



Senate Select Committee on Education Finance
S.B. 44 Appropriations for the Department of Education for FY 2019, 2020 and 2021

Testimony submitted by Schools For Fair Funding
Bill Brady

February 6, 2019

Chairman Baumgardner, Members of the Committee:

I am pleased to testify on behalf of Schools For fair Funding **in support of SB 44**. SFFF is a coalition of 40 school districts from across Kansas representing 140,000 Kansas students. This is 30% of all Kansas students. Included in our organization are the four plaintiff districts in the *Gannon* lawsuit; Dodge City, Hutchinson, Kansas City and Wichita.

In nearly eight years of litigation with the *Gannon* lawsuit, this is the only time SFFF has submitted testimony in support of a proposal designed to address a court decision. In the Special Session of 2016 SFFF did sign on to an agreement with the legislature to solve the equity portion of the lawsuit and end the Special Session. Our ability to work together in 2016 should serve as roadmap to all of us, that by working cooperatively we can now end the school finance litigation.

This bill **IN ITS CURRENT FORM, WITHOUT AMENDMENTS**, will solve the *Gannon VI* issues. SFFF proposes that, if this bill is adopted in its current form and signed by the governor, that the parties simply stipulate to the court that the issue has been resolved, just as they did in 2016 to end the equity portion of the suit. SFFF would only ask that the court retain jurisdiction to see that the out years get implemented and appropriated as planned.

If the bill attracts amendments, then a simple solution evades us and the lawyers will have to analyze the effect of the amendments and their impact on constitutional equity and adequacy. Part of this analysis will be to see if the bill as amended actually solves the *Gannon VI* inflation problem or dodges the issue and creates more points requiring further litigation.

SFFF would urge the Committee to keep it simple, fix the problem, as this bill does, and end the litigation.

Last June, approximately one month after the conclusion of the Legislative session, the Supreme Court issued the *Gannon VI* decision. On page 4 of the 39 page opinion, which is attached to this testimony, the Court identified the remaining problem. The Supreme Court identified *six* years of inflation that the state failed to account for in the calculation it made as part of its *five* year funding plan. The court did not require that the first year, FY19, the current year, be adjusted, but the Court did require that these *six* years of inflation be accounted for in the remaining *four* years of the five year plan.

Following the June opinion, the Kansas State Board of Education passed its recommendation for dealing with the shortfall and included it in its FY 20 and FY 21 budget requests. The State BOE calculated the required *six* years of inflation and spread it over the final *four* years of the five year plan.

The State BOE used a fixed rate of inflation of 1.44% for these *six* years. The current rate of inflation is higher than this, but SFFF has chosen to support the State BOE numbers to end the litigation.

SFFF would like to address the issue of timing. Last session, Attorney General Derek Schmidt, testified before Legislative committees about the importance of enacting legislation by March 1. The reason the AG gave for the request was because the Supreme Court intended to review the work prior to the end of the fiscal year and the AG needed time to adequately prepare a response to the court. Again this year, the same procedure is in place and the deadlines put in place, April 15 for briefs and May 9 for a hearing. These are more aggressive deadlines than last year. Without the clean SB 44 inflation fix, the funding in the current formula has been determined to be unconstitutional. The State, on May 9, must be prepared to convince the Court that it has fulfilled its proposed *Montoy* safe harbor plan by adding *six* years of inflation over the remaining *four* years of the five year plan.

SFFF looks forward to continuing discussions with you to end the litigation and provide Kansas with a constitutional funded school finance system.

What did the Supreme Court’s June 25, 2018 decision say about the “*Montoy* Safe Harbor”?

From page 4 of the *Gannon VI* decision:

“But the State still has not met the adequacy requirement in Article 6 of the Kansas Constitution. Although it has expressed an intent to comply with the adequacy threshold discussed in *Montoy v. State*, 282 Kan. 9, 138 P.3d 755 (2006) (*Montoy IV*), it has failed to consistently implement its self-styled “*Montoy* safe harbor” plan of compliance described in the April 23, 2018, memo from the Kansas Legislative Research Department (KLRD) to legislative counsel. By timely making financial adjustments regarding problems identified below, however, the State can satisfactorily address the remaining constitutional infirmities in adequacy appearing in its chosen plan and particularly in the implementation. We discern **two obvious problems** arising from the April 23 memo:

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

The Court is thus requiring **two years** (FY18 and FY19) plus **four years** (FY20, FY21, FY22 and FY23) of inflation to be added. The Court is allowing this **six** years of inflation to be added over the remaining **four** years of the plan. SB 44, as introduced, does this.

What did the April 23, 2018 Kansas Legislative Research Department Memo Say?

KLRD attempted to determine what the Montoy Safe Harbor was by calculating the funding current student counts would provide using the FY2010 formula with a base of \$4,492.

Current Student Counts	X	FY2010 Formula with \$4492 BSAPP	=	\$3,108,690,821
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The \$3,108,690,821 is what they calculated the current demographics would provide under the original Montoy formula.

Then they added inflation for each year up to FY2017.

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

The \$3,434,941,542 is what they determined would have been funded under the *Montoy* plan, in **FY2017**. They called this their Target Aid to Schools for **FY2019**.

What did the Supreme Court say about this?

The Supreme Court said the failure here was in stopping at 2017. Inflation should have been calculated for 2018 and 2019 also to get to the FY2019 school year. From the Court, “The failure to adjust two years of funding for inflation through the approaching 2018-19 school year.”

Target Aid to Schools	\$	3,434,941,542
Current Aid		(2,817,090,821)
Scheduled Increase in Aid		(95,606,000)
Total Target Additional Aid	\$	522,244,721

This \$522M was funded in 2018 SB 423 and 2018 House Sub for SB 61 over a five year period, FY19 through FY23.

What did the Supreme Court say about this?

The failure here was that the funding was spread over 5 more years, without adjusting for inflation. From the Court, “The failure to adjust for inflation until the memo's calculated principal sum (\$522 million, plus the adjustment referenced above) is paid in full, e.g., approximately five years.”

To fix both failures, inflation needs to be added through FY2019, and then continued to be added through the final phase in period, to FY2023. In other words: The Court is thus requiring **two years** (FY18 and FY19) plus **four years** (FY20, FY21, FY22 and FY23) of inflation to be added. The Court is allowing this **six years** of inflation to be added over the remaining **four years** of the plan.

What did the State Board of Education say?

The State Board of Education has simply extended the KLRD chart through FY2023, using an average of 1.44% inflation.

The State Board of Education’s result is \$363,636,068 needed for schools to reach the Montoy Safe Harbor.

State Board of Education Funding Request in Response to Gannon VI (adopted July 2018)

STATE FOUNDATION AID (BASE—Base Aid for Student Excellence)

INFLATION ADJUSTMENT

Year	Prior Year Amount	Inflation Percent	Inflation Adjustment Amount	Net Amount
2010-11	\$3,108,690,821	3.22	\$100,099,844	\$3,208,790,665
2011-12	\$3,208,790,665	2.03	\$ 65,138,451	\$3,273,929,116
2012-13	\$3,273,929,116	1.40	\$ 45,835,008	\$3,319,764,124
2013-14	\$3,319,764,124	1.47	\$ 48,800,533	\$3,368,564,656
2014-15	\$3,368,564,656	(0.54)	(\$18,190,249)	\$3,350,374,407
2015-16	\$3,350,374,407	0.85	\$ 28,478,182	\$3,378,852,590
2016-17	\$3,378,852,590	1.66	\$ 56,088,953	\$3,434,941,542
2017-18	\$3,434,941,542	1.44	\$ 49,463,158	\$3,484,404,700
2018-19	\$3,484,404,700	1.44	\$ 50,175,428	\$3,534,580,128
2019-20	\$3,534,580,128	1.44	\$ 50,897,954	\$3,585,478,076
2020-21	\$3,585,478,076	1.44	\$ 51,630,884	\$3,637,108,960
2021-22	\$3,637,108,960	1.44	\$ 52,374,369	\$3,689,483,329
2022-23	\$3,689,483,329	1.44	\$ 53,128,559	\$3,742,611,889

SUMMARY

Target Aid To Schools -- FY 2023	\$ 3,742,611,889
Less: Current Aid	(\$2,817,090,821)
Less: Scheduled Increase in Aid -- FY 2019	<u>(\$ 146,105,000)</u>
Total Target Additional Aid	\$ 779,416,068

ANNUAL SUMMARY

	2019-20	2020-21	2021-22	2022-23	TOTAL
Four-Year Average	\$194,854,017	\$194,854,017	\$194,854,017	\$194,854,017	\$779,416,068
Five-Year Plan Amt.	<u>(\$102,195,000)</u>	<u>(\$105,195,000)</u>	<u>(\$105,195,000)</u>	<u>(\$103,195,000)</u>	<u>(\$415,780,000)</u>
Additional Required	\$92,659,017	\$89,659,017	\$89,659,017	\$91,659,017	\$363,636,068