



## **School Choice Fights Will Shift to Regulation Florida's current political debates offer an early look into the struggles other states will face soon.**

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There is still some debate about whether choice in K-12 education is a worthy goal, but by this point public opinion [has for several years solidly supported](#) the idea. For pete's sake, even Al Jazeera America [has pointed out](#) the ludicrous, oppressive consequences of ZIP code education. Combine that with left-right political coalitions [supporting at least charters and even vouchers](#), and it seems likely that school choice in some form will continue to expand in the United States. That's a significant statement, because it wasn't so just three or four years ago, before 2011's "year of school choice" broke open 13 new private-school choice states.

It's also clear, however, that the school choice fight will increasingly shift to regulation. The question is no longer, "Should families have education choices?" It is, "What does 'choice' mean?" As the abortion war shows, "choice" is such an attractive-sounding concept that it is highly susceptible to political manipulation. If a word polls well, politicians will use it to describe their policies, even if that requires forcing 800-pound legislation into a linguistic miniskirt.

Because it fostered school choice early, Florida's current political debates offer an early look into the struggles other states will face soon. Florida cannot have vouchers except for special-needs students, thanks to [an extremely restrictive, anti-Catholic-prejudiced](#) state constitution. So in Florida, private school choice is largely exercised through tax-credit scholarships, which function entirely with private money. Businesses and individuals donate to nonprofits that distribute the money to children who want to attend private schools. The donors then receive a credit on their state taxes. Win for donors, win for kids, and win for society because Florida data shows the predominantly poor kids enrolled in the program [significantly improve their academic achievement](#).

### **Florida Leads the Way**

This spring, choice advocates brought the legislature numbers showing that for every two kids who got a scholarship, one child was rejected due to lack of funds. That means of the approximately 90,000 applicants, 60,000 got scholarships in 2013-14. There likely would have

been more applicants, but the organization that runs the scholarship program closed applications at 90,000 to prevent giving people false hope. Why are so many kids shut out? The state has capped cumulative donations and, although [the cap increases the year after donations hit 90 percent](#) of the cap, the increases have been too slow to keep up with demand. This year, for example, the cap should lift enough to allow approximately 76,731 kids to participate, using the [current scholarship average and donation limit](#) to multiply out. Already, however, [more than 100,000 kids have applied](#) for this fall, with a month left in the application window.

In short, tens of thousands of needy kids have been and will continue to be denied entrance to this popular and successful program. It sounds like a slam-dunk case for Florida's ostensibly school-choice-supporting lawmakers to increase the program's capacity, but the most lawmakers managed was to increase regulations and expand eligibility to some middle-class folks. So now even more kids can apply for an already too-restricted number of seats.

Instead of responding to parents' expression of their kids' needs, lawmakers fulfilled their personal needs to bluster and micromanage. Florida Senate President Don Gaetz decided to target a feature that has propelled the program's success. He proposed to measure private schools that accept the scholarships not on tests that match their curriculum and ethos but on the same tests that make public schools what they are. Gaetz called his attempt to restrict freedom another weasel word: "accountability." And it essentially torpedoed this year's attempt to expand choice. The conversation about expansion devolved into fights about "accountability," giving an opening for anti-choice lobbyists and a slew of negative press, and delaying any hope of passing a bill until the rather unhelpful eligibility expansion passed the last day of session. It's now on Gov. Rick Scott's desk.

## **'Til Death Do Us Part**

What happened in Florida is likely to repeat nationwide very soon. It's already happening with charter schools, another form of school choice that is now coming of age. As [Rick Hess and Michael McShane pointed out](#) recently, Congressional Republicans are attempting a similar "lovingly regulate to death" tack with charters now that school choice has become a bandwagon:

In New Orleans, the city with the largest charter school market share, charter schools have been pressured to adopt a standardized discipline system, and a standardized enrollment procedure. That could be a big problem for "no excuses" schools with strict discipline and other innovative schools if they aren't able to select classes with the best opportunity to benefit from their unique approaches. In Washington D.C. advocates for "controlled choice" have put forward plans to engineer the racial and economic makeup of schools through the use of "weighted" admissions lotteries and de facto quotas.

In each of these cases, well intentioned central planners have tried to bring about their particular idea of efficiency, effectiveness, and fairness. But regulations tend to be a one way ratchet. Once in place, it is usually impossible to do away with them. These changes risk remaking the charter school as a new version of the very system it is trying to replace. In short, if this regulatory impulse is left unchecked, it's all too possible that the high achieving charter school of today could become the failing public school of tomorrow.

With friends like this, who needs enemies? It appears lawmakers are so exuberant to demonstrate their love for school “choice” that they want to clutch it to their hearts and squeeze out its life.

Republicans have made “accountability” a cornerstone of their approach to education at least since President Ronald Reagan’s “A Nation At Risk” report demonstrated the futility of bureaucratizing education, which has been happening in the United States since approximately Reconstruction. It’s a reasonable approach only if you accept the premise of centrally administered education. That approach places the state as the responsible party, rather than individuals, akin to how government-backed loans put us all on the hook rather than the people who contract the loans. This shifts accountability from the individuals making a certain decision to everyone who can be coerced into paying for it. This is why government-style “accountability” often invokes [the tragedy of the commons](#). In other words, when everybody is “accountable,” no one is.

So Gaetz insisted that without subjecting private schools’ curriculum to measurement by state-sanctioned tests, they would not be “accountable” to the taxpayers (who are not even sending these schools money since Florida’s program is completely private). In other words, he wants families to have education choices, but only the education choices he thinks they should have. Florida parents know who that sounds like—the state teachers union, Parent-Teacher Association, and other naggy, mother-in-law-like micromanagers.

In a riveting speech to the state legislature this spring, Florida mother Chanae Jackson-Baker, whose children receive tax-credit scholarships, [explained the importance](#) of true education freedom.

I don’t know about anybody else’s private school, but the one my children attend, they took the Stanford 10 [test], which is actually a lot better ... than the FCAT [Florida’s state test]. ... When my son took the FCAT in third grade, he was doing horrible. He was doing horrible because he had auditory processing disorder. He has dyslexia. He’s on the autism spectrum... I hate to bash public school because I was the parent on SAC committee and PTO before I gave up on public school ... [but] he left public school reading at third grade, four-month level in sixth grade. He’s now in seventh grade and he’s on level. I never thought I’d see my son read a book...

So I’m willing to battle in order to give my kids an education. I’m here to let people know, we have to give our children choices. Even with me, it didn’t just inspire my children. When I saw that they could do anything, I saw that I can do anything. I graduated with my bachelor’s in psychology this year. That’s one thing I never thought I would be able to do. ...

## **Shocker: Regulations Strangle Choice**

Other states with private school choice are finding—surprise, surprise—that regulations such as testing restrict the opportunities available to families, which compromises the entire goal of school choice. Private schools just aren’t that willing to participate if that requires shedding their identity. If private schools have to fill out public school paperwork and follow public school

rules, why exist? In Indiana and Louisiana, for example, despite much-vaunted statewide voucher programs, [only a third of private schools participate](#).

Indiana's voucher program is also [about to face supply shortages](#). State lawmakers think maybe giving them more money will make the noose more comfortable. It's not the money, though, because if it were private schools would be all in for choice programs that send more their way. It's the strings. Here's proof: In Arizona, which has few regulations—certainly no testing mandate—on its tax-credit scholarships, [every private school but three participates](#). To this point, [71 percent of Florida's private schools](#) have participated in its scholarships. Florida's program is a little clunkier than Arizona's, but not as bad as Indiana and Louisiana's. It currently requires schools to administer their choice of several nationally-normed tests, not just the state test.

Testing may be the most important point of resistance for private schools and parents, according to several surveys. [One in Missouri](#), for example, found that 49 percent of private schools in Kansas City and St. Louis would not participate in a school choice program that required them to use state tests. Only 23 percent of parents say test scores are a prime criterion they use to judge school quality. Another [national survey of parents](#) found that fewer than 10 percent consider test scores one of their top five reasons for choosing a private school. Even [a Fordham Institute report](#) hoping to quell such concerns found that a quarter of private schools consider state testing requirements extremely important in deciding whether to participate in a choice program. That may have been artificially reduced because Indiana and Ohio require private schools to administer state tests to be accredited. That survey also found that the top concern for schools that didn't participate (at 58 percent) was “amount of paperwork required.”

It gets worse. As the Cato Institute's [Andrew Coulson pointed out](#), “The problem is not that private schools *won't* participate in heavily regulated school choice programs. The problem is that they *will*. Hold-outs will be in the minority, and will gradually be driven out of business by their subsidized counterparts due to the uneven fiscal playing field (much as America's once-dominant private schools were marginalized by the spread of “free” state-run schools).” To paraphrase C.S. Lewis's Professor Kirke, “Don't they teach econ 101 in school?” Apparently not. Either that or lawmakers desperately want to forget the laws of reality.

Choice is at odds with government-driven “accountability” because the former makes you responsible for your choice. In other words, choice ultimately serves as its own accountability. When people are truly free to choose, they are free to choose badly. If people can't choose what other people think are bad things, they aren't free. And of what moral and personal worth is deciding between different paths other people get to set out for you, anyway? That sort of arrangement is the one between a caretaker and child, which is inappropriate for a country where citizens have the birthright of self-government. So-called “accountability” is the opposite way to run systems, and it means that some people get to pick what choices are available to others. Unfortunately, this also makes everyone pay for one person's bad choice. Socrates would call that injustice.

