

## Gannon v State

(Supreme Court of Kansas; 2016 )

### Case at a glance

#### Full citation

[Gannon v. State, 298 Kan. 1107 \(Kan. 2014\) \(Gannon I\)](#)

[Gannon v. State, 303 Kan. 682 \(Kan. 2016\) \(Gannon II\)](#)

[Gannon v. State, 304 Kan. 490 \(Kan. 2016\) \(Gannon III\)](#)

#### Forum / Country

Supreme Court of Kansas, United States

#### Date of decision

7 March 2014 (Gannon I), 11 February 2016 (Gannon II), 27 May 2016 (Gannon III)

#### Summary of decision

In these three related decisions, the Kansas Supreme Court held that legislative changes to K-12 school funding, which reduced state-aid payments augmenting funds generated through property taxation in school districts with lower property values, violated the Kansas constitution. Article 6 of the Kansas constitution has previously been interpreted by the Kansas Supreme Court to require equity and adequacy in the provision of financing for education. The Kansas Supreme Court found that the legislative changes violated the equity requirement because school districts did not have reasonably equal access to substantially equal educational opportunity through similar tax efforts.

#### Significance to the right to education

These decisions clarify Kansas' constitutional obligation to provide funding for public K-12 education in a manner that ensures equity (and adequacy). The Kansas Supreme Court sets forth specific tests by which to assess whether the obligations of equity and adequacy under Article 6 of the Kansas constitution are met. These decisions strengthen the constitutional mandate for the state of Kansas to provide enough K-12 public education funding to enable school districts to meet a minimum standard of education in a manner that is equitable to school districts regardless of wealth disparities.

#### Issues & keywords

Education financing; Educational funding; State aid; Adequacy; Equity; Article 6; Mill levy; Tax effort; Local option budget; Capital outlay

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# Context

The Kansas Supreme Court previously addressed the funding formula for public K-12 education in a series of cases arising from litigation in *Montoy v. State* between 2003 and 2006. The Kansas Supreme Court found that the school finance formula employed by the Kansas legislature was unconstitutional for failing to make suitable provision for finance of the educational interests of the State. By 2006, the Kansas legislature complied with the Supreme Court's decision by increasing K-12 education funding by \$755.6 million. However, budget cuts (totalling more than \$500 million between 2009 and 2012) caused a failure by the State to provide the funding promised by the legislature in 2006 and prompted the filing of *Gannon v. State* by a coalition of school districts asserting that the State failed to comply with the Kansas Supreme Court's 2006 *Montoy* decision.

## Facts

Base funding for Kansas school districts primarily consists of property tax funds and general state aid, which accounts for the variation in property value between school districts. In addition to base funding, school districts can generate supplemental funding by imposing property taxes in support of a local option budget and/or a capital outlay. The funding mechanisms for both the local option budget and capital outlay include supplemental state aid, which supplements the funds generated by less wealthy school districts through the application of a formula accounting for the differences in property wealth among school districts throughout the State.

The State of Kansas enacted legislation eliminating supplemental state aid payments for capital outlay, and prorating supplemental state aid payments for local option budgets, beginning in 2010.

The trial court held that the State of Kansas violated Article 6 of the Kansas constitution by failing to provide suitable funding for education. In particular, the elimination of payments for capital outlay and the proration of payments for local option budgets created unconstitutional, wealth-based disparities among school districts.

### Article 6 of the Kansas Constitution

§6(b): The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorised by law. The legislature may authorise the state board of regents to establish tuition, fees and charges at institutions under its supervision.

## Issue

The primary questions before the Kansas Supreme Court were, in relevant part:

5. Whether the Kansas legislature's elimination of capital outlay state aid payments complies with the requirements of adequacy and equity in Article 6 of the Kansas Constitution.
6. Whether the Kansas legislature's proration of local option budget state aid payments complies with the requirements of adequacy and equity in Article 6 of the Kansas Constitution.

# Decision

In *Montoy*, the Kansas Supreme Court previously interpreted Article 6 of the Kansas Constitution to require at least two components: equity (with which funds are distributed) and adequacy (of funding for the educational programme). A final determination was reached by the Kansas Supreme Court regarding the equity requirement of the Kansas Constitution. The issue of adequacy is currently still under the Court's consideration.

## Equity

The Kansas Supreme Court held that the legislation reducing state aid to school districts in the form of what was commonly referred to as equalisation payments (i.e., equalisation between school districts with varying property values throughout the state) was unconstitutional. The Court ruled that such funding reductions established unreasonable, wealth-based disparities between school districts in violation of the equity requirement in Article 6 of the Kansas Constitution.

The Court set a deadline of 1 July 2014 for the legislature to address its ruling. In response, the Kansas legislature fully funded the then existing budget for supplemental state aid. However, the 2015 legislature amended the school funding formulas for fiscal years 2016 and 2017. This resulted in a determination by the trial court that the State of Kansas was no longer in compliance with the ruling in *Gannon I*, once again violating the equity requirement of the Kansas Constitution. On 11 February 2016, the Kansas Supreme Court affirmed the trial court's decision in *Gannon II*, based in large part upon evidence that only lower property-wealth districts entitled to the supplemental state aid lost funding under the amended funding formulas. A new deadline of 30 June 2016 was set to allow the State of Kansas to craft a suitable solution to cure the education financing formula.

In response, the Kansas legislature passed a bill to restore the supplemental state aid funding for capital outlay, but changed the formula for funding supplemental state aid for the local option budget. On 27 May 2016, in *Gannon III*, the Kansas Supreme Court found that this new legislation was unconstitutional because the resulting reduction of state aid regarding the local option budget violates the Article 6 equity requirement. Because the funding bill was deemed unconstitutional, the Court's ruling would have resulted in a shutdown of the entire public school system in Kansas if the State legislature did not enact new, acceptable legislation by 30 June 2016. On 27 June 2016, the State of Kansas passed a bill once again restoring the original funding levels for supplemental state aid, as it had originally done in response to *Gannon I*. The Kansas Supreme Court found this legislation to meet the constitutional requirement of equity.

## Adequacy

In *Gannon I*, the Kansas Supreme Court tasked the trial court with determining whether the State of Kansas has met its duty to provide adequacy in public education as required by Article 6 of the Kansas Constitution. The trial court found that funding levels in fiscal year 2009 resulting from the *Montoy* decisions served as a baseline for a constitutionally adequate education system. Accordingly, the trial court held that current funding approach of the State of Kansas, which has reduced funding levels since *Montoy*, as unconstitutionally inadequate. The Kansas Supreme Court decided to address the issue of adequacy separately from the issue of equity, and its decision regarding this issue remains pending. Oral arguments before the Court occurred on 21 September 2016.

# Impact

The *Gannon* decisions resulted in a restoration of supplemental state aid funding for capital outlay and local option budgets in Kansas. These decisions also clarified the constitutional requirements regarding education financing in favour of plaintiff school districts. In *Gannon I*, the Supreme Court expanded upon its *Montoy* decisions to expressly set forth the standards for equity and adequacy as required by Article 6 of the Kansas Constitution.

First, the Court clarified that the requirements of equity and adequacy are separate. Accordingly, even if funding is adequate, it may not be constitutionally equitable.

Regarding equity, the Kansas Supreme Court clarified the test as: school districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort. The Court noted that this test does not require precise standards of equality.

Regarding adequacy, the Kansas Supreme Court adopted the criteria set forth by the Kentucky Supreme Court in 1989 known as the *Rose* factors. These factors identify the following seven criteria:

1. Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilisation
2. Sufficient knowledge of economic, social, and political systems to enable the student to make informed choices
3. Sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation
4. Sufficient self-knowledge and knowledge of his or her mental and physical wellness
5. Sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage
6. Sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently
7. Sufficient levels of academic or vocational skills to enable public school students to compete favourably with their counterparts in surrounding states, in academics or in the job market.

## Commentary

*Gannon v. State* affirmed the principle that the right to education provided by the Kansas Constitution must be provided in an equitable fashion that meets a clearly defined minimum standard of adequacy.

In addressing the issue of adequacy, the trial court cited a comparison of current education funding against an adjusted form of a study by Augenblick and Meyers (commissioned by the Kansas legislature in 2002 to determine the cost of providing an education according to criteria set forth by a legislative committee) that formed the basis for measuring the State's compliance in *Montoy*.

However, the Kansas Supreme Court cautioned in *Gannon I* that a monetary formula was inadequate in determining constitutional adequacy of educational funding. In looking beyond a monetary formula, the trial court additionally cited disparities for minority and low-household-income students, suggesting that such disparities were tied to the State's reductions in educational funding.

New legislation normally enjoys a presumption of constitutionality. However, in this case, the Supreme Court retained jurisdiction over the equity portion of this case by instructing the trial court to ensure that the funding inequities are cured. By doing so, the burden remained on the State to prove that any new legislation regarding education finance complied with the Court's decision.

## Relevant cases

- *Montoy v. State*, 275 Kan. 145, 62 P.3d 228 (Kan. 2003) (Montoy I)
- *Montoy v. State*, 278 Kan. 769, 120 P.3d 306 (Kan. 2005) (Montoy II)
- *Montoy v. State*, 279 Kan. 817, 112 P.3d 923 (Kan. 2005) (Montoy III)
- *Montoy v. State*, 282 Kan. 9, 138 P.3d 755 (Kan. 2006) (Montoy IV)

In the *Montoy* cases, the Kansas Supreme Court held that the school finance formula at the time was unconstitutional for failing to comply with Article 6 of the Kansas Constitution, which the Court held required both equity and adequacy in achieving a suitable formula for financing education. The *Gannon* cases were initially filed by the plaintiff school districts in response to reductions by the state of Kansas to the education finance formula resulting from the *Montoy* decisions. The *Montoy* decisions can be found, [here](#).

- [Rose v. Council for Better Educ, Inc., 790 S.W.2d 186 \(Ky.1989\)](#).

The Supreme Court of Kansas adopted the minimum criteria set forth by the Supreme Court of Kentucky in *Rose* regarding adequacy of education in public K-12 schools.

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