

National
Common Core
Standards System

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I. Introduction

When the Common Core Standards Initiative (CCSI) began, few people were aware of the sweeping changes coming to education. Today, Arizona is beginning to see the consequences of adopting this program. Our children's future success, with respect to both citizenship and economic achievement, hinges on the decisions made today.

CCSI is much more than educational standards. It is the lynchpin in a drive by special interests and the federal government to shape national education policy to an extent never before seen in the history of Arizona and the United States. This system will be referred to as the National Common Core Standards System. It includes the following areas:

1. Educational Standards
2. High Stakes Testing
3. Data Collection
4. Student Privacy
5. Accountability

These areas plus the history of Common Core will be discussed to inform the reader about the scope of the federal agenda, and the current and future effects on Arizona's students, families, teachers, and schools.

II. History of Common Core

Many people assume that the nationwide prevalence of Common Core indicates that each of the states engaged in a vigorous review of the standards and independently rated them as beneficial and of high quality. The history of Common Core shows that the standards were pushed into the states in a way that circumvented the usual checks and balances in the constitutional structure. Familiarity with the history also helps one understand the interests of the Common Core owners and developers and how they work through groups such as the Chamber of Commerce to propagate the Common Core system. As discussed throughout this document, the reader will also learn that Common Core standards are systemically defective.

A. The History of Common Core in America

As described in more detail below, the Common Core system includes 1) a set of national K-12 standards in English language arts (ELA) and math; 2) standardized tests aligned to the standards, which includes two federally funded tests and, increasingly, as the test consortia have started to collapse due to their expense and design defects, third-party and state-owned tests that are aligned to the standards; (3) federally funded teacher evaluations that are significantly shaped by the federal government. In addition, the federal government has required the states to align their policies and laws in order to receive conditional No Child Left Behind (NCLB) waivers of burdensome federal regulations and *Race to the Top* (RTTT) grant money. Some of the same private entities involved in developing Common Core were also

involved in coordinating the development of the Next Generation Science Standards and the Social Studies Frameworks, both of which are aligned with Common Core.¹

The National Governors Association (NGA) and Council of Chief State School Officers (CCSSO) own the copyright to the Common Core Standards.² They developed the standards through Achieve, Inc., a private entity founded by a group of governors and corporate executives at the 1996 National Education Summit, a meeting of governors and executives hosted by IBM.³ NGA, CCSSO, and Achieve work as partners in the advancement of the Common Core.⁴

NGA and CCSSO are private, incorporated entities that receive money from other private entities, such as corporations and foundations, and from states in the form of dues for the participation of state school chiefs and governors in association activities. Both the NGA and CCSSO also receive significant state and federal tax dollars.⁵ They are not governmental entities. They do not have grants of legislative authority from the states. They are located in Washington, DC, not in the states. Because they are *private* entities, their meetings are not subject to Freedom of Information Act (FOIA) requests or other sunshine laws.

A governor or school chief who participates in NGA or CCSSO meetings is not doing so within the context of the “checks and balances” of state government. Those checks and balances manifest themselves through, among other things, public notices, government oversight, public meetings, and procedural adherence to public laws. Such mechanisms serve to uphold the public trust, to protect the rights of the people, to ensure that the government adheres to the will of the people, and to ensure prudent and wise governmental actions. As a matter of law and reason, neither a state nor the federal government can substitute “private action” for such mechanisms.

With respect to their Common Core activities, the names “NGA” and “CCSSO” imply, and have led many people to assume, that those organizations have been acting at the “behest of states” -- in other words, that the states, through their respective public check-and-balance-processes, individually empowered NGA and CCSSO to develop the standards and that they oversaw their development. The reality, though, is far from that. NGA and CCSSO developed the Common Core in response to massive private funding, most notably from the Bill & Melinda Gates

¹ <http://www.nextgenscience.org/writing-team>

² <http://www.corestandards.org/public-license:>

Attribution; Copyright Notice:

NGA Center/CCSSO shall be acknowledged as the sole owners and developers of the Common Core State Standards, and no claims to the contrary shall be made.

³ <http://www.achieve.org/history-achieve>. Achieve’s corporate leadership consists of corporate executives and four governors. See <http://www.achieve.org/our-board-directors>.

⁴ <http://www.achieve.org/history-achieve> (“**2009:** Work begins on the development of the Common Core State Standards; Achieve partners with the National Governors Association and Council of Chief State School Officers on the Initiative and a number of Achieve staff and consultants serve on the writing and review teams.”).

⁵ <http://news.heartland.org/newspaper-article/2013/04/24/state-led-common-core-pushed-federally-funded-nonprofit>

Foundation. State involvement amounted to little more than “suggestion-box” input and none of that input remotely involved individual states’ systems of checks and balances or public processes. States’ limited role was only *exacerbated* by the short timeline for Common Core’s development.

From the Gates Foundation alone, NGA, its partners, and Student Achievement Partners – another private entity heavily involved in advancing the Common Core--have accepted an estimated \$147.9 million for a variety of purposes, \$32.8 million of which is expressly earmarked to advance CCSS.⁶ Overall the Gates Foundation has spent an estimated \$2.3 billion in advancing Common Core.⁷ The wide range of its recipients⁸ includes,⁹ but is not limited to, National Association of State Boards of Education, Education Commission of the States, PTA associations, the Military Child Education Coalition, Council of State Governments, National Writing Project, National Council of Teachers of English, The American Association of School Administrators, the American Federation of Teachers Educational Foundation, the National Education Association Foundation for the Improvement of Education, the American Legislative Exchange Council, and WestEd. In furtherance of the NGA Common Core product, the Gates Foundation has even funded state entities including the Colorado, Delaware, Georgia, Kentucky, Louisiana, and Pennsylvania departments of education, as well as local education offices in Indiana, Ohio, and New Mexico. The Gates funding footprint extends to the College Board–owner of the SAT and Advanced Placement tests--to which Gates has provided over \$32 million in funding since 2001. In fact, the College Board’s new president, David Coleman, was one of the architects and chief writers of Common Core and, upon his appointment by the College Board, stated his intention to align the SAT to Common Core.¹⁰

Gates money also funds independent institutes and foundations to advance and promote Common Core, including American Agora Foundation, American Enterprise Institute, Aspen Institute, Facing History and Ourselves National Foundation, Foundation for Excellence in Education, James B. Hunt Institute for Educational Leadership and Policy Foundation, KnowledgeWorks Foundation, Nellie Mae Education Foundation, New America Foundation, and

⁶ <http://deutsch29.wordpress.com/2013/09/03/gates-money-and-common-core-part-ii/>.
<http://deutsch29.wordpress.com/2013/09/25/gates-money-and-common-core-part-v/> (calculating the amount as of Sept. 22, 2013). On her May 12, 2013 Washington Post blog, Valerie Strauss calculated the figure to be \$150 million. <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/05/12/gates-gives-150-million-in-grants-for-common-core-standards/>. The Gates Foundation provides information on all its grants through its website: <http://www.gatesfoundation.org/How-We-Work/Quick-Links/Grants-Database>

⁷ <http://www.artofteachingscience.org/why-bill-gates-defends-the-common-core/>.

⁸ <http://deutsch29.wordpress.com/2013/09/03/gates-money-and-common-core-part-ii/>

⁹ <http://deutsch29.wordpress.com/2013/09/11/gates-money-and-common-core-part-iii/>

¹⁰ Catherine Gewertz, *Incoming College Board Head Wants SAT to Reflect Common Core*, Education Week, (May 16, 2012), <http://www.edweek.org/ew/articles/2012/05/16/32collegeboard.h31.html>.
http://www.washingtonpost.com/local/education/college-board-to-make-changes-to-sat/2013/02/26/fb332bc4-8063-11e2-b99e-6baf4ebe42df_story.html.

Thomas B. Fordham Institute.¹¹ It funds businesses¹² and universities¹³ to advance Common Core. It funds entities like the Chamber of Commerce to promote Common Core.¹⁴

Every year, the Gates Foundation pours more and more millions of dollars into “college ready” grants, which is one of the main goals of the Common Core. As of this writing, Gates has made 2068 separate contributions to this grant category.¹⁵ Together, the promotion of Common Core by these entities gives the false appearance of a settled issue, one that is based on evidence and on consensus.

The NGA and CCSSO persuaded the federal government to foist the Common Core standards, and indeed the entire Common Core System, onto the states. In their December 2008 white paper *Benchmarking for Success*, NGA, CCSSO, and Achieve encouraged the federal government on the eve of the new administration to provide funding to states to, among other things:

- “[u]pgrade state standards by adopting a common core of internationally benchmarked standards in math and language arts for grades K-12...”
- “ensure that textbooks, digital media, curricula, and assessments are aligned” to the standards “offer a range of tiered incentives to make the next stage of the journey easier, including increased flexibility in the use of federal funds and in meeting federal educational requirements....”
- “revise state policies for recruiting, preparing, developing, and supporting teachers and school leaders to reflect the human capital practices of top performing nations and states around the world.”¹⁶

These ideas served as the basis of the U.S. Department of Education’s RTTT grant competition program,¹⁷ which the Department (USDE) funded with money from the American Recovery and Reinvestment Act of 2009 (the “Stimulus Bill”). USDE also apparently drew from *Benchmarking for Success* in developing the No Child Left Behind flexibility waiver program.

¹¹ <http://deutsch29.wordpress.com/2013/09/25/gates-money-and-common-core-part-v/>

¹² <http://deutsch29.wordpress.com/2013/10/05/gates-money-and-common-core-part-vi/m>

¹³ <http://deutsch29.wordpress.com/2013/09/17/gates-money-and-common-core-part-iv/>

¹⁴ Gates has provided at least \$5.6 million to chambers of commerce to advocate for Common Core. <http://www.gatesfoundation.org/How-We-Work/Quick-Links/Grants-Database#q/k=Chamber%20of%20Commerce>. Gates has also paid the Institute for a Competitive Workforce, an affiliate of the U.S. Chamber of Commerce, over \$3.2 million to push for the national standards. <http://www.gatesfoundation.org/How-We-Work/Quick-Links/Grants-Database#q/k=Institute%20for%20a%20Competitive%20Workforce> .

¹⁵ <http://www.gatesfoundation.org/How-We-Work/Quick-Links/Grants-Database#q/program=US%20Program&issue=College-Ready>

¹⁶ <http://www.achieve.org/BenchmarkingforSuccess>, pp. 5-7, 37.

¹⁷ <http://www.ed.gov/blog/2009/07/president-obama-secretary-duncan-announce-race-to-the-top/>

The enactment of the Stimulus Bill, on February 17, 2009¹⁸ set into motion three dynamics that unfolded throughout 2010: (1) USDE began preparing the RTTT grant competition program for the states; (2) Under tremendous pressure to obtain as much Stimulus money as possible as an “antidote” to the widely forecast impending fiscal and economic calamity, most states began positioning themselves to win money in the grant competition against other states; and (3) NGA, CCSSO, and Achieve began to develop the Common Core Standards through a private process.¹⁹

Title XIV of the Stimulus Bill appropriated \$53.6 billion to USDE, most of which would be granted to the states in formula grants or, as with the \$4.35 billion allocated to RTTT, in competitive grants. To receive the formula grants, a state had to make assurances to the federal government regarding certain federal objectives. For example, the states had to assure the USDE that it was “improving teacher effectiveness,” “improving data collection,” “enhancing the quality of student assessments,” and taking “steps to improve State academic achievement standards.”²⁰

To receive competitive grants, a state had to go a step further with respect to the same criteria. It had to demonstrate that it had “made significant progress in meeting the objectives....”²¹ This ignited, for the next year-and-a-half (the period of time it would take the federal government to design the competition and receive the grant applications from the states), a race among states to shape their laws, policies, and actions to fulfill the federal interpretation of those assurances and to score points in the competition.

Key points in that timeline included the following:

- Shortly after enactment of the Stimulus Bill, the federal Secretary of Education, Arne Duncan, expressly lauded the Common Core efforts of Achieve and Gates.²²
- In early 2009, USDE hired two key employees from the Gates Foundation:
 - James Shelton, former deputy director of education at the Gates Foundation, as assistant deputy secretary at USDE and as head of the Department’s Office of Innovation and Improvement; and
 - Margot Rogers, former special assistant to the director of education programs at the Gates Foundation, as chief of staff for the Secretary of Education.²³

¹⁸ The American Recovery and Reinvestment Act of 2009 (ARRA)(Pub.L. 111–5) available at <http://www.gpo.gov/fdsys/pkg/BILLS-111hr1enr/pdf/BILLS-111hr1enr.pdf>

¹⁹ See, e.g., *supra*, at fn. 4; R. James Milgram and Sandra Stotsky, *Lowering the Bar: How Common Core Math Fails to Prepare High School Students for Stem*, Pioneer Institute, no. 103 (Sept. 2013), <http://pioneerinstitute.org/download/lowering-the-bar-how-common-core-math-fails-to-prepare-high-school-students-for-stem/>.

²⁰ ARRA, Sec. 14005(d).

²¹ ARRA, Sec. 14006(a)(2), *referencing* the Stimulus Bill at “section 14005(d).”

²² States Will Lead the Way Toward Reform:

Secretary Arne Duncan's Remarks at the 2009 Governors Education Symposium available at <http://www2.ed.gov/news/speeches/2009/06/06142009.html>

- In March 2009, USDE announced the RTTT “national competition” to award the Stimulus money through two rounds of grant awards, RTTT Phase 1 and Phase 2.²⁴
- On June 1, 2009, NGA and CCSSO announced²⁵ that 46 states had joined “a state-led process to develop a common core of state standards,” without explaining what “joining” entailed.²⁶
- Two weeks later, the June 2009 NGA-Hunt Institute education forum featured direct national-standards advocacy to the 21 governors and staff who attended (the invitation-only event did not release names) and spliced in Secretary Duncan, who spoke of national standards as a federal-state partnership: “[M]y job is to help you succeed” in adopting “common national standards,” Duncan told the assembly.²⁷
- Under the competition, states competed with each other to win back their taxpayers’ money, and they earned points in the grant competition by committing to USDE’s policy agenda and demonstrating their progress in implementing that agenda. To that end, on July 24, 2009, Secretary Duncan also stated, “But I want to be clear that the RTTT is also a reform competition, one where states can increase or decrease their odds of winning federal support.”²⁸
- On November 12, 2009, in its final rule on the Stimulus Bill’s State Stabilization Fund, the USDE praised the development of the Common Core:

The Department continues to encourage States to work together to develop and implement common internationally benchmarked standards and assessments aligned to those standards in order to ensure that students are college-and-career-ready.²⁹

- USDE shaped state policy-making through an aggressive *misinterpretation* of the law. Through the statements of federal officials and through the RTTT grant applications, it changed the goal of encouraging a state to “enhance the quality of academic assessment”³⁰ to mean, for all practical purposes, adopting the NGA’s Common Core.

²³ <http://www.bizjournals.com/seattle/stories/2009/05/18/story2.html?page=all>;
http://www.businessweek.com/magazine/content/10_30/b4188058281758.htm

²⁴ <http://www2.ed.gov/policy/gen/leg/recovery/implementation.html>

²⁵ http://www.nga.org/cms/home/news-room/news-releases/page_2009/col2-content/main-content-list/title_forty-nine-states-and-territories-join-common-core-standards-initiative.html

²⁶ Joy Pullmann, *Five People Wrote ‘State-Led’ Common Core*, School Reform News, <http://news.heartland.org/newspaper-article/2013/06/07/five-people-wrote-state-led-common-core>, *citing*, http://www.nga.org/cms/home/news-room/news-releases/page_2009/col2-content/main-content-list/title_forty-nine-states-and-territories-join-common-core-standards-initiative.html

²⁷ <http://www2.ed.gov/news/speeches/2009/06/06142009.html> ;
<http://www.nga.org/files/live/sites/NGA/files/pdf/0910GESREPORT.pdf>.

²⁸ <http://www2.ed.gov/print/news/speeches/2009/07/07242009.html>.

²⁹ <http://www.gpo.gov/fdsys/pkg/FR-2009-11-12/pdf/E9-27161.pdf>, at p. 58437.

³⁰ With respect to standards, the Stimulus Bill’s “State Assurances” language states, at Section 14005(d)(C), that the State “[w]ill take steps to improve State academic content standards and student achievement standards consistent with section 6401(e)(1)(A)(ii) of the America COMPETES Act.” See also 74 Fed. Reg. 37,837, at 37,839 (July 29, 2009) (quoting section 6401(e)(1)(A)(ii)). <http://www.gpo.gov/fdsys/pkg/FR-2009-07-29/pdf/E9-17909.pdf>. There is no intent evidenced in either the Stimulus Bill or America Competes to herd the states into a particular set of standards or into the same set of standards.

- A State had to *compete* for money that came from its taxpayers by demonstrating its commitment to USDE’s education system, essentially committing to a monopoly. USDE:
 - Set, as one of the competition’s “absolute priorities,” that a state had to participate “in a consortium of States that ...[i]s working toward jointly developing and implementing common, high-quality assessments ... aligned with the consortium’s common set of K-12 standards ...”³¹
 - Directed the competition judges to award a state “high” points “if the consortium includes a majority of the States in the country,” but “medium or low” points if the consortium includes one-half the states or fewer, criteria that doomed the application of any state that had not joined the NGA effort.³²
 - Admitted that the “goal of common K-12 standards is to replace the existing patchwork of State standards” and that its view was “that the larger the number of States within a consortium, the greater the benefits and potential impact.”³³

- A state had to commit to the Standards and assessments *before*³⁴ they were completed and make their case that the Standards would be implemented regardless of whether it was awarded RTTT money:
 - States had to submit Phase I applications by January 19, 2010.
 - NGA issued the first public draft of the Standards in March 2010.
 - On March 29, 2010, the Department announced the Phase I winners (DE and TN).
 - States had to submit Phase II applications by June 1, 2010.
 - NGA issued the final K-12 Common Core Standards on June 2, 2010. From the March draft to the final version of the Common Core, the quality of the Standards actually *declined* in certain respects.³⁵
 - Phase II applicants had until August 2, 2010 to amend their RTTT submissions in order to submit “evidence of having actually adopted common standards” after June 1, 2010.

- In submitting its application, a state *had* to also demonstrate that it had joined one of the two state consortia applying for another pot of RTTT money, that is, either the Partnership for Assessment of Readiness for College and Careers (PARCC) or Smarter Balanced Assessment Consortium (SBAC), both of which were developing the standardized tests aligned with the Common Core. (These consortia were formed for the sole purpose of pursuing the USDE Stimulus Bill money.) The applicant state even had to

³¹ <https://www2.ed.gov/legislation/FedRegister/announcements/2010-2/041410a.pdf> 75 Fed. Reg. at 19,503.

³² 75 Fed. Reg. at 19,516 (April 14, 2010). *See also The Road to a National Curriculum.* <http://www.fed-soc.org/publications/detail/the-road-to-a-national-curriculum-the-legal-aspects-of-the-common-core-standards-race-to-the-top-and-conditional-waivers>

³³ 74 Fed. Reg. 59,688, at 59,733. <http://www.gpo.gov/fdsys/pkg/FR-2009-11-18/pdf/E9-27426.pdf>. *See also The Road to a National Curriculum, supra.*

³⁴ 74 Fed. Reg. 59,836 (Nov. 18, 2009) (list of Race to the Top deadlines). <http://www.gpo.gov/fdsys/pkg/FR-2009-11-18/pdf/E9-27427.pdf>.

³⁵ R. James Milgram and Sandra Stotsky, *Lowering the Bar: How Common Core Math Fails to Prepare High School Students for Stem*, Pioneer Institute, no. 103 (Sept. 2013), <http://pioneerinstitute.org/download/lowering-the-bar-how-common-core-math-fails-to-prepare-high-school-students-for-stem/>.

attach the consortium agreement. In signing the PARCC agreement, a state committed that it would “adopt a common set of college- and career-ready standards no later than December 31, 2011.”³⁶ In signing the SBAC agreement, a state agreed that it would “[a]dopt the Common Core Standards...”³⁷ Thus, in signing on as a full member of a testing consortium, a state committed itself to adopting Common Core in addition to the Common-Core aligned assessment. By implication, a state also committed itself to *junking* its own assessments and standards.³⁸

- The Gates Foundation, for its part, helped at least 24 states, including Arizona,³⁹ prepare their RTTT applications.⁴⁰

Subsequently, as the public pushback against Common Core has gathered steam, USDE – specifically Secretary Duncan-- has stepped in to urge the U.S. Chamber of Commerce and business leaders to advocate in *favor* of Common Core,⁴¹ to lobby newspaper editors on how to report on Common Core,⁴² and to attack the citizen push-back in the states.⁴³

B. The History of Common Core in Arizona

Shortly after President Obama and USDE Secretary Arne Duncan’s July 2009 announcement, that \$4.3 billion of the Stimulus Bill funds would be available to states in a RTTT competition,⁴⁴

³⁶ Memorandum of Understanding for Race to the Top-Comprehensive Assessment Systems Grant, Partnership for Assessment of Readiness for College and Career Members.

<http://www.cde.state.co.us/cdedepcom/executedparccgoverningmou2012-0>

³⁷ Memorandum of Understanding, SMARTER Balanced Assessment Consortium, Race to the Top Fund Assessment Program; Comprehensive Assessment Systems Grant Application.

<http://www.smarterbalanced.org/wordpress/wp-content/uploads/2011/12/Smarter-Balanced-RttT-Application.pdf>.

³⁸ Race to the Top Program Executive Summary, U.S. Department of Education, pp. 8; 74 Fed. Reg. 59,836, 59847 (Nov. 18, 2009)(“A copy of the Memorandum of Agreement, executed by the State, showing that it is part of a consortium that intends to develop high-quality assessments...or documentation that the consortium has applied...for a grant through the separate Race to the Top Assessment Program.”). The notice also required submission of “States participating in the consortium and the list of these States.” *Ibid.*

³⁹ http://foundationcenter.org/educationexcellence/gates_rttt_summary.pdf

⁴⁰ *Bill Gates’ School Crusade*, BloombergBusinessweek Magazine (July 15, 2010),

<http://www.businessweek.com/printer/articles/50690-bill-gates-school-crusade> (“When the federal government made \$4.35 billion in federal Race to the Top awards available—favoring applicants that agree to link teacher pay to test score gains, increase the number of charter schools, and adopt common curriculum standards—the Gates Foundation paid for consultants to prepare applications for 24 states, as well as the District of Columbia.”).

⁴¹ <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/04/24/is-the-common-core-standards-initiative-in-trouble/>

http://blogs.edweek.org/edweek/state_edwatch/2013/04/arne_duncan_urges_business_leaders_to_defend_common_core.html

⁴² <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/06/25/arne-duncan-tells-newspaper-editors-how-to-report-on-common-core/>

⁴³ <http://www.ed.gov/news/press-releases/statement-us-secretary-education-arne-duncan-1>;

<http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/11/16/arne-duncan-white-surburban-moms-upset-that-common-core-shows-their-kids-arent-brilliant/>;

<http://truthinamericaneducation.com/uncategorized/mad-mothers-respond-duncan/>.

⁴⁴ <http://www.ed.gov/blog/2009/07/president-obama-secretary-duncan-announce-race-to-the-top/>

the Arizona State Board of Education (SBE) began discussing applying for Phase 1 RTTT funding.

During its August 24, 2009 board meeting, board member Jaime Molera advised that Gov. Brewer had asked Dr. Deb Duval, former Superintendent of Mesa Public Schools, to lead Arizona's efforts in the RTTT process.⁴⁵ Dr. Duval enlisted the assistance of the P-20 Coordinating Council⁴⁶ to write the RTTT application, ensuring that Arizona was eligible, and that Arizona would also meet the federal requirements.⁴⁷

On January 5, 2010, cash-strapped Arizona submitted its 345-page application, with appendices, to the USDE hoping for \$250 million in RTTT funding.⁴⁸ In applying for this funding, Arizona agreed to many federal demands, including but not limited to: 1) Reporting to the federal government on Arizona's progress in reducing the inequities in the distribution of highly qualified teachers; 2) Implementing a State Longitudinal Data System (SLDS); 3) Linking data on student achievement or growth to teachers and principals for the purpose of teacher and principal evaluations; 4) Adopting the Common Core State Standards, **once they were written** (emphasis added); and 5) Entering into an agreement with other participating states to develop and implement common, high quality assessments aligned with the Common Core Standards.⁴⁹ Arizona agreed to become an active member of the Partnership for Assessment of Readiness for College and Careers (PARCC) Consortium.

The USDE denied Arizona's Phase 1 RTTT funding request, as well as its May 28, 2010 Phase 2 request.⁵⁰ Arizona tried a third time in December 2011.⁵¹ Under RTTT Phase 3, Arizona was awarded \$25 million.⁵² Unfortunately, it was learned nearly two years later that the cost to implement Common Core was estimated to be \$387 million.^{53,54}

During its March 22, 2010 meeting, SBE was advised by Associate Superintendent of Public Instruction Ms. Cheryl Lebo that the "Common Core State Standards Initiative" information (draft standards) had been posted online and was available for the public to provide input. It

⁴⁵ <http://www.azed.gov/state-board-education/files/2014/07/08-24-09.pdf>

⁴⁶ <http://coaching.typepad.com/files/pr---p-20-council-final-7-27-09.pdf>

⁴⁷ <https://www.azed.gov/wp-content/uploads/PDF/10-21-09E-LearningMinutes.pdf>

⁴⁸ <http://www2.ed.gov/programs/racetothetop/phase1-applications/arizona.pdf>;

<http://www2.ed.gov/programs/racetothetop/phase1-applications/appendixes/arizona.pdf>

⁴⁹ <http://www2.ed.gov/programs/racetothetop/phase1-applications/appendixes/arizona.pdf>

⁵⁰ <http://www2.ed.gov/programs/racetothetop/phase2-applications/arizona.pdf>

⁵¹ <http://www.azed.gov/racetothetop/files/2012/01/arizonas-rttt-phase3-application.pdf>

⁵² <http://www.azed.gov/racetothetop/files/2012/01/arizona-race-to-the-top-introductory-overview-powerpoint-presentation.pdf>

⁵³ <http://www.kcwebguy.com/tasks/sites/gilbertwatch/assets/File/Common%20Core%20Estimates%20ADE.pdf>

⁵⁴ <http://www.kcwebguy.com/tasks/sites/gilbertwatch/assets/File/Common%20Core%20Estimates%20AASBO.pdf>

would be posted for 30 days. **Ms. Lebo walked members of the board through the information posted and encouraged the members to review it.**⁵⁵ (Emphasis added.)

Shortly after the National Governors Association released the final draft Common Core State Standards on June 2, 2010,⁵⁶ the SBE met in a regular board meeting. Among other items, the board heard presentations of the standards from Dr. William McCallum and Ms. Mary Knuck. Dr. McCallum was one of the lead Common Core Math writers.⁵⁷ He is also an advisor to Student Achievement Partners,⁵⁸ as well as professor of Mathematics at the University of Arizona.⁵⁹ At the conclusion of the presentations, the SBE voted to adopt the Common Core State Standards.⁶⁰

Under ARS 15-701,⁶¹ it's clear that the SBE has the power to prescribe a minimum course of study and incorporate the academic standards adopted by the state board of education, to be taught in the common schools. However, according to ARS 15-203(A)(10)(12)(13), among the SBE's duties is to present a budget to the legislature relating to the accomplishment of its purposes, as well as a *fiscal* impact statement of any proposed changes to the minimum course of study or competency requirements and, on completion, send a copy to the director of the joint legislative budget committee (JLBC).⁶² There is no evidence that the SBE did this.⁶³

In April 2012, SBE President Jaime Molera announced⁶⁴ that Arizona would *abandon* the state's standardized testing assessment, AIMS, for a new next generation K-12 assessment: PARCC (Partnership for Assessment of Readiness for College and Careers, even though those tests had not yet been developed).⁶⁵ This was, of course, the logical consequence of Arizona joining PARCC. Then, on November 3, 2014, just a few months before testing was to begin, the SBE abandoned PARCC in favor of AzMERIT.⁶⁶ [It bears emphasizing what happened here and the effects of the federal intrusion into state sovereignty. What rational person

⁵⁵ <http://www.azed.gov/state-board-education/files/2014/07/03-22-10.pdf>

⁵⁶ http://www.nga.org/cms/home/news-room/news-releases/page_2010/col2-content/main-content-list/title_national-governors-association-and-state-education-chiefs-launch-common-state-academic-standards.html

⁵⁷ http://www.nga.org/cms/home/news-room/news-releases/page_2009/col2-content/main-content-list/title_common-core-state-standards-development-work-group-and-feedback-group-announced.html

⁵⁸ <http://achievethecore.org/about-us>: Student Achievement Partners was founded by David Coleman, Susan Pimentel and Jason Zimba, lead writers of the Common Core State Standards. As of 2012, Student Achievement Partners had received 6.5 million from the Gates Foundation. http://www.huffingtonpost.com/mercedes-schneider/a-brief-audit-of-bill-gat_b_3837421.html

⁵⁹ <http://math.arizona.edu/~wmc/>

⁶⁰ <http://www.azed.gov/state-board-education/files/2014/07/minutes-6-28-10.pdf>

⁶¹ <http://www.azleg.gov/ars/15/00701.htm>

⁶² <http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/15/00203.htm&Title=15&DocType=ARS>

⁶³ <http://www.azed.gov/state-board-education/archived-meeting-minutes-for-2009/> ;

<http://www.azed.gov/state-board-education/archived-meeting-minutes-for-2010/>

⁶⁴ <http://www.examiner.com/article/arizona-aims-testing-parcc-to-replace-aims-2014>

⁶⁵ <http://parcc.pearson.com/>

⁶⁶ <http://www.azed.gov/assessment/azmerit/>

or body of people would abandon their standardized tests in favor of undeveloped tests, the development of which was not in their control?] AzMERIT was scheduled to be taken by every student in grades 3-12, beginning in the Spring of 2015, and every year thereafter. The company responsible for creating AzMERIT is American Institutes for Research (A.I.R.), one of the largest behavioral and social science research and evaluation organizations in the world.⁶⁷

The implementation of the Common Core Standards began in the 2012-2013 school year.⁶⁸ Controversy concerning the standards didn't take very long. Parents and concerned citizens began speaking out about inappropriate, sexualized texts found in Common Core's Appendix B.⁶⁹ They complained about the new "conceptual math" methods that were used in the classroom and the emphasis placed on them *instead* of "traditional" American math methods known as standard algorithms. They also expressed concern about the federal government's role using RTTT grant money to bribe the states to accept a national set of standards. They saw that there was no cost analysis. They complained that computers required by school districts amounted to an "unfunded mandate." Citizens also expressed grave concerns that these standards had never been field tested.⁷⁰

In September 2013, Governor Brewer changed the name Common Core to "Arizona's College and Career Ready Standards (ACCRS)," apparently to give the *impression* that Arizona had played a significant role in developing Common Core. However, this was merely a rebrand. The standards remained the same.⁷¹ In fact, it would have been *perilous* for Arizona to make any changes, because "common assessments" were being developed by two national consortia⁷² to test the Common Core standards **as written**.⁷³ (Emphasis added.)

During Arizona's 2014 and 2015 legislative sessions, many Arizonans worked unsuccessfully through their legislators to remove and replace Common Core.⁷⁴

⁶⁷ <http://www.air.org/about-us>

⁶⁸ <http://www.azed.gov/azccrs/implementation-timeline/2012-2013>

⁶⁹ http://www.corestandards.org/assets/Appendix_B.pdf

⁷⁰ <http://www.gilbertwatch.com/index.cfm/blog/showdown-in-show-low-common-core-state-standards/>

⁷¹ http://www.washingtonpost.com/local/education/some-states-rebrand-controversial-common-core-education-standards/2014/01/30/a235843e-7ef7-11e3-9556-4a4bf7bcbd84_story.html

⁷² <http://indianapublicmedia.org/stateimpact/2013/06/26/before-todays-governing-board-meeting-five-things-to-know-about-parcc/>

⁷³ <http://indianapublicmedia.org/stateimpact/2013/08/19/core-question-does-copyright-mean-states-cant-change-the-common-core/>

⁷⁴ <http://arizonansagainstcommoncore.com/activism.html>

II. The Common Core Standards Are Inferior, Defective, and Do Not Lead to Readiness for Authentic College Work

The Common Core Standards are systemically defective in several respects. These defects necessitate that Arizona replace, not rebrand, Common Core with “high-quality” standards. For example, many of the standards are not age appropriate. Also, Common Core math *fails* to prepare children for college and puts them on a slowed-down progression that, by eighth grade takes them off the trajectory for STEM studies. English language standards are contrary to evidence and centuries of teaching. This was a foreseeable consequence of a developmental process that lacked the qualitative safeguards: it was not a public process and therefore lacked the transparency and checks-and-balances in that process, and it was predicated on a monopoly and therefore was not subject to the qualitative-ensuring effect of competition.

A. Common Core is Developmentally Inappropriate for Young Children

Standards that are “developmentally appropriate” are written with an understanding of how children’s minds mature so that the content and material presented correspond to the appropriate stage of mental development. “Age- appropriate” standards adhere to a sequencing that advances a child’s academic progress.

Understanding how children’s minds develop and then matching how the teacher presents the information to them, based on their stage of development, provides for “developmentally appropriate” standards. Research in cognitive science proves that there are *stark* differences in the learning abilities of children age 5 (Kindergarten) and age 8 (Grade 3) and even *more* so when the child turns 11 (Grade 5). In fact, their brains continue to develop and change until adulthood.

The famous child psychologist Jean Piaget determined that those entering school in Kindergarten were on the verge of entering into the Concrete-operational Phase, where their minds best understand things with concrete examples. **What distinguishes this phase from the next, which begins around age 11 or 12, is that they can't yet think abstractly.**⁷⁵ (Emphasis added.)

It makes a difference when we introduce the material so that the child is developmentally ready to understand what is being taught.

Standards that are not developmentally appropriate force the curriculum to include strategies and lessons that aren’t understandable to students. When this happens, teachers must spend an excessive amount of time trying to teach a concept that children aren’t capable of mastering, thus crowding out grade-level, appropriate materials that would *truly* advance the child’s progress.

⁷⁵ http://epltt.coe.uga.edu/index.php?title=Piaget%27s_Stages

Common Core Standards fail to give careful consideration for what is “developmentally appropriate.” The negative consequences to children, by implementing these standards, compel us as concerned citizens to seek the repeal of the Common Core Standards (CCS).

The lack of input by child development experts on the CCS writing team⁷⁶ is obvious in the approach the writers chose to determine the standards. Instead of considering what is “developmentally appropriate” for each grade, Common Core backtracks the end goals of college and career readiness down to the Kindergarten level. The set of skills and expectations that define a “college and career ready” high school graduate, such as critical thinking, begin in Kindergarten.

CCS fails to honor the *widely held* understanding of childhood development and require children who are in the middle of the concrete operation period to explain, justify, and apply principles that are abstract in nature. For example, the below standard for first grade requires students to use algebraic concepts, which are abstract, to solve simple addition problems:

1.OA.B.3 Apply properties of operations as strategies to add and subtract. Examples: If $8 + 3 = 11$ is known, then $3 + 8 = 11$ is also known. (Commutative property of addition.) To add $2 + 6 + 4$, the second two numbers can be added to make a ten, so $2 + 6 + 4 = 2 + 10 = 12$. (Associative property of addition.)⁷⁷

This is indeed “rigorous,” but solving problems through *abstract or deductive* reasoning doesn’t “match” the developmental state of a first grade child. This expectation may be appropriate in the upper grades, but not in grades K-3 where children have yet to develop the mental capacity for abstract thinking; their thought process is still too concrete.

The Common Core kindergarten standards call for children to read “emergent-reader texts with purpose and understanding.”⁷⁸ However, the results of the 2012 Program for International Student Assessment, or PISA, test show that of the top 12 countries in reading, ten begin formal instruction after age six—not five—and many begin close to age seven. Moreover, the long hours needed to accomplish this goal take away time better spent in developing oral language and providing rich experiences that will help with later comprehension of books. As children listen to and create stories, hear rich language texts, sing songs, poems and chants, their foundation for reading grows strong. This is especially vital for children from disadvantaged backgrounds.⁷⁹

⁷⁶ http://www.nga.org/cms/home/news-room/news-releases/page_2009/col2-content/main-content-list/title_common-core-state-standards-development-work-group-and-feedback-group-announced.html

⁷⁷ / <http://www.azed.gov/standards-practices/files/2015/04/azccrs-grade1-math-.pdf>

⁷⁸ http://www.azed.gov/azccrs/files/2013/10/azccrs-k-2-ela-standards-final10_28_13.pdf

⁷⁹ http://www.allianceforchildhood.org/sites/allianceforchildhood.org/files/file/Reading_Instruction_in_Kindergarten.pdf

If teachers are held accountable for student mastery of these standards on high-stakes testing, valuable classroom time will be spent drilling it into students and will result in *frustrated* children and nervous teachers. A very unfortunate consequence of measuring students against *inappropriate standards* is that teachers are going to see typically developing children as delayed or behind. This will lead to students being held back or tracked into remedial classes that they don't *really* need. Moreover, such results will negatively affect teacher evaluations, and unfairly so.

In 2010, over 300 experts in childhood development, including pediatricians, psychologists, teachers, and professors, agreed with the above position in a statement⁸⁰ submitted to the writers of the CCS which urged them to suspend the standards in grades K-3. They advised that Common Core was “too much too soon” and not supported by research from competitive international tests.

Unfortunately for America’s young children, the NGA and Common Core work team ignored the urgent call from the nation’s experts in early childhood development. The Common Core standards were released in June 2010,⁸¹ and governors and state boards of education all over America, including Arizona, adopted them “verbatim.”

There was *never* a pilot test, not even on a small scale. “That didn’t happen with the Common Core. Instead, they aligned the research with advocacy...” stated Sarah Reckhow, an expert in philanthropy and education policy at Michigan State University.⁸²

The “pilot test” was dropped in the laps of teachers and students on a massive scale in every state that adopted Common Core.

Even though full implementation occurred in 2013/2014,⁸³ most states began introducing them in the classroom in 2012/2013.

In October 2013, Mary Calamia, social worker and psychotherapist serving parents, students, and teachers in 20 school districts in Suffolk County, testified to the New York State Assembly Education Forum.⁸⁴ Her testimony proved the truth of Piaget’s systematic study of cognitive development and the concerns of 300 child development experts. She stated:

I also started to receive more calls referring elementary school students who were refusing to go to school. They said they felt ‘stupid’ and school was ‘too hard’” They were throwing tantrums, begging to stay home, and upset even to the point of vomiting. We cannot regulate biology. Young children are simply

⁸⁰ http://www.edweek.org/media/joint_statement_on_core_standards.pdf

⁸¹ http://www.nga.org/cms/home/news-room/news-releases/page_2010/col2-content/main-content-list/title_national-governors-association-and-state-education-chiefs-launch-common-state-academic-standards.html

⁸² http://www.washingtonpost.com/politics/how-bill-gates-pulled-off-the-swift-common-core-revolution/2014/06/07/a830e32e-ec34-11e3-9f5c-9075d5508f0a_story.html

⁸³ <http://www.corestandards.org/standards-in-your-state/>

⁸⁴ http://stopccssinnys.com/uploads/A1_Graf_-_Mary_Calamia_full_text.pdf

not wired to engage in the type of critical thinking that the Common Core calls for. That would require a fully developed prefrontal cortex, a part of the brain that is not fully functional until early adulthood. The prefrontal cortex is responsible for critical thinking, rational decision-making, and abstract thinking—all things the Common Core demands prematurely.

In speeches at Notre Dame⁸⁵ and before the Ohio House Education Committee,⁸⁶ child clinical psychologist Dr. Megan Koschnick explained that standards that young children are expected to meet, *e.g.*, to “collaborate” “engage in multiple discussions” “express thoughts, feelings, and ideas clearly” *etc.*, might be appropriate for training a “global workforce,” but they are *not* appropriate learning standards for young children. Dr. Koschnick warned that forcing children to meet standards *beyond* their capacity results in anxiety, frustration, and negative feelings about school, and they eventually “disengage.” Such reactions are often misinterpreted as behavioral problems, and many such children are *misevaluated* as in need of remediation.

Most teachers, administrators, and other school employees walk in fear of speaking out against Common Core because of the intimidation and retaliation they face. Even very vocal, high profile fifth grade Tucson teacher, Brad McQueen, who wrote The Cult of Common Core⁸⁷ and many subsequent articles, suffered retaliation at the hands of the Arizona Department of Education.⁸⁸

A promising Arizona first grade teacher quit after teaching for five years. Wishing to remain anonymous, she wrote this after being forced to teach Common Core:

Each week or so we are to give first graders a test in both reading and math on Fridays. The first one I did with my kids was in math, and it took an hour. They were miserable, and the cried through most of it. This continued for the first quarter and a half until they became accustomed to what a multiple choice and ‘open ended’ question was! If I never give another assessment like this again, it will be too soon.

The standard says that our first graders should be adding and subtracting within 20 using modeling and various strategies. The strategies they want us to use include number bonds and more of the common core ... math. This standard is absolutely *ridiculous*, and it is not ‘developmentally sound’ for a first grader..... We drill and kill and then test, test, test!

...it's not kid friendly and way too much for their brains to handle.

An Arizona school employee who works in a Nurse's office wrote the following:

⁸⁵ <https://www.youtube.com/watch?v=7tSQIJE6VuA>

⁸⁶ <https://www.youtube.com/watch?v=GdiFunxrHiw&index=4&list=PLYjhWVZdbWy4OkQlSoG09Jie-B9Kv5iSl>

⁸⁷ <http://eagnews.org/arizona-teacher-brad-mcqueen-published-book-to-express-his-many-doubts-about-common-core/>

⁸⁸ <https://arizonadailyindependent.com/2014/06/30/az-dept-of-education-to-anti-common-core-teacher-what-a-fcktard/>

Over half of the students in our elementary.... school are either in trouble and in the Principal's office, or sick and in the health office just to get out of class! I think some of these kids who 'get into trouble' are trying to get out of class because they do not understand Common Core, or get expelled because they do not want to look stupid because they do not understand Common Core.

In light of the research and experiences of early childhood development experts, borne out by the results of the true pilot test occurring in American classrooms, it appears that Common Core *is* a failure. Those who wish to write standards for their state should heed the March 2010 advice from members of the Alliance for Childhood:

We further call for the creation of a consortium of early childhood researchers, developmental psychologists, pediatricians, cognitive scientists, master teachers, and school leaders to develop comprehensive guidelines for effective early care and teaching that recognize the right of every child to a healthy start in life and a developmentally appropriate education.⁸⁹

B. The Common Core Math Standards Lock Children into a Slowed-Down Progression, Fail to Provide a Pathway to STEM Studies, and Do Not Prepare Them For Admission to Competitive Public and Private Universities.

Common Core math has several systemic defects. The total product fails to meet its promise of being evidence-based, internationally benchmarked, and rigorous. According to Dr. James Milgram, math professor *emeritus* at Stanford University, a mathematician so highly regarded that he's on the NASA advisory council,⁹⁰ and the only mathematician on the Common Core Validation Committee, students "educated" under Common Core math will be at least *two years* behind their peers from high-performing countries.⁹¹

In fact, the Common Core developers have admitted that Common Core **will not** produce students who are ready for STEM studies [science, technology, engineering, and math]. Jason Zimba, one of three lead writers of the math standards, admitted that by "college readiness" the Common Core developers meant "the colleges most kids attend [*i.e.*, community colleges], but not the colleges most parents aspire to." He further stated that "'college readiness' is [not meant] for STEM, and not for selective colleges [in any discipline]."⁹² By Zimba's admission, Common Core is:

⁸⁹ http://www.edweek.org/media/joint_statement_on_core_standards.pdf

⁹⁰ <http://www.nasa.gov/offices/nac/members/milgram-bio.html>

⁹¹ Testimony of James Milgram to the Indiana Senate Education Committee (Jan. 23, 2012), *available at* <http://hoosiersagainstdcommoncore.com/james-milgram-testimony-to-the-indiana-senate-committee/>; <ftp://math.stanford.edu/pub/papers/milgram/final-report-for-validation-committee.pdf>.

⁹² Testimony of Jason Zimba before the Massachusetts Board of Elementary and Secondary Education, *available at* <http://www.doe.mass.edu/boe/minutes/10/0323reg.pdf>.

Not only *not* for STEM, it's also *not* for selective colleges. For example, for UC Berkeley, whether you are going to be an engineer or not, you'd better have pre-calculus to get into UC Berkeley.

Marina Ratner, professor *emerita* of mathematics at Cal-Berkeley, is one of the top mathematicians in the world. She started looking into Common Core because of the changes in her grandson's sixth grade math. Last summer, she wrote in the Wall Street Journal that "students taught in the way that these standards require would have *little* chance of being admitted to even an average college and would certainly struggle if they did get in."⁹³

It is indisputable that Common Core math fails to prepare children for STEM studies and for admission to selective public and private colleges or studies in the humanities. This will hurt low-income students the most. Well-to-do families in the know will enroll their children in private schools or avail themselves of private tutoring or private summer school courses to ensure that their children have the proper preparation. Poor families will be unable to avail themselves of such resources. Some colleges can be expected, as stated in the *RTTT* grant competition, to realign their expectations with Common Core. Such lowering of standards is a disservice to our children. Moreover, the more selective universities will not lower their standards; they will simply fill their student slots with more children from states with high standards, from private schools, from home-school and from foreign countries.⁹⁴

Ironically, one stated purpose of the RTTT competition was to prepare more students for STEM study and careers and to address the needs of underrepresented groups in these fields.⁹⁵ To attain this goal, it is indisputable that a full Algebra I course must be placed in the eighth grade – as agreed by the National Mathematics Advisory Panel⁹⁶ leaders of selective technology-focused universities⁹⁷ and even the *Benchmarking for Success* report⁹⁸ that NGA and CCSSO used to justify Common Core in the first place. If children are prepared to take Algebra I by the start of the eighth grade, then they can progress *comfortably* to calculus in the twelfth grade. The

⁹³ <http://www.breitbart.com/big-government/2014/08/06/berkeley-math-professor-ratner-common-core-will-move-u-s-closer-to-bottom-in-international-ranking/>

⁹⁴ <http://pioneerinstitute.org/featured/common-core-math-will-reduce-enrollment-in-high-level-high-school-courses/>; <http://www.ncee.org/wp-content/uploads/2013/05/Findings.pdf>

⁹⁵ Race to the Top Executive Summary (Nov. 2009), *available at* <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf>.

⁹⁶ *The Final Report of the National Mathematics Advisory Panel* (2008), p. xviii, *available at* <http://www2.ed.gov/about/bdscomm/list/mathpanel/report/final-report.pdf>.

⁹⁷ https://www.youtube.com/watch?v=2dxVoEPpr_o. Dr. Bud Peterson, the president of Georgia Tech, confirmed that reality in a speech in Atlanta in September 2013: "You can't go to Georgia Tech if you don't take Algebra I by 8th grade and calculus as a senior."

⁹⁸ International Benchmarking Advisory Group, *Benchmarking for Success* (Dec. 19, 2008), pp. 24-25, *available at* <http://www.achieve.org/files/BenchmarkingforSuccess.pdf>.

experience of states that have placed Algebra I in eighth grade – for example, Massachusetts and California – bears out the wisdom of this move.⁹⁹

But despite this evidence, and unlike high-performing countries such as Singapore and South Korea, Common Core delays Algebra I until ninth grade.¹⁰⁰

Any “accelerated path” allowed by Common Core -- basically teaching three years of math in the last two years of grade school or the first two years of high school – inevitably favors students from well-to-do families, who can afford after-school tutoring and private summer school courses. **In short, Common Core will result in a widening achievement gap and fewer students prepared for STEM studies.**¹⁰¹

Beyond the delay in teaching Algebra I, Common Core math excludes certain Algebra II and geometry content that is currently a prerequisite at almost every four-year state college, as well as vast swaths of trigonometry.¹⁰² So much content is missing from the Common Core algebra series that students will be unprepared for trigonometry, let alone pre-calculus, and will thus be unable to pursue studies in a STEM subject.

To make matters worse, Common Core math teaches geometry using an experimental system, one that has *never* been implemented successfully in K-12. Even the Fordham Institute, a staunch Common Core proponent, reported that “the geometry standards represent a *significant* departure from traditional axiomatic Euclidian geometry and no replacement foundation is

⁹⁹ Massachusetts has placed first in the last four iterations of the National Assessment of Educational Progress test. Having entered the Trends in International Math and Science Study (TIMSS) competition as if it were its own country, Massachusetts saw its students score in the upper tier occupied by high-performing countries such as Singapore. Similarly, about 15 years ago, California moved Algebra I from ninth to eighth grade, and the number of students rated proficient and above in Algebra II increased by 240%. Moreover, the “achievement gaps” – the differences in scores for various demographic groups -- narrowed. See Ze’ev Wurman, *Why Students Need Strong Standards [and Not Common Core]*, American Principles Project (Oct. 2014), pp. 5-10, available at <http://americanprinciplesproject.org/wp-content/uploads/Math-paper-Zeev-Wurman-2.pdf>.

¹⁰⁰ Ze’ev Wurman, *Why Students Need Strong Standards [and Not Common Core]*, American Principles Project (Oct. 2014), pp. 5-10, available at <http://americanprinciplesproject.org/wp-content/uploads/Math-paper-Zeev-Wurman-2.pdf>.

¹⁰¹ *Id.*

¹⁰² Other deficiencies of Common Core math:

- It barely touches on logarithms, of great importance for chemistry, physics, and STEM in general.
- It fails to address mathematical induction.
- It fails to address parametric equations and infinite geometric series (progressions with common ratio), and incompletely addresses conic sections.
- It omits in trigonometry the phase of periodic functions, half-angle formulas, and polar forms and functions.
- It de-emphasizes algebraic manipulation, which is a prerequisite for advanced mathematics, and instead effectively redefines algebra as “functional algebra.” This approach does not prepare students for STEM careers.

See Emmett McGroarty & Jane Robbins, *Controlling Education from the Top: Why Common Core Is Bad for America*, American Principles Project, Pioneer Institute, Pacific Research Institute, Washington Policy Center (May 2012), available at http://blogs.edweek.org/edweek/state_edwatch/Controlling-Education-From-the-Top%5B1%5D.pdf, at Exhibit B.

established.”¹⁰³ That this failed approach is now, through Common Core, our national system of teaching geometry is simply *bizarre*.

The problems with Common Core math on the secondary level are profound. The deficiencies begin in Kindergarten and extend through the eighth grade. In the lower grades, Common Core promotes “reform,” or “fuzzy,” math. This delays teaching standard algorithms (the best, most logical way in which to solve a particular problem) and fluency in those skills. It also deemphasizes the standard algorithms and tends to confuse children about the best way for approaching a problem. Ultimately, the “learning progression” is delayed, so that children are not prepared to take Algebra I by the start of eighth grade.¹⁰⁴ The result of all this will be an *increase* in the number of children who **supposedly** have some “conceptual understanding” of math but who can’t *actually* work math problems.¹⁰⁵ This result is a near certainty, because it is exactly what happened in California in the 90’s when that state adopted essentially the same approach as Common Core for teaching math.¹⁰⁶ After a few disastrous years, California returned to more “traditional math” (standard algorithms) – the kind used by all of the higher-achieving countries. Why would Arizona now choose to go down a path that has been a demonstrable failure elsewhere?

States that have “rebranded the Common Core” have failed in the critical areas discussed above. They have *failed* to produce a set of math standards that prepare children for STEM studies, or even for admission to competitive public and private universities for studies in the humanities. Under Common Core, this is a failure that puts each child in front of a train wreck twelve years in the making. Early in their education, Common Core dictates the teaching of “fuzzy math” and thereby, contrary to the claims of its propagandists, tells teachers “how to teach.” If Arizona is to fix this, it must start with the lower grades and ensure a *comfortable and rigorous* (*i.e.*, not lapsing into math teaching fads) progression thereafter.¹⁰⁷

¹⁰³ Sheila Byrd Carmichael, Gabrielle Martino, Kathleen Porter-Magee, & W. Stephen Wilson, *The State of State Standards and the Common Core – in 2010*, Thomas B. Fordham Institute (July 2010), available at <http://edexcellence.net/publications/the-state-of-state-of-standards-and-the-common-core-in-2010.html>, at p. 28.

¹⁰⁴ The writers of the math standards, Phillip Daro, William McCallum, and Jason Zimba, produced two documents, *Publishers’ Criteria for the Common Core Math Standards* http://www.corestandards.org/assets/Math_Publishers_Criteria_K-8_Summer%202012_FINAL.pdf and *Progressions in Mathematics in the Common Core Math Standards*, <http://achievethecore.org/page/254/progressions-documents-for-the-common-core-state-standards-for-mathematics-detail-pg> that flesh out the “letter and spirit of the standards” for publishers, schools, and testing companies. These documents make it clear that the Common Core mandates fuzzy math in the classroom.

¹⁰⁵ Barry Garelick, “A New Kind of Problem: The Common Core Math Standards,” *The Atlantic* (Nov. 20, 2012), available at <http://www.theatlantic.com/national/archive/2012/11/a-new-kind-of-problem-the-common-core-math-standards/265444/>.

¹⁰⁶ Susan Berry, “Common Core Blockbuster: Mathematician Dr. Jim Milgram Warns Common Core Will Destroy America’s Standing in Technology,” *Breitbart* (Sept. 1, 2014), available at <http://www.breitbart.com/big-government/2014/09/01/common-core-blockbuster-mathematician-dr-jim-milgram-warns-common-core-will-destroy-america-s-standing-in-technology/>.

¹⁰⁷ <http://www.uaedreform.org/wp-content/uploads/2000/01/ZimbaMilgramStotskyFinal.pdf>

C. The Common Core English Language Arts Standards Are Not Evidence-Based, Are Contrary to the Evidence and Centuries of Teaching, and Impair the Preparation of Children for Authentic College Studies in the Humanities.

In keeping with the “workforce development” focus of Common Core, the standards usher in a radical redesign of English language arts (ELA) instruction, one that diminishes literary fiction in favor of nonfiction “informational texts.” Common Core dictates this preference for informational texts through its use of only nine literature standards versus ten informational standards.¹⁰⁸ Guidance documents produced by David Coleman and Susan Pimentel, the authors of the Common Core ELA standards, confirm that the focus of English classes now is to be on nonfiction rather than literature.¹⁰⁹ In other words, Dickens is out, newspaper articles are in.

Dr. Sandra Stotsky, the premier ELA standards authority in the United States and a member of the Common Core Validation Committee, criticizes the Common Core English standards as “empty skill sets . . . [that] weaken the basis of literary and cultural knowledge needed for authentic college coursework.”¹¹⁰ Dr. Stotsky has further criticized the ELA standards as being:

[N]either research-based *nor* internationally benchmarked. . . To judge from my own research on the language and literature requirements for a high school diploma. . . , Common Core’s ELA standards fall *far* below what other English-

¹⁰⁸ Common Core State Standards for English Language Arts & Literacy in History/Social Studies, Science, and Technical Subjects, at pp. 38, 40, *available at* http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf.

¹⁰⁹ In their *Publishers’ Criteria* memorandum, the chief drafters state that English language arts “programs and materials designed for them will need to **increase substantially** the amount of literary non-fiction they include. . . . the standards emphasize non-fiction that is built on informational text structures rather than literary non-fiction such as memoirs or biographies.” It further sets forth as “Non-Negotiable Criteria for Alignment to CC” that “Grades 3-5 literacy programs shift the balance of texts and instructional time to 50% literature/50% informational.” And it continues that grades 6-12 programs should “shift the balance of texts and instructional materials towards reading substantially more non-fiction.” At the same time, Common Core promotes a split 30% literature and 70% informational texts by stating that the Common Core “Standards are not alone in calling for a special emphasis on informational text.” The Common Core goes on to note that the federal Department of Education’s National Assessment of Educational Progress (NAEP) “requires a high and increasing proportion of informational text on its assessment as students advance through the grades,” which starts from a 50/50 split for grade 4 and proceeds to a 30/70 split for grade 12. Common Core then states, “The Standards aim to align instruction with this framework. . . . In accordance with NAEP’s growing emphasis on informational texts in the higher grades, the Standards demand that a significant amount of reading of informational texts take place in and outside the ELA classroom.” Common Core State Standards, pp.4-5 (June 2, 2010). Common Core argues that the 70% figure must reflect reading across the entire school curriculum. But it fails to answer how teachers in other subjects will be held accountable for some portion of the 70%. Nor does it even answer for how much of the 70% English teachers will be held accountable.

http://www.corestandards.org/assets/Publishers_Criteria_for_3-12.pdf;

http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf

Commentators on education policy nationwide are appealing to David Coleman, the primary author of the ELA standards despite the claims of state authorship, to revise the standards so that English teachers can teach more literature than nonfiction. So far, this advice has gone unheeded. *See* Diane Ravitch, “Advice to David Coleman: Revise the Common Core Standards” (Dec. 13, 2012), *available at* <http://dianeravitch.net/2012/12/13/advice-to-david-coleman-revise-the-common-core-standards/>.

¹¹⁰ Testimony of Dr. Sandra Stotsky Before Colorado State Board of Education (Dec 6, 2012), *available at* http://www.uaedreform.org/wp-content/uploads/2000/01/Stotsky_Testimony_for_Colorado.pdf.

speaking nations or regions require of college-intending high school graduates. . . . Nor is there evidence to support the idea that having English teachers teach more information reading (or literary nonfiction) and less literary reading will lead to greater college readiness.¹¹¹

Common Core ELA focuses not on academic knowledge – for example, actually studying and understanding the meaning of a Shakespearean tragedy or an Austen novel – but rather on developing workmanlike “skills” such as identifying a main idea and finding the “evidence” used to support it.¹¹² This is not education; it is training of a sort that may be useful someday in the student’s future entry-level job. Or maybe not, since it is unlikely many students will remember much if any of these dreary exercises. It is a *lowering* of the expectations of a child’s education and formation.

Not only is there *no* evidence that steering students toward informational text rather than engaging literature will produce better readers – or better “workers” – but in fact, all of the evidence suggests exactly the opposite.¹¹³ (Perhaps the lack of familiarity with the evidence is to be expected, given that the work group that created the ELA standards included **no** English professors or high-school English teachers.¹¹⁴) This conclusion is borne out by the experience of Massachusetts, whose students excelled in literacy under ELA standards that focused on the study of creative, classical literature, not informational text.¹¹⁵

Other research establishes that higher *lifelong* exposure to fiction creates better readers, with larger vocabularies, who are better at extrapolating from and interpreting texts.¹¹⁶ Reading fiction builds empathy.¹¹⁷ It even promotes *rational* decision-making by reducing the need for cognitive closure,¹¹⁸ that is, “ ‘seizing’ on an early statement or proposition in the process of acquiring

¹¹¹ Testimony of Dr. Sandra Stotsky Before Utah Education Committee (Aug. 15, 2012), *available at* <http://www.utahnsagainstcommoncore.com/sandra-stotsky-offers-utah-the-best-ela-standards-in-the-nation/>.

¹¹² Testimony of Dr. Sandra Stotsky Before Michigan Education Committee (Aug. 14, 2013), *available at* <http://www.uaedreform.org/wp-content/uploads/2000/01/Stotsky-Invited-Testimony-for-Hearing-in-Michigan-on-Common-Core.pdf>.

¹¹³ See, e.g., Mark Bauerlein & Sandra Stotsky, *How Common Core’s ELA Standards Place College Readiness at Risk*, Pioneer Institute, No. 89 (Sept. 2012), *available at* <http://pioneerinstitute.org/education/new-study-suggests-remedies-for-common-core-literature-deficit/>.

¹¹⁴ Jane Robbins & Sandra Stotsky, “Pulling Back the Curtain on Common Core,” *The Blaze* (June 27, 2013), *available at* <http://www.theblaze.com/contributions/pulling-back-the-curtain-on-common-core/>.

¹¹⁵ James Stergios, Charles Chieppo, & Jamie Gass, “The Massachusetts Exception,” *City Journal* (Summer 2012), *available at* http://www.city-journal.org/2012/22_3_machusetts-education.html.

¹¹⁶ Maja Djikic, Keith Oatley, and Mihnea C. Moldoveanu, *Reading Other Minds: Effects of Literature on Empathy*, *Scientific Study of Literature* 3:1, 28-47, at 43 (2013), John Benjamins Publishing Company (citing R.A. Mar, T. Babyuk, J. Valenzano, & J.B. Peterson, *Vocabulary and Lifetime Exposure to Narrative Fiction Versus Expository Non-Fiction*, Poster presented at the 9th Annual Meeting of the Society for Personality and Social Psychology, Albuquerque, NM, USA (2008). *Available at* <http://www-2.rotman.utoronto.ca/facbios/file/%282013b%29%20Djikic,%20Oatley,%20&%20Moldoveanu.pdf>

¹¹⁷ *Ibid.*

¹¹⁸ Maja Djikic, Keith Oatley & Mihena C. Moldoveanu (2013): *Opening the Closed Mind: The Effect of Exposure to Literature on the Need for Closure*, *Creativity Research Journal*, 25:2, 149-154, at 150. *Available at* <http://www.tandfonline.com/doi/abs/10.1080/10400419.2013.783735>

knowledge, followed by rigidly ‘freezing’ on the seized item, and remaining impervious to additional information.”¹¹⁹

In contrast, the kinds of informational texts promoted by Common Core are explanations of how mechanisms and processes work. They tend to be *less* emotionally engaging and *less* complex in terms of structure. Because they serve primarily to impart information, they require less discernment – less “reading between the lines” – than does fiction. Not surprisingly, the reading of fiction has been found to sharpen one’s empathy and theory-of-mind (in other words, understanding of what others are thinking).¹²⁰

When challenged about this diminution of classic, narrative literature, Common Core proponents invariably respond that such literature is still included. But there is only so much time in a class period, and any chunk of it devoted to newspaper articles is less that can be spent on literature. (Indeed, Common Core proponents encourage reading only portions of literary works rather than taking the time to read an entire novel or play.¹²¹) There is no denying that under Common Core, students will be reading less literature and missing out on the myriad benefits of literary study.

The bottom line is that Common Core ELA is likely to have exactly the *opposite* effects of those Mr. Coleman and Ms. Pimentel claim to be promoting. By ignoring the research evidence and imposing a cramped, sterile training model to produce workers rather than informed citizens, they will not even achieve their modest and misguided goals. Arizona students deserve so much better than this. Arizona must embrace “evidence-based” ELA standards. Such standards must rest heavily on classic, imaginative literature.

D. Common Core Undermines The Accurate Teaching of American History.

Common Core was sold to the states as encompassing only English and math. But the states soon discovered that “ELA” in fact covers content from many other disciplines. In fact, the full name of the ELA standards is “English Language Arts & Literacy in History/Social Studies, Science, and Technical Subjects.”¹²²

The injection of all these other subjects into an English classroom creates numerous problems. One is that English teachers haven’t been trained to teach those subjects. It is unwise and unfair

¹¹⁹ *Ibid.*

¹²⁰ Maja Djikic, Keith Oatley, and Mihnea C. Moldoveanu, *Reading Other Minds: Effects of Literature on Empathy*, Scientific Study of Literature . at pp. 32-33 (citing R.A. Mar, Keith Oatley, J. De la Paz, J. Hirsch, & J.B. Peterson, *Bookworms vs. Nerds: Exposure to Fiction Versus Non-fiction, Divergent Associations with Social Ability, and Simulation of Fictional Social Worlds*, Journal of Research in Personality, 40(5), 694-712 (2006). Available at <http://www-2.rotman.utoronto.ca/facbios/file/%282013b%29%20Djikic,%20Oatley,%20&%20Moldoveanu.pdf>

¹²¹ Lauren Hill, “Follow-Up: How Common Core Is Like a New Set of Cookware,” Education Week Teacher (March 20, 2012), available at http://blogs.edweek.org/teachers/teaching_ahead/2012/03/a_new_set_of_cookware.html#.

¹²² Common Core State Standards, available at http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf

to expect a teacher who concentrated in British literature in college to help students navigate constitutional law¹²³ or analyze the science behind global warming.¹²⁴

Another problem is that roping in “informational texts” from these other subjects destroys the context, and therefore in many cases the full meaning, of those documents. Even though David Coleman trains teachers to teach the Gettysburg Address wrenched free of its historical context,¹²⁵ only someone who has never taught English (as Coleman hasn’t) could think this is an effective way to do it.

A third problem is that the list of “exemplar” documents for ELA instruction (Appendix B¹²⁶ to the Standards) shows definite bias, especially in the realm of American history. Although Appendix B isn’t mandatory for the ELA classes, it reveals the mindset of the Common Core creators and what they hoped to accomplish by injecting history study into English classes. It would also be quixotic to think that the exemplars do not heavily influence test developers.

1. An Overview of American History in the Common Core’s Appendix B

Ms. Cara M. Palmer, M.Ed., an American History teacher at an Arizona charter school, did an in depth analysis of Common Core history readings.¹²⁷ She noted:

There are 333 texts selected for grades K-12 found in Appendix B. At least 72 of those texts are related to historical periods and topics taught in American history classes. Of these 72, at least 32 (about 42%) focus on the topic of racism, *e.g.*, slavery, segregation, and white supremacy. Only 10 of the 72 (approximately) contain the actual words or fundamental documents written by the men who played key roles in America’s founding as a free nation. Below is a pie chart showing a visual depiction of the American history “subject matter” for the chosen texts:

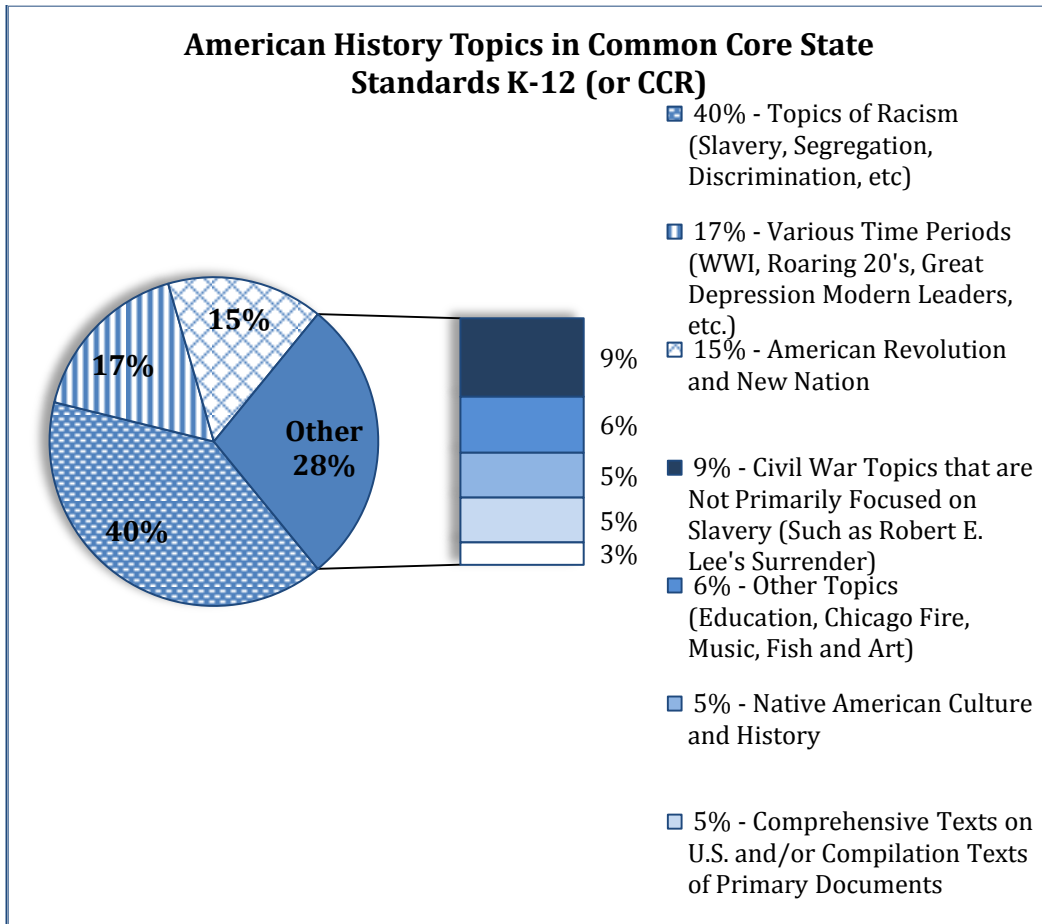
¹²³ Terrence Moore, “Hating the Constitution 101: Common Core on the Nation’s Founding,” Townhall.com (Jan. 6, 2014), *available at* <http://townhall.com/columnists/terrencemoore/2014/01/06/hating-the-constitution-101-the-common-core-on-the-nations-founding-n1771633>. *See also* Diane Ravitch, “Advice to David Coleman: Revise the Common Core Standards” (Dec. 13, 2012), *available at* <http://dianeravitch.net/2012/12/13/advice-to-david-coleman-revise-the-common-core-standards/>.

¹²⁴ Robby Soave, “Global Warming Will Kill Us All, Warns Common Core-Aligned Homework,” Daily Caller (Dec. 18, 2013), *available at* <http://dailycaller.com/2013/12/18/global-warming-will-kill-us-all-warns-common-core-aligned-homework/>.

¹²⁵ Valerie Strauss, “Teacher: One (Maddening) Day Working With the Common Core,” Education Resources Consortium *available at* <http://www.educationresourcesconsortium.org/news/2014/12/9/one-maddening-day-working-with-the-latest-common-core> t.

¹²⁶ “Appendix B: Text Exemplars and Sample Performance Tasks,” *available at* http://www.corestandards.org/assets/Appendix_B.pdf.

¹²⁷ <http://www.nccs.net/uploads/files/14081/ahistoryteachersresponsetocommoncore.pdf>



A Student's American History Under Common Core

In a school using Appendix B, one of the first history-related documents a kindergartner or first-grader would read would be the story of George Washington Carver ([A Weed Is a Flower: The Life of George Washington Carver](#)). This book offers an inspiring message of a man who overcame great odds (primarily slavery and racism) to become a prominent horticulturist who greatly helped the South in its agricultural achievements.

This book also tells a story of America. The early pages point out that Carver was the son of slaves' and that 'there was no hope for the future. They explain that Carver throughout his life had turned [e]vil into good, despair into hope and hatred into love . The story goes on to describe his family fleeing in fear from a band of white kidnapers and tells the sad story that he never saw his mother again.

This is the only American history text a child will read in kindergarten or first grade. There is no story, poem, or lyrics addressing anything good about the country – nothing about heroes such as Washington or Lincoln, or anything about American accomplishments. What might a child's perception of America be based on this introduction? More importantly, why is this the *only* text

chosen about American history? If a student is expected to learn about the life of a tree (A Tree Is a Plan by Clyde Robert Bulla), wind power (National Geographic Young Explorers' Wind Power), or learning to fly (How People Learned to Fly by Fran Hodgkins and True Kelley), why can't he learn the basic principles of freedom embodied by our country? Instead, he will learn only about slavery and racism.

This pattern continues from grade to grade. Of the 18 texts related to American history found in the standards for grades K-5 (the first six years of school), nine focus on racial tensions in America's past. Only three texts have the potential to shed a positive light on America and its early leaders. And those three do not fully highlight the individual's achievements and in some cases minimize the vital role that person played in America's development.

For example, a book about Abraham Lincoln for second- and third-graders (Lincoln: A Photography by Russell Freedman) focuses primarily on Lincoln's appearance and many faces but does not fully reveal his character or heroism. The student would most likely conclude from this book primarily that Lincoln was mysterious and unpredictable. Eleventh-graders would read Richard Hofstadter's Abraham Lincoln and the Self-Made Myth, which similarly fails to focus on the remarkable character and deeds of Lincoln but rather downplays his singular achievements. It appears that Common Core's aim is to highlight this man's *weaknesses* rather than his vital role in American history.

"One might also ask about the absence of the "Pledge of Allegiance," "My Country 'Tis of Thee," or any other texts that would keep our youth connected to our great nation. What about the driving effect that America's Founding documents have had on addressing, for example, slavery and women's suffrage? Or how Frederick Douglass considered the Constitution a 'glorious liberty document' and drew 'encouragement from the Declaration of Independence, the great principles it contains, and the genius of American Institutions....'¹²⁸ Or how in the American Revolution 'a revolution in which the Declaration of independence was both a symptom and a catalyst-were to be found the frail first sprouts of the later abolitionist movement.'¹²⁹

"Only two texts in K-8 even give a nod to American greatness (Emma Lazarus's The New Colossus and Longfellow's Paul Revere's Ride). What of the inspiring story behind the national anthem – the flag tattered but still flying after a night of British bombardment? Why is only one small part of the Constitution (the preamble) included, and then followed closely by a leftist critique of that remarkable document?¹³⁰ Students must wait until high school to read any of the

¹²⁸ Frederick Douglass, *What to the Slave Is the Fourth of July* (July 5, 1852). Available at <http://teachingamericanhistory.org/library/document/what-to-the-slave-is-the-fourth-of-july/>

¹²⁹ Thomas A. Bailey and David M. Kennedy, *The American Pageant, A History of the Republic*, (D.C. Heath and Company 1979). Available at <http://www.amazon.com/American-Pageant-A-History-Republic/dp/0669397288>

¹³⁰ Moore, *supra* n. 2.

words of our Founders, and even then, those excerpts are greatly outweighed by texts that focus on racial tensions.

2. Sample Performance Tasks and Their Accompanying Excerpts

Regarding Common Core's sample performance tasks and accompanying excerpts, Ms. Palmer makes the following analysis:

The Sample Performance Tasks, on multiple occasions, use a fundamental American document such as the Constitution, not to teach important lessons about how our free nation functions, but instead do the opposite – focus on *negative* aspects of the document or the men who created it.

While students must be given a balanced picture of American history rather than a whitewashed version, balance is key. Over-emphasis on the negative, as is apparent in Common Core's Appendix B, is not only untruthful and unfair to students but also damaging to our social fabric as a nation

History teacher C. E. White summed up the problem with the American history “exemplar” texts in Common Core: “[P]ropaganda from an elite few is literally changing the face of America’s future.”¹³¹ Common Core is harming our children’s education – and therefore our nation – in more areas than just English and math.

III. High Stakes Testing

High stakes testing is so named because the test outcomes are used to make important, often life-altering decisions. Such decisions may include the denial of a high school diploma, the repetition of a grade, the labeling of students and schools in pejorative ways, the withholding of funding and even the closing of a school. Students who may do well in school all year but fail a high stakes test may be required to attend summer school and take the test again or spend another year in the same grade....¹³²

A. High Stakes Testing and Student Outcome

As the debate about Arizona’s Measurement of Educational Readiness to Inform Teaching (AzMERIT) and other Common Core-aligned high stakes tests continues, it is important to review high stakes testing effectiveness. Test-driven instruction fails to improve student learning. Even though test scores may see improvement on the state test, other assessments, like the National Assessment of Educational Progress (NAEP), do not demonstrate similar performance improvement. A Fair Test review of published data from NAEP reveals that students were *less* likely to reach a level of “proficient” or higher on the NAEP math or reading tests in states that had mandatory high school graduation tests. Those states also

¹³¹ See <https://whatiscommoncore.wordpress.com/2013/01/20/history-teacher-speaks-out-stop-common-core/>.

¹³² <http://www.education.com/reference/article/high-stakes-testing1/>

had more students who failed to reach NAEP's "basic" level. In addition, states with high school graduation tests were *less* likely to show statistically significant improvement in their students' scores than were states without such tests.¹³³

High-stakes testing narrows the curriculum. When a school uses “test scores” to restructure curriculum and instructional practices, to improve student achievement on the high stakes test, meaningful education subjects are discarded. Often the curriculum is predominately narrowed to the subjects included on the test. Art, music, creative writing, recess, physical education, and other personal enrichment subjects are *reduced* in time or dropped from the curriculum so as to *increase* state test scores. In addition, “teaching to the test” often produces a classroom climate and style of teaching that is ineffective. Many students lose the desire to learn.¹³⁴

High stakes testing is biased against students from lower socioeconomic status. Diane Ravitch, education historian and leader of the movement against corporate-influenced school reform, explains:

What the advocates ignored is that test scores are heavily influenced by socioeconomic status. Standardized tests are normed on a bell curve. The upper half of the curve has an abundance of those who grew up in favorable circumstances, with educated parents, books in the home, regular medical care, and well-resourced schools. Those who dominate the bottom half of the bell curve are the kids who lack those advantages, whose parents lack basic economic security, whose schools are overcrowded and under-resourced. **To expect tougher standards and a renewed emphasis on standardized testing to reduce poverty and inequality is to expect what never was and never will be.**¹³⁵ (Emphasis added.)

High stakes testing will not create a perfect education outcome. Carnegie’s Leah Hamilton and Anne Mackinnon, in *Opportunity by Design*, as well as the McKinsey Group, have estimated that the “implementation of Common Core” will double the nation’s dropout rate.¹³⁶

B. AzMERIT Test

Currently, Arizona has adopted Arizona’s Measurement of Educational Readiness to Inform Teaching (AzMERIT) as the annual “high stakes” Common Core-aligned test. Specific concerns about the AzMERIT test have been raised.

¹³³ High Stakes Tests Do Not Improve Student Learning A Fair Test Report by Monty Neill, Acting Executive Director, January 1998. <http://www.fairtest.org/k12/naeprep.htm>

¹³⁴ <http://www.fairtest.org/dangerous-consequences-highstakes-standardized-tes>, https://www.oakland.edu/.../WP_Do%20High-Stakes

¹³⁵ <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/01/18/everything-you-need-to-know-about-common-core-ravitch/>

¹³⁶ <http://scholasticadministrator.typepad.com/thisweekineducation/2014/08/thompson.html#>

American Institutes of Research (AIR), which administers AzMERIT, is one of the world's largest behavioral and social science research and evaluation organizations.¹³⁷ Behavioral research is usually administered to people who have *severe* cognitive or communication disabilities to determine why they demonstrate inappropriate behaviors. The question to be asked is, “Why is a behavior-based research organization testing children who are attending normal schools?”

AzMERIT was not a state created test. Florida, Tennessee and Arizona purchased rights to use Utah's SAGE test modules for \$10 million. Arizona's portion was \$2,223,000.¹³⁸ The SAGE test was created by AIR. AIR is a partner of SMARTER Balanced which was given over \$175 million by the USDE to create standardized tests for Common Core along with PARCC.¹³⁹ In addition, AIR has received millions from the Gates Foundation.¹⁴⁰

AzMERIT is designed to be a high-stakes test—even though no validation or field testing was done. Dr. Gary Thompson, a doctor of clinical psychology, asked for validity reports about the SAGE (AzMERIT) Common Core test. Such reports would show the test's construct validity, criterion validity, content validity, concurrent validity, and predictive validity. He knew that test makers such as AIR or Pearson routinely provide validity reports to psychologists in the private sector, because, by law and ethics, they know the test can't be used otherwise. No validity reports were provided for SAGE. As for the SAGE (AzMERIT) test's academics, Dr. Thompson points out that, barring independent, peer-reviewed documentation, it is not possible to honestly claim that SAGE (or AzMERIT) measures what it claims to measure – academics – in a valid manner. Dr. Thompson puts it this way:

There is no way...that the AIR produced SAGE [AzMERIT]/ Common Core test measures academic achievement in a valid manner, and quite probably, does not measure academics at all.

After two years of studying the issue, Dr. Thompson surmises that AIR has devised one of the most complex, accurate measures of personality characteristics ever made. Dr. Thompson believes that behavioral testing was AIR's contractual goal and that SAGE reached that goal.¹⁴¹

Teachers and principals are evaluated according to students' performance. If student performance is poor, their jobs will be in jeopardy, and students may not be able to progress to

¹³⁷ <http://www.air.org/about-us>

¹³⁸ <http://www.sllib.com/news/1912812-155/three-states-paying-10m-for-rights>

¹³⁹ <http://www.smarterbalanced.org/news/smarter-balanced-awards-test-delivery-system-contract-to-american-institutes-for-research/> and <http://www2.ed.gov/programs/racetothetop-assessment/awards.html>

¹⁴⁰ <http://www.gatesfoundation.org/How-We-Work/Quick-Links/Grants-Database#q/k=American%20Institutes%20for%20Research>

¹⁴¹ <https://whatiscommoncore.wordpress.com/2015/03/24/dr-gary-thompsons-100000-reward-for-sage-common-core-test-validity-reports/>, <https://vimeo.com/77988848>

the next grade. These actions could happen in Arizona based on an unproven, non-validated test.¹⁴²

The argument has been that Common Core is just a set of standards and will not affect curriculum. Due to the accountability built into teacher, principal, and school evaluations, schools have invested millions of dollars into Common Core-aligned textbooks and on-line curriculum to prepare for the AzMERIT assessment. This effort confirms the statement made by Bill Gates: **“When the tests are aligned to the Common Standards, the curriculum will line up as well.”**¹⁴³ (Emphasis added) In addition, Common Core has created a new market for educational materials. In that regard, Secretary Duncan’s chief of staff wrote, “...the Common Core was intended to create a national market for book publishers, technology companies, testing corporations, and other vendors.”¹⁴⁴

Arizona has had to make serious cuts in its budget. The cost of the AzMERIT test will be about \$19 million the first year.¹⁴⁵ The Arizona Department of Education (ADE) is unsure of how much the test will cost in subsequent years. Therefore, the future “price tag” and its potential effect on Arizona’s budget are yet to be determined.

Professionals have raised concerns about the developmental appropriateness of the writing tests. “AzMERIT presents several paragraphs, from which the student is to extrapolate a topic and write on that. Third and fourth graders are to write an opinion on the inferred topic while fifth and sixth graders are to write an argument. Young children before the age of 11 or 12 (fifth/sixth grade) have real problems with inference. In fact, developmentally, they can’t do it.”¹⁴⁶ In addition, the amount of writing required on the test for the higher grades and the estimated time needed to complete the essays are vastly underestimated.¹⁴⁷ The number of hours spent testing (seven or more hours) for eight to eighteen-year-old students is similar to the number of hours spent in testing for advanced degrees.¹⁴⁸

Results from the new standardized tests will not be reported until November. In addition, teachers and principals are not permitted to see how students answered specific questions. Thus, everyone ends up with a grade—the student, the teacher, the principal, and the school—but the

¹⁴² <http://www.azed.gov/assessment/files/2014/11/award-specific-qa.pdf>

¹⁴³ <http://www.gatesfoundation.org/media-center/speeches/2009/07/bill-gates-national-conference-of-state-legislatures-ncsl>

¹⁴⁴ <http://www.washingtonpost.com/blogs/answer-sheet/wp/2014/01/18/everything-you-need-to-know-about-common-core-ravitch/>

¹⁴⁵ <http://www.azed.gov/assessment/files/2014/11/award-specific-qa.pdf>

¹⁴⁶ http://arizonafreedomalliance.ning.com/group/watching-schools/forum/topics/azmerit-testing-designed-to-fail?xg_source=msg_mes_network

¹⁴⁷ Utah: AIR’s absurdly long Common Core tests by Diane Ravitch July 5, 2014

¹⁴⁸ http://www.azcourts.gov/Portals/26/admis/2015/InI_AZ2015Feb.pdf, http://azmeritportal.org/wp-content/uploads/2015/03/AZ_3-8_Test_Directions_WEB.pdf?hc_location=ufi

tests have no “diagnostic value.” Teachers cannot learn from AzMERIT about the needs of their students.

In contrast, Dr. Sandra Stotsky oversaw the development of the Massachusetts standards and accountability system. After implementation, Massachusetts students scored first or tied for first place on all four National Assessment of Educational Progress (NAEP) tests in 2005, 2007, 2009, 2011, and 2013.¹⁴⁹ In 2007, Massachusetts was among the best, internationally, in math and science testing. Part of the reason was the independent school district accountability office that provided timely feedback to the teachers and principals. However, Massachusetts eliminated that office, and with the adoption of the Common Core System, it has experienced the sharpest decline in student performance in the country.¹⁵⁰

C. Parental Opt Out

Due to the concerns previously articulated, parents around the state of Arizona are choosing to “opt out” their children from taking the AzMERIT test. On December 10, 2014, Attorney General Tom Horne issued an opinion stating that ARS15-102 parental authority to “opt out” did not apply to the AzMERIT.¹⁵¹ (Previously, Tom Horne was Arizona’s State Superintendent who signed the Memorandum of Understanding agreement that committed Arizona to adopt the Common Core Standards.)¹⁵² However, this opinion is in violation of ARS 1-601¹⁵³ **Parents’ rights protected** and ARS 1-602¹⁵⁴ **Parents’ bill of rights**. These statutes state that “the liberty of parents to direct the upbringing, education, health care, and mental health of their children is a fundamental right...and all parental rights are reserved to a parent of a minor child without obstruction or interference from this state, any political subdivision of this state, any other governmental entity or any other institution...”

In addition, the U.S. Supreme Court has continuously upheld the principle that parents have the “fundamental right” to direct the education and upbringing of their children. In 1925, the Supreme Court decided *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). This decision asserted the parents’ fundamental right to keep their children free from government standardization. The court stated, “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right and the high duty, to recognize and prepare him for additional obligations.”¹⁵⁵ Several other Supreme Court decisions affirmed the *Pierce* decision. In light of this extensive precedent, the Due Process Clause of the Fourteenth Amendment protects the

¹⁴⁹ <http://www.doe.mass.edu/mcas/naep/results/>

¹⁵⁰ <http://truthinamericaneducation.com/common-core-state-standards/common-core-done-massachusetts/>

¹⁵¹ http://www.azed.gov/assessment/files/2014/12/ag-letter-re-parent-request-to-opt-out-of-azmerit_december-2014.pdf

¹⁵² http://www.arizonansagainstcommoncore.com/When_AZ_Join.html

¹⁵³ <http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/1/00601.htm&Title=1&DocType=ARS>

¹⁵⁴ <http://www.azleg.state.az.us/ars/1/00602.htm>

¹⁵⁵ <https://www.law.cornell.edu/supremecourt/text/268/510>

fundamental right of parents to make decisions concerning the care, custody, and control of their children.¹⁵⁶

IV. Data Collection and Personally Identifiable Information

Data collection and privacy violations have come to the forefront of public concern as the details of the National Security Agency's (NSA) vast collection abilities and activities --including monitoring of telephone calls, emails, and internet browsing histories-- have become known."

What seems to have "slipped under the radar" of most Americans, including parents of school age children, is the vast collection of student data the state and federal government are passing to third parties, without parental consent. The breadth of this activity has only widened with the implementation of Common Core Standards. Yet the American public has remained, for the most part, oblivious.

Lack of understanding is perpetuated by misleading information, supplied almost entirely by the USDE, main stream media, and locally by SBE. As Americans flounder in uncertainty and skepticism, the ADE and USDE have *hit the jackpot* on educational information. One need only consider this statement by Jose Ferreira, the CEO of Knewton, and collector of hundreds of millions of student data points. Ferreira said, "Education happens to be, today, the world's most data mineable industry, by far."¹⁵⁷ The USDE, with the assistance of the ADE, has taken full advantage of the opportunity.

A. Data Collection in Arizona

In the last decade, the USDE has invested approximately \$600 million in state-level data systems to maximize the amount and types of data collected. Under *No Child Left Behind* (NCLB), proposed in January 2001 and effective on January 8, 2002, all states are required to establish an accountability system to evaluate performance of local public schools, charter schools, and school districts. The following is a timeline of events leading to full implementation of a State Longitudinal Data System (SLDS) in Arizona:

- 2001: Voters approve Prop 301, establishing the requirement for a public school accountability system
- 2001: ADE develops AZ LEARNS, a one-year snapshot of student performance under Arizona's Instrument to Measure Standards (AIMs)
- 2003: ADE develops and deploys the Student Accountability Information System (SAIS), to improve school finance processes and services to Local Education Agencies (LEAs)
- ADE creates the vision of Arizona Educational Data Warehouse (AEDW), to unify 90-plus data stores into a centralized system

¹⁵⁶ <http://www.oceanetwork.org/currents/Court.pdf>.

¹⁵⁷ Knewton Education Datapalooza, Office of Ed Tech <https://youtu.be/Lr7Z7ysDluQ>.

- 2005: Arizona legislature appropriates a small budget to generate a warehouse Proof-Of-Concept (POC)
- POC results in the creation of the web-based Arizona School Improvement Plan (ASIP); and,
- 2006: Arizona legislature appropriates \$2.5 million in state funds to take the next steps toward creation of a state level education data warehouse.

In March, 2007, the ADE moved forward to implement a full scale SLDS by submitting a grant proposal to the USDE. The grant proposal requested \$5.954 million to enhance the collection, aggregation, and storage of “educational data” via the AEDW.¹⁵⁸ This set the stage to increase the variety of student data collected including, but not limited to:

- student personalized learning plans
- migrant student data
- eLearning
- child nutrition;
- response to intervention
- teacher professional development
- teacher certification
- benchmarking studies, and
- Adult education.¹⁵⁹

As part of the RTTT grants initiative, and as a condition of receiving stabilization funds *via* the Stimulus Bill, the USDE required completion of the SLDS, with the ultimate goal of linking data among other states and to form a national database. In 2012, Arizona applied for and received a second grant in the amount of \$4.966 million.¹⁶⁰ This additional grant was necessary to make significant progress toward meeting the 10 essential elements required by the 2011 Data Quality Campaign survey, including a unique statewide student identifier to remain with an individual student from kindergarten through high school.¹⁶¹

The SLDS initially was federally funded. However, at the request of Governor Brewer,^{162, 163} the Arizona legislature appropriated additional funding, which was for \$7 million for fiscal year 2014-2015.¹⁶⁴

Arizona’s database must be linked to Education Data Exchange Network (EDEN), now known as EdFacts, making the system interoperable among different agencies.¹⁶⁵ EdFacts is the portal

¹⁵⁸ <https://nces.ed.gov/programs/slds/state.asp?stateabbr=AZ>

¹⁵⁹ Arizona Statewide Longitudinal Data Systems Grant Project Narrative, pg. 5, available at <https://nces.ed.gov/programs/slds/pdf/Arizona2007.pdf>

¹⁶⁰ <http://nces.ed.gov/Programs/SLDS/state.asp?stateabbr=AZ>

¹⁶¹ <http://www.dataqualitycampaign.org/your-states-progress/10-essential-elements?element=one>

¹⁶² http://nces.ed.gov/programs/slds/pdf/AZDash_Spotlight.pdf

¹⁶³ <http://www.ospb.state.az.us/documents/2013/Summary%20Book%20FY14-FY15.pdf>

¹⁶⁴ <http://www.azed.gov/aelas/files/2013/12/december-2013-aelas-project-milestones.pdf>

¹⁶⁵ <http://nces.ed.gov/programs/slds/state.asp?stateabbr=AZ>

through which states provide data to the federal government. Arizona delivers the data via Arizona Education Data Standards (AZEDS).¹⁶⁶ In gathering and exporting data to the USDE, Arizona has adopted the Common Education Data Standards (CEDS).¹⁶⁷ The CEDS Data Dictionary currently contains more than 750 data points,¹⁶⁸ which support the SLDS.¹⁶⁹ The CEDS was created in partnership with IMS Global, the members of which include representatives of Pearson North America, ACT, American Institutes for Research (AIR), Partnership for Assessment or Readiness for College and Careers (PARCC), Smarter Balanced Assessment Consortium (SBAC), Microsoft, and The Gates Foundation.¹⁷⁰ An example of data points collected include, but are not limited to:

- Date of last dental screening, screening status, and availability of dental insurance
- Family identifier (equivalent of the unique personal identifier assigned to each student)
- Family income and the source of that income
- Father's and/or mother's education
- Generation code (Jr., Sr., III, *etc.*)
- Information regarding specific assignments, assignment date, due date, grade received
- Person or organization owning the rights to learning standards
- Number of people in the family and household
- Public assistance status
- Whether a student is not tested based on refusal of parent or student
- Sorority participation status
- Union membership status
- Bus route
- County of birth
- Nickname
- Religious affiliation

None of these data points have *anything* to do with whether a child is proficient in a course of study and are invasive of student and family privacy.

B. Privacy Issues and Changes to FERPA

A 2009 study by Fordham Law School's Center on Law and Information Policy concluded that expanding student data systems would leave student data highly vulnerable to invasions of student privacy and, "...do not appear to comply with the privacy requirements of the Family Educational Rights and Privacy Act."¹⁷¹ Historically, the Family Educational Rights and Privacy Act (FERPA) prohibited the disclosure of personally identifiable information (PII) contained in

¹⁶⁶ <http://www.azed.gov/aelas/azed/>

¹⁶⁷ <https://ceds.ed.gov/aif.aspx>

¹⁶⁸ <http://www.azed.gov/information-technology/resourcelibrary/datastandards/ceds/implementingceds5/>

¹⁶⁹ <https://ceds.ed.gov/elements.aspx>

¹⁷⁰ <http://www.imsglobal.org/membersandaffiliates.html>

¹⁷¹ http://law.fordham.edu/assets/CLIP/CLIP_Report_Childrens_Privacy_Final.pdf

"education records," without a parent's or student's written consent, to third parties.¹⁷² Of course, the USDE is never without a back-up plan.

In December 2011, President Obama quietly signed an Executive Order (EO 12866) gutting FERPA and dramatically expanding the disclosure exceptions and authorizing increased sharing of personally identifiable information without addressing privacy safeguards, and ignoring the Congressional policy and specific mandates to protect students' privacy.

First, the amendment redefined the term "authorized representative" to allow disclosure to individuals or entities not under the direct control of state, local, or federal education agencies. Until now, the USDE has excluded other federal or state agencies because such agencies were not under the direct control of the state educational agencies.¹⁷³

Second, the amendment expanded the term "directory information" to include a student ID number, user ID, or other unique personal identifier used by a student to access or communicate in electronic systems. This disclosure would "...negate the steps taken by states to protect the anonymity of the student in the state database."¹⁷⁴

Third, the amendment expanded the term "educational program" to allow disclosure to programs run by non-educational agencies such as early childhood education, job training, career and technical education, and adult education. This broad expansion allows the release of information pertaining to test tutoring services, workforce training programs, *i.e.*, bartending and floor installation, and adventure playground programs, all of which would result in "...the sharing of educational records to organizations not covered by FERPA at all."¹⁷⁵

Fourth, the amendment expanded the "audit and evaluation" exception to allow educational agencies to share PII **without parental consent** to non-educational agencies and institutions for the evaluation of programs which are not under the authority of the USDE.¹⁷⁶ In other words, PII can be shared with unlimited third parties **without parental consent** so long as the third parties can show they provide some type of "educational service."

In short, educational records are up for grabs at **no cost** to third parties and include medical and psychological records, as well. Student medical and psychological records are considered "educational" and, therefore, not afforded protection under HIPAA.¹⁷⁷ The changes to FERPA, made without congressional approval, became effective June 2013.

¹⁷² <http://www2.ed.gov/policy/gen/guid/secletter/030130.html> ;

<https://www.federalregister.gov/articles/2011/04/08/2011-8205/family-educational-rights-and-privacy>

¹⁷³ Fordham CLIP comments on NPRM, Docket: ED-2011-OM-0002 *available at* http://aacrao-web.s3.amazonaws.com/migrated/FERPA-CLIP-Comments.sflb.ashx_520501b3709e95.59712177.ashx

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ http://www.hhs.gov/ocr/privacy/hipaa/faq/ferpa_and_hipaa/513.html

When the changes were initially proposed, the USDE took public comments, the vast majority of which were adamantly opposed to the relaxation of privacy rules. The American Principles in Action, a non-profit, 501c4 organization, wrote:

Under the proposed changes, students and parents would lose their right to prevent disclosure of personal information and, in most cases, would have no way of knowing that a disclosure has even been made...proposed amendments...would gut the statute and imperil student privacy by removing practically all impediments to nonconsensual disclosure of personal data.¹⁷⁸

C. Release of Personally Identifiable Information by the ADE

Despite evidence to the contrary, the ADE has steadfastly maintained only aggregated student data is released to the USDE pursuant to federal law. At the Senate Education Committee hearing on March 19, 2015, an ADE representative testified as follows in response to a question regarding the release of PII:

No...Anything that comes in to the Department of Education from districts does not...it gets shared with the federal government, if anything does get shared, it is aggregated data so it's not personally identifiable.¹⁷⁹

That statement is patently false; the ADE is indeed releasing PII to external research partners.¹⁸⁰ Third parties may submit a Personally Identifiable Information Data Request form to the ADE if they are seeking “student level data and/or personally identifiable information.” The ADE also provides a “handbook” which accompanies the data request form titled Requesting Personally Identifiable Information or Data from the Arizona Department of Education. The instructions state, “**Any** person or organization, including doctoral and master’s degree candidates, university faculty, independent researchers, and private and non-profit organizations who wishes to use personally identifiable information *of any type*, must submit a data request packet.” (Emphasis added).¹⁸¹

Requests for personally identifiable information are reviewed by a Data Request Review Board (DRRB).¹⁸² The identities of the board members are not revealed. The board’s quarterly meetings are not open to the public. As such, a parent or concerned citizen has no recourse to object to the practice, and, as stated above, would likely have *no* idea information had even been

¹⁷⁸ <http://www.americanprinciplesinaction.org/apia-education/education/arne-duncan-and-does-end-around-congress-to-change-ferpa-invade-student-privacy/>

¹⁷⁹ http://azleg.granicus.com/MediaPlayer.php?view_id=22&clip_id=15706; also found at http://azleg.granicus.com/MediaPlayer.php?view_id=22&clip_id=15735

¹⁸⁰ <http://www.azed.gov/data/data-requests-2/>

¹⁸¹ <http://www.azed.gov/data/files/2013/10/requesting-pii-information-handbook.pdf>

¹⁸² <http://www.azed.gov/data/data-requests-2/>

released. This practice by the ADE, which is being done in a “partnership” with outside parties and in tandem with the USDE, is egregious and must *not* be tolerated by the leaders of this state.

A 2009 study by the Fordham Center on Law and Information Policy, reviewed state data collection practices on K-12 students in all 50 states. The report found data collected included, but was not limited to, student pregnancy, birth weight of student’s baby, mental health treatment parental education, medical test results, peer violence, and criminal history.¹⁸³ Anecdotally, a juvenile criminal record can be, and often is, expunged once the juvenile offender reaches the age of majority. However, the SLDS will store that information in perpetuity. The student’s juvenile criminal record will remain a part of his/her permanent government record *forever*, and will follow that student via his/her unique statewide student identifier throughout his/her work life in to retirement. This is morally and ethically wrong!

As eloquently stated by Diana M. Fessler, in her research paper presented to the Ohio State Board of Education in 1996, titled A Report on the Work toward National Standards, Assessments, and Certificates:

By not bringing forth in-depth information...state education agency employees – specifically those whose job it is to inform and advise members of the State Board of Education, members of the General Assembly, and the Office of the Governor – have disclosed, by virtue of their silence, that they **either don’t know** what’s going on, **or they are enabling participants**.¹⁸⁴ (Emphasis in original).

In a Department of Education report titled Promoting Grit, Tenacity, and Perseverance: Critical Factors for Success in the 21st Century, the expansion of data collection is identified as, “...a growing movement to explore the potential of the ‘**noncognitive**’ factors—attributes, dispositions, social skills, attitudes, and intrapersonal resources, independent of intellectual ability—that high-achieving individuals draw upon to accomplish success.”¹⁸⁵ (Emphasis added). These non-cognitive factors are considered psychometrics and, pursuant to FERPA, can be released to third parties without parental consent. The ADE’s practice of releasing PII to a wide variety of third parties would allow the release of psychometric information, as well.

CCSSO refers to “Core Skills” as among others, initiative, self-awareness, self-control, and social and personal responsibility.¹⁸⁶ According to the CCSSO, the Common Core Standards includes “skill sets” in which the affective domain would be assessed. The assessed attitudes,

¹⁸³ <http://law.fordham.edu/center-on-law-and-information-policy/14769.htm>

¹⁸⁴ A Report on the Work Toward National Standards, Assessments, and Certificates, Letter of Transmittal, pg. 3, Diana Fessler, May 2, 1997 available at <http://www.fessler.com/SBE/pdf/research.PDF>

¹⁸⁵ <https://docs.google.com/file/d/0B6pFLnJxi9B3OWRObnFhc2ljN0k/preview>

¹⁸⁶ Knowledge, Skills, and Dispositions: The Innovation Lab Network State Framework for College, Career, and Citizenship Readiness, and Implications for State Policy, Council of Chief State School Officers, pg. 4, Figure 1, February, 2013 available at

opinions, and beliefs would then be included with PII provided to the USDE, and indiscriminately to third parties.

D. Student Data Security

In April 2013, the Maricopa Community Colleges District experienced a large-scale breach of student data.¹⁸⁷ The breach affected approximately 2.5 million students and included the theft of student information ranging from home addresses, to social security numbers and bank account information. According to reports from PrivacyWatch.org, in a ten year period, 816,324,756 records were breached at educational institutions.¹⁸⁸

The full extent of the dangers posed to students by data breaches is “unknown”; however, in recent months, districts and their vendors have lost laptops and flash drives containing student information, accidentally posted children's health information and Social Security numbers online, and improperly released individual student test scores.¹⁸⁹

AIR, the behavioral and social science research and evaluation organization that designed AzMERIT, suffered a breach of personal student information in May 2014.¹⁹⁰

Incident after incident can be easily located with simple internet searches: 63,000 students' Social Security Numbers in El Paso, Texas¹⁹¹; 5,000 students' Social Security numbers in Wake County, North Carolina; 8,000 Social Security numbers from special education students in Palatine, Illinois¹⁹²; more than 18,000 Social Security numbers from students in Nashville, Tennessee.¹⁹³ The list is extensive, and the risk is high.

¹⁸⁷ <http://arizona.newspaper.com/eastvalley/127782-114/maricopa-community-colleges-report-data-security-incident-25-million-students-staff-potential-victi>

¹⁸⁸ <http://www.privacyrights.org/data-breach/new?title=&page=0%2C0%2C0%2C0%2C0%2C0%2C0%2C0%2C0>

¹⁸⁹ <http://www.govtech.com/education/Danger-Posed-by-Student-Data-Breaches-Prompts-Action.html>

¹⁹⁰ http://blogs.edweek.org/edweek/DigitalEducation/2014/05/data_breach_at_major_k-12_rese.html

¹⁹¹ <http://www.kvia.com/news/Thousands-Of-EPISD-Students-Employees-At-Risk-Of-Identity-Theft/15246920>

¹⁹² <http://www.triblocal.com/palatine/2011/06/17/laptops-stolen-from-palatine-held-info-on-students-teachers/>

¹⁹³ <http://www.knoxnews.com/news/state/18000-nashville-students-personal-data-put-online>

The Center on Law and Information Policy of the Fordham University School of Law studied publically available information regarding state longitudinal databases of children’s educational records from all 50 states and assessed the privacy protections for those databases.¹⁹⁴ The Center found that the majority of states *failed to adopt* and implement “basic” privacy protections for longitudinal databases of K-12 children.¹⁹⁵ Additionally, it concluded that the majority of states hold detailed information about each child that is identifiable to the individual child and of an extremely sensitive nature.¹⁹⁶ In making recommendations regarding security measures, Fordham School of Law’s Center affirmed, “The risk of security breaches and misuse is too large to justify the collection of sensitive information in an electronic record.”¹⁹⁷

State officials in Arizona have been increasing the intrusive collection of private student data by accepting federal grant money with full knowledge of the federal government’s intent to *expand* the scope of data collection. These Arizona officials have also been releasing private information to third parties *without* parental consent. The ADE is aware of what FERPA allows, and they are *actively engaged* in the release of PII **without parental consent**. Yet, not only has the ADE *not* made an attempt to notify parents of the change in federal policy, but they have also “actively” sought to keep the information from parents of public district and charter school students. Based on discussions with local parents, very *little* is known about what data is being collected or what happens to it after collection. Parents have been left out of the conversation about release of information to third party contractors who are being given unfettered access to PII about their children.

Students have a right to a privacy framework that limits data collection, gives rights to them and their families, and places responsibility on schools and companies that gather data. Arizona law recognizes a cause of action arising out of a privacy violation in which the standard of care has been breached. As more parents become aware of ADE’s practices, as well as the heightened likelihood of a data breach across interoperable systems, an increase of litigation is a very real possibility, as are the resulting litigation costs and damage awards.

The Arizona Constitution also provides the basis for litigation arising out of constitutional violations. The Due Process Clause, Article 2, Section 4, states: **No person shall be deprived of life, liberty, or property without due process of law.**¹⁹⁸ A right to privacy is established in Article 2, Section 8, which states: **No person shall be disturbed in his private affairs, or his home invaded, without authority of law.**¹⁹⁹ Therefore, aggrieved families have ample recourse

¹⁹⁴ Children’s Educational Records and Privacy: A Study of Elementary and Secondary School States Reporting Systems, Center on Law and Information Policy, Fordham University School of Law (October 2009) *available at* <http://law.fordham.edu/center-on-law-and-information-policy/14769.htm>

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid* at pg. 54.

¹⁹⁸ <http://www.azleg.gov/FormatDocument.asp?inDoc=/const/2/4.htm>

¹⁹⁹ <http://www.azleg.gov/FormatDocument.asp?inDoc=/const/2/8.htm>

against schools, state agencies, and those responsible for the processing of student data. The ADE's practices create potential privacy liability for the state and its partners.

The leaders in Arizona must take steps to prevent the continued, invasive, and random use of PII by any third party meeting the definition of "authorized representative," or "educational program." By turning a blind eye to this serious issue, Arizona officials, including administrative personnel within schools, local school board members, the ADE, the state Board of Education, the legislature, and the governor, have placed our most vulnerable population at risk for the abuses of the federal government, as well as contractors, consultants, test writers, and others, who have no business having access to this information.

Furthermore, state leaders should immediately demand that our U.S. Congressional delegation initiate a *full* investigation of the changes to FERPA, which allows all PII to remain unprotected. The state has a moral and ethical obligation to do what it should have done initially: protect Arizona children from federal government abuse.

V. Teacher Accountability

Education has never been short on buzz words, and the current movement is no different. With the implementation of the Common Core Standards there seems to have been a proliferation of new slogans attached to the process of educating children: "21st Century", "college- and career-ready", "big data", "critical thinking", "internationally benchmarked" and "state-led." One of the other terms being spoken in education circles is "accountability"; specifically, "teacher accountability."

Teacher accountability is defined as "...a predetermined level of expectations that a district, school, or educator is responsible for attaining. Accountability is typically tied to standardized test scores. The district, school, or educator could be rewarded for meeting or exceeding expectations. They could also be penalized for failure to reach those expectations."²⁰⁰

A. Standardized Test Scores or High Stakes Testing

High stakes testing means the outcome on a standardized exam is a *key factor* when making important decisions concerning students, teachers, and schools. In other words, to different extents each of these three groups bears consequences that depend upon the results of these tests. Students may not graduate if they don't reach outcomes, and younger children may be required to undertake remediation in the areas in which they are determined not to be proficient. Schools may be penalized with reduction in funding if students fail to show "adequate yearly progress" (AYP). Teachers are also subjected to incentives or penalties depending on the outcomes of student assessments, from termination of employment if deemed ineffective, to redistribution to failing schools if deemed effective. None of these incentives has a proven track record of success. In fact, quite the opposite may be true.

²⁰⁰ <http://teaching.about.com/od/A-ITeachingGlossary/g/Accountability.htm>

The recent cheating scandal in the Atlanta public schools, in which 10 former employees were convicted of conspiring to cheat on tests to receive raises and bonuses, is an example of how poor policy-making can go from bad to worse in very short order. Instead of settling for the incremental progress the students appeared to be making, "...the district and the state of Georgia demanded more. They wanted dramatic improvements in test scores and showed little concern for how this would be achieved...educators were expected to produce dramatic results or be fired."²⁰¹ As the author of the article goes on to state, "The real lesson here is that we have substituted 'slogans and benchmarks' for sound policy, and for this reason the Bush and Obama administrations are culpable, too. They share in the responsibility for widespread cheating, for the narrowing of curriculum that has reduced time for art, music, and physical education because they are 'non-tested' subjects, and that has driven thousands of talented educators from the profession because they are tired of being blamed for conditions they do not control."²⁰²

Atlanta is not an anomaly. *USA Today* investigated the standardized tests in six states and the District of Columbia. The investigation uncovered 1,610 instances in which public schools boasted statistically rare, perhaps suspect, gains on state tests.²⁰³ Such anomalies occurred in Washington D.C., and each of the other states reviewed by *USA Today* – Arizona, California, Colorado, Florida, Michigan, and Ohio.²⁰⁴

B. History of Teacher Accountability in Arizona

Pursuant to the No Child Left Behind Act of 2001 (NCLB), all states were required to implement a system of accountability sufficient to track student and school adequate yearly progress (AYP). When NCLB failed to result in any noticeable improvement, the Obama administration went to work revamping the system of achieving AYP. As part of the Stimulus Bill, the USDE offered awards under the RTTT Fund to "reward" states for "...creating the conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student participation for success in college and careers..."²⁰⁵

States were required to submit applications indicating their willingness/ability to comply with specific requirements. One mandate, under the auspice of improving student growth, required establishing a plan to evaluate teacher and principal effectiveness based on performance. States were required to implement measures of student growth, design fair evaluation systems for teachers and principals using multiple categories of student growth measurements (including

²⁰¹ http://www.huffingtonpost.com/pedro-noguera/atlanta-teachers-convicted_b_7069000.html

²⁰² Ibid.

²⁰³ http://usatoday30.usatoday.com/news/education/2011-03-06-school-testing_N.htm

²⁰⁴ Ibid..

²⁰⁵ Race to the Top Executive Summary, U.S. Department of Education, November 2009, pg. 2 *available at* <https://www2.ed.gov/programs/racetothetop/executive-summary.pdf>

assessment scores), and conduct annual evaluations of teachers and principals.²⁰⁶ Other measures of professional practice used for teacher/principal evaluation included observations based on rigorous teacher performance standards, teacher portfolios, and student parent surveys.²⁰⁷

As discussed previously in this article, all states were required, coercively, to expand the implementation of the SLDS. However, the coercion didn't stop there. Perhaps the most invasive demand required states to identify and redistribute teachers to satisfy conditions tied to the receipt of a NCLB waiver.²⁰⁸

In spring 2010, the state Legislature passed SB1040, later signed into law as ARS 15~203. Subsection (A) (38) sets forth the obligation of SBE, specific to teacher accountability:

Adopt and maintain a model framework for a teacher and principal evaluation instrument that includes quantitative data on student academic progress that accounts for between thirty-three per cent and fifty per cent of the evaluation outcomes.²⁰⁹

Thereafter, the ADE formed the Task Force on Teacher and Principal Evaluation, and in 2011, SBE Board adopted the Model Framework. The framework had three required components to evaluate teacher and principal effectiveness:

- 33% to 50% of the teacher evaluation tied to student quantitative data
- Optional 17% tied to school level and/or system level data, and
- 50% to 67% aligned to teaching performance/instructional leadership.²¹⁰

In April 2012, then-Governor Jan Brewer signed in to law HB2823, establishing the teacher/principal evaluation system as a mechanism to tie performance to “human capital management.”²¹¹ The evaluation system created four performance classifications to grade teachers and principals ranging from highly effective to ineffective. A unique personal identifier was also assigned to each teacher in order to link teachers to specific students as part of measuring effectiveness.

C. Pay for Performance

In 2010, Arizona received a \$51.8 million grant to launch a pilot program called Rewarding Excellence in Instruction and Leadership (REIL). This grant program was funded through the Stimulus Bill. Pursuant to program guidelines, teachers and principals would be eligible to

²⁰⁶ Ibid at pg. 9

²⁰⁷ Arizona ESEA Flexibility Request, pg. 164, available at <http://www2.ed.gov/policy/eseaflex/approved-requests/az.pdf>

²⁰⁸ Ibid pg. 165

²⁰⁹ <http://azleg.gov/FormatDocument.asp?inDoc=/ars/15/00203.htm&Title=15&DocType=ARS>

²¹⁰ <http://www.azed.gov/teacherprincipal-evaluation/files/2012/04/framework-factsheet.pdf>

²¹¹ <http://www.azed.gov/teacherprincipal-evaluation/hb-2823/>

receive 4 percent to 10 percent of base salary when student achievement was increased.²¹² The program was also intended to change how schools recruit, retain, and compensate strong educators, particularly in high-need areas.

True to education reform and legislation at the time and currently in play, the program was designed to *ignore* processes and focus specifically on outcome-based rewards. Teacher effectiveness would be based upon teacher observation and evaluation, and assessment scores. Principal effectiveness would be based upon observation and evaluation, and school and district level performance.²¹³ By their own admission, the REIL initiative was only based upon "...a theory of change."²¹⁴

Direct observation of teachers and principals to determine their "degree of performance" is intuitively appealing. Research, however, suggests otherwise. In the 1920s, researchers studied human behavior of workers at Hawthorne Works, outside of Chicago. The study results, later dubbed *The Hawthorne Effect*, determined workers stepped up efforts when they were being studied.²¹⁵ This raises the question whether teachers, when observed, would change their teaching practices to appear more effective. Direct observation also fails to take in to account evaluator bias or favoritism, two factors which can positively or negatively affect a teacher's performance evaluation.

Providing remuneration is equally questionable in terms of measuring quantitative output as opposed to qualitative. Management theorists have often concluded that public employees, including teachers, are relatively more motivated by a belief in the goals of their organizations.²¹⁶

As stated in *Teachers, Performance Pay, and Accountability: What Education Should Learn From Other Sectors*:

In education, most policy makers who now promote performance incentives and accountability...seem mostly oblivious to the extensive literature in economics and management theory documenting the inevitable corruption of

²¹² Rewarding Excellence in Instruction and Leadership, A Closer Look for Superintendents, Maricopa County Education Service Agency, 2010 available at <http://mcesa.schoolwires.net/cms/lib03/AZ00001882/Centricity/Domain/38/118052755-A-Closer-Look-for-Superintendents.pdf>

²¹³ Ibid at pg. 15

²¹⁴ Ibid at pg. 5

²¹⁵ <http://www.library.hbs.edu/hc/hawthorne/intro.html>

²¹⁶ Perry, James L., and Lyman W. Porter. 1982. Factors affecting the context for motivation in public organizations. *The Academy of Management Review*. Vol. 7(1), pp. 89-98, January available at http://www.indiana.edu/~jlpweb/papers/Factors%20Affecting%20the%20Context%20for%20Motivation%20in%20Public%20Orgs_Perry%20&%20Porter_AMR_1982.pdf

quantitative indicators and the perverse consequences of performance incentives that rely on such indicators.²¹⁷

An important question, to which no answer has ever been provided (if it has ever been asked), is, “How much curricular corruption, teaching to the test, are we willing to endure when we engage in “the folly of rewarding A while hoping for B”?”²¹⁸

When financial incentives fail, more drastic measures to “level the playing field,” as we hear with regularity from the current administration, are in order. As with wealth, skill can also be redistributed.

D. Teacher Redistribution

Pursuant to the RTTT Executive Summary, USDE, November 2009,²¹⁹ a state must:

- (i) Ensure the equitable distribution of teachers and principals by developing a plan, informed by reviews of prior actions and data, to ensure that students in high poverty and/or high minority schools (both as defined in this notice) have **equitable access** to highly effective teachers and principals (both as defined in this notice) and are not served by ineffective teachers and principals at higher rates than other students; and,
- (ii) Increase the number and percentage of effective teachers (as defined in this notice) teaching hard to staff subjects and specialty areas including mathematics, science, and special education; teaching in language instruction education programs (as defined under Title III of the ESEA); and teaching in other areas as identified by the state or LEA.

Plans for (i) and (ii), may include, but are not limited to, the implementation of incentives and strategies in such areas as recruitment, compensation, teaching and learning environments, professional development, and **human resources practices and policies**.²²⁰ (Emphasis added)

Under this mandate, after other methods of creating teacher equity fail, the school must resort to “human resources practices and policies,” which means a teacher or principal identified as highly effective will be ‘equitably redistributed’ to low performing schools regardless of their desire to be transferred.

The amended version of the Arizona Framework for Measuring Educator Effectiveness dances around the word “redistribution,” with terms such as “newly reassigned teacher,” meaning a

²¹⁷ Adams, Scott J., Heywood, John S., Rothstein, Richard. 2009. Teachers, Performance Pay, and Accountability: What Education Should Learn from Other Sectors, Economic Policy Institute, and pg. 122, *available at* http://www.epi.org/publication/books-teachers_performance_pay_and_accountability/

²¹⁸ Kerr, Steven. 1975. On the folly of rewarding A while hoping for B. *Academy of Management Journal*. Vol. 18(4), pp. 769-83, available at <http://www.ou.edu/russell/UGcomp/Kerr.pdf>

²¹⁹ <http://www2.ed.gov/programs/racetothetop/executive-summary.pdf>

²²⁰ Ibid at pgs. 9 and 10.

teacher who has been newly assigned to a grade, a content area, or a school.²²¹ However, the P20 Coordinating Council, mentioned earlier in this article, was not nearly as coy. In a Power Point presentation used at a Task Force meeting, the Council boldly identified “equitable distribution” as a goal of a Great Teachers, Great Leaders agenda. They also identified the need for a high quality plan to ensure equitable distribution of effective teachers and principals.²²² However, for several reasons, such a redistribution attempt is likely to fail, especially where it is predicated in significant part on the results of standardized tests.

This agenda has far-reaching consequences for the retention of existing teachers, and the degree to which students choose education as a field of study. As a teacher, there looms the prospect of being moved into a low performing school in another part of the district as a result of doing a great job.

For their part, principals will *no* longer have the ability to retain their best teachers. Families who move in to certain areas of a district will be subjected to a “revolving door of teachers” creating a lack of stability and consistency, as well as the constant movement of students from school to school in search of quality teachers. Principals will be subjected to the same uncertainty, being pulled out of schools in which they have achieved performance goals with teachers and students who are truly engaged in education.

Students considering entering the field of education, and who might also prove to be “effective” by government standards, may choose other career paths due to the uncertainty of where or how they might be transferred. The lack of stability will make it difficult for teachers to set down roots in the community of their choice and leaving their career and life choices at the whim of the long arm of federal government regulation.

None of this will serve the people who consider education their life calling. None of this will serve to improve education for children. The children of Arizona are no exception, especially when parents, local school boards, or even the ADE are no longer running the show. Without exception, it is *now* the Federal Government driving local schools.

Test-based accountability has neither been tested experimentally nor thought through with any realistic vision. It is full of “what if” scenarios. For example, what do you do about teachers who don’t teach a subject *unless* it is tested on the high-stakes assessment? How do you evaluate a teacher whose students had a teacher the prior year whose evaluation score was either particularly high or low? The teacher’s job could be easier because the students are so well prepared they are at an advantage in subsequent years. Or the teacher’s job could be more difficult because the students learned so much the year before, there’s little room for growth in

²²¹ Arizona Framework for Measuring Educator Effectiveness, Adopted April 25, 2011, amended May 19, 2014, pg. 4 available at <http://www.azed.gov/teacherprincipal-evaluation/files/2014/04/2014-15framework.pdf?20150112>

²²² http://www.powershow.com/view1/2977ce-ZDc1Z/P20_Coordinating_Council_Statewide_Longitudinal_Data_Systems_and_Use_Task_Force_Meeting_October_28_powerpoint_ppt_presentation

the current year. As previously noted, teachers who faithfully teach Common Core's age-inappropriate standards risk having a *higher* percentage of their students negatively evaluated. Moreover, those who teach poorer populations could be unfairly evaluated *vis-à-vis* those who teach wealthier populations whose parents have the wherewithal to supplement their education with private tutors and other paid educational services.

Redistributing good teachers to low performing schools may have several negative consequences, including the *exodus* of high quality educators out of the teaching profession for fear of being pulled out of their communities and school at which they have spent their careers, to be transferred to a low- or high-performing school some distance from their current school. Such broad, inexact, and fundamentally flawed policies are bound to incorrectly characterize many superior teachers as inferior, characterize inferior teachers as superior, and deflate the morale of teachers, students, and indeed the entire school community. Teacher redistribution is another policy doomed to failure.

Young people starting a career in teaching face the possibility of placement in a school in which there is no promise of stability and consistency. There may be so little control over career choice that well-qualified would-be teachers could be swayed from the field of education as a vocation in exchange for careers in which they can decide where they want to settle down and make career decisions for themselves. In education, they take the chance that they **will be** shuffled around to meet the bureaucratic expectations of some unseen authority in Washington, DC.

As stated by Joy Pullmann, managing editor at *The Federalist*, "It's utterly inappropriate and shameful to say that because one human has a skill that is useful to society...that society has a right to decide how, when, and where this person must wield that skill."²²³

Federal government officials, elected and appointed, who implement education policies that have been proven failures, do an enormous disservice to elementary and secondary school children in the United States. By stepping aside and allowing distant bureaucrats and private corporate interests to implement those same education policies in this state foists the same disservice on Arizona kids. Our kids deserve better.

VI. Conclusion

In Arizona and across the country, a true grassroots movement has arisen over the last several years. At the heart of this movement are parents and other citizens who understand that education policy-making is a perversion from what the Founders intended. It is radically different from a system in which parents drive policy-making. These perversions have resulted in poor policies and an inferior education for our children. That education is a far cry from the high-quality education for which America was once known.

²²³ <http://thefederalist.com/2014/07/10/next-on-the-federal-agenda-redistributing-teachers/>

Because it lacks a direct connection to the people, the federal government has, in many respects, become a *de facto* agent for special interests intent on driving their fad-laden educational products into the classroom. It is thus incumbent on all state elected officials to “stand at the constitutional line” and protect their citizens, especially their children, parents, and teachers from such encroachment.²²⁴

In the past, state officials could respond with an insipid or disingenuous resistance to federal intrusion and rely on the public inattention. That is no longer the case. The movement is growing by the day. It rests on fact. It will not rest, until the federal government and special interests are properly restricted. A state response that provides only a patina of change, such as the response in Indiana, will be an unforgivable failure of duty.

²²⁴ Alexander Hamilton, Federalist 28 (1787) (“It may safely be received as an axiom in our political system, that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority.”). *See also* Alexander Hamilton, Federalist 85 (1788) (“We may safely rely on the disposition of the state legislatures to erect such barriers against the encroachments of the national authority.”); James Madison, *Introduction of the Bill of Rights*, The Annals of Congress, House of Representatives, First Congress, 1st Session, 448-60 (1789); Thomas Jefferson, *Letter to Archibald Stuart* (1791) (“It is important to strengthen the State governments; and . . . it must be done by the States themselves, erecting such barriers at the constitutional line as cannot be surmounted either by themselves or by the general government.”).