A Federal Education Agenda

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The conservative approach to education policy is nothing if not confused. Conservatives cheer top-down federal standards and accountability while demanding bottom-up parental choice. They call for eliminating the federal Department of Education, but support spending on major federal education programs like Title I aid for disadvantaged students, the Individuals with Disabilities Education Act, and student loans. They treat restoring “local control” as a panacea, while neglecting the fact that “local control” strengthens the grip of teachers’ unions. They grumble about the Bush administration’s No Child Left Behind Act, but forget that the legislation passed with solid conservative support. They have applauded components of the Obama administration’s education policies, even as those policies have taken federal overreach to new levels.

This incoherence is bad for conservatives and bad for the country. Lacking a sound, focused approach to federal education policy, conservatives have largely ceded the work of reform to progressives, who embrace sweeping national solutions and put unwarranted faith in the wisdom of federal bureaucracies.

This stance has proved to be a liability, and has made it difficult for conservatives to offer much more than shopworn talking points. In May, Mitt Romney released his agenda for K-12 education reform, emphasizing familiar themes: school choice, innovation, transparency, and local control. But the Romney plan offers no insight into what the

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federal government does and does not do well when it comes to education. Romney can do better; as the Republican Party’s standard-bearer this year, he has an opportunity to demonstrate to the public that conservatives can recognize a constructive, if limited, role for the federal government in education.

Just what should conservatives’ approach to federal education policy be? It should, first of all, move beyond hollow promises to shutter the Department of Education. While efforts to rein in federal education outlays are certainly appropriate, decades of hard-won experience suggest that the federal role in education is not going away. In fact, despite their rhetoric to the contrary, conservative policymakers have shown little appetite for substantially trimming, much less eliminating, federal education spending. Meanwhile, they have allowed round after round of policymaking to layer onerous rules and regulations on states, districts, and schools. And the truth is that federal spending inevitably comes with conditions and expectations as to how the funds will be spent. If the federal government is going to continue to make substantial investments in education—and Republican lawmakers have given us little reason to assume otherwise—the challenge is to see that those dollars and the attached conditions actually benefit students and reflect a principled, circumscribed view of proper federal involvement in the nation’s schools.

But it will not be possible for Romney—or anyone else—to rise to this challenge until conservatives develop a coherent vision of what a principled federal role entails. Such a vision requires understanding how conservatives arrived at their present state of confusion on education and grasping both the federal government’s weaknesses and its peculiar strengths when it comes to improving the nation’s schools. By looking at what conservative policymakers have gotten wrong, and identifying what the federal government has the potential to do right, we can begin to sketch a clear, compelling vision for federal education policy.

AN UNIMPRESSIVE HISTORY

Over the past half-century, the story of conservatives and federal education policy has been one of half-hearted attempts, mixed messages, and decidedly mixed results. That story begins with the 1964 presidential campaign of Barry Goldwater, who, in challenging the Democrats on social policy, championed what conservatives would come to call the
“opportunity society.” In contrast to the big-government redistribution of Lyndon Johnson’s “Great Society,” conservatives would promote equality of opportunity rather than of results. In the American mind, the key to upward mobility has long been education; Goldwater’s principled commitment to “opportunity” thus demanded that conservatives develop a vision for school improvement to match. But throughout the late 1960s and ’70s, conservatives offered little in response to this challenge, preferring to focus on defense, crime, and deregulation. Republican policy on education generally amounted to “me too” support for new federal spending for Pell Grants, magnet schools, and special education.

Ronald Reagan would revive the notion of the “opportunity society” in his successful 1980 campaign. His education proposals during that contest, however, consisted chiefly of calling to abolish the cabinet-level Department of Education created by Jimmy Carter and reiterating the importance of state, local, and parental control. (The idea of abolishing the department went nowhere, as neither Reagan nor the Republican Senate ever really tried to follow through.) In 1988, George H. W. Bush campaigned on a promise to be the “education president,” though the substance of his education program was not much different from his predecessor’s. But because both men campaigned and governed during a time when education was mostly a third-tier concern, the public did not demand stronger policies for improving America’s schools — and the presidents’ failure to act didn’t much matter.

In 1992, however, circumstances changed. Arkansas governor Bill Clinton reframed the national debate, focusing on the issue of fairness for the middle class. In touting a “New Covenant,” he attacked the Reagan-Bush legacy for having shut out people who “work hard” and “play by the rules.” Clinton used his own commitment to educational “investment” to argue that GOP talk of opportunity was insincere. On education, Clinton could make a compelling case: Between 1980 and 1992, Republicans in the White House had done nothing significant to abolish the Department of Education, to reduce the federal government’s role in schooling, to slow the growth of red tape associated with federal programs, or to advance school vouchers. And they had not made any meaningful effort to explain how such policies would promote equal opportunity or improve schooling.

In 1992, exit polling identified education as a top-tier concern — and Roper polling showed Clinton with a 23-point advantage over Bush on
the issue. Though the GOP nominee in 1996, Kansas senator Bob Dole, tried to improve on Bush’s performance — by, for instance, advocating “opportunity scholarships” to allow poor students to attend private schools — he was outpolled by Clinton on the education question by even larger margins.

Politically speaking, the GOP’s dismal marks on education were a growing cause for concern. During the 1990s, domestic policy moved to the forefront of the national agenda. Education started to consistently rank among voters’ top concerns. Thus in 2000, when the leading contender for the party’s nomination had a strong track record on education, Republicans cheered.

As governor of Texas, George W. Bush had continued a bipartisan commitment to standards-based accountability that helped focus attention and resources on at-risk students and low-performing schools. Campaigning for the presidency, Bush pledged to bring these principles to Washington, and to create a more muscular role for the federal government in education. His message played well; in his contest with Al Gore, polling showed Bush virtually eliminating the huge, longstanding Democratic advantage on education.

The problem, however, was that conservatives had not given much thought to how Bush’s education vision would actually translate into federal policy. Days after taking office, Bush made good on his promise, sending a 28-page blueprint for federal education reform to Congress. The original plan reflected a reasonably coherent conservative vision: transparency, testing and accountability, parental choice, a commitment to rigorous educational research, and opportunities for states to experiment with teacher compensation and regulatory reform.

But the No Child Left Behind Act had to get through Congress. Democrats Edward Kennedy and George Miller, the chairman and ranking member of the Senate and House education committees, respectively, insisted upon major additions. These included, for instance, the onerous new “highly qualified teacher” mandate requiring that all classrooms be led by a teacher with appropriate paper credentials. This language would later be used by teachers’ unions and their left-wing allies to attack programs like Teach For America.

Nevertheless, the Bush administration, seeking bipartisan backing for its marquee policy initiative, went along with these modifications. So did conservatives, eager to support the new Republican president and
distracted by the “conservative” label affixed to NCLB’s accountability requirements (such as the law’s requirement that states regularly test students in reading and math and report the scores). As a result, conservatives ended up embracing a law that super-sized Lyndon Johnson’s Great Society-era Elementary and Secondary Education Act. Perhaps most famously, NCLB mandated that 100% of the nation’s children be “proficient” in reading and math by 2014—though the law left it up to states to define what proficiency meant. If schools and districts did not make the prescribed annual progress toward that goal, they would face federally mandated consequences. The result was the mother of all perverse incentives, with governors and legislators who were committed to rigorous standards rewarded with a guarantee that more of their schools would be deemed “failing” and subjected to federal micromanagement.

In practice, the law proved to be a mess. For instance, it did not stop at the sensible step of requiring states to disaggregate and report student-achievement data by socioeconomic status, race, and ethnicity. Rather, NCLB imposed an explicitly race-based system of accountability, labeling schools as “failing” if particular demographic groups did not make “adequate yearly progress” (AYP). This focus on closing racial “achievement gaps” forced states to label many reasonably performing schools as “failing,” puzzling and infuriating parents and educators. Moreover, the consequences for failing to make AYP were written into federal law, with mandated “remedies” including everything from busing students to new schools to state takeovers and school closures. The desire to avoid labeling schools as failing created great incentives for gaming the system: States responded by dumbing down tests and lowering the bar for students to be deemed “proficient.” When schools did fail to make AYP (as nearly half the nation’s schools did in results reported this spring), implementing the required remedies ultimately relied on the competence of the very same local leaders who were being sanctioned.

Not surprisingly, state officials quickly soured on NCLB. By the summer of 2006, 19 states had filed suit charging that NCLB was an unfunded mandate, prohibited the use of state funds for NCLB implementation, or were still considering legislation to opt out of NCLB altogether. In 2007, Republican congressman Pete Hoekstra attracted 64 GOP co-sponsors in the House, and Republican senator Jim DeMint drew seven in the Senate, for legislation that would have allowed states to opt out of NCLB and still receive federal education dollars. The public’s opinion
of NCLB had initially been modestly positive, but by the close of the Bush administration sentiment was tipping the other way.

In 2009, the widespread discontent with NCLB informed the Obama administration’s reforms. Departing from the sweeping, mandate-driven approach of his predecessor, Obama opted for incentives. Seizing on the $100 billion of education funding included in the enormous 2009 economic-stimulus package, the administration tucked in a handful of reform-minded initiatives to promote aims like innovation and more rigorous evaluation of teachers.

The centerpiece of Obama’s reforms was Race to the Top, a competitive grant program financed with $4.35 billion from the stimulus. The program’s stated goals were to strengthen standards and assessments, use a more data-driven approach to evaluate students and educators, improve teacher and principal quality through better recruitment and rewards, and turn around the lowest-performing schools. The mechanism would be, in effect, a contest, with grant money awarded to the states that did the best job of addressing the federal government’s 19 priorities in their grant applications. The embrace of state-level experimentation and competition, in particular, appealed to conservatives; right-leaning voices like New York Times columnist David Brooks and the editorial board of the Wall Street Journal praised the Obama initiative.

Some of the praise was warranted. Race to the Top offered state leaders the leverage they needed to uproot restrictive, rent-seeking policies favored by unions—such as caps on the number of charter schools or statutory data “firewalls” that prohibited states from using student-achievement data to evaluate teachers. Indeed, Race to the Top encouraged 13 states to pass charter-school laws or raise charter caps, and 11 knocked down their data firewalls.

But the program was beset by problems that outweighed its benefits. Federal officials pushed states to embrace modish trends in school improvement such as “cultural competency professional development.” As Ohio explained in its application, such “development” equips teachers to negotiate “the cultural and gender context of students affected by poverty, gendered expectations, race, and class.” In the Race to the Top application process, most of the scoring relied on how well states complied with hopelessly vague criteria: securing local “buy in,” providing effective support to educators, and so forth. States were rewarded for
procuring signatures indicating notional union support and for demonstrating that they were spending more on schools. The result was a competition that did more to reward grant-writing prowess and allegiance to the fads of the moment than meaningful, structural changes. Race to the Top turned into a bonanza for consultants, with state plans offering hundreds of pages of indecipherable jargon and unenforceable, poorly articulated (but nevertheless expensive) reform schemes.

Inevitably, Race to the Top disappointed. Every one of the first- and second-round winners has failed to follow through on key provisions of its plan—and yet all continue to collect their federal awards. Many of those winners were dubious choices to begin with. States like Ohio, New York, Maryland, and Hawaii had dismal track records in areas that the administration purportedly valued. On charter-school laws, for instance, the National Alliance for Public Charter Schools had Ohio ranked 26th, Hawaii 34th, and Maryland 40th. On the National Council on Teacher Quality report card, Ohio earned a D+, as did New York; Maryland earned a D, and Hawaii a D–.

With Race to the Top, many conservatives again found themselves in the position of having supported a sweeping federal reform program thanks largely to its pretty packaging. Precisely because conservatives are, after half a century, still bereft of a coherent approach to federal education policy, they remain susceptible to falling for sweeping proposals marketed as “reform minded.” When these reforms yield bigger government and disappointing outcomes, conservatives fall back on clichéd calls to abolish the Department of Education—which, as we have seen, go nowhere.

A PLACE FOR WASHINGTON

The conservative record on education is thus not a story to be proud of. To recount that history is not to counsel despair, however. America’s schools require dramatic improvement, and progressive dreams of “fixing” schools from Washington have shown little promise of delivering. Conservatives thus have an essential role to play when it comes to reforming American education. What they need is a better sense of what that role ought to be— informed by the mistakes of Race to the Top, NCLB, and decades of empty promises.

To start, it is essential to abandon unhelpful rhetoric about shutting down the Department of Education or “getting the federal government out
of education.” The federal government does have a legitimate role to play in schooling—and it always has. From the Land Ordinance of 1785, which set aside land for the purpose of building and funding schools, through Dwight Eisenhower’s 1958 investment in math and science instruction after the launch of Sputnik, the federal government has recognized a compelling national interest in the quality of American education.

The truth is that not even outspoken champions of local control really want Uncle Sam completely removed from schooling. Republicans—including the Tea Party class of 2010—routinely support maintaining or increasing federal funds for Title I, special education, and federal student loans. For instance, in 2011, when it looked like Congress might reduce federal funding for special education, Republicans intervened en masse to help stop the cuts. Washington congresswoman Cathy McMorris Rodgers, vice chair of the House Republican Conference, introduced an amendment that restored $557 million in special-education funding; House Republicans backed the amendment, co-sponsored by education-committee chairman John Kline, 232 to 5. Similarly, the Consolidated Appropriations Act of 2012—the budget deal passed at the last minute to avoid a government shutdown—actually increased funding for Title I and special education. Republicans supported the bill 147 to 86. Given that Title I and special-education programs account for the bulk of federal K-12 spending, Republican claims that the federal government should simply get out of schooling ring hollow.

It is just as well for the GOP that such promises amount to little more than empty rhetoric: If Republicans were serious, voters would react poorly. In the mid-1990s, when House Republicans proposed eliminating the Department of Education, polls consistently suggested that 70% to 80% of voters opposed the effort. This election cycle, polling finds that 74% of respondents oppose eliminating the Department of Education, with even 56% of self-described conservatives opposed.

It seems clear that the Department of Education isn’t going anywhere. The real opportunity lies in reassessing what it is that the federal government should do and how we ought to properly circumscribe its role. This requires understanding a few important facts about the relationship between Washington and America’s schools.

The most fundamental of these is the fact that Washington does not run schools. All Congress can do is enact laws that tell federal bureaucrats to write rules for states, which in turn write rules for school
districts, which in turn set the particular policies for schools. At each of these points, there is great potential for distortion; often, the grand visions of Washington lawmakers end up bearing little resemblance to how their policies actually play out in the nation’s classrooms. In short, while Washington can force states and districts to do things, it cannot make them do those things well.

Efforts to increase Washington’s influence generally involve increasingly complex directives and requirements—ever more intrusive federal regulation to try to ensure that states, districts, and schools do the “right” things in the “right” way. The problem, of course, is that inept district and school leaders continue to follow these directives ineptly; dynamic leaders, meanwhile, end up with their hands tied by ever-growing lengths of red tape.

This reliance on local leaders points to another tension between Washington and the nation’s schools, illustrated by some of the failures of Race to the Top. While the winning state plans were mostly about grand promises for the future, there were no guarantees that the key actors in those states would be around to see the pledges through. Indeed, by January 2011—less than 12 months after the first winners were announced—eight of the 11 states that won Race to the Top grants had new governors (and the District of Columbia had a new mayor). By this summer, less than two years after the second round was announced, eight of the 12 winners had new school superintendents.

With Race to the Top, NCLB, and other federal reform programs, Washington lawmakers insist upon, and state leaders agree to, sweeping promises that will have to be carried forward by new state leaders who may have no interest in pursuing their predecessors’ Washington-approved schemes. The entire approach is designed to produce reforms that are more likely to unravel than to come to fruition.

In other words, it is when Washington tries to direct improvement efforts or to exercise control over education that things go awry. This is how we get the unworkable mandates of No Child Left Behind and the infeasible promises of Race to the Top. A better approach would be to limit Washington’s involvement to tasks for which it is uniquely suited and that respect and embrace the basic tenets of federalism and our constitutional design.

Two such tasks in particular suggest themselves. The first deals with the public goods of providing accurate, comparable measures and
information needed to help empower parents, voters, state and local officials, and educators and of supporting the kind of basic research necessary for dynamic markets and entrepreneurial problem-solving. The second enlists the federal government in support of “trust-busting” and bureaucracy-taming—enabling promising new providers to challenge education monopolies, working to correct the legacy of federal micromanagement, and helping to free state and local reformers from the burden of their predecessors’ bad decisions.

**TRANSPARENCY AND RESEARCH**

One valuable legacy of No Child Left Behind has been the law’s improvement of citizens’ ability to gauge and compare school quality by providing routine, broadly similar information about student outcomes. For all its flaws, the law has illuminated student outcomes in an unprecedented fashion.

Historically, state and local officials have manipulated or hidden test results in order to make themselves look good. For instance, in 2000, prior the passage of NCLB, only 11 states disaggregated student-achievement data by gender or race. When NCLB made disaggregation a condition of receiving Title I funds, however, all states quickly adopted the practice. And since 2003, the National Center for Education Statistics has promoted transparency by using the National Assessment of Educational Progress (NAEP) to “map” state proficiency standards to state scores, allowing parents, voters, and taxpayers to make sense of the (often inflated) results their states report. Such data reporting poses minimal implementation headaches, does not involve federal authorities in dictating practice or monitoring compliance, and instead equips the right people—parents, voters, and taxpayers—to set priorities and make decisions for schools as they see fit.

Requiring that these data be uniformly collected and reported is a plausible and sensible role for the federal government. If Nebraska defined a pound as 16 ounces while Kansas defined it as 14, for instance, interstate commerce would be a nightmare. Ensuring consistency on such measures was in fact a major inspiration for the creation of our federal system. It is the reason the Articles of Confederation established the legislative branch’s power to “[fix] the standards of weights and measures throughout the United States,” and why the Constitution invested Congress with this same authority.
When it comes to empowering parents, voters, and policymakers to make informed judgments about educational quality, a similar principle applies. The federal government is uniquely suited to the role of “score-keeper” when it comes to measuring educational outcomes. It should require that states collecting federal school funds measure and report detailed data on school quality and educational costs in a consistent, uniform way that helps local decision-makers.

There are caveats, however. First, it is important to avoid having federally regulated measures and reporting mechanisms turn into federally mandated standards and curricula. Comparable metrics need not require states to teach common content, and the brewing debate over federal involvement in “Common Core” standards in math and reading is distinct from the question of whether the federal government should support more thorough and comparable reporting. Second, Washington will have to avoid the historical tendency for “measurement” to focus obsessively on inputs and compliance, rather than on productivity. While recent trends in data reporting have placed an admirable focus on student achievement, they have yet to seriously pair that interest with a focus on metrics that offer some sense of schools’ return on public investment.

A related role for the federal government — one that no other actor can play as well — is to promote high-quality basic education research. Market theorists have long noted that markets tend to under-produce public goods like national defense and roads, as it is unclear to would-be private providers how they will be paid for their efforts. Breakthroughs in basic research are similar: They require enormous time and expense, and it is rarely evident whether or how early-stage researchers will be able to reap the benefits of their labor. As a result, such research tends to be under-provided absent involvement from the government.

The National Institutes of Health addresses this problem by investing heavily in basic research that can give rise to new drugs and medical interventions, and then leaving the development and application of that research to private ventures. That division of labor has fueled enormous success in the field of health care, and a similar approach could be adopted in education. Conservatives should be comfortable with shifting funds away from federal programs that dictate state and local practices and toward the broader public good of basic research in the fields of cognitive science and human learning. Pursued sensibly,
such investments would yield early-stage findings that private ventures could then harness. A few of the research questions that offer long-term benefits but lack immediate market application include how fast the adolescent brain can absorb languages, which areas of the brain are associated with particular learning challenges, and how the use of digital content affects knowledge retention.

Yet here, too, there are caveats. Advances in basic education science will require continued insistence on rigor and new models of funding, so that dollars are steered into areas that offer genuine promise—cognitive science, applied reading techniques, and brain imaging, for instance—rather than into more aimless education-school research. Things are more promising on this front than they were a decade ago, thanks to the establishment in 2002 of the federal Institute for Education Sciences, which has emphasized efforts to apply rigorous scientific techniques to education questions. But though IES's establishment marked a shift toward more rigorous research in the field of education, the organization invests just $250 million a year in research, compared to NIH's research budget of more than $30 billion. Conservatives should feel comfortable supporting and expanding the institute and similar research efforts.

The establishment of rigorous, uniform measures of school-related data and greater investment in basic research both represent appropriate roles for the federal government in education. Neither will, or could, be undertaken by smaller-scale governments or private actors. Neither requires heavy-handed mandates or micromanagement from Washington. Rather, both serve to enable and empower parents, voters, taxpayers, state and local officials, educators, and entrepreneurs. This approach represents, in other words, a proper balance between federal, state and local, and citizen responsibility, one consistent with our constitutional order.

**trust-busting**

Of course, informing and empowering citizens and leaders to make good decisions about educating kids is helpful only if the system leaves space for reformers and entrepreneurs to solve problems and develop new approaches to schooling. In this area, policymakers have their work cut out for them. Teachers' unions, colleges of education, and a host of other special interests have stifled competition and choice in education, fighting for rules, regulations, and contracts that make it difficult
for reform-minded officials and private entrepreneurs to change things. State and local lawmakers, often beholden to these same interests, are reluctant to stand up to them. Here, then, is another place where the federal government can play a constructive role.

Again, conservatives need to achieve some clarity regarding just what that role ought to be. Though they are fond of attacking the public-education monopoly and the teachers’ unions that benefit from it, the irony is that conservatives have done little to lower the barriers to entry that confront challengers and entrepreneurs. Their approach has consisted mostly of suggesting that school choice alone will fix the problem by introducing competition into the system. But after two decades of experiments with choice, the monopolies are largely undented. Indeed, it would be a mistake to argue that more choice alone would eventually force schools and districts to change. As Stanford’s Caroline Hoxby has noted, the vast majority of American families already exercise some form of school choice (through home purchases, private schooling, charter schooling, public-school choice plans, or home schooling). A far better approach would be to address the policies that insulate schools and systems from meaningful competition or consequences for mediocre performance.

Conservatives need to couple their support for school choice with a firmer, savvier commitment to deregulation and free enterprise. The problem with education monopolies is not only their dominant market position, but also their ability to use that position to stack the rules of the game and maintain their favored status. One need only look to the example of airlines, trucking companies, and telecommunications firms prior to deregulation to see how this works. All were nominally subjected to “competition” before deregulation—though they cheerfully collaborated with regulators to ensure that competition didn’t pinch. It took major policy changes to dislodge privileged incumbents in these industries; it took challenging their protected status and lowering barriers to new entrants.

Like trucking and telecom firms, teachers’ unions, school bureaucracies, and colleges of education have held fast to protections and routines that guard the status quo. Stanford political scientist Terry Moe has pointed out that, as the dominant force in school-board and other state and local elections, teachers’ unions and other members of the education cartel are able to maintain a regulatory environment that
protects incumbents and deters challengers. They have blocked charter schools, restricted job descriptions, imposed exhaustive credentialing requirements, set rigid pay scales, created onerous tenure protections, and burdened new schools and teacher-preparation programs with extensive requirements and costs. Federal policies governing everything from Title I to special education have contributed to this web of rules and restrictions. Absent a concerted effort to change the laws and political conditions protecting the education cartel, potential challengers will continue to play on an uneven field.

One example of how this might work is in the area of teacher certification. Today, K-12 teachers are required to have state-issued teaching licenses in narrow areas of specialization. And since the vast majority of licensure programs are sponsored by public universities and colleges, reforming teacher preparation requires battling politically connected institutions. Unless a governor is eager to take on university administrators, influential alumni, and protective legislators, it is easiest to simply leave the current teacher-preparation regime alone, even though it impedes labor-market entry and protects mediocre programs from competition.

Given these constraints, the federal government can help by adopting a trust-busting approach that would enable reform-minded state leaders to pursue alternatives to the current certification regime. One promising example, launched in 2001 by the Bush administration but generally neglected thereafter, is the American Board for the Certification of Teacher Excellence. ABCTE created a private assessment-based certification process that can more readily and reliably certify teachers. States can choose to simply adopt ABCTE as an approved route of entry into their classrooms and permit teachers who pass its licensure tests to compete on equal footing with education-school graduates. But though ABCTE has been adopted in some form by 11 states, and though 95% of principals in schools with ABCTE teachers have judged them to be as effective as traditionally certified peers (or more so), the effort has been widely ignored.

The ABCTE model certainly deserves more attention. Such an approach allows state leaders to choose alternatives to traditional certification programs without having to overhaul the entrenched teacher-preparation apparatus in each state. Crucially, ABCTE is neither a new federal program nor a mandate. Rather, it is an example of federal policy helping to launch a private organization that state leaders can then use to reduce the barriers to entry erected by entrenched interests.
A related role for federal lawmakers is to help lift the burden of bad past decisions and troubling policy legacies that hinder reform-minded state and local leaders. Private-sector enterprises routinely get to the point where such legacies leave them ill-equipped to compete in the marketplace; General Motors and Chrysler are classic examples. When once-proud companies become shackled by legacy costs, bad contracts, or rigid business models, they are often driven out of the industry by newer, more flexible entrants. Other ventures opt to go through the bankruptcy process, which allows them to slough off old obligations and emerge leaner and better prepared to compete.

In the public sector, however, state and local leaders lack similar options. Every bad contract provision a superintendent ever accepted, every questionable interpretation of state code, and every inane school-board policy remains in effect unless actively reversed. Since such reversals require lawmakers to take significant political risks and to challenge powerful interests, they’re extremely rare. Making matters worse is the “evergreen” language in state law and in many public-sector contracts — language that keeps old provisions in effect until both parties agree to change them. This practice makes it effectively impossible for school boards to ever escape bad decisions made by long-gone predecessors.

The federal government can play a crucial role in altering this state of affairs. Here, Race to the Top got things half-right: Supporting state leaders who wished to undo old regulations that impeded charter schools and prohibited districts from evaluating teachers based on student achievement was a wise step. Federal policymakers would be even wiser to consider how a half-century of intrusive federal policymaking has fostered a culture of compliance among state and local educational leaders. Conservatives should champion a sustained, high-profile effort to scour federal regulations, state education-agency interpretations of federal statute, and related minutiae that impede reform-minded state and local leaders while consuming their time and resources.

The federal government should not only scour its own books but also help make it possible for school-system leaders to break free of outdated, destructive constraints. There’s a reason that bankruptcy is deeply rooted in Western economic thought: The notion that people need some way to remove the shackles of the past to begin anew is integral to free markets and free societies. The Constitution empowers Congress to set a uniform bankruptcy code, and federal policymakers have developed
a number of ways for different types of organizations to emerge safely from financial peril. In the case of education, the most relevant example might be Chapter 9 bankruptcy, through which municipalities are allowed to revisit existing collective-bargaining agreements and contractual obligations.

Remarkably few of the nation’s 14,000 school districts have successfully applied for Chapter 9 bankruptcy; just two have done so since the 1980s. In the mid-1990s, revisions to the bankruptcy code gave state governments the power to decide whether municipalities and school districts can file for Chapter 9. Some states specifically authorize school districts to file for Chapter 9, but most do not; even where local governments are authorized to apply, states retain the right to veto such a course. This allows the entrenched education monopoly to use the statehouse to prevent reform-minded district officials from getting their own houses in order. As an alternative, many states have opted to take over troubled school districts directly, appointing a trustee to run the schools but rarely doing much to rationalize unaffordable commitments or to free districts from unworkable contract provisions. This situation is made even worse by the strong ties between state education bureaucracies and the panoply of rent-seeking interests eager to maintain the status quo.

Empowering local school districts in this way suggests a tension between state and local government, and conservatives will be inclined to want the federal government to stay out. But doing so means deferring to the existing monopoly. A better option is for conservatives to ask policymakers to offer opportunities for those local leaders who are so inclined to free themselves from entrenched monopolies. Federal policymakers ought to devise a bankruptcy-like mechanism that permits those school districts receiving federal Title I funds and deemed (by their states) to be performing inadequately to petition for relief from contractual obligations (with unions, vendors, and others) that constrain their efforts to improve schooling. Enabling and encouraging districts to use a bankruptcy-like route to solvency would help ensure that federal funds are spent in the best interests of children. And it might well have the side benefit of encouraging union leaders to recalibrate their demands and to start worrying about the financial health of their employers. Freeing local educators and leaders from unaffordable obligations and anachronistic contract provisions so that they can spend
money on educating kids is a fight conservatives should welcome — and one they can win.

In short, conservatives can champion a vision of federal policy that helps local decision-makers challenge the dominance of the education cartel and frees them to do their most important work: educating children. Here, too, a proper balance should be struck between federal authority and local initiative. The federal government ought to concentrate on helping interested states and districts to escape the tangle of old, outdated regulations, but without prescribing cumbersome new rules or required reforms. What state and local leaders do with their newfound freedom will be up to them, but in the meantime, the federal government will have helped make possible genuine reform.

Of course, federal efforts to deregulate must simultaneously respect the federal obligation to secure core constitutional protections. Federal efforts to desegregate schools and to ensure access for students with disabilities arose precisely because state and local actors had failed to ensure that all children had equal access to education. However else the federal government’s involvement in education might change, this essential role cannot be compromised.

**Proper Limits**

After the excesses of the past decade, conservatives are understandably wary of claims that “the federal government is here to help” improve the nation’s schools. But the alternative — simply denying that Washington has any role to play in education — is both insincere and counterproductive. And absent a credible federal agenda of their own, conservatives will cede the field to more Bush- and Obama-style reforms. After all, when presented with troubling educational outcomes, federal lawmakers of all stripes have made it abundantly clear that they are unwilling to simply stand by and do nothing. Indeed, the perceived need to “do something” is what produces overbearing regulation that only makes matters worse.

There is a better way. Rather than allow themselves to be paralyzed by the idea that any federal activity is illegitimate, conservatives should wield the Department of Education and other parts of the federal education apparatus to reverse decades of increasing centralization and bureaucratization. As Senator Lamar Alexander, a former U.S. Secretary of Education, put it last year: “Washington can’t create good jobs, and
Washington can’t create good schools. What Washington can do, though, is shape an environment in which businesses and entrepreneurs can create jobs. It can do the same thing in education, by creating an environment in which teachers, parents, and communities can build better schools.”

By fostering improved research, data collection, and transparency, Washington can give parents, voters, taxpayers, and state and local officials the information they need to behave like consumers and investors — allowing them to pursue the best possible education for their children and a sound return on public investment. By reducing the influence of education cartels and extricating reform-minded leaders from decades of red tape, the federal government can open the field to new entrants and create room for meaningful competition. Washington can provide the essential preconditions for a true market in education but then leave the work of implementation, innovation, and turnaround where it must necessarily belong — in the hands of local officials, entrepreneurs, and citizens.

This is sound policy, and one that can be easily articulated in a crucial election year — by Governor Romney or by anyone committed to showing that conservatives are credible on the issue of education. It is also the best way for Washington to promote the kind of great schooling that America’s kids need. And it respects the traditional American understanding that the key to using federal power wisely is to properly circumscribe it — shaping a federal role in keeping with the federalist system the framers envisioned.