 12 of the past 15 years, “serves to highlight the fact that Kansas has failed an entire generation of its children.” *State v. Gannon*, 306 Kan. 1170, 1239, 402 P.3d 513 (2017) (concurring and dissenting opinion). Accordingly, timely final determinations of law are necessary to redress whether the Legislature complies with its constitutional mandate.

The Governor is not a party to this suit. The State of Kansas has been sued, not Governor Kelly in her official capacity. If she were a party, counsel for the Attorney General’s Office would be obligated to consider the Governor’s interest prior to filing its motion; as of this filing, however, the Attorney General

has not consulted with the Governor's office concerning the Attorney General's motion. Indeed, if the Attorney General had consulted with the Governor regarding her position, the Attorney General would know the Governor opposes this motion. While the Governor does not know the motivation for this motion at this time, if brought at the behest of the Legislature under K.S.A. 75-702, then the Attorney General cannot concurrently represent the Governor due to conflicting interests. As head of the executive branch committed to fully funding schools, Governor Kelly's interests are not represented by the Attorney General's filing.

The Court's consideration of the Governor's *amicus curiae* brief would not unduly delay proceedings in this case, which has already spanned nearly a decade. To the best of undersigned counsel's knowledge, no oral argument has been scheduled, and therefore, an *amicus curiae* brief from the Governor would not be within the 30-day restriction in Supreme Court Rule 6.06. For the foregoing reasons, Governor Kelly respectfully requests leave to file her *amicus* brief in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed on November 3, 2023, via filing in person with the Appellate Clerk's Office, with service to the parties via their counsel by U.S. mail, first class and additional copies by electronic mail to:

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