THE KANSAS CHAMBER
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Testimony before Joint Committee of House Appropriations and Senate Ways & Means
Legislative response to *Gannon* Equity Decision
Mike O'Neal, Pres./CEO Kansas Chamber of Commerce
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Chairmen and members of the Joint Committee

On behalf of the Kansas Chamber, I appreciate the opportunity to appear in support of a legislative response to the Court's latest equity decision in *Gannon.* The Kansas Chamber has a strong Education agenda that includes a call for increasing the quality of education for tomorrow's workforce with policies that, among other things:

- 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 *Gannon* ruling on the equity phase of the pending school finance litigation and the Court's less than subtle threat of court-ordered school closure if its articulated equity concerns are 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".

That said, an equity response is due and we applaud your effort to, once again, make a good faith effort to put forth an acceptable response on the equity phase such that the threat of school closure is averted. (Regarding school closure, you are well aware by now of current state law that prohibits Kansas courts from closing schools or enjoining the distribution of school funds. What you may not be aware of are the provisions of Art. 3, Sec. 3 of the Judicial article in the Kansas Constitution that reserves to the legislature the power to determine appellate jurisdiction, and, accordingly, the limits of a court's remedial powers.)

As an elected body that serves your constituents, it is prudent to take steps 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. Art. 6, Sec. 6 of the Kansas Constitution may deal with Finance, but it is Art. 6, Sec. 1 that provides that the legislature "maintain" schools. It's difficult to satisfy Art. 6, Sec. 1 if the Court insists on closing schools.

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 urge you to take steps to avoid the risk to these districts and their patrons.

Turning to the Court's own language, 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 during hearings in the regular session about whether the Court will require new or additional funds. First, equity is not a math equation. The test 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 in the regular session 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, <u>not whether the cure necessarily restores funding to the prior levels.</u>**" 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.**"

When the Senate Committee considered a proposal (SB 512) 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 is still necessary.

Given the current posture of the case and the deadline imposed by the court, it is prudent for the Legislature to act expeditiously to respond with regard to the equity phase. We believe the Legislature came up with an appropriate response during the 2016 Regular Session. Your response addressed the need for an equalization formula and protected your schools' funds. During this Special Session, the Legislature should address the issue of LOB equalization from the standpoint of what is best for the constituencies and taxpayers members represent. A solution does not require throwing more taxpayer money at the problem.

The Kansas State Department of Education has expertise in making the mathematical calculations necessary to ensure equalization of districts based on the adopted test of "reasonably equal access to substantially similar educational opportunity through similar tax effort." The Legislature has already appropriated funds in the 2016 legislative session to operate schools during the 2016-2017 school year. Those funds should be transferred to the KSDE with the firm promise that KSDE will distribute the funds in a manner that accomplishes equalization. Use of the term "block grant" is appropriate. A "grant" implies a promise in exchange for release of funds. The Feds have mastered this. KSDE should be given the authority, if authority does not already exist, to identify all unencumbered funds in the USD system and allocate those resources in a manner sufficient to address the Court's equity concerns.

If targeting additional funds in a manner consistent with the old LOB distribution formula, no "new" funds are needed. The K-12 system has hundreds of millions of dollars in unencumbered funds. The KBOE and KSDE should have the authority to identify those funds and redistribute them to the extent necessary to accomplish equalization, much as the current 20 mill law is utilized.

For the future, consider capturing a portion of the 20 mill levy and/or a portion of LOB levies for the purpose of funding equalization, rather than creating an annual equalization entitlement program at additional taxpayer expense. It is not the Court's function nor should it be within its power to disrupt educational pursuits in the state where the Legislature has committed over 50% of its entire State General Fund budget to K-12. Also, in anticipation of the "adequacy" phase of the pending litigation, use the "block grant" to extract a promise from KSDE, and in turn the USD's, that funds will be allocated in a manner "reasonably calculated to assist students in achieving the outcomes set forth in

statute." You're being sued over adequacy in an environment where you have no control over outcomes.

Our members, as ultimate consumers of the educational product of this state, stand ready to work with our education partners and legislators to help ensure our schools remain open and free from unwarranted judicial intervention. We have confidence that a solution that protects both our schools and Kansas taxpayers will be the result of your deliberations. Our schools want to open. We want schools to open. You want our schools to open. The question is whether the Court wants them to open.