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Intergovernmental Relations in Policy Areas *Education* International Forum on Federalism in Mexico: Local and Global Challenges

Presented by:
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It is my great pleasure this afternoon to join this workshop regarding federalism issues effecting education. For the past 10 years, as an elected state official in the United States, I have found myself struggling to place educational issues in the proper venue – national, state or local.

As you may know, the United States Constitution places very specific powers in the national government – in fact, there are only 17 so-called “enumerated” powers—the power to tax, create armies, declare war, print money, enter into treaties, regulated commerce among the states, etc. All other powers are (at least theoretically) reserved to the states. It is then up to the states to devolve power down to local levels of government. I say that all powers except the enumerated powers are *theoretically* reserved to the states as, over time and from time to time – such as during national crises (like we are now experiencing), there have been power shifts – an ebb and a flow of power between the national government and the states – but over time the balance of power has become lodged in the national government. Perhaps one of the great strengths of the US Constitution and the federal system that it created is that the Constitution is, as constitutional scholars have said, “ambiguous by design.” Federalism in the United States has been full of contradictions and conflicts. It has survived because of the flexibility and adaptability that those official interpreters of the Constitution – namely, the Supreme Court, have read into the Constitution This sharing of power, this

overlapping of powers, this competing of power at the several levels of government has been a crucial source of tension and energy in the US system of government. President George W. Bush recognized the strength that emanates from this sharing of power between levels of government when he said recently, “Freedom is best preserved when power is disbursed.”

And so it has been in the field of education – my designated topic for this afternoon. The history of education in the United States has been and continues to be one of tension and even conflict between the several levels of government.

Historically, education has been seen in the United States to be the purview of local government. The Constitution did not enumerate education as one of the powers of the national government. Accordingly, authority for education has been reserved for state governments . But throughout our history there has been a strong sentiment to keep control of education in the hands of local governments—in fact, not even in the hands of county or city governments, but in the hands of specially elected school boards. Having served as an elected member of a school board, I am acutely aware of the intense interest that parents have in the education of their children and their desire to have a very direct voice in educational decisions. Moreover, the schools have in a very real sense replaced the churches as the heart of the community – particularly in the smaller towns of the United States. As we have experienced a movement of population from rural areas to urban areas, the necessity to merge small local schools into larger entities - what we refer to as “school consolidation” has been fiercely resisted. When a school is closed in a small community and students are transported to larger schools in nearby communities, this is seen as the final nail in the coffin of that small community.

It is important to remember that in the United States all power over education resides with the states – and what the state gives to local government it can take away. Despite the philosophical preference that education be controlled locally, power over education has to a significant extent swung back to the states. A number of factors have been responsible for this erosion of local power over education. My state of South Dakota is probably quite typical of the forces responsible for the shifting control over education.

Our state constitution provides that “... it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools...” The state Supreme Court has interpreted this to mean that the state is obliged to provide equal educational opportunity to all children within the state. In South Dakota the state has authorized local levels of government to raise taxes through a tax on real property and through a limited sharing with the state of sales taxes. About 80% of all property taxes go to support primary and secondary education. As local communities within the state have varying tax bases based upon the value of property and the levels of sales, the state has had to equalize financial resources available for education through direct financial support of education by the state. The state now contributes just over 50% of all funding for primary and secondary

school education in South Dakota. This amounts to about 45% of our entire state budget. Another 20% of the state budget goes to higher education.

As the state has become increasingly involved in the financing of education, it has taken a direct interest in many facets of education. To some extent, the state's interest in education relates to areas that require action at the state, rather than local, level. The best example here is no doubt school computerization. As a state we have wired all of our schools for computers and have provided computer training so far to 40% of our teachers. We have devised programs for computerized learning so that students in small towns and rural areas can tap into the classes in such areas as advanced science and languages that are being taught in the larger schools. This, of course, only makes sense.

But in South Dakota, as is typical in most other states in the US, state intrusion in what has historically been local responsibility for education has gone beyond the provision of modern technologies. The states have become involved in curriculum decisions, in the measurement of educational quality through standardized testing, and in many other areas. The states are now virtually micro-managing local education. In South Dakota, through a succession of laws passed by our Legislature, we in effect controlled at the state level all aspects of local education. This reached the point where many of us in the Legislature felt that we needed to reassess state involvement in education and give back to local governments much of the control over education. Accordingly, we analyzed all of the state laws and regulations impacting primary and secondary school education and ended up repealing some 500 of these laws and regulations. Our attitude was that we in state government were not in as good a position as those at the local level to decide how best to deal with the education of our children and the administration of our schools. These laws and regulations that we repealed dealt with such "micro-decisions" as the starting and ending dates of the school year, whether a school should have a school nurse, whether a school should have a business manager, whether the chief administrator of the school should have a teaching degree, whether the school should provide bus transportation to its students and so on. It must be said that handing back to the locally-elected authorities the control of the schools was not universally cheered. I took some verbal abuse from teachers who said that the state should protect the schools from the local school boards – to which I replied that, if they did not agree with their elected school board members, they should defeat them at the next election. I pointed out to them that this is the democratic process. It is also federalism.

Since we repealed those 500 laws and regulations some 5 years ago, there have been constant efforts by legislators and by the executive branch of state government to intervene in local education. Although we at the state level of government never forget that the state has ultimate authority for education and only voluntarily has devolved authority down to local government, sometimes we use the "carrot & stick" approach, recognizing how ingrained local control of education has become. A case in point is the need to consolidate school districts as populations decrease in

the rural portions of our state. To encourage consolidation, the state is proposing to offer a financial incentive to adjacent schools districts to consolidate, but to withdraw some existing state financial benefits to those schools if they do not consolidate.

A highly controversial area of state intervention (in South Dakota and other US states) has been that of standardized testing. Many states and have felt that standardized testing is necessary in order to identify sub-standard schools so that those schools could be forced to improve quality. President Bush has also been a proponent of standardized tests – he would create national tests, effectively taking the measurement of educational quality out of the hands of the individual states. The more ardent protectors of local public education argue that standardized tests fail to recognize the different social and economic conditions existing in communities. Many educators oppose standardized testing because they believe testing narrows the curriculum, attacks true learning and is unfair to ethnic minorities. Suffice it to say that this issue – like several others I will mention- places the question of federalism in a very practical perspective.

In the federalism context, it has often been said that the states of the United States are laboratories for experimentation. Because of their relative autonomy, individual states can try out new programs and, if they prove successful, other states can adopt them. New ideas don't need to be tried on a national level – state experiments can serve as “pilot projects” for the nation. A recent commentator expressed this a little more cynically when he said, “I'm so glad there's California. It's kind of a big laboratory for the rest of the nation. Every time someone has a stupid idea, California tries it out, mercifully sparing the rest of us.”

In the field of education, there are in the United States four very major and somewhat revolutionary programs that are the subjects of experimentation in a number of states:

- school choice
- voucher
- charter schools
- privatization

“School choice” refers to state programs whereunder students may attend any public school of their choosing within their school district. In urban areas there are typically several, or even many, schools within a school district. Some of these schools may have a better reputation for quality than others – due to the neighborhoods in which they are located, special academic curriculum offered, better physical facilities and so on. Offering students the opportunity to choose the school they wish to attend inserts a degree of competition among schools – students will “vote with their feet” regarding the comparative quality of schools within their district. Opponents of school choice point out that this only leaves poor students in poor schools while better students crowd schools with better reputations—that it doesn't attack the failing school's problems.

A very hot issue in the United States is the so-called “voucher” system, under which students may be given a voucher that would enable them to pay for tuition at a private school rather than attend a public school. An even hotter sub-issue is whether vouchers can be used for religion-based schools. Again, the proponents argue that a voucher system brings healthy competition to education, placing public schools in direct competition with private schools. It is also argued that a voucher system enables any student, regardless of financial abilities, to attend a private school – whereas private schools have been considered in the past to be reserved for children of wealthy parents. Opponents argue that government-funded education vouchers reduce the financial resources available to the public schools system, do nothing to attack the problems of public education and pave the way to a private school system funded by taxpayers yet free of public control and oversight. Regarding the use of publicly funded vouchers to attend religiously affiliated schools, it is argued that this violates the US Constitutional requirement of separation of church and state. The US Supreme Court announced last month that it will consider this issue during its current session.

Thirty seven states have passed legislation permitting “charter schools” to be established. State laws differ but, generally speaking, charter schools are schools authorized by the state or local school district and publicly funded, but given some degree of autonomy over their educational programs and operations in exchange for their promise of more innovative or specialized educational opportunities. Charter schools have been organized by parent groups and others interested in providing a higher standard or specialized education. Some charter schools have focused on science, computers, the arts or simply on a higher standard of education than provided by the public schools. Opponents argue that charter schools tend to be “elitist”, reduce the resources available to traditional public schools, are outside the scrutiny and control of the local or state education authorities, and so on.

Perhaps the most radical concept is that of privatization of education – where government contracts with private organizations to take over the management of education within a local school district. Recourse to privatization has been taken in cases where the state or local school district has simply thrown up its hands and admitted that the problems in its schools were beyond the capabilities of the public sector. In some cases, it has been found that the private sector can operate with greater flexibility and is capable of more innovative management than is a government-run school system.

In each of the above areas, our federalist system has allowed the states to innovate and experiment and, through trial and error, attempt to solve problems and improve on its educational system.

So what is the national role in the US educational system?

Traditionally, the national government has had very little involvement in primary and secondary education in the United States. Financial support from the national government has been very limited – consisting for the most part in providing financial assistance to federally impacted areas (such as school districts serving military bases), assistance to Native Americans, welfare-related programs (such as school lunches) and experimental programs. There is at present, however, as in virtually every area, a tendency for the national government to become increasingly involved in primary and secondary education issues.

The Bush Administration has put forward a program to take on the challenge of education reform at the national level. Perhaps this relates at least in part to President Bush's active interest in education at the state level when he was Governor of Texas. The focus of the Bush plan is on increasing student achievement and enhancing flexibility in the educational system. Helping children with special needs, recruiting effective teachers and improving education research are also priorities. The Administration's 2001 budget called for an 8% increase, or \$1.6 billion, in spending on elementary and secondary education. School choice, vouchers and standardized testing have been promoted by President Bush since he was the Governor of Texas. Now he is proposing that the parents of disadvantaged students in failing schools be allowed the option of using federal funds to find adequate public or private schools for their children. Underlying the Bush proposals is a firm belief that the public education monopoly, when confronted by market forces, will be forced to improve. Schools, school districts and states that narrow the achievement gap between the best students and the worst students and improve overall student achievement will be rewarded with federal funds. Those that fail to make progress may lose a portion of the funds they now receive. The several versions of the Bush Education Bill that are now working their way through the House and Senate contain provisions that would permit parents whose children attend a failing school to send their children to another school of their choice, would require failing school districts to face a state takeover or conversion to a charter system. Referring to my earlier comments regarding the states as policy laboratories, the Bush Administration is borrowing heavily from successful state programs. In Florida, for example, children in failing schools were given a voucher to transfer to other public or private schools. More than 100 school districts facing state-declared "failure" in year 2000 worked furiously to improve their test scores – and succeeded.

Finally, I should mention of the role of the US Supreme Court in education policy. The Court has often been called upon to be the ultimate arbitrator in educational questions. The most famous cases were those surrounding segregation, educational opportunity and the concept of "separate but equal" education. In its historic 1954 decision in *Brown vs. Board of Education*, the Court firmly declared that the US education system must be equally open to all. I mentioned earlier that the Court will, in its current session, be addressing the issue of using taxpayer funds to enable students to attend religion-affiliated schools. The Court will also address the question of university admissions that attempt to increase the admission of racial

minorities at the expense of racial majority applicants—so-called “reverse discrimination.”

Over 200 years ago, in 1789, those who drafted the US Constitution sought to divide power between national and local government. They sought to create an equilibrium of power in order to protect the rights of the people and to ensure the survival and success of the democratic process. In the United States, as we constantly adjust our lives to new and ever more challenging situations, we seem to be “tasting old wine in new bottles.” Although the challenges are new, we continue to deal with shared, overlapping and competing powers in our federal system of government.