

118TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Internal Revenue Code of 1986 to allow a credit against tax for charitable donations to nonprofit organizations providing education scholarships to qualified elementary and secondary students.

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IN THE SENATE OF THE UNITED STATES

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Mr. CASSIDY (for himself, Mr. CORNYN, Mr. DAINES, Mr. TUBERVILLE, Mr. WICKER, Mr. BARRASSO, Mr. SCOTT of South Carolina, Mrs. BLACKBURN, Mr. BRAUN, Mr. SCOTT of Florida, Mr. YOUNG, Mr. BOOZMAN, Mr. HAWLEY, Mr. TILLIS, and Mrs. BRITT) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To amend the Internal Revenue Code of 1986 to allow a credit against tax for charitable donations to nonprofit organizations providing education scholarships to qualified elementary and secondary students.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Educational Choice  
5 for Children Act”.

1 **SEC. 2. TAX CREDIT FOR CONTRIBUTIONS TO SCHOLAR-**  
2 **SHIP GRANTING ORGANIZATIONS.**

3 (a) CREDIT FOR INDIVIDUALS.—

4 (1) IN GENERAL.—Subpart A of part IV of sub-  
5 chapter A of chapter 1 of the Internal Revenue Code  
6 of 1986 is amended by inserting after section 25E  
7 the following new section:

8 **“SEC. 25F. QUALIFIED ELEMENTARY AND SECONDARY EDU-**  
9 **CATION SCHOLARSHIPS.**

10 “(a) ALLOWANCE OF CREDIT.—In the case of an in-  
11 dividual who is a citizen or resident of the United States  
12 (as defined in section 7701(a)(9)), there shall be allowed  
13 as a credit against the tax imposed by this chapter for  
14 the taxable year an amount equal to the amount of quali-  
15 fied contributions made by the taxpayer during the taxable  
16 year.

17 “(b) AMOUNT OF CREDIT.—The credit allowed under  
18 subsection (a) in any taxable year shall not exceed an  
19 amount equal to the greater of—

20 “(1) 10 percent of the adjusted gross income of  
21 the taxpayer for the taxable year, or

22 “(2) \$5,000.

23 “(c) DEFINITIONS.—For purposes of this section—

24 “(1) ELIGIBLE STUDENT.—The term ‘eligible  
25 student’ means an individual who—



1 U.S.C. 7801))’ for ‘eligible educational in-  
2 stitution’ each place it appears, and

3 “(ii) in subparagraph (B) thereof, by  
4 substituting ‘such school’ for ‘such institu-  
5 tion’ each place it appears, and

6 “(B) such term shall include tutoring ex-  
7 penses for student academic needs, including  
8 for learning loss.

9 “(4) SCHOLARSHIP GRANTING ORGANIZA-  
10 TION.—The term ‘scholarship granting organization’  
11 means any organization—

12 “(A) which—

13 “(i) is described in section 501(c)(3)  
14 and exempt from tax under section 501(a),  
15 and

16 “(ii) is not a private foundation,

17 “(B) whose substantial purpose is to pro-  
18 vide scholarships for qualified elementary or  
19 secondary education expenses of eligible stu-  
20 dents,

21 “(C)(i) which meets the requirements of  
22 subsection (d), or

23 “(ii) which, pursuant to State law, was  
24 able, as of the date of the enactment of the  
25 Educational Choice for Children Act, to receive

1 contributions that are eligible for a State tax  
2 credit if such contributions are used by the or-  
3 ganization to provide scholarships to individual  
4 elementary and secondary students, including  
5 scholarships for attending private schools, and

6 “(D) which, separate from any other funds  
7 or contributions received by such organization,  
8 maintains and accounts for any contributions  
9 made by any person for the purpose of pro-  
10 viding scholarships for qualified elementary or  
11 secondary education expenses of eligible stu-  
12 dents.

13 “(d) REQUIREMENTS FOR SCHOLARSHIP GRANTING  
14 ORGANIZATIONS.—

15 “(1) IN GENERAL.—An organization meets the  
16 requirements of this subsection if—

17 “(A) such organization provides scholar-  
18 ships to 2 or more students, provided that not  
19 all such students attend the same school,

20 “(B) such organization does not provide  
21 scholarships for any expenses other than quali-  
22 fied elementary or secondary education ex-  
23 penses,

24 “(C) such organization provides a scholar-  
25 ship to eligible students with a priority for—

1                   “(i) students awarded a scholarship  
2                   the previous school year, and

3                   “(ii) after application of clause (i),  
4                   any such students who have a sibling who  
5                   was awarded a scholarship from such orga-  
6                   nization,

7                   “(D) such organization does not earmark  
8                   or set aside contributions for scholarships on  
9                   behalf of any particular student,

10                   “(E) such organization takes appropriate  
11                   steps to verify the annual household income and  
12                   family size of eligible students to whom it  
13                   awards scholarships, and limits them to a mem-  
14                   ber of a household for which the income does  
15                   not exceed the amount established under sub-  
16                   section (c)(1)(A),

17                   “(F) such organization—

18                   “(i) obtains from an independent cer-  
19                   tified public accountant annual financial  
20                   and compliance audits, and

21                   “(ii) certifies to the Secretary (at such  
22                   time, and in such form and manner, as the  
23                   Secretary may prescribe) that the audit de-  
24                   scribed in clause (i) has been completed,  
25                   and

1           “(G) no officer or board member of such  
2           organization has been convicted of a felony.

3           “(2) INDEPENDENT CERTIFIED PUBLIC AC-  
4           COUNTANT.—For purposes of paragraph (1)(F), the  
5           term ‘independent certified public accountant’  
6           means, with respect to an organization, a certified  
7           public accountant who is not a person described in  
8           section 465(b)(3)(A) with respect to such organiza-  
9           tion or any employee of such organization.

10          “(3) PROHIBITION ON SELF-DEALING.—

11           “(A) IN GENERAL.—A scholarship grant-  
12           ing organization may not award a scholarship  
13           to any disqualified person.

14           “(B) DISQUALIFIED PERSON.—For pur-  
15           poses of this paragraph, a disqualified person  
16           shall be determined pursuant to rules similar to  
17           the rules of section 4946.

18          “(e) DENIAL OF DOUBLE BENEFIT.—Any qualified  
19           contribution for which a credit is allowed under this sec-  
20           tion shall not be taken into account as a charitable con-  
21           tribution for purposes of section 170.

22          “(f) CARRYFORWARD OF UNUSED CREDIT.—

23           “(1) IN GENERAL.—If the credit allowable  
24           under subsection (a) for any taxable year exceeds  
25           the limitation imposed by section 26(a) for such tax-

1       able year reduced by the sum of the credits allowable  
2       under this subpart (other than this section, section  
3       23, and section 25D), such excess shall be carried to  
4       the succeeding taxable year and added to the credit  
5       allowable under subsection (a) for such taxable year.

6           “(2) LIMITATION.—No credit may be carried  
7       forward under this subsection to any taxable year  
8       following the fifth taxable year after the taxable year  
9       in which the credit arose. For purposes of the pre-  
10      ceding sentence, credits shall be treated as used on  
11      a first-in first-out basis.

12          “(g) APPLICATION OF VOLUME CAP.—A qualified  
13      contribution shall be taken into account under this section  
14      only if such contribution is not in excess of the volume  
15      cap established under section 3 of the Educational Choice  
16      for Children Act.”.

17           (2) CLERICAL AMENDMENT.—The table of sec-  
18      tions for subpart A of part IV of subchapter A of  
19      chapter 1 of such Code is amended by inserting  
20      after the item relating to section 25E the following  
21      new item:

“Sec. 25F. Qualified elementary and secondary education scholarships.”.

22          (b) CREDIT FOR CORPORATIONS.—

23           (1) IN GENERAL.—Subpart D of part IV of  
24      subchapter A of chapter 1 of the Internal Revenue

1 Code of 1986 is amended by adding after section  
2 45Z the following:

3 **“SEC. 45AA. CONTRIBUTIONS TO SCHOLARSHIP GRANTING**  
4 **ORGANIZATIONS.**

5 “(a) GENERAL RULE.—For purposes of section 38,  
6 in the case of a corporation, the education scholarship  
7 credit determined under this section for the taxable year  
8 is the aggregate amount of qualified contributions for the  
9 taxable year.

10 “(b) AMOUNT OF CREDIT.—The credit allowed under  
11 subsection (a) for any taxable year shall not exceed 5 per-  
12 cent of the taxable income (as defined in section  
13 170(b)(2)(D)) of the corporation for such taxable year.

14 “(c) QUALIFIED CONTRIBUTIONS.—For purposes of  
15 this section, the term ‘qualified contribution’ has the  
16 meaning given such term under section 25F.

17 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction  
18 shall be allowed under any provision of this chapter for  
19 any expense for which a credit is allowed under this sec-  
20 tion.

21 “(e) APPLICATION OF VOLUME CAP.—A qualified  
22 contribution shall be taken into account under this section  
23 only if such contribution is not in excess of the volume  
24 cap established under section 3 of the Educational Choice  
25 for Children Act.”.

1           (2) CONFORMING AMENDMENTS.—Section  
 2           38(b) of such Code is amended by striking “plus” at  
 3           the end of paragraph (39), by striking the period  
 4           and inserting “, plus” at the end of paragraph (40),  
 5           and by adding at the end the following new para-  
 6           graph:

7           “(41) the education scholarship credit deter-  
 8           mined under section 45AA(a).”.

9           (3) CLERICAL AMENDMENT.—The table of sec-  
 10          tions for subpart D of part IV of subchapter A of  
 11          chapter 1 of such Code is amended by adding at the  
 12          end the following new item:

“Sec. 45AA. Contributions to scholarship granting organizations.”.

13          (c) FAILURE OF SCHOLARSHIP GRANTING ORGANI-  
 14          ZATIONS TO MAKE DISTRIBUTIONS.—

15          (1) IN GENERAL.—Chapter 42 of the Internal  
 16          Revenue Code of 1986 is amended by adding at the  
 17          end the following new subchapter:

18                 **“Subchapter I—Scholarship Granting**  
 19                                 **Organizations**

“Sec. 4969. Failure to distribute receipts.

20         **“SEC. 4969. FAILURE TO DISTRIBUTE RECEIPTS.**

21           “(a) IN GENERAL.—In the case of any scholarship  
 22           granting organization (as defined in section 25F) which  
 23           has been determined by the Secretary to have failed to  
 24           satisfy the requirement under subsection (b) for any tax-

1 able year, any contribution made to such organization dur-  
2 ing the first taxable year beginning after the date of such  
3 determination shall not be treated as a qualified contribu-  
4 tion (as defined in section 25F(c)(2)) for purposes of sec-  
5 tions 25F and 45AA.

6 “(b) REQUIREMENT.—The requirement described in  
7 this subsection is that the amount of receipts of the schol-  
8 arship granting organization for the taxable year which  
9 are distributed before the distribution deadline with re-  
10 spect to such receipts shall not be less than the required  
11 distribution amount with respect to such taxable year.

12 “(c) DEFINITIONS.—For purposes of this section—

13 “(1) REQUIRED DISTRIBUTION AMOUNT.—

14 “(A) IN GENERAL.—The required distribu-  
15 tion amount with respect to a taxable year is  
16 the amount equal to 100 percent of the total re-  
17 cepts of the scholarship granting organization  
18 for such taxable year—

19 “(i) reduced by the sum of such re-  
20 cepts that are retained for reasonable ad-  
21 ministrative expenses for the taxable year  
22 or are carried to the succeeding taxable  
23 year under subparagraph (C), and

1                   “(ii) increased by the amount of the  
2                   carryover under subparagraph (C) from  
3                   the preceding taxable year.

4                   “(B) SAFE HARBOR FOR REASONABLE AD-  
5                   MINISTRATIVE EXPENSES.—For purposes of  
6                   subparagraph (A)(i), if the percentage of total  
7                   receipts of a scholarship granting organization  
8                   for a taxable year which are used for adminis-  
9                   trative purposes related to activities for pro-  
10                  viding scholarships for qualified elementary or  
11                  secondary education expenses of eligible stu-  
12                  dents (as such terms are defined in section  
13                  25F(c)) is equal to or less than 10 percent,  
14                  such expenses shall be deemed to be reasonable  
15                  for purposes of such subparagraph.

16                  “(C) CARRYOVER.—With respect to the  
17                  amount of the total receipts of a scholarship  
18                  granting organization with respect to any tax-  
19                  able year, an amount not greater than 15 per-  
20                  cent of such amount may, at the election of  
21                  such organization, be carried to the succeeding  
22                  taxable year.

23                  “(2) DISTRIBUTIONS.—The term ‘distribution’  
24                  includes amounts which are formally committed but  
25                  not distributed. A formal commitment described in

1 the preceding sentence may include contributions set  
2 aside for eligible students for more than one year.

3 “(3) DISTRIBUTION DEADLINE.—The distribu-  
4 tion deadline with respect to receipts for a taxable  
5 year is the first day of the third taxable year fol-  
6 lowing the taxable year in which such receipts are  
7 received by the scholarship granting organization.”.

8 (2) CLERICAL AMENDMENT.—The table of sub-  
9 chapters for chapter 42 of such Code is amended by  
10 adding at the end the following new item:

“SUBCHAPTER I. SCHOLARSHIP GRANTING ORGANIZATIONS”.

11 **SEC. 3. VOLUME CAP.**

12 (a) ALLOCATION.—

13 (1) IN GENERAL.—For purposes of sections  
14 25F(g) and 45AA(e) of the Internal Revenue Code  
15 of 1986 (as added by this Act), the volume cap ap-  
16 plicable with respect to both such sections shall be  
17 \$10,000,000,000 for calendar year 2024 and each  
18 subsequent year thereafter, with such amount to be  
19 allocated as follows:

20 (A) \$20,000,000 shall be allocated to each  
21 State (as defined in section 7701(a)(10) of the  
22 Internal Revenue Code of 1986), with such  
23 amount to be made available, in the manner de-  
24 scribed in subsection (b), for—

1 (i) any individual residing in such  
2 State to claim the credit allowed under sec-  
3 tion 25F of the Internal Revenue Code of  
4 1986 with respect to any qualified con-  
5 tributions (as defined in such section)  
6 made by such individual during any tax-  
7 able year beginning during such calendar  
8 year, and

9 (ii) any corporation created or orga-  
10 nized in such State to claim the credit de-  
11 termined under section 45AA of such Code  
12 with respect to any qualified contributions  
13 made by such corporation during any tax-  
14 able year beginning during such calendar  
15 year.

16 (B) With respect to the amount remaining  
17 after the allocation under subparagraph (A),  
18 such amount (as adjusted pursuant to para-  
19 graph (3)) shall be made available, in the man-  
20 ner described in subsection (b), for—

21 (i) any individual to claim the credit  
22 allowed under section 25F of the Internal  
23 Revenue Code of 1986 with respect to any  
24 qualified contributions made by such indi-

1           vidual during any taxable year beginning  
2           during such calendar year, and

3                   (ii) any corporation to claim the credit  
4           determined under section 45AA of such  
5           Code with respect to any qualified con-  
6           tributions made by such corporation during  
7           any taxable year beginning during such  
8           calendar year.

9           (2) CARRYOVER.—The amount of any allotment  
10          to a State under paragraph (1)(A) for any calendar  
11          year which is not claimed by taxpayers described in  
12          such paragraph during such calendar year shall be  
13          added to the allotment provided under paragraph  
14          (1)(B) for the subsequent calendar year.

15          (3) INCREASE IN NATIONWIDE VOLUME CAP.—  
16          For purposes of paragraph (1)(B), if the Secretary  
17          determines during any calendar year that the  
18          amount of qualified contributions made during such  
19          calendar year is equal to or greater than 90 percent  
20          of the total amount made available under such para-  
21          graph for such calendar year, such amount shall be  
22          increased by an amount equal to 5 percent of the  
23          total amount made available under such paragraph  
24          as of January 1 of such calendar year, with such in-

1       crease to remain in effect for the subsequent cal-  
2       endar year.

3       (b) **FIRST-COME, FIRST-SERVE.**—For purposes of  
4 applying the volume cap under this section, such volume  
5 cap shall be applied based on a first-come, first-serve  
6 basis, as determined based on the date on which the tax-  
7 payer made the qualified contribution.

8       (c) **REAL-TIME INFORMATION.**—For purposes of this  
9 section, the Secretary of the Treasury (or the Secretary’s  
10 delegate) shall develop a system to track the amount of  
11 qualified contributions made during the calendar year for  
12 which a credit may be claimed under section 25F or 45AA  
13 of the Internal Revenue Code of 1986, with such informa-  
14 tion to be updated in real time.

15 **SEC. 4. EXEMPTION FROM GROSS INCOME FOR SCHOLAR-**  
16 **SHIPS FOR QUALIFIED ELEMENTARY OR SEC-**  
17 **ONDARY EDUCATION EXPENSES OF ELIGIBLE**  
18 **STUDENTS.**

19       (a) **IN GENERAL.**—Part III of subchapter B of chap-  
20 ter 1 of the Internal Revenue Code of 1986 is amended  
21 by inserting before section 140 the following new section:

1 **“SEC. 139J. SCHOLARSHIPS FOR QUALIFIED ELEMENTARY**  
 2 **OR SECONDARY EDUCATION EXPENSES OF**  
 3 **ELIGIBLE STUDENTS.**

4 “(a) IN GENERAL.—In the case of an individual,  
 5 gross income shall not include any amounts provided to  
 6 any dependent of such individual pursuant to a scholar-  
 7 ship for qualified elementary or secondary education ex-  
 8 penses of an eligible student which is provided by a schol-  
 9 arship granting organization.

10 “(b) DEFINITIONS.—In this section, the terms ‘quali-  
 11 fied elementary or secondary education expense’, ‘eligible  
 12 student’, and ‘scholarship granting organization’ have the  
 13 same meaning given such terms under section 25F(c).”.

14 (b) CONFORMING AMENDMENT.—The table of sec-  
 15 tions for part III of subchapter B of chapter 1 of the In-  
 16 ternal Revenue Code of 1986 is amended by inserting be-  
 17 fore the item relating to section 140 the following new  
 18 item:

“Sec. 139J. Scholarships for qualified elementary or secondary education ex-  
 penses of eligible students.”.

19 **SEC. 5. ORGANIZATIONAL AND PARENTAL AUTONOMY.**

20 (a) PROHIBITION OF CONTROL OVER SCHOLARSHIP  
 21 ORGANIZATIONS.—

22 (1) IN GENERAL.—

23 (A) TREATMENT.—A scholarship granting  
 24 organization shall not, by virtue of participation

1 under any provision of this Act or any amend-  
2 ment made by this Act, be regarded as acting  
3 on behalf of any governmental entity.

4 (B) NO GOVERNMENTAL CONTROL.—Noth-  
5 ing in this Act, or any amendment made by this  
6 Act, shall be construed to permit, allow, encour-  
7 age, or authorize any Federal, State, or local  
8 government entity, or officer or employee there-  
9 of, to mandate, direct, or control any aspect of  
10 any scholarship granting organization.

11 (C) MAXIMUM FREEDOM.—To the extent  
12 permissible by law, this Act, and any amend-  
13 ment made by this Act, shall be construed to  
14 allow scholarship granting organizations max-  
15 imum freedom to provide for the needs of the  
16 participants without governmental control.

17 (2) PROHIBITION OF CONTROL OVER NON-PUB-  
18 LIC SCHOOLS.—

19 (A) NO GOVERNMENTAL CONTROL.—Noth-  
20 ing in this Act, or any amendment made by this  
21 Act, shall be construed to permit, allow, encour-  
22 age, or authorize any Federal, State, or local  
23 government entity, or officer or employee there-  
24 of, to mandate, direct, or control any aspect of

1 any private or religious elementary or secondary  
2 education institution.

3 (B) NO EXCLUSION OF PRIVATE OR RELI-  
4 GIOUS SCHOOLS.—No Federal, State, or local  
5 government entity, or officer or employee there-  
6 of, shall impose or permit the imposition of any  
7 conditions or requirements that would exclude  
8 or operate to exclude educational expenses at  
9 private or religious elementary and secondary  
10 education institutions from being considered  
11 qualified elementary or secondary education ex-  
12 penses.

13 (C) NO EXCLUSION OF QUALIFIED EX-  
14 PENSES DUE TO INSTITUTION'S RELIGIOUS  
15 CHARACTER OR AFFILIATION.—No Federal,  
16 State, or local government entity, or officer or  
17 employee thereof, shall exclude, discriminate  
18 against, or otherwise disadvantage any elemen-  
19 tary or secondary education institution with re-  
20 spect to qualified elementary or secondary edu-  
21 cation expenses at that institution based in  
22 whole or in part on the institution's religious  
23 character or affiliation, including religiously  
24 based or mission-based policies or practices.

1           (3) PARENTAL RIGHTS TO USE SCHOLAR-  
2 SHIPS.—No Federal, State, or local government en-  
3 tity, or officer or employee thereof, shall disfavor or  
4 discourage the use of scholarships granted by par-  
5 ticipating scholarship granting organizations for  
6 qualified elementary or secondary education ex-  
7 penses at private or nonprofit elementary and sec-  
8 ondary education institutions, including faith-based  
9 schools.

10           (4) PARENTAL RIGHT TO INTERVENE.—In any  
11 action filed in any State or Federal court which  
12 challenges the constitutionality (under the constitu-  
13 tion of such State or the Constitution of the United  
14 States) of any provision of this Act (or any amend-  
15 ment made by this Act), any parent of an eligible  
16 student who has received a scholarship from a schol-  
17 arship granting organization shall have the right to  
18 intervene in support of the constitutionality of such  
19 provision or amendment. To avoid duplication of ef-  
20 forts and reduce the burdens placed on the parties  
21 to the action, the court in any such action may re-  
22 quire interveners taking similar positions to file joint  
23 papers or to be represented by a single attorney at  
24 oral argument, provided that the court does not re-  
25 quire such interveners to join any brief filed on be-

1 half of any State which is a defendant in such ac-  
2 tion.

3 (b) DEFINITIONS.—For purposes of this section, the  
4 terms “eligible student”, “scholarship granting organiza-  
5 tion”, and “qualified elementary or secondary education  
6 expense” shall have the same meanings given such terms  
7 under section 25F(c) of the Internal Revenue Code of  
8 1986 (as added by section 2(a) of this Act).

9 **SEC. 6. EFFECTIVE DATE.**

10 The amendments made by this Act shall apply to tax-  
11 able years beginning after December 31, 2023.