

SCHOOL FINANCE LITIGATION: *Gannon v. State*

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School Finance Litigation: Nationally

www.ncsl.org/research/education/state-role-in-education-finance.aspx

Current Litigation

- Connecticut
- Florida
- Kansas
- New Jersey
- New York
- Texas
- Washington

Recently Resolved Litigation

- Alaska
- California
- Colorado
- Illinois
- North Carolina
- Rhode Island
- South Carolina

Overview

- ❑ The Constitution of the State of Kansas
- ❑ Constitutional challenges
- ❑ Previous school finance litigation in Kansas
- ❑ *Gannon v. State*—Prior to SB 7
- ❑ SB 7: “The Block Grant Bill”
- ❑ *Gannon v. State*—After SB 7
- ❑ Where are we now?

The Constitution of the State of Kansas

Article 6

Article 6, §§ 1, 5 and 6(b)

Today (L. 1966, ch. 10-Spec.sess.)

- ❑ **“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 ay be provided by law.”** Article 6, § 1.
- ❑ **“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.” Article 6, § 5.
- ❑ **“(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 board of regents to establish tuition, fees and charges at institutions under its supervision.” Article 6, § 6(b).

Constitutional Challenges

State constitutions

Equity and Adequacy

Challenges in school finance cases based on state constitutions

❑ **Equity-based challenges**

Are there funding disparities among school districts as a result of the school finance formula?

❑ **Adequacy-based challenges**

Is the current level of funding from the formula not allowing some school districts to meet some standard of educational quality that is required by the state's constitution?

Previous School Finance Litigation in Kansas

Constitution of the state of Kansas

Article 6

School Finance Litigation in Kansas

Caldwell v. Kansas

No. 50616 (Johnson County Dist. Ct. July 5, 1973)

- District court ruled that Kansas' school finance system was unconstitutional, based largely on the 14th Amendment of the U.S. Constitution.
- The School District Equalization Act (SDEA) was enacted as a result.

Knowles v. State Bd. Of Educ.

219 Kan. 271 (1976) and No. 77CV251 (Shawnee County Dist. Ct. Jan. 26, 1981)

- The district court held SDEA unconstitutional. The legislature amended the SDEA. The Kansas Supreme Court reversed. On remand, the case was transferred to Shawnee County, which upheld the amended version of the SDEA.

Mock v. State

No. 91CV1009 (Shawnee County Dist. Ct. Oct. 14, 1991)

- District court concluded that Article 6 imposed a constitutional duty on the legislature to provide each child an equal education opportunity and an adequate education. The legislature repealed the SDEA and enacted the School District Finance Quality and Performance Act (SDFQPA).

USD 229 v. State

256 Kan. 232 (1994)

- First school finance case to go to the Kansas Supreme Court on its merits. And held that all schools met the quality performance accreditation standards of K.S.A. 72-6439, which were substantially similar to the Rose factors and were the most appropriate measure of a suitable education. SDFQPA upheld.

Montoy v. State

275 Kan. 145 (2003); 278 Kan. 769 (2005); 279 Kan. 817 (2005); 282 Kan. 9 (2006)

- The Court determined the measure of suitability included student "improvement in performance." SDFQPA amended multiple times and additional moneys allocated until in constitutional compliance.

Gannon v. State

298 Kan. 1107 (2014)

- The Court established a new test for both adequacy and equity. The adequacy component was remanded to the district court panel. The Court found the equity component unconstitutional and directed district court panel to enforce this ruling. District court Panel found both adequacy and equity to be unconstitutional. Appeals pending.

School Finance Litigation in Kansas

Article 6 Constitutional Standards

USD 229

(1994)

- “Through the **quality performance accreditation standards**, the Act provides a legislative and regulatory mechanism for judging whether the education is ‘suitable’. These standards were developed after considerable study by educators from this state and others...Hence, 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 department of education.”

Montoy II

(2005)

- Suitable provision for finance “must **reflect a level of funding** which meets the constitutional requirement that ‘[t]he legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools.’”
- “The **equity** with which the funds are distributed and the **actual costs** of education, including appropriate levels of administrative costs, are critical factors for the legislature to consider in achieving a suitable formula for financing education.”

Gannon

(2014)

- “**Adequacy** component 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 minimal standards set out in *Rose*** and presently codified in K.S.A. 2013 Supp. 72-1127.”
- Court’s test for **equity** in K-12 public education is that: “School districts must have **reasonably equal access** to substantially similar educational opportunity through similar tax effort.”

School Finance Litigation

Grounds for constitutional challenges in Kansas

“(b) The legislature shall make suitable provision for finance of the educational interests of the state...”

❑ Equity-based challenge

- How funds are distributed
“Reasonably equal access to substantially similar educational opportunity through similar tax effort”

❑ Adequacy-based challenge

- Actual costs of education
“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.”

The *Rose* Capacities

Rose v. Council for Better Educ., Inc., 790 S.W.2d 186, 212 (Ky. 1989)
K.S.A. 72-1127(c)

1. Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
2. Sufficient knowledge of economic, social and political systems to enable the student to make informed choices;
3. Sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
4. Sufficient self-knowledge and knowledge of his or her mental and physical wellness;
5. Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
6. Sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
7. Sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

Gannon v. State

Prior to SB 7

Gannon v. State

First district court panel decision (January 11, 2013)

❑ **January 2010**

Montoy plaintiffs file a motion with the Kansas Supreme Court requesting *Montoy* be reopened to determine if the State was in compliance with the Court's prior orders in the case because base state aid per pupil was reduced for FY 2010. The Court denied this motion.

❑ **November 2010**

A new lawsuit was filed by various plaintiffs claiming the State violated Article 6 § 6(b) by failing to provide a suitable education to all Kansas students and the failure to make capital outlay state aid payments created an inequitable and unconstitutional distribution of funds.

❑ **January 2013 – First District Court Panel Opinion**

The Panel held that the State violated Article 6 § 6(b) by inadequately funding the plaintiff school districts under the SDFQPA. 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. 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.

❑ **January 2013**

All parties appealed.

Gannon v. State

Kansas Supreme Court decision (Mar. 7, 2014)

❑ **Adequacy**

- 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* and presently codified in K.S.A. 2013 Supp. 72-1127.”
- The Court then remanded the case back to the Panel with directions to apply this new adequacy test to the facts of the case.

❑ **Equity**

- “School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort.” The Court applied this equity test to the existing funding levels for capital outlay state aid and supplemental general state aid and found both were unconstitutional.
- The Court directed the Panel to enforce its equity rulings and provided guidance as to how to carry out such enforcement.

Gannon v. State

Kansas Supreme Court decision (Mar. 7, 2014)

❑ **March 2014**

- Senate Substitute for HB 2506

The Legislature passed HB 2506 in response to the Supreme Court's ruling. HB 2506 codified the *Rose* capacities at K.S.A. 2014 Supp. 72-1127 and 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.

❑ **June 2014**

- Panel Ruling on Equity

Based on estimates provided to the Panel at a hearing, the Panel determined that HB 2506 fully funded capital outlay state aid and supplemental general state aid and complied with the Court's equity ruling. The Panel did not dismiss the equity issue despite stating that no further action was necessary at that time.

Gannon v. State

Second district court panel decision (Dec. 30, 2014)

❑ December 30, 2014

▪ Panel Ruling on Equity

- The legislature, through HB 2506, had substantially complied
- However, if any equity issues arise, the Panel “believe[s] they are not precluded by the remand order”

▪ Panel Ruling on Adequacy

The Panel found that funding levels were constitutionally inadequate because the funding system “is *not* presently reasonably calculated to have all Kansas public education students meet or exceed the *Rose factors*.”

- *Rose factors* implicitly known and recognized
- Adjusting for inflation, the existing BSAPP of \$3,852 is constitutionally inadequate
- Gaps in student performance were likely due to inadequate funding
- Federal funding, KPERS, capital outlay funding, bond and interest funding and local option budget (LOB) funding cannot be included in any measure of adequacy as the school finance formula is written

Gannon v. State

Subsequent Motions

❑ **January-March 2015**

- The State filed a motion to alter and amend the Panel's opinion arguing the Panel did not clearly identify which facts it used to support its opinion.
- The Plaintiffs filed a motion to alter the previous judgment regarding equity claiming the State was no longer in substantial compliance and that additional expenditures in FY 2015 were necessary to fully fund equalization aid.
- The State appealed to the Supreme Court. The Plaintiffs filed a response arguing that the Court should deny the State's motion and remand the State's appeal to the Panel for resolution of all pending post-trial motions with the Panel.
- On March 5, 2015, the Kansas Supreme Court denied the State's motion and remanded the case to the Panel for resolution of all post-trial motions.

House Substitute for SB 7

“The Block Grant Bill”

House Substitute for SB 7

“The Block Grant Bill”

□ Summary

- Repeals SDFQPA
- Enacts the Classroom Learning Assuring Student Success (CLASS) Act
- Appropriates funds to the Kansas Department of Education for FY 2015, FY 2016 and FY 2017
- Appropriates funds in the form of block grants for FY 2015 and FY 2016
- Extraordinary need fund
- Fund flexibility

House Substitute for SB 7

"The Block Grant Bill"

❑ **Block Grants**

- Appropriates funds in the form of block grants for FY 2015 and FY 2016. The block grants include:
 1. General state aid
 2. Supplemental general state aid
 3. Capital outlay state aid
 4. Virtual school state aid
 5. Certain tax proceeds
 6. KPERS employer obligations

House Substitute for SB 7

“The Block Grant Bill”

□ Supplemental General State Aid

- Districts receiving LOB equalization state aid are divided into quintiles with the poorest receiving the most aid and successively wealthier quintiles receiving less.
- To calculate supplemental state aid, divide the assessed valuation per pupil (AVPP) of the school district by the 81.2nd percentile AVPP.
 - If the resulting ratio is equal to or greater than 1.0, the district does not receive supplemental general state aid.
 - If the resulting ratio is less than 1.0, subtract the resulting ratio from 1.0, then multiply the difference by the local option budget of the district. Multiply the resulting number by the applicable quintile percentage.

House Substitute for SB 7

"The Block Grant Bill"

□ Supplemental General State Aid

AVPP for each School District	
USD 1	
USD 2	
USD 3	72%
USD 4	
USD 5	82%
USD 6	
USD 7	92%
USD 8	
USD 9	95%
USD 10	
USD 11...	97%

81.2

If $(\text{District AVPP} \div 81.2^{\text{nd}} \text{ percentile AVPP}) < 1.0$,
SGSA = $[(1.0 - (\text{District AVPP} \div 81.2^{\text{nd}} \text{ percentile AVPP})) \times \text{LOB}] \times \text{Applicable \%}$

House Substitute for SB 7

"The Block Grant Bill"

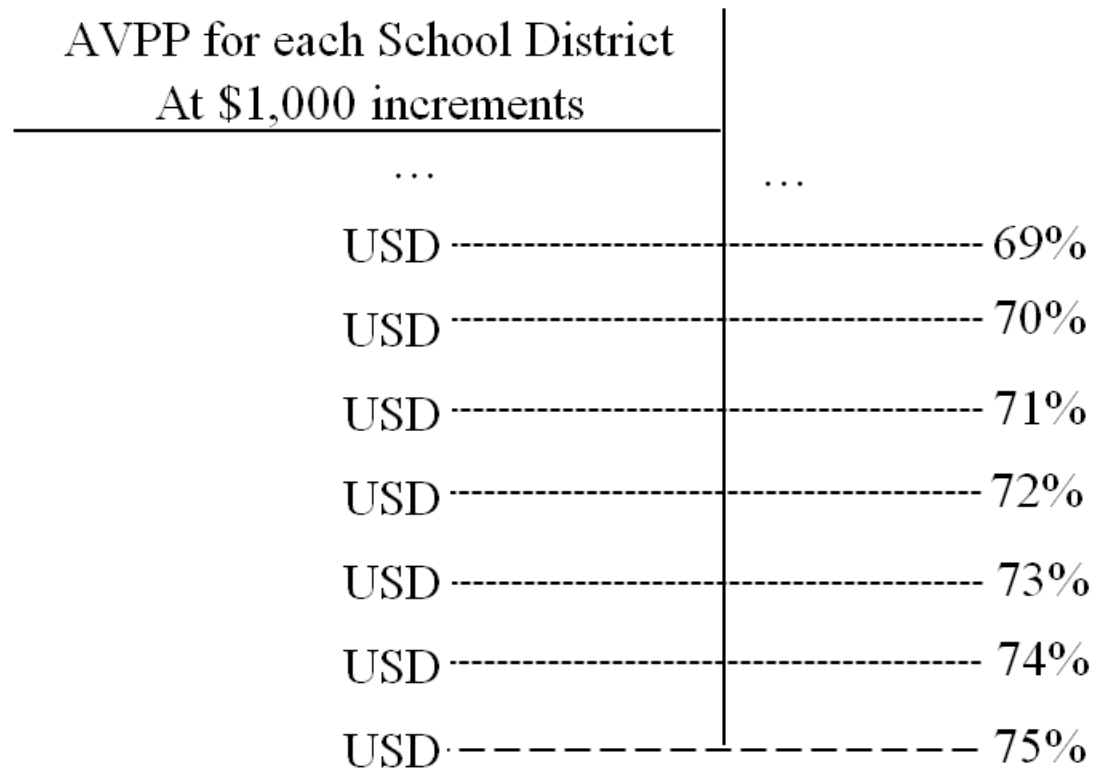
□ Capital Outlay State Aid

- Assessed valuation per pupil (AVPP) is rounded to nearest \$1,000 and ranked from highest to lowest
- The lowest AVPP is assigned a state aid computation percentage of 75%. The state aid computation percentage to each district decreases by 1 percentage point for each \$1,000 AVPP interval above the lowest AVPP
- Multiply each district's levy amount (up to 8 mills) by the applicable percentage

House Substitute for SB 7

"The Block Grant Bill"

□ Capital Outlay State Aid



Capital outlay state aid=Levy amount x Applicable %

Gannon v. State

After SB 7

Gannon v. State

Third district court panel decision (June 26, 2015)

“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.”

❑ **Adequacy**

“The adequacy of K-12 funding through FY 2015 was wholly constitutionally inadequate” and SB 7 froze such funding amounts for FY 2016 and FY 2017. Thus, SB 7 “also stands, unquestionably, and unequivocally, as constitutionally inadequate in its funding.”

❑ **Equity**

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.’”

Gannon v. State

Third district court panel decision (June 26, 2015)

❑ **Capital Outlay State Aid**

- By altering the formula, the amount of the entitlement for eligible districts has been reduced and even eliminated, yet property wealthier districts will remain unscathed.
- Any subsequent higher levy authorized by a district will not be equalized.
- “The legislature has, rather, by not restricting the authority of wealthier districts to keep and use the full revenues of such a levy, merely reduced, not cured, the wealth-based disparity found...unconstitutional in *Gannon*.”

Gannon v. State

Third district court panel decision (June 26, 2015)

❑ **Supplemental General State Aid (LOB Equalization)**

- 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.”
- “The new 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.
- “The condition created overall—and 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.’”

Gannon v. State

Third district court panel decision (June 26, 2015)

❑ **Orders**

- Changes to capital outlay state aid are stricken, which effectively reinstates and fully funds capital outlay state aid as it was prior to January 1, 2015 for FY 2015, FY 2016 and FY 2017.
- Changes to the supplemental general state aid formula are null and void, which effectively reinstates supplemental general state aid as it was prior to January 1, 2015. Any unpaid FY 2015 supplemental general state aid is to be paid to districts.

❑ **Temporary Restraining Order**

- Any distribution of funds is to be based on an unspecified weighted student count.
- General state aid distributions are to be “based on the weighted student count in the current school year in which a distribution is to be made pursuant to §6 and §7 of House Substitute for Senate Bill 7, not merely the total money available that is based on the weighted or unweighted student count in school year 2014-15 (FY 2015).”

❑ **Alternative Order**

- Certain provisions of SB 7 and subsequent related legislation will be stricken. Any remaining undistributed funds will be distributed pursuant to the SDFQPA as it existed on January 1, 2015.
- The alternative order is stayed, but would be lifted if any remedies or orders outlined fail in implementation or are not otherwise accommodated.

Gannon v. State

Procedural history following the third district court panel decision (June 26, 2015)

The State of Kansas, the plaintiffs, and the secretary of administration filed procedural motions in response to the third district court panel decision issued on June 26, 2015.

❑ **Motion to Stay**

- The State and the Secretary of Administration requested an immediate stay to suspend all of the Panel's order and maintain the status quo (SB 7) until the Kansas Supreme Court can review the decision and issue its own mandate.

❑ **Plaintiff's Response**

- Requested the Court deny the State's motion to stay because the status quo is the SDFQPA, not SB 7.

❑ **State's Reply**

❑ **Kansas Supreme Court Order**

- The Kansas Supreme Court held the State satisfied the basic requirements for relief and granted the motion to stay until such Court issues a further order or mandate.

Where are we now?

Current happenings in *Gannon v. State*

Gannon v. State

Where are we now?

The Kansas Supreme Court will separately hear the issues of adequacy and equity on appeal. Briefs from both the State and plaintiffs regarding equity were due to the Supreme Court on September 2, 2015.

❑ **November 6, 2015**

- Oral arguments on equity before the Kansas Supreme Court.

❑ **Spring 2016**

- Oral arguments on adequacy before the Kansas Supreme Court.

❑ **Decision**

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Questions?

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