

Kansas Courts Get It Right



By [Eric A. Hanushek](#) 03/12/2014

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There is a small community that closely watches the various school finance court cases that are always creating background noise for education policy discussions. This community was rewarded last week with a new decision from the Kansas Supreme Court. Importantly, its decision in [*Gannon v. Kansas*](#) potentially signals a new direction for these cases. Instead of deciding whether or not the Kansas legislature had dedicated sufficient funds to its local schools, it chose to highlight the importance of student outcomes.

Virtually all court cases have a long history, and this is no exception. In Kansas the history stretches back to 2003 when the first decision in *Montoy v Kansas* specified that the state spending on schools was not constitutionally adequate and that the legislature should fully fund a cost study provided by a group of outside consultants. That study purported to show that Kansas was not funding its schools at a level that was adequate to meet the constitutional requirements for the provision of education. With considerable unhappiness about what it thought to be an intrusion into its role as determining appropriations, the legislature increased the overall education funding and set a plan for future spending.

Then the 2008 recession intervened. The State reduced its spending, although the federal stimulus funds offset this decrease. And, it subsequently moved to make larger reductions in the size of state government and again in education. A group of litigants immediately re-entered the courts with two arguments: 1. We were promised more, and it is unconstitutional to reduce appropriations below the funding promised; 2. No consideration should be given to other sources of funding, including federal dollars. A panel of judges agreed with these plaintiffs, setting off an appeal by the State (the defendant).

The Supreme Court decision on this appeal held that it was legitimate for the legislature to make overall fiscal decisions, but that the legislature must maintain an educational system that met constitutional requirements. Perhaps because of the acrimony over the earlier court involvement in funding decisions, the Supreme Court went to considerable lengths in its decision to argue that it did indeed have a proper role in assessing the constitutionality of the education system and that its judgments did not constitute making policy.

Parts of this decision can be seen in the context of the many financing decisions across the nation. But, the innovation of the Kansas court was to indicate that “total spending is not the touchstone for determining adequacy.” Instead one should focus on whether there is an opportunity to achieve the goals of education – and here the Court adopted the original outcome goals promulgated two decades ago in the *Rose* decision of the Kentucky Supreme Court. These capacities, while quite vague, put the focus directly on the skills of students (e.g., sufficient oral and written communication skills to enable the student to function in a complex and rapidly changing civilization; sufficient knowledge of economic, social, and political decisions to enable the student to make informed choices; . . .).

By the ruling, the legislature and the courts may still use estimates of cost studies in assessing legislative actions, but they should not be taken as definitive as previously done in Kansas. The Court noted that these “studies are more akin to estimates than the certainties that the panel suggested.” By backing away from previous cost studies (which I have argued elsewhere are [completely unscientific](#)), the Court hoped to avoid the prior constitutional conflict with the legislature over who held the purse strings.

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The Court did make a clear distinction between equity issues and adequacy issues. It ruled that the way the legislature had dealt with the cutbacks was unconstitutional because it violated equity principles. The legislature changed both the funding of capital expenditures and the equalization funds for local school funding to the disadvantage of low-wealth districts. This aspect was a minor part of the legal battle in Gannon, but it led to all to a variety of misleading headlines such as the one in the New York Times: "Court orders Kansas Legislature to Spend More on Schools." Yes it did, but that was not the main thrust of the decision.

The matter of adequacy will return to the courts. The Supreme Court held that the exclusive focus on money of the lower judicial panel was inappropriate and asked the panel to use a more appropriate outcomes standard. And the plaintiffs, surely unhappy that the affirmative equity decision yielded a small portion of the money sought under the rejected adequacy decision, will certainly renew their efforts.

There is a clear lesson in this decision. The Kansas decision was refreshing, but it is not the end of school finance litigation. While some 45 states have faced court challenges to their school finance system, just focusing on spending will never protect the state from even further challenges. The only truly strong defense of legislative decisions is having a focus on outcomes – developing a strong accountability system, introducing incentives for higher performance, developing reliable teacher evaluation systems, and the like.

It is clear to almost everybody at this point that how money is spent is more important than how much is spent. The *Gannon* decision makes it clear that districts should not be permitted to turn inefficiency into demands for more money. But it also remains a duty of the legislature and governor to ensure that the system moves toward more efficient use of funds and toward improved student outcomes.

- Eric A. Hanushek

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