**Full court pressure**

Recent Supreme Court ruling in Kansas a reminder of the power of judiciary to shape state school funding

by Tim Anderson (handerson@csg.org)

In the decades-long legal battles over school funding, different states have taken turns in the national spotlight.

All eyes were on Ohio in the late 1990s, for example, after its state Supreme Court ruled on multiple occasions that the K-12 funding system was unconstitutional — due to an overreliance on local property taxes and a failure to deliver a “thorough and efficient system of common schools.”

This year was Kansas’ turn to grab headlines.

That state’s Supreme Court ruled in March that the Legislature’s current financing of K-12 schools was unconstitutional. The decision not only forced lawmakers to scramble for a fix by the end of this year’s session, it also could have ramifications in other states.

“Forty-five states have had court cases on the constitutionality of school funding,” and these cases have almost always been about, “Should we spend more money or not?” notes Erik Hanushek, a senior fellow at Stanford University’s Hoover Institution.

“What the Kansas Supreme Court has said is that this might be an issue, but the real issue is whether students learn. That is important because it may change the focus — how you spend the money rather than how much you spend.”

The Kansas case, Gannon v. State of Kansas, centered on two issues at the heart of most school-finance litigation: equity and adequacy.

On the first question, the state’s highest court ruled the system unconstitutional due to the lack of state dollars going to “equalization” funds for poorer school districts. The Kansas Legislature was given until July 1 to fix the problem, and lawmakers were spending most of the last days of session trying to reach an agreement.

On the question of adequacy, the Kansas Supreme Court returned the case to the district court, which had previously ruled in favor of the plaintiffs. That part of the ruling, in particular, caught the attention of Hanushek and other national observers. Rather than simply relying on education cost studies and how they compare to actual per-pupil funding, the justices said, a ruling on adequacy should be based on the learning goals and outcomes established in Kansas law.

Those statutory standards include adequate preparation of students for work and college, development of sufficient oral and written communication skills, and the development of physical and mental wellness among young people.

“What the Kansas Supreme Court essentially said is that the cost study isn’t the ultimate measure [of adequacy], the ultimate measure is the standards set in state statute,” notes Molly Hunter, director of the Education Justice program at the Education Law Center.

In other words, does Kansas’ current funding system (both how it is structured and implemented) allow all students to meet the state’s own standards?

How the state courts decide the adequacy part of the case will once again shape the work of the Kansas Legislature in the months and years ahead.

**Michigan’s ‘right to read’ case**

Meanwhile, another case in the Midwest also has the potential to take state litigation in another direction.

The class-action lawsuit was filed by the ACLU and students in a local Michigan school district.

It claims that the state and district are not meeting a statutory requirement that ensures children are reading at grade level. Current Michigan law requires districts to provide additional remedial assistance to students who are not performing at grade level in the fourth and seventh grades.

A large majority of students in the school district are reading below grade level. This lack of proficiency, and the fact that the problem has worsened, is evidence that Michigan and the local school district are not meeting their statutory and constituti
Impact of school-funding lawsuits, rulings varies widely in different states

Review of school-funding lawsuits M

ichigan and every other state in the nation have an education clause as part of their constitutions. Such clauses date back more than a century, Hunter says, and were prerequisites for territories wanting to become U.S. states.

The language in these clauses — “suitable provision for finance of the educational interests of the state” in Kansas, for example, or “thorough and efficient system of common schools” in Ohio — has often served as the basis for school-funding lawsuits. (Equal-protection clauses are also frequently cited.)

With the exception of Iowa, state supreme courts have handed down school-funding decisions in every Midwestern state. Plaintiffs have lost most of these cases, and in one Midwestern state, Nebraska, the court said it could not weigh in on the school-funding issue because it raised “nonjusticiable political questions.”

To-date, Kansas and Ohio are the only states in the region where K-12 funding systems have been ruled unconstitutional.

“I don’t think the [constitutional] language has much to do with the differences in how you see the courts rule,” Hunter says. “We see states with the same language with different rulings, or states with different language with the same rulings.” Likewise, the impact of these rulings is unpredictable.

Complicated history: A look at Midwestern states’ experiences with school-finance litigation

In multiple cases over the past five decades, Illinois courts have rejected claims that the state’s school-funding system is unconstitutional. The most recent ruling was made by the state Supreme Court in 2012. Plaintiffs in that case argued that the funding system was in violation of the Illinois Constitution’s equal-protection clause due to disparities between property-rich and property-poor school districts.

The Indiana Supreme Court has never ruled the state’s school-funding system unconstitutional. The state revamped its funding formula two decades ago following a case filed by some local school districts claiming the system was inequitable. More recently, the legislature made changes after a lawsuit was filed by some of the state’s rapidly growing school districts. That funding case was dropped due to legislative changes made in 2011.

The only school-funding lawsuit in Iowa occurred in 2002. It challenged the constitutionality of a provision in state law that allowed local governments to levy a sales tax to support school facilities. That provision, plaintiffs argued, made funding unequal for children who live in rural school districts and others with a small sales-tax base. The lawsuit was dropped in 2004 after the legislature made changes to increase revenue for these districts.

In two separate cases over the past decade, the Kansas Supreme Court has ruled the state’s school-funding system to be unconstitutional. Its most recent decision was handed down in March. The system is unconstitutional, in equity grounds, the justices ruled, because the Legislature has failed to provide sufficient “equitization” funds for poorer school districts. On the question of the overall adequacy of school funding, the justices returned the case to the district court for further review. They guided the lower court to base its decision on whether the current funding system provides the opportunity for students to meet statutorily set standards and learning goals. In contrast, rulings in the previous case were based on comparisons of state funding levels with the estimated cost of adequately educating students.

In 2006, the Kansas Legislature revamped its school-funding system in response to the Supreme Court’s finding that the system was unconstitutional. But the new system was brought following subsequent cuts in school funding.

Michigan’s school-funding system has never been ruled unconstitutional. However, the state is now a defendant in a first-of-its kind “right to read” lawsuit. Under current Michigan law, school districts must provide additional remedial assistance to students who are not performing at grade level in the fourth and seventh grades. The lawsuit claims that the state and a local school district have failed to ensure that students are reading at grade level.

In 1991, the Minnesota Supreme Court rejected a lawsuit brought by school districts challenging the constitutionality of school funding. The districts said the state’s funding model led to unconstitutional disparities among property-rich and -poor districts. A subsequent lawsuit challenged the funding system based on the state’s equal-protection clause. That suit was settled after an agreement was reached between the state and the NAACP.

Minnesota is one of only five U.S. states where a state supreme court rejected a school-funding lawsuit because it raised “nonjusticiable political questions.” The questions raised in such a case cannot be addressed by the courts, the Nebraska justices ruled, and must be left to the state Legislature.

Eight years ago, a lawsuit was filed in North Dakota claiming the state’s system of funding schools was unconstitutional, on the grounds that it was both inadequate and inequitable. That case helped lead to a transformation in how North Dakota’s K-12 districts are funded. Beginning in 2007, the state revamped its funding formula and increased the total amount of dollars going into the system. (The lawsuit was then dropped.) Today, the state provides more than 80 percent of total state-local funding for K-12 education — compared to about 40 percent a decade ago.

The state of Ohio’s DeRolph case remains one of the nation’s best-known examples of school-finance litigation. The case was filed in 1991, and over a five-year span (between 1997 and 2002), the state Supreme Court ruled four different times that the funding system was unconstitutional. The system was overly reliant on local property taxes, the Ohio justices ruled, and thus failed to meet the constitutional requirement to “secure a thorough and efficient system of common schools.” The court, however, did not retain jurisdiction over the case. The DeRolph lawsuit and court rulings did lead to increases in state school funding — in particular, a large new investment in school facilities.

In two major cases, the Soone Durose Supreme Court has rejected lawsuits challenging the constitutionality of the state’s school-funding system. The first case centered on questions of inequality (resource disparities among different school districts), the second on the overall adequacy of K-12 finance.

Sources for state-by-state information: Education Law Center and CSG Midwest research

In 2006, nine local school districts filed a lawsuit alleging that the state’s K-12 funding method was inequitable and inadequate. Central to their complaint was the system’s reliance on local revenue — at the time, only about 40 percent of the state-local share for schools was coming from state dollars.

In response to the lawsuit, the state formed a special Commission on Education Improvement. “We wanted to be the ones to solve the problem, not the courts,” recalls North Dakota Sen. Tim Flakoll, who served on the commission.

Led by the lieutenant governor, the commission included legislators, superintendents, state education leaders and teacher groups. Its work was built around finding consensus, Flakoll says, noting, for example, that any recommendation from the commission first required a supermajority vote by its members.

Beginning with the 2007 legislative session, North Dakota lawmakers moved ahead with the commission’s plan to address concerns about equity and adequacy. The lawsuit was then dropped.

Today, more than 80 percent of the state-local share for K-12 schools comes from state sources. “It was a historic change in the way we funded education,” Flakoll says. “But it wasn’t just about the dollars. It was about focusing those dollars on meaningful student performance.”

“We delivered what I would call ‘mass customization’ — provide [funding] on a student basis, not on a...
school basis. So if there are additional needs — for an English language learner, a special-education student, or for students in smaller districts — we have weight- ing factors to give additional dollars to that student.”

North Dakota’s economic growth has helped the state spend more on education. To make the commit- ment sustainable over the long term, the legislature is allocating a portion of the state’s oil and gas revenue to education and school-aid trust funds.

In Ohio, in the wake of the state Supreme Court ruling that the K-12 funding system was unconstitutio-nal, the legislature established a multi-billion-dollar program to finance new school facilities. Between 1992 and 2010, too, legislators began allocating an increasing percentage of the state’s general-fund budget to education — from 34.5 percent to 43.6 percent.

Yet Ohio’s DeRolph v. State lawsuit was never fully resolved. After a fourth ruling that the state’s education-funding system was unconstitutional, the court decided not to retain jurisdiction over the case.

Funding levels have fallen in most states

Funding for local schools comes from three revenue sources: federal, state and local. Between 2001 and 2011, the federal share has gone up in every Midwestern state, but it still represents the smallest portion of school funding (12.5 percent nationwide).

Over that same time period, in every Midwestern state except Indiana, North Dakota and Ohio, the state’s share of education funding fell between 2001 and 2011 — with the result being a greater reliance on federal and/or local dollars.

The tail end of that period was marked by a widespread fiscal crisis in states across the country. The recession and ensuing revenue slowdown led to funding cuts in education. Hunter notes, too, that many states have chosen to cut taxes in recent years.

According to the Center on Budget and Policy Priorities, at least 34 states are providing less school funding per student in 2013-14 than they did before the recession hit. That includes at least six states in this region (see map on this page).

Kansas has had among the steepest cuts in the country, the center’s report concludes.

Trends in state spending on education

between fiscal years 2008 and 2014

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<th>State</th>
<th>Inflation-adjusted state spending has increased</th>
<th>Inflation-adjusted state spending has declined</th>
<th>Source: Center on Budget and Policy Priorities, “Most States Funding Schools Less Than Before Recession” (September 2013)</th>
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<td>Kansas</td>
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<td>The key is teacher quality,” Hanushek says, “and the state has a fair amount of influence over it.”</td>
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According to Kansas Rep. Valdenia Winn, educa- tion funding in her state is down to 1992 levels.

“The recession was a factor, but it’s been policy decisions as well,” she says. “If you want to cut the size of government, and education takes up 50 percent of the [state] budget, schools are going to get squeezed once you start shrinking that pie.”

Winn believes the state has a sound funding for- mula in place. It was established following a previous lawsuit, in 2006, that successfully challenged Kansas’ school-finance system at the time. The problem now, she says, is that schools are being underfunded — well below, for example, a per-pupil amount set in statute.

Hanushek hopes this year’s Supreme Court ruling in Kansas will cause the state to look beyond cost studies and per-pupil funding amounts.

“There are two things that drive spending per pupil,” he says. “One is teacher salaries, the second is teacher-to-pupil ratios. Neither of those is closely related to student performance.

“So if you just put money into the existing system, you don’t get much improved performance, because salaries [as currently structured] are just completely unrelated to effectiveness. And if there is any impact of class size, it’s very small.”

His answer, then, is to change the current sys- tem, with the cornerstone being new evaluations of teacher effectiveness and pay structures that link the salaries of instructors to these evaluations. Several states have already begun to incorporate this approach.

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By the end of the third quarter of 2013, inflation-adjusted state spending in Kansas will cause the state to look beyond cost studies and per-pupil funding amounts.

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Registration for the meeting can be completed online at www.csgmidwest.org.