



Testimony to Senate Judiciary Committee

SCR 1608 – Constitutional Amendment on School Finance

February 13, 2013

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Chairman King and Members of the Committee:

We appreciate this opportunity to present testimony in strong support of SCR 1608 to amend the Constitution and prevent the judiciary from ordering appropriations of money.

Article 2, Section 24 of the Kansas Constitution says “No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law.” Regardless, Kansas courts have on several occasions ordered the Legislature to make a special appropriation of money for school funding.

Opponents may claim that the mandated additional funding under *Montoy* was based on legislation, but that was only after the Kansas Supreme Court threatened to close schools if the Legislature did not follow their order. Threatening to withhold education from students if the Legislature doesn’t spend more money is, in itself, sufficient evidence to justify amending the Constitution as set forth in SCR 1608. Sadly, there is much more evidence of the need for change.

Every decision rendered by the courts in *Montoy* was based on a cost study conducted by Augenblick & Myers (A&M) that was deliberately altered to produce higher funding levels. A&M used two methodologies to estimate school costs. The first was their Professional Judgment method, where A&M simply asked panels consisting mostly of current or retired educators what they thought the costs should be.

The courts’ reliance on A&M’s deliberately skewed results are outlined in a 2009 report published by Kansas Policy Institute authored by Caleb Stegall, “A Kansas Primer on Education Funding, Volume II: Analysis of *Montoy* vs. State of Kansas.”

After rendering its recommendations, A&M conceded the highly subjective nature of the cost estimates: the figures reflected the resources identified by panels who were assigned to complete defined objectives using a defined methodology. As a result, the figures largely “reflect[ed] the assumptions that were used to calculate them . . . [and] could change more

substantially if other people, informed by experience, research, and expertise, thought the objectives identified to the panels could be met even if some components were modified or eliminated.”ⁱ

The second methodology A&M used to estimate the cost of a “suitable education” was the successful schools approach. This approach determines a base cost amount by looking at the actual spending by districts that already meet the suitable education standard. In order to identify which Kansas school districts to use as models of “successful schools,” A&M collected the list of school districts that had already met both the input and outcome standards of the suitable education definition. This list included 85 school districts.

A&M emphasized that some of the strengths of the successful schools approach were its ability to identify a base cost figure, and “that it allows for the inclusion of spending efficiency to be used as a measure of success.” Regarding the latter, A&M had hoped to further winnow the number of “successful school” district models by examining the efficiency with which the 85 districts spent their money. After analyzing how several factors (such as attendance center size, enrollment, proportion of low-income students, and local tax effort) affected spending, A&M used these results to estimate a “predicted spending” efficiency level for each district. A&M then compared this “predicted spending” level for each district to a district’s actual spending, seeking to identify which school districts were spending efficiently.

But when the results demonstrated that 50 of the 85 “successful school” districts would be considered inefficient spenders, A&M decided not to use efficiency as a component of a “successful school,” choosing instead to use all 85 school districts. A&M concluded that had it used efficiency standard to exclude those 50 districts, this “might [have] undermine[d] the possibility that this higher [albeit inefficient] spending is what allows districts to be successful in Kansas.” In other words, as throughout the cost-study process, methodologies were adopted expressly because of the results they could be expected to deliver.ⁱⁱ

A&M openly admitted that they deliberately deviated from their own Successful Schools methodology and delivered artificially high spending numbers by ignoring efficient use of taxpayer money. Amazingly, the *Montoy* courts still based their rulings on ‘evidence’ that was known to be worthless. And now the Shawnee County District Court is following that legal precedent in its ruling on *Gannon*.

Incidentally, an overwhelming majority of Kansans believe that efficient use of taxpayer money should be part of school funding decisions. A public opinion poll conducted on our behalf by SurveyUSA between January 24 and January 27 of this year shows that 74% of Kansans agree, while only 23% disagree.ⁱⁱⁱ As shown on the following table, responses are consistent across party, ideological and even geographic lines.

Question 5: The cost study used by the court in its finding was conducted in 2001 and its authors acknowledge they did not take the efficient use of taxpayer money into account. How do you respond to this statement: Decisions on adequate funding of schools should be based on what it costs to hit required achievement levels while also making efficient use of taxpayer money.											
500 Adults	All	Party Affiliation			Ideology			Region			
Margin of Error: ±4.5%		Rep.	Dem.	Ind.	Cons.	Mod.	Liberal	Western KS	Wichita Area	KC Area	Eastern KS
Strongly agree	37%	47%	31%	30%	37%	32%	46%	29%	35%	38%	38%
Somewhat agree	37%	28%	45%	40%	31%	44%	34%	43%	43%	33%	35%
Somewhat disagree	11%	10%	8%	13%	10%	13%	7%	12%	7%	12%	11%
Strongly disagree	12%	11%	12%	14%	18%	9%	9%	15%	12%	13%	11%
Not sure	4%	3%	4%	4%	4%	3%	5%	2%	4%	3%	4%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Adult Composition	100%	31%	28%	36%	33%	43%	17%	12%	17%	24%	47%

To this day, no study has ever been conducted in Kansas to determine what it would cost for schools to achieve required student outcomes and have schools organized and operating in a cost effective manner.

A Legislative Post Audit study conducted in 2006 is often cited as a basis for determining school funding requirements, but LPA made it quite clear (on page 2, where it is hard to miss) that “...it’s important to remember that these cost studies are intended to help the Legislature decide appropriate funding levels for K-12 public education. They aren’t intended to dictate any specific funding level, and shouldn’t be viewed that way. Finally, within these cost studies we weren’t directed to, nor did we try to, examine the most cost-effective way for Kansas school districts to be organized and operated.”^{iv} (emphasis added)

Article 6, Section 6 of the Kansas Constitution says, “The legislature shall make suitable provision for finance of the educational interests of the state.” It does not say that all of the money shall be provided through the General Fund or any other state fund. The Legislature makes provision for financing public schools in several ways.

Format	State Aid	Federal Aid	Local Revenue	Total Expenditures
Dollars (in millions)	\$3,184.2	\$447.4	\$2,139.4	\$5,771.0
Dollars Per-Pupil	\$6,983	\$981	\$4,692	\$12,656

Source: Kansas Department of Education

For the 2011-12 school year, \$3.2 billion dollars was sent to school districts out of the State budget. Another \$2.1 billion was considered Local Revenue but \$1.546 billion of that total was property tax money provided through State authority.

	<u>2011-12 School Year</u>
Total State Aid per KSDE (1)	\$ 3,184,163,559
Total Local Aid per KSDE	\$ 2,139,429,840
Less Local Aid not from State Authority	
Voter-approved Bond and Interest payments	\$ (345,817,396)
Transportion fees	\$ (520,539)
User Charges	\$ (872,688)
Interest on Idle Funds	\$ (4,651,887)
Activity Fees	\$ (25,698,538)
Tuition	\$ (3,014,770)
Textbook Sale, Rental, Fees & Fines	\$ (5,687,105)
Gifts & Grants	\$ (19,329,836)
Food Sales	\$ (70,997,515)
Other	\$ (116,883,261)
Local Aid Raised on State Authority (2)	<u>\$ 1,545,956,305</u>
Total Aid Provided Under State Authority (1) + (2)	<u>\$ 4,730,119,864</u>
Base State Aid Per Pupil (\$3,780 x FTE enrolled)	\$ 1,723,681,890
BSAPP as Percent of Total State Provision	36%

Source: Kansas Dept. of Education

So while the Legislature made provision for \$4.7 billion, the *Montoy* and *Gannon* courts made their rulings on the amount attributed to Base State Aid Per Pupil (BSAPP), which accounts for only 36% of aid provided under State authority.

The Kansas Constitution makes clear that the sole authority to appropriate money resides with the Legislature. Some courts, however, have usurped that authority and ordered the Legislature to appropriate billions of dollars more for education funding. They not only ignored the Constitution in doing so, but knowingly used faulty cost studies and disregarded the Legislature’s total provision for financing of education.

Accordingly, Kansas Policy Institute strongly urges this Committee and the entire Legislature to approve SCR 1608 and reassert this fundamental Separation of Powers principle of our Democratic Republic.

ⁱ Caleb Stegall, “Volume II: Analysis of Montoy vs. State of Kansas”, page 28, quoting from John Augenblick & John Myers, Calculation of the Cost of a Suitable Education in Kansas in 2001-2002 Using Two Different Analytic Approaches (May 2002), at IV-9.

ⁱⁱ Ibid, page 29

ⁱⁱⁱ Complete survey results and methodology available at <http://www.surveyyusa.com/client/PollReport.aspx?g=a7839fb7-9943-4287-9320-653841b9996b&c=214>

^{iv} Kansas Legislative Division of Post Audit, “Elementary and Secondary Education in Kansas: Estimating the Costs of K-12 Education Using Two Approaches,” page 2.