A Department Without a Clause

Why a cabinet agency for education sits atop two, three, or four layers of government that already do the job — and why the Constitution never authorized it.

AN ARGUMENT FOR CONSTITUTIONAL DEVOLUTION

Search the Constitution of the United States from its preamble to its final amendment and you will not find the word *education*, the word *school*, or the word *teacher*. This is not an oversight. The men who drafted Article I, Section 8 wrote down, item by item, the specific powers they were willing to lend a national government: to coin money, to raise armies, to establish post roads, to regulate commerce among the several states. Schooling was not on the list. It was left, deliberately and without ambiguity, to the states and to the people — which is precisely where, for the first 190 years of the Republic, it stayed.

The United States Department of Education is, by Washington's own standards, a young and small institution. It was carved out of the old Department of Health, Education, and Welfare and signed into existence in 1979, opening its doors in 1980. It is the smallest cabinet department by headcount, employing roughly 4,200 people — about two-tenths of one percent of the federal workforce. And yet its budget has grown from about $14 billion at its founding to roughly $268 billion in 2024. The question this brief raises is not whether those dollars are large. It is whether the department should exist at all — when every function it claims is already performed, often two or three times over, by governments closer to the child.

I — THE CONSTITUTIONAL QUESTION

The power that was never delegated

The argument begins not with budgets but with first principles. The federal government is a government of **enumerated powers**. It may do what the Constitution authorizes and nothing more. James Madison made the point plainly in *Federalist No. 45*: the powers delegated to the national government are "few and defined," while those remaining with the states are "numerous and indefinite," extending to all the ordinary concerns of the lives, liberties, and properties of the people. The schooling of children is the most ordinary of those concerns.

Lest there be doubt, the Founders wrote a closing instruction into the Bill of Rights. The Tenth Amendment provides 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.** As one leading constitutional reference puts it, the amendment "expresses the fundamental principle that undergirds the entire plan of the original Constitution" — that the national government possesses only the powers handed to it. Education was never handed over.

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>
> AMENDMENT X, RATIFIED DECEMBER 15, 1791

This was not a drafting convenience. The state ratifying conventions demanded it. North Carolina insisted that "each state in the union shall, respectively, retain every power, jurisdiction and right, which is not by this constitution delegated." New York said the same. The Tenth Amendment was the price of ratification — a written guarantee to a wary public that the new federal government would not quietly absorb the everyday governance of the states. A cabinet department superintending the nation's classrooms is exactly the absorption that guarantee was meant to prevent.

Modern doctrine reinforces the point from a second direction. Under the **anti-commandeering principle** — developed in *New York v. United States*, *Printz v. United States*, and *Murphy v. NCAA* — Congress may not compel a state to enact or administer a federal regulatory program. Yet a great deal of what the Department of Education does is to attach detailed federal conditions to money and thereby steer the curricula, testing regimes, and administrative practices of state systems it has no direct authority to command. The spending power becomes, in practice, a way to do indirectly what the Tenth Amendment forbids directly.

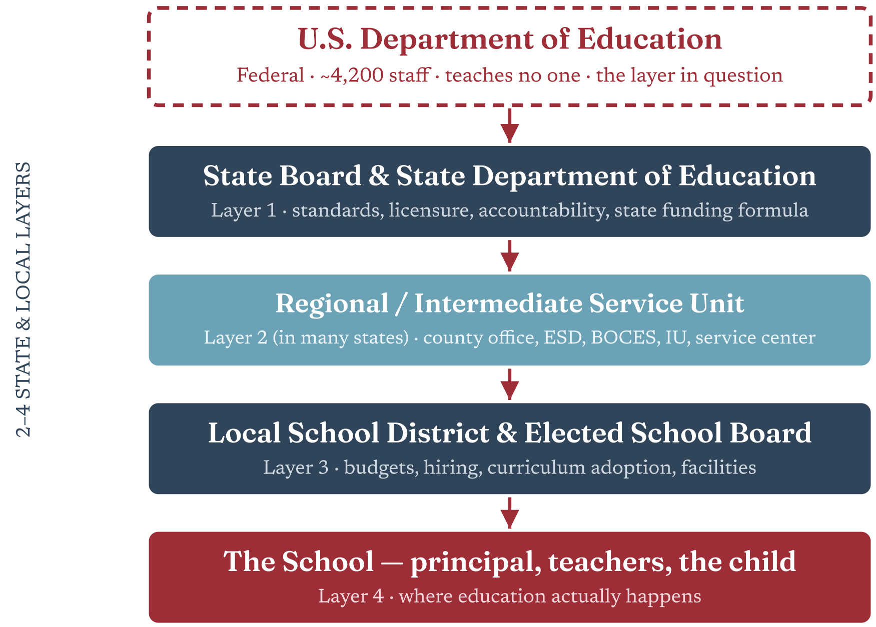
II — THE REDUNDANCY

One department, layered on a full state apparatus

Set the constitutional text aside for a moment and consider the machinery as it actually runs. The federal department does not teach a single child. It does not hire a teacher, set a bell schedule, choose a textbook, or repair a roof. Every one of those acts is performed by a government below it — and in most states, by *several* governments stacked one atop another. Before a single federal dollar or directive reaches a classroom, it passes through an apparatus that is already complete without it.

FIGURE 1 · THE ADMINISTRATIVE STACK

Four governments already stand between Washington and the child



Below the federal department sit a state board and state education agency; in many states a regional intermediate unit (county offices in California, Educational Service Districts in Washington, BOCES in New York, Intermediate Units in Pennsylvania, service centers in Texas and Ohio); then the local district with its elected school board; then the school itself. The federal layer is the only one that can be removed without leaving a single classroom unstaffed.

Each of those layers has its own statutory authority, its own taxing or appropriating power, its own administrators, and — crucially — its own accountability to a nearby public. The state board answers to the governor and legislature. The district answers to an elected school board your neighbors sit on. The federal department answers to no parent in particular and to every parent in general, which in practice means to neither. When four layers all claim to be improving the same fourth-grade reading class, the predictable result is not four times the help but four times the paperwork. The department's own grant programs require state and local agencies to produce plans, reports, and compliance audits that consume the time of the very educators they are meant to assist.

III – FOLLOW THE MONEY

The federal share is small; the federal leverage is not

If Washington were the primary funder of American schools, redundancy might at least buy something. It is not. State governments supply roughly 47 percent of public K–12 revenue and local governments roughly 45 percent — together about nine dollars in ten. The federal government, across all agencies, contributes a single-digit share in ordinary years, historically in the range of eight to ten percent and reaching the low teens only during recession and pandemic emergencies.

FIGURE 2 · WHO ACTUALLY PAYS FOR K–12

States and localities fund roughly nine of every ten dollars

Share of public elementary & secondary school revenue, recent non-emergency year.

Most education funding never originates in Washington. And of the federal money that does flow, roughly 90 percent is distributed by statutory formula — Title I for low-income schools, IDEA for special education — meaning the department functions largely as a pass-through that re-routes the nation's tax dollars back to the states it took them from, minus the cost of the bureaucracy that handled the round trip.

Here is the asymmetry at the heart of the case. The federal government pays a small minority of the bill but, through conditions attached to that minority, exerts influence far out of proportion to its share. A state that wishes to keep its eight or nine percent must comply with hundreds of pages of federal requirements governing the other ninety-odd percent it raised itself. The dollar is the lever; the regulation is the load it lifts. Strip away the department and the formula dollars could flow to states as block grants — or be left with the taxpayers who earned them — without the conditional apparatus that turns a junior funding partner into a senior rule-maker.

$14B → $268B	~8%	~90%
Department outlays, founding (1979) to 2024 — nominal dollars	Federal share of K–12 revenue in a normal year	Of federal K–12 money passed through by formula to states

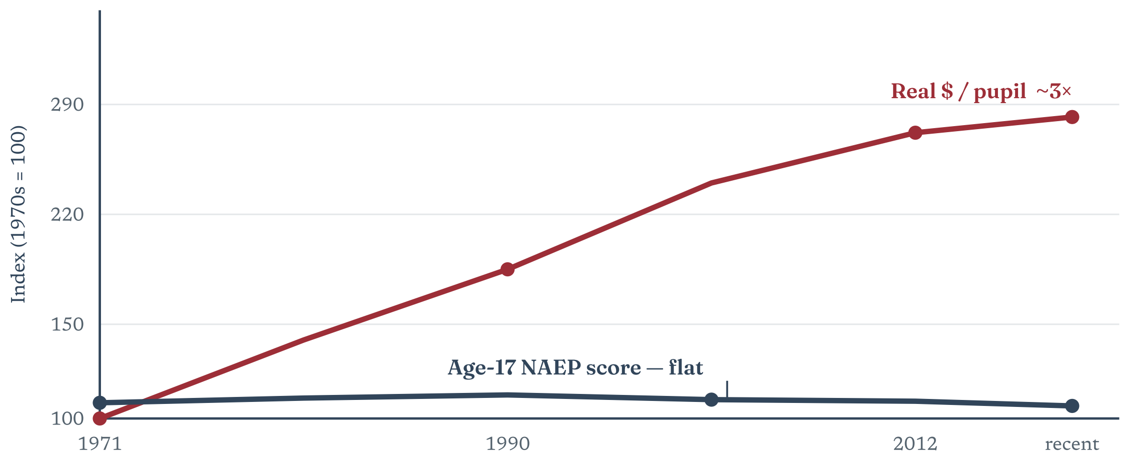
IV — THE RECORD

Spending soared; the results did not follow

A defender might concede the constitutional awkwardness and the redundancy but argue that the department earns its keep through results. The long-run evidence does not cooperate. Real, inflation-adjusted spending per pupil has roughly tripled since the early 1970s. Over the same half-century, the National Assessment of Educational Progress — the federal government's own long-term yardstick — shows the scores of seventeen-year-olds, students nearest the end of the K–12 system, essentially flat in both reading and mathematics. The most recent assessments show outright declines among nine- and thirteen-year-olds, with thirteen-year-olds losing ground in math and reading relative to a decade earlier.

FIGURE 3 · INPUTS VS. OUTCOMES

Per-pupil spending tripled; achievement near graduation barely moved



Illustrative indexed comparison (1970s = 100). Real per-pupil spending has roughly tripled across the period, while the long-term-trend NAEP scores of seventeen-year-olds – the cohort closest to leaving the system – have stayed close to their 1970s level, with recent declines among younger students. Exact values vary by year and series; the directional gap between rising inputs and stagnant outcomes is the point. Sources in the references below.

Correlation is not proof, and no honest brief pretends the department alone caused stagnation. But the burden of justification runs the other way. An agency claiming a national mandate over education, drawing a quarter-trillion dollars a year, ought to be able to point to a clear national return. After more than four decades, the headline measures it itself maintains show that the federal layer's arrival did not bend the curve. If the constitutional case and the redundancy case were the only arguments, the results case would still be enough to ask what, exactly, the department is for.

V – THE ADMINISTRATIVE SURGE

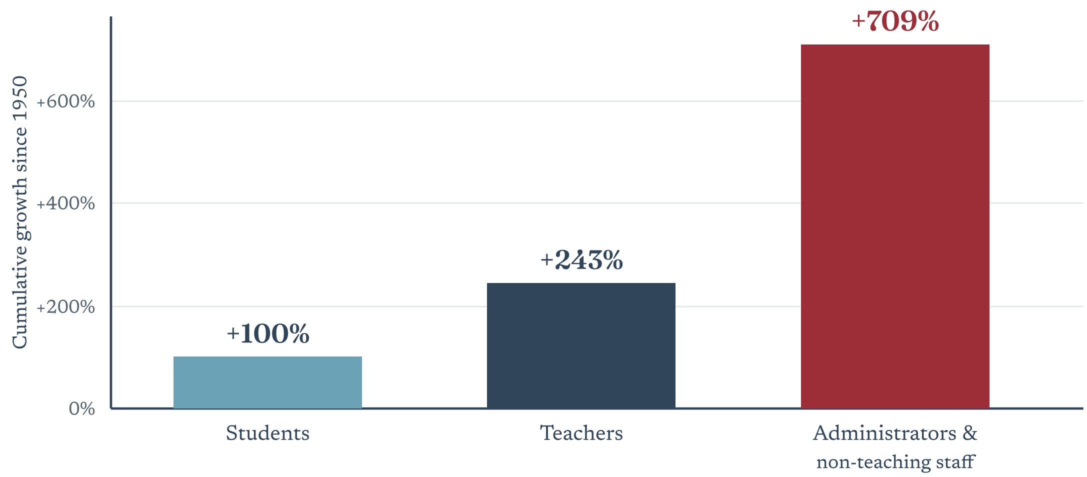
Where the rising dollars actually went

If real spending per pupil roughly tripled while results stood still, the natural question is where the money went. The answer, for the most part, is not the classroom. It flowed into administration — precisely the kind of non-teaching, supervisory headcount that every additional layer of government tends to multiply.

The numbers are stark. Drawing on the Department of Education's own statistics, the economist Benjamin Scafidi tracked public-school staffing from 1950 onward. Over that period the number of students roughly doubled, and the number of teachers grew faster still. But the number of administrators and other non-teaching staff exploded — rising more than seven times as fast as the student population it supposedly serves.

FIGURE 4 · THE ADMINISTRATIVE SURGE

Since 1950, non-teaching staff grew about seven times faster than students



Cumulative growth in U.S. public-school personnel and enrollment, 1950–2019, from NCES data as compiled by economist Benjamin Scafidi. Students rose about 100 percent and teachers about 243 percent, while administrators and other non-teaching staff rose roughly 709 percent. By recent counts, twenty-five states now employ more non-teaching staff than teachers.

A staffing pattern this lopsided is a choice, not a necessity. The consequences are concrete: by recent counts, roughly twenty-five states now employ more non-teaching personnel than classroom teachers, and in Virginia the ratio approached nearly two non-teachers for every teacher. Dollars that might have raised salaries or shrunk class sizes were absorbed instead by coordinators, compliance officers, and administrative staff — a great many of whose roles exist to manage the reporting, accountability, and grant-compliance requirements that cascade downward from higher levels of government.

This is where the constitutional argument and the practical one converge. Every layer of oversight manufactures work for the layer beneath it. A federal program with conditions attached requires a state office to interpret those conditions, which requires district staff to document compliance, which requires building-level personnel to gather the data. The federal department does not merely add its own roughly 4,200 employees; it helps seed administrative growth across the more than 13,000 school districts below it. Removing the top tier would not, on its own, reverse decades of local bloat — but it would switch off one of its most dependable engines.

In fairness, not all non-teaching staff are bureaucrats: the category folds in counselors, aides, nurses, and special-education support, much of it genuinely valuable. That caveat deserves to be stated plainly. But it cannot explain a growth rate seven times that of the student body, nor the steady, decades-long decline in the share of school employees who actually teach. A system already this top-heavy does not need a fifth supervisory layer added from Washington.

VI — THE INTERNATIONAL MIRROR

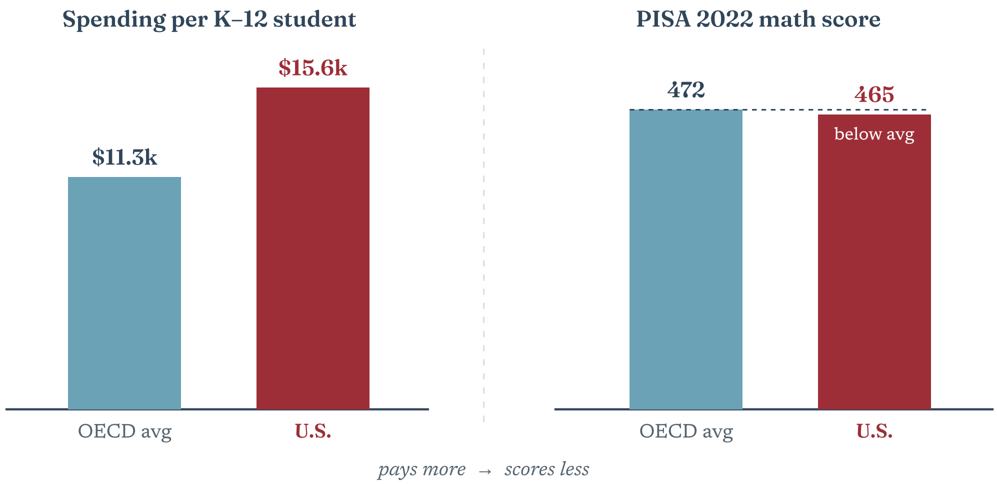
More money than almost anyone; middling results

A final defense of a national department rests on an unstated premise: that American schooling would improve with more resources and tighter central coordination. The international record cuts hard against it. The United States is not an under-funded system straining to catch up. It is one of the most lavishly funded education systems on earth — and its ordinary results show that money and central coordination are not the binding constraint.

Among the wealthy democracies of the OECD, the United States spends more per student than almost every peer. On recent comparable figures, American spending on primary and secondary schooling ran roughly 38 percent above the OECD average, placing the country near the very top of the table — trailing only tiny Luxembourg on some measures. Measured as a share of national income, the U.S. likewise devotes more to education than the typical OECD nation.

FIGURE 5 · THE INTERNATIONAL MIRROR

Near the top in spending, below the average in math



Left: U.S. spending per primary/secondary student was roughly 38 percent above the OECD average on recent comparable data (illustrative values, OECD *Education at a Glance* / NCES). Right: on PISA 2022, U.S. fifteen-year-olds averaged 465 in mathematics versus an OECD mean of 472, with twenty-five education systems scoring higher; the overall U.S. standing was around eighteenth. Bars shown from a zero baseline.

The returns do not track the outlay. On the 2022 Programme for International Student Assessment, which tests fifteen-year-olds across more than eighty systems, American students averaged 465 in mathematics against an OECD mean of 472 – below average, with twenty-five education systems scoring higher. U.S. results in reading and science were more creditable, sitting above the OECD average; but the overall standing hovered around eighteenth, well behind leaders such as Singapore, Estonia, Japan, and Korea — several of which spend considerably less per child.

The comparison is useful because it isolates the variable. If the United States lagged the world in spending, "spend more and coordinate nationally" would be a reasonable prescription, and a federal department a reasonable instrument for it. But the country already outspends nearly everyone, already operates a federal department, and still lands mid-pack in mathematics — the subject least dependent on language and culture. Whatever holds American education back, it is not a shortage of dollars or of national administrative capacity. The top-performing systems differ wildly in how they are governed; what they share is not a commanding national ministry stacked atop strong local ones, but quality and coherence where the teaching actually happens.

None of this proves that closing the department would, by itself, lift scores. It establishes something narrower but sufficient for the argument: the very premise used to justify a national education bureaucracy — that centralized funding and coordination are the missing ingredient — is not borne out by how the United States already compares with the world.

VII — THE ALTERNATIVE

What devolution actually looks like

Opponents of the department are sometimes caricatured as wanting to "abolish education." The opposite is true: the proposal is to return education to the governments that already run it, with fewer middlemen between the taxpayer and the teacher. A practical devolution would do three things. First, **convert the formula programs into clean block grants** — or direct revenue-sharing — so that Title I and special-education dollars reach states without the conditional rulemaking, letting elected state and local officials decide how to spend them. Second, **relocate the genuinely cross-state functions** that have a colorable federal basis — civil-rights enforcement under the Fourteenth Amendment, statistical collection, student-loan servicing — to the agencies built for those purposes, rather than housing them in a department whose core mission is local. Third, **let the states compete**: fifty laboratories trying different curricula, governance models, and funding mechanisms will surface what works faster than a single national office issuing uniform guidance to dissimilar communities.

The structure is already in place to absorb the change. Every state has a department of education and an elected board. Most have regional service units to handle economies of scale. All have local districts with taxing authority and elected oversight. The country educated itself this way, and reasonably well by world standards, for the better part of two centuries before 1980. Removing the federal tier does not remove a function; it removes a fourth or fifth copy of an administration the states already fund.

VIII – THE OTHER SIDE, FAIRLY STATED

Why reasonable people disagree

Intellectual honesty requires stating the strongest version of the opposing case, because the department's defenders are not without arguments. Three deserve a direct answer.

The constitutional answer. The Supreme Court has never held the Department of Education unconstitutional, and it is unlikely to. The accepted basis is not a hidden "education clause" but the *Spending Clause* and the General Welfare Clause: Congress may spend for the general welfare and may attach conditions to federal grants, a power upheld in *South Dakota v. Dole* so long as the conditions are clear, related to the purpose, and not unduly coercive. By this reasoning the department is constitutional precisely because it offers money rather than issues commands. The reply from this brief's side is that conditional spending on a scale that effectively dictates state policy is an end-run around the Tenth Amendment in substance even when it survives in form – but that is a contested reading, not a settled one.

The equity answer. Defenders argue that national programs exist to protect children whom local majorities have historically neglected – low-income students through Title I, students with disabilities through IDEA, and the civil-rights guarantees enforced by the Office for Civil Rights. Devolving without a federal floor, they warn, risks recreating the inequalities those programs were built to correct. This is the most serious objection, and any credible devolution plan must answer it – by preserving the funding and the civil-rights enforcement while shedding the surrounding bureaucracy, not by pretending the underlying need disappears.

The scale answer. Finally, defenders note that the department is genuinely small – the fewest employees of any cabinet agency – and that much of its budget is student financial aid, not K–12 micromanagement. A fair critic concedes this: the case against the department is less about its headcount than about its constitutional footing, its redundancy with state machinery, and its leverage relative to its modest funding share.

CONCLUSION

A layer the Republic can do without

The case against a federal Department of Education is not an argument against schooling, against funding, or against the protection of vulnerable children. It is an argument about *which government* should do those things – and the Constitution gave a clear answer before the question was ever asked. Education is not enumerated; the Tenth Amendment reserves what is not enumerated; and the states have built, at their own expense, the two, three, or four layers of administration that actually carry out the work. Above all of that sits a federal department that teaches no child, funds less than a tenth of the bill, routes most of its money straight back to the states, and presides over a half-century in which spending tripled while results near graduation stood still. A government of limited and enumerated powers can let that layer go. The classrooms will still open in the morning.

Sources & references

U.S. National Archives, *Bill of Rights* (transcript, Tenth Amendment text). archives.gov/founding-docs/bill-of-rights-transcript

Lawson & Schapiro / C.J. Cooper, interpretive essays on the Tenth Amendment, National Constitution Center & Heritage Guide to the Constitution. constitutioncenter.org; constitution.heritage.org

Constitution Annotated (CRS / Library of Congress), *Anti-Commandeering Doctrine* (New York v. United States; Printz v. United States; Murphy v. NCAA). constitution.congress.gov

North Carolina & New York ratification declarations (reserved-powers language), Avalon Project, Yale Law School. avalon.law.yale.edu

Pew Research Center, "What the data says about the U.S. Department of Education," Mar. 18, 2025 (4,209 employees; FY2024 net cost $218.4B; net outlays $267.9B). pewresearch.org

USAFacts, "What does the Department of Education do?" (established 1980; FY2024 spending ~$268B; ~4% of federal spending; ~0.2% of workforce). usafacts.org

Congressional Research Service, *State and Local Financing of Public Schools* (state 47.0%, local 44.8%, federal 8.3%; federal range 6.0–12.7%). everycrsreport.com

Bipartisan Policy Center, "Federal funding in K-12 education" (federal ~8–10%; ~90% of K-12 funds via formula grants). bipartisanpolicy.org

National Center for Education Statistics, *NAEP Long-Term Trend Assessment* (age 9, 13, 17 reading & math, 1970s–present). nationsreportcard.gov/ltt

Benjamin Scafidi, *The School Staffing Surge* (EdChoice/Friedman Foundation) and Heritage Foundation analysis of NCES data (1950–2019: students ~+100%, teachers ~+243%, administrators & non-teaching staff ~+709%; non-teachers outnumber teachers in ~25 states). files.eric.ed.gov; heritage.org

OECD, *PISA 2022 Results* & Country Note: United States (U.S. math 465 vs. OECD avg 472; reading 504; science 499; ~25 systems higher in math). gpseducation.oecd.org; NCES international comparisons, nces.ed.gov

OECD *Education at a Glance* and American Enterprise Institute analysis (U.S. per-student spending ~38% above the OECD average; among the highest in the OECD; ~5.4–5.6% of GDP vs. ~5.0% OECD). aei.org

Wikipedia / Department of Education Organization Act (formed Oct. 17, 1979; ~$14B founding budget; Mar. 20, 2025 executive order to wind down the department to the maximum extent allowed by law). en.wikipedia.org/wiki/United_States_Department_of_Education

South Dakota v. Dole, 483 U.S. 203 (1987) — conditional-spending doctrine (cited in the opposing-view section).

This brief presents the strongest version of the case for devolving federal education authority to the states, as its proponents would argue it, together with a fair statement of the principal counterarguments. It is an advocacy and educational document, not legal advice or a neutral judicial finding; the Department of Education has not been held unconstitutional by any court, and the constitutional questions discussed remain genuinely contested. Figures are drawn from the sources above; charts are illustrative and rounded.