

THE CIVIC VIRTUE OF PRIVATE HOME EDUCATION

or how I learned to stop

worrying and oppose

so-called Education

Savings Accounts

for homeschoolers



FALL 2020

Executive Summary

Education Savings Accounts (ESAs) are a common proposal to provide families with the financial flexibility to choose public school alternatives. Despite the good intentions behind them, ESAs pose numerous potential risks to the homeschooling community. HSLDA Vice President of Litigation James Mason makes his case against the adoption of ESAs.

Birth of the Homeschool Movement

- The homeschool movement began as the organic creation of private associations nationwide composed of parents striving to provide their children with the best educational experience available.
- **The story of homeschooling is one of rolling back government intrusion, not seeking government help.**

Birth of ESAs

- In his 1980 book *Free to Choose*, Milton Friedman diagnosed the failure of the public education system as a result of over-bureaucratization and centralization.
- His cure for the problem was vouchers. He believed that this would be a way for the government to demand a minimum level of education while giving parents the freedom to choose between state-approved options.
- Eventually, vouchers gave way to “Education Savings Accounts,” or ESAs. These are not true savings accounts.
- A true savings account is a tool into which individuals place their own money so that the money will grow and be available for a greater purpose farther down the road (e.g., 529 accounts).
- **For ESAs, the government collects taxes from private individuals. Those taxes are then redistributed to school-age kids to be spent on government-approved education expenses.**

Danger of ESAs

- First, ESAs place the burden of approving expenses on the state. The government, not parents, would decide what is best for a child’s education.
- Second, paperwork. HSLDA routinely handles lawsuits that are the results of misplaced paperwork. Who is to say that similar filing mistakes wouldn’t happen when families attempt to get their education expenses approved?
- **Third, the potential of increased regulations on homeschooling. These regulations could include mandatory homeschool registration, a list of approved curricula homeschool families would have to use, and mandatory home inspections by officials.**
- ESAs fundamentally go against the foundation of the homeschool movement. They come with the idea that the education of children is the state’s responsibility, not parents’.

It was a perfect spring morning in March 2016. With my dark grey suit on—which was not quite warm enough in the shade but was a bit too much in the bright sun—I strolled the cobblestone paths between the Williamsburg Woodlands Hotel and the Woodlands Conference Center. I was about to address the annual Leadership Conference sponsored by Home Educators Association of Virginia (HEAV).

Yvonne Bunn and Ann Miller met me in the foyer. Yvonne is diminutive with carefully coiffed reddish hair; in bearing and manner she is every bit the gracious Southern lady. Ann is tall with short dark hair and an electric smile that activates impish crinkles around her eyes.

They are the leaders of the assembled leaders. For many years they have labored to make HEAV one of the preeminent state homeschool organizations. And a big part of their success is their cultivation of smaller groups, helping them to be well led too.

Inside, around 90 support group leaders are listening to Tara Bentley, a state leader from Indiana, talk about “Healthy Leadership Habits.” The tightly-packed crowd, of whom 20 percent is African American and 90 percent is female, is 100 percent attentive and engaged. And they are almost all unpaid volunteers.

I start my talk with one of my favorite shticks.

“Remember back in 1978 when Congress established the Department of Home Education?” I ask with a straight face. Several of the participants take notes.

“And remember when President Carter appointed the first Secretary of Home Education in 1979?” A few look up, certain that something is not quite right.

“I mean,” I continue, “if not for the foresight of visionaries like Jimmy Carter, the homeschooling movement as we know it would never have come into existence.”

Now on to the joke, they giggle knowingly as I continue my riff. “If Congress hadn’t appropriated that money in 1983, Home School Legal Defense Association would never have been created. And without all those federal block grants that fund state groups like HEAV and local groups like yours, home education would have shriveled up and died.”

Moms and dads just like you

Now we all know that homeschooling did not begin

as a movement because of the top-down vision of a politician, nor was it dependent on government largesse. Homeschooling began when a handful of moms and dads just like you and me said, “enough.”

Amazingly, those first homeschoolers found each other long before Facebook groups were even a twinkle in Mark Zuckerberg’s eye. Groping through the darkness, without email, smart phones, or websites, prehistoric homeschoolers formed thousands of those quintessentially American things: private associations.

The civic virtue of private associations featured centrally in Alexis de Tocqueville’s *Democracy in America*, published between 1835 and 1840. Tocqueville was careful to distinguish between political associations and those “associations that are formed in civil life and which have an object that is in no way political.” By *civil life* he meant private life as differentiated from the state.

Speaking of civil life, he said:

Everywhere that, at the head of a new undertaking, you see the government in France and a great lord in England, count on it that you will perceive an association in the United States.

In America I encountered sorts of associations of which, I confess, I had no idea, and I often admired the infinite art with which the inhabitants of the United States managed to fix a common goal to the efforts of many men and to get them to advance to it freely.

Remember back in 1978 when Congress established the Department of Home Education?

The list of attendees at the HEAV Leadership Conference included homeschooling associations formed to provide cooperative classes, sports leagues, mentoring, adult support, field trips, art, books, and bees (spelling and geography bees, that is, but not buzzing).

Those associations were big and small, local and statewide, led by rookies and by veterans, diverse in makeup



by **JIM MASON**

HSLDA Vice-President of Litigation

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but united in purpose—providing a quality educational and social experience for their own children, their friends’ children, and their communities’ children.

Drawn by this common goal, they cheerfully gathered together on that fine spring morning to learn how to do it better. And no statute, regulation, or state official required them to be there or paid their way.

Tocqueville’s secret sauce

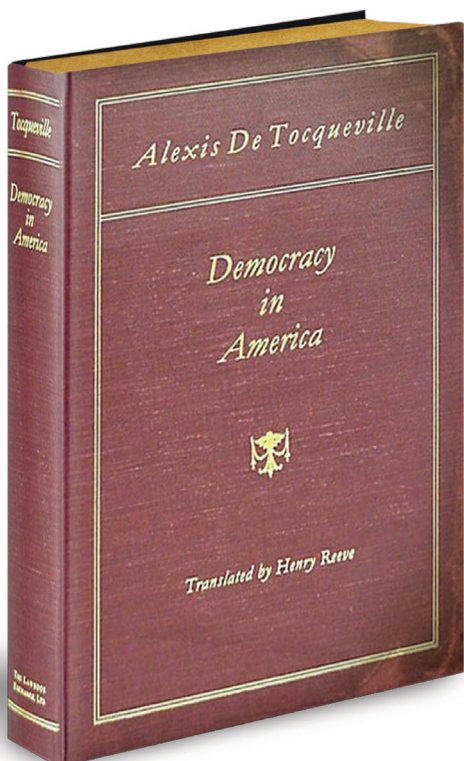
The organic, voluntary, exponential growth of homeschooling over the last 40 years owes much to the secret sauce of Tocqueville’s private associations.

There is a certain ironic symmetry in the fact that the nascent homeschool movement—invisible to the elite in the 1970s—emerged just as Washington, DC, elevated education to department level with its very own secretary.

I ask you, which of the two has proven more successful since 1978?

The civic virtue of private home education may be summed up by saying, “Oh yes, Mr. President, we did build that!”

Which leads to my subtitle, “*How I Learned to Stop Worrying and Oppose So-called Education Savings Accounts for Homeschoolers.* (With apologies to Stanley Kubrick and Dr. Strangelove.)”



Alexis de Tocqueville published his insightful observations between 1835 and 1840 from his visit to the United States.

But you may be asking yourself, “Why would a homeschool advocate oppose a savings account for education?”

Just ask the ants

First, here’s what I think a savings account is.

It is a tool in which I set aside a little of *my own* money today, and tomorrow, and tomorrow, so it will grow and be available for a greater purpose some time down the road. If I forgo my venti soy caramel macchiato today (and tomorrow and tomorrow), I will be able to help my kids pay college tuition 10 years from now.

To encourage college savings, the federal government created tax-advantaged 529 *plans*. I invest my daily caramel macchiatos into the stock market through my kid’s 529 plan, it grows for 10 years, and then when I withdraw it to pay for tuition, I don’t owe income tax on the increase.

That’s what I think of as an educational savings account. Saving is an admirable discipline. Just ask Aesop’s ants—and maybe his grasshopper, too.

But that is not what is envisioned by my friends in the educational choice movement, including some friends in state legislatures.

Here’s my take on how “ESAs” work (although proponents would not put it quite the same way):

- First, backed by the full power of the state, including the power to impose serious consequences for noncompliance, the taxman extracts a dollar from the wallets of Jones, Garcia, and Murgatroyd.
- Second, through the magical powers of bureaucratic efficiency, each of those dollars becomes 50 cents.
- Third, those 50 cents are jumbled together and redistributed to the parents of school-age kids to be spent on state-approved educational goods, including state-approved homeschooling expenses.
- Fourth, they call them “educational savings accounts” because . . . well, it markets well.

Here’s how proponents describe ESAs themselves: “ESAs allow parents to withdraw their children from public, district, or charter schools and receive a deposit of public funds into government-authorized savings accounts with restricted, but multiple, uses. Those funds—often distributed to families via debit card—can cover private school tuition and fees, online learning programs, private tutoring, community college costs, higher education expenses, and other approved customized learning services and materials.”¹

Supporters argue that education of children is a *public*

endeavor. Parents who choose not to send their children to free public schools are performing a public service, so providing them public money for private education is in return for that public service.

What they are promoting today as an ESA has a venerable intellectual origin and honorable purpose. I do not mean to impugn motives; the proponents of ESAs intend to do good. But the ESAs proposed today are not savings accounts; they are social welfare vehicles designed to transfer public tax money to parents of school-age kids. Calling them savings accounts doesn't make them so, and I believe ESAs would be poisonous to the private homeschooling movement of today.

Free to choose

An important event in the realm of ideas also happened about the same time as the organic rise of homeschooling and the simultaneous creation of a new layer of federal education bureaucracy in 1978: Milton and Rose Friedman's book and accompanying PBS series *Free to Choose* came out in 1980.

According to *The Economist*, the book and TV series "had an enormous influence on the way not just highly educated policy-makers but also the general public saw a wide range of issues."

The book's cover pitches it as "the classic inquiry into the relationship between freedom and economics," and one chapter is devoted to asking, "What's wrong with our schools?"

In that chapter, Friedman begins by expressing the fear that public education is "suffering from the same malady as are so many programs," what Walter Lippmann diagnosed as "the sickness of an over-governed society."

"For schooling, this sickness has taken the form of denying many parents control over the kind of schooling their children receive. . . . Power has instead gravitated to professional educators. The sickness has been aggravated by the increasing centralization and bureaucratization of schools."

I will summarize Friedman's nutshell history of education in America, but heartily encourage reading the whole thing. He recounts:

- In the early days of the Republic, though "schooling was neither compulsory nor free, it was practically universal (slaves, of course, excepted)."
- "[T]he gradual acceptance of the view that education ought to be the responsibility of the state"



that secret sauce

The organic, voluntary, exponential growth of homeschooling over the last 40 years owes much to the secret sauce of Tocqueville's private associations.

was "the most significant of the general trends of the nineteenth century." (We refer to this time as the Progressive Era historically, and the education reform Friedman refers to was a project of progressive reformers like John Dewey.)

- "Government takeover of education . . . resulted from pressure by teachers, administrators, and well-meaning intellectuals, rather than parents."
- "[G]overnment takeover reduced the quality and diversity of schooling."
- "The establishment of the school system in the United States [became] an island of socialism in a free market sea."
- "As professional educators have taken over, control by parents has weakened."

Friedman's diagnosis of the problem is not too different from that of early homeschoolers. Many of them might add that disfavor of religion in the public schools played a big role in their decision to quit the system. Or, some might say that a one-size-fits-all approach for all 25 kids in a classroom, did not, in fact, fit their child.

But Friedman's cure was quite different from that of early home educators—he proposed vouchers.

Won't you be my neighbor

In earlier writings, Friedman described the problem of education as primarily an economic issue, properly

addressed by the state. To support the state takeover of education, he cited the “neighborhood effect.” That occurs when “the action of one individual imposes significant costs on other individuals for which it is not feasible to make him compensate them.”

In the realm of education, the costs of the neighborhood effect to society accrue when some children are undereducated and are therefore unable to be effective citizens. Friedman’s solution to the current state education monopoly was to justify state takeover of education *funding*.

“Governments could require a minimum level of education which they could finance by giving parents vouchers redeemable for a specified maximum sum per child per year if spent on ‘approved’ educational services.”

He continues in *Free to Choose*:

Suppose, however, the government said to you: “if you relieve us of the expense of schooling your child [in free public schools], you will be given a voucher, a piece of paper redeemable for a designated sum of money, if and only if, it is used to pay the cost of schooling your child at an approved school.”

Today’s ESAs are debit cards rather than a piece of paper. But they operate on the same principle while providing more flexibility because the money may easily be spent at more than one place, an idea Friedman embraced in 2003. Friedman saw

universal funding through vouchers as a way to move education from a socialist system—where the state owns the means of production, and distribution, and has the power to compel—to a *social welfare* model, where parents have more freedom to choose among state-approved options. In his model, the money would follow the child, parents would choose among approved schools, and a free-market effect would create competition among schools. In his view, this would lead to lower costs and improved education.

From unknown to mainstream (in millions of easy steps)

When *Free to Choose* was published in 1980, private schools were the only alternative Friedman knew about. What he did not realize was that a completely new liberty-based model for monopoly-busting was emerging right under his nose.

The struggle for homeschool freedom has been one of rolling back needless government intrusion, not one of seeking government help. In the face of sometimes daunting odds, homeschoolers braved prosecution and social stigma. (And we still must deal with officious bureaucracies all-too-often.)

Homeschooling freedom as we know it today has not been the product of top-down management. Instead, in true free market fashion, it is the product of thousands of parents making millions of tiny decisions (and some huge ones) motivated by their own children’s well-being—Adam Smith’s invisible hand at work.

Unlike in 1980 when *Free to Choose* was published, today’s ESA proponents in and out of government know about homeschooling. Homeschooling has gone from unknown to mainstream. Legislatures went from complete ignorance about homeschooling, to homeschooling parents being elected to public office, to homeschool graduates now being elected. Homeschooling in America

A detailed pencil sketch of a hand holding a large, textured bag. The bag has a large dollar sign (\$) drawn on its front. The hand is shown from the side, with fingers wrapped around the top of the bag. The drawing is expressive and somewhat abstract, with heavy shading and cross-hatching for texture and depth. A small vertical watermark '© ISTOCKPHOTO.COM' is visible on the left side of the hand.

an improved sauce?

You will be given a voucher . . . , if and only if, it is used to pay the cost of schooling your child at an *approved* school.

is no longer a fringe movement to be stamped out as it once was (and still is in places like Germany). Homeschoolers in America are a growing, diverse, vocal constituency to be reckoned with.

The father of school choice

Some well-intentioned state legislators wishing to adopt Friedman's vision of driving a publicly-funded wedge into the public school monopoly also want to include homeschoolers in the ESA equation. They do so out of a sense of fairness. And they likely assume that homeschoolers as a class are like other constituencies and want their share of the public pie.

They are frequently astonished to learn that many homeschoolers want no part of a modern ESA voucher. Historically, when homeschoolers have gone to the legislature we do not typically go saying, "Please, give us a handout!" It has mostly been to say, "Keep your hands off!"

For his work in this area, Friedman has become known as the father of school choice. When someone like me critiques the life's work of a Nobel laureate, readers would do well to go to the source before deciding. There are arguments in favor of ESAs for homeschoolers. For example: we pay taxes to support public schools, why shouldn't we get tax money to pay for homeschooling? Or: more people would choose homeschooling if they received public assistance.²

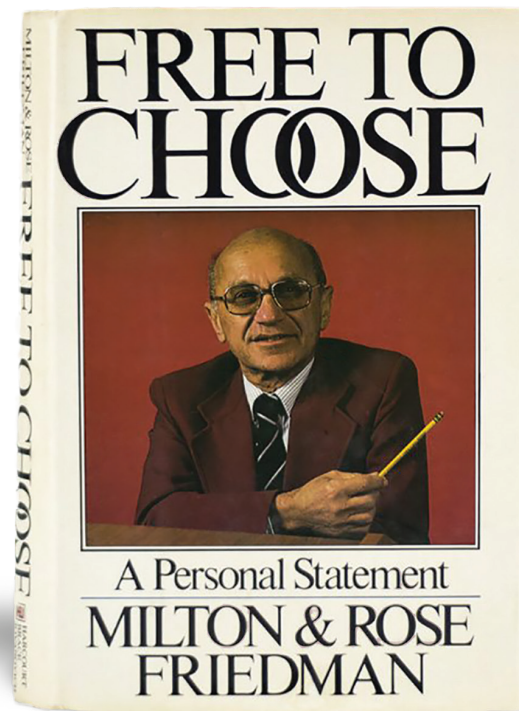
Upside and down

So why do I think that Friedman's voucher program—and the modern equivalent, the ESA program—is poisonous to the homeschooling movement?

A fact often overlooked (or at least underdiscussed) by modern ESA supporters is that Friedman's voucher proposal would also place the responsibility for approving private educational options in the hands of the state.

This opens up the possibility of one of Friedman's recognized downsides to vouchers applying to ESAs: the possibility of fraud.

From *Free to Choose*: "How can one make sure that the voucher is spent for schooling, not diverted to beer for papa and clothes for mama? The answer is that the voucher would have to be spent in an approved school."



Free to Choose by Milton and Rose Friedman hit the market in 1980 and challenged the educational status quo.

Unfortunately for ESA boosters, that word "approved" comes pre-installed with bad vibes for homeschoolers. "Who does the approving?" "How much government oversight will be required?" "Will some

bureaucrat in Capital City review my Amazon bill and decide that I spent too much on that out-of-print *Book of Greek Myths* by the D'Aulaires?"

I get another email

True story: on a Monday afternoon, I went to the dentist. At checkout I pay \$67 using my medical flex-spending debit card, another form of tax-advantaged savings account into which I put *my own money*.

Apparently, the IRS has told my flex administrator that you can't trust those wily dentists to charge patients for "approved" dentistry. So I get an email saying I need to send in a receipt. I trot back over to the dentist, get the receipt, scan, and email to the administrator.

I get another email saying the receipt needs to be more specific about the service provided. I trot back, scan, email.

I get another email. The receipt is not enough. I need to provide an explanation of benefits from my dental insurance company.

I figure out how to log into my new dental insurance account, find the EOB, print, scan, email.

Guess what: I GET ANOTHER EMAIL, this time threatening to lock my account. Turns out my insurance company actually covered \$15.30 of the \$67. I had thirty days to reimburse the administrator, or else! So, I went to my online checking account, added my administrator to the payees, and wrote a check for \$15.30 to the account holding MY OWN MONEY.

Two weeks later I get another email. "Your transaction has been approved."

Praise God and hallelujah! I felt like I'd won the lottery!

Does anybody seriously believe that ESAs will be friction free, especially considering that thousands of dollars of tax money are involved? Based on my 17 years at HSLDA, I can attest that seemingly benign paperwork issues can lead to considerable heartache for homeschoolers.

In 2016, we filed a lawsuit against New York City public schools. The local schools routinely turned homeschoolers over to CPS investigators alleging educational neglect because the central homeschooling office wrongfully delayed the lawfully submitted homeschooling paperwork. So the schools kept marking the child absent. And although homeschool mom Tanya Acevedo did everything the law required, a CPS investigator showed up at her door at 7 p.m. and demanded to interview her child and inspect her apartment. (After this article was first published, New York City agreed to make changes, paid Tanya damages, and submitted to a two-year consent decree, where they must report progress quarterly to HSLDA. You can read more about our efforts at hslida.org/Acevedo20.)

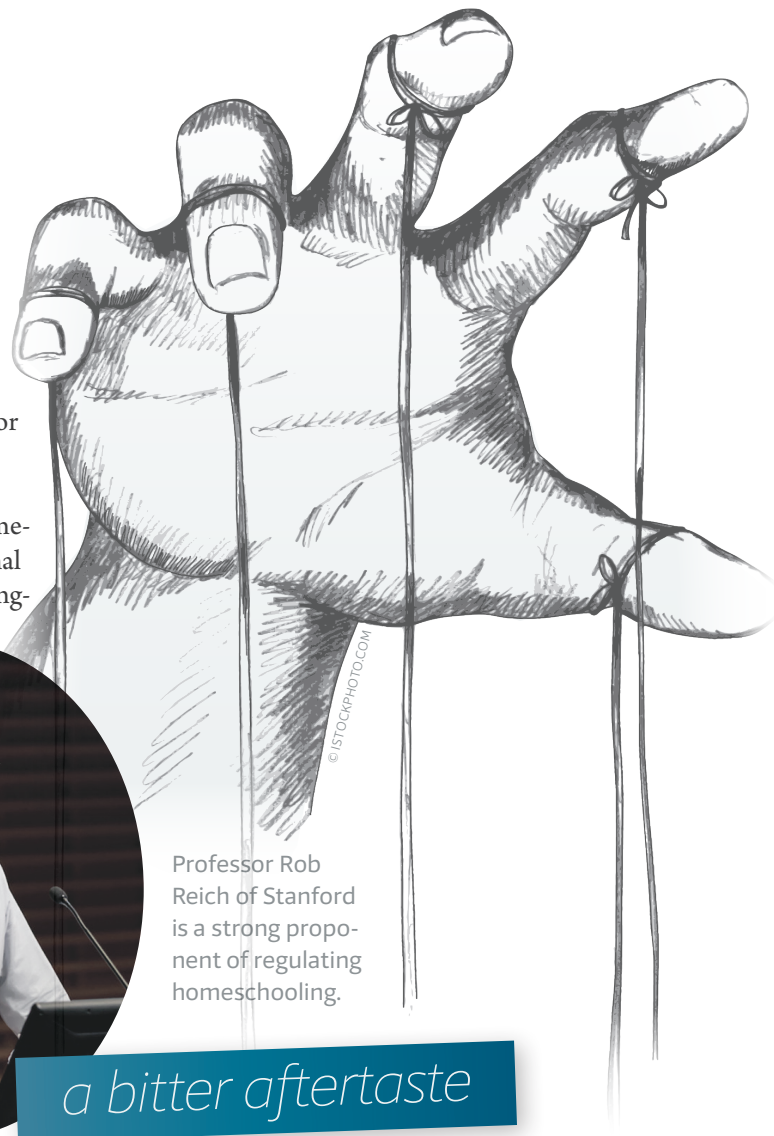
And what about homeschool mom Valerie Bradley, who was charged with contributing to the delinquency of her son when she turned her notice of intent in after the public school had already started. Even though he scored in the 97th percentile. After we represented her at trial and two appeals she was finally exonerated. (You can read Valerie's full story at hslida.org/Q418Bradley.)

Couldn't disputes over ESA paperwork cause similar heartaches for homeschoolers?

Professor Reich: The case of homeschooling

But the inefficiencies of bureaucrats are not the worst of the likely consequences.

Rob Reich is a political science professor at Stanford. He first came to my attention in 2002 with his essay, *Testing the Boundaries of Parental Authority Over Education: The Case of Homeschooling*. In this essay, Professor Reich proposed several regulations of homeschools, for



Professor Rob Reich of Stanford is a strong proponent of regulating homeschooling.

a bitter aftertaste

“A tax credit for homeschooling should not be offered without a requirement that homeschooled families accept some oversight.”

the good of the children.

First, all states must require registration of all homeschoolers.

“Second, the burden of proof that homeschools will satisfy the state's and the child's interest in education must rest with the parents who express the desire to homeschool. Aligning the burden with parents is important, because if the homeschooling arrangements were *presumed* to be satisfactory unless the state were to show otherwise, the state would have to resort to difficult and intrusive means to make such a case” (emphasis added).

Yes. Those horrible burdens we would be imposing on states. Burdens like due process, no prior restraints, free speech, and the presumption of innocence.


How backward of us.

Third, and perhaps most troubling, “because the state must ensure that the school environment provides exposure to and engagement with values and beliefs other than those of a child’s parents, the state should require parents to use curricula that provide such exposure and engagement.”

He acknowledges that many, if not most, homeschoolers will do this freely without mandating it. But there are those, particularly those of a certain benighted religious flavor, who will need to be brought under state discipline.

He “imagine[s] that parents could satisfy such a regulation in a variety of ways”:

- “[T]hey could submit their curriculum for review to local school officials.”
- “[T]hey could choose curricular materials from a state-approved list.” (why didn’t we think of that?)
- “[T]hey could allow their children to take periodic assessments that would measure their success in examining and reflecting upon diverse worldviews.” (I’m sure that’s objectively measurable in a completely viewpoint-neutral fashion. And I wonder how all those children of secular progressives will do when tested on the biblical worldview of evangelical Christians);
- “Surely other methods are possible,” he concludes.

I am also sure that other methods are possible. See Exhibit A, California Assembly Bill 2756 (2018) which would have mandated all homeschoolers submit to an annual inspection of their home by the fire marshal—that’s right, the fire marshal—because of the reported misdeeds of one family. Fortunately, when thousands of homeschoolers showed up in Sacramento, that bill went down in flames (which you can read more about at hsllda.org/Q418CABill ).

Strings ‘n things

Fast forward to 2015. Here’s the same Professor Reich writing in the opinion pages of the *New York Times*, responding to proposals for educational *tax credits* for homeschoolers:

I see no problem with a federal tax credit. But a tax credit for home schooling should not be offered without a requirement that home-schooled

families accept some oversight. . . . Want a tax credit to home school? Accept a requirement to register your child as being home schooled and that the child take the same state tests as other public school students. Federal dollars come with strings attached, and these particular strings are in the best interests of children, anyway.

I disagree with Professor Reich that tax credits necessarily bring the strings he suggests. Credits are designed to allow me to keep more of my own money, like the child tax credit. But can the same be true for ESAs, which are fully financed by thousands of tax dollars?

I suspect that eventually good-government sorts will want stricter accounting along the lines of my medical flex account, and eventually ideologues will try to justify legislative proposals like Professor Reich’s in exchange for ESA money.

Even if accepting ESAs were voluntary, how long would it take for some state legislatures to attach strings to state money, then expect all homeschoolers to toe the mark? Professor Reich and his allies, remember, would impose additional requirements on homeschoolers even if no state money were at issue. ESAs would change the equation considerably as Reich would have a compelling argument for imposing more regulation of homeschooling generally.

My objections to ESAs for homeschoolers are based on what I consider likely possibilities. They are necessarily speculative. Perhaps they could be avoided, as my friends who support ESAs argue. I suspect not, but maybe I am too cynical.

Even so, I would still oppose ESAs on principle.

Tax-funded ESAs are premised on the notion that the education of children is primarily a state responsibility based on the interests of the state. Those interests shift from time to time, as evidenced by the long sweep of secularization, social engineering, and Professor Reich, who speaks for many who share his views.

Whose children?

But if you believe, as I do, that raising, nurturing, and educating children falls under the laws of nature and nature’s God—and more specifically, if you share my Christian, biblical worldview that God placed children in the family as His institution on earth for raising kids, and that *all* parents, whether they share my biblical worldview or not, owe a duty to the Creator to equip kids with the love, knowledge, and tools they need to become caring, responsible adults—then you might say with me, “Render to Caesar the things that are Caesar’s; and to



PETIT A PETIT

God the things that are God's.”

In other words, I read Jesus's admonition in the context of this discussion to mean that we have gone astray by entrusting the education of children to the state when all along it belonged in the private sphere of the family and Tocqueville's voluntary associations.

The bureaucratic friction and potential strings therefore are not my primary objection to ESAs for homeschoolers. For that I take you back to the beginning of this essay—the HEAV Leadership Conference.

There is something truly lovely in seeing how a free people have built a radical counterculture, motivated by

The man who trained me in the ways of the Christian life many years ago was one of the original Navigators under Dawson Trotman. He got ahold of me after he and his beloved wife completed a long career as missionaries in the Cote d' Ivoire.

Responding to my many growth pangs, he would kindly say, “Petit a petit l'oiseau fait son nid.” Little by little the bird makes its nest.

Little by little the homeschooling movement grew in the face of tremendous adversity. Little by little we built muscle, endurance, and character. Little by little we formed Tocqueville's associations, we innovated, we branched out, and we have thrived.

Little by little homeschoolers have learned the habits of liberty, sometimes the hard way.

The habits of liberty are hard to learn . . . but they are oh-so-easy to forget.

nothing less than the love of their own children, mandated by nothing more than their own conscience, and supported by nothing more than their own ingenuity and community.

That brisk March morning in Williamsburg will forever exemplify for me the civic virtue of private home education.

A free people have built a radical counterculture, motivated by nothing less than the love of their own children.

the original recipe



ENDNOTES

¹ EdChoice. n.d. “What is an Education Savings Account?” Accessed November 8, 2018. <https://www.edchoice.org/school-choice/types-of-school-choice/education-savings-account>

² To read more about the positive side of ESAs from the perspective of their proponents, I recommend [edchoice.org](https://www.edchoice.org)

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