

NLWJC - KAGAN

EMAILS CREATED

ARMS - BOX 008 - FOLDER 006

[4/9/1999 - 4/16/1999]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. email	Elena Kagan to Sara Wilson et al re q'aires (1 page)	04/09/1999	P2, P5, P6/b(6)
001b. email attachment	ABA Personal Data Questionnaire (25 pages)	04/09/1999	P2, P5, P6/b(6)
001c. email attachment	Biographical Information (34 pages)	04/09/1999	P2, P5, P6/b(6)
002. email	Elena Kagan to Tanya Martin et al at 11:38 re ESEA-Anti-Smoking Programs [partial] (1 page)	04/15/1999	P6/b(6)
003. email	Elena Kagan to Eric Angel re Form (1 page)	04/15/1999	Personal Misfile
004. email	Elena Kagan to Tanya Martin et al at 11:39 re ESEA-Anti-Smoking Programs [partial] (1 page)	04/15/1999	P6/b(6)
005. email	Elena Kagan to Tanya Martin et al at 15:09 re ESEA-Anti-Smoking Programs [partial] (1 page)	04/15/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
 Automated Records Management System (Email)
 OPD ([From Elena Kagan])
 OA/Box Number: 250000

FOLDER TITLE:

[04/09/1999-04/16/1999]

2009-1006-F

kc213

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 9-APR-1999 14:36:28.00

SUBJECT: Re: data collection language for Daschle bill

TO: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

yes, fine

Withdrawal/Redaction Marker

Clinton Library

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001a. email	Elena Kagan to Sara Wilson et al re q'aires (1 page)	04/09/1999	P2, P5, P6/b(6)

COLLECTION:

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Automated Records Management System (Email)
OPD ([From Elena Kagan])
OA/Box Number: 250000

FOLDER TITLE:

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2009-1006-F
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001b. email attachment	ABA Personal Data Questionnaire (25 pages)	04/09/1999	P2, P5, P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
OPD ([From Elena Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[04/09/1999-04/16/1999]

2009-1006-F
kc213

RESTRICTION CODES

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OPD ([From Elena Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[04/09/1999-04/16/1999]

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RESTRICTION CODES

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 9-APR-1999 17:00:30.00

SUBJECT: q'aires

TO: Sara Wilson (CN=Sara Wilson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Eric S. Angel (CN=Eric S. Angel/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Mark Childress (CN=Mark Childress/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Attached is (1) my Senate form and (2) a slightly revised version of my ABA forms (with typos etc. corrected). Let me know what you want to me change. Thanks.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:12-APR-1999 15:44:00.00

SUBJECT: Re: bioterrorism

TO: Michelle Peterson (CN=Michelle Peterson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Now there's a question. Chris and Jose are fighting for the lead role.
Until they decide, I guess it's me.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:12-APR-1999 17:15:27.00

SUBJECT: Draft -- H.R. 800 -- ED Flex Letter to the conferees -- Final Clearance

TO: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

fyi

----- Forwarded by Elena Kagan/OPD/EOP on 04/12/99 05:18
PM -----

Sandra Yamin

04/12/99 04:44:54 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Mindy E. Myers/WHO/EOP, Dario J. Gomez/WHO/EOP, Laura Emmett/WHO/EOP

Subject: Draft -- H.R. 800 -- ED Flex Letter to the conferees -- Final Clearance

Attached for your clearance is the draft letter from Sec Riley directed to the conferees on H.R. 800 ED Flex Partnership Act of 1999. In the draft, Sec Riley states, "The Senate bill, however, contains unacceptable provisions regarding the class size reduction authority that are unrelated to the expansion of ED-Flex authority and, if adopted, would force me to recommend to the President that he veto the bill." The conference report is scheduled for House consideration on Friday, April 16th. We would like to get this letter out today. Please respond to me with your comments and/or sign-off as soon as possible. My apologies for the short turnaround. Thank you.

Message Sent

To: _____

Lawrence J. Stein/WHO/EOP

Charles M. Brain/WHO/EOP

Broderick Johnson/WHO/EOP

Bruce N. Reed/OPD/EOP

Elena Kagan/OPD/EOP

William H. White Jr./WHO/EOP

Bethany Little/OPD/EOP

Barbara Chow/OMB/EOP

Janet Murguia/WHO/EOP

Jonathan H. Schnur/OPD/EOP

Tanya E. Martin/OPD/EOP

Dear Conferee:

I am writing to express my views on the House-and Senate-passed versions of H.R. 800, the Education Flexibility Partnership Act of 1999. As you know, "ED-Flex" authority permits States to waive certain statutory and regulatory requirements that apply to Federal education programs in a manner that complements State educational reform efforts and promotes achievement to high standards by all students. The Administration has long supported the concept of expanding ED-Flex authority beyond the 12 States allowed under current law, so long as that expansion does not undermine the purposes of those Federal programs and maintains a high degree of accountability for results. I am very pleased, therefore, that both bills would expand eligibility for ED-Flex status to all the States, as well as the District of Columbia and the Commonwealth of Puerto Rico, and couple that increased flexibility with a serious attention to maintaining accountability at the State and local level. The Senate bill, however, contains unacceptable provisions regarding the class size reduction authority that are unrelated to the expansion of ED-Flex authority and, if enacted adopted, would force me to recommend to the President that he veto the bill. I urge the Conferees to avoid such a disappointing and unnecessary result.

Turning to the ED-Flex provisions, I am very pleased that both bills have strong provisions for ensuring State monitoring of local ED-Flex activities and termination of waivers that have inadequate or harmful results. With regard to the following provisions, I offer the following views:

- Public notice and comment. I am pleased that both the Senate and House versions contain provisions to enhance parental involvement in the ED-Flex waiver process. In order to maximize parental involvement and improve ED-Flex waivers, I support the Senate's provision on this issue, with the addition of language included in the House bill requiring the public notice to contain a description of any expected improvements in student performance and the public comments received by the State and local education agencies to be made available for public review.

- Expansion of ED-Flex Authority. With regard to the expansion of the ED-Flex authority, I support the Senate version of the bill, which would make very clear that a State may not waive Federal requirements applicable to ~~the State as a whole~~ itself.

Accountability Provisions. With respect to State eligibility for ED-Flex status, I support the more rigorous conditions in the House bill, as they apply to implementation of standards and assessments under Title I of the Elementary and Secondary Education Act of 1965 (ESEA). With respect to the State's application for ED-Flex status, I support the language in the Senate bill, which focuses on how ED-Flex authority will assist in implementing the State's comprehensive reform plan. Regarding the renewal of Ed-Flex authority, I support the more rigorous requirements in the House version that require the State to show measurable progress toward achieving the State's educational objectives.

Targeting Provisions. With respect to waivers that would not be authorized, I strongly support both the House and Senate versions regarding school eligibility for Title I Part A since both these ~~provision~~ *provisions* target funds more directly ~~on~~ *to* high poverty schools.

State Reporting. I believe that complete State reporting of ED-Flex results is important and so support the provisions of the House bill relating to annual State reporting to the Secretary about the numbers and characteristics of waivers granted.

Sunset Provision. Finally, I strongly support the provision of the House bill that would "sunset" this Act upon enactment of the upcoming reauthorization of the ESEA, because it is vitally important that continuation of ED-Flex authority be made consistent with changes to the underlying Federal programs to which it applies.

Class Size

Last fall, Congress enacted and funded, on a bipartisan basis, a down payment on the President's plan to help the Nation's school districts reduce class sizes in the early elementary grades. Regrettably, the Senate bill contains amendments to the class size reduction authority that would undermine its impact by permitting local school districts to use funds received under that initiative not to reduce class size, but to meet obligations they are already required to meet under Part B of the Individuals with Disabilities Education Act. The value of reducing class size in the early elementary grades is supported by ~~the~~ research, and doing so is one of the most important things we can do to honor our national commitment to ensuring equal educational opportunity for all our children. Moreover, reducing class size in the early grades allows teachers to identify, and work more effectively with, students who have learning disabilities, thereby potentially reducing those students' need for intensive special education services in the later grades. Rather than undermining the bipartisan effort to reduce class size--and setting parent against parent in school districts across the country--I would have supported a bill that extended the President's initiative, so that school districts could plan to hire additional qualified teachers, provide additional classrooms, and take the other steps necessary to reduce class size. I certainly cannot support a bill that contains these Senate amendments and would recommend that the President veto it, if it were presented to him.

The Office of Management and Budget advises that there is no objection to the submission of this report and that from the standpoint of the Administration's program, enactment of H.R. 800 containing the Senate's amendments relating to the class size reduction initiative would not be in accord with the President's program.

Yours sincerely,

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:13-APR-1999 12:23:15.00

SUBJECT: Re: INS meeting today

TO: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

sorry -- you're absolutely right. we'll have the bigger meeting tomorrow.

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:13-APR-1999 12:24:06.00

SUBJECT: RECEIVED: WtW and Census Funding

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

READ:UNKNOWN

TEXT:

RETURN RECEIPT

Your Document:

WtW and Census Funding

was successfully received by:

CN=Elena Kagan/OU=OPD/O=EOP

at:

04/13/99 12:26:30 PM

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:13-APR-1999 10:21:34.00

SUBJECT: Re: bioterrorism

TO: Michelle Peterson (CN=Michelle Peterson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:
sure; what's his take?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:13-APR-1999 15:25:28.00

SUBJECT: Re: Fourth Affirmative Defense

TO: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

ok

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-APR-1999 11:09:00.00

SUBJECT: Re: Civil Rights: Diversity in the workforce

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP [OPD])
READ:UNKNOWN

TO: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Irene Bueno (CN=Irene Bueno/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Seems to me this is an NEC thing. Let's let Gene know.

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-APR-1999 18:47:30.00

SUBJECT: RECEIVED: Possible Welfare Stories Tomorrow -- Daily Report

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

READ:UNKNOWN

TEXT:

RETURN RECEIPT

Your Document:

Possible Welfare Stories Tomorrow -- Daily Report

was successfully received by:

CN=Elena Kagan/OU=OPD/O=EOP

at:

04/14/99 06:49:02 PM

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-APR-1999 17:56:49.00

SUBJECT: Re: radio address

TO: Loretta M. Ucelli (CN=Loretta M. Ucelli/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Our new idea is child care. We can claim a real victory in the budget resolution, and Dems on the Hill would like us to highlight it. I think we should be able to get some press off this topic. Let's talk tomorrow morning?

RECORD TYPE: PRESIDENTIAL (NOTES READ RECEIPT)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:14-APR-1999 11:09:27.00

SUBJECT: RECEIVED: Pretty Good USA Today article--not in WH Clips though

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP [OPD])

READ:UNKNOWN

TEXT:

RETURN RECEIPT

Your Document:

Pretty Good USA Today article--not in WH Clips though

was successfully received by:

CN=Elena Kagan/OU=OPD/O=EOP

at:

04/14/99 11:09:45 AM

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Automated Records Management System (Email)
OPD ([From Elena Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[04/09/1999-04/16/1999]

2009-1006-F

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:15-APR-1999 11:38:43.00

SUBJECT: ESEA -- anti-smoking programs

TO: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP [OPD])
 READ:UNKNOWN

TO: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP @ EOP [OPD])
 READ:UNKNOWN

TEXT:

----- Forwarded by Elena Kagan/OPD/EOP on 04/15/99 11:41
 AM -----

Dan Marcus
 04/15/99 10:50:22 AM
 Record Type: Record

To: Charles F. Ruff/WHO/EOP, Elena Kagan/OPD/EOP
 cc:
 Subject: ESEA -- anti-smoking programs

This is to pass on to you, from Randy Moss, a concern re the forthcoming ESEA reauthorization proposal that OLC expressed to Dept of Education, was rebuffed, and wants the White House to be aware of for our consideration.

The proposed bill, as I understand from Randy, would condition substantial ESEA funding on the states' adoption of school anti-smoking programs. OLC has no problem with tying some ESEA funding to state antismoking programs, but worries about proportionality -- i.e., whether the sanction for not adopting the anti-smoking programs, in terms of loss of all ESEA funding, is too large given the small size of the antismoking program. They recommended to Dept of Ed that they put only a smaller subset of ESEA funding at risk. The OLC recommendation was made, not because they think the original proposal is indefensible, but to reduce litigation risk. For in the Supreme Court's leading decision on this issue, *South Dakota v. Dole*, 483 U.S. 203, 211 (1987), the Court, while upholding the legitimacy in general of using federal funds as an inducement to states to do what the feds want, warned that "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion.'" No decision since *Dole* has struck down a federal-state grant program on this ground, but recently 6 of 13 judges in a 4th Circuit en banc decision [002] P6(b)(6) said that a substantial 10th Amendment issue was presented where the entirety of a large federal grant would be withheld if the states failed to fall in line on some minor matter.

Dept of Ed said no, and they and we may well feel that anti-smoking stuff is important enough that we want a big club/inducement. Randy and OLC think we'd be safer if we tailored to sanction more. They are not saying this is a "must" (and they are not retaliating for *Helms v. Picard* !), but wanted to see what we think.

I personally doubt that the risk is great enough here -- given the popularity of school antismoking programs -- to justify pressing this point, but you guys can decide!

Withdrawal/Redaction Marker

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003. email	Elena Kagan to Eric Angel re Form (1 page)	04/15/1999	Personal Misfile

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
OPD ([From Elena Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[04/09/1999-04/16/1999]

2009-1006-F

kc213

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Freedom of Information Act - [5 U.S.C. 552(b)]

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Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. email	Elena Kagan to Tanya Martin et al at 11:39 re ESEA-Anti-Smoking Programs [partial] (1 page)	04/15/1999	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
OPD ([From Elena Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[04/09/1999-04/16/1999]

2009-1006-F

kc213

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:15-APR-1999 11:39:11.00

SUBJECT: ESEA -- anti-smoking programs

TO: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP [OPD])
READ:UNKNOWN

TO: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

this isn't right, is it?

----- Forwarded by Elena Kagan/OPD/EOP on 04/15/99 11:42 AM -----

Dan Marcus
04/15/99 10:50:22 AM
Record Type: Record

To: Charles F. Ruff/WHO/EOP, Elena Kagan/OPD/EOP
cc:
Subject: ESEA -- anti-smoking programs

This is to pass on to you, from Randy Moss, a concern re the forthcoming ESEA reauthorization proposal that OLC expressed to Dept of Education, was rebuffed, and wants the White House to be aware of for our consideration.

The proposed bill, as I understand from Randy, would condition substantial ESEA funding on the states' adoption of school anti-smoking programs. OLC has no problem with tying some ESEA funding to state antismoking programs, but worries about proportionality -- i.e., whether the sanction for not adopting the anti-smoking programs, in terms of loss of all ESEA funding, is too large given the small size of the antismoking program. They recommended to Dept of Ed that they put only a smaller subset of ESEA funding at risk. The OLC recommendation was made, not because they think the original proposal is indefensible, but to reduce litigation risk. For in the Supreme Court's leading decision on this issue, South Dakota v. Dole, 483 U.S. 203, 211 (1987), the Court, while upholding the legitimacy in general of using federal funds as an inducement to states to do what the feds want, warned that "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion.'" No decision since Dole has struck down a federal-state grant program on this ground, but recently 6 of 13 judges in a 4th Circuit en banc decision [REDACTED] said that a substantial 10th Amendment issue was presented where the entirety of a large federal grant would be withheld if the states failed to fall in line on some minor matter.

Dept of Ed said no, and they and we may well feel that anti-smoking stuff is important enough that we want a big club/inducement. Randy and OLC think we'd be safer if we tailored to sanction more. They are not saying this is a "must" (and they are not retaliating for Helms v. Picard !), but wanted to see what we think.

I personally doubt that the risk is great enough here -- given the popularity of school antismoking programs -- to justify pressing this

[004]

point, but you guys can decide!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:15-APR-1999 15:09:44.00

SUBJECT: Re: ESEA -- anti-smoking programs

TO: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP [OPD])
READ:UNKNOWN

CC: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

I've got to say that this seems to me woldly disproportionate as a political matter (putting aside whether it's also disproportionate as a matter of constitutional law). What do other peple think?

Tanya E. Martin
04/15/99 02:54:56 PM
Record Type: Record

To: Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP
cc: Jonathan H. Schnur/OPD/EOP, Cynthia A. Rice/OPD/EOP
bcc:
Subject: Re: ESEA -- anti-smoking programs

It does, in fact, appear to be right.

Title IV of ESEA (Safe and Drug Free Schools) has two provisions that deal with tobacco-free schools.

The first is a requirement that schools that are applying for SDFS grants certify in their applications that they have a policy prohibiting the use of tobacco by students and adults at all times in school buildings and on school grounds, consistent with the Tobacco-Free Schools Act.

The Tobacco-Free Schools Act is defined further down in the bill (Section D Related Provisions). This section would add new language to the ESEA requiring that each SEA and LEA that receives ESEA funds have a policy that prohibits the use of tobacco, in any form, at any time, and by any person, in school buildings, on school grounds, or at any school-sponsored event. [The actual language reads that "SEAs and LEA receving funds under this Act must have a policy..." which OMB reads as meaning ESEA, although it could mean under the SDFS section. I've asked Education for clarification on what they intended to do here].

This language would replace similar language under current law in the Pro-Children Act of 1994 (which basically prohibits smoking in schools or other indoor facilities that receive federal funds from Education,

Agriculture or HHS). The proposed new language would also impose more stringent requirements than the Pro-Children Act, in that: (1) the Pro-Children Act pertains only to smoking, whereas the proposed new language would prohibit smoking as well as the use of smokeless tobacco in schools; and (2) the Pro-Children Act prohibitions on smoking pertain to indoor facilities only and apply only during the school day, whereas the proposed new language would prohibit the use of tobacco on school grounds as well as in school buildings, at any time, or at any school-sponsored event.

In our earlier SDFS meetings, Education had not previously indicated that they would condition ESEA funding on an expansion of the Pro-Children Act (I will work with Cynthia to determine how much of an expansion from current law this would represent). In my discussions with OMB, they have indicated that they will not be commenting to Education on this section (staff felt this would be a DPC call).

Elena Kagan
04/15/99 11:39:39 AM
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Jonathan H. Schnur/OPD/EOP, Tanya E. Martin/OPD/EOP
cc:
Subject: ESEA -- anti-smoking programs

this isn't right, is it?
----- Forwarded by Elena Kagan/OPD/EOP on 04/15/99 11:42 AM -----

Dan Marcus
04/15/99 10:50:22 AM
Record Type: Record

To: Charles F. Ruff/WHO/EOP, Elena Kagan/OPD/EOP
cc:
Subject: ESEA -- anti-smoking programs

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COLLECTION:

Clinton Presidential Records
Automated Records Management System (Email)
OPD ([From Elena Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[04/09/1999-04/16/1999]

2009-1006-F
kc213

RESTRICTION CODES

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P6/(b)(6) said that a substantial 10th Amendment
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club/inducement. Randy and OLC think we'd be safer if we tailored to
sanction more. They are not saying this is a "must" (and they are not
retaliating for Helms v. Picard !), but wanted to see what we think.

I personally doubt that the risk is great enough here -- given the
popularity of school antismoking programs -- to justify pressing this
point, but you guys can decide!

[005]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:16-APR-1999 13:42:38.00

SUBJECT:

TO: Eric S. Angel (CN=Eric S. Angel/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:16-APR-1999 07:41:16.00

SUBJECT: Re: Civil Rights Coordinating Council

TO: Tanya E. Martin (CN=Tanya E. Martin/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP [OPD])

READ:UNKNOWN

TEXT:

non, no, no. We are not doing this. Please talk with me and Bruce.

Tanya E. Martin

04/15/99 07:34:00 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: Civil Rights Coordinating Council

The CRCC is meeting at 5PM tomorrow. At the last meeting, Maria Echaveste and Chuck Ruff requested a briefing (paper) that would give them an overview of ESEA (they were particularly concerned with the social promotions policy). I can give them summaries of major sections of the bill based on draft paper that Education is producing to describe this bill in plain-language -- but of course, it won't reflect the current state of play on social promotions. Is that ok with you?

Also, during the last meeting, Peter Rundlet reported that ED-OCR is drafting guidance on high-stakes testing. OCR is still revising their draft to accomodate whatever changes are made in ESEA regarding the social promotions policy. I've asked Peter to make sure that he sends me a copy of that draft guidance whenever it comes over from Education.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME:16-APR-1999 09:42:56.00

SUBJECT: new health answer

TO: Eric S. Angel (CN=Eric S. Angel/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Here's my new answer on health. Unless you think it should be changed,
scratch this issue off your list.