Supremacist Judges Are Running Our Schools

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Traditionally Republican Kansas, of all places, is the latest battleground in the judges' grab for supremacy over the other branches of government. The Kansas judges are unmoved by the fact that Kansans voted for President Bush who campaigned against activist judges.

On the first court day of the New Year, the Kansas Supreme Court ordered the Kansas legislature to appropriate more money for the public schools. According to the National Center for Education Statistics, Kansas spends $8,206 per pupil per year, but the judges said the state must spend much more to give schoolchildren the "suitable" education which the state constitution guarantees.

The Montoy v. Kansas decision implied that the state must spend an additional $850 million or more annually on public schools. The court then suspended its final order to goad the legislature to raise taxes by a court-imposed deadline of April 12.

Since when do judges tell legislatures what laws to pass and what taxes to levy? If any governmental function is (or should be) a legislative function, it is imposing taxes and spending the citizens' money.

The Kansas judges cowardly issued their decision unsigned so the voters cannot hold any particular one politically accountable. Kansas citizens should vote them all out of office the first time they get the opportunity.

Without any national media coverage, litigating lawyers and supremacist judges have been using the judiciary to take control of the public schools. In the last 18 months, more spending has been ordered by state supreme courts in Kansas, New York, North Carolina and Montana, and by trial judges in Massachusetts and Texas.

Public schools in 24 states are facing lawsuits from special-interest groups trying to get activist judges to order the taxpayers to spend more money on schools, which can come only from higher taxes. Courts are micromanaging schools, telling them how much money to spend and on what, right down to making decisions about computers and textbooks.

After ten years of litigation, the New York Court of Appeals ruled that the state must spend much more money to provide schoolchildren a "sound, basic education." A court-appointed panel then ordered the state to spend an additional $5.6 billion, plus $9 billion on new classrooms, laboratories, libraries and other facilities, making tax increases inevitable.

In Montana, the state supreme court decided last November that the school financing system is fatally flawed and ordered the legislature to appropriate more money to give children "a basic system of free, quality public elementary and secondary schools." Kentucky is still in court 16 years after activist judges first intervened to tell the state how to run its schools.

A 1981 lawsuit filed against New Jersey was decided four years later, but has returned to court nine times since, most recently last year. Suits are climbing through the courts in Georgia and Missouri.

In the 1970s, activist judges were ordering schools to spend more money to achieve racial balance. The apogee of those cases was the famous Kansas City, Missouri decision, which ordered taxes levied on the people of Missouri to build the world's most expensive school.

Two decades and billions of dollars later, this extravagantly equipped school is just as segregated as ever and the test scores are just as low.

When the lawyers and judges began to see that desegregation was an academic failure (and minorities began filing suits to return to neighborhood schools), the rationale for judicial supremacy changed to "equity." Dozens of suits were filed in the 1980s under equal-protection clauses in state constitutions to get activist judges to order state taxes to be levied to equalize spending on schools in rich and poor districts.

"Equity" has been a spectacular failure, too. These court rulings narrowed spending disparity in some cases, but Education Trust, a Washington-based research group, found that in half the states the funding gap between rich and poor districts actually widened.

A study of Texas's school funding litigation by a Harvard economist concluded that ten years of lawsuits to equalize the spending between rich and poor school districts, by what was called the Robin Hood scheme, resulted in reducing the spending gap by $500 per pupil, but cost $27,000 per pupil in destruction of property values. Increased property taxes depressed real estate values, leading inevitably to additional tax increases and further declines in real estate values.

In the 1990s, the litigating lawyers changed their takeover rationale again. They abandoned the argument of "equity" and substituted "adequacy."

The lawyers seek out subjective words in state constitutions such as "thorough and efficient," "sound basic," "adequate," or "suitable." Activist judges have accepted these adequacy arguments in almost two-thirds of the major school finance decisions since 1989.

But how much spending is adequate? The price tag for adequacy calculated by experts ranges from $5,009 in Illinois to $15,639 in New York. A lot of school money has been spent on litigation instead of on classrooms, but no one has proved any relation between school spending and student achievement.