



**THE KANSAS
CHAMBER**

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**Testimony before House Appropriations
HB 2740 – K-12 Equalization response
Mike O’Neal, Kansas Chamber CEO
March 23, 2016
Testimony in support**

Mr. Chairman and members of the Committee

On behalf of the Kansas Chamber, I appreciate the opportunity to appear in support of HB 2740, a legislative response to the Court’s latest equity decision in *Gannon*. The Kansas Chamber has a strong Board approved Education agenda for 2016 that includes a call for increasing the quality of education for tomorrow’s workforce and the efficient use of tax dollars through policies that:

- Support a suitable school finance system for K-12 education that ensures taxpayer dollars are adequately and efficiently invested toward instruction in order to provide students and teachers with the resources needed to fulfill the mission of the Department of Education.

The necessity for this legislation derives solely from the Kansas Supreme Court’s Feb. 11, 2016 ruling on the equity phase of the pending *Gannon* school finance litigation and the Court’s less than subtle threat of court-ordered school closure if its articulated equity concerns were not addressed by June 30, 2016. The Court has essentially bifurcated the case and is dealing with the “equity” phase first and the “adequacy” phase later. While this is certainly the Court’s prerogative, and can be dealt with separately, our interpretation of the Legislature’s responsibility, as determined by the Court in recent school finance litigation, is to make suitable provision for the finance of the educational interests of the state. Once it is determined what resources will be provided to that end, it is then the responsibility of the Legislature to allocate or otherwise see to it that the resources are allocated in a manner that is equitable, i.e., such that school districts have reasonably equal access to substantially similar educational opportunity through similar tax effort. With the question of “adequacy” still to be determined, a response to the Court’s equity decision appears to put the proverbial “cart before the horse”.

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“...to continually strive to improve the economic climate for the benefit of every business and citizen and to safeguard our system of free, competitive enterprise”.

That said, an equity response is due and we applaud this Committee's effort to make a good faith effort to divine from the Court's opinion an acceptable response on the equity phase such that the threat of school closure is averted. (Regarding school closure we would refer the Committee to KSA 2015 Supp. 72-64b03(d) which prohibits such school closures) As an elected body that works closely with its respective constituents, it is prudent to take the steps this Committee has taken to reduce risk to Kansas taxpayers, families and children who, as the Court has previously held, have a constitutional right to a public education. One way or another, schools must remain open in the fall.

It is also prudent to take steps to protect school districts and school children who were not parties to the litigation and/or who were not affected either way regarding the perceived equalization infirmity or who may have lost resources as a result of the Court's suggestions regarding the prior equity formula. While it would appear to make no sense to threaten these schools with closure when they were not involved in this dispute, we applaud this Committee for taking steps to avoid the risk to these districts and their patrons.

Turning to the Court's language in what we'll call *Gannon II*, the Court, while appearing to state a preferred method of compliance, did acknowledge that the equalization infirmity **"can be cured in a variety of ways – at the choice of the legislature."**

As to the Court's implied preference, the Court noted: **"One obvious way the legislature could comply with Article 6 would be to revive the relevant portions of the previous school funding system and fully fund them within the current block grant system."** Of significance is the fact that the Court is clearly open to continuation of the block grant system and with arriving at an equity response "within" the current block grant system.

A question was raised in the informational hearing about whether the Court will require new or additional funds. First, equity is not a math equation. It is, as the Court has stated: **"School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort."** In this regard, no witness who testified Monday before the joint Committee in response to questioning by legal counsel was able to articulate or knew of a metric for determining how this test is satisfied. This comes as no surprise since even the Court noted that: **"We acknowledge there was no testimonial evidence that would have allowed the panel to assess relative educational opportunities statewide."**

The Court did, however, speak to the issue of funding. First, the Court acknowledged that: **"equity does not require the legislature to provide equal funding for each student or school district."** The Court went on to say that the test of the funding scheme becomes a consideration of **"whether it sufficiently reduces the unreasonable, wealth-based disparity so the disparity then becomes constitutionally acceptable, not whether the**

cure necessarily restores funding to the prior levels. Finally, the Court made it clear that “need” is irrelevant. The Court held that **“equity is not a needs-based determination. Rather, equity is triggered when the legislature bestows revenue-raising authority upon school districts through a source whose value varies widely from district to district, such as with the local option mill levy on property.”**

Given what the Court said in *Gannon II*, it would have been perfectly acceptable to resurrect the capital outlay and LOB equalization formulae pre-SB7 and redistribute current funding accordingly. While that would have created so-called “winners” and “losers”, that is irrelevant to the Court since equity is equity and restoring prior funding is not required. Equity in its most basic form is illustrated by the example of sharing a bottle of pop with your kids. If you happen to pour more into one glass than another you equalize the glasses by pouring the contents of the one with more into the glass with less until they are equal. Equity does not require you to return to the refrigerator and open a new can. Unfortunately, the expectation with regard to school finance equalization has historically been that one is expected to always go back to the refrigerator for more, since a district that has been allocated funds now sees that as their entitlement. Any perceived reduction in an expectation is characterized as a “cut”. The concept of sharing, which we learned in Kindergarten, has been lost, even though, as the Court has ruled, “equity” is the law.

When this Committee considered a proposal (HB 2731) that would restore equalization to the presumably Court-preferred method, which created winners and losers, no district that would have benefitted showed up in support and no district that would have lost funds showed up in opposition. Only neutral testimony was received. It would be difficult to garner the votes necessary to pass such a measure and, notwithstanding a preferred course by the Court, passage of legislation by a majority of willing elected lawmakers would still be necessary.

Turning now to HB 2740, the bill, in our opinion, is a satisfactory response to the Court, given the Court’s own language and the bill’s response. Re-allocation of funds utilizing an approved method of calculating equalization (capital outlay formula) is proposed, with no district losing funds thanks to hold harmless provisions. Funds are included to cover minor changes in calculations due to actions taken subsequent to passage, and KSDE is given the balance of funds to allocate, as needed, in a manner consistent with the Court’s definition of “equity” and including the existing factors for approving additional funds for extraordinary needs.

As to the “hold harmless” provisions, testimony was presented to the Joint Committee Monday that these types or provisions are not uncommon and are part of the inherent nature of the political process by which school finance decisions are made. With regard to the KSDE provisions, given that the Legislature and this Committee are in session only part time, and

given that the Legislature relies on KSDE for equalization calculations and other technical data related to whatever formula may be in place, including block grants, it makes sense to have KSDE handle the “extraordinary needs” fund allocations.

Finally, HB 2740 provides what we’ve heard districts requesting: as much budget certainty as possible, one of the key advantages of the current block grant system. We urge the Committee’s favorable consideration of HB 2740.