EXECUTIVE SUMMARY
OF THE COMMON CORE CASE
AGAINST THE STATE OF IDAHO

The Common Core Case is a taxpayer lawsuit against the Governor, State Superintendent of Schools and President of the State School Board, as members of the Executive branch of the State of Idaho. The suit seeks a declaratory judgment and injunction preventing the State of Idaho from continuing to pay membership and student assessment testing fees to the Smarter Balanced Assessment Consortium, (SBAC), and requiring the State of Idaho to withdraw from SBAC, on the grounds that it is an unconstitutional compact between States, in violation of Article I, §10 of the U.S. Constitution. The expenditure of Idaho taxpayer funds in support of that entity therefore constitutes an illegal use of those funds under Article I, §3 of the Idaho Constitution.

The lawsuit is grounded in several parts of the Constitution. The Due Process Clause of the 14th Amendment of the U.S. Constitution guarantees the right of parents to direct and control the care, custody and education of their children. Historically, administration of elementary and secondary schools, including decision making as to curriculum, has been reserved to the States.

In the legislation creating the U.S. Department of Education, the U.S. Congress specifically prohibited that agency from involvement in the decision-making process of parents and State and local governments in the administration and curriculums of elementary and secondary education within a State's borders. In legislation spanning 50 years, Congress has repeatedly stated that the Federal Government does not have a proper role in determining curriculums or in the administration of state and local school systems.

The Elementary and Secondary Education Act of 1965 ("ESEA"), as amended by the No Child Left Behind Act of 2001 ("NCLB"), 20 U.S.C. §§ 6301 *et. seq.*, provides that:

> "[n]othing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State or local education agency, or school's curriculum, program of instruction, or allocation of State or local resources." 20 U.S.C. § 7907(a).

In 2009, when $4.35 billion in stimulus money was made available to the U.S. Dept. of Education, bureaucrats in that agency formed a plan to side-step Congress' prohibition on interference with State control of public schools, by making the States do their bidding. The Dept. did so by conditioning a States' receipt of education grant money under the Race to the Top program (RTTP) to the State's agreement to join a consortium of states and adopt the Common Core Standards.

The Dept. of Education offered RTTP grants to the States on the condition that the States band together as a "consortium" with the agreement that they would adopt uniform national educational standards in English Language Arts and Mathematics, i.e. the Common Core.

This use of RTTP funds violated the Elementary and Secondary Education Act. The ESEA expressly prohibits the Department of Education from using funds under the statute "to endorse, approve, or sanction any curriculum designed to be used in an elementary school or secondary school." 20 U.S.C. §7907(c)(1). The ESEA further provides that "no State shall be required to have academic content or student academic achievement standards approved or certified by the Federal Government, in order to receive assistance under this Act." 20 U.S.C. § 7907(c)(1).

In 2010, the State of Washington applied for grant money from the Dept. of Education to implement the Common Core Standards, on behalf of a private consortium of these states, including Idaho. The consortium was called the "Smarter Balanced Assessment Consortium" or SBAC. The Dept. of Education gave SBAC a $160,000,000 grant to implement the Common Core Standards. The grant money ran out in 2014, and for that and subsequent years, member states, including Idaho, pay SBAC fees to implement the Common Core Standards. SBAC currently has 18 member states, including Idaho.

The State of Idaho became a member of SBAC through the agreement of Governor Otter former Superintendent of Schools, Tom Luna, and Richard Westerberg, former President of the State School Board. Idaho's SBAC agreement requires the state to give up sovereignty over education decisions to the SBAC Board, restricts Idaho's right to withdraw from the consortium, and obligates Idaho to pay SBAC fees for membership and assessment testing. This year, Idaho will pay SBAC $2.7 million in fees.

SBAC has its own governing board that makes decisions binding on all member states with regard to curriculums and assessment testing of students within those states. The governing board consists of representatives of some, but not all, of the member states. None of the SBAC decisions are subject to review by state legislatures or approval by school officials within the member states. SBAC works in concert with the Department of Education with regard to the content and implementation of the Common Core standards in the member states.

Congress never consented to the formation of SBAC, or to the involvement of the Department of Education in the State's decision making process in the administration of elementary and secondary schools within their borders or the content of curriculums. In fact, as noted above, Congress has specifically prohibited the Department from such involvement.

Article I, §10, cl.3 of the U.S. Constitution, the "Compact Clause," prohibits States from entering into a consortium for the purpose of creating common policies and practices that are binding on those states, unless Congress consents to such a consortium. It states in pertinent part:

> **"No State shall, without the Consent of Congress,... enter into any Agreement or Compact with another State...."**

The Supreme Court has held that an interstate compact is unconstitutional if it is formed without the consent of Congress, and if its effect is to encroach upon the supremacy of the U.S. Government. Since Congress has declared that the Federal Government has no role under the Constitution in a State's decision-making over the administration and curriculum of state and

local schools, and since the 14th Amendment secures a parent's Constitutional right to control the care, custody and education of his children, RTTP grants issued by the U.S. Department of Education and conditioned on adoption of national curriculum standards violated the Spending Powers of the U.S. Government.

Article I, §8, cl. 1 of the U.S. Constitution limits the spending power of the federal government to certain enumerated powers. Education is not just missing from those enumerated powers. Congress has legislatively declared that it is reserved to the States. The 10th Amendment to the U.S. Constitution states that powers not granted to the federal government are reserved to the States or the people.

The Department of Education, has co-opted the States to create a uniform national educational policy through SBAC, an illegal interstate consortium. The States' actions violate the Compact Clause because (1) Congress did not consent to the formation of SBAC, and (2) the goal of SBAC is to create a national curriculum and subvert State sovereignty in educational administration and curriculum.i.e. the Common Core, contrary to the will of Congress.

EXECUTIVE SUMMARY – BULLET POINTS
THE COMMON CORE CASE
AGAINST THE STATE OF IDAHO

1. Congress has declared that the Federal Government is prohibited from directing or controlling the administration of State and Local education, including curriculum and programs of instruction.

2. The Department of Education side-stepped Congress' prohibition by making eligibility for $4.3 billion in education grants conditional on a State's agreement to adopt uniform national education standards, i.e. the Common Core.

3. As a further condition to receive federal grant money, the Department required the States to create an interstate consortium to implement the Common Core Standards. That consortium was SBAC ("Smarter Balanced Assessment Consortium"), created with $160,000,000 grant money from the Department of Education.

4. Idaho joined SBAC in 2010 in order to qualify for Race to the Top grant money.

5. Idaho's SBAC membership agreement resulted in Idaho giving up sovereignty in decisions about education policy and curriculum to the SBAC Governing Board.

6. Idaho pays SBAC yearly fees from taxpayer funds for membership and for student assessment testing.

7. Idaho's membership in SBAC is illegal because it was formed in violation of the Compact Clause of the U.S. Constitution, which provides: "**No State shall, without the Consent of Congress,...enter into any Agreement or Compact with another State....**"

8. Idaho taxpayers have standing to complaint about the illegal use of taxpayer funds by the State. Since Idaho's membership in SBAC is unconstitutional, its payment of taxpayer funds to that entity is likewise illegal and subject to injunction by taxpayers.