

## Expanding School Choice: Making Education More Accessible or Bureaucratic Boondoggle?

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The Trump administration's proposal would make Catholic schooling more accessible, but it raises concerns about federal overreach.

Washington — Education Secretary Betsy DeVos introduced a proposal last month, aimed at expanding school choice, that would provide “a \$5-billion annual federal tax credit for voluntary donations to state-based scholarship programs.”

While some groups welcome the proposal as a way to help make Catholic and private schools more accessible to lower-income families, others have raised questions about its long-term effects on the federal government's influence on education.

The “Education Freedom Scholarships” plan has been introduced in both the House and Senate by Rep. Bradley Byrne, R-Ala., and Sen. Ted Cruz, R-Texas. The Department of Education (DOE) explained that these scholarships “will be funded through taxpayers' voluntary contributions to state-identified Scholarship-Granting Organizations (SGOs),” and the taxpayers who contribute will get a “non-refundable, dollar-for-dollar federal tax credit.”

They emphasized that the scholarship program “will not create a new federal education program” but “instead will allow states to decide whether to participate and how to select eligible students, education providers and allowable education expenses.”

“The key element of the proposal is freedom for all involved,” DeVos said in a statement announcing the program. “Students, families, teachers, schools, states — all can participate, if they choose, and do so in the ways that work best for them. The major shift is that a student's needs and preferences, not their address or family income, will determine the type and quality of education they can pursue.”

According to the DOE, states could put the program funding toward an array of educational opportunities for students, including private and home education, special-education services and therapies, summer and after-school education programs, and tutoring for students in low-performing schools.

However, several prominent organizations that advocate for school choice have come out in opposition to the proposal, raising concerns over the consequences of this kind of federal involvement in state school-choice programs.

Constitutional and State Concerns

Lindsey Burke, the director of the Center for Education Policy at the Heritage Foundation, told the Register that, while the Trump administration's support for school choice is welcome, "establishing a nationwide federal tax credit scholarship program goes in the wrong direction: It would grow, rather than shrink, federal intervention in K-12 education."

Burke explained that the tax credit could incentivize a certain kind of giving that could hurt state programs.

"A dollar-for-dollar tax credit at the federal level could also mean donors give first to the more generous federal program (most state programs are not dollar-for-dollar)," she said, "and then, if they still have funding available, contribute to their state program. That approach could lead to an atrophy of state programs, which could be to the detriment of school choice long term."

Burke also raised a jurisdictional issue with the proposal, arguing that school-choice initiatives should be left to the states, as the federal government does not have the constitutional authority to enact it.

"Federal proposals to advance education choice should be confined to those student groups and areas over which the federal government has jurisdiction: students from military families, students living in Washington, D.C., and Native American students on tribal lands," she argued.

Burke acknowledged that "the proposal in its current form does not give the federal government any new regulatory authority," but said that "policymakers should consider how this program (and the private schools using it) might fare under a future administration less friendly to school choice."

Neal McCluskey, the director of the Cato Institute's Center for Educational Freedom, outlined some similar concerns with the proposal.

He wrote that DeVos is seeking to avoid the problem of federal control in education by "sticking with tax credits instead of vouchers and letting states opt in." However, McCluskey argued, "not only is this unconstitutional — taxes are authorized to execute specific, enumerated powers, not to lightly engineer state policy — it won't, ultimately, prevent encroaching federal control."

"If enacted, the credit would spur people to demand their states participate, and as more schools benefited from federally connected scholarships, all schools would be financially pressured to use them," he explained. "But the federal government will have the power to decide which state programs are or are not eligible, and on what grounds."

"School choice is great, and DeVos, Cruz and Byrne recognize that," he emphasized. "But as with so many policies, we cannot let our hearts overcome either our adherence to the rule of law — the Constitution — or make us underestimate the potentially crushing unintended consequences that the product of our pure motives may have."

### Protections Against Federal Encroachment

Byrne, the sponsor of the measure in the House, responded to these concerns, telling the Register that he and others have worked carefully to prevent the proposal from leading to federal overreach.

“The criticism of the bill has generally focused on the possibility that a future administration might attempt to use the law as a hook to regulate education providers,” he said. “However, preventing this from happening was one of the most important goals in drafting the legislation.”

Byrne’s office “worked closely with the Department of Education, Senator Cruz and a broad range of stakeholders, including the USCCB (U.S. Conference of Catholic Bishops), to ensure that we had the strongest possible protections against any federal encroachment into the school-choice movement.”

He emphasized that his bill “gives no regulatory authority to the Department of Education” and “tasks the states, not the federal government, with determining what Scholarship-Granting Organizations (SGOs) are eligible.”

“In fact, the only responsibility for the Department of Education under the bill is to maintain a web portal, in coordination with the Department of Treasury, naming eligible SGOs that the states have chosen,” Byrne pointed out.

“The legislation also specifically states that ‘[n]othing in this act shall be construed to permit, allow, encourage or authorize any federal control over any aspect of any private, religious or home-education provider, whether or not a home-education provider is treated as a private school or home school under state law,’” he added, concluding that “the concerns that this will lead to new federal control over the school-choice movement are simply unfounded.”

## Catholic Support

Bishop Michael Barber of Oakland, California, the chairman of the U.S. bishops’ Committee on Catholic Education, wrote to Cruz and Byrne to thank them for introducing the bill, saying, “The Catholic Church teaches that parents ... have the right to select the best education environment for their children.” He added that, “since 1925, parental rights in education has been the law of the land in the United States,” referencing a Supreme Court decision upholding the right of parents to send their children to private or religious schools.

Presentation Sister Dale McDonald, the director of public policy and educational research at the National Catholic Educational Association, told the Register why her organization supports the proposal.

“At NCEA, we have supported what we call full and fair parental choice: that all options should be on the table in choice programs as a justice issue,” she said, adding “that parents who are well off can move to neighborhoods with better schools whereas children whose families are economically disadvantaged shouldn’t be confined to another cycle of ineffective schooling. So we’re very pleased with it.”

As to the concerns raised about federal overreach, Sister Dale emphasized the voluntary aspect of the proposal.

“There’s nothing proscriptive in it — it simply says that the state would create its own program,” she contended. “We’ve got 29 states with various choice programs around the country, and they’re all voluntary. You can participate or not participate as a student or as a school, and the

way we see this bill, it would continue the same idea of 'state creates program,' which is the state's right to do."

Sister Dale did agree that there could be potential issues with implementing the proposal down the road, but she anticipated them at the state level.

"The real issue would be: What would a state program look like?" she said. "That's where we would be paying attention, at the state level, to: What might they try to put into a program at the state level that would make it impossible for our schools to participate?"