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A History of School Finance Litigation

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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 *MONTROY*

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

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 MONTROY CASE

Kansas Supreme Court Decision – Montroy 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 (*Montroy 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 *Montroy* 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 *Montroy v. State*, 275, Kan. 145, 146-47 (2003) (*Montroy 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

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 $\frac{1}{3}$ 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

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 *MONTROY*

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 *Montroy 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 *Montroy 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, 2015, 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.

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

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

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.