

MYTH BUSTERS

March 2019 Issue 10

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The Endless Cycle of School Finance Litigation: A Choice

MYTH: The cycle of school finance litigation will never end.

FACTS: The Kansas legislature has the authority to end the litigation, but has repeatedly chosen not to do so. Instead, legislative leadership has prolonged the Gannon case with a series of bills that have failed to get the job done (see Table 1).^a The Kansas Supreme Court was presented with a lawsuit that tasked the justices with assessing the state’s school finance formula compliance with the mandates framed in the Kansas Constitution. Article VI calls out two separate tests of constitutionality – equity and adequacy.^b The criteria needed to pass constitutional muster becomes clearer with each new school finance bill.

Fact 1 – 2010 Breach of Contract. The extended cycle of school finance litigation has been self-perpetuated. The Gannon lawsuit was filed in 2010 based on the state’s failure to uphold legislation that was passed in relation to the preceding school finance lawsuit, *Montoy vs Kansas*.^c Think of Gannon as the school districts’ response to a breach of contract by state leadership who chose not to honor their terms of agreement, and therefore, not to uphold the constitution.

Fact 2 – 2014 Inequity. The 2014 legislature enacted school finance House Bill 2506^d which was found by the court to meet the equity test, leaving the question of adequacy to be resolved (see Table 2).^e

Table 2. K-12 School Finance Formula Constitutional Requirements

<h1>EQUITY</h1> <p>School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort.</p>
<h1>ADEQUACY</h1> <p>The K-12 public education financing system (through structure and implementation) must be reasonably calculated to have all students meet or exceed the state education standards.</p>

Fact 3 – 2015 Block Grant. Rather than turn efforts towards solving the adequacy problem, the 2015 legislature passed Senate Bill 7^f (March 16, 2015) which repealed the existing school finance formula in its entirety. This two-year block grant plan froze, in place, levels of funding already ruled to be

Table 1. Gannon and the Legislature. The Back and Forth (KLRD, 2018)

Court Opinion	Legislative Action
Gannon I - Inequitable	2014 HB 2506 - Equity fix and various policy changes 2015 SB 7 - Block Grant and Equity changes
Gannon II - Inequitable	2016 HB 2655 - Equity changes
Gannon III - Inequitable	2016 Special Session HB 2001 - Equity fix and Virtual and Extraordinary Need Reductions
Gannon IV - Inadequate	2017 SB 19 - New funding formula en masse with Adequacy increases
Gannon V - Inadequate and Inequitable	2018 SBs 426 and 61 - Equity fixes and Adequacy increases
Gannon VI - Inadequate	2019 - ???

unconstitutional and created new inequities.^g On July 24, 2015, the court found the block grant deficiencies so problematic, the case had to be divided in two. Unconstitutional elements related to equity were grouped into one case, and those deficiencies related to adequacy were grouped into another. The state’s creation of new equity problems with the passage of the block grant bill added two years to the litigation cycle.

Fact 4 – 2016 More Inequities. The 2016 legislature created even more inequity with legislation passed during the regular session. In fact, problems with House Bill 2655^h were so profound the legislature was compelled to return for a special session in the summer of 2016 to pass corrective measures. House Bill 2001ⁱ was the clean-up bill which restored two critical equity elements of the school funding formula to methods previously deemed constitutional by the court – the Local Option Budget and Capital Outlay state aid. The stage

Table 3. Montoy Safe Harbor

Kansas legislature’s rationale for calculating adequate funding: Estimating what the total spending on K-12 public education would be today if the state had fully enacted the Montoy plan and kept funding levels adjusted for inflation moving forward.

was set to respond to the adequacy phase of the lawsuit and end the litigation.

Fact 5 – 2017 Adequacy Deadline. The deadline to rewrite a new plan was June 30, 2017, set by the fact that the school finance formula had been repealed in 2015 and the block grant had been found to be unconstitutional. Beyond this date, the legislature would have no mechanism to distribute funding and schools would not be able to open. The 2017 legislature enacted Senate Bill 19^j to reinstate a formula with baseline funding and additional weighting categories. With four small exceptions, the plan itself was found to meet the constitutional test for equity. However, the court determined the state fell far short of meeting the burden of proof regarding adequacy of funding. Another delay in resolution of the litigation was created.

Fact 6 – Burden of Proof. The burden to prove that funding levels meet the constitutional test for adequacy is the responsibility of the state. Throughout the series of legislative actions to craft a remedy, the court has instructed the state to show its work. Prior to 2018, the legislature failed to provide appropriate information about how funding levels were determined, leaving the impression that the numbers were arrived at arbitrarily – based on dollars available, with no real basis in actual costs, rate of inflation, changing education standards or rising needs of the students being served.

Fact 7 – 2018 Inadequacy & Inequity. In 2018, the Kansas legislature passed Senate Bills 423^k and 61^l, with fixes to the additional equity issues and an adequacy resolution. These bills finally provided an explanation for how much money was deemed enough to adequately fund K-12 public education. The

legislature chose their method of calculation to be based on the last time the court found the state to be in constitutional compliance. This defense is referred to as the “Montoy Safe Harbor” (see Table 3).^m

The court accepted the legislature’s calculation – with one condition. An inflation adjustment was required, if the restoration of funds were to be phased-in over time.

The court agreed with this methodology, but found that the legislature did not *implement* their agreed upon *structure*. Their inflation adjustment fell short by two years and failed to continue for the ensuing four years it took to fully phase in the total funding increase required to achieve adequacy.

Fact 8 – 2019 The BIG Question: Does the Legislature Have the Will to End the Litigation? It is now 2019 and nearly a decade later, and the legislature is on the brink of compliance. The Gannon VI opinion directs the state to add funding for the two missing years of inflation, and to continue adjusting for inflation over the life of the phase-in to achieve constitutional levels of funding.ⁿ Instead of enacting this simple plan, many in the legislature are pushing an alternative plan that would roll back the clock and once again fail to resolve Gannon. The plan being pushed removes scheduled base aid increases in years three and four, and eliminates the automatic inflation adjustment scheduled to kick in after the phase-in of funding. Further, changes to the formula are being proposed that have not been vetted, are unrelated to the Gannon ruling, and may create new equity problems. The court has warned that adequacy should not come at the expense of equity.

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^a Table 1. Penner, E. (2018). Gannon and the Legislature. The Back and Forth. *Kansas Legislative Research Department*, slide 14. <https://kasb.org/wp-content/uploads/2019/03/Penner121218-Gannon-and-the-Legislature.pdf>

^b Kansas Constitution, Article VI. https://www.kssos.org/other/pubs/KS_Constitution.pdf; Gannon v State of Kansas, (2018, June 25). No. 113,267, Gannon VI, p.16. http://www.ksrevisor.org/rpts/Gannon_V_KS_SupCt_June25_2018.pdf

^c Long, J. (2016, June 16). A History of School Finance Litigation. *Kansas Office of Revisor of Statutes*. Montoy vs Kansas. http://www.kslegislature.org/li_2016s/documents/school_finance_ro.pdf

^d House Bill 2506 (2014). Education Appropriations. http://kslegislature.org/li_2014/b2013_14/measures/hb2506/

^e Table 2. K-12 School Finance Formula Constitutional Requirements (2018). Gannon v State of Kansas. No. 113,267, pp.1-2, ruling VI. http://www.ksrevisor.org/rpts/Memo_Gannon_Dist_Ct_Opinion_123014.pdf

^f House Sub Senate Bill 7 (2015). Block Grant. http://kslegislature.org/li_2016/b2015_16/measures/sb7/

^g Self, G. (2016, Feb 25). Comprehensive Analysis. *Kansas Office of Revisor of Statutes*. Gannon II. http://www.ksrevisor.org/rpts/Gannon%20II_Comprehensive%20Analysis.pdf

^h S Sub House Bill 2655 (2016). CLASS Act. http://kslegislature.org/li_2016/b2015_16/measures/hb2655/

ⁱ S Sub House Bill 2001 (2016). Appropriations - Other Provisions. http://kslegislature.org/li_2016s/b2015_16/measures/hb2001/

^j Senate Bill 19 (2017). Creating the Kansas school equity and enhancement act. http://kslegislature.org/li_2018/b2017_18/measures/sb19/

^k Sub Senate Bill 423 (2018). Kansas School Equity and Enhancements Act. http://kslegislature.org/li_2018/b2017_18/measures/sb423/

^l H Sub for Senate Bill 61 (2018). Kansas School Equity and Enhancements Act. http://kslegislature.org/li_2018/b2017_18/measures/sb61/

^m Table 3. Montoy Safe Harbor. (2018, June 25). Gannon v State of Kansas, No. 113,267, Gannon VI, pp. 18-28.

ⁿ Long, J. (2018, July 6). Comprehensive Summary. *Kansas Office of Revisor of Statutes*. Gannon VI. http://www.ksrevisor.org/rpts/Gannon%20VI%20Comprehensive%20Analysis_FINAL%20DRAFT.pdf