

Written Testimony of
Robert Scott
Before the
Education Committee of the Kansas House of Representatives

Mr. Chairman and members of the committee, my name is Robert Scott and I served as the Texas Commissioner of Education from 2007 until July of 2012. During my over 20 years of service at the state and federal level, I have been involved in a number of education reform efforts and multiple curriculum revisions in the state of Texas. My experience with the Common Core began when I was asked to agree to implement standards that had not yet been written. At the time, I rejected this request since I did not have the legal authority to do so and was skeptical of a movement to nationalize curriculum standards. Texas law requires our curriculum standards to be adopted by the elected State Board of Education with the direct input of teachers, parents and business representatives in our state.

Publicly, I took a “wait and see” approach and told proponents of this movement that I would examine the standards and if something truly remarkable came of such a process, that I would work to incorporate them into our state standards. It was later revealed that states would be prohibited from modifying these standards by more than 15% and it became clear to me that this was not about collaboration among the states, it was about control from the federal government and some reformers who are seeking to create national markets for education products and services. Even more troubling was the lack of transparency in the development of these standards. The names of those writing the standards were not initially released and because non-governmental entities were doing this work, there were no requirements for open meetings or open records. Many of the proponents of the Common Core have acknowledged the flawed process in the development of the standards but now urge their continued use despite these flaws. To use a legal metaphor, the proponents argue that we should ignore the “fruit of the poisonous tree” problem in this case since it was done with the best of intentions.

As you know, education policy has been a matter traditionally left to the states. The federal role has increased since the 1960’s and the enactment of the Elementary and Secondary Education Act which created the Title I funding program to supplement state efforts in serving economically disadvantaged children. Since that time, Congress has enacted a number of other versions of this Act and created the United States Department of Education. It is important to note that, in many of these legislative actions, there are specific prohibitions against federal involvement in state and local curriculum matters. The legislation that created the Department of Education, the General Education Provisions Act and No Child Left Behind all contain such provisions.

In an effort to sidestep these federal laws, the Department of Education appears to have simply started paying others to do that which it is prohibited from doing. While federal law prohibits the development of a national testing system, the creation of two national testing consortia was done simply by creating grant programs to do so even in the absence of congressional authorization. Additionally, states experiencing some of the worst economic conditions in many decades were enticed to adopt these standards through the potential award of grant funding under the Race to the Top program. To put this in perspective, I looked at the potential award to the state of Texas (\$700 million) as a sizable amount of money. However, given the scope of the Texas education system that serves nearly five million students, that funding would operate the Texas system for two days. In exchange, the Department of

Education would have control over our curriculum, teacher evaluations and data systems for years to come. Ultimately, Governor Perry and I decided that this was not a wise decision for our state.

In response to Texas' decision to not participate in the Race to the Top competition, the Department of Education announced that it would seek funding from Congress to bypass states and provide grants directly to local school districts. Subsequently, the district Race to the Top competition was announced and two charter schools in Texas have secured grants. Additionally, the department announced that it would offer conditional waivers to provisions of the No Child Left Behind Act to states that agreed to adopt the Department's education reform measures, including the adoption of College and Career Readiness standards such as the Common Core. The underlying philosophy appears to be that which Congress has prohibited them from doing can be done under the waiver authority granted to the Secretary of Education. However, I know of no provision of law that allows the Secretary to waive prohibitions placed on the Department of Education by Congress. One state, California, attempted to bypass the conditional waiver by applying for a general waiver as authorized by law. Indeed, many in that state were concerned about federal control over teacher evaluations but wanted relief from the mandates of No Child Left Behind. Recently, that request was denied by the Department of Education.

Proponents of the Common Core argue that it will be better for students if we standardize curriculum across the states due to mobility and to ensure consistency of implementation in schools and classrooms. Indeed, there is some merit to this argument; however the loss of local control could result in state and local entities to lack the ability to make adjustments deemed necessary by their communities. Additionally, state and local governments will be called on to pay many of the costs associated with implementing these standards. I estimated that for Texas to abandon its current College and Career Readiness Standards and switch to the Common Core, the cost of buying new textbooks, providing professional development and implementing a new testing system could approach \$3 billion. Furthermore, since there is currently no process for revising or rewriting these standards, future costs and the schedule by which they will be demanded would be completely out of the control of states.

The loss of local control regarding curriculum standards is indeed troubling, but the practical aspects of running an education system made adopting such a system impractical for Texas. For instance, when setting the calendar for our state assessment system, we have to take into consideration a number of issues that impact local communities. Local decisions on when to allow students out on spring break, Texas Public Schools Week, various holidays and local events such as the Houston Live Stock Show and Rodeo are all considered so as to set the testing schedule in a way that does not hinder local community traditions. I cannot imagine how the federal government will respect such traditions when setting a testing schedule in 46 states. Currently in Texas, there is a well-publicized backlash against standardized testing. Adding a new federal test would only exacerbate that backlash in my opinion.

In conclusion, the effort to nationalize curriculum standards is based on the idea that uniformity leads to better student performance. However, these curriculum standards have not been piloted on any level to determine if they are truly better for students. Remarkably, many of those involved in this effort, admit that one of the primary motivators for this movement is the creation of national markets for education vendors.

If Congress can apply money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may establish teachers

Comment [JWR1]: Did we take out this clause in Indiana to keep from tossing them a bone?

in every State, county, and parish, and pay them out of the public Treasury; they may take into their own hands the education of children establishing in like manner schools throughout the Union; they may undertake the regulation of all roads, other than post roads. In short, everything, from the highest object of State legislation, down to the most minute object of police, would be thrown under the power of Congress; for every object I have mentioned would admit the application of money, and might be called if Congress pleased provisions for the general welfare...I venture to declare it as my opinion, that were the power of Congress to be established in the latitude contended for, it would subvert the very foundation, and transmute the very nature of the limited Government established by the people of America..." - James Madison