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Self-funded, Private Education vs. Government Funded School Choice: The Liberty of Parents and Private Schools vs. Government Control

1. Nevada’s “Education Savings Account” program now being proclaimed “the model” for other states in the publicly funded “school choice” debate. Or is it?

During the 2015 Nevada Legislative Session, Senator Hammond requested a Bill Draft Resolution (BDR) for a government funded alternative education option for Nevada K-12 students. The Friedman Foundation (renamed Ed Choice in 2016) assisted State Senator Scott Hammond in the writing of SB 302 the Nevada Education Savings Account bill. What makes Nevada’s ESA unique from existing smaller programs in four other states (Arizona, Florida, Mississippi, and Tennessee) is that it is “universal”, meaning it is not “means” or “needs” tested and is available to all NV public school students enrolled for a minimum of 100 days regardless of family income level or school failure rates. Authors of SB 302 proclaimed, *“It allows parents to remove their children from their assigned public schools and access a portion or all of their children’s public education funding to pay for services like private school tuition, curriculum, learning therapies, tutoring and more.”*ⁱ This new program passed the 2015 NV Legislature along strict party lines (all Republicans in support, all Democrats opposing).ⁱⁱ¹ Currently state legislatures in Texas, Indiana, Idaho, Iowa, Pennsylvania, Missouri, and even President-elect Trumps’ new administration are mulling government funded ESAs to expand “school choice” in 2017 and the Nevada ESA program is the model for many.

An Education Savings Account (ESA) program is different from a “voucher” they say, since money from the state’s Distributive School Account (DSA) is not being paid directly from the state to a religious private school (Blaine Amendments in many state constitutions prohibit the use of public funding for sectarian purposes). Rather, the money (between \$5,100 to \$5,700 in NV) is to go from the state’s Distributive School Account into

¹ NOTE: Two lawsuits were filed in NV District Court in late 2015 against the new ESA program. Both lawsuits were heard before the Nevada Supreme court and a final decision was handed down on September 29, 2016. Although the court ruled that the ESA law does not violate the Blaine Amendment in the Nevada Constitution and allows the Legislature to use public dollars to fund an ESA program, the Legislature did violate the NV Constitution by passing the ESA bill prior to passing the education funding bill. The NV Constitution requires that the public schools be funded before any other budget item is approved in our bi-annual sessions. Further, the court seemed to imply that money allocated by the Legislature to the public schools cannot be used to fund an ESA for a Nevada school-age child. This has been a pivotal element of the Ed Choice ESA school choice initiative. Consequently, a new “funding source” will need to be found and approved by the Nevada Legislature in 2017 if the program is to see the light of day. Further, a new funding source may impact the rest of the mechanics of the NV-ESA program and raise a new threat to private and home school autonomy. http://www.npri.org/docLib/20160929_16-30306.pdf

the Education Savings Account in the name of the child, whose parents then choose from government “approved” resources where to spend the money so that the child receives an education as compelled by state compulsory attendance laws.ⁱⁱⁱ This, proponents say, means the parent, not the state, is choosing the education modality for the child and the parent is “empowered” to choose a private religious school or use religious materials for the education of their child.

2. The ESA law has muddied the waters for homeschoolers in Nevada!

Many parents eager to receive state funding for the education of their children are saying that the new NV-ESA program is just “a different way of homeschooling”, it is not! Further, some elected officials are now quick to venture into this new area of “public/private ventures” in order to give parents a “choice” in the education the child receives at the expense of other’s freedom. Let me explain.

First and foremost, Nevada parents, who choose to use the ESA program, will NOT be “homeschooling” under NV statute. Two statutes, NRS 392.070(2) and 388D.020 allow parents, who receive NO MONEY from the state, to educate their children free from government control, although educational abuse and neglect statutes do apply as safeguards.^{iv} **Second, “homeschooling” is legally defined in Nevada Revised Statutes, NRS 385.007(3).**^v And while imitation is the best form of flattery, Nevada Homeschool Network (NHN) became alarmed when Senator Hammond introduced an amended version of his original ESA bill in April of 2015 that no one had been able to read prior to the hearing in the NV Senate Education Committee (*this seems to be a pattern repeating itself in other states in 2016 and 2017 as ESA bills are being mulled over... but not available for public review*).

NHN opposed the bill, SB 302, as introduced due to the Senator’s references to homeschooling in his verbal introduction of the bill.^{vi} Both public school and homeschool students (but not existing private school students) were to be able to access ESA funding.^{vii} Further, the Senator’s initial version attempted to use the NV homeschool law as the vehicle for this new program, blurring the distinction between a self-funded homeschool child and a child receiving a “home based” education through the government approved ESA program. However, Senator Hammond agreed to work with NHN to address our concerns. As a result, NHN offered an amendment to SB 302 that protected NV homeschooling but established an “Opt-in Child.”^{viii}

The amendment proposed by NHN created a fourth option for parents to meet the compulsory attendance law, NRS 392.040 (requiring a child between the age of 7 and 18 to be enrolled in a Nevada public school or receive an exemption).^{ix} In addition to a public school, a private school, or a homeschool; parents of children enrolled in a public school will be able to apply for a NV-ESA grant and the child approved for the ESA program will legally be classified as an “Opt-in Child”. These children will receive their education from an “approved” Participating Entity (PE) under the oversight of the NV State Treasurer (NST) and to a lesser extent, the NV Department of Education (NV-DOE).^x

Proof of this “muddying of the waters” affect has since filled pages of articles, editorials, and blogs on how the government funded ESAs will provide parents more “school choice”, including “homeschooling.” But the fact is that government funded ESAs have also created the opportunity for critics of a parent’s right to self-fund and direct the education of their child FREE from government control to call for more regulation of

“homeschooling” whether it is funded by the government or not. For instance, merely by substituting the word “home-school” for an “ESA Opt-in Child”, a NV teacher’s union lobbyist is now proving our point by seemingly calling for tighter rules “on homeschooling” if the NV-ESA is to be funded as stated by John Vellardita, Executive Director of Clark County Education Association, “...means testing or tightening the rules for home-school parents could potentially be among the union’s proposals regarding ESAs.”^{xi}

Granted, Mr. Vellardita probably doesn’t even know the legal distinction but that was the very point we were trying to make to the Nevada Legislature two years ago! **Just as people often confuse “virtual charter schools” attended by public school children “at home” with “parent funded/directed homeschooling”, government funded ESAs have added another layer of confusion in the minds of everyone!** This “muddying of the waters” will ultimately bring into question, just who IS ultimately responsible to provide education to children, parents or the state?

3. Applications, approvals, regulations, and requirements – let’s understand a government funded ESA (not to be confused with a parent-funded “Coverdell” ESA).

To qualify for the NV-ESA program, a child must first be enrolled full-time in a public school or public charter school for not less than 100 consecutive days just prior to applying for the ESA grant. Current private school and/or homeschool children are not eligible. However, these children may enroll in a public school for 100 days to become eligible relinquishing their private school or homeschool status.

Once approved for the ESA, parents may then choose an approved Participating Entity (PE) to provide education to the child. A Nevada private school (licensed or exempt), a regionally or nationally accredited private online school, an “eligible institution” defined as a NV college or university, a state certified tutor or tutoring agency, or a parent may all apply to become a Participating Entity. It is the “Participating Entity” (or a combination of PE’s) that will provide an education to a NV Opt-in Child. The Nevada State Treasurer is responsible for annually approving all ESA Opt-in students as well as Participating Entities and curriculum purchased through the ESA program.^{xii}

The approved PE provides the education to the child, meets applicable state requirements (including annual testing of the child with any norm-referenced national standardized test in mathematics and English language arts), and is paid from the ESA by the parent for their services. A parent who has been approved as a PE may purchase approved curriculum (the current State Treasurer is saying, as long as the curriculum is “educational” it will be approved), the annual standardized test for the child, and/or pay fees associated with services provided by other approved Participating Entities (including transportation costs) using the funds in an ESA. Parents may not pay themselves for teaching the child, or anyone else directly teaching the child, who is not an approved Participating Entity, nor pay for additional “non-educational” expenses such as private athletic team participation.

4. Aside from all the “hoops” to maneuver through, an ESA sounds great, right? Then why should self-funded homeschool parents be concerned with government funded school choice?

Whenever state funding is involved in the education of a child there must be accountability to the tax-payer for the use of that money. New state imposed “accountability measures” on both the public school system and public charter schools, over the last several years, is what (at least in part) has spurred the government funded school choice movement due to the failure of public schools to meet these accountability standards. Self-funded homeschooling in Nevada assures the parent who takes full responsibility for the education of the child (including the financial burden) of their fundamental parental rights free from government control.

When NHN first became aware of the push to utilize public funding for the education of children in a non-public school in Nevada we issued a position statement opposing the use of such funds for homeschooling in Nevada which in part reads,

Whereas, NHN is concerned that alternative education funding programs intending to benefit a student with a government controlled “choice in education” will jeopardize homeschool autonomy from government oversight; now, therefore,

NHN is opposed to adoption of any alternative education program in this state that utilizes taxpayer funding, either directly or indirectly, on behalf of a child who is being homeschooled pursuant to NRS 392.070, including government controlled voucher programs and Education Savings Accounts.^{xiii}

Our chief concern was and remains with the “controls”, including future controls, the government will put on the private school, education provider, and/or parent who accept ESA funding under the guise of “accountability” for the use of tax-payer money, essentially creating a system that ultimately requires children to be educated to the satisfaction of the government, not the parent. This begs the question; could schools, education providers, and parents who accept government funding through an ESA, now in actuality, be considered a “public school” under federal or state law?

If the NV-ESA program is ever funded by the NV State Legislature, Participating Entities receiving ESA funds will be held accountable to the tax-payer for the education of the child. Under existing NV statute “Exempt” Private Schools and Homeschools are not “accountable” to the state beyond modest “notification” requirements precisely because they receive no tax-payer funding from the state.^{xiv} While “accountability” in the current NV-ESA law is currently quite low (assuming you don’t mind your child being enrolled in a public school for 100 days, all the paperwork, giving your child an annual standardized test in all grades, and submitting results to the state for the State Longitudinal Data System), it will remain so only depending on who controls the Legislature and the Governor’s office at any given time. This is the “slippery slope” for self-funded homeschoolers and raises more questions:

- a) While NV homeschoolers currently enjoy the hard-won freedom to direct the education of their children free from government control with the passage of the Homeschool Freedom Bill in 2007^{xv}, will parents providing a “home based” education utilizing an ESA be as dedicated to the academic success of their children as traditional, self-funded homeschoolers have proven to be over the past 35+ years?

Dr. Brian Ray, National Home Education Research Institute (NHERI), provides the following information on students being educated via a self-funded, private homeschool:

Academic Performance

- *The home-educated typically score 15 to 30 percentile points above public-school students on standardized academic achievement tests. (The public school average is the 50th percentile; scores*

range from 1 to 99.) A 2015 study found Black homeschool students to be scoring 23 to 42 percentile points above Black public school students (Ray, 2015).

- Homeschool students score above average on achievement tests regardless of their parents' level of formal education or their family's household income.
- Whether homeschool parents were ever certified teachers is not related to their children's academic achievement.
- Degree of state control and regulation of homeschooling is not related to academic achievement.
- Home-educated students typically score above average on the SAT and ACT tests that colleges consider for admissions.
- Homeschool students are increasingly being actively recruited by colleges.^{xvi}

b) If private schools, education providers, and parents receiving tax-payer funds are increasingly "regulated" by the state either due to fraud or abuse of the program, or an ESA Opt-in child simply doesn't perform well on an annual test; what will stop the state from trying to regulate self-funded homeschoolers and private schools not accepting government funded vouchers or ESAs as well?

Matthew Gerwitz, a homeschool parent in Florida addressed the concerns of freedom loving homeschool parents across the nation in 2015, *"Even if school vouchers (or now ESAs) were offered with the best intentions, they could never remain that way because government, by default, seeks to control," he said. "School vouchers are a bad idea that should be avoided at every level — especially among homeschoolers." "There is no need to eat the 'king's meat,'" Gerwitz continued. "Homeschoolers do not need the good graces of government to do what's right by their kids; non-homeschoolers need to learn to stop depending on the government as surrogate parents. Vouchers are completely unnecessary if parents do their jobs."*^{xvii}

History shows us that as control of state legislatures change from election to election so do the laws and regulations citizens and businesses must operate under dependent on "who" is in control. As Kathy Thomsen said in 2010, *"Drafters of school choice legislation attempt to convince patrons that laws can be crafted with appropriate language to assure complete autonomy that protect private schools. Abundant evidence proves such assurances cannot be trusted."*^{xviii}

No legislation can be written that can't or won't be reversed or added to in successive legislative sessions.

Now that the NV Legislature shifted from Republican back to Democratic control in the 2016 election, this has raised considerable doubt for the future of the NV-ESA program due to the funding problems created by the NV Supreme Court decision in Schwarz v Lopez.^{xix} Further, as the public-at-large questions how ESA dollars are spent, additional "controls" are more likely than not to be put in place restricting the freedom of private schools, providers and/or parents accepting the funding.

5. What might be other "negative" consequences to public funding of private education?

If the Democrat-controlled 2017 NV Legislature does decide to find funding elsewhere in the state budget for the ESA, the program *will* be adapted with new tighter controls according to Nevada Assemblywoman Irene Bustamante Adams.^{xx} This will raise even more questions.

- a) Will tax-payers then have a new "subsidy" or entitlement program to worry about?
- b) Will taxes be continually raised to fund public/charter schools AND now government funded school choice as well?

- c) Will the general public be supportive of tax dollars being spent on private schools, education providers, or in their neighbor's home or will they consider ESAs and vouchers to be merely redistribution of wealth?
- d) Are vouchers and ESAs and their "accountability strings" just another form of public education?
- e) Would tax-credit scholarship organizations or tax-credits for parents who choose to educate their children outside of the public school system less government dependent and less intrusive?

These questions remain to be answered as the saga of "government funded school choice" unfolds in the years ahead. But studies are now indicating, despite all the claims of "excellence"; former public school students currently attending private schools in states with voucher programs ARE NOT testing any better than their public school age-mates.^{xxi} This should be of great concern; the autonomy from public education that private and home schools currently have in most states is at great risk. **Homeschoolers should fully understand that accepting funding from the government will bring limits to the moral decisions parents make about education provided to their child.**

And now the federal government is looking to fund "school choice?" As Jane Robbins of American Principals Project points out, *"While efforts to shatter the government monopoly on education are laudable, extreme caution must be exercised to ensure – if this is even possible – that when government money follows the child, government regulations don't follow as well."*^{xxii} A "Trojan Horse" may indeed be in our presence.

6. Do "school choice" advocates really care about YOUR children? Or is it all about "breaking the monopoly" of the Constitution-required provision of a public school system?

In NHN's discussions with Ed Choice during the 2015 NV Legislative session it became abundantly clear they do not understand the "liberty issue" that self-funded homeschool parents have advanced nationwide for the last thirty-five years. Ed Choice, Excel in Ed^{xxiii}, The Heritage Foundation^{xxiv}, (check the donor lists for these groups) and many other "think tanks" are apparently willing to see homeschools and private schools become collateral damage in their quest to acquire the holy grail of school choice. Ed Choice has expressed that "some accountability to the government" is "reasonable" if schools, education service providers and/or parents accept tax-payer funding, all in the name of "breaking the public school monopoly."

Truth be told, many advocates of government funded school choice probably have no problem with ALL parents being held accountable to the government for the education of the parent's child, just ask them. Although they like to say, "government funded school choice empowers parents", they seem to have little understanding of the fundamental rights of parents to direct the health, education, and welfare of the child FREE from government control. "School Choice" is about government control of the education provided to a child, not education provided through private schools or homeschooling *free* from those controls.

7. Several state legislatures are now considering ESA bills, is yours?

Homeschool parents in states considering education reform bills need to fully understand that state-funded ESA grants have accountability strings attached. Parents who choose to NOT accept state funding must be vigilant in protecting their state homeschool and/or private school law! The success of homeschooling is without question but now imitators seek to capitalize on the hard work of parents who have dedicated their lives to their children via self-funded, private homeschooling. We must continue to educate parents in the

biblical and moral “choice” to educate their children either through homeschooling or private schools not funded by the state or federal government... or we risk losing that right entirely.

- IAHE Action, facing the threat of an ESA program in Indiana, has many excellent blog posts expressing their concerns with ESAs.^{xxv}
- Idaho homeschoolers (CHOIS & ICHE) are gearing up for a possible fight in their state in and have an excellent article on this topic as well, *Coming Soon: FREE MONEY*.^{xxvi}

8. The battle for homeschool freedom continues...

In *Charter Schools: The Battle for Homeschool Freedom*, homeschool champion, Christopher J. Klicka, said, “Freedom is the answer. Freedom, I believe, is more important than “freebies.”^{xxvii} How succinct!

NHN and NV homeschoolers will remain adamant in defending the homeschool law and protecting themselves from being lumped in with “Public School at Home” students (virtual charter schools) and now “ESA Opt-in” children. As stated earlier, NV homeschoolers are not accountable to the public school system or state government because we receive no money from the state. Further, NV homeschool parents take “full responsibility”, including the financial burden, for the education of their child. NV homeschoolers will not abdicate the right and responsibility to educate our own children, as we see fit, to the government.

We encourage homeschool leaders and parents across the country to do the same; understand that your children do not belong to the state, are in fact, your prodigy, and as such your responsibility. We must stand up to the powerful financial influences that intend for government to retake control of ALL education provided to children in the United States. School choice vouchers and ESAs are just the first steps towards this ultimate but often unstated goal of education reformers.

9. Concluding Thoughts

Perhaps voucher/ESA grant programs will be beneficial in spite of the government controls placed on them and will provide some parents more options in the education of their children for those willing to accept the yoke. While NHN supports the concept of ESA’s for parents who voluntarily choose to use them, **self-funded HOMESCHOOLING without government funding/controls – “Parent Responsibility-based Education”**, must remain intact. However, the line of demarcation between “private” and “public” education is fast disappearing and it is not inconceivable that government will once again seep into our “private” lives because of those looking for financial assistance from the government to educate their own children.

The waters are becoming muddied as evidence by those parents who are demanding “their fair share” of taxpayer money, desiring to use government funding to educate their children at home and yet insist they are the same as self-funded homeschoolers and not “just parents providing a government approved home based education.” NHN Officers continue to be watchful and strive to educate parents, leaders, and public officials; self-funded, private homeschooling is a “Liberty issue” in our state.

On a personal note, I began homeschooling my children in 1990 at which time I joined other parents fighting for homeschool freedom in Nevada, one of most restrictive states to homeschool in at that time. As a result, I know all too well how easy it is for elected, appointed, and/or employed government bureaucrats to say that

ALL education of children in the state must be regulated by government. We must not go back to Egypt!

Please, please take the time to educate yourselves on the differences between homeschooling and government-funded education programs. Continued homeschool FREEDOM/LIBERTY is dependent on staying informed and engaged.

ⁱ Ed Choice, Robert Enlow President. From their website; <https://www.edchoice.org/school-choice/types-of-school-choice/>

ⁱⁱ Nevada State Legislature, 2015, *Final Votes* on SB 302; <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=705>

ⁱⁱⁱ Ed Choice, from their website page on the Nevada program; <https://www.edchoice.org/school-choice/programs/nevada-education-savings-accounts/>

^{iv} Nevada Homeschool Network, *Nevada Homeschool Laws*; <http://nevadahomeschoolnetwork.com/legal/nevada-homeschooling-laws/>

^v Nevada Revised Statute, 385.007 (3), <https://www.leg.state.nv.us/NRS/NRS-385.html#NRS385Sec007>

^{vi} Hammond, Senator Scott, Nevada Senate Education Committee Hearing on SB 302, 04.14.2015;

http://nvleg.granicus.com/MediaPlayer.php?view_id=14&clip_id=4302

^{vii} 2015 NV Legislative session, *Senate Bill 302 As Introduced* 04.14.2015;

<https://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB302.pdf>

^{viii} Nevada State Legislature, 2015, SB 302, *Amendment No. 639*;

https://www.leg.state.nv.us/Session/78th2015/Bills/Amendments/A_SB302_639.pdf

^{ix} Nevada Revised Statutes, NRS 392.040; <https://www.leg.state.nv.us/NRS/NRS-392.html#NRS392Sec040>

^x Nevada State Legislature, 2015, SB 302, *As Enrolled*; https://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB302_EN.pdf

^{xi} Editorial, Las Vegas Review-Journal, 12.17.2016; <http://www.reviewjournal.com/opinion/editorials/editorial-advancing-parental-choice>

^{xii} Swatz, Dan, Nevada State Treasurer, ESA website; <http://www.nevadatreasurer.gov/SchoolChoice/Home/>

^{xiii} Nevada Homeschool Network, position statement, 01.18.2015; <http://nevadahomeschoolnetwork.com/WP/wp-content/uploads/2016/03/Alternative-Education-Funding-Programs-NHN-Position-Statement.pdf>

^{xiv} Nevada Revised Statutes, NRS 394.211; <https://www.leg.state.nv.us/NRS/NRS-394.html#NRS394Sec211> and NRS 388D.020;

<https://www.leg.state.nv.us/NRS/NRS-388D.html#NRS388DSec020>

^{xv} Nevada State Legislature, 2007, SB 404; <https://www.leg.state.nv.us/Session/74th2007/Reports/history.cfm?ID=977>

^{xvi} Ray, Brian D., PhD, *Research Facts on Homeschooling*, NHERI, 03.23.2016; <http://nheri.org/research/research-facts-on-homeschooling.html>

^{xvii} Barry, Dr. Susan, *Why Homeschoolers Don't Want School Vouchers*, Breitbart, 05.28.2015; <http://www.breitbart.com/big-government/2015/05/28/why-homeschoolers-dont-want-school-vouchers/>

^{xviii} Thomsen, Kathy, Idaho Observer, 2010; <http://www.proliberty.com/observer/20100417.htm>

^{xix} Las Vegas Sun, 11.21.2016; <http://lasvegassun.com/news/2016/nov/21/is-the-esa-program-dead-in-nevada/>

^{xx} Las Vegas Sun, 11.09.2016; <https://lasvegassun.com/news/2016/nov/09/blue-wave-sweeps-democrats-back-to-control-in-neva/>

^{xxi} Dynarski, *Report on Negative Effects of Vouchers*, Brookings, 05.26.2016; <https://www.brookings.edu/research/on-negative-effects-of-vouchers/>

^{xxii} Robbins, Jane, *New GOP Platform: The Good, the Bad, and the Very Concerning*, The Pulse, 07.19.2016;

<http://thepulse2016.com/jane-robbins/2016/07/19/first-look-at-gop-platform/>

^{xxiii} Excel in Ed, Jeb Bush, <http://www.excelined.org/>

^{xxiv} The Heritage Foundation, website on *Education*; <http://www.heritage.org/issues/education>

^{xxv} IAHE Action Blog, Indiana; <http://iaheaction.net/blog/>

^{xxvi} Peters, Barry, *Coming Soon: FREE MONEY!*, Christian Homeschoolers of Idaho State Connection, Fall 2016; <http://chois.org/chois-connection/current-issue/>

^{xxvii} Klicka, Christopher J., *Charter Schools: The Battle for the Soul of Homeschooling*, Homeschool World, 2001; <http://www.homeschool.com/Articles/charter-schools-the-battle-for-the-soul-of-homeschooling.php>