

Kansas School Finance Litigation... The Status: June 2015

● The Kansas Constitution.

- The Kansas Constitution requires public schools run by local boards of education. (Article 6, Section 5)
- The Constitution provides that the Legislature shall provide for educational improvement. (Article 6, Section 1)
 - The Kansas Supreme Court has held that this provision “thus imposes a mandate that our education system cannot be static or regressive but must be one which “advances to a better quality or state.” (*Montoy* 2 278 Kan. 769 at 773 (2005))
- The Constitution also provides that these schools be suitably funded. (Article 6, Section 6(b))
 - The Kansas Supreme Court has held that the standard most comparable to suitable funding is a requirement of adequate funding. (*U.S.D.* 229 256 Kan. 232 (1994))
 - The Court has defined adequacy, saying “We hold its adequacy component is met 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 standards set out in *Rose*....” (*Gannon* 298 Kan. 1107 (2014))
 - The Court also has held that the Kansas Constitution contains an equity requirement, saying “School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort.” (*Gannon* 298 Kan. 1107 (2014))
 - The court emphasized the distinct adequacy and equity requirements, saying “Specifically, even if the legislature has met the adequacy requirement contained in Article 6, it may still violate the constitution by failing to meet the article's equity requirement. The two requirements are separate.” (*Gannon* 298 Kan. 1107 (2014))

● The *Montoy* lawsuit. (1999-2006)

- Knowing that the schools were underfunded, Schools For Fair Funding sponsored the *Montoy* lawsuit asking that the Legislature be forced to follow the constitution and fund the schools.
- The case went to trial in 2003 and the court found that the schools’ finance system was “blatantly unconstitutional.”
- The Kansas Supreme Court reviewed the case (five times) and agreed with the trial court that the Legislature was not following its constitutional duty.
- In 2006, to end the case and come into compliance with the constitution, the Legislature passed a three year funding plan to increase funding to the schools.
- This plan *would have* increased funding to schools by **\$755 million per year**.
- This increase was not optional. It was required by the constitution.
- The Supreme Court then dismissed the case because of the three year funding promise passed by the Legislature.

● The Budget Cuts.

- As the economy soured in 2009, the Governor and the Legislature began to cut school funding.
- The Legislature and the Governor reduced education then funding in excess of **\$511 million**.
- This is a 68% cut from the *Montoy* approved levels of increased funding.
- These cuts do not make schools “advance to a better quality or state” as required by the

- Constitution.
- The budget cuts were in direct violation of the Kansas Constitution.
- **The tax cuts.**
 - In recent years the Legislature had reduced taxes by over \$1 billion a year, knowing that the state would not be able to keep its mandated funding commitment to schools as agreed to conclude the *Montoy* litigation.
 - Many of these tax cuts were targeted to special interests rather than the general public.
 - Additionally, in 2012, the legislature reduced individual income taxes and eliminated state income tax on all partnerships, LLCs and sole proprietorships.
 - This eliminated income taxes for 333,000 businesses.
 - This was forecast to drop state revenues by \$2.7 billion by 2018.
- **Current School Funding Lawsuit Number 1: *Gannon vs. State of Kansas*. (2010-present)**
 - 46 Kansas school districts representing 144,792 school children (32% of the students in Kansas) banded together and joined Schools For Fair Funding (SFFF) in an attempt to stop the wrongdoing.
 - On November 2, 2010, they filed suit to restore the funding cuts.
 - This lawsuit went to trial on June 4, 2012, before a three judge panel in Topeka.
 - Evidence was presented over five weeks, with 17 days of trial, 662 exhibits, totaling 18,727 pages, and 44 witnesses, generating 3,672 pages of transcript testimony for the record.
 - On January 11, 2013, the three judge panel unanimously found the school finance system unconstitutional again.
 - The state appealed the ruling to the Kansas Supreme Court.
 - The Supreme Court issued its ruling on March 7, 2014.
 - It separated the adequacy issue and the equity issue, being the two separate requirements under the Kansas Constitution.
 - It found the system unconstitutional on equity grounds for the state's failure to fund property tax equalization payments to districts in sufficient amounts and ordered a legislative fix.
 - It found that further proceedings before the trial panel were needed on the adequacy requirement and remanded that part of the case back to the trial panel to see if Kansas children were receiving an adequate education according to the *Rose* factors.
 - The 2014 Kansas legislature began compliance with the equity decision by appropriating \$130M additional equalization dollars based on estimates of need.
 - Based upon representations by the state that equalization would be fully funded, and that the "estimates" would "trued up" if insufficient, the court gave initial approval to the equity fix.
 - The trial panel then re-examined the record to make the required adequacy determination based upon the *Rose* factors.
 - On December 30, 2014 the three judge trial panel again unanimously found that the system was unconstitutional on adequacy grounds because children were not receiving an education that met the *Rose* definition of adequacy.
 - As the 2015 legislative session began in January, the state discovered that they had underestimated the actual cost of the equity fix (to which they had agreed) by \$54M.
 - Rather than appropriate the additional \$54M as represented to the court, the

- legislature again cut equalization payments in the exact manner that had been *specifically* disapproved by the supreme court.
- The Plaintiffs moved to re-open the equity case and to require the state to comply with the supreme court equity ruling.
- A trial on this issue was held before the three judge panel in May of 2015.
- We await that decision.
- The current status is:
 - The trial court's second finding of unconstitutional adequacy is on appeal to the Kansas Supreme Court.
 - We await a trial court ruling on compliance with the constitutional equity requirement and payment of full equalization payments to the schools.
- As this court action unfolded, the 2015 Kansas legislature completely abolished the school finance formula along with all equalization payments.
 - It replaced it with a block grant system that simply funded all schools next year with whatever funding they had last year.
 - While the old school finance formula was a cost based formula that recognized changes in demographics and costs, the new block grant system totally divorced funding from costs.
 - The new block grant system instituted a funding freeze.
 - The block grant system was also challenged on equity grounds in the May 2015 trial.
 - We await a decision on the fate of the new block grant system.

Current School Funding Lawsuit Number 2: *Petrella vs. Brownback*. (2010-present)

- On December 10, 2010, a group of parents from a wealthy Kansas City suburban district sued the state seeking to curtail the state's duty to fund schools and for local property taxpayers to fund schools.
 - These plaintiffs are from a very property tax wealthy district.
 - They would leave less wealthy districts to fend for themselves.
 - They sought an injunction eliminating *any* cap on local moneys.
- They sought establishment of a new federal constitutional right for local taxpayers to tax locally in unlimited amounts to support schools.
- The plan they sought was very similar to the Governor Brownback proposed school finance plan, in that increases in funding would fall to local property taxpayers.
- SFFF intervened in this suit to defend the equity within the current school finance formula and to protect local taxpayers from the shift from state funding for schools to local funding for schools.
- The *Petrella* plaintiffs would have the education system return to an unfunded mandate from the state.
- The U.S. District Court for Kansas dismissed this suit on March 11, 2011, on standing grounds.
- The parents then filed an appeal of this dismissal to the 10th Circuit Court of Appeals in Denver.
- The 10th Circuit heard arguments in the fall of 2011 and reversed the dismissal in October of 2012, sending the matter back to the trial court for further proceedings.
 - The reason for the reversal was for technical error in dismissing on "standing to bring

- suit” grounds.
- The 10th Circuit did not speak to the merits of the suit.
- The trial court then entered a ruling on preliminary motions that the cap on local taxes would be judged by the “rational basis standard” rather than the plaintiff desired “strict scrutiny standard.”
- The plaintiffs then appealed this ruling to the 10th Circuit, for a second time.
- The 10th Circuit issued its second opinion in June of 2015 denying the parents appeal and ordering further proceedings using only the “rational basis” standard.
- If any “rational basis” can be put forward to support a cap on local taxation, then the case must fail.
 - The court opined that equity in a school finance system is certainly a rational basis for taxation caps.
- The court failed to recognize a new federal constitutional right for local schools to have unlimited taxation powers.
- The parents have filed a motion for the appeal to be reheard *en banc*.
- We await a ruling on the *en banc* motion.

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