

Approved: March 8, 2006
Date

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on February 20, 2006 in Room 313-S of the Capitol.

All members were present except:
Representative Ray Merrick- excused

Committee staff present:
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Carol Doel, Committee Secretary

Conferees:
Representative Arlen Siegfroid
Jim Clark, Legislative Counsel, Kansas Bar Association
Bob Bjerg, Kansas Families United for Public Education
Donna Whiteman, Assistant Executive Director/Legal Services Kansas Association of School Boards

Others attending:
See attached list.

Chairman Edmonds opened the floor for bill introductions and recognized Representative Tim Owens who requested a conceptual bill that all federal holidays be observed by State employees as well as the Legislature.

With no objections, this was accepted for introduction.

Representative Kinzer requested a bill related to reckless driving.

With no objections, this was accepted for introduction.

With no other bill introductions, the Chair opened the meeting for public hearing on **HCR 5026** - Kansas constitutional amendment preventing the courts from closing public schools.

Representative Siegfroid addressed the committee in support of **HCR 5026**. The Representative stated that this is an exact duplicate of a constitutional amendment that he carried on General Orders during the 2005 Special Legislative Session. This stated "*No court shall order any remedy for a violation of any provision of this article that shall cause the closure, or prevent the operation, of public schools.* It prevents any court from closing public schools as a remedy for a violation of Section 1 of Article 6 of the Kansas Constitution. It was his feeling that this would cause statewide chaos. He further stated that it would be irresponsible for us to leave them exposed to the risk of closure when we have within our power the ability to guarantee it cannot happen by letting the citizens of Kansas vote to change the constitution. (Attachment 1)

Jim Clark, Legislative Counsel Kansas Bar Association, delivered testimony opposing **HCR 5026**. Their testimony related that this resolution is an understandable and logical reaction to the *Montoy* decision, and it may result in unintended consequences that in the end only harm Kansas Children. (Attachment 2)

On behalf of Kansas Families United for Public Education (KFUPE) Robert Bjerg testified in opposition to **HCR 5026**. It is their opinion that if this resolution was passed, it would dramatically alter the checks and balances that are essential in our three branches of government. Without the traditional ability to order that an unconstitutional act cease, the courts would be potentially left without any effective remedy to enforce its decisions. They related that the only potential remedy that would remain for the Courts to exercise would be far more drastic: a contempt of court order. They strongly urged the Committee to reject the resolution. (Attachment 3)

Donna Whiteman, Assistant Executive Director/Legal Services, Kansas Association of School Boards, testified that they also opposed **HCR 5026**. Ms. Whiteman related their opinions regarding this resolution which included:

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on February 20, 2006 in Room 313-S of the Capitol.

- Changes to our state constitution should be carefully considered and analyzed to ensure the proposed changes do not create more problems than the problem meant to be addressed.
- The language in this resolution has the potential to upset the separation and delicate balance of powers established in our state constitution.
- The Kansas Legislature should not attempt to place itself and its acts above or outside of scrutiny by the courts or any other body.
- The cost to pay for this special election could be spent to address the Supreme Court's concerns in the finance ruling.

Ms. Whiteman further stated that if this amendment was passed, the Supreme Court may have to resort to more serious and direct orders addressed to the schools or state agencies. (Attachment 4)

With no other person wishing to address **HCR 5026**, Chairman Edmonds closed the public hearing.

There being no further business before the committee, the Chair adjourned the meeting.

ARLEN SIEGFREID

REPRESENTATIVE, 15TH DISTRICT

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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: FEDERAL AND STATE AFFAIRS
 SOCIAL SERVICES BUDGET
 TAXATION

Chairman Edmonds, Ranking Member Burroughs, and committee members, good afternoon and thank you for taking time to listen to my testimony concerning House Concurrent Resolution Number 5026.

HCR 5026 is an exact duplicate of a constitutional amendment I carried on General Orders during the 2005 Special Legislative Session. The important or defining phrase begins at line twenty-five and states. "No court shall order any remedy for a violation of any provision of this article that shall cause the closure, or prevent the operation, of public schools."

The statement is simple and straight forward in its meaning. It prevents any court from closing public schools as a remedy for a violation of Section 1 of article 6 of the Kansas Constitution.

The popular consensus of the legislature is public schools are the most important responsibility we deal with. It seems almost oxymoronic for us to allow the closing of these vital institutions as a "remedy" in a court case. Furthermore, the result would be chaos statewide. Imagine thousands of parents being forced to seek daycare on very short notice for about 280,000 elementary children (K-8). Frankly there are not enough daycare facilities available. Many parents would be forced to leave their jobs and other productive activities to care for young children. Teenage children, about 188,000 of them, would be home alone, on the streets, or in the malls.

The teachers would be either immediately sent home or without work once the LOB and reserve fund were exhausted, depending on the court order. The 35,000 teachers would join another 25,000 school employees in trying to make certain they did not default on mortgages, car loans, kept their utilities on, not to mention feeding their families.

Do we really want to leave this option open for the people we say are our most important resource?

School districts also have numerous contacts with local and regional businesses which could be endangered or damaged by a prolonged closing of schools. Everything from contracted bus services to milk deliveries would be affected causing additional economic disruption locally.

Federal aid for schools, is, to a great extent, determined by average daily attendance. Closing schools for a period of time would steadily lower the figure causing a reduction in money in the future.

The legislature is responsible for the adequate and continuous delivery of school funds to 468,000 students, 60,000 teachers and employees, and 1420 attendance centers in Kansas. It would be irresponsible for us to leave them exposed to the risk of closure when we have within our power the ability to guarantee it cannot happen by letting the citizens of Kansas vote to change the constitution.

Arb Siegf
 District #15

FEDERAL AND STATE AFFAIRS

Date 2-20-06Attachment 1



**KANSAS BAR
ASSOCIATION**

Testimony in Opposition to

HOUSE CONCURRENT RESOLUTION NO. 5026

House Federal and State Affairs Committee
February 20, 2006

The Kansas Bar Association is a voluntary, professional association serving over 6700 members, their clients and the people of the State of Kansas. One of the main goals of the Kansas Bar Association is to protect and promote access to the court system.

HCR 5026 proposes to amend the Kansas Constitution by prohibiting the judicial remedy of closing schools where a court has found a violation of Section 6 of the Kansas Constitution. The proposal appears to be in reaction to language that the Kansas Supreme Court used in the Montoy decision; and appears to be a logical reaction to the rather bizarre circumstances where a court would find that there was such a failure to provide intellectual, educational, vocational or scientific improvement that the only remedy left is to shut down the schools.

However, there may be situations in the future where the only remedy to enforce a court order is to shut down a school. For example, parents wanting to emphasize college preparatory courses seize control of a charter school or members of an ethnic or religious group gain a majority of seats on a local school board. Because of their policies and allocation of funds, both groups ignore or drastically underfund the teaching of vocational or scientific education. Parents who are not in favor of a college prep curriculum of the charter school or who are not members of the ethnic or religious group controlling the school board may be required to bring suit to compel such teaching. Assuming such parents are successful but the court order continues to be disregarded, the result is the continued underfunding of critical educational components. Then, and perhaps only then, would it become necessary for a court to order the closing of the charter school or schools in the offending district.

Passage of **HCR 5026** would remove such a remedy. Passage of **HCR 5026**, while an understandable and logical reaction to the Montoy decision, may result in unintended consequences that in the end only harm Kansas children. By removing the remedy of school closing after parents have succeeded in a lawsuit against the offending charter school or school board, their access to the courts has been diminished, if not eliminated. For these reason, **HCR 5026** should not be recommended favorably by this committee.

James W. Clark, Legislative Counsel
Kansas Bar Association

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FEDERAL AND STATE AFFAIRS

Date 2-20-06

Attachment 2

KANSAS FAMILIES UNITED FOR PUBLIC EDUCATION

Testimony before Kansas Legislative Committee on Federal and State Affairs

Hearing Date: Monday, February 20, 2006
Hearing Time: 1:30 p.m.
Hearing Location: State Capitol Building, Room 313S
Presenting KFUBE Testimony: Robert J. Bjerg

TEXT OF TESTIMONY

Good afternoon. My name is Robert Bjerg and on behalf of Kansas Families United for Public Education, or "KFUBE", I thank the Committee members for the opportunity to present testimony regarding the provisions of House Concurrent Resolution No. 5026 that proposes the drastic step of amending the Kansas constitution in order to add a provision that would prevent any court from ordering any remedy that could result in the closure, or prevent the operation of, public schools.

I have been a Kansas resident for nearly 25 years. All three of my children have attended or are currently attending schools within the Shawnee Mission Public School District. I am an attorney licensed in practice law in the State of Kansas and I practice with the Kansas City firm Seigfreid, Bingham, Levy, Selzer & Gee. I have testified before the Kansas legislature on other issues of interest to KFUBE.

KFUBE's mission is to advocate for all public school children in Kansas with respect to all issues affecting public schools, most importantly the adequacy and fairness of distribution of public school funding statewide.

Resolution No. 5026 is in response to the recent decision by the Kansas Supreme Court that declared as unconstitutional Kansas school financing laws. If enacted and then passed as a constitutional amendment by Kansas voters, it would entirely remove the proper, traditional, and least intrusive remedy utilized by our judicial branch. When laws or conduct are found by courts to be unconstitutional, the universal remedy is a judgment that either prevents further implementation of the law or a judgment that orders that the conduct immediately cease. Stated simply, it is the courts' function to prevent unconstitutional acts. It is not for the courts to draft legislation that would pass constitutional muster. This remains the exclusive domain of the legislature. In the specific case of the Kansas school financing scheme that was found to be unconstitutional, therefore, the Kansas Supreme Court ordered that the legislature go back and enact a financing plan that would ensure equal education for all Kansas public school students. Seen this way, it is not the Kansas Supreme Court that shuts down the schools, but the legislature that fails to enact legislation that comports with the constitution.

FEDERAL AND STATE AFFAIRS

Date 2-20-06

Attachment 3

Resolution No. 5026, if passed, would dramatically alter the checks and balances that are essential in our three branch system of government. Without the traditional ability to order that an unconstitutional act cease, the courts would be potentially left without any effective remedy to enforce its decisions. Again, with respect to the recent school financing decision, without the possibility that Kansas schools may cease to operate, there might be little incentive for the legislature to correct its constitutionally deficient system. Taking Resolution No. 5026 to its absurd conclusion, for example, if this legislature enacted a statute that created separate public school systems for Christian students and non-Christian students, everyone would certainly agree that such a law would be plainly unconstitutional. However, Resolution No. 526 would prevent the Kansas Courts from issuing a judgment that would stop the operation of such a system.

Without saying so, the genesis behind Resolution No. 526 is that it is better to have an unconstitutional public school system than no school system at all. Presumably, this is because our schools are such an essential service that we cannot afford to ever allow them to cease to operate. This is faulty thinking. Services that are provided on an unconstitutional basis, no matter how essential, should never be allowed. There is ample precedent of courts striking down other kinds of essential services that are provided unconstitutionally. Examples that readily come to mind are previous voting and jury systems that were operated in discriminatory manners. Courts ordered that such systems cease and, as a result, the systems were corrected.

The only potential remedy that would remain for the Courts to exercise would be far more drastic: a contempt of court order. When a court renders a judgment or order that is not followed, it has the ability to find that the offending party is in contempt of court. In this case, it is not altogether clear what individuals could be found to be in contempt, but it could conceivably include school district officials and/or all of the members of the legislature personally. The consequences of being held in contempt are very intrusive and severe: imprisonment and monetary fines. Thus, it would be far more drastic for the courts to either imprison or fine legislators or school officials for failing to abide by a court order.

In conclusion, KFUPE strongly urges that this Committee reject Resolution No. 526. Thank you for receiving my testimony.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

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Testimony on **HCR 5026**
before the
House Federal and State Affairs Committee

By

Donna L. Whiteman, Assistant Executive Director/Legal Services
Kansas Association of School Boards

February 20, 2006

Mister Chairman and members of the Committee:

On behalf of the Kansas Association of School Boards and the Kansas National Education Association, thank you for the opportunity to present testimony in opposition to **HCR 5026**.

Changes to the Kansas Constitution should not be taken lightly and require careful consideration. The Kansas Constitution carefully establishes three branches of government and the balance of powers among the executive, judicial and legislative are specifically crafted to ensure no one group can usurp the express power of the other to the detriment of the constitutional and statutory rights granted to all Kansas citizens.

Both state and federal constitutions ensure that the rights of the citizens are protected from arbitrary acts of the executive and legislative branches by ensuring that while the Legislature has the power to change the law and appropriate finances, the judiciary has the power to interpret the laws passed by the Legislature to ensure that neither branch infringes upon the rights of citizens and to fashion remedies to ensure compliance with the constitutional rights of all citizens. Section 20 of the Kansas Constitution specifically addresses the powers retained by Kansas citizens, "This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers not herein delegated remain with the people."

Support for quality public schools and the importance of education has been a priority to Kansas citizens since the Kansas Constitution was adopted on July 29, 1859, and ratified October 4, 1859. Education was so critical to Kansans that the first section of the Kansas Bill of Rights required that sections 16 and 36 in every township, including Indian reservations, be used for the exclusive use of common schools. Sections 6 and 7 of the Kansas Bill of Rights directed proceeds from the sale of several pieces of public lands for the support of schools.

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Attachment 4

There are approximately 466,000 students attending Kansas public schools. Parents, grandparents and communities across the state want a strong education program and the funding to maintain a world class education that prepares Kansas children to contribute, compete and excel in a global economic market. Quality public schools that provide educational opportunities for all our students is essential to the welfare of our state and nation. In **Brown v. Board of Education**, 347 U.S. at 493 (1954) the U.S. Supreme Court stated, "In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

- Changes to our state constitution should be carefully considered and analyzed to ensure the proposed changes do not create more problems than the problem meant to be addressed. Experience teaches us to exercise caution and not to use a sledge hammer when a fly swatter will suffice and to be careful what one asks for as the solution may create greater problems than the original concern.
- The language in this resolution has the potential to upset the separation and delicate balance of powers established in our state constitution. These checks and balances between the judiciary, legislative and administrative branches of government protect ordinary citizens and allow them an opportunity to challenge legislative acts and the acts of the administrative branch of government that may infringe upon the constitutional rights of Kansas citizens and children. The wisdom of the separation of powers doctrine and the delicate balance of power among the three branches of government has stood the test of time and has served our state and democracy well. To upset this balance of power by permitting the Legislature to act and not be challenged by citizens is a serious disruption and threat to the protections currently provided to Kansas citizens.
- The Kansas Legislature should not attempt to place itself and its acts above or outside of scrutiny by the courts or any other body. It sets a bad example for other public bodies and presumes that every act of appropriation by the Legislature is correct and in compliance with the rights guaranteed to average citizens.
- The cost to pay for this special election could be spent to address the Supreme Court's concerns in the school finance ruling.

Consideration needs to be given to the future impact of this change. This is a time for thoughtful, deliberative action. Good judgment, reasonableness and caution needs to prevail. It is critical the Legislature allow for options and continued dialogue with the Supreme Court.

The Supreme Court cannot allow an unconstitutional statute to remain in force and effect. Therefore, if this amendment should be passed, in the future the Supreme Court, being limited in their remedies by this resolution, and not having the opportunity to interact with the Legislature directly, may have to resort to more serious, direct orders addressed specifically to schools or state agencies.

Thank you for the opportunity to provide testimony.