ELECTRONICALLY FILED
2017 Jun 30 PM 4:50
CLERK OF THE APPELLATE COURT
CASE NUMBER: 113267

NO. 113,267

IN THE SUPREME COURT OF THE STATE OF KANSAS

LUKE GANNON,
by his next friends and guardians, *et al.*,

Plaintiffs/Appellees,

vs.

STATE OF KANSAS, *et al.*,

Defendants/Appellants.

PLAINTIFFS/APPELLEES OPENING BRIEF REGARDING ADEQUACY OF 2017 SENATE BILL 19

Appeal from the District Court of Shawnee County, Kansas
Honorable Judges Franklin R. Theis, Robert J. Fleming, and Jack L. Burr
Case No. 10-c-1569

Alan L. Rupe, #08914
Jessica L. Skladzien, #24178
LEWIS BRISBOIS BISGAARD & SMITH LLP
1605 N. Waterfront Parkway, Suite 150
Wichita, Kansas 67206
(316) 609-7900 (Telephone)
(316) 462-5746 (Facsimile)

John S. Robb, #09844
SOMERS, ROBB & ROBB
110 East Broadway
Newton, Kansas 67114
(316) 283-4650 (Telephone)
(316) 283-5049 (Facsimile)

Attorneys for Plaintiffs

TABLE OF CONTENTS

NATURE OF THE CASE

On March 2, 2017, this Court declared that the block grant funding provided by the Classroom Learning Assuring Student Success Act ("CLASS") was unconstitutional, largely because "more money was needed." *Gannon v. State*, 305 Kan. 850, 501, 390 P.3d 461 (2017) ("Gannon IV"). It then informed the State that it was obligated to adopt a new funding system that "is capable of meeting the adequacy requirements of Article 6." *Gannon IV*, 305 Kan. at 919. It demanded compliance by June 30, 2017. *Gannon IV*, 305 Kan. at 856. To establish compliance, the State has the burden to demonstrate the new system is constitutional and to "explain[] its rationales for the choices made to achieve [compliance]." *Gannon IV*, 305 Kan. at 856 (citing *Gannon v. State*, 303 Kan. 682, 709, 368 P.3d 1024 (2015) ("Gannon II").

The State claims it complied with the March 2 Order because the Legislature passed, and the Governor signed, 2017 Senate Bill 19 ("S.B. 19"). Notice of Legislative Cure, filed 6-16-17. S.B. 19 significantly underfunds K-12 public education – by all measures – and fails the adequacy test. Additionally, S.B. 19 does not meet the equity requirements of Article 6.

S.B. 19 significantly underfunds Kansas public education and only provides a $292.5 million increase to education funding over a period of two years. Appendix B: KSDE Memo, Computer Printout SF17-232, with supporting data, at 2017ADEQ00021 (Col. 2 shows that the total increase in state aid for FY18 is $194.7 million and Col. 3 shows the total increase for FY19 is $97.8 million).

S.B. 19 funds Kansas public education at a level far short of *every single* indicator available as to what it actually costs to constitutionally fund an education. This Court told the State that it was not in compliance with the Constitution because it was not putting enough money into K-12 public education. It told the State to increase funding in a manner that was "reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*." Finally, this Court specifically warned the State not to ignore the estimates of what it actually costs to provide students with a constitutional education. The State did not heed the Court's warning or follow its instructions. The adoption of S.B. 19 demonstrates a continued pattern by the State to ignore constitutional mandates.

The *lowest* estimate of what it costs to constitutionally fund an education to Kansas K-12 public school students is the estimate provided by the KSBE: $893 million over the next two years. With no reason or explanation, **S.B. 19 only provides one-third of that amount.** The level of funding provided by S.B. 19 is so low that school districts will have *less funds* available for educating students than what the State itself deemed appropriate for the year 2010 following the *Montoy* litigation. Considering inflation alone, the State cannot – in good faith – argue that school districts can educate students *better* with *less* funds than were needed seven years ago. There is no evidence to suggest that S.B. 19 is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*. There is, however, significant evidence to the contrary. Moreover, there is substantial evidence that S.B. 19 significantly disrupts equity and that the State ignored this Court's instruction "to be mindful of the connection

between equity and adequacy." *Gannon IV*, 305 Kan. at 917. S.B. 19 fails to comply with this Court's March 2 Order and the Kansas Constitution.

PROCEDURAL HISTORY

On March 2, 2017, this Court held that "the state's public education financing system, through its structure and implementation, is not reasonably calculated to have all Kansas public education students meet or exceed the minimum constitutional standards of adequacy." *Gannon IV*, 305 Kan. at 855-56. The Court provided the legislature "an opportunity to bring the state's education financing system into compliance with Article 6" on or before June 30, 2017. *Gannon IV*, 305 Kan. at 856.

On June 5, 2017, in response to the Court's Order, the Kansas Legislature passed S.B. 19. The bill was signed by Governor Brownback on June 15, 2017. S.B. 19 significantly underfunds Kansas public education, providing only a $292.5 million increase to education funding over a period of two years. The burden is now on the State to establish that S.B. 19 comports with the requirements of the Kansas Constitution. *Gannon IV*, 305 Kan. at 856. The State cannot meet this burden.

The procedural posture of *Gannon* should, regrettably, sound very familiar to this Court. It certainly is familiar to Plaintiffs' counsel, who has been down this road before. On January 3, 2005, this Court issued its opinion in *Montoy v. State*, 278 Kan. 769, 120 P.3d 306 (2005) ("Montoy II")). It found the then-existing school finance system unconstitutional, and – as the Court did here – gave the Legislature "a reasonable time to correct the constitutional infirmity." *Id.* at 775. The Legislature responded by adopting

2005 House Bill 2247 (H.B. 2247) in the spring of 2005, which resulted in this Court's opinion in *Montoy v. State of Kansas,* 279 Kan. 817, 821, 825-26 (2005) ("Montoy IV").

Ultimately, in *Montoy IV*, this Court found that H.B. 2247 was an "unsatisfactory response" to the Court's mandate. *Id.* at 843. Comparing H.B. 2247 to S.B. 19 warrants this Court reaching the same result here. Much like H.B. 2247 in *Montoy*, S.B. 19 purports to increase the base, but does not provide a significant amount of "new" money. *Id.* at 830 ("H.B. 2247 increases the BSAPP from $3,890 to $4,222. Only $115 of the $359 increase is "new" money; the balance was achieved by eliminating the correlation weighting and shifting those dollars to BSAPP."). Interestingly, since H.B. 2247 only provided a $115 increase to the $3,890 base, the actual base adopted in 2005 was $4,005. The State, through S.B. 19, now attempts to fund a base of $4,006, even though that level of funding was deemed "unsatisfactory" *twelve years ago*. Because this Court told the State that a $4,005 base was unsatisfactory in 2005, there is simply no basis for the State to conclude that increasing that base by $1 per student would be constitutional in 2017. Reaching that conclusion would require this Court to ignored the ever-increasing costs of education due to inflation, growing enrollment, and increasing demands.

The similarities between the State's actions in *Montoy* and the State's current action are even more striking considering the total amount of funding needed and the amounts that the State adopted in response to each finding of unconstitutionality. In 2005, the Legislature was told that funding needed to increase by approximately $853 million. *Montoy IV*, 279 Kan. at 845. The Legislature responding by only increasing funding by "approximately $142 million," a response that the Court deemed

unconstitutional. *Id.* at 822. Here, when confronted with a finding of unconstitutionality and the KSBE's recommendation to increase funding by $893 million, the State's response was overwhelmingly underwhelming *and* unconstitutional. It adopted a two-year funding scheme and – next year – only intends to increase funding by $194.7 million. The second year increase barely covers inflationary increases. Just like H.B. 2247 did in *Montoy*, S.B. 19 "substantially varies from any cost information in the record and from any recommendation of the Board of Education or the State Department of Education"; it is "unsatisfactory" and unconstitutional. *Montoy IV*, 279 Kan. at 831, 843.

There is virtually no difference between the procedural history that lead to the Court's decision in *Montoy IV* and the current history of this case. This Court's response should be similar as well. In the *Montoy* litigation, the Court was forced to give the State very specific guidance on what level of funding was required to comply with the Kansas Constitution. *See, e.g., Montoy IV*, 279 Kan. at 845 ("Specifically, no later than July 1, 2005, for the 2005-06 school year, the legislature shall implement a minimum increase of $ 285 million above the funding level for the 2004-05 school year, which includes the $ 142 million presently contemplated in H.B. 2247."). In light of the State's inadequate legislative response, such action is once again warranted.

THIS COURT'S INSTRUCTIONS TO THE STATE IN THE MARCH 2 ORDER

When this Court gave the State an opportunity to bring its education financing system into compliance with Article 6, the Court did not order any specific remedy. It instead acknowledged "[t]here is no one specific way for this funding to be achieved."

Gannon IV, 305 Kan. at 916. However, it did give specific direction to the State to demonstrate compliance. At a minimum, the State must show:

1. That S.B 19 appropriately *increases* funding. The March 2 Order affirmed the Panel's finding that, to ensure constitutionality, more funding is needed. *Gannon IV*, 305 Kan. at 913 ("As a result of this and other findings, the panel determined that *more money was needed* to make the inadequate CLASS legislation constitutional. *We agree*, based upon the demonstrated inputs and outputs found by the panel[.]") (emphasis added). And while total spending is not the touchstone of adequacy, *id.* at 895, the State cannot just increase funding; rather, it must do so to such an extent that the increase "is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*." *Id.* at 917.

2. That the State considered the estimates of what a constitutional education actually costs. "[T]he State should not ignore [the estimates of actual costs by the cost studies] in creating a remedy." *Gannon IV*, 305 Kan. at 854. These estimates of what it costs to provide a constitutional level of funding "represent evaluations that we cannot simply disregard." *Id.*; *Gannon v. State*, 298 Kan. 1107, 1170, 319 P.3d 1196 (2014) ("Gannon I") ("[A]ctual costs remain a valid factor to be considered [when] determining constitutional adequacy under Article 6.").

3. That S.B. 19 is responsive to financially important changing conditions. In finding CLASS's structure unconstitutional, this Court criticized the funds provided because "they are only minimally responsive to financially important changing conditions such as increased enrollment, in general or by subgroup—which can include those 'to

whom higher costs are associated.'" *Gannon IV*, 305 Kan. at 891. The State is obligated to demonstrate that S.B. 19 "is reasonably calculated" to correct this.

4. That S.B. 19 comports with all "previously identified constitutional mandates." This includes Article 6's equity requirements. *Gannon IV*, 305 Kan. at 856. Pursuant to this Court's equity test, S.B. 19 must grant school districts "reasonably equal access to substantially similar educational opportunity through similar tax effort." *Gannon I*, 298 Kan at 1175.

These instructions should guide this Court's review of S.B. 19. ***The State has failed to demonstrate compliance with any of these mandates.*** Since S.B. 19 meets none of these mandates, this Court should declare S.B. 19 unconstitutional.

STATEMENT OF THE FACTS

The Kansas School Equity and Enhancement Act enacted within S.B. 19 is similar in structure to the School District Finance and Quality Performance Act (the "SDFQPA"), repealed in 2015. The State chose to replace the unconstitutional CLASS with a funding formula that largely mimics the SDFQPA. The SDFQPA, generally speaking, funded education by providing a fixed amount of funding for each student through a "base state aid per pupil" based on full-time enrollment. A district's full-time enrollment was then adjusted by adding various weightings, which generally recognize that the needs of some students require more resources than others. The result was the amount of state financial aid distributed to the district. *Id.*

S.B. 19 calculates overall funding to school districts in the same manner. The "base state aid per pupil" has been renamed "base aid for student excellence" or "BASE

aid." S.B. 19, Sec. 4(e). Total state aid is calculated by multiplying the BASE aid by the adjusted enrollment. Sec. 4(jj) (defining "Total Foundation Aid"). The adjusted enrollment is calculated by applying "weightings" to the school district's enrollment. Sec. 4(a) (defining "Adjusted Enrollment"). While certain weightings have been adjusted and concepts renamed, the general funding mechanism remains the same.

The at-risk weighted enrollment of a district is determined by multiplying the number of students eligible for free meals under the National School Lunch Act by 0.484. S.B. 19, Sec. 23; Appendix A: Third Conference Committee Report Brief regarding Senate Bill No. 19, at 2017ADEQ00003. However, any school district would be allowed to substitute 10% of the district's enrollment multiplied by 0.484 for this weighting regardless of whether its enrollment warranted this weighting. *Id.*

S.B. 19 sets the BASE aid at $4,006 for FY18; $4,128 for FY19; and – after that – promises to be adjusted annually based on inflation. Sec. 4(e) (defining "Base Aid for Student Excellence"); Appx. B-1, at 2017ADEQ00019. The Kansas State Department of Education ("KSDE") predicts that, after FY19, the CPI adjustment will only increase funding by approximately $55 million annually based on an assumption of 1.5% annual inflation. Appx. B-1, at 2017ADEQ00021.

S.B. 19's funding sources are also largely the same as they were under the SDFQPA. S.B. 19 retains a 20-mill statewide levy and the local option budget ("LOB") component. Sec. 15. No school district can adopt a LOB that exceeds 33% of its total foundation aid received in the current school year. Sec. 15(a), (k)(2). Section 15 incorporates previous LOB concepts and allows school districts to adopt a LOB in the

amount that the school district had authorized under previous law. Sec. 15(b)(1), (f). Similar to the SDFQPA, increasing the LOB percentage requires the adoption and publication of a resolution and a local election if a protest is received. Sec. 15(c).

ARGUMENTS AND AUTHORITIES

I. THE STATE BEARS THE BURDEN TO DEMONSTRATE THAT S.B. 19 IS CONSTITUTIONAL AND MUST EXPLAIN ITS RATIONALE FOR ADOPTING S.B. 19

A. The burden to demonstrate compliance is on the State.

To comply with the burden imposed upon it by this Court, the State is obligated to demonstrate that S.B. 19 "is reasonably calculated to address the constitutional violations identified [in *Gannon IV*], as well as comports with previously identified constitutional mandates such as equity." *Gannon IV*, 305 Kan. at 856 (citing *Gannon II*, 303 Kan. at 743). Because this Court found that CLASS violated the adequacy components as to both its structure and its implementation, the State is now obligated to demonstrate that it cured those specific unconstitutionalities. *Id*. It must also demonstrate compliance with this Court's equity test. *Gannon IV*, 305 Kan. at 887. To establish compliance, the State must "explain[] its rationales for the choices made to achieve [compliance]." *Gannon IV*, 305 Kan. at 856 (citing *Gannon II*, 303 Kan. at 709); *Gannon II*, 303 Kan. at 743 ("the State would help its case by showing its work"); Scheduling Order, dated 6-19-17, at p.2.

B. The State was obligated to cure the constitutional violations associated with CLASS's structure *and* implementation.

The State is obligated to demonstrate that S.B. 19 "is reasonably calculated to address the constitutional violations identified [in *Gannon IV*.]" 305 Kan. at 856. In the

March 2 Order, this Court identified two constitutional violations: CLASS's structure and CLASS's implementation. *Id.* at 913.

As to CLASS's structure, this Court identified two specific failings that the State is now obligated to rectify: (1) CLASS merely funded education at the prior year's level; and (2) CLASS was only minimally responsive to financially important changing conditions. *Gannon IV*, 305 Kan. at 856. In addition to finding that CLASS's structure violated Article 6, this Court's March 2 Order also concluded that its implementation violated Article 6. *Gannon IV*, 305 Kan. at 891-92. Because the Court specifically looked at inputs *and* outputs when analyzing CLASS's implementation, the lack of adequate funding affected the constitutionality of both CLASS's structure and its implementation. *Gannon IV*, 305 Kan. at 891-93.

The same can be said of S.B. 19. While S.B. 19 is similar in structure to the former SDFQPA and Plaintiffs believe the underlying structure of the new formula is sound – with some exceptions described herein – the overall funding levels render both its structure and implementation unconstitutional. Further, some components of the SDFQPA that the State chose to re-adopt simply do not pass the Court's equity test, further necessitating a finding by this Court that S.B. 19 is unconstitutional.

II. S.B. 19 FAILS ARTICLE 6'S ADEQUACY TEST

Under S.B. 19, the State will increase funding by approximately $292.5 million over the next two years. The State has once again ignored the actual costs of providing an education and instead adopted a formula based solely on political compromise and the amounts of funds deemed to be available for appropriations. *See, e.g.*, *Montoy IV*, 279

Kan. at 818-19 ("the SDFQPA was not based on upon actual costs, but rather on former spending levels and political compromise"). Considering all of the evidence available, there is no basis to conclude that S.B. 19 is reasonably calculated to have all Kansas public education students meet the *Rose* standards, to comply with the Court's March 2 Order, or to accomplish constitutional compliance. The funding provided by S.B. 19 falls far short of every indicator available to the State as to what it actually costs to meet *Rose*.

In the March 2 Order, the Court specifically rejected "virtually conclusive deference" to the Legislature. *Gannon IV*, 305 Kan. at 883. But, even under a deeply deferential standard, S.B. 19 must be rejected because it is "very wide of any reasonable mark." *Unified School District No. 229 v. State*, 256 Kan. 232, 265, 885 P.2d 1170 (1994) (internal citations omitted). Had the State followed the mandates of the Constitution and this Court's Orders, it could not have arrived at S.B. 19.

A. S.B. 19 ignores the recommendations of "several expert bodies" as to the actual costs of providing a constitutional education.

S.B. 19 wholly ignores the estimates of several expert bodies as to what it actually costs to provide Kansas schoolchildren with a constitutional education. This Court specifically cautioned the State against doing this, stating that "the State should not ignore [the estimates of actual costs by the various cost studies] in creating a remedy." *Gannon IV*, 305 Kan. at 916. These estimates of what it costs to provide a constitutional level of funding "represent evaluations that we cannot simply disregard." *Gannon IV*, 305 Kan. at 854; *Gannon I*, 298 Kan. at 1170 ("[A]ctual costs remain a valid factor to be considered during application of our test for determining constitutional adequacy under

Article 6."). Yet, the State did not fund anywhere near the recommendations of these "expert bodies" or the reasonable estimates of what a constitutional education actually costs. *Gannon IV*, 305 Kan. at 897 ("This reduction, the panel noted, was in direct opposition to the recommendations of several expert bodies."). The State cannot meet its burden to demonstrate that it cured the unconstitutionalities identified in the March 2 Order that stemmed from CLASS's unconstitutional structure and implementation.

1. The State Board of Education estimates that, over the next two years, it will cost an additional $893 million to fully fund education at a constitutional level; the State ignored that estimate.

This Court's March 2 Order specifically instructed the State to: (1) increase funding in a manner that "is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*," and (2) create a remedy that considers the estimates of what providing a constitutional education actually costs, as calculated by the various cost studies. *Gannon IV*, 305 Kan. at 882.

To comply with this requirement would have necessarily required the State to consider the KSBE's recommendation that the State increase funding by $893 million over the next two-years. Appendix C-1: KSBE Press Release, dated July 15, 2016. After KSBE reviewed this Court's March 2 Order, it opined that adopting its budget recommendations would have cured the unconstitutionalities identified in this Court's March 2 Order. Appendix D: KSBE Release Statement Regarding Kansas Supreme Court Ruling, dated March 3, 2017. This is significantly important because "the legislature itself necessarily acknowledges that the [KSBE] – which the legislature has entrusted with developing curriculum for Kansas public school students – is capable of

understanding, measuring, and implementing the *Rose* educational goals in order to meet its important statutory duty." *Gannon IV*, 305 Kan. at 864-65.

The KSBE knows how to understand, measure, and implement a system that meets the *Rose* goals. It can reasonably anticipate how much that will cost. Yet, the State wholly ignored each of the following recommendations of the KSBE:

- The KSBE recommended that funding increase by $893 million over the next two years. Under S.B. 19, the State only intends to increase funding by $292.5 million over the next two years. After that, the base will only be increased based on inflation (if at all, *supra* §III: "The Legislature Has Failed to Support S.B. 19 With the Money Necessary to Fund It"). S.B. 19 falls $600 million short of providing the funding recommended by the KSBE; ***it funds only one-third of the request.*** Appendix G: Demonstrative Funding Comparisons, at 2017ADEQ00043.

- The KSBE recommended that the base be set at $4,604 for FY18. Appendix C-2: Board Briefs: A Summary Report, at KSBE002449; Appendix C-4: July 12, 2016 KSBE Meeting Minutes, at 2017ADEQ00465. The State adopted a base of $4,006 ($598 lower per student). S.B. 19, Sec. 4(e); Appx. G, at 2017ADEQ00043.

- The KSBE recommended that the base be set at $5,090 for FY19. Appx. C-2 at KSBE002449; Appx. C-4, at 2017ADEQ00465. The State adopted a base of $4,128, which is $962 lower per student. S.B. 19, Sec. 4(e); Appx. G, at 2017ADEQ00043.

- The KSBE recommended the Special Education be funded at $40 million. S.B. 19 responds with only $24 million.

- The KSBE recommended that the State provide an additional $31 million for Special Education in FY18 and an additional $9 million for Special Education in FY19. Appx. C-3; Appx. C-1, at KSBE002448. The State only increased Special Education funding by $12 million each year, *see* Appx. B-1, at 2017ADEQ00021.
- In FY18, the State provides $19 million less than what KSBE recommended.
- S.B. 19's two-year total is $16 million less than what KSBE recommended.

- The KSBE recommended that the State provide $3 million to fund the Mentor Teacher Program. Appx. C-1, at KSBE002448; Appx. C-3. The State provided $800,000 ($2.2 million less than the KSBE recommendation). S.B. 19, Sec. 1(a).

- The KSBE recommended that the State provide $4.25 million to fund the Professional Development Program. Appx. C-1 at KSBE002448; Appx. C-3. The State provided $1.7 million ($2.55 million less than recommended). S.B. 19, Sec. 1(a).

The effects of the State's failure to adopt the KSBE's recommendations is significant for all districts. Appendix E-1:Demonstrative Chart "State Board Request – Year 2." Most districts would be receiving between 15% and 30% additional funds by the end of the two-year period had the State adopted the KSBE's recommendations.

Since the inception of this lawsuit, the State has never attempted to fund education at the levels recommended by the KSBE. *See e.g.*, Plaintiffs' Supplemental Brief, dated 8-12-16, at pp. 25-26 and Appx. E. With the adoption of S.B. 19, that failure continues.

And, it does so in derogation of the Kansas Constitution, which places most of the constitutional responsibility regarding the educational interests of Kansas on the KSBE. Kansas Constitution, Article 6, §2 (the KSBE "shall have general supervision of public schools"). This responsibility gives the KSBE "the power to inspect, to superintend, to evaluate, and to oversee" public education in Kansas. *State ex rel. Miller v. Bd. of Educ*., 212 Kan. 482, 492 (1973). This Court has held that those powers are "self executing" such that "the legislature could not thwart [this] provision." *Id.* at 489. Instead, the Legislature should enact legislation "to facilitate or assist" the KSBE in exercising these powers. *See U.S.D. No. 443 v. Kansas State Board of Education*, 266 Kan. 75, 96 (1998) (citing *State ex rel. Miller*, 212 Kan. at 488). The State's repeated decisions to ignore the KSBE and thwart its power run afoul of the Kansas Constitution. *Id.* As such, the State cannot demonstrate that S.B. 19 "comports with previously identified constitutional mandates." *Gannon IV*, 305 Kan. at 856.

2. The State cannot argue that a base of $4,006 is constitutional when it previously indicated that the base should be set at $4,492 for FY10.

When the Legislature adopted the SDFPQA and appropriated a base of $4,492 for FY10, *see Gannon IV*, 305 Kan. at 880, the State conceded that such a level of funding was both adequate and necessary. This concession was accepted by this Court to conclude the *Montoy* case. This conclusion is further supported by evidence that – while this level of funding was not "perfect" – it arguably allowed Kansas public schoolchildren an opportunity to receive a constitutionally adequate education. R.Vol. 24, p.3147 ("The unanimous evidence was that the Kansas K-12 system was progressing

in its educational mission . . . when the BSAPP . . . was scheduled for FY2010 to be $4492."). It was for this very reason that the 2010 Commission, which the Legislature itself statutorily authorized, *see* Appendix AA: 2005 K.S.A. 46-3402, recommended that the Legislature should fund the school finance formula with a base of $4,492 for FY12, to be adjusted annually based on the cost of living. R.Vol. 77, p. 3543 (Tr. Ex. 178, at 2010COMM00171).

The State, however, has regularly ignored the repeated advice it received to increase the base and completely backed away from its post-*Montoy* efforts to fund education at a constitutional level. Now, seven years later, the State is only providing a base of $4,006 per student ($486 less per student). Appx. G.

Year	**2008-2009**	**2016-2017**	**2017-2018**	**2018-2019**
Base	$4400	$3852	$4006	$4128
Difference from $4492 base approved by *Montoy* Court	$92 less	$640 less	$486 less	$364 less

In addition to the State's previous admission that a base of $4,492 was needed in FY10, the *Gannon* Panel has also suggested that the State could demonstrate constitutional compliance by merely funding the Legislature's $4,492 base, adjusted

upward for inflation.[1] R.Vol. 24, p. 3147. A $4,492 base in FY10 was worth $4,980 in 2014 dollars (the time of the Panel's decision). *Id.* The same base would be worth $5,035 in 2017 dollars. Appendix F: Plaintiffs' Trial Exhibit 237, Updated, at 2017ADEQ00041. Funding education at this level would necessitate an increase of $806 million *this year*.[2] S.B. 19, which will only increase funding by $292.5 million for the next two years, provides only a small fraction of that amount.

---

[1] This Court misinterpreted the Panel's December 30, 2014 Order. The Court assumed that the Panel concluded that a base of $4,654 or $4,980 was appropriate by relying on the LPA and A&M studies. *Gannon IV,* 305 Kan. at 916. That is inaccurate. The Panel actually concluded that a base of $4,654 or $4,980 was appropriate by adjusting the previous legislatively-set statutory base of $4,492 for inflation. R.Vol. 24, p. 3144-3147. In its January 2013 Opinion, the Panel stated that the base should be set at $4,492. It gave deference to the legislature by relying on the "bright line" set in the statute. It purposefully "sacrificed" an inflation adjustment in favor of deferring to what the Legislature already had agreed to pay in FY 10. This was the bottom number that the Panel was willing to accept because "the long time consensus of expert option and expertise reflected that any sum less than the value of $4492 as the BSAPP . . . would be inadequate from any expert of evidential perspective." Due to inflation alone, a BSAPP of $4,492 in FY10 would now be worth $4,980 in 2014 dollars. Giving credit to the fact that, in 2013, it did not adjust for inflation, the Panel then noted that, a BSAPP of $4,492 in 2012 (when it issued its opinion instead of in FY10) would now be worth $4,654 in 2014 dollars. The numbers that the Panel used in its December 2014 Order as baselines ($4980 and $4654) had nothing to do with the cost studies, and merely reflected inflation-based adjustments to the previous statutory base. The Panel then *compared* their adjusted bases to the cost studies and further determined that if LOB were combined with the recommended bases, a base "near $4654 could be appropriate, but only so if it was also accompanied by selective and relevant upward changes in weightings" and found that at that base the LOB would be "intended to be consumed substantially in full to meet the *Rose factors*" The only nexus with the cost studies was to validate their inflation adjusted finding. R. Vol. 24, pp. 3158, 3167-71.

[2] Recommended funding levels [681,483 (weighted FTE for FY17) $5,035] minus current funding levels [681,483 * $3,852]. The weighted FTE for FY17 comes from Appendix Z.

S.B. 19 funds $514 million *less* than what school districts should have received with the FY10 base – when adjusted for inflation.[3] Despite bearing the burden to do so, the State points to no evidence that it will somehow cost less to educate Kansas public schoolchildren in FY17 than what the Legislature previously determined it would cost in FY10. The evidence all suggests otherwise. R.Vol. 24, p.3147 ("[T]he long time consensus of expert opinion and expertise reflected that any sum less than the value of $4492 as the BSAPP…would be inadequate from any expert or evidential perspective.").

Moreover, even if the State could somehow make up this $514 million shortfall, merely funding education at FY10 levels is not reasonably calculated to achieving constitutional compliance or to having all Kansas public education students meet or exceed the standards set out in *Rose* today. The Kansas Constitution "imposes a *mandate* that our educational system cannot be static or regressive but *must* be one which 'advances to a better quality or state.'" *Gannon I*, 298 Kan. at 1146 (citing *Montoy II*, 278 Kan. at 773). S.B. 19 fails to comply with this constitutional mandate. For this reason alone, the State cannot meet its obligation to show that S.B. 19 comports with the March 2 Order (requiring the State to demonstrate compliance with all "previously identified constitutional mandates"). *Gannon IV*, 305 Kan. at 856.

---

[3] Even ignoring inflation, S.B. 19 falls far short of funding education at the FY10 levels. To fund a base of $4,492 (NOT adjusted for inflation), would cost an additional $435 million. [This amount was calculated by subtracting current funding levels [681,483 (weighted FTE, *supra* n.11) * $3,852] from recommended funding levels [681,483 * $4,492]]. To fund the somewhat-inflated base of $4,980 would similarly require a significant increase in funds. Appx. G, at 2017ADEQ00044.

The level of funding provided by S.B. 19 is so low that school districts will have *less funds* available for educating students than they would have using the base that the State deemed appropriate for the year 2010. The State cannot, in good faith, argue that merely putting Kansas back to where it was when this litigation started is reasonably calculated to providing a constitutional education today. S.B. 19 is unconstitutional.

3. The State cannot argue it considered inflation.

The State often touts increases in total funding over the years. Total funding of the General Fund plus LOB has only increased $21 million dollars since 2009. R. Vol. R. Vol. 47, pp. 235-259 (Tr. Ex. 9); Appx. B; Appx. E-2. This is a one-half percent total increase over 8 years, despite 10.8% inflation during those years.[4] The increase in funding between 2009 and 2018 will be 5.8% despite yet another year of inflation taking its toll ($62 million per year – *see* Appx. H).

Year	2008-2009	2016-2017	2017-2018	2018-2019
General Fund + LOB	$4,114,725,284	$4,135,727,406	$4,351,747,267	$4,449,606,177
Funding Increase since 2009		$21,002,122 0.5%	$237,021,983 5.8%	$334,990,893 8.1%
Cost of Inflation since 2009		$444,390,331 10.8%	$506,135,592 12.3% est.	$567,880,853 13.8% est.
Amount General Fund + LOB is Short of Inflation		$423,338,209	$269,113,609	$232,898,960

[4] *See* KLRD Testimony May 12, 2017 to Senate Select Committee on Education Finance, available at http://www.kslegislature.org/li/b2017_18/committees/ctte_spc_select_committee_on_education_finance_1/documents/testimony/20170512_01.pdf.

4. The State cannot argue it considered other necessary cost increases.

Costs have also increased due to other factors, such as enrollment (*see* Appx. Z). There are 12,527 more students in the system than there were in 2009, a 2.8% increase. There are an additional 34.666.6 *weighted* pupils (those that cost more to educate), an increase of 18.6%. Between enrollment and weighting increases, the General Fund and LOB should have increased by more than $271 million. Appx. Z. It did not:

Year	2008-2009	2016-2017	Additional since 2009	Percent Increase
Enrollment	447,705.6	460,232.7	12,527.1	2.8%
Weightings (Weighted FTE – Enrollment)	186,584.1	221,250.7	34,666.6	18.6%
Total Increases			47,193.7	
Base Cost at $4400 in 2009			$207,652,280	
LOB Cost at 30% (of $4490 false base)			$63,569,914	
Total Cost of additional weighted students			$271,222,194	

District also need additional staff. Since 2009, 2,227 teachers and support staff have been cut. Appendix CC: Data Regarding State Personnel. At an estimated annual cost of $40,000 per position, replacing 2,227 positions would cost an additional $89 million. Commissioner Watson testified that school districts needed additional money for purposes of salary increases and fir additional staff to replace the positions that were previously cut. Appendix BB: May 10, 2017 Testimony, at 53. Further, school districts have more students with severe mental health needs than it has ever previously seen. If

districts were to "scale up enough social workers, counselors and school psychologists at the recommended ratios, it would be $160 million dollars just to target that." *Id.*, at p.51. These needs of school districts cannot be properly addressed by S.B. 19 and the State cannot argue that S.B. 19 will provide districts with a constitutional level of funding .

5. The reasonable cost studies commissioned by the State estimate that the base should be much higher.

The average of the reasonable cost studies, as adjusted for inflation, suggest that the base should be set at $6,347 for FY17, which would require an increase to funding *this year* in the amount of $1.7 billion.[5] S.B. 19's funding levels fall far short of what these State-commissioned studies estimate that it would cost to fully fund Kansas K-12 public education. And, they do so despite this Court's specific warnings not to ignore the cost studies. *Gannon IV*, 305 Kan. at 917; *Gannon I*, 298 Kan. at 1170.

In 2001, the Legislative Coordinating Council was charged with "provid[ing] for a professional evaluation of school district finance to determine the cost of a suitable education for Kansas children." R.Vol. 14, p.1799; R.Vol. 13, p. 1659 (Pls' FOF/COL ¶¶261-62). As a result, the Augenblick and Myers ("A&M") study was conducted.

[5] At the time of the last appeal, the reasonable cost studies in evidence estimated that the base should be $5,944 in FY12. (A&M recommendation for FY12 was $5,965 and LPA recommendation for FY12 was $5,922, the average of which is $5,944)). Adjusted for inflation, the average estimated base in FY17 would be $6,331. The total increase was calculated by subtracting current funding levels [681,483 (weighted FTE, *infra* n.11) * $3,852] from recommended funding levels [681,483 * $6,331]. Even if this number was not adjusted for inflation, however, it would still require a significant increase in funds to fund a base of $5,944. Appx. G, at 2017ADEQ00045. The State is only funding about 20% of what the cost studies estimated it would cost to provide a suitable education *five years ago* in FY12.

R.Vol. 20, p. 2617 (SOF ¶147); R.Vol. 35, pp. 1611-12. There is reliable evidence in the record that the A&M cost study estimated what it cost to provide students with a *Rose*-based education. R.Vol. 24, pp. 3062, 3100.

Adjusted for inflation, compliance with the A&M study would require a base of $6,260.[6] Under S.B. 19, school districts will receive $2,245 less dollars *per weighted student* than the A&M study recommended. Based on 2017's enrollment, this would necessitate an increase of $1.641 billion; yet, S.B. 19 only provides an increase of $292.5 million over two years. With no justification or explanation, the State provides only 18% of the increase that the A&M study estimated was necessary to provide Kansas schoolchildren with a constitutional education.

The Legislature also commissioned a second study, the LPA study, during the pendency of the *Montoy* lawsuit. As explained in *Gannon IV*:

> While *Montoy* was pending, the legislature directed the Legislative Division of Post Audit (LPA), to 'conduct a professional cost study analysis to estimate the costs of providing programs and services required by law.' K.S.A. 2005 Supp. 46-1131(a). This included '(1) State statute; and (2) rules and regulations or standards relating to student performance outcomes adopted by the state board' of education. 46-1131(b). These statutes included K.S.A 2—5 Supp. 72-1127, which required the [State Board of Education] to design performance outcome standards to achieve the educational goals newly established by the 2005 legislature in subsection (c) – goals that were 'remarkably parallel' to the *Rose* standards. *Gannon I,* 298 Kan. at 1166-67.

[6] Appx. F, at 2017ADEQ00041; R.Vol. 14, p.1800; R.Vol. 13, p. 1659 (Pls' FOF/COL ¶264); R.Vol. 14, p.1777; R.Vol. 13, p. 1659 (Pls' FOF/COL ¶189(c)).

Gannon IV, 305 Kan. at 879. There is substantial evidence in the record that the LPA cost study estimated what it cost to provide students with a *Rose*-based education. The LPA study was "premised on meeting the *Rose* mirrored goals set out by K.S.A. 72-1127(c) enacted in the 2005 legislative session." R.Vol. 24, pp. 3062, 3100.

Adjusted for inflation, compliance with the LPA study would require a base of $6,435.[7] The current base, authorized by S.B. 19, provides $2,429 less dollars *per weighted student* than the LPA recommendation. Based on 2017's enrollment, this would necessitate an increase of $1.76 billion; yet, S.B. 19 only provides an increase of $292.5 million over two years. With no justification or explanation, the State provides only 17% of the increase that the LPA study estimated was necessary to provide Kansas schoolchildren with a constitutional education.

Both the A&M cost study and the LPA cost study are reasonable estimates of the actual costs of providing a constitutional education in Kansas. *Gannon IV*, 305 Kan. at 917 ("And we acknowledge that the estimates of the various cost studies are just that: estimates. But they do represent evaluations that we cannot simply disregard."); R.Vol. 24, p. 3138; R.Vol. 14, pp. 1804, 1958-59; R.Vol. 14, p. 1829 ("[S]imply no evidence has been advanced to impeach the underpinnings of those studies nor the costs upon which they were based.")). It is appropriate to rely on these cost studies when adjudging S.B. 19. *See, e.g., Montoy IV*, 279 at 844-45 ("This case is extraordinary, but the imperative

[7] Appx. F, at 2017ADEQ00041; R.Vol. 14, p.1801; R.Vol. 13, p.1660 (Pls' FOF/COL ¶270); R.Vol. 14, p. 1777, 1801; R.Vol. 13, pp. 1634, 1661 (Pls' FOF/COL ¶¶189(d), 271).

remains that we decide it on the record before us. The A&M study, and the testimony supporting it, appear in the record in this case. The State cites no cost study or evidence to rebut the A&M study….Thus the A&M study is the only analysis resembling a legitimate cost study before us. Accordingly, at this point in time, we accept it as a valid basis to determine the cost of a constitutionally adequate public education in kindergarten through the 12th grade. The alternative is to await yet another study…and the school children of Kansas would be forced to await a suitable education."). Yet, the State has offered no reason as to why it ignored these studies and instead chose to fund only a fraction of what the studies estimate it costs to educate a Kansas public schoolchild.

B. The State's level of increased funding is not reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*.

Assessing whether S.B. 19 meets Article 6 necessitates consideration of how any "increased" funding will be used. Practically speaking, the State was obligated to determine what school districts could do to increase student achievement with the funding that S.B. 19 provides. To the extent that the State claims that it "increased" funding, the reality is that most of the "additional" funding contemplated by S.B. 19 will be completely absorbed by the naturally-occurring increases to the costs of educating students. Each year, inflation alone consumes approximately 1.5% of the total education funding (or about $79 million based on FY15 funding levels). *See* Appendix H:

Demonstrative Inflation Exhibit.[8] Over the next two years, inflation will consume approximately $158 million, more than half of S.B. 19's $292.5 million "increase."

Additionally, it is likely that the first priority of the school districts will be to raise teacher salaries, which have remained stagnant for much of the litigation. *See e.g.*, R.Vol.21, pp.696-97; R.Vol.22, pp.791-92. This is necessary in order to stop the massive loss of teachers drawn to neighboring school districts with higher salaries. R.Vol. 26, pp. 3296-97 (SOF ¶¶20-21); R.Vol. 32, pp. 791-92, 842; R.Vol. 33, pp. 1181-84, 1186-87, 1189-93; R.Vol. 31, pp. 690-91, 696-97; R.Vol. 30, pp. 450, 456-57; R.Vol. 83, p.4369; R.Vol. 96, p.6039; R.Vol. 53, p.801; R.Vol. 52, p.697.

A small increase in pay will come at a substantial cost to Kansas school districts. For instance, a 2.5% salary increase, like the one provided to other state employees in Senate Sub. for House Bill 2002 will cost approximately $85.7 million dollars for FY18.[9] And while salary increases are necessary to preserve and retain quality teachers, salary raises do not impact the *level* of activity directed at achievement, increase student performance, or reduce the achievement gap.

---

[8] Total state and local funding in Kansas equals approximately $5.2 billion. As demonstrated in Appx. H, in a $5.2 billion system, inflation of 1.5% is $79 million per year. Appx. H is a demonstrative exhibit that draws its data from publically available reports. *See* Appx. H, at 2017ADEQ00046.

[9] The KPERS system estimates that total school salaries subject to KPERS are approximately $3.43 billion dollars. Appendix I-1: *Stepping Soundly*: KPERS 2016 Comprehensive Annual Financial Reports for the Fiscal Year Ended June 20, 2016, at 2017ADEQ00233. A copy of the Senate Sub. for House Bill 2002 Summary, explaining the 2.5% raise provided to other state employees, is attached as Appendix I-2.

Only $194.7 million of S.B. 19's "increased" funds will be available to school districts in FY18. Appx. B-1, at 2017ADEQ00021 (Col. 2). Forty-four percent of that will likely be consumed by modest salary increases. It is the State's obligation to explain how the remaining funds will achieve constitutional compliance. *Gannon IV*, 305 Kan. at 857 (citing *Gannon II*, 303 Kan. at 709) (State must "explain[] its rationales for the choices made to achieve [compliance]."). The State cannot explain how the remaining increase will:

- Stop the "steady regression" of "student improvements." *Gannon IV*, 305 Kan. at 904.
- Decrease the number of Kansas students that "did not meet the state's own minimum standards for proficiency." *Id.* at 905.
- Reduce the "achievement gap" that exists in state assessments, NAEP results, ACT Benchmarks, etc. *Id.* at 909-910.
- Reduce the significant graduation rate gap. *Id.* at 912.

There is no conceivable way that S.B. 19 will fix the unconstitutionalities identified in the March 2 Order. The State identifies no programs, staff, or resources that can be implemented for that amount of money. And, it is the State's burden to not only show that such a result is *conceivable*, but also to show that the adoption of S.B. 19 was *reasonably calculated* to achieve that result. When the evidence proves that almost 25% of Kansas students are underperforming on State assessments, plain common sense dictates that the magnitude of the remedy must be increased.

It defies logic for the State to argue that S.B. 19 was *reasonably calculated* to have all students meet or exceed the *Rose* factors. For perspective purposes, by FY12, the cuts to education funding that began in FY09 totaled more than $511 million. *Gannon I*, 298 Kan. at 1115 ("cuts to BSAPP in fiscal years 2009 to 2012 totaled more than $511 million"); *Gannon IV*, 305 Kan. at 880 ("By fiscal year 2012…the legislature had reduced BSAPP to $3,780. In total, the reduction to education funding through these BSAPP reductions constituted a loss of more than $511 million to local districts.") (citing *Gannon I,* 298 Kan. at 1114-15). S.B. 19 does not even attempt to restore those cuts for the next school year to get education "back on track"; it provides only $292.5 million over two years, and does not remedy the damages caused by the past cuts.

S.B. 19 cannot – and does not – cure the unconstitutionalities identified in the March 2 Order. The State cannot meet its burden to demonstrate constitutional compliance.

C. Some underperforming districts actually lose funding under S.B. 19.

Under S.B. 19, 53 school districts lose a combined total of $11.3 million in funding for FY18. Appendix J: Demonstrative Exhibit Regarding District Gains and Losses Under S.B. 19. These losses range from *de minimus* amounts to 20% of their combined General Fund and LOB. More than half of those districts will also lose funding in FY19. *Id.* In light of this Court's finding that "more money was needed" to achieve constitutional compliance, *see Gannon IV*, 305 Kan. at 913, it defies logic that the State can achieve constitutional compliance for these districts by *reducing* funds. R.Vol. 14, p. 1877 (Panel's conclusion that "there is simply no reliable evidence

advanced by the State that indicates that *a reduction in funds available* to the K-12 school system" would result in compliance with the "requirements of Article 6"). The State may attempt to argue that the new Extraordinary Declining Enrollment Weight established at Section 51 of S.B. 19 will compensate these districts. But, these districts lose $11.3 million dollars, and the total appropriation for the Extraordinary Declining Enrollment Weight is only $2,593,452. S.B. 19, Sec. 1. Like all other areas of S.B. 19, the need is substantially under-appropriated. Section 51 sets up a competition among districts for this funding. Should the KSBE decide to remedy only one-half of the $4.3 million lost by Geary County (U.S.D 475), the remaining 52 districts would receive nothing. Additionally, Section 51 is only appropriated for FY18. The weighting provides no funding in FY19 because it sunsets July 1, 2018. S.B. 19, Sec. 51(e). This purported "fix" only cures about 25% of the problem and only cures it for one year.

The State offers no justification for *reducing* funds to school districts that area already underfunded to the point that they cannot provide significant numbers of their students with an education that meet the *Rose* standards. There is none. The school districts that will receive less funds under S.B. 19 are school districts that already struggled to provide a constitutional education to its students under prior funding schemes. For instance, by the end of the second year of S.B. 19's funding, the Geary County school district (U.S.D. 475) will have experienced a 4% decrease in overall funding. Appendix K-2: Demonstrative Exhibit Regarding Year 2 Gains and Losses Under S.B. 19 *With Achievement Data*, at 2017ADEQ00057. But, as the 2015-16 assessment results demonstrate, there is no indication that U.S.D. 475 needs *less* funding.

In 2015-16, 23.54% of the district's students were not on grade level for reading and 30% of its students were not on grade level for math. Appx. K-2, at 2017ADEQ00057. This district is not an anomaly; every district that loses funding under S.B. 19 has a significant portion of its student population not meeting the state's minimum standards for proficiency. *Id.*

In finding CLASS unconstitutional, this Court specifically noted a "steady regression" of "student improvements" and a decrease in students that met "the state's own minimum standards for proficiency." *Gannon IV*, 305 Kan. at 905. It tasked the State with correcting these deficiencies. It is the law of this case that money makes a difference when funding education, and that more money is needed to do so at a constitutional level. *Gannon IV*, 305 Kan. at 864, 892. The State cannot respond to the March 2 Order by reducing funds to struggling school districts. Yet, that is exactly what it did. Such a result is not "reasonably calculated to have all Kansas public education students meet or exceed the standards set out in *Rose*." The State cannot meet its burden to demonstrate constitutional compliance.

D. Components of S.B. 19 are politically motivated and do not reflect cost-based decisions that are reasonably calculated to have all students meet or exceed the standards set out in *Rose*.

The State's guide star in adopting S.B. 19 should have been compliance with the Kansas Constitution. In that vein, the State should have been more concerned with fixing the constitutional deficiencies identified in the Court's March 2 Order and less concerned with political compromise. *Gannon v. State*, 304 Kan. 490, 513, 372 P.3d 1181 (2016) ("Gannon III"). To the extent that the State contends it failed to adequately fund

education at a constitutional level because it was politically unable to do so, Plaintiffs remind this Court of its response to that argument in the equity portion of this appeal.

> The political necessities of the legislature are similarly irrelevant to our review. The constitution of the people of Kansas does not change its requirements based on legislators' support, or nonsupport, of proposed legislation. Rather, the Kansas Constitution "is the supreme and paramount law, receiving its force from the express will of the people." Just as the legislature has the power and duty to create a school funding system that complies with Article 6, it is this court's power and duty to determine whether an act of the legislature is invalid under that constitution, *i.e.*, if the legislature has met its duty. A law's political expediency or level of support will not shield it from such review.

Gannon III, 304 Kan. at 513 (internal citations omitted). Unfortunately, as Section 23 of S.B. 19 demonstrates, the State disregarded this warning.

S.B. 19 only increased funding to Kansas public schools by $293 million. Two million of those dollars each year were provided to <u>two</u> school districts to support a need that the districts do not even have. Section 23 provides that, if a district has less than 10% at-risk students, it still is allowed to obtain at-risk funds as if the district has 10% at-risk students. This is true regardless of how many of the students meet at-risk program guidelines. There are only two districts in Kansas that have less than 10% at-risk students: the Blue Valley school district (U.S.D. 229) and the De Soto school district (U.S.D. 232). Appendix X: Kansas Legislative Research Data Regarding 10% At-Risk Floor. This provision does not require these two school districts have 10% at-risk students, but allows them to each obtain at-risk funding for 10% of the district's enrollment. Sec. 23(a)(3). The result is that these two districts split almost $2 million in at-risk funds for at-risk students that these school districts do not have. This is not cost-

based. It is merely a method by which to increase funding to two politically influential school districts.

E. The weightings within S.B. 19 ignore financially important changing conditions, and do not comply with the Court's March 2 Order *or* the Kansas Constitution.

In finding CLASS's structure unconstitutional, this Court criticized the funds provided because "they [were] only minimally responsive to financially important changing conditions such as increased enrollment, in general or by subgroup—which can include those 'to whom higher costs are associated.'" *Gannon IV*, 305 Kan. at 855-56. The State is obligated to demonstrate that S.B. 19 "is reasonably calculated" to correct this constitutional violation. *Id.* at 501. It is not. S.B. 19's weightings ignore the actual costs of providing a constitutional education to certain student subgroups that are more expensive to educate and are insufficient to provide a constitutional level of funding for those students.

In adopting S.B. 19, the State did nominally pay heed to the Panel's warning that the system needed "selective and relevant upward changes in *weightings*." R.Vol. 24, pp. 3104-05. It increased the at-risk weighting from 0.456 to 0.484, but then used a much lower base than is required to fund the weighting. As Plaintiffs have repeatedly made clear, the weighting system only functions properly when the system or base is adequately funded. R.Vol. 30, pp. 312-14; R.Vol. 43, pp. 3346, 3373-774, 3378; R.Vol. 43, p. 3278; R.Vol. 77, p. 3541. Unfortunately, the State – knowing this – still chose to underfund the base, which has a more potent, dangerous effect on those students who cost

more to educate. The State was fully aware of this when it adjusted the at-risk weighting from 0.456 to 0.484.

Reducing the base has a more dramatic effect on those districts with increased numbers of at-risk students. For every dollar that the base is reduced, "[an] additional almost 50 cents on the dollar, is also removed." R.Vol. 30, pp. 385-386. So, while Plaintiffs contend that underfunding the base deprives all students of a constitutional education, the effects are felt even harder by those students that cost more to educate because of the multiplier effect. This is demonstrated by the significant achievement gap between the students that qualify for at-risk funding and those that do not. Appendix K-1: Demonstrative Charts Regarding Achievement Gap Between Free Lunch Students and Paid Lunch Students. While a higher percentage of free lunch students are below grade level, a significant number of paid lunch students are below grade level. *Id.* The State is obligated to cure these constitutional deficiencies for all students based on this Court's March 2 Order; an underfunded base simply cannot accomplish that goal.

The LPA study did recommend an at-risk weight of 0.484 (the weighting ultimately incorporated into S.B. 19). But, when the LPA study recommended that at-risk weighting in 2007, it also recommended that its complementary base be funded at $4,659, a base $653 higher than the S.B. 19 base. R.Vol. 81, pp. 3966-68 (Tr. Ex. 199 – LPA Study). The State increased the at-risk weighting in S.B. 19, but significantly underfunded the base. As a result, the "at-risk" students are not receiving the full benefit of that weighting and are therefore not receiving the amount of money that the LPA study estimated it would cost to provide them with a constitutional education in 2007.

In 2007, the LPA study recommended that school districts receive a base level of funding of $4,659 for each student and weighted funding of $6,914[10] for each at-risk student. If the State had merely adopted the 2007 LPA recommendation, it would have required the State to provide $428 million in total at-risk funding for FY18. Appendix M: Demonstrative Chart Comparing Effects of Weightings Under Different Bases.[11] S.B. 19 does not provide $428 million in at-risk funding. As a result of S.B. 19's lower base, school districts will only receive approximately $368 million[12] in at-risk funding Appx. M. To receive the full funding contemplated by the LPA study for the year 2007 at the lower base of $4,006 would require an actual at-risk weighting of 0.563.[13] Appx. M.

While the State did adopt a higher at-risk weighting, S.B. 19 provides about $60 million *less* that what the LPA estimated that it would cost to educate at-risk students in 2007. Appx. M. Considering the LPA's urban poverty funding recommendations demonstrates that at-risk funding is actually $74 million short of what the LPA estimated that it should be in 2007. Appendix N: Demonstrative Charge Comparing Various At-Risk Funding Scenarios. The State simply cannot justify spending $60 million less than what the reasonable, *Rose*-based LPA study recommended spending *ten years ago.*

---

[10] $4,659 (recommended base) * 0.484 (recommended weighting) + $4,659 (recommended base) = $6,913.96.

[11] The LPA recommendation of $428 million was calculated by multiplying the free lunch headcount (189,909, *see* Appx. B-1, at 2017ADEQ00024) by the 0.484 at-risk weighting and the LPA's recommended base ($4,659, *see* R.Vol. 81, pp. 3966-68).

[12] 189,909 (free lunch headcount, *see* Appx. B-1, at 2017ADEQ00024) * $4,006 (FY18 base) * 0.484 (at-risk weighting) = $368,215,319.74.

[13] $428 million (at-risk funding recommended by LPA for 2007) / $4,006 (FY18 base) / 189,909 (free lunch headcount, *see* Appx. B-1, at 2017ADEQ00024) = 0.5625.

When the at-risk funding is adjusted for inflation, the results are even more staggering. Adjusted for inflation, compliance with the LPA study would require a base of $6,435 in FY18 ($2,429 *more* per student). Appx. F, at 2017ADEQ00041. At that base, the amount of funding that should be provided to at-risk students under the LPA's recommended weighting is $1.2 billion[14]; the State's decision to fund only $368 million cannot be considered to be reasonably calculated to providing these students with a constitutional education. S.B. 19 does not provide sufficient funding for at-risk students.

F. Providing all-day kindergarten does not cure S.B. 19's deficiencies.

S.B. 19 provides funding for full-day kindergarten. S.B. 19, Sec. 4. The State may attempt to argue that this targets educational resources to these students, which will favorably impact the achievement gap noted by this Court. But, prior to the adoption of S.B. 19, 91.1% of students already attended full-day kindergarten and 88.8% of districts already offered full-day kindergarten to all of its students. Appendix Q: Demonstrative Chart Regarding 2015-2016 Kindergarten Enrollment, With Supporting Data. Thus, overall, the funding of full-day kindergarten will only minimally affect the level of education that Kansas public schoolchildren are receiving. The achievement failure rates noted by this Court cannot improve with the initiation of full-day kindergarten because it effectively already existed at the time that the failure rates were noted. If 91.1% of students were already attending full-day kindergarten, the lack of that program cannot be

[14] 189,909 (free lunch headcount, *see* Appx. B-1, at 2017ADEQ00024) * $6,435 (recommended base adjusted for inflation) * 0.484 (recommended weighting) = $1,222,064,414.52.

the cause for regression in student achievement and declining assessment results noted in this Court's March decision.

The additional appropriation for full day kindergarten amounts to approximately $62 million. Appx. B (additional 15,606 FTE kindergarten students * $4,006). The funding goes to all districts, not just at-risk districts, so it does not target more funding specifically to at-risk districts or students.

III. THE LEGISLATURE HAS FAILED TO SUPPORT S.B. 19 WITH THE MONEY NECESSARY TO FULLY FUND IT

To the extent that the State has arguably put *some* structure in place for Kansas students to receive an education that meets the requirements of the Kansas Constitution (*i.e.* – by passing S.B. 19), it has not taken any actions to fully fund the bill and therefore does not constitutionally ***implement*** the legislation. *Gannon I*, 298 Kan. at 1169 (citing *Montoy I*, 275 Kan. at 153 (acknowledging that seemingly constitutional legislation, when underfunded, can lead to an unconstitutional system)).

S.B. 19 is dependent on additional tax revenue generated by Senate Bill 30, enacted by the Kansas Legislature on June 6, 2017. However, even with this additional revenue, Kansas will be facing a negative ending balance as early as FY21, the third year of the plan. *See* Appendix O: Kansas Legislative Research Department's State General Fund Overview for FY18-FY21. This is indicative of a structural problem with S.B. 19. It is especially worrisome in light of post-*Montoy* events, when the State began making cuts to education and blamed them on the State's "self-imposed fiscal dilemma." R.Vol. 24, at p.3161.

This is closely related to another structural issue with S.B. 19: even if the State later develops a plan to fund S.B. 19 in FY 20 and FY21, it may simply choose not to do so. Section 4(e) of S.B. 19, which requires future legislatures to increase funding based on the CPI, should be viewed skeptically. The State has demonstrated a clear pattern of making representations in order to secure dismissal of a school funding case, only to default on those commitments once the Court releases jurisdiction of the matter. One example is the State's past promise to annually adjust funding levels based on the CPI. *See* 2006 K.S.A. 72-64c04. Historically, the State failed to implement CPI increases despite the statutory obligation to do so. Appendix P-1: Demonstrative Exhibit Regarding CPI Increase in Prior Law.[15] It is fair to assume that the Legislature could make a similar decision in the future and not actually increase funding after FY19.

Further, S.B. 19 is structurally unsound because it does not fully fund the programs that it legislates. S.B. 19 significantly underfunds Special Education, the Mentor Teacher Program, and the Professional Development Program, all of which the State chose to include in S.B. 19. When it adopted S.B. 19, the State retained the requirement that Special Education be funded at 92% of excess costs. *Compare* S.B. 19, Sec. 60(a); *with* 2015 K.S.A. 72-978(a); *Montoy v. State*, 282 Kan. 9, 22, 138 P.3d 755 (2006) ("Special education excess cost reimbursement has been increased from 85

[15] An increase at the required 3.64% CPI-U would have required that FY10 funding increase by $80,463,470 [$2,210,535,127 * 0.0364 = $80,463,478.62] for a total of $2,290,998,606. FY10 funding only totaled $2,068,312,380. *See* Appendix P-3: General State Aid/Supplemental General State Aid for Kansas USD's 2009-2010, at 2017ADEQ00098 [$1,929,618,677 (total general state aid) + $138,693,703 (federal ARRA)]. That is $222,686,226 short of what the CPI increase required.

percent at the time of *Montoy II* to 92 percent, and provides by 2008-09 an additional $ 111.5 million in new funding."). This requires that the State pay $503,482,999 to Special Education in FY18 and $513,552,659 to Special Education in FY19. Appendix L-2: KSBE's July Board Materials, at 2017ADEQ00390.

At the time that the State adopted S.B. 19, the Legislature was well aware that funding Special Education at 92% of excess costs would necessitate additional money. The KSBE estimated that it would cost an additional $69.5 million in FY18 and an additional $79.6 million in FY19. Appx. L-2, 2017ADEQ00390. But, the State failed to appropriate the additional money that it knew it would cost to fully fund Section 60(a). Instead, the State only increased Special Education funding by $12 million for FY18 and for FY19. Appx. B-1, at 2017ADEQ00021 (Row 5). The State intentionally and significantly under-appropriated Special Education funding. In FY18, funding will be $57.5 million short and funding will be $55.6 million short in FY19.

The State chose to adopt S.B. 19 Section 60(a) and require that Special Education be funded at 92% of excess costs. It has continuously maintained this funding requirement for the purpose of supplementing federal allocations under the Individuals with Disabilities Education Act.[16] Unfortunately, it also has continuously maintained its unconstitutional pattern of pro-rating funding based on the amount of funds available and/or political compromise. The State has under-appropriated Special Education

---

[16] *See* http://www.ksde.org/Agency/Division-of-Learning-Services/Early-Childhood-Special-Education-and-Title-Services/Special-Education/Special-Education-Fiscal-Resources/Categorical-Aid.

funding throughout the pendency of this litigation; FY11 is the last time Special Education was funded to 92% of excess costs. Appendix L-1: Demonstrative Exhibit Regarding State Special Education Funding. This under-appropriation is very similar to the under-appropriation of LOB State Aid, which was ruled unconstitutional in the equity portion of this case. The downward proration to fit an artificial budget target indicates a structural deficiency in the implementation of the new formula. The entire *Gannon* suit has focused on under-appropriation. This under-appropriation of Special Education shifts those excess costs to other parts of the formula. Districts have been obligated to meet the unwavering state and federal mandates for special education. Since Special Education funding has not increased to meet those increased costs, school districts have been forced to cannibalize funding from general funds and LOB funds to meet these requirements. Such cannibalization will continue to be required since S.B. 19 once again underfunds Special Education. The level of cannibalization due solely to Special Education for FY18 is $57.5 million. Appx. L-1, L-2.

Likewise, S.B. 19 under-appropriates the Mentor Teacher Program. S.B. 19 incorporated the SDFQPA's Mentor Teacher Program. *Compare* 2015 K.S.A. 72-1414 *with* S.B. 19, Sec. 63. It would cost $3 million to fully fund the law. Appx. L-2, at 2017ADEQ00391. Without explanation, S.B. 19 appropriates less than half of that ($800,000) for FY18 and for FY19. Sec. 1(a), 2(a). This does not even return the funding of the program back to the FY09-FY11 levels. Appx. L-2, at 2017ADEQ00391.

Finally, S.B. 19 under-appropriates the Professional Development Program. S.B. 19, Sec. 94. It would cost $8.5 million to fully fund the program. Appx. L-2, at

2017ADEQ00392. For both FY18 and for FY19, S.B. 19 only appropriates 20% of the full cost of implementing the program ($1.7 million each year). The State offers no justification for retaining the program, but then failing to fund what it actually costs.

IV. ACHIEVEMENT LEVELS WERE UNACCEPTABLE EVEN AT THE *MONTOY* LEVEL OF SPENDING.

The KSBE's recommendation and the Panel's recommended funding levels are largely based upon the legislative adopted base of $4492 at the conclusion of the *Montoy* case. While this level of funding was never reached, evidence at trial and in the record since shows that spending at pre-cut levels still produced the unacceptable failure rates noted by this court. This would indicate that even those spending levels were insufficient. It should be noted that spending levels have never approached the levels recommended by the professional studies done by the state by A&M and LPA. Failure rates bottomed out in approximately 2011 with approximately 22% of the at-risk students not performing to standards. The 2016 data shows those failure rates now rising to approximately 38%. Appendix DD: Kansas Assessment Data Excerpts. The State attempted to argue at trial, and may continue to argue, that somehow these achievement results would be different if we looked at all funds, including federal funds and LOB, rather than just the general fund. The proofs, however, show that these failure rates occurred when all funds *were* being considered. In the years that the achievement data demonstrates that students were failing, all of those funds were in fact being spent and impacted the educations of the children tested. The results still show unacceptable failure

rates. Any argument that funding levels would be acceptable if LOB and federal funds are "included" must fail. The proof is in the past and current unacceptable outputs.

V. BEST PRACTICES ARE NOW MANDATED FOR ALL AT-RISK SPENDING, BUT THE STANDARDS ARE NOT DEFINED.

Section 25 of S.B. 19 adds a requirement that all at-risk funding be only spent upon "at-risk educational programs based on best practices" as determined by KSBE. The bill then mandates KSBE to identify these best practices by July 1, 2018. This is a change from current law. Current law only requires that at-risk funds be spent as approved by KSBE. Currently the new "best practices" have not been completed and released by KSBE and schools will not even know what these new best practices are while they prepare their budgets and begin school. It is a structural defect in the formula to limit or change how hundreds of millions of dollars may be spent without articulating the required change.

VI. S.B. 19 DOES NOT MEET THIS COURT'S EQUITY TEST

In its March 2 Order, this Court instructed the Legislature "to be mindful of the connection between equity and adequacy." *Gannon IV*, 305 Kan. at 917. Any legislative cure must comply with this Court's equity test, which requires that school districts have "reasonably equal access to substantially similar educational opportunity through similar tax effort." *Gannon I*, 298 Kan at 1175. S.B. 19 significantly disrupts the equity of the funding distribution, and for those reasons, fails to comply with the Court's Order and the Kansas Constitution.

A. S.B. 19 Violates the Equity Component of Article 6 Because It Subjects Schools to a Protest and Election Process to Gain Full Access to Available Funds

S.B. 19 once again improperly hinges the funding of public education to the whim of local taxpayers. *See e.g.*, R.Vol. 137, p. 1469. Notably, S.B. 19 grandfathers every district's former LOB percentage into the new formula. While most districts had approved an LOB of 30%, certain, usually more wealthy, districts were able to implement a 33% LOB, after successfully navigating a mandatory election process. Therefore, 44 districts now have access to $30 million in additional, local resources. Appendix U: Demonstrative Chart Showing 33% LOB Grandfathered Advantage, at 2017ADEQ00119. The additional resources available to these 44 districts are not available to the remaining school districts without surviving the protest/election process. As such, S.B. 19 cannot be said to accord "school districts reasonably equal access to substantially similar educational opportunity through similar tax effort." And, the disparity in resources is significant, ranging from the low of an additional $61 per student to an additional $381 per student. Appx. U, at 2017ADEQ00119.

The fact that the State retained the protest/election requirement further demonstrates that S.B. 19 violates the equity provisions of Article 6. In effect, the State once again unconstitutionally conditions a school district's ability to fund an education for its students to the whim of its local voters, in violation of the Kansas Constitution. R.Vol. 37, p. 1504 (adopting Plaintiffs' Proposed FOF/COL Re: Equity). This creates unequal access to funding, and allows wealthier districts more educational opportunity through that funding. It, as the Panel found, violates the equity test. R.Vol. 37, p. 1504.

The history of failed elections related to school funding in Kansas demonstrates that wealthier school districts have an easier time passing local tax increases. By requiring local voter approval, the Legislature perpetuates a system by which the school districts do not have "reasonably equal access" to equalization money. Instead, they have wildly inconsistent access based on the results of the election. Constitutionally required equity cannot be a function of whether a community is wealthy enough or has enough like-minded voters to succeed in raising additional LOB funds through statutorily-required elections.

There is an obvious correlation between a school district's wealth and the likelihood that it will be able to pass an election to access additional funds. Between 1995 and 2012, 59% of LOB elections failed. Appendix V: Previously Admitted Equity Exhibits, at SFFF000790-804. Disaggregating to account for wealth, however, produces shocking results. School districts with an assessed valuation per pupil ("AVPP") of more than $100,000 have a 25% failure rate for LOB elections. Appx. V, at SFFF00788-789. But, those districts with an AVPP between $50,000 and $100,000 have a 60% failure rate for LOB elections. And, 81% of the LOB elections between 1995 and 2012 have failed for those poorest school districts, with an AVPP under $50,000. *Id.*

A review of the failure rates for capital outlay elections reveals similar results. Between 1995 and 2012, 48% of capital outlay elections failed. Appx. V, at SFFF000790. But, ***none*** of those failed capital outlay elections occurred in wealthier school districts with an AVPP of more than $100,000. Appx. V, at SFFF000788. The failure rate for capital outlay elections jumps up significantly (to 53%) for school districts

with an AVPP between $50,000 and $100,000. In the poorest school districts, with an AVPP under $50,000, four out of every five capital outlay elections (80%) fail. *Id.*

Importantly, this empirical data supports what educators in Kansas already know and testified about at trial. A school district's wealth makes a significant difference in whether it can raise education funding when an election is required. As Superintendent Lane testified:

> We have not gone out for the referendum to raise the LOB to 31 percent because we're very much aware that in a community where most of your children live in poverty, where the median income is less than 38,000 a year, it's not impossible but highly unlikely that the voters, who are very passionate and supportive of what we do in schools, can afford to increase their taxes at all. <u>So the board is committed to not asking for another general obligation bond and promised that to the voters prior to the passage of that last bond issue</u>.

R.Vol. 30, p. 281 (emphasis added); R.Vol. 31, 522 (discussing the same issue in the context of capital outlay equalization).

S.B. 19 does not comply with the March 2 Order because it does not comply with all "previously identified constitutional mandates," specifically – it does not meet Article 6's equity requirements.

B. <u>S.B. 19 Violates the Equity Component of Article 6 By Shifting the Payment of Certain Operational Costs From the General Fund to the Capital Outlay Fund</u>

S.B. 19 is further dis-equalizing because it allows school districts to expand capital outlay uses and pay certain *operational costs* from the capital outlay fund. Appx. A, at 2017ADEQ00010 (describing changes to Capital Outlay). In doing so, it significantly

disrupts whether school districts have reasonably equal access to substantially similar educational opportunity and therefore violates Article 6's equity test.

Section 91 of S.B. 19 makes changes to the permissible uses of money in the capital outlay fund. *Compare* S.B. 19, Sec. 91 *with* 2015 K.S.A. 72-8804. Notably, Section 91 adds two additional purposes for which school districts can expend any moneys in the capital outlay fund: utility expenses and property and casualty insurance. Sec. 91(a)(8), (9). These are *operational costs*. This fundamentally changes the use of the capital outlay fund.

For FY17, capital outlay expenditures, statewide, only totaled $295.5 million. Appendix T: FY17 Capital Outlay Aid, at 2017ADEQ00118 (combining the totals of Cols. 3 and 5). Adding in utility expenses and property and casualty insurance will increase the expenditures made from the Capital Outlay Fund by over half. *See* Appendix S: KSDE Expenditures Report SF17-031, at 2017ADEQ00109 (statewide FY16 utility expenditures were $123 million and statewide FY Property and Casualty Insurance expenditures were $39 million for a total of $162 million).

This expansion of authority violates the equity test in two ways: (1) because of the equalization method used and (2) capital outlay is wealth-limited to 8 mills. First, the equalization provided to school districts for moneys within the capital outlay fund is calculated differently than the equalization provided to school districts for moneys within the LOB supplemental general state aid fund. *See Gannon III*, 304 Kan. at 505 ("Under the capital outlay aid formula, however, the equalization point becomes significantly lower and set to the median AVPP on the State Board's AVPP schedule."). Instead of

receiving equalization at the 81.2 percentile, districts only get equalization for Capital Outlay up to about the 62nd percentile, using the lesser (median) method. Equalization aid for Capital Outlay is much less generous than for LOB.

The Court has historically tolerated the lower equalization for capital outlay largely because the capital outlay fund was, at least in the past, limited in its use. *Gannon III*, 304 Kan. at 506 ("By law, school districts may only use capital outlay funds for capital improvements such as building costs, equipment purchases, and other authorized investments."); *id.* ("In sum, LOB enhances a district's ability to perform its basic function, while capital outlay, although necessary, is indirect and generates considerably smaller revenue."). But, S.B. 19 changes the authorized uses of the capital outlay fund in a manner that directly ties the fund to the district's ability to perform its basic function. In *Gannon III*, this Court stated:

> We must conclude that applying the former capital outlay formula—to calculate supplemental general state aid—creates intolerable, and simply unfair, wealth-based disparities among the districts. While these disparities are acceptable when computing aid in the smaller and less flexible capital outlay arena, the degree of inequity among the districts is too great when considering that the LOB has developed into such a major source of basic, and versatile, educational funding.

Gannon III, 304 Kan. at 507.

Second, Capital Outlay is capped at 8 mills. The money that a district can generate in its Capital Outlay Fund differs significantly based solely on one factor: that district's wealth. Appendix R: Demonstrative Capital Outlay Funding Comparison. Comparing the capital outlay funding for various districts shows the dis-equalizing effects of this provision. This is true even when the equalization aid is considered

Districts with lower wealth will not have the same ability to shift expenditures. The Kansas City school district (U.S.D. 500) does not receive even half of the Capital Outlay funds that Blue Valley has available to it. These two districts are of similar size but greatly different wealth. If Kansas City used its $9 million Capital Outlay funding for utilities and insurance, they would have no funds left for actual capital outlay needs, while Blue Valley (U.S.D 229), spending about the same amount on utilities and insurance, would still have $13 million left. If Dodge City used its Capital Outlay funding for Utilities and Insurance it would have very little left for capital outlay needs. Other, wealthier districts of the same size, will not have the same difficulty. Expanding the use of a wealth based fund allows districts with high wealth to shift vastly more operating expenditures into capital outlay, freeing up their general fund or LOB for offering additional educational opportunities to their students. It is an equity violation. Appx. R., at 2017ADEQ00107. *Gannon III*, 304 Kan. at 501 ("[T]he State may not allow children to receive disparate levels of educational opportunity on the basis of wealth, especially the property wealth of the district where they happen to live (citing *Gannon I*, 298 Kan. at 1174 ("Education in Kansas is not restricted to that upper stratum of society able to afford it.")).

C. S.B. 19 Violates the Equity Component of Article 6 Because it Equalizes the Prior Year's LOB

Under S.B. 19, LOB equalization aid will be paid only upon the prior year's LOB. This provision wholly disconnects the equalization aid from its purpose: "to equalize property-poor districts' local revenue-raising authority." *Gannon III*, 304 Kan. at 495.

As a result of this provision, no district will receive LOB equalization aid for any LOB increases for the first year of its increase. It delays aid to a needy district by a year, and it costs the State less this year. This provision is not unlike borrowing money from the highway fund. The KSDE estimates LOB increases for FY18 will be $32.1 million. Appendix Y-1: Demonstrative Calculation of Unequalized LOB Due to Use of Prior Year LOB, at 2017ADEQ000136. Under the prior system, those increases would be subject to equalization aid and the State would have appropriated $16.3 million in state aid for those districts. Under the new system, state aid for LOB is paid based on the prior year LOB, so those districts will not get any additional LOB state aid. It is the lowest valuation districts that receive the largest percentage of their LOB in equalization funding. Having to raise the first year's increase with no equalization will be an obstacle to raising it at all.

Interestingly, if a district abolished its LOB, it would still receive LOB state aid that year. Districts with decreases to their LOB authority will still receive $2.8 million in extra aid on those decreases. Appx. Y. This is a violation of the equity test.

CONCLUSION

The State cannot meet its burden to show that SB 19 cures the constitutional infirmities in the Kansas school finance system. While the structure of the new formula passes constitutional muster, with a few exceptions, the implementation of the formula, specifically the magnitude of its appropriations, completely misses the mark.

S.B. 19 increases the from $3,852 to $4,006 to $4,128. Using this as a measure of the adequacy of S.B. 19 demonstrates it unconstitutionality; it falls far short of all other estimates as to what the base should be for FY18 and FY 19. The KSBE recommended

the base increase to $4,604 and then $5,090. The Panel suggested a base of $4,980. The inflation-adjusted cost study recommendations would require a base of $6,435 (for the LPA study) or $6,260 (for the A&M study). Merely adjusting the 1992 base of $3,600 for inflation would require a base of $6,006. S.B. 19 does not fund anywhere near this and does not remedy the constitutional infirmities, when using the base as the measure.

If this Court instead measured the adequacy of S.B. 19 by the amount of increased spending, S.B. 19 again falls short. S.B. 19 increases spending by $194.7 million in year one and by an additional $97.8 million in year two, for a two year total of $292.5 million. The KSBE recommended a two-year request of $893 million; S.B. 19 falls $600 million short. The cost studies suggested even larger increases. Funding the levels recommended by LPA the would require an increase of about $1.7 billion. Funding the levels recommended by A&M require an increase of about $1.6 billion. Funding to the levels suggested by Panel would cost about $769 million. Simply returning to the inflation unadjusted 2010 base of $4,492 would cost about $436 million. S.B. 19 funds only about 33% of the KSBE request, 17% of the LPA-indicated cost, 18% of the A&M-indicated cost, and 36% of the Panel-indicated cost. Using increased funding as the measure, S.B. 19 does not remedy the constitutional infirmities.

Two years of inflation alone will cost $158 million and consume 54% of the increase provided by S.B. 19.

The level or magnitude of funding provided by S.B. 19 simply does not meet the constitutional adequacy mandate by any measure. It is not even close.

Evidence at trial indicated that educators know how to address the achievement gap, they know how to increase achievement, and they just do not have the resources to do it. S.B. 19 does not provide those resources.

Evidence at trial indicated that greater infusions of resources after the *Montoy* case resulted in increased achievement. As the resources were withdrawn, achievement dropped. Minimal or inadequate infusions of resources will not meet the Court's mandate. All evidence indicates that the magnitude of the increases matter and that the magnitude of the S.B. 19 increase greatly misses the mark.

Adequacy aside, S.B. 19 does not meet the Constitution's equity requirements. Funding operational costs from capital outlay, with its lesser equalization scheme and its wealth based limit is a clear equity violation. Grandfathering districts that passed the protest/election gauntlet to gain a 33% LOB allows them a 3% resource advantage from the beginning of the new formula. This is a clear equity violation. Linking LOB authority to a protest/election requirement denies equal access and is a clear equity violation. Allowing two districts to pocket $2 million to educate at-risk kids they do not have is a clear equity violation. Equalizing LOB based on the prior year's LOB denies equalization to some and continues equalization for others when it should not continue. It is an equity violation.

When this Court was faced with a strikingly similar legislative response in *Montoy*, it found the response to be "unsatisfactory." The same result is warranted here.

For the reasons stated above, Plaintiffs request that this Court:

(1) Declare S.B. 19 unconstitutional.

(2) Enter a finding that the Legislature should appropriate at least enough money to meet the KSBE's request for additional resources. This would require funding a base in FY18 of $4,604, costing approximately $567 million, and a base in FY19 of $5090, costing an additional $328 million for a total two-year increase of $893 million. It would also require full funding of Special Education at 92% of Excess Costs as required by statute.

(3) Disallow the addition of utilities and insurance expenditures to capital outlay authorization.

(4) Authorize all districts a starting LOB of 33%,

(5) Remove any requirement that LOB authority be linked to a protest/election requirement.

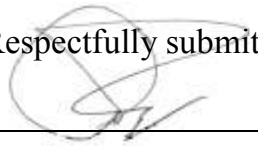
(6) Disallow the discriminatory 10% floor to at-risk funding.

(7) Require that LOB be equalized in the current year rather than the prior year.

Plaintiffs request that the court set a new deadline of September 1, 2017 for these unconstitutional provisions to be remedied. Allowing the unconstitutional system to continue for yet another year upon the hope that next year's legislature might enact a better cure is not appropriate. The children of Kansas have waited long enough. Absent a constitutional cure, Plaintiffs request that the implementation of the finance system be declared void. Plaintiffs would further request the opportunity to brief exceptions to any spending injunction to allow for the preservation and security of district properties and systems should that be necessary.

Dated this 30th day of June, 2017.

Respectfully submitted,



Alan L. Rupe, #08914
Jessica L. Skladzien, #24178
LEWIS BRISBOIS BISGAARD & SMITH
1605 North Waterfront Parkway, Suite 150
Wichita, KS 67206-6634
(316) 609-7900 (Telephone)
(316) 462-5746 (Facsimile)
Alan.Rupe@lewisbrisbois.com
Jessica.Skladzien@lewisbrisbois.com

John S. Robb, #09844
SOMERS, ROBB & ROBB
110 East Broadway
Newton, KS 67114
(316) 283-4650 (Telephone)
(316) 283-5049 (Facsimile)
JohnRobb@robblaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2017, I electronically served the foregoing to:

Derek Schmidt
Jeffrey A. Chanay
Stephen R. McAllister
M.J. Willoughby
Memorial Building, 2nd Floor
120 SW 10th Ave.
Topeka, KS 66612-1597
Derek.Schmidt@ag.ks.gov
Jeff.Chanay@ag.ks.gov
stevermac@fastmail.fm
MJ.Willoughby@ag.ks.gov

Arthur S. Chalmers
Hite, Fanning & Honeyman, L.L.P.
100 North Broadway, Suite 950
Wichita, KS 67202-2209
chalmers@hitefanning.com

Attorneys for Defendant State of Kansas

Steve Phillips
Assistant Attorney General
Office of the Attorney General
Memorial Building, 2nd Floor
120 S.W. 10th Ave.
Topeka, KS 66612-1597
Steve.Phillips@ag.ks.gov
Attorney for State Treasurer Ron Estes

Philip R. Michael
Daniel J. Carroll
Kansas Dept. of Administration
1000 SW Jackson, Suite 500
Topeka, KS 66612
philip.michael@da.ks.gov
dan.carroll@da.ks.gov
Attorneys for Secretary of Administration Jim Clark

Alan L. Rupe