

What's Wrong with the Crucial Communism Teaching Act



By Paul Engel

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- Should the history of Communism be taught in school?
- Is it within the powers of Congress to require the creation of such a curriculum?
- What is the impact of allowing Congress to dictate educational standards?

There are a lot of things I'd like to see done better in this country. On that list, education is right up near the top, but is it right to break the law to improve education? That's the question I asked myself when I read the text of H.R. 5349, The "Crucial Communism Teaching Act." You see, while teaching the truth about communism's history is important, should this bill pass Congress and be signed, it cannot be the supreme law of the land because it was not made pursuant to the Constitution of the United States.

Let's back up a little bit. On December 6th, 2024, the House passed H.R. 5349 327-62. As of this writing, it has been received by the Senate and referred to the Committee on Health, Education, Labor, and Pensions.

Purpose of the Bill

Let's start by looking at the purpose of this legislation.

SEC. 2. PURPOSES.

The purposes of this Act are the following:

(1) To help families, civic institutions, local communities, local educational agencies, high schools, and State educational agencies to prepare high school students to be civically responsible and knowledgeable adults.

[H.R. 5349 – 118th Congress](#)

First, let's notice that the entities Congress wants to help are primarily local. Yes, the list includes state education agencies, but families and civic institutions, along with high schools, are local entities. Why this is important will become evident a little later.

The goal of preparing our young people to be civilly responsible and knowledgeable adults is laudable. However, that does not justify this legislation. Neither does the Constitution vest in Congress the power to determine what needs to be taught in our high schools, as this legislation claims to do.

(2) To ensure that high school students in the United States—

(A) learn that communism has led to the deaths of over 100,000,000 victims worldwide;

(B) understand the dangers of communism and similar political ideologies; and

(C) understand that 1,500,000,000 people still suffer under communism.

[H.R. 5349 – 118th Congress](#)

Learning the truth about history is very important. As Santayana said:

“Those who cannot remember the past are condemned to repeat it.”

Santayana

That does not mean the federal government is the right entity to teach history. Since the Constitution does not vest in the United States the power to regulate education, Congress doesn't have the legal authority to make such a law.

Necessary and Proper

Per the law, Congress must include a "Constitutional Authority Statement" in all legislation. In other words, before a member of Congress, either House or Senate, introduces legislation, they must show that Congress actually has the authority to make such law. In the Constitutional Authority Statement for H.R. 5349, Representative Salazar wrote:

By Ms. SALAZAR:

H.R. 5349.

Congress has the power to enact this legislation pursuant to the following:

Article I Section 8 Clause 18

[H.R. 5349 – 118th Congress – Constitutional Authority Statement](#)

Does Article I, Section 8, Clause 18 vest in Congress the power to regulate education? The Constitution vests several powers in the Congress of the United States. Many of those powers are listed in Article I, Section 8. The last of the powers delegated to Congress in Article I, Section 8 comes in clause 18, the Necessary and Proper Clause, which states that Congress has the power:

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

[U.S. Constitution, Article I, Section 8](#), Clause 18

So for Congress to be able to make a law, it must be both necessary and proper for putting into execution a power vested by the Constitution in the government of the United States or one of its departments or officers. However, regulating education is not a power vested in any part of the government of the United States. It is therefore neither necessary nor proper for Congress to make a law to regulate education. In other words, not only is Ms. Salazar's Constitutional Authority Statement foolish, it also shows the ignorance of the Constitution not only of Ms. Salazar, but of the 33 other members of the House of Representatives who co-sponsored the legislation.

Allegedly Required Education

Since this legislation is unconstitutional, to claim it has the power to create curricula is a lie. Rather this legislation, should it be passed and signed, would allege the federal government take the following actions in violation of the law and the oath of office for every member of any government official who implemented it.

SEC. 3. DEVELOPMENT AND DISSEMINATION OF CIVIC EDUCATION CURRICULUM AND ORAL HISTORY RESOURCES.

The independent entity created under section 905(b)(1)(B) of the FRIENDSHIP Act (40 U.S.C. 8903 note; 107 Stat. 2331 note), also known as the ‘‘Victims of Communism Memorial Foundation’’, shall—

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This line confused me a bit. You see, 40 USC §8903 is entitled “Congressional authorization of commemorative works.” That’s right, Congress wants to ask an organization created for the purpose of creating monuments and other commemorative works to tell schools how to teach. Specifically, Congress wants your children taught about Communism by a group who’s sole purpose is:

(b) AUTHORIZATION OF MEMORIAL.—

(1) AUTHORIZATION.—

(A) The National Captive Nations Committee, Inc., is authorized to construct, maintain, and operate in the District of Columbia an appropriate international memorial to honor victims of communism.

(B) The National Captive Nations Committee, Inc., is encouraged to create an independent entity for the purposes of constructing, maintaining, and operating the memorial.

(C) Once created, this entity is encouraged and authorized, to the maximum extent practicable, to include as active participants organizations representing all groups that have suffered under communism.

[107 Stat §905\(b\)](#)

First of all, this National Captive Nations Committee, Inc. (apparently a federal corporation), is only authorized to construct, maintain, and operate a memorial within the District of Columbia. What logical reason does Ms. Salazar and Congress have to believe them capable of developing a civic education curriculum, as stated in the law:

(1) develop a civic education curriculum for high school students that—

(A) includes a comparative discussion of certain political ideologies, including communism and totalitarianism, that conflict with the principles of freedom and democracy that are essential to the founding of the United States;

(B) is accurate, relevant, and accessible, so as to promote the understanding of such political ideologies; and

(C) is compatible with a variety of courses, including social studies, government, history, and economics classes;

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I've developed curriculum; it is not an easy task. Even with my extensive knowledge of the topics at hand, turning that into something pedagogically (the art, science, or profession of teaching) was quite difficult. Are we to expect a group of people trained in building and operating monuments are up to the task? Where is the vetting of the facts and data that would be included in such curriculum? Where is the peer review? Where is anything resembling the art, science, or profession of teaching in this legislation?

(2) develop oral history resources that may be used alongside the curriculum described in paragraph (1) and that include personal stories, titled “Portraits in Patriotism”, from diverse individuals who—

(A) demonstrate civic-minded qualities;

(B) are victims of the political ideologies described in paragraph (1)(A); and

(C) are able to compare the political ideologies described in paragraph (1)(A) with the political ideology of the United States; and

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Again, “developing an oral history resource” is not a simple task. While such oral history is quite a powerful educational tool, it is a difficult task, since said history must also be vetted if it is to be a real educational value.

(3) engage with State and local educational leaders to assist high schools in using the curriculum described in paragraph (1) and the resources described in paragraph (2).

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Now, after all the work is done, Congress wants this group of

monument builders to help high schools to use their curriculum? I wonder, will any U.S. Dept. of Education dollars be used to entice and influence these schools to adopt this questionable curriculum?

Conclusion

Yes, I believe not only that education is important, but learning about history should be part of that education. I think that, when confronted by the evils committed by current and past communist regimes, most people would be horrified and avoid adopting such political ideas. However, is it within the powers of the United States to make that determination? No. Has the government of the United States been vested with the power to regulate or fund education? No. Would this legislation, should it be passed and signed by a President, be valid? Absolutely not! As the Supreme Court pointed out in the case *Norton v. Shelby County*:

An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed.

[Norton v. Shelby County :: 118 U.S. 425 \(1886\)](#)

Since Congress seems to value a civic education so much, perhaps it should start with its own? After all, the Constitutional Authority Statement for this legislation shows an absolute ignorance of the Necessary and Proper Clause of the United States Constitution. Perhaps people in glass houses shouldn't throw stones. After all, if the members of Congress, who not only write our legislation but took an oath or affirmation to support the Constitution of the United States, are so ignorant of not just the document as a whole, but the language vesting them with power, how can we take any civic education they create seriously?

Let's not forget that the National Captive Nations Committee,

Inc., that Congress wants to develop this questionable curriculum, will have costs that need to be paid. Can we expect Congress to embezzle more money from the American people to pay those expenses?

Again, I whole heartedly support the inclusion of civics in our educational systems. I simply wish Congress would educate itself about its legal powers beforehand. How can members of Congress claim to pull the spec out of the eye of our education system while a gigantic beam is wedged in theirs?

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E-Mail Paul Engel: paul@constitutionstudy.com