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Educational Freedom in the Wake of No Child Left Behind

The Honorable Bob Schaffer and The Honorable Peter Hoekstra

JENNIFER A. MARSHALL: I'm particularly delighted to be able to welcome these two stalwart education reformers. They were extraordinarily influential in defining the terms of the conservative education debate in the 1990s. Conservatives have always believed that education decisions should be made by those closest to the child; but mastering the policy and the politics surrounding federal programs is a more challenging matter, and regrettably, few conservative Members of Congress have had the patience or fortitude to do that.

Not so with our two speakers today. In the 1990s, Congressmen Pete Hoekstra and Bob Schaffer were both instrumental in defining the terms of the education debate in Congress. They rallied reform-minded Members to support ideas that would empower local schools, teachers, and especially parents.

As chairman of the House Subcommittee on Oversight and Investigations, Representative Hoekstra traveled across the country, holding hearings about the extent of federal involvement in education. The *Education at a Crossroads* report that emerged from his travel across the country stated the facts very clearly: In spite of several hundred programs in multiple agencies across the federal government and tens of billions of dollars of expenditures each year, the federal government could show little to no success in education achievement in the three and a half decades of its involvement.

Together, Representatives Hoekstra and Schaffer were vigilant in their effort to protect taxpayers' invest-

Talking Points

- The passage of No Child Left Behind was the largest expansion of the federal government's role in K-12 education since the creation of the U.S. Department of Education.
- No Child Left Behind is a serious federal intrusion into state authority that creates a prescriptive, "one-size-fits-all" framework with less freedom to meet the unique needs of students in small rural schools, schools that attract non-traditional learners, districts that have large migrant populations, or communities with concentrated poverty.
- Federally driven testing requirements are an inadequate replacement for real accountability: an educational marketplace in which schools are accountable to parents.
- Letting the states assume freedom and control in education policymaking would cut red tape, restore federalism, and allow for true accountability to parents and local communities.

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ment in education by identifying waste, fraud, and abuse at the U.S. Department of Education. In fact, they even made some surprise visits to the department to investigate further what was going on in the many programs and the labyrinth of regulatory procedures and paperwork that at the time were not very well known. The Department of Education was failing audits and was often unable to account for what it was doing with these scores of billions of dollars of Americans' money.

Congressman Hoekstra went on to serve on the Intelligence Committee, and he is known for his leadership and consistency on a wide range of issues. From the topics that he chooses to engage, it is very clear that he understands that America's place in the world will be defined by the character of its culture. So we are grateful that he is now back on the Education Committee, and we are especially eager to hear his comments about how we can continue the march toward educational freedom in the wake of the most aggressive expansion of the federal role in education since 1965, the No Child Left Behind Act.

I would also like to introduce and welcome back Congressman Bob Schaffer. Congressman Schaffer is one of the most respected and experienced veterans of education policy in the state of Colorado and, for that matter, across the country.

For more than 20 years, Congressman Schaffer has been an advocate for competitive schools and the empowerment of those closest to the child; namely, parents and teachers. Few elected officials have been more engaged in educational reform ideas and innovations. In the Colorado State Senate and the U.S. Congress, Representative Schaffer was a vocal proponent of expanding educational options through charter schools and other means. He served on the House Education and the Workforce Committee in Congress and chaired the Education Reform Caucus. He currently serves as vice-chairman of the Colorado State Board of Education.

But perhaps his greatest personal involvement with public schools has been through the educational experience of his own five children. Bob and his wife Maureen have helped to start alternative and charter schools in the Fort Collins area, and once again, they demonstrate their commitment to

the quality of education in America and providing options for all American students.

—Jennifer A. Marshall is Director of Domestic Policy Studies at The Heritage Foundation.

THE HONORABLE BOB SCHAFFER: It's great to be back in Washington, D.C. I'm in the oil and gas business these days, but I have never given up on the notion that the need to have a vibrant education system in our country is a critical and crucial goal for our states and for our country generally. So I manage to stay involved in that too.

I got elected in the last election to the Colorado State Board of Education, a seven-member board given the responsibility to help implement state laws that apply to education. We're not a lawmaking body, but the State Board of Education has the responsibility to implement our State School Finance Act, as well as all of the federal rules, regulations, and guidelines that come down from Washington, D.C. It's been a great, interesting experience to have had a chance to view education from almost every side—I've never been a teacher in a formal sense—as a state legislator, a U.S. Congressman, and now on the regulatory side on the State Board of Education, which gives me a unique perspective about education management and leadership.

I believe beyond a shadow of a doubt that education is the number one topic confronting our country. There are many, many topics that confront our nation: We are a country at war, we have great security issues overseas and domestically, and we have issues confronting our country with respect to tax policy and the economy and general prosperity. But no matter how many years you go back in America's political history, you're not going to find a topic that has been more consistently important than education.

This was a topic that our founding fathers discussed at great length. Jefferson, Madison, Adams, and Ben Franklin all talked extensively about the need for our country to educate the citizenry well in order to maintain the republic, as we are a country of self-governing individuals. We don't look to kings or oligarchs to define America. Power flows from the people to governing authorities. It is exactly upside-down from the experience of so many other countries around the world.

We need a nation full of smart people in order to maintain our liberty and our freedom. I would submit, ladies and gentlemen, that we are not doing a good enough job right now—certainly not to the extent that we ought to sit back and rest on our laurels and believe in a false level of confidence about the ability of this nation to maintain freedom and liberty in a classical sense, as those terms have come to define us.

You can do a public opinion poll in any state during any election and ask people what the number one issues are confronting the country; you will almost always find education in the top three, always and everywhere. Conservatives have failed in this regard. When you look at the Republican Party, which tends to represent the conservative side of the political spectrum, conservative leaders generally, as represented at our Capitol, have lacked the imagination, have lacked the courage, and have lacked the ingenuity to grab the most important issue confronting our country and reform it in a way that would be consistent with conservative ideals.

When we want the economy of our nation to flourish, what do conservatives do? We move authority back to the entrepreneurs of our nation, getting rid of the rules and regulations and the excessive burdens of federal taxation in order to allow industries to flourish. When we see a consolidation of power and authority and stagnation in the leadership of a specific industry or subject matter, we try to allow the forces of free-market competition to offer consumers the greatest quality at the lowest price and in the most convenient way.

We'll fight for those things when it comes to improving airline passenger travel; we'll fight for those things when it comes to broadening the access to financial services and increasing earnings; we will fight for those things when it comes to allowing the insurance industry to compete to drive down the cost of health care. But somehow, when it has come to the most important topic confronting our nation, we have decided as conservatives to be content with a government-owned, unionized, bureaucratized monopoly. It's just gone on for too long.

This battle is one that has raged for quite a long time. I think the time for being content with that kind of a model to deliver the most important prod-

uct and service in American society is over. The time for reform couldn't be any more apparent. Yet we continue to see in our states and in the country this great struggle decided in the direction of more authority moving to this city. We can talk about that within the context of No Child Left Behind and the context of the history that Jen mentioned, with the Education Reform Caucus and the efforts by a small group of conservatives here in Washington over the years in this struggle, but overall it's a battle we're losing. More authority in education is moving away from our neighborhoods and away from our kitchen table and moving to this town.

Some might find that a great thing. There are those who are a part of that government-owned, unionized, bureaucratized monopoly who feel more comfortable having the control and the power in their hands, and for obvious reasons. You can probably point to some levels of success—a program that might have helped here, a program that might have helped there—but when it comes to educating our nation generally, this is a formula for failure. It is a formula that, regrettably, both parties on Capitol Hill seem to have come to an agreement on: The way to fix education problems in America is through more programs and consolidation of authority in Washington, D.C.

It's the wrong direction. I am hopeful that, led by the conservatives in Washington and conservatives throughout the country, our politicians will come to their senses and realize that the traditional formula that works for airline passenger travel, that works in insurance, that works in health care, that works in financial services, and that works in manufacturing also ought to be allowed to work in public education. That's really the message, and it is not a new one for me. If you had been in an auditorium when I was in Congress, you would have heard almost the same speech years ago.

“No Child Left Behind” is a good goal. It's a good metaphor. We ought to have a public education system that leaves no child behind.

But let's back away from the federal government for a minute and talk about governors throughout our country. Let's suppose you are a conservative Republican who becomes governor of your state. You now find yourself the CEO of your state's school

system. What would you do, as a conservative, business-oriented entrepreneur, to improve public education in your state?

One of the things you might consider, which has been very trendy for the last two decades, is to take a look at all of the education enterprises in your state, all of the school districts and all of the public institutions, and begin measuring them and comparing one enterprise against the other for success, to try to figure out, if you're in school A, whether you have a better chance of succeeding than in school B. Through this kind of discussion, we began to see in the middle 1980s, and really in the 1990s, an effort by states to come up with statewide testing standards.

Prior to this, here's what happened in most school districts. Your school district would buy a test off the shelf—they might buy the Iowa Test of Basic Skills—and they would test their children to find out how education progress was proceeding in their district based on one particular measurement. If you started to see a dip in the scores in your local community, then a new school board would get elected, a new superintendent would come in, and what would the solution be? “You know, that Iowa test doesn't really measure what we teach.”

That's what all parents would hear: “The test doesn't really measure what we teach in this district. We're really good at some other things, and so we're going to buy a new test off the shelf.” And that might be the Stanford Test, which you used to be able to purchase. You bring that test in, and you start testing to that. Things would look good for a few years, and then you'd start sliding on the Stanford Test. Then you'd get a new school board and superintendent, and they'd say, “You know what? That Stanford Test is not really measuring what we teach at this school.” So it was always a moving target.

So these conservative governors who got elected started saying, “No, we're going to have one test, and it's going to be statewide.” Many states were doing this at the same time, and you saw states begin to purchase this similar testing regimen for each of their states and defining it.

Testing is fine if that is the goal, but when it comes to government-owned schools, standard-

ized testing is a replacement for the marketplace. It is a replacement for the marketplace where customers determine quality. So if you're the CEO, a conservative Republican entrepreneur, and your job is to fix the system you now own, testing is probably the best way to accomplish that. That's good for government people; it's not particularly good for the customer, and it's not necessarily good for students.

Now let's suppose you become President of the United States. Your job is to find a way to make sure that we are improving the quality of education across the country to ensure that no child will be left behind. What would you do? You'd look back and say, “I was a governor, and I know lots of other governors just like me. We are serious about improving the quality of education. When I was a governor, I had—and all these other conservative governors still have—standardized testing. Maybe what we ought to do is try to draw all of this together so that as a nation, we can not only compare schools within Colorado or within Texas or within Utah, but begin to compare them with one another so that on a national basis, from a national perspective, we can start measuring these government-owned enterprises against one another to improve the quality of education generally.”

That really is the impetus for No Child Left Behind. It was not a unique idea by candidate George Bush when he was running for office; it was attempted during the Clinton Administration too. The difference is this: When President Clinton was in the White House and Secretary Richard Riley was running the Department of Education, when they talked about a national testing strategy, Republicans were so opposed to this and had such strong regard for the concept of federalism and 50 states being responsible for their education system that not only did we kill these bills, but when we killed the Clinton efforts toward national testing, we boasted about how, as conservatives, we had avoided this train wreck of consolidating education authority in Washington: that we, as the conservative party, were adhering to the concepts of our Constitution, particularly the Tenth Amendment that gives the authority to manage schools specifically to the states and to the people.

In fact, we actually passed legislation that would preemptively prohibit any funding for national testing if a future Administration and the Department of Education tried to impose national testing on the entire country and consolidated education authority in Washington. These bills didn't go too far in the Senate, but they always did fairly well over on the House side. The point being that there was an understanding, just ten years ago, that any time you move power and authority to Washington, D.C., you lose the chance to manage schools and to operate them on a state-by-state basis as our founding fathers had envisioned, and from the standpoint of the child and their parents, the customers of public education, you take one step further away from true competitiveness within an education environment.

There are some good things in No Child Left Behind that were added to try to get votes from people like me, but I ended up voting no, and Pete Hoekstra did too. But there are a couple of good things that are market-oriented in the law. You don't see them implemented that well throughout the states, but they are in the law.

For example, if you find your child in a school that is labeled as "persistently dangerous," No Child Left Behind says that the school district has to cooperate with the parents and the child to help that kid find a better place to learn, a safer place more conducive to learning. To my knowledge, there aren't any parents receiving letters from their states under No Child Left Behind letting them know they are in a dangerous school and they can leave. In fact, in my state, it takes 270 felonies at a large public high school in a two-year period before I would ever get a notice as a parent—I'm speaking specifically about the school where my kids went to high school—before my school would be labeled as "persistently dangerous" under that provision of the law, because school districts and states don't want to offer school choice under those conditions.

The other area involves school failure. If your child is in a Title I school, and, after two years, if that Title I school gets put on an improvement plan, you can take a portion of your Title I funding and receive tutoring services, which are called supplemental education services, in the private sector. In other words, you could go to a private tutoring cen-

ter and take some of your government money with you to get additional tutoring.

That's a good victory in the No Child Left Behind law, but I would challenge anybody to go to any state and find an example where this is being aggressively implemented and enforced. Usually you find resistance from the local school administrators, and you rarely find a state board of education or a state department of education that is aggressive about actually alerting parents of this freedom that they have in No Child Left Behind. The participation in the supplemental education services in that provision of the law is very, very small.

Even if these provisions were more vigorously enforced, would that make No Child Left Behind a better piece of public policy? The answer is no. As positive as those two choice elements are, they are predicated on failure. You shouldn't get freedom only if you fail. You shouldn't get freedom only if your school's dangerous. You shouldn't get freedom only if your child's not learning. You should have freedom in America by virtue of being an American.

This should be the message of anybody who describes themselves as a freedom-loving conservative in this city. Our goal in public education ought to be to provide the greatest amount of choice from a consumer standpoint, the greatest amount of parental choice that drives down cost by virtue of competition, that improves quality dramatically by virtue of competition and improves your chances of convenience within this system by virtue of competition.

If we allow states the freedom to create a competitive education and academic marketplace, we will see teachers rising to the occasion when they are treated like real professionals. We will see parents playing a greater role in the education of their children when we treat them like real customers. And we will see children in America achieving the highest levels of academic success when we start treating them like real Americans.

For some reason, we have lacked the nerve and we have lacked the courage to pinpoint the problem that has confronted this country for so many years and threatens our future as a great republic. The

founding fathers had it right: A decentralized approach to this industry or any other industry is the best way to maintain our preeminence as a nation.

On balance, the No Child Left Behind Act is exactly as Jennifer suggested: It is a massive federal intrusion into the authority of the states. And this happened while conservatives were in charge of the House, the Senate, the White House. We are now at that point where Congress is considering reauthorization of No Child Left Behind, and the question for us to ask ourselves as American citizens is: In what direction will we proceed?

The person who is one of the leaders in that effort to try to define the terms of the battle as No Child Left Behind comes up for reauthorization is Congressman Pete Hoekstra from the great state of Michigan. Our experience working together here in Washington, not only when it comes to ferreting out waste, fraud, and abuse, but also with the limited functional capacity of the Department of Education to have a realistic chance of improving education quality in schools way out in Colorado or Holland, Michigan, is really what leads our side of this debate. We hold the belief that authority is best left to states, communities, and families. The more you consolidate authority here in Washington, the less the chance that positive, meaningful reform will actually take place.

The passage of No Child Left Behind was the largest expansion of the federal government's role in K-12 education since the creation of the Department of Education. How did we stray? I think people believed that they needed to give the President a win. Two years after we won the national testing vote with 242 votes, we only had 41 votes against No Child Left Behind. We just got run over by a train in that environment, and in some ways, it foretold what was going to happen on some other issues, including spending. The Congress rolled over for this White House and, I think, moved away from some of our principles, and we paid the price finally in 2006.

The interesting thing now for No Child Left Behind is that there are very few advocates for it; there is no constituency for it. Parents don't like it, administrators don't like it, and kids don't like it, but politicians and bureaucrats in Washington love

it—which should be the first indication to you that it is a troubled program.

We know that the terms of this debate are going to be different. You have a new Congress now and a different party in charge. With the same White House, where is the compromise going to come down? My guess is we're probably going to see No Child Left Behind expanded and that the rules and regulations associated with it will become greater, not less.

The question is: What happens to the states? Are we going to force all 50 states to participate in a new regimen of more authority being centered here in Washington, D.C., or are we going to leave states with an escape hatch? And the guy with the answer is Congressman Pete Hoekstra from the state of Michigan.

THE HONORABLE PETER HOEKSTRA: When I arrived in Washington, I was the lone Republican from my elected class who specifically requested to be placed on the House Committee on Education and the Workforce. I came to Washington with the belief that education policies are best determined at the local level by parents and teachers in conjunction with local officials, not by bureaucrats in Washington.

During the mid-1990s, I collaborated with Republicans to create "Children First: The Republican Agenda for America's Students," which established the Republican agenda for reforming our existing education system. We determined that the federal approach to education was broken and that we needed to return to our conservative principles of allowing parents and their communities to determine how best to educate their children and establishing high academic expectations. Stemming from these principles, House Republicans sought to eliminate the U.S. Department of Education.

One of our initial victories came in 1998 when House Republicans successfully defeated President Bill Clinton's education priority to implement national testing. Representative William Goodling introduced a bill that prohibited the spending of federal education funds on national testing without explicit and specific legislation. The debate surrounding national testing was lively and heated, and

conservatives loudly proclaimed that bureaucrats in Washington did not know how best to measure the academic success of our students in our local districts. We passed the prohibition of national testing by a vote of 242 to 174.

During the mid-1990s, we also found that only 65 cents of every dollar spent on education actually made it to the classroom. The House passed the Dollars to the Classroom Act in 1998, which would have directed 95 cents of every dollar to the local classroom. The bill languished in the Senate, but it made a statement to the U.S. Department of Education that it was unacceptable for federal dollars to be tied up in red tape.

In 1999, I fought to pass the “Straight As” bill [Academic Achievement for All Act], which would have granted states the option of severing ties with the U.S. Department of Education in exchange for the freedom and flexibility for the states to use federal funds in a manner that better ensures their particular students’ academic success.

Despite all the efforts to reform the federal government’s involvement and return education to parents and communities, in 2001, Congress passed the largest expansion of the role of federal government in K–12 education since the creation of the Department of Education in 1979. Instead of minimizing the government’s role, we tightened its grip.

This was not how Congressman Schaffer and I envisioned things going. Bob and I had such a good time through the ‘90s, going to the Department of Education, cataloguing the hundreds of programs and the billions of dollars worth of spending. We would just walk over to the Department of Education and say, “We’re just going to walk around.” Of course, they’d go apoplectic: What are these guys doing here?

We’d knock on doors, asking, “Do any of you read the reports? Who reads these reports and this paperwork that comes back from the states, and who issues these rules and regulations? Have you ever been to Colorado? Is there anybody here from Michigan?”—you’d have to go through the building for a while before you’d find somebody—“And is anybody here from the Second Congressional District of Michigan?” No, but they’re putting together

all these mandates and requirements without knowing the parents, kids, school boards, or the economic conditions of the people that they’re writing all these rules and regulations for.

So there we were, believing that education is a state, local, and primarily a parental issue, and we were winning the debate. In 1998, we passed a measure in the House prohibiting national testing, which President Clinton wanted to do. He wanted to put together just one test and test every kid nationwide. We had a vote on the floor: 242 “yes” votes prohibiting national testing. We were winning, moving toward state control, local control, empowering parents, and empowering local communities to design their education system.

Then we went down to Crawford, Texas, in November of 2000. There was a great hope that this was going to be the opportunity to really restore the local control of education—flexibility, choice, and all of those kinds of positive things. But instead, you know what we ended up with: testing in grades 3 through 8, once in 9th through 11th, and testing just in reading and math. What you’re now seeing is what happens when you have a federal program: It grows.

Republicans sold out to give the President a victory by passing an education bill drafted by Senator Edward Kennedy to create a punitive education program that measures academic achievement by test scores. No Child Left Behind established a “one-size-fits-all” framework that creates less freedom to meet the diverse needs of our student population that varies from community to community by creating mandatory testing for grades 3 through 8 and once in high school.

The law requires a heavy federal hand to monitor the success of each state as they seek to achieve their benchmarks for academic success. In order for states to comply with the burdensome regulations, the Office of Management and Budget found that NCLB is costing states and local communities an additional 7 million hours in paperwork, or \$140 million. This is in addition to the 48.6 million hours required by previous federal law. According to the National Center for Education Statistics, under NCLB, only 61 cents of every dollar actually makes it to the classroom.

In addition to more mandates, NCLB has also created unintended consequences that have caused our schools to demonstrate “soft discrimination” by creating informal barriers to students who may cause a school to fail to meet adequate yearly progress. Instead of allowing a local school board to determine how best to educate the students in its community, it has to comply with the constantly changing mandates from state and federal bureaucracies.

I heard the same message during the *Education at a Crossroads* field hearings during the 1990s; however, today the message is louder. Our local education leaders have extraordinarily limited control over how to educate our children.

Even more perplexing, to validate each school subject that is taught in the classroom, I now have teachers who teach physical education, visual and performing arts, science and social studies lobbying me to add them to the federal mandates provided under NCLB. Some of my colleagues have been fighting for the last few years to add science as a testing requirement. The Administration has proposed additional testing in high school—students would be tested in grades 3 through 11—as well as testing at our local colleges in order to measure academic achievement. I also learned that my own state senator led the effort in Michigan to pass a resolution recommending that the core disciplines of social studies—including civics, government, economics, history, and geography—should be added to the testing requirements of the No Child Left Behind Act of 2001.

And even more startling, today, Representatives Zach Wamp (R-TN) and Ron Kind (D-WI) are hosting a press conference with Richard Simmons on the topic of combating childhood obesity. Representative Wamp is introducing legislation to add physical education as a testing requirement under NCLB. Representative Wamp is a friend of mine, so I asked him, “What are you doing?!” And he said, “Pete, we are going to be able to make a compelling case to include P.E. in No Child Left Behind.”

Is this the direction we intended to go? In order to reach “proficiency,” does it mean that we need to test our students every step of the way in every subject from grade three through high school?

Last week, I convened four roundtable discussions throughout my district in West Michigan and met with more than 160 education leaders, parents, and teachers. The meetings confirmed that we have severed the ties between parents and local school districts and made schools beggars to Washington.

My constituents—the educational leaders who are tasked to inspire and mold young minds in preparation for the 21st century—stated that NCLB costs more money to comply with the overwhelming amount of paperwork, they have less flexibility to meet the diverse education needs of their students, and they have to focus more and more of their efforts on the amount of testing they are required to shoulder by the state and federal education departments. Their comments confirmed the need to re-engage the education debate and lead it back to true conservative principles of a limited role for the federal government.

The main concern Congressman Schaffer and I had in 2001 was that when the federal government starts a program, it will inevitably expand it, and that is exactly what has happened. What did not happen with the first iteration of No Child Left Behind will happen with the next one. There will be more testing, more mandates, more money, less freedom, and less flexibility; and in the end, we are on the doorstep of having a national curriculum, which is probably the most devastating thing that can happen to education in America.

Next week, I intend to introduce legislation that will give states the option to submit a “Declaration of Intent” to the U.S. Department of Education that they will assume full responsibility for educating their students. States that submit a “Declaration of Intent” will receive their federal funding and will have the freedom and flexibility to use the resources in a manner that they determine best meets their students’ educational needs.

States that submit a “Declaration of Intent” will not be required to comply with the mandates of NCLB. Under this option, states will no longer be beholden to the federal government. Instead, this legislation will restore accountability to parents and schools as a state advances its academic policies to successfully serve all students, especially disadvantaged children.

I will be introducing the bill in conjunction with legislation that my colleagues in the Senate, Jim DeMint (R-SC) and John Cornyn (R-TX), plan to introduce. Their bill will provide states with the autonomy and flexibility for educating their students in exchange for improving student academic achievement and demonstrating a narrowing of the achievement gaps. Together, we believe that we will be able to move education away from the federal bureaucratic red tape that has taken resources away from our classrooms and has hindered innovation and back to conservative principles.

As I stated earlier, I believe that we should demand an excellent education for our children,

and as taxpayers, we should hold our educators accountable for preparing our students to compete in a free-market economy. However, I do not believe in prescriptive, “one-size-fits-all” federal policies that fail to address the unique needs of small rural schools, schools that attract non-traditional learners, districts that have large migrant populations, or communities with concentrated poverty.

The role of the federal government should be to ensure that dollars go directly to the classroom and that *all students* have the opportunity for a good, quality education. It is time that we shift our focus back to the local community and restore federalism.