

IN THE SUPREME COURT OF KANSAS

Luke Gannon, et. al. Appellees)
) Case No. 113,267
)
v.)
)
State of Kansas, et al. Appellant.)

**KANSAS STATE BOARD OF EDUCATION’S MOTION FOR LEAVE TO
FILE BRIEF OF AMICUS CURIAE OUT OF TIME**

The Kansas State Board of Education (“State Board”) moves under Supreme Court Rules 6.06(a) and 5.02(c) for leave of Court to file an *Amicus* Brief out of time, supporting the constitutionality of Senate Bill 16. In support, the State Board states:

1. Kansas Supreme Court Rule 6.06(a) provides that “[a] brief of an *amicus curiae* may be filed when: (1) an application to file the brief is served on all parties and filed with the clerk of the appellate courts; and (2) the appellate court enters an order granting the application.”
2. Kansas Supreme Court Rule 6.06(b)(1)(2019 Kan. S. Ct. R. 37) requires that an *amicus* brief be filed 30 days before oral argument. Oral argument is set for May 9, 2019. The State Board is unable to meet the Rule 6.06(b)(1)'s requirement that an *Amicus* brief be filed at least 30 days prior to oral argument.
3. Submitting this Motion for Leave was not possible more than 30 days prior to the scheduled hearing because: (1) SB16 was signed into law by the Governor on April 6, 2019, making it nearly impossible to submit this request and file the *amicus* brief more than 30 days prior to the oral argument; and (2) the State Board met as an assembled body thereafter on April 16, 2019. The State Board acts expeditiously under the circumstances and requests that the Court permit the filing of an *Amicus Curiae* brief out of time.
4. The State Board met on April 16, 2019 and voted to request leave to file an *Amicus* brief with the Court. Specifically, the State Board voted unanimously (10-0) to authorize the State

Board's Attorney to file an *Amicus* Brief with the Kansas Supreme Court on behalf of the State Board in support of the finance portion of Senate Bill 16.

5. The State Board is an elected, 10-member body mandated by Article 6, §2(a) of the Kansas Constitution. The Education Article provides the State Board shall have general supervision of Kansas public schools and all other educational interests of the state, except those specifically delegated by law to the State Board of Regents. The State Board is not a party to this litigation. However, the State Board plays an important constitutional role in the process and would like to be heard as the Supreme Court considers if SB 16 is the adjustment which will bring the funding of the K-12 education system into compliance with the Kansas Constitution.

6. The State Board is familiar with the school finance legislation and the disputes regarding the constitutionality of various school finance bills. The Kansas State Board of Education made budget requests and submitted a proposal to respond to this Court's decision, *Gannon v. State*, 308 Kan. 372, 420 P.3d 477 (Kan. 2018) ("Gannon VI"), regarding the funds necessary to meet the mandates of the Court. The State Board, through the Commissioner and the Department of Education, made certain budget recommendations, the amounts which were adopted in the final bill. Collectively, they responded to dozens of requests for information through the 2019 legislative session, providing a couple thousand pages of documents in response to specific requests by the Senate Education Committee, the K-12 Education Budget Committee, Legislators and the Legislative Research Department.

7. Senate Bill 16 is the legislative culmination of the work the State Board did to craft and adopt its July 2018 plan. The Legislature passed Senate Bill 16 on April 5, 2019. The Governor signed the bill into law on April 6, 2019.

8. The State Board supports the constitutionality of the school funding plan enacted during the 2019 legislative session. The State of Board has a perspective on the factual and legal

issues before the Court, which is unique and would benefit the Court as it considers the constitutionality of Senate Bill 16. The State Board supports SB 16 and believes that it is in the best interests of the students in the State of Kansas.

9. The State Board has requested the consent of the other parties to file an *Amicus* Brief. Consent has been granted and there is no objection by the State of Kansas (Defendants/Appellants). Plaintiffs/Appellees do object to the request. In an effort to overcome any objections that may be presented by Plaintiffs/Appellees, the undersigned attempted to meet and confer with Plaintiffs' counsel, offering to impose a page limit of the *amicus* brief and file the brief by April 24, 2019, giving Plaintiffs' the last word and response to the *amicus* brief. Plaintiffs made it clear that they would object to any request by the State Board file leave for leave to file an *amicus* brief.

10. If the Court grants leave, the State Board suggests that the Court set a deadline of April 24, 2019, to file its *amicus* brief. This will alleviate any prejudice to any party, as the responsive briefing is due thereafter, on April 25, 2019.

11. Kansas Supreme Court Rule 6.06(d) does not entitle an *amicus curiae* to oral argument and the State Board is not asking for oral argument. The State Board is only asking to be heard through its briefing and written expression of support for SB 16.

WHEREFORE, the State Board respectfully requests leave of Court to file an *amicus* brief out of time in support of Senate Bill 16 on or before April 24, 2019.

Respectfully Submitted,

GATES SHIELDS FERGUSON
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CERTIFICATE OF SERVICE

I certify that the foregoing will be served on counsel for each party through the Court's electronic filing system, which will send a "Notice of Electronic Filing" to each party's registered attorney.

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