

**SB 44 Opponent Testimony – in person**  
**School funding increase to appease Supreme Court**  
**Senate Select Committee on Education Finance**  
**Dave Trabert – President**  
**February 6, 2019**



Chairwoman Baumgardner and Members of the Committee,

We appreciate this opportunity to testify in opposition to SB 44, which would increase school funding in an attempt to appease the Kansas Supreme Court in *Gannon v. State of Kansas*. Our opposition is primarily related to three issues:

1. The judiciary has no constitutional authority to order an appropriation.
2. Funding increases do not cause student achievement to improve.
3. Additional funding will cause existing long-term budget deficits to become worse.

### **Judiciary has no constitutional authority to order appropriations**

In 1994, the Kansas Supreme Court ruled in *USD No. 229 v. State of Kansas* that the constitution doesn't allow the court to set funding levels. The court said "...shall make suitable provision for the finance of the educational interests of the state" refers to a system of finance (e.g., a formula) and not any specific amount of funding.

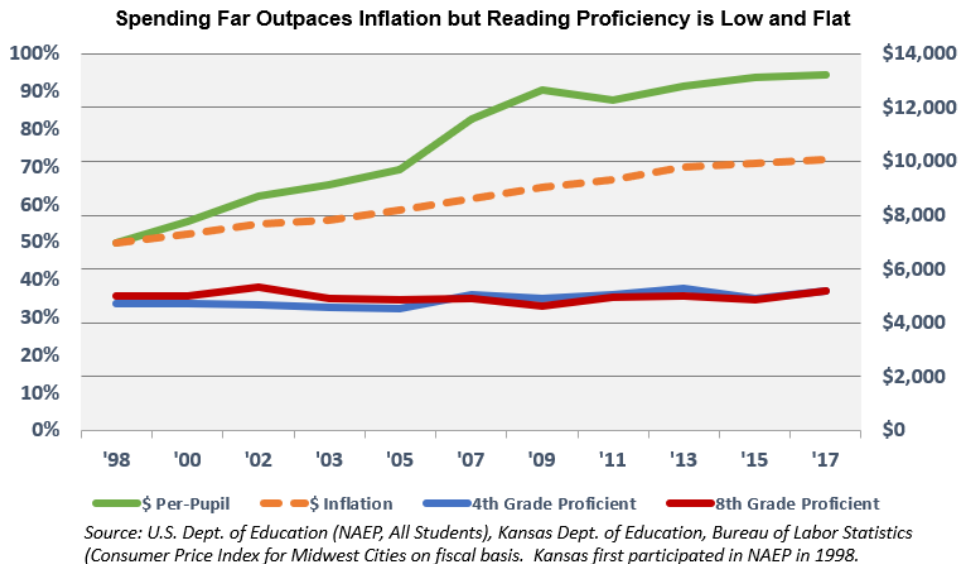
The constitution also vests the power to appropriate solely with the Legislature.

The current members of the Supreme Court ignore all of this precedent. They believe the constitution requires a certain funding level. They also believe they can order an appropriation in violation of the separation of powers doctrine, which they seem to believe is a one-way street. In *Solomon v. State of Kansas*, the court struck down the legislature's attempt to amend the procedure for selecting chief judges in various judicial districts. The legislature passed a bill allowing local judges to select their chief judge for the district, rather than having each chief judge be appointed by the Kansas Supreme Court. Justice Eric Rosen wrote, "[O]ne department of government usurps the powers of another department when it exercises **coercive** influence on the other." (emphasis added) "In order for the interference by one department with the operations of another department to be unconstitutional, **the intrusion must be significant.**" (emphasis added)

The current group of justices even threatened to close schools if the Legislature fails to do the court's bidding, which is expressly prohibited by state law. K.S.A. 72-64b03(d) provides that in school finance litigation under Art. 6 of the Kansas Constitution, courts "shall not have the authority to order a school district or any attendance center within a school district to be closed or enjoin the use of all statutes related to the distribution of funds for public education."

## Spending more money won't improve student achievement

Failure on the part of the Governor and the Legislature to defend the rule of law by allowing the court to order the appropriation of money under threat of schools being closed might appease this court, but it won't help students. Had per-pupil funding been increased for inflation since 1998, it would have increased from about \$7,000 per-pupil to about \$10,000; instead, it is well over \$13,000. At the same time, however, Reading proficiency on the National Assessment of Educational Progress (NAEP) has only improved from 35 percent to 37 percent.



The ACT score for Kansas students is slightly lower than it was 20 years ago and only 29 percent are college-ready in English, Reading, Math and Science. State assessment results also reflect stubbornly low achievement; only about a quarter of high school students are on track to be college and career ready in Math and less than 30 percent are on track in English Language Arts.

The Department of Education says the Legislature has already made provision for nearly \$900 million in additional funding but history (both in Kansas and elsewhere) says student achievement won't materially change. Money matters, of course, but it's how money is spent that can make a difference. Even the authors of the WestEd cost study say, "funding alone is not enough;...if one fails to consider how well resources are used, then increasing how much resources are provided may have a limited effect on student outcomes." That's vitally important because districts aren't held accountable (as in, there's a consequence) for effective use of resources, and the education lobby resists every such attempt.

## Additional funding will make budget deficits even worse

A Legislative Research profile prepared for Senator Tom Holland shows Kansas is already facing large budget deficits in the near future and allowing the current members of the Supreme Court to continue setting school funding levels will only make that worse.

The following table includes these revisions from that KLRD profile:

- The impact of SB 22 is removed so the state retains the federal tax windfall
- Gov. Kelly’s proposed re-amortization of KPERS is removed
- The profile is extended one year using revenue estimates produced in December 2018 for Rep. Susan Humphries and continuing expenditures from the previous year.

Between large school funding increases already in the budget and Governor Kelly’s new proposals, there would be a \$140.6 million shortfall in FY 2022 and another \$355.7 million shortfall for FY 2023. But that just gets the budget to a zero ending balance; state law requires a minimum 7.5 percent ending balance, which would be about \$600 million.

State General Fund - Sen. Holland Profile					
Description	APVD FY 2019	Est. FY 2020	Est. FY 2021	Est. FY 2022	Est. FY 2023
Beginning Balance	\$ 761.7	\$ 678.0	\$ 540.8	\$ 259.5	\$ -
Consensus Revenue Est.	\$ 7,309.7	\$ 7,271.3	\$ 7,234.8	\$ 7,392.7	\$ 7,569.8
PMIB loan repayment	\$ (264.3)	\$ 52.9	\$ 52.9	\$ 52.9	\$ 52.9
Highway transfers		\$ 238.1	\$ 158.7	\$ 79.3	
Gov's other revenue adj.	\$ (3.3)	\$ 11.9	\$ 1.0		
Continue postponing CCRSF & LAVTRF			\$ 132.4	\$ 132.4	\$ 136.9
Continue capping JCF at \$3.5 million			\$ 29.5	\$ 29.5	\$ 29.5
Total available revenue	\$ 7,803.8	\$ 8,252.2	\$ 8,150.1	\$ 7,946.3	\$ 7,789.1
Approved expenditures	\$ 7,071.0	\$ 7,125.8	\$ 7,711.4	\$ 7,890.6	\$ 7,946.3
Human Services caseload	\$ 54.6	\$ (20.5)	\$ 50.9	\$ 80.0	\$ 85.0
School finance consensus	\$ (6.5)	\$ 89.3	\$ 99.3	\$ 95.5	\$ 95.5
Supreme court remedy		\$ 104.5	\$ (3.0)		
KPERS w/statutory inc.	\$ -	\$ 286.0	\$ 16.0	\$ 19.0	\$ 18.0
Replace state highway transfer		\$ 45.0			
Non-case medicaid	\$ (43.7)				
State employee pay plan		\$ 22.3			
Medicaid expansion		\$ 14.2	\$ 16.0	\$ 1.8	
Judicial pay increase and positions		\$ 20.1			
Governor's other spending adj.	\$ 3.1	\$ 72.0			
Reappropriations	\$ 47.3	\$ (47.3)			
Adjust to zero balance				\$ (140.6)	\$ (355.7)
Total adj expenditures	\$ 7,125.8	\$ 7,711.4	\$ 7,890.6	\$ 7,946.3	\$ 7,789.1
Ending Balance	\$ 678.0	\$ 540.8	\$ 259.5	\$ -	\$ -
as % of expenditures	9.5%	7.0%	3.3%	0.0%	0.0%

*Source: Kansas Legislative Research Department prepared at the request of Sen. Tom Holland. Transfers in FY 2020 and beyond do not include \$293.1 million from the State Highway Fund to the General Fund. Transfers in FY 2021 and beyond include \$54.0 million to LAVTRF and \$78.1 million to CCRSF from SGF.*

**Conclusion**

Continuing to allow courts to unconstitutionally order funding will continue to cause major budget shortfalls, likely cause economy-damaging tax increases and most important, won’t address the real crisis of persistently low student achievement. For these reasons, we encourage the Committee to oppose SB 44 and thank the members for their consideration.