House K - 12 Budget Committee
H. B. 2445 Education Finance Act

Testimony submitted by Schools For Fair Funding
Bill Brady

March 13, 2018

Chairman Patton, Members of the Committee:

Schools For Fair Funding is a coalition of 40 Kansas school districts comprised of 142,484 students, or 30% of the students in Kansas. Thank you for the opportunity to present our views on HB 2445.

We are testifying in opposition to this bill due to the concerns we have outlined below. We urge that the bill be adjusted and that it be moved forward. Without adjustment, we cannot support the bill.

In judging the constitutionality of any school finance bill, the Kansas Constitution is the guidestar. The Kansas Supreme Court has further defined just what our Constitution requires to guide us. Most recently, in the *Gannon* case, the Court has provided the most detailed articulation of the requirements. There are two components a bill must provide to pass constitutional muster: It must provide for adequacy and equity.

> "To determine compliance with the adequacy requirement in Article 6 of the Kansas Constitution, Kansas courts apply the test from *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), which establishes minimal standards for providing adequate education. More specifically, the **adequacy requirement is met when the public education financing system provided by the legislature for grades K-12—through structure and implementation—is reasonably calculated to have all Kansas public education students meet or exceed the standards set out in Rose**...."

> "To determine compliance with the equity requirement in Article 6 of the Kansas Constitution... **school districts must have reasonably equal access to substantially**

similar educational opportunity through similar tax effort."

HB 2445 must pass these two tests to meet constitutional requirements.

Last session, the legislature did not meet certain constitutional requirements as it adopted S.B. 19. In order to fix school finance, these are the things that need to happen:

1. Increase funding at least $600M ($700M if the $98M appropriation for FY 19 in S.B. 19 is lapsed) to achieve adequacy. This is the balance of the amount needed, in addition to the $193M provided by SB 19 for FY 2018, to reach the State Board of Education requested amount of $893M.

   The system must be "reasonably calculated to have all Kansas public education students meet or exceed the standards set out in Rose..." The State Board has determined that this funding request will meet this test.

2. Fix four equity violations identified by the Supreme Court.

   "[S]chool districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort."

   a. Remove the expansion of capital outlay authority that allowed utilities and property and casualty insurance as permissible capital outlay expenditures.

   b. Remove the protest petition/election process for increases to LOB, allowing all districts to raise the same percentage of LOB simply on a local board of education vote.

   c. Remove the delay of LOB equalization funding caused by equalizing on the prior year LOB. LOB equalization needs to be paid on the current year LOB budget.

   d. Remove the 10% at-risk floor which provided at-risk funding to only two districts for students they do not have.

3. Avoid *new* parochial equity-busting changes to the system.

   "[S]chool districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort."

HB 2445 addresses three of the four equity violations. It does not appropriately address the LOB violation.

LOB Protest petition and election requirement. Section 3 provides for a district to increase its Local Option Budget over the statewide average ***only by a protest petition and election process.*** This procedure was found to be unconstitutional by the *Gannon* trial court as a violation of the equity test. **It does not allow equal access to resources.**

This provision in S.B.19 was also found by the *Gannon V* court to be unconstitutional. Specifically the Court said:

> "The panel's finding—a correlation exists between a district's wealth and its ability to gain voter approval of a board resolution that is certain to raise mill levies—is supported by the LOB election history contained in the record on appeal. From 1995 to 2012, 59% of all LOB elections failed, and the election success declined as AVPP declined. Eighty-one percent of the LOB elections failed in districts where the AVPP for LOB purposes fell below $50,000, while 60% of the elections failed where the AVPP for LOB purposes was between $50,000 and $100,000. And only 25% failed where the LOB AVPP exceeded $100,000. ***These results indicate that reinstating the protest-petition process will exacerbate wealth-based disparities among the districts—except, of course, for those 38 districts already at the 33% maximum LOB authority.***
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> "We cannot say with certainty how many districts would have experienced successful petition drives had they been required to face such protests during those three years. Nor can we accurately predict those numbers for the future. We have found no historic information on this precise point in the record. Nevertheless, the panel's finding of fact and corresponding evidence in the record document the number of successful petition drives that resulted in an unsuccessful election; this finding allows us to conclude that it is more probable than not that some LOB resolutions will be defeated by voters. Whatever the failure rate might be, it obviously must compare unfavorably to a 100% success rate enjoyed by those qualifying districts that raised their LOB authorizations above 30% by board action alone during the three-year period when the protest-petition process was not in place for them.
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> **"To place these disparities in perspective, the plaintiffs point out that the 44 districts with an LOB authorization above 30% gained as much as $381 per pupil—and an average among them of $203 per pupil—over the amount these same districts would have generated if their LOBs were only at the 30% level. Cumulatively, according to the plaintiffs—and unchallenged by the State—all districts with board-set LOB authority greater than 30% of their state financial aid now have $30,741,559 more available than they would have at an authorization level of 30%.**
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> **"The State responds that having elections and basing funding on the will of the people in the districts cannot be unconstitutional. According to the**

State, as long as it equalizes wealth disparities then it has met its obligation under the equity requirement of Article 6. But the State, not local districts, has the obligation under Article 6 to make suitable provision for the finance of the educational interests of the state. *Gannon I*, 298 Kan. at 1127-29.

"In *Montoy III* this court considered a somewhat similar situation but in the context of the capital outlay fund. There, the legislature removed the capital outlay mill levy cap for a period of years and then reinstated it. The legislature made the restored cap prospective only, grandfathering mill levies for up to four years, regardless of whether the levy exceeded the cap. The court concluded the unequal treatment of districts "perpetuates the inequities." *Montoy III*, 279 Kan. at 838.

"The same rationale applies here. The legislature, in effect, allowed certain districts to increase their LOB authorization above 30% without having to be concerned about the uncertainties of an election process and has now grandfathered those higher LOB authorizations, including any related equalization aid. The other districts wishing to do so—potentially more than 200 of them—must now clear the structural hurdle imposed by the protest-petition process reinstated by S.B. 19, § 15.

"As such, we conclude S.B. 19's provision reinstituting the LOB protest-petition process for all increases violates the equity requirement of Article 6. In short, many districts are effectively denied an access reasonably equal to the one afforded these other districts—access that is needed in order to make a similar tax effort, e.g., impose a comparable mill levy. So it logically follows that because of this lost access they cannot as readily avail themselves of the advantages that would flow from that tax effort, i.e., a substantially similar educational opportunity. See *Gannon I*, 298 Kan. at 1175. In other words, the State has failed to meet its burden of establishing that the LOB provision complies with the equity standard of Article 6. See *Gannon IV*, 305 Kan. at 856."(Emphases added)

This bill voids any resolution on June 30, 2018 if an election was not held, but that only partially solves the inequity found by the court. This bill does nothing to address the inequality created by the election process itself. Some districts will be unable to have a successful election or will continue to fail to even place the issue before voters and thus their funding (educational opportunity) will not be substantially similar to the districts that can pass an election.

This could be cured by simply allowing the adoption of LOB by local board resolution and vote.

HB 2445 also has these provisions:

Timing on Notice of LOB Increases. This bill requires a notice to the state board by April 1 if

districts wish to increase their LOB authority for the next year. It is highly unlikely that districts will know of this requirement before April 1, 2018, as the bill is not even out of committee merely weeks before this deadline. This has the effect of denying any LOB increase for FY19 because the April 1 deadline cannot be met.

Additionally, in most years, the legislature has not completed its work on school funding for the next year by this April 1 deadline. This leaves local districts to guess at any amount of LOB that may be needed to meet the April 1 deadline.

LOB Equalization Paid on Current Year LOB. This bill provides that LOB State Aid will be paid on the current year LOB budget. This fixes the inequity found by *Gannon V* in which only property-poor districts were impacted by not providing aid on the current year budget.

Transportation Aid. This bill aligns the transportation formula to match current long standing practice.

10% At-Risk Floor. This bill removes the artificial floor for at-risk funding which was found to be unconstitutional in *Gannon V*.

Capital Outlay Usage. This bill removes the ability to fund utilities and property and casualty insurance from the Capital Outlay Fund which was found to be unconstitutional in *Gannon V*.

Adequacy of Funding.

This bill does not address the biggest problem found by *Gannon V*, being the underfunding of the school finance formula.

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