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A Comment on School Finance in Kansas & Separation of Powers

Response to Commentaries in Kansas City Television Media

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In his recent KMBC editorial (Aug. 30, 2004), Wayne Godsey argued that it is simply inappropriate for state judges to stick their noses into legislative business, referring specifically to the recent Kansas Supreme Court hearings on the state's school finance law. Further, Mr. Godsey appears to condemn those who brought the lawsuit to court, asserting that they should rely on the democratic process to affect policy change. Mr. Godsey is not alone in making this argument. Dave Helling of KCTV 5 made a similar argument in a media panel discussion back in December of 2003 on *Kansas City Week in Review*, the week following Judge Bullock's lower court preliminary ruling.

Mr. Godsey of KMBC has decomposed the issues correctly when he notes that the plaintiffs have argued that (a) there is not enough money being spent and (b) that the money is being allocated unfairly. It is indeed difficult to see how a panel of judges can impose its wisdom on the first part – just how much does a “suitable” education cost? What is a suitable education to begin with? Imposing a judicial mandate would in fact mean that the court, not the legislature, would be setting the state budget and in effect setting state tax policy.

That said there are legitimate reasons why even the first question is being addressed in court. Let's begin with a simple review of *how state government works* – for Mr. Godsey's benefit. Kansas, like other states has a constitution. That constitution contains a clause that indicates that the Kansas legislature shall be

responsible for making “suitable” provision for the finance of the educational interests of the state (Article 6, Section 6). The education clause is not a distant historical artifact, but rather, part of the 1966 amendments to the Kansas constitution, around the time that Governor Avery first introduced an organized program of state aid to public schools.

Indeed, it is primarily the state legislature's responsibility to figure out exactly what “suitable” means and how to craft policies that make suitable provision of finance. However, Kansas, like other states also has a judicial branch. A major responsibility of that branch of government is to review challenges brought by individuals or parties against laws adopted by the state legislature. As its broad framework for review, the state court relies primarily on the state constitution. That is, it is a responsibility of both the state courts and the state legislature to figure out what exactly “suitable” means and whether current policies are, in fact, suitable.

The second concern, in my personal opinion is the more pressing concern, and one requiring immediate judicial attention and intervention. Quite simply, the Kansas legislature has concocted a scheme of allocating school funding on a “need basis,” which systematically allocates funding in the least amounts to the districts and children that have the greatest needs. The policies in question have little or no “rational basis” (the legal standard for equal protection analysis), most are politically motivated, and some of the policies that dreadfully misallocate the state's more than

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3 billion education dollars are simply a function of bad mathematical calculations made over 12 years ago.

By the way, as much as we all like to think that “Kansas is no different from other states” or even that we are generally “better than average,” when it comes to such funding disparities, Kansas has been consistently found to have the second largest (second to New York) race related gaps in education spending in the country (see, for example **The Funding Gap** report, available at www.edtrust.org).

Mr. Godsey seems to believe that if we – the voters – don’t like a policy, we should just vote into office legislators who will craft a policy we do like. Quite simply, majority rules (at least in terms of the majority opinion of officials elected by a majority of voters). Lets’ turn the tables for a minute. Imagine if you will, a Kansas where poor non-white and non-English speaking voters are the majority, and their candidates rule the legislature. Let’s just say, for hypothetical purposes that Mr. Godsey, his family and friends live in a pleasant middle to upper middle income predominantly white community in the middle of the state, with a historically very nice, locally controlled school system. Let’s just say for argument sake, that neither Mr. Godsey nor his neighborhood peers have other options as to where to live or where to send their children to school (as would likely be the case when we turn the tables back around). In this hypothetical case, the legislature chooses to establish a school funding policy that... for whatever reason they wish... allocates to Mr. Godsey’s neighborhood school only \$1 per pupil in order to save money to redistribute to their own schools, which will be funded at \$10,000 per pupil. Further, the legislature enacts a law that allows schools to enhance their budgets by only 25% per pupil. That is, Mr. Godsey’s school may raise an additional 25 cents per pupil, and the other

schools in the state may raise an additional \$2,500 per pupil.

By Mr. Godsey’s reasoning, this is okay, so long as the policies in question resulted from *the democratic process*. No court intervention required – “separation of powers” you know. Mr. Godsey should simply vote for officials who will articulate his plight in the legislative session. So be it if his one representative lacks sufficient political power alliances to influence legislation. The prerogative of the majority shall rule... even if the policies developed by the majority are illogical, arbitrary and discriminatory.

Indeed this seems like an absurd stretch of an example, but its’ really not that far off-base. Kansas legislators over the past ten to twelve years have adopted and manipulated numerous adjustments in the school finance formula that serve specifically to improve education for some but not others. The aggregate effect of these adjustments is that the school finance formula provides systematically less funding for the handful of large town and city districts that serve the vast majority of the state’s minority and non-English speaking students. For example, the Kansas legislature has determined it to be more costly (not by any analysis, mind you) to educate the upper middle income students of Blue Valley and DeSoto school districts who happen to attend school in new facilities than it is to educate low-income, non-English speaking students in older (less operationally efficient) facilities in Kansas City or Dodge City. Both DeSoto and Blue Valley receive more “need adjustment” in their “General Fund Budget” (the supposed “adequate” base of funding) than Kansas City, Kansas.

Similar issues underlie the state’s low enrollment weight, which provides substantial additional funding to very small districts, using the argument that they lack economies of scale, but on the actual basis

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that they had higher average spending as a result of higher average taxable property wealth under the previous formula in 1991. Interestingly, the KC metro area district with the highest general fund allocation per pupil is Piper, adjacent to Kansas City and receiving over \$800 per pupil to compensate the district for suffering lack of economies of scale (in spite of its relatively “urban” location). Piper’s low enrollment bonus, like Blue Valley and DeSoto’s new facilities aid, far outweighs Kansas City’s at risk and bilingual education program adjustments combined. But hey, this policy is a result of the democratic process.

In this most recent legislative session, an additional adjustment was proposed to increase local latitude to spend in “high cost” districts, which was to be determined by the average housing unit value of a district. Under the proposal, Blue Valley, DeSoto, Olathe, Shawnee Mission, and Piper would have been allowed to raise more money, but not Kansas City. The same would be true around the state... Andover could raise more, but not Wichita... and Auburn Washburn, but not Topeka. The underlying assumption... It costs more to hire teachers to work in districts with expensive houses (even though teachers don’t have to live in the district in which they work). In reality, these districts already have a significant competitive advantage over their poor urban neighbors in teacher recruitment in their respective labor markets.

I’m sure that if *they* were in the majority, those presently disadvantaged by the school finance formula could craft a “rational basis” as sound as the underlying basis for current policies, and that they could similarly disadvantage Mr. Godsey’s children and those of his neighbors. But alas, poor minority and non-English speaking children and their families in Kansas, concentrated in a handful of large town and city districts, are not the majority.

I guess they should just accept their fate. The majority has spoken and the democratic process... by Mr. Godsey’s definition... has worked as designed. No need for court intervention here – separation of powers, you know.

In closing, I suspect that parents, teachers and administrators in districts that I have herein accused of being “advantaged” by the aid formula would take issue with this characterization. They are unquestionably, far more advantaged than others, especially given their students’ needs. But, their budgets are tight. Some have been forced to cut back programs, class sizes are larger than preferred and teacher salaries... well... unimpressive. Hence the desire of the legislators that represent them to further “bend” the formula in their favor. This brings us back to the first question: Is the system as a whole, suitably financed? Perhaps not. And it may just be the case that court intervention is required on this account as well, since it is increasingly apparent that even the more affluent, politically powerful suburban districts of Kansas, that prize their schools, have been unable to affect policy through traditional democratic processes. In fact, I would argue it to be more noble for the citizens and representatives of these “advantaged” *though under-funded* districts to step up for the cause of fixing the system for all Kansas children, rather than continuing support for self-interested manipulation of current formula (read “equal protection violations”) by a handful of clever legislators (who shall remain nameless) that represent these districts.

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