

EDUCATION WEEK

Kansas Ruling Fuels Debate on Adequacy of Funding

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The Kansas Supreme Court's [ruling that the state's public school funding system violates the state constitution](#) could create more questions than answers, fueling the debate between K-12 advocates and politicians elsewhere on the legal amount states must provide for education.

In its March 7 ruling in *Gannon v. State of Kansas*, the Kansas high court declared the state's K-12 funding system unconstitutional because it treats poor districts inequitably. That conclusion has spurred the legislature to consider how to restore funding to two aid programs for operating and capital budgets.

But the court declined to say whether the system provided inadequate funding, and the justices ordered that the issue be reconsidered by a lower-court panel. That outcome sets up another round of court disputes between the plaintiffs—four school districts and 31 individuals—and the state.

Other states, including Texas and New York, are awaiting key K-12 finance rulings from their own court systems, while a ruling from more than two years ago continues to make waves in Washington state.

In a reference to finance litigation elsewhere in the nation, the Kansas high court directed a lower-court panel to determine adequacy based on parameters set in a 1989 Kentucky ruling, in *Rose v. Council for Better Education*, on that state's K-12 spending. The Kansas justices also stressed that “total spending is not the touchstone for adequacy in education” as defined in the state constitution.

Ultimately, the ruling is “kind of frustrating for both sides” and essentially prolongs the battle, said Michael Griffith, a senior school finance analyst with the Denver-based Education Commission of the States. And despite the national headlines the Kansas ruling made, it's far from clear that it will have a broad, long-term impact.

“If you're a parent ... and you send your kids to Topeka schools, don't suddenly think your kid is going to have more resources sitting there,” Mr. Griffith said.

Positive Momentum

The *Gannon* case grew out of what the plaintiffs said was the state's failure to live up to funding promises made in the wake of a 2005 school finance decision, in *Montoy v. State of Kansas*, which led to a plan to boost K-12 funding. State lawmakers cut funding beginning in fiscal 2010 in the wake of the Great Recession, and the *Gannon* plaintiffs subsequently sought about \$440 million in additional annual funding to match what they said were the *Montoy* promises.

The state argued that the plaintiffs had no legal standing to sue, and that the Kansas Constitution leaves the specific levels of K-12 funding up to the legislature.

Some funding advocates viewed the latest Kansas decision, which was published earlier this month, as a significant step forward not just for the state, but also for the issue of school funding equity and adequacy around the country.

In a conference call hosted by the Leadership Conference on Civil and Human Rights, Dianne Piché, the director of education programs for the Washington-based group, said the ruling reaffirmed the legacy of the U.S. Supreme Court's decision in *Brown v. Board of Education*. The historic 1954 ruling, which took its name from a case that originated in Topeka, Kan., struck down racial segregation in public schools.

Ms. Piché said the *Gannon* decision would improve the lot of disadvantaged students who have been jilted by the state's current funding system.

On the same call, David Sciarra, the executive director of the Newark, N.J.-based Education Law Center, which studies state funding systems, said the ruling should send a clear message to governors and legislators in many states "that simply don't serve the needs of their schoolchildren."

Said John Robb, a lawyer for the plaintiffs in *Gannon*: "We view this as a huge victory for Kansas kids."

But others expressed concern about the limited nature of the court's ruling. In a statement expressing disappointment with the Kansas Supreme Court for not delivering a clear resolution for K-12 funding, the Kansas National Education Association also issued a [pre-emptive defense against cutting other areas of the state budget](#) to boost public school aid.

"We don't need threats to cut funding to vital social services, rob retirement pensions, and cut aid to higher education," the 23,000-member union said in a statement. "Public school students are still sacrificing, and the solution is obvious."

Disdaining Democracy

But the union's solution of significantly higher funding for schools isn't the obvious or correct one to Walter Olson, a senior fellow at the Washington-based Cato Institute. In a March 10 blog

post on the website of the libertarian think tank, Mr. Olson said that Kansas' finance fight is just one piece of a larger strategy that seeks to "seize control of school funding" through the courts.

In the process, he argued in a subsequent interview, that movement is subverting representative democracy by ignoring what state legislators decide on K-12 funding.

"I see it as a way in which the educational establishment uses litigation to entrench itself against supervision by other branches of government and voters interested in cutting budgets," Mr. Olson said.

He also said that despite the desires of plaintiffs like those in Kansas, there are sometimes unintended consequences for their victories, such as the aftermath of the *Serrano v. Priest* decision by the California Supreme Court in 1971.

That case, in which the state justices ruled that relying on local property taxes to finance public schools was unconstitutional because of resulting disparities, led to California voters' 1978 passage of Proposition 13, Mr. Olson said, which limited the growth of property taxes and required that all tax increases by the state be passed by a two-thirds majority in each chamber of the legislature.

Kansas lawmakers, meanwhile, indicated that they would discuss the budgetary impacts of the court's opinion in late March. Republican members of the legislature say they were [considering cutting other parts of the general budget](#), or shifting money around specifically in the state's K-12 budget, in order to comply with the ruling, the Associated Press reported.

States in Play

Other states also face unanswered questions about their school spending in light of high-profile lawsuits.

Advocates and officials in Texas are still awaiting a ruling from state District Court Judge John Dietz about the constitutionality of the K-12 funding system there.

Judge Dietz ruled last year in favor of school district plaintiffs that had claimed Texas lawmakers underfunded education after \$5.4 billion in budget cuts made in 2011. But after the legislature boosted K-12 funding by \$3.4 billion during its 2013 session, the judge officially reconsidered the case, and a new ruling is expected fairly soon.

In Washington state, the supreme court has been keeping a close eye on legislators' attempts to abide by its 2012 ruling in *McCleary v. State of Washington*, which held that the state had to dramatically reform and increase K-12 spending by 2018.

But in a situation somewhat similar to that in Kansas, the Washington state court's periodic responses to legislative action, or lack thereof, have drawn criticism from lawmakers irked by what they see as an overly aggressive court intruding into legislative deliberations.

Regardless of how the *Gannon* case ultimately affects Kansas' school funding, Mr. Griffith of the ECS said, any claims that the ruling would shake loose a new batch of finance lawsuits and radical overhauls of many state funding systems are probably misreading the environment for K-12 finance.

“Each state has different constitutional language, different histories of litigation,” Mr. Griffith said.

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