

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Stephen Morris at 10:30 a.m. on January 28, 2004, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Alan Conroy, Director, Kansas Legislative Research Department
J. G. Scott, Chief Fiscal Analyst, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes
Art Griggs, Revisor of Statutes Office
Judy Bromich, Administrative Analyst
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Duane Goossen, Director, Division of the Budget

Others attending:

See Attached List.

Senator Helgerson moved, with a second by Senator Schodorf, to approve the minutes of the January 13, January 14 and January 15, 2004, meetings. Motion carried on a voice vote.

Chairman Morris opened the public hearing on:

SB 323--Changing the date of the joint estimates of revenue to the state general fund from April 4 to April 20

Staff briefed the committee on the bill.

Chairman Morris welcomed Duane Goossen, Director, Division of the Budget, who testified in support of **SB 323**. (No written testimony was submitted.) Director Goossen explained that by moving the date of the joint estimates of revenue to the State General Fund from April 4 to April 20 it would provide better income tax data for the Director of the Budget and Kansas Legislative Research Department for the current fiscal year and the ensuing fiscal year.

There being no further conferees to come before the committee, the Chairman closed the public hearing on **SB 323**.

Senator Helgerson moved, with a second by Senator Schodorf, to recommend **SB 323** favorable for passage. Motion carried on a roll call vote.

Chairman Morris welcomed Carolyn Rampey, Fiscal Analyst, Kansas Legislative Research Department, Principal Analyst, who presented a briefing on Shawnee County Judge Terry Bullock's memorandum decision and preliminary interim order on school district funding (Attachment 1). Ms. Rampey explained that two lawsuits currently challenge the present system in Kansas for funding elementary and secondary education.

Ms. Rampey presented a summary of school finance litigation and gave background information regarding the State Court Case Summary (*Montoy, et. al. v. State of Kansas, et.al.*) and the Federal Court Case Summary (*Robinson, et.al. v. State of Kansas, et.al.*). She explained activities related to *Montoy*. Ms. Rampey also addressed prior challenges to school finance acts and listed observations. Ms. Rampey detailed information regarding the Memorandum Decision and Preliminary Interim Order, status of the order and observations in her testimony.

CONTINUATION SHEET

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE at 10:30 a.m. on January 28, 2004, in Room 123-S of the Capitol.

Committee questions and discussion followed. The committee discussed whether the Legislature itself might need its own counsel or representation regarding Judge Terry Bullock's memorandum decision and preliminary interim order on school district funding. The Chairman mentioned that a committee discussion may take place at a future meeting regarding school district funding.

The Committee discussed removing the pay plan raise of 3 percent from the Governor's budget in order to deal with it systemwide rather than during the subcommittee process. Senator Bunten moved, with a second by Senator Kerr, to remove the pay plan raise of 3 percent out of the Governor's budget and address it systemwide. Motion carried on a voice vote.

The meeting was adjourned at 12:00 p.m. The next meeting is scheduled for January 29, 2004.

**SENATE WAYS AND MEANS COMMITTEE
GUEST LIST**

DATE January 28, 2004

NAME	REPRESENTING
<i>Steve [unclear]</i>	<i>Ks Top News Network</i>
Jim Edwards	KASB
TERRY FOLEYTH	KNEA
Juan Mejias	KNEA
Julie Scott	KNEA
Dodie Leekhead Johnson	Patrick Hurley & Co.
Milt [unclear]	Ks. Governmental Consulting
Harry A. White	KANSAS Farm Bureau
Rob Meyer	HREN Law Firm

January 19, 2004

SUMMARY OF SCHOOL FINANCE LITIGATION

Two lawsuits currently challenge the present system in Kansas for funding elementary and secondary education. A memorandum decision and preliminary interim order has been issued by Shawnee County District Court Judge Terry Bullock on one, with the final order to be issued July 1, 2004. The other case is pending before the United States District Court. Both cases have been brought by essentially the same parties and are represented by the same attorneys. This memorandum has been prepared by the Legislative Research Department and the Office of the Revisor of Statutes to provide a summary of major issues raised in the litigation and to put the current litigation in context with regard to prior challenges to the 1992 School District Finance and Quality Performance Act. The background section of this memorandum relies on information presented to legislative committees by Dan Biles, Attorney for the State Board of Education, and Scott Hesse, Office of the Attorney General.

BACKGROUND

State Court Case Summary

Montoy, et. al. v. State of Kansas, et.al.
Shawnee County District Court
Case No. 99 C 1788, Div. 6

This case was filed December 14, 1999, by USD 305 (Salina) and USD 443 (Dodge City) and by 31 students from those districts who primarily comprise various protected classes, including African-American, Hispanic, Asian-American, students with disabilities, and those of non-United States origin. Defendants named in the case were the State of Kansas; Governor Kathleen Sebelius; State Treasurer Lynn Jenkins; each member of the State Board of Education; and Commissioner of Education Andy Tompkins.

The plaintiffs brought all of their claims under the *Kansas Constitution*, including a challenge as to whether the Legislature has made "suitable provision for finance of the educational interests of the state" as required by Article 6. They also alleged violations of state equal protection and due process principles and specifically challenged the total amount of funds provided to their school districts, the low enrollment weight, the local option budget, special education excess cost funding, and funding for capital outlay. Finally, they contended that the school funding formula is an encroachment on the constitutional authority of the State Board of Education.

Judge Bullock originally dismissed the plaintiffs' claims for procedural and other reasons when the case came before him, but the Kansas Supreme Court remanded the case to his court.¹ Judge Bullock heard the case in a trial that was completed October 1, 2003, and issued a

¹ *Montoy, et al. v. State of Kansas, et.al.*, 275 Kan. 145, 62 P 3d 228 (2003).

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memorandum decision and preliminary interim order on December 2, 2003. It is almost certain that the case will be appealed to the Kansas Court of Appeals when the order is made final in July 2004 and that the Kansas Supreme Court will take jurisdiction.

Federal Court Case Summary

Robinson, et. al v. State of Kansas, et al.
U.S. District Court for the District of Kansas
Case No. 99-1193 MLB

This case was filed May 21, 1999, by 32 students from USD 305 (Salina) and USD 443 (Dodge City) who represent various protected groups. Defendants are the State of Kansas; Governor Kathleen Sebelius; State Treasurer Lynn Jenkins; each member of the State Board of Education; and Commissioner of Education Andy Tompkins.

The plaintiffs present themselves as representatives of mid-sized school districts which do not receive the same amount of school funding per student as the smaller enrollment school districts. They bring their claims under federal law and the *United States Constitution* and contend that the school funding system in Kansas violates the federal Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, implementing regulations to Title VI, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the *United States Constitution*. They claim there are more minority and disabled students in larger districts than the smaller ones, resulting in a financing scheme that has a discriminatory impact on the students in larger districts.

No trial date has been set in the *Robinson* case.

Activities Related to *Montoy*

Prior to start of the trial in late September 2003, Judge Bullock issued a pretrial memorandum in which he laid down principles and guidelines that would apply in the case.² Observing that "the constitutional school funding mandate is directed at the Legislature alone," he dismissed the Governor and the State Treasurer from the case and proceeded to discuss the following issues:

- Appropriate Level of Judicial Scrutiny. Judge Bullock informed the parties that he would use the "rational basis analysis" in reaching his decision. He explained that the rational basis test requires that, in order to pass constitutional muster, acts of the Legislature must bear a rational or reasonable relationship to a legitimate goal. He observed that the reason for equal funding is to guarantee an equal educational opportunity for every child and that differential funding must be justified by a rational explanation, "based on actual increased costs" necessary to provide an equal educational opportunity, such as the higher cost of educating children in smaller districts. (This is the same level of scrutiny used in prior school finance cases.) With regard to the plaintiffs' allegation that state equal protection and due process principles are being violated, Judge Bullock informed

² *Memorandum Decision and Order Concerning Conclusions of Law. Montoy, et al.* State Case No. 99-C-1738 (Shawnee County District Court, September 8, 2003). Along with the September decision, Judge Bullock issued a letter decision, dated September 8, 2003, concerning the issues of procedure and parties.

the parties that he would use the same rational basis test in determining due process claims as he would use to determine matters of equity and suitability.

- The Constitutionality of Statutory Funding Schemes. Judge Bullock put the parties on notice that he considered the case to be about equity and suitability. *Equity* involves providing each child with equal educational opportunities and being able to justify varying levels of appropriations among districts on the basis that they are necessary to provide students in one district with educational opportunities that are equal to those provided to other students. To illustrate the point, Judge Bullock offered two examples: (1) School districts need additional funding to transport students who live further from school so that those students have the same opportunity to attend school as those who live nearer; and (2) schools need additional funding to teach English to non-English-speaking students so that those students can learn subjects regularly taught to all students. *Suitability* is independent of equity and pertains to whether the total amount of money available for education is adequate to provide educational opportunities that meet constitutional requirements. Judge Bullock noted that there is no appellate court or even legislative suitability standard and concluded that he must craft one. Rejecting the idea of compiling a list of standards that are too specific to meet changing needs and conditions, he arrived at the following general definition:

"The Court holds that a constitutionally suitable education (much like an efficient education or an adequate education as provided for in the constitutions of our sister states) must provide all Kansas students, commensurate with their natural abilities, the skills necessary to understand and successfully participate in the world around them both as children and later as adults. Because this is the constitutional right of every Kansas child, whether the legislature has met this standard is ultimately a decision for the judicial branch."

Judge Bullock indicated that, in determining matters of equity and suitability, he intended to take into account the entire funding scheme for school finance, including general purpose funding, capital outlay, sales tax supplements, and special education.

- Usurpation of the Self-Executing Powers of the State Board of Education. The plaintiffs contended that the school funding formula was an encroachment on the constitutional authority of the State Board of Education to provide general supervision of schools, which previously has been deemed to be "self-executing" or derived from the *Kansas Constitution* without need for supplemental legislation. Judge Bullock dismissed this contention by pointing out that the *Constitution* gives the Legislature the authority to provide funding to the public schools and that the Legislature and the State Board of Education play two distinct roles: "The *Kansas Constitution* provides the Legislature with the duty to develop a method with which to provide funding to the public schools and provides the Board with the duty to supervise local school boards to ensure the educational interests of the state are being met. The Board simply does not have the power to develop or alter provisions for funding, nor does it have the power to control the funding of the school districts."

Judge Bullock also listed the following issues, initially raised by plaintiffs, which the Supreme Court asked him to address:

- "The state law no longer contains educational goals or standards, nor has the State Board of Education issued any regulations containing academic standards or objective criteria against which to measure the education Kansas children receive.
- The amount of Base State Aid Per Pupil has not kept up with inflation.
- School districts are required to raise capital outlay expenses locally and the four mill levy limit has been removed, allowing wealthier districts even greater access to capital outlay expenditures than poorer districts and thus increasing funding disparities.
- The school finance formula provides widely differing amounts of revenue to different districts.
- The number of minority students in the plaintiff school districts has increased dramatically and a substantial gap exists between the performance of minorities and whites and between students in the free and reduced lunch programs and those not in these programs on the state standardized tests.
- Plaintiff school districts must raise money locally through the 'local option budget' or the capital outlay fund to meet the minimum school accreditation requirements.
- Plaintiff school districts raise less money per pupil with each mill levy than wealthier districts and increased reliance on local taxes has resulted in a less advantageous education in the plaintiff school districts than in wealthier districts."

Accompanying Judge Bullock's pretrial memorandum was a letter to the parties that summarized his opinions regarding the issues involved in the litigation. The letter concluded with the following sentence: "Finally, in case the Court has not been crystal clear, the Court takes the view that this case is about children and their suitable, and equal educational opportunities. Nothing else. If we all keep our focus on the children, I believe we shall reach the goal our constitution mandates." [Emphasis in the original.]

Prior Challenges to School Finance Acts

The recent history of school finance legislation is replete with challenges to various school finance acts. The School District Equalization Act (SDEA), enacted in 1973, was a response to a Johnson County District Court decision which found the prior act unconstitutional because the state had not provided enough aid to offset disparities among school districts in taxing efforts and per pupil expenditures.

The SDEA was challenged in four lawsuits filed in 1990 and 1991 that were consolidated in the Shawnee County District Court.³ Prior to the trial for the consolidated cases, Judge Bullock—the same judge who heard the 2003 *Montoy* case—held a pretrial conference in the fall of 1991 attended

³ *Mock v. Kansas*, Case No. 91-CV-1009.

by the Governor and the Legislative leadership at which he announced a series of principles the Court would apply in deciding the pending issues.

Judge Bullock agreed to delay the trial in order to give state policymakers the chance to consider enacting a new school finance formula in light of the principles he had identified. A task force comprised of appointees of the Governor and the Legislature considered school finance and submitted its recommendations prior to the 1992 Session. In 1992, the Legislature enacted the current school finance formula, the School District Finance and Quality Performance Act. In that same year, the Legislature also established the School District Capital Improvements State Aid Program, based on an equalization concept, in order to assist school districts in making bond and interest payments. The latter was enacted in response to Judge Bullock's pretrial ruling that all costs—including capital expenditures—are included in the constitutional mandate placed on the Legislature by the Education Article of the *Kansas Constitution*.

In the months immediately following passage of the new act, Judge Bullock dismissed three of the consolidated cases and transferred jurisdiction of the remaining school finance litigation to Judge Marla Luckert, another Shawnee County District Court judge. In the fall of 1992, three new suits brought by school districts against the new school finance law were consolidated with pending litigation. The cases were brought to trial the following summer (1993). Judge Luckert issued her opinion in December 1993, in which she found two constitutional infirmities in the law:

- The uniform school district general fund tax levy was construed to be a state property tax and, as such, subject to a constitutional provision which limits such levies to two years in duration. (The legislative response to this finding has been to subject the tax to renewal every two years.)
- The low enrollment weight was found constitutionally deficient because it was not "grounded upon education theory." (Judge Luckert did not, however, reject the principle of an enrollment weight *per se* to reflect economies of scale.) Because the low enrollment provision was so intertwined with other provisions of the formula, Judge Luckert found the entire act unconstitutional.

In order to give the 1994 Legislature time to remedy the Act, Judge Luckert stayed the effective date of the finding until July 1, 1994. Litigants appealed Judge Luckert's opinion to the Kansas Court of Appeals in December 1993. The Kansas Supreme Court took jurisdiction and in December 1994 upheld the constitutionality of the 1992 School District Finance and Quality Performance Act, including its provisions for low enrollment weighting.⁴ The Court concluded that "there is a rational relationship between the legislature's legitimate objective of more suitably funding public schools and the classifications created in the low enrollment weighting factor." In so concluding, the Supreme Court overruled Judge Luckert's finding that the low enrollment weight was constitutionally deficient. (Judge Luckert's finding that the school district general fund tax levy did not pass constitutional muster was responded to by the legislative practice, begun in 1994, of setting the district general fund tax rate for two-year periods.)

⁴ *Unified School District Number 229 v. State*, 256 Kan. 232, 885 P. 2d 1170.

Observations

School finance litigation nationwide has generally been at the state, not federal, court level because it is state constitutions that have the most to say about the responsibility to provide for public schools. Because constitutions vary from state to state, what is decided in one state court often does not have direct applicability to other states. The Kansas Supreme Court decision, issued in 1994, is the only decision issued by Kansas' highest court on a school finance case and the legal precedent established by that case doubtless will have a bearing on the litigation that is proceeding almost a decade later. (It also should be noted that, in the interval since the Supreme Court's 1994 decision, Judge Luckert has become a Supreme Court justice.)

One of the principles underscored in the 1994 case was that the *Kansas Constitution* makes the Legislature responsible for providing for the funding of the educational interests of the state and that this responsibility does not impede the power of locally elected boards to operate schools. Judge Bullock made a similar finding in his pretrial memorandum in the *Montoy* case when he determined that the Legislature's authority in this area does not infringe upon the general supervision responsibilities of the State Board of Education.

In its 1994 decision, the Supreme Court addressed the matter of the appropriate level of scrutiny in addressing litigation involving equal protection rights of students and concluded that the rational basis test was the appropriate level. This is the lowest level of judicial scrutiny, meaning that greater deference is given to the Legislature and its role. Indeed, Justice McFarland wrote in the 1994 opinion: ". . . the judiciary's role is very limited in its scope. The wisdom or desirability of the legislation is not before us. The constitutional challenge goes only to testing the Legislature's power to enact the legislation."

The original School Finance and Quality Performance Act enacted in 1992 contained a list of ten outcomes-based goals for schools that could be measured and evaluated. These goals were part of the Quality Performance Accreditation system. One example is that "schools have a basic mission which prepares the learners to live, learn, and work in a global society." The Supreme Court in 1994 considered these goals to be the standard of adequacy set by the Legislature and adopted by the State Board of Education in determining whether funding provided by the Legislature was "suitable" in the context of the constitutional requirement.

Basically, the Supreme Court in 1994 decided not to substitute its judgment as to what was "suitable" and opted to use standards set by the Legislature. Judge Bullock initially interpreted the Supreme Court's 1994 ruling to mean that the Court had *no* role in determining whether funding for education was suitable and dismissed *Montoy* when it first came before him. The Supreme Court reversed his ruling and remanded the case to his Court, observing that the ten goals originally contained in the Act had been removed by the 1995 Legislature. In addition, the Supreme Court noted issues raised by plaintiffs in the case which it wished Judge Bullock to address.

In providing his own definition that a suitable education is one that "must provide all Kansas students, commensurate with their natural abilities, the skills necessary to understand and successfully participate in the world around them . . .", Judge Bullock asserted the role of the Judicial Branch to determine whether the Legislature has met its constitutional responsibilities. His pretrial admonition to the parties that the case is about children indicated that the focus of the case was not on school districts but on individual students and whether, in the view of the Court, they had been provided suitable and equal educational opportunities.

JUDGE BULLOCK'S DECISION

Memorandum Decision and Preliminary Interim Order

On December 2, 2003, Judge Bullock issued a memorandum decision and preliminary interim order finding that "the current school funding scheme stands in blatant violation of Article 6 of the *Kansas Constitution* and the equal protection clauses of both the Kansas and United States Constitutions in the following three separate and distinct aspects in that:

- "It fails to equitably distribute resources among children equally entitled by the *Constitution* to a suitable education or in the alternative to provide a rational basis premised on differing costs for any differential;
- It fails to provide adequate total resources to provide all Kansas children with a suitable education (as that term has been defined by both this court and the Legislature itself); and
- It dramatically and adversely impacts the learning and educational performance of the most vulnerable and/or protected Kansas children. This disparate impact occurs by virtue of underfunding, generally, and selective underfunding of the schools where these vulnerable and/or protected children, of course, are: the poor, the minorities, the physically and mentally disadvantaged, and those who cannot or nearly cannot yet speak the primary language of America and its schools."⁵

The Judge found that the school funding mechanism violates Section 1 of the Kansas Bill of Rights (which pertains to equal rights), the Fourteenth Amendment of the *United States Constitution* (which pertains to equal protection), and Article 6(b) of the *Kansas Constitution* (which requires the Legislature to make suitable provision for finance of the educational interests of the state).

The Judge's decision, written in blunt language, lists numerous specific components of school funding that he finds unconstitutional or objectionable. They include:

- "The Court finds as a matter of fact and law that the funding scheme presently in place and as applied in Kansas by its underfunding in general and by its mid and large-school underfunding specifically, clearly and disparately injures vulnerable and/or protected students and thus violates both Article 6 of the *Kansas Constitution* and the equal protection clauses of both the United States and Kansas constitutions.
- Based on the Augenblick and Myers (A&M) study to calculate the cost of providing a suitable education in Kansas (May 2002), the true amount of the suitability shortage, taking all A&M exclusions and inflation into account, appears to be well in excess of a billion dollars (as Kansas schools are presently configured and managed—both legislative choices).

⁵ *Memorandum Decision and Preliminary Interim Order*, issued December 2, 2003. *Montoy, et al. v. State*, Case No. 99-C-1738 (Shawnee County District Court, December 2, 2003).

- The lowest per pupil FTE allotment, received by students in USD 489 (Liberal), is \$5,655.95, while students in USD 301 (Nes Tres La Go) receive the highest per pupil FTE allotment of \$16,968.49, a differential of slightly more than 300 percent! Accordingly, as a matter of uncontroverted fact and law, the current funding scheme containing, as it does, a 300 percent unexplained FTE pupil disparity for which no rational basis has been shown or proved, violates Article 6 of the *Kansas Constitution* in its failure to provide equity in funding for all Kansas Children.
- The Court finds that these broad averages [of math and reading scores on the Kansas assessments] conceals the fact that most of Kansas' most vulnerable and/or protected students are failing or giving up; hardly proof of a suitable education made available to all.
- Regarding special education, the state only provides reimbursement for 85 percent of the costs of the salary of a special education teacher or paraprofessional incurred by local school districts. Local school districts, at a minimum, must use general fund dollars to pay for at least 15 percent of all special education services. Obviously, this reduces the available funds for regular education services, a built-in deficiency by legislative design. Defendants have intentionally failed to fully fund the costs to meet the needs of Kansas children with disabilities.
- The 4-mill limit on school district capital outlay was removed in 1999, the result being that wealthy districts are able to raise virtually unlimited funds for the construction and maintenance of buildings and the purchase of new equipment, with no provision for power equalization for poor districts unable to do likewise.
- It is significantly easier for districts with high assessed property values to raise substantial funds through a local option budget (LOB). Obviously, the higher the value of the property in the district, the more dollars each mill of tax will raise. Thus, in districts with low property valuations, it is virtually impossible to raise adequate funds to supply basic education needs (for which LOBs are now used) without severely impacting district taxpayers.
- Kansas has no 'bottom-up' budgeting system for public schools whatsoever! No one, in the history of Kansas, has ever asked our schools what resources they need to provide a suitable education for our children. And this in a vital, constitutionally protected endeavor already consuming nearly four billion dollars (well over half the entire revenues of the state). Instead, these billions of tax dollars are distributed annually by legislative fiat (the financing scheme) without any requests, estimates, or other input on costs or needs from the "boots on the ground" superintendents, principals, or teachers in the field.
- The ten outcomes-based goals for schools associated with Quality Performance Accreditation, which were part of the original school finance act and were important to the Supreme Court in its decision to uphold the act in 1994, were removed in 1995.
- The current financing scheme was never based upon costs or even estimated costs to educate children, but was, in fact, the result of a 'political auction. . .' In fact, it is now revealed that the present scheme was actually premised not upon costs but upon former spending levels of districts under the old unconstitutional

School District Equalization Act, thus freezing the inequities of the old law into the new."

Status of the Order

Judge Bullock issued his decision as a "memorandum decision and preliminary interim order" which is not final. He intends to withhold the final order and judgment until July 1, 2004, in order to give the Governor and the Legislature "the luxury of a full legislative session (while our schools remain open) to correct the constitutional flaws outlined in the opinion." The Court specifically retains jurisdiction to:

- Determine whether the problems outlined have been corrected and, if so, to dismiss the case; or
- Issue such further orders and take such further steps as may be required to enforce the constitutions if the other branches of government fail to do so.

Based on the preliminary order, it appears that Judge Bullock intends to review any action taken by the 2004 Legislature to change the current method of funding public schools to determine if they satisfy the constitutional objections he raises. If the Court finds that no changes have been made or finds that made changes do not satisfy constitutional requirements, the Court has the option of ordering that no money be distributed to schools through statutes that are deemed to be unconstitutional or even to impose a funding mechanism devised by the Court.

Because the decision is not final, it is not a "final appealable order" as defined by statute. In order to appeal an order that is not final, it is necessary to get the district judge who issued the order to issue a certification for an "interlocutory appeal" (an appeal of a point preliminary to final disposition of a case.) If the district court judge agrees, the Kansas Court of Appeals may permit an appeal.

Attorney General Kline decided not to ask Judge Bullock for permission to appeal, but the State Board of Education directed its attorney to do so. Judge Bullock denied the request.

Observations

One difference between how the Kansas Supreme Court in 1994 approached its decision, which upheld the constitutionality of the School District Finance and Quality Performance Act, and how Judge Bullock reached his decision, which finds the law unconstitutional, is that Judge Bullock expands the traditional rational basis test. The Supreme Court said in 1994 that legislative enactments must implicate legitimate goals and the means chosen by the Legislature must bear a rational relationship to those goals. Judge Bullock imposes a more stringent requirement that a rational basis must be based on cost differences supported by empirical studies.

Judge Bullock had available to him the Augenblick and Myers study – commissioned by the Legislature and the State Board of Education – that took what Kansas policy makers had defined as "suitable" and put a price tag on it. The Supreme Court in 1994 did not require that the rational basis test be justified by evidence as to actual costs and, indeed, did not have such a study at its disposal. Clearly, Judge Bullock attached great significance to the Augenblick and Myers study. Whether the Supreme Court will do so remains to be seen, assuming that it hears the case on appeal.

Other changes have taken place since the school finance law was found to be constitutional, including changes to the law itself that make it different from the law the Supreme Court upheld. The Supreme Court itself, in its 1994 school finance decision, anticipated the possibility that the law it found constitutional then might later be found to be deficient. The 1994 decision included the following quote from the district court opinion of Judge Luckert:

"The issue of suitability is not stagnant; past history teaches that this issue must be closely monitored. Previous school finance legislation [the School District Equalization Act], when initially attacked upon enactment or modification, was determined constitutional. Then, underfunding and inequitable distribution of finances led to judicial determination that the legislation no longer complied with constitutional provisions."