

ACTIVITY 12.1

LESSON NOTES AND QUESTIONS

Which level of government has the authority to decide educational policy?

What is Federalism?

Why would States want to go along with an educational policy such as NCLB?

Which item on the Handy Dandy Guide to Economics is most useful in explaining why the states have gone along with NCLB?

Debriefing the Play

Under what authority does the federal government offer funding for the states to participate in NCLB?

Why would states agree to participate?

Do you think NCLB violates the principles of federalism? Why or why not?

Can incentives be both positive and negative? How?

Is it predictable that all 50 states would agree to participate in NCLB?

Under our federal system, when do incentives become coercive?

ACTIVITY 12.2

THE SUPREME COURT HEARS A CASE

Narrator: This play is based on a case titled *Connecticut v. Spellings*. It is called this because the State of Connecticut is the *plaintiff*, meaning the person or group bringing the legal action. *Spellings* is the name of the defendant, in this case Margaret Spellings, who was Secretary of the U.S. Department of Education at the time this case began.

One part of Connecticut's case is based on the Tenth Amendment. The State of Connecticut claims that the No Child Left Behind Act (NCLB) has many requirements, but does not provide enough funds from the federal government to meet these requirements. But, if Connecticut decides *not* to participate in NCLB, it will lose lots of federal education money that is not related to NCLB. And the threat of that loss, Connecticut argues, is coercive and constitutes a violation of the Tenth Amendment.

In 2008, the case was dismissed by the U.S. District Court, District of Connecticut. But, what if the District Court's decision is appealed to the U.S. Supreme Court?

All stand: The Court arrives.

Supreme Court Marshal: The Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!

The Justices sit. Everyone else sits.

Chief Justice: We are here today to hear oral arguments in the case of *Connecticut v. Spellings*. We will hear arguments concerning paragraph 192 of the complaint.

Attorney for the Plaintiff: Thank you Mrs. [or Mr.] Chief Justice, and may it please the court. We contend that the provisions of the No Child Left Behind (NCLB) Act violate the sovereign powers of the states as provided by the Tenth Amendment of the Constitution, which states that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Associate Justice 1: Let's be clear about something from the beginning. Spending for education is nowhere found in the enumerated powers of Congress. Is it your argument that education is a state function and that NCLB therefore violates the Tenth Amendment?

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THE SUPREME COURT HEARS A CASE

Associate Justice 2: Because, Article 1, Section 8, Clause 1 allows Congress to spend to promote the general welfare. Do you agree that spending for education falls within the scope of its enumerated powers under the general welfare clause?

Attorney for the Plaintiff: We agree that this is a proper function of Congress. So, that is not our concern relative to the Tenth Amendment. Rather, it is with the conditions....

Associate Justice 2: Your state willingly accepted funding for NCLB, is that not the case?

Chief Justice: Because, this is a proper incentive for states to comply with what Congress deems necessary under its enumerated powers.

Attorney for the Plaintiff: Yes, however the conditions attached by the Secretary of Education are....

Associate Justice 1: This Court has long held that Congress may attach conditions to its grants to the states. Congress offers the incentive of funding—with conditions. States can refuse the funding if they don't like the conditions.

Attorney for the Plaintiff: We contend that the way Secretary of Education Spellings has put NCLB into action goes beyond offering incentives. It...

Associate Justice 1: In what way?

Attorney for the Plaintiff: We contend in paragraph 192 of our complaint that the rules the Secretary has created to put NCLB into effect are too rigid and arbitrary. And the penalties for not complying with these rules are so harsh and unrelated to the conditions upon which Connecticut accepted the funds that they violate the Tenth Amendment.

Associate Justice 1: I repeat: In what way?

Attorney for the Plaintiff: In paragraph 67 of the complaint we point out that the consequences of opting out of the NCLB Act apparently are not limited to losing funds related to NCLB. The State of Utah formally posed the question of opting out of the requirements of the NCLB Act to the U.S. Department of Education (USDOE). In 2004, the USDOE responded that not only would Utah lose its NCLB funds, but it also would forfeit nearly twice that much in other funds. Unrelated pro-

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grams such as the special education funds under the Individuals with Disabilities Education Act, and preschool programs for handicapped children, would be negatively affected.

Chief Justice: Various laws, including NCLB, give the Secretary of Education broad powers to make sure states meet the goals intended in the law.

Attorney for the Plaintiff: True, but in *South Dakota v. Dole*, South Dakota contested a federal law providing that 5 percent of federal highway funds would be withheld from states that didn't adopt the minimum drinking age of 21. The majority court opinion stated that the conditions for accepting funding could not be "so coercive as to pass the point at which pressure turns into compulsion."

Associate Justice 2: But South Dakota lost that case. The majority of the court decided that the threat of withholding 5 percent of federal highway funds was a proper incentive, not compulsion.

Attorney for the Plaintiff: True. But *South Dakota v. Dole* established the principle that withholding money could possibly be more than an incentive—it could be compulsion. We think the threat of lost funding for *other* education programs if we opt out of NCLB is compulsion and therefore violates the sovereignty of the State of Connecticut protected by the Tenth Amendment.

Associate Justice 2: Hmmm. How much funding would be lost in Connecticut?

Attorney for the Plaintiff: Connecticut could lose as much as 5 percent of statewide education spending and 15 percent in the most economically disadvantaged school districts.

Chief Justice: Thank you for your argument before the Court. The case is submitted. The Court will now retire.

Supreme Court Marshal: All rise.