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**Comprehensive Summary of the Kansas Supreme Court Decision in
Gannon v. State, issued June 14, 2019 (*Gannon VII*)¹**

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On June 14, 2019, the Kansas Supreme Court (Court) issued its seventh decision in the *Gannon* school finance litigation (*Gannon VII*). The Court held that the financial adjustments to the Kansas School Equity and Enhancement Act (KSEEA) enacted in 2019 House Substitute for Senate Bill 16 (SB 16) substantially comply with the Court's *Gannon VI* mandate, which specified that the State could be constitutionally compliant if it addressed the inflation issues in its *Montoy* safe harbor plan by providing additional educational funding.² Additionally, the Court retained jurisdiction "to ensure continued implementation of the scheduled funding."³

(To read only about *Gannon VII*, please turn to page 8 of this memorandum.)

GANNON PROCEDURAL HISTORY⁴

The *Gannon v. State* series of cases began in November 2010, when a lawsuit was filed claiming the State violated Article 6 of the Constitution of the State of Kansas by not constitutionally funding public K-12 schools in Kansas.

School Finance Formulas in Kansas

When *Gannon* was filed in 2010, the School District Finance and Quality Performance Act (SDFQPA) was the existing school finance formula. Under the SDFQPA, the amount of

¹ This memorandum provides a comprehensive summary of the *Gannon VII* decision and places it in context with other recent school finance decisions. The Office of Revisor of Statutes has prepared memoranda on each of the prior decisions in *Gannon v. State* and a memorandum on the history of school finance litigation in Kansas. These documents can be found at <http://www.ksrevisor.org/>.

² *Gannon v. State*, No. 113,267 at 3 (Kan. Sup. Ct. June 14, 2019) (*Gannon VII*).

³ *Id.* at 25.

⁴ This memorandum provides a brief summary of the procedural history of the *Gannon v. State* decisions. The Office of Revisor of Statutes has prepared a memorandum on the history of school finance litigation in Kansas, including a more comprehensive summary of *Gannon*. This document can be obtained by contacting the Office of Revisor of Statutes or at <http://www.ksrevisor.org/>.

state aid received by a school district was determined by multiplying the base state aid per pupil (BSAPP) by the adjusted enrollment of the district. Adjusted enrollment used weightings to account for certain demographics and characteristics of a school district's student population. The SDFQPA was repealed in 2015 and replaced by the Classroom Learning Assuring Student Success Act (CLASS Act). Under the CLASS Act, school districts received a "block grant" of state financial aid based on the state aid received in school year 2014-2015 under the SDFQPA with some adjustments. The CLASS Act expired on June 30, 2017, and was replaced by the Kansas School Equity and Enhancement Act (KSEEA) enacted in SB 19. The basic structure of the KSEEA is substantially similar to the SDFQPA.

Gannon I

In *Gannon I*, issued in March 2014, the Court reaffirmed that Article 6 requires both an adequacy and an equity component be satisfied for a school finance formula to be constitutional.⁵ The Court determined that the adequacy requirement is satisfied "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 [*Rose* standards]."⁶ The Court did not apply the new adequacy test to the existing formula, but directed the District Court Panel (Panel)⁷ to do so on remand.⁸ The Court also determined that the equity requirement is satisfied when school districts "have reasonably equal access to substantially similar educational opportunity through similar tax effort."⁹ The Court applied the equity test to the current funding levels for capital outlay state aid and supplemental general state aid, and found both unconstitutional.¹⁰ The Court then remanded the case to the Panel to apply the adequacy test and enforce the Court's equity ruling.¹¹

District Court Panel

In 2014 and 2015, the Panel issued two separate decisions on the constitutionality of the Kansas school finance formulas. In the Panel's first decision after *Gannon I*, the Panel found the

⁵ *Gannon v. State*, 298 Kan. 1107, 1163 (2014) (*Gannon I*).

⁶ *Id.* at 1170.

⁷ K.S.A. 2017 Supp. 72-5633 requires that constitutional challenges claiming a violation of Article 6 of the Constitution of the State of Kansas be tried before a three-judge panel at the district court.

⁸ *Gannon I* at 1199.

⁹ *Id.* at 1175.

¹⁰ *Id.* at 1197.

¹¹ *Id.* at 1200.

SDFQPA to be unconstitutional under the new test for adequacy.¹² In response to the Panel's decision, the Legislature repealed the SDFQPA and enacted the CLASS Act through 2015 Senate Bill No. 7 (SB 7). The Panel subsequently issued a new decision finding the CLASS Act constitutionally inadequate and the supplemental general state aid and capital outlay state aid equalization formulas as amended by the CLASS Act constitutionally inequitable.¹³ The Panel's decisions were appealed to the Court.

Bifurcation

On July 24, 2015, following the Panel's decision on the CLASS Act, the Court stated that the equity and adequacy issues were in different stages of the litigation and "recognized the need for an expedited decision on the equity portion of the case."¹⁴ The Court then bifurcated adequacy and equity and required the parties to brief and argue the issues separately.¹⁵ The Court ruled on the equity issue in *Gannon II* and *Gannon III*, and on the adequacy issue in *Gannon IV*.

Gannon II and III

In *Gannon II*, issued in February 2016, 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 amended supplemental general state aid and capital outlay state aid equalization formulas in SB 7 failed to cure the unconstitutional wealth-based disparities among school districts.¹⁶ In response, the Legislature enacted Senate Substitute for House Bill No. 2655 (HB 2655) amending both the supplemental general state aid and capital outlay state aid formulas. In *Gannon III*, issued in May 2016, the Court held that HB 2655 cured the capital outlay inequities, but failed to cure the supplemental general state aid inequities.¹⁷ To address the supplemental general state aid inequities, the Legislature passed Substitute for House Bill 2001 (HB 2001) during a special session in June 2016. On June 28, 2016, the Court found HB 2001 cured the supplemental general state aid inequities, but the Court retained jurisdiction over equity.¹⁸

¹² *Gannon v. State*, No. 2010CV1569 at 115 (Shawnee Co. Dist. Ct. Dec. 30, 2014).

¹³ *Gannon v. State*, No. 2010CV1569 at 7 (Shawnee Co. Dist. Ct. June 26, 2015).

¹⁴ *Gannon v. State*, No. 113,267 (Kan. Sup. Ct. Order July 24, 2015).

¹⁵ *Id.*

¹⁶ *Gannon v. State*, 303 Kan. 682, 720, 726 (2016) (*Gannon II*).

¹⁷ *Gannon v. State*, 304 Kan. 490, 493 (2016) (*Gannon III*).

¹⁸ *Gannon v. State*, No. 113, 267 (Kan. Sup. Ct. Order June 28, 2016).

Gannon IV

With the equity portion of the case resolved, the Court turned to adequacy. In *Gannon IV*, the Court held that the CLASS Act did not satisfy the adequacy component of Article 6.¹⁹ The Court found that the CLASS Act did not meet either the structure or implementation requirements of the adequacy test.²⁰ The Court held that the CLASS Act was inadequate because the structure of the act "does not profess to be a school finance formula" and is merely a "funding stopgap."²¹

The Court also examined the inputs to the K-12 educational system (the costs and funding sources of providing an adequate system)²² and the outputs from the system (various student achievement measures).²³ In its review of inputs, the Court found the level of funding and the impact of such funding inadequate.²⁴ In its review of outputs, the Court found the State was failing to provide nearly one-fourth of all public school students in Kansas with basic skills in both reading and math and that achievement gaps existed between all students and certain subgroups of students.²⁵

Though the Court affirmed the Panel's conclusion that the CLASS Act is unconstitutional, it stayed all orders to give the Legislature the opportunity to enact a new school finance system prior to June 30, 2017.²⁶ The Court stated that the adequacy portion of the case would now be in the remedial phase, and thus, the State has the burden to demonstrate that any new school financing system is "reasonably calculated to address the constitutional violations" of the adequacy requirement while also satisfying the equity requirement.²⁷

Gannon V

Following the Court's decision in *Gannon IV*, the Legislature passed SB 19 enacting the KSEEA,²⁸ which created a new school finance formula similar in structure to the SDFQPA. The

¹⁹ *Gannon v. State*, 305 Kan. 850, 913-14. (2017) (*Gannon IV*).

²⁰ *Id.*

²¹ *Id.* at 889-90.

²² *Id.* at 892-901.

²³ *Id.* at 901-15.

²⁴ *Id.* at 893.

²⁵ *Id.* at 906-08.

²⁶ *Id.* at 918.

²⁷ *Id.* at 856.

²⁸ See K.S.A. 2017 Supp. 72-5131 et seq.

legislation also added approximately \$317 million in additional funding for public schools for school years 2017-2018 and 2018-2019.²⁹ The Court heard oral argument on SB 19 in July 2017.

On October 2, 2017, the Court issued its decision in *Gannon V.*³⁰ The Court reviewed the constitutionality of the KSEEA and held that the State failed to demonstrate that the KSEEA satisfied both the adequacy and equity components of Article 6.³¹ Although the Court recognized that SB 19 "arguably makes positive strides," the financing system was not shown by the State to be "reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*" and did not provide school districts "reasonably equal access to substantially similar educational opportunity through similar tax effort."³²

The Court held that the KSEEA satisfied the structure component of the adequacy test under Article 6,³³ but did not satisfy the implementation component.³⁴ The Court did not find the State's successful schools model persuasive and held that the State failed to demonstrate that the overall funding and the BASE aid amount provided for in the KSEEA were constitutionally adequate.³⁵ Additionally, the Court was not persuaded by the State's effective base argument. The Court found that the notion that BASE aid and local option budget (LOB) funds are comparable is "a false equivalency because they are fundamentally different with frequently different purposes."³⁶ The Court held that LOB funds cannot be combined with BASE aid funds to create an "effective base" because LOB funds do not provide the same benefit to every school district.³⁷ Finally, despite the Court's recognition of the efforts to target funding toward at-risk students and improve at-risk student performance, the Court determined that the State failed to sufficiently demonstrate how these provisions of the KSEEA would satisfy the adequacy component of Article 6.³⁸

The Court also held that certain provisions of SB 19 exacerbated wealth-based inequities between school districts in violation of the equity component of Article 6.³⁹ In particular, the Court identified the following provisions as equity violations: (1) The expanded use of capital

²⁹ *Gannon VI* at 6-7.

³⁰ *Gannon v. State*, 306 Kan. 1170 (2017) (*Gannon V.*).

³¹ *Id.* at 1172.

³² *Id.* at 1237. Quoted text first stated in *Gannon I* at 1170 and 1175.

³³ *Id.* at 1184.

³⁴ *Id.* at 1183.

³⁵ *Id.* at 1197.

³⁶ *Id.* at 1203.

³⁷ *Id.* at 1205.

³⁸ *Id.* at 1206-11.

³⁹ *Id.* at 1213.

outlay funds; (2) the procedure to raise the maximum LOB authority; (3) the LOB equalization based on the preceding year LOB authority; and (4) the 10% minimum at-risk student weighting.⁴⁰

The Court retained jurisdiction and extended the stay of its mandate until June 30, 2018.⁴¹

SB 423 and SB 61

During the 2018 legislative session, the Legislature passed SB 423 and SB 61 to address the issues raised in *Gannon V*. The legislation attempted to address the adequacy issue by returning to that level of public school funding that was last approved by the Court at the end of the *Montoy* litigation (cited as the "*Montoy* Safe Harbor Plan"). Recognizing this occurred in school year 2009-2010, the Legislature calculated the inflation cost for each subsequent school year through school year 2016-2017 (see chart below).⁴² The inflation adjusted targeted amount of increased aid to schools, less funding amounts already appropriated, was determined to be approximately \$522 million.⁴³

Year	Prior Year Amount	Inflation Percent	Inflation Adjustment Amount	New Amount
2011	\$ 3,108,690,821	3.22 %	\$ 100,099,844	\$ 3,208,790,665
2012	3,208,790,665	2.03	65,138,451	3,273,929,116
2013	3,273,929,116	1.40	45,835,008	3,319,764,124
2014	3,319,764,124	1.47	48,800,533	3,368,564,656
2015	3,368,564,656	(0.54)	(18,190,249)	3,350,374,407
2016	3,350,374,407	0.85	28,478,182	3,378,852,590
2017	3,378,852,590	1.66	56,088,953	3,434,941,542

SB 423 and SB 61 established a plan to pay the \$522 million in additional funding over five years starting with school year 2018-2019 through annual increases in the BASE aid amount.⁴⁴ The legislation also added additional funding for preschool-aged at-risk programs,

⁴⁰ *Id.*

⁴¹ *Id.* at 1239.

⁴² This chart was presented in a memorandum prepared by Kansas Legislative Research Department (KLRD) staff on April 23, 2018, explaining to House of Representatives legal counsel, Curt Tideman, the method used for calculating the additional funding to be provided under SB 423 (April 23, 2018, Memorandum).

⁴³ See KLRD Memorandum, a copy of which is an appendix to the Brief of the Appellant State of Kansas http://www.kscourts.org/kansas-courts/supreme-court/Cases_of_interest/Cases/113267/default.asp.

⁴⁴ K.S.A. 2018 Supp. 72-5132(e).

special education, the ACT and WorkKeys assessment program, and for a mental health intervention pilot program.⁴⁵

SB 423 also addressed the four equity issues identified by the Court in *Gannon V*. The expanded use of capital outlay funds, the LOB equalization based on the preceding year, and the 10% minimum at-risk student weighting were all remedied by striking the offending portions of the appropriate statutes.⁴⁶ The Legislature addressed the Court's concern regarding the protest petition for LOB authority by nullifying any LOB resolution authorizing a LOB above the statewide average that was adopted without being subject to an election process.⁴⁷

Gannon VI

On June 25, 2018, the Court issued its decision in *Gannon VI*. The Court reviewed the KSEEA as amended by SB 423 and SB 61 and held that even with the additional funding provided by such legislation, the KSEEA failed to satisfy the adequacy component of Article 6 of the Constitution of the State of Kansas.⁴⁸ However, the Court indicated that "by timely making financial adjustments in response to the plan's identified problems and its accompanying calculations – and then by completing the plan – the State can bring the system into constitutional compliance."⁴⁹

The Court disagreed with the State's calculation of a baseline amount of \$522 million to be phased in over five years finding that such amount "is still short of reaching the State's *Montoy* safe harbor for that timeframe" because inflation adjustments were not factored in to such amount for SY 2017-2018 and 2018-2019.⁵⁰ The Court found that once the State's calculated amount is appropriately adjusted for inflation, further adjustments for inflation were needed until the new baseline amount is "paid in full over time—as the State's chosen remediation plan provides."⁵¹

The Court also held that the equity violations identified in *Gannon V* had been cured by the legislature's actions with the passage of SB 423 and SB 61 and found no new equity violations in the current law.⁵²

⁴⁵ 2018 Session Laws of Kansas Ch. 57, § 1.

⁴⁶ *Id.* at §§ 5, 9, 14, and 15.

⁴⁷ *Id.* at § 4.

⁴⁸ *Gannon VI* at 28.

⁴⁹ *Id.* at 28-29.

⁵⁰ *Id.* at 24-25.

⁵¹ *Id.* at 25.

⁵² *Id.* at 36.

Additionally, the Court noted it was unclear whether virtual school state aid was included in the State's *Montoy* safe harbor plan calculation and that the State needs to explain why it deducted the virtual school state aid in the April 23, 2018, memorandum.⁵³

The Court retained jurisdiction over the State's appeal and stayed its mandate on the constitutionality of the KSEEA until June 30, 2019, to provide the Legislature an opportunity to bring the KSEEA into constitutional compliance.⁵⁴

Senate Bill 16

During the 2019 legislative session, the Legislature passed SB 16 to address the issues raised by the Court in *Gannon VI*.⁵⁵ SB 16 further increased BASE aid amounts for each of the remaining four years of the State's *Montoy* safe harbor plan. The Legislature enacted the BASE aid amount increases proposed by the deputy commissioner of education, approved by the State Board of Education and recommended by the Governor.⁵⁶ The increases added approximately \$90 million per year to the KSEEA for four years. Following the scheduled increases in BASE aid amounts through school year 2022-2023, the law provides that the statutory BASE aid amount will be annually adjusted by the three-year average of the consumer price index for the Midwest region.

In May 2019, the Court heard oral argument on the remedial legislation enacted in SB 16.

GANNON VII COMPREHENSIVE SUMMARY

In *Gannon VII*, the Court reviewed the KSEEA, as amended by SB 16. The Court held that "through SB 16's additional funding of its *Montoy* safe harbor plan, the State has substantially complied with [the Court's] mandate from *Gannon VI*."⁵⁷ The Court also held that it would "retain jurisdiction [of the case] to ensure continued compliance with that mandate."⁵⁸

⁵³ *Id.* at 22.

⁵⁴ *Id.* at 38.

⁵⁵ SB 16 was signed by the Governor on April 6, 2019.

⁵⁶ See Kansas State Board of Education meeting minutes from July 10, 2018, available at: <https://www.ksde.org/Board/Kansas-State-Board-of-Education/Agendas-Meeting-Dates-and-Minutes/2018-Meeting-Materials-Minutes>.

⁵⁷ *Gannon v. State*, No. 113,267 at 3 (Kan. Sup. Ct. June 14, 2019) (*Gannon VII*).

⁵⁸ *Id.*

Background

In *Gannon VI*, the State argued that under its *Montoy* safe harbor plan, it could reach constitutional compliance if it "returned to the basic funding formula approved in *Montoy IV* for SY 2009-10 and provided the funding under that formula—including accounting for inflation..."⁵⁹ In its *Gannon VI* decision, the Court generally accepted the State's *Montoy* safe harbor plan and held that the State could come into constitutional compliance if it addressed the following issues:

1. The failure to adjust two years of funding for inflation through the approaching 2018-19 school year. Satisfactory adjustments would result in a higher amount of principal, i.e., more than the \$522 million the memo calculates as yet owed to the school districts; and
2. The failure to adjust for inflation until the memo's calculated principal sum (\$522 million, plus the adjustment referenced above) is paid in full, e.g., approximately five years. Satisfactory adjustments would result in more than that principal figure being paid during that span. But we acknowledge the first year of payment—for SY 2018-19—need not be adjusted because that inflation has already been accounted for in paragraph 1 above.⁶⁰

In response to *Gannon VI*, the Legislature enacted SB 16, which increased BASE aid amounts "in an effort to cover inflation with additional funding and thus complete its safe harbor remediation plan."⁶¹

Court's Analysis

The Court analyzed two issues in its *Gannon VII* decision: (1) Has the State properly explained how virtual school state aid was calculated in its *Montoy* safe harbor plan; and (2) does SB 16 make appropriate financial adjustments to account for the inflation issues identified by the Court in its *Gannon VI* mandate?⁶²

Virtual School State Aid

⁵⁹ *Gannon VI*, 308 Kan. at 386-87.

⁶⁰ *Gannon VI* at 398-99.

⁶¹ *Id.* at 10.

⁶² *Id.* at 11.

In *Gannon VI*, the Court asked the State to clarify how virtual state aid fit into the *Montoy* safe harbor calculations found in the April 23, 2018, memo. The Court noted that it was unclear why the State deducted virtual school state aid when calculating the total amount of additional funding needed to achieve the *Montoy* safe harbor plan.⁶³ The State clarified in a March 27, 2019, memorandum from KLRD that virtual school state aid "operated within the funding formula before 2015" and therefore, was included in the first step of the *Montoy* safe harbor plan calculation.⁶⁴ The Court accepted the State's explanation that virtual school state aid was included in such calculation.⁶⁵

Inflation and Mandate from *Gannon VI*

The Court began its review of SB 16 by restating its general acceptance of the State's *Montoy* safe harbor plan and noted the two inflation-related issues it identified in such plan.⁶⁶ The Court reiterated that it did not prescribe a particular method, nor a specific level of funding, for addressing inflation.⁶⁷ "Rather, [the Court] left it to the State to determine how to account for inflation in compliance with [the Court's] mandate, subject to [its] further review."⁶⁸ The Court also acknowledged that the State could achieve constitutional compliance "without strict adherence to a particular plan."⁶⁹

The Court continued its review of SB 16 with particular focus on how the State addressed the inflation issues through SB 16's BASE aid amount increases. Here, the Court chose to only consider whether the State adhered to the Court's *Gannon VI* mandate to consider the effects of inflation as directed by the Court.⁷⁰ In particular, the Court determined it would consider whether the State "protected the total money (both old and new) that [the Court] identified in *Gannon VI* from being devalued by inflation."⁷¹

As guidance, the Court returned to its *Montoy IV* decision, where it observed that education funding is "extraordinarily complex" and held that the State substantially complied with the Court's orders because the State provided "an amount reasonably close to the funds

⁶³ *Id.* at 22.

⁶⁴ *Id.* at 14.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 16.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 21.

⁷¹ *Id.*

necessary for schools to meet the legislature's own standards for an adequate education."⁷² Similarly, in this case, the Court noted that estimating future inflation is inexact and that future funding estimates also involve predicting future student populations and demographics. The Court stated that the estimates for inflation in future years "are in sharp contrast to [past years] where actual inflation was already known..."⁷³

Based on its review, the Court held that "the version of the KSEEA in place with the adoption of SB 16 substantially complies with [the Court's] orders expressed in *Gannon VI*" because SB 16 annually increases the BASE aid amounts by approximately \$90 million per year on a four-year schedule beginning in SY 2019-2020 through SY 2022-2023.⁷⁴ The Court concluded that the additional funding provided by SB 16 was sufficient to cover "the \$100 million increase in principal—due to past and present inflation—from approximately \$522 million to about \$622 million."⁷⁵ Furthermore, the Court stated that SB 16 "protects against the devaluing effects of future inflation on the \$622 million" as the additional funds are phased into the KSEEA over the next four years.⁷⁶ Additionally, the Court noted that there is continued "protection" after the four years of scheduled increases conclude in 2023 because the BASE aid amount is statutorily set to increase annually by the three-year average of the consumer price index for the Midwest region.⁷⁷

Jurisdiction

The Court held that while it concluded SB 16 brings the State into substantial compliance with its *Gannon VI* mandate, the Court retained jurisdiction over the case "to ensure continued compliance with that mandate."⁷⁸ The Court, in retaining such jurisdiction, noted that it has "the inherent power to impose remedies and otherwise enforce [its] holdings..."⁷⁹ Though, the Court retained jurisdiction, it did not explicitly provide a date for the end of such jurisdiction, nor did it provide any explicit indication as to what is required for dismissal. The Court only stated that it retained jurisdiction to "ensure continued implementation of the scheduled funding."⁸⁰

⁷² *Id.* at 22. See *Montoy v. State*, 282 Kan. 9, 21-22 (2006).

⁷³ *Id.* at 23.

⁷⁴ *Id.* at 23.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 3.

⁷⁹ *Id.* See *Kjellander v. Kjellander*, 90 Kan. 112 at 114 (1913).

⁸⁰ *Id.* at 25.