

State of Kansas



**Speaker Mike O'Neal**  
**Kansas House of Representatives**

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**TESTIMONY IN SUPPORT OF HCR 5010**  
**March 3, 2011**

Chairman Aurand and members of the Education Committee, I appear in support of HCR 5010, a proposed constitutional amendment to clarify Art. 6, Sec. 6 of the Kansas Constitution. Until the *Montoy* decision, this education article in our state constitution was well understood and its interpretation by the state's highest court was consistent with the legislative history of the article's enactment by the voters of Kansas.

Today, however, ambiguity apparently exists since two separate Kansas Supreme Court decisions are hopelessly in conflict with regard to the proper interpretation of Art. 6, Sec. 6 of the Kansas Constitution, which requires that the legislature "make suitable provision for finance of the educational interests of the state." In the 1994 Supreme Court case of *U.S.D. #229 v. State*, the state's highest court held that in school finance litigation "*the issue for judicial determination was whether the Act provides suitable financing, not whether the level of finance is optimal or the best policy.*" The court went on to hold that the "*funding of public education is a complex, constantly evolving process. The legislature would be derelict in its constitutional duty if it just gave each school district a blank check each year.... Rules have to be made and lines drawn in providing 'suitable financing'. The drawing of these lines lies at the very heart of the legislative process and the compromises inherent in the process.*"

In considering the court's responsibility under the separation of powers doctrine, the court noted that "*the determination of the amounts, sources, and objectives of expenditures of public moneys for educational purposes, especially at the State level, presents issues of enormous practical and political complexity, and resolution appropriately is largely left to the interplay of the interests and forces directly and indirectly affected, in the arena of legislative*

*and executive activity. This is of the very essence of our governmental and political polity. It would normally be inappropriate, therefore, for the courts to intrude upon such decision-making.”*

In *Montoy*, decided in 2005, the state’s highest court, did an abrupt about-face and determined that the long-standing constitutional article had another meaning altogether. Rejecting precedent the court found that “suitable provision for finance” could and would be construed to mean a certain level of funding irrespective to the interplay of the legislative process and appropriation process. Faced with yet another lawsuit the state, therefore, has an interest and responsibility to have the voters decide on the proper interpretation of the constitutional article which sets forth the legislature’s responsibility in the area of education finance.

HCR 5010 would restore the education finance article to its original purpose, a requirement for a system of finance that provides for the equitable distribution of funding to the state’s various and diverse school districts in amounts that are determined by the interplay of the legislative and appropriations process. A continuous cycle of school finance litigation is counterproductive and has fostered an education system more focused on chasing funds than achieving outcomes through policy-driven, competitive initiatives.

The current legislative environment with regard to school finance is the exact environment the court in *U.S.D. #229 v. State* warned us about. In considering the challenge to the new school finance law in 1994, the court noted that “*the proponents of the claims made in this issue would, in effect, rewrite Sections 5 and 6 to require the State to provide direct financial aid or the means to raise tax monies sufficient to cover what each school district determines is ‘suitable financing’ for the particular district’s needs. Under this rationale, the legislature would have little or no role in the determination of what amount of finance was suitable for the particular district.*” The court went on to conclude that “*the court will not substitute its judgment of what is ‘suitable’, but will utilize as a base the standards enunciated by the legislature and the state board of education.*” Today, statutes pretty well define a “suitable education”. The legislature’s role and responsibility is to see that those statutory requirements are funded through an equitable distribution of state funds. The legislature’s role is not to sign blank checks or pay for every item or expense districts choose to offer or incur.

The court in *U.S.D. #229 v. State* got it right. We owe it to the people of the state to restore the proper interpretation and intent of the education article relating to school finance.