Thursday, June 16

Afternoon Session

- Overview of School Finance Litigation in Other States and the Judicial and Legislative Response to that Litigation
- Overview of Possible Constitutional Amendment Prohibiting School Closure and Background on the Similar 2005 Law
- Public Comment on the Proposed Constitutional Amendment Prohibiting School Closure or Other Potential Constitutional Amendments Pertaining to School Finance

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

68-West–Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 • FAX (785) 296-3824

kslegres@klrd.ks.gov http://www.kslegislature.org/klrd

REVISED
June 16, 2016

To: Senate Committee on Judiciary and House Committee on Judiciary

From: Lauren Douglass, Principal Research Analyst

Re: Other States' Judicial and Legislative Responses to School Finance Litigation

This memorandum examines the approach of other states' courts and legislatures in imposing remedies in school finance litigation. According to information provided by the National Conference of State Legislatures (NCSL), all but four states have had some variation of school finance litigation since the late 1960s. Due to the extent of such litigation, this memorandum is by no means comprehensive; however, it seeks to highlight trends, where they can be found. Further, the nature of the topic requires cases to be decided under the terminology of state law, making it difficult to compare one state's court rulings to another.

Separation of Powers and the Political Question Doctrine

A 2009 law review article identifies seven states that have declined to intervene in challenges to K-12 school finance citing separation of powers principles or a determination that the issue is a nonjusticiable political question: Alabama, Florida, Illinois, Nebraska, Oklahoma, Pennsylvania, and Rhode Island.[1] These cases often cite the test for the political question doctrine outlined in *Baker v. Carr,* 369 U.S. 186, 217 (1962). The first part of the test refers to a "textually demonstrable commitment of the issue to a coordinate political department," such that the analysis in these cases frequently relies on states' own constitutional provisions. Additionally, part two of the test refers to "a lack of judicially discoverable and manageable standards for resolving [the issue]," and thus lack of specificity in constitutional provisions or elsewhere in the law sometimes leads courts to decline to consider these cases.

In the Florida case, the Florida Supreme Court upheld dismissal of a suit citing provisions of the *Florida Constitution* that prohibit one branch from exercising the powers of another and give sole authority to appropriate to the legislative branch.[2] Further, the court stated the appellants did not provide a standard for adequacy that "would not present a substantial risk of judicial intrusion into the powers and responsibilities assigned to the legislature, both generally (in determining appropriations) and specifically (in providing by law for an adequate

1 Christine M. O'Neill, *Closing the Door on Positive Rights: State Court Use of the Political Question Doctrine to Deny Access to Educational Adequacy Claims*, 42 Column. J.L. & Soc. Probs. 545, 547 (2009).

2 *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 407-08 (Fla. 1996).

and uniform system of education)."[3] In Alabama, after issuing four decisions over the course of nine years, the court found to pronounce a specific remedy from the bench would equate to an exercise of the legislature's sole duty to administer state funds to public schools and quoted a *constitutional* provision stating the judicial branch "shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men."[4]

No Specific Remedy Provided

Where courts have ruled in favor of plaintiffs, some have declined to provide a specific remedy, deferring instead to the legislative branch. In *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), the Kentucky Supreme Court held Kentucky's entire system of common schools was unconstitutional, including statutes creating, implementing, and financing the system; the creation of local school districts, school boards, and the Kentucky Department of Education; school construction and maintenance; and teacher certification.[5] The court instructed the General Assembly that the system must be efficient and set binding criteria; however, the court emphasized the General Assembly had sole responsibility for providing the system of common schools.[6]

---

3 *Id.* at 408.

4 *Ex parte James*, 836 So. 2d 813, 817, 819. (Ala. 2002). *See also Comm. for Educ. Rights v. Edgar*, 672 N.E.2d 1178, 1191 (Ill. 1996) (referencing lack of judicially discoverable or manageable standards and stating "the question of educational quality is inherently one of policy involving philosophical and practical considerations that call for the exercise of legislative and administrative discretion"); *Nebraska Coal. for Educ. Equity & Adequacy v. Heineman,* 273 Neb. 531, 554 (2007) (holding it "beyond our ken" to determine funding adequacy as the court is not the proper forum for resolving broad and complicated policy decisions or balancing competing political interests); *Okla. Educ. Ass'n v. State*, 158 P.3d 1058, 1066 (Okla. 2007) (stating the Legislature has few constitutional restraints in carrying out its duty to establish and maintain a free public educational system and when the methods used for carrying out this duty are challenged, the only justiciable question is whether the Legislature acted within its powers); *Danson v. Casey*, 484 Pa. 415, 427, 399 A.2d 360, 366 (1979) (stating "the only judicially manageable standard this Court could adopt would be the rigid rule that each pupil must receive the same dollar expenditures," and "expenditures are not the exclusive yardstick of educational quality"); *and City of Pawtucket v. Sundlun*, 662 A.2d 40, 62 (R.I. 1995) (finding the constitution charged the General Assembly with the duty to promote public schools and referring to lack of judicially manageable standards).

5 *Id.* at 215.

6 *Id.* at 216. *See also Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 156 (Tenn. 1993) (affirming the trial court's holding that the appropriate remedy should be fashioned by the General Assembly and stating the constitution "contemplates that the power granted to the General Assembly will be exercised to accomplish the mandated result, a public school system that provides substantially equal educational opportunities to the school children of Tennessee," such that "the means whereby the result is accomplished is, within constitutional limits, a legislative prerogative.").

School Closure as a Remedy

New Jersey is the only state known to have closed schools. In the case of *Robinson v. Cahill*, 351 A.2d 713 (1975), the New Jersey Supreme Court issued a deadline for legislative action similar to the deadline in *Gannon*, and schools closed for eight days.

Other Remedies

In Arkansas, the Supreme Court released jurisdiction in a 2004 opinion; then in 2005 it recalled the case, having stated in the 2004 opinion that "this court will exercise the power and authority of the judiciary at any time to assure that the students of our State will not fall short of the goal set forth by this court," and appointed masters to make findings of fact.[7] The masters were charged with examining and evaluating legislative and executive action taken to comply with the court's order and its constitutional mandate and reporting their findings to the court.[8]

Other courts simply retain jurisdiction and continue to monitor legislative action for compliance with court orders. The Wyoming case *Campbell Cty. Sch. Dist. v. State*, 181 P.3d 43, 83-84 (Wyo. 2008) chronicles the Wyoming Supreme Court's oversight of school finance in three different cases, beginning in 1971, saying, "Each time jurisdiction was retained, legislative action was finally forthcoming. . . . In this case, . . . we retained jurisdiction reluctantly and at the request of both parties, and went to great lengths to provide flexibility to the parties in hopes of a final resolution." In New Jersey, the State is in the process of complying with a 2011 judicial order to fully fund the School Funding Reform Act of 2008. The most recent order in *Abbott v. Burke* is the 21st reiteration of the ongoing line of cases first filed in 1981.

In ongoing litigation in Washington, the Supreme Court found the State in contempt of court but delayed sanctions until the close of the 2015 Legislative Session. On August 13, 2015, it issued an order imposing a fine of $100,000 per day on the State for each day it is in violation of the court's order in *McCleary v. Washington,* 279 P.3d 227 (2012).

Additional Resources

NCSL maintains an online spreadsheet containing citations to modern school finance cases and categories for the outcomes of those cases. It can be accessed at http://bit.ly/School-Finance-Litigation-Citations-NCSL

The spreadsheet is premised on an American Law Report on the validity of public school funding systems, 110 A.L.R.5th 293 (Originally published in 2003), and on law review articles.

LSD/kal

---

7 *Lake View Sch. Dist. No. 25 of Phillips Cty., Ark. v. Huckabee*, 210 S.W.3d 28, 29 (Ark. 2005).

8 *Id.* at 30 (2005) (stating the masters would have the same powers and authority as set forth in *Lake View Sch. Dist. No. 25 v. Huckabee*, 356 Ark. 1, 144 S.W.3d 741 (2004).).

KANSAS OFFICE of
REVISOR of STATUTES
LEGISLATURE of THE STATE of KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE • SUITE 24-E • TOPEKA, KS 66612 • (785) 296-2321

SPECIAL SESSIONS IN KANSAS

BACKGROUND AND HISTORY

There are two types of legislative sessions—regular and special. A regular session is the annual (or biennial) gathering of legislators, typically with a start date and length determined by a statutory or constitutional provision. A special session occurs when the legislature is called to convene at a time outside the regular legislative session usually to address a particular topic or emergency. There is no specific timing for a special session. In most states, either the governor or the legislature may call a special session. In 16 states, only the governor may call a special session. In Kansas, the governor may call a special session or the legislature may petition the governor to call a special session.

KANSAS

Article 1, Section 5 of the Constitution of the State of Kansas provides, "The governor may, on extraordinary occasions, call the legislature into special session by proclamation; and shall call the legislature into special session, upon petition signed by at least two-thirds of the members elected to each house."

Originally, the constitution only allowed the governor to call a special session, but was amended in 1972 to allow the legislature to petition the governor to call a special session. In 1974, the legislature enacted K.S.A. 46-1401 through 46-1403 to provide for the proper procedure for the legislature to petition the governor for a special session. Of the four special sessions since the constitutional amendment allowing the legislature to petition the governor to call a special session, none have been the result of legislative petition.

Though special session proclamations usually provide a particular start date and subject matter, once called, the length and subject matter of a special session may not be limited by the proclamation. In 2005 and 2013, the gubernatorial proclamations contained deadline dates for particular legislation to be passed. However, such deadlines have no legal force or effect (AG Op. 87-92).

There have been 22 special sessions in Kansas. The first was in 1874 to deal with a grasshopper plague destroying crops. The most recent was in 2013 to address criminal sentencing procedures that impose a 50-year mandatory minimum sentence. Governor Alf Landon (1933-1937) called the most legislative sessions with three.

#16

Previous Special Sessions

1874: Gov. Osborn, 7 days—Grasshopper plague destroying crops.

1884: Gov. Glick, 7 days—Foot and mouth disease outbreak in cattle.

1886: Gov. Martin, 28 days—Redistricting and appropriations.

1898-99: Gov. Leedy, 17 days—Regulations for railroad charges.

1903: Gov. Baily, 3 days—Emergency flood relief.

1908: Gov. Hoch, 16 days—Regulation of railroad rates, create a primary election, banking regulations.

1919: Gov. Allen, 4 days—Ratify the 19th Amendment to the Constitution of the United States.

1920: Gov. Allen, 20 days—Coal miners' strike and funding for Kansas National Guard expenses.

1923: Gov. Davis, 7 days—Deal with voter-approved payments to World War I veterans that $25 million in bonds would not cover.

1928: Gov. Paulen, 3 days—Amend the Constitution of the State of Kansas to allow the state to build and maintain highways so as not to lose federal funds.

1930: Gov. Reed, 11 days—Constitutional amendment on tax policy.

1933: Gov. Landon, 25 days—Investigate municipal bonds and respond to federal banking and work relief laws.

1934: Gov. Landon, 6 days—Extend a mortgage foreclosure moratorium.

1936: Gov. Landon, 6 days—Draft a constitutional amendment to allow the state to participate in the federal social security program.

1938: Gov. Huxman, 22 days—Make changes to welfare laws and increase state funding.

1958: Gov. Docking, 17 days—Respond to budget crisis after the Kansas Supreme Court struck down a mineral severance tax.

1964: Gov. Anderson, 6 days—Redistricting changes because of one-person, one-vote Supreme Court ruling.

1966: Gov. Avery, 14 days—Legislative redistricting.

1987: Gov. Hayden, 6 days—Attempt to enact a comprehensive highway program.

1989: Gov. Hayden, 2 days—Extend deadline to pay property taxes.

2005: Gov. Sebelius, 12 days—Respond to a Kansas Supreme Court order regarding public school funding.

2013: Gov. Brownback, 2 days— Respond to a U.S. Supreme Court ruling regarding criminal sentencing procedures used to impose a 50-year mandatory minimum term of imprisonment ("hard 50").

LEGISLATIVE PETITION

Article 1, Section 5 of the Constitution of the State of Kansas allows the legislature to petition the governor to call a special session if at least two-thirds of the members of each chamber sign such a petition. K.S.A. 46-1401 states, "Whenever any legislator wishes to petition the governor to call a special session of the legislature as provided in section 5 of article 1 of the constitution of the state of Kansas, he shall subscribe the form prescribed in this section." K.S.A. 46-1401 also provides the petition form and requirements for such petition, including sworn affirmation before a notary public. The Constitution and K.S.A. 46-1402 require the governor to call a special session when properly petitioned by the legislature. The constitutional provision allowing for legislative petition was enacted in 1972. There have been four special sessions called during that time, but none of which have been the result of legislative petition.

GOVERNOR'S PROCLAMATION

To call a special session, Article 1, Section 5 of the Constitution of the State of Kansas requires the governor to issue a proclamation. K.S.A. 75-403 requires that all proclamations issued by the governor be countersigned by the secretary of state. Once it is signed, the proclamation will be filed with the secretary of state pursuant to Executive Order No. 75-1. The original will remain in the secretary of state's office, but for any certified copies, the secretary of state will "attach an official certification thereto under the secretary of state's official seal," pursuant to K.S.A. 75-409.

Historically, the governor's proclamation has included both the date and time which the legislature will gather for the special session. However, Attorney General Opinion No. 87-92 states that the proclamation may not require an end date or limit the subject matter of the special session. If such proclamation does provide an end date or subject matter limitation, it will have no legal force or effect.

Because of the pressing nature of special sessions, the governor's proclamation is typically issued less than a month before the start of the special session and can be within a few days. In 1987, the governor's proclamation was issued on August 4 with the special session beginning on August 31. In 1989, the governor's proclamation was issued on December 4 with the special session beginning on December 8. In 2005, the governor's proclamation was issued on June 9 with the special session beginning on June 22. In 2013, the governor's proclamation was issued on August 6 with the special session beginning on September 3.

MESSAGE FROM THE GOVERNOR

Article 1, Section 5 of the Constitution of the State of Kansas requires the governor to communicate in writing to the legislature at every session. This message from the governor includes priorities and need for a special session.

RESOLUTIONS

ORGANIZATIONAL RESOLUTION

At the beginning of each session, including special sessions, the legislature must organize and name its officers. Both chambers traditionally prepare an organizational resolution declaring the officers and notifying the other chamber that they are organized.

SEATING CHART RESOLUTION

Pursuant to House Rule 2504 and Senate Rule 20, both chambers are to ensure that all current members have an assigned seat. Typically, this is done by adoption of a seating chart resolution.

CONCURRENT ORGANIZATIONAL RESOLUTION

A concurrent resolution notifying the governor that the chambers are organized and ready to receive messages is prepared. This resolution requirement is implied by Article 1, Section 5 of the Constitution of the State of Kansas. The governor is required to send certain messages to the legislature, so it is necessary for the governor to know when the legislature is organized and prepared to receive such messages.

CONCURRENT ADJOURNMENT RESOLUTION

The Constitution of the State of Kansas states that one chamber cannot adjourn without the consent of the other chamber. Traditionally, this is accomplished with a concurrent adjournment resolution. However, on one occasion in 1989, both chambers simply declared their respective chamber adjourned sine die.

BILLS

REGULAR SESSION BILLS

Regular session bills may not be acted upon during the special session. Article 2, Section 8 of the Constitution of the State of Kansas provides, in part, "Bills and concurrent resolutions under consideration by the legislature upon adjournment of a regular session held in an odd-numbered year may be considered at the next succeeding regular session held in an even-numbered year, as if there had been no such adjournment." (Emphasis added.)

AG Opinion No. 87-92 states that bills and resolutions introduced, but not acted upon, during the preceding regular session may not be carried over to a special session.

SPECIAL SESSION BILLS

Bills and resolutions introduced during the special session may not be carried over to the next regular session. AG Opinion No. 87-92 states that all bills and resolutions enacted during a special session must have been introduced during such special session.

PREFILED BILLS

Bills may not be prefiled for a special session. Both K.S.A. 46-801 and 46-804 specify that prefiling is specific to the "regular session."

REFERRAL OF BILLS

All bills introduced during special session are referred by the presiding officer in each chamber in the same manner as during a regular session absent a specific rule adopted for the special session.

LIMITATIONS ON CONSIDERATION OF BILLS

Consideration of bills during a special session may be limited, but only by the adoption of a resolution. Such resolution may state that the only bills to be considered will be those introduced by specific committees. AG Opinion No. 87-92 states that the legislature may adopt a rule or resolution which would restrict the subject matter of bills which may be introduced during a special session. (e.g. 2005 SS HR 6003)

PASSING BILLS ON THE DAY THEY ARE INTRODUCED

During a special session, it is common for bills to move through the legislative process much faster than during a regular session. Sometimes a bill may pass on the day it is introduced. However, to do so requires special action because Article 2, Section 15 of the Constitution of the State of Kansas provides that "No bill shall be passed on the day that it is introduced, unless in case of emergency declared by two-thirds of the members present in the house where a bill is pending." This constitutional provision requires two-thirds of the chamber to declare an emergency before it votes on a bill that was introduced that same day.

COMMITTEE MEETINGS

COMMITTEE MEETINGS PRIOR TO THE SPECIAL SESSION

A committee may meet in the interim prior to the special session to review or discuss issues. However, if members of the committee would like to be compensated for attending such meetings, the meetings must be approved by the Legislative Coordinating Council (LCC). During the interim, the LCC governs the affairs, meetings and activities of standing and other committees pursuant to K.S.A. 46-1202 and also governs the mechanics and procedures of all legislative committee work and activities. For a member to receive compensation, travel expenses and subsistence expenses or allowances for a standing committee, special committee or select committee that is meeting during the interim (except for the Ways and Means Committee of the Senate and the Committee on Appropriations of the House when meeting pursuant to K.S.A. 46-134a), pursuant to K.S.A. 46-1209, the committee meeting must be authorized by the LCC.

In the past, the LCC has authorized specific standing committees of the House and Senate to meet during the interim to study subject matters assigned to the committee by the LCC. In 1993,

the LCC designated all standing committees of the legislature as interim study committees and authorized them to meet and to conduct studies.

COMMITTEE MEETINGS DURING THE SPECIAL SESSION

Standing committees may meet during a special session upon call of the chairperson, but committee secretarial staff may or may not be available to such committees during a special session.

CONFIRMATIONS

JUDICIAL SELECTION

For confirmations of judges or justices by the Senate, there is a statutory time limitation by which such confirmation must be done. It is the opinion of the Office of Revisor of Statutes that the time requirement does start if a special session is called. Subsection (b) of 2015 Supp. K.S.A. 20-3020 provides:

> "No person appointed pursuant to subsection (a) shall assume the office of judge of the court of appeals until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 60 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 60-day time limitation, the senate shall vote to consent to any such appointment not later than 20 days after the senate begins its next session. In the event a majority of the senate does not vote to consent to the appointment, the governor, within 60 days after the senate vote on the previous appointee, shall appoint another person possessing the qualifications of office and such subsequent appointment shall be considered by the senate in the same procedure as provided in this section. The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the time limitation imposed by this subsection, the senate shall be deemed to have given consent to such appointment." (Emphasis added.)

The language does not distinguish between a regular session and a special session, but merely uses the term "session." The legislative history was not clear as to whether or not this was intended to be limited to the regular session. Since it is not distinguished, the Office of Revisor of Statutes is of the opinion that "session" includes both a regular session and a special session.

The language does not address what role, if any, the Senate Committee on Confirmation Oversight would have in the court of appeals appointment process. The language states that no person appointed by the governor shall assume office until the senate acts on such appointment. Thus, the provisions of K.S.A. 46-2601, which allow the Senate Committee on Confirmation Oversight to give temporary approval to a person appointed by the governor and authorize the person to exercise the powers, duties and functions of the office until such appointment is

confirmed by the Senate, do not appear to be applicable. When the Senate is in session, Senate Rule 56 provides that appointments "shall, unless otherwise ordered by the President, be referred to appropriate committees by the President." The Office of Revisor of Statutes is of the opinion that Senate Rule 56 is applicable to the court of appeals appointment and would allow any appropriate committee to consider such appointment during the special session, upon referral by the president.

KANSAS OFFICE of
REVISOR of STATUTES
LEGISLATURE of THE STATE of KANSAS
Legislative Attorneys transforming ideas into legislation

300 SW TENTH AVENUE • SUITE 24-E • TOPEKA, KS 66612 • (785) 296-2321

STATUTORY PROVISIONS PROHIBITING COURTS FROM CLOSING SCHOOLS

This memorandum provides the legislative history and historical background for the two Kansas statutes enacted during the 2005 special session that prohibit Kansas courts from closing schools as a remedy in school finance litigation under Article 6 of the Constitution of the State of Kansas. It also provides a brief background of *Montoy v. State* which was the impetus of such legislation.

CURRENT STATUTES

Kansas has two statutes that prohibit Kansas courts from closing schools as a remedy in school finance litigation under Article 6. These statutes were enacted during the 2005 special session in response to the district court's remedial order in *Montoy v. State* that enjoined the use of all statutes related to the distribution of funds for public education, effectively closing schools.[1] K.S.A. 72-64b03 applies specifically to the district court panel and those persons appointed by the panel, but does not apply to the Kansas Supreme Court. The other statute, K.S.A. 60-2106, applies specifically to appellate courts, including the Kansas Supreme Court.

In the 2005 special session, two bills were introduced that aimed to prohibit courts from closing or effectively closing school districts as part of a judicial remedy in school finance cases. The language that was ultimately passed and codified in statute is a hybrid of those bills.[2] Neither K.S.A. 72-64b03 nor 60-2106 has been amended since they were enacted in 2005. No Kansas court has addressed their constitutionality.

K.S.A. 72-64b03

In 2005 regular session, the Legislature enacted new section 22 of Senate Bill No. 43 (SB 43) requiring the appointment of a three-judge panel for cases alleging the State violated Article 6. That same year during the 2005 special session, the Legislature amended new section 22 in House Substitute for Senate Bill No. 3 (SB 3) and added subsection (d) prohibiting the judicial panel or any master or other person appointed by the panel in school finance cases from having

[1] *Montoy v. State*, No. 99-C-1738, Shawnee Co. Dist. Ct. (Dec. 2, 2003).
[2] *See* Special Session 2005 House Substitute for Senate Bill No. 3 as amended by House Committee of the Whole and Special Session 2005 Senate Bill No. 5.

"the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education."[3]

K.S.A. 72-64b03(d) states:

> As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the judicial panel or any master or other person or persons appointed by the panel to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education.

K.S.A. 60-2106

When K.S.A. 60-2106 was originally enacted in 1963 it contained general provisions regarding Kansas Supreme Court decisions and did not include any school finance remedy provisions. In the 2005 special session, the Legislature added subsection (d) to prohibit appellate courts from closing schools as part of a judicial remedy for Article 6 violations.

K.S.A. 60-2106(d) states:

> As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court or any master or other person or persons appointed by the appellate court to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education.

[3] 2005 Special Session Senate Bill No. 3 as amended by Senate Committee of the Whole

MONTOY V. STATE BACKGROUND

In *Montoy v. State*, after a bench trial, Shawnee County district court judge Terry Bullock entered a Preliminary Interim Order on December 2, 2003, holding that the Kansas school funding scheme, as it then existed, was unconstitutional in violation of Article 6.[4] At the time of the opinion, the court withheld final judgment and gave the legislative and executive branches an opportunity to enact legislation that would comply with the Article 6 requirement that the "legislature make suitable provision for finance of the educational interests of the state."[5]

The Legislature did not address the district court's order during the 2004 legislative session. As a result, on May 11, 2004, the district court issued its remedial order. The district court's chosen remedy was to "enjoin the use of all statutes related to the distribution of funds for public education, this time with the schools closed" until a constitutionally valid school funding scheme was enacted.[6] On May 19, 2004, the Kansas Supreme Court stayed the district court's remedial order pending an appeal.

On appeal, the Kansas Supreme Court in *Montoy II* affirmed the district court's decision that "the legislature has failed to meet its burden as imposed by Art. 6, § 6 of the Kansas Constitution."[7] However, the Supreme Court retained jurisdiction over the remedy and stayed "all further proceedings to allow the Legislature a reasonable time to correct the constitutional infirmity in the present financing formula."[8]

Ultimately, the Legislature responded during the 2005 legislative session by enacting House Bill 2247 and SB 43, both of which amended the School District Finance and Quality Performance Act (SDFQPA) and included other school finance and policy legislation. However, the Supreme Court in *Montoy III* declared the legislation inadequate and ordered an increase in school funding of $285 million, but did not enjoin statutes related to the distribution of funds for public education.[9] In response, Governor Kathleen Sebelius called a special session to respond to the Court's ruling.

In the 2005 special session, the Legislature passed House Substitute for SB 3 which amended the SDFQPA, appropriated additional funds to the Department of Education, and contained the provisions prohibiting Kansas courts from closing schools as part of a remedy. The

[4] *Montoy v. State*, No. 99-C-1738 at 11, Shawnee Co. Dist. Ct. (Dec. 2, 2003).
[5] Art. 6 § 6(b) of the Constitution of the State of Kansas
[6] *Montoy v. State*, No. 99-C-1738 at 11, Shawnee Co. Dist. Ct. (Dec. 2, 2003).
[7] *Montoy v. State*, 278 Kan. 769, 120 P.3d 306 at 308 (2005).
[8] *Id* at 310.
[9] *Montoy v. State*, 279 Kan. 817, 112 P.3d 923 (2005).

Supreme Court held this legislation cured the Article 6, Section 6 constitutional infirmities and was in substantial compliance with the Court's orders.

SENATE ACTION

Senate Bill No. 5 (SB 5) was the first bill introduced during the 2005 special session to prohibit a court from ordering a remedy that would close or effectively close schools. Section 1 of SB 5 stated, "No court of this state, nor any master or other person or persons appointed by a court to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law...shall have the authority...to make or enforce any order or remedy that would result in the closure of public schools or otherwise enjoin the use of all statutes related to the distribution of funds for public education." SB 5 was not passed by the Senate, but the language of section 1 of SB 5 was amended into new section 19 of SB 3 by the Senate Committee of the Whole. SB 3 passed the Senate on June 23, 2005. At this point in the legislative process, SB 3 included only one such provision and it applied to all courts.

HOUSE ACTION

The House Select Committee on School Finance began discussing SB 3 on June 23, 2005 and after several days of discussion, substituted the Senate's version of SB 3. House Substitute for SB 3 contained three separate provisions prohibiting courts from closing schools. Section 35 of the substitute bill contained the language of section 1 of SB 5 in its entirety. K.S.A. 72-64b03 was amended to include the following: "As a part of a remedy, preliminary decision or final decision, the judicial panel shall not have the authority to order a school district or any attendance center within a school district to be closed." K.S.A. 60-2106 was amended to include the following: "As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court shall not have the authority to order a school district or any attendance center within a school district to be closed."

The minutes from the Select Committee on School Finance meetings on SB 3 provide no discussion of these provisions. The minutes state only that a staff member from the Kansas Legislative Research Department confirmed the language added by the Senate was the same as

section 1 of SB 5. When the House passed SB 3 on June 30, 2005, it contained three provisions to prohibit Kansas courts from ordering a remedy that would result in the closure of schools.

CONFERENCE COMMITTEE ACTION

On June 30, 2005, the Senate nonconcurred to the amendments made by the House to SB 3 and requested a conference committee to which the House acceded. There are no minutes or formal documentation of the discussions held during the conference committee on SB 3. An Agree to Disagree was adopted by both chambers on July 2, 2005 and second conferees were appointed. The conference committee report adopted by both chambers on July 6, 2005, contained two provisions addressing the ability of the courts to remedy any action brought under Article 6 and no longer included the exact language from section 1 of SB 5. The provisions combined language from prior versions of SB 3 and the language from section 1 of SB 5. These provisions are codified at subsection (d) of K.S.A. 60-2106 and subsection (d) of K.S.A. 72-64b03. SB 3 was approved by the governor on July 20, 2005.

THE PROPOSED PROVISIONS

The 2005 special session Legislature looked at several different provisions to prohibit courts from closing schools as part of a remedy in school finance litigation cases. The following are the provisions considered by the Legislature:

"As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the judicial panel or any master or other person or persons appointed by the panel to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education." (K.S.A. 72-64b03).

"As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court or any master or other person or persons appointed by the

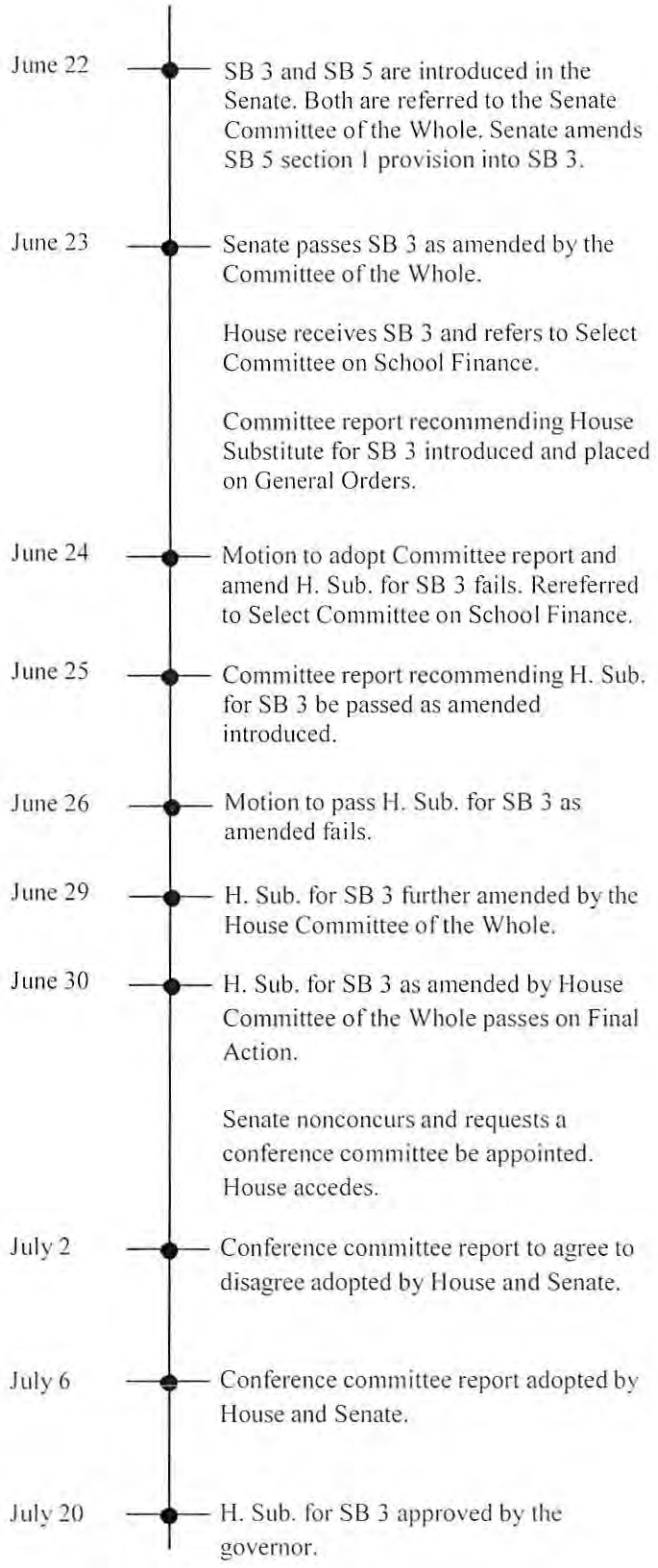
appellate court to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education." (K.S.A. 60-2106(d)).

"No court of this state, nor any master or other person or persons appointed by a court of this state to hear or determine a cause or controversy or to make or enforce any order or remedy ordered by a court pursuant to K.S.A. 60-253, and amendments thereto, or any other provision of law, nor a judicial panel appointed pursuant to the provisions of section 22 of 2005 Senate Bill No. 43, and amendments thereto, shall have authority in the case of Montoy v. State of Kansas, No. 04-92032-S or any other case involving a violation of Article 6 of the Kansas Constitution to make or enforce any order or remedy that would result in the closure of public schools or otherwise enjoin the use of all statutes related to the distribution of funds for public education." (2005 Senate Bill No. 5 Sec. 1)

"As a part of a remedy, preliminary decision or final decision, the judicial panel shall not have the authority to order a school district or any attendance center within a school district to be closed." (2005 House Substitute for Senate Bill No. 3 sec. 23(e)).

"As a part of a remedy, preliminary decision or final decision in which a statute or legislative enactment of this state has been held unconstitutional as a violation of article 6 of the Kansas constitution, the appellate court shall not have the authority to order a school district or any attendance center within a school district to be closed." (2005 House Substitute for SB 3 section 33(d)).

TIMELINE


June 22
SB 3 and SB 5 are introduced in the Senate. Both are referred to the Senate Committee of the Whole. Senate amends SB 5 section 1 provision into SB 3.
June 23
Senate passes SB 3 as amended by the Committee of the Whole.
House receives SB 3 and refers to Select Committee on School Finance.
Committee report recommending House Substitute for SB 3 introduced and placed on General Orders.
June 24
Motion to adopt Committee report and amend H. Sub. for SB 3 fails. Rereferred to Select Committee on School Finance.
June 25
Committee report recommending H. Sub. for SB 3 be passed as amended introduced.
June 26
Motion to pass H. Sub. for SB 3 as amended fails.
June 29
H. Sub. for SB 3 further amended by the House Committee of the Whole.
June 30
H. Sub. for SB 3 as amended by House Committee of the Whole passes on Final Action.
Senate nonconcurs and requests a conference committee be appointed. House accedes.
July 2
Conference committee report to agree to disagree adopted by House and Senate.
July 6
Conference committee report adopted by House and Senate.
July 20
H. Sub. for SB 3 approved by the governor.

House / Senate Judiciary Joint Meeting
Potential Constitutional Amendment Prohibiting School Closure
June 16, 2016
Dave Trabert, President

Chairman Barker, Chairman King and members of the Committees:

We appreciate this opportunity to share our thoughts on possible Constitutional amendments regarding public education.

It's hard to imagine that any court would threaten to violate students' constitutional right to education by closing schools over a tiny funding dispute, but that's the bizarre reality we face. Statutory prohibition of school closure as set forth in K.S.A. 60-2106(d) and K.S.A. 72-64b03(b) is obviously insufficient to deter the Supreme Court from threatening such action, so we support a constitutional amendment to prohibit the closure of schools over funding disputes.

We also believe the Constitution must be amended to permanently resolve the litigation cycle and get the focus back in the classroom where it belongs. The Article 6 requirement for the Legislature to make suitable provision for finance of the state's educational interests really only serves to address the monetary demands of school districts and the special interests supported by school funding. Money must be provided but there is no requirement that schools use the money to produce any specific outcomes.

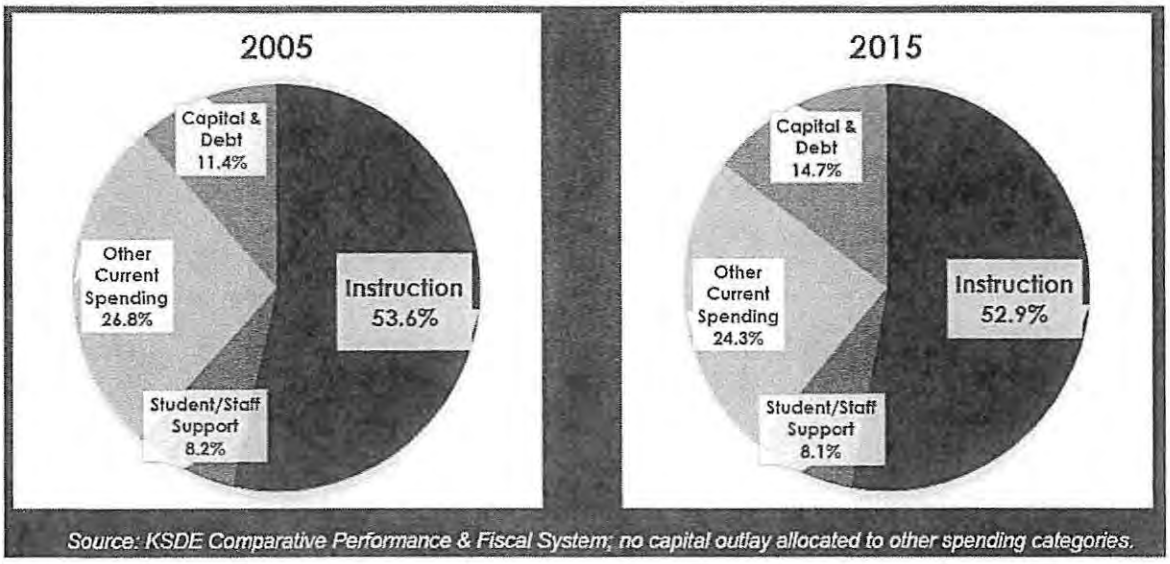
Despite the fact that per-pupil funding continues to set records and increased 45% more than if adjusted for inflation over the life cycle of the old funding system, here are the harsh realities of student achievement in Kansas:

- Only 32% are college-ready in English, Reading, Math and Science (ACT)
- Less than 25% of low income kids are Proficient in Reading and Math, and only about half of the more affluent students are Proficient (NAEP, 4th Grade and 8th Grade)
- Low income students are 2 to 3 years' worth of learning behind...in the 4th Grade (NAEP)
- At the current pace, it would take centuries to close low income achievement gaps.

The data clearly shows that just spending more will change anything. Money matters, of course, but when pressed, even most researchers who believe there is a correlation between money and outcomes admit that it's how money is spent that makes a difference rather than how much is spent. Most also readily admit that simply spending more does not CAUSE outcomes to improve.

Local school boards alone decide how to allocate resources and here's a summary of their actions over the last ten years. Funding increased by nearly $2 billion but the percent of resources allocated to Instruction declined to 52.9%. In fact, the share allocated to Student and Staff Support

as well as Other Current Spending also declined. Only Capital & Debt increased, from 11.4% to 14.7%.



For some perspective on the shift to Capital & Debt in Kansas, consider these facts:

- Debt Service payments jumped 72% over the last 10 years, from $286 million to $493 million per year.
- $4.8 billion in new bonds were issued by just 143 school districts over the last 10 years.
- Kansas had the 10th highest per-pupil indebtedness according to 2014 Census data, at $10,211 on a headcount basis.

Given the funding and achievement realities, we propose two constitutional amendments be placed on the ballot for voters' consideration, with the one receiving the largest number of votes being adopted:

1) Remove "suitable" from Article 6 so that neither the Legislature nor school districts are held accountable for any specific action.

2) Hold both parties accountable by clearly defining a formula-driven minimum funding level (i.e., not something subjective for courts to 'interpret) the Legislature must provide and requiring school districts to achieve district-specific minimum achievement goals or lose their accreditation, at which point students in unaccredited districts receive a state-funded Education Savings Plan to attend a public or private school of their choice.

This way, voters can decide whether everyone on no one should be held accountable. And if you'll pardon the pun, either option seems to be an equitable solution to get out of courtrooms and back into classrooms.

Thank you for your consideration.

KANSAS ASSOCIATION OF SCHOOL BOARDS
Serving Educational Leaders, Inspiring Student Success

www.kasb.org

Public Comment on the Proposed Constitutional Amendment Prohibiting School Closure or Other Potential Constitutional Amendments Pertaining to School Finance

before the
House and Senate Judiciary Committees

by

Mark Tallman, Associate Executive Director for Advocacy,
Kansas Association of School Boards
Also representing United School Administrators of Kansas
Kansas School Superintendents Association

Chairman King, Chairman Barker, Members of the Committees:

Thank you again for the opportunity to appear today. The most recent resolution adopted in December by the KASB Delegate Assembly included the following statement:

> **Judicial System**. We support the role of an independent judiciary in enforcing constitutional provisions. We oppose either changing the selection process for judges or limiting the ability of the courts to enforce those provisions, which would weaken the traditional separation of powers in Kansas.

None of these three organizations have specifically addressed the issue of enforcing school finance provisions by prohibiting the operation of an unconstitutional finance system. Clearly, an order by the Kansas Supreme Court that would keep public schools from operating would be detrimental to all students in the state, as well as their families, school staff, Kansas communities and the state as a whole.

However, the concern for avoiding educational harm to all students cannot be an excuse to fail to address constitutional issues of school finance adequacy and equity, regardless of the financial or political issues involved. The people of Kansas placed the requirement for suitable finance of the educational interests of the state in the state constitution precisely in order to provide a higher standard than ordinary legislative majorities. A constitutional right or requirement that cannot be enforced is no right at all.

If this committee wished to advance a constitutional amendment to prohibit an interruption in the operation of the public schools, we believe it must ensure that the judicial system can enforce a remedy if the Legislature fails to provide constitutionally equitable and adequate funding.

The people of Kansas should not be given the false choice of voting to maintain their children's educational opportunities only by allowing the educational opportunities of other children to be limited or restricted because they live in the wrong school district. We would note any district can become the "wrong" district, which is why ensuring adequate and equitable funding in every district for every child is in the interest of every Kansan.

Thank you for your consideration.

MainStream Coalition
5960 Dearborn, #213
Mission, KS 66202-9905
(913) 649-3326
mainstreamcoalition.org

About MainStream

Founded in 1993, the MainStream Coalition is an advocacy group for moderate political views regardless of party. Our members do more than vote.

Testimony to Joint Meeting of House Committee on Judiciary and Senate Committee on Judiciary
Chairs, Rep. John Barker, Sen. Jeff King
Hearing: Thursday, June 16, 2016, 2:30 pm, Room 346-S, Statehouse

Position – OPPOSE Constitutional amendments to limit or otherwise specify the role of the Kansas Supreme Court in matters of public education

Chairmen Barker, King, and Members of the Committees,

The MainStream Coalition opposes any Constitutional Amendments to the Kansas Constitution intended to limit or otherwise specify the role of the Kansas Supreme Court in matters of public education.

The Kansas Supreme Court has not overstepped its bounds in regards to public school finance. In fact, it has performed the duties set for it by the people of Kansas admirably. When asked by plaintiffs, and only when asked by plaintiffs, the Court examines laws enacted by the Legislature and determines their constitutionality. That is not "activist" jurisprudence. They do not make law.

Rather, they examine the work of this body, and determine its legality under our Constitution. In the case of Gannon v. State of Kansas, specifically the equity decision released May 27, the Courts determined that the Legislature had not complied with the Constitution.

Disliking the result of a ruling should not result in a constitutional amendment to change the rules. It instead requires that this body craft a school finance plan that meets the requirements set forth by the people of Kansas in their Constitution.

We have spent enough taxpayer money litigating the State's persistent underfunding of public education. It is time to fully fund schools. Respectfully, we urge you to drop these tactics and do your jobs by the people of Kansas.

Thank you,

Sheryl Spalding
President,
MainStream Coalition

Kansas Families for Education

Demanding Excellent Education for All Children

Testimony – Opposition to Constitutional Amendment limiting Judicial Independence
Joint Judiciary Committee
June 15th, 2016

Thank you, to the Chairman and to this committee for giving me the opportunity to speak. My name is Brian Koon, and I am the legislative liaison for Kansas Families for Education, and we stand opposed to the proposed Amendment to the State Constitutionwhich would limit judicial independence.

Kansas Families for Education opposes this measure on grounds that it is a direct threat to the checks and balances set down by James Madison and our other forefathers at the birth of this nation. The founders sought to prevent power from being concentrated in one branch of government, unlike the Monarchy we had so recently rebelled from. The goal of having three brancheswas to create a stable and fair government where no branch would reign supreme over the others. In other words, our forefathers lived through an unstable, unbalanced, and unfair system, and had overthrown that yoke; they chose to make a new government that would respond to the will of The People.

In this country, we use court orders for many things. Sometimes court orders are used to compel deadbeat dads to pay the child support that is their duty to pay – even if they do not like the ruling, or do not wish to pay, or believe it is not the duty of a parent to pay. None of that matters, because they are ordered by the court to pay, and court orders are the remedy courts have at their disposal to obtain compliance.Garnishing wages from deadbeat dads is one way to obtain compliance to a court order; shutting down unconstitutional school funding is another. This is the tool courts have to compel people to do things they, by definition, don't wish to do, but are mandated by law or the constitution.

Under a system proposed by this amendment in which Judicial independence has been limited, the court is essentially irrelevant in preventing the unconstitutional underfunding of public education, and the Legislative branch may fund public education just as little as it sees fit. How much does this Legislature propose for that expenditure if this amendment were to pass? One dollar for each student? No money at all? Both levels of funding, and any level of funding at all, will be legal levels of funding under a system where there is no requirement to satisfy a court's demand for fair and adequate funding. Will we look back at the year 2016as the last days of public education funding – or the highest level of funding for the next hundred years?

These are the questions the voters of Kansas are asking, but I have one more: if the Legislature and Governor believe so strongly that Article 6 of our Constitution is unwise, why not write an amendment to strike that language instead of using this backdoor attack to virtually do the same thing? Do you lack the courage to try it, or the votes to pass such an overt attack on Public

Education? I theorize that this committee would rather attack judges, who are largely prevented from making political statements and therefore from responding to political attacks, than to try to convince the people of this state that the best Public Education for their children is none at all.

Kansas Families for Education wholeheartedly supports the independence of the Kansas Supreme Court and its defense of the Constitutional right of Kansas school children to receive an adequate and equitable education for which the State provides suitable financing, as specified in Article 6 of the Kansas Constitution.

To conclude, on behalf of public school students, their parents, and deeply concerned voters all across this state, I urge each of you not to support a Constitutional Amendment limiting the power of the Kansas Supreme Court.

Thank you for your time and consideration.

Testimony before the Joint Meeting of House Committee on Judiciary and Senate Committee on Judiciary
Regarding Proposed Constitutional Amendment Prohibiting School Closure and Other Potential Constitutional Amendments Pertaining to School Finance
by
Erin Gould of **Game On for Kansas Schools**
June 16, 2016

Members of the Committees:

Thank you for the opportunity to communicate our concerns with amending the Kansas Constitution in response to orders by the Kansas Supreme Court in school funding litigation. Game on for Kansas Schools is a nonpartisan grassroots effort among Kansans who share a belief in high-quality public education as a right of all Kansas students. We advocate for Kansas public schools to ensure our teachers, principals, superintendents, and school board members have the resources necessary to deliver quality education to all Kansas students. We inform communities across the state about issues and legislation affecting their students.

While we understand and share frustration over the multiple rounds of litigation over school funding, we believe that amending the Constitution is the incorrect solution. At the outset, we note that the oath of office for Kansas legislators is quite short and is almost entirely limited to promising to uphold our federal and state constitutions. The Senate oath states, "We, and each of us, do solemnly swear or affirm that we will support the Constitution of the United States and the Constitution of the state of Kansas, and faithfully discharge the duties of the office of the Senator of the State of Kansas, So help us God."

We oppose amending the Constitution to prohibit the Supreme Court from closing schools. As parents and citizens, we absolutely understand the chaos and financial difficulties that blocking the flow of funding to schools would create, and we think that chaos should be avoided. However, we focus on the fact that the funding formula we had was deemed constitutional; it was the lack of funding allocated to the formula that caused the legal repercussions. We also know that the solution this legislature devised in 2014 was also deemed constitutional, but the legislature's actions since then have brought us to our current predicament. As parents, we have been waiting since 2009 for the fulfillment of the promise of funding made at the conclusion of the Montoy case. When the Great Recession impacted the state's ability to fund schools appropriately, we waited. But here we are in 2016 and still waiting. We understand some legislators think our schools are equitably and adequately funded, but we do not share that opinion. We ask how long the legislature can continue to fall short of necessary funding. We ask what short of threatening to block the flow of funding will get the legislature to do as it is obligated. We understand our state is in a fiscal crisis, but we also understand that is a self-created crisis. We believe we should avoid risking the closure of schools by equitably funding them rather than changing the Constitution.

We have also been invited to comment on "other potential constitutional amendments pertaining to school finance." That really is difficult to do without knowing specifically what the amendments might be. However, we oppose any amendments designed to allow the legislature to lower the standard of adequacy or equity for public education. The Kansas Constitution refers not only to making suitable provision for public education in our state, but also requires the state to "provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities." We believe the reference to improvements indicates that our constitution contemplates a strong public education system, rather than one that was deemed adequate in the past. We believe our legislature should devote its attention to meeting the needs of Kansas children rather than changing the Constitution to lower our standards. We also believe that constitutional amendments should be addressed during the regular session rather than during a hastily-called hearing during the summer.

Kansas PTA
715 SW 10th Street, Topeka KS 66612
www.kansas-pta-legislative.org
kansaspta@gmail.com

Testimony to Joint Meeting of both Judiciary Committees
Honorable Chairs, Senators Greg Smith, Jeff King and
Representatives John Barker and Charles Macheers
Robert G. Gallimore, Principal Research Analyst, Judiciary, Corrections, and
Juvenile Matters, Kansas Legislative Research, 785 296-3181
Public Comment, June 16, 2016, 2:30 pm, Old Supreme Court Room, 346-S

Testimony Kansas PTA
Proposed Constitutional Amendment Prohibiting School Closure or Other Potential Constitutional Amendments Pertaining to School Finance

Thank you for the opportunity to submit public comment. Again, please consider the importance of this testimony as critically as if we were able to present in person. As noted earlier today, we are a volunteer run organization and cannot always rearrange our schedules and get time off work, on such short notice – in addition to the time needed to prepare statements.

Kansas PTA is opposed to a constitutional amendment that would restrict a branch of government from fulfilling its duty. We encourage our elected officials to focus time and energy on resolving the issue at hand during this special session, rather than on changing the rules to nullify the problem.

Kansas PTA holds the position that the May 27 Gannon opinion on school finance was the act of an impartial court system fulfilling its constitutional obligation. The Courts have been responding to cases brought forth by plaintiffs who have been wronged, interpreting the law as established by statute and the constitution. The Gannon ruling is not a political statement, but a professional judgment from an equal branch of the Kansas government. The recent Gannon opinion should not be mischaracterized as a battle between Johnson County and Wichita (or any other region of the state, for that matter). The school finance debate, at its core, is about the role of public education in our democracy and whether or not all Kansas youth deserve the opportunity to acquire the knowledge and competences to productively participate and engage in society.

Kansas PTA will continue to advocate for investment in public education. Moving forward from this special session, PTA will continue to call for the establishment of a transparent and meaningful process to draft a new school finance formula. We expect this new formula process to involve all key education stakeholders, to yield a working definition of the term suitable, and to identify a routine procedure for updating the cost of providing all youth the opportunity to achieve the state education standards. Kansas PTA supports a school finance formula that provides adequate and equitable opportunity for all youth and school communities to achieve regardless of their readiness, disability, language, wealth or geography.

On behalf of the parents, teachers, and community members of Kansas PTA, we ask that you withdraw consideration of a constitutional amendment, in alignment with Kansas PTA mission and legislative priorities:

- PTA mission and purpose have remained the same since our inception over 100 years ago, focused on facilitating every child's potential and empowering families and communities to advocate for all children.
- KS PTA Legislative Priority 3. Kansas PTA will support efforts to preserve the Kansas Constitutional infrastructure for education, including nonpartisan elections of Kansas school board members and their appointment of our Education Commissioner, as well as, retaining the primary responsibility of defining the phrase intellectual, educational, vocational and scientific improvement with the education governance structure (Kansas School Board, Kansas Department of Education, education scholars and practitioners).

Thank you for your time and consideration.

Denise Sultz, Kansas PTA President
kansaspta@gmail.com
@KsPTALeg

Cc: Josh Halperin, VP of Advocacy
Devin Wilson, State Legislative Chair
Mary Sinclair, PhD, Team Advocate

THE PTA POSITION

Kansas PTA is a nonpartisan association that promotes the welfare of children and youth. The PTA does not endorse any candidate or political party. Rather, we advocate for policies and legislation that affect Kansas youth in alignment with our legislative platform and priorities.

KANSAS BAR ASSOCIATION

TO: **The Honorable John Barker & The Honorable Jeff King**
and Members of the Joint Meeting of House and Senate Judiciary Committees

FROM: **Joseph N. Molina**
On behalf of the Kansas Bar Association

RE: **Public comment relating to the school finance lawsuit and order to close Kansas Public Schools**

DATE: **June 16-17, 2016**

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,200 members, including lawyers, judges, law students, and paralegals. www.ksbar.org

The Kansas Bar Association provides this written public comment as it relates to limiting the Kansas Supreme Court's authority in response to the Kansas Supreme Court's May 27, 2016 order (Gannon Order) concerning the equitable funding of Kansas Public Schools.

The KBA appreciates the opportunity to address the Joint Meeting of the House and Senate Judiciary Committee.

At the outset it should be noted that the KBA takes no position on the school finance issue, nor does it have a position on the merits of the case currently before the Kansas Supreme Court. ***The KBA is concerned with current efforts to limit the Kansas Supreme Court's authority to adjudicate cases within its purview.***

As it is currently understood the Kansas Legislature is discussing a constitutional amendment that would prohibit the Kansas Supreme Court from ordering Kansas Public Schools to be closed for unconstitutional inequities. To be clear, this is not what the Kansas Supreme Court has ordered in its May 27 ruling. The court stated that:

> "the inability of Kansas schools to operate would not be because this court would have ordered them closed. Rather, it would be because this court would have performed its sworn duty to the people of Kansas under their constitution to review the legislature's enactments and to ensure the legislature's compliance with its own duty under Article 6". See Gannon II, 303 Kan. 682, Syl. ¶ 9.

Given these comments it would appear that efforts to strip the court of its constitutionally derived authority is misguided since the court has not ordered schools be closed but rather found legislative enactments in noncompliance with the Kansas Constitution.

The KBA also feels strongly that such legislation violates the separation of powers doctrine because full review of litigation is a function of the courts. The Kansas Supreme Court has the power and duty to review legislative enactments when cases and/or controversies are brought before it. This authority extends to remedial orders that correct unlawful or unconstitutional provisions. Without the power to order remedial measures a court's rulings have little force and effect, and these rulings become advisory at best.

Furthermore, limiting the court's power to review and remedy unconstitutional laws erodes the foundational pillars of checks and balances among and between the three co-equal branches of government. If the court loses the power to remedy unconstitutional laws, it loses the power to balance the legislature and uphold the constitution. The legislature should not be able to enact a law and then vaccinate itself from judicial review and remedy. To do so would severely limit the people's right to bring actions against the government for grievances and would restrain the court's constitutional responsibility to act as a check on the other branches of government.

Finally, efforts to limit court powers is an attack on the independence of the judiciary. In Federalist Papers Nos. 78 and 79 Hamilton argued that the judiciary was the weakest of the three branches of government and "all possible care is requisite to enable it to defend itself against attacks." Should a proposal limiting the court's power be passed, judicial independence would be threatened as judges/justices would be hesitant to make unpopular rulings because that ruling may lead to further reductions on court jurisdiction.

It is for these reasons that the KBA urges members of the Joint Meeting of the House and Senate Judiciary Committee to resist this measure or any others that may be proposed which has a similar limiting effect upon the authority of the highest court in our state.

KANSAS ASSOCIATION OF DEFENSE COUNSEL
825 S Kansas Avenue - Suite 500, Topeka, KS 66612 Telephone: 785.232.9091
Fax: 785.233.2206 www.kadc.org

TO: **Joint Meeting of the House and Senate Judiciary Committees**
FROM: **Nathan D. Leadstrom, on behalf of the Kansas Association of Defense Counsel**
DATE: **June 15, 2016**
RE: **OPPOSITION TO CONSTITUTIONAL AMENDMENT STRIPPING JUDICIAL REVIEW OVER ISSUES OF SCHOOL FUNDING**

> *If men were angels, no government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.*

James Madison, Federalist Paper No. 51 (1788).

Madison drives home the principle that no one is above the law, not even the government who, "[w]e, the people of Kansas," gave the power to govern.[1] Thus, in a government of law "administered by men over men," our Constitution can only be fully and effectively implemented when the laws of the state are respected by the citizenry **and** the government alike. This is a necessary step for assuring the continued vitality of our system. Stripping the judiciary of the power to interpret and apply the law irreparably destroys the system of government by placing the Legislature above the supreme law of the land set forth in the Constitution.

KADC is a state-wide organization of lawyers admitted to practice law in Kansas who devote a substantial amount of their time to the defense of civil cases and representing businesses across the state. As part of our mission, our organization advocates for the administration of justice, because our clients depend on it. For this reason, KADC has consistently spoken out in favor of the importance of the separation of powers and impartiality of the judiciary, and, to preserve the integrity and effectiveness of our justice system, it strongly opposes efforts to change that system. In this instance, KADC is opposed to any changes to the checks and balances within the Kansas Constitution that would strip the Supreme Court of its jurisdiction or authority to review legislative action for its conformity to constitutional requirements in the area of public education funding or any other right or freedom guaranteed by the Kansas Constitution. The Kansas Supreme Court properly and fairly determined the issue of public education funding in compliance with its duty under the Constitution, the Legislature needs to quit attacking the Court for its decision and perform its own duty to comply with that decision as required by the Kansas Constitution.

[1] KAN. CONST., Preamble & Bill of Rights §§ 2, 20.

I. The Legislature cannot judge of its own compliance with the Constitution.

The written Constitution is paramount law because it emanates directly from the People.[2] The Legislature may only enact legislation in harmony with, but not in derogation, of the Constitution.[3] Otherwise, any law that can be ignored is meaningless. "If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny."[4] Thus, to be equal in the eyes of the law, no one is allowed to be a judge in his own cause and all must submit to the will of the People. It was from these simple, undeniable truths that our government was given shape to protect and preserve the will and liberty of the People.[5]

II. Separation of Powers is essential to guarantee Liberty and Justice for All.

The framers of the Kansas Constitution, modeled after the U.S. Constitution, addressed this problem by dividing power among the different branches of government (legislative, executive, and judicial). This framework for government, known as the **separation of powers**, ensures that no one person or branch is able to gain absolute power and stand above the law. Each branch of our government has some level of control or oversight over the actions of the other branches. Those three branches of government guaranteed by the Kansas Constitution each have unique powers:

- "[T]he executive power is the power to enforce the laws."[6]
- "[T]he legislative power is to make, amend, or repeal laws."[7]
- "[T]he judicial power is the power to interpret and apply the laws in actual controversies."[8]

The doctrine of the separation of powers is well-recognized as an inherent guarantee of both the Kansas and United States Constitutions.[9] The Framers "recogniz[ed] a strong need to separate legislative and judicial power."[10] Therefore, they created "a three branch system of government, relying on checks and balances, with an independent judiciary that remains a model for the rest of the world."[11] "The Framers regarded the checks and balances that they had built into the tripartite Federal Government as a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other."[12]

This does not mean that everyone agrees with the all of the decisions handed down by the Kansas Supreme Court. Some complain about the Court's opinions that are critical of the

---

[2] *Id.*; *see also In re Tax Application of Lietz Constr. Co.*, 273 Kan. 890, 903, 47 P.3d 1275 (2002).

[3] *State, ex rel., v. Board of Education*, 212 Kan. 482, 488, 511 P.2d 705 (1973).

[4] *United States v. United Mine Workers*, 330 U.S. 258, 312 (1947) (Frankfurter, J., concurring) ("There can be no free society without law administered through an independent judiciary.").

[5] *See* Alexander Hamilton, Federalist Paper No. 78 (1788) (quoting Montesquieu, Spirit of Laws, Vol. I, p. 181) ("'[T]here is no liberty, if the power of judging be not separated from the legislative and executive powers.'").

[6] *State ex rel Stephen v. Kansas House of Representatives*, 236 Kan. 45, 59, 687 P.2d 622 (1984); KAN. CONST., art. 1 § 3.

[7] *State ex rel Stephen*, 236 Kan. at 59; KAN. CONST., art. 2 § 1.

[8] *State ex rel Stephen*, 236 Kan. at 59; KAN. CONST., art. 3 § 1.

[9] Natalie Haag, *Separation of Powers: Is There Cause For Concern?*, 82 J. Kan. B.A. 30 (March 2013); *see Miller v. Johnson*, 295 Kan. 636, 670, 289 P.3d 1098 (2012); *Van Sickle v. Shanahan*, 212 Kan. 426, 447, 511 P.2d 223 (1973) ("[T]he doctrine of separation of powers is an inherent and integral element of the republican form of government....").

[10] Kurt Kuhn, *Judicial Remedies and the Constitutional Balancing Act*, 32 The Advoc. (Texas) 55 (Fall 2005).

[11] *Id.*

[12] *Buckley v. Valeo*, 424 U.S. 1, 122 (1976).

825 S Kansas Avenue, Suite 500 • Topeka, Kansas 66612
(785) 232-9091 • FAX (785) 233-2206 • www.kadc.org

Legislature's decisions. But the tension between the legislature and the courts is intentional and is as old as the United States, when Chief Justice Marshall wrote the opinion in *Marbury v. Madison*[13] in 1803.

III. Judicial Review is inseparable from the Rule of Law to ensure Justice for All.

The rule of law is the foundation of our "republican form of government" in exercise of the respective powers of our three branches of government.[14] It places the judiciary in the weakest position with the very important but limited duty to administer the justice system in the exercise of the state's judicial power of interpreting and applying the law to concrete disputes.[15] The judicial power has long been recognized to include the **power of judicial review** to declare executive or legislative actions as unconstitutional which is the "very essence of judicial duty."[16] Our Founding Fathers understood this principle as the bedrock for our system without which the written Constitution had no power.[17]

Judicial review of legislative and executive actions is what distinguishes the rule of law from majority rule[18] and acts as a shield against the arbitrary exercise of power by those in control of government unbound by any law. In majority rule, legal statutes are understood as simply the devices of the rulers, who are free to alter their substance at any time without restraint. For Constitutional law to function, by contrast, even the legislators and administrators of the law must be subject to its provisions.[19] With everyone equal in the eyes of the law, the promise of Justice for All is guaranteed and shielded from attack by every-changing majority or mob rule opinions.

Ensuring that democracy, liberty and justice were not hollow promises, our Framers created a form of government aimed at avoiding the concentration of power in a single authority. They made the Judiciary an institution "not under the thumb of other branches of Government."[20] James Madison, while introducing in Congress the amendments that became the Bill of Rights, eloquently noted that the Judiciary "will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights."[21] Alexander Hamilton argued in Federalist No. 78 that "there is no liberty, if the power of judging be not separated from the legislative and executive powers.... The complete independence of the courts

---

[13] 1 Cranch 137 (1803). There, the Court explained: "So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; *the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty*." 1 Cranch at 178 (emphasis added).

[14] U.S. CONST., art. IV § 4.

[15] *See* KAN. CONST. art III, § 1; *see also* Alexander Hamilton, Federalist Paper No. 78 (1788) (describing the judiciary as "the weakest of the three departments of power ... and [as such] all possible care is requisite to enable it to defend itself against their [executive and legislative] attacks.").

[16] *Marbury v. Madison*, 5 U.S. 137, 178 (1803).

[17] *See* Alexander Hamilton, Federalist Paper No. 78 (1788) ("[W]henever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.").

[18] The Founding Fathers understood majority rule, left unchecked, has "ever been found incompatible with personal security or the rights of property." James Madison, Federalist Papers No. 10 (1787).

[19] *See* Alexander Hamilton, Federalist Paper No. 78 (1788) (quoting Montesquieu, Spirit of Laws, Vol. I, p. 181) ("'[T]here is no liberty, if the power of judging be not separated from the legislative and executive powers.'"); *see also United States v. United Mine Workers*, 330 U.S. 258, 312 (1947) (Frankfurter, J., concurring) ("There can be no free society without law administered through an independent judiciary.").

[20] Hon. Ruth Bader Ginsburg, Judicial Independence: The Situation of the U.S. Federal Judiciary, 85 NEB. L. REV. 1 (2006).

[21] James Madison, Address to the House of Representatives (June 8, 1789), in THE MIND OF THE FOUNDER 224 (Marvin Meyers ed., 1973).

825 S Kansas Avenue, Suite 500 • Topeka, Kansas 66612
(785) 232-9091 • FAX (785) 233-2206 • www.kadc.org

of justice is ... essential...."[22] As Hamilton explained, if the legislature judged the validity of its own laws, then its members would substitute their will for the will of the people:

> It is not ... to be supposed that the constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority.[23]

It is clear, then, that the Framers called on the Judiciary to patrol the Constitution's legal boundaries to preserve the rule of law. This was not because judges were believed to be wiser or smarter than those in the government's other branches; but, rather, the Framers believed allowing the other branches to police themselves was far too dangerous. The executive, with the sole power to decide whether executive orders complied with the Constitution could become despotic; while the legislature, carrying out of the will of the voters, would seldom turn down popular statutes that cross the Constitution's legal boundaries.[24]

Thus, judicial review of legislative action forms an important foundation of both federal and state constitutional jurisprudence—and of the institutional resentment sometimes felt by American legislatures toward the judiciary. This tension existed when Kansans adopted our Constitution and subsequent amendments. Our state's citizens knew the Supreme Court would engage in review of legislation, and they chose to maintain this essential check upon legislative power to prevent and protect the will of the People. Disputes between the branches of government do not constitute a reason to amend the Constitution or to go in search of ways around judicial decisions, those disputes exist by design.

IV. Judges decide cases based on the Law and the Constitution; Legislators make decisions based on public opinion.

The impetus for the suggestion to amend the Constitution is the Supreme Court's decision in *Gannon* requiring additional funding of public schools to comply with constitutional requirements. Some complain that the Court's decisions on this issue do not reflect current public feelings; yet resistance to the sometimes fickle winds of public opinion in service of the rule of law is the touchstone of American courts. Kansas Supreme Court decisions holding the Legislature accountable to the will of the People as expressed in the Constitution should be encouraged not attacked. Without judicial independence to make decisions free from public or legislative opinion, the system breaks down in favor of majority rule that is often contrary to the rights guaranteed in the Constitution. Those in the majority view today were often the people in the minority only yesterday and are likely to find themselves there again in the future. However, judicial independence weathers these storms of public opinion protecting the rights, freedoms and will of the People – both in the majority and in the minority – at all times.

"The truth is ... the danger is not, that the judges will be too firm in resisting public opinion, and in defence of private rights or public liberties; but that they will be too ready to yield themselves to the passions, and politics, and prejudices of the day."[25] Only judicial independence to interpret and apply the Constitution as written to ensure the will of the People remains intact will

---

[22] 3 THE FEDERALIST No. 78, at 502 (Alexander Hamilton) (Edward Mead Earle ed.). (Without judicial independence, Hamilton argued, "all the reservations of particular rights or privileges would amount to nothing.").
[23] 4 THE ESSENTIAL FEDERALIST AND ANTI-FEDERALIST PAPERS 285 (Alexander Hamilton) (David Wooton, ed., 2003).
[24] STEPHEN BREYER, MAKING OUR DEMOCRACY WORK: A JUDGE'S VIEW 6-11, 215 (2010).
[25] Story, Joseph, *Commentaries on the Constitution of the United States*, vol. III, p. 476 (1833).

825 S Kansas Avenue, Suite 500 • Topeka, Kansas 66612
(785) 232-9091 • FAX (785) 233-2206 • www.kadc.org

protect against this. Some assert that a court is "liberal" or "activist" when it strikes down legislation or decides a case against another branch of government. This position ignores the reality that the courts do not choose the fights, they only decide the cases that the citizens of this State bring before it seeking to protect their individual rights and guaranteed freedoms. It ignores that the elected representatives of the people also have an obligation to comply with the Constitution which will be enforced in a court of law.

More to the point, judges do not "make law"; they apply it, they interpret it, and they make judgments between conflicting laws. But they do not make law in the sense of legislation. What judges do is far removed from both the process and the effect of legislation. Legislators pick the issues; courts do not pick the cases they decide. Legislators deal with abstract policies rather than concrete cases. Judges make decisions in the context of actual facts, and their decisions are constrained in part by the arguments and record before the court in a given case, and are subject to being distinguished in later cases with different facts. Further, court cases are laden with procedural histories, jurisdictional complexities, and doctrinal precedents that shape and constrain their judicial task. Finally, unlike judges, legislators are expected to abide by their constituents' wills. Judges are accountable to the law and required to uphold the Constitution.

As the Supreme Court explained even before the current school funding amendment was adopted by the People of Kansas in the 1960s:

> It is sometimes said that courts assume a power to overrule or control the action of the people's elected representative in the legislature. That is a misconception.... The judiciary interprets, explains and applies the law to controversies concerning rights, wrongs, duties and obligations arising under the law and has imposed upon it the obligation of interpreting the Constitution and of safeguarding the basic rights reserved thereby to the people. In this sphere of responsibility courts have no power to overturn a law enacted by the legislature within constitutional limitations, even though the law may be unwise, impolitic or unjust. The remedy in such a case lies with the people.'[26]

Furthermore, when reviewing legislation, the Court gives great deference to the legislature as the elected representatives of the People and, therefore, "[a] statute will not be declared unconstitutional unless its infringement on the superior law of the constitution is clear beyond substantial doubt."[27] In performing this duty, courts guard against substituting their views on economic or social policy for those of the legislature and are only concerned with the legislative power to enact statutes, not with the wisdom behind those enactments.[28] "When a legislative act is appropriately challenged as not conforming to a constitutional mandate, the function of the court is to lay the constitutional provision invoked beside the challenged statute and decide whether the latter squares with the former—that is to say, the function of the court is merely to ascertain and declare whether legislation was enacted in accordance with or in contravention of the constitution—and not to approve or condemn the underlying policy."[29]

V. Once the Supreme Court performs its duty to review legislation under the Constitution, the Legislature must perform its duty to comply with the

[26] *Harris v. Shanahan*, 192 Kan. 183, 206–07, 387 P.2d 771 (1963).
[27] *Samsel v. Wheeler Transport Services, Inc.*, 246 Kan. 336, Syl. ¶ 3, 789 P.2d 541 (1990).
[28] *Id.*
[29] *Samsel*, 246 Kan. at 348-49.

825 S Kansas Avenue, Suite 500 • Topeka, Kansas 66612
(785) 232-9091 • FAX (785) 233-2206 • www.kadc.org

decision.

Our history is replete with courts making difficult decisions in trying times. In a piece of our own State's history, the U.S. Supreme Court was required to decide in *Brown v. Board of Education* that the doctrine of separate but equal violated equal protection. At the time, that decision was extremely controversial and several states threatened to disobey the Court's decision including open defiance with court orders to comply with that decision. Yet, a fellow Kansan, President Eisenhower speaking from the Oval Office told the Nation that once a court reaches a decision, it **must** be followed:

> Proper and sensible observance of the law then demanded the respectful obedience which the nation has a right to expect from all its people....
>
> The very basis of our individual rights and freedoms rests upon the certainty that the President and the Executive Branch of Government will support and insure the carrying out of the decisions of the Federal Courts, even, when necessary with all the means at the President's command.
>
> Unless the President did so, anarchy would result.
>
> The interest of the nation in the proper fulfillment of the law's requirements cannot yield to opposition and demonstrations by some few persons.
>
> Mob rule cannot be allowed to override the decisions of our courts.
>
> ...
>
> A foundation of our American way of life is our national respect for law.[30]

KADC strongly urges all Representatives and Senators to reject any changes to the Kansas Constitution that would strip the jurisdiction or power of judicial review from the Supreme Court to review legislative action that may be found contrary to any right or freedom guaranteed under the Kansas Constitution.

[30] President Eisenhower's Address to the Nation, September 24, 1957, available at https://www.eisenhower.archives.gov/research/online_documents/civil_rights_little_rock/1957_09_24_Press_Release.pdf

825 S Kansas Avenue, Suite 500 • Topeka, Kansas 66612
(785) 232-9091 • FAX (785) 233-2206 • www.kadc.org

KANSAS ASSOCIATION FOR JUSTICE

Your rights. Our Mission.

719 SW VAN BUREN STREET, SUITE 222, TOPEKA, KS 66603 | PHONE: 785-232-7756 | FAX: 785-232-7730 | WWW.KSAJ.ORG

To: **Senator Jeff King, Chairman**
Representative John Barker, Chairman
Members of the Senate & House Judiciary Committees

From: **Callie Jill Denton JD**
Executive Director

Date: **June 16-17, 2016**

RE: **Proposed Constitutional Amendment Prohibiting School Closure or Other Potential Constitutional Amendments Pertaining to School Finance**

The Kansas Association for Justice (KsAJ) is a statewide, nonprofit organization of trial attorneys. KsAJ has no public policy position on school finance. Our comments are limited to positions on judicial review and the co-equal branches of government.

KsAJ has not had an opportunity to review draft language for a proposed amendment to the Constitution to prohibit school closure. Consequently, we are forced to speculate as to its provisions and the means by which it is implemented.

Arguably, there are already implicit constitutional prohibitions against school closure throughout Article 6 in the many explicit duties that are currently enumerated, any of which are necessary to keep public schools open in Kansas.[1] If a prohibition on school closure is achieved by preventing courts from exercising judicial review of Article 6, it would be a significant deviation from basic tenets of the American form of government that include checks and balances among three separate but co-equal branches. KsAJ strongly recommends against such an amendment.

Judicial review is a well-settled concept in Kansas law and in state and federal courts across the nation. *Marbury v Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed.60 (1803), established the concept of the supremacy of the federal Constitution, and that "...a legislative act contrary to the Constitution is not law." 5 U.S. (1 Cranch) at 177. Further, "It is emphatically the province and duty of the Judicial

[1] See Article 6, which requires the legislature ("shall") to fulfill a number of constitutional duties related to public education. Section 1 requires the legislature to establish and maintain public schools; section 2 requires the legislature to provide for a state board of education which has general supervision of public schools; section 3 requires the legislature to provide for 10 member districts, each comprised of 4 contiguous senate districts; and section 6 requires the legislature to make suitable provision for finance of the educational interests of the state.

Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each." 5 U.S. (1 Cranch) at 177.

Prohibiting courts from exercising judicial review of legislative actions under Article 6 is inconsistent with the principles of law established in *Marbury* and the appropriate function of the judicial branch to interpret and apply the Constitution, and to void legislative acts that violate it. Eliminating judicial review will eliminate citizens' ability to challenge the constitutionality of future school funding laws or policies under Article 6 and to bring litigation to enforce Article 6.

Without judicial review, and checks and balances between the legislative and judicial branches, a significant remedy against the legislature's failure to comply with its constitutional duties in Article 6 will be removed. Although a governor may veto legislation he deems unconstitutional, the legislature may override the governor's veto; an inferior bill would become law with no additional possibility of review or challenge. Without judicial review of Article 6, there is a significant consolidation of power in the executive and legislative branches, and specifically in the legislative branch, and a significant loss of power to Kansans who desire to challenge the constitutionality of school funding legislation. The consolidation of power should be viewed as especially suspect.

Kansas is not alone in facing public school funding challenges or constitutional crises.[2] However, it would make a difficult situation far worse to recommend to the people of Kansas a policy that erodes the foundations of government, and, ironically, contradicts the lessons on civics that are taught in public schools. On behalf of the members of the Kansas Association for Justice, we recommend your support for the co-equal branches of government and the principle of judicial review and your opposition to an amendment that corrodes or diminishes either.

[2] Forty-six states have had school litigation since the 1970s according to Daniel Thatcher, an education finance specialist with the National Conference of State Legislatures (NCSL). Schools shutting down? It wouldn't be the first time it's happened, *Wichita Eagle*, June 8, 2016, http://www.kansas.com/news/politics-government/article82600692.html