INTRODUCTION

This book explores the story of Kansas school finance, a saga that spans decades, three waves of court cases, plenty of political bluster, and a handful of intriguing characters. The forces, structures, events, and characters addressed in these pages have protected Kansas public schools from suffering a much worse fate than might otherwise have occurred in their absence. The goal of this book is to provide the more casual reader of education- and public policy–oriented books an entertaining tale of school finance reform in Kansas, with implications for reforms in other states. The casual reader of education policy may have heard that in the most recent decade, Kansas schools suffered thanks to the largest funding cuts in the nation, a result of Governor Brownback’s “real live experiment” in cutting taxes. While states in many parts of the country and in particular those neighboring Kansas significantly disinvested in their public schooling systems over the past ten years, Kansas, despite the Brownback era setbacks, has remained ahead of the pack. This book unpacks how and why.

School finance isn’t a particularly riveting topic. Kansas is probably not considered by many to be a particularly entertaining state. So writing about the intersection of the two would seem to be a monumentally bad idea. After all, Kansas’s main tourist attractions include a barbed wire museum and the world’s largest ball of twine. Kansas is nearly a perfect rectangle, but for the broken northeastern corner, and for the most part, Kansas is flat—damn flat. Kansas is flyover country at its finest and flattest.
Kansas has captured the intrigue of political media and authors in search of Middle America for the past few decades. Kansas is the geographic center of the US, but not so much the political center. Perhaps the best-known political commentary on Kansas is Thomas Frank’s 2002 book, What’s the Matter with Kansas? In the book, Frank paints a facile portrait of largely ignorant, low-income white voters unable to break the self-destructive habit of voting against their own economic interests. Recently, Frank’s caricature of Kansans has been countered by more nuanced perspectives from a pair of books published in 2018: Sarah Smarsh’s Heartland: A Memoir of Working Hard and Being Broke in the Richest Country on Earth and What’s Right with Kansas? by Ed O’Malley, former Kansas state representative and head of the Kansas Leadership Center. Ed O’Malley shows up as a character in this book at a few points in time. Sarah Smarsh would have been an undergraduate at the University of Kansas soon after I arrived there as a faculty member, though our paths never crossed to my knowledge.

The Kansas school finance saga is one of the more interesting stories in both recent Kansas history and in school finance—admittedly, a low bar. More importantly the Kansas school finance story provides useful insights for strengthening public education in other states and protecting public schooling from outright dismantling and complete disinvestment in politically conservative states. In fact, many of the lessons of Kansas school finance may also inform productive change in bluer states, from California and Colorado to Connecticut and Vermont. Kansas offers a unique constitutional structure for both protecting educational rights and maintaining judicial independence, which in combination are essential to providing equitable and adequate schooling in politically and economically volatile times. The history behind how all of this comes into being and the involvement of Kansas courts in interpreting those constitutional protections includes a cast of characters and events, captured in court documents themselves, as well as often clever reporting and political cartoons that keep it all entertaining.

Through multiple rounds of state and federal constitutional challenges and shifting political tides in the state legislature, Kansas has maintained a degree of balance, stability, equity, and adequacy in the financing of its public schools that not only exceeds what we more liberal coastal elites might expect, but also exceeds that of most
surrounding states and many other states across the country. This book explores the how and why.

**ORGANIZATION OF THIS BOOK**

This book combines historical background, legal analysis, and political and economic contextual data. Some chapters are primarily historical. Others focus on data and context. Other chapters focus on legal analysis, and still others on the characters involved, including the key role of strong female leadership in the governor’s office, legislature, and the high court. Throughout the middle portion of the Kansas school finance saga, I was an active, in-person participant, and much of that portion of this book is presented from a first-person perspective. My involvement as an expert and consultant continued for the decade since my departure. But this book also includes a deep historical dive into the constitutional history of the state and the reshaping of Kansas’s government and institutions over time, including the 1966 amendments to the education clause of the constitution—all of this long prior to my own arrival.

Anyone who knows me or my work knows that I can't possibly write a book, or even a simple blog post, without some data, tables, graphs, and charts. The thesis of this book, that Kansas is better off than it might have been, requires some validation in data, including evaluating long-term trends in taxes and public expenditures and in education spending equity and adequacy, and comparisons with neighboring states. This book takes advantage of a publicly available longitudinal data set my team and I have compiled over the years: the School Finance Indicators Database (SFID), which includes a multitude of measures of the level and fairness of school funding. Extensive comparisons are made between Kansas and each of its four neighboring states: Colorado, Oklahoma, Missouri, and Nebraska.

I also draw on data on the political context of Kansas to address how Kansas compares with its neighbors and the nation as a whole on measures of political leanings and on the gender balance within state legislatures over time, in order to illustrate that Kansas is not always what outsiders might expect. I use Michigan State University’s Correlates of
State Policy data set, which includes indices of the political disposition of state legislatures and policy context itself, as well as numerous useful background attributes of state legislators and governors.  

Much of the school finance saga itself is told through the words, arguments, and decisions of the various lawyers and judges who have participated in multiple rounds of litigation. This book includes deep dives into the texts of trial court and state supreme court rulings, which both illustrate the evolution of the interpretation and application of the state’s 1966 constitutional requirements for financing and governing public schooling and provide a window into the personalities of the judicial characters involved. I also explore in detail herein the three separate attempts the legislature has made to conduct empirical analyses of the costs of meeting the constitutional requirements to make suitable provision for finance of the educational interests of the state. The legislature engaged in these efforts, using outside consultants, to inform their response to court orders and to appease the court itself. I explore the backstory and individuals involved in each study, in addition to the technical aspects of the studies themselves. These studies are not only central to the saga in terms of how they inform the court and legislature but also contribute to what sets Kansas apart from most other states. Few other states have engaged as extensively or rigorously and independently in such endeavors.

Then there are the various characters who bring the Kansas school finance saga to life, many of whom I had the pleasure to interact with personally. One of those characters was Shawnee County District Court Judge Terry Bullock, loved by some but hated by just as many, who recently passed away on August 2, 2019. Judge Bullock receives much attention in the pages that follow. In the second round of legal challenges to the state’s school funding system over which Judge Bullock presided, he was faced with evaluating evidence offered by the state in its defense that more money really wouldn’t help improve schools. Thus, from the state’s standpoint, it would be inappropriate for the court to rule current funding levels inadequate. Bullock responded in his decision with the proclamation: “Money doesn’t matter? That dog won’t hunt in Dodge City.”

Finally, this book relies heavily on state and local news coverage of the events as they happened, from both serious and satirical outlets.
Yes, there was indeed satirical media coverage of school finance (go figure!), including but not limited to numerous political cartoons from the Wichita Eagle’s cartoonist, Richard Crowson. Satirical portrayals of the school finance saga also occasionally made their way into the Kansas City Pitch’s KC Strip column—a column written from the perspective of an observant, sarcastic slab of meat (a Kansas City strip steak, to be precise).

At the core of this book are descriptions, analysis, and discussion related to eight key elements. I argue these elements are the reasons that Kansas, despite the general political disposition of the state (Kansas has supported Republican presidential candidates in every election since 1968), has managed to continue providing a reasonably equitable and adequate system of public schools—more so than three out of four of its neighbors. Those eight elements include the following:

1. The 1966 ratification of the Education Article of the Kansas Constitution, which established an independently elected Kansas State Board of Education, with self-executing constitutional powers to oversee elementary and secondary education (general supervision of schools) and required that the legislature “shall make suitable provision for finance of the educational interests of the state.”

2. A judicial selection and retention process, which reduces the role of political ideology among state high court justices and limits turnover, providing the opportunity for state high court judges to develop a deep understanding and institutional history of complex ongoing litigation.

3. A panel of high court judges with in-depth understanding of the complexities of school finance policy and the intersection with state constitutional requirements.

4. A legislature that has been generally responsive to the state high court in terms of orders to increase and/or redistribute state aid and in terms of meeting its obligation to provide empirical evidence to guide school finance reforms.

5. An independent and trusted (bipartisan) legislative research division (Division of Post Audit), which has played a role in performing and digesting empirical evidence pertaining to school finance reform, including collaborating with outside scholars.
6. The availability (as a result of elements 4 and 5) of high-quality evidence for (a) informing judicial evaluation of the state of school finance in Kansas and (b) guiding legislative reforms.

7. Tireless legal counsel with deep knowledge and institutional history, representing plaintiffs in several rounds and decades of litigation, from 1990 to the present day.

8. The role of informed media, covering the story from a variety of angles, providing historical context and background, and occasionally offering insightful, satirical perspectives on a topic that’s really just not that funny.

Importantly, all of these elements provide policy guidance for other states—red and blue—to strengthen their public education systems and solidify the role of public schooling in their states’ future. Illuminating that policy guidance and providing a detailed roadmap for other states is the primary goal of this book.

THE SAGA

This book would not exist if there was not a saga around which to spin the tale and develop the characters in the chapters that follow. But what is the Kansas school finance saga? And why is it, or should it be, of interest to anyone outside of Kansas, or even outside of those immediately involved in or affected by the saga within Kansas? Well, on that last point, nearly everyone in Kansas has been affected in one way or another by either taxes or the quality of public schools available in the state, or both, over the past several decades. The Kansas school finance saga is often described by other authors in exceedingly manly, Old West terms, as if it was a gunfight in Dodge City between awesomely mustached foes. While this book does include a few awesomely mustached characters, the Kansas school finance saga, so dramatized by others, has really been an ongoing process of mediation, frequently negotiated by the women of the high plains.

The saga mainly involves two distinct teams: plaintiff school districts and their legal counsel, challenging the constitutionality of the state school finance system to achieve more equitable and adequate
funding, with *the state* meaning primarily the legislature, but also the state board of education (it’s complicated); and a team of referees, meaning the state judicial system, from district courts to the Kansas Supreme Court. The saga occurs in three major phases, including five event periods, as shown in figure I.1, but it requires some important backdrop info. None of the legal battles that followed would have been possible without the 1966 amendments to the state constitution, which both altered the distribution of responsibilities for the governance of the public education system and clarified the legislature’s obligation to fund it.

The first wave of modern era litigation and mediation came about in the *Mock v. State of Kansas*, 1991 (*Mock*) case, wherein school districts across the state brought multiple legal challenges to growing...
disparities in school funding, exacerbated by recent tax cuts. *Mock* in particular is most often shared in Kansas school finance lore as a great mediation orchestrated by a uniquely Kansan and boisterous judge, Terry Bullock. That period came to a close when the state’s high court decided that the solutions adopted by the legislature to the problems identified by Bullock were good enough!

Good enough didn’t last for long: the school finance system was back in court for a protracted period and parallel challenges in state and federal court from 1999 to 2006 (*Montoy* in state court and *Robinson* in federal court), when again, at the end of it all, the high court decided that the legislature had sufficiently fulfilled the court’s demands. Soon thereafter, the great recession hit, and fiscal austerity and tax cuts became the policy preferences du jour under a conservative Kansas governor, Brownback, and an increasingly conservative Kansas legislature. Their efforts and the recession undermined the solutions adopted in 2006, landing the state back in court for another decade: the *Gannon* period.

This may all seem like way too much litigation, internal fighting, and political positioning, but what I will describe in this book is that the ongoing process of mediation necessarily involved engaged advocates and informed the court and a largely, at least cyclically responsive legislature. Even under this more subdued framing, however, I assure you that the stories herein include their fair share of entertaining characters and informative events.

**PERSONAL PERSPECTIVES**

Much of this book is written from my personal perspective, both as insider and onlooker. To date, I have written book chapters on the history of Kansas school finance reforms, a special issue of the *Kansas Policy Review* that covered various aspects of Kansas school funding, numerous law review articles on Kansas school finance litigation, and peer-reviewed journal articles on Kansas school finance. I myself have written more than enough on Kansas school finance to fill the pages of this book, but that is not the goal here. I was a professor at the University of Kansas from 1997 through 2008, having traveled there
for my first academic position after completing my doctorate at Teachers College, Columbia University. I went to Kansas with typical East Coast views of what Kansas would be, and even by the time I left eleven years later, I had not entirely dispensed with those views. It’s a process. I continued working with plaintiff attorneys in the Gannon litigation, traveling back for trial in 2011 and most recently drafting reports in 2018 (a review of the most recent cost studies). I returned to Kansas City in the spring of 2019 for an academic conference in which we convened various parties discussed in this book to talk about the most recent episodes in the saga.

By my third year in Kansas, I found myself sitting on the governor’s task force on financing K–12 education, which recommended the first of three studies that would address the “costs” of meeting the state’s constitutional obligation toward its schools. (I was very much involved in drafting that recommendation.) We traveled the state for hearings, giving me newfound respect for the vastness, and flatness, of the high plains of western Kansas. New to Kansas, I had little understanding of the prominence and influence of many of my peers on that task force, which included a former US senator from Kansas. Soon thereafter, I found myself consulting for attorneys representing plaintiffs bringing two new lawsuits against the state over funding inequities and inadequacies—one in federal court (Robinson v. Kansas) and another in state court (Montoy v. Kansas). These lawyers have carried on these fights from the late 1980s to present. My involvement in these cases would eventually lead to days on end of the most tedious depositions through which I’ve ever sat, walking page by page, word by word, number by number through every opinion and analysis I had provided in that case. Annoyed as hell, while trying to stay composed, I had little idea that the state board attorney deposing me at the time would himself end up sitting on the Kansas Supreme Court.

I also had the pleasure (albeit a terrifying one) of testifying as an expert before the famed (or infamous, depending on your perspective) Judge Terry Bullock and in front of the three-judge panel (for hours on end) that heard the Gannon case nearly a decade later. I spent time on the side crafting simulations and trying to come up with solutions over lunch with young representative Ed O’Malley, and then sharing the same with his legislative colleagues in an attempt to get traction—to
try to come up with solutions outside of litigation. My twenty-plus-year involvement in this story, while short of the thirty-plus-year involvement of many other characters involved (fifty-three years for one!), gives me unique insight into what actually went down, which I will do my best to share herein.

THE CHAPTERS THAT FOLLOW

The first section of the book provides a largely sequential tale of the Kansas school finance saga, from the historical backdrop through the three major waves of litigation. But I begin in chapter 1 with a prologue, providing some background on my personal perspectives and how they shaped my perceptions of Kansas on my arrival there in 1997, versus my perceptions of Kansas now, having left the state over a decade ago (2008). In my years prior to moving to Kansas, I was attending graduate school in New York City while teaching science at a progressive, liberal, elite private school. Clearly a contrast with Kansas, but also a contrast with my own upbringing in small-town northern New England.

Chapter 2 provides some historical context, from the era before the US Supreme Court decision in Brown v. Board of Education through the adoption of the 1966 Kansas constitutional amendments that shape how the state’s high court evaluates school funding concerns to this day. The year 1966 and the term of then governor Avery also marked the introduction of the state’s first statewide aid program for public schooling. Much of what I know about the real history of the Kansas constitutional amendments I learned in a lengthy conversation with Governor Avery outside a bathroom at a daylong economic conference at the University of Kansas in 2002. Of course, that conversation is supplemented herein with other research and documentation.

Chapter 3 ushers in the modern era of Kansas education policy, still prior to my own arrival. Chapter 3 digs into the first high drama on the high plains, in which Judge Terry Bullock arrived on the scene to mediate legal complaints brought against the state, from all corners of the state (forty-two separate school districts), decrying growing inequities in school funding, lack of sufficient state aid, and vastly uneven
local taxes required to provide adequate schooling from town to town and one corner of the state to the other. Bullock, sidestepping writing any formal trial court ruling—or even holding a trial—instead fired a warning shot, convening legislators, the governor, those bringing the complaints, and other key officials, suggesting that they fix the problem—and quickly—to avoid trial and an inevitable ruling against the state. Governor Joan Finney responded quickly by convening a citizen task force, which provided recommendations to the legislature. Not without significant drama, by the close of the 1992 legislative session, a new school funding formula was adopted: the School District Finance Act. That formula was eventually evaluated, and upheld in part but overturned in part, by then district court (now high court chief justice) judge Marla Luckert, and eventually it was upheld by the state’s high court under Chief Justice Kay McFarland.

Chapter 4 introduces the modern era of school finance litigation in Kansas, the increased role of the courts, and the soap opera-like reshuffling of characters that would occur over the next two major rounds of judicial battles: Montoy and Gannon. It turned out that the solution negotiated by Bullock and upheld by the high court (a) wasn’t quite as game-changing as many had first assumed and (b) was also vulnerable to erosion over time—and not much time. Within only a few years (after 1994), several districts were again feeling the financial squeeze and concerned about spending and taxing inequities, leading to the filing of the Montoy challenge in 1999. The story repeated itself a decade later, with the filing of Gannon. Chapter 4 focuses mainly on the mid-2000s and the Montoy case, in which empirical evidence of education costs begin to play a role in informing court rulings and legislative responses, and in which the unique structure of the Kansas government and the balanced constitutional roles and obligations of the legislature and state board of education are clarified and affirmed. Chapter 4 is also where I begin to cut my teeth, both as an academic researcher and an advisor and expert witness in school finance litigation. Finally, chapter 4 also explores the rhetoric and reality of highly publicized showdowns between the Kansas high court and legislature.

Chapter 5 takes us into the economic recession, when the Kansas political pendulum swung back to the right and Governor Brownback promised that sweeping tax cuts would provide a shot of adrenaline
to the Kansas economy. Instead, it was more like a shot of sedative. In chapter 5, I take a look at outside analyses of the Kansas tax cuts and their failure, and I walk through data on the effects of those cuts in the wake of the recession, on state revenue and on public school funding in particular. But still, Kansans persisted. Chapter 5 also addresses the follow up litigation to *Montoy: Gannon v. Kansas*, which was filed as the recession hit and funding increases promised in the wake of *Montoy* came to a halt. The *Gannon* case was tried and deliberated by the state’s lower and high courts throughout the period of budget decimation that resulted from the Brownback tax cuts. Judicial involvement clearly played at least some role in the Kansas comeback. But chapter 5 explains that this comeback would not have been realized without the political rebalancing of the state legislature and the eventual departure of Brownback.

The second section of the book focuses on analyzing specific topics and issues that I believe played critical roles in keeping Kansas in balance and in funding Kansas schools better than might have been the case otherwise in the absence of these conditions. These conditions include the presence of strong women leaders as governors, in the legislature and the court; the use of high-quality evidence to inform judicial analysis and policy remedies; and a collection of persistent structures, organizations, and individuals, often assuming more than one role in different chapters in the saga.

Chapter 6 profiles the women of Kansas. Literature in political science on state and local governments suggests that women as elected officials are more likely to support spending on social programs, in particular on programs that provide services to children and families. Of course, literature in political science also suggests that more liberal state governments are more likely to spend more and more equitably on these same services. Kansas presents an odd contrast. For a politically conservative state, Kansas has had more women as governors (three to date) than most other states; a large share of women on the high court, including two chief justices; and a larger share of women in the legislature than many other states, including much bluer states. Especially notable figures discussed in chapter 6 include the governor at the time of the first major overhaul of school funding in Kansas, Joan Finney, who ushered in the modern era, and Justice Carol Beier, who
penned an impressive dissent for the court on the question of whether the state constitution provides for a fundamental right to an education and who has often asked the most challenging questions, leading to sharp exchanges in oral arguments before the court.10

Chapter 7 explores the role of evidence in influencing the state’s high court and legislature. In the more visible national context of the evolution versus creationism and intelligent design debates, Kansas might be viewed by many coastal elites as being decidedly antiscience.11 One might argue that the state took a similarly dogmatic and antiempirical approach to its reliance on the suspect economic advisement of Arthur Laffer12 to guide Governor Brownback’s tax cut policies. But when it comes to school finance, Kansas has arguably led the nation in both conducting rigorous analyses to guide school funding policy and then, perhaps more importantly, paying some attention to those analyses when revising and adopting policy. This is despite the apparent direct conflict with the cult of Lafferism idea that increased taxes can only ever cause economic harm. Chapter 7 summarizes those analyses, but also explores the characters behind them and how they came to be. In that chapter, I admit and disclose my personal role at each of three critical junctures in the recent history of Kansas school finance.

Chapter 8 explores the persistent individuals, organizations, and interest groups that have shaped Kansas school finance policies over the past several decades. My speculations about the importance of persistence and persistent individuals is drawn less from academic literature and more from my personal perspective as a participant in this story. Testifying in front of a judge who is familiar with how schools are funded, what children need, what outcomes matter, and how to evaluate the intersections of these is far easier than testifying in front of judges who are not. It’s also helpful that judges have deep knowledge of how to link broad, at times ambiguous constitutional requirements to this evidence. This process is communicated through lawyers, and thus their deep knowledge of the same in setting up and communicating their case to the judge is critical. And it’s equally important that legislators tasked with redesigning a school finance system to meet judicial demands understand what they are doing. Developing that understanding takes time—usually more than one or a few terms. By virtue of dealing for decades with both the technical and legal issues...
involved in constitutional litigation over school funding, the individuals chronicled herein know their stuff and its context.

Attorneys Alan Rupe and John Robb have been representing plaintiff families and school districts in state and federal legal challenges over school funding for three decades. Their worthy opponent in early rounds of litigation, Dan Biles, represented the Kansas State Board of Education as defendant, then migrated toward a middle ground position in the mid-2000s, when the attorney general’s office began more actively representing the interests of the governor and legislature, and now sits on the high court. Marla Luckert sat as district court judge upholding (in part; also overturning in part) the legislature and the governor’s remedy response to Judge Terry Bullock’s heavy-handed, orchestrated resolution in 1991. Bullock himself returned a decade later to hear trial testimony in *Montoy v. Kansas*, penning a highly entertaining 2003 ruling and several equally entertaining and insightful orders to follow. Chapter 8 chapter explores the various lawyers, judges, legislators, other public officials, and interest groups involved, as well as state, local, and national media. One man persisted through it all, from immediately after ratification of the state’s 1966 constitutional amendments to the latest rounds of *Gannon v. State*, as chief purveyor of any and all data pertaining to the state school finance system: Dale Dennis. My own personal involvement, beginning with my membership on a governor’s task force in 1999, is now running into two decades.

Chapter 9 of this book provides contextual data illustrating that Kansas school funding is, in fact, less bad than it might otherwise have been, by comparison with national trends and with neighboring states. I’m often pressed in academic conferences and other contexts about what I hope to gain from participating in these lengthy legal challenges over school funding or from preparing reports and analyses for courts or legislatures on costs of meeting specific outcome standards. Critics argue that legislators don’t ever really fully comply with court orders or design formulas that take fully into account any cost analyses anyone might provide. My response has been that even small shifts matter. That if judicial pressure—even if never-ending—combined with sound empirical evidence can bend school finance in the right direction, toward more equitable and adequate education for all, then that’s a good thing and it was all worth it. That is, the modest goal is to make
school funding less bad than it might otherwise have been if left entirely to political self-interest and preservation! Chapter 9 brings us to the lessons that can be learned from decades of litigation, political activity, empirical research, and the often explosive, sometimes mundane, frequently entertaining saga of Kansas school finance. Some lessons can be learned from governance structures, which, while difficult to change, might provide the greatest long-term leverage, in part because they are difficult to change. Should other states consider constitutional revision, separating standard setting and oversight from financing of schools? Does the less political judicial selection and retention process in Kansas lead to a more stable and thus more knowledgeable court? Is it better able to understand and thus manage the complexities of school finance over time? What can be learned from advocacy groups and political actors in the state over time? How have those individuals ensured that (a) the legislature and governor will respond, at least in part, to judicial rulings, and (b) the legislature would request and rely on credible expertise and empirical analyses?

Before we move to these reflective questions about what we can learn from the Kansas saga, we first need to step back in time to my arrival on the scene in the late 1990s, and then even further back in time, to the state’s founding and its original and revised constitutions. And now, our story begins.