



Nevada Supreme Court declares ESAs constitutional

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Today the Nevada Supreme Court declared that education savings accounts (ESAs) are constitutional, but the funding mechanism isn't. This is relevant in Idaho because opponents to ESAs claim Idaho's Blaine Amendment prohibits them.

Perhaps not.

For the full details go [here](#) for a piece by Jason Bedrick of Cato, but here's an excerpt, **emphasis mine**:

ESA Funds Belong to Parents, Not the State

The plaintiffs further alleged that the ESA violated the state constitution's Blaine Amendment, which states: "No public funds of any kind of character whatever [...] shall be used for sectarian purpose." Although even the plaintiffs conceded that the ESA has a secular purpose and that parents may expend all of their ESA funds on secular education, they contended that the potential that parents might use ESA funds to pay tuition at a religious school or purchase religious homeschool materials was a violation of the Blaine Amendment. The court disagreed:

Once the public funds are deposited into an education savings account, the funds are no longer "public funds" but are instead the 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. Any decision by the parent to use the funds in his or her account to pay tuition at a religious school does not involve the use of "public funds" and thus does not implicate Section 10.

This is consistent with how the courts treat other transfers of public funds to individual citizens. **A person using food stamps for a religious feast, hosting regular Bible studies at a subsidized apartment, or spending Medicaid funds at a Catholic hospital with a crucifix in every room and priests on the staff likewise do not violate the U.S. or state constitutions.** The mere fact that the state places some restrictions on how those funds may be spent does not, as the plaintiffs alleged, mean that they are still "public funds." As the court ruled, "That the funds may be used by the parents only for authorized educational expenses does not alter the fact that the funds belong to the parents."