

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 2002.⁷ 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*⁸ and *Gannon*.⁹ 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.