

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 9462
OFFERED BY MR. SMITH OF MISSOURI**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Educational Choice
3 for Children Act of 2024”.

**4 SEC. 2. TAX CREDIT FOR CONTRIBUTIONS OF INDIVIDUALS
5 TO SCHOLARSHIP GRANTING ORGANIZA-
6 TIONS.**

7 (a) ALLOWANCE OF CREDIT.—

8 (1) IN GENERAL.—Subpart A of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code
10 of 1986 is amended by inserting after section 25E
11 the following new section:

**12 “SEC. 25F. QUALIFIED ELEMENTARY AND SECONDARY EDU-
13 CATION SCHOLARSHIPS.**

14 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
15 dividual, there shall be allowed as a credit against the tax
16 imposed by this chapter for the taxable year an amount
17 equal to the aggregate amount of qualified contributions
18 made by the taxpayer during the taxable year.

1 “(b) LIMITATIONS.—

2 “(1) IN GENERAL.—The credit allowed under
3 subsection (a) to any taxpayer for any taxable year
4 shall not exceed an amount equal to the greater of—

5 “(A) 10 percent of the adjusted gross in-
6 come of the taxpayer for the taxable year, or

7 “(B) \$5,000.

8 “(2) ALLOCATION OF VOLUME CAP.—The credit
9 allowed under subsection (a) to any taxpayer for any
10 taxable year shall not exceed the amount of the vol-
11 ume cap allocated by the Secretary to such taxpayer
12 under subsection (g) with respect to qualified con-
13 tributions made by the taxpayer during the taxable
14 year.

15 “(3) REDUCTION BASED ON STATE CREDIT.—
16 The amount allowed as a credit under subsection (a)
17 for a taxable year shall be reduced by the amount
18 allowed as a credit on any State tax return of the
19 taxpayer for qualified contributions made by the tax-
20 payer during the taxable year.

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

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

24 “(A) is a member of a household with an
25 income which is not greater than 300 percent

1 of the area median gross income (as such term
2 is used in section 42), and

3 “(B) is eligible to enroll in a public ele-
4 mentary or secondary school.

5 “(2) QUALIFIED CONTRIBUTION.—The term
6 ‘qualified contribution’ means a charitable contribu-
7 tion (as defined by section 170(c)) to a scholarship
8 granting organization in the form of cash or market-
9 able securities.

10 “(3) QUALIFIED ELEMENTARY OR SECONDARY
11 EDUCATION EXPENSE.—The term ‘qualified elemen-
12 tary or secondary education expense’ means the fol-
13 lowing expenses in connection with enrollment or at-
14 tendance at, or for students enrolled at or attending,
15 an elementary or secondary public, private, or reli-
16 gious school:

17 “(A) Tuition.

18 “(B) Curriculum and curricular materials.

19 “(C) Books or other instructional mate-
20 rials.

21 “(D) Online educational materials.

22 “(E) Tuition for tutoring or educational
23 classes outside of the home, including at a tu-
24 toring facility, but only if the tutor or instruc-
25 tor is not related to the student and—

1 “(i) is licensed as a teacher in any
2 State,

3 “(ii) has taught at an eligible edu-
4 cational institution, or

5 “(iii) is a subject matter expert in the
6 relevant subject.

7 “(F) Fees for a nationally standardized
8 norm-referenced achievement test, an advanced
9 placement examination, or any examinations re-
10 lated to college or university admission.

11 “(G) Fees for dual enrollment in an insti-
12 tution of higher education.

13 “(H) Educational therapies for students
14 with disabilities provided by a licensed or ac-
15 credited practitioner or provider, including oc-
16 cupational, behavioral, physical, and speech-lan-
17 guage therapies.

18 Such term shall include expenses for the purposes
19 described in subparagraphs (A) through (H) in con-
20 nection with a homeschool (whether treated as a
21 homeschool or a private school for purposes of appli-
22 cable State law).

23 “(4) SCHOLARSHIP GRANTING ORGANIZA-
24 TION.—The term ‘scholarship granting organization’
25 means any organization—

1 “(A) which—

2 “(i) is described in section 501(c)(3)
3 and exempt from tax under section 501(a),
4 and

5 “(ii) is not a private foundation,

6 “(B) substantially all of the activities of
7 which are providing scholarships for qualified
8 elementary or secondary education expenses of
9 eligible students,

10 “(C) which prevents the co-mingling of
11 qualified contributions with other amounts by
12 maintaining one or more separate accounts ex-
13 clusively for qualified contributions, and

14 “(D) which either—

15 “(i) meets the requirements of sub-
16 section (d), or

17 “(ii) pursuant to State law, was able
18 (as of the date of the enactment of this
19 section) to receive contributions that are
20 eligible for a State tax credit if such con-
21 tributions are used by the organization to
22 provide scholarships to individual elemen-
23 tary and secondary students, including
24 scholarships for attending private schools.

1 “(d) REQUIREMENTS FOR SCHOLARSHIP GRANTING
2 ORGANIZATIONS.—

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

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

8 “(B) such organization does not provide
9 scholarships for any expenses other than quali-
10 fied elementary or secondary education ex-
11 penses,

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

14 “(i) students awarded a scholarship
15 the previous school year, and

16 “(ii) after application of clause (i),
17 any such students who have a sibling who
18 was awarded a scholarship from such orga-
19 nization,

20 “(D) such organization does not earmark
21 or set aside contributions for scholarships on
22 behalf of any particular student,

23 “(E) such organization takes appropriate
24 steps to verify the annual household income and
25 family size of eligible students to whom it

1 awards scholarships, and limits them to a mem-
2 ber of a household for which the income does
3 not exceed the amount established under sub-
4 section (c)(1)(A),

5 “(F) such organization—

6 “(i) obtains from an independent cer-
7 tified public accountant annual financial
8 and compliance audits, and

9 “(ii) certifies to the Secretary (at such
10 time, and in such form and manner, as the
11 Secretary may prescribe) that the audit de-
12 scribed in clause (i) has been completed,
13 and

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

16 “(2) INCOME VERIFICATION.—For purposes of
17 paragraph (1)(E), review of all of the following (as
18 applicable) shall be treated as satisfying the require-
19 ment to take appropriate steps to verify annual
20 household income:

21 “(A) Federal and State income tax returns
22 or tax return transcripts with applicable sched-
23 ules for the taxable year prior to application.

1 “(B) Income reporting statements for tax
2 purposes or wage and income transcripts from
3 the Internal Revenue Service.

4 “(C) Notarized income verification letter
5 from employers.

6 “(D) Unemployment or workers compensa-
7 tion statements.

8 “(E) Budget letters regarding public as-
9 sistance payments and Supplemental Nutrition
10 Assistance Program (SNAP) payments includ-
11 ing a list of household members.

12 “(3) INDEPENDENT CERTIFIED PUBLIC AC-
13 COUNTANT.—For purposes of paragraph (1)(F), the
14 term ‘independent certified public accountant’
15 means, with respect to an organization, a certified
16 public accountant who is not a person described in
17 section 465(b)(3)(A) with respect to such organiza-
18 tion or any employee of such organization.

19 “(4) PROHIBITION ON SELF-DEALING.—

20 “(A) IN GENERAL.—A scholarship grant-
21 ing organization may not award a scholarship
22 to any disqualified person.

23 “(B) DISQUALIFIED PERSON.—For pur-
24 poses of this paragraph, a disqualified person

1 shall be determined pursuant to rules similar to
2 the rules of section 4946.

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

7 “(f) CARRYFORWARD OF UNUSED CREDIT.—

8 “(1) IN GENERAL.—If the credit allowable
9 under subsection (a) for any taxable year exceeds
10 the limitation imposed by section 26(a) for such tax-
11 able year reduced by the sum of the credits allowable
12 under this subpart (other than this section, section
13 23, and section 25D), such excess shall be carried to
14 the succeeding taxable year and added to the credit
15 allowable under subsection (a) for such taxable year.

16 “(2) LIMITATION.—No credit may be carried
17 forward under this subsection to any taxable year
18 following the fifth taxable year after the taxable year
19 in which the credit arose. For purposes of the pre-
20 ceding sentence, credits shall be treated as used on
21 a first-in first-out basis.

22 “(g) VOLUME CAP.—

23 “(1) IN GENERAL.—The volume cap applicable
24 under this section shall be \$5,000,000,000 for each
25 of calendar years 2025 through 2028, and zero for

1 calendar years thereafter. Such amount shall be allo-
2 cated by the Secretary as provided in paragraph (2)
3 to taxpayers with respect to qualified contributions
4 made by such taxpayers, except that 10 percent of
5 such amount shall be divided evenly among the
6 States, and shall be available with respect to individ-
7 uals residing in such States.

8 “(2) FIRST-COME, FIRST-SERVE.—For purposes
9 of applying the volume cap under this section, such
10 volume cap for any calendar year shall be allocated
11 by the Secretary on a first-come, first-serve basis, as
12 determined based on the time (during such calendar
13 year) at which the taxpayer made the qualified con-
14 tribution with respect to which the allocation is
15 made. The Secretary shall not make any allocation
16 of volume cap for any calendar year after December
17 31 of such calendar year.

18 “(3) REAL-TIME INFORMATION.—For purposes
19 of this section, the Secretary shall develop a system
20 to track the amount of qualified contributions made
21 during the calendar year for which a credit may be
22 claimed under this section, with such information to
23 be updated in real time.

24 “(4) ANNUAL INCREASES.—

1 “(A) IN GENERAL.—In the case of the cal-
2 endar year after a high use calendar year, the
3 dollar amount otherwise in effect under sub-
4 section (a) for such calendar year shall be equal
5 to 105 percent of the dollar amount in effect
6 for such high use calendar year.

7 “(B) HIGH USE CALENDAR YEAR.—For
8 purposes of this subsection, the term ‘high use
9 calendar year’ means any calendar year for
10 which 90 percent or more of the volume cap in
11 effect for such calendar year under subsection
12 (a) is allocated to taxpayers.

13 “(C) PREVENTION OF DECREASES IN AN-
14 NUAL VOLUME CAP.—The volume cap in effect
15 under subsection (a) for any calendar year shall
16 not be less than the volume cap in effect under
17 such subsection for the preceding calendar year.

18 “(D) PUBLICATION OF ANNUAL VOLUME
19 CAP.—The Secretary shall make publicly avail-
20 able the dollar amount of the volume cap in ef-
21 fect under subsection (a) for each calendar
22 year.

23 “(5) STATES.—For purposes of this subsection,
24 the term ‘State’ includes the District of Columbia.”.

25 (2) CONFORMING AMENDMENTS.—

1 (A) Section 25(e)(1)(C) of such Code is
2 amended by striking “and 25D” and inserting
3 “25D, and 25F”.

4 (B) The table of sections for subpart A of
5 part IV of subchapter A of chapter 1 of such
6 Code is amended by inserting after the item re-
7 lating to section 25E the following new item:

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

8 (b) FAILURE OF SCHOLARSHIP GRANTING ORGANI-
9 ZATIONS TO MAKE DISTRIBUTIONS.—

10 (1) IN GENERAL.—Chapter 42 of such Code is
11 amended by adding at the end the following new
12 subchapter:

13 **“Subchapter I—Scholarship Granting**
14 **Organizations**

“Sec. 4969. Failure to distribute receipts.

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

16 “(a) IN GENERAL.—In the case of any scholarship
17 granting organization (as defined in section 25F) which
18 has been determined by the Secretary to have failed to
19 satisfy the requirement under subsection (b) for any tax-
20 able year, any contribution made to such organization dur-
21 ing the first taxable year beginning after the date of such
22 determination shall not be treated as a qualified contribu-
23 tion (as defined in section 25F(c)(2)) for purposes of sec-
24 tions 25F.

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

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

8 “(1) REQUIRED DISTRIBUTION AMOUNT.—

9 “(A) IN GENERAL.—The required distribu-
10 tion amount with respect to a taxable year is
11 the amount equal to 100 percent of the total re-
12 cepts of the scholarship granting organization
13 for such taxable year—

14 “(i) reduced by the sum of such re-
15 cepts that are retained for reasonable ad-
16 ministrative expenses for the taxable year
17 or are carried to the succeeding taxable
18 year under subparagraph (C), and

19 “(ii) increased by the amount of the
20 carryover under subparagraph (C) from
21 the preceding taxable year.

22 “(B) SAFE HARBOR FOR REASONABLE AD-
23 MINISTRATIVE EXPENSES.—For purposes of
24 subparagraph (A)(i), if the percentage of total
25 receipts of a scholarship granting organization

1 for a taxable year which are used for adminis-
2 trative purposes is equal to or less than 10 per-
3 cent, such expenses shall be deemed to be rea-
4 sonable for purposes of such subparagraph.

5 “(C) CARRYOVER.—With respect to the
6 amount of the total receipts of a scholarship
7 granting organization with respect to any tax-
8 able year, an amount not greater than 15 per-
9 cent of such amount may, at the election of
10 such organization, be carried to the succeeding
11 taxable year.

12 “(2) DISTRIBUTIONS.—The term ‘distribution’
13 includes amounts which are formally committed but
14 not distributed. A formal commitment described in
15 the preceding sentence may include contributions set
16 aside for eligible students for more than one year.

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

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

“SUBCHAPTER I. SCHOLARSHIP GRANTING ORGANIZATIONS”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after De-
3 cember 31, 2024.

4 **SEC. 3. EXEMPTION FROM GROSS INCOME FOR SCHOLAR-**
5 **SHIPS FOR QUALIFIED ELEMENTARY OR SEC-**
6 **ONDARY EDUCATION EXPENSES OF ELIGIBLE**
7 **STUDENTS.**

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

11 **“SEC. 139J. SCHOLARSHIPS FOR QUALIFIED ELEMENTARY**
12 **OR SECONDARY EDUCATION EXPENSES OF**
13 **ELIGIBLE STUDENTS.**

14 “(a) IN GENERAL.—In the case of an individual,
15 gross income shall not include any amounts provided to
16 any dependent of such individual pursuant to a scholar-
17 ship for qualified elementary or secondary education ex-
18 penses of an eligible student which is provided by a schol-
19 arship granting organization.

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

24 (b) CONFORMING AMENDMENT.—The table of sec-
25 tions for part III of subchapter B of chapter 1 of the In-

1 ternal Revenue Code of 1986 is amended by inserting be-
2 fore the item relating to section 140 the following new
3 item:

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

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to amounts received after Decem-
6 ber 31, 2024, in taxable years ending after such date.

7 **SEC. 4. ORGANIZATIONAL AND PARENTAL AUTONOMY.**

8 (a) PROHIBITION OF CONTROL OVER SCHOLARSHIP
9 ORGANIZATIONS.—

10 (1) IN GENERAL.—

11 (A) TREATMENT.—A scholarship granting
12 organization shall not, by virtue of participation
13 under any provision of this Act or any amend-
14 ment made by this Act, be regarded as acting
15 on behalf of any governmental entity.

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

23 (C) MAXIMUM FREEDOM.—To the extent
24 permissible by law, this Act, and any amend-

1 ment made by this Act, shall be construed to
2 allow scholarship granting organizations max-
3 imum freedom to provide for the needs of the
4 participants without governmental control.

5 (2) PROHIBITION OF CONTROL OVER NON-PUB-
6 LIC SCHOOLS.—

7 (A) NO GOVERNMENTAL CONTROL.—Noth-
8 ing in this Act, or any amendment made by this
9 Act, shall be construed to permit, allow, encour-
10 age, or authorize any Federal, State, or local
11 government entity, or officer or employee there-
12 of, to mandate, direct, or control any aspect of
13 any private or religious elementary or secondary
14 education institution.

15 (B) NO EXCLUSION OF PRIVATE OR RELI-
16 GIOUS SCHOOLS.—No Federal, State, or local
17 government entity, or officer or employee there-
18 of, shall impose or permit the imposition of any
19 conditions or requirements that would exclude
20 or operate to exclude educational expenses at
21 private or religious elementary and secondary
22 education institutions from being considered
23 qualified elementary or secondary education ex-
24 penses.

1 (C) NO EXCLUSION OF QUALIFIED EX-
2 PENSES DUE TO INSTITUTION'S RELIGIOUS
3 CHARACTER OR AFFILIATION.—No Federal,
4 State, or local government entity, or officer or
5 employee thereof, shall exclude, discriminate
6 against, or otherwise disadvantage any elemen-
7 tary or secondary education institution with re-
8 spect to qualified elementary or secondary edu-
9 cation expenses at that institution based in
10 whole or in part on the institution's religious
11 character or affiliation, including religiously
12 based or mission-based policies or practices.

13 (3) PARENTAL RIGHTS TO USE SCHOLAR-
14 SHIPS.—No Federal, State, or local government en-
15 tity, or officer or employee thereof, shall disfavor or
16 discourage the use of scholarships granted by par-
17 ticipating scholarship granting organizations for
18 qualified elementary or secondary education ex-
19 penses at private or nonprofit elementary and sec-
20 ondary education institutions, including faith-based
21 schools.

22 (4) PARENTAL RIGHT TO INTERVENE.—In any
23 action filed in any State or Federal court which
24 challenges the constitutionality (under the constitu-
25 tion of such State or the Constitution of the United

1 States) of any provision of this Act (or any amend-
2 ment made by this Act), any parent of an eligible
3 student who has received a scholarship from a schol-
4 arship granting organization shall have the right to
5 intervene in support of the constitutionality of such
6 provision or amendment. To avoid duplication of ef-
7 forts and reduce the burdens placed on the parties
8 to the action, the court in any such action may re-
9 quire interveners taking similar positions to file joint
10 papers or to be represented by a single attorney at
11 oral argument, provided that the court does not re-
12 quire such interveners to join any brief filed on be-
13 half of any State which is a defendant in such ac-
14 tion.

15 (b) DEFINITIONS.—For purposes of this section, the
16 terms “eligible student”, “scholarship granting organiza-
17 tion”, and “qualified elementary or secondary education
18 expense” shall have the same meanings given such terms
19 under section 25F(c) of the Internal Revenue Code of
20 1986 (as added by section 2(a) of this Act).

