

1. Introduction

Education is a \$634-billion annual industry in America.¹ Given how much we spend on it in the first place, it should be used as efficiently and effectively as possible. In every other part of the economy, more choices and competition lead to better quality at lower prices—this lesson shouldn't stop at the schoolhouse door.

Giving families access to more educational options comes in a variety of forms, overviewed below:

- **Charter Schools**—Charter schools are public schools that are privately operated, either as single, independent schools, or as part of larger Charter Management Organizations—such as the Knowledge is Power Program (KIPP) or Success Academy—which run several schools, sometimes across multiple states. Generally, charter schools accept students on a lottery basis.

Unconstrained by proscriptive union contract rules traditional public schools must contend with, charter school faculty have more flexibility to experiment with unique teaching methods, while charter schools themselves can specialize in different educational approaches or curricular focuses, such as classical education, STEM, performing arts, or language immersion, creating a more diverse public school marketplace for parents to choose from.

- **School vouchers**—School vouchers enable eligible families to use their students' per-pupil funds they would have otherwise received in a traditional public school to pay for the tuition of a private school of their choice.
- **Tax credit scholarships**—Tax credit scholarships give individuals or corporations full or partial tax credits in exchange for their donations to non-profit scholarship granting organizations (SGOs) that issue private school tuition scholarships to students. The tax credits are worth all or a percentage of the individual or corporate donations. Because they operate through private donations, tax credit scholarships tend to be safest from legal challenges and regulatory creep, though the amount of participation in these scholarships may be limited by funding.
- **Education Savings Accounts (ESAs)**—Like vouchers, ESAs allow families to use their child's per-pupil funds they would have otherwise received in a traditional public school toward their child's education, but offer far more flexibility. Families receive their funds into restricted-use accounts available for a variety of educational purposes, such as private school tuition, educational software, textbooks, uniforms, private tutoring, even therapeutic programs for special needs students.

ESA funds roll over, giving families an incentive to save over time and maximize the value of their purchases to make their dollars go as far as possible. Usually parents can devote any unused funds toward college or technical education expenses at the end of high school as well.

ESAs give parents unprecedented flexibility to exercise not only school choice but even à la carte course-choice at a variety of different educational providers, spurring paradigm shifts in how we think about delivering curriculum. Thanks to their flexibility, ESAs have the potential to incentivize K-12 providers to price discrete units of service individually, the same way colleges and universities do with credit hours for individual course subjects. For these reasons, ESAs represent perhaps the most exciting school choice alternative currently available.

Regarding the expansion of both public and private school choice in America, 2016 and 2017 have been important years. At the publication of Reason Foundation's *Annual Privatization Report 2016: Education*, there were 59 private school choice programs across 28 states and the District of Columbia.² As of this writing, there are 63. In 2015, 390,000 students used a voucher, tax credit scholarship, or an ESA to enroll in schools of their choice.³ Last year, that number increased to 446,000.⁴

Charter schools continued to grow last year as well. In the 2016–2017 school year, an estimated 3.1 million students attended an estimated 6,900 charter schools, up a projected 200,000 students from last academic year—a one-year enrollment jump of 7%.⁵ In 17 school districts, charter schools now boast a 30% or larger share of public school enrollment.⁶ These gains continue a 10-year trend of charter school enrollment nearly tripling in the United States.⁷

Parental demand for charter schools hasn't slackened either. According to the most recent survey, more than one million students are on waiting lists for charter school spots around the country. And an April 2016 poll from the National Alliance for Public Charter Schools found that 73% of parents favored increasing the number of charter schools in their communities, while nearly 80% of parents surveyed who already had charter schools in their communities favored additional ones opening.

It's no surprise then that over 300 new charter schools opened the doors for the start of the 2016–2017 school year. Less well-known, but equally important, are the 211 charter schools that closed down, for a variety of reasons such as low enrollment, poor academic performance, or financial concerns, which are often tied to the first two.⁸ Charter schools have more flexibility than their traditional public counterparts to try new strategies to succeed, but unlike traditional public schools, they are far more accountable for failure since parents and students can vote with their feet. In public schools that compete with charters, students may also “vote with their feet,” but public schools are rarely closed for academic failure, under-enrollment, or financial reasons. These closures show the corrective forces of a more market-based approach in action.

The past year saw opponents of educational choice on the march, whether it was the NAACP claiming charter schools foment segregation (9 out of 10 studies on the subject show otherwise) or the heated protests

over the confirmation of the pro-school choice former American Federation for Children Chair Betsy DeVos as secretary of education.⁹ But despite an increasingly loud, vociferous operation, a strong majority of the American public favors school choice. The American Federation for Children's 2017 annual poll found that 68% of likely voters supported the concept of school choice, a support level similar to the previous two years of polling. Support for school choice is even higher among Latinos (75%), African-Americans (72%), Millennials (75%), and parents of special needs children (83%).¹⁰ Despite these welcoming numbers, education reformers must remain vigilant in making the case for educational freedom to keep winning future victories to come.

2. Federal School Choice Legislative Highlights

Following the 2016 election, Betsy DeVos, the former chair of the American Federation for Children, was appointed secretary of education. So far, DeVos has emphasized pro-school choice rhetoric and the importance of a limited federal role in education policy, maintaining her desire to respect federalist principles in interactions with states. It remains to be seen how committed the Trump administration will be to these principles in the design of any education initiatives it may announce in 2018.

Some clues about President Trump's plans for the federal education landscape lie in his proposed education budget, released in March 2017 and currently pending approval by Congress. This "skinny budget" cuts about \$9.2 billion from the federal education budget, eliminating or reducing funding for over 20 programs with mixed or negative empirical impacts on achievement. At the same time, the budget adds 1.4 billion in funding toward more choice-friendly purposes.¹¹ For instance, the budget adds an additional \$168 million to the federal Charter School Program's \$333 million budget.¹² The CSP helps prospective charter schools overcome high initial fixed costs for facilities—a major expansion bottleneck—along with helping successful existing charter schools expand and replicate elsewhere.

The "skinny budget" also adds an additional \$1 billion in Title I funds intended to help poor students. States would have the option to make these funds portable—in other words, funds could follow individual students themselves. Currently, Title I dollars only flow to schools with sufficiently high percentages of students in poverty, while impoverished students in schools with low enough percentages get none. Reason Foundation proposed Title I portability as early as 2014 and looks forward to following the evolution of any proposal in Congress and at the Department of Education.¹³

Finally, the budget contains an additional \$250 million for a "new private school choice program," which many speculate may take the form of funding a federal school voucher program.¹⁴ While such a program would undoubtedly benefit large numbers of students in states that might not otherwise pass private school choice programs, many education reformers worry about potential federal regulatory strings that could become attached to such a program under future Congresses and administrations.

While few details have emerged as of this writing about the program, many school choice advocates have proposed alternatives seen as less risky, such as extending Education Savings Accounts to students already within federal jurisdiction. These could include students in Washington DC, on Native American reservations, or with parents deployed in the military.¹⁵ Other proposals include altering existing federal education savings programs.¹⁶ For example, 529 plans already let families save for college in tax-preferred accounts. Letting families use these funds for K-12 expenses could allow more to access school choice with a lower risk of federal regulatory reach since families would be using their own money. Coverdell accounts

allow similar tax-advantaged savings as 529s, but for both K-12 and college expenses. Unfortunately, these accounts are capped at only \$2,000 in savings, but lifting those limits could bring similar benefits.

In Congress, former Representative Jason Chaffetz introduced HR 1387, the Scholarships for Opportunity and Results (SOAR) Reauthorization Act in March 2017. This bill would provide continued funding for the over 1100 students in the DC Opportunity Scholarship Program, a federally funded school voucher program for low-income residents of our nation's capital.¹⁷ Funding for the program has long been a perennially controversial partisan issue, especially after a recent study showing negative achievement effects for participants in their first year catching up in new schools, but DCOSP's more tangible outcomes speak for themselves.¹⁸

Last year, DCOSP participants had a 95% high school graduation rate, while DC Public Schools lag 26% behind.¹⁹ Last year 80% of DCOSP graduates were admitted to two- or four-year colleges or universities, and the program enjoys an 87% parental satisfaction rate.²⁰ As of this writing, HR 1387 was reported from the House Oversight and Government Reform Committee and sits on the Union Calendar, where it may be assigned a full House vote later this session.²¹

In June, Senator John McCain introduced S. 1294, the Native American Education Opportunity Act. This bill would make children attending schools administered by the Bureau of Indian Education (BIE) eligible for federally funded Education Savings Accounts, worth up to 90% of their current per-pupil funding, about \$15,000 apiece.²² BIE schools are infamous for their poor management, with the Bureau's 48,000 students suffering from some of the lowest test scores and graduation rates in the country.²³ As of this writing, S. 1294 currently sits in the Senate Indian Affairs Committee, awaiting further action.

3. State Private School Choice Legislative Highlights

Alabama

Alabama passed no new choice programs in 2016–2017, but the state Senate did introduce SB 123, sponsored by Senate President Pro Tempore Del Marsh, which would have expanded tax credits available through the state’s Education Scholarship Program, a tax-credit scholarship launched in 2013. Though SB 123 passed the Alabama Senate, it failed in the House in May 2017.²⁴

Arizona

In June 2016, the Arizona auditor general released a performance audit on the state’s Empowerment Scholarship Accounts, the nation’s first education savings account (ESA) program.²⁵ The auditor found that the Arizona Department of Education distributed account funds effectively and had a satisfactory fraud prevention system in place.²⁶

In 2017 Arizona scored a major accomplishment for school choice. On April 7th, Governor Doug Ducey signed SB 1431, which expanded the state’s Empowerment Scholarship Accounts to near-universal eligibility. The program will gradually expand eligibility to different grades year by year until the 2020–2021 school year, when students who previously attended public school for at least 100 days prior, or are entering kindergarten, will be eligible for the ESA.²⁷

With the current funding delays to Nevada’s near-universal ESA, Arizona’s own expansion puts it on track to pioneer the largest-scale private school choice program in American history. After defeating lawsuits from the Arizona Education Association and the Arizona School Boards Association in 2013, which were upheld in the Arizona Court of Appeals and dismissed from further consideration by the state Supreme Court, the Empowerment Scholarships are on a solid legal footing and ready to serve even more students.²⁸

Arkansas

Arkansas passed a May 2016 budget that included funding for the Succeed Scholarship Program for Students with Disabilities (SSPSD), a statewide voucher program for students with an Individualized Education Plan (IEP) who have been accepted into a private school and have been enrolled in public schools for at least one year, or who are dependents of active duty military parents.²⁹ The current voucher award is the state

allocation of per-pupil funding for public school students (\$6,646 for the 2016–2017 school year).³⁰ Additionally, the program was limited to only 100 students for the 2016–2017 school year.

Though the enrollment limitation remains, the Arkansas Legislature made improvements to the law in its 2017 legislative session. In April 2017, Governor Asa Hutchinson signed three bills amending the SSPSD. HB 1056 allows district superintendents to waive requirements for voucher students who have previously attended a public school for a year. HB 1456 allows voucher students to attend schools that are in the process of attaining accreditation, while HB 1567 expands eligibility for the voucher program to children in foster homes. While the scope of the voucher program remains needlessly limited, the legislature may continue to expand its ability to serve Arkansas children. Unfortunately, the Arkansas Legislature also voted down a more robust ESA school choice program: SB 756 and HB 1222 would have created a tax credit-funded ESA program.³¹

Colorado

While Colorado did not pass any school choice programs this year, lawmakers attempted to. In an April 2017 vote that passed 18–17, the Colorado Senate passed SB 39, a tax-credit program for individuals to pay tuition at private schools. However, the bill failed the House Education Committee by a 7–6 vote.³²

Florida

In June 2017, Florida Governor Rick Scott signed HB 15, which raised the grant amount in Florida’s Tax Credit Scholarship Program to between 88% and 96% of the per-pupil funding of public school students, depending on grade level.³³ Governor Scott also signed HB 7069, a bill that increases the funding for the Gardiner Scholarship program by \$30 million, raising its available funds to over \$100 million for the forthcoming school year.³⁴ Last year, close to 7,500 students took advantage of the Gardiner Scholarship Program, an Education Savings Account for children with an IEP or a diagnosis with a variety of disabilities, up a quarter-fold from the previous school year.³⁵

Georgia

In February and March 2017, the Georgia House and Senate, each passed HB 217, which would raise the cap of tax credits available through the state’s Qualified Education Expense Tax Credit. The House version of the bill would have raised the cap—currently, \$58 million—to \$100 million over six years, though the Senate version of the bill amended this number down to \$65 million.³⁶ Unfortunately, differences between the two versions were not resolved before the end of the 2017 legislative session.³⁷

Indiana

In February 2016, Indiana lawmakers introduced SB 334—a bill designed to make technical corrections to Indiana’s Choice Scholarship Program, a statewide school voucher system serving nearly 35,000 students—but failed to get it through a conference committee before the end of the legislative session. The bill would have added an enrollment date for families who wanted to use the vouchers and required annual site visits of 5% of the participating schools.³⁸

In January 2017, Indiana lawmakers introduced three private school choice bills, but all died in committee. SB 534 would have developed and implemented an ESA for special needs students, while HB 1591 would have implemented a universal ESA for all public school students. HB 1590 would have made the Choice Scholarship Program universal by dropping its income requirements.³⁹

Illinois

In August 2017, Illinois Governor Bruce Rauner signed SB 1947, which made the Prairie State the 18th to initiate a tax-credit scholarship program. The bill creates the Invest in Kids Program, a \$75-million scholarship for low-income students.⁴⁰

Kansas

While Kansas passed no school choice bills in 2016, lawmakers introduced HB 2457 in January, which would have expanded the student eligibility for and the overall cap of the Tax Credit for Low Income Students Scholarship Program. While the bill was reportedly out of committee, it did not get a vote before the end of the legislative session.⁴¹ HB 2741, which died in committee after being introduced in March, would have established a state funding formula for education, including a universal ESA for children in public schools, enabling them to use up to 70% of their per-pupil funding for tuition and other educational purposes.⁴²

Kansas fared better in 2017. In June, Governor Sam Brownback signed SB 19, which enabled individual taxpayers to receive tax credits for donations to scholarship granting organizations participating in Kansas’ Tax Credit for Low Income Students Scholarship Program. Previously, only corporate taxpayers qualified.⁴³

Kentucky

Kentucky is one of less than half of U.S. states without a private school choice program.⁴⁴ And while that didn’t change in 2016–2017, it wasn’t for lack of trying. In January 2016, lawmakers introduced SB 44 and

its companion bill, HB 336, which would have created a tax-credit scholarship program available to children of families whose household incomes come within 160% of the threshold to qualify for federal free and reduced-lunch programs.⁴⁵ Unfortunately, both bills died in their respective Appropriations and Revenue committees.⁴⁶ In March 2016, HB 620 and its companion bill, SB 273 were introduced, which would have established an Education Savings Account for Kentucky students with IEPs. Unfortunately, both bills also died in their respective education committees.⁴⁷

In January 2017, SB 102 and HB 162 were introduced to the Kentucky Legislature and would have both created statewide tax-credit scholarship programs. Unfortunately, neither escaped committee before the end of the legislative session.⁴⁸

Maryland

In March 2016, SB 706 was introduced into the Maryland State Senate to create a tax-credit scholarship program for students to attend private schools of their choice, funded by donations from businesses to scholarship granting organizations. Businesses could claim up to 60% of their contributions as a credit, not to exceed a total tax credit per contribution of more than \$200,000 per taxable year.⁴⁹ While the bill passed the Senate, it died in the House Ways and Means Committee.⁵⁰

But on March 29th, Maryland became 30th state with a private school choice program, when a legislative conference committee inserted a school voucher program into SB 190, the state's budget bill.⁵¹ The Broadening Options and Opportunities for Students Today (BOOST) program—now in its second year—started July 1, 2016. The program provides nearly \$6 million in scholarships for students eligible for the federal free and reduced-price lunch program, and is administered by the Maryland Department of Education.⁵²

Minnesota

In May 2016, HF 1369 was added into Minnesota's budget bill and then later removed pending consideration in the 2017 legislative session. The bill would have created a tax credit scholarship for students eligible for the federal free and reduced-price lunch program and who attended public schools the year prior. Donors to scholarship granting organizations participating in the program could claim up to an 80% tax credit for their contributions.⁵³

Minnesota didn't enact a private school choice program in the 2017 legislative session either, but there were several attempts. SF 256 and its companion bill, HF 386, introduced in January, would have created a tax credit scholarship available to students from families with incomes up to two times those eligible for the federal free and reduced-price lunch program.⁵⁴ Unfortunately, while both bills passed their respective education committees, they died in each chamber's taxes committee.⁵⁵ In May, the Minnesota Legislature

passed HF 4, an omnibus tax bill containing a tax credit scholarship. Unfortunately, Governor Mark Dayton vetoed this bill.⁵⁶

Mississippi

Mississippi fielded multiple school choice bills in 2016, one of which passed. SB 2385 and its companion bill, HB 943, introduced in February 2016, would have made the state's ESA, the Equal Opportunity for Students With Special Needs Program—a universal program—rather than one focused on students with disabilities. Unfortunately, both bills died in committee.⁵⁷ However, HB 33, which expanded eligibility for the state's ESA program, did pass, receiving Governor Phil Bryant's signature in April 2016. The bill enabled students with an IEP in the past five years to be eligible for the ESA program, up from the 18-month window required previously.⁵⁸

In 2017, Mississippi scored an additional victory for school choice when Governor Phil Bryant signed HB 1046 in April. While the bill was scaled down from its previous format, the bill expanded eligibility for Mississippi's Dyslexia Therapy Scholarship for Students with Dyslexia Program, to include students in first grade through 12th grade.⁵⁹

Missouri

Missouri passed no new school choice bills in 2016–2017, but had several similar pieces of legislation introduced. HB 2307 and its companion bill SB 609, both introduced in February 2016, would have created Missouri Scholarship Accounts, tax credit scholarships for students with special needs who had previously attended public schools. Donors could receive a 75% tax credit in exchange for donations to scholarship granting organizations, and parents would have the flexibility to use the funds for a variety of educational purposes beyond private school tuition, much like an Education Savings Account.⁶⁰ Unfortunately both bills died in committee.⁶¹

In April 2016, HB 1589, which would have set up a tax credit scholarship along the lines previously proposed, passed the Missouri House, but unfortunately did not get a vote in the Senate before the end of the calendar.⁶²

In 2017, Missouri lawmakers proposed two private school choice bills. SB 32 would have created a tax credit funded ESA for special needs students similar to the bills proposed in 2016.⁶³ While the bill passed the Senate Government Reform Committee in February, the legislative session expired before voting on the bill.⁶⁴ A similar bill in the state Senate, SB 313, passed that chamber in April along with the House Rules Committee, but the legislative session ended before the bill could get a vote in the House.⁶⁵

Nebraska

While Nebraska still has no private school choice programs, lawmakers introduced several bills in 2017 with the potential to change that. LB 295, introduced in January, would establish a tax credit scholarship for students from families earning up to two times the income eligible for the federal free and reduced-price lunch program.⁶⁶ The Revenue Committee passed the bill 5–3 in May, watering down the aggregate tax credit cap from \$10 to \$2 million in the process, and limiting the program’s cap growth to \$10 million total, increasing not more than 20% per year. While the bill did not get a vote in the 2017 session, it will be taken up again in January 2018.⁶⁷

LB 118 would have created a parent-funded ESA program open to all students, while LB 608 would have created a school voucher program for students from low-performing schools worth up to 75% of the per-pupil funding they would have otherwise received.⁶⁸ Unfortunately, both of these bills died in their respective committees.

Nevada

Though Nevada made history in 2015 by passing the nation’s first near-universal ESA program, called the Empowerment Scholarship Accounts, legal battles through 2016 put the program in limbo while a temporary injunction against the program was in place. The September ruling of the Nevada Supreme Court (see: “4. Private School Choice Legal Highlights”) necessitated the legislature allocating an alternate funding source for the program. While a legislative fix for the program would have been relatively simple to come by, education took a back seat to a particularly flagrant piece of corporate welfare: Governor Brian Calley focused the emergency session on financing a 65,000-seat football stadium and convention center to facilitate the Oakland Raiders’ move to Las Vegas.⁶⁹

In February 2017, Gov. Sandoval’s submitted budget included a biannual \$60-million appropriation to fund Nevada’s ESA program, but Democrats, now in the majority after the 2016 election, stripped the funding from the budget after a battle at the end of the session with lackluster resistance from Gov. Sandoval on behalf of the program.⁷⁰

Another legislative fix introduced in March, SB 506, would have moved ESA funding from the Treasurer’s office to the Department of Education to meet constitutional obligations, but the bill did not advance past the Senate Education Committee before the end of the legislative session.⁷¹ As the Nevada ESA heads into its third year, it remains unfunded, with a waitlist of over 10,000 students.⁷²

One bright spot for Nevada was the May passage of SB 555, which gave a one-year, \$20-million appropriation to the Education Choice Scholarship Program, a statewide tax credit scholarship.⁷³ Nevertheless, Nevada will have ample work ahead of it in 2018 to put its choice programs on more certain footing.

New Hampshire

New Hampshire had a busy 2016–2017 for school choice. HB 1371 was introduced in February 2016, which would have created a study committee on establishing a special needs ESA. While the bill passed the Education Committee 12–8, it did not get a floor vote before the end of the session.⁷⁴

HB 1637, introduced in March 2016, would have enabled “town-tuitioning,” a form of voucher employed by several New England towns in Maine and Vermont since 1869, which allows students from a town without a public school to use public education funds to pay for a private school or a public school in another town.⁷⁵ Under the bill, towns statewide without public schools could send their students to neighboring schools or non-religious private schools. The bill was intended to give towns legislative authority to practice tuitioning after the New Hampshire Department of Education sued the town of Croydon’s School Board in 2015 for attempting to do so.⁷⁶ Unfortunately, then-Governor Maggie Hassan vetoed the bill on June 16, 2016, and the legislature was unable to assemble a sufficiently large majority to override.⁷⁷

In 2017 New Hampshire pressed on. In January, SB 193 was introduced, which would create a nearly universal ESA, providing 90% of the per-pupil funds a student would otherwise receive in a traditional public school to use toward private school tuition and a variety of other educational expenses.⁷⁸ The bill passed the Senate in March, and though it did not get out of the House Education Committee before the end of the 2017 session, it was retained for consideration when the legislature reconvenes in 2018.⁷⁹

HB 647, also introduced in January, would have created an ESA for special needs students disbursing 90% of the per-pupil funds a student would have received in a traditional public school. While this bill passed the New Hampshire House, it is currently tabled until the 2018 session.⁸⁰

However, in June, New Hampshire Governor Chris Sununu signed two school choice bills into law. SB 8 allows town tuitioning grants statewide for towns without public schools to send their students to non-sectarian private or neighboring public schools. Gov. Sununu also signed HB 386, which adds additional flexibility to New Hampshire’s Education Tax Credit Program, a tax credit scholarship. Now families can use scholarship funds for a variety of education-related expenses beyond private school tuition, similar to an ESA.⁸¹

North Dakota

While North Dakota did not pass any school choice programs in 2017, it did introduce one bill aimed at doing so. HB 1382, introduced in January, would have created a near-universal ESA program offering 75% of a child’s traditional public school per-pupil funding. This bill was amended in February to only commission a feasibility study about the program. While the bill passed the North Dakota house, it failed in the Senate.⁸²

North Carolina

In 2017 school choice supporters won big in North Carolina. In June, the legislature overrode Governor Roy Cooper's veto to enact SB 257, making North Carolina the sixth state to enact an ESA program. The bill, which also included additional funds for North Carolina's two voucher programs, enables students with special needs, in foster care, or who are children of an active-duty military member to access to up to \$9,000 per year for a variety of educational, therapeutic, and transportation-related expenses. Additionally, students already eligible for North Carolina's income or disability-based voucher programs can still receive those funds on top of their ESA grants.⁸³

Oklahoma

While Oklahoma failed to pass an ESA program, it ended the year with multiple school choice victories over 2016–2017. In January 2016, HB 2949 was introduced, which would have created Oklahoma's first ESA, a near-universal program open to all Oklahoma children who had previously attended a public school.⁸⁴ While the bill passed the Common Education Committee, it did not get a floor vote before the end of the session.⁸⁵

Additional developments in 2017 include SB 560, which would create a new ESA enabling eligible students to use up to 90% of their per-pupil education funding, depending on their income level, on a variety of educational expenses. The sponsor withdrew consideration for his bill for the 2017 session and hopes to revisit it when the legislature reconvenes in 2018.⁸⁶

Governor Mary Fallin signed two school choice bills on May 12th.⁸⁷ SB 301 expands the eligibility of Oklahoma's Lindsey Nicole Henry Scholarship for Students with Disabilities Program, a voucher originally for students with special needs, to include children in foster care or who were adopted. SB 445 increases the cap on credits receivable through the Oklahoma Equal Opportunity Education Scholarship Act. This tax credit scholarship is open to students with family incomes at or below 300% of the federal free and reduced-price lunch program guidelines—a provision alone qualifying 78% of all Oklahoma households with children—or who live in residential zones of schools considered “in need of improvement” by the state.⁸⁸

Ohio

Ohio strengthened three of its five school choice programs this year. In June 2017, Governor John Kasich signed HB 49, a budget bill containing an increase in the per-student funding award for the Cleveland Scholarship Program, the nation's longest-running school voucher program. The bill also continued the grade-by-grade phase-in of the Income Based Scholarship Program, a voucher program that grew 42% in its now-fourth year, and currently accepts applications in grades K-4.⁸⁹ It also extended the application window for the Jon Peterson Special Needs Scholarship Program, a voucher for students with disabilities, to enable

year-round applications for children with an IEP.⁹⁰ Ohio is tied for having the highest number of private school choice programs in the country, and these expansions should help those programs continue to help more Buckeye students have access to quality educational options.

Oregon

Oregon did not pass any school choice legislation in the past year, but introduced one bill. SB 437, which would have created a universal ESA program, died in the Ways and Means Committee.⁹¹

Pennsylvania

While Pennsylvania did not pass any new school choice legislation this year, HB 250, which would raise the caps of two state-wide tax credit scholarships for low-income students by a combined \$25 million, passed the House. The bill would raise the cap on the credits available through the Educational Improvement Tax Credit Program from \$125 million to \$175 million, and raise the cap of the Opportunity Scholarship Tax Credit program from \$50 million to \$75 million.⁹² While the bill passed the House and was referred to the Senate Education Committee, it remained there once the legislature adjourned for 2017.⁹³

South Carolina

In 2017 South Carolina introduced a bill to expand the cap on its Education Credit for Exceptional Needs children, a tax credit scholarship for students with disabilities. S 241 increases the cap on tax credits available through the program from \$10 million to \$25 million.⁹⁴ The bill was referred to the Senate Committee on Finance and remained there when the legislature adjourned for 2017.⁹⁵

South Dakota

South Dakota school choice advocates had a big year in 2016. The state enacted its first private school choice program when Governor Dennis Dauggard signed SB 159 on March 25th. The bill created the Partners in Education Tax Credit for students with family income within 150% of eligibility for the federal free and reduced-price lunch program. The program is the nation's 21st tax credit scholarship, and went into effect for the 2016–2017 school year. It provides scholarships worth up to 90% of a student's traditional public school per pupil funding, and allows up to \$2 million in tax credits to be claimed by donors to participating scholarship granting organizations.⁹⁶ The program, which just finished its first year, is available to nearly 40% of South Dakota families.⁹⁷

Tennessee

In January 2016, Tennessee lawmakers introduced HB 1049 and SB 999, companion bills to create a voucher for students in the bottom 5% of schools in the state, or whose families meet the income requirements for the federal free and reduced-price lunch program.⁹⁸ While the program was initially capped at 5,000 students, it could expand in later years. Though the bill made it to the House floor, it was tabled on February 11th for the rest of the session.⁹⁹

In 2017 Tennessee introduced two additional school choice bills. SB 161 and its companion bill, HB 126, were similar to HB 1049 and SB 999, establishing an Opportunity Scholarship Pilot Program for students eligible for the federal free and reduced-price lunch program in districts with more than 30 of the bottom 5% of Tennessee public schools. Unlike its predecessor, SB 161 set a more expansive program cap of 20,000 recipients.¹⁰⁰ Unfortunately both chambers deferred further action on both bills until the 2018 legislative session.¹⁰¹

Texas

Texas moved toward enacting its own ESA program in 2016–2017. On September 13, 2016, the Texas Senate Committee on Education held a preliminary hearing on ESAs in preparation for the 2017 legislative session.¹⁰² Introduced in January 2017, SB 3 would create a nearly universal ESA program. On March 21, 2017, the Texas Senate Education Committee held a hearing on SB 3, where a variety of experts, including Reason Foundation’s Aaron Smith, provided testimony on the merits of ESAs. Smith discussed how increased per-pupil funding portability through ESAs would help Texas tackle a variety of school funding inequity issues.¹⁰³ In March, the bill passed the Senate after an 18–13 vote, however the bill failed in the House.¹⁰⁴

Virginia

While Virginia did not pass any new choice programs in 2016–2017, its legislature introduced a variety of bills. HB 389, which originally created a near-universal ESA program but was amended in the House Appropriations Committee to narrow eligibility to students with special needs, passed both houses in March 2016. Unfortunately Governor Terry McAuliffe vetoed the bill later in the month.¹⁰⁵ HB 1017 and HB 1019, both introduced in January 2016, would have expanded Virginia’s Education Improvement Tax Credit Scholarship Program, a tax credit scholarship for children from families with incomes up to 300% above eligibility for the federal free and reduced-price lunch program (or up to 400% above for students with special needs). The bills gave scholarship granting organizations more time to report donations to the tax credit scholarship program, and expanded student eligibility to pre-kindergarten. HB 1017 was tabled by the

House Finance Committee for review in 2017. While HB 1019 passed the House, it died in the Senate Committee on Finance.

In 2017, the Virginia Legislature passed another bill, HB 1605, to create an ESA for low-income and special needs students, but Governor McAuliffe again vetoed the bill in March. However, this version of the bill contained a “reenactment clause,” requiring the next legislature to pass the same bill again before it became law, rendering the vote largely symbolic anyway.¹⁰⁶

West Virginia

Though West Virginia did not pass any new private school choice programs this year, it introduced two bills to do so in 2017. HB 2689 and its companion bill SB 273, introduced in February, would have created a nearly universal ESA, capped at 1,000 students with a \$3 million appropriation. While HB 2689 died without further action, SB 273 ultimately passed out of the Senate Education Finance Committee as a substitute bill to create a pilot ESA program. Unfortunately the legislature ended the 2017 session while the bill was still in the Senate Finance Committee.¹⁰⁷

Wisconsin

In August 2017, Wisconsin’s Joint Finance Committee approved an amendment to the state budget that would increase the income eligibility limit for Wisconsin’s statewide voucher program, from 185% of the federal poverty line to 220%. The measure will now head to the Wisconsin House and Senate for approval.¹⁰⁸

4. Private School Choice Legal Highlights

For federal education litigation, 2016's most notable case was *Friedrichs v. California Teachers Association*, which challenged mandatory union dues to finance collective bargaining. While California teachers don't have to pay dues to support the California Teachers Association's (CTA) political activism, they do have to pay hundreds of dollars per year in "agency fees" to finance the union's collective bargaining. Whether or not teachers are members of the union, the argument goes, they all benefit from the contract the union negotiates. One of traditional public schools' biggest drawbacks is the inflexible union-negotiated contracts principals have to contend with that limit their ability to innovate.

Rebecca Friedrichs was the lead plaintiff of a group of 10 California teachers who argued that as public employees, being forced to support collective bargaining stances concerning the use of taxpayer dollars was inherently political, violating their First Amendment rights under the Establishment Clause. Reason Foundation and other pro-school choice organizations collaborated to support Friedrichs' efforts during the trial. During oral arguments on January 11, 2016, the late Associate Justice Antonin Scalia summed up this reasoning as follows:

*The problem is that everything that is collectively bargained with the government is within the political sphere, almost by definition. Should the government pay higher wages or lesser wages? Should it promote teachers on the basis of seniority or on the basis of [merit?] All of those questions are necessarily political questions.*¹⁰⁹

Despite initial predictions of a victory after the oral argument, Justice Scalia's untimely death in March 2016 left the court deadlocked 4–4. As a result, the Supreme Court issued a per curiam opinion affirming the 9th Circuit Court of Appeals' verdict against Friedrichs, without setting a new precedent on the case.

Another case pending before the Supreme Court could have the same impact for teachers' unions. Mark Janus, an employee of the Illinois Department of Healthcare and Family Services, filed suit against the American Federation of State, County, and Municipal Employees (AFSCME) for mandating agency fee payments under similar first Amendment grounds. On June 6th, the National Right to Work Legal Defense Fund filed a petition for a writ of certiorari for *Janus v. AFSCME* on behalf of the plaintiff.¹¹⁰ On September 28th, the Supreme Court announced it will hear the Janus case.¹¹¹ The Court's verdict could end mandatory union dues for teachers and public employees around the country.

On June 26th, the Supreme Court issued a verdict which could be an opening salvo against school choice-impeding Blaine Amendments in state constitutions around the country. The court ruled in *Trinity Lutheran v. Missouri* that it was unconstitutional for a state to exclude a religious school from an otherwise neutral secular aid program (in this case a playground resurfacing initiative) on the basis of their religious status. As

Chief Justice Roberts stated in the majority opinion: “The express discrimination against religious exercise here is not the denial of a grant, but rather the refusal to allow the Church—solely because it is a church—to compete with secular organizations for a grant.”¹¹²

At first blush, the case is a big victory for private school choice programs frequently under legal threat for allowing their participants to choose religious schools from among a variety of options. However, the court’s opinion left in place the older precedent of *Locke v. Davey*, which allowed Washington State to deny a student the use of a college financing program because he intended to study to become a minister.¹¹³ Future litigation will have to determine just how wide a door for the expansion of school choice has been opened.

There have been several state-level education lawsuits this year as well:

California

Anticipating Neil Gorsuch’s confirmation to the Supreme Court in April 2017, school choice proponents were confident of challenging agency fees once again. In February, the Center for Individual Rights (the same firm that represented Rebecca Friedrichs) filed a lawsuit on behalf of Ryan Yohn, a California educator leading eight plaintiffs in challenging the California Teachers Association’s agency fees, once more on First Amendment grounds. As of June 1st, Judge Josephine L. Staton of the Central District of California has ordered discovery for *Yohn v. California Teachers Association*.¹¹⁴ If *Janus v. AFSCME* is granted certiorari and decided in favor of the plaintiff, Yohn may not have to go to the Supreme Court to reach a favorable judgment in California.

Connecticut

On September 7, 2016, the Superior Court in Hartford Connecticut ruled in *Connecticut Coalition for Justice in Education Funding v. Jodi M. Rell* that the state’s school funding formula was “irrational” and its method of distributing tax dollars was unconstitutional, giving the state 180 days to propose a new formula.¹¹⁵ So far, Connecticut hasn’t formulated its new school finance system, but the verdict represents an opportunity for the state to pursue a weighted student formula to more equitably and efficiently allocate its education resources.

Florida

In August 2016, Florida’s First District Court of Appeals ruled 3–0 to dismiss a seven-year-old lawsuit against Florida’s Tax Credit Scholarship.¹¹⁶ The suit alleged that the program violated Florida’s “adequately funding public education” constitutional provision. In 2014, the suit had expanded to cover Florida’s McKay

and Gardiner Scholarship programs. The court ruled that the Florida Education Association (FEA), which brought the suit, had no standing in its case because it could not prove injury.¹¹⁷ In January 2017, the Florida Supreme Court denied the Florida Education Association’s appeal of the ruling, on a similar basis of lack of standing, finally putting the legal fate of school choice programs serving over 100,000 students on firm ground.¹¹⁸

Georgia

In January 2017, the Georgia Supreme Court heard oral argument for *Gaddy v. Department of Revenue*, concerning Georgia’s eight-year-old Tax Credit Scholarship program, which funds over 13,000 students annually.¹¹⁹ The Southern Legal Foundation brought the suit, arguing that religious private schools were unconstitutionally benefitting from the tax credit program, through funds donors retained that otherwise would have gone to the state. But the program is entirely privately funded, undermining the claim of “state assistance” to religious schools. On June 26th, the Georgia Supreme Court ruled in the Tax Credit Scholarship program’s favor, holding that the plaintiffs had no standing to bring suit because they had suffered no injury from the program.¹²⁰

Montana

On May 30, 2017, Judge Heidi Ulbricht of the 11th Judicial Circuit Court of Montana, ruled in favor of the pro-school choice plaintiff of *Espinoza v. Department of Revenue*.¹²¹ After Montana established its Tax Credits for Contributions to Student Scholarship Organizations program in 2015, the Montana Department of Revenue implemented a rule barring scholarship granting organizations from distributing funds to religious schools. Though an appeal to the Montana Supreme Court is expected, the program’s participants will now have fuller access to educational options for the foreseeable future.¹²²

Nevada

Nevada has had a bittersweet two years of litigation surrounding its ESA program. In January 2016, the Nevada Supreme Court issued injunctions in *Lopez v. Schwartz* against the ESA program disbursing funds over a state constitutional challenge that the program was using public funds for religious purposes. In May 2016, Judge Eric Johnson (Eighth Judicial District Court, Clark County, Nevada) dismissed an ACLU lawsuit against the ESA program in *Duncan v. State of Nevada*, arguing that the program’s secular purpose did not violate the ban.¹²³ In September 2016, the Nevada Supreme Court issued a consolidated ruling for *Duncan v. State of Nevada* and *Lopez v. Schwartz*. While the ruling upheld the constitutionality of the program given its secular, educational intent, it found the program’s funding source unconstitutional. Unfortunately, Governor Brian Sandoval’s chose to use an emergency legislative session after the ruling to

fund a new football stadium instead of creating the legislative fix the court required.¹²⁴ Sandoval's further failure to stand firm to secure an ESA appropriation during this summer's budget negotiations leaves 10,000 students who have already signed up with continued uncertainty over receiving funding as the program enters its third year.¹²⁵

New Hampshire

On July 29, 2016, the Superior Court of Sullivan County, New Hampshire ruled against the Town of Croydon in *Department of Education v Croydon School Board, et. al.*¹²⁶ The New Hampshire Department of Education sued the town for "tuitioning" five students to local private schools instead of a neighboring public school that was chronically low-performing. "Tuitioning" is a practice dating back to 1869 in nearby states such as Vermont and Maine among towns without traditional public schools of their own (as described on page 13 of this report). Despite this setback, the passage of SB 8 in June 2017 (discussed in Part 3) now permits "town tuitioning" statewide, giving Croydon the statutory authority to do so.

5. Charter School State Legislative Highlights

Charter schools had several victories at the state level over 2016–2017 enabling greater expansion and redress of funding imbalances with traditional public schools.

Alabama

In 2016, Alabama appropriated \$200,000 to support the work of the Alabama Public Charter School Commission, which oversees authorizing guidelines and allocates planning funds to charter school applicants.¹²⁷

Arizona

On May 5, 2017, Arizona Governor Doug Ducey signed SB 1531, which created the Public School Credit Enhancement Fund. The fund will make \$300 million available in low-cost financing for charter schools to help them overcome start-up and facilities cost barriers to expansion.¹²⁸

Arkansas

In 2016, Arkansas appropriated \$5 million for the Open-Enrollment Public Charter School Facilities Funding Aid Program. The fund can help Arkansas charter schools overcome a major stumbling block for their expansion as a sector compared to traditional public schools.¹²⁹

On March 21, 2017, Arkansas made additional progress in assisting charter school facilities' efforts as Governor Asa Hutchinson signed Senate Bill 308. The law grants charter schools a right to use vacant or underused public school facilities, helping avoid more expensive construction efforts or property purchases.¹³⁰

California

Through the passage of Prop 98, California allocated \$20 million in start-up funding for charter schools to be used in case the state does not win a new grant from the federal Charter Schools Program.¹³¹

Colorado

In 2016, Colorado appropriated an additional \$3 million into its Charter Capital Construction Fund, raising the program's total budget to \$25 million.¹³² The state also requires school districts to regularly provide information on vacant or underutilized buildings and entertain charters' proposals for use of these spaces. If districts deny these proposals they must notify charter schools of the reasons why in writing and through public meetings. The state also enabled charter schools to use Charter Capital Construction funds to cover maintenance costs. Finally, Colorado reduced the period a charter has to be authorized before it gains eligibility to apply for the Building Excellent Schools Today construction grant program—from five to three years—like other schools statewide.¹³³

In 2017, Colorado attempted to give charter schools access to the same property tax revenues public schools enjoy through SB 61. Unfortunately however, the bill was indefinitely postponed in the Colorado House Committee on Education.¹³⁴

Florida

Florida's 2016 budget agreement increased funding for its Facilities Capital Outlay program for charter schools to \$75 million, up from \$50 million.¹³⁵

Georgia

On April 27, 2017, Georgia Governor Nathan Deal signed HB 430, which granted more equitable access to facilities and Title I funding for charter schools and more clearly defined accountability standards for charter school authorizers.¹³⁶

Idaho

In 2016, Idaho appropriated an additional \$750,000 to a charter school debt reserve fund it established in 2015.¹³⁷ The fund will help qualifying charter schools receive favorable financing for facility improvement and construction costs, which are typical barriers to charter expansion.

On April 4, 2017, Idaho made additional progress when Governor Butch Otter signed HB 279, which helps streamline the application process for new charter schools.¹³⁸

Illinois

In 2016, Illinois increased its start-up funding from the Charter Revolving Loan Fund for new charter schools from \$250 to \$750 per pupil.¹³⁹ As part of this expansion, the state made facilities costs an eligible expense for the program to cover.

Kentucky

Kentucky became the 44th state in the country to legalize charter schools after Governor Matt Bevin signed HB 520 on March 21, 2017.¹⁴⁰ The bill will allow school boards and the mayors of Louisville and Lexington to authorize an unlimited amount of charter schools starting in the 2017–2018 school year.

Louisiana

Home to the largest scale charter school experiment in the country, the state-run New Orleans Recovery School District (RSD), Louisiana navigated the merging of the RSD with the older Orleans Parish School Board (OPSB), which the RSD had gradually subsumed during rebuilding after Hurricane Katrina. Senate Bill 432, which passed in the summer of 2016, will return all RSD schools back into OPSB leadership by July 2018.

After Hurricane Katrina, the RSD reformed New Orleans' school system into a decentralized “portfolio” model of district governance, converting nearly every traditional public school in the city into a charter, instituting open enrollment, and protecting principal autonomy in school governance. The RSD's reforms helped usher in dramatic performance gains as New Orleans students eventually surpassed other storm-affected pupils they had scored well beneath before the hurricane.¹⁴¹

Luckily the law's provisions protect the operational autonomy of charter schools—the key to their innovative flexibility—and protect charters' statuses as Local Educational Agencies, helping to insulate them from potential school board overreach. Nevertheless, during implementation it will remain to be seen if these principles are fully respected and New Orleans can preserve the key elements of its success story.¹⁴²

In other charter-related news, on June 14, 2016 Louisiana's Governor John Bel Edwards signed into law SB 260, which eliminated local charter authorizers. Due to this law, Louisiana school districts and the state board of education are the only legal charter school authorizers in the state.¹⁴³ The resulting law—Act No. 497—places unfortunate limits on charters schools' abilities to start or expand, particularly considering the potential for conflicts of interest from district-level authorizers, who are sometimes reluctant to authorize new schools that would compete with traditional district schools.¹⁴⁴

Massachusetts

On November 7, 2016, Massachusetts voters decisively rejected Question 2, which would have lifted the state's charter school cap and allowed up to 12 new charter schools annually. The measure failed 62% to 38%, despite the emphatic support of Massachusetts' pro-charter school governor, Charlie Baker. Currently, there are 78 charters in the state, many with waiting lists for enrollment.¹⁴⁵

Maryland

The National Alliance of Public Charter Schools ranks Maryland's charter school law the worst in the country. In 2017, Maryland Governor Larry Hogan supported HB 878 and its companion bill SB 704, two bills to reform the state's charter law. The bills were designed to create an independent charter school authorizer that would give charter school applicants an alternative authorizer and give charter schools more flexibility over curriculum and more support to obtain and maintain charter school facilities. Both bills unfortunately died in committee, though advocates look to Maryland as a potential state for reform next session.¹⁴⁶

Mississippi

On April 14, 2016, Mississippi Governor Phil Bryant signed legislation enabling students in low-performing traditional public schools to cross district lines to attend a charter school.¹⁴⁷ Additionally, the law allowed conversion charter schools to purchase or lease their school buildings from local school districts at market value. Leasing or purchasing the district school building was not allowed before the new law.¹⁴⁸ As facility access is a main obstacle to charter expansion, both measures within the law should help expand educational options for Mississippi children.

Missouri

In January 2017, Missouri lawmakers introduced HB 634, which would increase access in additional school districts to non-district charter authorizers to approve schools.¹⁴⁹ The bill would remove the inherent conflict of interest involved with traditional public schools having the right to approve or deny their competitors' right to exist.¹⁵⁰ The bill passed the Missouri House in March and has been referred to the Senate Education Committee.

Montana

Montana is one of seven states where charter schools remain illegal. In 2017, that almost changed. HB 376, introduced in January, would have established the state's first charter school law. Though it passed the House in March, the bill failed in the Senate in April.¹⁵¹ Additionally, and further complicating current prospects for charter expansion in the Treasure State, Montana Governor Steve Bullock has promised to veto any charter school bill that passes the legislature.¹⁵²

Nebraska

Nebraska, like Montana, is one of seven states where charter schools remain illegal—LB 630 was introduced in January 2017 in the hopes of changing that. While the bill had a hearing in March, it remains in the Education Committee as of the current recess.¹⁵³

New Mexico

New Mexico defeated an anti-charter bill during the 2017 legislative session. House Bill 46, introduced in January, would have instituted a moratorium on new charter schools from June 2017 through 2020. The bill was defeated in a tie vote in the House.¹⁵⁴

New York

On average statewide, New York charter school students receive a quarter less per-pupil funding than their traditional public school counterparts. In 2016, New York started addressing this disparity, giving an additional \$54.8 million in funding for charter schools, an increase of \$430 per charter school student.¹⁵⁵ While a step in the right direction, the disparity in access to per-pupil and facilities funds remains to be closed.

Oklahoma

Oklahoma charter schools have the potential for additional gains through SB 359, introduced in February 2017. The legislation creates a framework for charter schools to participate in district bonding efforts and gives charter schools the first opportunity to purchase or lease a property that district administrators are planning to sell or lease. The bill passed the Senate in March and currently sits in the House's Appropriations and Budget Education Subcommittee.¹⁵⁶

Rhode Island

Rhode Island faced multiple potential blows for public school choice in 2017, though may have dodged both of them. Its House passed HB 6203, giving the Cumberland Town Council the authority to limit the amount of students who enroll in charter schools to as little as 8% of the district's average daily enrollment. As of this writing, the bill has been referred to the Rhode Island Senate Finance Committee, receiving no vote thus far.¹⁵⁷

Additionally, in July, Governor Gina Raimondo vetoed a bill that would have defined K-8 charter schools as “network” (i.e. multiple) schools subject to additional regulation. With over a quarter of Rhode Island's 31 charter schools authorized to educate students in grades K-8 or wider, this bill's failure was an important relief.¹⁵⁸

Virginia

In March 2017, Governor Terry McAuliffe vetoed pro-charter bills—SB 1283 and its companion, HB 2342. These bills would have created regional charter school divisions capable of authorizing new charters in areas of Virginia with struggling schools.¹⁵⁹ Charter advocates hope for renewed prospects for success after Virginia's gubernatorial election in 2018.

West Virginia

In January 2016, West Virginia, another one of the seven remaining states without charter schools, introduced a bill to legalize them, HB 4011, but the bill died in the House Education Committee.¹⁶⁰ The state was the scene of a similar push in 2015, and charter advocates hope for a new bill proposal in the coming legislative session.

Washington

Washington state passed legislation re-establishing its charter school law on April 1, 2016 after its state Supreme Court had declared its previous charter law unconstitutional in September of the previous year.¹⁶¹ The new law made Washington the 43rd state to legalize charter schools, giving much-needed certainty to its estimated 1,600 charter school students.¹⁶²

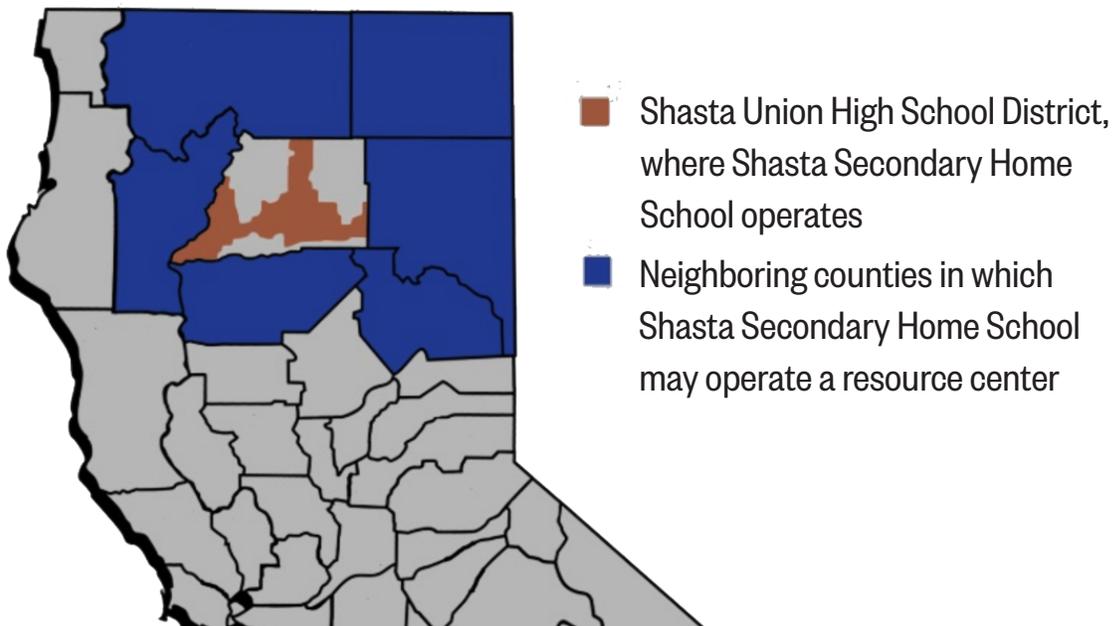
6. Charter School Legal Highlights

California

California's 3rd District Court of Appeal issued a disappointing decision in *Anderson Union High School District v. Shasta Secondary Home School* in October 2016. The court held that non-classroom-based charter schools may not operate resource centers outside of their school district boundaries in their own authorized counties.

The narrow reading of the statute in question now prohibits charter schools from legally expanding within their home counties near the students they serve, while allowing charters to set up locations in neighboring counties. The decision creates an absurd, arbitrary “prohibitive island” (shown in Figure 1, below) between neighboring counties and the charter school’s home district where it cannot set up resource centers, needlessly complicating its ability to serve students. Given that online charter schools are one of the few forms of school choice many rural students have access to, the ruling is all the more disappointing.

Figure 1: Charter School “Prohibitive Island”



Source: Pacific Legal Foundation

In a further blow, the California Supreme Court declined to review the case in January 2017. Hope for a solution may lie in a contrary decision by another California appeals court that will then have to be reconciled by the State Supreme Court.¹⁶³

Florida

On May 26, 2017, the Palm Beach County School District appealed the result of *School Board of Palm Beach County v. Florida Charter Education Foundation* to the Florida Supreme Court.¹⁶⁴ In January, Florida's 4th District Court of Appeals upheld the State Board of Education's authority to review appeals when charter school applications are rejected by local school boards.

The Palm Beach County School Board gained notoriety in December 2014 after rejecting South Palm Beach Charter School's application to open a new campus, calling it insufficiently "innovative" despite the network's reputation for quality. Florida's State Board of Education unanimously overturned the school board's decision, prompting the suit.¹⁶⁵ The appeal process is a valuable check against school districts being too eager to shut down potential competition in charter approval processes, so the case will hold important consequences for Florida children.

Louisiana

On September 5, 2017, the Louisiana State Supreme Court held a hearing over the constitutionality of using state education formula dollars to fund "Type 2" charter schools in the state. In January 2017, Louisiana's First Circuit Court of Appeals ruled 3–2 in *Iberville Parish School Board v. Louisiana State Board of Elementary and Secondary Education* that funding Type 2 charter schools was unconstitutional. Over 13,000 students attend these kinds of charters, distinguished by not having public boards and by being authorized by the state rather than local school districts.¹⁶⁶ Removing funding sources for these schools would jeopardize Louisiana charter schools' ability to exist independently from school districts less willing to authorize their competitors.

Massachusetts

Alongside the failure of Question 2 at the ballot box in November 2016, Massachusetts charter school advocates had a rough year at the courtroom. A month earlier, a Suffolk County Superior Court judge dismissed a lawsuit challenging the constitutionality of limiting the number of charter schools that can operate. The judge held that the state has the right to protect the financial interests of traditional public schools.¹⁶⁷

Minnesota

The Minnesota State Supreme Court has agreed to hear a lawsuit brought by parents of Minneapolis and St. Paul schools' students asserting that charter schools have brought segregation and denied poor minority children an adequate education. The Minnesota Court of Appeals threw out the suit in March.¹⁶⁸

Mississippi

In April 2017, the Southern Poverty Law Center filed suit against the constitutionality of Mississippi funding charter schools before the Hinds County Chancery Court, arguing that funding charter schools violates Mississippi's 1870 constitution by disproportionately denying African Americans "school rights and privileges" through a "uniform system of free and public schools."¹⁶⁹ As of this writing, Mississippi only has three charter schools, whose populations are all over 95% African American.¹⁷⁰

Missouri

On April 11, 2016, the NAACP and the St. Louis Public Schools filed suit against the city and Missouri over the exclusive right to use sales tax revenue for traditional public schools. City officials argue that the revenues were meant to assist all students attending public schools, including charters. The district seeks to recoup revenues it argues should have gone to the district ever since the first tax dollars flowed to charter schools in 2006—a total of over \$40 million dollars.¹⁷¹

Legal victory for the St. Louis School District would put the educational options of the over a third of St. Louis children who now attend charter schools at risk, cutting per-pupil revenues at charter schools up to \$800 per year and likely forcing many in the city to close.¹⁷² In July 2016, the Eastern District Court of Missouri denied a motion by charter school parents to intervene in the lawsuit as part of the defense.¹⁷³

New Jersey

Princeton Charter School (PCS), the only charter school in the city, has been embroiled in a legal battle all through 2017 over its proposed expansion. In January, Princeton Public Schools filed suit against the charter, arguing the school violated state New Jersey "sunshine" laws by not providing sufficient notice for public meetings during the planning process. The charter has countersued, alleging the district has done the same for years.

Additionally, the Latino Coalition of New Jersey filed a complaint with the Department of Justice against the charter school, claiming it discriminates against potential students on the basis of race and income.¹⁷⁴ While

it's true that PCS's enrollment is less economically disadvantaged than in the district's traditional public schools, the purpose of the expansion is specifically to accommodate a more diverse student body, and the school uses a weighted lottery to begin with favoring disadvantaged students among applicants.¹⁷⁵

Washington

In February 2017, Washington's King County Superior Court ruled that the state's charter school law was constitutional after a suit brought by *El Centro de la Raza* attempted to challenge the recently rewritten law. The ruling gives the over 1,600 students at eight charter schools in Washington needed certainty about the future of their educational options.¹⁷⁶

About the Author

Tyler Koteskey is an education policy analyst at Reason Foundation. He studies the rise of school choice across America, with a focus on portable funding strategies such as student-based budgeting and the intersection of education reform and juvenile justice. Tyler holds a bachelor's degree in history and political science from the University of California, Los Angeles.

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