

Comments at Congressional Briefing on Sept. 8, 2008

This book demonstrates not only that education is a fundamental public service, but that the federal government has had an important role in assuring its availability from the very founding of this country. Indeed, as noted by Jennifer Clarke, the national involvement antedated the Constitution and began under the Articles of Confederation.

Our book documents that education was not seen as the right of small elites, but the concern was with its widespread diffusion and availability – both because of its role in promoting advancement out of poverty and into middle class or wealth, and in promoting the tools of citizenship.

As a result, America has been the envy of the world for providing free public education from K through 12 for all of its citizens well in advance of the rest of the world.

But in actuality, the quality of that education has differed widely, to the point that what was offered in rural agricultural areas, big city minority communities, and flourishing suburbs varied drastically.

We have allowed our states to allocate public funds so that one child may receive \$120,000 more in government services than another child during their public school careers. In Pennsylvania, for example, a recent state study found public spending ranging from \$7,000 to \$17,000 per child per year.

Although the 14<sup>th</sup> Amendment says no person shall be deprived of equal treatment under the law, the Supreme Court has said that giving some students high quality school and other students low quality schools because of unequal funding is not unequal treatment. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

It will not surprise anyone that almost without fail the well funded schools are attended by students with more family resources, who are better prepared and who need fewer specialized services to succeed. Perversely, students who need more help receive less public help; those who need the least get the most.

Our toleration of this unequal allocation of public spending is a test of whether we accept our history's vision that we strengthen our country when we strengthen access to education for all. If education is the artery pumping new people into the mainstream of American life, failure to provide high quality education which furnishes the skills and tools need to succeed in our global technological age to all students is a fatal hardening of the arteries to the grand American Experiment.

There are several possible responses at the federal level.

One is a Constitutional Amendment to reverse the Supreme Court's decision in the *Rodriguez* case, declaring education is a fundamental right. This is a famously daunting task, requiring two-thirds congressional approval and then approval by three-quarters of the states. Many persons believe the task of organizing such a campaign would strengthen education advocacy. Others worry that even if successful, it would leave many difficult issues of interpretation in the hands of the judiciary.

Another response is to make disparate impact regulations of Title VI of the Civil Rights Act of 1964 enforceable, reversing the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 225 (2001). Although this should be done, it will help only poor districts with minorities, leaving a large part of the problem untouched.

A third alternative is to use the federal spending power, the same power used by President

Bush in No Child Left Behind and whose plenary nature was upheld by Justice Rehnquist in *South Dakota v. Dole*, 483 U.S. 2003 (1987). In addition to directing federal funds to help underfunded children, Congress would require states to alter their own funding program to provide equality of funding as a condition of receiving federal assistance. Right now Congress appropriates money targeted to low income students, but does nothing to stop the states from making this task harder by spending less of their own money on those students.

The equalization required by Congress to level the playing field can be either of monetary resources, or it can be of the inputs known to be necessary for high quality outcomes – skilled teachers, equally rigorous curricula, small class size, quality facilities and textbooks, libraries and computers. This is the approach pioneered by Congressman Fattah. Either way, we will be consistent with the historic role of Congress to see that education is not the preserve of a privileged few but shall be equally accessible to all to the extent feasible. Congress has a role in assuring states do their part to allow all children receive quality schooling so no child is left behind, and it is not limited to spending more money to do so, but can require the states to assist in that process.

Americans have long boasted that because of its education system all children face a level playing field in the race to success. It is time that Congress tell state governments to take their heavy thumb of unequal funding off the scale so that the playing field can become truly level.