THE CHALLENGES FACING PUBLIC EDUCATION IN 2017

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(1.0 CLE) This panel will examine the Gannon school funding case and the issues regarding funding education in Kansas. They will also cover recent issues involving student civil rights and employment issues.

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Top Ten Legal Challenges Facing Kansas Public Schools

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I. New School Finance Formula
II. Gannon School Finance Case
III. Expansion and Funding of Special Education
IV. Parental Involvement and Poverty
V. Teacher Salaries, Health Insurance, Negotiations and Due Process
VI. Retirement and Recruitment of Teachers and KPERS Retirement Benefits
VII. Title IX and Transgender Students
VIII. Social Media, Snapchat, Instagram and all Things Electronic
IX. The Federalization of Employment Law: FMLA and FLSA
X. Demographics of an Aging and Declining Population
CHRONOLOGY OF KEY EVENTS IN GANNON AND PETRELLA

1966: Kansas adopted its education article as part of the Kansas Constitution, which in part requires that “[t]he legislature shall make suitable provision for finance of the educational interests of the state.”


1989: Alan Rupe becomes involved in school finance litigation when the then existing school funding legislation (the School District Equalization Act or SDEA) is challenged by several school districts and individuals in Mock v. State of Kansas, 91-CV-1009 (Shawnee County District Court, slip op. October 14, 1991).

October 14, 1991: Honorable Terry L. Bullock issued an opinion in Mock v. State of Kansas, 91CV1009 (Shawnee County District Court, slip op. October 14, 1991) that indicated he would find the funding formulas, as they existed, were unconstitutional. The decision prompted the Governor and legislative leadership to appoint a task force to investigate legislative alternatives which would satisfy the guidelines in the decision. This task force issued a report recommending a new formula granting each district the same base state aid per pupil (BSAPP) and then allowing for certain adjustments for student needs and district size.


December 2, 1994: For the first time, the Supreme Court, considered the merits of a school finance case. In U.S.D. 229, the Supreme Court upheld the School District Finance and Quality Performance Act (SDFQPA) as constitutional. The decision set the stage for Montoy.

1999: The Montoy cases begin, five years after previous challenges to the State’s, through its legislature, school funding scheme. Alan Rupe and his team (including John Robb), on behalf of the Plaintiffs, filed a lawsuit alleging (1) a violation of Art. VI, § 6 of the Kansas Constitution; (2) a violation of equal rights protection under the Kansas Constitution; and (3) a violation of the substantive due process rights under the Kansas Constitution.

At the same time, the same Plaintiffs, represented by Alan Rupe and his team (including John Robb), filed a lawsuit in federal court alleging that the funding discriminated against students based on their race and national origin in violation of the United States Constitution and Title VI of the Civil Rights Act of 1964; that the funding discriminated against students based on disability in violation of the United States Constitution and the Rehabilitation Act of 1973 and the Americans with Disabilities Act; that the funding discriminated against students based on their national origin and limited English proficiency in violation of the Equal Education Opportunity Act; and that the funding denied students equal protection under the United States Constitution.
Constitution. The case was styled *Robinson v. State of Kansas*. It was ultimately dismissed voluntarily and all claims against the State at that time were pursued in the *Montoy* case.

**January 3, 2005:** The Kansas Supreme Court held that the public school financing formula adopted by the State, through its legislature, had failed to meet its constitutional burden. *Montoy v. State of Kansas*, 278 Kan. 769, 771, 120 P.3d 306, 308 (2005) (Montoy II).

**2005-2006:** Legislative activity took place and was determined inappropriate to remedy the constitutional defects.

**May 19, 2006:** In response to previous *Montoy* decisions and results of the LPA cost study, the governor signed S.B. 549 (a three-year funding plan to increase K-12 funding) into law.

**July 28, 2006:** The Kansas Supreme Court dismissed the *Montoy* lawsuit; the Court held (1) the constitutionality of S.B. 549 was not properly before the Court (“A constitutional challenge of S.B. 549 must wait for another day.” – *Montoy V*, at 20-21); (2) that the Legislature responded to the Court’s previous concerns regarding the constitutionality of the funding system; and (3) that the appeal was dismissed (in so holding, the Court specifically decided not to remand the case to the district court to allow the plaintiffs to challenge the new funding formula. *Montoy v. State*, 282 Kan. 9, 12, 138 P.3d 755, 758 (2006).

**February of 2009:** The Governor and Legislature begin to cut school funding; education funding is ultimately reduced in excess of $511 million per year between 2009 and 2011. See Trial Ex. 241.

**January 11, 2010:** Alan Rupe and his team (including John Robb and Jessica Skladzien), on behalf of *Montoy* Plaintiffs, file Motion to Re-Open *Montoy v. State of Kansas*, Case No. 04-92032-S, with the Kansas Supreme Court.

**February 12, 2010:** Supreme Court denies request to re-open *Montoy*. Instructs that “there is nothing the plaintiffs are seeking that they cannot accomplish by filing a new lawsuit.”

**June 17, 2010:** Pursuant to K.S.A. 72-64b02(a), Plaintiffs send a Notice of Claims to the Secretary of the Kansas Senate and the Chief Clerk of the Kansas House of Representatives indicating their intent to file a lawsuit alleging violations of Article 6 of the Kansas Constitution. See Tr. Ex. 363. This is a prerequisite for filing the *Gannon* lawsuit.

**November 2, 2010:** Alan Rupe and his team (including John Robb and Jessica Skladzien), filed a lawsuit alleging various claims, including violations of Article 6 of the Kansas Constitution, styled, *Gannon et al v. State of Kansas*.

**November 4, 2010:** Kansas Court of Appeals Chief Judge Gary W. Rulon assigns a three-judge panel, pursuant to K.S.A. 72-64b03, to preside over the *Gannon* litigation. Judges Franklin R. Theis, Robert J. Fleming, and Jack L. Burr will preside over the matter.
**December 10, 2010:** USD 512 students and parents filed a lawsuit alleging various claims, including the constitutional right to levy unlimited taxes to fund their schools and an injunction eliminating any cap on the LOB, styled, *Petrella et al v. Parkinson [now Brownback] et al.*

**December 23, 2010:** Alan and his team (including John Robb and Jessica Skladzien), filed a motion to intervene in *Petrella* on behalf of the interests of the *Gannon* plaintiffs.

**January 18, 2011:** Kansas District Court Judge John Lungstrum granted the *Gannon* Plaintiffs' motion to intervene in *Petrella*.


**December 2, 2011:** *Gannon* Plaintiffs filed their Amended Petition, which contains the claims that will ultimately be decided by the Panel. *See* Tr. Ex. 238.

**2012:** The Legislature continues to eliminated state income taxes; eliminates state income taxes on partnerships and small businesses. Estimates for state general fund ending balance plummets. *See e.g.* Tr. Ex. 299.

**June 4, 2012:** The *Gannon* trial began; the 16 day trial stretched over a period of four weeks. During the course of that trial, 44 witnesses testified and 662 exhibits were introduced into evidence. There are 3,672 pages of trial transcripts and at least 18,727 pages of exhibits.

**October 18, 2012:** The 10th Circuit Court of Appeals reversed Judge Lungstum's dismissal of the *Petrella* Plaintiffs' complaint and remanded the case for further proceedings. *Petrella v. Brownback*, 697 F.3d 1285 (2012).

**January 11, 2013:** Three judge panel unanimously issued a decision in *Gannon* finding that the school finance system was unconstitutional. The panel found “that Plaintiffs have established beyond any question that the State’s K-12 education system now stands as constitutionally underfunded.” With regard to the tax cuts, the panel stated, “It seems completely illogical that the State can argue that a reduction in education funding was necessitated by the downturn in the economy and the state’s diminishing resources and at the same time cut taxes further, thereby further reducing the sources of revenue on the basis of a hope that doing so will create a boost to the state’s economy at some point in the future.” The panel enjoined the Kansas Legislature from spending less than $4,492 per pupil on education, an approximate total increase of $500 million.

**January 11, 2013:** The State appealed the *Gannon* ruling to the Kansas Supreme Court. Alan Rupe and his team (including John Robb, Jessica Skladzien, and Mark Kanaga) continue to represent Plaintiffs.

**January 30, 2013:** *Gannon* Plaintiffs filed Notice of Cross-Appeal, mainly appealing remedy (we thought base should be higher than statutory $4,492 (the Panel’s remedy was to raise the base to $4,492) and should be closer to the averages of the A&M/LPA studies (or $5,944))
February 7, 2013: State files motion seeking Order from the Kansas Supreme Court directing the parties to mediate the issues underlying the Gannon appeal.

March 1, 2013: Kansas Supreme Court ordered mediation of the issues underlying the Gannon appeal.

April 29 and 30, 2013: Parties to Gannon litigation attempted mediation; mediation was unsuccessful.

May-September, 2013: The Gannon parties and amici submit briefs to Kansas Supreme Court; 800 pages of briefs filed by the parties and the five amici:
  - May 15, 2013: Each side filed their principle briefs
  - July 15, 2013: Response briefs filed
  - August 9, 2013: Reply briefs filed
  - September 2013: 4 amicus briefs filed on behalf of Plaintiffs
    o Emporia School Districts
    o Kansas Association of School Boards
    o Kansas National Education Association
    o Education Law Center

October 8, 2013: Oral argument was presented to the Kansas Supreme Court in Gannon v. State.


March 7, 2014: The Kansas Supreme Court issued a 110-page ruling in Gannon, firmly setting forth that it is ultimately responsible for determining whether the school finance system is educational. Gannon v. State, 298 Kan. 1107. The Court held that there were two aspects of a constitutional formula: equity and adequacy. The Court upheld the Panel’s decision that the constitutional formula was inequitable and ordered the Legislature to fix the inequities no later than July 1, 2014. With regard to adequacy, the Court held that the Panel applied the incorrect standard of “actual costs” and should have instead determined whether the funding was reasonably calculated to meet the Rose factors. Remanded the matter to the panel to assess whether 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 standards set out in Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989) and as presently codified in K.S.A. 2013 Supp. 72-1127. Instructed that the Court could make the decision either on the current record or after reopening.

April 21, 2014: Governor Brownback signed HB 2506 into law.

April 25, 2014: Gannon Panel ordered “equity hearing” on HB 2506 to determine whether it complied with Supreme Court’s determination.

May 16, 2014: Gannon Plaintiffs filed Motion to Enter Judgment on Existing Record (regarding adequacy).
June 11, 2014: *Gannon* Panel held “equity hearing” and Panel determined HB 2506 met the Court’s requirements and that no further action by the Panel was required – made no determinations regarding adequacy.

December 30, 2014: *Gannon* Panel issued decision finding that the current funding levels were inadequate and held:
- Not necessary to take any more information than what was currently before them
- No need to change case caption
- “constitutional inadequacy from any rational measure or perspective clearly has existed and still persists in the State’s approach to funding the K-12 school system”
- “we find the Kansas public education financing system provided by the legislature for grades K-12 – through structure and implementation – is not presently reasonably calculated to have all Kansas public education students meet or exceed the Rose factors”

January 23, 2015: The State filed motion asking the *Gannon* Panel to alter its judgment on adequacy.

January 27, 2015: *Gannon* Plaintiffs filed a motion asking Panel to alter its judgment on equity. Specifically, Plaintiffs cited the fact that HB 2506 has still not been fully funded.

January 28, 2015: The State appealed the Panel’s December 2014 Order in *Gannon* finding that current funding levels were inadequate.

February 5, 2015: Governor Brownback announced further cuts to school funding.

March 5, 2015: The Kansas Supreme Court remands the State’s appeal in *Gannon* to the Panel until resolution of all pending post-trial motions.

March 11, 2015: The *Gannon* Panel enters an ordering denying the State’s Motion to Alter or Amend the Panel’s December 30 Order (with regard to adequacy).

March 13, 2015: The *Gannon* Panel sets a hearing on Plaintiffs’ motion asking the Panel to alter its judgment on equity. The hearing is set to take place starting May 7, 2015.

March 16, 2015: The State again appeals *Gannon* to the Kansas Supreme Court, this time as to the issue of adequacy.

March 18, 2015: Plaintiffs ask the Kansas Supreme Court to strike the notice of appeal and allow the Panel to reach a decision on equity before allowing the appeal to proceed.

March 25, 2015: Governor Brownback signs House Substitute for Senate Bill 7 (S.B. 7) (“the block grant bill”) into law, which – among other things – revokes some of the equalization funding adopted in H.B. 2506 and establishes that, going forward, school districts will receive block grants to fund education.
**March 26, 2015:** *Gannon* Plaintiffs filed Motion for Declaratory Judgment and Injunctive Relief seeking an order that S.B. 7 is unconstitutional.

**April 30, 2015:** Kansas Supreme Court granted the district court jurisdiction to resolve all pending post-trial matters.

**May 7, 2015:** *Gannon* Panel holds hearing to determine whether State is in compliance with equity mandate; indicates that it will provisionally take information for purposes of determining whether S.B. 7 is constitutional.

**May 15, 2015:** The parties in *Gannon* submit post-hearing briefing on constitutionality of S.B. 7 and State’s current failure to meet

**June 1, 2015:** The Tenth Circuit issues an Order affirming the district court’s decision denying the *Petrella* Plaintiffs’ motion for preliminary injunction and dismissing any claims the *Petrella* Plaintiffs intended to assert under a strict scrutiny analysis. *Petrella v. Brownback*, 787 F.3d 1242 (2015). This is the second Tenth Circuit order in the *Petrella* matter.

**June 8, 2015:** *Petrella* Plaintiffs docket an appeal with the Kansas Supreme Court in the *Gannon* matter seeking to appeal the Panel’s denial of their motion to intervene.

**June 15, 2015:** *Petrella* Plaintiffs file a petition for rehearing *en banc.*

**June 26, 2015:** The *Gannon* Panel issued an order on the constitutionality of S.B. 7, finding that (1) the adoption of the block grant bill does not comply with the Supreme Court’s March Order as to equity and (2) that it “stands, unquestionably and unequivocally, as constitutionally inadequate in its funding.” To cure these constitutional defects, the Panel did not wholly strike down the block grant bill (S.B. 7) and instead tried to fashion a remedy that would allow the block grant statute to exist, but in a more constitutional manner. The Panel concluded that the following orders (which it entered) would “mitigate the urgency” for completely invalidating the block grant bill:

1. A temporary restraining order (TRO) pending the Supreme Court’s review on appeal that requires funding be distributed based on the current years’ weighted enrollment and not the total funds available or the enrollment from the 2014-15 school year (effectively ending the “freeze” on funding);
2. An order striking the capital outlay state aid funding (Sec. 63) and LOB state aid provisions (Sec. 38) of the block grant statute as unconstitutional;
3. An order reinstating the capital outlay state aid funding and LOB state aid statutes as they existed prior to the adoption of the block grant bill;
4. An order encumbering the money necessary to distribute capital outlay state aid funding and LOB state aid funding for this year as calculated by the statute that existed prior to the adoption of the block grant bill (K.S.A. 72-8814 and H.B. 2506);
5. An order joining the Kansas State Board of Education as a party for purpose of effecting the remedy; and
6. An order retaining jurisdiction and indicating that the Legislature’s failure to comply with this Order would likely result in complete invalidation of the block grant bill and an order that the funds be distributed under the old formula (the SDFQPA).

The State appealed the Order to the Kansas Supreme Court the same day.

**June 29, 2015:** *Petrella* Plaintiffs request for rehearing *en banc* is denied.

**June 29, 2015:** The State files a request with the Kansas Supreme Court asking for a stay of the Panel June 26, 2015 Order.

**June 30, 2015:** The Kansas Supreme Court stayed the Panel’s June 26, 2015 Order and indicated that it would issue an expedited briefing schedule.

**July 7, 2015:** The 10th Circuit affirms District Court decision and remands to District Court for further review.

**August 10, 2015:** The Shawnee Mission School District filed its Kansas Supreme Court appellant brief seeking reversal of the Panel’s decision not to allow the district to intervene in the *Gannon* lawsuit.

**September 2, 2015:** The Defendants State of Kansas and Mr. Estes and the *Gannon* Plaintiffs filed their *Gannon* equity briefs in the Kansas Supreme Court.

**September 2, 2015:** Defendants, Kansas State Board of Education and Dr. DeBacker, filed their Answer in the *Petrella* lawsuit.

**September 14, 2015:** The Defendant State of Kansas and the *Gannon* Plaintiffs filed their Kansas Supreme Court appellee briefs regarding the Panel’s decision not to allow the district to intervene in the *Gannon* appeal.

**September 14, 2015:** The District Court in *Petrella* granted Defendants’ motion to substitute Kansas State Board of Education members Steve Roberts for Sue Storm, Deena Horst for Kathy Martin, Kathy Busch for Walt Chappell, Jim McNiece for David T. Dennis and Jim Porter for Jana Shaver.


**October 2, 2015** The Defendants State of Kansas and Mr. Estes and the *Gannon* Plaintiffs filed their *Gannon* equity response briefs in the Kansas Supreme Court.

**October 5, 2015:** *Petrella* Plaintiffs filed petition for writ of certiorari with the U.S. Supreme Court.

October 23, 2015: Petrella Plaintiffs filed their motion to stay all proceedings in the District Court.

November 2, 2015: Petrella Intervenor-Defendants filed their brief in opposition to petition for writ of certiorari in U.S. Supreme Court.

November 4, 2015: The Kansas Supreme Court denied the Shawnee Mission School District’s request to participate in oral argument in the Gannon appeal.

November 6, 2015: The Kansas Supreme Court heard oral arguments in the equity portion of Gannon appeal.

November 13, 2015: The Defendant State of Kansas and the Petrella Plaintiffs filed their responses to the Petrella Plaintiffs’ motion to stay all proceedings in the District Court.

November 16, 2015: The Petrella Plaintiffs filed their reply to Petrella Intervenor-Defendants brief in opposition of plaintiffs’ petition for writ of certiorari in the United States Court.

November 23, 2015: The Defendants (both the State and Mr. Estes) filed their Gannon adequacy briefs in the Kansas Supreme Court.

November 30, 2015: The Petrella Plaintiffs filed their reply brief on their motion to stay proceedings in the District Court.


January 12, 2016: The Plaintiffs filed their response to the Defendants’ (both the State and Mr. Estes) Gannon adequacy briefs in the Kansas Supreme Court.

January 12, 2016: The District Court granted the Petrella Plaintiffs’ motion to stay proceedings.

January 27, 2016: The Defendant State of Kansas filed its Gannon adequacy reply brief in the Kansas Supreme Court.

February 11, 2016: The Kansas Supreme Court issued its Equity Opinion, in which it found the current school finance system unconstitutional yet again. The Court did not impose a remedy at this point choosing instead to give the legislature a short time to fix the unconstitutionality; however, if the legislature does not fix the equalization issues by June 30, the Court declared that it will be forced to shut down the state school system. Gannon v. State, 303 Kan. 682 (2016).
February 18, 2016: The Plaintiffs filed a Motion to Modify the Court’s Order to Clarify Certain Language in the Kansas Supreme Court.

February 25, 2016: Defendant State of Kansas filed its Response to Plaintiffs’ Motion to Modify the Court’s Order to Clarify Certain Language in the Kansas Supreme Court.

February 26, 2016: The Plaintiffs filed its Reply to Defendant’s Response to Plaintiffs’ Motion to Modify the Court’s Order to Clarify Certain Language in the Kansas Supreme Court.

March 21, 2016: The Kansas Supreme Court denied Plaintiffs’ Motion to Modify the Court’s Order to Clarify Certain Language.

March 24, 2016: Senate Substitute for H.B. 2655 passed both legislative chambers and was sent to Governor Brownback.

April 7, 2016: Governor Brownback signed Senate Substitute for H.B. 2655. The State of Kansas filed a Notice of Legislative Cure with the Kansas Supreme Court, providing the Court with the text of Senate Substitute for House Bill 2655 and the transcript of the legislative hearings held during the bill’s development and passage.

April 8, 2016: The Kansas Supreme Court issued a scheduling order providing briefing and oral argument deadlines regarding the Court’s review of Senate Substitute for House Bill 2655. Oral argument to be held on May 10, 2016.

April 15, 2016: Defendant State of Kansas filed its Brief Concerning Legislative Cure in the Kansas Supreme Court.

April 25, 2016: Plaintiffs filed their Response to Defendant’s Brief Concerning Legislative Cure in the Kansas Supreme Court.

May 5, 2016: Defendant State of Kansas filed a Motion to Strike Appendix B to Plaintiffs’ Brief or, In The Alternative, to Consider the Appendix Attached to This Motion in the Kansas Supreme Court.

May 6, 2016: Plaintiffs filed their Response to Defendants’ Motion to Strike in the Kansas Supreme Court.

May 10, 2016: The Kansas Supreme Court heard oral arguments regarding Senate Substitute for House Bill 2655.

May 27, 2016: The Kansas Supreme Court released *Gannon III*, holding that the Kansas Legislature’s adoption of H.B. 2655 failed to cure the inequities present in the operation of the current school funding scheme, specifically as it related to how the State equalized local money raised under the Local Option Budget provisions. The Court declared that the system was unconstitutional as of the date of its order, and reiterated its declaration in *Gannon II* that if the
Legislature did not adopt a constitutional formula on or before June 30, 2016, there would be no mechanism for funding Kansas public schools in FY17. *Gannon v. State*, 304 Kan. 490 (2016).

**June 7, 2016:** Governor Sam Brownback called for a special legislative session on education funding.

**June 23, 2016:** Special legislative session on education funding scheduled to begin.

**June 24, 2016:** The Legislature passed Sub for HB 2001 during a special legislative session with a 116-6 vote in the House and a 38-1 vote in the Senate. The bill funds $38 million in LOB Equalization Aid without assessing schools any of the general state aid they are scheduled to receive.

**June 27, 2016:** Governor Sam Brownback signed Sub for HB 2001. The *Gannon* Plaintiffs and the State of Kansas filed a Joint Stipulation of Constitutionality Equitable Compliance in the Kansas Supreme Court, in which they agreed that Sub for HB 2001 meets the equity requirements of the Kansas Constitution.

**June 28, 2016:** The Kansas Supreme Court entered an Order in *Gannon*, finding that Substitute for HB 2001 complied with the Court’s most recent order and resolved the current equity issues. The Court retained jurisdiction over all elements of the *Gannon* case and indicated that it would schedule oral argument to address the adequacy portion of the lawsuit in a separate court order. *Gannon v. State*, No. 113,267, 2016 Kan. LEXIS 314 (June 28, 2016).

**July 6, 2016:** The Kansas Supreme Court scheduled oral argument in the adequacy portion of *Gannon* appeal for September 21, 2016 and will allow supplemental briefs by both parties to be submitted by August 12, 2016.

**July 13, 2016:** The district court dismissed the *Petrella* Plaintiffs request to extend the stay in *Petrella* based on potential changes as *Gannon* proceeds. Urged Defendants to file a Motion to Dismiss based on Plaintiffs’ admission that the matter is not justiciable in its current procedural posture. *Petrella v. Brownback*, No. 10-2661, 2016 U.S. Dist. LEXIS 91698 (D. Kan. July 13, 2016).

**July 15, 2016:** *Petrella* Plaintiffs dismiss case and file stipulation of dismissal without prejudice.

**August 12, 2016:** The State and Plaintiffs filed supplemental briefs with the Kansas Supreme Court regarding the adequacy of the current funding levels.

**September 21, 2016:** Oral argument in the adequacy portion of *Gannon* appeal takes place before the Kansas Supreme Court.
History Leading to Adoption of Current School Funding Formula


The present text of Article 6, the education article, dates from amendments made in 1966. House Concurrent Resolution No. 537 stated the intent of the legislature in seeking amendment of the education article: “[t]hat the Kansas legislative council is hereby directed to make a study of the scope, function, and organization of the state in supervising education to comply with the constitutional requirement of a uniform system of public schools, *The Education Amendment to the Kansas Constitution*, Publication No. 256, Dec. 1965 Kansas Legislative Council, page v.

The committee assigned to review and recommend changes to the education article stated that by including an article on education in the original Kansas Constitution “the people secure[d] themselves what is of first importance by placing binding responsibilities on the legislative, executive, and judiciary documents.” *Education Amendment* at page 2. The committee further noted, “[t]he constitution of 1861 placed a responsibility on the legislature to establish a uniform system of schools,” and that “equality of educational opportunity is a goal which has been generally accepted.” (Emphasis added). *ID.* at 3.

After several floor amendments, the current Education Article was finally adopted, submitted to a popular vote, and ratified by the people, all in 1966. A careful examination of the current text of the article reveals four, essential, clear, and unambiguous mandates from the people (the source of all power in our democratic form of government):

Section 1. Schools and related institutions and activities. The *legislature* shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools . . . which may be organized and changed in such manner as may be provided by law. (Emphasis added).

Section 2. State board of education and state board of regents. (a) The *legislature* shall provide for a state board of education which shall have general supervision of public schools . . . all the educational interests of the state, except educational functions delegated by law to the state board of regents. (Emphasis added).

Section 5. Local public schools. Local public schools under the *general supervision* of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the *general supervision* of the state board of
education, but such agreements shall be subject to limitation, change or
termination by the legislature. (Emphasis added).

Section 6. Finance. (b) The legislature shall make suitable provision for
finance of the educational interests of the state. No tuition shall be charged for
attendance at any public school to pupils required by law to attend such school,
except such fees or supplemental charges as may be authorized by law.
(Emphasis added).

As further explained in Unified School District Number 229 v. State, 256 Kan. 232, 885
P.2d 1170 (1994):

At the time of the ratification of Article 6, school finance was controlled by the
State School Foundation Fund Act. L.1965, ch. 402. This Act was the most
comprehensive school finance legislation to that point in Kansas history.
Fundamental to the legislation was an indexing of a geographic area's ability to
fund public education. Money was then distributed commensurate with the
“index” and other factors. Each county assessed a levy to finance the state aid.
School districts were also empowered to levy ad valorem taxes to fund operating
expenses, but were restricted from increasing the budget to no more than 104
percent of the operating expenses per pupil in the preceding school year. L.1965,
ch. 402, § 15. If a district found this inadequate, a school budget review board
could authorize additional expenditures in certain specified situations, such as
where there had been “unusual occurrences”. The review board consisted of the
state superintendent, the state controller, and the state budget director. Hence,
districts did not have the ability to raise budgets beyond the statutory limits
without state authorization, even if the voters of the district wished to do so.
L.1965, ch. 402, §§ 15, 16. In 1967, the legislature authorized school boards to
seek voter approval to exceed budgetary limitations. L.1967, ch. 409, § 18. This
authorization was later repealed. In 1970, the budget limitations were replaced
with the so-called “school tax lid.” L.1970, ch. 402.

The School Foundation Fund Act and related school finance statutes were
determined to be unconstitutional by the District Court of Johnson County in
Caldwell v. State, case No. 50616 (Johnson County District Court, slip op. August
30, 1972). The court found that the law failed to provide equalization aid
sufficient to offset the disparity in either tax effort or per pupil operating
expenditures, “thereby making the educational system of the child essentially the
function of, and dependent on, the wealth of the district in which the child
resides.” Responding to this decision, the legislature enacted the School District
equalization, SDEA distributed state aid based upon district wealth. The higher
the assessed valuation and taxable income of the district, which were the
measures of the district's wealth, the lower the state aid. The lower the wealth, the
higher the aid. A district below the spending median was given authority to
increase the district budget, upon voter approval, to the level of the median budget per pupil within the district's enrollment category or a maximum of 15 percent. L.1973, ch. 292, § 26. The alternative 15 percent cap was eliminated in 1978, allowing a district, upon voter approval, to raise the budget to the median budget per pupil in the same enrollment category. L.1978, ch. 296, § 6. In 1979, the limitation was lifted entirely, and the district was allowed to increase its budget by any amount approved by the voters. L.1979, ch. 221, § 3. Some of these modifications were prompted by litigation.

In 1975, the constitutionality of the SDEA was challenged by numerous parties, including 41 unified school districts. The District Court of Chautauqua County found the Act unconstitutional. The legislature amended the Act, but the court did not hear further evidence and dismissed the case. On appeal, the Supreme Court reversed and remanded for further proceedings. Knowles v. State Board of Education, 219 Kan. 271, 547 P.2d 699 (1976). On remand, the case was transferred to the District Court of Shawnee County and the judge presiding over this division, the Honorable E. Newton Vickers, ruled the SDEA was constitutional. Knowles v. State Board of Education, 77CV251 (Shawnee County District Court, slip op. January 26, 1981). The SDEA became the subject of litigation again in 1990 as several school districts and individuals, including several of the plaintiffs in this action, challenged the constitutionality of the statutes. On October 14, 1991, the Honorable Terry L. Bullock issued an opinion answering 10 questions which formed governing rules of law applicable to the challenges. Mock v. State of Kansas, 91CV1009 (Shawnee County District Court, slip op. October 14, 1991). The decision prompted the Governor and legislative leadership to appoint a task force to investigate legislative alternatives which would satisfy the guidelines in the decision. This task force issued a report recommending a new formula granting each district the same base state aid per pupil (BSAPP) and then allowing for certain adjustments for student needs and district size. Report of the Governor's Task Force on Public School Financing (November 2, 1991).


In Unified School District Number 229 v. State, 256 Kan. 232, 885 P.2d 1170 (1994), the Supreme Court, for the first time, considered the merits of a school finance case. In U.S.D. 229, the Supreme Court upheld the School District Finance and Quality Performance Act (SDFQPA) as constitutional. The decision set the stage for Montoy I.

The Montoy cases began in 1999, five years after previous challenges to the State’s, through its legislature, school funding scheme. Plaintiffs filed a lawsuit against the State of Kansas, the Governor, the members of the Kansas State Board of Education, and the Commissioner of the Kansas State Department of Education alleging (1) a violation of Art. VI, § 6 of the Kansas Constitution; (2) a violation of equal rights protection under the Kansas Constitution; and (3) a violation of the substantive due process rights under the Kansas Constitution. In 2001, at the district court level, Judge Terry Bullock dismissed the challenge.
just prior to trial, finding that he was bound the U.S.D. 229 holding that the legislature has the ultimate responsibility for determining what is suitable financing. Montoy v. State of Kansas, 275 Kan. 145, 62 P.3d 228 (2003) (Montoy I) (discussing Unified School District No. 229 v. State, 256 Kan. 232, 885 P.2d 1170 (1994)).

On appeal to the Supreme Court, Plaintiffs argued that the district court erred in dismissing their claims. In what ultimately became the first in a series of decisions in the Montoy cases, the Court found genuine issues of material fact to exist, and reversed and remanded the district court’s decision. Montoy I, 275 Kan. at 145. Pivotal in that decision was the Court’s finding that “the issue of suitability is not stagnant.” Id. at 153 (citing Unified School District No. 229, 256 Kan. at 258).

On remand following a bench trial, the district court held that the SDFQPA, K.S.A. § 72-6405, “stands in blatant violation of Article VI of the Kansas Constitution.” Montoy v. State of Kansas, No. 99-C-1738, 2003 WL 22902963, at *42 (Kan. Dist. Ct. Shawnee County, Dec. 2, 2003). This time, it was the State who appealed to the Supreme Court, and in Montoy II, the Supreme Court held that the public school financing formula adopted by the State, through its legislature, had “failed to meet its [Art. VI, § 6] burden.” Montoy v. State of Kansas, 278 Kan. 769, 771, 120 P.3d 306, 308 (2005) (Montoy II). In that decision, the Court mandated increased funding for Kansas schools; found that the then-current financing formula increased disparities in funding; and the formula was not based on any cost analysis but was instead based on “political and other factors not relevant to education.” Montoy II, 278 Kan. at 775. The Court withheld its formal opinion pending corrective action by the State, through its legislature, and stated that “[w]e have in this brief opinion endeavored to identify problem areas in the present formula as well as legislative changes in the immediate past that have contributed to the present funding deficiencies. We have done so in order that the legislature take steps it deems necessary to fulfill its constitutional responsibility.” Id. at 776.

In response to Montoy II, the State, through its legislature, enacted House Bill 2247, and on June 3, 2005, the Supreme Court issued its Opinion (supplemental to Montoy II) on the constitutionality of that bill. Montoy v. State of Kansas, 279 Kan. 817, 819, 112 P.3d 923 (Montoy IV). The Court held the funding scheme was not in compliance with the Montoy II decision because it did not appropriately consider (1) actual costs of providing adequate education and (2) the equity of the distribution of that funding. Montoy IV, 279 Kan. at 818. Thus, the Court ordered that the State, through its legislature, implement a minimum increase of $285 million above the 2004-05 school year funding level for the 2005-06 school year. This amount was roughly one-third of the total increased funding needed to reach adequacy, as shown by the State’s own cost study. Thereafter, the State, through its legislature, again enacted changes to the school finance formula through Senate Bill 549 (“SB 549”).

The funding formula addressed by this Court three and one-half years ago in Montoy V provided $755.6 million in additional funding to schools. This Court found that the legislative process was in substantial compliance with its previous orders. Montoy v. State of Kansas, 282 Kan. 9, 24, 138 P.3d 755, 765 (2006) (Montoy V). The Court, however, specifically did not hold that the new funding scheme was constitutional. The Court dismissed the case without considering the constitutionality of SB 549. But, the court explained that their dismissal of the case was not to be interpreted as a determination that SB 549 was constitutional. Montoy V.
(“The constitutionality of S.B. 549 is not before this court. It is new legislation and, if challenged, its constitutionality must be litigated in a new action filed in the district court.”).

The Supreme Court’s decision to dismiss the case was based largely on the assumption that the Kansas Legislature a) had made genuine efforts to consider the costs of achieving adequate student outcomes across varied populations and settings in Kansas, and b) had gone to sufficient lengths to redesign the state school finance formula in ways that linked that formula with those costs. The court explained:

The legislature has undertaken the responsibility to consider actual costs in providing a suitable system of school finance by commissioning the LPA to conduct an extensive cost study, creating the 2010 Commission to conduct extensive monitoring and oversight of the school finance system, and creating the School District Audit Team within LPA to conduct annual performance audits and monitor school district funding as directed by the 2010 Commission.
Top Ten Legal Challenges Facing Kansas Public Schools

- Alan L. Rupe, Attorney, Lewis and Brisbois, Wichita, Kansas
- David Schauner, General Counsel, KNEA
- Donna L. Whiteman, Assistant Executive Director Legal Services, KASB
- Mildred Pierce, EdD, Education Consultant

Kansas Legal Revitalization Conference
Feb. 2, 2017
Education for a Democratic Society

“Nothing can more effectively contribute to the cultivation and improvement of a country, the wisdom, riches and strength, virtue and piety, the welfare and the happiness of a people than a proper education of youth.

Benjamin Franklin, 1789
X. Demographics of an Aging and Declining Population

• National growth continues to outpace Kansas population growth
• Kansas less than 1% of nation’s population
• 10 most populous counties comprise 64% of population, 60 smallest counties account for 10% of population
• Hispanic population growth
• Wichita Center for Economic Business Research - In less than 20 years, Kansans older than 65 will out number those younger than 18. Loss of population in rural areas and 26% of entire state will live in Wichita
IX. The Federalization of Employment Law

• Family Medical Leave Act, 29 C.F.R. § 825.100
• Proposed regulations to increase salary threshold for exempt employees from $23,600 to $47,476
• Federal law geared toward for profit businesses and not public schools
“The future has a way of arriving unannounced. We are either progressing or retrograding all the while. There is no such thing as remaining stationary in this life.”

James Freeman Clarke
VIII. Social Media, Snapchat, Instagram and all Things Electronic

- School District’s authority to discipline students at school, on school property, school sponsored events. K.S.A. 72-8901 et seq.

- *Tinker vs. Des Moines* 393 U.S. 503 (1969) and Off-Campus Free Speech challenges

- Employee use off-campus
VII. Title IX and Transgender Students

• Title IX provides:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” 20 U.S.C. § 1681
Title IX and Transgender Students (cont’d)

• OCR May 13, 2016 Dear Colleague letter – schools must treat student’s “gender identity” as student’s sex for Title IX compliance

• Dept. of Ed. Regulation 30 C.F.R. § 106.33
  “A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities proved for one sex shall be comparable to such facilities provided to students of the other sex.”
Title IX and Transgender Students (cont’d)

  - Temporary injunction granted barring federal agency from taking action against school districts for not following DOE guidance

- **G.G. v. Gloucester County School Brd.** (4th Cir. April 19, 2016)
  - October 28, 2016 US Supreme Ct. accepted cased for review

- **State of Nebraska v. United States**, Case No. 4:16-CV-03117, Nebraska D.C. filed July 18, 2016
  - 10 sates including Kansas
“Neither a wise man nor a brave man lies down on the tracks of history to wait for the train of the future to run over him.”

Dwight D. Eisenhower
VI. Retirement and Recruitment of Teachers & KPERS Retirement Benefits

• Fewer numbers of teachers graduating from Kansas Universities
• Changes in KPERS Law makes it difficult to hire retired teachers
• Recruiting teachers outside of Kansas
• Hard to fill areas
• Continued attacks on education by elected officials
• Kansas Commissioner of Education’s Blue Ribbon Task Force on Teacher Vacancies and Supply, August 8, 2016
V. Teachers Salaries, Health Insurance & Negotiations

- Block Grants frozen state aid
- Health insurance cost increases
- Legislative proposals to change health care coverage
- Kansas Professional Negotiations Act, K.S.A. 72-5413 et seq.
Why Education?

Importance of Education

• To give to every citizen the information he needs for the transaction of his own business;
• To enable him to calculate for himself, and to express and preserve his ideas, his contracts and accounts, in writing;
• To improve, by reading, his morals and faculties;
• To understand his duties to his neighbors and country, and to discharge with competence the functions confided to him by either;
• To know his rights; to exercise with order and justice those he retains; to choose with discretion the fiduciary of those he delegates; and to notice their conduct with diligence, with candor, and judgment;
• And, in general, to observe with intelligence and faithfulness all the social relations under which he shall be placed.

Thomas Jefferson: Report for University of Virginia, 1818
IV. Parental Involvement, Poverty, Foster Care, Mental Health

• Education is a cooperative endeavor between students, parents and the school

• Parental support and structure are essential for student academic achievement

• In 2014, 40% of Kansas school students received free lunches as their families had annual earnings of less than $30,615 for a family of 4

• Families in crisis
Foster Care in Kansas

• As of June 2015, there were 6,517 children in foster care in Kansas.
  – Sedgwick county has most children in and out of home placement, 919 (14.1 percent).

• Average length of stay in foster care for those adopted is 33 months, 38 months for those who age out, and nine months for those who are reunited with their families.

• Kansas currently has 2,872 licensed foster homes.
“Change is the law of life and those who look only to the past or present are certain to miss the future.”

John F. Kennedy
III. Expansion and Funding of Special Education

Federal law

• Federal aid accounts for less than 20% of the 539 million Kansas spent on special education funding.

• State reimburses local districts 92% of excess costs.

• Local school districts transfer additional amounts to cover cost of special education from their general fund.
II. *Gannon* School Finance Case

Under Article 6 of the Constitution, two tests:

- Equity
- Adequacy
II. Gannon School Finance Case

• Equity

School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort
II. *Gannon* School Finance Case

• Adequacy

whether 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 standards set out in *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989)
II. *Gannon* School Finance Case

Three Potential Outcomes

1. Find that the system meets the constitutional standards
2. Declare unconstitutional and defer to Legislature to fix
3. Declare unconstitutional and target remedy to failing students
I. New School Finance Formula

• Will be drafted by a new legislature
• Plaintiffs urge the legislature to return to the previous formula and to fund the actual costs of an education
I. New School Finance Formula

• Property-wealthy schools have pushed for higher LOB
• Only appropriate if:
  – Adequacy is achieved first
  – Equalized
  – Not subject to voter protest
  – Must be funded by all districts, not just those receiving equalization aid
QUESTIONS