

Senate Concurrent Resolution No. 1621

By Senator Kelsey

1-14

9 A CONCURRENT RESOLUTION concerning the expenditure of
10 public moneys to finance certain litigation against the Legislature or
11 the State of Kansas.

12

13 WHEREAS, The people have all governmental power and exercise it
14 through the legislative branch of the government, the legislature is free
15 to act except as it is restricted by the state constitution; and

16 WHEREAS, The constitution of the state of Kansas limits rather than
17 confers power, hence, we look to it to see what it prohibits instead of
18 what it authorizes; and

19 WHEREAS, Any power and authority not limited by the constitution
20 remains with the people and their legislators; and

21 WHEREAS, The people have given the judiciary the obligation to in-
22 terpret legislative action within the framework of the constitution; and

23 WHEREAS, If a legislative enactment is constitutional, it is not for the
24 court to set policy or to substitute its opinion for that of the legislature;
25 and

26 WHEREAS, In determining whether a statute is constitutional, courts
27 must guard against substituting their views on economic or social policy
28 for those of the legislature. Courts are concerned only with the legislative
29 power to enact statutes and appropriate money, not with the wisdom
30 behind those enactments or appropriations; and

31 WHEREAS, The determination of the amounts, sources and objectives
32 of expenditures of public moneys, especially at the state level, presents
33 issues of enormous practical and political complexity, and resolution ap-
34 propriately is largely left to the interplay of the interests and forces di-
35 rectly involved and indirectly affected in the arenas of legislative and
36 executive activity. This is of the very essence of our governmental and
37 political polity. It normally would be inappropriate, therefore, for the
38 courts to intrude upon such decision-making; and

39 WHEREAS, The court in *State ex rel. Stephan v. House of Represen-*
40 *tatives* 236 Kan. 45 (1984) provided a detailed discussion of the doctrine
41 of separation of powers. The court recognized the doctrine and that
42 through it “a dangerous concentration of power is avoided through the
43 checks and balances

1 each branch of government has against the other,” and that, generally
2 speaking, “the legislative power is the power to make, amend, or repeal
3 laws; the executive power is the power to enforce the laws; and the judicial
4 power is the power to interpret and apply the laws in actual controver-
5 sies.”; and

6 WHEREAS, Under article 2, section 24 of the constitution of the state
7 of Kansas, the power of appropriation is vested exclusively in the legis-
8 lative branch; and

9 WHEREAS, The judiciary is not free to exercise all state power; it may
10 exercise only the judicial power. The confinement of appropriations to
11 the legislative branches, both in our federal and state governments, was
12 not random. It reflects our national ideal that the power of appropriation
13 must be under the control of those whose money is being spent: Now,
14 therefore,

15 *Be it Resolved by the Senate of the State of Kansas, the House of Rep-*
16 *resentatives concurring therein:* That given the delegation of the approp-
17 riation powers under the constitution of the state of Kansas, any order
18 of the court directing the legislature to appropriate a specific level of
19 funding is viewed as advisory in nature; and

20 *Be it further resolved:* That with respect to the determination of specific
21 amounts of appropriations, the legislature of the state of Kansas should
22 act based solely upon its own deliberative judgment as to the proper
23 public policy determination and the amount of funding to be provided;
24 and

25 *Be it further resolved:* That the legislature hereby declares its view that
26 courts lack the constitutional authority to order the legislature to make
27 specific amounts of appropriations; and

28 *Be it further resolved:* That the legislature hereby declares that no
29 public moneys or moneys derived from the imposition of any tax shall be
30 expended to finance or support litigation challenging the constitutionality
31 of the amount of any legislative appropriation.