

No. 04-92032-S

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IN THE SUPREME COURT OF THE STATE OF KANSAS

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RYAN MONTROY, et al.  
Plaintiffs-Appellees,

v.

THE STATE OF KANSAS, et al.  
Defendants-Appellants

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***AMICUS CURIAE* BRIEF OF  
EDUCATIONAL MANAGEMENT CONSULTANTS  
IN SUPPORT OF REAL “REMEDIES” TO ACHIEVE  
AN EQUAL EDUCATIONAL OPPORTUNITY  
FOR EACH K-12 STUDENT OF KANSAS**

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Appeal from the District Court of Shawnee County  
Honorable Terry L. Bullock, Judge; District Court Case No. 99-C-1738

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Dated: May 5, 2005

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**EXHIBITS**

- 1) [National Summary of School Finance Litigation, by Year, Case and Status – 1970-99](#)
- 2) [Comparison of Per Pupil State Aid by School District Size](#)
- 3) [Educational Management Consultants – Model for Funding Quality, Equal Education  
in Kansas](#)
- 4) [KSDE Explanation of Weight Calculations in Kansas School Finance Formula](#)
- 5) [Kansas Educational Spending Increases – 1989-2003](#)

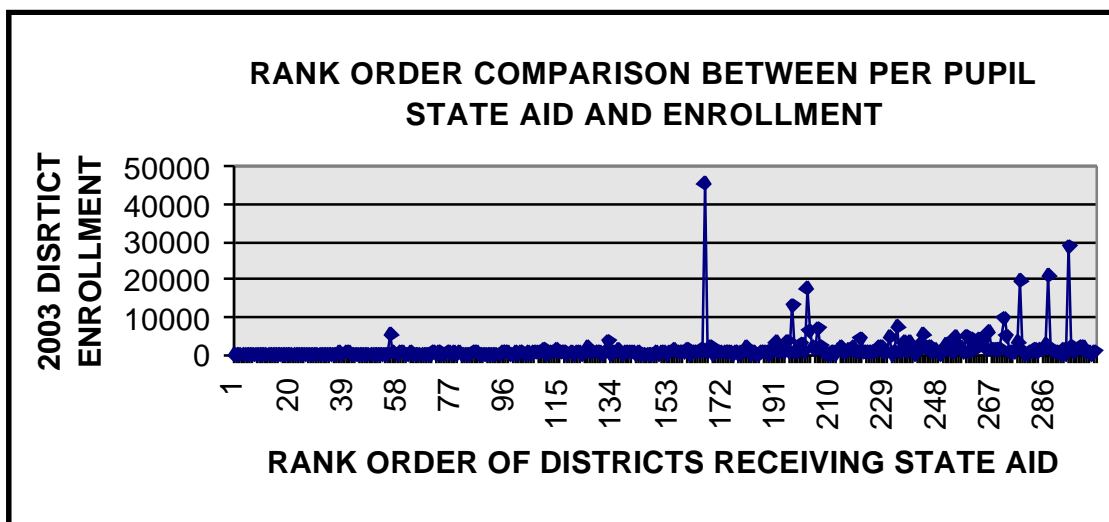
- 6) [KSA 72-7513 – General Powers of State Board of Education](#)
- 7) [KSDE “Definition of Suitable Education” – January 2005](#)
- 8) [Suitable Education As Defined by the Legislative Leadership Council for the Augenblick & Myer Study](#)
- 9) [Augenblick & Myers Cost Estimate Methodology is Flawed](#)
- 10) [What is a Suitable Education? Including: KSBA Summary of How Kansas School Districts Spend Money – and Why, plus Kansas and National Assessment of Education Progress Scores for Math and Reading,](#)
- 11) [Regionalization Concept for Reorganization of Kansas School Districts – January 2003 by Superintendents Sharol Little and Kenneth Kennedy + PowerPoint Slides](#)
- 12) [National Survey of School Districts by State](#)
- 13) [Kansas Assessed Valuations Per Pupil – 2000-2004](#)
- 14) [Equal Access to Schools Fails to Equalize Education](#)
- 15) [Auburn Washburn Focus Groups to Define Suitable Education](#)
- 16) [13 Year History of Local Option Budgets](#)

## INTEREST OF AMICI CURIAE

Educational Management Consultants is a Kansas based firm which has identified the learning needs of over 700,000, K-12 students in 16 States to help school district managers match instructional resources to the students enrolled in each school building. The following recommendations are also based on knowledge of school finance litigation in 39 States starting with *Serrano v. Priest* in California in 1971 plus instructional unit-cost analyses in large and small school districts in 6 States. (E-1) And, as a former student, teacher and administrator in Kansas small, medium and large schools and K-12 Districts, first hand knowledge and understanding of the “real issues” facing our State are shared to help find practical solutions to the Kansas School Finance mess.

### SPECIFIC RESPONSES TO THE APRIL 15<sup>TH</sup>, 2005 ORDER

The **Plaintiffs have Prevailed. This Case is ready to Remand to J. Bullock** to oversee the funding changes needed to equalize educational opportunity for each Kansas K-12 student. No more fact finding is necessary. This case has been delayed by Defendants’ legal maneuvering since 1999. The facts were clear then and State Aid has become more unequal in the interim ranging now from \$361 to \$7,989 per pupil. (E-2)



J. Bullock has shown great wisdom and insight into the complexities and myths of school finance. His May 11, 2004 Order was one of the most well written and documented rulings from any Court in the Nation on the issues. (E-1) Because the Defendants do not agree with his Orders does not support sending this Case to a “Master” or panel unfamiliar with the facts. J. Bullock’s rulings have been fair and accurate. It is now time to move forward rather than waste more years waiting to “fix the problems”.

To avoid mass confusion throughout the 301 School Districts, the funds appropriated by the 2005 Legislature should be distributed. However, this Court should Order that the Cost Analysis and new School Finance Model outlined in the remainder of this Brief be completed prior to the start of the 2006 Legislative Session. This new Model will allow the 2006 Legislature to redistribute tax dollars to school buildings to provide resources to teach the students in attendance. But, there is no justification to increase taxes or funding at this time. More money is NOT the answer!!

The first fact to clearly state is that **NONE** of the **10 formula weights** listed on Page 4 of the Court’s Order are fair, equitable or just ways to provide adequate funding to educate Kansas K-12 students. The BSAPP may provide each School District with an equal amount of State-Aid per pupil but the costs to educate each student vary greatly by school and student. The At-Risk definition has to do with the income level of parents instead of each student’s ability to learn. So this weight grossly inflates budgets in some districts without providing extra funding for students who find school too difficult or boring to attend. There is also nothing equal in the other weights. They have been abused over the years to inflate spending without increasing student achievement. (E-4)

As for the constitutional significance of Items 1–4 on Page 5 of the Order, the Legislature has no authority to “Ear Mark” special funding for “Skills for Success” over numerous other programs and courses. During the past 10 years, State Aid per Pupil has risen 107%, Federal Aid is up 132.7% and LOB revenue is up 25.8% while the CPI-U Index has only increased 27.2%. Student enrollment is up just 3% and decreased in 191 Districts during this same period as families move from rural areas. (E-5) Of the \$4 billion dollars spent per year, only 54% goes for Instruction and 1.4% for vocational. So, the key issue is how to FAIRLY DISTRIBUTE the 67% of State tax revenue which is already spent on Education—NOT—on how to TAX AND SPEND even more money.

#### SUMMARY OF ARGUMENTS

The primary focus of this *amicus curiae* brief and court case is on how to provide an equal educational opportunity for each K-12 student in Kansas. To achieve this goal, all parties involved in funding, managing and providing quality education must challenge long held assumptions, focus on how best to provide the learning resources required to teach each student in the school they attend and stop making excuses.

The current school finance formula used by the Kansas State Legislature to distribute funds to school districts is unconstitutional. This has been true for decades.

The data in this brief and attached Exhibits clearly document this fact. There are wide variations in funding and learning resource distribution between the 301 school districts in Kansas. And, since no two school districts have the same property tax base from which to increase their funding, there is no assurance in the current H.B. 2247 formula that each student’s needs are being met—in the school which they attend.

To correct this gross inequity, it is necessary to **(1) identify the learning needs and achievement level of each student in each school**, then **(2) verify what instructional resources are necessary in that school building to teach the students enrolled**, and finally **(3) develop a Statewide budget process which will pay for the costs to teach each student the stated, measurable objectives**. With this school-based budget, the Legislature can use a computer model to **distribute the Local and State taxes back to EACH school** to meet the learning needs of the students enrolled. (E-3)

This dynamic budgeting and redistribution of revenue will change from year to year to reflect the resources needed in each school. Basing the new school finance formula on actual instructional costs at the building level instead of previous District spending, will equalize the educational opportunity for each Kansas K-12 student.

#### **“SUITABLE” PROVISION TO FINANCE**

As the Court points out in its April 15, 2005 Order, Article 6 of the Kansas Constitution requires that the Legislature “make suitable provision for finance” of public schools. However, H.B. 2247 which was passed by the Kansas Legislature in April, 2005 is nothing more than a series of political compromises to tinker with weights which have little to do with the cost of teaching. Like similar appropriations bills for the past 50 years, it does not reflect the actual cost to educate K-12 students in the schools where they attend. So, it is impossible to say whether the funding appropriated is “suitable”.

No one group in Kansas is in charge or accountable for administrating education or controlling instructional costs. The Legislature appropriates funds each year but have little say over how the money is spent. The State Board of Education is mandated by KSA 72-7513 to adopt standards plus establish courses of study and curriculum but it has

no funds to implement these standards nor is it accountable to the Legislature or the Governor. (E-6) Unlike all other functions of State government, the KSDE does not report to the Governor nor does it have any real managerial or administrative control over the Districts where the money is spent.

School Principals and teachers actually use most of the resources, but they have little say over what money is budgeted for their school or how it is spent. This leaves many schools in Minority neighborhoods with few instructional resources while other schools in affluent neighborhoods in the same School District are full of modern resources and more competent teachers. This managerial and funding chaos creates massive waste of public funds and must stop!!

Furthermore, neither the Legislature nor the Kansas State Board of Education have a clear definition of what each student is to learn during his/her 13 years of public education. Instead, KSA 72-101 only deals with what subjects to teach to elementary students, whereas KSA 72-1103 and KSA 72-1117 only mandates courses in “civil government” and “Kansas history”. (E-7) The KSDE provides a brief list of “units” or groups of required courses in a Precollege Curriculum for each high school graduate but not what is to be learned or how well. (E-8) Augenblick and Myers tried to guess what these vague phrases mean and grossly inflated the cost of education. (E-9) (E-10)

These “definitions” and thus their cost estimates are totally meaningless. For decades, the educational ship in Kansas has been sailing without a compass or destination. It is like a group of people taking a trip. Are we going to Denver or to San Francisco? Unless we know where we are trying to go, we can easily run out of money before we reach the final destination or spend a lot of money without going very far.

It is essential that all parties become clear about what is to be taught and how well each student is to demonstrate achievement before graduation. For now, Kansans can only say that each student kept a seat warm for 13 years but we do not know what they actually learned or how much money is required for them to learn the basic skills, knowledge and concepts to be employable, earn an income and support a family. No more funding should be appropriated by the Legislature until the “suitable education” question is answered and Kansans know what students are to learn with their tax dollars.

### **WHAT DOES IT COST TO EDUCATE EACH K-12 STUDENT?**

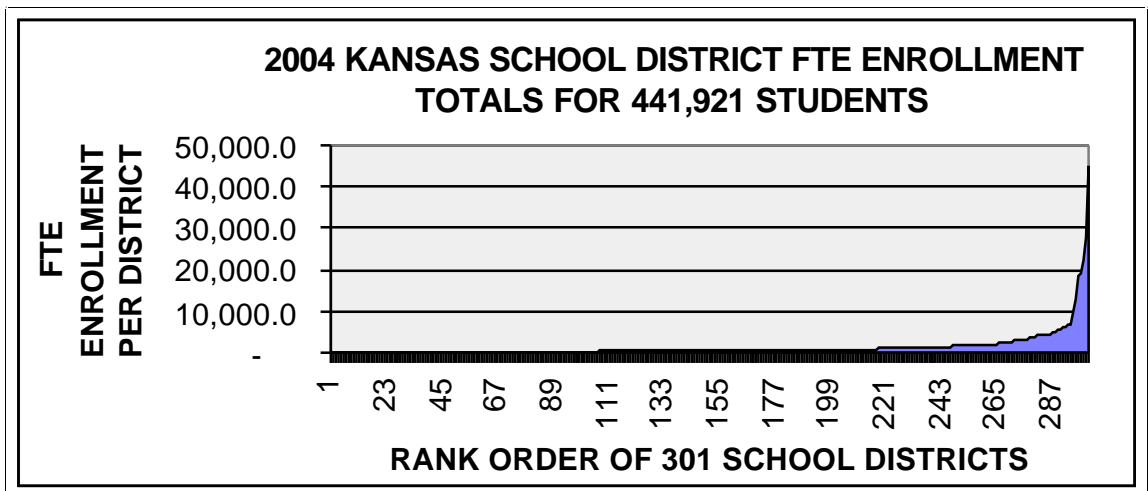
The answer to this question will only be known after a professional cost analysis is done in a random-stratified sample of Kansas schools. This Cost Analysis and Budget Development Process are detailed on page 15 of this Brief and in the attached Exhibits.

Reviewing line item budgets of past spending patterns will not tell the Legislature or the Courts what it actually costs to teach students a “suitable education”. So, for H.B. 2247 to ask the Legislative Post Audit to do an analysis of existing data without going into the schools or having a clear definition of what is to be learned is wasted money for yet another useless “study”.

To start with, **the Cost Center of education is the SCHOOL – NOT – the District!!** No business in the world could control costs and manage effectively the way schools are run in Kansas. There are such vast differences between the student mix and instructional unit costs in different schools across the State that to allocate a fixed BSAPP by the Legislature does nothing to equalize educational opportunity.

Schools are where students learn. Districts are merely artificially drawn geographic boundaries which serve no educational purpose and create major disparity in funding due to their vast differences in size, enrollment and assessed property values.

When Kansas was primarily a rural, agricultural economy, the farm families built small schools for their children and paid proportionally to the value of their land. As people moved off the farm, many of these small schools remain. But, to receive State funding, these schools became known as Districts.



Less than 200 Students	34 Districts
Between 200 - 1000	183 Districts
Between 1000 - 5000	70 Districts
Between 5000 - 10,000	8 Districts
Over 10,000 Students	6 Districts

Source: KSDE URL: [http://www.ksde.org/leaf/data\\_warehouse/data\\_warehouse.htm](http://www.ksde.org/leaf/data_warehouse/data_warehouse.htm)

Kansas still has 34 School Districts which are less than 200 students in one building and 183 Districts which are less than 1,000 students. In reality, these administrative units are too small to provide a comprehensive curriculum. Furthermore, since each of these Districts has a Superintendent, School Board, District staff and separate busses, there are hundreds of thousands of unnecessary, duplicated dollars spent in the false hope of keeping the historical name of each small town alive.

Many small Kansas towns are losing population and are afraid that School District consolidation will take away their identity. Friday night football and basketball are the big entertainment in town, so they ask their elected representatives to resist cutting these wasted dollars so they can keep their memories of the “good ole days”.

School District consolidation in Kansas will save over \$100 million dollars each year. Several proposals have been made in the Legislature and to the State Board of Education to reduce the number of Districts to 40 with a minimum enrollment of 10,000 students. This would not mean closing most schools in rural areas, but it would cut the high administrative plus duplicated transportation and facilities costs. (E-11)

Currently, busses from adjoining small districts travel the same roads and highways only 1/3<sup>rd</sup> to 1/2 full. So busses, classrooms, teachers and sports facilities could be better utilized at a greatly reduced cost by District consolidation. However, to date, consolidation efforts have been resisted by rural officials and Legislative leaders have lacked the courage to stop this enormous waste of taxpayer dollars. (See Exhibit 12 of how other States with rural schools have already consolidated their School Districts.)

In addition to no learning objectives or clear definition of a “Suitable Education” and too many school districts, Kansans are still locked into using our schools only 180 days per year. When farmers needed their children home for planting and harvest, it made sense to have school finished by the end of May. They also needed their kids home to help with evening farm chores so school was dismissed by 3pm each day.

These artificial timelines are very expensive. No business could shut down for 3 months per year or operate just 7 hours per day. Construction bond principal and interest are still due plus many administrators and utilities must be paid 12 months per year.

Using schools for regular and remedial instruction each month means that vacations for parents and teachers can be staggered throughout the year and instructional resources made available to more students.

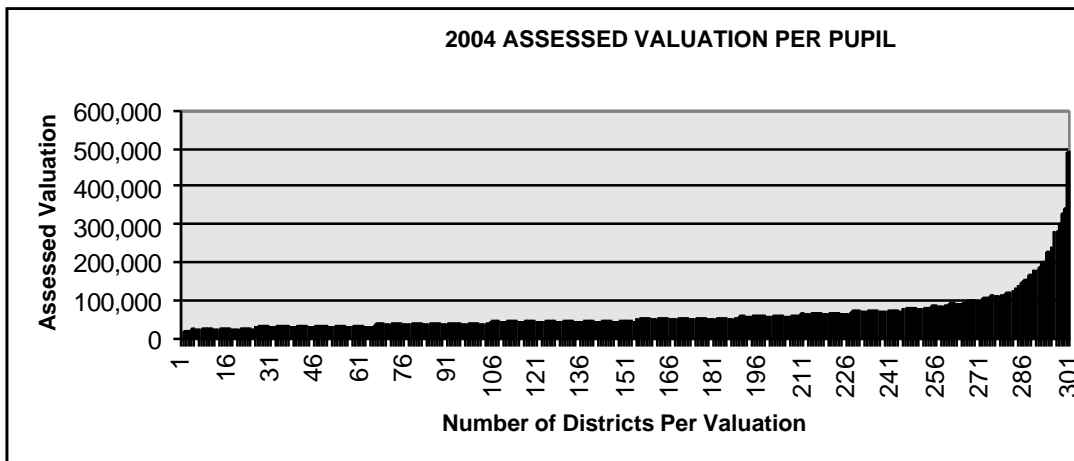
Increased productivity from teachers and administrators is where the greatest savings can be achieved. Salaries are over 80% of the costs in any District. So, it is essential that teachers and administrators make full use of each day. Teachers in many Districts have negotiated an hour for planning plus an hour for “Team Time” into each school day. Consequently, in many Kansas Middle and High Schools, up to 1/3<sup>rd</sup> of each day, the teachers are not teaching students. This also means that during every class period, at least 1/6<sup>th</sup> of the classrooms are not being used for instruction.

Planning and Team Time should be done after the students leave the buildings at 3 PM. Instead, the teachers and most Administrators are gone from the schools by 3:30. By, increasing the productivity of school personnel and expecting a “full day’s work for a full day’s pay”, class size can be reduced immediately and slower students can receive after-school tutoring without raising taxes or funding.

In smaller, rural schools, where it is unfeasible to hire teachers for the small number of students taking advanced science, math and language courses, the use of instructional technology can provide a comprehensive curriculum for each student at a fraction of the cost. Web-based instruction, instructional television and consolidated districts where students can attend specific schools with science and vocational classrooms can all be used to reduce costs while providing an equal educational opportunity for each student.

**STATE COLLECTION AND REDISTRIBUTION OF TAXES TO FUND EQUAL EDUCATION IN ALL DISTRICTS**

It is essential, that all revenue from property, sales and income taxes be collected by the State and then redistributed back to the individual schools by the State Legislature. Forcing each school district to use a Local Option Budget to increase its income only creates greater disparity between the “haves” and “have nots”. The range is from \$810 Assessed Valuation per Pupil to \$488,732 with an average of \$63,721. Plus, students who attend school in low income neighborhoods in low property valuation districts are doubly penalized since funds and resources seldom reach these schools from the district level. (See Exhibit 13, Kansas Assessed Valuations Per Pupil 2000-2004.)



Source: KSDE 5 Year History of Assessed Valuation Per District

Fifty years after *Brown v. Board of Education*, schools throughout Kansas and America are still using bussing as a way to try to get lower income students a quality education. But transportation costs are tremendously expensive. Brown was granted the right to send his daughter to the school closest to where he lived in Topeka. Instead, students are now bussed out of their neighborhoods because local school boards and

administrators can not be trusted to provide quality teachers and instructional resources equally to all schools within their districts.

Millions of dollars for bussing students are wasted in Kansas when those dollars could be better spent providing quality education in the neighborhood schools where students live. Changing this one failed strategy, would also allow neighbors to get better acquainted and permit the parents of students an opportunity to participate in their child's school. Parent-teacher interaction would greatly improve if the parents did not have to drive across town to participate in school functions and meetings. Putting students on a bus for up to 2 hours each day must stop. (E-14)

Using busses for this purpose is not only a waste of public funds, but it has a negative impact on learning since students can not use this time to do homework and it prevents parents from meaningful contact with their child's teachers. Furthermore, many students arrive tired, since it takes an hour or more for their bus to deliver them to school.

Since the State has the Constitutional responsibility to educate all children within its boundaries, it is very important that sources of revenue from various taxes are collected by the Kansas State Treasurer and then redistributed by the Legislature to assure that each child has an equal educational opportunity to learn in the school nearest their home. To have any credibility, these **funds must be dispersed back to individual schools as the basic cost-center of education.**

Local school administrators and school boards have the responsibility to oversee the use of these funds and directing the day-to-day learning process. But relying on local districts to raise significant portions of their own funds to pay for education is a major reason why there is such vast disparity in educational opportunity for children who may

live just a few blocks or miles from each other. Plus, funds allocated to districts seldom reach the local school buildings which need additional resources the most.

### **NEW SCHOOL FINANCE FORMULA DEVELOPMENT PROCESS**

Assuring an equal educational opportunity for each K-12 student in Kansas can only be achieved by first documenting what it costs to teach students in the schools they attend. The following strategy will develop a new School Finance Formula for Kansas.

1. **The Supreme Court should mandate that clear definitions of a Suitable Education, an Instructional Cost Analysis and a new School Finance Computer Model be developed before the start of the 2006 Legislative Session.** J. Bullock should oversee the process and timelines.
2. Instructional cost data should be collected from a randomized, stratified sample of 6 large districts, 6 medium sized districts and 12 small school districts in Kansas.
3. To remain objective, the data analysis and computer model development should be done by educational experts who are not employees of any Kansas school district or public agency.
4. The sample districts need to be in sets of 2 divided between East, Central and Western regions to reflect geographical, and demographic variations in the State.
5. Many of these costs can be collected from existing data in the State Board of Education, Legislative Research Office and school districts.
6. As additional school-based data are required to verify instructional costs, achievement and existing resources, site visits must be made to specific school buildings to collect this information. Input from current school teachers, building administrators and district employees is essential.

7. The school-based cost data from each district should then be compiled into a database and spreadsheets to analyze the variations between districts, regions and instructional objectives. Aggregate student achievement scores in each building should be entered to identify which costs produce the most instructional benefits.
8. Input will be received from a Kansas Suitable Education Task Force made up of employers, parents, former students and classroom teachers. Then building level instructional cost, resource and achievement data will be put into the School Finance Computer Model to simulate how best to attain the learning objectives developed by the Task Force. This Model will allow the State Legislature to then redistribute tax dollars back to the school buildings and districts throughout the State based on student needs.
9. A standardized, State-wide School Based Budgeting data collection format will also be developed to allow cost and achievement data to be sent via electronic files from each school in Kansas. This process will minimize future data collection costs and assure that accurate, timely data are updating the Model throughout the school year. (See proposed School Finance Model in Exhibit 3)
10. The Suitable Education Definitions, Cost Analysis and School Finance Computer Model needs to be completed and ready to pass into law during the 2006 Legislative Session. An estimate of costs to complete the work will depend largely on how much valid data can be found in existing databases. The contract should be done by experienced educators who know the questions to ask, which answers are reasonable and how to teach students relevant concepts and skills. This is not a job for accountants or a committee of politicians.

## CONCLUSIONS

The current School Finance Formula for the State of Kansas is unconstitutional since it does not assure each K-12 student an equal educational opportunity to learn. In addition, allocating funds based on a set amount per pupil does not take into account the wide variation of curriculum and student learning needs in individual schools.

Remanding this Case back to J. Bullock to make specific rulings will save valuable time needed to fix the financial distribution problems and allow urgently needed instructional resources to reach the students disenfranchised by the current formula. The Court should NOT force the Legislature to appropriate more money by increasing weights which have nothing to do with learning. Also, more “fact finding” to verify the unconstitutionality of the current formula delays justice for all 430,000, K-12 students.

Furthermore, relying on Local Option Budgets to make up the differences between what is allocated by the State Legislature and the learning resources needed in each school building only makes the inequity greater, since no two districts have the same property tax base from which to raise funds. (E-16) There are also too many small school districts in Kansas. This simple fact automatically puts students in these rural schools at an economic disadvantage, unless they are next to a large gas reserve.

The State Treasurer must collect the property, sales and income taxes from all areas of Kansas. The new School Finance Formula must then redistribute these tax revenues **back to individual schools based on the learning needs of the K-12 students attending each building.**

The amount of money to raise and distribute to individual schools depends on the measurable objectives to be learned. These stated objectives must be based on skills and

understanding of concepts which are relevant to future employment and life as productive adults in a modern world. Basing these objectives on the assumption that all students are college bound is wrong. Most students know that much of what they are forced to learn is boring and not relevant to their future. So, as many as 40% simply drop out of K-12 schools before graduation. This does not mean that they are dumb or can not learn. They simply are not willing to sit in class without learning anything of use.

Spending more money on the same college bound curriculum will not keep more students in school. However, changing the curriculum to include technology, manufacturing, life skills and practical vocational courses will excite students and provide them with the tools they need to succeed in the World economy. They need practical, employable, competitive skills—whether they are going directly into the job market or headed for college after high school graduation

With the new School Finance Computer Model developed before the start of the 2006 Legislative Session, the new formula can be passed and implemented into law to dispense tax revenue starting on July 1, 2006. Determination, leadership and focus will provide each K-12 student in Kansas with an equal educational opportunity to learn relevant skills and concepts. This fundamental responsibility of State Government can be achieved. It must be taken seriously with the political will and wisdom to make the hard decisions outlined above.

Dated: May 4, 2005

Respectfully submitted,

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**CERTIFICATE OF MAILING**

The President of Educational Management Consultants does hereby state that he has emailed a copy of this **AMICUS CURIAE BRIEF** to the attorneys of record in *Montoy v. Kansas* on this day, May 5, 2005.

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