



Written by [Joe Wolverton, II, J.D.](#) on June 28, 2015

## Delaware Passes Bill Allowing Opt Out of Common Core Mandated Tests

The Delaware legislature has passed a bill permitting parents to have their kids opt out of Common Core-mandated standardized tests.

The legislation — House Bill 50 — was introduced in March by state Representative John Kowalko, a Democrat, and state Senator David Lawson, a Republican.

After months of wrangling over the language and the scope of the proposal — debates that local media reports often became “a shouting match,” with the public gallery at the legislature filled to the rafters — the final compromise version of the two bills was approved by the state House of Representatives on June 23 by a vote of 31-5 and then a few days later the state senate followed suit, voting 15-6 to send the bill to the desk of Democratic Governor Jack Markell.

“I’m very happy it passed by such a wide margin,” Kowalko told NewsWorks. “It shows (the legislators) support parental rights.”

If the legislation is signed into law by the governor, beginning in August, a child’s legal guardian or parent may “opt out” of having the student take the state’s annual assessment test, which in Delaware bears the bureaucratically devised name of the Smarter Balanced Assessment System.

The current test was created based on the guidelines set out in the Common Core curriculum standards.

Common Core State Standards Initiative is the official name of the scholastic standards copyrighted by the Washington, D.C.-based National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO). Common Core has come under significant fire from parents, teachers, and school administrators across the country, who declare that the standards are a bid by the federal government to take over the education system. Additionally, privacy advocates have voiced concerns over the distribution to contractors of personally identifiable information about students and their families.

Senator Lawson talked to local media about the problems he sees with the Common Core test:

Lawson said he believes education has fallen short ever since the mandated tests. He said they’re not about assessing the students or the schools, but about giving money to the creators of the tests.

“Every test that comes into our school the vendor gets money and every time the test gets graded a





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vendor gets money,” Lawson said. “We use children as pawns to get what we want, meaning the State, and that is not right.”

At the last minute, lawmakers tried to tack several amendments to the final version of the bill, one of which expanded the “opt out” alternative to tests administered on the district level. Another amendment grants 11th graders the ability to refuse to take the assessment test without parental consent. Both these amendments originally failed, but the latter provision was eventually approved and become part of the bill sent to the governor’s desk.

The Delaware media report that Governor Markell is opposed to the measure, although he reportedly has not decided whether he will veto it. According to NewsWorks in Delaware:

“The Governor has not said whether he will sign the bill,” said Jonathon Dworkin, a spokesman for the governor, in an e-mail.

“He has made clear that he has concerns about what he’s heard from civil rights leaders and the business community, as well as about a potential loss of federal funds. He understands and agrees that there is too much testing, which is why we launched a statewide effort to review all testing done at the state and local levels and identify opportunities to reduce it.”

Should the governor decide to sign the bill (which seems unlikely), Delaware is likely to be punished financially by the federal government. As reported by DelawareOnline, the state department of education reports that the federal educrats have issued a “threat” to state officials. Should Delaware refuse to conform to the Common Core requirements, the federal Department of Education will withhold “as much as \$90 million.”

According to the Tenth Amendment Center, “The federal government has warned other states considering new opt-out legislation this year — including Illinois, Colorado and Oklahoma — but has not yet withheld any money.”

Last September, I wrote about the battle over Common Core in Oklahoma and the similar threat made by the Obama administration to withhold money from the Sooner State. That threat has yet to be carried out, however.

In Delaware, a majority of parents seem to support the bill. In fact, the state Parent Teacher Association (PTA) openly called for its passage.

PTA President Terri Hodges told DelawareOnline, “Smarter Balanced in its current form does not provide a true picture of student learning. “The results of tests are not available until the end of the year. That provides very little value to me as a parent or for a teacher.”

Hodges has opted her children out of the test.

All states should follow Delaware and opt out of Common Core and the rest of federal education regulations. They have this power.

The simple, undeniable fact is that the Constitution does not grant to the federal government any authority over education. Therefore, according to the Tenth Amendment, that power is retained by the states and the people.

This isn’t some marginal view of second-tier founding era writers. In fact, the Founders were universally agreed that state governments have the power to take this tack with regard to unconstitutional acts of the federal government.



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In *The Federalist*, No. 78, Alexander Hamilton explained the philosophy behind the principle:

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

James Madison, also writing in the *Federalist Papers*, recommended that state legislators, in order to prevent federal abridgment of fundamental liberties, should refuse “to co-operate with the officers of the Union.”

Speaking during the War of 1812, Daniel Webster said:

The operation of measures thus unconstitutional and illegal ought to be prevented by a resort to other measures which are both constitutional and legal. It will be the solemn duty of the State governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power. These are among the objects for which the State governments exist.

In the Kentucky Resolution of 1798, Thomas Jefferson wrote:

That the several States composing the United States of America, are not united on the principle of unlimited submission to their general government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes — delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force.

Nullification is a constitutionally sound method of checking federal usurpation and is quicker and less complicated than an attempt to have the law repealed by Congress or overturned by a future federal bench more respectful of the Constitution.

That said, there is no reason that concerned citizens should not use every weapon in the constitutional arsenal, including working to convince Congress to abolish every unconstitutional department of the federal government, including the Department of Education.

As of press time, the bill still sits on the governor’s desk.



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