A NEW MODEL FOR STATES AS LABORATORIES FOR REFORM: HOW FEDERALISM INFORMS EDUCATION POLICY

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In the decade since passage of the No Child Left Behind Act, American education policy has been federalized and politicized to an unprecedented degree. Widespread substantive and ideological criticism of the Act has left the future of the legislation—and of federal education policy itself—in doubt. The Obama Administration has called for an overhaul of No Child Left Behind, which has engendered criticism as an unfunded federal mandate on the states. But the Administration’s implementation of Race to the Top, a controversial education reform competition among the states, has exacerbated concern about federal encroachment upon state policy making autonomy.

In this Note, I explore both the troubling federalism implications of recent federal education initiatives and the equally compelling policy considerations demanding continued federal leadership. I conclude that globalization and entrenched interstate inequality, among other forces, necessitate a continued, albeit more prudent, role for the federal government in reforming K–12 education.

INTRODUCTION

When the most recent results of the Programme for International Student Assessment (PISA), an internationally administered test for fifteen-year-old students, were released in late 2010, many were surprised to learn that students in Shanghai had received the highest mean scores in each subject area by a significant margin.1 The success of these first-time participants received a great deal of media attention.2 While this stunning performance is not representative of the Chinese student population as a whole, it nonetheless struck a nerve in the United States, bringing American students’ own middling per-

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formance into sharp relief. Many, including President Obama, characterized the announcement of the results as a “Sputnik moment”: an opportunity for the United States to prioritize education in the wake of an embarrassing loss on the global stage.

The results, while revealing, should not have been altogether surprising. In a 1983 report entitled *A Nation at Risk*, the National Commission on Excellence in Education had predicted that the United States’ continued status as a world economic leader would hinge on the reform of its public education system. In strong language befitting its Cold War backdrop, the report documented the decline of American education and warned that a loss of global competitiveness was imminent:

> Our Nation is at risk. Our once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world. . . . [T]he educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people.

*A Nation at Risk* left an indelible mark on the national consciousness, generating K–12 education reforms at the local, state, and, later, federal level. Some have even credited it with saving the then-fledgling U.S. Department of Education (DOE) from dismantlement.

The role of the DOE, and federal involvement in education policy generally, increased dramatically in the ensuing thirty years, although not without controversy. The passage of the No Child Left Behind Act (NCLB) in 2001 signaled that education reform, once con-

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3 See infra notes 137–139 and accompanying text (summarizing American performance on the 2009 exam administration).


6 Id.

7 The DOE may not have survived in the face of demonstrated antipathy from President Reagan and other prominent Republicans. PAUL MANNA, SCHOOL’S IN: FEDERALISM AND THE NATIONAL EDUCATION AGENDA 80 (2006). It had received cabinet-level status only a few years earlier, Department of Education Organization Act, Pub. L. No. 96-88, § 201, 93 Stat. 668, 671 (1979) (codified at 20 U.S.C. § 3411 (2006)), despite frequent proposals to that effect throughout the twentieth century, MANNA, supra, at 77 (noting more than fifty such bills were introduced in the first half of the twentieth century).
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fined to the “margins” of federal policy, had become a fixture of the national agenda. NCLB, the most comprehensive federal education legislation to date, passed both houses of Congress with overwhelming bipartisan support but has since been the subject of widespread criticism from commentators, states, and federal officials. The federal government has not retreated from the education policy field, however. President Obama made education a priority of his domestic agenda in his first fourteen months in office, introducing two major education policy initiatives: first, an NCLB reauthorization and reform plan that would focus on college- and career-ready standards, and second, the Race to the Top Fund (Race to the Top), a competitive grant program for states authorized by the 2009 economic stimulus bill.

While concerns over an increased federal role in education have been exacerbated by the imperfect design and implementation of Race to the Top, I argue that some federal leadership in education reform is desirable from a political, theoretical, and legal perspective. The more difficult question is how best to achieve federal oversight of education. This paper puts forth one partial answer. Drawing from a normative federalism framework that values overlapping federal and state policy making, I advocate federal policies that pair the federal government’s superior resources with the states’ superior ability to innovate policy responses to local and national education challenges.

In Part I, I briefly address the implications of competing theoretical formulations of federalism in the context of education reform. I ultimately adopt, with some restriction, the model of “polyphonic federalism” developed by Professor Robert A. Schapiro. In Part II, I examine four core legal and policy objections to NCLB and to the Obama Administration’s recent education initiatives: first, the doctrine of local control; second, unfunded (or underfunded) mandates and federal policy influence exceeding school funding expenditures; third, threats to the political independence of state legislatures; and

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9 The Act passed with a landslide 384–45 vote in the House of Representatives, 147 CONG. REC. 9296–97 (2001), and an equally landslide 91–8 vote in the Senate, 147 CONG. REC. 10,802.
fourth, the ossification of untested education reform trends. Notwithstanding these concerns, I explain in Part III that a compelling national interest in education outcomes and the limited capacity of state education authorities justify a continuing federal role in education reform. I conclude in Part IV by providing a model for federal oversight that affords states continued autonomy. My illustrative proposal for federally funded, competitive pilot programs at the state level to follow Race to the Top relies in part on a reinterpretation of the classic economic formulation of states as “laboratories” for reform.13

I

FEDERALISM THEORY AND EDUCATION POLICY

Theoretical models of federalism have real-world implications for policy making. It is therefore difficult to prescribe the appropriate intergovernmental balance in education reform without first establishing a normative framework. How does—and more importantly, how should—the federal-state relationship work in practice? In this Part, I critique popular federalism models in the education law literature and adopt Robert A. Schapiro’s “polyphonic” model as a starting point for my examination of education federalism.

A. Popular Federalism Theories Provide Little Guidance

One longstanding conception of federalism envisions two distinct, mutually exclusive domains of state and federal power.14 This formulation, frequently termed “dual federalism,” fell out of vogue in the New Deal era but has since enjoyed a resurgence under the devolutionary “New Federalism” ideology of the Reagan years.15 The idea that the federal government and the states occupy mutually exclusive

13 See New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”); SCHAPIRO, supra note 12, at 75 (citing Brandeis for the theory that states are “firms” engaged in competition).
14 SCHAPIRO, supra note 12, at 47.
15 Donald B. Rosenthal & James M. Hoefler, Competing Approaches to the Study of American Federalism and Intergovernmental Relations, 19 PUBLIUS 1, 3 (1989). The term “devolution” is used to describe the transfer of certain federal functions, such as developmental policies, back to the states. Paul E. Peterson, Devolution’s Price, 14 YALE L. & POL’Y REV. 111, 114–15 (1996). The vitality of dual federalism was affirmed in the wake of a stunning 1995 Supreme Court decision that, for the first time in sixty years, struck down federal legislation as beyond Congress’s interstate commerce power. United States v. Lopez, 514 U.S. 549, 567–68 (1995) (expressing concern that an overbroad Commerce Clause would erase the distinction between “what is truly national and what is truly local”).
areas of jurisdicition finds structural support in the Constitution’s creation of a federal government of limited, enumerated powers.\textsuperscript{16} Yet, this conception of federalism bears little resemblance to a modern administrative state in which “nearly everything has become intergovernmental,”\textsuperscript{17} including education. Scholars, recognizing that dual federalism theory did not match federalism practice, have developed a number of contemporary alternatives, including cooperative federalism and coercive federalism. “Cooperative federalism” is a model popularized in the mid-twentieth century that emphasizes shared interests and voluntary collaboration between state and federal governments,\textsuperscript{18} including state implementation of national policy through federal grants. By contrast, some commentators believe that “coercive federalism,” describing the federal government’s increased use of statutory mandates, conditional grants, preemption, and administrative regulation to force states’ compliance with federal policy initiatives,\textsuperscript{19} more aptly describes the status quo.\textsuperscript{20}

The education law literature frequently invokes the cooperative and coercive federalism models,\textsuperscript{21} particularly when analyzing NCLB, which requires states to implement standards and to assess schools according to their progress in meeting those standards, among other things.\textsuperscript{22} Because the precise definition and formulation of these standards and assessments is a matter of state discretion, federal-state partnerships are crucial to realizing NCLB’s goal of providing all children with a “fair, equal, and significant opportunity to obtain a high

\textsuperscript{16} See U.S. Const. art. I, § 8 (listing Congress’s powers).


\textsuperscript{18} Schapiro, supra note 12, at 90.


\textsuperscript{21} See, e.g., Goodwin Liu, Interstate Inequality of Educational Opportunity, 81 N.Y.U. L. Rev. 2044, 2044 (2006) (arguing for “Congress to pursue, within an existing framework of cooperative federalism, reforms that create national education standards and an expanded federal role in school finance to serve as building blocks of a national policy to guarantee all children educational adequacy for equal citizenship”); Kamina Aliya Pinder, Federal Demand and Local Choice: Safeguarding the Notion of Federalism in Education Law and Policy, 39 J.L. & Educ. 1, 11–14 (2010) (describing the design of NCLB as an example of cooperative federalism but noting that “most state and local education officers would assert that NCLB is far more coercive than it is collaborative”).

quality education.”23 In practice, however, NCLB has been decried as
an unfunded mandate24—a hallmark of coercive federalism—and an
untoward “nationalization and centralization of policy.”25 As such,
neither model fully describes the current education policy landscape
or provides guidance on ways to improve policy. Cooperative
federalism is largely a descriptive model, and, moreover, one that
unrealistically underemphasizes intergovernmental conflict.26
Coercive federalism is susceptible to the opposite, but equally serious,
problem: It overstates federal-state divergence, thereby obscuring
common ground and forestalling cooperation.

B. Polyphonic Federalism Should Inform Education Policy

Normative and functional theories of federalism—with origins in
the legal, political, and economic literatures—have more to say about
how best to allocate power between the federal government and the
states.27 Robert A. Schapiro, for instance, has developed a model of
“polyphonic federalism” that recognizes “multiple, independent
sources of political authority . . . not defined by subject matter.”28
Rather than perpetuating distinct enclaves of state and federal power,
Schapiro’s model assumes that “plurality, dialogue, and redundancy”
foster “innovation and resilience.”29 The benefits of such a model are
threefold: States learn from one another, the federal government
“build[s] on the best practices of the states,” and states, “[s]ubject to
federal baselines, . . . can vary their practices, and practices can evolve
over time.”30 Schapiro’s formulation shows potential for useful appli-

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24 See infra Part II.B.2 (describing unfunded mandate arguments made by states in fed-
eral court). For more on the states’ arguments, see generally Andrew G. Caffrey, Note, No
Ambiguity Left Behind: A Discussion of the Clear Statement Rule and the Unfunded
Mandates Clause of No Child Left Behind, 18 WM. & MARY BILL RTS. J. 1129 (2010).
25 Posner, supra note 19, at 408.
26 Rosenthal & Hoefler, supra note 15, at 5; see also SCHAPIRO, supra note 12, at 90–91
(noting that cooperative federalism fails to offer guidance on how to resolve power strug-
gles between state and federal governments in areas of overlapping substantive authority).
27 Economic efficiency is perhaps the most popular lens, but it is ill-suited to the
education context. At its root, fiscal federalism assigns primary responsibility for the provi-
sion of national public goods to the federal government and for the provision of so-called
LITERATURE 1120, 1134–35 (1999). However, because local policies may jeopardize
national educational outputs, distinctions drawn by traditional efficiency theory may not
persuasively answer whether and to what extent the federal government should be
involved in education reform. See infra notes 75–77 and accompanying text.
28 SCHAPIRO, supra note 12, at 95. Schapiro has discussed his theory in a number of law
review articles. E.g., Robert A. Schapiro, Toward a Theory of Interactive Federalism, 91
29 SCHAPIRO, supra note 12, at 97–98.
30 Id. at 103–04.
cation, with implications for the reauthorization of NCLB. It offers both a description of overlapping policy authority at the state and federal levels and a normative assumption about the desirability of further enmeshment.

Schapiro’s polyphony metaphor is attractive because it simply and eloquently evokes a system in which federal and state policy making intersect.31 The model is not limited, of course, to education policy. Instead, it provides a global view of federalism in the United States. But for my purposes, Schapiro’s metaphor provides a useful starting point for unlocking the potential of concurrent spheres of influence in the education context.32 Schapiro does not assume or demand a clean division of powers within a shared sphere of influence. The flexibility of his approach is a good match for education, a public good with redistributive and developmental, as well as national and local, aspects. Schapiro’s polyphony metaphor will inform my assessment of the advantages and disadvantages of federal involvement in education reform in Parts II and III, in addition to my recommendations in Part IV for retaining federal policy leadership without eroding or precluding valuable contributions from the states.

II
LEGAL AND POLICY OBJECTIONS TO FEDERAL OVERSIGHT OF EDUCATION SUGGEST A CONTINUED NEED FOR STATE POLICY MAKING

A. Current Federal Education Programs

In its broadest form, opposition to federal oversight of education rests on structural or ideological arguments that view the states as the historical, and thus rightful, overseers of public education in our federalist system.33 The expansion of federal education policy in recent

31 By highlighting a single theoretical framework, I do not intend to reject others out of hand. Cf. Larry Kramer, Understanding Federalism, 47 Vand. L. Rev. 1485, 1486 (1994) (“[W]hat federalism ‘is,’ what it ‘means,’ looks different depending on the area examined and the question asked.”). Efficiency theories, for example, remain relevant to questions of fiscal policy that arise in the context of debates over local control of education and government subsidies, the latter a key feature of the Obama Administration’s education policy.

32 As a new, overarching theory of federalism, Schapiro’s model is both more complex and more visionary than my distillation: It envisions a new order in which “[o]verlapping, concurrent power sharing [is] the norm,” and greater interdependence of federal and state judicial systems (“intersystemic adjudication”) helps to protect liberties. Hugh D. Spitzer, Book Review, 40 Publius 563, 564 (2010) (reviewing Robert A. Schapiro, Polyphonic Federalism: Toward the Protection of Fundamental Rights (2009)).

33 The doctrine of local control, see infra Part II.B.1, is one formulation of this argument. Possibly motivated by concern with the federal role in education spending, prominent Republicans, including a newly elected President Reagan and 1996 presidential
years has increasingly shifted the discourse from a debate on the merits of any federal intervention to an evaluation of the federalism implications of particular federal programs. Familiarity with recent education initiatives is therefore crucial for understanding persistent legal and policy objections to the federal role in education. In this subsection, I briefly describe two of many such programs: NCLB and Race to the Top. These programs will then inform my analysis of the most salient risks posed by a strong federal role in the formation of education policy.

1. The No Child Left Behind Act

NCLB is the latest iteration of the Elementary and Secondary Education Act of 1965 (ESEA), comprehensive federal education spending legislation first passed under the Johnson Administration. Title I, the centerpiece of the ESEA, provides federal funding for low-income students. Receipt of Title I funds is conditioned on compliance with NCLB’s substantive provisions, which focus on three core areas: testing, teaching, and accountability. Each state must implement an accountability plan developing “challenging academic standards” in math, reading, and science and describing three levels of academic achievement (basic, proficient, and advanced). The accountability plan must also define what constitutes “adequate yearly progress” (AYP) toward meeting proficiency goals by NCLB’s 2014 deadline with respect to the general student population and to specific sub-

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groups. Furthermore, each state must administer “high-quality, yearly student academic assessments” to measure AYP.

In addition to its emphasis on accountability measures, NCLB also encourages freedom for states and communities, parental choice, and the use of empirically proven reading programs. States have flexibility in designating federal funds and defining the key substantive provisions under NCLB, while accountability-based sanctions on underperforming schools provide parental choice. Schools that consistently fail to meet AYP are subject to increasing penalties, culminating in mandatory state takeover or another “alternative governance arrangement” after five years of noncompliance.

These principles do not easily coexist, however. Faced with full flexibility in the implementation of standards and testing but tough sanctions for failure, states have diluted the means of evaluation and superficially inflated scores, precipitating a race to the bottom among the states. The Obama Administration has outlined a plan for overhauling NCLB that would retain the accountability system while replacing the current law’s penalties with an incentives-based program measuring student growth and increasing the number of criteria by which schools are evaluated.

37 Id. § 6311(b)(2). The subgroups include racial minorities, students with disabilities, low-income students, and English language learners. Id. While states are granted the flexibility to define “adequate yearly progress,” the concept “is diagnostic in nature, and intended to highlight where schools need improvement and should focus their resources.” Rod Paige, Dear Colleague, U.S. DEP’T OF EDUC. (July 24, 2002), http://www2.ed.gov/policy/elsec/guid/secletter/020724.html.

38 20 U.S.C. § 6311(b)(3). The Act also requires that students take the National Assessment of Education Progress (NAEP), a national examination administered by the DOE, every two years, id. § 6311(c)(2), and requires that schools retain only “highly qualified teachers,” id. § 6319(a).

39 The DOE describes these principles as the four pillars of NCLB. Four Pillars of NCLB, U.S. DEP’T OF EDUC., http://www2.ed.gov/nclb/overview/intro/4pillars.html (last modified July 1, 2004) (“No Child Left Behind is based on stronger accountability for results, more freedom for states and communities, proven education methods, and more choices for parents.”).

40 20 U.S.C. § 6316(b)(8)(B). The five-year deadline is derived from 20 U.S.C. § 6316(b)(1)(A) (requiring identification of schools that fail to make AYP for two years), 6316(b)(7)(C) (requiring education agencies to take corrective action by the end of two years after identification if schools continue to fail to make AYP), and 6316(b)(8) (requiring alternative governance one year after corrective action if there is continued failure). Other permissible alternative governance arrangements include reopening as a charter school, replacing all or most staff, or relinquishing control to a private operator. 20 U.S.C. § 6316(b)(8)(B).


42 See generally BLUEPRINT FOR REFORM, supra note 10 (describing the Obama Administration’s vision for educational reform).
2. The Race to the Top Fund

The aptly named Race to the Top is a $4.35 billion competitive grant program for states announced in July 2009 that has four goals: “enhancing standards and assessments, improving the collection and use of data, increasing teacher effectiveness and achieving equity in teacher distribution, and turning around struggling schools.” Under DOE regulations, the fifty states, the District of Columbia, and Puerto Rico were eligible for funding if, among other things, they eliminated “any legal, statutory, or regulatory barriers at the State level to linking data on student achievement . . . or student growth . . . to teachers and principals for the purpose of teacher and principal evaluation.” Independent examiners assessed state applicants on the basis of a scoring rubric developed by the DOE, which awarded up to five hundred points in the competition for innovative programs addressing these objectives. The 2010 competition was administered in two rounds, with winners announced in March and August. Ultimately, twelve of forty-seven applicants received funding. A third, much smaller round of the competition that focused on early childhood education was announced in May 2011. As explained in the next Section, Race to the Top, like NCLB, has been criticized on both policy and federalism grounds.

B. Legal and Policy Objections

Four salient, if nonexhaustive, objections to federal oversight of education can be drawn both from the education federalism literature

43 Race to the Top is codified in the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 115 (2009). ARRA appropriated additional DOE funds through the State Fiscal Stabilization Fund, ARRA div. A, tit. XIV, a one-time, $53.6 billion appropriation intended to contribute to states’ recessionary budget shortfalls and to advance the four education goals also associated with Race to the Top. Through the Fund, ARRA authorized Race to the Top, ARRA §§ 14001(c), 14006, and the Investing in Innovation Fund, a $650 million competitive grant program, ARRA §§ 14001(c), 14007, and provided $200 million in additional funding for the Teacher Incentive Fund, a fund for merit-based teacher compensation systems, ARRA div. A, tit. VII.


46 Id. at 59,813 (setting forth selection criteria and maximum point allotments).

generally and from these two education programs specifically: (1) conflicts with the doctrine of local control and its attendant values of democratic participation and quality education; (2) limited federal funding and unfunded mandates; (3) threats to the institutional autonomy of state legislatures; and (4) ossification of unproven education reform trends. While each of these considerations may counsel in favor of a continued state role in education reform, they do not require exclusion of the federal government.

1. Local Control, Democratic Participation, and Quality Education

One of the most entrenched grounds of opposition to federal education programs like NCLB and Race to the Top is the doctrine of local control. Justice Brennan gave the principle its strongest endorsement in the 1974 school busing case Milliken v. Bradley:48 “No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.”49 Litigants and courts invoke this principle not only in the desegregation context,50 but also in other cases in which state defendants have an interest in shifting responsibility to local school districts.51

Notwithstanding judicial recognition of the two advantages of local control—democratic participation and educational quality—the principle is not legally or constitutionally compelled. Judicial respect for local control reflects deference to states’ allocation of authority within their borders rather than preservation of school district autonomy.52 Education is not a purely local function. Instead, it is an area of “core state responsibility”53 guaranteed by education clauses in

48 Milliken v. Bradley, 418 U.S. 717 (1974), held that courts cannot order school districts with a history of de facto (rather than de jure) segregation to undertake integration through school busing.
49 Id. at 741–42.
50 Missouri v. Jenkins, 515 U.S. 70, 99 (1995) (“[O]ur cases recognize that local autonomy of school districts is a vital national tradition . . . .”).
52 In Rodriguez, the Court turned aside the federal constitutional claims against Texas by characterizing local control as a “legitimate state purpose or interest.” 411 U.S. at 54–55.
53 Horne v. Flores, 129 S. Ct. 2579, 2593 (2009) (emphasis added) (citing Jenkins, 515 U.S. at 99) (emphasizing independence of state and local authorities); see also United
all fifty state constitutions. School districts lack federal constitutional status and exist solely as “creature[s] of the state.”54 Unlike similarly situated local governments, however, school districts’ sole function—the provision of, and financial responsibility for, public education—ultimately lies with the states.55 Nonetheless, “de facto local autonomy”56 persists as a form of state policy in diminished form. To some, the rise of school finance and adequacy litigation57 and the implementation of statewide standards and assessments, first under state initiatives and later through NCLB, have rendered local control illusory.58 On the other hand, local coffers continue to provide over forty percent of public school budgets59 and a number of municipalities have adopted mayoral control and other decentralizing measures in recent years.60 The persistence of local control is likely a product of tradition, powerful interest group networks,61 and the belief that it promotes “accountability and community choice.”62

Even if we accept a diminishing (though still significant) sphere of influence for school districts, the value of citizen participation in education does not disappear at the state level. Admittedly, political accountability and citizen engagement, which are quite immediate at

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54 Briffault, supra note 51, at 28.
55 Id. at 28, 37–38.
56 Id. at 40.
57 In contrast to the Federal Constitution, which is silent on the subject of education, many state constitutions require the provision of free public education. See, e.g., N.Y. Const. art. XI, § 1 (“The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”). There have been a number of lawsuits brought in recent decades challenging school finance regimes on the theory that the State has failed to fulfill its state constitutional obligations to provide an adequate education to all pupils, particularly those in poorer districts. E.g., Campaign for Fiscal Equity, Inc. v. State, 801 N.E.2d 326 (N.Y. 2003).
58 Heise, supra note 8, at 130–32.
60 Briffault, supra note 51, at 53.
the local level, are diluted at the state level. This dilution is not as drastic as that experienced in the shift from state to national politics, but it is not insignificant. Elected officials in state government oversee—and are politically accountable for—a broad range of equally salient initiatives, from criminal justice to social welfare. Similarly, citizen participation, including by ballot, may be more effective if the citizens are concentrated in one of the United States’ fifteen thousand local school districts rather than one of fifty states, particularly with respect to hard decisions about how—and how much—to spend on education.

Nevertheless, citizens can and do influence the state education budget. For example, New Jersey made headlines in 2010 when its voters defeated more than half of the state’s local education budgets, many of which were to be financed by additional property taxes. The election results supported Governor Chris Christie’s proposal for significant state education spending cuts to address New Jersey’s budget shortfall. As a general matter, citizens in many jurisdictions have played an important role in shifting financial responsibility for education funding, and attendant policy making power, from the local to the state level. Demands for relief from high property taxes and court-mandated equalization efforts, for example, have led to both limitations on property taxes and increases in state aid to public schools.

In short, meaningful citizen participation in education policy remains possible at the state level. This conclusion counsels in favor of respecting the historic role of states, their school district agents, and their citizens in shaping policy. It does not counsel against the intervention of federal policy makers, however. Because education policy is increasingly salient at the national level, there is greater potential

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63 See Heise, supra note 8, at 130 (discussing local control); Miliken v. Bradley, 418 U.S. 717, 741–42 (same).
64 The assumption that “people are more able to govern themselves, more able to exercise collective self-determination, more able to exercise real control over their government when they are governed locally” may break down in jurisdictions as large as states. Jacob T. Levy, Federalism, Liberalism, and the Separation of Loyalties, 101 AM. POL. SCI. REV. 459, 462 (2007).
65 The defeated local budgets were meant to offset proposed reductions in state funding to local schools. Winnie Hu, Schools in New Jersey Plan Heavy Cuts After Voters Reject Most Budgets, N.Y. TIMES, Apr. 22, 2010, at A20.
66 In the weeks prior to the budget vote, Christie had chastised local districts for refusing to adopt austerity measures to lower costs and explicitly called on New Jersey residents to express their displeasure at the polls. Id.
67 Sokolow, supra note 62, at 175.
68 See infra Part III.A (providing reasons that the national government has an interest in education policy).
than ever for meaningful democratic participation with respect to forming federal policy and holding federal politicians accountable for their choices.

Concern for the “quality of the educational process,” like increased democratic participation, is a popular justification for local control that remains salient at the state level. In *Milliken*, the Court asserted that local control “permits the structuring of school programs to fit local needs, and encourages ‘experimentation, innovation, and a healthy competition for educational excellence.’” While this formulation resembles subsidiarity, the principle that government functions should be assigned to the lowest practical level. While subsidiarity protects individual and state dignitary interests, it also addresses efficiency concerns—namely, responsiveness to local needs.

The validity of the educational quality rationale for local control thus depends on whether schools require flexibility to respond to unique local conditions. Regional differences are often exaggerated in an era of unprecedentedly nationalized politics, policy, and culture. Nonetheless, undeniable differences in demographics and tax policy, among other things, remain between and within states. Concentrated populations of English-language learners or low-income students in particular localities or states may require specialized local educational policy. On the other hand, local differences may jeopardize rather than promote quality education if not for federal intervention. For instance, a state or locality’s limited fiscal capacity or tax effort can drastically reduce per-pupil expenditures, or educational content

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70 *Id.* (quoting *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 50 (1973)).
73 See *SCHAPIRO*, *supra* note 12, at 16–26 (describing nationalizing trends in politics, policy, and culture).
75 See generally *Liu*, *supra* note 21 (detailing interstate education inequalities); *see also infra* Part III.A.2 (discussing fiscal inequalities between states). Fiscal capacity refers to the ability of governments to generate tax revenue, while tax effort refers to the amount actually collected. The former varies with the amount and value of natural resources, the wealth of the population, and the presence of industry; the latter depends on tax rates,
may vary with local political ideology\textsuperscript{76} in an era in which state and federal policy makers agree that the use of internationalized standards are necessary for post-secondary success as well as national competitiveness.\textsuperscript{77} Recognition of the necessity of local/state solutions to some uniquely local/state problems is not inconsistent with federal oversight of education. It simply requires a sensitive application of the federalism model described in Part I. The fact that local governments can solve some problems better should not preclude the federal government from making supplementary, or even overlapping, efforts.

Nor does \textit{Milliken}'s citation of "experimentation, innovation, and . . . competition"\textsuperscript{78} as a means of achieving educational quality compel a slavish devotion to local control. True, one of the merits of a federalist system is the ability of its component parts to innovate. An individual state—by virtue of its smaller size, knowledge of local conditions, or more homogenous citizenry—may be better able than the federal government to implement (and, where necessary, modify) new education policy with flexibility. But the recognition that states are better innovators does not compel local control over education. As I explain in Part IV, the federal government can maintain a policy role while harnessing the advantages of the states-as-laboratories model.\textsuperscript{79}

deductions, enforcement, and other tax policies. \textit{See Liu, supra} note 21, at 2082--85 & 2085 n.154 (describing different ways to measure fiscal capacity).

\textsuperscript{76} Two recent examples are illustrative. The National Governors Association content standards, \textit{see The Nat'l Governors Ass'n, Council of Chief State Sch. Officers & Achieve, Inc., Benchmarking for Success: Ensuring U.S. Students Receive a World-Class Education} (2008) [hereinafter NGA REPORT], available at http://www.nga.org/Files/pdf/0812BENCHMARKING.PDF, conspicuously exclude scientific concepts like evolution that may be "a cause of controversy in some states." Sam Dillon, \textit{Panel Proposes Single Standard for All Schools}, \textit{N.Y. Times}, Mar. 11, 2010, at A1. Texas was the subject of publicity following a revision of state social studies standards, which, among other things, mandated instruction on certain key conservative figures. Critics charged that these changes were overly politicized. \textit{See} Susan Jacoby, \textit{Op-Ed., One Classroom, From Sea to Shining Sea}, \textit{N.Y. Times}, Mar. 19, 2010, at A25 (describing changes to Texas standards). This move by Texas, a large purchaser of textbooks, is likely to affect the content of publications used across the nation. \textit{See} April Castro, \textit{Texas Board OKs Adjusted Social Studies Curriculum}, \textit{Associated Press}, reprinted in \textit{Charleston Gazette} (West Virginia), May 22, 2010, at A2 (noting that Texas standards will be used by textbook publishers for material reaching other states).

\textsuperscript{77} For instance, recent initiatives by the Obama Administration highlight the need to use internationalized standards. \textit{See supra} text accompanying notes 10--11 (describing Obama initiatives).


\textsuperscript{79} \textit{See infra} Part IV.B. It might be argued that federal oversight of education may, over time, lead to policy convergence that hampers the ability of states to compete for citizens. \textit{Cf. Levy, supra} note 64, at 460--61 (explaining federalism theories that emphasize the salutary effects of policy differences between states and the ability of citizens to move to different localities according to their policy preferences). As such, \textit{Milliken}'s invocation of
2. Limited Federal Funding and Unfunded Mandates

Financial obligations imposed from the top down also animate opposition to NCLB and federal education policy generally. While NCLB had broad support in Congress, state legislatures controlled by both parties were so alarmed by NCLB’s new conditions that many took the unusual step of formally resisting its implementation. At least thirty-eight states considered, and some passed, legislative resolutions condemning NCLB, prohibiting the use of state or local money to support it, and/or urging school districts to reject NCLB funds. Utah went further, famously becoming the first state to (temporarily) opt out of NCLB entirely.

The bulk of this formal opposition to NCLB is rooted in the contention that the states bear most of the costs of implementing NCLB, in violation of the Spending Clause and NCLB’s own unfunded mandates provision. One lawsuit brought by a state and another by school districts—instrumentalities of states—challenged NCLB on these grounds but were dismissed. While two unfavorable disposi-
tions cast doubt on the viability of legal challenges to NCLB’s unfunded mandates, dicta in these cases have broad and important policy implications. The Sixth Circuit recognized, albeit indirectly, that practical coercion under the Spending Clause can exist independently of legally actionable, constitutionally infirm coercion, stating in unequivocal terms that “Congress has not fully funded the cost of complying with NCLB.”

Indeed, since the genesis of the Elementary and Secondary Education Act (ESEA) in the 1960s, K–12 education expenditures by the federal government have increased in absolute terms but remained flat relative to spending by states and localities. The passage of NCLB, which increased the number and extent of states’ obligations under Title I, as well as the number of affected schools, did not dramatically alter this calculus. State and local governments remain responsible for most of the cost of public education.

This data inevitably raises the question “whether it makes sense to permit the federal government . . . to exert far more policy influence than the federal government’s financial contribution to state and local school district budgets might traditionally warrant.” The most obvious answer, and thus the least satisfying, is that state implementation of any of the major federal education initiatives is voluntary, at least in name. Recall, however, that Connecticut objected to the financial balance struck by NCLB strongly enough to file a federal action, but apparently not strongly enough to forego the funds in the first

and thus passed constitutional muster under South Dakota v. Dole, 483 U.S. 203 (1987). Pontiac, 584 F.3d at 295–96 (Sutton, J. concurring). The Supreme Court’s denial of certiorari in Pontiac has suspended the debate for the time being.

The concept of an unfunded mandate is itself ill-defined and, in the view of one fiscal federalist, is an “analytically bankrupt concept[.]” Super, supra note 61, at 2580 (noting that the concept’s focus on adequacy of marginal rather than total funding ignores the fact that government money is fungible). Moreover, the Dole Spending Clause test has never resulted in a finding of unconstitutionality. Michael D. Barolsky, Note, High Schools Are Not Highways: How Dole Frees States from the Unconstitutional Coercion of No Child Left Behind, 76 GEO. WASH. L. REV. 725, 733 (2008).

Pontiac, 584 F.3d at 263 (Cole, J., plurality) (ruling on threshold ripeness issue).

Manna, supra note 7, at 12 fig.1.2, 68–69.

From 2000–01 (the year prior to NCLB’s passage) to 2004–05 (the second year of its implementation), total federal education expenditures increased by $15 billion. This represents a minor increase in the federal funding burden from 7.3 percent to 9.2 percent. Digest of Education Statistics, supra note 59, at 247 tbl.172.

Heise, supra note 8, at 130. Heise explores the issue of federal influence relative to federal spending at length. He observes that states have managed to increase their contribution to public education funding relative to local sources in tandem with their assertion of greater policy making authority vis-à-vis local school districts. Id. at 153–54 (arguing further that the federal government is loath to produce unfunded mandates and that disjoining policy making from funding compromises political accountability and meaningful citizen participation).
place. The current recession and concomitant state budget deficits have surely exacerbated the problem. The states’ ability to make meaningful decisions about whether to accept conditional grants depends not only on the amount in question and the relative burdens of the strings attached, but also on the vagaries of the financial climate. Neither Race to the Top nor Obama’s proposal for similar incentives-based Title I grants under a revamped and reauthorized NCLB has addressed the disparity between federal and state spending.

Heise offers a partial solution to this problem: adoption of voluntary national policies rather than practically compulsory federal policies. To be sure, this approach risks engendering the same legally noncoercive, but practically coercive, influence that has led all fifty states to participate in NCLB. However, as I will explain in Part IV, incentives-based federal grants—in the general vein of Race to the Top, but with substantial tweaking—impose fewer burdens than do the punitive “strings” attached to NCLB participation.

3. Threats to the Institutional Autonomy of State Legislatures

NCLB is probably not unconstitutionally coercive, but it is certainly controversial. Similarly, Race to the Top has indirectly—and thus not actionably—threatened the institutional autonomy of state legislatures. At its core, NCLB is premised on the “central tradeoff” of increased flexibility for increased accountability. If, as critics suggest, NCLB’s dual commitment to these goals is self-defeating, with states diluting standards in a “race to the bottom,” the fault is the result of too little coercion—not too much. As implemented, Race to


92 See Super, supra note 61, at 2582 (describing the influence of business cycle on state acceptance of federal funds).

93 See Heise, supra note 8, at 153 (discussing the advantages of decoupling policy making and funding responsibilities).

94 Pontiac, 584 F.3d at 287 (Sutton, J., concurring).

95 See supra note 41 and accompanying text for a discussion of NCLB’s “perverse incentives.”
the Top is substantively and politically coercive in a way that NCLB is not.

If formulated at a broad level of abstraction, Race to the Top appears to be the perfect antidote to the punitive and inflexible accountability provisions of NCLB.\textsuperscript{96} Many of its selection criteria are written in general terms.\textsuperscript{97} Other criteria, however, are very specific.\textsuperscript{98} Where Race to the Top demands particular policies, it reflects a top-down approach inconsistent with the program’s central purpose: to foster innovation.

Race to the Top also threatened the autonomy of state legislatures, who scrambled to bring their codes into line with the Administration’s preferences in time for the January and June 2010 application deadlines.\textsuperscript{99} New York’s leaders, for instance, initially failed to muster sufficient support in the state legislature to raise charter school caps and to repeal a measure prohibiting the use of student test scores in tenure decisions,\textsuperscript{100} two accountability measures necessary to secure Race to the Top funding. While New York was one of sixteen finalists out of a total of forty-one applicants in Phase 1, only two states were awarded funding in the first round of competition: Tennessee and Delaware.\textsuperscript{101} Tennessee and Delaware’s success was predicated both on the passage of new state laws consistent with the federal government’s preferences and on strong support from local teachers, school districts, and business leaders.\textsuperscript{102} With significant pressure from New York City Mayor Michael Bloomberg, his

\textsuperscript{96} See \textit{supra} Part II.A.2 for an overview of Race to the Top.

\textsuperscript{97} The standards and assessments criteria, for example, include “[d]eveloping and adopting common standards,” “[d]eveloping and implementing common, high-quality assessments,” and “[s]upporting the transition to enhanced standards and high-quality assessments.” Race to the Top Fund, 74 Fed. Reg. at 59,813.

\textsuperscript{98} Notable examples include criteria for teacher accountability measures and charter school development. See \textit{id.} at 59,844 (using annual teacher and principal evaluations to inform personnel decisions including removing teachers and granting tenure); \textit{id.} at 59,845 (evaluating whether the state discriminates against charter schools).


\textsuperscript{100} Jennifer Medina, \textit{New York Fails To Get Grant of $700 Million for Schools}, N.Y. TIMES, Mar. 30, 2010, at A22; see also N.Y. EDUC. LAW § 3012-b(2)(a) (McKinney 2009) (repealed July 2010) (providing that teachers hired beginning in the 2008 school year “shall not be granted or denied tenure based on student performance data”).


\textsuperscript{102} See Sam Dillon, \textit{Delaware and Tennessee Win U.S. School Grant}, N.Y. TIMES, Mar. 30, 2010, at A15 (describing the reasons Delaware and Tennessee won). Delaware, for example, passed laws permitting state intervention in failing schools and authorizing teacher accountability. Following the announcement of the winners, Governor David Patterson made a final appeal to the New York legislature to make the changes called for
Chancellor of Education, and charter school advocates, the New York legislature finally passed legislation authorizing more than a twofold increase in the number of charter schools and a teacher evaluation system that accounts for student performance just before the second Race to the Top deadline.103 All told, thirty-four of the forty-seven applicants in Phases 1 and 2 changed state education law or policy in their bid for the extra funds,104 although most of them ultimately received no funding for their efforts.105

While this kind of policy influence falls short of mandating federal standards, it allows the federal government to intervene in state governance and policy making. The states’ capitulation also eschews genuine policy debate on the wisdom and efficacy of the reform measures urged by the Obama Administration. A recent longitudinal study of charter schools by the Center for Research on Education Outcomes (CREDO) at Stanford University illustrates this point.106 The national report, the first of its kind, was funded by pro–charter school foundations.107 Yet, the results suggest that the vast majority of American charter schools fail to measurably improve student achievement relative to traditional public schools.108 That is not to say that charter schools show no promise. A supplementary study by CREDO on elementary school students in forty-nine charter schools in New York City, a system with substantial backing by the Mayor, indicates that charter schools provide “significantly better results” than traditional public schools.109 The relative merits of

by the Obama Administration, stating, “We can’t afford the luxury of ideological differences getting in the way right now.” Medina, supra note 100.


105 Three months later, New York, eight other states, and the District of Columbia received funding in the second round of competition. Id.


108 See MULTIPLE CHOICE, supra note 106, at 1 (“Nearly half of the charter schools nationwide have results that are no different from the local public school options and over a third, 37 percent, deliver learning results that are significantly worse than their student would have realized had they remained in traditional public schools.”).

109 See CTR. FOR RESEARCH ON EDUC. OUTCOMES, STANFORD UNIV., CHARTER SCHOOL PERFORMANCE IN NEW YORK CITY 14 (2010), available at http://credo.stanford.edu/reports/NYC%202009%20_CREDO.pdf (detailing specific student groups with significantly better results in math and reading).
various charter schools are beyond the scope of this Note. The wide range in the quality of these institutions, however, renders dubious a federal policy that supports charter school implementation as an end in itself—especially because further devolution of power, from state and local education authorities to private charter companies, may well complicate future education reform initiatives.110

The fairness and efficacy of penalizing teachers for poor student outcomes, especially in light of teacher shortages in many areas of the country, is similarly a matter of ongoing debate. For instance, Florida’s Republican legislature passed a bill that would have held teachers accountable for student outcomes and eliminated tenure, a mainstay of unionized contracts,111 partly to strengthen Florida’s candidacy for Race to the Top Phase 2.112 After receiving over 120,000 messages on the issue, Governor Charlie Crist publicly broke with his party and vetoed that bill, arguing that it failed to provide a “clear understanding of how gains will be measured.”113

The untested nature of these, and many other popular reform initiatives, exacerbates the risks attendant to federal encroachment upon state policy making autonomy. This institutional vulnerability is always present to some degree when federal money is used as the “carrot” in “carrot and stick” policy making. Requiring states to pass specific legislation in order to receive extra funding is, as a practical matter, largely indistinguishable from providing money for a specific policy purpose knowing it will require considerable supplementation by state treasuries.114 Courts routinely uphold both claims in the face of constitutional attack.115 As a policy matter, however, there is a significant qualitative difference. Consider the Federal Aid Highway Act, which conditions states’ receipt of some federal highway funds on, among other things, state seatbelt regulation and a legal drinking

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110 See, e.g., Jacoby, supra note 76, at A25 (decrying “further balkanizing of a public education system already hampered by the legacy of extreme decentralization”).

111 Trip Gabriel & Damien Cave, Florida Governor Bucks G.O.P. on Teacher Pay Bill, N.Y. TIMES, Apr. 15, 2010, at A16 (“Passions have not run so high in Florida, the governor said, since the controversy over ending the life of Terri Schiavo in 2005.”).

112 Id.

113 Id. The difficulty of accurately and meaningfully measuring student outcomes has also frustrated the goals of NCLB. See supra Part II.A.1 (describing the shortcomings of NCLB).

114 Cf. supra Part II.B.2 (describing the unfunded mandate litigation arising under NCLB).

115 See supra notes 84–85 and accompanying text (discussing failure of states’ Spending Clause claims and permissiveness of South Dakota v. Dole generally).
age of twenty-one years.\footnote{23 U.S.C. §§ 153(a), 158(a) (2006). The latter provision was upheld under \textit{Dole}. \textit{See South Dakota v. Dole}, 483 U.S. 203, 212 (1987) (concluding drinking age provision is a valid use of the spending power).} While the policy rationale for the latter is assailable,\footnote{See generally, \textit{e.g.}, Mary Pat Treuthart, \textit{Lowering the Bar: Rethinking Underage Drinking}, 9 N.Y.U. J. LEGIS. & PUB. POL’Y 303 (2005) (discussing the prevalence of underage drinking and advocating for state-set drinking laws).} transportation safety initiatives of this kind present clear, mutually exclusive choices. In formulating the funding condition, the federal government must weigh the benefits of the safety feature against its policy costs. A state actor deciding whether to accept the funds and the attached conditions faces the same choice. This stands in contrast to many popular education reforms, which are not only of uncertain value but—as charter schools powerfully illustrate—infinitely variable.

Moreover, to be effective, education reforms do not necessarily require nationwide uniformity. The drinking limitation in \textit{South Dakota v. Dole} was predicated upon findings that variable state drinking ages encouraged young people to drive “to border States where the drinking age [was] lower.”\footnote{483 U.S. at 208–09 (quoting \textit{PRESIDENTIAL COMM’N ON DRUNK DRIVING, FINAL REPORT 11} (1983)).} State education policies may have some similar “spillover effects.”\footnote{\textit{Schapiro}, supra note 12, at 114–15 (contemplating “spillover effects” as one justification for federal preemption in a polyphonic system).} To cite one example, a single state may impose its educational content preferences upon its sister states because states are served by a nationwide textbook market.\footnote{See supra note 76 (describing the interstate effects of new Texas social studies standards).} But, for the most part, local and regional conditions present unique challenges in the implementation of policy,\footnote{Demographics is perhaps the best example. \textit{See supra} note 74 and accompanying text (discussing dispersion and concentration of immigrants in different states).} meaning uniformity is not always possible or even desirable. Nor is education policy analogous to industry regulation, which, unless nationalized, presents collective action problems. If state participation in the Clean Air Act, for example, were not encouraged through conditions and sanctions,\footnote{See 42 U.S.C. § 7509 (2006) (detailing sanctions).} economic incentives might exist for states to under– or deregulate. The failure of NCLB, in contrast, is not a manifestation of classic collective action theory but rather the product of a shortsighted statutory mechanism for federal oversight.

While there may be no legal difference between tying federal funding to the implementation of a statute requiring seatbelts and tying it to the passage of a statute authorizing charter schools, the
cooption of state policy making in the latter example is less justifiable. Education reforms generally do not require uniform application or collective action and may be difficult to evaluate empirically. In the absence of both a need for uniform collective action and the ability to predict results, the federal government should not impose pressure on a state legislature to approve a particular statutory enactment.

The most recent iteration of Race to the Top may be vulnerable to similar criticism. Although the Early Learning Challenge is a laudable effort to address gaps in preschool access, quality, and achievement, \(^{123}\) it has nonetheless met with controversy. Of particular concern is an “[a]bsolute [p]riority” requiring applicants to tackle development standards and kindergarten entry assessments.\(^{124}\) At present, less than half the states require preassessment of incoming kindergarteners.\(^{125}\) While many in the education community have applauded the effort, others have questioned the wisdom of implementing standardized testing so soon in a child’s educational career.\(^{126}\)

### 4. Ossification of Unproven Policy

A related concern is the extent to which top-down policy making of the sort employed by the DOE in its distribution of stimulus funds risks nationalizing and ossifying unproven education trends. The last thirty years witnessed an explosion of reform initiatives at the state and, later, federal level beginning with adequacy and school finance litigation. During the 1980s, states took an interest in educational quality reforms, including rigorous testing, high school graduation requirements, and teacher certification requirements.\(^{127}\) Standards, in the form of content and performance benchmarks and student assessments, became the reform *du jour* in the 1990s,\(^ {128}\) culminating in the passage of NCLB at the dawn of the new century. Support for charter

\(^{123}\) See *supra* note 47 and accompanying text (describing the Early Learning Challenge).


\(^{126}\) See, e.g., Valerie Strauss, *Race to the Top: Standardized Testing for Preschoolers*, WASH. POST (July 6, 2011, 12:28 PM), http://www.washingtonpost.com/blogs/answer-sheet/post/race-to-the-top-standardized-testing-for-preschoolers/2011/07/05/gIQAU4W0H1_blog.html (“The institutionalization of standardized assessments for young kids threatens to turn preschool into an academic environment that is too regimented for youngsters.”).

\(^{127}\) MANNA, *supra* note 7, at 11–12.

\(^{128}\) *Id.* at 12.
schools and teacher accountability is more recent. The pace of reform has accelerated so quickly that it is difficult to find solid empirical research to corroborate even established initiatives.\footnote{129 It is worth remembering that the first nationwide, longitudinal study of charter school outcomes was not released until 2009. \textit{See supra} notes 106–07 and accompanying text (discussing the first such report).}

Absent reliable data, the federal government’s assertion of specific policy preferences is little more than political posturing. NCLB may have suffered from insufficient attention to pedagogical method,\footnote{130 Aaron J. Saiger, \textit{Legislating Accountability: Standards, Sanctions, and School District Reform}, 46 \textit{Wm. & Mary L. Rev.} 1655, 1724 (2005).} but Race to the Top goes too far in the opposite direction. The Obama Administration’s insistence on charter schools and teacher accountability measures recalls the federal government’s unpopular foray into bilingual education in the 1960s. By mandating bilingual instruction to English-language learners, the government endorsed a “pedagogical approach of disputed and unproven efficacy” and ignored “the diverse views of ethnic communities on the value of bilingual education.”\footnote{131 Amy Gutmann, \textit{Democratic Education} 86 (rev. ed. 1999).} If the federal government is to be involved in education reform at all, its central goal should be to encourage the reasoned development of best practices over the long haul.

\section*{III}
\textbf{The Case for Federal Oversight of Education Reform}

Notwithstanding serious legal and policy objections to the Bush and Obama Administrations’ recent education reform attempts, some federal oversight remains both wise and politically tenable. In this Part, I suggest two principal justifications for a leading federal role in education reform: the strong national interest in education and the states’ limited educational capacity. Each must be balanced against the federalism considerations outlined in Part II—the relationship of funding to policy making power, states’ (sometimes) superior ability to respond to local conditions, states’ cosovereignty, and the need to test education policy before wide implementation. These factors suggest that the federal government should fund policy experimentation in the states, with a view toward identifying best practices to be implemented later at the state and/or national level.
A. The National Interest in Education Necessitates
Federal Leadership

As true local control is supplanted in part by state regulation, the relevant stakeholders in education outcomes also must change. Local control capitalizes on the value of small government political accountability as well as parental and community involvement in policy making. The nationalization of education reform engenders a new value particularly, though not exclusively, salient to national stakeholders: global competitiveness. While states have a mutual interest in the economic prospects of their denizens in a globalized society, interstate inequalities in education inputs and outputs call for federal involvement.

1. Competitiveness in the International Sphere

How American education measures up on the global stage has been a central concern since the National Commission on Excellence in Education sounded the alarm in *A Nation at Risk* in 1983. Nearly thirty years later, however, American students continue to lag behind their peers. Disparities are particularly apparent at the secondary school level. Consider the recent performance of fifteen-year-olds on PISA, a test administered by the Organisation for Economic Cooperation and Development (OECD), an organization of thirty-four North American, South American, European, and Asian nations. The exam, which is given every three years, tests knowledge in reading, mathematics, and science in nine-year cycles; one of these three subjects is the major assessment area in any given exam administration. Despite modest gains in science, recent PISA results for U.S. students otherwise show little change from earlier exam administrations, notwithstanding the intervening passage of NCLB. In

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132 See supra Part I.A. (discussing models for education in which the major actors are the federal and state governments).

133 Indeed, the voluntary adoption of content standards in core academic subjects by the National Governors Association grew out of this very concern. See NGA REPORT 24 (noting that in order “to ensure that students are equipped with the necessary knowledge and skills to be globally competitive,” states must upgrade their classrooms with “a common core of internationally benchmarked standards in math and language arts”).

134 As considered in this Note, the most important educational inputs might include funding, personnel, and other resources. The primary educational output would be student achievement, as measured by graduation rates, test scores, academic progress, and other benchmarks. See infra Part III.A.2 (describing interstate inequalities in education inputs and outputs).

135 NAT'L COMM’N ON EXCELLENCE IN EDUC., supra note 5.

136 PISA 2009 RESULTS, supra note 1, at 21.

137 Secretary Arne Duncan’s Remarks at OECD’s Release of the Program for International Student Assessment (PISA) 2009 Results, U.S. DEP’T OF EDUC. (Dec. 7, 2010),
2009, a “reading year” and the most recent exam administration for which data are available, the United States scored fourteenth in reading, seventeenth in science, and twenty-fifth in mathematics out of thirty-four OECD participants. American mean reading and science scores are each at or near the OECD average, but the United States’ mathematics performance was deemed below average by a statistically significant margin.

PISA results have proven to be a useful diagnostic for participating countries, providing sound evidence both of international standing and domestic performance over time. While preoccupation with rankings can exaggerate deficiencies, the OECD has estimated that the differences in scores between the highest- and lowest-performing OECD countries represent more than two grade levels, a serious discrepancy. On average, U.S. students are at the middle of the pack but still significantly behind their peers in Korea, Finland, and Canada, the top-ranked OECD test-takers. Unfortunately, these deficits are only more pronounced for the nation’s lowest-performing students.

2. Interstate Inequalities in Education Inputs and Outputs

The federal government is better poised to improve the international standing of the country’s students to the extent that it can remedy or mitigate substantial inequalities in education inputs and outputs. Then-professor Goodwin Liu has shown that inequality of educational opportunity—measured in terms of per-pupil expenditures, academic standards under NCLB, and student performance—is more pronounced between states than within states, due largely to

138 Id.
139 PISA 2009 RESULTS, supra note 1, at 15 tbl.1.
141 PISA 2009 RESULTS, supra note 1, at 13.
142 See infra note 145 and accompanying text (discussing differential performance across subgroups).
states’ variable fundraising ability. Unfortunately, states with low fiscal capacity have greater concentrations of low-income students, minority students, and English language learners, subgroups which lag far behind their domestic and international peers. Although PISA results are not available on a state-by-state basis, demographic differences in performance are substantial. When the most recent reading scores of racial groups are isolated, Asian Americans lead all OECD countries, White Americans come in third, and Blacks and Hispanics appear near the bottom, behind students from most developed Asian and Western democracies. Any discussion of U.S. educational excellence must therefore consider inequality. Substantial differences in the degree of social, racial, and economic diversity of the school-age population exacerbate the substantial funding discrepancies between states that are troubling in their own right. The problems of fiscal capacity and equality are mutually reinforcing because disadvantaged students require more funds—in the form of English-language teachers, reduced-price lunches, tutoring, and other special services—than revenue-poor states can provide. The need for wealth redistribution and protection of civil rights, functions better served by the national government, provides a strong case for federal intervention.

Despite a number of successful constitutional challenges to unequal state finance regimes under state constitutional law, there is no clear federal cause of action to redress this troubling interstate inequality. Liu advocates revision of federal policy to encourage voluntary adoption of rigorous national content standards by the states and an increased federal role in school finance regimes. He calls for a substantial infusion of federal funds into state school

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143 Liu, supra note 21, at 2044, 2061–62.  
144 Id. at 2061–62.  
147 San Antonio Independent School District v. Rodriguez held that education is not a fundamental right under the Equal Protection Clause. 411 U.S. 1, 37 (1973) (rejecting the district court’s arguments that education is a fundamental right and finding that the federal government should not closely scrutinize the state government’s intrastate education inequality).  
148 Liu, supra note 21, at 2104. Professor Liu argues that the Fourteenth Amendment’s guarantee of national citizenship confers an affirmative obligation on Congress to remedy disparities that both disproportionately affect minority and low-income students and are primarily the result of variable fiscal capacity between states. Id. at 2061–62, 2101.
finance systems, with greater distributions to states with lesser fiscal capacity. These substantive and fiscal equalization proposals recognize that, to improve national outcomes, the federal government cannot afford to ignore substantial interstate inequalities.

Increased federal aid to states would go a long way toward securing greater equality in the distribution of educational opportunity—but not all the way. First, increased expenditures alone have not been linked to measurable student achievement gains. Second, variation in states’ substantive education policy may exacerbate divergence of educational opportunity. In Germany, which, similar to the United States, has both a completely decentralized education system and one of the highest socioeconomic achievement gaps in the OECD, empirical studies have linked inequality in outputs to specific state policies. Liu recognizes as much when he notes that, to be successful, fiscal solutions “must leverage and integrate other reform agendas in the policy environment.” It is important to note that while equity considerations may demand some federalization of education funding, they do not necessarily require federalization of policy. The federal government should not set the reform agenda alone in the absence of empirical data on how best to spend limited education funds. The formation of empirically sound, locally tailored educational policies thus requires substantial state contributions on the ground.

B. States Have Limited Educational Bureaucratic Capacity

The second principal justification for federal involvement is, unlike the first, structural and process oriented. In the education field,

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149 Goodwin Liu, National Citizenship and Equality of Educational Opportunity, 116 Yale L.J. Pocket Part 145, 150 (2006). Liu also proposes a revision to Title I that would allocate federal aid based on student poverty rather than the states’ relative per-pupil spending. Id.

150 See, e.g., Gary Burtless, Does Money Matter?: The Effect of School Resources on Student Achievement and Adult Success 41 (1996) (“Statistical evidence and recent historical experience suggest to me that school performance is unlikely to be improved solely by investing extra money in the nation’s schools.”); see also Posner, supra note 140 (noting the United States’ “mediocre” PISA performance notwithstanding one of the highest per-pupil spending rates in the OECD).


152 Liu, supra note 21, at 2127.

state bureaucratic capacity is, like its federal counterpart, fairly new. On the eve of the enactment of NCLB’s antecedent, the ESEA, the Johnson Administration was concerned that state education departments were too weak to implement its provisions.\textsuperscript{154} While state departments have been charged with implementation of an increasing number of federal education statutes in the intervening forty years, they have built up their compliance capacity at the expense of true policy expertise.\textsuperscript{155} Limited state funds, the “sheer magnitude of the reforms states have initiated since the early 1980s,” and a poor research base from which to assess policy have further limited their capacity.\textsuperscript{156} This lack of capacity means that states do not, on average, possess sufficient resources and expertise to implement education reform unilaterally.

It also means that federal policy is constrained by both the DOE’s capacity and each state’s capacity. In implementing NCLB, the Bush Administration was forced to make a number of concessions, including individual waivers from requirements, blanket revisions, and reversals of policy in the face of state incapacity and its own inability to enforce the law as written.\textsuperscript{157} Following the announcement of President Obama’s proposal for NCLB reauthorization, which includes a shift from absolute to growth-based measurement of student achievement,\textsuperscript{158} experts predicted it would take several years for states to develop the requisite capacity to monitor students’ academic growth.\textsuperscript{159} The limited capacity of state education departments justifies a strong federal role in education, but the interdependence of state and federal bureaucracies in implementing federal policy simultaneously serves to check sudden expansions of federal power.\textsuperscript{160} The federal government simply cannot do it alone.

\begin{footnotesize}
\begin{enumerate}
\item 154 MANNA, supra note 7, at 77.
\item 155 Id. at 107.
\item 156 Id. at 107–08.
\item 157 Id. at 133. One well-publicized example was a reversal on the use of commercially produced assessments. Id.
\item 158 BLUEPRINT FOR REFORM, supra note 10, at 9–10.
\item 159 Sam Dillon, Array of Hurdles Awaits New Education Agenda, N.Y. TIMES, Mar. 16, 2010, at A16 (noting that less than half of all states “currently have the advanced student data tracking systems needed to measure student academic growth”).
\item 160 See MANNA, supra note 7, at 113 (“[S]ates can respond to federal requirements by saying ‘no’ or ‘we can’t.’ When that happens, federal policy entrepreneurs may become frustrated, but they typically reply ‘okay’ and adjust their own agendas . . . .”).
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IV
THE FUTURE OF FEDERAL OVERSIGHT OF EDUCATION

The central paradox presented by limited state capacity—that it simultaneously necessitates and cabins federal involvement in education policy making—can be resolved in part by synthesizing Schapiro’s conception of “polyphonic federalism” with Professor Paul Manna’s elaboration of the agenda-setting function of federalism. I borrow from these mutually accommodating theories of federalism and update the traditional model of states as laboratories for progressive reform by promoting the federal government to the role of facilitator.

A. Building State and Federal Capacity To Achieve Mutual Goals

Manna observes that federal policy makers can “expand the federal education agenda by borrowing strength from state governments. . . . Frequently, this borrowing has coalesced with federal education initiatives designed to build capacity at lower levels of government.” Originally, ESEA built up state education authorities, creating “a continuing source of bureaucratic capacity from which future federal policy makers could borrow.” The history of NCLB lends further support to this processual reading. President Bush’s proposal came on the heels of a decade-long adequacy movement across many states as well as a law in his home state of Texas that tied accountability to high-stakes testing.

To achieve its twin goals for education reform—global competitiveness and equality of opportunity—any federal program undertaking education reform must recognize the crucial role of states in building up capacity at both levels of government to develop, test, and implement specific initiatives. Manna’s political science perspective complements and elucidates Schapiro’s overarching theory of polyphonic federalism. Conceived in such terms, the symbiotic, capacity-building relationship between the federal and state governments is a manifestation of overlapping sources of authority from

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161 Id. at 14 ("[F]ederalism creates potential agenda setting opportunities for individuals who carefully size up their own weaknesses and then make up for them by leveraging arguments or capabilities that exist elsewhere in the system.").

162 Id. at 89.

163 Id. at 91.

codependent sovereigns. It also promotes the “innovati[on] and resilien[ce]”\textsuperscript{165} that is a centerpiece of Schapiro’s normative analysis.

B. A New Model for States as Laboratories

Justice Brandeis famously described states as laboratories that may “try novel social and economic experiments without risk to the rest of the country.”\textsuperscript{166} While his metaphor remains very popular, Brandeis’s observation only tells us about one of the reasons for the existence of independent state and federal power, not “how to reconcile them.”\textsuperscript{167} Moreover, the conspicuous exclusion of the federal government from Brandeis’s policy alchemy makes it more a relic of dual federalism’s heyday than a metaphor with continuing application. It says nothing about how to determine the proper place of the federal government in an era of increasingly centralized and nationalized policy making.\textsuperscript{168} Through synthesis with Schapiro’s and Manna’s formulations, however, Justice Brandeis’s popular metaphor achieves a new vitality. One way to conceptualize the federal role is as a laboratory assistant who simultaneously observes and provides research support for a number of experiments, drawing inferences from the results and serving as an information repository for future experiments.\textsuperscript{169}

To some extent, the Obama Administration’s recent education reform proposals envision the federal role in similar terms. Under Obama, the DOE seems to recognize a good thing when it sees it: Its Race to the Top competition awarded up to forty points for the adoption of the national content standards developed by the NGA over the past two years, and its NCLB reauthorization proposal explicitly praises the standards’ alignment with its own goals for college- and

\textsuperscript{165} SCHAPIRO, supra note 12, at 97–98.

\textsuperscript{166} New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

\textsuperscript{167} SCHAPIRO, supra note 12, at 77.

\textsuperscript{168} Levy, supra note 64, at 461 (noting that the metaphor today “is widely used as a more all-purpose defense of the legitimacy of states pursing divergent policies in general”).

\textsuperscript{169} See Oates, supra note 27, at 1133 (“[O]ne might suspect that relatively independent efforts in a large number of states will generate a wider variety of approaches to public policy than a set of centrally designed experiments.”). I am not the first to propose a reboot of Brandeis’s laboratory metaphor. See, e.g., Mark Pilotin, Comment, Finding a Common Yardstick: Implementing a National Student Assessment and School Accountability Plan Through State-Federal Collaboration, 98 CAL. L. REV. 545, 548–49 (2010) (invoking states as laboratories and federal government as “facilitator” in arguing in favor of national student assessment and accountability plan). While Pilotin describes the federal-state role in terms similar to mine (and familiar to any student of federalism), his proposal is focused on comprehensive accountability reform administered through federal regulatory authority. My proposal, in contrast, is limited to a single pilot program focused on accountability reform. See infra Part IV.C (proposing such a program). As such, I envision a substantially less expansive role for the federal government in terms of subject matter and scope of oversight.
career-ready standards. Moreover, the incentives-based (rather than penalty-based) funding initiatives that form the core of both proposals suggest sensitivity to legally permissible but practically coercive federal “carrot and stick” policy making that, as I discussed in Part II.B.3–4, precludes important localized policy making by state legislatures and threatens to ossify unproven reform trends.

Indeed, the Obama Administration’s heavy-handed approach to the selection of Race to the Top criteria belies its rhetoric of fostering innovation. By prioritizing and rewarding very specific reform measures, the program circumscribes the range of competitive state proposals. To fulfill the promise of states as laboratories for education reform, the federal government should commit to an unbiased assessment of funding applications, preferably by a panel of independent players, to detect and support those “novel social and economic experiments” most worthy of federal interest and expenditures. In the words of Diane Ravitch, a longtime proponent of national standards, the federal government’s role should be to “discover and explain the very best existing [practices], not to invent new and untried ones.”

C. Pilot Programs as Successors to Race to the Top

Given the uncertain efficacy of many new education reform ideas, one way to begin this important work is through the adoption of permanent pilot programs that would serve as successors to Race to the Top and focus on a variety of education reform goals. While many potential programs are possible, I suggest one plan devised with prior successes and failures under recent federal programs in mind: the establishment of an independent and transparent reform board within the DOE to administer state subsidy programs providing research funds for education reform proposals. Within this framework, the President and the DOE should retain primary authority for selecting the areas to be studied and improved—for example, teacher performance, union relations, testing, curricula, literacy programs, or administrative efficiency. An independent education reform board comprised of experienced education policy experts, reform advocates, educators, and administrators would contribute both substantive expertise and a diversity of viewpoints.

170 Blueprint for Reform, supra note 10, at 11–12.
171 New State Ice Co., 285 U.S. at 311 (Brandeis, J., dissenting).
My proposal would improve upon the procedures used in Race to the Top. In evaluating state applications, Race to the Top utilized fifty-eight independent reviewers selected by the DOE from a total of 1500 applicants for their background in education policy, education reform, application evaluation, and/or bureaucratic capacity and scale. These experts both reviewed written applications independently and, in panels of five, attended presentations and question-and-answer sessions with applicants.

While the general contours of this evaluation process reflect an appropriate delegation of administrative authority to expert policy makers and a means for meaningful participation by stakeholders (i.e., the applicants themselves), other procedural aspects of the program were unwise and should be reformed. First, Race to the Top reviewers worked from rubrics designed without their input, which may be responsible for the significant discrepancies in scores within panels. Second, the DOE anonymized the evaluation process to prevent applicants from imposing pressure, leaving the task of identifying conflicts of interest largely to the DOE itself. Because this lack of transparency increases the risk that bias or conflicts of interest will remain undetected and obscures the DOE’s own agenda, revelation of the names, qualifications, and associations of all reform board panelists would ensure that only the most worthy proposals receive funding. To similar effect, the functions of board members would include collaboration with DOE officials on the means of evaluation.

Overhauling the means of evaluation is the single most important substantive change my proposal contemplates. Like Race to the Top, these pilot programs would consist of incentive grants that award federal money for innovative reform projects designed to address public education challenges. Grants are less coercive than NCLB’s retributive funding scheme and thus preferable from a policy and federalism perspective.

174 Id. at 11.
175 Id. at 14–15 (describing differences in reviewer scores). The Department of Education maintains that these discrepancies were due to diversity of opinion, which they sought to encourage. Id. at 14.
176 Id. at 12–13.
177 Moreover, unlike sanctions, the main enforcement mechanism of NCLB, ex ante financial incentives are more likely to encourage innovation because failure to achieve results is not penalized. They also mitigate the free-rider problem that makes coordination among states difficult. Left to their own devices, many states will decline to take policy risks in the hope of benefiting from the information externalities produced by programs conducted in sister states. Oates, supra note 27, at 1133.
Incentive grants—if properly implemented as outlined in broad strokes below—are the optimal way for the federal government to harness the states’ policy making expertise in service of its own responsibility to equalize educational opportunity and increase national competitiveness in a global economy.\textsuperscript{178} Indeed, it was the failure to employ truly objective criteria—and not the fiscal mechanism of the competition itself—that threatened to coopt state policy making autonomy and ossify unproven reform trends. Race to the Top evaluated potential programs in part on the basis of congruence with the Obama Administration’s specific policy preferences. I propose instead the use of scoring rubrics that reward points chiefly for research design, taking into account feasibility, cost effectiveness, program scope, past success or failure of similar policy initiatives there or elsewhere, and capacity for replication in other states or school populations. Imposing very specific program requirements from the top down not only threatens state autonomy in a federalist system, but also stifles innovation. By contrast, a pilot program aims to discover and develop best practices. Therefore, significant discretion on the ground to anticipate and respond to local conditions and unanticipated problems would best allow for innovation.\textsuperscript{179}

Consider a pilot program to evaluate how to set teacher compensation to best encourage student achievement. Proposals might range from an across-the-board salary increase to incentivize morale and retention of good teachers; bonuses for extraordinary student progress and/or student achievement; salary reductions for failure to meet certain benchmarks; or a variable salary system with each teacher’s salary set each year on the basis of the prior year’s performance. In evaluating such a proposal, the DOE, through its independent evaluators, may assess the feasibility of the program in light of current conditions in that state, the state’s union obligations, existing empirical research, and similar programs in other states, but it would not afford substantive preference to any one proposal. Indeed, the pilot program should not have been authorized if a particular result was desired.

I have delineated only the outlines of a pilot program, but the four federalism considerations developed in Part II can inform pro-

\textsuperscript{178} See supra Part III.A (discussing the need for federal involvement).

\textsuperscript{179} Cf. Saiger, supra note 130, at 1722–24 (noting that NCLB’s rigid adequate yearly progress standard prevented schools from seeking incremental solutions). State accountability systems work better because states generally retain discretion to decide whether or not to take corrective action against underperforming schools. If these schools know failure is inevitable, they lose the incentive to try novel approaches. Id. at 1728.
gram specifications for this and future proposals. At a broad level of abstraction, a pilot program of the kind I envision internalizes both the state legislatures’ policy making autonomy and the advantages of local control. Supporting development of education policy in the states avoids coercive top-down directives and exploits the chief structural advantages of a lower level of government: proximity to “the People” and the associated values of citizen participation and locally tailored initiatives. The guiding spirit of the proposal eschews ossification of unproven policy trends by restricting the subject matter of pilot programs to cutting-edge or untested education initiatives and precluding federal policy mandates. Admittedly, politicization of the process remains a threat, notwithstanding procedural safeguards that promote transparent and independent means of evaluation. However, ossification can be further prevented by extending project timelines both at the proposal and implementation stages to counteract the government’s demonstrated bias for “shovel ready” projects that perpetuate the status quo. Finally, while limited pilot programs will not produce parity in federal and state education funding, they do provide some assistance to strained state budgets.

While this proposal appears to give most autonomy to states in developing policy, the federal policy making role is enhanced in two ways. First, by selecting the subject matter of pilot projects, the federal government becomes a key education agenda setter for the nation. Second, by conducting and evaluating pilot projects over time, the federal government can learn which reforms are worthy of increased federal investment and regulation through new or existing programs. These oversight powers are important tools for addressing national competitiveness in a global economy. Unfortunately, a program of this scale cannot eliminate the substantial interstate inequalities in state education budgets that partially create the problem, but it offers a start, particularly if incentive grants take into account state need in terms of relative fiscal capacity.

180 See supra Part II.B (discussing the local control doctrine, limited federal funding, threats to state autonomy, and ossification of unproven policy).

181 Empirically rooted policy making is always difficult, because “[t]he legitimacy of a certain policy measure (and in extension its advocates) does not necessarily come from its being empirically proven to be the most effective remedy for a problem, but rather from the political and public acceptance of this measure.” Waldow, supra note 140, at 481.

182 When tight spending deadlines are in play, the government has an incentive to fund projects that can be implemented quickly whether or not they are the most promising proposals. Cf. Johnson, supra note 146, at 184 (noting that “shovel ready” projects present “possibility of entrenching existing patterns of inequality”) (internal quotes omitted).

183 As Professor Liu demonstrates, statutory reform and major increases in federal education appropriations would be required. See supra Part III.A.2 (describing inequalities in education inputs).
This Note has highlighted how federal education policy can impinge on state policy making autonomy. It is important to remember, however, that the success of federal spending programs relies on the federal government’s ability to police state conduct. The key lesson of NCLB, expounded at length by other writers, is the need to avoid creation of perverse incentives. While there is a fine line between coercion and accountability, the federal government must retain some oversight of state spending to ensure funds are being used for true reform. Analysis of the first year of short-term federal education funding programs enacted as companions to Race to the Top suggests that many states used earmarked funding primarily to fill their own budget shortfalls, in contravention of the statutory purpose of the appropriation. The use of reporting mechanisms and staggered appropriation of programs can help mitigate the risk that cash-starved states misappropriate federal funds.

My pilot program proposal, though modest, illustrates the potential of a “polyphonic” model of education federalism. In the short term, the programs would harness the pluralism inherent in a large, heterogeneous federal system to test a number of innovative education solutions. In the medium– to long-term, emerging consensus on the best education policies may, but need not, suggest subject areas for substantive federal regulation. My modified “polyphonic” education policy framework tolerates—in fact, celebrates—a diversity of approaches as long as the federal government remains able to pursue national imperatives for educational quality and equality of opportunity.

CONCLUSION

The loss of Democratic control in the House of Representatives following the 2010 midterm elections has jeopardized President Obama’s plans for NCLB reauthorization this year. Republican

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184 For one such writer, see Ryan, supra note 41.
185 MICHAEL A. REBELL ET AL., STIMULATING EQUITY?: A PRELIMINARY ANALYSIS OF THE IMPACT OF THE FEDERAL STIMULUS ACT ON EDUCATIONAL OPPORTUNITY 4 (2010), available at http://www.equitycampaign.org/i/a/document/12857_Stimulating_Equity_Report_FINAL.pdf (finding, in a twenty-state sample of grant recipients from a one-time appropriation to the Fiscal Stabilization Fund, that none had devoted funds to the reform areas for which money was appropriated and instead used the funding to “backfill[]” and make up for gaps in normal education funding).
186 See id. at 4, 36–37 (concluding that “states are not going to set aside scarce funds to support new initiatives for equity if they are not backed up by mandatory directives or strong maintenance of effort requirements” and proposing, inter alia, “transparent, comprehensible periodic reports”).
187 See Sam Dillon, New Challenges for Obama’s Education Agenda in the Face of a G.O.P.-Led House, N.Y. TIMES, Dec. 12, 2010, at A36 (noting that the new House com-
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antipathy to greater federal involvement in education is unsurprising in light of the perceived failure of NCLB, a soaring deficit, and the controversy surrounding the Obama Administration’s implementation of Race to the Top. While NCLB has many critics, states have spent substantial sums to develop accountability systems to comply with its requirements, and states’ capacity for data collection has markedly improved. In light of these changes to the education reform bureaucracy, abandoning the federal role in education is premature. My proposal for a new model of state-federal partnership recognizes that federal leadership in education reform can mitigate the effects of interstate inequality and suboptimal state capacity while respecting states as coequal policy makers in the education sphere. This “polyphonic” understanding of the federal-state relationship shows real promise in providing answers to the nation’s intractable education challenges.
