

The Trump Administration:

Politics and Priorities

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Purpose

- Bring context to discussion of Congressional and administration actions surrounding education
- Help predict how administration will act on certain issues

Agenda

- The push for smaller government
- Government reform efforts
- What this means for ED
- How this strategy is reflected in legislation

The Push for Smaller Government

What's Behind It?

- Federalism
 - Concept that most power should be seated at the State level
 - Fewer decisions made by federal government
 - More autonomy for individuals, corporations
 - Less regulation/restriction

Constitutional Origins of Federalism



- Amendment X
 - “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

Constitutional Origins of Federalism

- Congress has power to “make all Laws which shall be **necessary and proper** for carrying into Execution the foregoing Powers.”
- Congress may “pay the Debts and provide for the... **general Welfare** of the United States.”
- Congress may “**regulate commerce** ...among the several states.”

(all from Article I, Section 8)

Competing Priorities

• Republicans:

- Small federal government
 - In size and scope
- Power to States/ individuals
- Limited federal assistance
- Lower taxes
- “market-driven” services and economy

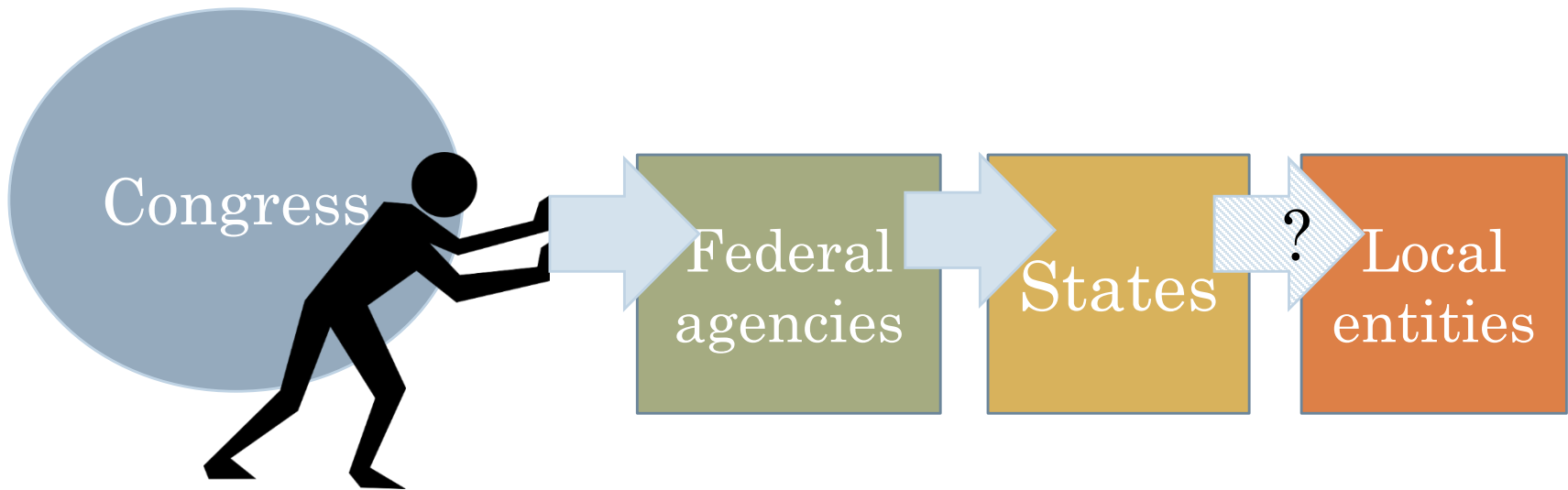
Democrats:

- Strong federal governance role
- Federal intervention as “guardrails” to protect individuals
- Social safety net programs a priority

Current Driving Philosophy

- "That government is best which governs least."
- (variously attributed to Thomas Jefferson, Henry Thoreau, and the motto of the United States Magazine and Democratic Review)
- This means limiting regulations and the scope of federal law, trusting the "market" of individuals to determine the direction of policy
 - If the voters disagree with the actions of policymakers, they will vote them out of office
 - States may pick up the slack and offer their own regulations/rules

Shifting Authority



Government Reform Efforts

Executive Orders

- Regulatory Pause (1/20/17)
 - Paused implementation of rules that had been published but had not yet gone into effect for 60 days after inauguration
 - Including ESSA accountability regulations -
Though this ended up being moot
 - Urges agencies to further delay/review individual rules
 - “Regulations” includes guidance documents of “general applicability and future effect”
 - Exceptions for health/safety/national security



Executive Orders

- Regulatory Reduction (1/20/17)
 - For every new regulation published, two must be revoked
 - Costs must be offset

Memo from White House (4/6/17)

- Applies not only to interim and final regulations published in the federal register, but also “significant guidance documents”
- If a rule is required by Congress, still have to revoke 2 old ones
- If a rule is overturned by Congress (e.g. through CRA), qualifies as cost savings
- Agencies may “bank” cost savings toward a future year

Executive Orders

- Agency Reorganization (3/13/17)
 - OMB must come up with new way to organize federal agencies/ programs
 - Agencies have 180 days to come up with draft plans to improve “efficiency, effectiveness, and accountability”
 - OMB published consolidated plan in Federal Register for public comment
 - Within 180 days after completing public comment, must submit a complete reorganization plan detailing:
 - “Whether some or all of the functions of an agency.... Would be better left to State or local governments or to the private sector through free enterprise”
 - Whether functions are “justified by the public benefit [they] provide”
 - Potential cost of shutting down agencies or offices

The CRA

- Congressional Review Act (existing law)
 - Reaches back 60 legislative days
 - Rescinds regulation
 - Prohibits agency from ever issuing “substantially similar regulations”
 - In first days of Trump administration, used to rescind:
 - ESSA Title I Accountability Regulations
 - HEA Teacher Preparation regulations
- Window now closed!

What this means
for ED

Suspension of Obama-Era Guidance/Practices

- Guidance on accommodation of transgender students rescinded (February 2017)
 - Disagreement on applicability of Title IX protections
 - Disagreement on federal role in enforcing student rights
 - “There must be due regard for the primary role of the States and local school districts in establishing educational policy”
- January 2018 resolution of transgender students’ complaints: “OCR determined we do not have subject matter jurisdiction over Allegation 1, inasmuch as the alleged discriminatory conduct you described does not raise any prohibitive bases under the civil rights laws OCR enforces”

Suspension of Obama-Era Guidance/Practices

Withdrawal of 3 previous letters on
student loan servicing (April 2017)

Procurement process had too many “moving
deadlines, changing requirements, lack of
consistent objectives”

Withdrawal of guidance “negate[s]” any
“impediment, ambiguity, or inconsistency”

Ending “Extraneous” Programs

- Ending four higher education “experimental sites” effective June 30th (April 2017)
 - Program granted participating institutions of higher education (IHEs) a waiver from certain federal student aid rules (e.g. allowing colleges to limit the unsubsidized loans a student could take out)
 - Also ended certain Pell/ work-study initiatives
- Ended socioeconomic diversity grants known as “Opening Doors, Expanding Opportunities”

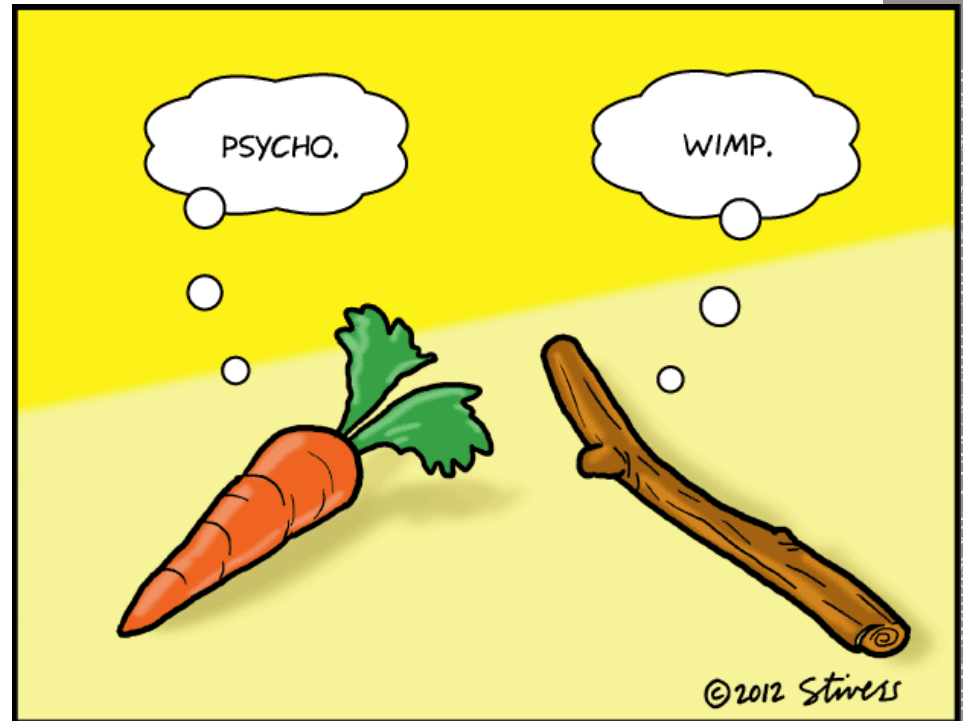
Test Case: ESSA State Plan Template

- Administration rescinded Obama-era version and replaced
- Revision “promotes innovation, flexibility, transparency and accountability, and reduces burden”
- Contains “only those descriptions and information that are absolutely necessary for the Department’s consideration of each State’s plan”
- Removes regulatory requirements (statute only)
- Less information, please!
 - “States may have to adapt their answers to the revised requirements, but if a state submits a consolidated State plan per the revised template, the overall application they submit should be far shorter.”
 - But... maybe not? Feedback on State plans asks for more detail

How This Strategy is Reflected in Legislation

Carrot-and-stick Federalism

- If power is not explicitly or implicitly given, Congress often implements opt-in programs
 - Funding, requirements come only when a State accepts money for a program
 - Often requires significant State share
 - States free to opt out
 - Relies on public pressure



Carrot-and-Stick Federalism

- Every Student Succeeds Act
 - “Any State that opts out of receiving funds, or that has not been awarded funds, under one or more programs under this Act shall not be required to carry out any of the requirements of such program or programs, and nothing in this Act shall be construed to require a State to participate in any program under this Act.”

Reining in ED: The Extreme

- H.R. 610 (Rep. Steve King, R-IA)
 - Would eliminate ESEA, child nutrition standards
 - Turns money into a block grant for public schools, private schools, or home-schooling
 - Light on substance – likely intended to be a message bill
 - House and Senate have no appetite to revisit ESSA as implementation is just getting off the ground
- H.R. 899 (Rep. Thomas Massie, R-KY)
 - Would eliminate the Department of Education on December 31st, 2018
 - No further details about transitioning out, what would happen to funding, no termination of grants (and therefore no accountability?)

Reining in ED: The Mundane

- Sample Secretarial limitations in Every Student Succeeds Act:
 - Strictly prohibits Secretary from doing anything to:
 - Require/incentivize certain standards or assessments, instructional content, programs of instruction, curricula, etc..
 - Deny approval of State plans or waivers without good reason
 - Mandate elements of a teacher evaluation system
 - Set new criteria through regulation or requiring adoption of certain policies in exchange for flexibility or approval of State plans
 - Endorse a specific curriculum or develop a federally sponsored assessment
 - Issue non-regulatory guidance that
 - provides a “strictly limited or exhaustive list” to illustrate successful implementation, or
 - that purports to be legally binding

Questions?



Changes to Requirements and Enforcement

From Bush to Obama to Trump
From NCLB to ESSA

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NCLB to ESSA



- Congress weighs in on Federal rule role in Education
- Consistently defers to States with “back off” message to ED
- “Back off” generally and specifically

Identification of schools in need of improvement

NCLB

- Step by step identification of schools failing to make AYP and detailed consequences
- ESSA requires annual meaningful differentiation identifying any school where a subgroup is consistently underperforming
 - What is “consistently”?
 - What is “underperforming”?
- Congress – “...[A]s determined by the State...”

- When has a school qualified to leave identification?
- NCLB – Specific criteria and times
- ESSA – The State shall establish exit criteria



Standards and Assessments

- What is an appropriate system of academic standards and assessments?
- NCLB plan approval: Required regular overhaul of standards and aligned assessments: Frequent changes
- ESSA:
 - The Secretary may not add new criteria, add new requirements as a condition of plan approval
 - The Secretary may not
 - a) Require the addition or elimination of specific elements of academic standards
 - b) Prescribe long term goals or measurements for students
- 11 specific prohibitions in this section

Waivers

NCLB: Secretary Duncan (2011), frustrated at slow pace of NCLB reauthorization offers extensive flexibility from NCLB requirements – in return for:

- 1) College and Career Ready Standards
- 2) State developed differentiation and accountability plans
- 3) Effective instruction and leadership
- 4) Reduce regulatory burden

All subject to ED review and approval

ESSA – All 11 prohibitions as condition of plan approval – are prohibitions on conditions for waiver

Teacher qualifications

- NCLB – HQT federal requirements
- Disallowing State exceptions to certification, etc.
- ESSA – Teachers meet the State requirements



Fiscal

- Supplement not supplant T1
- NCLB retained traditional rules
 - 3 presumptions
- ESSA – The LEA must demonstrate its methodology assures Title 1 schools all the state/local funds – otherwise entitled to
- **The Secretary may not prescribe the specific methodology used...**

- NCLB to ESSA

Federal requirements and one size fits all
to
State developed programs with federal
involvement prohibited

- How does a State fulfill these requirements?
 - Answer: State plans



Non Regulatory Guidance

- NCLB – Extensive and regularly used to support non-compliance claims
 - Example – When can I return unspent SES funds to my general account? – Detailed process mandated
- ESSA – The Secretary may not issue non regulatory guidance providing a limited or exhaustive list to illustrate successful implementation

Non Regulatory Guidance (cont.)

- Limited list:
 - May use the funds for, without limitation, any of the following:
- Exhaustive list:
 - Must use the funds for one or more of the following:
- Are there any other types of list?

State Plan Approval Process

- All States have submitted
 - 33/52 Approved
- Initial
 - Secretary DeVos requests extensive changes to early plans



Continued Backlash from Republican Lawmakers

Process is not what we intended

- Democratic Response:
 - Senator Patty Murray – Approving plans that do not comply – lacking guardrails

Approval Process

- Arizona: Initial – unclear how proposed calculation on achievement indicator will measure student achievement
 - Response: Description, no change
 - Approved
- Connecticut: Initial achievement indicator based on scale scores
 - Response: Explanation, no change
 - Approved
- Delaware: Initial – goals not ambitious enough cannot use AP to measure college/career readiness
 - Response: Explanation, no change
 - Approved

Approval Process (cont.)

- Massachusetts: Initial – Cannot use scale scores, no change
 - Exit criteria not developed
 - Response: Will develop after initial notification
 - Approved
- Nevada: Initial – Must describe teacher equity distribution
 - Response: Still collecting
 - Approved

Approval Process (cont.)

- Tennessee: Initial – Supersubgroup – Black/Hispanic/Native American must disaggregate
 - Response: No change
 - Approved
 - Wisconsin: Initial – Proficiency indicator does not prevent “override – high or low”
 - Response: Description, no change
 - Approved
- Is the process working the way Congress (ESSA) intended?

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