

the Senate on Tuesday, May 15, 2001, at 10 a.m., for a hearing regarding the Financial Outlook of the United States Postal Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Tuesday, May 15, 2001, at 2 p.m., in Dirksen 226.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. GREGG. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 15, 2001, at 10 a.m., to hold a closed hearing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EMERGENCY THREATS AND CAPABILITIES

Mr. GREGG. Mr. President, I ask unanimous consent that the Subcommittee on Emerging Threats and Capabilities of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, May 15, 2001, at 2:30 p.m., in open and closed sessions to receive testimony on the Department of Energy's defense nuclear nonproliferation programs, in review of the defense authorization request for fiscal year 2002 and the future years defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that Travis Sullivan, a fellow in Senator CANTWELL's office, be granted floor privileges during the consideration of S. 1, the Elementary and Secondary Education Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that Janet Whitehurst of my staff be granted the privilege of the floor during the remainder of the debate on S. 1.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE EDUCATION BILL

Mr. JEFFORDS. Mr. President, we have several important amendments pending, but I would like to spend a few minutes discussing the very heart of the bill: Accountability and assessments. I believe the bill before us is the most dramatic reform of the Elementary and Secondary Education Act since 1965. I would like everyone to understand what is in this bill so they can understand how dramatic an impact it will have upon every school in this Nation.

For the first time, we will require all children in grades 3-8 to be annually

assessed, and that schools, districts, and States will face consequences if they fail to improve the performance of their students.

Each year—year in, year out—every level of education will be held accountable for showing measurable progress for each group of students they serve. This is the central feature of the legislation, and yet, to judge from press reports and editorials, it is very poorly understood.

I want to do what I can this evening to make sure it is widely understood in this Nation how dramatic the changes are for which we are about to vote.

I am not probably known for unwavering support for the President's agenda, nor, I hope, am I known for going out of my way to criticize the press. But I rise today both to defend the President and to suggest that the press has been sloppy in its reporting and editorial writing on what should be the central issue of the story, education reform.

For the past week or two, there have been a few press accounts and editorials implying that somehow the President or the Senate has caved to pressure, has watered down the standards in this bill, or has walked away from real reform.

In fairness to the press, I realize this is a difficult subject to cover. The topic can be a bit dense, and there is no real bright line as to the kind of progress we can expect from students and schools.

On Thursday, the lead editorial in USA Today read: "Congress Set to Dilute Education Reform," while the sub-head read: "Lawmakers gut school accountability, turn backs on minorities."

That editorial is but one example of what I think is the lack of understanding about this bill, especially, it seems, in the press. And while my opinion, of course, is just that, it is based on a wealth of data that can be verified independently. Not only do I think it can be verified, I think it is the obligation of the press to do so before it makes value-laden judgments.

In order to understand where we are, a bit of background is necessary. The major education proposals before the Congress have at their core the requirement that States and schools set high standards in core subject matters and that they measure whether students are achieving those standards; further, that we pay particular attention to the progress of our lowest-achieving students. In other words, we are going to look at the groups of students, as well as the students on a general basis, to make sure that no child is left behind.

As reported from committee, both H.R. 1 and S. 1 contain the notion that all students would be proficient in math and reading in 10 years and that a school or school district or State that failed to meet this standard would be deemed to have failed—let me repeat that—and that a school or school

district or State that failed to meet this standard would be deemed to have failed.

Further, progress in meeting this goal would be monitored on an annual basis. If a school or district or State failed to make the so-called adequate yearly progress—a term I will use over and over again, "adequate yearly progress," or, for short, AYP—it would be identified as needing school improvement—another phrase to remember—or subject to sanctions if improvement efforts failed.

The concept of AYP is an important one because adequate yearly progress is the bar for judging whether a school or district or State has succeeded or failed.

Legislating that all students should be proficient in 10 years is a wonderful goal, and perhaps for this reason none of us really gave it much thought. Having been involved in the passage of the Goals 2000 Act some years ago, having served on the national goals panel, I must confess that I have become a little wiser about our ability to achieve wonderful goals.

For my colleagues who may not be familiar with the Goals 2000 Act, in it we codified very ambitious goals that we hoped to achieve by the year 2000. For example, back in 1994, we called for our students to be first in the world in math and science—that was a big goal, a goal that we are so far from having fulfilled—and that all students leaving 4th, 8th, and 12th grades would do so with demonstrated competency in challenging subject matter, including English, math, science, foreign language, and so on, all by the year 2000.

Well, 2000 has come and gone. In my view, we have made only limited progress in reaching those goals. We have a long way to go, especially in these goals directly relating to academics. I don't think the lesson to take from this experience is that goals are a bad idea. Rather, I think the lesson is that an unrealistic goal, linked to very real consequences, is a bad idea.

The goal contained in S. 1, as it was reported from the HELP Committee, that all students would be proficient in 10 years, was both admirable and entirely unrealistic. That will explain why we have done what we have. It gives me no great pleasure to say this. I have spent a good part of my career in a continuing effort to improve education for all students, beginning in my very first year in Congress in 1975. Like anyone, I take some pride in my work. I would much rather correct a glaring problem in a piece of legislation before it is reported from my committee, but as has been noted before, wisdom is a rare commodity which should not be rejected merely because it arrives late.

Unlike some of the issues we confront in this Chamber, we have a solid amount of experience in the results of education reform and educational assessment. The same year we put in place the national education goals, we

also passed the last reauthorization of ESEA. Among other things, that reauthorization required annual assessments of students served by title I; that is, for economically disadvantaged students. Combined with the efforts of States and especially leaders from Connecticut and North Carolina and Texas, we have a good idea of what States can accomplish.

Thanks to the Internet, which effectively didn't exist during the last reauthorization, it is a simple matter to examine what States and schools have been able to achieve and how they compare with the standards we are contemplating in this legislation.

What you will find when you do so is that the standard we have set in our bill, expecting every child to be proficient in reading and math in 10 years, was simply not going to happen unless States dramatically dumbed down their tests. Moreover, because States used different criteria for determining proficiency, some States would encounter tremendous hurdles relative to other States, as we tried to overlay one Federal goal on top of 50 very different State systems of measurement.

A good example of this is in the comparison of the States of Texas and Missouri. According to the National Assessment of Education Progress, or NAEP, students in Texas and Missouri are almost identical in their reading ability. Yet the two States' assessments could hardly have been more different.

In 1998, when the NAEP reading test was given, Texas, by its own test, judged 79 percent of its students proficient, while Missouri, by its tests, rated only 29 percent of its students proficient in reading. Neither State is right or wrong. The point is, they have very different standards.

Yet the way our bill emerged from committee, Missouri students would have been expected to make 2½ times the gains of the students from Texas each year merely because their State had set a higher bar for proficiency.

Whether a State was expected to make proficiency gains of 7 percentage points a year, such as Missouri, or 2 percentage points, such as Texas, matters little. As it turned out, of the 20 or so States we looked at, no State achieved a level of AYP, annual yearly progress, required by the committee-reported bill.

Not surprising, what was true at the State level for all students was even more true as the sample size declined. Either by looking at various student subgroups or districts or schools themselves, random samples of schools in Connecticut and North Carolina and Texas revealed that almost no school would make adequate yearly progress under our original definition; our original definition meaning later on we changed it. We had to.

I should note here, my remarks focusing on certain States should be taken as a compliment. The three States I just mentioned are widely rec-

ognized as being leaders in education reform. Their data goes back for several years. And in the case of North Carolina and Texas, that data is broken out by many of the categories that would be required under our legislation.

My own State of Vermont, which has been working very hard at education reform and assessments over the past several years, would also fail to make annual yearly progress. So would every other State based on the progress even leading States have been able to make.

Some self-styled education reformers have argued that we should not have abandoned the committee report approach, even in the face of this evidence that every school, practically, in the United States would fail. But it is a mystery to me how you can have education reform if every school and every school district and every State is labeled a failure. Resources would be diluted; chaos would result, as every title I school would be steered into corrective action and reconstituted under the bill. Reconstitution means that you tear it all apart. You create a charter school. You fire all the teachers, whatever else. You have to do something that dramatic, with the entire staff being fired, maybe.

Those teachers with seniority rights would no doubt exercise their bumping rights to land a position in another school. This mass firing and dislocation of teachers would come amidst what most people see as a looming teacher shortage. All over the country, we know that our teachers are getting older and fewer and fewer are coming into the field of teaching. Thus, we are going to have problems in that, which is another issue we will have to face later.

This is not good education policy. This is madness. But we were all so intent on proving how tough we could be improving education that for a long time nobody seemed to be willing to admit we were wrong.

The President, to his everlasting credit, saw the problem and was willing to try to address it. He has stuck by that decision in spite of the often ill-informed treatment he has received from the press. He has chosen the substance of education reform over its political symbolism.

The President and anyone engaged in education reform for very long knows that a goal of education reform must be significant, continuous improvement. And to get it, you need to focus your efforts on the schools that need the most help. Monstrous gains from one year to the next, year in and year out, simply do not happen in the real world. In the real world, our schools are battling poverty, violence, drugs, unstable families, apathetic parents, engaged parents, with more than one job, television, turnover, and all manner of impediments. We cannot throw in the towel, but neither can we legislate miracles.

The substitute amendment pending before the Senate tries to set ambi-

tious but realistic goals for school improvement. If they are adopted, we will all see the results in a few years. I would wager today that we will not look back with regret for setting the bar too low. My own view is that the greatest likelihood is that we will swamp the system by identifying too many schools and States as failing.

But we have reached a compromise on this issue and I will support it, in the firm hope that time will prove me wrong and this bill will not over-identify schools as failing.

The substitute amendment sets our two tests for meeting AYP. First, states must establish a formula that measures progress against the goal of 100 percent proficiency for all students in a decade. Many States already have such formulae in place, so they may have to make some adjustments to their existing approaches. The state-determined formula must give greater weight to improving the performance of the poorest performing students. Quite sensibly, greater weight should be given to greater gains. And the driving factor behind a formula must be the performance on assessments.

The second prong of the AYP definition is designed to ensure that no matter how a State formula is constructed, in order to show adequate yearly progress, the State and its schools and districts will be required to achieve at least a one percentage point gain in proficiency for each group of students, every year.

Let me briefly address the notion that our proposal permits schools to hide the performance of low-performing minorities.

Simply put, this notion is rubbish. The disaggregated scores of groups of students must be reported for schools, districts and states. As a result, parents and the public at large will know exactly how groups of students are performing.

What are these groups? They are based on race, ethnicity, gender, migrant status, limited English proficiency, low-income status and disability. The performance of each of these groups will be measured and disclosed through various means, including the Internet.

We're not hiding the results, we're putting them on a worldwide billboard.

A school will be deemed to have failed to make adequate yearly progress if it fails to make progress for disabled students, for limited English proficient students, for low-income students, and for racial and ethnic groups of students in each subject assessed.

There are easily a dozen different ways a typical school can fail to make adequate yearly progress under the approach taken in the pending substitute.

Making a one percentage point gain in the achievement year after year for every subgroup is a daunting task. Very few states have easily accessible data at the school level by the various subgroups for which this bill will require measurement and consequences.

But the few that do indicate it will be a high standard indeed.

Even at the State level, this kind of continuous improvement has proven elusive for almost every State, even those that are held up as examples of states committed to reform.

The Education Trust recently published a study of how well States have done in closing the achievement gap between white and minority students. As part of that study, it looks at the states making the largest gains in minority math achievement as measured by NAEP.

According to the Education Trust, eight States made above average gains in 4th grade math for African American students. They were: Massachusetts, Michigan, Texas, Iowa, North Carolina, Connecticut, Indiana, and Louisiana.

Most of these States are generally recognized as being in the forefront of education reform efforts in our country.

They also share this distinction. Each of them would be deemed a failure under the committee reported bill.

Let me repeat that. The eight states that did the best job in improving math instruction for black students would all fail if you held them to a standard of reaching 100 percent proficiency for all students.

I have with me a few charts that illustrate my point. In each, the most recent data available is used, and it is compared to what it would take to reach 100 percent proficiency over 10 years. The charts go back in time as far as readily available comparable data permits. Again, these are some of the very best, most committed States.

If you go across the chart, you will find that in 1999, which is the year from 1998–1999, it shows failure because the progress was not there from 1998, and the actual progress was 11.5 and total required progress was 8.8. I get a little confused with the charts, and I suspect everybody will.

Let's go to Iowa. It shows that their annual required progress was a 2.76 improvement. You will notice that as you go along, starting out with 72.45, if you add all the red, it is because they didn't make the 2.76 improvement all the way across, and actually they are missing about 16.56 percent. Then you can break it down by groups. You can see all the way down male, female, and you go to mathematics and so forth. But they are failing.

Connecticut is the same. Connecticut has one of the most impressive educational systems, but you will see there from looking back to the annual progress, they fail right across the board for all those years. We thought they were one of the best. That gives you an idea of what we are looking at, which will show that we have really an incredibly strict piece of legislation.

Massachusetts failed to make progress in reading, and actually lost a little ground in math.

Michigan, in 1999, failed in math and reading.

Texas failed in both subjects in every year but 1997.

Iowa has failed for 5 years running in both subjects.

North Carolina failed to make AYP in both 1999 and 2000.

Connecticut would have failed to make AYP for 5 years running.

Indiana has lost ground in reading and math, and would have failed for 3 years running.

In Louisiana, given the high bar it sets for proficiency, its gains from 1999 to 2000 don't come close to meeting AYP.

To sum up, every States fails.

So for the press to come out and say that we have weakened the standards and somehow we are not going to be stiff enough, they have to understand that under this bill it is going to be very difficult for the States to comply.

These are the results that drove us to amend the committee-reported bill. We didn't do so because of pressure from Governors or any allegiance to the status quo. We did so because facts are stubborn things. And the facts show that no State has made, or will make, the kind of gains called for in the original bill. Has the substitute set the bar too low? That's a fair question. Again, I think it has to be answered by what the best schools and States can achieve. And again, I think we have set a very high bar.

A look at a random sample of school districts deemed "exemplary" in Texas shows that they nearly all fail to make one percentage point gains each year, for each group. That might be explained by the fact that when a school's students are at 90 or 95 percent proficiency, either all students or a group or two will fluctuate up and down. But a look at lower-performing Texas schools, those deemed only "acceptable," yields the same result. If you look at a dozen, probably only one will make AYP.

The same holds true for Connecticut schools and districts.

I have a chart that looks at the committee-reported standard, in which all schools and districts failed. But the results are only marginally different with a 1 percent standard. In the case of Connecticut, the data we have does not show student subgroup performance, which will show gains above and below the average performance, but overall not that good. North Carolina shows the same results. The areas that are darker are the problem areas with no success shown. We looked at the first dozen or so school districts in that State. As our chart shows, all but one failed to make AYP based on the performance of all students in either math or reading.

We found one district did make AYP on the basis of all students, but when you look at the performance of the subgroups of students as we do in the chart for the district, it failed to make a uniform 1 percentage point gain, both for some of the lower performing groups, but also for the highest one.

The purpose behind my remarks is not to leave all of us discouraged, but to try to illustrate that even where you have the best efforts at educational reform, improving educational performance is a very hard task, and we cannot expect miracles.

Our efforts should be ambitious but anchored to what we know schools can achieve.

If we enact a system that labels all schools failures, then it is we who have failed.

On the other hand, if they have not already done so, I hope my colleagues in the Senate will take some time to talk with educators in their State about this issue. And I hope the very capable people in the press who write on this issue will spend a little more time in trying to connect the varying claims in this debate to the rich amount of experience that is easily available.

I thank my colleagues for their attention.

I took the time this evening to allow people to have the full story so as to better understand, especially when the press says we have watered down the standards. They can make that argument, but if you realized how strict they were to start with and if you realized the present status of our schools, you would understand that had we not done this, it would have been devastating and probably so deflating that we would have chaos.

We have tried to come up with what we believe are the improvements that are capable of being performed by the schools. I point out, as I have pointed out to my colleagues continuously, that is why it is incredibly important we make sure the resources are there for these schools to make the changes to live up to the President's program.

I urge everyone to follow the costs that are going to be incurred and to talk with the officials in their States to see what resources they believe will be necessary to make sure that every child in that State has an opportunity to be a successful student.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE PLACED ON THE CALENDAR—S. 872

Mr. JEFFORDS. Mr. President, there is a bill at the desk due for its second reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 872) to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal