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Routing

End It, Don't Mend It *What to Do with No Child Left Behind*

by Neal McCluskey and Andrew J. Coulson

Executive Summary

The looming expiration of the federal No Child Left Behind Act has prompted a flood of commission reports, studies, and punditry. Virtually all of those analyses have assumed that the law should and will be reauthorized, disagreeing only over how it should be revised. They have accepted the law's premises without argument: that government-imposed standards and bureaucratic "accountability" are effective mechanisms for improving American education and that Congress should be involved in their implementation.

In this paper, we put those preconceptions under a microscope and subject NCLB to a thorough review. We explore its effectiveness to date

and ask whether its core principles are sound. We find that No Child Left Behind has been ineffective in achieving its intended goals, has had negative unintended consequences, is incompatible with policies that do work, is at the mercy of a political process that can only worsen its prospects, and is based on premises that are fundamentally flawed. We further conclude that NCLB oversteps the federal government's constitutional limits—treading on a responsibility that, by law and tradition, is reserved to the states and the people. We therefore recommend that NCLB not be reauthorized and that the federal government return to its constitutional bounds by ending its involvement in elementary and secondary education.

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Introduction

Virtually every study that has weighed in on the future of the No Child Left Behind Act has taken the law's underlying principles as given.¹ The voluminous *Beyond NCLB: Fulfilling the Promise to Our Nation's Children* report from the Aspen Institute's Commission on No Child Left Behind is typical, declaring that "Commission members . . . were united *from the outset* in [their] firm commitment to . . . harness the power of standards, accountability and increased student options."² Commission members' commitment to government standards and testing was not a product of their study but a foregone conclusion.

Similarly, the "ESEA Reauthorization Policy Statement" published by the Council of Chief State School Officers promises that "if we follow through," standards-based reform "has the potential to dramatically improve student achievement and meet our education goals."³ No defense of, or evidence supporting, this claim is included in the statement.

Despite the widespread assumption that government standards and accountability will prove effective, it is unwise to make policy decisions affecting tens of millions of children—and costing tens of billions of dollars—on the basis of preconceived, unscrutinized notions. This paper seeks to provide a more rational and empirical basis for the NCLB reauthorization debate by

- reviewing the law's performance to date,
- exploring how politics affected its design,
- reviewing the most high-profile recommendations for revisions to the law,
- exploring Congress's traditional and constitutional role in education, and
- discussing the merits of alternative reform strategies.

Assessing NCLB

NCLB's supporters began declaring the law a success within a few years of its January 2002

passage. In July 2005, for instance, when the National Assessment of Educational Progress released its most recent *Trends in Academic Progress* report, then-chairman of the House Committee on Education and the Workforce John Boehner (R-OH) asserted that

[t]hrough No Child Left Behind, we made it a national priority to improve student achievement and close achievement gaps that have persisted between disadvantaged students and their peers. The culture of accountability is taking root in our nation's schools, and student achievement is on the rise.⁴

In January 2006, Secretary of Education Margaret Spellings was similarly effusive:

I am pleased to report that No Child Left Behind is working. The long-term Nation's Report Card results released this past summer showed elementary school student math and reading achievement at an all-time high and the achievement gap closing.⁵

This sort of triumphalism has continued ever since, with Secretary Spellings in May 2007 even giving NCLB credit for improving scores on NAEP U.S. history and civics exams, despite the fact that NCLB does not address those subjects:

For the past five years, No Child Left Behind (NCLB) has focused attention and support on helping students become stronger readers. The release today by The Nation's Report Card on U.S. History and Civics proves NCLB is working and preparing our children to succeed.⁶

Policymakers like Boehner and Spellings who helped to craft and pass NCLB are not the only ones who have touted the law's supposed success. In its final report, released in February 2007, the Aspen Institute's NCLB commission rang a similarly positive note,

claiming that

[t]here is growing evidence that NCLB is producing . . . improved student achievement. According to NAEP, scores in mathematics increased nationwide for 4th and 8th graders from 2003 to 2005. . . . In reading, the national average of 4th graders' scores improved from 2003 to 2005.⁷

Consider, however, that NCLB was passed in January 2002, and 4th-grade reading scores did not in fact change at all between 2002 and 2005. The one-point uptick between 2003 and 2005 only offset a one-point downtick between 2002 and 2003. Furthermore, the Aspen commission neglects to mention that 8th-grade reading scores fell by two points after 2002. At least according to NAEP scores since NCLB's passage, it seems that the law has achieved nothing of consequence.

But postpassage scores don't tell us the whole story. To judge whether the law is working, we also have to look at preexisting trends in achievement. It is quite possible, for example, that math scores were already rising, and reading scores stagnating or falling, before the law was passed and that NCLB affected neither. To have any hope of isolating NCLB's actual effect on student achievement and test score gaps, we have to compare score trends before and after the law's passage.

According to the NAEP Long-Term Trends report, 4th- and 8th-grade math scores did improve between 1999 and 2004, as did 4th-grade reading scores (8th-grade reading was flat). Attributing those results to NCLB is highly problematic, however, given that the law was only enacted in January 2002 and not fully implemented until the 2005-06 school year.

But suppose NCLB really did start transforming American education after just a year or two in existence. A rough idea of its effects could then be gleaned by looking at the standard NAEP mathematics and reading results (a data set that is separate from the Long-Term Trends report mentioned earlier). The news wouldn't be good: As depicted in

Figures 1 and 2, the trends in those results are virtually unchanged.

While both 4th- and 8th-grade math scores rose between 2003 and 2005 (the only period during which score changes can be reasonably attributed to NCLB), the rate of improvement actually slowed from that achieved between 2000 and 2003, a period before the law's effects would have been felt. In reading, the results were worse, with the period covered by NCLB seeing a score decline for 8th graders and stagnation for 4th graders, following an appreciable improvement between 2000 and 2002 (before the law's passage).

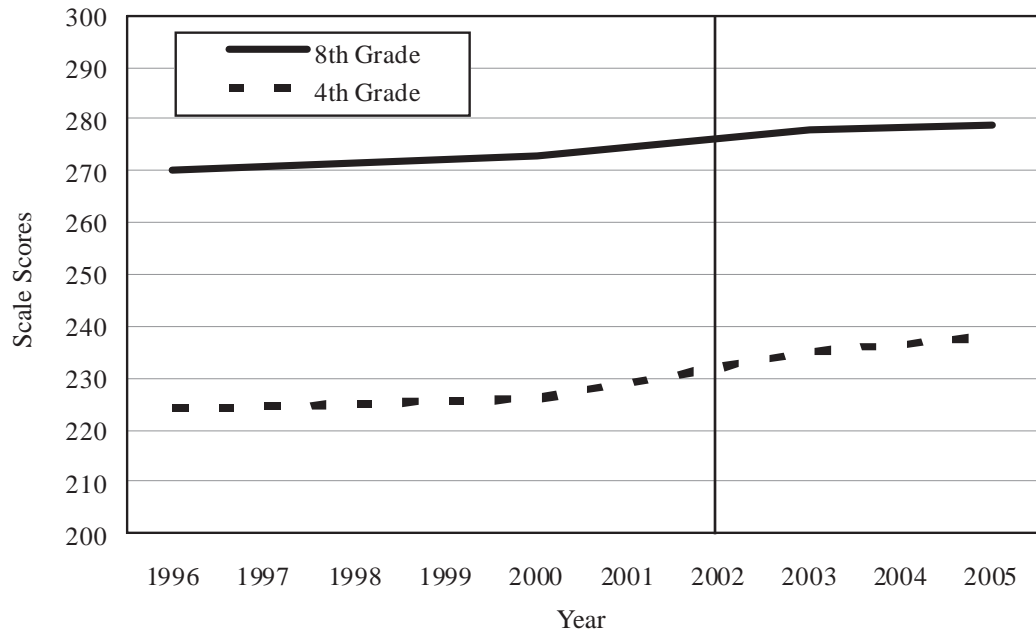
The analysis above is admittedly cursory, providing only tentative evidence of NCLB's effects. In June 2006 Harvard University's Civil Rights Project released a more rigorous review of NAEP score trends before and after passage of NCLB.⁸ After comparing the trends from 1990 all the way through 2005, the study's author, Jaekyung Lee, concluded that

- NCLB does not appear to have had a significant impact on improving reading or math achievement. Average achievement remains flat in reading and grows at the same pace in math as it did before NCLB was passed. In grade 4 math, there was a temporary improvement right after NCLB, but it was followed by a return to the prereform growth rate.
- NCLB does not seem to have helped the nation and states significantly narrow the achievement gap. The racial and socioeconomic achievement gap in NAEP reading and math persists after NCLB. Despite some improvement in reducing the gap in math right after NCLB, the progress was not sustained.
- NCLB's attempt to scale up the alleged success of states that already had test-driven accountability programs⁹ does not appear to have worked. It neither enhanced the earlier academic improvements seen in some of those states nor transferred them to other states.

NCLB supporters have responded to the

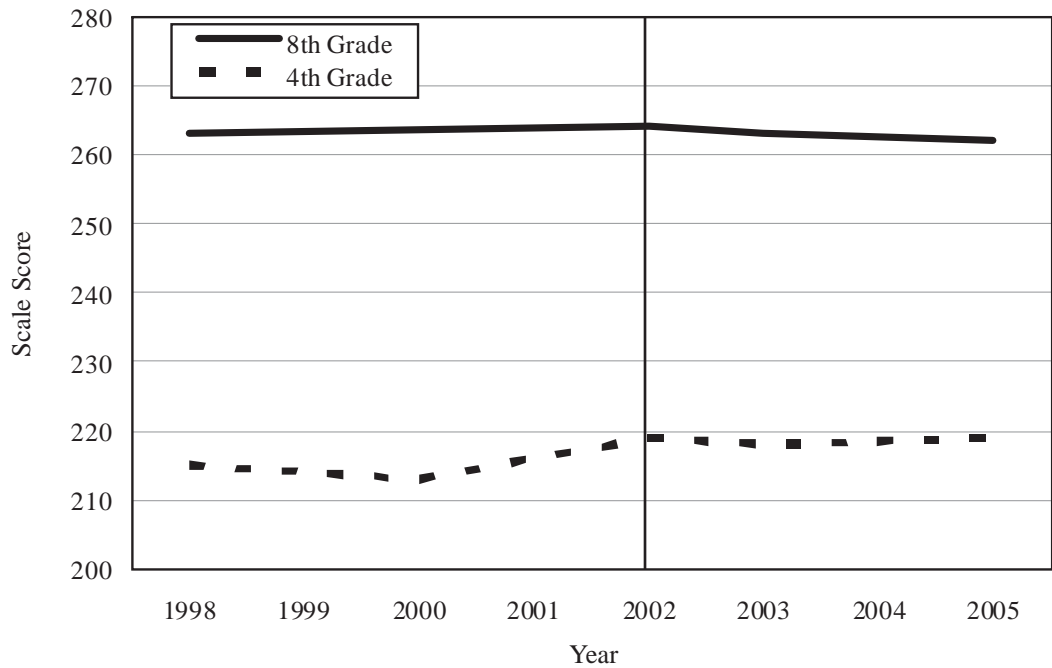
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Figure 1
NAEP Mathematics



Source: U.S. Department of Education, National Center for Education Statistics, *2005 Assessment Results*, http://nces.ed.gov/nationsreportcard/nrc/reading_math_2005/.

Figure 2
NAEP Reading



Source: U.S. Department of Education, National Center for Education Statistics, *2005 Assessment Results*, http://nces.ed.gov/nationsreportcard/nrc/reading_math_2005/.

Harvard study by ignoring it. At the time of this writing, the only reference to Lee's study on the Department of Education's website was its routine entry in the department's database of education research papers (the ERIC database). And although the Aspen commission lists the Harvard study in its bibliography, the commission's report does not address—indeed, does not even mention—Jaekyung Lee's findings.

Interestingly, the Aspen commission released a background paper of its own investigating post-NCLB test score gaps in seven states.¹⁰ The paper did not compare score trends before and after the law's passage and was not nationally representative, so it is less useful than the Harvard study, but it is notable in that it offers little support for the commission's own positive views on the effects of NCLB. The paper finds that post-NCLB changes in ethnic and other achievement gaps have been "mixed." Some gaps have shrunk, some have grown larger, others haven't changed much at all.

Another recent report that bears on NCLB's academic effects was conducted by the Northwest Evaluation Association, a non-profit test provider that works with 2,400 school districts. Using its database of test scores from more than 300,000 students, NWEA researchers compared how much students learned over the course of the 2003–04 school year with how much they learned in 2001–02. What the researchers found was that students learned less in a year after NCLB's passage than they did before it, a result that held true for every ethnic group analyzed and for both mathematics and reading.¹¹

The NWEA's results, it should be noted, were not necessarily nationally representative—data from only 23 states were used—and they do not conclusively prove that NCLB was responsible for the observed decline in student learning. However, they are a further piece of evidence that NCLB has not improved American education. Those results have also largely been ignored by the people who wish to reauthorize the law.

There is one last, important component

to NCLB that might offer evidence that the law is working: NCLB requires all states to create math and reading standards and to test student mastery of them. Perhaps the results of those assessments are promising.

Indeed, many states have been reporting gains on state test scores. Most recently, a June 2007 report from the Center on Education Policy found that many states have seen overall state test score improvements and shrinking achievement gaps under NCLB, a finding that Secretary Spellings declared "confirms that No Child Left Behind has struck a chord of success with our nation's schools and students. . . . We know that the law is working."¹²

Despite the seemingly rosy findings when it comes to state test results, there is more bad news than good. For one thing, the CEP study identified huge holes and inconsistencies in state data, the result of most states' having altered their standards, tests, definitions of "proficiency," and other achievement measures since NCLB was passed. Indeed, there were so many holes in the data that CEP had usable pre- and post-NCLB data for only 13 states, and only enough information to conduct full analyses for 7.

And data holes are not the only problem. Several studies have found that students' scores on state tests often greatly outstrip their performance on NAEP exams, suggesting that states make success on their own tests relatively easy to achieve compared with the more rigorous NAEP. A June 2006 University of California, Berkeley, analysis comparing scores on state tests with those on NAEP for 12 states, for instance, concluded that "state results consistently exaggerate the percentage of fourth-graders deemed proficient or above in reading and math—for any given year and for reported rates of annual progress, compared with NAEP results."¹³ More recently, the Institute of Education Sciences equated scores on state tests in schools that administered NAEP with those schools' NAEP results. (NAEP is based on representative sampling of schools and students rather than testing every student in every school.) This revealed that most states' "proficient" levels are equivalent to NAEP's "basic"

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designation. That is, except in 4th-grade reading, where most state proficiency levels are actually *below* NAEP’s basic level.¹⁴

Taking all these findings together, NCLB appears to have done little good, despite rhetoric from NCLB supporters to the contrary. Indeed, if anything, there is appreciable evidence that NCLB may have slowed or even partly reversed gains achieved before its passage.

Understanding the Law’s Politics and Unintended Consequences

Despite promises from supporters that NCLB would be fundamentally different from previous federal education policies—focusing on academic outcomes rather than inputs like money, school buildings, or improved technology—it shares a critical feature with its predecessors: its ultimate design was driven chiefly by political rather than educational goals, dooming it to failure.

The first problem that politics created is that NCLB had to be a product of compromise between disparate interest groups and ideological preferences, rendering it politically palatable but logically incoherent. Consider the forces at work during its creation. Among Republicans, there was significant resistance to federal involvement in education, resulting in a law that at the federal level promised “proficiency” but left states to set their own standards and proficiency definitions. For their part, Democrats have very strong connections to teachers’ unions and school administrators, who often oppose rigorous standards, and civil rights groups, who have traditionally feared that such standards would be used to punish districts with large minority populations. Democrats have also, though, traditionally supported a significant federal role in education funding. This collision of competing goals helped mold NCLB into a law that has lavished significant new federal funding on public schools while imposing hollow standards and accountability.

The second problem is that, because public schools are politically controlled, the system is inevitably geared first and foremost to helping politicians and special interests like teachers and administrators, not parents and students. So while NCLB’s supposed goal is to force public schools to establish and meet high standards, it actually encourages states to keep standards as low as possible while providing the veneer of tough accountability. State policymakers, abetted by federal officials who respond to special interests, have been unable to resist this opening, often setting standards as low as they can, defining proficiency as loosely as possible, and administering easy tests, thereby avoiding the law’s penalties to the greatest extent possible while still claiming success. Consider a few specific examples:

- After finding that many students struggled with a new 3rd-grade reading test, in the 2002–03 school year, Texas decreased the number of questions students needed to answer correctly to pass the test from 24 out of 36 to 20.¹⁵
- When 1,513 of its schools showed up on the first NCLB list of schools needing improvement, Michigan lowered the percentage of students that needed to pass state exams to make “adequate yearly progress,” including dropping the percentage needed to pass high school English from 75 percent to 42 percent.¹⁶
- Soon after NCLB was passed, Colorado redesignated scores that had been called “partially proficient” on state exams as “proficient.”¹⁷
- Perhaps gambling that NCLB would be a dead letter before 2014, Ohio back-loaded its adequate yearly progress goals, aiming to increase proficiency by just 3.3 percent per year for the law’s first six years but then by 40 percent in its last six years.
- In Louisiana students who scored at the “basic” level on state tests were designated “proficient” for NCLB purposes.¹⁸
- In 2005 Wisconsin cut the number of its

schools that failed to meet NCLB standards by more than half by implementing a 99 percent confidence interval to judge schools' test results.¹⁹

Those are not isolated incidents. Nationwide, NCLB's perverse incentives have set off what Thomas B. Fordham Foundation president Chester Finn has dubbed a "race to the bottom."²⁰ In October 2005, when the NAEP reading and math exam results were released, a Fordham analysis found that almost 20 states had reported gains in the percentage of 8th graders rated "proficient" on their own tests between 2003 and 2005, but none had made any progress on the NAEP. Many states either had set very low bars for "proficiency" or had used some other tricks to remain in good standing under NCLB. The 2007 IES report comparing NAEP and state test scores seems to confirm this.

Perhaps most disturbing, in 2006 the Associated Press revealed that nearly two million minority students weren't having their scores counted separately by group, as NCLB requires, because states were setting very high minimum subgroup sizes. Oklahoma, for instance, was allowing schools to exclude the scores of any group with fewer than 52 members, whereas Maryland set the exempt group size at only 5.²¹

The third major problem caused by NCLB is a classic case of unintended consequences stemming from government action: marginalization of academic subjects not covered by the law's standards and testing requirements. According to a nationally representative 2006 survey of school districts conducted by the Center on Education Policy, to focus on reading and math 71 percent of districts have reduced the amount of time elementary schools spend on other subjects.²²

Perhaps the hardest-hit subject has been social studies. In testimony before the Senate Subcommittee on Education and Early Childhood Development, historian David McCullough observed that "because of No Child Left Behind, sadly, history is being put on the back burner or taken off the stove alto-

gether in many or most schools, in favor of math or reading."²³ Similarly, Princeton University historian Theodore Rabb has lamented that "the unintended consequence of No Child Left Behind has been to put history into an even more marginal position. . . . With some notable exceptions . . . the amount of class time given to history, especially in the first eight grades, has been shrinking almost by the month."²⁴

To address those concerns, many teachers and experts in subjects other than math and reading have recommended adding their own disciplines to NCLB's list of subjects for which schools will be held accountable. In March 2007, for instance, the Working Group of Social Studies Discipline Organizations released a statement calling for adding "the core social studies disciplines—civics/government, economics, geography, and history" to the list of subjects for which NCLB mandates state standards and testing.²⁵ Similarly, in February 2007, fitness guru Richard Simmons joined Reps. Zach Wamp (R-TN) and Ron Kind (D-WI) in a press conference to unveil the Strengthening Physical Education Act of 2007, which would add physical education to the roster of subjects with federally mandated minimum standards and assessments.²⁶

Of course, in trying to emphasize everything, NCLB would in fact emphasize nothing. Moreover, even if it were somehow possible to expand NCLB's focus across the entire curriculum (by, say, adding several hours to the school day), there is no empirical reason to think it would do any good. As discussed earlier, NCLB has not improved overall achievement or diminished gaps even when concentrated on just two subjects.

Evaluating Proposed Modifications to NCLB

In August 2006 Secretary Spellings compared NCLB to Ivory soap: "It's 99.9 percent pure or something. . . . There's not much needed in the way of change."²⁷ Given that there is still no conclusive evidence that

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Recommendations for reform have generally taken a “more of the same” approach: more funding, more centralization, and more standards and testing.

NCLB is working, and that there is good reason to believe that it is producing harmful unintended consequences, this is not a common view. Even most NCLB supporters have called for the law to be reformed in various ways.

Unfortunately, it is fair to say that, overall, recommendations for reform have generally taken a “more of the same” approach: more funding, more centralization, and more standards and testing. Consider, for example, several of the recommendations offered by the Aspen Institute in *Beyond NCLB: Fulfilling the Promise to Our Nation’s Children*:

- Implement new requirements that principals qualify as highly effective principals (HEP), a designation that would carry licensure requirements, demonstration of “the necessary skills for effectively leading a school,” and production of “improvements in student achievement that are comparable to high-achieving schools made up of student populations with similar challenges.”²⁸
- Add science to the list of subjects on which students must make adequate yearly progress.²⁹
- Make public education address “students’ behavioral and social needs by requiring schools to determine the availability of social services and mental health services when developing the school’s improvement plan.”³⁰
- Require states to add a 12th-grade assessment to their testing regime.³¹
- Create federal “model content and performance standards and tests” in reading, math, and science and allow states to either adopt those standards and tests or have the federal government compare state standards and tests with the national model.³²

To begin with, those requirements would add yet more stultifying rules and regulations to NCLB. That, however, is not their biggest fault. More important, none of those provisions would address a key problem with

government-imposed education standards: evasion. The same authorities who have been keeping standards low and results “good” under NCLB would have power under the Aspen commission’s proposals. There is no reason to think they would be any less likely to game the system under Aspen’s proposals than under the current arrangement.

Consider nationalization of standards and tests. Intended to halt the race to the bottom by setting a single standard for every school in the country, federal standards would instead just relocate to Washington the political evasion game currently being played by states. Indeed, even if rigorous national education standards could initially survive the political process and be included in a revised NCLB, they would likely be crippled during the writing of regulations to implement the law, in which special interests have an even greater influence than they do in the legislative process. The work of writing regulations is done in the backrooms of the federal bureaucracy, not with the public scrutiny that often accompanies work on legislation, and interests like the National Education Association, which alone has a staff of more than 500 in Washington, are much better able to participate in such things as “negotiated rule making” than are parents.

Evasion would come from both the top and the bottom of the political food chain. At the top, an administration that championed the law would be encouraged by political expediency to produce favorable-looking test results to bolster its chances for reelection if in its first term, or to help its party—and the president’s legacy—if in its second. Witness Secretary Spellings’s pronouncements that NCLB is a proven success despite significant evidence to the contrary. At the bottom, interest groups like the National Education Association, National School Boards Association, and numerous others whose members might be embarrassed or harmed by higher standards would have a powerful incentive to lobby for lower ones. And regulatory bodies often come under the sway of the very groups they are supposed to regulate because those are the groups

whose livings come from the status quo and are therefore the most active in lobbying, participating in such regulation-drafting activities as negotiated rule making and advocacy communications. As a result, the pressure on the bureaucracy to lower standards to present a favorable picture of student achievement would be just as intense at the national level as it has been at the state.

Unfortunately, the Aspen commission is not the only group on the national standards bandwagon. In January 2007 Sen. Chris Dodd (D-CT) introduced the Standards to Provide Educational Achievement for All Kids Act, cosponsored in the House by Rep. Vernon Ehlers (R-MI). The act would have the National Assessment Governing Board—which currently oversees the politically toothless NAEP tests—create national K–12 math and science standards and would bribe states to use those standards by establishing an American Standards Incentive Fund to pass out grants to states that adopted them.

State adoption of the standards is touted as “voluntary” by the act’s supporters, but this claim rests on a fallacious equivocation: advocates seldom say *for whom* the standards would be voluntary. They would certainly not be voluntary for families. If a state opted in, as every state has opted in to NCLB thus far, families who did not agree with the law could not opt out. They would have no choice in the matter.

For states and school districts, too, national standards would not be truly voluntary. Dodd’s incentive fund would, after all, be stocked with money taken *involuntarily* from taxpayers, and the federal government would return it only to states that “volunteered” to abide by the federal standards. That is more akin to extortion than voluntary exchange.

Of course, real voluntarism would defeat the stated purpose of national standards, which advocates argue are needed to halt NCLB’s race to the bottom. If states could truly opt in and out of such programs without penalty, then the sought-after uniformity in standards would not likely arise.

The reality is that no matter how national standards were imposed, there would be noth-

ing to prevent federal policymakers from playing politics with them, quietly dumbing them down just as states and local districts have done with their standards. Consider the national standards plan favored by the Thomas B. Fordham Foundation. It would vest standards-setting responsibility in an independent federal entity like NAGB, reasoning that doing so would greatly insulate the standards from political interference. NAGB, Fordham argues, “is a broadly representative and bipartisan body, with all key stakeholders present,” and “it has not been timid about demonstrating its independence both of political masters and of education interest groups.”³³

Of course, the NAEP—which NAGB oversees—has never had any real consequences (read: money) attached to its results, making it a very low-payoff target for special interests. In spite of that, Fordham president Chester Finn has himself told Congress that NAGB and other supposedly neutral federal education functions are in constant political peril. As he testified before the House Subcommittee on Early Childhood, Youth and Families in 2000:

Unfortunately, the past decade has also shown how vulnerable these activities are to all manner of interference, manipulation, political agendas, incompetence and simple mischief. It turns out that they are nowhere near to being adequately immunized against Washington’s three great plagues:

- the pressing political agendas and evanescent policy passions of elected officials (in both executive and legislative branches) and their appointees and aides,
- the depredations and incursions of self-serving interest groups and lobbyists (of which no field has more than education), and
- plain old bureaucratic bungling and incompetence.³⁴

So even when no money has been attached to success on federal standards, according to

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Even the administration of Franklin Delano Roosevelt did not see a constitutional role for the federal government in K-12 education.

Finn, NAGB has been under constant political assault.

Another popular reform proposal is to add “flexibility” to NCLB—generally allowing schools and districts to more easily avoid the law’s sanctions—while significantly increasing funding. A group of current and former school administrators called Public Schools for Tomorrow, for instance, recently called for much less standardized testing, as well as rewards for schools that make substantial progress (rather than sanctions for those that do poorly).³⁵ They also, though, said that Washington should pony up money for a program to train new teachers and should fund NCLB at the full level authorized by the law. Congress, however, rarely appropriates the fully authorized amounts under any law.

Only two NCLB proposals break with the “more federal government” model. Instead of increasing the federal role in education, the Academic Partnerships Lead Us to Success Act of 2007 (A-PLUS) would allow states to declare that they want to run their own education systems and get money back from Washington if they do so.³⁶ The Local Education Authority Returns Now Act (LEARN) would go one better, through a tax credit giving federal money directly back to individual taxpayers in states that declare their independence.³⁷

There are two versions of A-PLUS, with the Senate version requiring that states enter into performance agreements with Washington in exchange for their freedom and money. The House version requires no such agreement.³⁸ The latter approach and LEARN are especially welcome because they would take federal politics out of setting performance standards. Only LEARN, though, makes whole the taxpayers from whom federal education money was taken in the first place. Still, all three are superior to other alternatives because they recognize that states are closer to their people, states are better equipped to handle education than the feds, and states that wish to run their own education systems should not have to sacrifice money taken from their taxpayers.

As preferable as those bills are to competing reauthorization proposals, neither is a com-

plete solution to the federal education problem. While they decrease the compulsion and intrusiveness of current federal education policy, neither complies fully with the Constitution or eradicates the ability of federal policymakers to politicize educational decisions.

The Federal Government’s Proper Role in Education

Perhaps because the Elementary and Secondary Education Act (of which NCLB is just the latest version) has existed since 1965, the federal presence in our schools has come to be taken for granted and its constitutionality no longer seriously questioned. But when it comes to education policy, the Constitution has not been amended since its adoption in 1789, and neither the word “education” nor the word “schooling” appears among the enumerated powers that it grants to the federal government. Washington thus has no legitimate role in education other than complying with the Fourteenth Amendment by prohibiting state and local discrimination in the provision of schooling. As the Tenth Amendment makes clear, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

So how did the federal government get involved in the first place? For most of the nation’s history, education was a state, local, and family affair, in keeping with the Tenth Amendment. The federal government’s first major forays into education were special-purpose laws: the GI Bill of 1944, subsidizing college for World War II veterans, and the National Defense Education Act of 1958, aimed at beefing up science instruction in the wake of Russia’s launch of the satellite Sputnik. So anathema was the idea of federal education involvement, in fact, that even the administration of Franklin Delano Roosevelt—not known for a conservative conception of federal power—did not see a constitutional role for the federal government in education, as this excerpt from a 1941 federal govern-

ment publication, *History of the Formation of the Union under the Constitution*, illustrates:

Q. Where, in the Constitution, is there mention of education?

A. There is none; education is a matter reserved for the states.³⁹

Because of the longstanding respect for local control and the Constitution, it was not until 1965, with the ESEA, that Congress stepped squarely into the general education business. Slowly but surely, it has increased that presence ever since.

The effects of Congress's extraconstitutional venture into education have been broad and damaging. Among other harms, ignoring the Constitution has undermined the rule of law, because the Constitution establishes the proper scope of federal power. Bounds on federal power have been eliminated and there is little Washington won't prescribe, right down to how schools teach reading, rendering the Constitution a dead letter. In addition, the nationalization of education has created a sprawling impersonal bureaucracy in a field that demands, by its very nature, considerable individualization and personal attention.

The Framers would probably have predicted exactly such outcomes from federal education involvement. They knew that a huge but distant national government could not be truly responsive to the unique needs of local communities and individual families. They also knew that centralized government could easily decay into exploitation, with those wielding government power almost certain to use it for their own good rather than that of the people they nominally serve. That is why they ceded only a few specific powers to the national government—powers that had to be wielded centrally—and otherwise reserved authority to the states or the people.

In *Federalist* no. 46, James Madison makes clear the advantages of state rather than national control: "By the superintending care of these [States], all the more domestic and personal interests of the people will be regulated and provided for. With the affairs of

these, the people will be more familiarly and minutely conversant. And with the members of these, will a greater proportion of the people have the ties of personal acquaintance and friendship, and of family and party attachments."⁴⁰

For most of American history, education was highly decentralized—to a large extent even privatized—and was very successful. For instance, by the time the Constitution was drafted, literacy among free American males was around 65 percent, significantly higher than in Europe.⁴¹ By 1840 it was estimated that nearly 90 percent of white males were literate.⁴² And keep in mind that those literacy rates were achieved in a population that was busy taming a still-wild land.

Contrast this to America's education track record since 1965, when the ESEA was passed. On the NAEP long-term reading assessment, 9-year-olds saw their scores rise only 11 points between 1971 and 2004 (on a 500-point scale); 13-year-olds saw only a 4-point gain; and 17-year-olds—the "final products" of our K-12 system—saw no gain at all: the average score was 285 in 1971 and 285 in 2004.

In math the results were a little better, but not much: 9-year-olds' scores increased 22 points, from 219 to 241, and 13-year-olds' had a 15-point uptick. However, 17-year-olds saw only a 3-point nudge, from 304 to 307. The implication is that learning has shifted somewhat toward the lower grades, but that, at the end of high school, students are not significantly better prepared academically than they were more than three decades ago. And the poor—whom many programs are supposed to target—have not benefited any more than the general population. Using parents' highest level of education as a proxy for wealth (no income or other wealth breakdown is available through the NAEP), math scores for 17-year-olds whose parents have less than a high school education rose only 7 points between 1978 and 2004, and reading scores dropped by 3 points.⁴³ This despite a substantial rise in the standard of living, the advent of personal computers and the Internet, and a more than doubling of real per pupil spending between the

The nationalization of education has created a sprawling impersonal bureaucracy in a field that demands individualization and personal attention.

We have suffered a catastrophic decline in educational productivity, analogous to buying 1970s cars today and paying twice their original selling price.

1970–71 and 2002–03 school years (from \$5,064 to \$10,464).⁴⁴ We have suffered, in other words, a catastrophic decline in educational productivity, analogous to buying 1970s cars today and paying twice their original selling price.

The federal government has been a major contributor to this colossal inefficiency, spending a combined total of more than \$452 billion, after inflation, on ESEA programs between 1966 and 2006.⁴⁵ In almost that exact same time frame—1965 to 2005—real federal spending per elementary and secondary pupil grew 545 percent, from \$193 to \$1,242.⁴⁶ Despite this massive investment, and the ever-increasing federal control that accompanied it, scores on the NAEP long-term trend exams have been essentially stagnant, especially among high school seniors.

The federal government has spent hundreds of billions of dollars on elementary and secondary education since ESEA was passed but has almost nothing to show in return. This track record points clearly to the wisdom of the Constitution’s Framers, who deliberately chose not to accord Congress a role in education policymaking because they were convinced that such a role would prove disastrous.

The Education Market Alternative

Given NCLB’s inability to live up to the expectations set for it and the poor showing of federal education interventions more generally, it is well past time to refocus our nation’s energies on more effective structural reforms. There is now a vast international literature comparing the relative merits of different school governance and funding systems. Of particular interest is the research that compares parent-chosen private schools with bureaucratic state-run education systems, after controlling for student background characteristics and other nonschool factors thought to influence outcomes. Figure 3 distills the results of that research, showing the number of separate statistically

significant findings of differences in outcomes between the sectors.

The studies providing the source data for this figure were identified by a combination of academic database searches, Google Internet searches, and consultation of the references listed in the studies found through those searches. The initial searches were conducted as part of a literature review first published in 2004 and updated for this paper.⁴⁷

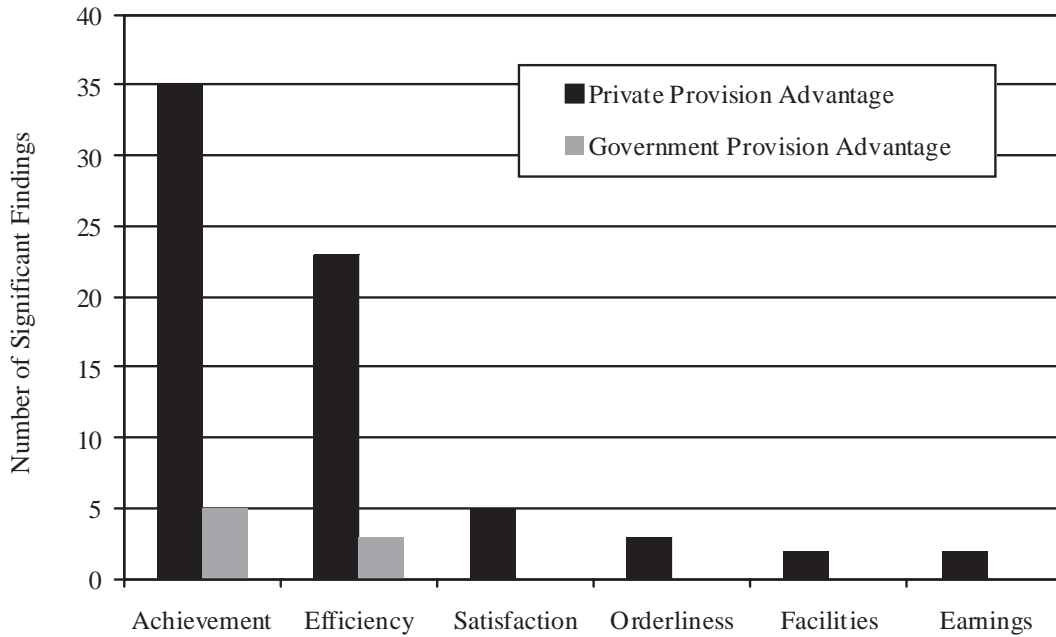
The six different outcome categories⁴⁸ for which empirical evidence is available are student academic achievement (as measured by test scores), school efficiency (as measured by achievement per dollar spent), parental satisfaction, the orderliness of the classroom environment, the condition in which physical facilities are maintained, and the earnings of graduates.⁴⁹

As can be gleaned from Figure 3, there are 35 statistically significant findings of a private-sector advantage in academic achievement, and only 5 of a government-sector advantage. The breakdown for school efficiency is 23 to 3. For the other four outcome categories, all the statistically significant findings we located favor private provision.

The advantages of parental choice and competition do not end at improving overall outcomes. They have also proven superior in diminishing racial achievement gaps, a major stated goal of NCLB. Several studies of U.S. school voucher programs, for instance, have found that African-American students benefit the most from participation in such programs and, hence, suggest that parental choice could significantly close the racial achievement gap if expanded to include all students. Other studies have found that inner-city Catholic schools have a disproportionately positive effect on African-American high school graduation rates, college acceptance rates, and college graduation rates and that universal public and private school choice programs would greatly reduce residential segregation.⁵⁰

Note that Figure 3 understates the benefits of market provision of education. Most studies of market versus bureaucratic provision of edu-

Figure 3
Empirical Findings Comparing Private and Government Provision of Education



Sources: See Appendix.

cation simply compare the results between the sectors. But while market forces operate more vigorously in the private sector, they can also affect the performance of government schools—particularly when government schools face intense competition from the private sector due to school choice programs.

For example, to determine the effect that Chile’s nationwide school voucher program has had on academic achievement in both government and private voucher schools, researcher Francisco Gallego compared their test scores with the scores of Chile’s elite non-voucher private schools. These schools opted not to participate in the nation’s voucher program when it was introduced in 1982 because the voucher amount was well below the tuitions that they charged, and the state mandated at the time that the voucher be accepted as full payment. So, for reasons of financial expediency, they chose not to accept voucher students.

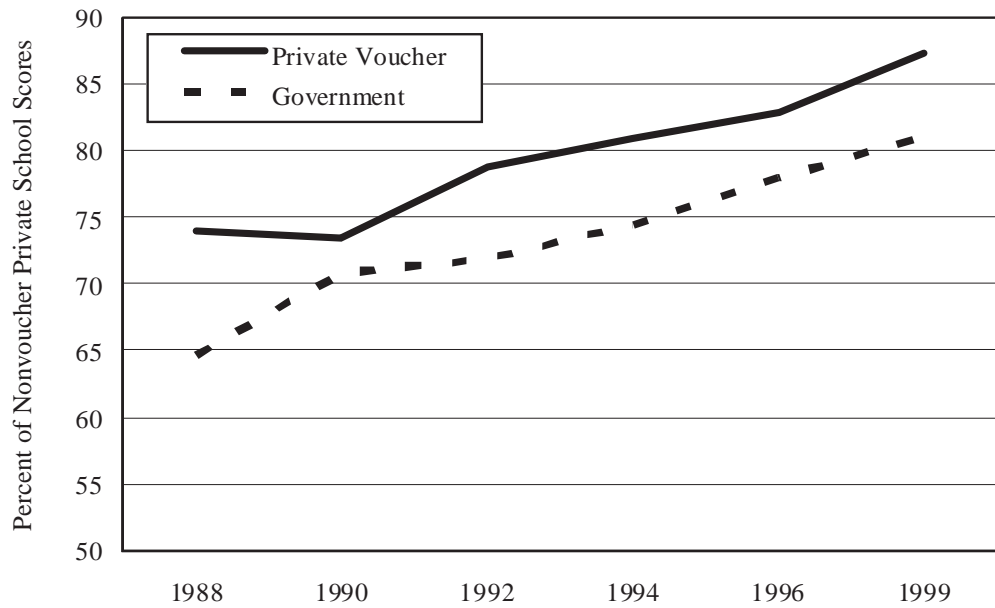
Enrolling the children of many of the wealthiest, most highly educated families in

Chile, these elite schools not surprisingly outscore both voucher-funded private schools and government schools. But the gap in the scores between these sectors has been narrowing over time under the voucher program, as Gallego has shown. Figures 4 and 5 chart the scores of government and private voucher students on a national test as a fraction of the scores achieved by elite nonvoucher private school students. At both the 4th and 8th grade levels, voucher students *and* government school students have closed the gap substantially. Harvard professor Caroline Minter Hoxby found a similar positive effect on government school achievement under the much smaller scale Milwaukee voucher program.⁵¹

In light of this evidence, it is clear that the fundamental idea behind NCLB—improving achievement through government benchmarks and penalties for failing to meet them—is mistaken. In fact, the law is a barrier to educational improvement because it pressures states to focus on central planning and bureaucratic compliance rather than on

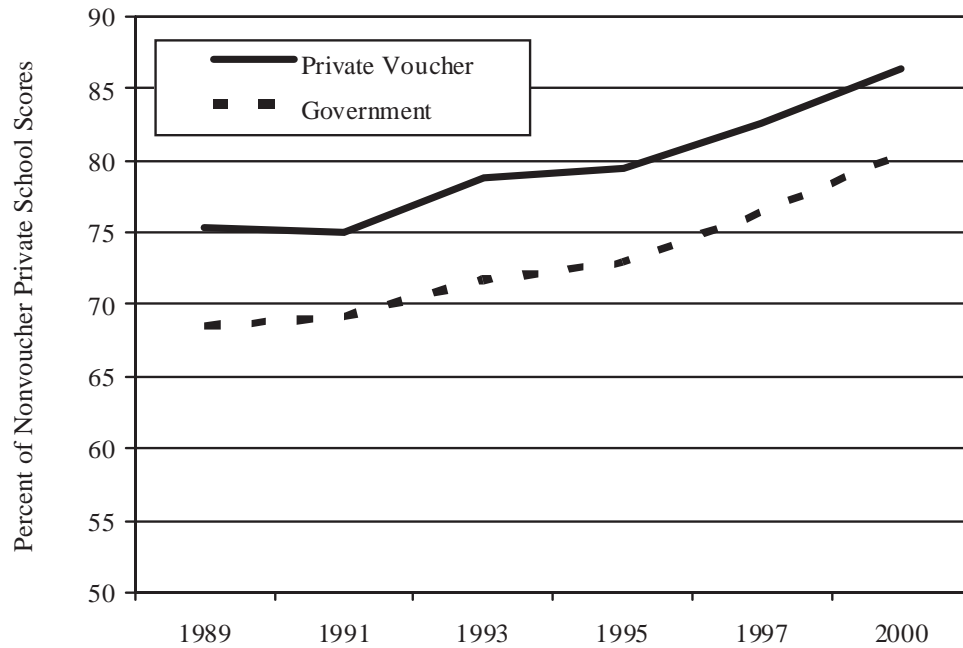
While market forces operate more vigorously in the private sector, they can also affect the performance of government schools when government schools face intense competition.

Figure 4
Trends in 4th-Grade Test Scores under Chile's National School Choice Program, by Sector



Source: Francisco A. Gallego, "Competencia y Resultados Educativos: Teoría y Evidencia para Chile," Banco Central de Chile, Working Paper no. 150, April 2002.

Figure 5
Trends in 8th-Grade Test Scores under Chile's National School Choice Program, by Sector



Source: Francisco A. Gallego, "Competencia y Resultados Educativos: Teoría y Evidencia para Chile," Banco Central de Chile, Working Paper no. 150, April 2002.

unleashing market forces, as the scholarly research suggests should be done.

Conclusion and Recommendations: Phase Out NCLB and Promote School Choice in the States

Previous policy reports on the future of the No Child Left Behind Act have rested on the assumption that the law's basic principles are sound, and those reports have thus failed to critically examine NCLB's performance or long-term prospects for success. Worse yet, they have generally ignored important evidence that contradicts their assumptions.

The evidence and analysis presented here make it clear that the federal government has no proper role in American education beyond enforcing civil rights laws. Moreover, neither federal interventions in general nor NCLB in particular have lived up to the expectations set out for them. Nor can they, because federal intrusions actually discourage states from pursuing truly effective policies—those based on parental choice, school autonomy, and competition.

We therefore recommend that the U.S. Department of Education be abolished and that funding for all federal education programs be turned into temporary block grants to the states. Those grants should be phased out completely over three years, giving states time to reallocate their own personnel and resources. In addition, so that taxpayers do not continue to pay for a function Washington is no longer serving, federal income tax rates should be reduced in proportion to the amount of overall federal spending that is cur-

rently allotted to education.

One objection to this proposal might be that states have often proven little better at handling education than Washington. How will devolving power back to them help?

That is a reasonable objection. States have indeed been consolidating power over education at the same time as the federal government and have little more to show for it. And they have failed largely for the same reason as the federal government: while states are closer to the families who are being short-changed by public schooling, state governments are still huge political institutions dominated by special interests, and power is still held by politicians and bureaucrats, not parents. That is also true in many school districts, which have become much larger and more centralized over the last century. Some districts encompass entire counties, and large urban districts often have in excess of 100,000 students. New York City has more than a million. Even "locally," then, individual parents often have very little recourse when they are unhappy with the schools. That is why the public must demand that policymakers introduce universal choice at the state and local level once federal entanglement is removed.

Several states have already begun to move down the road to educational freedom through education tax credit programs (both for families' own use and for donations to scholarship funds that serve low-income families) and school voucher programs. Thus far, those programs are still too small to genuinely transform American education. The NCLB reauthorization debate, however, is an ideal time to pause, examine the evidence, and admit that school choice policies—not more centralization in Washington—are by far the most promising avenue for realizing our educational goals and ideals.

This is an ideal time to pause, examine the evidence, and admit that school choice policies are the most promising avenue for realizing our educational goals and ideals.

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