

The Forum for America's Ideas

SCHOOL VOUCHERS AND EDUCATION SAVINGS ACCOUNTS: ARE THEY CONSTITUTIONAL?

NCSL LEGISLATIVE SUMMIT
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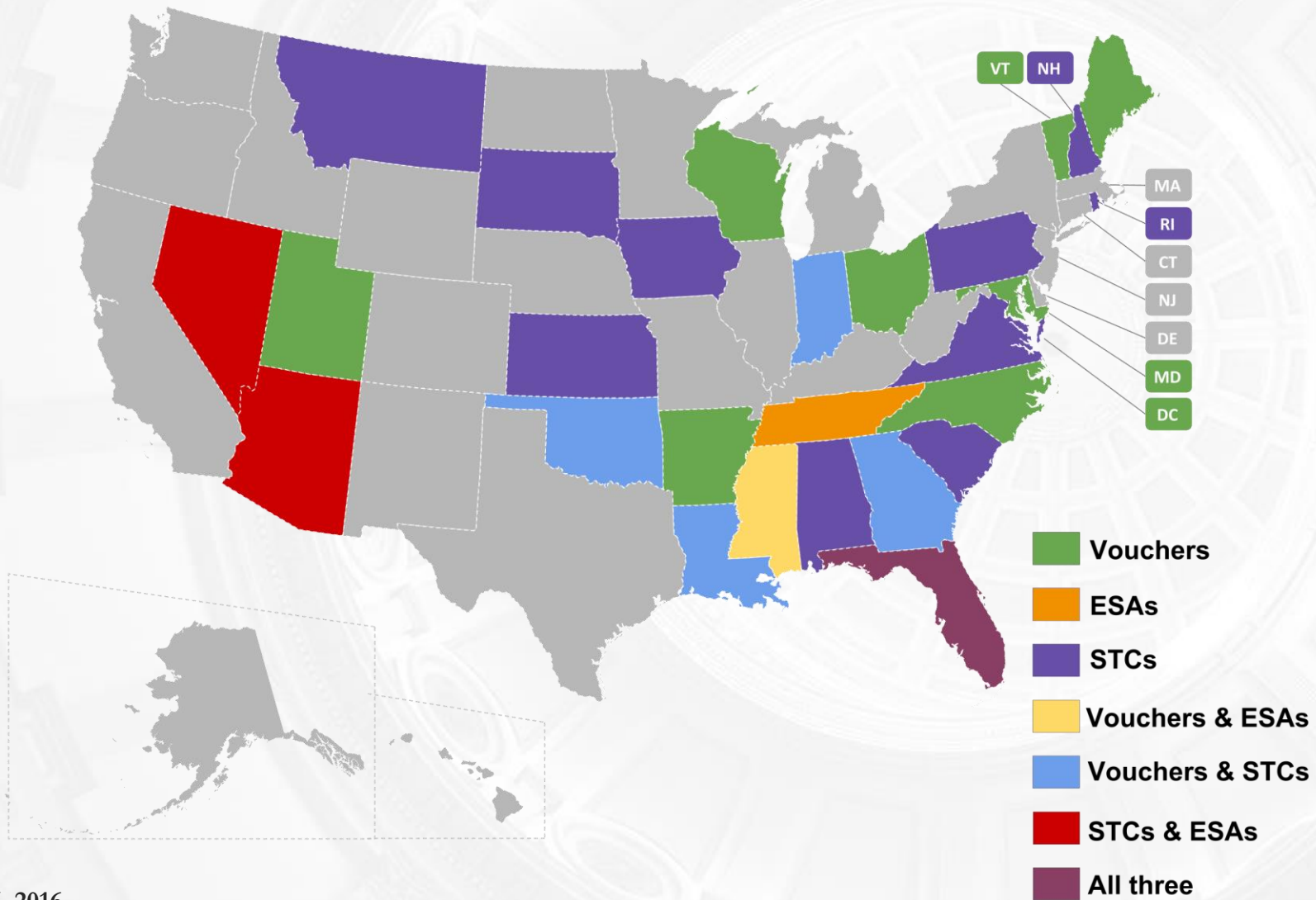
Where Are We Today?

Private Choice

- ❑ School Vouchers = 17 + D.C. States
 - State funded scholarships parents can use to pay private school tuition
- ❑ Education Savings Accounts (ESAs) = 5 States
 - State funded grants parents can use for a variety of educational goods and services
- ❑ Scholarship Tax Credits = 15 States
 - State created, privately funded scholarships can use to pay private school tuition



Private School Choice Landscape 2016



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Grounds for Challenging Choice Programs

- Education or general provisions within the state constitution:
 - ▣ Duty to establish a statewide uniform system of free public education
 - ▣ Prohibition against using state money for private purposes



General Constitutional Provisions

- ❑ *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006): Voucher program violated state's duty to provide uniform, efficient high-quality system of free public schools
- ❑ *Cain v. Horne*, 202 P.3d 1178 (Ariz. 2009): Voucher program violated prohibition against appropriating money for a private institution or public corporation



General Constitutional Provisions

- *Colo. Congress of Parents, Teachers, & Students v. Owens*, 92 P.3d 933 (Colo. 2004): Voucher program violated constitutional requirement for local control by school district boards of education by requiring school districts to spend locally raised money for educational programs they did not control

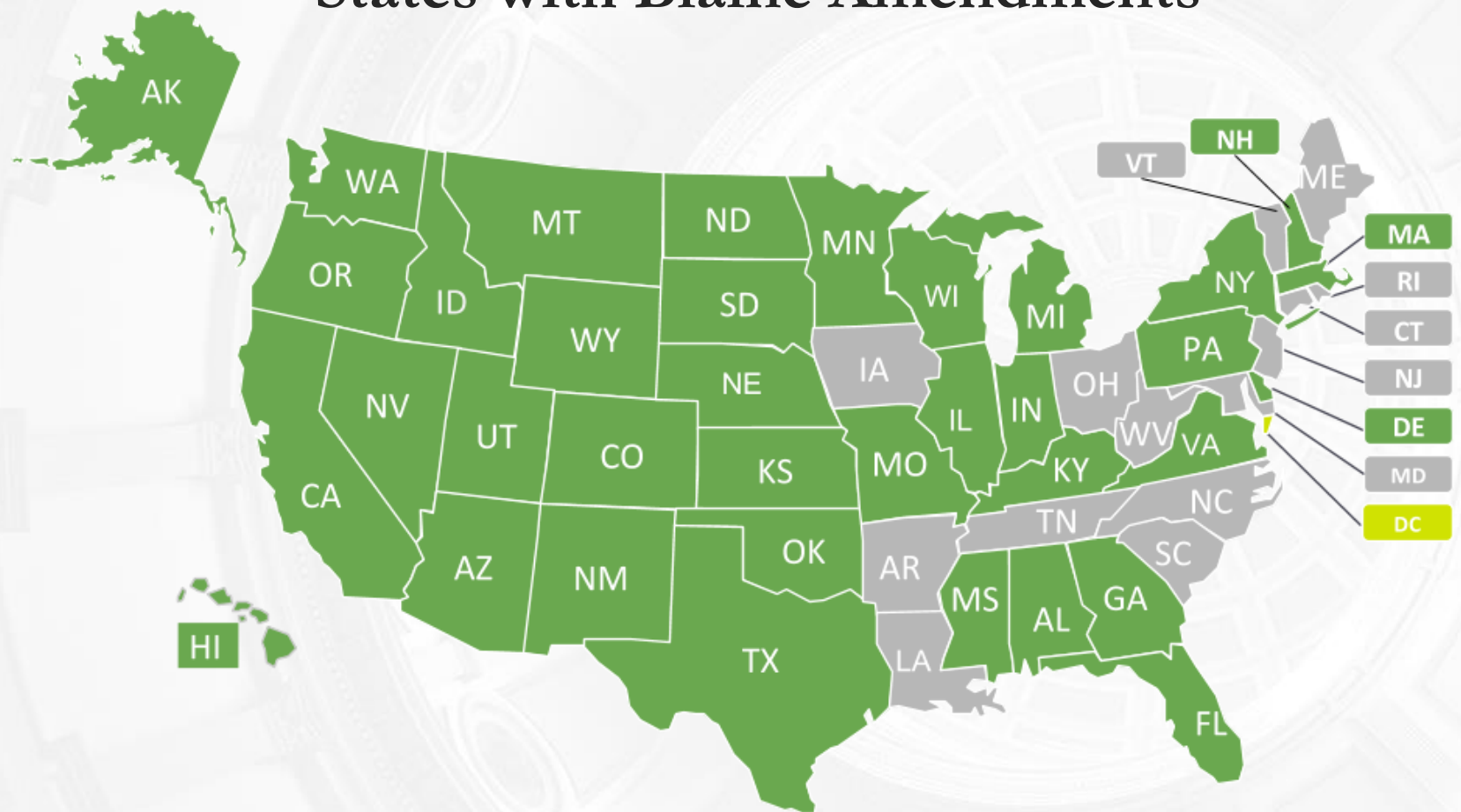


Religious Constitutional Provisions

- ❑ No money appropriated or aid given to sectarian schools or other institutions
- ❑ No person compelled to attend, support, or maintain a place of worship, ministry, or religious sect against his or her will



States with Blaine Amendments



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Dismissed for lack of standing

- *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011): Plaintiffs could not demonstrate standing – tax credit was not an expenditure of state money in violation of Establishment Clause and didn't amount to a religious tax or tithe



Federal cases

- ❑ *Mueller v. Allen*, 103 S. Ct. 3062 (1983): MN tax deduction for educational expenses – including parochial school tuition – did not violate Establishment Clause
- ❑ *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002): OH voucher program did not violate Establishment Clause - was religion neutral and subject to independent parental choice



Federal Cases

- *Locke v. Davey*, 540 U.S. 712 (2004): Upheld WA exclusion of theology degree programs from eligibility for a state scholarship program – states can be more stringent in interpreting state constitutional religious provisions without violating federal Free Exercise or Establishment Clauses



State cases where upheld program

- *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998)
- *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999)
- *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013)



State cases where upheld program

- *Niehaus v. Huppenthal*, 310 P.3d 983 (Ariz. 2014)
- *Magee v. Boyd*, 175 So.3d 79 (Ala. 2015)
- *Oliver v. Hofmeister*, 368 P.3d 1270 (Okla. 2016)



State cases where struck down program

- ❑ *Chittenden Town Sch. Dist. v. Dep't of Educ.*, 738 A.2d 539 (Vt. 1999)
- ❑ *Bush v. Holmes*, 886 So.2d 340 (Fla. 1st Dist. Ct. App. 2004)
- ❑ *Taxpayers for Public Education v. Douglas Cty. Sch. Dist.*, 351 P.3d 461 (Colo. 2015)



As the legality of voucher plans unfolds on a state-by-state basis, it may depend more on the political climate of the states and the dispositions of respective state high courts than on the exact wording of the state constitutional provisions.

“The Legal Status of School Vouchers: The Saga Continues”, Martha McCarthy, Ph.D., 297 Ed. Law Rep. 655 (2013)

