

well-established principles of constitutional law and the D.C. Rules of Professional Conduct, which generally prohibit a lawyer from even requesting—let alone instructing—a witness to refrain from voluntarily giving relevant information to another party.... The “quest [for truth] will more often be successful if both sides have an equal opportunity to interview the persons who have the information from which the truth may be determined....” The Subcommittee’s instruction hampered Congressman Rangel’s ability to obtain evidence from witnesses during the investigative stage of this proceeding and will continue to do so unless that instruction is rescinded formally and in writing, making it clear that witnesses may communicate with his counsel without fear of reprisal from a congressional committee.

5. The Investigative Subcommittee failed to provide a complete and meaningful response to Congressman Rangel’s Motion for a Bill of Particulars and Motion to Dismiss....

SIXTH DEFENSE

Congressman Rangel’s assistance in launching CCNY’s program to educate disadvantaged students at a public university for public service careers served important public purposes and constituted a service to constituents, which he believed in good faith to be within the scope of his official duties as an elected Congressman of CCNY’s district.

SEVENTH DEFENSE

The fact that Congressman Rangel sought and received earmarks for the Rangel Center demonstrates that it was properly regarded as a matter of public concern and within his official duties. It is common for Members to request that appropriations designate funds for use in specific programs named for them that benefit their constituents and the public at large (e.g., the Robert C. Byrd National Technology Transfer Center at Wheeling Jesuit University, and the Thad R. Cochran Marine Aquaculture Center at the University of Southern Mississippi)....

NINTH DEFENSE

The SAV’s construction and application of the solicitation ban exceeds the scope of the statute and the guidelines set forth in the UNITED STATES HOUSE OF REPRESENTATIVES Committee on Standards of Official Conduct Adjudicatory Subcommittee....

‘Racist to the Top’

There is widespread opposition from civil rights groups and others to President Obama’s “Race to the Top” racist destruction of public education in the United States. Here is an excerpt from a statement issued July 21, by the Lawyers Committee for Civil Rights under Law; National Action Network; National Association for the Advancement of Colored People (NAACP); NAACP Legal Defense and Educational Fund, Inc.; National Council for Educating Black Children; National Urban League; Rainbow PUSH Coalition; and Schott Foundation for Public Education.

Framework for Providing All Students an Opportunity to Learn through Reauthorization of the Elementary and Secondary Education Act

Today there is nothing short of a state of emergency in the delivery of education to our nation’s communities of color....

Recommendation 1B: Shift the Focus from Competitive Grants for a Few States to Incentives for All States to Embrace Systemic Reform.

Despite the critical need for Common Resource Opportunity Standards, the Administration’s proposed FY 2011 budget directs the bulk of its increases in education spending to be distributed as competitive grants, while formula dollars, which have been historically underfunded, remain flat. Because only a few states will receive competitive grants, most children in most states will experience a real decrease in federal support when inflation and state and local budget cuts are taken into consideration. We are concerned that the Administration’s Blueprint suggests that ESEA [Elementary and Secondary Education Act] reauthorization will continue this approach. Instead, we call for a shift of focus from competitive grant programs to conditional incentive grants that can be made available to all states, provided they adopt systemic, proven strategies for providing all students with an opportunity to learn.

If education is a civil right, children in winning states should not be the only ones who have the opportunity to learn in high-quality environments. Such an approach reinstates the antiquated and highly politicized frame for distributing federal support to states

that civil rights organizations fought to remove in 1965. With the creation of the ESEA as a part of President Lyndon B. Johnson's War on Poverty, the federal government took the first steps toward requiring an equitable distribution of funding among states. Shifting the emphasis from competitive grants to conditional incentives can preserve those gains. Incentivizing behavior through limited competition, in and of itself, is not a bad strategy, but we must go further to recognize that many states and districts in our union will not compete, either because they do not have the capacity or because they lack the political will. This increases the likelihood that better-resourced states and communities will win out. For these reasons, a competitive framework does not go far enough to ensure equity.

The implementation of the Race to the Top Fund's grant process highlights our concerns about an approach to education funding that relies too heavily on competition: only fifteen states and the District of Columbia were on the shortlist in the first round to be eligible for *possible* funding. These finalist states contain only 37% of the students in the United States eligible for free and reduced lunch. Only 14% of the students in the finalist states are Hispanic compared to 26% in the non-finalist states. Overall, 74% of Hispanic students live outside finalist states. While 53% of Black students in the United States are in the finalist states, losing 47% of the Black students places a huge economic burden on the country. Overall, 42% or 12.5 million of the nation's children would be left behind. As a result of the selection of Tennessee and Delaware as the two winners of the first round, the Race to the Top Fund currently impacts only 2.5% of the students in the United States eligible for free and reduced lunch, 3% of the nation's Black students, and less than 1% of Latino, Native American, and Hmong students.

The limited reach of the Race to the Top Fund and other market-based frames for federal education funding jeopardizes achievement of the commendable goal for the United States to become a global leader in post-secondary education attainment by 2020. By most estimates, the United States will need at least 16 million more graduates a year than our current rate to achieve this goal. This requires a dramatic increase in the percentage of Brown, Black, and Native people—documented and undocumented—achieving post-secondary credentials. If states with large communities of color such as California, Louisiana, Mississippi, and Texas are left behind in any competitive grant process, sig-

nificant numbers of Black and Brown children who are needed to meet that 2020 benchmark will also be left behind.

The Race to the Top Fund and similar strategies for awarding federal education funding will ultimately leave states competing with states, parents competing with parents, and students competing with other students. Moreover, even states that do not choose to compete for federal incentive funds should have an obligation to provide a standard of education consistent with protecting their children's civil rights. The civil right to a high-quality education is connected to individuals, not the states, and federal policy should be framed accordingly. Good federal policy should mitigate political inequities that serve as barriers to delivering the ultimate change that is so plainly desired and needed. By emphasizing competitive incentives in this economic climate, the majority of low-income and minority students will be left behind and, as a result, the United States will be left behind as a global leader.

We recognize that federal incentives are an important part of motivating states to action. We therefore advocate the use of conditional incentives—incentives that are available to all states that meet whatever equitable and fair conditions are established—rather than competitive incentives, which only provide resources to the few. In addition, the *Common Resource Opportunity Standards*, described above, should factor into the evaluation of all federal educational funding applications and regulatory activities. To the extent that competitive grants will be utilized, states should gain additional points for progress toward resource equity and lose points for providing an inadequate approach to closing opportunity gaps. The strength of states' equity plans should be considered as the U.S. Department of Education (DOE) determines how to allocate limited resources for aid and technical assistance....

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