

**Testimony before Joint Meeting of Senate Ways and Means and House Appropriations Committee
Regarding Funding to Meet the Supreme Court Gannon Decision
Special Legislative Session June 23, 2016
Bill Brady, Schools For Fair Funding**

Chairmans Ryckman and Masterson and Members of the Committee:

Thank you giving me the opportunity to provide comments, on behalf of Schools for Fair Funding, regarding the most efficient method for complying with the Kansas Supreme Court's most recent ruling in the *Gannon* matter, dated May 27, 2016. Schools for Fair Funding is a coalition of over 50 Kansas school districts, and represents approximately one-third of the school children in Kansas. Schools for Fair Funding, like many of us here, desires that Kansas public schools open in the fall, and operate under a constitutionally equitable funding system.

It is our position that the most efficient and desirable method for complying with the Court's recent ruling is to follow what the Court described as an "obvious way" to comply with Article 6 – to revive the relevant portions of the previous school funding system and fully fund them within the current block grant system." *Gannon v. State*, 303 Kan. 682, 743 (2016)(*Gannon II*). The Deputy Commissioner of Education, Dale Dennis, has estimated the total additional cost associated with this method of compliance would be approximately \$38,615,080. His June 3, 2016 printout (SF16-150) containing that estimate is submitted with this written material.

We, of course, recognize the political realities of the legislative branch, just as the Court did in *Gannon III*. *Gannon III*, *slip op.* at 33. But, the Court held that "[t]he political necessities of the legislature are similarly irrelevant to our review. The constitution of the people of Kansas does not change its requirements based on legislators' support, or nonsupport, of proposed legislation A law's political expediency or level of support will not shield it from such review." *Id.*, *slip op.* at 29. This special session was called with the goal of passing legislation that would comply with the Supreme Court's May 27, 2016 decision and ensure that Kansas' public schools can operate without interruption. A bill that adds an additional \$38 million to fully fund the former supplemental general state aid provisions would meet that goal and ensure that schools open.

I would also like to mention that we are aware that some members of the legislature have considered bills include so-called "hold harmless" provisions. These provisions would have further *disequalizing* effects on the distribution of education funding that would be detrimental to compliance with the Kansas Supreme Court's equity test. We firmly believe that it is a mistake to regard these provisions as "hold harmless" provisions and that doing so comes with a substantial risk that the Supreme Court will enjoin all sources of education funding and close schools in Kansas. Far from holding districts harmless, these proposed "hold harmless" provisions represent an attempt to ensure that certain districts that currently possess a purchasing power advantage over other districts maintain that advantage. We would urge all of you to consider these ill effects if any legislation that contains a "hold harmless" provision is introduced.

The Court has specifically stated that if the legislature chooses to comply using some method other than the "obvious," straightforward method of fully funding the supplemental general state aid as it previously operated, the Court's review will again be invoked and the State will have the burden of demonstrating that the "hold harmless" provisions meet the equity requirements of Article 6. *Gannon II*, 303 Kan. at 743. The Kansas Supreme Court has repeatedly made clear that the equity standard of Article 6 require that: "School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort." *Gannon v. State*, 298 Kan. 1107, 1175 (2014)(*Gannon I*). In determining whether a "hold harmless" provision would meet the equity test, it must be remembered that if a district *loses* equalization aid by reverting to the old formula, that generally reflects a change in AVPP that necessitated *less* equalization aid. In other words, it

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demonstrates that the district is in a financial situation by which it does not need a “boost” from the State to keep up with other school districts. By giving districts in this situation additional equity money despite the lack of need, the State is putting those districts *in a better situation* than the property-poor districts. In essence, it perpetuates the disparities in purchasing power that presently exist under CLASS, disparities that have already been found to be unconstitutional by the Court. Therefore, just as with H.B. 2655, the legislature should anticipate that this bill and its present “hold harmless” provisions will be found to be an “unsuccessful attempt[] to equitable, *i.e.*, fairly, allocated resources among the school districts.” *Gannon III, slip op.* at 33; *quoting Gannon II, 303 Kan.* at 744.

Moreover, there has been discussion of funding a “hold harmless” provision by reaching into the funds of all districts and taking money from the base. In addition to disrupting equity, this would further harm the overall adequacy of the amount of money appropriated to Kansas public schools. The Supreme Court has specifically warned that if the legislative fix “run[s] afoul of the adequacy requirement,” it will be rejected. *Gannon II, 303 Kan.* at 743. Therefore, we must resist any temptation to disrupt the adequacy of the funding in an attempt to comply with the equity component.

The methods of holding districts harmless that have been discussed destroy equity. If the bill passed during this special session contains a hold harmless provision, that bill will be unable to meet the Court’s test, thereby jeopardizing the ability of our schools to open.

To truly “hold harmless” in a manner that would maintain equity would cost far more than the roughly \$11M that has been discussed by this legislature. In order to actually hold all districts harmless and retain equity among the districts, the legislature would be required to equalize to the 94.4 percentile (\$198,244 AVPP) instead of the 81.2 percentile (\$119,840 AVPP). This would cost approximately \$262M dollars. A chart demonstrating the cost of a constitutionally-equalized “hold harmless” provision is submitted with this written material. Given the cost and the State’s current economic outlook, it is not surprising that no bills that would truly “hold harmless” while maintaining equity are presently before this body for review. Given that there does not appear to be the political will to fund “hold harmless” provisions in a manner that would sustain equity, we urge you to instead pass a bill that contains no “hold harmless” provisions. **Alternatively, a bill that contains an application process, which allows individual districts who lose supplemental general state aid under any legislative fix to apply for additional funding on a case-by-case basis would protect certain districts, while also maintaining equity.**

Again, Schools for Fair Funding takes the position that the most efficient and desirable method for complying with the Court’s recent ruling is to revive the relevant portions of the previous school funding system and fully fund the \$38 million needed to do so.

Mr. Chairman and members of the committee, thank you for your consideration and your work on these important issues for Kansas schoolchildren and their families.