

NEWS RELEASE

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Montoy Case Gives Taxing Power to Supreme Court

Noted Attorney: Court Engages in "Self-Destructive" Behavior

(WICHITA) – In a [constitutional analysis](#) written for the Flint Hills Center for Public Policy, Wichita attorney Gerrit Wormhoudt argues that the Kansas Supreme Court is making a drastic departure from the state's constitutional tradition and history, by which only the Legislature has the power to levy and allocate taxpayer money.

Mr. Wormhoudt, who has practiced before the Kansas Supreme Court and the Supreme Court of the United States, warned that should the Legislature acquiesce in the *Montoy* case, it will "have aided and abetted the Court's self-destructive actions" of reaching beyond its constitutional authority.

John R. LaPlante, Education Policy Fellow of the Flint Hills Center, welcomed the analysis as an important contribution to the ongoing debate. "Mr. Wormhoudt raises some important questions that policy makers in all areas of government, as well as citizens, need to consider."

In relying on the findings of the consulting firm Augenblick & Myers, the Court held that a contractor's study is now binding on the Legislature. This logic is a reversal of two important principles observed by previous courts. The first principle is that the judiciary should not take on legislative functions. The second is that legislative power cannot be delegated to outside groups, including private consulting firms.

Wormhoudt reminds lawmakers and judges alike that in the words of a previous ruling by the Kansas Supreme Court, the judiciary should respect "the principle of noninterference by the judiciary in a legislative function." In that same decision (*Union Pacific Railroad Co. v State Tax Commission*), the Court observed that "the power to tax is a legislative power."

While members of the Legislature have been routinely criticized as a result of the *Montoy* lawsuit, the Court has stepped into the legislative arena. In the words of Wormhoudt, the Court "simply treated the lawsuit as the equivalent of a legislative proceeding over which it was presiding."

Concluding that the power to make "suitable provision for the funding of public schools" is and has always been delegated by the people of the state of Kansas to their elected representatives, Wormhoudt calls on the Legislature and the Supreme Court to "honor their respective, separate constitutional obligations." For the sake of self-government, the Legislature must reassert its primacy in setting policy regarding education financing.

Please visit www.flinthills.org to read the complete policy paper, "[Undermining the Judicial Power of the State](#)".

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