

Comprehensive Summary of the Kansas Supreme Court Opinion in *Gannon v. State*, issued October 2, 2017 (*Gannon V*)¹

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On October 2, 2017, the Kansas Supreme Court (Court) issued its fifth decision in the *Gannon* school finance case (*Gannon V*). The Court held that the Kansas School Equity and Enhancement Act (KSEEA) enacted in 2017 Senate Bill 19 (SB 19) fails to satisfy both the adequacy and equity components of Article 6 of the Constitution of the State of Kansas.² Article 6, § 6(b) of the Constitution of the State of Kansas requires the Legislature to “make suitable provision for finance of the educational interests of the state.”³ In *Gannon I*, the Court reaffirmed that Article 6 contains both an adequacy component and an equity component.⁴ To satisfy the adequacy component, the Court held that “the public education financing system provided by the Legislature for grades K-12—through structure and implementation—must be reasonably calculated to have all Kansas public education students meet or exceed the [*Rose* standards].”⁵ To satisfy the equity component, the Court held that school districts must “have reasonably equal access to substantially similar educational opportunity through similar tax effort.”⁶

The Court stayed its mandate on the KSEEA until June 30, 2018, to give the Legislature “time and opportunity to reach constitutional compliance.”⁷ However, the Court set April 30, 2018, as the date briefs addressing any legislative remedies are to be submitted to the Court and set June 30, 2018, as the date the Court would issue its ruling on such legislative remedies.⁸

¹ This memorandum provides a comprehensive summary of the *Gannon V* decision and places it in context with other recent school finance decisions. The Office of Revisor of Statutes has prepared memoranda on each of the prior decisions in *Gannon v. State* and a memorandum on the history of school finance litigation in Kansas. These documents can be found at <http://www.ksrevisor.org/>.

² *Gannon v. State*, No. 113,267 at 4 (Kan. Sup. Ct. Oct. 2, 2017) (*Gannon V*).

³ Kan. Const. Art. 6 § 6(b).

⁴ *Gannon v. State*, 298 Kan. 1107, 1170 (2014) (*Gannon I*). The Court held that the dual requirements of Article 6, § 6(b) had been recognized previously by the Court in *Montoy v. State*.

⁵ *Id.* The *Rose* standards are educational capacities first espoused by the Kentucky Supreme Court in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989). They are currently codified in K.S.A. 2017 Supp. 72-3218(c).

⁶ *Gannon I* at 1175.

⁷ *Gannon V* at 78.

⁸ *Id.* at 80.

GANNON PROCEDURAL HISTORY²

The *Gannon v. State* series of cases began in November 2010 when a lawsuit was filed claiming the State violated Article 6 of the Constitution of the State of Kansas by not constitutionally funding public K-12 schools in Kansas.

School Finance Formulas in Kansas

When *Gannon* was filed in 2010, the School District Finance and Quality Performance Act (SDFQPA) was the existing school finance formula. Under the SDFQPA, the amount of state aid received by a district was determined by multiplying the base state aid per pupil (BSAPP) by the adjusted enrollment of the district. Adjusted enrollment used weightings to account for certain demographics and characteristics of a district’s student population. The SDFQPA was repealed in 2015 and was replaced by the Classroom Learning Assuring Student Success Act (CLASS Act), which was as a two-year “block grant” of funding for schools. Under the CLASS Act, school districts received a “block grant” of state financial aid based on the school district’s state aid under the SDFQPA with some adjustments. The CLASS Act expired on June 30, 2017, and was replaced by the Kansas School Equity and Enhancement Act enacted in SB 19. The basic structure of the KSEEA is substantially similar to the SDFQPA.

Gannon I

In *Gannon I*, issued in March 2014, the Court reaffirmed that Article 6 requires both an adequacy and an equity component be satisfied for a school finance formula to be constitutional.¹⁰ The Court determined that the adequacy requirement is satisfied “when the public education financing system provided by the Legislature for grades K-12—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the [*Rose* standards].”¹¹ The Court did not apply the new adequacy test to the existing formula, but directed the Panel to do so on remand.¹² The Court also determined that the equity requirement is satisfied when school districts “have reasonably equal access to

⁹ This memorandum provides a brief summary of the procedural history of the *Gannon v. State* decisions. The Office of Revisor of Statutes has prepared a memorandum on the history of school finance litigation in Kansas, including a more comprehensive summary of *Gannon*. This document can be obtained by contacting the Office of Revisor of Statutes or at <http://www.ksrevisor.org/>.

¹⁰ *Gannon I* at 1170, 1199.

¹¹ *Id.* at 1170.

¹² *Id.* at 1199.

substantially similar educational opportunity through similar tax effort.”¹³ The Court applied the equity test to the current funding levels for capital outlay state aid and supplemental general state aid, and found both unconstitutional.¹⁴ The Court then remanded the case to the Panel to apply the adequacy test and enforce the Court’s equity ruling.¹⁵

District Court Panel

In 2014 and 2015, the Panel issued two separate decisions on the constitutionality of both the adequacy and equity components of Kansas school finance funding formulas. In the Panel’s first decision after *Gannon I*, the Panel found the SDFQPA to be unconstitutional under the new test for adequacy.¹⁶ The Legislature then repealed the SDFQPA and enacted the CLASS Act in response to the Panel’s decision. The Panel subsequently issued a new decision finding the CLASS Act constitutionally inadequate and the supplemental general state aid and capital outlay state aid equalization formulas as amended by the CLASS Act constitutionally inequitable.¹⁷ The Panel’s decisions were appealed to the Court.

Bifurcation

On July 24, 2015, following the Panel’s decision on the CLASS Act, the Court stated that the equity and adequacy issues were in different stages of the litigation and “recognized the need for an expedited decision on the equity portion of the case.”¹⁸ The Court then bifurcated adequacy and equity and required the parties to brief and argue the issues separately.¹⁹ The Court ruled on the equity issue in *Gannon II* and *Gannon III*, and on the adequacy issue in *Gannon IV*.

Gannon II and III

In *Gannon II*, issued in February 2016, the Court held that the State failed to show sufficient evidence that it complied with the Court’s prior equity orders set forth in *Gannon I* and found that the amended supplemental general state aid and capital outlay state aid equalization formulas in SB 7 failed to cure the unconstitutional wealth-based disparities between districts.²⁰ In response, the Legislature enacted Senate Substitute for House Bill No. 2655 amending both

¹³ *Id.* at 1175.

¹⁴ *Id.* at 1197.

¹⁵ *Id.* at 1200.

¹⁶ *Gannon v. State*, No. 2010CV1569 at 115 (Shawnee Co. Dist. Ct. Dec. 30, 2014).

¹⁷ *Gannon v. State*, No. 2010CV1569 at 7 (Shawnee Co. Dist. Ct. June 26, 2015).

¹⁸ *Gannon v. State*, No. 113,267 (Kan. Sup. Ct. Order July 24, 2015).

¹⁹ *Id.*

²⁰ *Gannon v. State*, 303 Kan. 682, 720, 726 (2016) (*Gannon II*).

the supplemental general state aid and capital outlay state aid formulas. In *Gannon III*, issued in May 2016, the Court held that HB 2655 cured the capital outlay inequities, but failed to cure the supplemental general state aid inequities.²¹ To address the supplemental general state aid inequities, the Legislature, in special session, passed Substitute for House Bill 2001. On June 28, 2016, the Court found HB 2001 cured the supplemental general state aid inequities, but the Court retained jurisdiction over equity.²²

Gannon IV

With the equity portion of the case resolved, the Court turned to adequacy. In *Gannon IV*, the Court held that the CLASS Act did not satisfy the adequacy component of Article 6.²³ The Court found that the CLASS Act did not meet either the structure or implementation requirements of the adequacy test.²⁴ When reviewing the structure of the CLASS Act, the Court held that the CLASS Act was inadequate because it “does not profess to be a school finance formula” and is merely a “funding stopgap.”²⁵ When reviewing the implementation of the CLASS Act, the Court examined the inputs to the K-12 educational system (the costs and funding sources of providing an adequate system)²⁶ and the outputs from the system (various student achievement measures).²⁷ In its review of inputs, the Court found the level of funding and the impact of such funding inadequate.²⁸ In its review of outputs, the Court found the State is failing to provide nearly one-fourth of all public school students in Kansas with basic skills in both reading and math and that achievement gaps existed between all students and certain subgroups of students.²⁹ Though the Court affirmed the Panel’s conclusion that the CLASS Act is unconstitutional, it stayed all orders to give the Legislature the opportunity to enact a new school finance system prior to June 30, 2017.³⁰ The Court stated that because the adequacy portion of the case would now be in the remedial phase, the State has the burden to demonstrate that any

²¹ *Gannon v. State*, 304 Kan. 490, 493 (2016) (*Gannon III*).

²² *Gannon v. State*, No. 113, 267 (Kan. Sup. Ct. Order June 28, 2016).

²³ *Gannon v. State*, No. 113,267 at 76. (March 2, 2016) (*Gannon IV*).

²⁴ *Id.*

²⁵ *Id.* at 49.

²⁶ *Id.* at 52-61.

²⁷ *Id.* at 62-77.

²⁸ *Id.* at 52.

²⁹ *Id.* at 67, 69.

³⁰ *Id.* at 81.

new school financing system is “reasonably calculated to address the constitutional violations” of the adequacy requirement while also satisfying the equity requirement.³¹

Senate Bill No. 19

On June 5, 2017, the Legislature passed SB 19, which includes the KSEEA, as the new school finance formula after the CLASS Act expired and was found unconstitutional by the Court. The KSEEA attempted to address the concerns the Court expressed in *Gannon IV* by increasing the amount of overall funding allocated to school districts and by directly targeting some of the increased funds to the underperforming students that seemed of particular concern to the Court in *Gannon IV*.³²

GANNON V COMPREHENSIVE SUMMARY

In *Gannon V*, the Court reviewed the constitutionality of the KSEEA and held that the State failed to demonstrate that the KSEEA satisfied both the adequacy and equity components of Article 6.³³ The Court recognized that SB 19 “arguably makes positive strides,” however, the financing system has not been shown by the State to be “reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*” and does not provide school districts “reasonably equal access to substantially similar educational opportunity through similar tax effort.”³⁴ The Court retained jurisdiction of the case and extended the stay of its previous mandate until June 30, 2018.³⁵ The briefing schedule for any legislative remedy begins on April 30, 2018.³⁶

Adequacy

To satisfy the adequacy component of Article 6, the State has the burden to demonstrate that its public school financing system is reasonably calculated to have all public education students meet or exceed the *Rose* standards through both structure and implementation.³⁷ Simply put, the Court is requiring the State to “show its work” as to how the school finance formula will achieve constitutional compliance.³⁸

³¹ *Id.* at 82.

³² *Id.* at 67-76.

³³ *Gannon IV* at 4.

³⁴ *Id.* at 78. Quoted text first stated in *Gannon I* at 1170 and 1175.

³⁵ *Id.* at 80.

³⁶ *Id.*

³⁷ *Gannon I* at 1175.

³⁸ *Gannon IV* at 78.

Structure

The Court held that the KSEEA satisfies the structure component of the adequacy test under Article 6.³⁹ The Plaintiffs argued that KSEEA’s structure was unconstitutional because certain programs were not funded at the statutorily required level; there would not be enough revenue to fund schools by fiscal year 2021; and there is the possibility that future legislators could refuse to increase the BASE aid amount for inflation.⁴⁰ The Court rejected all the Plaintiff’s arguments because they “involve too many contingencies and require [the Court] to make too many assumptions.”⁴¹ The Court held the structure of the KSEEA constitutionally adequate.⁴²

Implementation

The Court held that the KSEEA does not satisfy the implementation component of the adequacy test under Article 6.⁴³ The Court reiterated that the State has the burden to show constitutional compliance in the remedy phase of the litigation and was required to “show its work” in demonstrating how the KSEEA satisfied the adequacy test.⁴⁴

Successful Schools Model

To show its work, the State primarily relied on a successful schools model to demonstrate that the KSEEA funding levels were constitutionally adequate.⁴⁵ The successful schools model identified 41 school districts in Kansas that exceeded their expected performance based on certain criteria.⁴⁶ The successful schools model is similar to one of two models utilized by Augenblick & Myers (A&M) in its 2002 cost study.⁴⁷

The Court found that the State’s successful schools model was not persuasive and failed to demonstrate that the overall funding and the BASE aid amount provided for in the KSEEA were constitutional.⁴⁸ Generally, the Court questioned the information used in the successful

³⁹ *Gannon V* at 18.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 20.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 21.

⁴⁷ *Id.* at 20-21. The Augenblick & Myers independent firm hired by the Legislature completed a cost study analysis of the Kansas public education finance system in 2002 that has been an often-cited source of data for the Court, the parties and the Legislature in the *Gannon* series of decisions.

⁴⁸ *Id.* at 20-21.

schools model saying it lacked specificity and did not provide enough relevant data.⁴⁹ According to the Court, “the State’s ‘successful schools’ model does not contain enough schools or districts meeting student performance standards—much less constitutional standards of adequacy...”⁵⁰ The Court found that the State’s successful schools model was not nearly as extensive or as detailed as the A&M study. Further, the A&M study’s use was in “contrast to the State’s [current] approach” due to the State’s emphasis on efficiency.⁵¹ Based on the flaws the Court cited in the successful schools model, it concluded that “the State has not established any valid figure through its calculations...to show [the KSEEA] is constitutionally adequate.”⁵²

Effective Base

The State argued that when the BASE aid amount of \$4,006 specified by the KSEEA is combined with projected LOB funds, it created an effective BASE aid amount that not only exceeds the 2006 Legislative Division of Post Audit (LPA) cost study recommended BASE aid amount adjusted for inflation, but also is sufficient to satisfy the adequacy component of Article 6.⁵³ The Court, however, disagreed because, as the LPA study concluded, student performance could only improve if more than just an inflation-adjusted amount was provided and improved performance was necessary for students “to at least reach the minimum standards of the [*Rose* capacities].”⁵⁴ The Court noted its concern with the performance level of all students, not just certain underperforming subgroups and ultimately found that the State failed to demonstrate “why, how, or by how much” KSEEA funding levels would improve such student performance.⁵⁵

Additionally, the Court found inherent in the State’s effective base argument the notion that BASE aid and local option budget (LOB) funds are comparable, but rejected this as “a false equivalency because they are fundamentally different with frequently different purposes.”⁵⁶ According to the Court, “LOB-generated funds do not provide the same fixed amount to every student regardless of their locale. The individual districts that levy those discretionary mills not

⁴⁹ *Id.* at 23 and 24.

⁵⁰ *Id.* at 27.

⁵¹ *Id.* at 28-29.

⁵² *Id.* at 32.

⁵³ *Id.* at 35-36. (The Kansas Division of Legislative Post Audit completed a cost study analysis titled “Elementary and Secondary Education in Kansas: Estimating the Costs of K-12 Education Using Two Approaches” in 2006 that has been an often-cited source of data for the Court, the parties and the Legislature in the *Gannon* series of decisions).

⁵⁴ *Id.* at 37-38.

⁵⁵ *Id.* at 39.

⁵⁶ *Id.*

only retain these funds, but the amounts of those funds can also vary widely among the districts...”⁵⁷ The Court held that LOB funds cannot be combined with BASE aid funds to create an “effective base” because LOB funds do not provide the same benefit to every school district.⁵⁸

At-Risk Funding

The State further argued that the KSEEA addressed adequacy through increased and targeted funding for students receiving at-risk program services. Specifically, the KSEEA addressed at-risk students and programs by: (1) increasing the at-risk weighting from .456 to .484; (2) providing a 10% at-risk floor; (3) funding full-day kindergarten; (4) providing additional funds for preschool-aged at-risk students; (5) requiring at-risk funds be spent on at-risk programs consistent with best practices as determined by the State Board of Education; and (6) requiring that any remaining at-risk funds at the end of a fiscal year remain in the fund and not be used for any other purpose.⁵⁹ In response, the Court recognized the following benefits of such actions in that:

- (1) The increased at-risk weighting does increase funding for at-risk students by \$23 million.⁶⁰
- (2) The 10% at-risk floor increases at-risk funding by \$2 million, but the Court notes such funding only benefits two school districts.⁶¹
- (3) Full-day kindergarten is a widely accepted method to improve student performance and funding full-day kindergarten makes available funds school districts had been using to provide full-day kindergarten and allows school districts to utilize those funds elsewhere.⁶²
- (4) Increased funding to preschool-aged at-risk students will help reduce the achievement gap in the future and is helpful.⁶³
- (5) The requirement that at-risk funds be spent on at-risk programs identified by the state board of education as at-risk best practices is “a direct attempt by the State to help at-risk students.”⁶⁴

⁵⁷ *Id.* at 40.

⁵⁸ *Id.* at 41.

⁵⁹ L. 2017, ch. 95, §§ 1, 2, 23, 25.

⁶⁰ *Gannon V* at 44.

⁶¹ *Id.* at 45.

⁶² *Id.* at 46.

⁶³ *Id.* at 47.

⁶⁴ *Id.* at 48

- (6) The requirement that any remaining at-risk funds remain in the at-risk fund at the end of the fiscal year “reflects an effort to maintain funding allocated specifically to benefit at-risk students.”⁶⁵

Despite the Court’s recognition of the Legislature’s efforts to target funding toward at-risk students and improve at-risk student performance, the Court determined that the State failed to sufficiently demonstrate how each of these provisions of the KSEEA would satisfy the adequacy component of Article 6.⁶⁶ Specifically, the Court found that:

- (1) Even though the Legislature increased the at-risk weighting, the State did not “indicate how \$23 million, coupled with [the KSEEA’s] other provisions, will be adequate for the underperforming students...to meet the *Rose* standards.”⁶⁷
- (2) Providing a 10% at-risk floor only benefits two districts and the State “has not offered any support for its argument” that the additional \$2 million provided by this provision “significantly contributes” to adequacy.⁶⁸
- (3) Funding all-day kindergarten would “not result in ‘new money’ for all districts” and “despite probably being a move in the right direction, the State has not shown on the record why this unknown amount” satisfies the adequacy requirement.⁶⁹
- (4) Increasing preschool-aged at-risk funding will help reduce the achievement gap for young students, but not current K-12 students and the State did not offer any support that this additional funding significantly contributes to adequacy.⁷⁰
- (5) While the best practices requirement attempts to help at-risk students, the “State has not demonstrated how this is going to result in a material improvement over the longstanding requirement that school districts have an approved at-risk student assistance program.”⁷¹
- (6) Requiring remaining at-risk funds to remain in the at-risk fund at the end of the school year “reflects an effort to maintain funding allocated specifically to benefit at risk students,” but “the State has not demonstrated how many districts had balances in

⁶⁵ *Id.* at 49.

⁶⁶ *Id.* at 44-49.

⁶⁷ *Id.* at 44-45.

⁶⁸ *Id.* at 45-46.

⁶⁹ *Id.* at 47.

⁷⁰ *Id.*

⁷¹ *Id.* at 48.

their at-risk funds at the end of each fiscal year...much less what those amounts were.”⁷² So, “it is unknown what actual impact this provision will have.”⁷³

Increased Funding Calculations

The Court noted that multiple calculations for increased funding were submitted to the Court, and those calculations were “considerably higher than the \$292.5 million presented by the State.”⁷⁴ The plaintiffs proposed a calculation of \$1.7 billion based on an average of the A&M study recommended BASE and the LPA study recommended BASE adjusted for inflation. The plaintiffs alternatively proposed another calculation of \$819 million based on the Panel’s 2014 proposed BASE adjusted for inflation.⁷⁵ The Court also cited the Kansas Department of Education budget recommendation to the governor of \$893 million.⁷⁶ The Court stated that the difference between the other proposed calculations and the funding provided by the KSEEA emphasized the State’s need “to demonstrate the validity of its funding approach.”⁷⁷

Holding on Adequacy

The Court found that while the structure of the KSEEA is constitutionally adequate, the implementation of the KSEEA is constitutionally inadequate because the State “has not met its burden to satisfactorily demonstrate to this court that the K-12 public education financing system the legislature enacted, [the KSEEA], ‘is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*’”⁷⁸

Equity

To satisfy the equity component of Article 6, the State must demonstrate that the KSEEA provides school districts with “reasonably equal access to substantially similar educational opportunity through similar tax effort.”⁷⁹ The Court clarified that any wealth-based disparities should be reasonable when measured by [the equity] test⁸⁰ and “wealth-based disparities are unreasonable if the remedial legislation increases or exacerbates inequities among districts.”⁸¹ The Court held that the State failed to demonstrate that the KSEEA satisfies the equity

⁷² *Id.* at 49.

⁷³ *Id.*

⁷⁴ *Id.* at 43.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 50.

⁷⁹ *Id.* at 51.

⁸⁰ *Gannon I* at 1180.

⁸¹ *Gannon V* at 52.

component and it exacerbates wealth-based inequities between school districts, particularly with respect to the expanded use of capital outlay funds, the procedure to raise the maximum LOB authority, basing LOB calculations on the preceding year and the at-risk 10% floor.⁸²

Expanded Use of Capital Outlay Funds

Money in a school district’s capital outlay fund is limited in use to certain property-related expenses and the KSEEA expanded those uses to include property and casualty insurance and utility expenses.⁸³ The State argued that the expanded uses of the capital outlay fund does not raise an equity concern because the expanded uses logically relate to the existing purposes of the capital outlay fund and the expansion applies to all school districts and does not impact any school district’s tax effort.⁸⁴ The plaintiffs argued that the Legislature’s “equalization point for the capital outlay fund is significantly lower than for the LOB fund” and for every dollar a school district generates from its capital outlay mill levy, it receives less capital outlay equalization aid than it would for LOB equalization aid.⁸⁵

The Court agreed with the plaintiffs and further explained that if property and casualty insurance and utilities can now be paid from the capital outlay fund, money in the school district’s general fund or LOB fund would be “released for other purposes” and such money from those funds may be used for a greater number of authorized uses,⁸⁶ which “results in increased overall flexibility of districts’ spending.”⁸⁷ The Court acknowledged that increased flexibility is advantageous for local school boards, but causes concern in that it creates or increases wealth-based disparities because of “the varying ability of districts to take advantage of this shift of certain expenditures to capital outlay funds, and that variation is tied to wealth.”⁸⁸ As such, school districts do not have reasonably equal access to substantially similar educational opportunity through similar tax effort.⁸⁹

Procedure to Raise LOB Maximum Authority

The KSEEA provides that if a school district seeks to raise its maximum LOB authority by resolution, the electors of such school district may object to the resolution by protest

⁸² *Id.* at 50-51.

⁸³ K.S.A. 72-8801 and L. 2017, ch. 95, § 91.

⁸⁴ *Gannon V* at 56.

⁸⁵ *Id.* at 57.

⁸⁶ *Id.* at 59.

⁸⁷ *Id.*

⁸⁸ *Id.* at 59-60.

⁸⁹ *Id.* at 61-62.

petition.⁹⁰ The Court determined that “the protest-petition process will exacerbate wealth-based disparities among districts” except for those districts that are already at the statutory maximum.⁹¹ Based on that determination, the Court held that the protest petition for LOB authority violates the equity requirement because it only applies to districts seeking to increase LOB authority, not districts that currently have reached maximum LOB authority.⁹²

LOB Calculation Based on the Preceding School Year

The KSEEA calculates supplemental general state aid based on a school district’s LOB percentage from the preceding school year rather than from the current school year as had been done under the SDFQPA.⁹³ The State argued this provision increases predictability, and is sound public policy. The Court recognized the rational basis for this provision, but ultimately rejected the argument stating that, “regardless of the policy justifications for embracing predictability and certainty, the legislature may not violate Article 6 under that banner” if it exacerbates a wealth-based inequity.⁹⁴ The Court held the KSEEA provision requiring that school districts use their preceding year’s LOB percentage for computing equalization state aid is inequitable because a school district qualified to receive supplemental general state aid that increases its maximum LOB authority would not receive an increase in supplemental general state aid for that school year, which “widens the gap between property-poor and property-wealthy districts.”⁹⁵

At-Risk 10% Floor

The KSEEA allows any school district that has less than 10% of its student population qualify for the at-risk weighting to receive at-risk funding as though 10% of its students qualified for the at-risk weighting.⁹⁶ The Court found that this 10% floor provision “uses a wealth-based standard” because it only applies to school districts “where a proportionately higher number of students live in households” with high enough income levels that they do not qualify for the at-risk weighting.⁹⁷ The Court held the 10% minimum for at-risk funding is inequitable because of its disequalizing effect and the State did not establish that this provision satisfies the equity

⁹⁰ L. 2017, ch. 95 § 15.

⁹¹ *Gannon V* at 68.

⁹² *Id.* at 69.

⁹³ See L. 2017, ch. 95, § 17 and K.S.A. 72-6434, prior to its repeal.

⁹⁴ *Gannon V* at 71.

⁹⁵ *Id.* at 70-72.

⁹⁶ L. 2017, ch. 95, § 23.

⁹⁷ *Gannon V* at 75. A student who qualifies for the at-risk weighting is a student who is eligible for free meals under the National School Lunch Act, which uses a household income threshold to determine eligibility.

component of Article 6.⁹⁸ The Court did, however, note that this issue might be tolerable if overall funding were adequate.⁹⁹

Remedy¹⁰⁰

The Court declined to provide a specific minimum amount of additional funding required to reach constitutional adequacy because “to do so would exalt funding over other constitutional considerations such as equity and structure.”¹⁰¹ The Court stayed its mandate on the KSEEA until June 30, 2018, to provide the Legislature an opportunity to bring the KSEEA into constitutional compliance.¹⁰² Under the stay, the KSEEA remains in effect until June 30, 2018. However, the Court also set a briefing schedule for arguing the merits of any school finance legislation passed in the 2018 legislative session that is enacted to cure any constitutional infirmities with the KSEEA that begins on April 30, 2018.¹⁰³ The Court retained jurisdiction over the State’s appeal and the stay of its mandate.¹⁰⁴

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Justice Johnson, joined by Justice Rosen, concurred with the majority’s opinion that the KSEEA is inadequate and inequitable, but dissented in permitting the State enact a remedy by June 30, 2018 and would have instead required any legislative remedy to be completed by the end of 2017. Justice Biles also concurred with the majority’s opinion that the KSEEA is inadequate and inequitable, but dissented in allowing the inequitable provisions of the KSEEA to continue in effect during the 2017-2018 school year and would have instead enjoined their implementation before school district budgets were finalized.

¹⁰¹ *Gannon V* at 76.

¹⁰² *Id.* at 77-78.

¹⁰³ *Id.* at 80.

¹⁰⁴ *Id.*