

## Regulatory Relief: A Slippery Slope

June, 2011

*So the king took his signet ring from his hand and gave it to Haman the Agagite, the son of Hammedatha, the enemy of the Jews. And the king said to Haman, "The money is given to you, the people also, to do with them as it seems good to you." (Esther 3:10-11, ESV)*

*Then Pharaoh said to Joseph, "Since God has shown you all this, there is none so discerning and wise as you are. You shall be over my house, and all my people shall order themselves as you command." (Genesis 41:37-40, ESV)*

Is now the time to give more regulatory control over public education to Arne Duncan, the Secretary of Education appointed by President Obama? Many seem to think so, and have called for this. However we must pause and realize that to do so could set a dangerous precedent and result in even less local, parental or even elected representative control of public education.

There is broad bipartisan agreement in Congress that the Elementary and Secondary Education Act, ESEA, or as it was labeled in 2001, the No Child Left Behind Act, is broken and needs to be fixed. However there is no bipartisan consensus as to what the problems are and how best to fix them. Some say that the student tests required by ESEA have narrowed the curriculum and forced teachers to teach to invalid and irrelevant state tests; others argue that the requirements of ESEA that were intended to ensure teacher quality amount to a series of meaningless hoops that teachers were forced to jump through that should either be repealed or strengthened; still others insist that the requirements that all schools meet a test based Annual Yearly Progress (AYP) targets leading to 100% proficiency by the year 2014 are unrealistic and need to be scrapped.

The law was originally scheduled to be reauthorized three years ago – before President Obama took office. Most recently the Senate said their plan was to produce a draft bill for consideration by Easter, but that did not happen.

Recognizing that ESEA has some serious problems, a host of education associations last month issued a press [statement](#) calling on Secretary Duncan to provide “regulatory relief,” to unnamed provisions of the law. The National School Boards Association and the American Association of School Administrators took this idea one step further and are circulating a [petition](#) requesting, “the Department of Education to exercise their regulatory authority to relieve school districts from the constraints of current statutes, keeping schools from being held hostage while Congress moves forward with complete reauthorization.” Watching this unfold one begins to get the feeling that this may be exactly where the Secretary of Education wants educators to be – pleading for him to be given broader powers to relax or waive regulations. To be fair, the School Boards Association and School Administrators have made it clear that they would prefer across the board flexibility granted to all districts rather than individual waivers that Secretary Duncan could mete out to selected school districts that have met certain requirements before they are granted.

Scripture is replete with examples of rulers who gave broad regulatory power to their appointees with mixed results. Certainly Joseph was a model administrator in the way he prepared Egypt for coming years of famine and in so doing positioned the nation of Egypt well to be able to force many countries,

including the Israelites, into slavery. The story of Esther tells how Haman, a corrupt administrator appointed by King Ahasuerus of Persia, was almost able to exterminate the Jews – save for the intervention of God.

If Duncan is given the power to provide regulatory relief to school districts having difficulty implementing NCLB he will in effect be allowed to reshape the law without a vote of congress. Investing so much authority in one person is never wise. That is why the framers of our constitution carefully crafted a separation of powers in which the Congress establishes the law and the President and his appointees implement it. While we can all hold the Secretary of Education in high esteem and even believe that his increased regulatory authority in this instance would be used wisely, we know that we are all prone to sin and that such a precedent would over the years eventually lead to corruption. Our political separation of powers and has served us well in keeping us from becoming a nation in which political favoritism and patronage systems flourish and we need to preserve that. However one does not need to adopt this biblical view of the fallen nature of man and the importance of separation of powers to see that there are other concerns significant enough to warn us away from giving further regulatory control to Duncan.

Such a proposal would also accelerate the gradual shift from state and local control over public education to the federal government. The responsibility and authority of the elected representatives of Congress who are responsible for representing their states and localities and establishing good laws would be short circuited. Make no mistake about it, many in Washington, DC are beginning to speak openly about how local control of public education is a historical relic that has no place in the 21<sup>st</sup> century. Such conversation usually comes up in discussions about the U.S. slide in international rankings and how countries with centralized control like Finland and Norway do better than the US. In a nation as large and diverse as the United States it would be impossible to have central control of education unless you also had a Department of Education with broad regulatory powers.

Another big concern with allowing the unelected Secretary of Education to provide regulatory relief is that it removes from the political party that controls the White House – in this case the Democrats – any pressure to change the law. If they can achieve their goals for change in the law merely through the actions of their appointed Secretary, why would they need to compromise with the Republicans to come to agreement about a new law?

As we think about this problem we must consider the legislative impasse that makes it possible. We have a divided government with the Senate and President being controlled by the Democrats and the House under the control of the Republicans. Such divisions have happened at many times in our past. As a matter of fact this is a more typical situation than one party rule. What is unique at this time is that there is a deep debate occurring across our country about the appropriate role of government.

Until this debate is resolved it is unlikely that the education logjam will be broken. In the meantime, it would be wrong and dangerous to downplay the important precept of separation of powers that has served us so well in the past. Instead, Christians must commit to serious prayer for our members of Congress, the President and Secretary Duncan. And, we must learn enough about the issues at stake to cast our votes wisely. Further, we must, if called to do so, become personally involved in politics. This will go far toward ensuring that as our democracy is shaped through the current era of political turmoil it will emerge as a stronger democracy that will function as, *“God’s servant for your good.” (Romans 13:4, ESV)*

If you have thoughts, questions or concerns about how federal education policy impacts your calling to teach we would like to hear about them. Address your comments, questions and concerns to **WashingtonWatch@ceai.org**.

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