



Nevada ESAs ruled constitutional, but funding hurdle remains

Heather Kays

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The Nevada Supreme Court ruled Thursday that the state's education savings account program is constitutional, but struck down the ESA law's funding mechanism.

State Sen. Scott Hammond, who wrote the ESA legislation, told Watchdog.org that the court's ruling was mostly good news.

"The positive part is the ruling says the ESA program is constitutional," the Las Vegas Republican said. "We just have to find another way to fund it. We can do it."

But Hammond said he could not offer any details about what such a revamped plan might look like.

"I'm always optimistic and hopeful that we can come together," said Hammond. "We just need to talk about the right way to fund it that will pass muster. That's doable."

Under the law enacted in 2015, the ESA program was set to begin this year. Instead, the law immediately drew lawsuits from the American Civil Liberties Union alleging that it violated the state constitution's requirement of a "uniform system of common schools," a prohibition on using public funding for sectarian purposes, and a clause that requires the state to appropriate funds to operate district schools before any other appropriation is enacted.

The court ruled the ESA program passes constitutional muster on the first two of those challenges, but not on the third.

In rejecting the ACLU's claim the ESA program unconstitutionally funds sectarian schools, the court said, "It is undisputed that the ESA program has a secular purpose — that of education— and that the public funds which the State Treasurer deposits into the education savings accounts are intended to be used for educational, or non-sectarian, purposes. Thus, in depositing public funds into an education savings account, the State is not using the funds for a 'sectarian purpose.'"

The court also rejected the ACLU's "narrow reading" of the state constitution, saying such an interpretation "would mean that the public school system is the only means by which the Legislature could encourage education in Nevada."

But the court found that the state treasury does not have the authority to use the funds appropriated by the school district funding bill to fund ESAs.

Under the law, parents can use the per-pupil funding for their children to pay for a variety of approved educational options, including private school tuition, tutoring, textbooks, and therapies, making Nevada's one of the most expansive ESA programs in the country.

Close to 8,000 students have signed up thus far, according to Hammond.

Seeing the distinction

While disappointed that the program remains on hold, school choice advocates stressed the importance of establishing that the concept is constitutionally acceptable.

“As was the situation in Arizona, Nevada courts found that education savings accounts do not violate the state constitution — another promising sign for account laws around the country,” said Jonathan Butcher, education director for the Goldwater Institute in Phoenix. “This is a strong indication that courts see the distinction between the accounts and other learning opportunities like private school scholarships.”

Butcher said funding ESAs alongside district schools as Arizona now does would be optimal, because lawmakers would not have to decide each year whether to fund the program.

“The funding issue is specific to Nevada and can be resolved by the legislature,” said Butcher. “For the sake of Nevada's students, I hope the legislature moves quickly to patch this last item.”

Matt Frendewey, national communications director for the American Federation for Children, told Watchdog.org the court upholding the ESA program is an important victory.

“We are encouraged with today's ruling from the Nevada Supreme Court — dismissing constitutional challenges to the state's near universal education savings account program,” said Frendewey. “We encourage Gov. Brian Sandoval and the state Legislature to quickly address the technical fix required to appropriately fund a child's education through an ESA.”

Jason Bedrick, policy analyst for the Center for Educational Freedom at the Cato Institute, urged the legislature to hold a special session to quickly address funding.

Hammond said he would speak with state officials and legislators about finding a solution right away.