Memoranda and Public Comments Presented at the Joint Meeting of the House and Senate Judiciary Committees

Thursday, June 16

Morning Session

- Overview of *Gannon* Rulings
- Overview of Pre-*Gannon* School Finance Litigation
- Public Comment on Potential School Funding Changes in Response to the May 27, 2016, *Gannon* Order

SENATE CONCURRENT RESOLUTION NO. ____

By

A PROPOSITION to amend article 6 of the constitution of the state of Kansas by amending section 6 thereof to define the legal remedies for violations of article 6.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 6 of article 6 of the constitution of the state of Kansas is hereby amended to read as follows:

"**§ 6. Finance.** (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

(c) In any civil action in which a statute or other legislative

enactment of this state has been held unconstitutional as a violation of this article, no court shall have the authority to order a school district or any attendance center within a school district to be closed, or make or enforce any other order or remedy, the effect of which is to prohibit the expenditure of funds such that a school district or any attendance center within a school district shall not operate. Nor shall the legislature have such authority when its action is in direct response to a court ruling that a statute or other legislative enactment of this state has been held unconstitutional as a violation of this article.

~~(c)~~ (d) No religious sect or sects shall control any part of the public educational funds."

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"*Explanatory statement.* The purpose of this amendment is to limit the legal remedies available to both the courts of this state and the legislature by prohibiting the closure of schools as a legal remedy in cases where a law is held to be unconstitutional as a violation of article 6 of the constitution of the state of Kansas.

"A vote for this proposition would prohibit courts in this state from issuing any order to close one or more schools as a remedy in a lawsuit where a law is held to be unconstitutional as a violation of article 6 of the constitution of the state of Kansas. It would also prohibit the legislature from enacting any law that would close one or more

schools if such law is in direct response to a court ruling that a law is unconstitutional as a violation of article 6 of the constitution of the state of Kansas."

"A vote against this proposition would make no changes to current law, and courts would be able to continue issuing orders that could have the effect of closing schools, and the legislature would retain authority to close schools by law."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the primary election in August in the year 2016, unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

SENATE CONCURRENT RESOLUTION NO. ____

By

A PROPOSITION to amend article 6 of the constitution of the state of Kansas by creating a new section prohibiting the denial of a public education.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Article 6 of the constitution of the state of Kansas is hereby amended by adding a new section to read as follows:

"Article 6.—EDUCATION"

"§11. Denial of public education prohibited. In any civil action in which a statute or other legislative enactment of this state has been held unconstitutional as a violation of this article, no court shall issue any order, the effect of which is to close schools or otherwise deny the provision of public education that is required by section 1 of this article, nor shall the legislature, in direct response to such court action, pass a statute or other legislative enactment that would close schools."

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

"*Explanatory statement.* The purposes of this amendment is to limit the legal remedies available to both the courts of this state and the

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legislature by prohibiting the closure of schools or otherwise denying the provision of public education in cases where a law is held to be unconstitutional as a violation of article 6 of the constitution of the state of Kansas.

"A vote for this proposition would add a new section to article 6 of the constitution of the state of Kansas that would prohibit both the legislature and the courts of this state from denying public education to the children in this state.

"A vote against this proposition would make no changes to the current authority granted by the constitution of the state of Kansas to the legislature and the courts of this state with respect to public education."

Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the Senate, and two-thirds of the members elected (or appointed) and qualified to the House of Representatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the primary election in August in the year 2016, unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

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Comprehensive Analysis of the Kansas Supreme Court Opinion in *Gannon v. State*, issued May 27, 2016 (*Gannon III*)

Gordon L. Self, Revisor of Statutes
Jason B. Long, Senior Assistant Revisor of Statutes
Nick Myers and Tamera Lawrence, Assistant Revisors of Statutes

June 1, 2016

EXECUTIVE SUMMARY

On May 27, 2016, the Kansas Supreme Court (Court) issued its decision regarding whether 2016 Senate Substitute for House Bill No. 2655 (HB 2655) cured the unconstitutional wealth-based disparities in the distribution of capital outlay state aid and supplemental general state aid as required by the Court in its prior decision issued on February 11, 2016. The Court held that HB 2655 cured the capital outlay inequities, but failed to cure the supplemental general state aid inequities. The Court further held that the unconstitutional supplemental general state aid funding mechanism and the local option budget (LOB) provisions cannot be severed from the Classroom Learning Assuring Student Success (CLASS) Act, and therefore, ruled that the CLASS Act, as a whole, is unconstitutional.[1]

In summary, the Court ruled that:

- HB 2655 cures the capital outlay inequities.
- HB 2655 fails to cure the LOB inequities due to disparities in the supplemental general state aid mechanism and is unconstitutional.
- The hold harmless provision of HB 2655 fails to mitigate the LOB inequities.
- The extraordinary need fund is insufficient to mitigate the LOB inequities.
- Despite the existence of a severability clause in HB 2655, the unconstitutional provisions of HB 2655 cannot be severed from the CLASS Act.
- If the State is unable to satisfactorily demonstrate compliance with the Court's mandate to cure the LOB inequities by June 30, 2016, then there will be no constitutionally valid school finance system in existence for fiscal year 2017.

[1] *Gannon v. State*, No. 113,267 (Kan. Sup. Ct. May 27, 2016) (*Gannon III*).

Joint House and Senate Judiciary Committee Meeting
Date: 6-16-16
Attachment: 3

COMPREHENSIVE ANALYSIS

RECENT PROCEDURAL HISTORY

On May 27, 2016, the Kansas Supreme Court (Court) issued its opinion in *Gannon v. State*, No. 113,267 (*Gannon III*) regarding whether 2016 Senate Substitute for House Bill No. 2655 (HB 2655) cured the unconstitutional wealth-based disparities in the distribution of capital outlay state aid and supplemental general state aid.[2] This is the Court's third opinion in the *Gannon* litigation regarding the constitutionality of the school funding provisions enacted by the Legislature. It is also the second opinion concerning the equity portion of the case following the Court's earlier opinion in *Gannon II*.[3]

On February 11, 2016, in *Gannon II*, the Court held that the operation of capital outlay state aid and supplemental general state aid under the Classroom Learning Assuring Student Success (CLASS) Act created unconstitutional wealth-based disparities among school districts.[4] The Court gave the Legislature until June 30, 2016, to pass remedial legislation and demonstrate to the Court how such legislation cures the unconstitutional inequities. If the Legislature failed to cure such unconstitutional inequities by June 30, 2016, the Court indicated that it would hold the Kansas school finance system unconstitutional as a whole, prohibiting the operation of the school finance system for fiscal year 2017.[5]

In response to *Gannon II*, the Legislature passed HB 2655, which reinstated the prior capital outlay state aid formula as it existed before the CLASS Act was enacted, and applied that same equalization mechanism to the calculation of supplemental general state aid.[6] HB 2655 also created a hold harmless provision that provided school district equalization aid for each school district that would have received less total equalization aid in school year 2016-2017 than it did in school year 2015-2016 due to the changes in HB 2655.[7] Finally, the bill moved administration of the extraordinary needs fund to the State Board of Education from the State Finance Council and permitted the Board to disburse those funds to further reduce inequities among school districts.[8]

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[2] *Id.*
[3] *See Gannon v. State*, 303 Kan. 682 (2016) (Kan. Sup. Ct. Feb. 11, 2016) (*Gannon II*).
[4] *Gannon II* at 746.
[5] *Id.* at 741.
[6] 2016 Senate Substitute for House Bill No. 2655, §§ 3, 4 (HB 2655).
[7] *Id.* at § 5.
[8] *Id.* at § 9 (amending K.S.A. 2015 Supp. 72-6476).

The Governor signed HB 2655 into law on April 6, 2016, and the State filed its Notice of Legislative Cure the following day. On May 10, 2016, the Court heard oral arguments on whether HB 2655 cured the unconstitutional inequities identified by the Court in *Gannon II*.

This memorandum provides a comprehensive analysis of the Court's decision in *Gannon III*. A detailed history of the *Gannon* litigation and the events that led to the *Gannon III* decision is also included at the end of the comprehensive analysis.

GANNON III (MAY 27, 2016)

In *Gannon III*, the Court held that HB 2655 cured the capital outlay inequities by reinstating the capital outlay state aid formula that was utilized by the State prior to the enactment of the CLASS Act.[9] However, the Court held that the legislation failed to cure the local option budget (LOB) inequities.[10] Despite the provision of additional hold harmless equalization state aid and the availability of extraordinary need funds, the Court found that the equity disparities between property-wealthy school districts and property-poor school districts had not been mitigated, but rather, had been exacerbated.[11] The existence of such disparities renders the supplemental general state aid provisions of the CLASS Act unconstitutional as they continue to be in violation of Article 6 of the Constitution of the State of Kansas (Article 6).[12]

The Court further held that these unconstitutional provisions cannot be severed from the CLASS Act.[13] Severing the offending provisions would, in the Court's words, "do violence to the legislative intent" of the CLASS Act.[14] Since the Court did not sever the LOB and supplemental general state aid provisions from the CLASS Act, the Court held that HB 2655 is void and indicated that the entire school finance system is therefore unconstitutional as presently enacted.[15]

The Court retained jurisdiction over the equity portion of the case and has further stayed its mandate that the school finance system is unconstitutional as a whole. The Court gave the Legislature until June 30, 2016, to enact a legislative remedy that complies with the equity standard for the provision of school finance under Article 6. If a legislative cure is not enacted

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[9] *Gannon III* at 17.
[10] *Id.* at 22.
[11] *Id.* at 18.
[12] *Id.* at 34.
[13] *Id.* at 43.
[14] *Id.* at 43 (quoting *Brennan v. Kansas Insurance Guaranty Ass'n*, 293 Kan. 446, 463 (2011)).
[15] *Id.* at 45.

by that date, or the proposed legislation fails to meet the constitutional standard, then the Court will lift its stay and issue an order holding the entire school finance system unconstitutional.[16]

1. The Equity Standard under Article 6

Since *Gannon I* the Court has continued to affirm, and does so again in *Gannon III*, the equity standard of Article 6 is that "[s]chool districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort."[17] While acknowledging that it has never established any specific application of the standard, the Court did clarify that it has "rejected legislation that increased or exacerbated inequities among districts."[18] Summarizing its application of the standard, the Court stated, "the State may not allow children to receive disparate levels of educational opportunity on the basis of wealth, especially the property wealth of the district where they happen to live."[19]

2. HB 2655 Cures the Capital Outlay Inequities

The Court recognized that HB 2655 enacted the same capital outlay state aid formula that was in law prior to the enactment of the CLASS Act, and that this was the same formula the Court previously indicated would be constitutional.[20] The Court further noted that capital outlay state aid was no longer a part of the block grant funding under the CLASS Act, which allows capital outlay state aid "to be calculated by the total mill levy actually set by a school district, instead of being frozen by the levy level imposed before the enactment of CLASS."[21] Finally, the Court took notice of the fact that the majority of aid-qualifying districts will see substantial increases in capital outlay state aid under HB 2655.[22] Based on its review of this legislative record, the Court held that the state met its burden to show compliance with *Gannon II*'s mandate regarding capital outlay equalization.[23]

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[16] *Id.*
[17] *Id.* at 14 (quoting *Gannon v. State*, 298 Kan. 1107, 1175 (2014) (*Gannon I*)).
[18] *Id.* (quoting *Gannon II*, 303 Kan. 682, 709).
[19] *Id.* at 15.
[20] *Id.* at 15. *See Gannon I* at 1191; *see also Gannon II* at 743.
[21] *Id.* at 16.
[22] *Id.* at 17.
[23] *Id.*

3. HB 2655 Fails to Cure the LOB Inequities

HB 2655 applied the same formula used for calculating capital outlay state aid – found by the Court to be constitutional for that purpose – to the determination of supplemental general state aid, which is equalization state aid for districts that authorize a LOB. The Court held such application to be unconstitutional because it increases and exacerbates unconstitutional wealth based disparities among districts.[24]

Application of the Capital Outlay Formula to Supplemental General State Aid Distribution

First, the Court noted that when the formula utilized for capital outlay state aid is used to calculate supplemental general state aid, the total equalization state aid provided to school districts is less than the amount distributed under the CLASS Act, which was held unconstitutional in *Gannon II*.[25] Despite this change in total equalization state aid, the Court pointed out that wealthy school districts that do not qualify for state aid will experience no change in their ability to fund their LOB.[26]

Second, the Court reviewed the equalization point – the point at which school districts are entitled to receive supplemental general state aid – under each of prior formulas and under HB 2655. The Court found that the equalization point was "significantly" lower with the effect of "substantially decreasing the number of aid-qualifying school districts."[27] This analysis was conducted by the Court solely with respect to the calculation of supplemental general state aid, and did not include any consideration of the additional equalization state aid provided under the hold harmless provision of HB 2655.

Finally, the Court addressed the State's argument that a constitutional formula applied to capital outlay funding is necessarily constitutional when applied to LOB funding. In its analysis the Court examined the magnitude and the expenditure flexibility of both funding mechanisms. The Court noted that while funds allocated for a school district's LOB have virtually no limitations and may be used for general operating expenditures of the district, capital outlay funds are statutorily restricted to a finite type of expenditures, such as building fixtures, equipment, and uniforms.[28] In terms of magnitude, the Court also found significant differences. In its example, the Court cited the Wichita school district's LOB revenue of $111 million as

[24] *Id.* at 18.
[25] *Id.* at 19.
[26] *Id.*
[27] *Id.*
[28] *Id.* at 20.

compared to its capital outlay revenue of $28 million.[29] The Court concluded that wealth-based disparities must be proportional to the type of local revenue being equalized.[30] Disparities that may be acceptable with respect to capital outlay become "too great when considering that the LOB has developed into such a major source of basic, and versatile, educational funding."[31]

The Hold Harmless Provision Fails to Mitigate the LOB Inequities

The State, in both its brief and at oral argument, argued that the equity of HB 2655 should be reviewed by taking the entire act into consideration, including the provision of hold harmless equalization state aid. In response to this argument, the Court reviewed the hold harmless provision and found that HB 2655 reduces the total amount of supplemental general state aid. The Court stated that the hold harmless equalization state aid merely restores school districts back to that same level of funding which the Court ruled unconstitutional in *Gannon II*.[32]

The State also proffered charts showing a marked decrease in the mill levy disparity among school districts under HB 2655 compared to the CLASS Act. The Court rejected this as evidence of a constitutionally equitable funding formula.[33] In its rejection, the Court found that such change was likely due to normal fluctuations in the assessed valuation per pupil calculations for school districts.[34] The Court found the State offered no evidence to contradict this conclusion.[35] Furthermore, the Court found that the charts reflected averages and did not show the greater disparities among individual school districts.[36]

While holding that the hold harmless provision was not sufficient to cure the LOB inequities, the Court also concluded the hold harmless provision actually increases disparity among districts qualifying for supplemental general state aid.[37] Funds provided as hold harmless state aid are deposited into a school district's general fund rather than its LOB fund.[38] The Court found this created a choice for aid-qualifying districts. A district could either transfer the hold harmless funds to the LOB fund and thereby fill the gap created by the decrease in supplemental general state aid funding, or a district could retain the hold harmless funds in the district's general

[29] *Id.*
[30] *Id.* at 22.
[31] *Id.*
[32] *Id.*
[33] *Id.* at 24.
[34] *Id.*
[35] *Id.*
[36] *Id.* at 25.
[37] Id. at 26.
[38] *Id*

fund and opt to fill the LOB funding gap by levying additional property taxes under its LOB authority. The Court determined any additional LOB revenue used to backfill the LOB funding gap would be unequalized and therefore further increase LOB inequities.[39] Despite the Court's statement, section 3 of HB 2655 provides that any tax revenue raised under a district's LOB authority is equalized through the supplemental general state aid calculation.[40]

Finally, the Court rejected arguments by the State regarding the political necessity of the hold harmless provision and the need for budget certainty for school districts. Both considerations were rejected by the Court as irrelevant to the issue of Article 6 equity.[41]

The Extraordinary Need Fund is Insufficient to Mitigate the LOB Inequities

The State argued that the funding inequities would be sufficiently mitigated by the use of extraordinary need funds. The Court noted that administration of the extraordinary need fund had been shifted under HB 2655 from the State Finance Council to the State Board of Education.[42] The Court also noted the statutory expansion of the uses of extraordinary need funds – the Board can now consider whether the applicant school district has reasonably equal access to substantially similar educational opportunity through similar tax effort.[43] However, the Court was not persuaded that the extraordinary need funds would be capable of curing the LOB inequities. The Court cited both the reduction in total appropriations for the extraordinary need fund and the increased statutory uses for its conclusion that this source of funding is "an insufficient remedy for the residual inequities in the LOB funding mechanism."[44]

The State Failed to Meet Its Burden with respect to LOB Inequities

In summary, the Court held that the State had failed to meet its burden to demonstrate that HB 2655 cured the inequities in the LOB funding mechanism. The disparities created by applying the capital outlay state aid formula to the calculation of supplemental general state aid were too great to satisfy the Article 6 equity standard. Further, neither the hold harmless provision nor the use of extraordinary need funds would effectively reduce these disparities.[45]

[39] *Id.* at 28.
[40] *See* HB 2655, § 3.
[41] *Gannon III* at 28.
[42] *Id.* at 30.
[43] *Id. See* K.S.A. 2015 Supp. 72-6476.
[44] *Id.* at 31.
[45] *Id.* at 32-33.

4. Plaintiffs are Not Entitled to Attorney Fees

The Court held that nothing had changed with respect to the Plaintiffs' request for attorney fees. The Plaintiffs' motion for attorney fees is still under review by the District Court Panel and is not before the Court on appeal, nor have the Plaintiffs filed a motion for appellate attorney fees with the Court. The Plaintiffs' request was denied.[46]

5. The Unconstitutional Provisions Cannot Be Severed From the CLASS Act

After declaring the supplemental general state aid provision of HB 2655 to be unconstitutional, the Court next considered the effect of this ruling on the remainder of the CLASS Act. The State argued that the Court should sever any unconstitutional provisions and allow the remainder of the CLASS Act to continue in effect for fiscal year 2017. The State cited the amended severability provision enacted as part of HB 2655 as support for this argument.[47]

The Court's analysis began by stating the legal test for severing unconstitutional provisions from a statute provided by *Brennan v. Kansas Insurance Guaranty Ass'n*.[48] That test is as follows: "If from examination of a statute it can be said that [1] the act would have been passed without the objectionable portion and [2] if the statute would operate effectively to carry out the intention of the legislature with such portion stricken, the remainder of the valid law will stand."[49] The Court also affirmed case law holding that the existence of a severability clause is not dispositive of the issue; it merely creates a presumption.[50]

The Court then determined that severance of the supplemental general state aid provisions in HB 2655 would also necessitate the severance of the LOB authority for all school districts since severance of only the supplemental general state aid portion would leave in place a local revenue mechanism that was clearly inequitable.[51] Severance of both the supplemental general state aid provisions and the LOB provisions would result in a loss of approximately $1 billion in school funding, or about 25% of the total funding for public schools.[52]

In its analysis of the first part of the test, the Court found five factors weighing against the State's argument that the Legislature would have passed HB 2655 without the unconstitutional provisions. First, the State has been in constant litigation over the adequacy of

[46] *Id.* at 34.
[47] *Id. See* K.S.A. 2015 Supp. 72-6484.
[48] *Brennan v. Kansas Insurance Guaranty Ass'n*, 293 Kan. 446 (2011).
[49] *Id.* at 35-36 (quoting *Brennan* at 463).
[50] *Id.* at 37.
[51] *Id.* at 39.
[52] *Id.*

school finance since 2010.[53] Second, there is a pending appeal of the District Court Panel's ruling on the adequacy of school finance.[54] Third, the Court specified in *Gannon II* that any equity cure proposed by the Legislature could "[run] afoul of the adequacy requirement."[55] Fourth, the inclusion of a hold harmless provision shows the Legislature was concerned about the total amount of funding being provided for public schools.[56] Fifth, the budget bill passed by the Legislature at the end of the 2016 Session provided an exemption for public schools from the allotment authority granted to the Governor in 2016 House Substitute for Senate Bill No. 161.[57]

Having concluded that the Legislature would not have passed HB 2655 without the unconstitutional LOB provisions, the Court turned to the second part of the test. The Court found that the CLASS Act could not "operate effectively to carry out the intention of the legislature" without the unconstitutional provisions.[58] In support of its conclusion the Court cited legislative intent statements from the preamble to HB 2655 and Section 2 of HB 2655, as well as from the legislative intent provisions of the CLASS Act, itself.[59] In particular, the Court noted the Legislature's focus on avoiding funding disruptions to public schools and providing certainty in funding. In the Court's opinion, the loss of approximately $1 billion in education funding through the severance of the unconstitutional LOB provisions would "seriously undermine" the Legislature's intent to: (1) Meet its Article 6 obligations; (2) avoid disruptions to public education; (3) provide certainty in education funding; and (4) provide funds needed for educational opportunities.[60]

After finding that both parts of the *Brennan* test failed, the Court concluded that severing the unconstitutional LOB provisions from the CLASS Act would do "violence to legislative intent."[61] For these reasons the Court held that severance was not an option and that the entire CLASS Act was unconstitutional and void.[62]

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[53] *Id.* 40.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.* at 41. *See* 2016 House Substitute for Senate Bill No. 249, § 45.
[58] *Id.* at 43.
[59] *See* HB 2655, preamble, § 2; *see also* KSA 2015 Supp. 72-6463.
[60] *Gannon III* at 43.
[61] *Id.* (quoting *Brennan*, 293 Kan. at 463).
[62] *Id.* at 45.

6. The Court's Mandate Stayed Until June 30, 2016

While the Court held that the CLASS Act was unconstitutional in its entirety due to the Court's inability to sever the LOB provisions from the rest of the act, the Court continued its stay of this ruling. The stay puts a hold on the Court's order going into effect. The Court stated that such stay would remain effective until June 30, 2016, at which time the Court would consider whether a constitutional legislature cure had been enacted.[63] Thus, the mandate issued in *Gannon II* remains in place: "If by the close of fiscal year 2016, ending June 30, the State is unable to satisfactorily demonstrate to this court that the Legislature has complied with the will of the people as expressed in Article 6 of their constitution through additional remedial legislation or otherwise, then a lifting of the stay of today's mandate will mean no constitutionally valid school finance system exists through which funds for fiscal year 2017 can lawfully be raised, distributed, or spent."[64]

CONCLUSION

In *Gannon III*, the Court held that the State had met its burden to demonstrate that it had cured the inequities in the capital outlay state aid funding mechanism that were identified in its prior opinion in *Gannon II*.[65] However, the Court also held that the inequities found to be present in the supplemental general state aid funding mechanism under *Gannon II* had not been cured, but had been exacerbated by the provisions of HB 2655.[66] The Court rejected arguments by the State that the hold harmless provision and the changes in the extraordinary need fund mitigated any remaining inequities in supplemental general state aid distribution.[67] Due to the continued existence of such inequities in the supplemental general state aid funding mechanism, the Court held that portion of HB 2655 unconstitutional as a violation of Article 6's equity requirement.[68]

The Court further rejected the State's argument that the unconstitutional provisions of HB 2655 could be severed from the CLASS Act allowing the remainder of the Act to continue in effect for school year 2016-2017. The Court held that the Legislature would not have passed HB 2655 without the LOB and supplemental general state aid provisions, and that the CLASS Act

[63] *Id.*
[64] *See Gannon II* at 743-44.
[65] *Gannon III* at 17.
[66] *Id.* at 22.
[67] *Id.* at 26, 31.
[68] *Id.* at 34.

could not "operate effectively to carry out the intention of the legislature" without such provisions.[69] For these reasons the Court declared the entire CLASS Act unconstitutional.[70]

The Court stayed its order holding the CLASS Act unconstitutional until June 30, 2016, and gave the Legislature until such date to enact a legislative cure for the inequities that continue to exist in the supplemental general state aid funding mechanism.[71] If no legislature cure is enacted by that time, the Court may lift its stay meaning "no constitutionally valid school finance system exists through which funds for fiscal year 2017 can lawfully be raised, distributed, or spent."[72]

[69] *Id.* at 43.
[70] *Id.* at 45.
[71] *Id.*
[72] *See Gannon II* at 743-44.

HISTORY OF THE *GANNON* LITIGATION

In January 2010, the *Montoy* Plaintiffs filed a motion with the Court requesting *Montoy* be reopened to determine if the State was in compliance with the Court's prior orders in that case. This was done in response to reductions in the amount of base state aid per pupil (BSAPP) appropriated for fiscal year 2010 and reductions in funding for capital outlay state aid and supplemental general state aid. The Court denied this motion, which led to the filing of *Gannon*.[73]

The new lawsuit was filed in November 2010 by various Plaintiffs and contained several claims.[74] Those claims included an allegation that the State violated Article 6, §6(b) by failing to provide a suitable education to all Kansas students, that the failure to make capital outlay state aid payments created an inequitable and unconstitutional distribution of funds, that Plaintiffs were denied equal protection under both the 14th Amendment to the U.S. Constitution and Sections 1 and 2 of the Kansas Bill of Rights, and that Plaintiffs were denied substantive due process under Section 18 of the Kansas Bill of Rights.[75]

First District Court Panel Decision (Jan. 11, 2013)

The Panel rejected the Plaintiffs' claims of equal protection and substantive due process violations.[76] However, the Panel held that the State had violated Article 6, §6(b) by inadequately funding the Plaintiff school districts under the SDFQPA.[77] It also held that both the withholding of capital outlay state aid payments and the proration of supplemental general state aid payments created unconstitutional wealth-based disparities among school districts.[78] As part of its order, the Panel imposed a number of injunctions against the State which were designed to require a BSAPP amount of $4,492, and fully fund capital outlay state aid payments and supplemental general state aid payments.[79]

All parties appealed the Panel's decision. The State appealed both the Panel's holdings as to the constitutionality of the State's duty to make suitable provision for finance of the educational interests of the state and the Panel's remedies. The Plaintiffs appealed the Panel's reliance on the BSAPP amount of $4,492, arguing that cost studies indicated the BSAPP amount

[73] *Gannon I*, 298 Kan. 1107, 1115 (2014).
[74] Currently, the Plaintiffs consist of four school districts (U.S.D. No. 259, Wichita; U.S.D. No. 308, Hutchinson; U.S.D. No. 443, Dodge City; and U.S.D. No. 500, Kansas City).
[75] *Gannon I*, at 1116-1117.
[76] *Id.* at 1117-1118.
[77] *Id.*
[78] *Id.* at 1116.
[79] *Id.* at 1118.

should be greater than $4,492. At the request of the State, two days of mediation were conducted in April 2013, but those efforts were unsuccessful.[80] In October 2013, the Kansas Supreme Court heard oral arguments from both sides.

Kansas Supreme Court Decision—Gannon I (Mar. 7, 2014)

On March 7, 2014, the Court reaffirmed that Article 6 of the Constitution of the State of Kansas contains both an adequacy component and an equity component with respect to determining whether the Legislature has met its constitutional obligation to "make suitable provision for finance of the educational interests of the state."[81] First, the Court stated that the adequacy component test is satisfied "when the public education financing system provided by the Legislature for grades K-12—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose* [*v. Council for Better Educ., Inc.,* 790 S.W.2d 186 (Ky. 1989)] and presently codified in K.S.A. 2013 Supp. 72-1127."[82] The Court then remanded the case back to the Panel with directions to apply the newly established adequacy test to the facts of the case.

Second, the Court also established a new test for determining whether the Legislature's provision for school finance is equitable: "School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort."[83] The Court applied the newly established equity test to the existing funding levels for both capital outlay state aid and supplemental general state aid, and found both were unconstitutional under the test. Based on these findings, the Court directed the Panel to enforce its equity rulings and provided guidance as to how to carry out such enforcement.

In response to the Court's decision, the Legislature passed HB 2506, which became law on May 1, 2014. First, the bill codified the *Rose* standards at K.S.A. 2014 Supp. 72-1127, which provides the educational capacities each child should attain from the subjects and areas of instruction designed by the Kansas State Board of Education.[84] Second, the bill appropriated an additional $109.3 million for supplemental general state aid and transferred $25.2 million from the state general fund to the capital outlay fund.[85]

At a hearing on June 11, 2014, the Panel was provided estimates from the Kansas Department of Education about the additional appropriations in HB 2506. Based on such

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[80] *Id.*
[81] *Id.* at 1163; *see also*, Kan. Const. art. 6 § 6(b).
[82] *Id.* at 1170 (citing *Rose*, 790 S.W.2d at 212).
[83] *Id.* at 1175.
[84] *See* K.S.A. 2015 Supp. 72-1127(c).
[85] L. 2014, ch. 93 §§ 6, 7, and 47; K.S.A. 2014 Supp. 72-8814.

estimations, the Panel determined that HB 2506 fully funded capital outlay state aid and supplemental general state aid and complied with the Court's equity judgment.[86] The Panel did not dismiss the equity issue despite stating that no further action was necessary at that time.[87]

Second District Court Panel Decision (Dec. 30, 2014)

On December 30, 2014, the Panel issued its second significant *Gannon* opinion. The Panel affirmed its prior equity ruling and held that the State "substantially complied" with the obligations to fund capital outlay state aid and supplemental general state aid.[88] The key decision by the Panel was that funding levels were constitutionally inadequate because "the Kansas public education financing system provided by the Legislature for grades K-12 – through structure and implementation – is not presently reasonably calculated to have all Kansas public education students meet or exceed the Rose factors."[89]

In concluding that funding levels were constitutionally inadequate, the Panel made several findings. The Panel found that the *Rose* factors have been implicitly known and recognized by the Kansas judiciary and that the cost studies the Panel based its opinion upon were conducted with knowledge and consideration of the *Rose* factors.[90] The Panel determined that, by adjusting the cost studies' figures for inflation, the current BSAPP amount of $3,852 is constitutionally inadequate.[91] The Panel found that gaps in student performance were likely to continue due to inadequate funding.[92] The Panel also determined that federal funding, KPERS, capital outlay funding, bond and interest funding, and LOB funding cannot be included in any measure of adequacy of the school finance formula as it was currently structured.[93] Regarding the LOB funding mechanism, the Panel stated that LOB funding cannot be included in any measure of adequacy due to the fact that it is solely discretionary at the local level.[94]

The Panel's opinion did not contain any direct orders to either party, but did provide suggestions as to how adequate funding could be achieved. Initially, the Panel suggested that a BSAPP amount of $4,654 coupled with increases in certain weightings could be constitutional, provided the LOB funding scheme was adjusted to include both a minimum local tax levy and a

[86] *Gannon v. State,* No. 2010CV1569, at 24-26 (Shawnee Co. Dist. Ct. June 26, 2015).
[87] *Id.*
[88] *Gannon v. State,* No. 2010CV1569, at 7 (Shawnee Co. Dist. Ct. Dec 30, 2014).
[89] *Id.* at 114-115.
[90] *Id.* at 11-14.
[91] *Id.* at 56.
[92] *Id.* at 20.
[93] *Id.* at 62-77.
[94] *Id.* at 76-77.

fail-safe funding mechanism.[95] Alternatively, the Panel proposed a BSAPP amount of $4,890 could be an adequate level of funding if the LOB were to remain strictly discretionary.[96] Finally, the Panel retained jurisdiction to review the Legislature's subsequent actions at a later time.

Subsequent Motions and Legislative Actions

Two post-trial motions were filed shortly after the Panel's December 30, 2014, decision. On January 23, 2015, the State of Kansas filed a motion to alter and amend the Panel's December 30, 2014, opinion arguing the Panel did not clearly identify which facts the Panel used to support its opinion. On January 27, 2015, Plaintiffs filed a motion to alter the previous judgment regarding equity claiming that the State was no longer in substantial compliance and that additional expenditures in fiscal year 2015 were necessary to fully fund equalization aid. Subsequent briefings and responses were then submitted to the Panel upon these two motions.

On January 28, 2015, the State appealed the case to the Kansas Supreme Court. On February 27, 2015, the State filed a motion with the Supreme Court to stay any further Panel proceedings until disposition of the State's appeal. On March 3, 2015, Plaintiffs filed a response to the State's motion arguing that the Court should deny the State's motion and instead remand the State's appeal to the Panel for resolution of the all pending post-trial motions with the Panel. On March 5, 2015, the Kansas Supreme Court denied the State's motion to stay further Panel proceedings and remanded the case to the Panel for resolution of all post-trial motions.[97]

On March 11, 2015, the Panel issued an opinion and order upon the State's motion to alter and amend the Panel's judgment in which the Panel granted in part the State's motion and withdrew a paragraph from the its December 30, 2014, opinion that the Panel deemed to be the source of the State's motion.[98] On March 13, 2015, the Panel issued an order setting a hearing date for May 7, 2015, upon Plaintiffs' motion to alter judgment regarding equity.[99] On March 16, 2015, the State appealed the matter to the Court. Plaintiffs' subsequently responded on March 19, arguing that the case should remain before the Panel until the remaining post-trial motions were resolved.

On March 16, 2015, the Legislature passed SB 7 which was signed by the governor and became law on April 2, 2015. The bill created the Classroom Learning Assuring Student Success Act. The first three sections of SB 7 appropriated funds to the department of education for fiscal

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[95] *Id.* at 103.
[96] *Id.* at 105.
[97] *Gannon v. State*, No. 113,267 (Kan. Sup. Ct. Mar. 5, 2015).
[98] *Gannon v. State*, No. 2010CV1569 (Shawnee Co. Dist. Ct. Mar. 11, 2015).
[99] *Gannon v. State*, No. 2010CV1569 (Shawnee Co. Dist. Ct. Mar. 13, 2015).

years 2015, 2016 and 2017 in the form of block grants for school districts. The block grants are calculated to include: (1) the amount of general state aid a school district received for school year 2014-2015; (2) the amount of supplemental general state aid a school district received for school year 2014-2015; (3) the amount of capital outlay state aid a school district received for school year 2014-2015; (4) virtual school state aid, as amended by SB 7; (5) certain tax proceeds; and (5) KPERS employer obligations. The bill also establishes the extraordinary need fund to be administered by the State Finance Council. Finally, the bill repeals the SDFQPA.

The Legislature amended the supplemental general state aid formulas and capital outlay state aid formulas in SB 7 and applied the amended formulas to the 2014-2015 school year. The supplemental general state aid formula was amended so that state aid would be still be distributed to the districts with an AVPP under the 81.2 percentile with the eligible districts being divided into quintiles based on each district's AVPP. Under the amended supplemental state aid formula, the lowest property wealth districts would receive the most aid and the successively wealthier districts would receive less aid depending on the quintile that applied to the district. The capital outlay state aid formula was amended so that the lowest property wealth district would receive 75% of district's capital outlay levy amount with the state aid percentage decreasing by 1% for each $1,000 increase in AVPP above the lowest district.

On March 26, 2015, Plaintiffs filed a motion for declaratory judgment and injunctive relief asking the Panel to hold SB 7 unconstitutional. On April 2, 2015, Plaintiffs filed a reply with the Kansas Supreme Court notifying the Court of its motion to declare SB 7 unconstitutional and asking the Court to remand the State's appeal on the issue of adequacy for the Panel's resolution of the entire case. On April 30, 2015, the Court issued an order giving the Panel jurisdiction to resolve all pending post-trial matters, including the Plaintiffs' motion to alter judgment regarding equity and Plaintiffs' motion to declare SB 7 unconstitutional.[100]

A hearing upon Plaintiffs' motions was held before the Panel on May 7-8, 2015.

Third District Court Panel Decision (June 26, 2015)

On June 26, 2015, the Panel issued its Memorandum Opinion and Order and Entry of Judgment on Plaintiffs' motion to alter judgment regarding equity and Plaintiffs' motion for declaratory judgment regarding the constitutionality of SB 7. In its opinion, the Panel examined whether SB 7 provided constitutionally adequate funding reasonably calculated to have every student meet or exceed the *Rose* factors. The Panel also examined whether the amendments

[100] *Gannon v. State,* No. 113,267 (Kan. Sup. Ct. Apr. 30, 2015).

made in SB 7 to capital outlay state aid and supplemental general state aid were constitutionally equitable by providing reasonably equal access to substantially similar educational opportunity through similar tax effort. The Panel held that "2015 House Substitute for SB 7 violates Art. 6 §6(b) of the Kansas Constitution, both in regard to its adequacy of funding and in its change of, and in its embedding of, inequities in the provision of capital outlay state aid and supplemental general state aid."[101]

With regard to adequacy, the Panel reiterated its December 30, 2014, finding that the "adequacy of K-12 funding through fiscal year 2015 was wholly constitutionally inadequate." SB 7 froze such funding amounts for fiscal years 2016 and 2017, SB 7, thus it "also stands, unquestionably, and unequivocally, as constitutionally inadequate in its funding."[102] With regard to equity, the Panel stated that funding levels are inequitable because of the formulaic changes to capital outlay state aid and supplemental general state aid in SB 7 and because the bill does not account for any changes in "the number and demographics of the K-12 student population going forward, except in 'extraordinary circumstances.'"[103]

The Panel stated that by altering the capital outlay state aid formula, the amount of the entitlement for eligible districts was reduced and even eliminated, yet property wealthier districts will remain unscathed and any subsequent higher levy authorized by a school district would not be equalized.[104] In addition, "the Legislature has, rather, by not restricting the authority of wealthier districts to keep and use the full revenues for such a levy, merely reduced, not cured, the wealth-based disparity found…unconstitutional in *Gannon*."[105]

The Panel found that for supplemental general state aid, SB 7 "reduced local option budget equalization funds that were to be due for FY 2015 and then freezes that FY 2015 state aid amount for FY 2016 and FY 2017."[106] "The new [supplemental general state aid] formula's reductions are not applied equally across the board in terms of the percentage of reduction…and still leaves a constitutionally unacceptable wealth-based disparity between USDs" who need such aid and those that do not.[107] The Panel found that the condition created overall—particularly its retroactive and carryover features—[represents] a clear failure to accord 'school districts

[101] *Gannon v. State*, No. 2010CV1569, at 6 (Shawnee Co. Dist. Ct. June 26, 2015).
[102] *Id.* at 54-55.
[103] *Id.* at 56.
[104] *Id.* at 33-34.
[105] *Id.* at 35.
[106] *Id.* at 36.
[107] *Id.* at 48.

reasonably equal access to substantially similar educational opportunity through similar tax effort.'"[108]

The Panel issued a temporary order requiring "any distribution of general state aid to any unified school district be based on the weighted student count in the current school year in which a distribution is to be made."[109] The Panel also issued certain orders regarding capital outlay state aid and supplemental general state aid that would have reinstated and fully funded such aid as such state aid provisions existed prior to January 1, 2015, for FY 2015, FY 2016, and FY 2017.[110]

In addition, the Panel outlined and stayed an alternative order striking certain provisions of SB 7 and requiring distribution of funds pursuant to the SDFQPA, as it existed prior to January 1, 2015. The Panel stated that such stay would be lifted if any remedies or orders outlined fail in implementation or are not otherwise accommodated.[111]

Subsequent Motions

In response to the Panel's opinion, on June 29, 2015, the State filed a motion to stay the operation and enforcement of the Panel's opinion and order and appealed the case to the Court. On June 30, 2015, the Kansas Supreme Court granted the State's motion to stay the operation and enforcement of the Panel's opinion and order.[112]

On July 24, 2015, the Court stated that the equity and adequacy issues were in different stages of the litigation and that it "recognized the need for an expedited decision on the equity portion of the case."[113] The Court then separated the two issues of adequacy and equity and required the parties to brief and argue the issues separately beginning with equity.[114] The Court heard oral arguments regarding equity on November 6, 2015 and released the *Gannon II* equity opinion on February 11, 2016.

Kansas Supreme Court Decision—Gannon II (Feb.11, 2016)

On February 11, 2016, in *Gannon II*, the Court held that the operation of capital outlay state aid and supplemental general state aid under the Classroom Learning Assuring Student Success (CLASS) Act created unconstitutional wealth-based disparities among school

[108] *Id.* at 49.
[109] *Id.* at 57-58.
[110] *Id.* at 65-67.
[111] *Id.* at 79-83.
[112] *Gannon v. State,* No. 113,267 (Kan. Sup. Ct. June 30, 2015).
[113] *Gannon*, No. 113,267 (Kan. Sup. Ct. July 24, 2015).
[114] *Id.*

districts.[115] The Court gave the Legislature until June 30, 2016, to pass remedial legislation and demonstrate to the Court how such legislation cures the unconstitutional inequities. If the Legislature fails to cure such unconstitutional inequities by June 30, 2016, the Court indicated that it would hold the Kansas school finance system to be unconstitutional as a whole, which would effectively prohibit the operation of the school finance system for fiscal year 2017.[116]

[115] *Gannon II* at 746.
[116] *Id.* at 741.

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Potential Remedial Orders Following *Gannon III*

Nick Myers, Assistant Revisor of Statutes
Jason Long, Senior Assistant Revisor of Statutes
Tamera Lawrence, Assistant Revisor of Statutes

June 14, 2016

On May 27, 2016, in *Gannon III,* the Kansas Supreme Court (Court) issued its decision regarding whether 2016 Senate Substitute for House Bill No. 2655 (HB 2655) cured the unconstitutional wealth-based disparities in the distribution of capital outlay state aid and supplemental general state aid. The Court held that HB 2655 cured the capital outlay inequities, but failed to cure the supplemental general state aid inequities.[1] The Court further held that neither the supplemental general state aid provisions in HB 2655 nor the entire local option budget (LOB) mechanism can be severed from the Classroom Learning Assuring Student Success (CLASS) Act.[2] Therefore, the Court held that the CLASS Act was unconstitutional as a whole and continued to "stay the issuance of our mandate—and the stay of the panel's broad remedial orders—until June 30, 2016."[3]

If no legislative action is taken on or before June 30, 2016, the Court could issue a remedial order lifting the stay. Such an order could: (1) Lift the stay declaring the CLASS Act unconstitutional while continuing the stay of the district court panel's (panel) remedial orders; (2) lift the stay declaring the CLASS Act unconstitutional and lift the stay on the panel's remedial orders reinstating the equalization formulas as they existed prior to the CLASS Act; or (3) lift the stay declaring the CLASS Act unconstitutional and lift the stay on the panel's remedial order nullifying the CLASS Act and reinstating the entire School District Finance and Quality Performance Act (SDFQPA).

This memorandum will analyze these three potential scenarios that could occur if the Court were to lift the stay on its order or the panel's orders. This is not meant to be a complete list of scenarios that could occur if the Court were to take further action. Uncertainty still exists

[1] *Gannon v. State*, No. 113,267, at 32 (Kan. Sup. Ct. May 27, 2016) (*Gannon III*).
[2] *Id.* at 43.
[3] *Id.* at 43-46.

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regarding the particular details of each scenario and also whether or how much the Court would modify any of the scenarios. In addition, the Court could issue a remedial order that is not contemplated in this memorandum.

(1) Lift Stay Ordering CLASS Act Unconstitutional – Continue Stay of Panel's Orders

In *Gannon III*, the Court declared the CLASS Act unconstitutional as a whole but continued to stay the issuance of its order until June 30, 2016.[4] Under *Gannon II*, the Court declined to affirm any of the panel's orders and also declined to address the parties' specific arguments regarding the panel's orders.[5] As such, the Court suggested that lifting the stay on the Court's order declaring the CLASS Act unconstitutional would be the only remedial option that the Court would follow.

Lifting the stay on its order holding the CLASS Act unconstitutional would mean that "no constitutionally valid school finance system exists through which funds for fiscal year 2017 can lawfully be raised, distributed, or spent."[6] Without a constitutionally equitable school finance system, Kansas public schools will not be able to operate beyond June 30, 2016.[7] Also, any efforts to implement such a constitutionally invalid system could then be enjoined by the Court.[8]

(2) Lift Stay on Panel's Remedial Orders Reinstating Equalization Formulas

Despite the lack of attention given to the panel's orders in *Gannon II*, under *Gannon III* the Court seemingly left open the possibility that the Court could lift the stay on some or all of the panel's remedial orders stating that the Court would "continue to stay the issuance of our mandate—*and the stay of the panel's broad remedial orders—until June 30, 2016.*"[9] Because the Court's focus in *Gannon II* and *III* was equity, assuming the Court remains focused solely on equity considerations, the Court could lift the stay on the panel's remedial orders concerning equity so as to cure the unconstitutionally inequitable provisions of the CLASS Act.

The equity portion of the panel's remedial orders issued on June 26, 2015, reinstated and required full funding of the capital outlay state aid formula and the supplemental general state aid formula as each formula existed on January 1, 2015, prior to the enactment of the CLASS

[4] *Id.*
[5] *Gannon v. State,*
[6] *Gannon II* at 1062.
[7] *Id.* at 75.
[8] *Id.*
[9] *Id.* at 45-46 (emphasis added).

Act.[10] The panel specifically struck certain sections and textual language of 2015 House Substitute for Senate Bill 7 (SB 7) to reinstate the prior capital outlay state aid and the supplemental general state aid formulas.[11] The panel also required full funding of such formulas for fiscal years 2015, 2016 and 2017. To assure full funding, the panel directed the Kansas State Board of Education to immediately certify the amounts due and required executive officials to honor such certifications and make such payments.[12]

If the Court were to lift the stay on the panel's remedial orders concerning equity without any modification, such orders would seemingly require the Legislature and other executive officials to issue back payments to schools for amounts owed pursuant to the reinstated equalization formulas in fiscal years 2015 and 2016. In addition, such order also would continue to require operation of and full funding of the reinstated capital outlay state aid and supplemental general state aid formulas for fiscal year 2017. However, the Court could modify the panel's remedial orders regarding equity so as to only require payments for fiscal year 2017 and not require payments for fiscal years 2015 and 2016.

There is prior precedent suggesting that the Court would modify the panel's remedial order so as to not include any back payments for prior fiscal years.[13] In *Gannon I*, plaintiffs requested an order requiring payment of capital outlay state aid entitlements from prior fiscal years but the Court affirmed the panel's denial of such request. If the Court modifies the panel's remedial orders concerning equity so as to not require back payments, the equalization formulas as they existed in the SDFQPA would be reinstated and certain executive officials and the department would be required to fully fund such formulas in fiscal year 2017.

(3) Lift Stay on Panel's Remedial Order Reinstating the SDFQPA

The prior scenario would require the Court to sever the unconstitutional equalization formulas from the CLASS Act with a remedial order reinstating the equalization formulas as they existed in the SDFQPA. However, in *Gannon III*, the Court declined to sever the unconstitutional supplemental general state aid provisions from the CLASS Act finding that severance would do "violence to legislative intent."[14] If the Court were to again find that severing the unconstitutional equalization formulas and reinstating the prior formulas runs afoul

[10] *Gannon v. State*, No. 2010-CV-001569, at 65-76 (Shawnee Co. Dist. Ct. June 26, 2015).
[11] *Id.*
[12] *Id.*
[13] *Gannon v. State*, 298 Kan. 1107, 1189-95 (Mar. 7, 2014) (*Gannon I*).
[14] *Gannon III* at 43.

of legislative intent, the Court could choose to lift the stay on the panel's broad alternative order as a cure for the unconstitutional CLASS Act.

The panel's broad alternative order struck certain provisions of SB 7, including the CLASS Act, reinstated the entire SDFQPA and required appropriated funds to be distributed pursuant to the SDFQPA.[15] Under this remedial order, the SDFQPA would be judicially reinstated as the school finance formula for fiscal year 2017. The Panel's alternative order did not contain a discussion regarding whether the Panel would require distribution of funds for amounts due pursuant to the SDFQPA for fiscal years 2015 or 2016.

CONCLUSION

The Court gave the Legislature another opportunity to "craft a constitutionally suitable solution" and continued to "stay the issuance of our mandate — and the stay of the panel's broad remedial orders—until June 30, 2016."[16] If no legislative action is taken on or before June 30, 2016, the Court would likely issue a remedial order lifting the stay of its order and potentially the panel's orders. The Court in *Gannon II* appeared to suggest that the Court's remedial order would lift the stay declaring the CLASS Act unconstitutional thereby prohibiting the distribution of funds pursuant to the CLASS Act which would lead to school closures.

In *Gannon III*, the Court seemed to leave open the possibility that the Court's remedial order could also include lifting the stay on the panel's broad remedial orders. Lifting the stay of the panel's orders creates two different scenarios. First, the Court could lift the stay on the equity portion of the panel's remedial orders. Under this scenario, the capital outlay state aid and supplemental general state aid formulas would be reinstated as they existed under the SDFQPA and full funding of such formulas would be required. Second, the Court could lift the stay on the panel's alternative order which judicially reinstated the SDFQPA as the school finance system.

Any subsequent remedial order to lift the stay and enjoin the operation of the school finance system would be unprecedented action on the part of the Court. No prior Kansas Supreme Court order has actually prohibited the operation of a school finance formula or reinstated statutory provisions to cure certain unconstitutional provisions in a school finance system. As such, predicting the details of a potential future remedial order is challenging. In addition, the Court could always adjust or modify any of the above remedial orders or it could create a wholly new remedial order that is not contemplated in this memorandum.

[15] *Id.* at 79-83.
[16] *Id.* at 45-46.

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A History of School Finance Litigation

Jason B. Long, Senior Assistant Revisor

June 16, 2016

This memorandum provides a history of school finance litigation since the enactment of the School District Finance and Quality Performance Act in 1992. This review includes the relevant constitutional provisions, the case-law immediately prior to *Montoy v. State*, the *Montoy* decisions and subsequent legislation, and the *Gannon v. State* decisions and subsequent legislation.

CONSTITUTIONAL PROVISIONS

The legal disputes over the provision of finance for the public school system revolve around the constitutional amendments to Article 6 of the Constitution of the State of Kansas (Article 6) that were ratified by the Kansas electorate in 1966.[1] The amendments were crafted by an 11-member citizen advisory committee that was tasked by the Legislature with examining the education system in Kansas and recommending changes in its structure and organization.[2] Seeking to provide for the governance of the educational system as it moved into the future, the committee recommended a comprehensive system with general supervision by an elected state board and local control vested in a locally elected school board.[3] The committee also provided for the continued governance of the Legislature through the provision of finance for the educational interests of the state.[4] Copies of the relevant sections of Article 6 that have become the source of these legal disputes are attached to this memorandum.

First, Section 1 of Article 6 requires that the Legislature "provide for intellectual, educational, vocational and scientific *improvement* by establishing and maintaining public schools, educational institutions and related activities." (Emphasis added) This provision places responsibility for the educational interests of the state with the Legislature. The emphasized term

[1] *See* Article 6 of the Constitution of the State of Kansas.
[2] *See* The Education Amendment to the Kansas Constitution, Pub. No. 256 (Dec. 1965).
[3] *Id.* at 1-7.
[4] *Id.* at 30-36.

"improvement" has been used by the courts as a basis for holding that financing the status quo does not necessarily satisfy the constitutional requirements.[5]

Section 2 of Article 6 establishes the State Board of Education and its primary duty of general supervision of schools. Such constitutional authority has generally been held to be self-executing.[6] The State Board of Education has authority to regulate the schools and school districts of this State.

Section 5 of Article 6 establishes local control of public schools in the locally elected boards of education. However, this section does reserve certain legislative control to the Legislature.[7]

Finally, Section 6 of Article 6 provides that "[t]he legislature shall make suitable provision for finance of the educational interests of the state." Generally, this provision requires the Legislature to provide sufficient funding for the public school system. This is done by direct appropriation, taxes levied at the local level, or may be done by some other funding mechanism. This provision is typically construed as requiring the Legislature to provide a "suitable education" for every public school student in Kansas.[8]

After ratification of the revised Article 6 in 1966, various school financing laws were enacted and legal challenges arose based on alleged violations of the above-described constitutional provisions.

HISTORY PRIOR TO *MONTOY*

In 1992, the legislature enacted the School District Finance and Quality Performance Act (Act) in response to a legal challenge to the previous school funding laws. The Act was challenged on various constitutional grounds, including violations of Sections 5 and 6 of Article 6. In 1994, the Kansas Supreme Court (Court) upheld the Act against all of the constitutional challenges in *U.S.D. 229 v. State*.[9]

As to the Section 5 challenge, the Court held that Article 6 places responsibility for establishing the educational system with the Legislature and the responsibility for providing for the finance thereof.[10] Though the plaintiff school districts argued that Section 5 granted local

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[5] *Montoy v. State*, 278 Kan. 769, 773 (2005) (*Montoy II*).
[6] *State ex rel. Miller v. Bd. of Educ.*, 212 Kan. 482, 484 (1973).
[7] *See* Article 6, § 5 of the Constitution of the State of Kansas (subjecting agreements to limitation, change or termination by the legislature).
[8] *See Montoy II*.
[9] *U.S.D. 229 v. State*, 256 Kan. 232 (1994)
[10] *Id.* at 251-52.

boards of education self-executing power for the financing of the school district, the Court held that there is no such self-executing authority found in Section 5, and that the school boards' authority to levy and collect taxes stems solely from the grant of such authority by the Legislature.[11] Therefore, the provisions in the Act granting or restricting a school board's taxing authority were constitutionally permissible.[12]

The Court found that "suitability" was most closely akin to adequacy.[13] After examining adequacy standards in other states with similar constitutional provisions, the Court held that the quality performance accreditation standards enumerated in the Act provided a sufficient means of judging whether the education being provided was "suitable."[14] The Court was not willing to substitute its judgment of what constituted "suitable" for that of the Legislature and held that the Act did not violate Section 6.[15]

THE *MONTOY* CASE

Kansas Supreme Court Decision – Montoy I (Jan. 24, 2003)

After the *U.S.D. 229* decision, the Legislature amended the Act various times. These changes led to a new legal challenge regarding the constitutionality of school finance, which was filed on December 14, 1999 in Shawnee County District Court. Relying primarily on the decision in *U.S.D. 229*, the district court summarily determined that there were no constitutional violations and dismissed the lawsuit.[16]

On appeal, the Kansas Supreme Court held that the plaintiffs' amended petition contained sufficient factual allegations that, when coupled with the changes in school finance law since the *U.S.D. 229* decision, provided a case that could not be summarily dismissed (*Montoy I*).[17] The Court noted that the suitability of school finance is not a fixed issue, but one that should be monitored and reevaluated as needed.[18] Because of the numerous changes in the school finance laws, the Court decided that *Montoy* was sufficiently removed in time from *U.S.D. 229* that the

[11] *Id.* at 253.
[12] *Id.*
[13] *Id.* at 254.
[14] *Id.* at 258.
[15] *Id.* at 257.
[16] *Montoy v. State*, 275, Kan. 145, 146-47 (2003) (*Montoy I*).
[17] *Id.* at 156.
[18] *Id.* at 153.

issue of the suitability of school finance warranted another examination.[19] Reversing the district court's dismissal, the Court sent the case back to district court for trial.[20]

Second District Court Decision (Dec. 2, 2003)

Prior to trial, the Legislature directed that a professional cost study be conducted to analyze the cost of providing a suitable education.[21] The study was conducted by the firm of Augenblick & Myers. The ten quality performance accreditation standards for education had been removed from the Act and replaced with a statute requiring the State Board of Education to design and develop an accreditation system "based upon improvement in performance that reflects high academic standards and is measurable."[22] These accreditation standards along with performance measures determined by the Legislative Educational Planning Committee were the criteria used in the evaluation of the level of school finance in the Augenblick & Myers cost study (A&M study).[23]

At trial, the district court found several societal and legislative changes had occurred since the *U.S.D. 229* decision. The societal changes included shifts in the demographics of public school students and higher admission standards at postsecondary institutions.[24] Legislative changes included modification of several of the finance formula weightings over the years.[25] These modifications did not appear to correlate to the societal changes noted by the district court. In its order issued December 2, 2003, the district court used the A&M study as its cost basis for determining the cost of a suitable education and also took into account the various changes in the Act since the *U.S.D. 229* decision.[26] The district court concluded that the Legislature had failed to "make suitable provisions for finance" of the educational interests of the state.[27] The district court then stayed its order holding the Act unconstitutional until July 1, 2004, to give the executive and legislative branches an opportunity to remedy the constitutional infirmities in the Act.[28]

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[19] *Id.*
[20] *Id.* at 156.
[21] K.S.A. 46-1225 (2001) (repealed 2005).
[22] *Id.*
[23] *Id.*
[24] *Montoy v. State*, No. 99C1738, at 29 (Shawnee Co. Dist. Ct. Dec. 2, 2003).
[25] *Id.*
[26] *Id.* at 37-43.
[27] *Id.* at 49.
[28] *Id.* at 50.

The matter was brought before the district court again in May 2004. After reviewing the legislative action from 2004 Legislative Session, the district court issued another order on May 11, 2004.[29] The district court concluded that the State had failed to correct the deficiencies identified in the court's prior order.[30] As part of its decision, the district court enjoined the "use of all statutes related to the distribution of funds for public education, this time with the schools closed."[31] According to the court, this would effectively put the school system "on pause" until the unconstitutional defects in the funding system were remedied.[32] Additionally, the district court directed the plaintiffs to prepare an order of restraint to be directed to any public official or public body that provided or expended money for public education.[33] The order of restraint would prohibit such public entities from expending any funds for public education under all education funding statutes. The order was directed to take effect on June 30, 2004, and violation of the order would be punishable by contempt.[34] The district court issued a subsequent order on May 18, 2004, clarifying that its previous order would not prohibit expenditures for bond payments and contractual obligations for capital assets.[35]

Kansas Supreme Court Decision – Montoy II (Jan. 3, 2005)

The district court's order was stayed pending appeal. The Kansas Supreme Court issued its second decision in the matter on January 3, 2005 (*Montoy II*).[36] The Court first looked at the standard for determining when an Article 6, § 6 violation has occurred. The Court found that a "suitable education" has many aspects.[37] One aspect is found in Section 1 of Article 6, which requires that the Legislature provide for educational "improvement."[38] The Court noted that the Legislature had originally recognized this aspect by adopting ten goals of education in the Act. However, those standards were removed and replaced with the statute requiring the State Board of Education to design and develop an accreditation system.[39] The Court also noted the

[29] *Montoy v. State*, No. 99C1738 (Shawnee Co. Dist. Ct. May 11, 2004).
[30] *Id.* at 5.
[31] *Id.* at 11.
[32] *Id.*
[33] *Id.* at 15.
[34] *Id.*
[35] *Montoy v. State*, No. 99C1738 (Shawnee Co. Dist. Ct. May 18, 2004).
[36] *Montoy v. State*, 278 Kan. 769 (2005) (*Montoy II*).
[37] *Id.* at 773.
[38] *Id.*
[39] *Id.*

Legislature's own definition of "suitable education" expressed in K.S.A. 46-1225(e), which has since been repealed.[40]

Using such findings as the standard for the definition of "suitable education," the Court began its analysis of the evidence presented at trial. It concluded that there was substantial competent evidence, including the A&M study, supporting the district court's ruling that the Legislature had failed to provide for the finance of a suitable education for Kansas students.[41] Specifically, the Court agreed with findings that the school finance formula failed to adequately provide funding for school districts with high proportions of minority, at-risk, and special education students.[42] The Court also noted evidence showing that school districts were using local option budgets to finance general education expenses even though that revenue source had been enacted with the intent that it finance those expenses that are above and beyond general school district operating expenses.[43]

Additionally, the Court agreed with the district court's finding that no actual costs of education had been used in formulating the school finance formula.[44] The district court found that instead, the weightings and other variables of the formula were determined based on prior spending levels and political compromise. The Court found this lack of an actual cost basis for the formula distorted various weightings, including low-enrollment, special education, vocational education, bilingual, and at-risk weightings.[45]

The Court affirmed the district court's ruling that the Act was unconstitutional in violation of Article 6. However, the Court retained jurisdiction over the case and stayed all orders so as to reexamine the issues again after the Legislature had time to convene and respond through legislative changes to the formula.[46]

Kansas Supreme Court Decision – Montoy III (June 3, 2005)

In response to the Court's decision in *Montoy II*, the Legislature enacted 2005 House Bill No. 2247 (HB 2247) and 2005 Senate Bill No. 43 (SB 43). These enactments made changes to the base state aid per pupil (BSAPP), various weightings, the local option budget (LOB) limits, and limits on capital outlay levies. The Legislature also established the 2010 Commission to

[40] *Id.* at 774.
[41] *Id.* at 775.
[42] *Id.* at 771-72.
[43] *Id.*
[44] *Id.* at 774.
[45] *Id.*
[46] *Id.* at 775.

oversee the school finance system and ordered a cost study to be performed by the Division of Legislative Post Audit (LPA study). A total of $142 million would be added for school funding for the 2005-2006 school year through these amendments.

In June of 2005, the Court issued its third opinion on the Act (*Montoy III*).[47] The Court began its analysis of the legislative enactments by reaffirming that since the case had moved into the remedial phase – the Court had held the formula unconstitutional in January of 2005 and had given the Legislature an opportunity to present a legislative remedy – the burden was now on the State to prove that its proffered remedy was constitutional.[48] The Court also held that its review of the 2005 legislation was not a violation of separation of powers as it has been long settled in law that it is the judiciary's duty to determine the constitutionality of legislative enactments.[49]

The Court then looked at the various amendments made by the Legislature in comparison to the data of the A&M study. The Court's general conclusion was that the changes in the BSAPP and the weightings fell short of the actual cost data supplied by the A&M study.[50] It also concluded that without appropriate equalization measures the property tax amendments to the LOB and the capital outlay provisions had the potential to exacerbate the wealth disparities among school districts.[51] Based on these conclusions, the Court held that the legislative enactments of the 2005 session were not constitutional under Section 6 of Article 6.[52]

Using the A&M study as the basis for its remedy, the Court concluded its opinion by ordering the State to increase funding for schools by at least $285 million for the 2005-2006 school year.[53] This was $^1/_3$ of the amount of total funding increases recommended by the cost study to the State Board of Education in July of 2002.[54] The Court also retained jurisdiction once again to review the Legislature's actions if necessary.[55]

During a special session of the Legislature in the summer of 2005, the Legislature passed Senate Bill No. 3 (SB 3), which when combined with the $142 million added by HB 2247 brought the total increase in school funding to $289 million. At a hearing on July 8, 2005, the Court reviewed SB 3 and found that it complied with the Court's earlier order.[56] The Court

[47] *Montoy v. State*, 279 Kan. 817 (2005) (*Montoy III*).
[48] *Id.* at 825-26.
[49] *Id.* at 828.
[50] *Id.* at 831-38.
[51] *Id.* at 839.
[52] *Id.* at 840.
[53] *Id.* at 845.
[54] *Id.*
[55] *Id.* at 847.
[56] Kan. Sup. Ct. order of July 8, 2005.

allowed most of the provisions of HB 2247 as modified by SB 3 to be effective for the 2005-2006 school year. The Court also once again retained jurisdiction to review further legislative action on this issue in the future.[57]

Kansas Supreme Court Decision – Montoy IV (July 28, 2006)

During the 2006 Legislative Session the Legislature received a new cost study conducted by the LPA and enacted 2006 Senate Bill No. 549 (SB 549), which significantly altered the school finance formula. In May 2006, the Court once again reviewed the school finance issues in yet another remedial hearing. In its subsequent opinion (*Montoy IV*),[58] the Court found SB 549 to "materially and fundamentally" change the school funding scheme in Kansas.[59] Specifically, the Court noted that SB 549 implemented a three-year funding scheme by incorporating increases in the BSAPP over a three-year period. It also added new weightings, adjusted others, and broadened the flexibility of school districts to spend money received for certain programs. SB 549 also addressed the local wealth disparities by significantly revising the LOB caps and equalization formula, and declaring that such funds are to be used for general education purposes.[60]

Due to the extensive changes in the school funding formula, the Court held that the constitutionality of SB 549 was not an issue to be decided by the Court.[61] The Court's review in this final opinion was to determine whether the Legislature was in compliance with the Court's order in *Montoy III*. Any constitutional challenge to SB 549 would have to be brought in a new lawsuit.[62]

As to the issue of compliance with *Montoy III*, the Court held that while the Legislature could not ignore the LPA study, it was not required to implement the findings and conclusions of the study.[63] The Legislature considered the cost conclusions of the study and in doing so complied with *Montoy III*. Noting the complexities of funding public education, the Court held that the Legislature had substantially complied with its previous orders and dismissed the case.[64]

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[57] *Id.*
[58] *Montoy v. State*, 282 Kan. 9 (2006) (*Montoy IV*).
[59] *Id.* at 16.
[60] *Id.* at 16-17.
[61] *Id.* at 18-19.
[62] *Id.* at 19.
[63] *Id.* at 24.
[64] *Id.* at 26-27.

LEGISLATIVE RESPONSES TO *MONTOY*

Responses During the Case

As noted above, the Legislature passed two acts during the 2005 Legislative Session – HB 2247 and SB 43 – that made substantial changes to the school finance formula. The total amount of additional funding for public schools under these enactments was $142 million. The Legislature then enacted SB 3 during the 2005 Special Session, which added another $147 million in school funding.

Additionally, the House of Representatives adopted two resolutions – HR 6006 and HR 6007 – that directly addressed the Court's decision in *Montoy III*. HR 6006 stated that the Court had infringed on the right and responsibility of the Legislature to determine the provision of finance for public education. HR 6007 went further by making several findings regarding the A&M study, the consideration of costs by the Legislature, and the definition of "suitable education."

In 2006, the Legislature passed SB 549, which made significant changes to the school finance formula as noted by the Court in *Montoy IV*. These changes enacted a three-year plan for school funding and made substantial changes to the LOB provisions and the equalization of local tax levies. The total additional funding for public schools over the three-year period would be $466 million.

Legislative Enactments After the Case

In 2008, the Legislature passed 2008 Senate Bill No. 531 increasing the BSAPP from $4,433 to $4,492.

In 2009, the Legislature recognized the BSAPP may not be funded at the statutory amount, and so passed 2009 Senate Bill No. 84 (SB 84) to provide an alternative calculation for LOB authority. The LOB of a school district is contingent upon the state financial aid that a school district is entitled to receive, which is contingent upon the amount of the BSAPP provided by the State. Thus, SB 84 provided that if the BSAPP appropriated in a given year was below $4,433, the school district could still calculate its LOB authority based on a fictional BSAPP of $4,433 so as not to lose LOB authority and the local revenue that comes with it.

In 2011, the Legislature passed 2011 Senate Bill No. 111 (SB 111) to give school districts more flexibility in spending the cash reserves held in various school district funds. Financial analysis showed that there were unencumbered balances in these funds in a number of

school districts, but that the districts could not spend the money because of statutory restrictions. SB 111 removed these restrictions for the 2011-2012 school year thereby giving school districts flexibility in their spending. This legislation was then extended in 2012 to apply to the 2012-2013 school year, and again the following year.

Part of the rationale behind SB 111 was to release unencumbered funds for school districts to use at a time when general state aid was being reduced during the period of the recession. The reduction in general state aid – most notably through reductions in the BSAPP – led to the filing of the current lawsuit in 2010.

THE *GANNON* CASE

In January 2010, the *Montoy* Plaintiffs filed a motion with the Court requesting *Montoy* be reopened to determine if the State was in compliance with the Court's prior orders in that case. This was done in response to reductions in the amount of BSAPP appropriated for fiscal year 2010 and reductions in funding for capital outlay state aid and supplemental general state aid. The Court denied this motion, which led to the filing of *Gannon*.[65]

The new lawsuit was filed in November 2010 by various Plaintiffs and contained several claims.[66] Those claims included an allegation that the State violated Article 6, §6(b) by failing to provide a suitable education to all Kansas students, that the failure to make capital outlay state aid payments created an inequitable and unconstitutional distribution of funds, that Plaintiffs were denied equal protection under both the 14th Amendment to the U.S. Constitution and Sections 1 and 2 of the Kansas Bill of Rights, and that Plaintiffs were denied substantive due process under Section 18 of the Kansas Bill of Rights.[67]

First District Court Panel Decision (Jan. 11, 2013)

The Panel rejected the Plaintiffs' claims of equal protection and substantive due process violations.[68] However, the Panel held that the State had violated Article 6, §6(b) by inadequately funding the Plaintiff school districts under the SDFQPA.[69] It also held that both the withholding of capital outlay state aid payments and the proration of supplemental general state aid payments

[65] *Gannon I*, 298 Kan. 1107, 1115 (2014).
[66] Currently, the Plaintiffs consist of four school districts (U.S.D. No. 259, Wichita; U.S.D. No. 308, Hutchinson; U.S.D. No. 443, Dodge City; and U.S.D. No. 500, Kansas City).
[67] *Gannon I*, at 1116-1117.
[68] *Id.* at 1117-1118.
[69] *Id.*

created unconstitutional wealth-based disparities among school districts.[70] As part of its order, the Panel imposed a number of injunctions against the State which were designed to require a BSAPP amount of $4,492, and fully fund capital outlay state aid payments and supplemental general state aid payments.[71]

All parties appealed the Panel's decision. The State appealed both the Panel's holdings as to the constitutionality of the State's duty to make suitable provision for finance of the educational interests of the state and the Panel's remedies. The Plaintiffs appealed the Panel's reliance on the BSAPP amount of $4,492, arguing that cost studies indicated the BSAPP amount should be greater than $4,492. At the request of the State, two days of mediation were conducted in April 2013, but those efforts were unsuccessful.[72] In October 2013, the Kansas Supreme Court heard oral arguments from both sides.

Kansas Supreme Court Decision—Gannon I (Mar. 7, 2014)

On March 7, 2014, the Court reaffirmed that Article 6 of the Constitution of the State of Kansas contains both an adequacy component and an equity component with respect to determining whether the Legislature has met its constitutional obligation to "make suitable provision for finance of the educational interests of the state."[73] First, the Court stated that the adequacy component test is satisfied "when the public education financing system provided by the Legislature for grades K-12—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose* [*v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989)] and presently codified in K.S.A. 2013 Supp. 72-1127."[74] The Court then remanded the case back to the Panel with directions to apply the newly established adequacy test to the facts of the case.

Second, the Court also established a new test for determining whether the Legislature's provision for school finance is equitable: "School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort."[75] The Court applied the newly established equity test to the existing funding levels for both capital outlay state aid and supplemental general state aid, and found both were unconstitutional under the test. Based on

[70] *Id.* at 1116.
[71] *Id.* at 1118.
[72] *Id.*
[73] *Id.* at 1163; *see also*, Kan. Const. art. 6 § 6(b).
[74] *Id.* at 1170 (citing *Rose*, 790 S.W.2d at 212).
[75] *Id.* at 1175.

these findings, the Court directed the Panel to enforce its equity rulings and provided guidance as to how to carry out such enforcement.

In response to the Court's decision, the Legislature passed HB 2506, which became law on May 1, 2014. First, the bill codified the *Rose* standards at K.S.A. 2014 Supp. 72-1127, which provides the educational capacities each child should attain from the subjects and areas of instruction designed by the Kansas State Board of Education.[76] Second, the bill appropriated an additional $109.3 million for supplemental general state aid and transferred $25.2 million from the state general fund to the capital outlay fund.[77]

At a hearing on June 11, 2014, the Panel was provided estimates from the Kansas Department of Education about the additional appropriations in HB 2506. Based on such estimations, the Panel determined that HB 2506 fully funded capital outlay state aid and supplemental general state aid and complied with the Court's equity judgment.[78] The Panel did not dismiss the equity issue despite stating that no further action was necessary at that time.[79]

Second District Court Panel Decision (Dec. 30, 2014)

On December 30, 2014, the Panel issued its second significant *Gannon* opinion. The Panel affirmed its prior equity ruling and held that the State "substantially complied" with the obligations to fund capital outlay state aid and supplemental general state aid.[80] The key decision by the Panel was that funding levels were constitutionally inadequate because "the Kansas public education financing system provided by the Legislature for grades K-12 – through structure and implementation – is not presently reasonably calculated to have all Kansas public education students meet or exceed the Rose factors."[81]

In concluding that funding levels were constitutionally inadequate, the Panel made several findings. The Panel found that the *Rose* factors have been implicitly known and recognized by the Kansas judiciary and that the cost studies the Panel based its opinion upon were conducted with knowledge and consideration of the *Rose* factors.[82] The Panel determined that, by adjusting the cost studies' figures for inflation, the current BSAPP amount of $3,852 is

[76] *See* K.S.A. 2015 Supp. 72-1127(c).
[77] L. 2014, ch. 93 §§ 6, 7, and 47; K.S.A. 2014 Supp. 72-8814.
[78] *Gannon v. State,* No. 2010CV1569, at 24-26 (Shawnee Co. Dist. Ct. June 26, 2015).
[79] *Id.*
[80] *Gannon v. State,* No. 2010CV1569, at 7 (Shawnee Co. Dist. Ct. Dec 30, 2014).
[81] *Id.* at 114-115.
[82] *Id.* at 11-14.

constitutionally inadequate.[83] The Panel found that gaps in student performance were likely to continue due to inadequate funding.[84] The Panel also determined that federal funding, KPERS, capital outlay funding, bond and interest funding, and LOB funding cannot be included in any measure of adequacy of the school finance formula as it was currently structured.[85] Regarding the LOB funding mechanism, the Panel stated that LOB funding cannot be included in any measure of adequacy due to the fact that it is solely discretionary at the local level.[86]

The Panel's opinion did not contain any direct orders to either party, but did provide suggestions as to how adequate funding could be achieved. Initially, the Panel suggested that a BSAPP amount of $4,654 coupled with increases in certain weightings could be constitutional, provided the LOB funding scheme was adjusted to include both a minimum local tax levy and a fail-safe funding mechanism.[87] Alternatively, the Panel proposed a BSAPP amount of $4,890 could be an adequate level of funding if the LOB were to remain strictly discretionary.[88] Finally, the Panel retained jurisdiction to review the Legislature's subsequent actions at a later time.

Subsequent Motions and Legislative Actions

Two post-trial motions were filed shortly after the Panel's December 30, 2014, decision. On January 23, 2015, the State of Kansas filed a motion to alter and amend the Panel's December 30, 2014, opinion arguing the Panel did not clearly identify which facts the Panel used to support its opinion. On January 27, 2015, Plaintiffs filed a motion to alter the previous judgment regarding equity claiming that the State was no longer in substantial compliance and that additional expenditures in fiscal year 2015 were necessary to fully fund equalization aid. Subsequent briefings and responses were then submitted to the Panel upon these two motions.

On January 28, 2015, the State appealed the case to the Kansas Supreme Court. On February 27, 2015, the State filed a motion with the Supreme Court to stay any further Panel proceedings until disposition of the State's appeal. On March 3, 2015, Plaintiffs filed a response to the State's motion arguing that the Court should deny the State's motion and instead remand the State's appeal to the Panel for resolution of the all pending post-trial motions with the Panel.

[83] *Id.* at 56.
[84] *Id.* at 20.
[85] *Id.* at 62-77.
[86] *Id.* at 76-77.
[87] *Id.* at 103.
[88] *Id.* at 105.

On March 5, 2015, the Kansas Supreme Court denied the State's motion to stay further Panel proceedings and remanded the case to the Panel for resolution of all post-trial motions.[89]

On March 11, 2015, the Panel issued an opinion and order upon the State's motion to alter and amend the Panel's judgment in which the Panel granted in part the State's motion and withdrew a paragraph from the its December 30, 2014, opinion that the Panel deemed to be the source of the State's motion.[90] On March 13, 2015, the Panel issued an order setting a hearing date for May 7, 2015, upon Plaintiffs' motion to alter judgment regarding equity.[91] On March 16, 2015, the State appealed the matter to the Court. Plaintiffs' subsequently responded on March 19, arguing that the case should remain before the Panel until the remaining post-trial motions were resolved.

On March 16, 2015, the Legislature passed SB 7 which was signed by the governor and became law on April 2, 2015. The bill created the Classroom Learning Assuring Student Success Act. The first three sections of SB 7 appropriated funds to the department of education for fiscal years 2015, 2016 and 2017 in the form of block grants for school districts. The block grants are calculated to include: (1) the amount of general state aid a school district received for school year 2014-2015; (2) the amount of supplemental general state aid a school district received for school year 2014-2015; (3) the amount of capital outlay state aid a school district received for school year 2014-2015; (4) virtual school state aid, as amended by SB 7; (5) certain tax proceeds; and (5) KPERS employer obligations. The bill also establishes the extraordinary need fund to be administered by the State Finance Council. Finally, the bill repeals the SDFQPA.

The Legislature amended the supplemental general state aid formulas and capital outlay state aid formulas in SB 7 and applied the amended formulas to the 2014-2015 school year. The supplemental general state aid formula was amended so that state aid would be still be distributed to the districts with an AVPP under the 81.2 percentile with the eligible districts being divided into quintiles based on each district's AVPP. Under the amended supplemental state aid formula, the lowest property wealth districts would receive the most aid and the successively wealthier districts would receive less aid depending on the quintile that applied to the district. The capital outlay state aid formula was amended so that the lowest property wealth district would receive 75% of district's capital outlay levy amount with the state aid percentage decreasing by 1% for each $1,000 increase in AVPP above the lowest district.

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[89] *Gannon v. State*, No. 113,267 (Kan. Sup. Ct. Mar. 5, 2015).
[90] *Gannon v. State*, No. 2010CV1569 (Shawnee Co. Dist. Ct. Mar. 11, 2015).
[91] *Gannon v. State,* No. 2010CV1569 (Shawnee Co. Dist. Ct. Mar. 13, 2015).

On March 26, 2015, Plaintiffs filed a motion for declaratory judgment and injunctive relief asking the Panel to hold SB 7 unconstitutional. On April 2, 2015, Plaintiffs filed a reply with the Kansas Supreme Court notifying the Court of its motion to declare SB 7 unconstitutional and asking the Court to remand the State's appeal on the issue of adequacy for the Panel's resolution of the entire case. On April 30, 2015, the Court issued an order giving the Panel jurisdiction to resolve all pending post-trial matters, including the Plaintiffs' motion to alter judgment regarding equity and Plaintiffs' motion to declare SB 7 unconstitutional.[92]

A hearing upon Plaintiffs' motions was held before the Panel on May 7-8, 2015.

Third District Court Panel Decision (June 26, 2015)

On June 26, 2015, the Panel issued its Memorandum Opinion and Order and Entry of Judgment on Plaintiffs' motion to alter judgment regarding equity and Plaintiffs' motion for declaratory judgment regarding the constitutionality of SB 7. In its opinion, the Panel examined whether SB 7 provided constitutionally adequate funding reasonably calculated to have every student meet or exceed the *Rose* factors. The Panel also examined whether the amendments made in SB 7 to capital outlay state aid and supplemental general state aid were constitutionally equitable by providing reasonably equal access to substantially similar educational opportunity through similar tax effort. The Panel held that "2015 House Substitute for SB 7 violates Art. 6 §6(b) of the Kansas Constitution, both in regard to its adequacy of funding and in its change of, and in its embedding of, inequities in the provision of capital outlay state aid and supplemental general state aid."[93]

With regard to adequacy, the Panel reiterated its December 30, 2014, finding that the "adequacy of K-12 funding through fiscal year 2015 was wholly constitutionally inadequate." SB 7 froze such funding amounts for fiscal years 2016 and 2017, SB 7, thus it "also stands, unquestionably, and unequivocally, as constitutionally inadequate in its funding."[94] With regard to equity, the Panel stated that funding levels are inequitable because of the formulaic changes to capital outlay state aid and supplemental general state aid in SB 7 and because the bill does not account for any changes in "the number and demographics of the K-12 student population going forward, except in 'extraordinary circumstances.'"[95]

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[92] *Gannon v. State,* No. 113,267 (Kan. Sup. Ct. Apr. 30, 2015).
[93] *Gannon v. State*, No. 2010CV1569, at 6 (Shawnee Co. Dist. Ct. June 26, 2015).
[94] *Id.* at 54-55.
[95] *Id.* at 56.

The Panel stated that by altering the capital outlay state aid formula, the amount of the entitlement for eligible districts was reduced and even eliminated, yet property wealthier districts will remain unscathed and any subsequent higher levy authorized by a school district would not be equalized.[96] In addition, "the Legislature has, rather, by not restricting the authority of wealthier districts to keep and use the full revenues for such a levy, merely reduced, not cured, the wealth-based disparity found...unconstitutional in *Gannon*."[97]

The Panel found that for supplemental general state aid, SB 7 "reduced local option budget equalization funds that were to be due for FY 2015 and then freezes that FY 2015 state aid amount for FY 2016 and FY 2017."[98] "The new [supplemental general state aid] formula's reductions are not applied equally across the board in terms of the percentage of reduction...and still leaves a constitutionally unacceptable wealth-based disparity between USDs" who need such aid and those that do not.[99] The Panel found that the condition created overall—particularly its retroactive and carryover features—[represents] a clear failure to accord 'school districts reasonably equal access to substantially similar educational opportunity through similar tax effort.'"[100]

The Panel issued a temporary order requiring "any distribution of general state aid to any unified school district be based on the weighted student count in the current school year in which a distribution is to be made."[101] The Panel also issued certain orders regarding capital outlay state aid and supplemental general state aid that would have reinstated and fully funded such aid as such state aid provisions existed prior to January 1, 2015, for FY 2015, FY 2016, and FY 2017.[102]

In addition, the Panel outlined and stayed an alternative order striking certain provisions of SB 7 and requiring distribution of funds pursuant to the SDFQPA, as it existed prior to January 1, 2015. The Panel stated that such stay would be lifted if any remedies or orders outlined fail in implementation or are not otherwise accommodated.[103]

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[96] *Id.* at 33-34.
[97] *Id.* at 35.
[98] *Id.* at 36.
[99] *Id.* at 48.
[100] *Id.* at 49.
[101] *Id.* at 57-58.
[102] *Id.* at 65-67.
[103] *Id.* at 79-83.

Subsequent Motions

In response to the Panel's opinion, on June 29, 2015, the State filed a motion to stay the operation and enforcement of the Panel's opinion and order and appealed the case to the Court. On June 30, 2015, the Kansas Supreme Court granted the State's motion to stay the operation and enforcement of the Panel's opinion and order.[104]

On July 24, 2015, the Court stated that the equity and adequacy issues were in different stages of the litigation and that it "recognized the need for an expedited decision on the equity portion of the case."[105] The Court then separated the two issues of adequacy and equity and required the parties to brief and argue the issues separately beginning with equity.[106] The Court heard oral arguments regarding equity on November 6, 2015 and released the *Gannon II* equity opinion on February 11, 2016.

Kansas Supreme Court Decision—Gannon II (Feb.11, 2016)

On February 11, 2016, in *Gannon II*, the Court held that the operation of capital outlay state aid and supplemental general state aid under the Classroom Learning Assuring Student Success (CLASS) Act created unconstitutional wealth-based disparities among school districts.[107] The Court gave the Legislature until June 30, 2016, to pass remedial legislation and demonstrate to the Court how such legislation cures the unconstitutional inequities. If the Legislature fails to cure such unconstitutional inequities by June 30, 2016, the Court indicated that it would hold the Kansas school finance system to be unconstitutional as a whole, which would effectively prohibit the operation of the school finance system for fiscal year 2017.[108]

[104] *Gannon v. State,* No. 113,267 (Kan. Sup. Ct. June 30, 2015).
[105] *Gannon*, No. 113,267 (Kan. Sup. Ct. July 24, 2015).
[106] *Id.*
[107] *Gannon II* at 746.
[108] *Id.* at 741.

vote at precincts established prior to cession. Herken v. Glynn, 151 K. 855, 868, 881, 101 P.2d 946: Apparently overruled by Evans v. Cornman, 398 U.S. 419, 26 L.Ed. 370, 90 S.Ct. 1752.

6. Citizen may change residence temporarily or permanently; acts and intentions govern. State, ex rel., v. Corcoran, 155 K. 714, 719, 128 P.2d 999.

7. Rational state policy justified districts differing in population under state census from ideal; no proof of discrimination in taking census. Winter v. Docking, 373 F. Supp. 308.

8. "Temporarily residing" as used in theft insurance policy construed. Winsor v. Hartford Fire Ins. Co., 6 K.A.2d 397, 400, 628 P.2d 1080 (1981).

§ 4. Proof of right to vote. The legislature shall provide by law for proper proofs of the right of suffrage.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; L. 1974, ch. 462, § 1; Aug. 6, 1974.

Cross References to Related Sections:

Registration of voters, see ch. 25, art. 23.

Research and Practice Aids:

Elections ⇐ 59 et seq.
Hatcher's Digest, Elections §§ 1, 2, 12.
C.J.S. Elections § 16.

Attorney General's Opinions:

Registration of voters; purging of registration lists. 80-93.

Elections; registration of voters; registration by naturalized citizens. 80-266.

CASE ANNOTATIONS

1. Majority of votes cast presumed will of majority of electors. County Seat of Linn Co., 15 K. 500.

2. Registration law of 1879 enacted in pursuance hereof, and valid. The State v. Butts, 31 K. 537, 550, 2 P. 618.

3. Section cited in determining qualification of elector to petition for abandonment of manager plan. State, ex rel., v. Dunn, 118 K. 184, 235 P. 132.

4. Cited in holding absentee-voters acts within legislative power and valid. Lemons v. Noller, 144 K. 813, 824, 832, 63 P.2d 177.

5. Absentee voters' act held valid although no provision for challenging voter. Burke v. State Board of Canvassers, 152 K. 826, 827, 833, 841, 107 P.2d 773.

§ 5.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; Repealed, L. 1972, ch. 393, § 1; Aug. 1, 1972.

Revisor's Note:

Section related to duelists, prohibiting their holding an office of trust or profit.

CASE ANNOTATIONS

1. Section cited in determining right of legislature to name qualifications of county superintendents. Jansky v. Baldwin, 120 K. 332, 243 P. 302. Rehearing denied: 120 K. 728, 244 P. 1036.

2. Silence of constitution on a subject is not a prohibition; legislature may prescribe qualifications of voters; constitution limits, rather than confers, powers. Lemons v. Noller, 144 K. 813, 816, 817, 63 P.2d 177.

§ 6.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; eliminated by revision, L. 1974, ch. 462, § 1; Aug. 6, 1974.

Revisor's Note:

Section related to bribery to procure election.

CASE ANNOTATIONS

1. Section cited in considering "veterans' preference law." Goodrich v. Mitchell, 68 K. 765, 769, 75 P. 1034.

2. Bribed votes cannot be counted. Hunt v. Gibson, 99 K. 371, 377, 161 P. 666.

3. Section cited in determining right of legislature to name qualifications of county superintendents. Jansky v. Baldwin, 120 K. 332, 243 P. 302. Rehearing denied: 120 K. 728, 244 P. 1036.

4. Silence of constitution on a subject is not a prohibition; legislature may prescribe qualifications of voters; constitution limits, rather than confers, powers. Lemons v. Noller, 144 K. 813, 816, 817, 63 P.2d 177.

§ 7. Privileges of electors. Electors, during their attendance at elections, and in going to and returning therefrom, shall be privileged from arrest in all cases except felony or breach of the peace.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; L. 1974, ch. 462, § 1; Aug. 6, 1974.

Research and Practice Aids:

Arrest ⇐ 60.
C.J.S. Arrest § 3.
Am. Jur. 2d Arrest § 100.

§ 8.

History: L. 1911, ch. 337, § 1; eliminated by revision, L. 1974, ch. 462, § 1; Aug. 6, 1974.

Revisor's Note:

Section related to women's right to vote and hold office.

Article 6.—EDUCATION

Revisor's Note:

The 1966 amendment to this article replaced original sections 1 to 7 and eliminated sections 8, 9 and 10. Annotations to former sections are omitted as directed by L. 1969, ch. 426, § 2.

CASE ANNOTATIONS

1. Cited in opinion considering L. 1982, ch. 282, relating to community colleges and municipal universities. State ex rel. Stephan v. Board of Lyon County Comm'rs, 234 K. 732, 733, 676 P.2d 134 (1984).

§ 1. Schools and related institutions and

activities. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to state and county superintendent of public instruction.

For annotations to original section, see K.S.A. Vol. 6, p. 936; copyright 1964.

Research and Practice Aids:

Schools and School Districts ⇐ 9.

Hatcher's Digest, School Districts §§ 1 to 5.

C.J.S. Schools and School Districts §§ 13, 15.

Law Review and Bar Journal References:

Discussed in comment on the 1973 Kansas School District Equalization Act by James L. McNish, 22 K.L.R. 229, 235 (1974).

"Student Fees in Public Schools: New Statutory Authority," Joe Allen Lang, 16 W.L.J. 439, 442, 459 (1977).

"Constitutional Law: Privacy Penumbra Encompasses Students in School Searches [New Jersey v. T.L.O., 105 S.Ct. 733 (1985)]," J. Lynn Entriken Goering, 25 W.L.J. 135, 142 (1985).

Attorney General's Opinions:

Public television; works of internal improvement. 80-55.

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Education; state board of education. 81-236.

State board of education; gifts and bequests; management and expenditure through trust fund. 83-58.

Education; legislature; authority. 83-154.

Schools; vocational education; plan for establishment; approval by state board of education. 83-169.

School attendance; G.E.D. 87-46.

CASE ANNOTATIONS

1. Constitution grants general supervisory powers over district boards directly to state board of education. State, ex rel., v. Board of Education, 212 K. 482, 485, 495, 497, 511 P.2d 705.

2. Article construed with Article 2, Section 1; 72-7108 not unconstitutional as unlawful delegation of legislative power. State, ex rel., v. State Board of Education, 215 K. 551, 554, 555, 556, 561, 562, 564, 527 P.2d 952.

3. Order dismissing action to determine constitutionality of 1973 School District Equalization Act as moot, vacated and remanded; rights hereunder unresolved. Knowles v. State Board of Education, 219 K. 271, 272, 273, 547 P.2d 699.

4. Teachers' collective negotiations within "related activities" category; constitutionality of act (72-5413 et seq.) upheld. NEA-Fort Scott v. U.S.D. No. 234, 225 K. 607, 608, 609, 612, 592 P.2d 463.

§ 2. State board of education and state board of regents. (a) The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.

(b) The legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. Public institutions of higher education shall include universities and colleges granting baccalaureate or postbaccalaureate degrees and such other institutions and educational interests as may be provided by law. The state board of regents shall perform such other duties as may be prescribed by law.

(c) Any municipal university shall be operated, supervised and controlled as provided by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

A proposition to amend this section was submitted to the electors Aug. 6, 1974 and was rejected (see L. 1974, ch. 465; SCR No. 22).

Prior to 1966, section related to the establishment of schools.

For annotations to original section, See K.S.A. Vol. 6, p. 937; copyright 1964.

Research and Practice Aids:

Colleges and Universities ⇐ 7; Schools and School Districts ⇐ 47.

Hatcher's Digest, Colleges and Universities § 3; School Districts § 68.

C.J.S. Schools and School Districts §§ 86 to 90.

Law Review and Bar Journal References:

"Student Fees in Public Schools: New Statutory Authority," Joe Allen Lang, 16 W.L.J. 439, 447 (1977).

Attorney General's Opinions:

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Education; state board of education. 81-236.

State board of education; gifts and bequests; management and expenditure through trust fund. 83-58.

Education; legislature; authority. 83-154.

Schools; vocational education; plan for establishment; approval by state board of education. 83-169.

CASE ANNOTATIONS

1. Cited in holding local school board authorized to close attendance facility. Brickell v. Board of Education, 211 K. 905, 916, 917, 508 P.2d 996.

2. Held partially self-executing; state board of education possesses general supervisory powers over district boards. State, ex rel. v. Board of Education, 212 K. 482, 484, 486, 487, 488, 493, 495, 496, 497, 511 P.2d 705.

3. Article construed with Article 2, Section 1; 72-7108 not unconstitutional as unlawful delegation of legislative power. State, ex rel., v. State Board of Education, 215 K. 551, 554, 555, 556, 561, 562, 564, 527 P.2d 952.

4. Applied; school board not immune from liability (under 11th amendment) to teachers for failure to afford teachers' rights under 14th amendment to pretermination hearing. Unified School District No. 480 v. Epperson, 551 F.2d 254, 260.

5. Referred to; school board not immune to teachers for failure to provide pretermination hearing. Unified School Dist. No. 480 v. Epperson, 583 F.2d 1118, 1123.

6. Authority of secretary of human resources under teachers' collective negotiations act (72-5413 et seq.) not in violation hereof. NEA-Fort Scott v. U.S.D. No. 234, 225 K. 607, 608, 609, 611, 612, 592 P.2d 463.

7. Board of Regents held not subject to building code ordinances of Kansas City for construction at K.U. Medical Center. State ex rel. Schneider v. City of Kansas City, 228 K. 25, 31, 612 P.2d 578.

8. Board of regents is an employer under public employer-employee relations act. Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA, 233 K. 801, 811, 667 P.2d 306 (1983).

§ 3. Members of state board of education and state board of regents. (a) There shall be ten members of the state board of education with overlapping terms as the legislature may prescribe. The legislature shall make provision for ten member districts, each comprised of four contiguous senatorial districts. The electors of each member district shall elect one person residing in the district as a member of the board. The legislature shall prescribe the manner in which vacancies occurring on the board shall be filled.

(b) The state board of regents shall have nine members with overlapping terms as the legislature may prescribe. Members shall be appointed by the governor, subject to confirmation by the senate. One member shall be appointed from each congressional district with the remaining members appointed at large, however, no two members shall reside in the same county at the time of their appointment. Vacancies occurring on the board shall be filled by appointment by the governor as provided by law.

(c) Subsequent redistricting shall not disqualify any member of either board from service for the remainder of his term. Any member of either board may be removed from office for cause as may be provided by law.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to the state permanent school fund and sources of revenue for fund.

For annotations to original section, see K.S.A. Vol. 6, p. 937; copyright 1964.

Research and Practice Aids:

Schools and School Districts ⇐ 47.
Hatcher's Digest, Schools and School Districts § 73.
C.J.S. Schools and School Districts § 87.

CASE ANNOTATIONS

1. Referred to in determining senate confirmation or rejection of appointees of governor under 22-3707 lawful. Leek v. Theis, 217 K. 784, 804, 539 P.2d 304.

§ 4. Commissioner of education. The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 58; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to the apportionment of income from the state permanent school fund.

Research and Practice Aids:

Schools and School Districts ⇐ 47.
C.J.S. Schools and School Districts § 87.

§ 5. Local public schools. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 59; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to lease or sale of school lands.

For annotations to original section, see K.S.A. Vol. 6, p. 939; copyright 1964.

Research and Practice Aids:

School and School Districts ⇐ 51.
Hatcher's Digest, School Districts §§ 69 to 71.
C.J.S. Schools and School Districts § 105.

Law Review and Bar Journal References:

"Students' Constitutional Rights in Public Secondary Education," Harold D. Starkey, 14 W.L.J. 106 (1975).

Attorney General's Opinions:

School textbooks; when free textbooks required. 79-122.

Schools; buildings; compliance with municipal zoning and building code requirements. 80-14.

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

Schools; transportation of students; transportation routes. 83-180.

Capital outlay levy, funds and bonds; procedure, protest, petition and election; effect of substitute resolution. 86-69.

School attendance; G.E.D. 87-46.

Organization, powers and finances of boards of education; interlocal agreements; duration of agreements. 87-119.

CASE ANNOTATIONS

1. School dress code regulating hair length of male students upheld; school boards authorized to provide rules and regulations. Beline v. Board of Education, 210 K. 560, 563, 571, 502 P.2d 693.

2. Cited in holding local school board authorized to close attendance facility. Brickell v. Board of Education, 211 K. 905, 917, 508 P.2d 996.

3. Cited; state board of education possesses general supervisory powers over district boards. State, ex rel., v. Board of Education, 212 K. 482, 485, 486, 492, 493, 497, 511 P.2d 705.

4. Mentioned in action involving collective negotiations of teachers' association with school board. National Education Association v. Board of Education, 212 K. 741, 748, 512 P.2d 426.

§ 6. Finance. (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

(c) No religious sect or sects shall control any part of the public educational funds.

History: Adopted by convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 59; original subject matter stricken and new subject substituted, L. 1966, ch. 10—Spec. Sess.; Nov. 8, 1966.

Revisor's Note:

Prior to 1966, section related to moneys from various sources to be applied to support of common schools.

For annotations to original section, see K.S.A. Vol. 6, p. 939; copyright 1964.

Provision for a permanent tax levy for educational institutions, previously appeared in § 10 of this article.

Research and Practice Aids:

Colleges and Universities ⇐ 4, 6(1); Schools and School Districts ⇐ 16 et seq., 98 et seq.

Hatcher's Digest, Constitutional Law § 67; School Districts § 100.

C.J.S. Colleges and Universities §§ 9, 10; Schools and School Districts §§ 17 et seq., 376 et seq.

Am. Jur. 2d Colleges and Universities §§ 30, 31.

Law Review and Bar Journal References:

"Student Fees in Public Schools: New Statutory Authority," Joe Allen Lang, 16 W.L.J. 439, 441, 442, 448 (1977).

Attorney General's Opinions:

Schools; teachers' contracts; constitutionality of binding arbitration provision in Senate Bill No. 718. 80-63.

State educational institutions; management, operation; fixing of tuition, fees and charges. 81-115.

Education; state board of education; authority. 83-154.

Schools; vocational education; plan for establishment; approval by state board of education. 83-169.

CASE ANNOTATIONS

1. Order dismissing action to determine constitutionality of 1973 School District Equalization Act as moot, vacated and remanded; rights hereunder unresolved. Knowles v. State Board of Education, 219 K. 271, 272, 273, 547 P.2d 699.

2. Apportionment of monies contained in fund established hereunder by state finance council not unconstitutional as being a usurpation of executive powers by the legislature. State, ex rel., v. Bennett, 222 K. 12, 24, 564 P.2d 1281.

§ 7. Savings clause. (a) All laws in force at the time of the adoption of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. All laws inconsistent with this amendment, unless sooner repealed or amended to conform with this amendment, shall remain in full force and effect until July 1, 1969.

(b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 1, 1967.

(c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal and in-

KANSAS POLICY INSTITUTE
ADVOCATING FOR FREE MARKETS AND THE PROTECTION OF PERSONAL LIBERTY

House / Senate Judiciary Joint Meeting
Potential School Funding Changes in Response to May 27 *Gannon* Order
June 16, 2016
Dave Trabert, President

Chairman Barker, Chairman King and members of the Committees:

We appreciate this opportunity to provide input on potential school funding changes in response to the Supreme Court's May 27 Gannon order. The rationale for our recommendations are fully explained in "Supreme Court contradicts itself, defies constitution in equity ruling" dated May 31 and "Don't let the courts close schools" dated June 4, both of which are attached.

In short, aside from the Supreme Court's thoughtful, student-focused March 2014 remand on adequacy, the 5½ year saga of Gannon litigation has played out like a political soap opera. The lower court has twice defied the Supreme Court's new directive on measuring adequacy. School districts don't know how to define or measure performance against the Rose standards, which means they have no legal basis for claiming they lack sufficient funding for students to meet those standards...yet the lower court ignores that reality.

The Supreme Court has repeatedly said more money isn't needed to remedy equity, but even though the Legislature increased LOB equity funding by more than $100 million at the Court's 'suggestion,' the Court continues to suggest perhaps even more money should be spent. Now the Supreme Court is threatening to violate students' constitutional right to education by closing schools if less than 1% of funding isn't rearranged as they see fit. The schools and courts have made the 5½ year Gannon ordeal largely about money; we call on the Legislature to shift the focus to students by taking the following action in the Special Session:

1. Put a funding mechanism in place to ensure that school districts are paid on time. Rout the money through the Department of Administration if necessary.

2. Indemnify state and school employees from contempt of court or other related charges.

3. If any school districts choose not to open their doors, provide every student in those districts with state-directed vouchers to attend any public or private school of their choice.

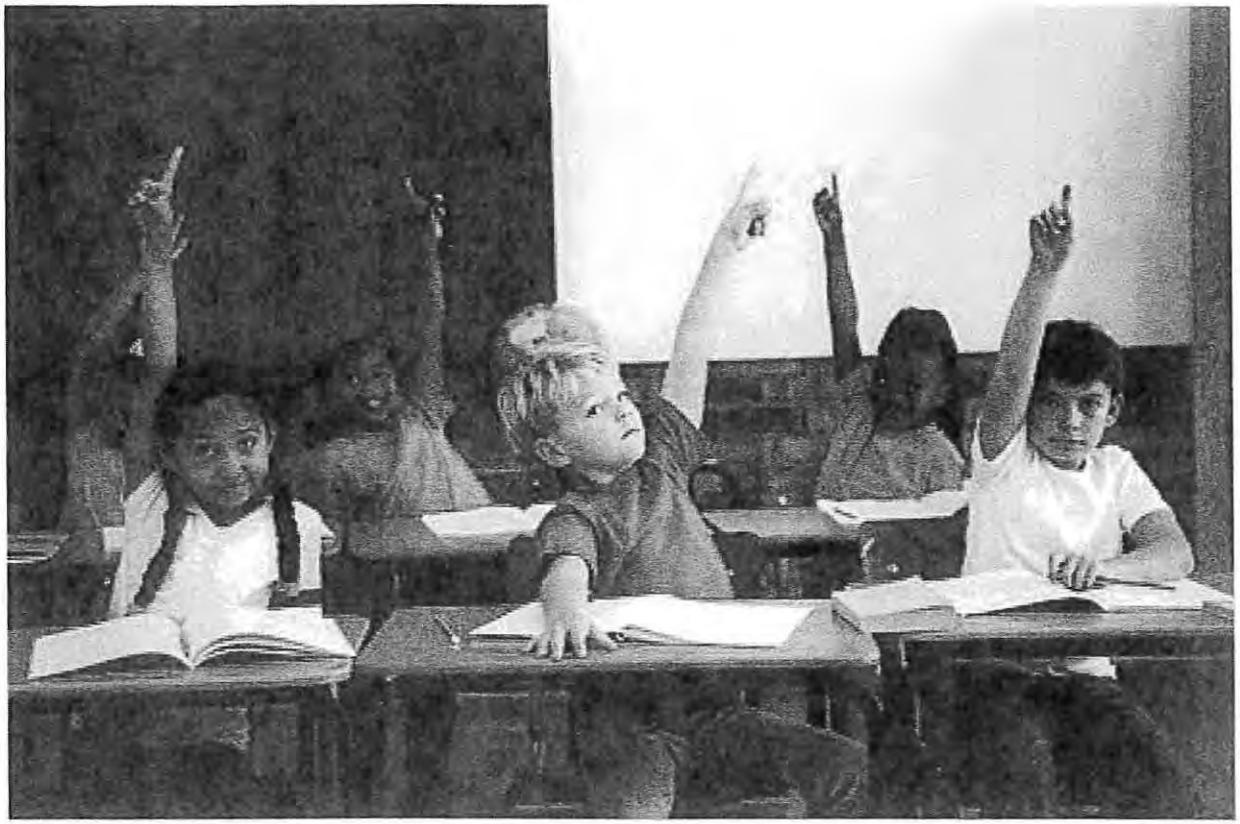
4. Make one last attempt to reallocate the same or similar amount of equity funding, even if that means taking money away from districts and giving it others as the Court suggested. The votes may not be there without the hold harmless provision the Court rejected, but that would show good faith and prove the Court wrong about the necessity of hold harmless.

Thank you for your consideration.

Don't let the courts close schools

kansaspolicy.org/dont-let-courts-close-schools/

June 4, 2016



The rhetoric must stop. Now. Nothing is accomplished by the Supreme Court threatening to close schools because a tiny piece of funding isn't allocated as the Court prefers, or by legislators vowing to stand firm against judicial bullying. In the meanwhile, almost a half million students are threatened with loss of their constitutional right to education and 70,000 school employees could lose their paychecks.

Aside from the Supreme Court's very thoughtful, student-focused March 2014 decision, the Court has otherwise directed a political soap opera. The lower court panel even defied the Supreme Court on more than one occasion. The Legislature retaliated by attempting to interfere with court operations. The Legislature also attempted to change how Supreme Court judges are nominated but we don't see that as retaliation so much as preventing a panel controlled by unelected lawyers from directing the nominating process. No other state allows unelected lawyers to control the nominating process and neither should Kansas.

The courts have been the bigger bully but it's time for the Governor and legislators to be the bigger 'person'. Daring the courts to close schools may feel justified, but leaders take actions that put their constituents and students first. Not to concede; we believe the Legislature has made multiple good faith efforts to resolve this equity issue, but to ensure that students' constitutional right to education is not interrupted.

Here's the action we recommend:

1. Governor Brownback should immediately call a Special Session.

2. Put a funding mechanism in place to ensure that school districts are paid on time. If the Department of Education won't send the money, route it through the Department of Administration.

3. Indemnify state and school employees from contempt of court or other related charges.

4. If any school districts choose not to open their doors, provide every student in those districts with state-directed vouchers to attend any public or private school of their choice.

5. Make one last attempt to reallocate the same or similar amount of equity funding, even if that means taking money away from districts and giving it others as the Court suggested. The votes may not be there without the hold harmless provision the Court rejected, but that would show good faith and prove the Court wrong about the necessity of hold harmless.

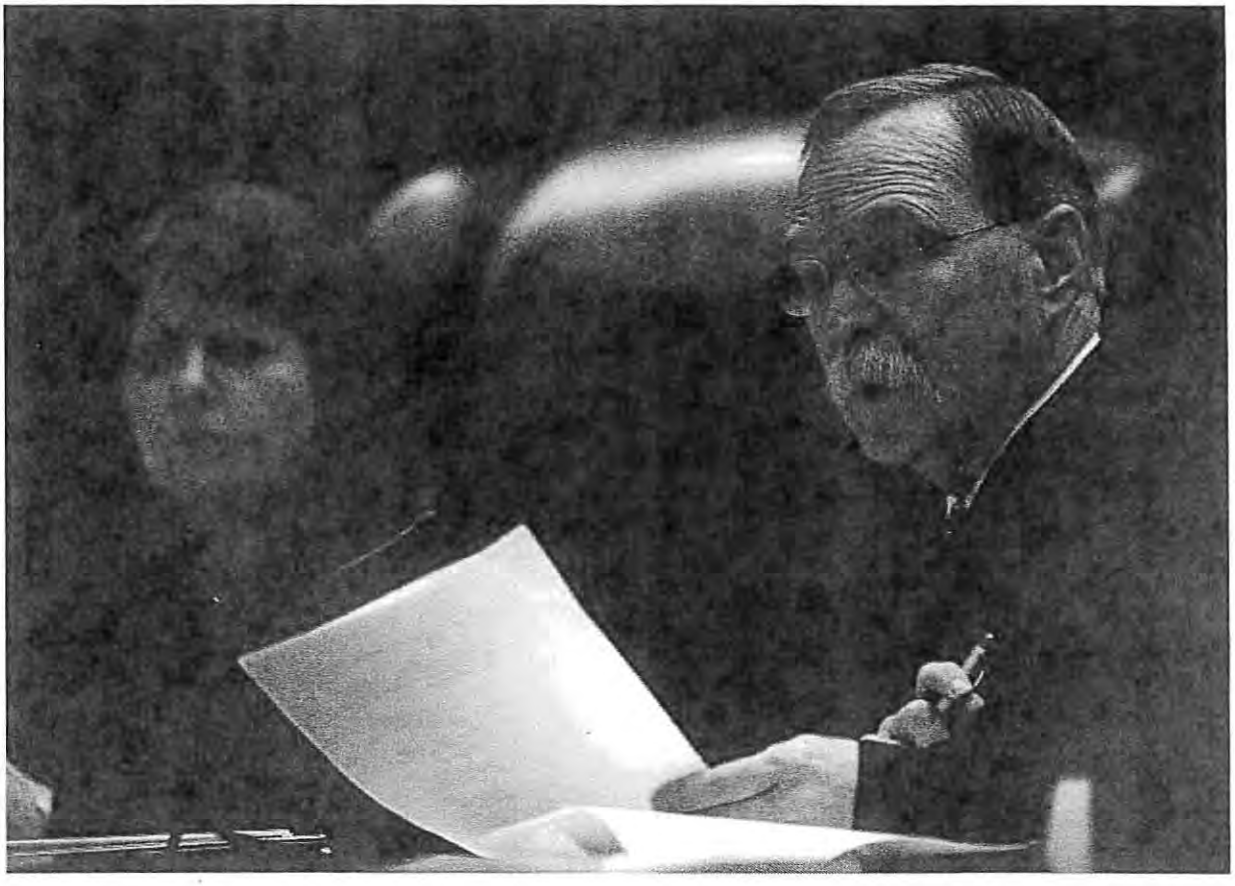
Contrary to many false claims, this isn't a matter of spending more money to resolve equity – even the Supreme Court says equity can be met by reallocating the same amount of money. And it's not because the Supreme Court says schools aren't adequately funded; they oddly haven't even scheduled oral arguments on that larger issue.

This is just about politics. We call on the Governor and legislators to be the adults in the room and ensure that students aren't deprived of their constitutional rights to education.

Supreme Court contradicts itself, defies constitution in equity ruling

kansaspolicy.org/supreme-court-contradicts-defies-constitution-equity-ruling/

May 31, 2016



The Kansas Supreme Court's March 2014 ruling on school funding was a thoughtful, student-focused approach. They said outcomes matter most in determining adequacy, all funding sources (including KPERS) should be considered and said the cost study upon which *Montoy* and the lower court's *Gannon* rulings were based is "more akin to estimates" than certainties. Since then, and certainly with their May 27, 2016 equity ruling, it's been mostly about establishing their desired dominance over the Legislature.

For starters, there is nothing in the state constitution that empowers any court to order schools closed. To the contrary, the Court has found that the constitution guarantees students certain educational rights, so closing schools would deprive students of such rights and thereby violate the constitution. But even if the Court believes it has the right to do so, how are students better served by depriving them of education as opposed to participating in a system where funding might...just maybe in the eyes of seven judges...be inequitably distributed by less than 1 percent of total funding? It seems that education is taking a back seat to the Court's determination to prove it can compel the Legislature to accede to its demands.

The Supreme Court's threat to close schools appears to be prohibited by existing law. K.S.A. 60-2106(d) says "As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court or any master or other person or persons appointed by the appellate court to hear or determine a cause or controversy or to make or

enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education."

Mike O'Neal, an attorney, former Speaker of the House and now CEO of the State Chamber, says, "The plaintiffs challenged the school closure prohibition in the District Court. The panel found the challenge to be "not ripe for review" and did not issue a ruling on that claim. Accordingly, the issue was not considered by the Supreme Court and was not addressed in either Friday's decision or the February decision." That measure was passed and signed into law during the 2005 special session by Governor Kathleen Sebelius, following the Supreme Court's threat to close schools in *Montoy*.

O'Neal went on to say, "There are actually two separate state laws containing the school closure prohibition. K.S.A. 72-64b03(b) prohibits the district court panel from imposing that remedy and there is also K.S.A 60-2106 in the Code of Civil Procedure, which deals with appellate court rules and jurisdiction. This statute clearly applies the same prohibition against school closure to the Appellate courts."

Page 12 of their May 27 decision repeats the Court's threat to close schools if the will of the [seven] people is not met.

We cautioned: "In short, if by the close of fiscal year 2016, ending June 30, the State is unable to satisfactorily demonstrate to this court that the legislature has complied with the will of the people as expressed in Article 6 of their constitution through additional remedial legislation or otherwise, then a lifting of the stay of today's mandate will mean no constitutionally valid school finance system exists through which funds for fiscal year 2017 can lawfully be raised, distributed, or spent.

. . . .

"Without a constitutionally equitable school finance system, the schools in Kansas will be unable to operate beyond June 30." 303 Kan. at 743-44.

Since the 'will of the people as expressed in Article 6' is ostensibly the crux of the matter, let's review what the people say in Article 6(b): "The legislature shall make suitable provision for finance of the educational interests of the state." Aside from prohibiting tuition, that's the extent of the people's will on the funding of public schools. Anything else is just the interpretation of seven people on the Supreme Court and a panel of three lower court judges.

That's not to say that equity should not be included in the people's will; it should. But it's hard to imagine that 'the people' would prefer to have schools closed than to have students be exposed to a system with a few (possibly) misplaced dollars. Keep in mind that even this Court said: "[W]e acknowledge there was no testimonial evidence that would have allowed the panel to assess relative educational opportunities statewide." There was no evidence of lack of educational opportunity in fact. Further, anyone who has spent much time discussing school funding with 'the people' knows they are much more concerned about improving outcomes and whether schools are adequately funded rather than the lesser equity issue. This begs the question; why didn't the Court first take on the larger, more important matter of adequate funding?

Some have speculated that they'd rather not deal with the more volatile issue of adequacy while standing for retention. But the Court's March 2014 remand and the lower court's responses on adequacy may point to a different motive. The Court said (on page 77) adequacy "...is met when the public education financing system provided by the legislature for grades K-12—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in Rose and presently codified in K.S.A. 2013 Supp. 72-1127."

Subsequently, school districts and the Department of Education have gone on record saying they don't know how to

measure or define the Rose capacities. And if they can't define the Rose capacities, what is their legal basis for claiming they lack adequate funding to get there? The lower court ignored that obvious conundrum and also ignored the Supreme Court's guidance to not rely on the old Augenblick & Myers cost study. So when the Supreme Court does finally take up adequacy, they may have to dismiss the case on the grounds that the Plaintiffs can't make their case.

If they took up adequacy first and followed their March 2014 ruling, they wouldn't have had the opportunity to express their desire to dominate and flog the Legislature in an election year. So they keep running the clock on equity, hoping that a new Legislature may decide to pay the schools' adequacy ransom and avoid having to say that the Plaintiffs can't make their case.

Finally, there's the circular logic they applied to the Legislature's equity solution. There is no dispute that the Legislature's methods of determining which districts qualify for equity funding are of their own arbitrary design.[i] The Supreme Court has also repeatedly ruled that the Legislature may develop new equalization formulas that could distribute fewer equalization dollars, because the focus is on equitable distribution rather than on the amount of equalization funding.

Yet every time the Legislature does so, the Court finds a way to say that they didn't spend enough money. This time, they said there wasn't enough because the Legislature used a proration factor in its new formula. The Legislature could have developed a formula without a proration factor that would have distributed the same amount of money, but the Court used the proration factor as an excuse to again chastise the Legislature for not providing enough money.

The Court repeatedly says the Legislature can resolve equity in a variety of ways of their own device, but that's like Henry Ford telling customers they could choose whatever color car they wanted as long as it was black.

This equity ruling sadly has nothing to do with the educational interests of students. It's just another attempt to establish the Judiciary as the dominant branch of government.

[i] *Initially, districts below the 81.2 percentile of Assessed Valuation Per Pupil. In HB 2655, an equalization factor is determined by arranging the assessed valuation per pupil (AVPP) of all school districts from largest to smallest, rounding the AVPPs to the nearest $1,000 and identifying the median. The equalization factor of the median is 25 percent. For every $1,000 a school district's AVPP is above the median, the school district's equalization factor is reduced from 25 percent by 1 percent and for every $1,000 a school district's AVPP is below the median, the school district's equalization factor is increased from 25 percent by 1 percent.*

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Public Comment on Potential School Funding Changes in Response to the May 27, 2016, *Gannon* Court Order

before the
House and Senate Judiciary Committees

by

Mark Tallman, Associate Executive Director for Advocacy,
Kansas Association of School Boards
Also representing United School Administrators of Kansas
Kansas School Superintendents Association

Chairman King, Chairman Barker, Members of the Committees:

Thank you for the opportunity to appear today. These three organizations support the principle that both adequacy and equity are components of a constitutionally suitable provision of finance of the educational interests of the state.

Equity, in part, means school districts must be able to access similar amounts of revenue to provide similar educational opportunities at similar tax efforts. The May 27 *Gannon* Order found the Legislature had resolved equity issues in capital outlay state aid by returning to the previous formula; but had not demonstrated that using the same capital outlay formula would reduce tax disparities in the local option budget.

We agree with the Supreme Court there may be other ways to achieve equity; however, at this point the quickest and more certain ways to ensure a constitutionally equitable system is to restore both the previous capital outlay formula (based on the median valuation per pupil) and the previous LOB formula (based on 81.2 percentile of valuation per pupil). We understand that would cost the state approximately $38 million, and would encourage the Legislature to take action.

Before standing for questions at the pleasure of the chairs, we would like to make a comment on the issue of "hold harmless." As we testified during the regular session on school finance proposals, our organizations support the concept of hold harmless in school funding. We understand there are proposals to provide additional funding to compensate districts which would lose funding by returning to the previous LOB equalization formula, so they would not be required to raise their mill levies.

We do not object that concept, but believe such an approach should be provided to all districts in similar circumstances. We submit that if the Legislature had previously provided funding to allow all districts to avoid increasing their mill levies due to changes under the school finance system, it is highly unlikely this case would have ever reached the Kansas Supreme Court.

Thank you for your consideration.

THE KANSAS CHAMBER
UNITED FOR BUSINESS

835 SW Topeka Blvd.
Topeka, KS 66612
785.357.6321

Testimony Before Joint Committee on Judiciary
Comment on Potential School Funding Changes Re: *Gannon*
Mike O'Neal, Kansas Chamber CEO
June 16, 2016

Chairmen and members of the joint Committee:

In the infamous words of the late Yogi Berra, "It's *déjà vu* all over again." Once again, the Kansas Legislature finds itself having to respond to yet another round of school finance litigation and threats from this Supreme Court. I say "this" Supreme Court and not "the" Supreme Court because Kansas legal history shows that "who" serves on the Court makes a huge difference in how a static State Constitution is interpreted. Sometimes it's a 180 degree difference.

In considering a response to the latest edict from this Supreme Court in the *Gannon* case, lawmakers are naturally discussing possible constitutional amendments to address the Court's violation of the Separation of Powers doctrine and the threat to close schools over a controversy representing only a handful of districts and a miniscule percentage of overall school funding. Those same discussions and proposals were considered back in the 2005 Special Session in the wake of the *Montoy* case and the Court's threat of school closure then. Recall that a bipartisan vote in the 2005 Special Session and signature by a Democrat Governor enacted not only an unprecedented ramp-up of school funding but also a prohibition against school closures or the enjoining of distribution of school funds as a remedy ever again. A decade later and still only about 55 cents on the tax dollar gets to the classroom and districts are still suing.

One proposed constitutional amendment could include beefing up the existing Art. 2, Sec. 24 provision that has made it clear for over 150 years that it is the Legislature that controls the state's purse strings. Why, after 150 years should we now be needing to consider clarifying that provision? The answer: "this" Supreme Court.

By the way, note that Art. 2, Sec. 22, sets out the doctrine of legislative immunity. This is the section that protects the Legislature from being sued. Staff will be happy to brief you on the case of *State, ex rel Stephan v. House of Representatives.* 236. Kan. 45 (1984) The Court can't force the Legislature to do anything it is not inclined to do on its own. Rather, "this" Court

has determined that it will maneuver around that inconvenient constitutional barrier by threating to forbid the State from implementing anything the Legislature enacts, thereby preventing schools from opening, while claiming that it will not be the Court doing it but rather the Legislature. The Court is playing the political card in a case where they have found the issue does not involve a "political question". The political question doctrine serves to instruct the judicial branch to decline jurisdiction in cases which are essentially non-justiciable because they involve uniquely political decisions which are best left to the legislative branch as a matter of public policy.

Another proposed constitutional amendment could include adding a provision or provisions to the Education article, Art. 6., to add a constitutional prohibition against school closure, e.g. Article 6, Sec. 6 is the provision on "finance" that has been implicated in both the pending *Gannon* case and the *Montoy* case that spawned the 2005 Special Session. That provision was adopted by Kansans in 1966, 50 years ago. Why, in the 50 year history of this provision should we be needing to consider an amendment to this provision? The answer: "this" Supreme Court.

Earlier I suggested that who serves on the Court makes a huge difference in constitutional interpretation sometimes. Such has been the case with school finance. In 1994 the sitting members of the Kansas Supreme Court had before them a similar school finance lawsuit, one where the Plaintiffs were challenging provisions of the new school finance formula passed in 1992. The question before the Court was whether the School District Finance and Quality Performance Act (SDFQPA) made suitable provision for public education. Even though the 1966 constitutional provision was not changed in any way between 1994 and 2005 or 2016, the Kansas Supreme Court had vastly different things to say with regard to the proper interpretation of the provision and the Court's own role in determining constitutionality.

I have attached relevant quotes from the Court's opinion in *U.S.D. 259 v. State.* (Attachment A.) Suffice it to say that our Court in 1994 had a view of the constitution and its limited role in deciding school finance cases which mirrors the view of the Texas Supreme Court in its recent decision there and which is in direct conflict with "this" Court's view. In *U.S.D 259*, our Court acknowledged that: "The funding of public education is a complex, constantly evolving process. The legislature would be derelict in its constitutional duty if it just gave each school district a blank check each year.... Rules have to be made and lines drawn in providing 'suitable financing'. The drawing of these lines lies at the very heart of the legislative process and the compromises inherent in the process."

The Texas Supreme Court, in their very recent ruling in *Morath*, stated: ...."our judicial responsibility is not to second-guess or micromanage Texas education policy or to issue edicts from on high increasing financial inputs in hopes of increasing educational outputs. There doubtless exist innovative reform measures to make Texas schools more accountable and efficient, both quantitatively and qualitatively. Judicial review, however, does not license second-guessing the political branches' policy choices, or substituting the wisdom of 9 judges for that of 181 lawmakers. Our role is much more limited, as is our holding. Despite the imperfections of the current school funding regime, it meets minimum constitutional requirements".

The Kansas Legislature is faced with the current Court's view on the subject, a view that suggests the Court reserves the right to usurp both the legislative and executive branches when its personal view is at odds with the policy makers who answer to their constituents. It is not the only view. Time will tell who will occupy the seats on the Court come January. Constitutional provisions were intended by our founders to be enduring and not subject to the whims of the unelected. We would caution against rushing to amend the constitution every time a court acts contrary to the intent of the people. The remedy, as our Court has acknowledged, lies with the people and there currently exists a mechanism for the public to express its displeasure with members of the Court.

Nevertheless, if the question becomes not one of "if" but, rather, 'how" the state constitution should be amended, we would recommend that it take the form of placing in the constitution what you have already provided for in state law, i.e., a provision making it clear that the Court has no power to directly or indirectly force closure of or prevent commencement of public schools as a proposed remedy in a school finance case. It's a cruel irony that a Court that so publically espouses the right to a public education would be so cavalier in threatening to deny our children access to that public education if the Legislature fails to capitulate to the Court's demands over an incredibly small piece of overall funding. In 2005, legislators who could barely agree with each other on the time of day were united in agreement in limiting the Court's power over whether schools opened or closed.

Given the current posture of the case and the deadline imposed by the court it is prudent for the Legislature to act expeditiously to respond with regard to the equity phase. We believe the Legislature came up with an appropriate response during the 2016 Regular Session. Your response addressed the need for an equalization formula and protected your schools' funds. During the upcoming Special Session, the Legislature should address the issue of LOB equalization from the standpoint of what is best for the constituencies and taxpayers they represent. A solution does not require throwing more taxpayer money at the problem. The Kansas Supreme Court has acknowledged in this *Gannon* litigation that

"equity does not require the legislature to provide equal funding for each student or school district". The Court has also acknowledged that the test of the funding scheme becomes a consideration of "whether it sufficiently reduces the unreasonable, wealth-based disparity so the disparity then becomes constitutionally acceptable, not whether the cure necessarily restores funding to the prior levels."

The Kansas State Department of Education has expertise in making the mathematical calculations necessary to ensure equalization of districts based on the adopted test of "reasonably equal access to substantially similar educational opportunity through similar tax effort." The Legislature has already appropriated funds in the 2016 legislative session to operate schools during the 2016-2017 school year. Those funds should be transferred to the KSDE with the firm promise that KSDE will distribute the funds in a manner that accomplishes equalization. Use of the term "block grant" is appropriate. A "grant" implies a promise in exchange for release of funds. The Feds have mastered this. KSDE should be given the authority, if authority does not already exist, to identify all unencumbered funds in the USD system and allocate those resources in a manner sufficient to address the Court's equity concerns.

For the future, consider capturing a portion of the 20 mill levy and/or a portion of LOB levies for the purpose of funding equalization, rather than creating an annual equalization entitlement program at additional taxpayer expense. It is not the Court's function nor should it be within its power to disrupt educational pursuits in the state where the Legislature has committed 50% of its entire State General Fund budget to K-12. Also, in anticipation of the "adequacy" phase of the pending litigation, use the "block grant" to extract a promise from KSDE, and in turn the USD's, that funds will be allocated in a manner "reasonably calculated to assist students in achieving the outcomes set forth in statute." You're being sued over adequacy in an environment where you have no control over outcomes.

We applaud Attorney General Schmidt's efforts to ask the Court to exercise prudent judicial temperament and restraint and stand down with regard to the school closure threat. Our members, as ultimate consumers of the educational product of this state, stand ready to work with our education partners and legislators to help ensure our schools remain open and free from unwarranted judicial intervention. We have confidence that a solution that protects both our schools and Kansas taxpayers will be the result of your deliberations. Our schools want to open. We want schools to open. You want our schools to open. The question is whether the Court wants them to open.

Attachment "A"

INSTRUCTIVE QUOTES FROM U.S.D #229 V. STATE

"The consolidated actions herein are challenges to the constitutionality of the legislation. Accordingly, the judiciary's role is very limited in its scope. The wisdom or desirability of the legislation is not before us. The constitutional challenge goes only to testing the legislature's power to enact the legislation_"

"...if a legislative enactment is constitutional, it is not for this court to set policy or to substitute its opinion for that of the legislature no matter how strongly individual members of the court may personally feel on the issue."

"It is sometimes said that courts assume a power to overrule or control the action of the people's elected representatives in the legislature. That is a misconception... The judiciary interprets, explains and applies the law to controversies concerning rights, wrongs, duties and obligations arising under the law and has imposed upon it the obligation of interpreting the Constitution and of safeguarding the basic rights reserved thereby to the people. In this sphere of responsibility courts have no power to overturn a law enacted by the legislature within constitutional limitations, even though

the law may be unwise, impolitic or unjust. The remedy in such case lies with the people."

"...if the statute in question does not clearly contravene the provisions of ... Article 6 of the Kansas Constitution, our duty is to uphold the statute, regardless of any personal views individual members of this court may have...."

"The proponents of the claims made in this issue would, in effect, rewrite Sections 5 and 6 to require the State to provide direct financial aid or the means to raise tax monies sufficient to cover what each school district determines is 'suitable financing' for the particular district's needs. Under this rationale, the legislature would have little or no role in the determination of what amount of finance was suitable for the particular district."

"In this issue, districts which have seen their funding reduced by the Act presented evidence of how they have had to reduce programs, personnel etc., to accommodate the reduced funding. They argue the funding is not 'suitable' when it results in cutting programs deemed necessary by the local boards of education. They acknowledge there is a wide disparity in per pupil spending but argue the legislature is improperly cutting off the mountain tops to fill the valleys. There was testimony, however, that some school districts believed they had greater local control under the Act. The district court correctly held that the issue for judicial determination was whether the Act provides suitable financing, not whether the level of finance is optimal or the best policy.

"The standard most comparable to the Kansas constitutional requirement of 'suitable' funding is a requirement of adequacy found in several state constitutions. common terms, 'suitable' means fitting, proper, appropriate, or satisfactory. *Webster's New Collegiate Dictionary (1977).* Suitability does not mandate excellence or high quality. In fact, suitability does not imply any objective, quantifiable education standard against which schools can be measured by a court...."

"... the court will not substitute its judgment of what is 'suitable', but will utilize as a base the standards enunciated by the legislature and the state board of education".

"... courts have noted that there is no authoritative consensus on how to provide the greatest educational opportunity for all students. As the Colorado Supreme Court noted:

> '[T]hese are considerations and goals which properly lie within the legislative domain. Judicial intrusion to weigh such considerations and achieve such goals must be avoided. This is especially so in this case where the controversy, as we perceive it, is essentially directed toward what is the best public policy which can be adopted to attain quality schooling and equal educational opportunity for all children who attend our public schools.'"

"The funding of public education is a complex, constantly evolving process. The legislature would be derelict in its constitutional duty if it just gave each school district a blank check each year.... Rules have to be made and lines

drawn in providing 'suitable financing'. The drawing of these lines lies at the very heart of the legislative process and the compromises inherent in the process."

"The determination of the amounts, sources, and objectives of expenditures of public moneys for educational purposes, especially at the State level, presents issues of enormous practical and political complexity, and resolution appropriately is largely left to the interplay of the interests and forces directly involved and indirectly affected, in the arena of legislative and executive activity. This is of the very essence of our governmental and political polity. It would normally be inappropriate, therefore, for the courts to intrude upon such decision-making."

KANSAS CITY KANSAS PUBLIC SCHOOLS
2010 N. 59TH STREET, KANSAS CITY, KS 66104
(913) 551-3200, FAX: (913) 551-3217
WWW.KCKPS.ORG

JOINT MEETING OF HOUSE COMMITTEE ON JUDICIARY AND SENATE COMMITTEE ON JUDICIARY

Public Comment on Potential School Funding Changes in Response to the May 27, 2016, Gannon Order
Senator King and Representative Barker, chairs

David A. Smith, Chief of Communications and Governmental Relations
June 16, 2016

On behalf of the Kansas City, Kansas Public Schools (KCKPS), I am here to testify on potential changes in the Kansas school funding formula, in response to the Kansas Supreme Court ruling in the *Gannon v. State of Kansas* lawsuit. As I am sure you realize, in the absence of specific legislation to consider, I am unable to stand in support or opposition to any potential action by either of these two committees. Rather, I intend to speak to general principals that I believe should guide the work of the Kansas Legislature, as it considers responding to the May, 27, 2016 ruling in the Gannon case.

First, it is the Legislature's responsibility to pass an equitable school finance system, one that meets the equity test of the Kansas Supreme Court: Specifically, the Legislature must enact a school finance system that provides school districts with "reasonably equal access to substantially similar educational opportunity through similar tax effort," while not running afoul of the adequacy requirement of Article 6 of the Kansas Constitution. Failure to enact an equitable school finance system will leave the school finance system in Kansas unconstitutional, and school districts will be unable to spend money provided through that unconstitutional system.

The impact of a legislative shutdown of the school finance system in Kansas, even for a short period of time, would be devastating to schools, to families, and to the state of Kansas. Districts will be forced to spend money they do not have to recover from a shut down, at a time when they are already struggling to meet increased costs. Indeed, even the threat of a shutdown has created uncertainty and anxiety for students, families, and staff, and has made the process of hiring new staff significantly more challenging.

The most straight-forward and direct way to respond to the Supreme Court's ruling on equity is to reinstate and fully fund the previous equalization formula for the Local Option Budget (LOB) for the 2016/17 school year ($16.5 million), and fully fund Capital Outlay equalization ($24 million). The Supreme Court has already determined that this approach meets the constitutional test for equity. It is thus the most direct way to meet the equity requirements of the Kansas Constitution, and keep schools open. While this approach does not address the significant losses in LOB and Capital Outlay state aid over the past seven years (which for KCKPS total $32 million), it at least puts the state on the right path.

It is important that the money necessary to pay for the restoration of LOB and Capital Outlay equalization should not come from other parts of the education funding formula. Any attempts to redirect existing resources or to artificially add to school district funding in an un-equalized manner would threaten the constitutionality of the equity fix.

Thank you for your consideration of this testimony.

Joint Meeting of House and Senate Committee on Judiciary
Senator King and Representative Barker, chairs

June 16, 2016

Presenter: Jim Freeman, CFO
Wichita Public Schools

Public Comment on Potential School Funding changes in Response to the May 27, 2016, Gannon Order

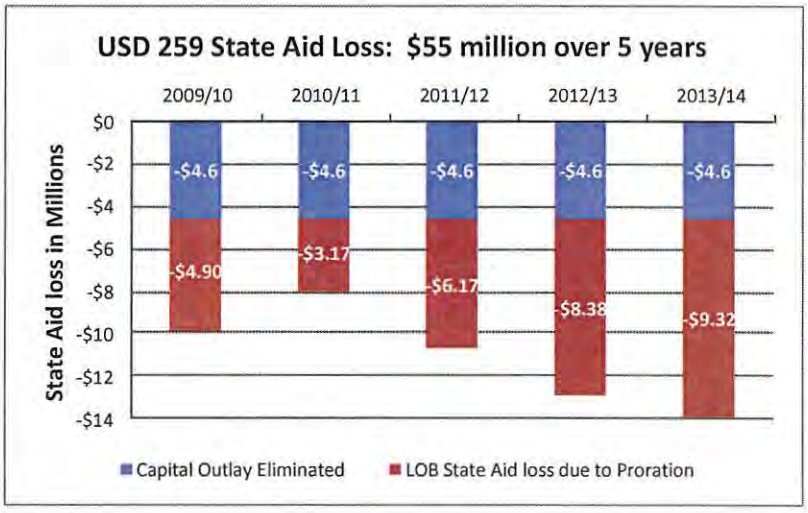
Chairman King and Chairman Barker, members of the House and Senate Judiciary Committees:

Thank you for the opportunity to provide comments on the Kansas Supreme Court's May 27th *Gannon Order*. The legislature was successful in responding to the deficits found in the Capital Outlay state aid distribution. The Court found the Capital Outlay inequity was cured by HB 2655. The Court did not find the new local option budget (LOB) constitutional when the capital outlay aid formula was applied due to increased and exacerbated disparity among districts.

We are halfway through the month of June. We are all in agreement with the objective to keep our schools open and not disrupt the important behind the scenes work which take place during the summer to prepare for fall enrollment and the first day of classes.

Given the short timeframe and desire to provide Kansas schools and families with certainty, we support reinstating the former local option budget formula and fully fund state aid.

The issue of not providing equity for LOB and capital outlay aid has persisted since 2009. The Court found the combination of LOB aid proration and elimination of capital outlay aid created unconstitutional, wealth-based disparity among districts.



To offer the Committees a historical perspective on the magnitude of LOB state aid proration (underfunding), combined with Capital Outlay aid elimination, this chart illustrates the impact on the Wichita Public Schools. The chart illustrates state aid loss from 2009 to 2013 (prior to the block grant). LOB proration ranged from 8 percent reduction in 2010/11 to a high of 22% proration in 2013/14.

Loss of LOB state aid placed the Wichita Board of Education, along with Boards faced with proration, in the position of either increasing property taxes or cutting budgets. A sharp contrast compared to the property wealthy districts which did not experience reductions in state aid or LOB budgets.

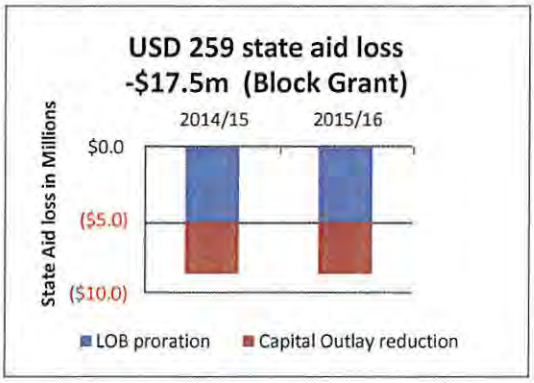
The elimination of capital outlay state aid in 2009 was a disproportionate reduction for Wichita Public Schools. The district's capital state aid loss totaled over $23m during the ramp-up of bond construction projects approved by voters in 2008. The significant loss of funding negatively impacted school construction projects.

Prior to the block grant adoption the Wichita Public Schools lost over $55m in state aid which adversely impacted school operations and capital projects while increasing LOB property taxes.

In 2014/15 in response to Gannon, the legislature reinstated capital outlay aid and funded LOB aid. The legislature's action lowered property taxes 3.5 mills for Wichita taxpayers and funded pay raises.

The Block Grant recalculated the formulas for both LOB and capital which reduced the equalization aid in 14/15. These reductions in LOB and capital outlay state aid resulted in property taxes increasing 2.8 mills in 15/16.

The state aid underfunding has impacted some, not all districts. Districts with lower property wealth have had fewer resources to educate students.



The Local Option Budget is no longer funding the "extras." The LOB now funds routine operational costs. Because the LOB is part of our basic operational budget, the underfunding of state aid creates inequities. The chronic underfunding of state aid has strained the budgets for school districts who qualify for state aid.

Underfunding LOB state aid and eliminating capital outlay aid has reduced resources for some districts, including Wichita, who has lost funding for seven years. Districts with greater affluence have not experienced losses in LOB or capital.

This disparity has made it more difficult to hire and retain the most talented teachers and school leaders who are essential in providing the quality educational programs required to meet the educational needs of our diverse student population.

We are at a competitive disadvantage to hire the best and brightest teachers – the teachers our Wichita students deserve, the quality of teachers students in every community in Kansas deserve. We must guard against zip code being the determining factor for quality education. Funding equity helps bridge the educational needs for students who do not live in affluent circumstances.

We believe the path to a constitutional resolution in fiscal year 17 is to reinstate the previous, constitutional formulas for both the local option budget funded (approx. $16.5m) and capital outlay (approx. $23m). Although this does not make our district whole for FY 15 or 16, this action, in our opinion, will work. Diluting funding, changing formulas or adding artificial provisions beyond the scope of the formula will simply continue the disparity and jeopardize reaching a constitutional resolution in a timely manner.

Mr. Chairman, thank you for your consideration and work on these issues of great importance to students, families and Kansans.

Pratt Unified School District No. 382
small schools, BIG OPPORTUNITIES
Suzan Patton, Superintendent • David Schmidt, Curriculum Director
Bill Bergner, President • Brian Schrag, Vice-President
Mark Fincham • Chris Drake • Bill Skaggs • Kim Stivers • Donna Hoener-Queal
Linda Kumberg, Clerk • Diana Albers, Treasurer • Donna Whiteman, KASB Attorney

Public Comment on Potential School Funding Changes
In Response to the May 27, 2016, Gannon Court Order

before the
House and Senate Judiciary Committees

by
Suzan Patton, Superintendent
USD 382-Pratt
Also representing Kansas School Superintendents Association

Chairman King, Chairman Barker, Members of the Committees:

Thank you for the opportunity to appear today. It's no coincidence that our district slogan is "small schools, BIG OPPORTUNITIES." Our mission is to make sure Pratt students leave us confident in their skills and knowledge in order to compete with their Kansas peers, no matter their post-graduation path. Like students in Johnson or Sedgwick counties, our students deserve the opportunity to enroll in Advanced Placement classes or STEM programs; improve skills through focused math and reading interventions (Multi-Tiered Systems of Supports); or experience career mentoring and internships.

A small district like Pratt offers these programs because of an equitable funding mechanism. The former local option budget formula based on the 81.2 percentile of valuation per pupil will cost the state approximately $38 million. In addition, the hold harmless provision makes sure districts will not lose money. I urge you to support this past formula to expedite the equity solution so school districts may move forward.

Parents and patrons are impatient and want a solution. They, like administrators, vacillate between anger, fear, frustration, and sadness. When the two-year plan for block grant funding was approved, administrators and parents were assured there would be no cuts. It behooves the legislature to demonstrate integrity and maintain the public's trust by working together with the Supreme Court and resolving the equity dilemma. Restoring the local option formula for state aid can serve as an interim remedy while long-term solutions are addressed. KSSA and our USA-Kansas affiliate organizations have been working on potential funding structures that could be part of those solutions and hope to be involved in those critical conversations.

After graduation, Pratt students will scatter across the state and live in your communities. The more opportunities and access to a quality education they experience, the more they will enrich our state. Honor all Kansas students by submitting the former local option formula and hold harmless provision as a solution to the equity issue.

Thank you for your consideration.

Kansas PTA
715 SW 10th Street, Topeka KS 66612
www.kansas-pta-legislative.org
kansaspta@gmail.com

Testimony to Joint Meeting of both Judiciary Committees
Honorable Chairs, Senators Greg Smith, Jeff King and
Representatives John Barker and Charles Macheers
Robert G. Gallimore, Principal Research Analyst, Judiciary, Corrections, and
Juvenile Matters, Kansas Legislative Research, 785 296-3181
Public Comment, June 16, 2016, 10:45 am, Old Supreme Court Room, 346-S

Testimony Kansas PTA
Potential School Funding Changes in Response to the May 27, 2016, Gannon Opinion

Thank you for the opportunity to submit public comment. Please consider the importance of this testimony as critically as if we were able to present in person. We are a volunteer run organization and cannot always rearrange our schedules and get time off work, on such short notice, in addition to the time needed to prepare statements.

Kansas PTA urges our elected officials to use this additional opportunity for meaningful resolution, to focus on the equitable contribution towards and allocation of state aid to our K12 public schools without pitting communities against one another. We also hope that this is a pure attempt to solve the equity portion without changes to education policy as a means of securing votes.

We are of the position that the state's inequity issue is primarily a function of inadequate state aid for the operational functions of public education and by a self-imposed budget crisis that stems from the 2012 tax policy designed to eliminate income taxes. The inequity problem was never found to be a function of the 1992 school finance formula. Rather, inequities grew as state aid for the classrooms shrunk, as the financial burden on local communities increased and the means left to backfill declining state aid were contorted.

In Kansas, the suitable finance of public education is a constitutional obligation of the legislature. As the primary revenue source for state aid is the State General Fund (SGF), we ask committee members to keep in mind that the $435 million SGF education budget shortfall that derailed the *Montoy* school finance resolution following the Great Recession was never restored. This gap intensified in 2012 following the intentional policy choice to eliminate income taxes in favor of total reliance on other taxes. This significant policy change has resulted in a $1 billion reduction in state revenues with offsetting increases not realized. Prior to 2012,

nearly half of the SGF was generated from personal income taxes. Steps to eliminate half the state revenue stream has resulted in significant reductions in K12 operational budgets, along with all other investments in beneficial and necessary services and programs.

Kansas PTA will continue to advocate for an investment in public education, at a level which provides public schools with the funds needed to cover the actual costs of providing each child with the opportunity to achieve the state education standards. In alignment with our legislative platform and priorities 1 and 2 (noted below), Kansas PTA supports a school finance formula that provides equitable and adequate opportunity for all youth and school communities to achieve regardless of their readiness, disability, language, wealth or zip code.

On behalf of the parents, teachers, and community members of Kansas PTA, we ask that you consider our testimony as you deliberate a resolution to the current inequities in state aid for K12 public education:

- PTA mission and purpose have remained the same since our inception over 100 years ago, focused on facilitating every child's potential and empowering families and communities to advocate for all children.
- Legislative Priority 1. Kansas PTA will support efforts to strengthen and improve the Kansas public school finance system, which includes legislation and policies that: A. Uphold Kansas Constitutional obligations to make suitable provision for the finance of the Kansas public schools that is equitable for every child; B. Pursue solutions to fully fund state and federal educational mandates, without disproportionately shifting the burden to local communities.
- Legislative Priority 2. Kansas PTA will support efforts to restore an equitable and balanced tax policy to maintain a reliable revenue stream for public education. A policy which draws upon income, property and sales taxes has been proven by history to be a secure and sustainable approach. Kansas PTA opposes provisions limiting the growth of government before public education is fully funded to statutory levels.

Thank you for your time and consideration.

Denise Sultz, Kansas PTA President
kansaspta@gmail.com
@KsPTALeg

Cc: Josh Halperin, VP of Advocacy
Devin Wilson, State Legislative Chair
Mary Sinclair, PhD, Team Advocate

THE PTA POSITION

Kansas PTA is a nonpartisan association that promotes the welfare of children and youth. The PTA does not endorse any candidate or political party. Rather, we advocate for policies and legislation that affect Kansas youth in alignment with our legislative platform and priorities.

Subject: Voter input regarding for school funding committee meetings June 16-17, 2016

Dear Senator King and Representative Barker:

I plan to attend one of the the upcoming school funding committee meetings in Topeka but since the newspaper article (Lawrence Journal World) did not specify how the public feedback session sign-up would take place for the upcoming Thursday and Friday meetings, I am sending my email comments for your consideration.

I am currently registered as a Republican voter in Douglas County, but feel strongly drawn to think of myself as an independent voter since I don't feel the current Republican elected officials adequately reflect my beliefs on a variety of issues, including educational funding.

I think Governor Brownback's failed economic recovery plan and the legislature's unwillingness to exercise leadership to override the governor's reckless financial policies have threatened the long-term stability and quality of Kansas education as nothing I've witnessed in my 47 years in Kansas. Were it not for the checks-and-balance of the state constitution as currently exercised by our courts I fear the state of public education in Kansas would be at risk of suffering irreparable harm due to the austerity being repeatedly forced on school districts, their staff, and ultimately, our youngsters. It's wonderful to see how our constitutional democracy is working in the current environment to hold our legislative and executive branches accountable. The rhetoric from the Governor and certain legislators regarding reigning in the courts strikes me as wrong-headed and potentially violating the constitutional principles I believe have helped keep our country and state strong. Instead, I'd like to see leadership address approaches to increase revenue back to the state including taxes. I am not afraid to pay for the things that preserve and secure the longterm viability of our state and its citizens, and education is one of those "things".

I've lived in Kansas since moving here in 1969 as a freshman in college. I obtained my BA from the University of Kansas(1977) and my MS from Wichita State University (1986), also attending Emporia State University, Sterling College, and Washburn University for classes. I am a married father of five children, all of whom benefitted from 12 years of Kansas public school educations (Halstead, Tonganoxie, and Lawrence schools). My wife, a Kansas native from a family farm near Lone Elm,KS, is a graduate of Washburn University and also attended Allen County Community College and Kansas State. I spent 10 years (1978-1987)as a high school science teacher and coach in small Kansas school districts (i.e. Waverly-Lebo USD and Halstead USD), as well as serving as a community college adjunct anatomy&physiology instructor (1987-1990's)for Hutchinson Community College, Kansas City,KS Community College, Johnson County Community College, and currently (2011-present) Highland County Community College at their Perry, KS branch near my home in the Perry-Lecompton school district. Due to my interest in educational opportunities for our Kansas children , I also served as a school board member and school board president in the Tonganoxie school district (1991-94). My family and I have invested a significant portion of our time ,talent, and income in Kansas education at all levels and overall I am quite pleased with the quality offered. Dollar for dollar I believe what Kansas schools offer our students and their families is one of the key benefits for those families who choose to stay in our state.

I think it important to add that due to the wages I experienced as a high school science teacher and coach trying to support a family of 6 others, I chose to leave public education in 1988. I began what became a 23-year career working for major pharmaceutical companies. My work over the years often involved traveling out-of-state on business. During one period, rather than accept a company-paid offer to move my family to Chicago, I opted to fly to my Chicago office weekly for four years in order that my wife and children could enjoy the benefits of life in Kansas. I don't regret the decision to maintain my family and home in Kansas, even though the travel and absence from home were ongoing burdens. My management and training and development leadership work for major pharmaceutical corporations also provided me with an appreciation for the necessity of providing adequate funding for essential goods and services to maintain the longterm viability of a company. As one future CEO stated, the difference between a manager and leader can be seen when firetrucks show up at a major fire scene. The fireman who manages the blaze knows all the necessary skills to attack a burning building. But, the fireman who leads the operation must be able to direct the firemen to the right buildings. In a similar way, I think adequate,even strong sustainable educational funding is the "right building" for legislators, the executive branch, and the judiciary to focus on in the immediate term. Ask Kansas citizens to pay for their schools and levy the taxes necessary to do so. The issue of the quality of education achieved by Kansas schools will and should continue to be a part of the longer range planning efforts and discussions. For now, let's make certain our Kansas citizens are given the opportunity to adequately fund one of the state's gems, its schools.

Best regards,

Dan Huffman
898 N. 1850 Road
Lawrence, KS 66049