

Jindal's Anti-Common Core Fantasy

By RiShawn Biddle

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Your editor could opine about some of the amazing aspects of Louisiana Gov. Bobby Jindal move yesterday to file a federal suit in his ambition-driven jihad against Common Core reading and math standards. Start with the fact that Jindal, along with other movement conservative Common Core foes such as FreedomWorks and the Pioneer Institute (which harrumphed about the suit in a press release) are demanding the kind of judicial activism they often oppose. In fact, FreedomWorks complained that last week's ruling by a state court judge against Jindal's effort to halt Common Core implementation (a clear violation of state law) was such even when it wasn't so.

There's also the fact that Jindal's suit rails against the Obama Administration's support for states voluntarily implementing Common Core when he championed that very help for the Bayou State's reform efforts four years ago. Jindal's flip-flop was laid out in great detail last week by Louisiana Nineteenth Judicial District Judge Todd Hernandez in his ruling against Jindal's executive order attempting to halt the standards, as well as by your editor back in June. It is hard for Jindal to square his proclamation that he is against any federal support for systemic reform against declarations five years ago that Louisiana was in "great position" to win federal Race to the Top funding.

But none of this is surprising. As **Dropout Nation** has pointed out since June,, the Louisiana governor's effort to kibosh Common Core implementation, both within his state and now on a national level, is driven less by either ideology and principle than by a desire to bolster support for his likely run for the Republican presidential nomination among movement conservatives. None of this has worked out in Jindal's favor at the polls. But in filing this latest suit (along with earlier, unsuccessful litigation at the state level), Jindal believes he can still get a heads-up against other Republican aspirants by saying that he was the only one who took legal action against Common Core implementation. But what do Common Core foes get out of this? For them, Jindal's 29 pages of fury and fantasy allows them to further their incredible narrative of implementation as some sort of federal coercion.

But in the process, both Jindal and his fellow-travelers against Common Core have ensured themselves of embarrassment on a national stage in the one place they can't win the day: Courts of law where facts count.

But let's get to the gist of Jindal's suit. In it, Jindal and his allies are asking a federal district court judge to invalidate the rules governing Race to the Top because the entire effort supposedly violates federal law — including the General Education Provisions Act, the No Child Left Behind Act, and the law authorizing the creation of the Department of Education itself. How? Because in Jindal's mind, Race to the Top has put the Obama Administration in the position of controlling Louisiana's curricula and that of other states. How? By awarding funding to those states who voluntarily implemented Common Core along with other reforms such as eliminating caps on charter school growth.

That Race to the Top also included a round that funded the work of the PARCC and Smarter Balanced consortia developing Common Core-aligned tests makes the federal coercion even stronger than one would realize. How? According to Jindal's attorneys, the fact that PARCC and Smarter Balanced detail their work on developing the tests means that it is explicitly developing curricular materials. Since the Obama Administration granted Race to the Top money for that purpose, this means that it is directly controlling curricula in violation of federal law.

As mentioned, Jindal's argument isn't a new one. Pioneer has argued that line since 2012, when it recruited former Bush Administration lawyers Kent Talbert and Robert Eitel (along with Stanford University's resident anti-Common Core activist, Bill Evers) to pull out a report questioning the legality of federal support for Common Core implementation. More importantly, Jindal's narrative is based on that of Pioneer and its fellow Common Core foes, most-notably Neal McCluskey of the libertarian Cato Institute, all of whom view any federal support for the standards as coercion.

Yet Jindal (along with his allies) leaves out a few inconvenient facts — and not just that he led Louisiana's successful effort to gain \$17.5 million in Race to the Top (including Common Core implementation) before he decided he was against it.

There's the fact that Race to the Top is a voluntary effort under which states can win federal funding so long as they implement a set of reforms they have chosen on their own. The fact that a mere 18 states ended up receiving Race to the Top funding (out of 50) since 2010 and that most of those states only garnered funding for teacher evaluation, school data system, and charter school expansion efforts (and not simply for Common Core implementation) makes lie of Jindal's coercion argument (and that of his fellow Common Core allies). Because no aspect of Race to the Top involved the Obama Administration actually blessing any curricula — and since states could refuse to either implement Common Core or develop their own form of college and career-ready standards as part of their grant proposal — Jindal can't prove that the administration's actions violate GEPA or any federal statute. [That the American Recovery and Reinvestment Act, which governs Race to the Top, likely supersedes any other education laws on the books, is also a consideration that Jindal has ignored.]

If anything, the federal government has proven far too willing to accommodate states that haven't fully met their promises. New York, for example, hasn't returned any of its \$696 million in Race to the Top funding even though it still hasn't fully implemented

the teacher evaluation system at the heart of its successful grant request. Only Hawaii was considered at high risk of losing its \$75 million grant — and even the Aloha State has managed to keep its funding in spite of struggles on implementing its promised teacher evaluation system. Put simply, the Obama Administration could easily prove in court that it hasn't engaged in any coercion, much less any control over state policymaking.

Then there's the fact that Jindal fails to admit that states were on the path to developing Common Core's long before the Obama Administration came into the picture. Starting in 2004, Achieve Inc., through its American Diploma Project, worked with 35 states (including Louisiana) to help them develop curricula requirements for obtaining high school diplomas. By 2008, a year before the formal development of Common Core, Achieve released *Benchmarking for Success*, a report which laid out much of the framework for how Common Core's standards would be crafted as well as offered guidance to states in revamping standards on their own.

A year later, the work on developing common standards came to fruition when governors and chief state school officers through their two policymaking groups — the National Governors Association and Council of Chief State School Officers — began developing what are now Common Core reading and math standards. The two groups gleaned the lessons from Achieve's efforts, along with the lessons gleaned from earlier standards development efforts by reform-minded governors and standards-and-accountability activists. Especially given Jindal's role in Louisiana's successful move to approve Common Core (including passage of his school reform package in 2012 that makes implementation of the standards one of its centerpieces), Jindal can't prove coercion.

Meanwhile the argument that the Obama Administration is coercing states into implementing Common Core is laughable. In fact, they actually requested federal support for the effort. More importantly, federal support for reforms at the state level is nothing new or illegal. From the passage of the Morrill Land Grant in 1863 to the National Defense Education Act of 1958, administrations Republican and Democrat have encouraged systemic reforms such as providing comprehensive college-preparatory curricula.

The Reagan Administration's release of *A Nation at Risk* in 1983 led to the launch of some 250 commissions and panels working on developing curricula standards and other matters. A decade later, the Clinton Administration's passage of Goals 2000 as well as the reauthorization of the Improving America's Schools Act, the immediate predecessor of the No Child Left Behind Act, furthered reforms already beginning in states. Then came No Child in 2001, which gave reform-minded governors the tools they needed to advance reforms and overcome opposition from traditionalists within their states. No Child also supported what would be the coming together of states on developing common curricula.

This federal support for state-level reforms extends to the development of standardized testing regimes such as those provided by PARCC and Smarter Balanced. It was the

passage of the National Defense Education Act that led to the first wave of standardized testing regimes. Four decades later, the Improving America's Schools Act and then No Child, would support state level testing efforts. For Jindal and Common Core foes to prove that the Obama Administration acted illegally, they would have to argue against what can only be called settled law.

Simply put, Jindal has no case. Even worse for Common Core foes, the Obama Administration, along with supporters of the standards, could make mincemeat of their entire argument. The facts fail to support the narrative conjured up out of thin air by Common Core foes. Luckily for most of Jindal's fellow-travelers against the standards, they don't work in institutions of higher education; as is, particularly for once-sensible reformers, their fanciful federal coercion narrative, along with their willingness to associate with demagogues such as once-respectable education historian Diane Ravitch, radio talk show host Glenn Beck, and pundit Michelle Malkin, hasn't covered themselves in any glory.

[Let's also note that the case can be made that the federal government hasn't done enough to hold states accountable for meeting their promises under Race to the Top. This need for accountability, by the way, would also make it hard for Oklahoma to sue the Obama Administration over its move today to end its No Child waiver; the state voluntarily implemented Common Core a year before applying for a waiver, and had promised to have college-and-career ready standards of some kind in place in exchange for being allowed to ignore federal law. Your editor will elaborate more on that tomorrow.]

If anything, Jindal's lawsuit will end up backfiring on Common Core foes by allowing supporters of the standards to jujitsu their fanciful narrative on the national legal stage.

Meanwhile Jindal's lawsuit also gives Common Core supporters a new opportunity to make some key points. The first? That the Obama Administration's support for Common Core is no different than what earlier presidents — including Ronald Reagan and George W. Bush — have done for other state-level reform efforts: Provide much-needed (and as Ilya Somin of the Cato Institute would likely note, much-desired) cover for reform-minded governors and school leaders to undertake critical efforts opposed by traditionalists entrenched in American public education's super-clusters of failure.

The second: That Common Core implementation is a key step in addressing the reality that far too many kids, especially those from poor and minority backgrounds, are not getting the comprehensive college-preparatory curricula they need and deserve in an increasingly knowledge-based economy and society. Given that the federal government is charged under the U.S. Constitution and by laws such as No Child with defending the civil rights of black, Latino, Asian, and poor white children, the case can be made that not enough is being done by the Obama Administration to support implementation.

And finally, by so fervently opposing Common Core implementation, especially with conspiracy-theorizing that is intellectually senseless, the motley crew of movement conservatives, hardcore progressive traditionalists, and even once-sensible reformers

have essentially revealed themselves to be far more concerned with comforting their ideologies (and in the case of traditionalists and some school choice activists, their financial interests) than with building brighter futures for kids. Especially in light of the data on how few of our most-vulnerable kids are being provided college-preparatory learning from the moment they enter school, opposing Common Core implementation is morally indefensible. Common Core foes cannot claim to be concerned about the futures of children when the consequences of their opposition harm them the most.

By the time Jindal's lawsuit gets tossed out of court, the governor will have destroyed what's left of his future political prospects as well as ruined what was once a respectable legacy on the school reform front. But for Common Core foes, the damage may be even worse than that. The good news for supporters of the standards is that once again their opponents are their own worse enemy.