

Bull in the China Closet

The Federal Department of Education spent a budget-busting \$93.4 billion in 2006—more than three times the \$25.8 billion spent in 1992 and the \$35.5 billion spent when the present administration took office in 1991.

The result? Student SAT scores falling in many parts of the United States with a few “islands” showing some stability or making modest advances. *The Federal Bull rampaging in the education closet.* The more the expenditures and intrusion in education, the less or no improvement in learning skills show up in the classroom.

Now, Federal Education Secretary Margaret Spellings has proposed to extend the No Child Left Behind Act to higher education, with efforts to impose nationalized college testing through her National Commission on the Future of Higher Education (NCFHC), which issued its final report and recommended the new testing mandate. The present Congress has, thankfully, dragged its feet on this issue as Ms. Spellings is attempting a back door mandate by forcing college accreditation agencies to start demanding that the tests be imposed.

Accrediting agencies have been in existence for nearly 100 years, and colleges use them to examine their own performance outcomes and to demonstrate competence through such “outsider testimony.” The agencies have, for the most part, respected the mission and purpose of institutions they review. Since the Federal Government became a major source of funding for colleges, *the accrediting agencies are the gateway to the money*, and graduation from an accredited college is the gateway to job opportunities.

After several weeks of intense “negotiated rule making” between the Department of Education and the accrediting agencies, an impasse has been reached. The Department has asked a representative of one of the largest agencies to step down from the consulting panel because of her recalcitrance. The Department has threatened to impose common accreditation standards in accrediting without agreement from the accreditors. This is the opposite of competition and diversity.

Where in the U.S. Constitution is the language that gives the Federal Government the right to interfere in public education or to declare the necessity for a Department of Education? Former President Ronald Reagan attempted to dispose of the Department of Education, but was unsuccessful. Too many pigs at the trough. The Constitution leaves things such as education to the people or to the respective states.

Higher education in the United States is the best in the world with students from all over the globe wanting to attend these institutions. There are more than 2,000 accredited four-year colleges in the U.S. and their diversity and appeal has attracted highly competent and respected programs to the campuses. This free market of education has afforded students a wide choice of schools at which they can pursue their education and their goals in life.

Write or telephone your representatives in Congress and the Senate that now is the time for us to declare, “Federal hands off higher education.”

— Wally Reemelin
Excerpts, Wall Street Journal



Pork Sharing is Unconstitutional

James Madison is the acknowledged father of the Constitution. In 1794, when Congress appropriated \$15,000 for relief of French refugees who fled from insurrection in San Domingo (now Haiti) to Baltimore and Philadelphia, Madison wrote disapprovingly, “I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents” (James Madison, 4 Annals of Congress 179 [1794]). Today, at least two-thirds of a \$2.5 trillion federal budget is spent on the “objects of benevolence.” That includes Medicare, Medicaid, Social Security, aid to higher education, farm and business subsidies, welfare, ad nauseam.

A few years later, Madison’s vision was expressed by Representative William Giles of Virginia, who condemned a relief measure for fire victims. Giles insisted that it was neither the purpose nor a right of Congress to “attend to what generosity and humanity require, but to what the Constitution and their duty require.”

In 1827 Davy Crockett was elected to the House of Representatives. During his term of office a \$10,000 relief measure was proposed to assist the widow of a naval officer. Crockett eloquently opposed the measure saying, “Mr. Speaker: I have as much respect for the memory of the deceased, and as much sympathy for the suffering of the living, if there be, as any man in this House, but we must not permit our respect for the dead or our sympathy for part of the living to lead us into an act of injustice to the balance of the living. I will not go into an argument to prove that Congress has not the power to appropriate this money as an act of charity. Every member on this floor knows it. We have the right as individuals, to give away as much of our own money as we please in

charity; but as members of Congress we have no right to appropriate a dollar of the public money” (from his famous “Not Yours To Give” speech, originally published in *The Life of Colonel David Crockett* by Edward Sylvester Ellis).

Compared to today, yesteryear’s vision differs vastly in what congressional actions are constitutionally permissible. How might today’s Congress, President, and courts square their behavior with that of their predecessors? The most generous interpretation of their behavior I can give is their misunderstanding of Article I, Section 8 of the Constitution, which reads, “The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and *general welfare of the United States*.” Misuse of the General Welfare clause serves as warrant for Congress to do just about anything on which it can secure a majority vote.

The framers addressed the misinterpretation of this clause. Madison said in a letter to James Robertson, “With respect to the two words ‘general welfare’, I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creators.” Madison also said, “If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions.” Madison laid out what he saw as constitutional limits on federal power in Federalist 45, where he explained, “The powers delegated by the proposed Constitution to the federal

government are few and defined. . . to be exercised principally on external objects, as war, peace, negotiation, and foreign commerce.”

Thomas Jefferson explained in a letter to Albert Gallatin, “Congress has not unlimited powers to provide for the general welfare, but only those specifically enumerated.”

The Constitution of the State of California does not have a “general welfare” clause. Each county is governed by the laws of the State, unless its in a Charter County, which Placer County is, and then the charter governs county actions not preempted by the State.

Article XVI, Section 3, State Constitution states, “No money shall ever be appropriated or taken from the State Treasury for purpose or benefit of any corporation, association...or other institutions, not under exclusive control of the State.”

Section 5 states, “Neither the Legislature nor any county...shall ever make an appropriation, or pay from any public fund...or grant anything to...any religious sect, church, creed, or sectarian purpose, or help...any school...or other institution controlled by any...sectarian denomination whatsoever.”

Article 1, Section 7 (b), Privileges, states, “A citizen or class of citizens may not be granted privileges...not granted on the same terms to all citizens” (as amended 1979).

The Placer County Revenue Sharing program may be in violation of the State Constitution. Certainly it violates the Federal Constitution, as expressed by James Madison. The California Constitution really says that Supervisors must share revenues with everyone, not only some designated by one of them.

The League will welcome investigation
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