

NEVER DOUBT THAT A SMALL GROUP OF THOUGHTFUL, COMMITTED, CITIZENS CAN CHANGE THE WORLD. INDEED, IT'S THE ONLY THING THAT EVER HAS.

MANY ARE ATTRACTED TO SOCIAL SERVICE - THE REWARDS ARE IMMEDIATE, THE GRATIFICATION QUICK. BUT IF WE HAVE SOCIAL JUSTICE, WE WON'T NEED SOCIAL SERVICE.

FREEDOM MAKES A HUGE REQUIREMENT OF EVERY HUMAN BEING. WITH FREEDOM COMES RESPONSIBILITY. FOR THE PERSON WHO IS UN

IN THESE DAYS OF DIFFICULTY, WE AMERICANS EVERYWHERE MUST AND SHALL CHOOSE THE PATH OF SOCIAL JUSTICE... THE PATH OF FAITH, THE PATH OF HOPE, AND THE PATH OF LOVE TO-
WARD OUR FELLOW MAN.

ING TO GROW UP, THE PERSON WHO DOESN'T WANT TO CARRY IS O W N WEIGHT, THIS IS A FRIGHTENING POSSIBILITY.

BEARING WITNESS

A JOURNAL ON LAW AND SOCIAL RESPONSIBILITY

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BE THE CHANGE YOU WANT TO SEE IN THE WORLD. IN MATTERS OF TRUTH AND JUSTICE, THERE IS NO DIFFERENCE BETWEEN LARGE AND SMALL PROBLEMS. FOR ISSUES CONCERNING THE TREATMENT OF PEOPLE ARE ALL THE SAME. OUR RESPONSIBILITY AS PRIVILEGED HUMAN BEINGS IS TO PAY BACK FOR THE OPPORTUNITIES WE'VE RECEIVED. HUMAN PROGRESS IS NEITHER AUTOMATIC NOR INEVITABLE... EVERY STEP TOWARD THE GOAL OF JUSTICE REQUIRES SACRIFICE, SUFFERING, AND STRUGGLE; THE TIRELESS EXERTIONS AND PASSIONATE CONCERN OF DEDICATED INDIVIDUALS.

CHANGE WILL NOT COME IF WE WAIT FOR SOME OTHER PERSON OR SOME OTHER TIME. WE ARE THE ONES WE'VE BEEN WAITING FOR. WE ARE THE CHANGE THAT WE SEEK. GOVERNMENT IS LIKE A BABY. AN ALIMENTARY CANAL WITH A BIG APPETITE AT ONE END AND NO SENSE OF RESPONSIBILITY AT THE OTHER. IN THE LONG RUN, WE SHAPE OUR LIVES, AND WE SHAPE OURSELVES. THE PROCESS NEVER ENDS UNTIL WE DIE.

I'M NOT GOING TO CHANGE THE WAY I LOOK OR THE WAY I FEEL TO CONFORM TO ANYTHING. I'VE ALWAYS BEEN A FREAK. SO I'VE BEEN A FREAK ALL MY LIFE AND I HAVE TO LIVE WITH THAT. YOU KNOW. I'M ONE OF THOSE PEOPLE. AND THE CHOICES WE MAKE ARE ULTIMATELY OUR OWN RESPONSIBILITY.

A LAWYER IS EITHER A SOCIAL ENGINEER OR A PARASITE.

LAW AND ORDER EXIST FOR THE EDUCATED CITIZEN HAS AN OBLIGATION TO SERVE THE PURPOSE OF ESTABLISHING THE PUBLIC. HE MAY BE A PRECINCT WORKER OR A JUSTICE AND WHEN THEY FAIL IN THIS PURPOSE THEY BECOME THE DANGEROUSLY STRUCTURED DAMS THAT BLOCK THE FLOW OF SOCIAL PROGRESS. WHEN RED HAired PEOPLE ARE ABOVE A CERTAIN SOCIAL GRADE THEIR HAIR IS AUBURN. PRESIDENT. HE MAY GIVE HIS TALENTS AT THE COURT-HOUSE, THE STATE HOUSE, THE WHITE HOUSE. HE MAY BE A CIVIL SERVANT OR A CANDIDATE OR A CAMPAIGN WINNER OR A LOSER. BUT A PARTICIPANT AND NOT A SPECTATOR. HE MUST BE SUFFOLK UNIVERSITY LAW SCHOOL. IF YOU EVER HAVE A CHANCE TO PASS THIS FAVOR ALONG TO OTHERS, DO IT FOR ME.

BEARING WITNESS

A JOURNAL ON LAW AND SOCIAL RESPONSIBILITY

Bearing Witness: A Journal on Law and Social Responsibility is a student-edited journal at Suffolk University Law School. We are a magazine style publication that is dedicated to serving as a forum for sharing experiences and facilitating conversations about law and social responsibility.

We publish shorter scholarly essays, opinion pieces, interviews, stories, reflections, poetry and artwork. Students are our primary contributors, but our pages are open to faculty & alums, as well as to people from outside the Suffolk Law School community.

PUSHING STATES TOWARD BETTER EDUCATIONAL ACHIEVEMENT

A LOOK INTO NO CHILD LEFT BEHIND AND A RACE TO THE TOP

While the United States values education as a public concern, it remains an area regulated by states and local agencies. However, states continue to be pressured by the federal government to increase educational standards with the hopes of improving our performance on overall national and global levels. Within the nation, achievement disparities between students based on race and class have still not been resolved.

There is no fundamental constitutional right to education;¹ however, as part of traditional democratic values and self-sufficiency among citizens,² all states, in some form or another, include education in their constitutions.³ The federal government supposedly leaves education to be handled by state and local governments,⁴ yet Congress uses its enumerated Spending and Commerce powers to regulate education.⁵ Furthermore, Congress can also place conditions on the receipt of federal funds.⁶ However, these conditions must be unambiguous in order to provide notice to states of the terms and consequences of accepting federal funds.⁷ The Tenth Amendment⁸ serves to protect state sovereignty by preventing the federal government from forcing state action. Thus, the Tenth Amendment acts as another barrier to Congressional authority in order to protect the states.

The last two presidential administrations attempted to improve education in hopes of reducing student achievement gaps. However, Congress's first attempt at resolving gaps in student achievement came through the Elementary and Secondary Education Act ("ESEA") in 1965.⁹ The ESEA was enacted to close the achievement gap between economically and educationally disadvantaged students, establishing the focus on measuring accountability and increased standards.¹⁰ However, up



until the early 1990's, the ESEA's provisions centered on testing were not strongly enforced.¹¹ In 1994 it was reauthorized by former President Clinton's Improving America's Schools Act ("IASA"),¹² which put more of an emphasis on establishing scientifically measured testing standards.¹³ Yet disparities between students on the basis of race and socioeconomic conditions status continued to exist as a wide achievement gap.¹⁴

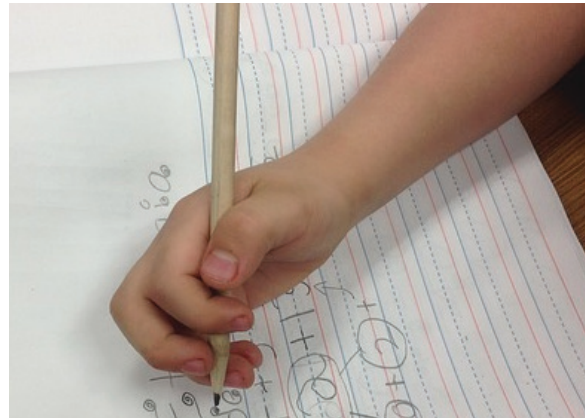
The ESEA was reauthorized again by former President Bush's No Child Left Behind ("NCLB") Act,¹⁵ funding states' schools on the condition that they comply with the terms of NCLB. NCLB was signed in 2002 with support from both political parties. President Bush proposed NCLB as a way to force states, desiring (or needing) federal funds for education, to conform to his measurement standards.¹⁶ Some were supportive of NCLB because it provided necessary oversight and guidance to states and local agencies with regards to areas such as special education. However, others were critical because it limited state and local control over education.

NCLB focuses on assessments in the form of standardized testing as a way to measure achievement and Adequate Yearly Progress ("AYP").¹⁷ Schools failing to make AYP are deemed schools "in need of improvement", and must offer supplemental educational services, such as free tutoring or after-school assistance. If a school fails to make AYP for five consecutive years, it faces harsh consequences, such as reorganizing the school into a charter school, asking a private company or the state's department of education to run the school, or even closing the school completely.¹⁸ NCLB has also taken a "no holds bar" approach to certain subgroups of students (i.e., English Language Learners or students with disabilities) with more classroom and testing needs for the sake of having consistent, uniform tests created in order to more easily measure AYP. These high standards and considerably unattainably high aspirations have formed a "one-size-fits-all," blanketed approach to education and resolving the educational achievement gap. However, federal education officials should bear in mind that the root of the achievement gap requires more than high-stakes testing and federal funds to close it. It seems easier to throw more money at schools or to create the illusion of reform progress through standardized test results, although student achievement issues are far more complex than that. NCLB was enacted with the goal of having all students scoring in the "proficient" achievement level by the 2013-2014 school year.¹⁹ However, as we move into the year 2014, it is clear that this mission still remains unaccomplished. At this point, it even appears to be an unattainable goal.

Consequences of the pressures resulting from NCLB requirements include districts foregoing or reducing school time designated to art or music classes, and other elective academic areas that are not exclusively tested.²⁰ This is particularly troublesome due to existing studies stating that arts education may be beneficial to minority students and may actually assist in closing the achievement gap.²¹ Michael Petrilli, a senior official at the U.S. Department of Education, stated that, "[t]he spirit of No Child Left Behind is to make sure that every child in America gets the kind of well-rounded education once reserved for children of the elite."²² However, it seems like a well-rounded education is exactly what many students are being deprived of for the sake of meeting testing standards. Or, on the other hand, in an effort to keep arts education in schools it becomes another area of standardized testing.²³

While the nation and its states should be devoted to improving student achievement and closing the achievement gap, a wholesome, well-rounded education should not completely suffer. Moreover, blanketed

standards should not be created for additional subjects, such as music and art, causing increased pressure to meet such standards for already stressed out teachers and students. In fact, if the federal government was as concerned about school and career readiness as it claims, it would ensure that education focuses on “skills that a computer cannot replicate and that an educated worker in a low-wage country will have a hard time doing[,]” such as “creativity, inventiveness, spontaneity, flexibility [and] interpersonal relations . . . not rote memorization[.]”²⁴



One of the most disturbing consequences of NCLB is states' response to its ambitious requirements: lowered standards and manipulated test results.²⁵ Doing so has made it more difficult for parents to assess children's achievement in comparison with other states.²⁶ On the other hand, certain states and districts pressured to meet NCLB requirements resorted to cheating and manipulating test results in order to stay above water. Recently for instance, 35 educators from an Atlanta, Georgia school district were indicted in a cheating scandal.²⁷ This indictment came in response to a state investigation into large unexplainable gains in achievement within certain schools in a particular school district.²⁸ However, this Atlanta school district is not the only district that has engaged in such conduct.²⁹ It is understandable why teachers and administrators would feel the need to manipulate test scores. Doing so allows educators to reap some incentives such as salary bonuses or tenure, and it also may protect educators' jobs since low test scores put their positions at risk.³⁰ In fact, a more subtle way of manipulating scores is when districts encourage low-performing students “to stay home on test days or [these students are] counseled to quit or be suspended before tests are administered.”³¹ States should not be able to abuse their discretion by manipulating standards and results in order to protect themselves from federal repercussions for not meeting NCLB goals. So while it may appear that achievement is improving, it may actually be remaining the same, or even getting worse.

About 750 amendments to NCLB were proposed to fix some of the above issues. Over 150 organizations have expressed their commitment to making NCLB a better accountability system with the hopes of achieving its objectives of increasing achievement and closing the achievement gap.³² In addition to these organizations, President Obama has proposed his own set of revisions to NCLB in reauthorizing the ESEA. President Obama's NCLB reform proposals include weakening the stringent punishments states face for failing to make AYP, and waiving states from NCLB requirements altogether. By August 2012, waivers were granted to thirty-three states along with the District of Columbia.³³ Waivers may have been a backdoor way around repealing NCLB or amending its stringent requirements. Since the waivers do not completely absolve states from accountability, it seems like a great exit strategy out of NCLB while we all wait for a legislative consensus on how to move forward with NCLB and the ESEA. Some education officials acknowledge waivers as a starting point for a hoped-for, true overhaul of NCLB.³⁴

President Obama set forth the Race to the Top (“RTTT”) Fund;³⁵ a contest to reward states leading the pack in their plans for education reform and improving student achievement. He decided to take a somewhat different approach with RTTT, focusing slightly less on student achievement and more on teacher perfor-

mance and charter schools. Determining which states would receive RTTT funds occurred by ranking states on a point system through various criteria, with no guarantee that competing states would receive any funding.³⁶ This funding incentive has caused many states to increase standards for teachers and students, and to remove limits on the amount of charter schools allowed within the state.³⁷

Critics insist that RTTT will not eliminate gaps in student achievement. Instead, the federal government should invest in more early childhood programs and affordable housing for low-income families to better support public schools, especially those in high-poverty communities.³⁸ As mentioned during the discussion of NCLB, educational funding can be a helpful resource for states to implement programs and improve schools. However, the federal government should stop acknowledging financial initiatives such as RTTT as the “end all, be all” of education reform and increasing student achievement. Perhaps more work needs to be done on a societal, community-based level to improve education, especially since circumstances outside of the classroom play such an influential role on what goes on inside the classroom and on standardized tests.

Closing the student achievement gap remains a problem that has yet to be solved. Districts and teachers go to great lengths to attempt to stay in the federal government’s good graces in order to keep their schools intact and to continue to retain necessary funds. This makes a true assessment of the nation’s progress in closing the student achievement gap a lot more difficult. The two administrations’ initiatives both focus heavily on measures and accountability as the means to increase student achievement. Overall, in analyzing recent federal statutes geared towards increasing student achievement, it seems that the federal government has barely scratched the surface to resolve the achievement gap. It will take more resources such as community programs and resolving deeply-rooted societal and economic issues in order to truly close the achievement gap. Test scores and federal funding have not seemed to have helped as much as the federal government would like to think. ■

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END NOTES

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⁶ South Dakota v. Dole, 483 U.S. 203, 206 (1987).

⁷ *Id.* at 207.

⁸ U.S. Const. amend. X.

⁹ Pub. L. No. 89-10, 79 Stat. 27 (codified as amended at 20 U.S.C. § 6301 (1994 & Supp. V 2000)).

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