

June 22, 2017

Updated July 21, 2017

Education Savings Accounts: The Future of School Choice Has Arrived

ESAs are a constitutionally compliant solution proven to raise education quality in states willing to give choice a chance.

By Timothy Benson *

Introduction

Although the idea has been around since the 1990s,¹ education savings accounts (ESAs) are attracting increasing interest among school choice advocates and legislators who want every child to have a quality education. A 2012 report that helped popularize the program suggested ESAs are “the way of the future.”² That assessment has turned out to be prescient.

With an ESA, state education funds allocated for a child are placed in a parent-controlled savings account.

Parents then use a state-provided debit

card to access the funds to pay for the resources chosen for their child’s unique educational program, such as tuition at a private or parochial school, tutoring, online classes, transportation, specialized therapies, textbooks, and even college courses while still in high school. Unused ESA funds may be rolled over from year to year and can be saved to pay for future college expenses.

Milton Friedman endorsed education savings accounts in an interview in 2003.

Although similar to school vouchers, ESA programs are more versatile, giving parents increased flexibility in tailoring an education to their child’s needs. Because of this flexibility, they may be more likely than vouchers to survive constitutional challenges, especially in states that have Blaine Amendments written into their constitutions.

Milton Friedman, the Nobel Prize-winning economist, endorsed ESAs, which he termed “partial vouchers,” in an interview in 2003: “Why is it sensible for a child to get all his or her schooling in one brick building? Why not add partial vouchers? Why not let them spend part of a voucher for math in one place and English or science somewhere else? Why should schooling have to be

* Timothy Benson is a policy analyst for The Heartland Institute. For a complete bio, see page 12.

in one building? Why can't a student take some lessons at home, especially now, with the availability of the Internet?"³ ESAs make that vision a reality.

The first ESA program was launched in Arizona in 2011. Four other states—Florida, Mississippi, Nevada, and Tennessee—have followed suit with programs of their own. Of the five, only Nevada's program is universal. The other programs are limited to special-needs students or children from low-income families, and Arizona's and Mississippi's programs have enrollment caps that further limit the number of students who can benefit from the programs.

This *Heartland Policy Brief* is in three parts. Part 1 discusses how universal ESA programs offer the most comprehensive range of educational choices to parents. Part 2 describes the five ESA programs currently in operation, taken chronologically by year of introduction. Part 3 reviews possible state-level constitutional challenges to ESA programs. An appendix recounts The Heartland Institute's quarter-century history of ESA advocacy.

Part 1

ESAs Are Comprehensive, Liberating, Flexible

ESAs are “the way of the future” because they provide greater freedom and flexibility for families and may be less vulnerable to state constitutional barriers than voucher programs. “ESAs are about empowering parents and improving the range of educational options for children,” said Renee Porter, executive director of ChoiceMatters. “All children are different and learn differently. Some children have disabilities that require special attention. Other children are so advanced that their time in the classroom isn't really benefitting them. It's unrealistic, and quite frankly unfair, to expect every public school to provide for the exact needs of every student. That's why it's important to give parents options like charter schools, private schools, and virtual schools.”⁴

<p>School Choice Effects Documented by “Gold Standard” Research</p>

- | |
|---|
| <ul style="list-style-type: none">• Improved outcomes for choice students.• Improved outcomes for public school students.• Savings for taxpayers.• Improved school integration.• Improved students' civic values and practices. |
|---|

The case for ESAs has benefited from extensive research conducted on the effects of voucher programs on students and public school systems since the launch of the nation's first choice plan, the Milwaukee Parental Choice Program, in 1990.

In 2016, what was then the Friedman Foundation for

Educational Choice (now EdChoice) released a report summarizing the findings of 100 empirical studies of school choice programs.⁵ Eighteen of the studies were randomized control experiments, the “gold standard” in academic research. The report explained, “Students who apply for a voucher enter randomized lotteries to determine who will receive the voucher and who will remain in a public school; this allows researchers to track very similar ‘treatment’ and ‘control’ groups, just like in medical trials.”⁶

Of the 18 gold standard studies, 14 show education choice improved student outcomes. Two studies show neither positive nor negative outcomes, and two studies—both of the Louisiana Scholarship Program voucher—show negative outcomes.⁷ (For more information on the Louisiana Scholarship Program, see note.⁸) After the Friedman Foundation report was released, a third study showing negative outcomes for voucher recipients, this time in Ohio, was released.⁹

Thirty-three of the studies examined by the Friedman Foundation weighed the effect of education choice on outcomes for children still in public schools. They overwhelmingly found education choice improved outcomes even for public school students who did not participate in the choice programs. Only one study reported negative outcomes for public school students as a result of school choice programs.¹⁰

Twenty-eight of the studies measured the fiscal impact of school choice policies; 25 found the programs saved taxpayers money. The other three found the programs to be revenue-neutral. Not a single empirical study found school choice programs have had a “negative fiscal impact.”¹¹ Moreover, in every city and state in which school choice programs were enacted between 1990 and 2006, the programs have been found to increase per-pupil instructional spending at public schools.¹²

Twenty-eight of the studies measured the fiscal impact of school choice policies; 25 found the programs saved taxpayers money. The other three found the programs to be revenue-neutral.

Ten studies examined by the Friedman Foundation considered school choice programs’ effect on racial segregation. Nine of those studies found school choice helps to integrate schools by moving students out of schools that tend to be more highly segregated. Not one empirical study examined by the Friedman Foundation found school choice programs increased segregation.¹³

Eleven of the studies examined the effect of school choice programs on civic values. Eight of those studies found school choice programs “[improve] civic values and practices, such as respect for the rights of others and civic knowledge.”¹⁴ None of the empirical studies examined showed school choice programs had a negative impact on civic values.

“The results are not difficult to explain,” the study concludes. “School choice improves academic outcomes for participants and public schools by allowing students to find the schools that best match their needs and by introducing healthy competition that keeps schools mission-focused. It saves money by eliminating administrative bloat and rewarding good stewardship of resources. It breaks down the barriers of residential segregation, drawing students together from diverse communities. And it strengthens democracy by accommodating diversity, de-politicizing the curriculum, and allowing schools the freedom to sustain the strong institutional cultures that are necessary to cultivate democratic virtues, such as honesty, diligence, achievement, responsibility, service to others, civic participation, and respect for the rights of others.”¹⁵

Other literature reviews arrive at similar conclusions. For example, Herbert J. Walberg, in a 2007 book titled *School Choice: The Findings*, reviewed research on the effectiveness of charter schools, voucher programs, private schools, and public school choice and concluded: “In short, given these overall findings and the consistency of the evidence, it may be confidently concluded that school choice generally works better than public school monopolies.”¹⁶

The September 2016 decision by the Nevada Supreme Court upholding the constitutionality of the state’s ESA program has spurred interest across in the country.¹⁷ Lawmakers in at least 16 states have introduced ESA legislation as of the end of April 2017.¹⁸ Far fewer voucher and tax-credit scholarship measures were introduced.¹⁹

Part 2 Current State ESA Programs

Six states currently have ESA programs. This section describes them, taken chronologically by year of introduction.

Arizona

Arizona Empowerment Scholarship Accounts

- Twenty-two percent of children eligible. (Will be universal by the 2020–21 school year.)
- Highly restrictive enrollment cap, expiring in 2019.
- Administered by the Arizona Department of Education.
- Available to all students in kindergarten, first grade, sixth grade, and ninth grade beginning in the 2017–18 school year.
- Available to all students in second grade, seventh grade, and tenth grade beginning in the 2018–19 school year.
- Available to all students in third grade, eighth grade, and eleventh grade beginning in the 2019–20 school year.

The nation’s first ESA program was Arizona’s Empowerment Scholarship Accounts program, launched in 2011. Students were originally eligible for the ESA if they had special needs, had been adopted from the state foster care system, or were with a family that had an adoption case plan open. Students with an active-duty military parent or a parent who was killed in action also qualified. Other eligible categories were students living on one of the state’s Indian reservations, who attended a public school, or who lived within a school district that received a “D” or “F” grade on the state’s accountability report card.²⁰ First-time ESA students also must have attended a public school full-time for 100 days in the previous fiscal year or be entering kindergarten.²¹

Legislation passed in April 2017 made all Arizona students eligible for the program by the 2020–21 school year. Eligibility would phase in incrementally and in a staggered fashion, starting with students in kindergarten, first grade, sixth grade, and ninth grade in the 2017–18 school year.²²

Originally, funding for the Empowerment Scholarship Accounts was set at 90 percent of the state’s charter school per-pupil base funding. For non-special-needs students, this was \$4,645 per student for K–8 and \$4,904 per student for high school during the 2015–16 school year.²³ State expenditures on the program in 2015 exceeded \$28 million.²⁴

With the expansion of the program, ESA funding has changed. Funding amounts are now set at 90 percent of the state’s charter *or* public school per-pupil base funding, depending on which

type of school the student attended the previous year. Low-income students (those whose families have income 250 percent of the federal poverty level, \$70,725 for a family of four in 2017) receive 100 percent of base funding.²⁵

Roughly 150 students took advantage of the Empowerment Scholarship Accounts program in the 2011–12 school year, and participation has increased steadily since then.²⁶ Estimates for the 2016–17 school year show more than 3,300 students participating.²⁷ More than 22 percent of Arizona children are currently eligible for the program, with 134 schools participating.²⁸ The state caps annual enrollment increases in the program at 0.5 percent of the total public school enrollment of the previous school year.

An audit of the Empowerment Scholarship Accounts program released in June 2016 by Arizona’s Office of the Auditor General found fraud was committed in less than 1 percent of all program distributions.²⁹ According to an official with the Arizona Department of Education, the agency that administers the ESA program, the audit shows the staff of the Empowerment Scholarship Accounts program is doing “a pretty outstanding job keeping up with the changes in the program and that the program is safeguarding taxpayer dollars as best they can.”³⁰

Satisfaction with the program is high among participating parents. A 2013 survey by the Friedman Foundation for Educational Choice, now EdChoice, found “no parent responded as neutral or reported any level of dissatisfaction with the accounts. Those results show high levels of satisfaction even after accounting for our limited sample size and margin of error [emphasis added].”³¹

Florida

Launched in 2014, Florida’s Gardiner Scholarship Program (GSP) is already the nation’s largest ESA program by enrollment. GSP will have more than 7,400 participating students for the 2016–17 school year, with an average account value for 2015–16 of \$8,840.³² There are 1,276 participating schools in 2016–17.³³

Unlike Arizona’s ESA program, GSP has no enrollment cap, but only 12 percent of Florida K–12 students are eligible for the program because enrollment is limited to students with specific special needs.³⁴ Student funding varies by county of residence, grade, and public school spending for students with disabilities.

Appropriations for the program are \$71.2 million for 2016–17, and another \$5.1 million in unused funds from 2015–16 rolls over.³⁵ Also unlike Arizona, where the Empowerment Scholarship Accounts program is administered by a state agency, Florida’s GSP is administered by state-approved scholarship funding organizations. These nonprofit organizations verify and reimburse parents for qualifying expenses.

Gardiner Scholarship Program

- Twelve percent of children eligible.
- No enrollment cap.
- Administered by state-approved nonprofit organizations.
- Enrollment limited to students with certain special needs:
 - i. Autism
 - ii. Down syndrome
 - iii. Intellectual disabilities
 - iv. Muscular dystrophy
 - v. Prader-Willi syndrome
 - vi. Spina bifida
 - vii. Williams syndrome

Mississippi

Mississippi's Equal Opportunity for Students with Special Needs Program was launched in the fall of 2015. Thirteen percent of Mississippi K–12 students are eligible.³⁶ There were 21 participating schools and 204 students in the program's second year of operation in 2016–17.³⁷ Accounts were funded at \$6,500 for 2015–16, with the amount subject to change based on

Equal Opportunity for Students with Special Needs Program

- Thirteen percent of children eligible.
- 500-student per-year enrollment expansion cap.
- Administered by the Mississippi Department of Education.
- Enrollment limited to students who have had an Individualized Education Plan within the last five years.

the state's public school per-pupil funding amount.³⁸ For 2016–17, the account value increased to \$6,637.³⁹ The state Department of Education administers the program.

Mississippi's program has a much lower enrollment cap than its Arizona counterpart. Enrollment for 2015-16 was limited to just 500 students, with only 500 additional students allowed to enroll in each subsequent year. In addition, the enrollment increase has not been accompanied by a corresponding

increase in program funding, so there were only 425 total scholarships available for 2016-17, less than half of what the law allows for.⁴⁰ All 425 scholarships will be awarded because the program is so popular that the Mississippi Department of Education had to hold a lottery for the final 175 available scholarships.⁴¹ To be eligible for the program, students must have had a valid Individualized Education Plan (IEP) within the five years previous to applying. (All public schools are required under the Individuals with Disabilities Education Act to create an IEP for each child enrolled receiving services for special education.)

So far, the program appears to be very popular with the parents with access to it. Ninety-one percent of parents enrolled in the program report they are satisfied with their ESA, with 98 percent reporting they are satisfied “with the school or educational program they chose for their child.”⁴² In contrast, only 24 percent were satisfied with the public school their child had

been attending before their families received their ESAs.⁴³

Individualized Education Account Program

- Two percent of children eligible.
- No enrollment cap.
- Administered by the Tennessee Department of Education
- Enrollment limited to students with certain special needs:
 - i. Autism
 - ii. Hearing impairment
 - iii. Intellectual disabilities
 - iv. Orthopedic impairment
 - v. Traumatic brain injuries
 - vi. Visual impairment

Tennessee

Tennessee's Individualized Education Account Program (IEA) was adopted in 2015 and went into effect on January 1, 2017. Like the programs in Florida and Mississippi, the Tennessee IEA is open only to students with special needs. IEA has no enrollment cap, but only 2 percent of students statewide are eligible.⁴⁴

Administered by the state Department of Education, each IEA is funded at 100 percent of the state per-student funding level the child would have received at his or her geographically assigned public school, along with whatever special education funds the student is entitled to under the state’s basic education program. The average account value for 2017 is roughly \$6,200.⁴⁵

Nevada

Nevada’s Education Savings Accounts program, enacted in 2015, holds the most promise because of its near-universality. Fully 96 percent of the state’s K–12 students are eligible to enroll in the program.

Students with special needs and those whose family income is less than 185 percent of the federal poverty level (\$44,863 for a family of four in 2015–16) would receive 100 percent of the per-pupil average basic state support level. This came to \$5,710 in 2015–16.⁴⁶ All other students would receive 90 percent of this amount, or \$5,139 in 2015–16.⁴⁷

Education Savings Accounts

- Ninety-six percent of children eligible.
- No enrollment cap.
- Administered by the Nevada State Treasurer’s Office.
- All public school students eligible.

The program was scheduled to launch in 2016, but two legal challenges have put it in limbo. The first lawsuit challenged the program’s constitutionality on the grounds the funding is derived from money allegedly appropriated “exclusively” for public schools.⁴⁸ The second lawsuit, filed by the American Civil Liberties Union, contended the ESA’s funding mechanism violates the state constitution’s Blaine Amendment, which prohibits any taxpayer funding of “sectarian” schools.⁴⁹

In the second lawsuit, the Nevada Supreme Court upheld the constitutionality of the program, ruling ESAs do not violate the state constitution’s provision for a “universal system of common schools” or the state’s Blaine Amendment. In the first lawsuit, the court ruled the program’s funding mechanism was unconstitutional and issued an injunction blocking implementation of the program until the legislature adopts a new funding mechanism that meets the court’s guidelines.⁵⁰

A bill that appropriates money for the program, changes its funding mechanism, and switches its jurisdiction from the State Treasurer’s office to the Nevada Department of Education was introduced in the Nevada Senate. In early June, the state Senate removed ESA funding from the public education funding proposal, leaving the program unfunded.⁵¹

North Carolina

Personal Education Savings Accounts Program

- Ten percent of children eligible.
- No enrollment cap.
- Administered by the North Carolina State Education Assistance Authority.
- Enrollment limited to students with certain special needs:
 - i. Autism
 - ii. Hearing impairment
 - iii. Intellectual disability
 - iv. Orthopedic impairment
 - v. Serious emotional disturbance
 - vi. Speech or language impairment
 - vii. Traumatic brain injury
 - viii. Visual impairment

North Carolina is the newest ESA state, enacting the Personal Education Savings Accounts Program (PESA) in June 2017. Like programs in Florida, Mississippi, and Tennessee, the North Carolina ESA is available only to children with special needs. PESA contains no enrollment cap, and 10 percent of students statewide are eligible.⁵²

The program has been appropriated only \$450,000 for Fiscal Year 2017–18, specifically for implementation, although this will rise to \$3 million in Fiscal Year 2018–19 when the program takes effect and accounts begin to be funded.⁵³ With a maximum account

value of \$9,000, it is possible only 333 students could be served by PESA in its first year of existence.⁵⁴

PESA will be administered by the North Carolina State Education Assistance Authority, with the maximum account value of an ESA being 104 percent of the state per-student public school funding level. Parents will be able to use PESA in conjunction with North Carolina’s Special Education Scholarship Grants for Children with Disabilities voucher program and the Opportunity Scholarships Program, giving them a potential \$21,200 annual funding for the education of their special-needs child.⁵⁵

Part 3: State Constitutional Issues: Blaine Amendments and Compelled Support

Blaine Amendments—named after James G. Blaine, the former speaker of the U.S. House of Representatives and the Republican Party’s presidential nominee in 1884—are anti-Catholic pieces of legislation and state constitutional amendments designed to prevent public money from being sent to Catholic schools. They currently exist in 38 state constitutions.

In reaction to the emergence of a large and steadily growing Catholic minority in the United States in the mid-nineteenth century, Catholic leaders pushed for government programs that would have provided state funding for their own religious educational institutions. Catholics felt those schools were necessary because public schools at the time were essentially Protestant in orientation. For example, school lessons were taught from the King James Bible, and students sang from Protestant hymnals. Instead of enacting measures prohibiting religion from public education completely, the Blaine Amendments were created to ensure publicly funded schools conveyed a Protestant theological worldview.⁵⁶

“Although the public schools of that period were called ‘nondenominational,’ that description did not mean that they were non-religious or secular in today’s terms,” writes Richard D. Komer of the Institute for Justice. “It meant that they did not teach the doctrine of any particular Protestant sect or

With the support of a national Protestant majority that sought to keep Catholic schools from receiving public funds, states began adopting their own versions of Blaine’s failed federal amendment.

denomination in the course of conducting religious activities, such as school prayer, Bible reading and lessons, and hymn singing. Understandably, Catholics and certain other religious groups were unwilling to participate in the public schools and maintained their own schools.”⁵⁷

Blaine’s original effort was a proposed amendment to the U.S. Constitution. The amendment read, “No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations.”⁵⁸

Although the amendment passed the House of Representatives by an overwhelming margin in 1875, it failed by four votes in the Senate.

States began adopting their own versions of Blaine’s failed federal amendment, with the support of a national Protestant majority that sought to keep Catholic schools from receiving public funds as Catholic immigrants became more numerous and enrollment in their schools grew. Congress made it known to the Western territories applying for statehood the price of admission would be a state constitution with a Blaine provision. Arkansas, Iowa, and Louisiana are the only states west of the Mississippi River that do not have a Blaine Amendment in their constitutions.

“The Blaine Amendments reflected more than reactionary nativism or a principled dedication to the protection of religious liberty through no-aid separationism,” writes Richard W. Garnett of Notre Dame Law School. “They cannot be fully understood without reference to the irreducibly anti-Catholic ideology that inspired and sustained them.”⁵⁹

Opponents of school choice routinely point to Blaine Amendments in their lawsuits against voucher and ESA programs, as in the ACLU suit against the Nevada ESA, which some students could be expected to use at private religious schools. Anti-choice activists tend to characterize the amendments as an important although secondary (to the U.S. Constitution’s First Amendment) safeguard for the separation of church and state.

The language of Blaine Amendments varies in each state. For example, here in The Heartland Institute’s home state of Illinois, our lengthy Blaine Amendment reads as follows:

Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any

grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.⁶⁰

In neighboring Indiana, the comparatively brief Blaine Amendment simply reads, “No money shall be drawn from the treasury, for the benefit of any religious or theological institution.”⁶¹

When crafting ESA programs, lawmakers must take into consideration the specific language of their state’s Blaine Amendment.

In addition to or instead of the Blaine Amendments, 29 state constitutions also have compelled-support clauses, which could erect a roadblock for ESA programs. Compelled-support clauses prohibit persons from being coerced into attending or monetarily supporting a church, ministry, or religiously affiliated organization (such as a school) without their consent. Twenty state constitutions have both Blaine Amendments and compelled-support clauses.

Arizona’s ESA program survived a Blaine Amendment-based legal challenge in 2014, as did Nevada’s program in September 2016.

Arizona’s ESA program survived a Blaine Amendment-based legal challenge in 2014, as did Nevada’s program in September 2016.⁶² The Arizona Supreme Court refused to hear an appeal of *Niehaus v. Huppenthal*, an Arizona Court of Appeals’ affirmation

of a lower court ruling that ESAs do not violate the state’s constitution. “ESA is neutral in all respects toward religion and directs aid to a broad class of individuals without reference to religion,” the court ruled.⁶³ “The specified object of the ESA is the beneficiary families, not private or sectarian schools. ... [The] ESA [program] does not result in an appropriation of public money to encourage the preference of one religion over another, or religion per se over no religion. Any aid to religious schools would be a result of the genuine and independent private choices of the parents.”⁶⁴

The Nevada Supreme Court used similar reasoning in upholding ESAs in *Duncan v. State of Nevada*. The majority opinion states: “Once the public funds are deposited into an education savings account, the funds are no longer ‘public funds’ but are instead private funds of the individual parent who established the account. The parent decides where to spend that money for the child’s education and may choose from a variety of participating entities, including religious and non-religious schools.”⁶⁵

Courts in Indiana,⁶⁶ Oklahoma,⁶⁷ and Wisconsin⁶⁸ have upheld voucher programs in spite of those states’ Blaine Amendments, but there also have been cases where courts have ruled vouchers violate state constitutions. The impetus for Arizona’s ESA program was the state supreme court’s decision to invalidate two small voucher programs for children with disabilities and children in foster care in 2006.⁶⁹ The court ruled the programs violated the state’s Aid Clause, which reads, “No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation.”⁷⁰

The Louisiana Scholarship Program’s funding formula was originally ruled unconstitutional in November 2012 by the Louisiana Supreme Court, which declined to rule on the constitutionality of the program if it were to be funded in a different manner.⁷¹ In June 2013, the state passed a budget funding the program through a different mechanism. In 2015, the Colorado Supreme

Court found the Douglas County School District’s Choice Scholarship Pilot Program unconstitutional because it channels state funds to sectarian schools.⁷²

Because ESAs deposit state per-pupil education spending into an account parents control, courts have found parents, not the state, decide where the funds are spent. Parents may choose to pay for many different educational services; evidence from Arizona shows many in fact choose to do so. Twenty-eight percent of Arizona ESA holders took advantage of at least two educational products and services between the fourth quarter of the 2013–14 fiscal year and the fourth quarter of the 2014–15 fiscal year.⁷³ Parental choice, rather than state funding of institutions, is what makes ESA programs and voucher programs constitutional and able to withstand legal challenges.

Parental choice is what makes ESA programs and voucher programs constitutional and able to withstand legal challenges.

ESAs appear to be less vulnerable than vouchers to claims of unconstitutionality because ESAs are more versatile. While under current voucher programs parents can redeem vouchers only at schools, parents can use ESAs for a variety of educational options such as private tutors, online courses, educational therapies and services, and dual-enrollment courses. ESAs also can be used to cover the fees for national standardized achievement tests such as the SAT and ACT. This “ability to direct dollars to multiple education services is a critical distinction between ESAs and other parental choices in education, including K–12 private school vouchers,” writes Lindsey Burke of The Heritage Foundation,⁷⁴ and this versatility appears to make them more resistant to Blaine Amendment litigation.

Conclusion

When looking to introduce ESA legislation in their home states, legislators should follow Nevada’s lead and create programs that are as universal as possible, with no enrollment caps. The Heritage Foundation recommends legislators also try to avoid “well-intentioned but misguided regulations” such as “open admissions requirements, price controls, state testing mandates and excessive reporting requirements. Although intended to guarantee access and accountability, these regulations produce consequences that can reduce the effectiveness of ESAs and even undermine their goals.”⁷⁵

According to the latest national survey by EdChoice, 58 percent of parents of school-age children in the United States have a favorable opinion of ESA programs, specifically because ESAs offer them “more freedom and flexibility” and give their children “access to schools having better academics.”⁷⁶ Republican, Democrat, black, and Hispanic respondents all show majority support for ESA programs. Fifty-six percent of respondents also agreed ESAs should be universal, “available to all families, regardless of income and special needs.”⁷⁷

A survey of state legislators found similarly widespread support for ESAs, with 61 percent responding they were in favor of such programs, including 69 percent of legislators below the age of 54 and 71 percent of those with fewer than eight years of legislative experience.⁷⁸ The fact that younger legislators are more supportive of ESAs mirrors regular public opinion polls. Generation X and Millennials – the generations today most likely to be parents of school-aged

children and probably more likely to spend time thinking about education issues specifically because they affect their children – are the strongest supporters of ESAs.⁷⁹

The goal of public education should be to allow all parents to choose which school their children attend, require every school to compete for every student who walks through its doors, and make sure every child has the opportunity to attend a quality school.

The overwhelming majority of the available empirical evidence makes it clear educational choice offers families improved access to high-quality schools that meet their widely diverse needs and desires, and it does so at a lower cost while benefitting public school students and taxpayers. Just as important, education choice programs are broadly popular because they allow parents to

exercise their fundamental right to direct the education of their children. Surveys from ESA states show exposure to these programs only increases their popularity among parents.

ESA programs are not a silver-bullet solution to every problem plaguing the nation’s school system, but they certainly allow families much greater opportunities to meet each child’s unique education needs. The goal of public education today and in the years to come should be to allow all parents to choose which schools their children attend, require every school to compete for every student who walks through its doors, and make sure every child has the opportunity to attend a quality school.

Appendix

Heartland Institute Analyses and Advocacy of Education Savings Accounts

The Heartland Institute has been at the forefront of advocating for education savings accounts for a quarter of a century.⁸⁰ In a 1992 competition for the New American Schools Development Corporation, Heartland Institute President and CEO Joseph Bast coauthored a proposal that included “Individual Education Accounts,” which could be used by parents to pay for curriculum coordinators and service providers. A further defense of Individual Education Accounts appeared in a 1996 Heartland *Policy Study*.⁸¹

With assistance from George Clowes and the Illinois Legislative Reference Bureau, Bast also included ESAs in model legislation called “The Heartland Plan for Illinois” in 1996–97.⁸² The plan would have allowed parents to place surplus school voucher funds into an ESA that could be used to pay for educational expenses in subsequent years, including higher education. Bast and Herbert J. Walberg, Ph.D., chairman of The Heartland Institute’s board of directors, also discussed ESAs in their books *Education and Capitalism*⁸³ and *Let’s Put Parents Back in Charge*.⁸⁴

ESAs were featured in the first edition of the “Ten Principles of School Choice” booklet, part of Heartland’s *Legislative Principles Series*, released in 2004.⁸⁵ More recently, ESAs were included as one of the recommendations in the 2015 booklet *Ten State Solutions to Emerging Issues*.⁸⁶

A variant of the ESA, the student opportunity scholarship (SOS) account, was featured in a 2016 *Heartland Policy Brief*, “Saving Chicago Students: Strike Vouchers and SOS accounts.”⁸⁷ SOS accounts would be activated by parents whose children had been forced out of their neighborhood public school by a union-organized teacher strike lasting ten or more school days. The SOS account would allow the affected children to remain permanently in a private school.

About the Author

Timothy Benson is a policy analyst at The Heartland Institute. Prior to joining Heartland, Benson worked for the Foundation for Government Accountability as an editor and writer. He also wrote a regular column for Scripps Treasure Coast Newspapers. His work has appeared in *Investor’s Business Daily*, *National Review Online*, *The Hill*, *The Washington Times*, *Crain’s Chicago Business*, *The American Spectator*, and many other publications across the country. He is coauthor of the *Heartland Policy Brief* “[Saving Chicago Students: Strike Vouchers and SOS Accounts](#).”

About The Heartland Institute

The Heartland Institute is a national nonprofit research and education organization. Founded in Chicago, Illinois in 1984, Heartland’s mission is to discover, develop, and promote free-market solutions to social and economic problems. Its activities are tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

Heartland is headquartered in Arlington Heights, Illinois and has a full-time staff of 39 and a budget of \$6 million. It is supported by the voluntary contributions of approximately 5,300 supporters. For more information, please visit our Web site at www.heartland.org, call 312/377-4000, or write to The Heartland Institute, 3939 North Wilke Road, Arlington Heights, IL, 60004.

Endnotes

¹ Joseph L. Bast, “A Short History of Education Savings Accounts,” The Heartland Institute, June 13, 2005, <https://www.heartland.org/template-assets/documents/publications/17458.pdf>.

² Matthew Ladner, “The Way of the Future: Educations Savings Accounts for Every American Family,” EdChoice, October 2012, <https://www.edchoice.org/research/the-way-of-the-future/>.

³ Pearl Rock Kane, “Choice & Freedom: Milton Friedman on Education,” *Education Next*, Winter 2003, <http://educationnext.org/choicefreedom>.

⁴ Leo Pusateri, “Oklahoma considering bill establishing statewide ESA program,” *School Reform News*, March 7, 2016, <https://www.heartland.org/news-opinion/news/oklahoma-considering-bill-establishing-statewide-esa-program>.

⁵ Greg Forster, “A Win-Win Solution: The Empirical Evidence on School Choice—Fourth Edition,” EdChoice, May 18, 2016, <http://www.edchoice.org/wp-content/uploads/2016/05/A-Win-Win-Solution-The-Empirical-Evidence-on-School-Choice.pdf>.

⁶ EdChoice, “Gold Standard Studies: Evaluating School Choice Programs,” last modified March 23, 2017, <https://www.edchoice.org/school-choice/gold-standard-studies/>.

⁷ *Ibid.*

⁸ A 2016 report by the Education Research Alliance for New Orleans also concluded the Louisiana Scholarship Program (LSP) showed negative outcomes, but it noted student results improved between the program’s first and second years, “reduced racial segregation,” and “through market-based pressures” may have increased public school students’ math scores. The authors provide several possible reasons for LSP’s poor showing. These include the possible “short-run growing pains associated with curricula alignment” from private schools adjusting instruction to meet state standards; the success of other education reforms in a state “home to an aggressive test-based accountability policy and strong school choice system”; the possibility the private schools participating in LSP were not “adequately prepared to serve the needs of students who were both financially and academically in great need”; and the possibility a higher percentage of lower-quality private schools participated in LSP due to the “extensive regulations placed on the program by the state,” along with the “relatively modest voucher value relative to private school tuition.” See Jonathan N. Mills, Anna J. Egalite, and Patrick J. Wolf, “How Has the Louisiana Scholarship Program Affected Students? A Comprehensive Summary of Effects after Two Years,” Education Research Alliance for New Orleans, February 22, 2016, <http://educationresearchalliancenola.org/files/publications/ERA-Policy-Brief-Public-Private-School-Choice-160218.pdf>.

A 2015 American Enterprise Institute survey found the private school participation rate in LSP is much lower than for voucher programs in other states. Whereas close to two-thirds of Florida’s and half of Indiana’s private schools participate in their respective school choice programs, only roughly one-third of Louisiana’s do so, with only 22 percent of LSP-participating schools planning to increase their level of enrollment. This lower participation rate could be a factor in LSP’s poor showing thus far. See Brian Kisida, Patrick J. Wolf, and Evan Rhinesmith, “Views From Private Schools: Attitudes about School Choice Programs in Three States,” American Enterprise Institute, January 2015, <https://www.aei.org/wp-content/uploads/2015/01/Views-from-Private-Schools-7.pdf>.

⁹ David Figlio and Krzysztof Karbownik, “Evaluation of Ohio’s EdChoice Scholarship Program: Selection, Competition, and Performance Effects,” Thomas B. Fordham Institute, July 7, 2016, https://edex.s3-us-west-2.amazonaws.com/publication/pdfs/FORDHAM%20Ed%20Choice%20Evaluation%20Report_online%20edition.pdf.

¹⁰ Greg Forster, *supra* note 5.

¹¹ *Ibid.*, page 23.

¹² Susan L. Aud, “Education by the Numbers: The Fiscal Effect of School Choice Programs, 1990–2006,” *School Choice Issues in Depth*, May 9, 2007, <http://www.edchoice.org/wp-content/uploads/2015/09/Education-by-the-Numbers-Fiscal-Effect-of-School-Choice-Programs.pdf>.

¹³ Greg Forster, *supra* note 5.

¹⁴ *Ibid.*, page 2.

¹⁵ *Ibid.*, page 1.

¹⁶ Herbert Walberg, *School Choice: The Findings* (Washington, DC: Cato Institute, 2007), page 109.

¹⁷ Heather Kays, “More States Express Interest in ESA Programs After Nevada Court Decision,” Watchdog.org, October 14, 2016, <http://watchdog.org/278760/states-express-interest-esa-programs-nevada-court-decision/>.

¹⁸ As of April 30, 2017, education savings account legislation had been introduced in Arizona, Arkansas, Indiana, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Texas, Virginia, West Virginia, and Wyoming.

¹⁹ Legislators in Florida, Indiana, Mississippi, Nebraska, and Tennessee have introduced voucher legislation, and legislators in Alabama, Georgia, Kentucky, Minnesota, Nebraska, Pennsylvania, and Texas have introduced tax-credit scholarship legislation.

- ²⁰ EdChoice, *The ABCs of School Choice—2016 Edition*, January 2016, <http://www.edchoice.org/wp-content/uploads/2016/02/2016-ABCs-WEB-2.pdf>, pages 17–18.
- ²¹ *Ibid.*
- ²² *An Act Amending Sections 15-2401 and 15-2402, Arizona Revised Statutes; Relating to Empowerment Scholarship Accounts*, SB 1431, 53d Legislature 1st Reg. Sess. (2017), <https://apps.azleg.gov/BillStatus/GetDocumentPdf/447029>.
- ²³ EdChoice, *ABCs 2016*, *supra* note 20.
- ²⁴ American Federation for Children, *Teach Choice—2015–16 School Choice Yearbook*, April 2016, http://afcgrowthfund.org/wp-content/uploads/2016/04/2015-16-School-Choice-Yearbook-4_27.pdf, page 53.
- ²⁵ EdChoice, *The ABCs of School Choice—2017 Edition*, January 2017, <https://www.edchoice.org/wp-content/uploads/2017/02/The-ABCs-of-School-Choice-1.pdf>, page 21.
- ²⁶ EdChoice, *ABCs 2016*, *supra* note 20, page 18.
- ²⁷ EdChoice, *ABCs 2017*, *supra* note 25, pages 15–16.
- ²⁸ *Ibid.*, page 15.
- ²⁹ “Empowerment Scholarship Accounts Program Performance Audit,” *Report No. 16-107*, Arizona Department of Education, June 2016, https://www.azauditor.gov/sites/default/files/16-107_Report.pdf.
- ³⁰ Jenni White, “Arizona ESA Program Receives Good Grade from State Audit,” *School Reform News*, August 3, 2016, <https://www.heartland.org/news-opinion/news/arizona-esa-program-receives-good-grade-from-state-audit>.
- ³¹ Jonathan Butcher and Jason Bedrick, “Schooling Satisfaction: Arizona Parents’ Opinions on Using Education Savings Accounts,” EdChoice, October 2013, <http://www.edchoice.org/wp-content/uploads/2013/10/SCHOOLING-SATISFACTION-Arizona-Parents-Opinions-on-Using-Education-Savings-Accounts-NEW.pdf>.
- ³² EdChoice, *ABCs 2017*, *supra* note 25, page 17.
- ³³ *Ibid.*
- ³⁴ *Ibid.*
- ³⁵ *Ibid.*
- ³⁶ *Ibid.*, pages 19–20.
- ³⁷ *Ibid.*
- ³⁸ American Federation for Children, *supra* note 24, page 72.
- ³⁹ Brett Kittredge, “Special Needs ESA Program Grows 70 Percent Over Previous Year,” Empower Mississippi, July 21, 2016, <http://empowerms.org/special-needs-esa-program-grows-70-percent-over-previous-year/>.
- ⁴⁰ *Ibid.*
- ⁴¹ Justin Vicory, “State Holding Scholarship Lottery for Special Needs Children,” *Sun Herald*, January 24, 2017, <http://www.sunherald.com/news/local/education/article128479239.html>.
- ⁴² Brett Kittredge, “The Special Needs ESA: What Families Enrolled in the Program are Saying After Year One,” Empower Mississippi, December 2016, <http://empowerms.org/wp-content/uploads/2016/12/ESA-Report-final.pdf>.
- ⁴³ *Ibid.*
- ⁴⁴ EdChoice, *ABCs 2017*, *supra* note 25, pages 23–24.
- ⁴⁵ *Ibid.*
- ⁴⁶ EdChoice, *ABCs 2016*, *supra* note 20, pages 75–76.

⁴⁷ *Ibid.*

⁴⁸ Neal Morton, "State Supreme Court Hearings on School Choice Likely to Resonate Nationwide," *Las Vegas Review-Journal*, July 27, 2016, <http://www.reviewjournal.com/news/education/state-supreme-court-hearings-school-choice-likely-resonate-nationwide>.

⁴⁹ Tori Hart, "ACLU Appeals Nevada Judge's Ruling Upholding ESA," *School Reform News*, July 25, 2016, <https://www.heartland.org/news-opinion/news/aclu-appeals-nevada-judges-ruling-upholding-esa>.

⁵⁰ *Duncan v. State. Lopez v. Schwartz*, 132 Nev. Adv. Opn. No. 73. EN BANC Nos. 69611/70648. (2017). <https://www.edchoice.org/wp-content/uploads/2016/09/Nevada-Supreme-Court-ESA-Ruling.pdf>.

⁵¹ Sean Whaley, "Nevada Legislature mired in partisan standoff over controversial ESAs," *Las Vegas Review-Journal*, June 3, 2017, <https://www.reviewjournal.com/news/2017-legislature/nevada-legislature-mired-in-partisan-standoff-over-controversial-esas/>.

⁵² *Appropriations Act of 2017*, SB 257, North Carolina General Assembly, 2017–2018 Session, pages 133–138, <http://www.ncleg.net/Applications/BillLookup/LoadBillDocument.aspx?SessionCode=2017&DocNum=4828&SeqNum=0>.

⁵³ *The Joint Conference Committee Report on the Base, Capital, and Expansion Budget*, North Carolina General Assembly, 2017–2018 Session, page F 46, <http://www.ncleg.net/Applications/BillLookup/LoadBillDocument.aspx?SessionCode=2017&DocNum=4828&SeqNum=2>.

⁵⁴ *Appropriations Act of 2017*, *supra* note 52, pages 133–8.

⁵⁵ *Ibid.*

⁵⁶ U.S. Commission on Civil Rights, "The Blaine Amendments & Anti-Catholicism," June 2007, <http://www.usccr.gov/pubs/BlaineReport.pdf>.

⁵⁷ Richard D. Komer, "School Choice: Answers to Frequently Asked Questions About State Constitutions' Religion Clauses," Institute for Justice, September 2006, https://www.ij.org/images/pdf_folder/school_choice/FAQ/legal_FAQ_state.pdf.

⁵⁸ Lloyd P. Jorgenson, *The State and the Non-Public School, 1825–1925* (Columbia, MO: University of Missouri Press, 1987), pages 138–139.

⁵⁹ Richard W. Garnett, "The Theology of the Blaine Amendments," *Scholarly Works*, Paper 484, 2004, http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1482&context=law_faculty_scholarship.

⁶⁰ Constitution of the State of Illinois. Article X, § 3. <http://www.ilga.gov/commission/lrb/con10.htm>.

⁶¹ Constitution of the State of Indiana. Article 1, § 6. <http://www.law.indiana.edu/uslawdocs/inconst/art-1.html#sec-6>.

⁶² *Niehaus v. Huppenthal*, 233 Ariz. 195, 310 P.3d 983 (Ct. App. 2013), <http://caselaw.findlaw.com/az-court-of-appeals/1646005.html>.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Duncan v. State*, *supra* note 50, page 24.

⁶⁶ *Meredith v. Pence*, 984 N.E.2d 1213 (2013), <http://www.in.gov/judiciary/opinions/pdf/03261301bd.pdf>.

⁶⁷ *Oliver v. Hofmeister*, 2016 OK 15 368 P.3d 1270, <http://www.oscn.net/applications/oscn/deliverdocument.asp?citeid=477431>.

⁶⁸ *Jackson v. Benson*, 218 Wis.2d 835 (1998) 578 N.W.2d 602, <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=17205>.

⁶⁹ *Cain v. Horne*, 202 P.3d 1178 (Ariz. 2009), https://scholar.google.com/scholar_case?case=18417263283625544025&hl=en&as_sdt=6&as_vis=1&oi=scholar.

- ⁷⁰ Constitution of the State of Arizona, Article IX, § 10.
http://www.azleg.gov/const/arizona_constitution.pdf.
- ⁷¹ *Louisiana Federation of Teachers, et al. v. State of Louisiana, et al.*, (LA Sup. Ct., May 7, 2013),
<http://caselaw.findlaw.com/la-supreme-court/1630493.html>.
- ⁷² *Taxpayers for Public Education v. Douglas County School District*, 2015, https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2013/13SC233.pdf.
- ⁷³ Jonathan Butcher and Lindsey M. Burke, "The Education Debit Card II: What Arizona Parents Purchase with Education Savings Accounts," EdChoice, February 24, 2016, <http://www.edchoice.org/wp-content/uploads/2016/02/2016-2-The-Education-Debit-Card-II-WEB-1.pdf>.
- ⁷⁴ Lindsey M. Burke, "Education Savings Accounts: Advancing Choice in States with Blaine Amendments," *Issue Brief* No. 4613, The Heritage Foundation, October 2016,
<https://www.heartland.org/template-assets/documents/publications/Heritage%20ESA%20Blaine.pdf>.
- ⁷⁵ Jason Bedrick and Lindsey M. Burke, "Recalibrating Accountability: Education Savings Accounts as Vehicles of Choice and Innovation," *Special Report* No. 190, The Heritage Foundation, December 12, 2016, <http://thf-reports.s3.amazonaws.com/2016/SR-190.pdf>.
- ⁷⁶ Paul DiPerna and Andrew D. Catt, "2016 Schooling in America Survey: Public Opinion on K–12 Education and School Choice," EdChoice, *Polling Paper* #28, October 6, 2016,
https://www.edchoice.org/wp-content/uploads/2016/11/2016-10_SIA-Poll-Update.pdf, page 49.
- ⁷⁷ *Ibid.*, page 50.
- ⁷⁸ Paul DiPerna, "Surveying State Legislators: Views on K-12 Education, Choice-Based Policies, and the Profession," EdChoice, September 20, 2016, https://www.edchoice.org/wp-content/uploads/2016/11/2016-9_Surveying-State-Legislators-By-Paul-DiPerna-Update.pdf, page 26.
- ⁷⁹ Paul DiPerna and Andrew D. Catt, *supra* note 72.
- ⁸⁰ Joseph L. Bast, *supra* note 1.
- ⁸¹ Joseph L. Bast, Herbert J. Walberg, and Robert J. Genetski, "The Heartland Report on School Finance Reform for Illinois: Part 2," *Policy Study* No. 73, The Heartland Institute, May 1, 1996,
<https://www.heartland.org/publications-resources/publications/no-73-the-heartland-report-on-school-finance-reform-for-illinois-part-2>.
- ⁸² Joseph L. Bast and George Clowes, "The Heartland Plan for Illinois: Model School Voucher Legislation," *Policy Study* No. 98, May 2002, <https://www.heartland.org/publications-resources/publications/no-98-the-heartland-plan-for-illinois-model-school-voucher-legislation>.
- ⁸³ Joseph L. Bast and Herbert J. Walberg, *Education and Capitalism: How Overcoming Our Fear of Markets and Economics Can Improve America's Schools* (Stanford, CA: Hoover Institution Press, 2003).
- ⁸⁴ Joseph L. Bast and Herbert J. Walberg, *Let's Put Parents Back in Charge!* (Chicago, IL: The Heartland Institute, 2003).
- ⁸⁵ Joseph L. Bast and Herbert J. Walberg, *Ten Principles of School Choice* (Chicago, IL: The Heartland Institute, 2004), <https://www.heartland.org/template-assets/documents/publications/16856.pdf>.
- ⁸⁶ Joseph L. Bast, *et al.*, *Ten State Solutions to Emerging Issues*, (Arlington Heights, IL: The Heartland Institute, 2015), https://www.heartland.org/template-assets/documents/publications/state_solutions-final_x.pdf.
- ⁸⁷ Timothy Benson and Lennie Jarratt, "Saving Chicago Students: Strike Vouchers and SOS Accounts," The Heartland Institute, May 5, 2016, https://www.heartland.org/template-assets/documents/publications/05-05-16_benson_il_strike_vouchers.pdf.