



# SCHOOL FINANCE LITIGATION: *Gannon v. State*

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# Overview

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- ❑ Article 6 §6 of the Kansas Constitution
- ❑ Adequacy & Equity
- ❑ History & Timeline
- ❑ *Gannon IV*
- ❑ SB 19
- ❑ *Gannon V*



# Article 6 § 6(b)

Constitution of the state of Kansas  
“Suitable provision for finance...”



# Article 6 § 6(b)

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

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- ❑ **“(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.”**



# School Finance Litigation in Kansas

## Recent Evolution of 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*.”
- 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.”



# Adequacy & Equity

What does it mean?

*Gannon* / Constitutional tests



# *Gannon I* Constitutional Tests

Equity and Adequacy Components of Kansas School Finance Cases

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## Equity

“School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort.”

- ❑ Do wealth-based disparities exist between districts?
- ❑ If a wealth-based disparity exists, is such disparity reasonable?
  - Do equalization formulas cure an unreasonable disparity?
- ❑ Wealth-based disparities are unreasonable if the legislation increases or exacerbates inequities among districts.



# *Gannon I* Constitutional Tests

Equity and adequacy components of Kansas school finance cases

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## Adequacy

“The public education financing system provided by the legislature for grades K-12 – through structure and implementation – must be reasonably calculated to have all Kansas public education students meet or exceed the [Rose capacities].”

- ❑ Adequacy includes two prongs:
  1. Structure
  2. Implementation
    - Inputs – Funding levels, funding sources, funding impacts
    - Outputs – Student achievement measures





# The Rose Capacities

*Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989)  
K.S.A. 72-3218(c)

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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.



# Brief History & Timeline

November 2010-June 2016



# Brief History & Timeline

November 2010 through June 2016

- ❑ 2010
  - Gannon filed
- ❑ 2012
  - District Court Panel trial
- ❑ 2013
  - Panel Ruling: SDFQPA inadequate and inequitable
- ❑ 2014
  - Supreme Court *Gannon I*: SDFQPA equalization formulas inequitable. Remanded adequacy.
  - HB 2506
  - Panel Ruling: SDFQPA Equitable.
  - Panel Ruling: SDFQPA inadequate, but still equitable.
- ❑ 2015
  - SB 7: CLASS Act
  - Panel Ruling: CLASS Act inadequate and inequitable.
  - Supreme Court bifurcates adequacy and equity.
- ❑ 2016
  - Supreme Court *Gannon II*: CLASS Act equalization formulas inequitable.
  - HB 2655
  - Supreme Court *Gannon III*: Capital outlay equitable. Supplemental general state aid inequitable.
  - HB 2001 (Special Session)
  - Supreme Court order: Supplemental general state aid equitable.



# Brief History & Timeline

Beginning of *Gannon v. State* through Panel Ruling 1

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## ❑ **November 2010**

- *Gannon* lawsuit 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.

## ❑ **June 2012**

- A three-judge district court panel (Panel) conducted a bench trial.

## ❑ **January 2013**

- The Panel held that the State violated Article 6 § 6(b) by inadequately funding the plaintiff school districts under the School District Finance and Quality Performance Act (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. All parties appealed.



# Brief History & Timeline

*Gannon I*, HB 2506 and Panel Ruling 2

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## □ **March 2014**

### ▪ *Gannon I*

The Court reaffirmed that Article 6 contains both an adequacy and an equity component and issued the constitutional tests for both components. The Court applied the equity test and found the current funding levels for capital outlay state aid and supplemental general state aid unconstitutional. The Court did not apply the adequacy test to the SDFQPA. The Court remanded the case back to the Panel to enforce its equity ruling and apply the adequacy test to the SDFQPA.

### ▪ Senate Substitute for HB 2506 - Equity fixes

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's Bench Ruling on HB 2506

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 and stated that no further action on equity was necessary at that time.



# Brief History & Timeline

Panel Ruling 3, SB 7 and Panel Ruling 4

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## ❑ **December 2014**

- Panel Ruling on Adequacy & Equity

The Panel again confirmed that HB 2506 substantially complied with the Supreme Court's equity ruling. However, the Panel found that funding levels under the SDFQPA were constitutionally inadequate because the system "is not presently reasonably calculated to have all Kansas public education students meet or exceed the *Rose factors*."

## ❑ **March 2015**

- House Substitute for SB 7

SB 7 was passed in response to the Panel's ruling. SB 7 repealed the SDFQPA and enacted the Classroom Learning Assuring Student Success (CLASS) Act. It modified the equalization formulas for capital outlay state aid and supplemental general (LOB) state aid. SB 7 appropriated funds to the department of education in the form of block grants for school years 2016 and 2017.

## ❑ **June 2015**

- Panel Ruling on SB 7

The Panel found that SB 7 violates Article 6, "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."



# Brief History & Timeline

Focus on Equity – Bifurcation, *Gannon II* and HB 2655

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## □ July 2015

- Bifurcation of Adequacy and Equity

The Court, stating that “although the equity and adequacy issues ‘do not exist in isolation from each other,’ they are currently in different stages of resolution” split the adequacy and equity issues going forward. The Court would first deal with equity and then adequacy.

## □ February 2016

- *Gannon II* (Equity)

The Court held that the State failed to show sufficient evidence that it complied with the Court’s prior equity orders set forth in *Gannon I* and found that the supplemental general state aid and capital outlay state aid formulas in SB 7 failed to cure unconstitutional wealth-based disparities between districts.

## □ April 2016

- Senate Sub. for HB 2655

HB 2655 amended both the supplemental general state aid and capital outlay state aid formulas. It reinstated the capital outlay formula as it had been prior to SB 7 and adopted the same formula for supplemental general state aid.



# Brief History & Timeline

Focus on Equity – *Gannon III* and the Legislative Special Session

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## □ **May 2016**

### ▪ *Gannon III*

The Court held that HB 2655 cured the capital outlay inequities, but failed to cure the supplemental general state aid inequities. The capital outlay equalization formula cannot be used for supplemental general state aid because it does not take into account the larger magnitude of supplemental general state and its lack of spending limitations. In addition, school districts would also receive far less supplemental general state aid than they did under SB 7, which was already held unconstitutional.

## □ **June 2016**

### ▪ Substitute for HB 2001 (Special Session)

HB 2001 reinstated the supplemental general state aid formula as it existed prior to SB 7. Qualifying school districts would be equalized at the 81.2% AVPP.

### ▪ Parties filed joint stipulation of constitutional compliance

### ▪ Supreme Court Order

The Court found that HB 2001 complies with the equity requirement of Article 6. Equity issues on appeal are presently resolved and no judicial remedy is necessary at this time. The Court retained jurisdiction over the issue and did not dismiss equity.





# *Gannon IV*

Adequacy of the CLASS Act



# *Gannon v. State IV*

Kansas Supreme Court Decision, 305 Kan. 850 (March 2, 2017)

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## Adequacy

“We conclude the state's public education financing system, through its structure and implementation, is not reasonably calculated to have all Kansas public education students meet or exceed the minimum constitutional standards of adequacy.”

### ❑ Structure

- “We hold that CLASS does not meet the structure requirement contained in the *Gannon I* test.”
- The CLASS Act “does not profess to be a school finance formula.”
- Block grants are a “funding stopgap.”
- The CLASS Act is only minimally responsive to changing student conditions such as enrollment of total student populations and enrollments of certain subgroups.



# *Gannon v. State IV*

Kansas Supreme Court Decision (March 2, 2017)

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## ❑ **Implementation**

- “We further hold that CLASS does not meet the implementation requirement of the Gannon I test for constitutional adequacy.”
- Implementation requires a review of:
  - Inputs
    - Funding levels
    - Funding sources
    - Impact of funding
  - Outputs
    - Student achievement (test scores, graduation rates, KSDE college readiness measurements)



# *Gannon v. State IV*

Kansas Supreme Court Decision (March 2, 2017)

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## ▣ **Inputs**

- The Panel should have given greater deference to certain sources of funding, such as KPERS, federal funds and local option budget funds, because those sources have some level of value to the system as a whole.
- “Actual costs remain a valid factor to be considered in an adequacy determination.”
- The evidence showed that reductions in BSAPP amounts resulted in reductions to certain educational programs, educational services, extracurricular activities, staffing and certain classes, which negatively impact achievement of the Rose factors.

## ▣ **Outputs**

- The Court reviewed statewide assessment test scores in reading and math, NAEP scores, ACT scores, graduation rates and KSDE college readiness measurements.
- The Court found that nearly  $\frac{1}{4}$  of all students were not performing at grade level and it has gotten worse since funding levels began decreasing. Achievement gaps were worsening for student subgroups, which included African American, Hispanic, English language learners, disabled, and free and reduced lunch students.



# *Gannon v. State IV*

Kansas Supreme Court Decision (March 2, 2017)

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## □ **Remedy**

- The Court, noting that the CLASS Act was already set to expire by legislative enactment on June 30, 2017, stayed the order of the Panel and the Court's own mandate until that time to allow the legislature an opportunity to create a new school finance system that complies with the Article 6 and the Court's decisions in *Gannon*.
- The Court provided no specific recommendations as to the structure or implementation of a new school finance system.
- The Court reaffirmed that the State will bear the burden of establishing the new school finance system is "reasonably calculated to address the constitutional violations of the adequacy requirement while also satisfying the equity requirement.
- If the State failed to comply, the school financing system would be ruled constitutionally invalid and therefore void.
- The Court retained jurisdiction over the case.



# SB 19

The Kansas School Equity and Enhancement Act (KSEEA)



# SB 19

## KSEEA Finance Formula

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### Finance Formula Similar to the SDFQPA

#### □ **Total Foundation Aid = BASE x Adjusted Enrollment**

##### ▪ **BASE Amount:**

- \$4,006 (2017-2018)
- \$4,128 (2018-2019)
- Adjusted each school year thereafter by a three-year average Consumer Price Index

##### ▪ **Adjusted Enrollment:**

- Headcount enrollment multiplied by the weightings

##### ▪ **Weightings:**

- At-risk student, bilingual, low enrollment, high density at-risk student, career technical education, declining enrollment, high enrollment, low enrollment, school facilities, ancillary school facilities, cost of living, special education and related services, and transportation.



# SB 19

## Highlights of Certain KSEEA Provisions

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### □ **Enrollment**

- Kindergartners counted as 1.0 FTE. (Previously 0.5 FTE). This change funds all-day kindergarten.

### □ **Weightings**

- At-Risk Student Weighting = Number of students eligible for free meals x 0.484. (0.456 under SDFQPA).
- 10% Floor for determining at-risk weighting – Any district with an enrollment of less than 10% free-lunch students can calculate at-risk weighting as if it had an enrollment of 10% free-lunch students.\*
- Weighting for high-density at-risk may be calculated by school building rather than school district.
- Bilingual Weighting – Greater of either:
  - FTE enrollment in approved programs x 0.395 (Contact Hours); or
  - Actual enrollment in bilingual programs x 0.185 (Headcount).

\*Equity implications in *Gannon V*





# SB 19

## Highlights of Certain KSEEA Provisions

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### ❑ **Expenditure Accountability**

- Funds generated by the at-risk weighting and the high-density at-risk weighting must be spent on best practices identified by the State Board.

### ❑ **Legislative Reviews**

- Low and high-enrollment weighting review and alternatives – July 1, 2018
- SBOE Report on school district accreditation—July 1, 2019
- KSDE report on school district funding—July 1, 2019
- KSDE cost study of CTE programs—July 1, 2019
- Virtual school programs—July 1, 2020
- At-risk student weighting—July 1, 2020
- Reasonable calculation of any provision of the KSEEA—July 1, 2021
- School year 2020-2021 BASE aid amount—July 1, 2021
- Successful schools model—July 1, 2023 and July 1, 2026
- Bilingual student weighting—July 1, 2021
- LPA audits—as they are completed (2018 through 2026)



# SB 19

## Highlights of Certain KSEEA Provisions

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### □ **LPA Performance Audits**

- Transportation services funding—January 2018
- At-risk education funding—January 2020
- Best practices of successful schools—January 2021 and 2026
- Bilingual education funding—January 2023
- Statewide virtual school programs –January 2024
- Cost of providing educational opportunities for every student to achieve the performance standards adopted by the State Board –January 2019, 2022, and 2025

### □ **Sunset Provisions**

- Declining enrollment weighting—July 1, 2018
- Extraordinary declining enrollment weighting—July 1, 2018
- Career technical education cost study by the KSDE—July 1, 2018
- At-risk weighting—July 1, 2019
- Career technical education weighting—July 1, 2019
- Aggregate amount of general obligation bonds—June 30, 2022
- Kansas School Equity and Enhancement Act—July 1, 2027



# SB 19

## Authorized Tax Levies

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### ❑ **Mandatory 20 mill levy for each school district**

- Proceeds remitted to state treasurer and credited to school district finance fund.

### ❑ **Local Option Budget (LOB)**

- Capped at 33% of total foundation aid of a district.
- Proposed LOB increases above 30% are subject to a protest petition/election process.\*
- Generally, no expenditure restrictions on LOB funds.

### ❑ **Capital Outlay**

- Capped at 8 mill tax levy.
- Proposed increases are subject to a protest petition/election process.
- Capital outlay fund expenditures are restricted: (1) Computer software; (2) performance uniforms; (3) housing and boarding pupils enrolled in an area vocational school operated under the board; (4) architectural expenses; (5) building sites; (6) undertaking and maintenance of asbestos control projects; (7) school buses; (8) property and casualty insurance\*; (9) utility expenses\*; and (10) other fixed assets.

\*Equity implications in *Gannon V*



# SB 19

## Authorized Tax Levy Equalization Formulas

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- **LOB Equalization – Supplemental General State Aid Formula**
  - Based on Assessed Valuation Per Student (AVPS)
    - For 2018-2019 - Determine district's AVPS in the preceding school year.
    - For 2019-2020 and each school year thereafter – Determine the average AVPS of the three immediately preceding school years.
  - Rank all districts by AVPS and identify the AVPS at the 81.2 percentile. Districts with an AVPS at or above the 81.2 percentile are not entitled to supplemental state aid.
  - Divide a district's AVPS by the AVPS at the 81.2 percentile and subtract from 1. The resulting number provides a district's supplemental state aid percentage.
  - Multiply district's supplemental state aid percentage by the district's LOB amount for the immediately preceding school year\* to determine a district's LOB equalization.

\*Equity implications in *Gannon V*



# SB 19

## Authorized Tax Levy Equalization Formulas

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### ■ **Capital Outlay State Aid Equalization**

- Based on preceding school year's AVPS.
- Round each district's AVPS to nearest \$1,000. Determine the median AVPS and assign it an equalization percentage factor of 25%.
- For every \$1,000 decrease in AVPS from the median, add 1% to equalization percentage factor and vice-versa for every \$1,000 increase.
- Multiply a district's percentage factor by the amount of capital outlay levied by the district to determine a district's capital outlay state aid.



# SB 19

## Other Items in SB 19

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- ❑ **Capital Improvement State Aid (Bond and Interest)**
  - 2 equalization formulas – Pre July 1, 2015 and post July 1, 2015.
  - Amount of approved bonds cannot exceed amount of bonds retired in preceding year.
  - School districts with less than 260 students must receive state board approval in order to receive state aid.
  - No state aid payments for extracurricular activity facilities unless necessary for safety or disability access.
  
- ❑ **Tax Credit Scholarship Program**
  - Qualified schools must be accredited by July 1, 2020.
  - Scholarships can go to students in one of the lowest 100 performing districts.
  - Individual tax credit allowed and \$500,000 cap on donations.



# *Gannon V*

Burden of Proof  
Adequacy  
Equity  
Remedy



# Gannon V

Kansas Supreme Court Decision (October 2, 2017)

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## ❑ Who has the burden of proof?

- Legislative enactments begin with a presumption of constitutionality.
- In the remedy phase of litigation, there is no presumption of constitutionality and the State has the burden to show constitutional compliance.
- *Gannon IV* statement from the Court:
  - State must “satisfactorily demonstrate . . . that its proposed remedy is reasonably calculated to address the constitutional violations” and comport with the equity requirements.
  - State would help its case by “showing its work.”
- State must demonstrate that the KSEEA is adequate and any accompanying equalization formulas are equitable.





# *Gannon V*

Kansas Supreme Court Decision (October 2, 2017)

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## **Adequacy**

“The State has not met its burden of establishing that the public education system provided by the legislature through S.B. 19 for grades K-12 meets Article 6’s adequacy requirements.”

### ❑ **Structure**

### ❑ **Implementation**

- Successful Schools Model
- Effective BASE
- At-Risk Funding
- Increased Funding Calculations



# *Gannon V*

Kansas Supreme Court Decision (October 2, 2017)

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## Structure

- ❑ **SB 19 satisfies the structure prong of the adequacy test.**
  - Plaintiffs argued that SB 19's structure was unconstitutional because certain programs were underfunded; there would not be enough revenue to fund schools by fiscal year 2021; and there is the possibility that future legislatures could refuse to fund the increase in BASE aid.
  - The Court rejected all of the plaintiff's arguments because they "involve too many contingencies and require [the Court] to make too many assumptions."



# *Gannon V*

Kansas Supreme Court Decision (October 2, 2017)

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## **Implementation**

- ❑ **SB 19 fails to satisfy the implementation prong of the adequacy test.**
  - Successful schools model
  - Effective BASE aid amount
  - Targeted at-risk funding provisions
  - SB 19 calculations an “outlier”



# *Gannon V*

Kansas Supreme Court Decision (October 2, 2017)

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## ❑ **Successful Schools Model**

- The “successful schools model” identified 41 school districts that exceeded their expected performance based on on four measures (Math and ELA grade level and college and career ready, ACT, Graduation) and deduced an average base amount of \$4,080.
- The Court found the successful schools model unpersuasive and failed to demonstrate that the overall funding and the BASE aid amount were constitutional because it lacked specificity and did not provide enough relevant data.
- Court concluded that “the State had not established any valid figure through its calculations...to show SB 19 is constitutionally adequate.”



# Gannon V

Kansas Supreme Court Decision (October 2, 2017)

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## □ **Effective BASE**

- The State argued that when the BASE aid amount of \$4,006 is combined with projected LOB funds, it created an effective BASE aid amount that not only exceeded the 2006 LPA cost study recommended BASE adjusted for inflation, but also is sufficient to satisfy adequacy.
  - $\text{BASE} + \text{LOB funds} = \$5,639$  effective BASE
  - $\text{LPA inflation adjusted base} = \$5,486$
- Court found that State ignored a critical part of the LPA study which was that inflation-adjusted figures must be further adjusted upward to accomplish improved performance.
- LOB and BASE funds are fundamentally different with frequently different purposes.
  - Weightings don't apply to LOB funds in the same manner as the BASE.
- LOB-generated funds do not provide the same fixed amount to every student regardless of location.



# Gannon V

Kansas Supreme Court Decision (October 2, 2017)

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## □ Targeted At-Risk Funding Provisions

- At-Risk Weighting Increase
  - Increase to the at-risk weighting from .456 to .484 provided \$23 million additional dollars but the State “makes no effort” to show how such additional money, coupled with the other provisions, “will be adequate for the underperforming students of this subgroup.”
- 10% Floor for At-Risk Funding
  - “State has not offered any support for its argument that this sum significantly contributes to the adequacy issue.”
- Funding for All-Day Kindergarten
  - “While fully funding kindergarten is a well-supported approach to closing the achievement gap, the State has not demonstrated how much money S.B. 19’s change will actually add to the school finance system given the variety of ways districts have previously paid for it.”
  - “While probably being a move in the right direction, the State has not shown on this record why this unknown amount is ‘reasonably calculated’” to have all students achieve Rose.



# Gannon V

Kansas Supreme Court Decision (October 2, 2017)

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## ❑ Targeted At-Risk Funding Provisions Cont'd.

- **Preschool-Aged At-Risk Funding**
  - Court found that the “State has not offered any support for the argument that this figure significantly contributes to the adequacy issue” but “an increase in targeted, at-risk funding is helpful.”
- **Best Practices Requirement for At-Risk Funds**
  - “Direct attempt by the State to help at-risk students.”
  - “State has not demonstrated how this is going to result in a material improvement over the longstanding requirement [under the SDFQPA] that school districts have an approved at-risk student assistance program.”
- **Year-End At-Risk Fund Balances Remain in the Fund**
  - “Effectively readopts the pre-2012 law.”
  - “It is unknown what actual impact this provision will have because the State has not demonstrated how many districts had balances in their at-risk funds at the end of each fiscal year and chose to transfer that money to pay general operating expenses, much less what those amounts were.”



# *Gannon V*

Kansas Supreme Court Decision (October 2, 2017)

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## □ **“SB 19 as Outlier”**

- Other calculations in the record are considerably higher than the \$292.5 million provided by SB 19 which “emphasizes the need” for the State to show its work.
  - \$1.7 Billion (Plaintiff's averaging of the two cost studies)
  - \$893 million (KSBOE Budget request)
  - \$819 million (Plaintiff's calculation based on Panel's proposed base)





# *Gannon V*

Kansas Supreme Court Decision (October 2, 2017)

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## **Adequacy Conclusion**

“The state has not met its burden to satisfactorily demonstrate to this court that the K-12 public education financing system the legislature enacted i.e. S.B. 19, is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in Rose.”

- ❑ **Structure of SB 19 constitutionally adequate**
- ❑ **Implementation is inadequate**



# *Gannon V*

Kansas Supreme Court Decision (October 2, 2017)

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## **Equity**

“The system, through its structure and implementation, is not providing school districts with ‘reasonably equal access to substantially similar educational opportunity through similar tax effort.’”

### ❑ **Equity Violations**

- Capital Outlay's Expanded Uses
- Local Option Budget's Protest Petition Procedure to Raise LOB
- Supplemental General State Aid Based on Preceding Year's LOB
- At-Risk Weighting 10% Floor



# Gannon V

Kansas Supreme Court Decision (October 2, 2017)

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## ❑ **Expanded Uses Capital Outlay Fund – Inequitable**

- Capital outlay's equalization point is lower than the LOB equalization point because of the limited allowable expenditures of the capital outlay fund. Expansion of capital outlay uses undercuts this.
- Districts have varying abilities to take advantage of the capacity to shift funds for the expanded uses which is tied to the wealth of districts.
- Expanded uses of capital outlay funds exacerbate wealth-based disparities to unacceptable levels.

## ❑ **LOB Procedures Regarding the Protest Petition – Inequitable**

- 2014-2015 SDFQPA allowed certain districts to go up an additional 2% with LOB (to 33%) upon board action alone. No protest petition and election process was provided if such increase was disputed.
- CLASS essentially locked in LOB's keeping certain districts at 33% without any further action.
- SB 19 now allows any district to go up to a 33% LOB but any increases above 30% are subject to a protest petition and election process.
- Correlation exists between district's wealth and its ability to gain voter approval. As such, "reinstating the protest-petition will exacerbate wealth based disparities among the districts."
- The Court held that "many districts are effectively denied an access reasonably equal to the one afforded" to certain other districts. "Access that is needed in order to make a similar tax effort."



# *Gannon V*

Kansas Supreme Court Decision (October 2, 2017)

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## ❑ **Use of Preceding Year Values for LOB Equalization – Inequitable**

- The lookback provision in LOB equalization formula withholds equalization funds from a district that is desiring to increase its LOB.
- Only districts that receive equalization aid are affected which exacerbates wealth-based disparities.

## ❑ **10% At-Risk Floor – Inequitable**

- This provision only benefits two districts “where a proportionally high number of students live in households with income levels above the free-meal qualifications test. In other words, this provisions of S.B. 19 uses a wealth based standard.”
- Cannot discern from the legislative record how the 10% cutoff could be justified on an actual costs basis both for those districts that benefited from the calculation and “those that may be excluded despite the costs of education underperforming students who do not qualify for the free meal program.
- “A \$2 million equity issue might be tolerable if overall funding were adequate.”



# Gannon V

Kansas Supreme Court Decision (October 2, 2017)

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## □ Remedy

- The Court stayed its mandate on SB 19 until June 30, 2018, to provide the Legislature an opportunity to bring the KSEEA into constitutional compliance.
- There is no “specific level of funding” for adequacy and no “particular brand of equity” that is mandated.
- State would help by showing its work. “This exercise involves considerably more than what it presented to the Court in the instant appeal and in *Gannon III*. The State should identify other remedies that the legislature considered but, more important to meeting its burden, explain why it made its particular choice for reaching the constitutional standards for adequacy and equity.
- “State should remain cautious of challenges arising from an increased reliance upon LOB-generated funding (and less upon BASE-generated funding) as it seeks to make suitable provision for finance of the educational interests of the state.

## □ Deadlines

- April 30, 2018, parties briefs addressing any legislative remedies are due.
- May 10, 2018, response briefs are due.
- May 22, 2018, oral arguments.
- June 30, 2018, state must demonstrate constitutional adequacy and court will have communicated its decision.



# *Gannon V*

Kansas Supreme Court Decision (October 2, 2017)—Concurs & Dissents

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## ❑ **Johnson and Rosen**

- Concurred in part and dissented in part.
- Agreed with the overall holding that SB 19 is inadequate.
- Disagreed with remedies: Would have required submission of a new formula by end of this year.

## ❑ **Biles**

- Concurred in part and dissented in part.
- Agreed with the overall holding that SB 19 is inadequate.
- Disagreed with allowing inequitable provisions to be operational during the 2017-2018 school year: Would have issued an order enjoining the equity offending provisions.



# Questions?

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