

Jonathan Butcher Testimony on Education Savings Accounts
Submitter: Goldwater Institute

Chair Roblan and members of the Senate Education Committee, my name is Jonathan Butcher and I'm the education director for the Goldwater Institute, headquartered in Arizona. In 2011, Arizona became the first state to implement education savings accounts. I was a member of the Arizona Department of Education's Steering Committee for the accounts from 2013-14.

Nothing better demonstrates the importance of giving every child the chance at a successful future than the story of a parent and her child and how an education savings account changed their lives.

Holland Hines moved to Arizona after the birth of her son, Elias, to be closer to family and friends. She anticipated needing help with Elias's needs: Doctors had diagnosed Elias with autism and hyperlexia (a precocious reading ability). "At first," Holland explains, "he attended a regular public school, but by the beginning of second grade...I was being called several times a week to pick up a crying, shaking little boy who was crouched under a table and asking for help."¹

Holland applied for an education savings account in 2011, and Elias began attending a private school that specializes in teaching children with special needs. Holland explains that Elias has "an adapted schedule that allows him to attend school half time to work on academics, social interaction, and classroom etiquette. The other half of his school week is spent attending speech, occupational, physical, and music therapies that his doctor prescribes."

"Elias is now excited for school and comes home happy about what he is learning," Holland says. "His academics have improved tremendously, his anxiety at home and school is almost gone, and his ability to remain at school for his scheduled school day has greatly improved."

Holland says the account "allows the one person who knows best what her child needs—the parent—to make the most important education decisions for her child."

Instead of a labyrinth of state and district funding mechanisms, education savings accounts provide parents with a dedicated source of education resources for their student.² With an account, the state deposits a portion of a child's funding in a private bank account that parents use to buy educational products and services for their children. Arizona families have 11 categories of eligible expenses at their disposal including private school tuition, online classes, textbooks and curricular materials such as science kits, and educational therapy services. Families can save money from year to year and even pay for college expenses before or after a child finishes high school.

Arizona parents use the education savings account card just like a prepaid Visa card. The state department of education makes quarterly deposits to each card, and parents use the Visa cards to buy educational products and services. They can swipe their cards at a private school or an educational therapist's credit card terminal or enter their account information in PayPal to make purchases.

Arizona limits card usage to vendors that fall into certain merchant code categories (MCC) to help prevent misuse. For example, parents cannot use their child's education savings account card at a gas station because of the station's MCC code, while they *can* swipe their child's card at a participating school's credit card reader.

Research demonstrates promising results, and studies show parents are highly satisfied. A 2013 survey of participating parents found that all families reported some level of satisfaction, even those that reported being highly satisfied before they left a traditional school to use an education savings account. Seventy-one percent of respondents reported being "very satisfied" with their child's account.

Families are using the accounts for many products and services, giving them access to multiple educational solutions for their child. In 2016, a review of Arizona education savings account parent spending found that 28 percent of families were using an account for multiple products and services, not just private school tuition. This figure is consistent with an earlier study that found 34 percent of families were using the cards for multiple purchases. In both studies, approximately one-third of account holders used an account for more than one educational service.

This feature makes the accounts distinct from K-12 private school scholarships because these scholarships or vouchers can only be used for private school tuition. The accounts can be used for several different learning experiences simultaneously.

Today, lawmakers in Florida, Mississippi, and Tennessee have created education savings account laws based on Arizona's model.

In 2017, Arizona lawmakers expanded the accounts so that every child attending a public school in the state has the option to apply for an account by 2021.³ Children from low income families will receive approximately \$5,000 per account, while other applicants will receive \$4,500. Children with special needs will be funded with account awards worth 90 percent of what the state general fund would have used for that child in a public school (these amounts vary according to a child's diagnosis).

From 2011-14, the Goldwater Institute defended the accounts in court alongside the Institute for Justice against a lawsuit that claimed the accounts were identical to K-12 private school vouchers and violated provisions of Arizona's constitution (*Niehaus v. Huppenthal*). The Arizona Supreme Court had previously ruled that vouchers were not permitted under Arizona's constitution in *Cain v. Horne*.⁴ The court ruled in *Cain* that vouchers violate state constitutional provisions that prevent the use of public funds for private or religious purposes. Such provisions are commonly known as "Blaine Amendments," and these amendments have stalled or even prevented parents from choosing where their child learns in other states.⁵ The U.S. Supreme Court wrote in *Mitchell v. Helms* (2000) that Blaine amendments have "a shameful pedigree that we do not hesitate to disavow... Consideration of the amendment arose at a time of pervasive hostility to the Catholic Church and to Catholics in general."⁶ The lawsuit filed in *Niehaus* charged that education savings accounts were the same as vouchers and were unconstitutional in

Arizona.

Yet in 2013, Arizona Appeals Court Judge Jon W. Thompson wrote in a unanimous opinion that the accounts are fundamentally different from private school vouchers:

The ESA 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. The parents are given numerous ways in which they can educate their children suited to the needs of each child with no preference given to religious or nonreligious schools or programs.⁷

In 2014, the Arizona Supreme Court declined to hear an appeal in the case. As a result, education savings accounts are constitutional in Arizona.

Every child should have the chance at the American Dream. No matter a student's zip code or parents' income, all children should have quality learning opportunities. Education savings accounts are providing great options for thousands of students from all backgrounds across Arizona.

¹ Holland Hines, "One Mom's Story," Goldwater Institute Liberty in Action, Fall 2012.

² The original text for this section is can be found in Jonathan Butcher, "The Future of Money and Giving Every Child the Chance at a Successful Future," Goldwater Institute Policy Report, May 9, 2016, <http://goldwaterinstitute.org/en/work/topics/education/education-savings-accounts/the-future-of-money-and-giving-every-child-the-cha/>.

³ Fifty-third Arizona Legislature, First Regular Session, SB 1431, <https://apps.azleg.gov/BillStatus/GetDocumentPdf/452775>.

⁴ See Arizona Supreme Court, *Cain v. Horne*, available at <http://www.azcourts.gov/Portals/23/pdf2009/CainOpinionCV080189PR.pdf>.

⁵ See Florida Supreme Court, *Bush v. Holmes*, available at http://www.floridasupremecourt.org/pub_info/summaries/briefs/04/04-2323/Filed_01-05-2006_Opinion.pdf.

⁶ *Mitchell v. Helms*, 2000, 120 S. Ct. 2530, 2551).

⁷ See Arizona Court of Appeals, *Niehaus v. Huppenthal*, <http://caselaw.findlaw.com/az-court-of-appeals/1646005.html>.