



**KANSAS ASSOCIATION  
OF SCHOOL BOARDS**

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**Written testimony on potential Senate Concurrent Resolution that would prohibit the legislature  
and the courts from closing schools as a result of school finance litigation**

before the  
**Senate Committees on Judiciary**

by

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Chairman King, Members of the Committees:

Thank you for the opportunity to comment on this issue. We offer the same comments we provided to the joint meeting with the House Judiciary Committee last week. 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.

Our members have not 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 wishes 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.

Supporters of this concept stated last week that courts would, in fact, still be to enforce alternative remedies. If that is the case, we do not believe that the language of such an amendment as discussed last week would in any way “end the cycle of litigation,” which some have suggested is the goal. If plaintiffs are still able to seek relief through the courts, how would this change reduce legal challenges?

Furthermore, there would likely be continuing legal debate as to whether a court order actually closed schools or effectively prohibited them from operating. For example, if the Court invalidated the Local Option, effectively eliminating about one-third of operating funds, would that be permitted under the proposed amendment? The court itself would have to decide.

In addition, we disagree with the idea that there has been excessive school finance litigation in Kansas. There have been four major legal challenges to Kansas school finance since the current education article was amended 50 years ago. In the early 1970’s, the Legislature responded to a lawsuit by creating the School District Equalization Act before the case reached the Supreme Court. In 1992, the Legislature adopted the School District Finance and Quality Performance Act based on an opinion issued by the District Court before the case went to trial. The state “won” the case when the new law was challenged.

In 2005 and 2006 in the *Montoy* case, the Kansas Supreme Court found school funding unconstitutional and the Legislature corrected the issues based primarily on the Legislature’s own commissioned cost studies. Finally, the current *Gannon* case is based primarily on the fact that the Legislature clearly changed statutory provisions it had agreed to in settling the *Montoy* case.

In other words, in five decades there have been basically four major cases. In two cases, the state essentially conceded without trial. In the most recent case, it is quite possible the challenge would not have been brought or certainly progressed this far if state had maintained its agreement in the remaining case. The number of years in which school finance challenges have been active has more to do with the time it takes to litigate such cases than their frequency.

As we stated last week, 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 a school district lacking support from a legislative majority. Any district can become such a 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.