

# THE MORAL LIBERAL

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GOVERNMENT, & THE AMERICAN CONSTITUTION

## *MN Continues Fight Against Federal and Executive Overreach*

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EDUCATION LIBERTY WATCH

As the state and federal controversies increase over the unconstitutional and illegal requirements of the No Child Left behind waivers and the equally unconstitutional and illegal implementation of the Common Core Standards via federal funding and requirements, Minnesota legislators continue to step up to the plate.

The House Education Reform Committee passed the companion to the bill that we described in our recent alert, [MN Takes Center Stage in Academic Standards Battle this Week](#). The House bill authored by Rep. Sondra Erickson (R-Princeton), chairwoman of the House Education Reform Committee, simply requires that there be approval by the people's representatives in the legislature before the state department of education would adopt future Common Core Standards such as happened with the English language arts standards under the Pawlenty administration or the wholesale rewriting that is producing the very [revisionist social studies standards](#) being put in place by the Dayton administration. That bill passed the committee essentially on a party line voice vote (audio available [herestarting](#) at about 27:28 with Dr. Effrem's testimony at about 1:07. A written version of her similar recent Senate testimony is available [here](#)).

The other big development is the introduction of a bill, HF 2905 by Representative Bob Barrett (R-Schafer), and SF 2928 by Senators Sean Nienow (R-Cambridge) and David Hann (R-Eden Prairie), to require the commissioner of education to seek Minnesota's own waiver to No Child Left Behind based on the state's needs and laws. This would be in place of the illegal, unconstitutional, conditional and temporary waiver that Minnesota received from the Obama administration, one that among its other problems, in essence requires the Common Core Standards. This bill enjoyed [wide bipartisan support](#) during the 2008 legislative session when the Democrats were in control of the legislature and passed the House floor unanimously as an amendment by Rep. Carolyn Laine (DFL- Columbia Heights) to the education finance omnibus bill. Sadly, it was removed from the omnibus bill after a veto threat by then Governor Tim Pawlenty.

These bills are closely related and very important, not only in Minnesota but around the nation to the whole essence of state's rights, separation of powers, the rule of law, and academic freedom. As Neil McCluskey of the Cato Institute correctly points out, although overshadowed by the health care reform debate at the US Supreme Court, these issues are analogous to and should be viewed as the "[other, almost complete, federal takeover](#)."

The Obama administration is beginning to try to cover their tracks on this their newest federal takeover. After the excellent white paper produced by the [Pioneer Institute](#) and George Will's equally excellent column titled, [Those Pesky Things Called Laws](#), as well as all the push back they received from Secretary of Education Arne Duncan's thuggish [statement](#) to South Carolina for even considering withdrawing from the Common Core Standards, they are trying to backpedal.

Mr. Duncan completely reversed his tone of his statement to South Carolina from excoriating them for considering changing their standards to actually [agreeing](#) with the state superintendent that “the State of Utah has ‘complete control of Utah’s learning standards in all areas of our public education curriculum.’”

This week the secretary then went on to offer a letter similar to the one he wrote to Utah to any state that wanted one during a [speech to the legislative conference](#) of the Council of Chief State School Officers. During that event he also actually admitted within the hearing of an Education Week reporter that “[sometimes we get in the way](#)” of states supporting the national standards. While all of this contrition on the part of the secretary is nice to hear, it is only talk. The federal government is still breaking three federal laws and bribing or blackmailing, depending on one’s point of view, desperately cash starved states into implementing these standards. We suspect that this new tone is coming as a result of Duncan’s and the Obama administration’s fear of another state-led revolt as they are now experiencing with health care. In addition, this sudden change of heart came at about the same time that Secretary Duncan [testified](#) on the Department of Education’s budget request before a very skeptical US House Education and Workforce Committee and its chairman, Rep. John Kline (R-MN2).

In fact the committee’s March 29th fact sheet put out after the secretary’s testimony, titled [Left Turn: By the Numbers – The Secretary of Education’s Startling Record of Executive Overreach](#) clearly shows the many problems with the administration’s actions in education. Here are some of the important highlights in line with Education Liberty Watch’s longstanding and primary concerns receiving extra emphasis:

#### **Number of Conditions States Must Adopt to Get a Waiver From No Child Left Behind: ?**

The secretary’s conditional waiver process has been shrouded in secrecy from the beginning. After receiving the first round of waiver applications, he sent letters “suggesting” states change their applications to improve their chances at obtaining a waiver. The whims of the secretary direct the waivers process, leaving states in the dark about the true cost and number of conditions the secretary may mandate.

#### **Number of Dollars the President Proposed for the Secretary’s Slush Fund (Known as Race to the Top) Since 2009: 7.45 billion**

In 2009, Secretary Duncan announced a new grant competition to pressure states to undertake the administration’s preferred K-12 policies. The program has provided the secretary sole discretion over a multi-billion dollar slush fund of taxpayer dollars. The administration continues to expand Race to the Top’s size by declaring new phases of the original program and extending its reach into early childhood learning and higher education. So far, the president has proposed a total of \$7.45 billion from taxpayers for the secretary to spend on his own policy priorities. [Note: The federal Department of Education has just announced that half of the most recent \$500 million of unnecessary, borrowed, deficit funds of Race to the Top that they secured in that last round of budget negotiations will be used to continue the [invasive preschool version of Race to the Top](#).]

#### **Number of Conditions the Secretary Imposed on States Seeking Access to the Secretary’s Slush Fund: 110**

To be considered for a Race to the Top grant, states were strongly encouraged to enact specific “reforms” preferred by the secretary. Many states felt coerced to adopt the Common Core Standards and more than 100 other prescriptive federal requirements in order to compete for Race to the Top grants. Instead of operating a transparent competition, the secretary chose to base the program on bias, chance, and coercion.

#### **Number of Times Department Sued for Overreach in the Last Year: 2**

In July 2011, the Association of Private Sector Colleges and Universities filed a legal challenge to the department’s regulatory overreach in implementing its gainful employment regulations. In February 2012, the Electronic Privacy Information Center filed a lawsuit contesting the department’s effort to amend the Family Educational Rights and Privacy Act without authority from Congress. A [report](#) last year by the Congressional Research Service raised concerns about the secretary’s authority to grant conditional waivers, leaving the department open to even more legal scrutiny.

#### **WHAT CAN BE DONE:**

On the federal level, please thank [Chairman Kline](#) and those on the [Education and Workforce Committee](#) that are trying to hold the administration accountable both with the budget and with the [No Child Left Behind reauthorization](#). In addition, it is important to let the House leadership of [Representatives John Boehner](#) and [Eric Cantor](#) know how important it is to hold firm during budget talks and not let the administration have ANY more money for Race to the Top so as to prevent more being spent on the final implementation of the unconstitutional Common Core Standards and related assessments or tightening of the noose on the federal control of preschool. On the state level, please firmly urge your own legislators to demand a state centered waiver on NCLB and a withdrawal from the Common Core. In Minnesota, please urge legislators to support the [Erickson/Nelson bill](#) on standards and the [Barrett/Nienow bill](#) on NCLB waivers as the omnibus education bills are being debated and the end of session crunch approaches. Minnesota legislative leadership is listed at the end of this last [alert](#).

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