

REFLECTIONS ON LEGISLATION

REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT: CHALLENGES THROUGHOUT THE LEGISLATIVE PROCESS

*Congressman Donald M. Payne**

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I. Introduction

As a member of the House Committee on Education and the Workforce, I had the opportunity to become actively involved in the

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consideration of one of the most prominent pieces of legislation passed during the 107th Congress: the reauthorization of the Elementary and Secondary Education Act (ESEA).

Much was at stake as this bill moved through the legislative process, because the Elementary and Secondary Education Act is our nation's largest and most comprehensive federal education law. ESEA was originally authorized in 1965 during the presidency of Lyndon Johnson for five years; it has been reauthorized every five years since then.¹

President George Bush had emphasized changes in education policy as one of his top legislative priorities.² Philosophical differences between the Bush Administration and House Democrats ensured that there would be a contentious debate over key provisions in the bill.

II. The No Child Left Behind Bill and The Excellence and Accountability in Education Act

As the 107th Congress got underway early in 2001, House Republicans introduced a bill based on a proposal by President Bush, while Democrats in the House of Representatives introduced legislation embodying their own initiatives to strengthen federal education policy and boost student achievement. The Bush Administration Bill, H.R. 1, was entitled the *No Child Left Behind* bill,³ the House Democrats' bill, H.R. 340, introduced by the Ranking Democrat on the Committee, Representative George Miller along with Representative Dale Kildee, was called the *Excellence and Accountability in Education Act*.⁴

As a former schoolteacher, I have been involved in educational issues throughout my entire career. Because of my firsthand experience in the classroom, as well as my close involvement with the urban schools I represent in Congress, I hold strong opinions about federal

¹ Nina J. Crimm, *Core Societal Values Deserve Federal Aid: Schools, Tax Credits, and the Establishment Clause*, 34 GA. L. REV. 1, 46 (Fall 1999).

² Ian Christopher McCaleb, *Bush Presses Education Agenda with Smiles and Handshakes*, Jan. 25, 2001, at <http://www.cnn.com/2001/ALLPOLITICS/stories/01/25/bush.education>. During his presidential campaign, Bush stated that education reform would be his priority when he reached the White House. *Id.*

³ H.R. 1, 107th Cong. (2001). This bill was introduced on March 22, 2001 by Congressman Boehner. *Id.* The purpose was that it was a "bill to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind." *Id.*

⁴ H.R. 340, 107th Cong. (2001) was introduced on January 31, 2001. A summary of its primary provisions can be found at <http://thomas.loc.gov>.

education policy and the need to provide support to disadvantaged students. I oppose the use of vouchers for private schools because of the damaging impact such a program would have on the public school system. I believe it is unrealistic to divert resources away from public schools which educate the vast majority of our students. Another area of concern I had about the Bush Administration's plan was the testing provision.⁵ While I believe in accountability in public education, the measures in the bill would basically punish schools whose students score poorly on tests. It is not surprising that children from disadvantaged homes often have lower scores than their more affluent counterparts.⁶ Testing is a subjective tool. Many urban schools are in such poor physical condition that they are considered unsafe. In New Jersey, 87% of schools report a need for modernization or repairs in order to achieve a fundamental rating of "good overall condition."⁷ Urban schools often lack modern computers and other technological equipment which are important to help students keep up with their peers.

ESEA programs supplement state and local initiatives to help ensure that all children have access to a sound education by targeting resources to specific needs. Goals of the programs include providing increased assistance to help low-achieving students improve performance; improving teacher and principal training and recruitment efforts; assisting students with English language proficiency needs; and supporting programs such as safe and drug-free schools and before- and after-school community learning centers.⁸

When Congressional hearings on ESEA began, the sharp differences in opinion regarding federal education policy were brought into focus. One of the witnesses for the Republican majority was Mr. Kenneth Connor, President of the conservative Family Research Council based in Washington, D.C.⁹ In his testimony, he voiced

⁵ H.R. 1, 107th Cong. § 1501 (2001).

⁶ Gerald Bracey, *What They Did on Vacation*, THE WASH. POST, Jan. 16, 2002, at A19.

⁷ *How Do You Define National Security?*, NATIONAL PRIORITIES PROJECT: GRASSROOTS FACTBOOK, VOL. III, SERIES 1, January 2000, at <http://www.natprior.org/sos2000/pdf/newark.pdf> (last visited March 23, 2002).

⁸ Erik W. Robelen, *An ESEA Primer*, EDUC. WEEK, Jan. 9, 2002, at http://www.edweek.org/ew/ew_printstory.cfm?slug=16eseabox.h21 (last visited April 2, 2002).

⁹ The Family Research Council (<http://www.frc.org/>) espouses marriage and family as essential in society. The organization articulates several core principles on their website:

- God exists and its sovereign over all creation. He created human

approval for some of the cornerstones of the Bush Administration proposal: diverting resources away from public schools through the use of vouchers; a block grant program called

Straight A's, which would also weaken the federal role in education; and new testing requirements.¹⁰ He also expressed enthusiasm for components of the Administration's plan which would promote voluntary school prayer and offer afterschool grants to religious organizations.¹¹

Giving a different perspective as a witness was Ms. Randi Weingarten, President of the United Federation of Teachers and Vice President of the American Federation of Teachers.¹² She expressed her organization's belief that the federal role in education is critical, especially for urban areas which lack adequate property wealth and therefore rely more heavily on federal supplementary support.¹³ She called the Administration's bill "fatally flawed" because of its support of vouchers and block grants.¹⁴

As a representative from an urban area of Northern New Jersey, one of the items in the reauthorization of ESEA which was of utmost importance to me was Title I funding for disadvantaged students. Title I has been a tool for promoting equal educational opportunities for

beings in his image. Human life is, therefore, sacred and the right to life is the most fundamental of political rights.

- Life and love are inextricably linked and find their natural expression in the institutions of marriage and the family.
- Government has a duty to promote and protect marriage and family in law and public policy.
- The American system of law and justice was founded on the Judeo-Christian ethic.
- American democracy depends upon a vibrant civil society composed of families, churches, schools, and voluntary associations.

¹⁰ *Education for the 21st Century: Hearing Before the House Comm. on Educ. and the Workforce*, 107th Cong. (2001) (testimony of Kenneth L. Connor), available at 2001 WL 2006711.

¹¹ *Id.*

¹² See <http://www.aft.org/about/diverse.html> (last visited Mar. 20, 2002). The American Federation of Teachers (AFT) is an organization created for the collective bargaining of teachers. *Id.* It began in the 1960's and continues today; its members include not only teachers, but other para-professionals and school related personnel. *Id.*

¹³ *Transforming the Federal Role in Education for the 21st Century: Hearing in H.R. 1, H.R. 340 and H.R. 345 Before the House Committee on Education and the Workforce*, 107th Cong. 1 (2001) (statement of Ms. Randi Weingarten, President, United Federation of Teachers).

¹⁴ *Id.* at 2. Ms. Weingarten stated "[t]he AFT believes that the Administration bill is fatally flawed, however, with its incorporation of vouchers and block grants." *Id.*

children from low-income families.¹⁵ Title I has been an important factor in efforts to close the achievement gap over the past three decades.¹⁶

A. Offered Amendments

1. 50% poverty threshold

On May 2nd and 3rd of 2001, the Education and the Workforce Committee met to consider the reauthorization of ESEA. I offered two amendments during the consideration of the bill.

The first amendment sought to retain the 50% of poverty threshold for school wide programs.¹⁷ Such programs have usually been limited to higher-poverty schools because the performance of all pupils in the school tends to be low. The rationale for my amendment is that a level of 50% of poverty is where we begin to see an impact on the entire school. At poverty levels below 50%, the school poverty has a smaller impact on the achievement level of the entire school population. The 50% poverty-threshold is already a major reduction from the pre-1994 threshold of 75%. Now the Committee bill before us included an additional 10% reduction from the 50% level. Under existing law, schools below the 50% poverty level that need additional federal fund can apply for a waiver from the Secretary of Education.¹⁸ Although my amendment initially was approved by the Committee, because the Chairman opposed it, he called for a second vote after some members had left the room, and it was subsequently defeated.¹⁹

2. Ed-Plus Program

The other amendment involved the Ed-Plus program, which provides additional support for the special needs of urban and rural areas, and which had been launched in the 1994 reauthorization of

¹⁵ *Comm. on Educ. and the Workforce: Additional Views to H.R. 1*, May 14, 2001, available at <http://edworkforce.house.gov/democrats/hr1views.html>.

¹⁶ *Id.*

¹⁷ H.R. 1, 107th Cong. (2001), Roster of Amendments Offered, May 2, 3, 9, 2001, available at <http://edworkforce.house.gov/markups/107th/fc/hr1/finalroster.htm> (last visited April 2, 2002).

¹⁸ No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2001).

¹⁹ *Supra* note 17.

ESEA.²⁰ In the new reauthorization we were considering, funding was continued for the rural portion, but the urban portion was removed. My amendment called for the continuation of both the rural and urban programs.²¹ I believe that Congress should recognize the challenges found throughout our nation's urban schools, particularly those with high concentrations of ethnic and language minorities. Unfortunately, this amendment was also defeated.²²

Two important changes were adopted during consideration of amendments to the bill: removal of vouchers and state block grants.

B. *Vote in the Committee on Education and the Workforce*

On May 9, the vote on whether to approve the Bush Administration education bill, H.R. 1, as amended, was taken in the Committee on Education and the Workforce. It was approved by a vote of 41 to 7.²³ Some of the Republicans opposed the bill because they were unhappy with changes which had been made to the original version. Six Republicans voted against the measure;²⁴ I was the only Democrat to oppose the compromise. In my opinion, although some positive changes had been made, the bill was still far from what was needed to address the needs of our most disadvantaged students.

In the Democratic-controlled Senate, a different version of the bill was emerging. With the help of a group of like-minded Republicans, the leadership was successful in increasing funding levels under ESEA for special education, assistance to poor schools and test development, among other items. Vouchers were removed from the Senate bill. The Senate passed its amended version of H.R. 1 on June 14, 2001.²⁵

III. *Resolving the Differences Between the House and Senate Bills*

There were major differences between the House and Senate bills to be resolved. The Senate version provided a \$14.4 billion increase for

²⁰ *Supra* note 17.

²¹ *Supra* note 17.

²² *Supra* note 17.

²³ *Comm. on Educ. and the Workforce Full Committee Markup*, Bill Number H.R. 1, available at <http://edworkforce.house.gov>.

²⁴ The six Republicans who voted "no" were Hoekstra, Graham, Souder, Schaffer, Tancredo and Demint. *Id.*

²⁵ See http://www.senate.gov/legislative/vote1071/vote_00192.html (last visited April 2, 2002).

ESEA programs;²⁶ the House version contained only a \$4.6 billion increase.²⁷ In the Senate version, states and school districts would get \$181 billion over 10 years to cover 40% of their costs in complying with the 1975 Individuals with Disabilities Education Act;²⁸ the House had no provision. There were questions about whether the differences between the two versions could be resolved.

Passage of the education bill had already been a top priority of the Bush Administration, and the terrorist attacks of September 11th strengthened the resolve of both Congress and the Administration to proceed with the business of the people. The Chairman of the Committee, John Boehner of Ohio, expressed his determination to proceed forward and reach an agreement. He met with the Ranking Member on the House Committee, George Miller of California, Senator Edward Kennedy of Massachusetts and Senator Judd Gregg of New Hampshire to begin working out a bipartisan compromise.

By early December, a compromise had been reached which sought to narrow, over a 12-year period, the educational achievement gap between disadvantaged students and their more affluent peers and between minority and non-minority students.

The compromise included the establishment of a state-based annual testing system for students in grades three through eight in every state to gauge student proficiency in reading and math.²⁹ The tests will measure the performance of an entire school, but also of subgroups of students to ensure that no single group of students is allowed to consistently under-perform.³⁰ The agreement also provides new, highly targeted resources to significantly improve the quality of education by improving the training and salaries of teachers; paying for additional instruction for the neediest students and schools; and increasing the success of after-school and school safety programs.³¹ Schools which under-perform would receive additional assistance, but schools which consistently under-perform would gradually cede greater control over their instructional operations until they begin to achieve high levels of

²⁶ Lynn Olson and Erik Robelen, *ESEA Passage Unlikely Before Fall*, EDUC. WEEK, July 11, 2001, available at 2001 WL 12046541.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Robelen, *supra* note 8.

³⁰ *Id.*

³¹ *Id.*

performance.³² The agreement satisfied many who see the annual test as a diagnostic tool, but not a solution.

When the 107th Congress convened early in the year, it was impossible for me and many other education advocates to support the Bush Administration's version of the ESEA bill, which had been introduced in the House. By making our voices heard throughout the process, we were able to win important concessions.

The original bill contained vouchers; vouchers were eliminated. Block grants, which would have weakened federal support for education, were eliminated. Mandatory teacher testing was replaced with a variety of means for assuring the quality of current teachers in their field; the approach in the bill has more support for teachers through high-quality professional development. Civil rights protections, which had been eliminated from the original bill, were restored.

Other key portions of the bill include the continuation of Safe and Drug-Free Schools and After-School programs.³³ Our national commitment to reducing class size and to emergency school repair and construction is preserved.³⁴ The compromise also includes the targeting of federal funds to the neediest communities.³⁵ The 50 school districts with the highest percentage of poor students will receive a 10% increase in Title I funding as a result of formula changes.³⁶ In addition, the measure seeks to ensure that parents have better information about the quality of their local schools through annual report cards and strong parent involvement requirements.³⁷

Although the Bush Administration's original proposal contained a 3% increase in ESEA, the final compromise lifted that level to a 20% increase.³⁸ In some areas the increase was especially dramatic; while there was no increase for bilingual education programs at first, we negotiated a 57% increase.³⁹

³² *Id.*

³³ H.R. 1, 107th Cong. Title I (2001).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

IV. Conclusion

On December 13th, I joined the majority of my colleagues in the House of Representatives in approving the compromise, which passed by a margin of 381 to 41.⁴⁰ The Senate agreed to the conference report on December 18th by a vote of 87 to 10.⁴¹ The President signed the measure on January 8, 2002, and it became Public Law 107-110.⁴²

While the final version of the bill was not perfect, I believe that the changes which were made throughout legislative process vastly improved the original legislation, H.R. 1. Now we face another challenge as we move to the budget and appropriations process and work to secure the actual funding to implement provisions in the new law. I am hopeful that the under the improved version of the bill, we will make progress toward providing quality education to students in every school, in every neighborhood.

⁴⁰ CONG. REC. H10112 (Dec. 13, 2001).

⁴¹ CONG. REC. S13422 (Dec. 18, 2001).

⁴² Bill Sammon, *Bush Hails Education Reform: Signs Bill to Cheers in Ohio*, THE WASH. TIMES, Jan. 9, 2002, at A1.