



Invest in Education Foundation

Educational Choice for Children Act Protecting Religious Freedom and Operational Autonomy

[S.120](#) by Senator Bill Cassidy and # [H.R.531](#) by Representative Adrian Smith (NE-3)

The *Educational Choice for Children Act* (ECCA) is a \$10 billion federal scholarship tax credit that would expand K-12 education freedom and opportunity for up to two million children nationwide and increase parental control over their children's education. Contributions from individuals and businesses to non-profit scholarship granting organizations (SGOs) would fund scholarships for students to cover tuition, tutoring to address learning loss, education technology and special needs services among other uses.

Safeguards Against Government Encroachment

This legislation would prohibit governmental control, mandates or encroachment over scholarship granting organizations (SGO) that receive contributions or schools that educate student scholarship recipients, including faith-based schools. Section 5 of this legislation contains the following:

- An SGO, which distributes scholarships, "shall not ...be regarded as acting on behalf of any governmental entity" and that bill "shall be construed to allow [SGOs] maximum freedom to provide for the needs of the participants without governmental control."
- Nothing in the bill "shall be construed to permit, allow, encourage, or authorize any Federal, State or local government entity, or officer or employee thereof, to mandate, direct, or control any aspect of any [SGO]" or "any private or religious elementary or secondary education institution."
- No government or agent thereof "shall impose or permit the imposition of any conditions or requirements that would exclude or operate to exclude educational expenses at private or religious elementary and secondary education institutions from being considered qualified ...expenses," including "based in whole or in part on the institution's religious character or affiliation, including religiously based or mission-based policies or practices."

Case Law Protections

Enacting a federal scholarship tax credit and amending the Internal Revenue Code provides an additional constitutional safeguard against governmental "strings" or mandates on participating SGOs and schools. The Institute for Justice noted that the U.S. Supreme Court and other courts have ruled that "at no time does the government own, control or possess the monies that fund the private school scholarships." Accordingly, such scholarships transmitted to the parents or directly to the schools chosen by the parents provide no constitutional hook for governmental control. Additional

discussion on the legal background of tax credits is provided by the Institute for Justice [here](#) and [here \(page 19\)](#).

Organizational Support

The ECCA has been reviewed and is supported by the Council for American Private Education (CAPE), U.S. Conference of Catholic Bishops, Agudath Israel of America, Orthodox Union, American Association of Christian Schools and the Association of Christian Schools International, and the Home School Legal Defense Association among other groups. The Institute for Justice also reviewed and signed off on bill language. A full list of organizations that have endorsed the ECCA is [here](#).