



## School choice advocates celebrate win in Nevada, gear up for next round

Heather Kays

May 19, 2016

Nevada's education savings account program does not violate a constitutional ban on using taxpayer money for religious purposes, Las Vegas District Court Judge Eric Johnson has ruled.

Johnson dismissed the lawsuit challenging the law on Wednesday, ruling that the ESA program was "neutral with respect to religion" because parents, not state officials, decide whether to use the funds for private or religious schools.

Johnson also ruled a provision in the state constitution allowing lawmakers to encourage education "by all suitable means" allows the ESA program to exist alongside the traditional public school system.

The ESA law, enacted in 2015, allows parents to determine how about \$5,100 in per-pupil state funding will be spent on state-approved educational options for their children. Those options include private school tuition, home-school expenses, tutoring, textbooks, some therapies and other educational resources.

"The state has no influence or control over how any parent makes his or her genuine and independent choice to spend his or her ESA funds," Johnson wrote in his decision.

Despite the favorable ruling, the ESA program remains on hold because a Carson City judge issued an injunction in a separate case in January that halted implementation. The Nevada Supreme Court is expected to schedule hearings on that case soon.

State Sen. Scott Hammond, who wrote the ESA legislation, told Watchdog.org that he was "thrilled beyond belief" by the decision. "I think it was obviously the right decision. There was just too much precedent that the judge couldn't ignore."

Hammond said he thinks both cases challenging the ESA program will be combined and then heard by the state Supreme Court. And he said he expects the high court to rule quickly.

"I don't think they're going to dawdle at all," said Hammond. "There are about 6,000 students signed up for the program. They have to make a decision."

And, he said, the ruling is likely to spur more applicants.

“This is about civil rights. I do believe we will get to a point where every parent will be able to customize their own child’s education. Parents have got to be empowered,” said Hammond. “The money is following the kid. It was never about religion. It was always about empowering parents.”

### **School choice advocates celebrate**

Proponents of school choice outside the Silver State were also celebrating the decision.

Leslie Hiner, vice president of programs at the [Friedman Foundation for Educational Choice](#) says the judge gave parents “renewed hope” that the courts in Nevada will honor the ESA program.

“Nevada’s ESA shifts the balance of power in education from an old one-size-fits-all system that’s been in place since the days before electricity to a child-friendly land of opportunity where all children can get the educational services they deserve – and parents, not the old bureaucracy, have the power to choose educational options that fit the unique needs of their children,” said Hiner.

Hiner says this week’s ruling provide a “solid foundation” for the Nevada Supreme Court to uphold the ESA program.

Jason Bedrick, a policy analyst with the [Cato Institute](#)’s Center for Educational Freedom, said the judge was on solid ground regarding religion.

“The ACLU argued that the Nevada Constitution demanded that the legislature discriminate against religious institutions,” said Bedrick. “Fortunately, the judge rejected this notion. Instead, following the U.S. Supreme Court and the near-consensus of other state supreme courts, Judge Eric Johnson held that the state constitution demands religious neutrality but does not prohibit religious institutions from benefiting from programs, like the education savings account, that have a secular purpose and benefit the public generally.”

Jonathan Butcher, education director for the [Goldwater Institute](#), was also upbeat, while acknowledging that the fight is not yet over in Nevada.

“This is a great outcome for parents and families,” said Butcher. “While there are plenty of steps to go through the system, it’s good to get a win for students.”

“It’s going to be key to resolve the other lawsuit, Lopez, so that Nevada can start awarding accounts to families,” Butcher added.

Mike Petrilli president of the [Thomas B. Fordham Institute](#), said he is hopeful that the ESA program will be up and running sooner rather than later.

“The Nevada program breaks new ground for parental choice, and we’re glad to see the courts deferring to elected legislators,” said Petrilli. “Now it’s up to state officials to implement the ESA initiative thoughtfully so that it succeeds academically and politically, and not just legally.”

Jeanne Allen, founder and CEO of the Center for Education Reform, pointed to precedents set in other school choice cases.

“Nevada’s legal system has affirmed precisely the same rights that the U.S. Supreme Court recognized in 2002 in the *Zelman v. Simmons-Harris* ruling on Ohio vouchers — that parents indeed have the right to choose programs that they feel best provide the right opportunity for their children,” said Allen.