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Testimony before Senate Judiciary Committee
SCR prohibiting school closure
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Mr. Chairman and members of the Senate Judiciary Committee

On behalf of the Kansas Chamber, I appreciate the opportunity to appear again, now that you are in Special Session, to address the issue of whether a legislative response to the recent and upcoming *Gannon* decision should include consideration of a constitutional amendment codifying in our State Constitution the current state law prohibiting lower and appellate Kansas courts from taking any action to prohibit schools from opening by enjoining distribution of funds appropriated for that purpose.

As you know from staff briefings, the Legislature, during the Special Session of 2005, anticipated the need to address court threats of school closure. Those threats were made back in *Montoy.* Ultimately, the Legislature passed legislation providing additional funding and the case was dismissed but two specific statutes were signed into law making it clear that the legislative and executive branches had agreed that school closure should never again be threatened nor should school closure ever be an option for any court in this state. The statute applying the prohibition to our appellate courts has never been challenged and no claim of invalidity is before the Court. It stands as the law in Kansas to this day.

Indeed, to allow such a remedy to be available threatens the very fabric of our state constitution and its commitment to public education. While Art. 6. Sec. 6 deals with school finance, Art. 6, Sec. 1 calls for the Legislature to "provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools…." Art. 6, Sec. 6 calls for the Legislature to establish a mechanism for a system of school finance but the overriding obligation is to see that schools are actually open operating. That becomes impossible to accomplish if a Court threatens to shut down schools over 1% or less of the funding resources for schools, sources that increase by millions of dollars annually and which add to the hundreds of millions of dollars of balances schools have in reserve.

To those who would suggest that courts must have this ultimate power to essentially "destroy the village in order to save it", we would point to the number of jurisdictions that have acknowledged their limited jurisdiction in such matters and applied either a separation of powers analysis to avoid usurping the role of the legislative branch, or applied the political question doctrine to acknowledge that the issue is essentially non-justiciable as lacking judicially manageable standards.

In addition, please note the provisions of the Judicial article in the Kansas Constitution. Art. 3, Sec. 3 of the Kansas Constitution provides that the "supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law." (Emphasis added) Case after case has interpreted that provision to mean

that it is the legislative branch that controls the court's jurisdiction in all but the cases where the court has original jurisdiction. This is not a case of original jurisdiction. This is an appeal from a district court panel decision. The court has no original jurisdiction in injunctive actions, e.g. (See *Collins v. York*, 175 Kan. 511) The Legislature controls whether the court even has jurisdiction to hear a school finance case and certainly has the power to limit any remedy that court may be inclined to impose in such an action. It is universally accepted law that the legislative branch determines appellate jurisdiction, evidentiary rules and rules of procedure. K.S.A. 60-2106(d) in the Kansas Code of Civil Procedure relating to the rules of appellate jurisdiction and procedure, provides clearly that no Kansas Appellate court has the authority to order a school district or school within the district to be closed or enjoin the use of statutes related to the distribution of funds for public education. <u>They have no power to close one school, let alone all of them.</u>

We therefore suggest that it should not be necessary to put in the state constitution something that is current state law. However, as there is significant uncertainty with regard to this Court's apparent intent to ignore or violate state law, and given its insistence and acknowledgment that the constitution is the work of the people and is to be respected, it is reasonable to codify in the state constitution a prohibition against school closure. As we understand the latest version of a proposed Amendment, it would apply the prohibition to both the legislative and judicial branches. That would address any public concern that the proposal somehow singles out the judicial branch. It shouldn't. Schools should not be closed by either branch. Period.

While on the subject of constitutional amendments, we note that apparently in Florida there is a separations of powers provision prohibiting one branch from exercising the powers of the other. It may be worth taking a look at this or other states' provisions that may address the overall subject of overreach. This Court was not shy about ruling the Legislature violated the separation of powers doctrine in the *Solomon* case and that just involved who gets to select the chief judge in a judicial district. Shouldn't the same rationale apply and shouldn't the Legislature also have a remedy when the judicial branch violates the doctrine?