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SYMPOSIUM: READING, WRITING, AND REFORM THE ROLES OF STATE AND FEDERAL GOVERNMENT IN EDUCATION

THE PRESIDENT'S NATIONAL TESTING PROPOSAL HAD TO BE STOPPED

SENATOR JOHN ASHCROFT*

I. INTRODUCTION

Any movement toward national control of education savages principles that we as Americans hold dear: parental authority and control, teachers who are free to teach core subject matter and school boards that are responsive to their communities, not held captive by distant bureaucrats. President Clinton's proposal for national testing of our children is an example of such an attempt at a federal power grab. The President wants to move power out of the hands of parents, teachers, and school boards and into the hands of Washington bureaucrats. His proposal must be stopped. Congress should continue its prohibition on federal funding for federalized, individualized testing to ensure that we protect and preserve parental involvement and local control of education.

This article will provide an overview of the recent national testing debate. It will explain that there is no statutory authority for the Clinton national testing proposal and describe how previous attempts at federal standards have been disastrous. It will demonstrate why national tests are unnecessary in light

* Senator Ashcroft (R-MO) was elected to the United States Senate in 1994. Prior to his election to the Senate, he served as Governor of Missouri for two terms, from 1985 to 1993. *Fortune* magazine rated Ashcroft as one of the top ten education governors in the country. In the Senate, Ashcroft waged a long but successful fight to build a Senate majority against federalized student testing.

of current state assessments, private commercialized tests, and existing federal-ly supported tests.

The article will then elaborate on the dangers of a national testing proposal, including the loss of parental involvement and local control, the institution of a national curriculum, and the imposition of high-risk educational philosophies and fads. Further, it will argue that the proposed national tests will not be truly “voluntary,” as the President represents them to be. Finally, it will show that the President’s proposal is opposed by groups and organizations reaching across the entire political spectrum, as well as state officials, experts, and educators.

II. BACKGROUND

In his 1997 State of the Union Address, President Clinton announced his plans to establish national tests for students in 4th grade reading and 8th grade math.¹ The tests, described as voluntary in nature, would provide an annual indication of overall student proficiency that could be reported to parents and teachers² and would be used to measure individual student performance throughout the country.³

Without waiting for Congressional authority (or even giving Congress the opportunity to discuss the merits of the President’s proposal), the Department of Education surged ahead and began development of these national tests, with plans to administer them starting in 1999.⁴ In August of 1997, the Department announced the award of a \$13 million contract for its national testing initiative⁵ and its plans to spend an estimated \$50.6 million under the contract from FY 1998 through FY 2001.⁶

A battle then ensued between the Administration and Congress over whether the President had the authority to move ahead with the national testing proposal and, more importantly, over the wisdom of implementing federalized tests. Late in the First Session of the 105th Congress, the Administration and Congress finally reached a compromise agreement on national testing. They passed legislation prohibiting federal funds from being used to field test, pilot

1. *State of the Union Address* (visited February 5, 1997) <<http://www.whitehouse.gov/WH/SOU97/>>.

2. *Overview of Plans for the Voluntary National Tests in Reading and Mathematics* (visited September 30, 1997) <<http://www.ed.gov/nationaltests/overview.html#graph>>.

3. *Mastering the Basics: Reaching for High Standards in Reading and Math* (visited September 26, 1997) <<http://www.ed.gov/nationaltests/basics.html>>.

4. *Overview of Plans for the Voluntary National Tests in Reading and Mathematics*, *supra* note 2.

5. *Contract to Develop Voluntary National Tests Awarded to Alliance of Major Testing Firms* (visited April 14, 1998) <<http://www.ed.gov/PressReleases/08-1997/contrpr.html>>.

6. U.S. Dept. Of Education with American Institutes for Research, Sec. B, Aug. 18, 1997, at 1.

test, implement, administer, or distribute in any way, any national tests in fiscal year 1998.⁷ The legislation also transferred authority over the allowable test development activities from the Department of Education to the National Assessment Governing Board (NAGB).⁸ NAGB is a board created by Congress in 1988 to set policy for the National Assessment of Educational Progress (NAEP), a statutorily authorized sampling test administered throughout the country.⁹

Despite this clear congressional prohibition, President Clinton continued to move ahead at full speed with his national testing proposal. The President seemed intent on misrepresenting the nature of the legislative response to his testing proposal. In fact, he made a statement to the American people in his 1998 State of the Union Address that flatly mischaracterized the legislation he signed in the fall of 1997. Mr. Clinton announced: "Thanks to the action of this Congress last year, we will soon have, for the first time, a voluntary national test based on national standards in fourth-grade reading and eighth-grade math."¹⁰ David Broder of the *Washington Post* described Mr. Clinton's statement as "thoroughly misleading without being literally false."¹¹

The President's statement was not an isolated incident. Department of Education publications and website documents indicated the Administration's clear intention to move ahead with the national testing proposal in spite of the restrictions under the newly-enacted law.¹² Additionally, the President's FY 1999 education budget called for \$15 million to further develop national tests.¹³

During the Second Session of the 105th Congress, the House of Representatives, led by Congressman Bill Goodling, passed legislation to permanently ban any federal funds for national testing.¹⁴ I introduced identical legislation in the Senate¹⁵ and offered the provision as an amendment to H.R. 2646,

7. Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-78, §§ 305-06, 111 Stat. 1467 (1997).

8. *Id.* at § 307.

9. The National Assessment Governing Board Home Page (visited Feb. 22, 1999) <<http://www.nagb.org>>.

10. *State of the Union Address* (visited April 16, 1998) <<http://www.whitehouse.gov/WH/SOTU98/address.html>>.

11. David S. Broder, *The Credibility Problem*, WASH. POST, February 22, 1998.

12. *Community Updates—No. 53, January 1998: 1998 Education Budget Provides an Historic Investment in Educational Opportunity* (visited April 16, 1998) <<http://www.ed.gov/G2k/Community/98-01.html>>.

13. *Justifications of Appropriation Estimates to the Congress for fiscal year 1999*, DEPT. OF EDUC. Vol. 2 at V-67.

14. The House passed the measure as a free-standing bill by a vote of 242-174. 144 CONG. REC. H354-55 (daily ed. Feb. 5, 1998).

15. S. 1215, introduced on Sept. 24, 1997.

the Education Savings and School Excellency Act.¹⁶ The Senate passed the amendment by a vote of 52-47.¹⁷ Unfortunately, the testing ban provision was removed from H.R. 2646 during the House-Senate conference on the bill due to the concern that the provision would give the President an additional reason to veto the entire legislation.¹⁸

However, Congressman Goodling and I worked with Congressional leadership¹⁹ to ensure that our permanent testing ban language was included in appropriations legislation for fiscal year 1999,²⁰ which the President signed into law on October 21, 1998.²¹

At last, Congress put to a halt the President's attempt to impose upon our children a federalized, individualized test absent Congressional authority. Congress has protected the ability of parents, teachers, and local schools to be involved in the education of their children by participating in the development of school curriculum, standards, and testing. For the sake of our children's educational success, the President's national testing proposal had to be stopped.

Why are so many members of Congress, myself included, so strongly opposed to national testing? After all, it may sound like a worthy idea to have uniform standards to which all our nation's children should be held accountable, and which we could use to compare students in one state to another. However, many uniform benchmarks already exist without the dangerous consequences of federally imposed tests. The truth is that federalized tests—mandated from Washington—will hurt education in our nation. There is no doubt that we should hold our children to high, challenging academic standards. But any such standards should be set at the state and local levels, where parents, teachers, and local school boards can make the crucial decisions that will affect our children's educational experience.

16. 144 CONG. REC. S3403 (daily ed. April 22, 1998).

17. *Id.* at S3420.

18. President Clinton had already made it clear that he would veto H.R. 2646, which expanded the use of education savings accounts to include elementary and secondary education expenses. *See, e.g.*, Letter from President William J. Clinton, U.S.A., to Congressional Leaders on the "Education Savings Act for Public and Private Schools," April 27, 1998. The President vetoed H.R. 2646 on July 21, 1998. 144 CONG. REC. H6052 (daily ed. July 21, 1998).

19. *See* June 5, 1998 Letter of Trent Lott and Newt Gingrich to Bill Goodling and John Ashcroft, printed in 144 CONG. REC. S6933 (daily ed. June 24, 1998).

20. H.R. REP. No. 825, 105th Cong., 2nd Sess. § 305(a) (1998), H.R. CONF. REP. No. 4328 (October 19, 1998). Section 305(a) provides:

[N]o funds provided to the Department of Education or to an applicable program, may be used to pilot test, field test, implement, administer or distribute in any way any federally sponsored national test in reading, mathematics, or any other subject that is not specifically and explicitly provided for in authorizing legislation enacted into law.

21. Omnibus Capitalized and Emergency Supplemental Appropriations Act of 1999, P.L. No. 105-277, 112 Stat. 2681 (1998).

III. THERE IS NO STATUTORY AUTHORITY FOR THE CLINTON NATIONAL TESTING PROPOSAL.

The first question we must examine is whether the President has any statutory authority to move ahead with his national testing proposal without explicit Congressional authorization. Department of Education officials claim that they were authorized to pursue the testing initiative under the Fund for Improvement of Education (FIE) legislation.²²

However, the FIE provisions simply provide broad authority for discretionary activities intended to promote educational reform.²³ They do not authorize the kind of national tests envisioned by the President. This is true for at least two reasons. First, the testing activities envisioned by the Administration are clearly not mentioned in the FIE legislation. Second, where the Department of Education has developed or authorized the development of other tests, they have relied on a specific statutory authorization, not FIE's broad discretionary language. What is more, the tests referred to in these statutes differ significantly from those under the President's initiative.

For example, statutory authorization for the National Assessment of Education Progress (NAEP)²⁴ is explicit, and gives clear instructions as to how NAEP tests are to be designed and administered. (NAEP assessments are to be administered using "sampling techniques that produce data that are representative on a national and regional basis, and on a State basis . . .")²⁵ Representative samples of 4th, 8th, and 12th graders are tested at least every two years.²⁶ Tests are to be given "in reading, writing, and the other subjects included in the third National Education Goal, regarding student achievement and citizenship."²⁷

Additionally, Section 220 of the Goals 2000: Educate America Act,²⁸ entitled "Assessment Development and Evaluation Grants", authorized the Secretary of Education to make grants to states, local educational agencies, or consortia for developing, testing, and evaluating state assessments.²⁹

One of the strongest arguments to refute the Administration's reliance on the FIE for authority comes from a review of the predecessor statute to the FIE, the Fund for Innovation in Education. This program, established in 1988

22. 20 U.S.C. §§ 8001-8007 (1994); *Department of Labor, Health & Human Services, Education & Related Agencies Appropriations for 1998*: Hearings before the Subcommittee of the Committee on Appropriations House of Representatives, 101st Cong., 1st Sess. (1998).

23. 20 U.S.C. §§ 8001(a), 1001(b)(1)(A)(ii) (1992).

24. 20 U.S.C. § 9010 (1994).

25. 20 U.S.C. § 9010(b)(1).

26. 20 U.S.C. § 9010(b)(1)(A), (b)(2)(A)(i).

27. 20 U.S.C. § 9010(b)(1).

28. Educate America Act, Pub. L. No. 103-227, § 220, 108 Stat. 125 (1994)(codified as amended at 20 U.S.C. § 5850).

29. *Id.* (Interestingly, this provision was later repealed by Pub. L. No. 104-134).

by P.L. 100-297, specifically and explicitly provided authority to “develop, prepare, and conduct an optional test for academic excellence.”³⁰ However, Congress later repealed this explicit testing language when it passed the Improving America’s Schools Act of 1994³¹ and replaced the Fund for Innovation in Education with the present Fund for Improvement of Education.³² Unless we are to read Congress’ repeal of this language as a nullity, then the current version of FIE cannot provide sufficient authorization for these national tests.

As stated earlier, the current FIE provision contains no explicit authority for the type of national tests the President desires to develop. Such language was once on the books, but Congress made a conscious decision to repeal it. The legislative history should send a clear message to the President that he has no statutory authority to move ahead with his national testing proposal.

The President’s lack of statutory authority should end this debate for present purposes. However, it is also important to consider the President’s national testing proposal on policy grounds as well as legal grounds.

IV. PREVIOUS ATTEMPTS AT FEDERAL STANDARDS HAVE BEEN DISASTROUS.

If the federal government’s previous track record on developing federal education standards and assessments is any indication of the future success in developing a federalized, individualized test, Congress acted wisely in stopping the President’s proposal dead in its tracks. Washington’s past attempts in this area have been disastrous.

A. *The History Standards*

In 1991, the National Endowment for the Humanities (NEH) and the Department of Education funded the development of the *National Standards for United States History* for just over \$2 million.³³ The standards were intended to identify and define both “historical thinking” and content standards that students should attain in the particular area of history being addressed.³⁴

Lynne Cheney, who as chairman of the NEH awarded the contract for the development of these standards, later ended up condemning the standards which she said were “suffused with political correctness.”³⁵ She revealed that

30. Secretary’s Fund for Innovation in Education, Pub. L. No. 100-297, § 4601, 102 Stat. 247 (1988)(The test is described further at § 4602).

31. Improving America’s Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994).

32. S. REP. NO. 103-292, 103rd Cong., 2nd Sess. (1994).

33. JAMES B. STEDMAN & WAYNE C. RIDDLE, CRS REPORT FOR CONGRESS, GOALS 2000: EDUCATE AMERICA ACT IMPLEMENTATION STATUS AND ISSUES 12 (1998).

34. *Id.*

35. Lynne V. Cheney, *A Failing Grade for Clinton’s National Standards*, WALL ST. J., September 29, 1997, at A22 [hereinafter *Failing Grade*].

a participant in the group overseeing the drafting of the standards admitted that the standards sought to be politically correct.³⁶ As a consequence, the standards slighted or ignored many central figures in U.S. history, particularly white males. Further, the standards were uncritical in their discussions of African and Native American societies and were unduly critical of capitalism.³⁷

Remarkably, these standards failed to mention Robert E. Lee, Paul Revere's midnight ride, the Wright Brothers, Thomas Edison, and J.P. Morgan. On the other hand, Mansa Musa, a 14th-Century African king, and the Indian chief Speckled Snake had prominent display, and the American Federation of Labor was mentioned nine times.³⁸ Such a skewed view of our nation's history prompted columnist George Will to label the failed history standards as "cranky anti-Americanism."³⁹

As a result of the controversy swirling around the *National Standards for United States History*, the Senate unanimously rejected their use in the public schools.⁴⁰

B. *The English/language arts standards.*

The English/language arts standards were such an ill-considered muddle that even the Clinton Department of Education cut off funding for them after having wasted nearly \$1 million. The standards were intended to show what students should "know and be able to do" in English, a subject that includes reading, literature, composition, and oral communications.⁴¹ After reviewing a draft of the standards, which defined literacy as "an active process of constructing meaning," Lynne Cheney said they seemed to be "infected with the virus of postmodernism."⁴²

The Department of Education found that the proposed standards were "vague and often read as opinions and platitudes," concentrated on process, and failed to "define what students should know and be able to do in the domains of language, literacy, and literature."⁴³ It also criticized the group working on the standards for focusing on learning activities and elements to which

36. Lynne V. Cheney, *The End of History*, WALL ST. J., October 20, 1994, at A22.

37. *Id.*

38. Senator John Ashcroft, *I Will Filibuster to Stop National Testing*, HUMAN EVENTS, October 3, 1997, at 24.

39. George Will, *The Real State of the Union*, WASH. POST, January 26, 1995, at A25.

40. S. RES. 66, 104th Cong., 1st Sess. (1995).

41. Debra Viadero, *E.D. Awards Grant for Last of Standards Projects, in English*, EDUC. WK., October 21, 1992, at 10.

42. HOUSE OF REPRESENTATIVES ECONOMIC OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE, 1995 WL 122885 (F.D.C.H.).

43. Karen Diegmüller, *English Group Loses Funding for Standards*, EDUC. WK., March 30, 1994.

children should be exposed, instead of what they should know and be able to do.⁴⁴

C. *The NCEST Recommendation*

Back in 1992, the only Congressionally-authorized body ever asked to make recommendations on national testing rejected the notion of a single national test for students. The National Council on Education Standards and Testing was authorized by Congress in 1992 to advise the American people on the desirability and feasibility of national standards and tests. NCEST also recommended long-term policies for setting voluntary standards and planning an appropriate system of tests.⁴⁵ Its final report concluded that “the system of assessment must consist of multiple methods of measuring progress, *not a single test.*”⁴⁶

D. *Congress’ Rejection of NESIC*

Beyond this, Congress has already rejected a federal entity charged with establishing national standards. As part of its 1994 Goals 2000 legislation,⁴⁷ Congress authorized the establishment of the National Education Standards and Improvement Council (NESIC) to certify national education standards.⁴⁸ Two years later, however, Congress repealed NESIC⁴⁹ over concerns that it would function as a national school board by establishing federal standards and driving local curriculum. In an earlier debate over the repeal of NESIC, Senator Judd Gregg (R-NH) articulated the concerns about NESIC’s potential to be a national school board:

I think it is logical to presume that once a national standard has been set and defined by some group which has received the imprimatur of the Federal Government, you will see that standard is aggressively used as a club to force local curriculums to comply with the national standard. . . . [I]t was a mistake to set up this national school board called NESIC.⁵⁰

44. *Id.*

45. NATIONAL COUNCIL ON EDUCATION STANDARDS AND TESTING, RAISING STANDARDS FOR AMERICAN EDUCATION 4 (1992).

46. *Id.* at 5 (emphasis added).

47. Goals 2000: Educate America Act, Pub. L. No. 103-227, 108 Stat. 125 (1994).

48. *Id.* § 212, 108 Stat. 125 (1994).

49. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996)(The FY 1996 appropriations legislation containing funding for education).

50. 141 CONG. REC. S1038 (daily ed. Jan. 18, 1995)(statement of Sen. Judd Gregg).

E. A History Lesson for Congress and the President

Both Congress and the President should learn from the mistakes of the past and refuse to go down a path that we know will prove to be costly and unsuccessful. Lynne Cheney has testified before Congress that national standards are unnecessary in any subject area, and that we do not need any federal body to certify or approve them.⁵¹

Even President Clinton has admitted the failures of the history and English/language arts standards: "Now, the effort to have national standards, I think it's fair to say, has been less than successful. The history standards and the English standards effort did not succeed"⁵²

With this in mind, there should be no question that a national testing proposal will fail our nation's children. What is more, the dismal history of national standards, along with Congress' repeated actions to eliminate explicit authorizations for national tests, makes all the more specious the claim that the general language in the Fund for Improvement of Education authorizes the President's national testing proposal.

V. NATIONAL TESTS ARE UNNECESSARY IN LIGHT OF STATE ASSESSMENTS, PRIVATE COMMERCIALIZED TESTS, NAEP, AND TIMSS.

It is difficult to understand why President Clinton wants to create and administer a national test for our children in light of the abundance of tests that currently exist. Nearly every state in our nation either has, or is developing, assessments for their students, and a number of private, commercial tests have been used for years throughout the nation. Additionally, we have two federally supported tests, the National Assessment of Educational Progress and the Third International Mathematics and Science Study, which are used to compare student progress across the nation and throughout the world. We also know that our students are already on the verge of being "overtested" every year, which cuts into valuable class teaching time. What good will one more test do our children?

A. Current State Efforts to Develop Tests and Assessments

Approximately 48 states have developed or are developing state standards and 45 have statewide assessment systems.⁵³ Some notable tests include the Illinois Goals Assessment Program, the Louisiana Education Assessment Program, the Texas Assessment of Academic Skills, the Virginia State Assess-

51. HOUSE OF REPRESENTATIVES ECONOMIC OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE, *supra* note 42.

52. Remarks by President Bill Clinton to the National Governors Association Education Summit, Palisades, N.Y., FEDERAL NEWS SERVICE, March 27, 1996.

53. ROBERT J. MARZANO & JOHN S. KENDALL, A COMPREHENSIVE GUIDE TO DESIGNING STANDARDS-BASED DISTRICTS, SCHOOLS AND CLASSROOM (1996).

ment Program, the Wisconsin Student Assessment System, the Massachusetts Comprehensive Assessment, and the Connecticut Academic Performance Test.⁵⁴ By supplanting or superseding state and school district efforts, a national test will undercut their efforts and impose a “one-size-fits-all” system.

As Governor of Missouri (1985-1993), I put into place mechanisms for high standards and accountability for our state. We instituted the Missouri Mastery and Achievement Tests (MMAT), which were included in my Excellence in Education Act of 1985.⁵⁵ We developed this based on the belief that all students in the state deserve to master key skills and core competencies in reading, math, science, and social studies as a result of their schooling. The MMAT put Missouri in the vanguard of states and experts in developing mechanisms to assess the success of education programs. The MMAT system provided individual reports to parents about their child’s strengths and weaknesses and to teachers about the students in their classes. Schools could use information from the MMAT to identify trends in performance and to assess and strengthen curricula and teaching methods to enhance student learning. Annual MMAT achievement reports helped to identify areas in which curriculum improvement was necessary. Through the first several years, test results showed dramatic improvements in scores over the base year of 1987.

B. Private Commercial Tests

Beyond the state efforts to measure success of their students, current national standardized tests exist to gauge performance. Some of the current private national tests in use include the Iowa Test of Basic Skills, Tests of Achievement Proficiency, California Achievement Test, Comprehensive Test of Basic Skills, and the Metropolitan Achievement Test.⁵⁶ These tests, which provide a way to compare student achievement levels with a national norm, are used by states and local school districts as a part of, or in addition to, their own state assessments.

C. NAEP and TIMSS

Additionally, we have two existing tests that evaluate national performance based on statistical sampling, the National Assessment of Educational Progress (NAEP)⁵⁷ and the Third International Mathematics and Science Study (TIMSS).⁵⁸

54. NATIONAL CENTER FOR HOME EDUCATION, VOTE NO ON NATIONAL TESTING 3 *circa* Fall 1997 (undated).

55. Excellence in Education Act, RSMo. § 160.251, H.B. No. 463.

56. NATIONAL CENTER FOR HOME EDUCATION, *supra* note 54, at 3.

57. 20 U.S.C. § 9010 (1994).

58. *The Third International Mathematics and Science Study* (visited March 15, 1998) <<http://www.ams.org/notices/199605/comm-timss.html>>.

NAEP assessments are administered to a representative sample of students in the country, geographical regions, and states,⁵⁹ and no student takes an entire NAEP test in any subject matter or grade level.⁶⁰ NAEP results are used to compare aggregate national, and in many instances, state scores with those of the country as a whole. The academic subject areas tested vary from year to year and include reading, writing, math, and science.⁶¹ There is express statutory authorization to fund NAEP.⁶²

The Third International Mathematics and Science Study (TIMSS), developed and administered by the International Association for the Evaluation of Educational Achievement, takes place in nearly fifty different countries.⁶³ This international comparative survey of education tests a representative sample of nine-year-olds, thirteen-year-olds, and students in their last year of secondary school in the areas of mathematics and science.⁶⁴ States can use TIMSS to compare the achievement of their students to that of students in all of the nations participating in the study.⁶⁵ International assessments such as TIMSS are authorized under the National Center for Education Statistics legislation.⁶⁶

D. Students are already tested enough.

With the plethora of existing state and commercial standardized tests available, implementation of a national test would increase the already heavy testing burden students bear annually. According to Boston College's Center for the Study of Testing, children are already overtested, taking between three and nine standardized tests a year.⁶⁷ Totaling state-mandated assessments, district-run programs, tests for special education students and college admissions exams, the Center found that teachers give somewhere between 140 million and 400 million standardized tests annually.⁶⁸ Hence, it is no surprise that

59. 20 U.S.C. § 9010(b)(1) (1994).

60. *About NAEP* (visited October 15, 1997) <<http://www.nagb.org/abtnaep.html>>.

61. *Redesigning the National Assessment of Education Progress* (visited October 15, 1997) <<http://www.nagb.org/policy/.html>>.

62. 20 U.S.C. § 9012(b) (1994).

63. *The Third International Mathematics and Science Study*, *supra* note 58.

64. *Id.*

65. *Id.*

66. See 20 U.S.C. § 9003(a)(6) (1998) ("The duties of the Center are to collect, analyze, and disseminate statistics and other information related to education in the United States and other nations, including . . . acquiring and disseminating data on educational activities and student achievement in the United States compared with foreign nations.").

67. Mary Beth Marklein, *Educators Ask Whether Effort is Paying Off*, USA TODAY, October 7, 1997, at 1A.

68. *Id.*

American students take more standardized tests than their European counterparts.⁶⁹

Mandatory testing of our nation's students takes a toll on school time and resources, consuming about 20 million school days and somewhere between \$700 million and \$900 million in expenditures each year.⁷⁰ The National Center for Fair and Open Testing (FairTest) has criticized the proliferation of testing activities in this country. In an August 1997 study, FairTest found that the "state testing burden is often too heavy, with students repeatedly tested in the same subjects. A few states test students in almost every grade. For accountability purposes, such extensive testing is not necessary and diverts valuable instruction time."⁷¹

Several state education officials agree with this assessment. Barbara Lawrence, Utah's coordinator for evaluation and assessment, has said that the President's testing proposal "introduces more testing into our system and is not worth the effort or the funds."⁷² Even one member of President Clinton's Voluntary National Test committees has admitted that many experts believe there is already too much testing of children.⁷³

Where does all this testing get us? As Chairman Bill Goodling of the House Education and Workforce Committee has aptly said, "if you are trying to fatten cattle, they don't get fatter by getting weighed one more time."⁷⁴ If you are trying to educate students, they don't get smarter by being tested one more time. Students not only have the regular tests of their instructional regime, they also have three to nine other tests that interfere with instructional time. And the test results are telling us pretty clearly where we are educationally. We know there is much room for improvement, but like weighing the cattle one more time will not make them fatter, testing the students one more time will not make them smarter.

VI. THE REAL DANGERS OF NATIONAL TESTING

If I were to try to rank the responsibilities of a culture, I would have to rank very close to the top of the list the responsibility to prepare the next gen-

69. CONGRESS OF THE UNITED STATES, OFFICE OF TECHNOLOGY ASSESSMENT, EXAMINATION SYSTEMS IN THE EUROPEAN COMMUNITY: IMPLICATIONS FOR A NATIONAL EXAMINATION SYSTEM IN THE UNITED STATES (1991).

70. Renalda Mack Hunsicker, *Standardized Testing: What's It Worth*, TEACHERS IN FOCUS, (1994).

71. Fair Test Organization, *New State By State Survey Concludes Most Assessment Systems Need Major Changes; States Just "Tinkering at the Edges of Reform,"* (visited Sept. 29, 1997) <<http://fairtest.org/pr/tstkdspr.htm>>.

72. *States Still Ambivalent About National Tests*, 39 EDUCATION U.S.A. 8 (1997).

73. Mark Pitson & Linda Jacobson, *Hearings Draw Few, But Varied, Remarks*, EDUC. WK. (visited on Feb. 25, 1999) <<<http://edweek.org>>>.

74. 141 CONG. REC. H341 (daily ed. Feb. 5, 1998)(statement of Rep. Bill Goodling).

eration to be successful. It is vital that our nation's children receive the best education possible. While I believe that the President's intentions in proposing a national test for our children are well-meaning, I feel strongly that his proposal would in fact be a recipe for disaster for education in this country.

A. *Federal testing would take away parental involvement and local control, as it would result in a national curriculum.*

A federal, one-size-fits all test, designed by a group of bureaucrats in Washington, would threaten two of the most important cornerstones in education: parental involvement and local control.

1. The importance of parental involvement and local control in improving children's academic achievement.

As Governor of Missouri, I adopted the slogan "Success in School is Homemade," to stress the importance of parental involvement in a child's education.⁷⁵ I had learned the importance of parental involvement from my work with the Education Commission of the States. This is a group of officials, legislators, governors, and school officials across America that come together to share information and exchange ideas about education. Our Commission discovered that the single most operative condition in student educational achievement is the involvement of parents. Several studies demonstrate the significance of parental involvement in their child's education.

One study out of Chicago found that family involvement improved elementary school children's performance in reading comprehension.⁷⁶ The study tracked 826 first through sixth grade students in a city-wide program aimed at helping parents create academic support conditions in the home. The superintendent, principal, teacher, parents, and student signed a contract in which the parents stipulated that they would provide a special place in the home for study, encourage the child through daily discussion, attend to the student's progress in school, compliment the child on gains, and cooperate with the teacher in providing all of these things properly. After one year, students who were "intensively exposed" to the program improved .5 to .6 grade equivalents in reading comprehension on the Iowa Test of Basic Skills over students less intensively involved in the program.⁷⁷

75. The major program goals of "Success in School is Homemade" were to provide practical ideas about ways parents can help children learn at home and to develop a positive climate throughout the school district that encourages strong home-school partnerships. A WORKING MISSOURI: THE ASHCROFT YEARS, 1985-1993, at 42.

76. H. J. Walberg, R. E. Bole, & H. C. Waxman, *School-Based Family Socialization and Reading Achievement in the Inner-City*, 17 PSYCHOL. IN THE SCHOOLS 509-514 (1980).

77. *Id.*

A 1989 national survey determined that parent involvement is more important in high school student achievement than parent education levels or income level.⁷⁸ The study used data from the 1980 *High School and Beyond* national survey conducted by the National Center for Educational Statistics, particularly focusing on 11,227 seniors who participated in the 1980 survey and in the 1986 follow-up survey.⁷⁹ The report found that, although parent education level and income are associated with higher achievement in high school, when socio-economic status is controlled, only parental involvement during high school had a significant positive impact on achievement.⁸⁰ Students of parents who were highly involved during their high school education are more than three times as likely to obtain a bachelors degree than their counterparts whose parents were not very involved.⁸¹

A 1993 study tracking two elementary schools in Maryland and California showed how a program focusing on parental involvement helped produce significant gains in student achievement.⁸² The schools implemented a “partnership” program which emphasized two-way communication and mutual support between parents and teachers, enhanced learning at both home and school, and advocated joint decision making between parents and teachers.⁸³

Students at Columbia Park School in Prince George’s County, Maryland, who had once lagged far behind national averages, began performing above the 90th percentile in math and above the 50th percentile in reading after implementing the partnership program.⁸⁴ In its fourth year of the same program, the Daniel Webster School in Redwood City, California, showed meaningful gains in student achievement compared with other schools in the district.⁸⁵ Webster students increased their average California Test of Basic Skills math scores by 19 percentile points, with all grades performing above grade level. In language arts, most classes improved at least 10 percentile points.⁸⁶

78. Eva Eagle, *Socioeconomic Status, Family Structure, and Parental Involvement: The Correlates of Achievement*, in A NEW GENERATION OF EVIDENCE: THE FAMILY IS CRITICAL TO STUDENT ACHIEVEMENT (Anne T. Henderson & Nancy Berla eds., 1994).

79. *Id.*

80. *Id.*

81. *Id.*

82. Susan McAllister Swap, *Developing Home School Partnerships: From Concepts to Practice*, in A NEW GENERATION OF EVIDENCE: THE FAMILY IS CRITICAL TO STUDENT ACHIEVEMENT, *supra* note 78, at 144-146.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

An increase in parental involvement also led to significant gains in student academic achievement in Mississippi elementary schools.⁸⁷ In 1989, seven school districts implemented the Quality Education Program (QEP), which was “designed to increase student success in school by increasing parent involvement.” The QEP program included: (1) training of teachers and administrators in effective school-to-home communication strategies; (2) parent seminars to provide parenting skills and home support for the child’s education; (3) home-school activities, including Back to School Night, weekly student schoolwork folders, and newsletters for parents; and (4) school-community programs and leadership programs that involved community and business leaders with students.⁸⁸ Between the 1988-89 school year (the year before the QEP program was implemented) and the 1990-91 school year, the 27 participating schools, which served 16,000 elementary students, showed a 4.5 percent increase in test scores over control schools.⁸⁹

Based upon the wealth of evidence, the importance of parental involvement in a child’s education cannot be denied. Even President Clinton’s Department of Education has acknowledged this principle:

“When families are involved in their children’s education in positive ways, children achieve higher grades and test scores, have better attendance at school, complete more homework, demonstrate more positive attitudes and behavior, graduate at higher rates, and have greater enrollment in higher education.”⁹⁰

We also know that local control has been a cornerstone of education since our country’s inception and that our nation’s founders intended for education to be a local, rather than federal responsibility. Experience has shown that the element of local control is a key factor in educational success. Former Governor George Allen of Virginia, a state which has developed widely acclaimed standards of learning for english, mathematics, science, history, and social studies, has stated the importance of educational reform at the grassroots level: “If there is one important lesson we have learned during our efforts to set clear, rigorous and measurable academic expectations for children in Virginia’s public school system, it is that effective education reform occurs at the grassroots local and State level, not at the federal government level.”⁹¹ Similarly, Governor Ed Schafer of North Dakota, who has described local control

87. Herb Thompson, *Quality Education Program/Mississippi: Program Evaluation Panel Report*, in A NEW GENERATION OF EVIDENCE: THE FAMILY IS CRITICAL TO STUDENT ACHIEVEMENT, *supra* note 78, at 147-148.

88. *Id.*

89. *Id.*

90. U.S. DEPT. OF EDUCATION, STRONG FAMILIES, STRONG SCHOOLS (1994).

91. Letter from George Allen, Governor of Virginia, to Bill Goodling, U.S. Rep. and Chairman of the House of Representatives Education and Workforce Committee (July 29, 1997).

as being the “most successful quality” of education, has warned that “the responsibility for curriculum development and student learning must remain at the state and local level.”⁹²

As a former Governor who made education a top policy priority during my administration, I understand fully the value and necessity of local control. Such a concept is essential to a state’s ability to design legislation that is responsive to the needs and desires of its local communities.

2. Who controls the educational decisions is crucial.

Looking at the positive effects of parental involvement and local control in our children’s educational success brings us to the most fundamental question in the education debate: Who will determine what our children should learn and how they are taught?

Theodore Sizer, a liberal critic of the national standards agenda, acknowledges that *who* sets the standards and controls the curriculum is crucial:

“The ‘who decides’ matter is not a trivial one. Serious education engages the minds and hearts of our youngest, most vulnerable, and most impressionable citizens. The state requires that children attend school under penalty of the law, and this unique power carries with it an exceedingly heavy burden on policymakers to be absolutely clear as to ‘who decides’ and why that choice of authority is just. We are dealing here with the fundamental matter of intellectual freedom, the rights of both children and families.”⁹³

Over 30 years ago, education professor Harold Hand recognized the significance of the control question in education:

“The question before us, then, . . . is whether the national interest would best be served (a) by embarking on a national achievement testing program in the public schools at the certain cost of relinquishing the principles of states and local control and of consent as these now apply to the public schools, or (b) by holding to these principles at the certain cost of losing whatever the potential values unique to such a national achievement testing may be.”⁹⁴

Most of us would agree that education has traditionally been a state and local issue. Our country is made up of nearly 16,000 local schools districts which are overseen by local school boards, made up of members of the community. Parents and teachers have the opportunity to provide significant input into educational decisions. Nearly every state has its own state board of edu-

92. STATE OF N. DAKOTA, OFFICE OF THE GOVERNOR, *Schafer Urges Caution on Clinton’s National Testing Plan* (Sept. 15, 1997).

93. Theodore R. Sizer, *Silences*, CURRENT 33 (1996).

94. Harold Hand, *Recipe for Control by the Few*, 30 THE EDUC. F. 3, 271-72, (1966)(discussing whether the federal government should institute the National Assessment of Educational Progress (NAEP)).

cation. For years, important decisions regarding curriculum have been made at the state and local levels.

Based upon our nation's history and our knowledge that parental involvement and local control are critical to the success of education, one would think that we would want to advance proposals that preserve this important principle. However, the President's national testing initiative would destroy these proven foundations for success. His proposal would create a national curriculum, which would in turn drive what is taught across our nation and leave parents, teachers, and school boards helpless to intervene.

3. Why national tests would lead to a national curriculum.

There is wide consensus among teachers, administrators, and education experts that "what gets tested is what gets taught." Dr. Bert Green, professor of psychology at Johns Hopkins University, notes: "The strategy seems to be to build a test that represents what the students should know, so that teaching to the test becomes teaching the curriculum that is central to student achievement."⁹⁵ The Association for Childhood Education International agrees, saying "[w]hat we are seeing is a growing understanding that teaching to tests increasingly has become the curriculum in many schools"⁹⁶ The director of the Iowa Basic Skills Testing Program has explained that there is a history of attempting to use tests to change curricula.⁹⁷

The practice of teaching to the test would no doubt occur with the proposed national reading and math tests. The Missouri State Teachers Association, comprised of nearly 40,000 members and the largest teachers association in my state, has warned: "The mere presence of a federal test would create a de facto federal curriculum as teachers and schools adjust their curriculum to ensure that their students perform well on the tests."⁹⁸ Marc Bernstein, the superintendent of the Bellmore-Merrick Central High School District in Seattle, has echoed this view: "I know that the president has not recommended a national curriculum, only national testing, but educators know all too well that 'what is tested will be taught.'"⁹⁹

Even the Clinton Administration and the Department of Education have conceded that the President's national testing proposal would affect school curriculum. Deputy Secretary of Education Michael Smith has said: "[T]o do

95. Bert E. Green, *Setting Performance Standards: Contents, Goals and Individual Differences*, address before the William H. Anghoff Memorial Lecture Series (1995).

96. Vito Perrone, *On Standardized Testing*, CHILDHOOD EDUCATION (1991).

97. Millicent Lawson, *Experts Question Value of New National Tests*, EDUC. WK. (visited Sept. 3, 1997) <<http://edweek.org/htbin/fastwe>>.

98. Attachment to Letter from Kent King, Executive Director, Missouri State Teachers Association, to John Ashcroft, U.S. Senator, Missouri, (Sept. 30, 1997).

99. Marc F. Bernstein, *The Tyranny of Tests*, N.Y. TIMES, Oct. 23, 1997.

well in the national tests, curriculum and instruction would have to change.”¹⁰⁰ During an October 20, 1997 press briefing, Department of Education Secretary Riley, when asked if the national tests would influence curriculums, responded “absolutely.”¹⁰¹ Make no mistake: the President knows that his federal testing proposal would lead to a federal curriculum.

Conservatives have not been the only ones to express fears that a national test would lead to a national curriculum. When President Carter was considering a national test proposed by Senator Claiborne Pell in 1977, Joseph Califano, Carter’s Secretary of Health, Education, and Welfare, warned that: “Any set of test questions that the federal government prescribed should surely be suspect as a first step toward a national curriculum In its most extreme form, national control of curriculum is a form of national control of ideas.”¹⁰²

While I am not sure that I would go as far as Mr. Califano, I believe it is clear that we want parents, teachers, and local school boards to be in charge of what is being taught and how it is taught in our local schools, especially when they are being asked to pay 93 cents out of every dollar to education.¹⁰³

4. Why is a national curriculum detrimental?

A national curriculum destroys the ability of parents, teachers, and school boards to have involvement in the educational decisions of their children. Instead, curriculum decisions will be dictated from Washington by a *de facto* national school board that writes the tests, and hence determines the curriculum. States, local school districts, parents, and teachers will be denied the opportunity to develop curricula and tests that meet the specific needs of their children.

Professor Harold Hand recognized this dangerous result: “A national testing program is a powerful weapon for the control of both purposes and content of curriculum, no matter where in the nation children are being taught, and so leads to increasing conformity and restriction in curriculum.”¹⁰⁴

Lyle V. Jones, research professor in psychology at the University of North Carolina at Chapel Hill, has predicted that the result of the national tests will

100. June Kronholz, *Clinton’s Plan for Tough Student Tests is Expected to Bring High Failure Rate*, WALL ST. J., Feb. 6, 1997, at A16.

101. Transcript of Press Briefing by Education Secretary Riley, Oct. 20, 1997, 1997 WL 13913811 *13.

102. George F. Madaus & Thomas Kellaghan, prepared for Office of Technology & Assessment, *Examination Systems in the European Community: Implications for a National Examination System in the U.S.*, April 1991, at 6.

103. See WAYNE RIDDLE, JAMES STEDMAN & PAUL IRWIN, CRS ISSUE BRIEF FOR CONGRESS, ELEMENTARY AND SECONDARY EDUCATION: RECONSIDERATION OF THE FEDERAL RULE BY THE 106TH CONGRESS 3 (1999).

104. Harold C. Hand, *National Assessment Viewed as the Camel’s Nose*, PHI DELTA KAPPAN 8-13 (1965).

be to “focus . . . on getting kids to perform well on the test rather than meeting a richer set of standards in mathematics learning.”¹⁰⁵

Test experts George Madaus and Thomas Kellaghan point out that Great Britain’s attempt to provide a national exam “with a wide-achievement span seems to have been unsuccessful not only in the case of lower-achieving students but is reported . . . to have lowered the standards of the higher-achieving students”¹⁰⁶

In effect, say these experts, a national test will end up lowering achievement standards and restricting the ability of teachers to provide a rich learning environment for students.

If a national test is implemented, it will drive the curriculum being taught, because teachers will teach to the test. No longer will parents, teachers, and school boards have a meaningful say in what their children should learn — the national test will make that decision. No longer will states and local communities be able to tailor education programs to address the needs of their children; instead they will be forced to march in step to the orders sent down from a national school board. The standards and assessments being developed in the fifty states will be scrapped in favor of a Washington-imposed, one-size-fits-all curriculum that will turn out to be one-size-fits-none. Our best resources for educational success, parental involvement and local control, will remain untapped, as our children suffer.

Why do we want this national test, if it is a detriment to our nation’s educational system? The bottom line is we do not. Instead, education should be focused at the local level, where parents, teachers, and school boards can have the greatest opportunity to be involved in the development of school curriculum and testing. The federal government should not impose its will on parents, teachers, and school boards about the education of their children.

While local experimentation with new techniques is what the laboratories of the states is all about, national experimentation with new educational techniques invites a national disaster.

105. *Experts Question Value of New National Tests*, 17 EDUC. WK., (visited Sept. 3, 1997) <<http://edweek.org/htbin/fastwe>>.

106. George F. Madaus & Thomas Kellaghan, prepared under contract for the Office of Technology and Assessment, *Student Examination Systems in the European Community: Lessons for the United States*, June 1991, at 21.

B. Ignoring that basic skills are the most important things for students to learn, the proposed national tests contain high-risk educational philosophies and fads.

1. The Proposed Math Test

The chairman of President Clinton's math panel, John Dossey,¹⁰⁷ served on the 1989 National Council of Teachers of Mathematics (NCTM) that criticized American schools' "long-standing preoccupation with computation and other traditional skills."¹⁰⁸ Dossey and the NCTM are advocates of what has been described as "whole math," which teaches our children that the right answers to basic math tables are not as important as an ability to justify incorrect ones.¹⁰⁹ According to the NCTM, the ability to add, subtract, multiply and divide should be replaced, it seems, by basic calculator skills.¹¹⁰ Whole math has been described as "an instructional scheme based on the idea that knowledge is only meaningful when we construct it for ourselves."¹¹¹ The "whole math" textbooks emphasize "multiculturalism" and downplay problem-solving.¹¹²

The documented consequence of using "whole math" has been a decline in math performance. One year after the Department of Defense Dependent Schools (DoDDS) began using whole math, the median percentile computation scores on the Comprehensive Test of Basic Skills, taken by more than 37,000 DoDDS students, dropped by 14% for third graders, 20% for fourth graders, 20% for fifth graders, 17% for sixth graders, 17% for seventh graders, and 8.5% for 8th graders.¹¹³

Marianne Jennings, a professor at Arizona State University, found that her eighth grade daughter could not solve a math equation after being taught by the textbook entitled "Focus on Algebra," which she dubbed as "MTV Math."¹¹⁴ The expert who conceptualized this textbook was none other than

107. Christopher Wills, *ISU Professor Overseeing Creation of National Math Test*, ASSOCIATED PRESS, Sept. 16, 1997.

108. Lynne V. Cheney, *Creative Math, or Just "Fuzzy Math"?: Once Again Basic Skills Fall Prey to a Fad*, N.Y. TIMES, Aug. 11, 1997, at A1.

109. *Id.*

110. Lynne V. Cheney, *Exam Scam: The Latest Education Disaster: Whole Math*, THE WK. STANDARD, Aug. 4, 1997, at 26 [hereinafter *Exam Scam*].

111. *Id.* at 25.

112. Marianne M. Jennings, *MTV Math Doesn't Add Up*, WALL ST. J., Dec. 17, 1996, at A22.

113. DODEA, News Release, *Comprehensive Test of Basic Skills (CTBS) Scores Released*, June 7, 1996.

114. Jennings, *supra* note 112.

John Dossey.¹¹⁵ Senator Robert Byrd of West Virginia, after examining the "Focus on Algebra" whole math text book, called it "whacko algebra."¹¹⁶

There is perhaps no better example of tests dictating curriculum than the whole math phenomenon. Existing tests are designed to evaluate *real* math. Not surprisingly, students steeped in whole math perform poorly on traditional math tests. The only hope for whole math advocates like Dossey is to change the tests so that whole math students will perform well and other schools will change their curriculum.

The proposed national math test produced by Dossey and his math panel for the Administration is steeped in the "whole math" philosophy.¹¹⁷ A group of five hundred mathematicians from around the nation wrote a letter to President Clinton criticizing the President's math panel for relying upon the NCTM standards, which have raised concern from many mathematics professional associations, as the NCTM standards represent only one point of view of math.¹¹⁸ The group of mathematicians also claimed that the proposed test fails to test basic computational skills, under the assumption that all students will know them.¹¹⁹

Richard Schoen, a Stanford University mathematics professor, questioned the proposed math test during public hearings held in August 1997, stating that the draft test specifications did not "give proper emphasis to technical skills, particularly computational skills." Schoen noted that skills such as determining ratios, probability, and exponents were absent from the draft, which instead focused on problems that foster a more conceptual understanding of math.¹²⁰

2. The Proposed Reading Test

The proposed national reading test produced by President Clinton's reading committee is also fraught with problems. The October 1997 test draft indicates that the test designers rely on the assumption that students have already mastered basic reading skills, such as the ability to decode unknown words.¹²¹ Hence, the test may not be testing for this basic skill.

The test also focuses on assessing students' ability to read for "literary experience," which includes determining a reader's judgments of and reactions to

115. Cheney, *Exam Scam*, *supra* note 110, at 29.

116. 143 CONG. REC. S5393 (daily ed. June 9, 1997)(statement of Sen. Robert Byrd).

117. Cheney, *Failing Grade*, *supra* note 35.

118. Letter from Henry Adler, Former President, Mathematical Association of America, et al., to William Jefferson Clinton, President, U.S.A. (Aug. 26, 1997).

119. *Id.*

120. Pitson & Jacobson, *supra* note 73.

121. U.S. DEPT. OF EDUCATION, ITEM AND TEST SPECIFICATIONS FOR THE VOLUNTARY NATIONAL TEST IN 4TH-GRADE READING 11 (1997).

the text.¹²² Examples of the proposed reading passages are filled with questions asking the reader what the story characters feel or think about situations, and also ask the reader how he or she feels about it.¹²³ How can you determine what the right answers are to these types of questions?

Nearly forty percent of 4th grade students cannot read at the “basic” reading level, and 70% percent of them cannot read at a “proficient” level.¹²⁴ A test which assesses feelings won’t help our kids learn to read, but instead will gauge their ability to understand political correctness. This will do nothing to equip them with the necessary skills to decode words and become proficient readers.

The Chairperson of the President’s reading panel is Dorothy Strickland,¹²⁵ a proponent of another unproven educational method called “whole language.”¹²⁶ The whole language theory holds that children learn to read the same way they learn to speak. They are “born with the ability to read and all that is required is surrounding them with books, read to them, and let them read to themselves, using context, pictures, and the beginning and ending letter sounds of words to guess their meanings.¹²⁷ Quite simply, children are to learn words and language as a whole, without first ensuring that they know how to decode words. On the other hand, the phonics approach teaches children the letters and letter combinations that make up the forty-four sounds in our language. With these tools, children learn to read by sounding out words.

Recent studies conducted by the National Institute of Child Health and Human Development (NICHD) have determined that the most effective method of teaching children to read is the phonics, rather than the whole language approach. The NICHD noted that our children have been failing in reading because we have stopped using the proven method of teaching children to decode words.¹²⁸

It is puzzling to me why the President would appoint to head his National Reading Test Panel an individual who advocates an unproven teaching method over one that has demonstrated success for many years. Further, it is frighten-

122. *Id.* at 12-13.

123. *Id.* at 85-89, 119-23.

124. NATIONAL CENTER FOR EDUCATION STATISTICS, NAEP 1998 READING REPORT CARD FOR THE NATION AND THE STATES 20 (1999).

125. Henry Stern, *New Jersey Woman Chairs Committee Devising National Reading Test*, ASSOCIATED PRESS, Sept. 15, 1997.

126. Richard L. Colvin, *Teachers Speak Out In Favor of Reading Aloud Education*, L.A. TIMES, May 5, 1995, at A3.

127. See Robert W. Sweet, Jr., *Don't Read, Don't Tell, Clinton's Phony War on Illiteracy*, 38 POLICY REVIEW (1997).

128. The Center for the Future of Teaching and Learning, *Thirty Years of NICHD Research: What We Now Know About How Children Learn to Read*, 15 EFFECTIVE SCH. PRACTICES 3, 33-34, 37 (1996).

ing to imagine how our nation's children would sink deeper into illiteracy as a result of a national reading test that would perpetuate a "whole language" curriculum throughout the nation.

3. NAGB Agrees

Not surprisingly, the board charged with overseeing the limited development activities allowed by Congress has reached the same conclusions I have about the content of the proposed math and reading tests developed by the President's national testing committees. In March 1998, the National Assessment Governing Board (NAGB) announced that "credit would only be given for correct answers on the national math tests, and that there should only be limited use of calculators."¹²⁹ The Board also said that the reading test should ask no questions about students' "personal experiences, attitudes, or feelings."¹³⁰ NAGB's determinations simply confirm what many of us in Congress have been saying all along about the quality of the President's national testing proposal.

C. *The national tests will not be truly "voluntary."*

Although the President has stated that his national tests would be voluntary, experience teaches the contrary. What is described as "voluntary" often becomes "mandatory" when federal programs and federal funding are involved.

For example, the 55 mph speed limit handed down by Congress was voluntary, in theory. In practice, however, the speed limit was universally adopted because federal highway funds were contingent upon states' "voluntary" cooperation.

What is true for speed limits is also true for education. The *Goals 2000: Educate America Act of 1994* legislation,¹³¹ which claims to be "voluntary" for state participation, is laden with mandates. Supporters of this legislation repeatedly promised that it was not intended to control or direct education, only to support and encourage reform. However, the *Goals 2000* Act uses the word "will" over 40 times in describing what states and local districts are expected to do to accomplish the Act's goals.¹³² To obtain federal funds, states must prove that they have in place a plan that incorporates all of these requirements.¹³³

129. Carol Innerst, *Panel Gets Tough on National Testing*, WASH. TIMES, March 13, 1998, at A7.

130. *Id.*

131. Goals 2000: Educate America Act, Pub. L. No. 103-227 (1994).

132. Lance T. Izumi & Natalie Williams, *Goals 2000 and California Education: Devolution in Retreat*, Oct. 16, 1995, at 1.

133. *Id.*, at 4, 6-7.

William Safire has also expressed his skepticism toward the “voluntary” nature of the Administration’s testing proposal: “We’re only talking about math and English, say the national standard-bearers, and shucks, it’s only voluntary. Don’t believe that; if the nose of that camel gets under the tent, the hump of a national curriculum, slavish teaching to homogenizing tests, and a black market in answers would surely follow.”¹³⁴

Even President Clinton himself has indicated that he doesn’t really intend for his voluntary tests to be “voluntary.” During remarks to a joint session of the Michigan Legislature in March of 1997, the President said: “I want to create a climate in which no one can say no, in which it’s voluntary but you are ashamed if you don’t give your kids the chance to do [these tests].”¹³⁵ In light of the President’s comments, and of past experience, the so-called voluntary national tests would be forced upon the states and students across the nation.

VII. OPPOSITION TO NATIONAL TESTS IS WIDESPREAD.

Throughout the course of this debate, President Clinton has boasted that the majority of Americans support his national testing proposal.¹³⁶ He claims that he merely wants to provide what the public is demanding. While people may initially believe that national testing is a good idea, their opinions change when they are given more of the facts.

A *Wall Street Journal/NBC News* national poll found that 81% of adults favor President Clinton’s initiative, with almost half of the public strongly in favor and only 16% opposed.¹³⁷ However, when asked whether the federal government should establish a national test — with questions spelling out the issue of a standard of national accountability vs. ceding too much power to the federal government — the public splits 49% to 47%, barely in favor.¹³⁸

In reality, fewer than half of those polled, when given the facts, support the President’s testing initiative. With just a bit of explanation, the so-called 81 percent endorsement crumbles. When the real facts of the proposed federalized test mandated from bureaucrats in Washington become known, the American people know that this is not a plan for greatness. Rather, this is a plan for disaster. This is considerably like the President’s health care proposal

134. William Safire, *Flunk that Test*, NEW ORLEANS TIMES, Oct. 1, 1997, at B7.

135. President William J. Clinton, U.S.A., Address to the Michigan State Legislature, 1997 WL 10084638 (Mar. 10, 1997).

136. See, e.g., President William J. Clinton U.S.A., Radio Address to the Nation, Aug. 30, 1997; Melissa Healy, *Clinton Urges National School Test in Education*, L.A. TIMES, Aug. 31, 1997; Statement by President William J. Clinton, U.S.A., on the House’s Vote to Prohibit the Development of Voluntary National Tests, Sept. 16, 1997.

137. *Education Becomes the Paramount Issue: Clinton’s Initiatives Gain Approval, But People Split on a National Test*, WALL ST. J., Mar. 14, 1997, at R4.

138. *Id.*

which received significant support early on, but the more people learned, the less they liked it.

Apprehension about the President's national testing proposal has not simply come from one segment of society. To the contrary, the fact that opposition is from groups that span the entire array of the political spectrum demonstrates the universal concern that the Administration's proposal is besieged by problems. Organizations ranging from the NAACP and People for the American Way¹³⁹ to the Christian Coalition and Concerned Women for America expressed either opposition to or concerns with the national testing proposal.¹⁴⁰ While some groups have expressed concern that the Administration's proposal would allow discrimination against students with limited English proficiency and fail to provide safeguards against the invalid and inappropriate use of test results,¹⁴¹ others fear the proposal would lead to a national curriculum and control of the content of textbooks and teaching materials.¹⁴²

Various state government officials have also voiced opposition to the Clinton federalized testing proposal. Former Governor Terry Branstad of Iowa has said that education has always been and should remain a state and local issue.¹⁴³ He points out that virtually all states are working on state or local standards, and that, in the end, the national test would not measure these locally adopted standards.¹⁴⁴ Former Governor George Allen, whose state of Virginia has developed nationally acclaimed standards of learning for english, mathematics, science, history, and social studies, had made clear that "[w]e do *not* need another test that takes time from our classrooms, adds an additional cost to our States and provides no new information to strengthen educational

139. Letter from Wade Henderson, Executive Director, Leadership Conference on Civil Rights, et al., to President William J. Clinton, U.S.A. (Sept. 4, 1997). The organizations comprising the Leadership Conference on Civil Rights were the Mexican American Legal Defense and Education Fund, the NAACP Legal Defense and Education Fund, the National Council of La-Raza, the Lawyers' Committee for Civil Rights, the National Women's Law Center, People for the American Way, the American Association of University Women, and the Center for Law and Education.

140. Letter from Bill Goodling, U.S. Representative and Chairman of the House Education and the Workforce Committee, to members of the U.S. Congress (Sept. 3, 1997)(listing a number of groups opposing the President's testing proposal, including the Home School Legal Defense Association, the American Association of Christian Schools, American Family Association, Christian Coalition, Concerned Women for America, Eagle Forum, Family Research Council, Family Life Seminars, Coalition for America, National Right to Read Foundation, Traditional Values Coalition, American Association of School Administrators, the NAACP Legal Defense and Educational Fund, the National PTA, and Project Twenty-One).

141. Letter from Wade Henderson, *supra* note 139.

142. NATIONAL CENTER FOR HOME EDUCATION, *supra* note 54.

143. Press Release, Office of the Governor of Iowa (Sept. 9, 1997).

144. *Id.*

opportunities for our students.”¹⁴⁵ Governors Keating of Oklahoma and Schafer of North Dakota have expressed similar concerns.¹⁴⁶

Similarly, South Carolina’s State Superintendent of Education, a vocal critic of the President’s testing proposal, says that many states, such as hers, have put significant time and funding into developing a testing system that demonstrates how students perform against their own state standards and how they do in comparison to students in other states and throughout the country. Her chief concern is that Clinton’s national tests would be repetitive.¹⁴⁷ A spokesman for the Florida Department of Education echoed this concern, saying, “[w]e’ve just developed our own test, and we’re not going to give it up.”¹⁴⁸

Additionally, teachers throughout the nation oppose the President’s national testing proposal. A November 1997 survey done by the academic association Phi Delta Kappa found that nearly 70% of the teaching profession reject the President’s proposal.¹⁴⁹ What better authority to speak out on this issue than those individuals who work with students every day and understand the dangers of national tests?

Finally, respected education authorities disagree strongly with the Clinton proposal for federalized testing. Pointing to the disastrous results of the federal history and English language arts standards, Lynne Cheney, former chairperson of the National Endowment for the Humanities, argues that standards and tests should be set at the state level, rather than from Washington.¹⁵⁰ She warns that if Clinton’s national test “is the disaster that the record indicates it will be, the result could be a national calamity.”¹⁵¹

Former Secretary of Education Lamar Alexander has also expressed his opposition to the President’s proposal, calling the establishment of single, uniform tests a “dangerous notion.”¹⁵² Creating such a test, he says, would lead to a de facto national school board. Like so many others, Alexander points out that states are already developing rigorous academic standards and assess-

145. Letter from George Allen, Virginia Governor, to Bill Goodling, U.S. Representative and Chairman of the House Education and the Workforce Committee (July 29, 1997)(emphasis in original).

146. News Release, Governor Keating of Oklahoma (Sept. 10, 1997); Press Release, Governor Schafer of North Dakota (Sept. 15, 1997).

147. Press Release, South Carolina Department of Education (Sept. 16, 1997).

148. *States Still Ambivalent About National Test*, 39 EDUCATION USA 8, 3 (1997) quoting Brewster Brown, spokesperson for Florida Dept. of Education.

149. Jacques Steinberg, *Unlike Public, Teachers Oppose National Tests*, N.Y. TIMES, Nov. 12, 1997.

150. Cheney, *supra* note 35.

151. *Id.*

152. Lamar Alexander letter to Senator John Ashcroft (Oct. 23, 1997).

ments, contributing to the dynamic marketplace of tests Alexander has long advocated.¹⁵³

VIII. CONCLUSION

If our nation is to remain great, then we must ensure that our children receive the best education possible. Education reform must incorporate methods that have proven successful in helping students achieve high academic success.

The President's federal testing proposal would take away two of these proven methods in educating our children: parental involvement and state and local control. The federal government should not impose its will on school boards, parents, and teachers about the education of their children. Rather, educational decisions are best made at the state and local level, where parents have the greatest opportunity to be involved in the education of their children by participating in the development of school curriculum, standards, and testing.

Congress had the courage to stand for parental involvement and local control of schools by stopping the federal takeover of educational curriculum and teaching. Parental involvement and local control have been the hallmarks of our educational system since the nation's first days. We cannot pull the rug from beneath the pillars that have made education in America a success. The President's national testing proposal must continue to be rejected if we are to save the future of our children.

153. Lamar Alexander letter to Senator John Ashcroft (Oct. 23, 1997).