

Kansas: State Supreme Court affirms unconstitutionality of public school funding



David M. Kall | Friday, February 26, 2016

In the 2016 case [Gannon v. State of Kansas](#) (*Gannon II*), the Kansas Supreme Court considered an appeal by Kansas, in which the state argued that the three-judge panel of the lower court, on remand, had improperly determined that it had not cured certain constitutional infirmities related to equitable funding of public education. Ultimately, the Supreme Court agreed with the panel and concluded that the state had not carried its burden of showing that it had cured capital outlay's unconstitutional inequities.

To understand the details of the Supreme Court's conclusions, it makes sense to take a closer look at what happened first, in [Gannon I](#).

Gannon I

In 2014, the Kansas Supreme Court required application of a specific test for determining whether public school funding complies with [Article 6](#) of the Kansas Constitution, among other things. Article 6 provides, in part, that “[t]he legislature shall make suitable provision for finance of the educational interests of the state.”

The crux of *Gannon I* was whether Kansas had underfunded public education from fiscal years 2009-2012. This determination involved examination of the two components of public school funding inherent in Article 6: adequacy and equity.

By way of background, it was the School District Finance and Quality Performance Accreditation (SDFQPA) that established the formula and mechanism through which Kansas school districts receive their K-12 public education funding. This ultimately comes from state aid, and “local effort,” which is comprised mostly of property taxes. This formula provided a fixed amount of funding per student. A district whose

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funding from local efforts was less than its state aid funding entitlement would receive the difference from the state. Additionally, supplemental general state aid and school district capital outlay state aid was available to less wealthy, qualifying school districts.

Also relevant are the Kansas legislature's actions in the wake of the recession. This resulted in a 2009 reduction of the 2006 statutorily specified amount. In fiscal year 2010, this amount was reduced again. Beyond this, the legislature started reducing supplemental general state aid, and withholding capital outlay state aid.

Adequacy

In a 1989 case, *Rose v. Council for Better Education*, the Kentucky Supreme Court articulated a rationale and definition for the adequacy of public education funding test; several other states embraced this test, like Massachusetts, North Carolina, and South Carolina.

In *Gannon I*, the Kentucky Supreme Court took the step of formally adopting these standards as the minimal goals in providing an adequate education. But it did not actually determine whether the state met them, because, it concluded, the lower court applied the wrong test to the facts. For this reason, the court remanded with instructions to apply the *Rose* factors. It also noted that "total spending is not the touchstone for adequacy."

Equity

The court acknowledged that the equity with which funds are distributed, as set forth in Article 6, is a critical factor that the legislature must consider in order to achieve a suitable formula for financing education.

In its opinion, the *Gannon I* Court recognized that while it has "often spoken of the requirement of equity in this area, it has not clearly defined the term." It thus did so.

In applying its definition, the court held that in 2009 and beyond, by eliminating all capital outlay state aid payments to which school districts were otherwise entitled, the legislature had created unconstitutional, wealth-based disparities. The court agreed with the appellate panel's denunciation of such, and that the legislature should have the opportunity to promptly cure the statute.

***Gannon II*, 2016**

The paramount question before the Kansas Supreme Court this time was whether the state failed to comply with *Gannon I*'s equity directive; the lower court's holdings with respect to the adequacy requirement were not before the court in *Gannon II*.

The situation giving rise to the 2016 case was the Governor's January 2015 budget, which called for supplemental appropriations in order to fully fund the capital outlay and supplemental general state aid entitlements.

For fiscal years 2016 and 2017, the legislature repealed its school funding system altogether, and replaced it with Classroom Learning Assuring Student Success Acts (CLASS). CLASS was designed to provide each school district a block grant in those years that would be ". . . at least equal to, the total state financial support as determined for school year 2014-2015 [fiscal year 2015] under the [SDFQPA], prior to its repeal."

As a consequence, for fiscal year 2015, the amended aid formulas reduced statutory entitlements by \$54 million, and froze the 2016 and 2017 amounts at that reduced figure. This meant that supplemental appropriations would be necessary in order to fully fund the capital outlay and supplemental general state

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aid entitlements.

For these reasons, the plaintiffs sought district court intervention again, to prevent the repeal and reductions from taking effect. The panel concluded that lawmakers' actions were both unconstitutional and contradictory to the mandate of *Gannon I* because of their effect on total capital outlay funding. The *Gannon II* Court concurred with the panel.

As for the supplemental general state aid inequities, the court agreed that the legislature's altered formula also contradicted *Gannon I*'s mandate, because it did not result in school districts having reasonably equal access to substantially similar educational opportunities through similar tax effort in fiscal year 2015. Additionally, the *Gannon II* Court determined that CLASS exacerbated wealth-based disparities.

Implications

In *Gannon I*, the Court declared that it is the only body with the authority to determine adherence to the standards of the "people's constitution." Anticipating legislative action that would amend the statutory language to lower the standards for a public education, the court declared that "only the people of Kansas" have such authority.

Along these lines, in *Gannon II*, the court contemplated the tension between the constitution as a direct mandate of the people, and the statute as an expression of the legislature. Referring to a United States Supreme Court case from 1803, the court concurred with the long-standing precedent that it must obey the will of the people as expressed in their constitution. Otherwise, to allow the legislature to judge the validity of its own laws would enable lawmakers to substitute their will for that of their constituents.



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