EducationNext

For the Love of Choice, Don't Federalize It

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I get the temptation: If you think something is good and you can give it to lots of people in one fell swoop, you will *really* want to do that. School choice is definitely good, empowering families by upending a system in which education providers are more powerfully incentivized to influence politicians than to satisfy parents. But let us not rush in where the Founders feared to tread.

The case for federalism

The first question facing any federal proposal should be whether it is allowed by the Constitution. That may seem quaint or quixotic, but it is fundamental: the Constitution gives Washington specifically enumerated powers, and that is all. Governing education, aside from enforcing civil rights legislation and regulating schooling on federal lands, is not among them.

There are sound practical reasons for respecting these constitutional limits. First and foremost, federalism defends against centralized control of America's diverse communities and people. In addition, when sub-national units, such as states and school districts, try something new, the damage is isolated if a plan does not work; if it succeeds, others are free to replicate it and adapt it to their needs.

But isn't school choice fundamentally different from and better than federalism? Doesn't it inherently move power from higher, more centralized levels to the lowest levels possible: children and families?

It does, and that is a tremendous strength. But as we've learned from roughly a quarter-century of experience with state-level school choice programs and federal higher education policy, any connection to the federal government can have unintended consequences for choice, including incentivizing government control of the schools to which public money flows. That control can diminish and even eliminate the core value of school choice: the ability to choose something truly *different*.

Federal money means federal regulation

We should protect federalism both to ensure that differing methods of delivering choice can be tried without having to compete against a choice monopolist—an oxymoronic but all-too-real concept when discussing the feds—and to prevent national homogenization of private schools via the kinds of regulations that inevitably get attached to federal dough.

On the first major concern—avoiding a monopoly choice system—I believe the most meaningful form of accountability is having to satisfy parents. But while I oppose most rules and regulations on schools participating in choice programs, I would never declare that my preferred amount of regulation is always and everywhere incontrovertibly right. Research does not make a slam-dunk case for any specific system. Research is limited, as are our minds. The way we learn what's best now and continue to discover methods that may be better is to allow free action on a level playing field. Federalism helps us do just that.

On the second point—federal "help" rendering once-autonomous private institutions increasingly homogenous—all major forms of choice are susceptible to government control to varying degrees. The danger is far greater when that control comes from Washington, because you can't even move to another state to escape it.

Consider: Charter schools are public schools, which means that they have to administer and be evaluated using state tests, which in turn encourages the schools to use curricula similar to those of traditional public schools. And reports of "wild west" chartering notwithstanding, you can forget about charters charging prices, or controlling their own admissions, or implementing lots of other variables that make a choice a *choice*.

Many private school voucher programs are also heavily regulated, rendering private schools cramped alternatives, at best. In Milwaukee, home of the first modern voucher program, participating schools must administer state tests, allow students to opt out of religious programs, and meet teacher qualification rules. In Louisiana—where we've seen the first negative, lottery-based study results, quite possibly because the program's heavy-handed regulatory approach led the strongest private schools to sit out—participating schools must have open admissions for voucher holders, administer state exams, and maintain a curriculum roughly comparable to that of the public schools.

But what about tax credits?

Scholarship tax credits and education savings accounts appear to attract less regulation. Andrew Coulson compared vouchers and tax credits empirically and found that credits are less prone to regulation, probably because no one has tax dollars taken away and sent to someone else. Education savings accounts are too new to know for sure, but the hope is that they will avoid onerous rules because funds can be spent on multiple uses.

But even these seemingly less-regulation-prone choice mechanisms can come with controls. For instance, schools taking kids with scholarships funded through Florida's tax credit program must be approved by the state, meet teacher-qualification requirements, and show gains on either state exams or nationally norm-referenced tests. Students in Tennessee's Individualized Education Account Program must take either a nationally norm-referenced test chosen by the state department of education or the state exam.

Even expanding tax-preferred 529 plans, which currently only apply to higher education expenses, to include K–12 education expenses could threaten schools' autonomy. Any college on which a student wants to spend 529 account money must be accredited, and requiring that colleges be accredited to take students with federal aid is a major reason that we do not see more postsecondary education innovation. Indeed, accreditation is the primary way Washington regulates colleges; a student can only use federal aid at an accredited school, and the federal government regulates the accreditors.

A dangerous cycle of aid-driven price inflation

But what if the proposed numbers of federal choice dollars, potential beneficiaries, and participating schools were small? Wouldn't that allay concerns about Washington dictating terms to private schools nationwide?

Well, not exactly. The numbers may start small, but the allure, and eventual necessity, of getting those dollars would likely grow quickly. Once a single group starts getting aid, others naturally demand the same thing. Looking further at higher education is instructive.

In 1970–71, there were only a relative handful of federal student aid programs, and total aid, including loans, amounted to just $16.5 billion in 2015 dollars. The number of programs has since nearly doubled, and the total amount of federal aid in the 2015–16 academic year was $140.1 billion. Readily available data on the share of students receiving federal aid only goes back to the 1992–1993 academic year, but the growth in aid dependence is also clear: In 1992–93, 45 percent of full-time, full-year undergraduates used some form of federal aid. By 2011–12, that had jumped to 73 percent.

What about federal higher education tax incentives? Though nonexistent until the 1996–97 school year, more than $18 billion in tax benefits were claimed in 2015–16.

Aid money got baked into the system, and now colleges can no longer exist without taking students with federal aid. Aid-eschewing institutions would be unable to pay for all the stuff, academic and otherwise, that aid-accepting schools provide and would struggle mightily to attract students. And since aid is built into the prices, students need it, too.

With federal school choice, K–12 schools and families would also likely become hooked on federally connected cash, including money furnished through donation tax credits, and the vicious cycle of aid leading to price inflation would take off. This danger is especially acute in the context of a federal program since, unlike individual states, Washington can easily borrow or even print money it does not have. These abilities matter even for credits, allowing the feds to more easily forego tax revenue.

With burgeoning federal aid, federal rules that would make autonomous private schools ever more homogenous and, well, *public* would also likely proliferate. We have seen the regulation impetus in state-funded school choice programs. We have also seen it in higher education. That sector deals with adults and, hence, has been less prone to regulation than K–12 education, but it has nonetheless become increasingly subject to federal controls, including through accreditation and a Sword of Damocles—separation from student aid—hanging over institutions that, regardless of the mix of students they serve, do not meet federal performance metrics.

Imagine if there had been a federal voucher or tax credit program just a few years ago. Private schools nationwide could have faced heavy pressure to adopt nationally uniform curriculum standards. They could have been subjected to "Dear Colleague" letters prescribing, even for religious schools, their bathroom and locker room access policies. They could have been coerced into teacher evaluations based in part on standardized test scores. Choice, quite simply, could have been kneecapped, even if more people were able to exercise it.

If the goal is to maximize true choice—not just give more people something called "choice"—the conclusion is clear: A federal program would be too dangerous, threatening to snuff out federalism and impose uniformity on private schools nationwide. It would also violate the Constitution, which was written as it was because the Founders knew that education was no place for the national government.

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