



# Educational Freedom and Innovation Act

## A BILL

To protect educational freedom, school innovation, and parental rights in education.

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Educational Freedom and Innovation Act”.

### **SEC. 2. FINDINGS.**

Congress finds the following:

(a) **CONSTITUTIONAL FOUNDATION.**—The Due Process Clauses of the Fifth and Fourteenth Amendments protect fundamental liberties, including the right of parents to direct the upbringing and education of their children, as established in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and *Meyer v. Nebraska*, 262 U.S. 390 (1923).

(b) **PARENTAL RIGHTS TRADITION.**—The liberty of parents to direct the education and upbringing of their children is among the oldest and most fundamental rights protected by the Constitution, predating the founding of the Republic and recognized across diverse cultures and traditions.

(c) **EDUCATIONAL PLURALISM.**—A thriving civil society benefits from educational pluralism, including diverse educational institutions, pedagogical approaches, and curricula that reflect the varied values, beliefs, and priorities of American families.

(d) **INNOVATION IN EDUCATION.**—Educational innovation, including the development of new schools, teaching methods, curricula, and technologies, is essential to improving educational outcomes and meeting the diverse needs of students.

(e) **HISTORICAL RESTRICTION.**—Throughout American history, various States have imposed restrictions on educational freedom, including:

- (1) Prohibitions on private schools or particular types of schools.
- (2) Mandatory attendance at government-run schools.
- (3) Restrictions on homeschooling.
- (4) Excessive regulatory burdens on alternative educational models; and

(5) Discriminatory treatment of religious schools or schools with particular philosophical approaches.

(f) CONTEMPORARY CHALLENGES.—In recent years, States have increasingly imposed restrictions on educational freedom that:

- (1) Limit the creation or operation of charter schools, private schools, or other alternative educational institutions.
- (2) Impose curriculum mandates that conflict with parental values or educational philosophy.
- (3) Restrict homeschooling through excessive regulatory requirements.
- (4) Discriminate against schools based on religious affiliation or educational philosophy.
- (5) Impose teacher certification or other requirements that exclude qualified educators from innovative schools; or
- (6) Otherwise substantially burden parental rights to direct their children's education.

(g) EDUCATIONAL OUTCOMES.—Evidence demonstrates that educational choice, innovation, and parental involvement are associated with improved student outcomes, increased parental satisfaction, and more efficient use of educational resources.

(h) STATE INTERESTS.—While States have legitimate interests in ensuring that children receive basic education necessary for citizenship in a free society, many State restrictions on educational freedom are not narrowly tailored to serve these interests and instead reflect protectionist impulses, ideological preferences, or resistance to innovation.

(i) FEDERAL ROLE.—Congress has authority under Section 5 of the Fourteenth Amendment to protect fundamental rights, including parental rights and educational freedom, from State infringement.

(j) SPENDING POWER.— Congress has authority under the Spending Clause to attach conditions to Federal education funding to ensure that such funding is not used to infringe upon constitutional rights.

### **SEC. 3. DEFINITIONS.**

In this Act:

(a) PARENT.—The term “parent” means a biological or adoptive parent, legal guardian, or other person standing in loco parentis with respect to a child.

(b) CHILD.—The term “child” means an individual under the age of 18 years.

(c) EDUCATIONAL INSTITUTION.—The term “educational institution” means any school, academy, learning center, homeschool, online school, or other entity that provides instruction to children, including:

- (1) Public schools.
- (2) Charter schools.
- (3) Private schools, including religious schools.
- (4) Homeschools.
- (5) Microschools and learning pods.
- (6) Online or virtual schools; and
- (7) Any other innovative educational model.

(d) EDUCATIONAL METHOD.—The term “educational method” means any pedagogical approach, teaching technique, or instructional strategy used to provide education to children.

(e) CURRICULUM.—The term “curriculum” means the content, subjects, materials, and sequence of instruction provided to students.

(f) STATE.—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, including any political subdivision, agency, or instrumentality thereof.

(g) SUBSTANTIALLY BURDEN.—The term “substantially burden” means to inhibit, restrict, penalize, or impose conditions or requirements that make the exercise of educational freedom significantly more difficult, costly, or less effective than it would otherwise be.

#### **SEC. 4. PROTECTION OF EDUCATIONAL FREEDOM AND INNOVATION.**

(a) GENERAL RULE.—No State shall inhibit the creation, development, or operation of educational institutions, methods, or curricula, including private schools, charter schools, homeschooling, and innovative educational programs.

(b) STRICT SCRUTINY STANDARD.—A State may inhibit educational freedom only if the State demonstrates by clear and convincing evidence that:

- (1) The inhibition is narrowly tailored to serve a compelling governmental interest.
- (2) The compelling interest is limited to:
  - (A) Protection of public health and safety through requirements directly related to such protection.
  - (B) Prevention of educational or other neglect or abuse of children; or

- (C) Ensuring that children receive basic education in core subjects necessary for citizenship in a free society, including literacy, mathematics, history, and civics.
- (3) The inhibition is the least restrictive means of achieving the compelling interest; and
  - (4) The inhibition does not discriminate against particular educational institutions, methods, or curricula based on:
    - (A) Religious affiliation or religious content of instruction.
    - (B) Philosophical, ideological, or pedagogical approach, except where the approach itself has a well-known link to neglect or abuse.
    - (C) For-profit or nonprofit status; or
    - (D) Any other impermissible consideration.
  - (5) The inhibition does not prohibit consideration of whether an educational institution – whether under the banner of religion or not – promotes, incites, or provides material support for violent conduct, terrorist activity as defined in 18 U.S.C. §2331, or other criminal activity intended to overthrow the government through unlawful means, including where evidence demonstrates that the institution’s teachings:
    - (A) Promote, incite, or provide material support for violence towards persons based on their religion, sex, national origin, or other protected status.
    - (B) Advocate that criminal conduct—including violence, coercion, fraud, sexual assault, human trafficking, child abuse, child marriage, forced marriage, or slavery—are religiously permissible or required.
    - (C) Teach that individuals lack legal personhood, equal protection under law, or fundamental constitutional rights based on their sex or religion.
    - (D) Instruct students that violent overthrow of the constitutional government is a religious duty; or
    - (E) Instruct students that deception or violation of U.S. law is religiously justified to advance religious goals.

(c) PROHIBITED RESTRICTIONS.—The following State actions shall be presumed to violate this Act unless the State satisfies the strict scrutiny standard of subsection (b):

- (1) Prohibitions on the creation or operation of private schools, charter schools, homeschools, or other alternative educational institutions.
- (2) Durational or numerical caps on charter schools, private schools, or homeschools not based on genuine capacity constraints.

- (3) Curriculum mandates that require instruction in specific ideological content or prohibit instruction based on religious or philosophical viewpoint.
- (4) Teacher certification requirements that exclude otherwise qualified educators from teaching in private schools, charter schools, or homeschools.
- (5) Facility requirements that exceed those necessary for health and safety and that are not similarly imposed on other institutions serving children.
- (6) Standardized testing requirements that are more burdensome for alternative educational institutions than for traditional public schools.
- (7) Reporting or assessment requirements that exceed those necessary to ensure basic educational adequacy.
- (8) Restrictions on the use of innovative teaching methods, technologies, or curricula.
- (9) Discrimination in funding, services, or benefits based on the type of educational institution, religious affiliation, or educational philosophy; or
- (10) Any other restriction that substantially burdens educational freedom without satisfying strict scrutiny.

(d) PROHIBITED JUSTIFICATIONS.—The following shall not constitute compelling governmental interests justifying inhibition of educational freedom:

- (1) Desire to maintain enrollment in traditional public schools.
- (2) Opposition to religious or philosophical content of education.
- (3) Preference for particular pedagogical approaches or educational theories.
- (4) Protection of public school teachers' unions or employment interests.
- (5) Administrative convenience or uniformity.
- (6) Revenue considerations or budgetary concerns.
- (7) Aesthetic preferences or community character concerns; or
- (8) General assertions about quality of education not supported by clear and convincing evidence of actual educational inadequacy or harm to children.

## **SEC. 5. PROTECTION OF PARENTAL RIGHTS.**

(a) FUNDAMENTAL RIGHT RECOGNIZE.—Congress affirms and recognizes the fundamental right of parents to direct the upbringing, education, and care of their children, consistent with the principles articulated in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Meyer v. Nebraska*, 262 U.S. 390 (1923), and subsequent Supreme Court precedent.

(b) SCOPE OF PARENTAL RIGHTS.—The fundamental right of parents includes:

- (1) The right to choose among public schools, private schools, charter schools, homeschooling, and other educational options.
- (2) The right to choose the curriculum, instructional materials, and pedagogical approach for their children's education.
- (3) The right to direct the religious, moral, and philosophical education of their children.
- (4) The right to access information about their children's education, including curriculum content, instructional materials, and assessment results.
- (5) The right to consent to or refuse medical, psychological, or counseling services provided to their children by schools.
- (6) The right to consent to or refuse instruction on topics related to sexuality, gender, religion, or other sensitive matters; and
- (7) The right to direct all other aspects of their children's upbringing consistent with law.

(c) STANDARD OF REVIEW.—Governmental actions that substantially burden the fundamental right of parents to direct the education and upbringing of their children shall be subject to strict scrutiny and must be narrowly tailored to serve a compelling governmental interest using the least restrictive means available.

(d) PROHIBITED STATE ACTIONS.—No State shall:

- (1) Compel parents to enroll their children in particular schools or educational programs.
- (2) Prohibit parents from homeschooling their children or impose requirements on homeschooling that substantially burden this right without satisfying strict scrutiny.
- (3) Require parents to adopt particular curricula or pedagogical approaches that conflict with parental values or educational philosophy.
- (4) Provide medical, psychological, counseling, or other services to children without parental knowledge and consent, except in emergency circumstances.
- (5) Instruct children in matters related to sexuality, gender identity, or other sensitive topics without providing parents with advance notice and an opportunity to opt their children out of such instruction.
- (6) Withhold information from parents about their children's education, health, or welfare.
- (7) Retaliate against parents who exercise their fundamental rights under this Act; or
- (8) Otherwise substantially burden parental rights without satisfying strict scrutiny.

## **SEC. 6. CAUSE OF ACTION.**

(a) PRIVATE RIGHT OF ACTION.—Any parent or educational institution whose rights under this Act have been violated may bring a civil action for declaratory or injunctive relief in an appropriate United States district court.

(b) ORGANIZATIONAL STANDING.—Any organization whose mission includes protecting educational freedom or parental rights may bring suit on behalf of its members or to challenge systemic violations of this Act.

(c) JURISDICTION.—The district courts of the United States shall have jurisdiction over actions brought under this Act without regard to the amount in controversy.

(d) BURDEN OF PROOF.

- (1) The plaintiff must demonstrate by a preponderance of the evidence that a State action substantially burdens educational freedom or parental rights as defined in this Act.
- (2) Once the plaintiff meets this burden, the State must demonstrate by clear and convincing evidence that the challenged action satisfies strict scrutiny as set forth in Section 3(b).
- (3) The burden may not be satisfied by speculation, general assertions of governmental interest, or consideration of impermissible justifications listed in Section 3(d).

(e) REMEDIES.

- (1) Upon finding a violation of this Act, the court shall issue appropriate declaratory and injunctive relief.
- (2) The court may award reasonable attorney fees and costs to a prevailing plaintiff.
- (3) The court shall accord priority to proceedings under this Act to the extent practicable.

## **SEC. 7. PRESERVATION OF LEGITIMATE STATE INTERESTS.**

(a) BASIC EDUCATIONAL ADEQUACY.—Nothing in this Act shall be construed to prevent States from:

- (1) Requiring that all children receive instruction in basic literacy, mathematics, history, civics, and science adequate to prepare them for citizenship and self-sufficiency.
- (2) Establishing reasonable assessment procedures to verify that children are receiving adequate education.
- (3) Investigating and remedying situations of genuine educational or other neglect where children are not receiving any meaningful education, or investigating and remedying situations of genuine physical or sexual abuse; or

- (4) Enforcing generally applicable health, safety, and building codes necessary to protect children from genuine risks of harm.

(b) LIMITATIONS ON STATE AUTHORITY.—Any State action taken pursuant to subsection (a) must:

- (1) Be narrowly tailored to achieve the specific legitimate interest.
- (2) Not discriminate against particular educational institutions or approaches.
- (3) Provide for reasonable accommodations for diverse educational philosophies and methods.
- (4) Respect parental rights to direct the specific content and approach of their children's education; and
- (5) Satisfy strict scrutiny if it substantially burdens educational freedom or parental rights.

## **SEC. 8. FEDERAL EDUCATION FUNDING CONDITIONS.**

(a) PROHIBITION ON FUNDING FOR RIGHTS VIOLATIONS.—No Federal education funds provided to any State shall be used to support, enforce, or implement any law, regulation, policy, or practice that violates this Act.

(b) CERTIFICATION REQUIREMENT.—As a condition of receiving Federal education funds, each State shall certify annually that:

- (1) It is in compliance with this Act; and
- (2) No Federal funds will be used for purposes that violate this Act.

(c) ENFORCEMENT.—The Secretary of Education shall:

- (1) Monitor State compliance with this Act.
- (2) Investigate complaints of violations.
- (3) Provide States with an opportunity to come into compliance; and
- (4) Withhold Federal education funds from States that are found to be in violation of this Act after notice and opportunity for hearing.

## **SEC. 9. RULE OF CONSTRUCTION.**

(a) BROAD PROTECTION.— This Act shall be construed broadly to protect educational freedom, parental rights, and educational innovation.

(b) NO EXPANSION OF STATE POWER.— Nothing in this Act shall be construed to grant States any power not otherwise possessed to regulate education or to restrict parental rights.

(c) SEVERABILITY.—If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected.

**SEC. 10. EFFECTIVE DATE.**

This Act shall take effect 180 days after the date of enactment.