



**KANSAS BAR
ASSOCIATION**

TO: **The Honorable John Barker & The Honorable Jeff King**
and Members of the Joint Meeting of House and Senate Judiciary
Committees

FROM: **Joseph N. Molina**
On behalf of the Kansas Bar Association

RE: **Public comment relating to the school finance lawsuit and order to**
close Kansas Public Schools

DATE: **June 16-17, 2016**

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,200 members, including lawyers, judges, law students, and paralegals. www.ksbar.org

The Kansas Bar Association provides this written public comment as it relates to limiting the Kansas Supreme Court's authority in response to the Kansas Supreme Court's May 27, 2016 order (Gannon Order) concerning the equitable funding of Kansas Public Schools.

The KBA appreciates the opportunity to address the Joint Meeting of the House and Senate Judiciary Committee.

At the outset it should be noted that the KBA takes no position on the school finance issue, nor does it have a position on the merits of the case currently before the Kansas Supreme Court. ***The KBA is concerned with current efforts to limit the Kansas Supreme Court's authority to adjudicate cases within its purview.***

As it is currently understood the Kansas Legislature is discussing a constitutional amendment that would prohibit the Kansas Supreme Court from ordering Kansas Public Schools to be closed for unconstitutional inequities. To be clear, this is not what the Kansas Supreme Court has ordered in its May 27 ruling. The court stated that:

“the inability of Kansas schools to operate would not be because this court would have ordered them closed. Rather, it would be because this court would have performed its sworn duty to the people of Kansas under their constitution to review the legislature's enactments and to ensure the legislature's compliance with its own duty under Article 6”. See Gannon II, 303 Kan. 682, Syl. ¶ 9.

Given these comments it would appear that efforts to strip the court of its constitutionally derived authority is misguided since the court has not ordered schools be closed but rather found legislative enactments in noncompliance with the Kansas Constitution.

The KBA also feels strongly that such legislation violates the separation of powers doctrine because full review of litigation is a function of the courts. The Kansas Supreme Court has the power and duty to review legislative enactments when cases and/or controversies are brought before it. This authority extends to remedial orders that correct unlawful or unconstitutional provisions. Without the power to order remedial measures a court's rulings have little force and effect, and these rulings become advisory at best.

Furthermore, limiting the court's power to review and remedy unconstitutional laws erodes the foundational pillars of checks and balances among and between the three co-equal branches of government. If the court loses the power to remedy unconstitutional laws, it loses the power to balance the legislature and uphold the constitution. The legislature should not be able to enact a law and then vaccinate itself from judicial review and remedy. To do so would severely limit the people's right to bring actions against the government for grievances and would restrain the court's constitutional responsibility to act as a check on the other branches of government.

Finally, efforts to limit court powers is an attack on the independence of the judiciary. In Federalist Papers Nos. 78 and 79 Hamilton argued that the judiciary was the weakest of the three branches of government and "all possible care is requisite to enable it to defend itself against attacks." Should a proposal limiting the court's power be passed, judicial independence would be threatened as judges/justices would be hesitant to make unpopular rulings because that ruling may lead to further reductions on court jurisdiction.

It is for these reasons that the KBA urges members of the Joint Meeting of the House and Senate Judiciary Committee to resist this measure or any others that may be proposed which has a similar limiting effect upon the authority of the highest court in our state.