

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. 15-113267-S

REPLY IN SUPPORT OF
STATE OF KANSAS'S RULE 6.09(b) LETTER

Despite Plaintiffs' protests and attempts at obfuscation, *Maisto, et al. v. New York*, Supreme Court of New York, Albany County, Index No.: 8997-08, RJI No.: 01-08-09015 (Sept. 19, 2016), is yet another decision which supports granting deference to legislative policy choices when courts are evaluating the constitutional adequacy of school finance systems.

After making a facile attempt to distinguish the principle of *Maisto* and other such cases, Plaintiffs claim the Panel is presumed to have allocated the burden of proof to Plaintiffs. Yet, *compare* Response Brief of Appellees, filed Jan. 12, 2016, at 40 (explicitly arguing the State bore the burden of proof on adequacy). In any event, whatever the Plaintiffs' argument of the day on the burden of proof, the Panel plainly put the burden on the State in the original proceedings, Vol. 14, 1947 ("once Plaintiffs established that no cost studies justified the State's reductions . . . the burden of proof thereafter shifted to the Defendant . . ."), said nothing about the "burden of proof" in its post-remand orders and proceedings, Vol. 24, 3047 *et seq.* & Vol. 136, 1460 *et seq.*, and

committed reversible error by incorrectly shifting the burden. As the Panel itself declared, “we treated this case presumptively as a question of enforcement of the *Montoy* cases, hence, looking only for changes [] that would require [] any material alteration to any of the previous conclusions reached.” Vol. 24, 3062.

This shifting of the burden alone justifies reversal of the Panel’s adequacy decision. Moreover, once the burden is properly allocated to the Plaintiffs, the State is entitled to judgment as a matter of law on the existing record because Plaintiffs have utterly failed to demonstrate that the *current* school finance system is constitutionally inadequate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 17th day of October, 2016, a true and correct copy of the above and foregoing was 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 was electronically mailed to:

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