IN THE SUPREME COURT
STATE OF WYOMING
SHAWNA GOETZ, CLERK
FILED
September 8, 2025
02:19:47 PM
CASE NUMBER: S-25-0136

IN THE SUPREME COURT, STATE OF WYOMING

THE STATE OF WYOMING,

Appellant
(Defendant),

v.

WYOMING EDUCATION ASSOCIATION, a Wyoming Nonprofit Membership Corporation,

Appellee
(Plaintiff),

and

ALBANY COUNTY SCHOOL DISTRICT NUMBER ONE; CAMPBELL COUNTY SCHOOL DISTRICT NUMBER ONE; CARBON COUNTY SCHOOL DISTRICT NUMBER ONE; LARAMIE COUNTY SCHOOL DISTRICT NUMBER ONE; LINCOLN COUNTY SCHOOL DISTRICT NUMBER ONE; SWEETWATER COUNTY SCHOOL DISTRICT NUMBER ONE; SWEETWATER COUNTY SCHOOL DISTRICT NUMBER TWO; and UINTA COUNTY SCHOOL DISTRICT NUMBER ONE,

Appellees
(Intervening Plaintiffs).

S-25-0136

BRIEF OF APPELLEE WYOMING EDUCATION ASSOCIATION

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INTRODUCTION

Before getting into the voluminous record and the lengthy briefs of this case, it is valuable to observe that this case is ultimately not as complicated as it may appear despite the magnitude of the issues and the voluminous trial record. The ultimate question for this Court to resolve is whether the legislature has appropriated the necessary funds to properly fund public education. That is fundamentally a factual question. The District Court heard the presentation of evidence at trial, made credibility determinations regarding witnesses, carefully reviewed the trial record, applied existing precedent and then found both that the Plaintiffs had proved their claims and also that the State's defenses were not proven. This case does not require this Court to adopt new law but only to apply established precedents in review of the District Court's findings and conclusions. Neither the District Court's factual fundings nor 40 years of precedent should be overturned despite the State's plea that this Court do so.

STATEMENT OF JURISDICTION

The District Court's Findings of Fact, Conclusions of Law, and Order ("Order") dated February 26, 2024 is a final appealable order under W.R.A.P. 1.05 because it affects a substantial right, determined the merits of the case, and resolves all outstanding issues. The state filed its appeal pursuant to W.R.A.P 2.01 on March 26, 2025. Therefore, this Court has jurisdiction under article 5, section 2 of the Wyoming Constitution.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

As referenced in the Introduction section above, this case is not nearly as complicated as the Appellant's brief or its framing of the issues makes it seem. After the lengthy trial and careful consideration of the evidence presented, the District Court ruled that the State's system for financing public education violated the State's constitutional obligations to provide an equitable, high-quality education. On appeal, then the fundamental issue for this Court's review is this:

I. Was the District Court correct in determining that the State's system for funding public education, including both past and current actions and lack of action by the State, is unconstitutional because it violates the fundamental right to education guaranteed by the Wyoming Constitution and previously recognized in long standing precedent by the Wyoming Supreme Court?

As the basis for the District Court's decision, there are multiple components reflecting how the fundamental right to education was violated by the states which are sub-issues related to the fundamental issue described above. Those are:

A. Did the District Court err in applying the strict scrutiny standard when assessing the State's funding of education or constitutional violations?

B. Is the State failing to provide adequate funding to school districts to cover their costs for hiring and maintaining sufficient numbers and qualify of education personnel, including teachers, as the State is constitutionally obligated to do?

C. Is the State failing to provide appropriate and timely adjustments for

inflation as it is constitutionally obligated to do in order to due to increase funding to school districts to cover increased costs of providing an equitable, high quality educational opportunity to Wyoming students?

D. Is the State failing to provide necessary funding to school districts for the cost to district of providing needed school resource officers, elementary school counselors, school nutrition programs, and student technology?

E. Is the State failing to assess the educational suitability of facilities and then properly fund remedies to address a lack of educational suitability?

F. Does the State's funding of education facilities for school districts meet constitutional requirements previously recognized and articulated by the Wyoming Supreme Court?

STATEMENT OF THE CASE

I. Nature of the Case

This case is a constitutional challenge to the State's funding of public education. Appellee WEA brought this case to correct the failure to fund public education in the manner required by the Wyoming Constitution and the mandates of this Court. WEA contends that the State's failures to properly fund education violate Article 1, Section 23; Article 7; and the equal protection clause of the Wyoming Constitution. Specifically, WEA contends that the legislature has not properly funded numerous aspects of the costs to school districts of providing education to Wyoming students, including failing to provide needed funding for the

cost of hiring and maintaining sufficient numbers and quality of personnel; failing to provide for needed increases in funding due to inflation and increasing costs; and failing to properly fund renovations or replacements for inadequate or unsuitable school and other educational facilities. WEA also contends that there are components of a proper and modern education system which are not funded at all by the State, including the costs for needed school resource officers (SROs), elementary school counselors, nutrition programs for students, and adequate amounts of technology equipment. The Intervening Plaintiffs have also brought claims of constitutional violations of a similar, but not identical nature, to those brought by WEA.

In its Brief, the State hyperbolically mischaracterizes this case as part of endless litigation over school finance. In reality, this case represents just the opposite. The last litigation challenging the constitutionality of the State's funding for education, the *Campbell IV* case, was brought more than thirty years ago. The initial ruling in that case by this Court was in 1995 and the Court maintained jurisdiction over the matter until it was sufficiently resolved by the decision in *Campbell IV* in 2008, fourteen years before this case was filed in 2022. What occurred between *Campbell IV* and the filing of this case was that the State changed its operational funding system to a different, judicially unreviewed model and then proceeded to allow the funding model to become outdated and underfunded by failing to change model components to account for increasing and changing costs as well as by failing to adopt and apply necessary inflationary adjustments to the model over a period of many years. The State stopped making an assessment of the educational suitability of schools and stopped approving needed funding for renovations or replacement of inadequate facilities.

Far from rushing to litigate these issues, the Plaintiffs have shown substantial patience in trying to get the State to make needed changes and funding increases through the legislative process prior to filing litigation. It was then only after this litigation was filed in 2022 that the legislature began once again to make some adjustments to the funding model and approve funding for long-neglected schools and facilities.

II. Course of Proceedings

WEA brought this case and its claims by filing a complaint against State on August 22, 2022. (R. at 1-71) On May 2, 2023, a number of Wyoming school districts intervened in the case as plaintiffs and filed their own complaint which also alleged constitutional violations by the State. (R. at 318-336)

As the case proceeded towards trial, the State raised the issue of the burden of proof at trial and specifically disputed that the District Court should apply a strict scrutiny standard as part of that court's assessment of whether the State's actions or inaction with regarding to the funding system for education was constitutionally compliant or not. Relying on long-established precedent from the *Campbell* decisions[1] made by this Court, the District Court

[1] The four *Campbell* cases cited throughout this brief are: *Campbell Cty School Dist.1 v. State* 907 P.2d 1238(Wyo. 1995) (*Campbell I*); *State v. Campbell Cty Sch. Dist. 1* 2002 WY 18, 19 P.3d 518 (Wyo. 2001)(*Campbell II*); *State v. Campbell Cty Sch.Dist.*1, 2001 WY 90, 32 P,3d 325 (Wyo. 2001);*Campbell Cty Sch. Dist. 1 v. State*, 2008 WY 2, 181 P.3d 43 (Wyo. 2008) (*Campbell IV)*

issued an Order on Burden of Proof wherein it held that the Plaintiffs had the burden of providing evidence to establish the facts of any alleged constitutional violation, but that due to the fundamental nature of the right to education, strict scrutiny would then be applied to any proven violation of that right, regardless whether that violation stemmed from disparities or from harm to the constitutionally required level of quality being provided. (R at 477-79)

A bench trial was conducted from June 3, 2024 to June 26, 2024. The Plaintiffs' witnesses included witnesses from WEA, the Professional Teaching Standards Board, and multiple witnesses from Plaintiff school districts, including superintendents, business managers, and human resources personnel. (R. at 6482-6549) Twelve of those school district witnesses were designated as non-retained experts and provided expert opinions during the trial. (R. at 1114-1132) The State's witnesses primarily consisted of employees from state agencies, who provided general testimony regarding the nature of the State's funding model and school facilities funding, and retained experts, who the State almost exclusively relied upon dispute the Plaintiff's claims. (R. at 6550-6574)

After the trial, the District Court issued extensive Findings of Fact and Conclusion of Law, and an Order (hereafter "Order") finding the Plaintiff had proven their case by a preponderance of evidence, and applied established law to find the system was unconstitutional for numerous reasons and so requires action to correct the violations and bring the system into constitutional compliance. (R. at 6436-6621)

In its Order, the District Court held: "The Court finds and concludes that the Funding Model is not cost-based." (R. at 6592) The Court went on to hold:

> School districts should be provided funding for each of the components necessary to provide the required quality education based upon a reasonable and accurate cost basis for each component. School districts should not have to take money from one component to cover the cost of another component because the latter is not cost-based. Based on the evidence presented, the Court cannot conclude that the Funding Model represents "as close are reasonably possible, the cost of education" which is the primary constitutional issue.

Campbell IV, ¶31*,* 181 P.3d at 55.

The District Court further held that currently unfunded costs for school districts to provide a quality should be funded by the State. R at 6594-96. These unfunded costs the Court identified were: funding for mental health support in elementary; school resource officers; funding for unmet costs of nutrition programs; funding for a 1 to 1 ratio of technology devices to students. (R. at 6596 to 6604) The Court additionally found that the funding failures of the Model created disparities which violate equal protection. (R at 6616-17)

As to facilities, the Court found that the State must again include consideration of educational suitability as part of evaluating the need for remedies for schools, and that state funding for schools and other facilities was inadequate. (R at 6604-6612) The Court concluded "The Funding Model is unconstitutional." (R. at 6618)

There are two aspects of the District Court's Order that must be affirmed because the State has not appealed them. The Court held that additional funding for mental health counseling must be provided, particularly in elementary grades. The State's brief does not address that issue, so that portion of the Order must be affirmed. Similarly, the State's brief says it doesn't agree but is not appealing the Courts' holding that the state has delayed

funding facilities for too long. (St. Br. pp. 7-8, fn 4) Since is not appealed, the Court's Order on this topic must be affirmed.

The State's description in its brief of the Nature of the Case asserts: "The suggestion that Wyoming is shortchanging or somehow harming students is detached from reality." (St. Br. p. 3) The Court found, and the evidence at trial proved, that the State's model is underfunding school districts and students are harmed as a result. The District Court's Order is not "detached from reality."

The State also asserts it has spent "lavishly" on facilities while the Court found evidence showed serious underfunding. Although the State did aggressively address facilities for several years, as addressed in the facilities argument, there are currently serious unmet deficiencies. The State's brief characterizes this case as "yet another chapter in the seemingly endless litigation over the constitutionality of school funding." (St. Br. p. 3) However, the State's brief has trouble keeping the story straight since at page 69 they also argue that it has been almost 20 years since anyone challenged funding.

Particularly troublesome is the State's assertion at page 5 of its brief that "The district court's willingness to oblige these defendants [sic]raises serious questions about the basis on which courts may nullify the actions of a co-equal brand of government to declare constitutional violation and effectively force more spending..." If this is intended as criticism of the District Court, it is unjustified and unfair. The District Court observed: "The Court has not reached its conclusion lightly and has carefully tried to apply the holdings and standards of the Wyoming Supreme Court." (R. at 6618) The high quality of the decision speaks for

itself. If the State's assertion is intended as rejection of the principle of judicial review of legislative actions, it is contrary to 40 years of Wyoming precedent regarding school finance and the fundamental right to education as well as contrary to hundreds of years of American jurisprudence. "Constitutional provisions imposing a mandatory duty on the legislature are judicially enforceable in protecting individual rights such as education." *Campbell I,* 907 P.2d at 1264. *Campbell I* further explained: "Although this court has said the judiciary will not encroach into the legislative policy making, as the final authority on constitutional questions the judiciary has the duty to declare unconstitutional that which transgresses the state constitution." *Id.*

III. Statement of Relevant Facts

A. Background

The operational school finance system adopted in Wyoming is known as a "resource model" system. The State is required to identify the various resources (components) needed in a high-quality education system, determine the actual cost of those resources, and then fully fund the cost. *Campbell I,* at 1279. The cost that must be funded is the cost of the statutory "basket of goods", which is a collection of subjects and skills that school districts are required to minimally provide as part of a quality education for Wyoming students. W.S. § 21-9-101

The State's brief confuses this simple process required by the *Campbell* cases with its reliance on the consultant's model, also know as the "EB" or "Picus" model. (Ex. E1) The consultant's model is the funding model developed based on what the State's consultant, Dr.

Picus, recommended and is simply one consultant's version of how resources could be configured. What must be funded, in order for funding system to be constitutional, is the cost of the components in the statutory model, not the consultant's model because districts are paid based on the statutory model. The "statutory model" is the finalized model funding included in statute, based on the components and funding levels actually adopted by the legislature. The consultant's model has a different package of resources than what is in statute. (Ex. E1) As explained in the argument, the "cost" of the statutory model cannot be determined using the consultant's model. The model is supposed to be "recalibrated" for components and the costs of those components every 5 years to ensure that it has all the needed elements of education and current costs. *Campbell II* at ¶89. The model must also be adjusted for inflation, at least every two years, in between recalibrations to remain current. *Campbell II* at ¶90.

B. District Court Findings and Conclusions

The most direct way to set forth the facts relevant to this case is to start with some of the District Court's findings in its Order following trial.

Personnel Cost Findings

- "The most expensive component of any educational system is personnel, primarily classroom teachers. Personnel costs are 80% of the total operational costs." (*R. at* 6586)
- "The court finds Plaintiffs proved by a preponderance of the evidence that the Funding Model's estimate of the cost of salaries for personnel no longer accurately

reflects the actual cost of school district personnel. and therefore violates the *Campbell* holdings." (R. at 6586)

- There is no dispute that the salaries actually paid by school district personnel have been consistently higher than the Funding Model salaries, which is evidence that the Funding Model salaries are below cost. From school year 2006-07 through school year 2022-23, the actual average salary paid to instructional staff - teachers, tutors, librarians and instructional facilitators - by all school districts has exceeded the Funding Model's average salary. The difference between actual salaries paid by districts to teachers and the Funding Model salaries has grown from 6 percent in school year 2010-11 to percent in school year 2022-23. (R. at 6586-7)
- "The ***Funding Model*** base salary, which is the amount the Funding Model estimates is the cost to hire a first-year teacher with no experience and only a bachelor's degree, was approximately $37,000 in 2010 and rose to just $37,540 in 2022-23." (R. at 6587, emphasis added)
- "Many of Dr. Stoddard's [State's labor expert witness] opinions and conclusions showed the Funding Model's salary were not cost- based or were not the salary amount a school district must pay to hire personnel. For example, she testified: as of 2022 – 23, every adjacent state's average teacher salary, except for South Dakota, were higher than the Funding Model's weighted average salary; these adjacent states were increasing their teaching salaries faster than Wyoming, Wyoming teaching salaries were flat for several years, Wyoming teaching salaries increased very slowly

since 2010;Wyoming teaching salaries have shown little growth since 2012-13;Wyoming teaching salaries have fallen relative to comparable occupations from a high of 96% percent ratio to 83% ratio in 2022; Wyoming's advantage over the region has fallen in half since 2018-19; and Wyoming's 2022-23 Funding Model salary lies below the average salary in the region." (R. at 6588)

- In 2017, the legislature, looking for another model, hired consulting firm APA. The Court found: "APA recommended adjusting Model salaries in line with actual salaries being paid by school districts." (R. at 6588*)* Although APA saw the salary market as being at the level of actual salaries, the State then went back to relying on Dr. Picus, who was suggesting cheaper salaries. (R. at 6588)
- "Several of the Plaintiff School Districts had recently performed wage studies for classified employees which uniformly concluded those employees' salaries were significantly below market." (R. 6588)
- None of Wyoming's school districts pay teachers based on the Funding Model salaries.
- "There was significant evidence demonstrating that school districts are having increasing difficulty recruiting and retaining teachers. Since 2019 there has been an increase in teachers with 4-20 years of experience leaving teaching in Wyoming. Since 2012, there has been a decline in the number of students graduating from UW in education, with a high of 278 graduates in 2012 and 182 graduates in 2023. The number of undergraduates majoring in education has also declined steadily since

2010." (R. at 6589) The Court further found that the state's litigation expert, Dr. Kodel, had admitted that the number of students completing teacher education programs nationally "had declined by 40% from 2007 to 2021." (R. at 6589)

- A Teacher Recruitment and Retention Task Force study from the Department of Education recommended that salaries be increased and that 78% of teachers surveyed ranked salaries as the number one factor that would improve retention. *Id.*
- There is a wealth of additional evidence supporting the Court's conclusions which will be discussed in the argument.

It important to note that the State has not made any effort to demonstrate that the facts on which the Court relied are "clearly erroneous." In fact, the term "clearly erroneous" does not appear anywhere in the State's brief. Instead of addressing the actual evidence relied upon by the Court, the State's brief essentially ignores it and argues instead the Court should have relied on their expert's credibility and their version of the facts. As is discussed at more length later in this brief under the standard of review section, the District Court's findings and the Plaintiffs' evidence are taken as true and the reviewing Court does not re-weigh the evidence on appeal.

External Cost Adjustment (ECA) Findings

The District Court's Order made a number of important factual findings regarding the State's inaction in adopting and applying External Cost Adjustments (ECAs), which are overall adjustments to the funding model to account for inflation.

- Wyoming statues require the state to make an inflation adjustment. W.S. 21-13-

309(o). *Campbell I, II,* and *IV* require inflation adjustments. *Campbell IV* required the state to "recalibrate" the model at least every four years and to adjust the model for inflation in between, using the Wyoming Cost of Living Index or other similar index. *Campbell IV* at 64-65.

The District Court found: "The parties agree that since 2010, the legislatures has not adopted ECAs for every year between recalibrations, has repealed previously enacted ECAs, and enacted time-limited ECAs." (R. at 6581) Although *Campbell II* required the State to make inflation adjustments using the Wyoming Cost of Living Index or some similar index the State ceased to use that method after 2010. *Campbell II,* ¶ 105, 19 P.3d at 555. Instead, the legislature invented a theory that the salaries in the original model and submitted to this Court as cost in 2008 were actually too high. Rewriting history and the *Campbell* mandate, the State froze salaries and ECAs for approximately a decade. The legislature used the purported "overpayment" as an excuse to refuse ECAs, give one year's ECAs and retroactively repeal previous ECAs. The state refers to the system as being "cost plus," a theory of Dr. Richard Seder. The District Court findings rejected the assertion that personnel were overpaid.. The Court rejected the State's methodology for determining inflation. (R. at 6581) The Court found: "The Court finds the State's method used to account for inflation is flawed because it does not account for inflation of each of the required components of the Funding Model. Whether or not the Funding Model's total expenditures are more than the total expenditures that would result from the Consultant's model does not necessarily account for any of the inflation that exists for each of the four broad categories of

components that school districts must purchase, including professional salaries, nonprofessional salaries, energy, and school supplies and materials. As Dr. Seder explained, a resource cost model like the Funding Model will be "cost based" if "each of the components have a reasonable and accurate cost basis to them." (R. at 6582)

The multiple flaws in the state's methodology are discussed further in the Argument.

Findings regarding lack of funding for necessary costs

In addition to other fundamental problems with the core operations funding model, the Court also found that there were costs necessarily incurred by school districts to deliver a modern, quality education which were not being funded. Specifically the Court found that the model failed to fund mental health counselors, school resource officers, nutrition costs, and technology for students. (R. at 6594 to 6604) **Again, the State's brief does not attempt to challenge any of the District Court's factual findings on these issues as "clearly erroneous", instead largely ignoring the underlying evidence on which the Court based its findings.**

School Facilities Findings

- Even though the State has appropriated "a significant amount of funding" for school facilities, the District Court found that the state has not "acted in good faith to assure school facilities have sufficient funding to provide adequate school facilities." (R. at 6611) Even the State has acknowledged that "School needs for facilities continue to outpace available resources." (Ex. 2030 p. 50; R. at 6609)
- "There have been years when the legislature appropriated no funding or very little

funding for capital facilities even though inadequate facilities existed." (R.6611)

- The District Court found that the "Plaintiffs proved many school facilities are in need of more than just routine maintenance." (R. at 6611; See also Tr. vol. V, pp. 1237-1238; Tr. Vol. II, p. 308; Exhibit C5, p. State-RFP2.1-023823)
- "There are schools that have been inadequate for at least ten years" and even now that they are being addressed "it will be at least another six years until they are replaced; and that "it is unacceptable for generations of students to pass through inadequate schools." (R. at 6609-6612).
- Educational suitability, or the ability of a facility to perform its educational purpose and provide the educational program, has been acknowledged by both state and district witnesses as a fundamental element of whether buildings are adequate. (Tr. Vol. II, p. 308-309: Tr. Vol. XIII, p. 3426) According to an industry standard, both condition and functionality (suitability) are components of a comprehensive educational building assessment. (Ex. A12; Tr. vol. XII, pp. 2993-2994)
- The State "does not directly assess existing school facilities for educational suitability" and instead "relies primarily on the Chapter 3, Section 8 Process to assess an existing school facility's educational suitability." (R. at 6606)
- The Chapter 3, Section 8 process requires school districts to take several steps in order for the School Facilities Commission to even consider an educational suitability issue of an existing facility. These steps include "(1) a school district board to assess its facilities to determine whether an existing school facility is educationally adequate; (2) a school

district board to make a finding that an existing school facility is inadequate; (3) a school district board to direct the school district superintendent to notify the SCD and prepare a detailed report explaining the reasons why the existing facility is not adequate; (4) the school district superintendent to provide the detailed report to the SCD; (5) the SCD to evaluate the school district's report and then make recommendations to the SFC; and (6) the SFC to determine if, based on the school district's report and the SCD's recommendation, a remedy is necessary." (R. at 6607; Exhibit Y5, Chapter 3, Section 8 of the School Facilities Commission Rules.)

- "The Chapter 3, Section 8 process does not list any criteria, standard, or score that a school district must satisfy to be entitled to a remedy." (R. at 6607) Therefore, the School Facilities Commission has "unfettered discretion to determine whether school district's claim under the process is approved for a remedy." (R. at 6608)
- The State itself does not perform any assessment of a facility's educational suitability, and any assessment would be conducted by each school district at their own expense. (R. at 6608) "As previously established, the State has not directly assessed school facilities for educational suitability since *Campbell IV*, a period of fifteen years." (R. at 6610)
- The State's failure to assess educational suitability has allowed "…many Wyoming public-school students to be educated in educationally unsuitable schools for many years." (R. at 6609)

C. **The State's version of facts is inaccurate, incomplete, and does not comport with the clearly erroneous standard.**

In its brief, the State spins an elaborate factual narrative to try to reframe the case around its selective version of events and its heavy reliance on retained expert testimony. Despite the District Court's finding that their expert witnesses lacked credibility and that their testimony warranted only diminished weigh (R. at 6577-6580), as well that its experts' testimony did not provide a factual basis to contradict the evidence presented by the Plaintiffs, the State nonetheless persists in attempting to persuade this Court to accept only its experts' opinions and disregard the Court's findings based on the credible and thorough evidence presented by the Plaintiffs. The State portrays school districts as run by greedy people who deliberately have inflated salaries unnecessarily just for the purpose of getting more money even though they allegedly don't need it. The State ignores the reality that the evidence presented at trial and relied on by the District Court established that districts raised salaries to the limited extent that they are able to do so because that is what they have to pay in the market to try to recruit, hire, and retain necessary personnel. (Tr. vol. I, pp. 85-88; Tr. vol. VI pp. 932, 1010; Tr. vol. IV, pp. 963-966; Tr. vol. V, pp. 1142-1144; Tr. vol. VIII, p. 1981)

The State's expert, Dr. Richard Seder, opined that the system actually overfunded education. Many of the transcript citations used by the State are to Dr. Seder's testimony. He contended that teachers were overpaid by the model to try and justify the failure to raise salaries and grant inflation adjustments (ECAs). He testified there was no justification for all Wyoming districts paying higher salaries than the model funds. This "cost plus" theory was rejected by the Court. It is absurd to suggest that more than 200 school board members in

conservative Wyoming are deliberately paying thousands more per teacher in salaries without need or justification. The State's brief selectively excludes a wealth of evidence showing the necessity of higher salaries. That evidence is summarized in the salaries argument.

In the record, there is specific evidence of the teacher shortage, including vacant positions, increasing use of substitutes and teachers on temporary certifications. The Director of the Wyoming Professional Teaching Standards Board testified there is a problem with recruitment and retention of teachers, including fully qualified and educated teachers. (R. at 6533) The Teacher Recruitment and Retention report by the State Department of Education, commissioned by the legislature, found there is a serious problem with recruitment and retention. (R. at 6589) In short, low salaries create a problem hiring and keeping teachers, as explained in the argument below.

The State's theory is totally contrary to the real-world experience. If Wyoming school districts were truly overpaying teachers, then they should not have any trouble hiring personnel. But, they do have a serious problem filling positions and finding quality applicants, as will be discussed in the argument. In fact, the same experts who proffer the State's theory also testified that they did not know if the statutory model salaries were sufficient to recruit and retain quality teachers. (Tr. Vol. IV, p. 849; Tr. Vol. X, pp. 2453, 1445-46, 2543-45) Dr. Stoddard said she did not know because she did not have the right data about should districts actual hiring experience. (Tr. Vol. IV p. 849-50) Dr. Seder testified that he did not know why districts paid more than the model. Tr. (Vol Iv, pp. 856-

858) Dr. Koedel testified that it was "unknowable" whether the model was sufficient. (Tr. Vol. X p. 2453, 2456) None of the experts bothered to consult with the people who actually run the school to get the missing data. In short, the very experts upon whom the State solely relied on for its evidence on salary adequacy don't actually know if the funding for salaries provided by the State is sufficient, and they did not try to find that out from Wyoming school districts.

Since 2012, the base teacher salary in the statutory model increased from $37,000 to $37, 540. The State relies heavily on a "comparable wage index" to justify low salaries in the statutory model. The State explains that they now base salaries on Wyoming teacher wages being set at 75% of certain categories of privately employed workers whose jobs the experts consider "comparable" to public school teachers. (Ex. E1 at 002328) This methodology is highly flawed and does not support the conclusion that salaries are adequately funded. To start with, Dr. Stoddard testified that the 2012 report she authored with Dr. Seder emphasized that no one indicator like comparable wage index or any other one indicator should be used to determine wage funding. (Tr. Vol IV, pp. 888-90) However, that is exactly what the legislature has been doing to justify not increasing funding for salaries in the model. The State's experts had trouble defining what might be a comparable group of employees. (Tr. Vol. X. pp. 2477-2482) The choices of comparable are relatively subjective. For example, "managers" were considered comparable, but Dr. Koedel could not explain what it takes for a person to be considered a manager. (Tr. Vol. X p. 2482) The State's experts could not state how many other "comparables" they used, or where they resided, since teachers are

spread across the state in some very small locations, while it seems reasonable that many private sector persons would be clustered near larger communities where there are headquarters of private companies and many private sector companies and federal and state government. (Tr. Vol. X 2477-82)

The State asserts that comparable wage ratios in Wyoming were far too high higher than adjacent states in 2008. At that time, Wyoming's ratio was that teacher salaries were at 96% of private comparable salaries. (Tr. Vol. IV, p. 887-90) The state's theory, in part, was that Wyoming teacher salaries as a percentage of other allegedly "comparable" workers (96%) were higher than the same ratios in other states, which meant that Wyoming salaries were too high in 2008. However, Dr. Seder authorized a report that same year for Montana, where he said Montana's ratio was 115%. Dr. Koedel, another of the State's experts, suggested that there may not be a comparable wage market to compare to teachers because the teacher market is unique. (Tr. Vol. X 2518-19) Dr. Picus, the legislature's consultant, recommended a goal of 75-85% ratio of teacher salaries to wages of comparable positions, but this is, at most, an expert's guess, and not based on any evidence correlating that ratio to whether school districts could fill vacant positions and keep teachers.(Ex. E1)The Legislature's disingenuous reliance on comparable wages is demonstrated by the Stoddard data that showed that the Wyoming ratio between was significantly declining, that there were increasing exits from the profession, that there was increasing use of underqualified personnel by school districts unable to attract and retain qualified personnel, and that and salaries in other states were increasing faster than in Wyoming, thus making it increasingly

more difficult to recruit and retain personnel.(Ex. 1104, 1105)

The state's "cost-plus" theory was the invention of Dr. Seder. Only Dr. Seder testified to explain and justify the cost-plus theory and the Court found he was biased and lacked credibility. R at 6578-79. Seder begins his theory that the model was cost plus by attempting to rewrite history, claiming that the salaries submitted to this court in *Campbell IV* as cost, and which were approved by the Court, were actually excessive. *Campbell IV* at 64. Although those teacher salaries in the model at the time of *Campbell IV* were based on the work of two labor economists and the State claimed at the time that the salary levels represented actual cost for teacher salaries, Seder now says he knows better. *Campbell II* at 548; *Campbell IV* at 52-3, 64.

It is important to recognize that all of the analysis of the sufficiency of salaries done by the State's experts for trial used the actual salary levels paid by Wyoming school districts instead of using the lower salary levels which are in the funding model. (R. at 6579) Those experts did this while at the same time inconsistently claiming that actual salaries paid by school districts are not the measure of salary cost. It is ironic that the State argues that the actual salaries paid by school district were allegedly inflated unnecessarily but its experts used those actual salary numbers, not the salaries in the model, to develop their statistics. As the Court found, the model base salary of $37,000 determined by two labor economists and approved in *Campbell IV* rose to only $37,540 in 2022-23. (R. at 6587)

Using the State's approach of comparable wage theory to assess the costs of salaries of salaries and to determine if salaries are overfunded suffers from many flaws including: 1)

Stoddard testified that no *one* indicator like comparable wage should be used to determine salaries (Tr. Vol IV, pp. 888-90); 2) Stoddard's own reports demonstrated wage pressures and the inadequacy of funding for salary (Exs. 1104, 1105); 3) there was disagreement between the experts as to who should be considered a comparable worker for the purposes of even performing a wage comparison (Tr. Vol. X p. 2477) 4)Stoddard testified there is no one correct ratio of wages for a state (Tr. Vol IV, pp. 854-55); 6) Koedel testified that teaching is a unique market and there may not be a true comparable in the private sector (Tr. Vol. X, 2518-9); 7) no effort was made to control for whether the allegedly comparable workers would be considered highly qualified employees in order to ensure that the comparison was validly conducted (Tr. Vol. X, p. 2448); 8) there is no one correct comparable wage; 9) the experts could not identify where the comparable workers being used were located and whether those professionals may be in larger cities while teachers are spread across the state to serve a sparse population (Tr. Vol. X, pp. 2482, 2582, 2475, 2477); 10) Stoddard acknowledged that there may be a lack of local amenities that discourages teachers from locating in Wyoming (Tr. Vol IV, pp. 850-53); and 11) The 75-85% ratio targeted by the State's experts as appropriate is, at most a guesstimate based on the unproven assumption that the number of hours worked is the only determinant of teachers' pay or willingness to accept a teaching position. (Tr. Vol IV, p. 887-90)

In *Campbell IV,* this Court expressly warned about the impending teacher shortage and directed the State to carefully monitor it and "take appropriate action" before it became a crisis. *Campbell IV* at ¶91. Stoddard testified she was unaware of this Court's warning, as

she did not read any cases and no one told her to monitor it. (Tr. Vol IV, pp.834-5) She did not have Wyoming data to know if districts were unable to fill positions and were filling them with underqualified teachers. (Tr. Vol. IV 842-44; 856-58) There is no evidence that any of the State's experts even checked with districts to see if there was a teacher shortage in Wyoming or if schools were having difficulty filling positions with qualified applicants.

The state's factual assertions include that districts had substantial funds they were not spending, and also that the districts were able to support new programs or activities. The testimony at trial related to this topic was that districts did have cash reserves needed to allow them to have sufficient cash flow, saving up to make large purchases like replacement of a large quantity of books of technology, maintenance projects that required saving up because it would be a large, one-time expenditure. (Tr. Vol. I, p 158-159; The districts also used federal funds to do things like implementing elementary school counselors in some districts, but that federal money was set to expire as of fall 2025 and districts were facing layoffs. (Tr. Vol. VIII, pp.1848-1849; Vol. IV, pp. 1037-1039; Vol. II, pp. 359-361) Arguing about the accumulation of reserves to pay for large purchases is an intentional distraction from the relevant evidence and issues in this case, including the key issue of whether the funding model provides sufficient funds to pay the cost of each component in the model in order to adequately fund an equal and quality opportunity for education for Wyoming students.

Even using the State's own evidence, it is also clear that the State withheld $150 million dollars' worth of ECAs which their own methodology indicated they should be

providing. After not having made consistent or cumulative inflationary adjustments to the model for many years, the State, most conveniently, only acted to start applying ECAs to the model again after this litigation was filed in 2022.

STANDARD OF REVIEW

A. Findings of Fact Reviewed Under "Clearly Erroneous" Standard

The District Court's findings of fact are reviewed using the "clearly erroneous" standard. *Campbell I* at ¶ 13, Under that standard, factual findings of the trier of the facts are "presumptively correct." The appellate court's review does not entail any "reweighing disputed evidence." *Forbes v. Forbes*, 2015 WY 13, 341 P.3d 1041 (Wyo. 2015); *Gould v. Ochsrer*, 354 P.3d 965(2015) In reviewing a bench trial, the appellate court will "accept the prevailing party's evidence as true, giving that party every reasonable inference that can fairly and reasonably be drawn from the evidence." *Harber v. Jensen,* 97 P.3d 57, 60 (Wyo. 2004) However, the State's brief does not articulate nor apply the "clearly erroneous" standard.

The burden of proof is governed by strict scrutiny. When the district court in *Campbell II* failed to apply strict scrutiny, this Court reversed and said:

> "Because the right to an equal opportunity to a proper public education is constitutionally recognized in Wyoming, **any state action interfering with that right must be closely examined before it can be said to pass constitutional muster. Such state action will not be entitled to the usual presumption of validity;** rather, the state must establish its interference with that right is forced by some compelling state interest and its interests its interference is the least onerous method of accomplishing that objective *Miller v. Laramie*, 880 P. 3d. 594, 597 (Wyo.

1994).

Campbell II, 19 P. 3d at 525-536.

Additional authority for strict scrutiny is provided in the argument.

When reviewing whether the funding system provides the **quality** mandated by the constitution, the *Campbell* cases establish a high bar of quality needed to satisfy the constitutional mandate:

> Substantively, the constitution uses terms commanding the legislature to provide and fund an education system of a quality that is "appropriate for the times." No other reasonable conclusion can be drawn except the obvious one that the specific directives of sections 1 and 9 are well beyond simply allowing the legislature to dispense a minimal level of elementary and secondary education and funding it as best it can.

Campbell I, 907 P.2d at1279

In determining the quality of the system that is required, *Campbell II* explained: "Unlike the majority of states which emphasize additional funding, equalized funding, or basic education, Wyoming views its state constitution as mandating legislative action to provide a thorough and uniform education that is both visionary and unsurpassed." 19 P.3d at 538.

B. Strict Scrutiny Applies in this Case

The State argues the District Court erred in applying strict scrutiny. To the contrary, the application of the strict scrutiny burden of proof regarding the fundamental right to education has been established precedent for more than four decades. Strict scrutiny was required and applied in this Court's previous decisions reviewing constitutional challenges to

the State's funding system and actions regarding that fundamental right. See e.g. *Washakie v. Herschler,* 666 P.2d 319 334-5 *(Wyo.* 1980; *Campbell II* at 535*; Campbell IV* at 50*.* The court in *Campbell I* explained that the application of strict scrutiny goes far beyond simply any wealth-based disparities:

> Because the right to an equal opportunity to a proper public education is constitutionally recognized in Wyoming, **any state action interfering with that right must be closely examined before it can be said to pass constitutional muster.** Such state action will not be entitled to the usual presumption of validity; rather, the state must establish its interference with that right is forced by some compelling state interest and its interference is the least onerous means of accomplishing it.

Campbell I, 907 P.2d at 126 (emphasis added.)

Campbell II observed: "This court plainly recognized in *Campbell* that the interaction of the various finance components revealed the necessity that the system be judged as a while under one level of scrutiny." *Campbell II* at ¶ 43 (Internal citations omitted). This interdependence of the various components is even more prominent under the revised system, which relies upon a model literally built upon those components. *Campbell II,* 19 P.3d at 536. The legislature is not entitled to a presumption of constitutionality. *Id*.

The State attempts to use language from *Campbell IV* to claim that strict scrutiny does not apply to a review of the components' adequacy in the model, repeatedly using snippets of *Campbell IV* out of context. Argument on page 50 of the State's brief claims that those selective snippets from *Campbell IV* demonstrates that the adequacy of funding is entitled to deference and is measured by rational basis/ discretionary standards instead of by the strict

scrutiny standard. The snippets relied on by the State are taken out of context, however, and are contrary to what the case actually holds.

The actual context of those statements relied on by the State from Campbell IV regarding discretion and deference is that they are made after the district court had applied a strict scrutiny standard and had found as a *factual* conclusion that the specific funding at issue satisfied the constitutional requirements for adequacy. After noting that the district court's factual findings were reviewed under the clearly erroneous standard, the court concluded that the Constitution was satisfied, therefore, additional funding beyond the constitution's mandate was then a discretionary decision for the legislature. *Campbell IV* at 50. However, the factual posture of this case is the opposite of *Campbell IV.* Here, the District Court's factual finding was that the funding being provided was *not* sufficient to meet the constitutional standards for adequacy. Whether the funding provided for operations is adequate is a *factual* issue. *Id.* To put it another way, the additional funding argued for by the plaintiffs in *Campbell IV* was deemed to be discretionary because the court found on a factual basis that the constitutional requirement for adequacy of funding had been satisfied. Here, where the District Court's findings are that the level of funding falls short of the standard of adequacy, the standard of strict scrutiny applies to the finding of a constitutional violation as a result of inadequacy.

Campbell IV explained the difference in its application of standard of review at that point from what had been used in *Campbell II*:

> In this most recent round of litigation the issues before the district court regarding compliance with the *Campbell II* operational funding mandates **were factual** and the state had the burden of proving those facts by a preponderance of the evidence...The issue presented to the district court was whether or not the state's revisions and recalibration reflected cost as reasonably as could be expected...In this context, the strict scrutiny test discussed above is not in play. We simply review the district court's findings using the clearly erroneous standard.

Campbell IV at 50 (emphasis added)

"Because education is a fundamental right and our citizens are entitled to equal protection under our state constitution, **all** aspects of the school finance system are subject to strict scrutiny and statutes establishing the school finance system are not entitled to any presumption of constitutionality." *Campbell II* at ¶42, 535. If the State's new argument regarding strict scrutiny was actually correct, there would never have been a *Campbell II* decision where the court reviewed each of the components of the model, found some needing adjustments or more funding and other components needed to be added to the model. For example, at that time, this Court required the State to create a new component for career and technical education and to include the adjustment of salaries for nonprofessional employees based on experience, responsibility and seniority in order to address inadequacies in funding. *Campbell II,* at 526-27.

Despite the case law requiring that all aspects of school finance be reviewed under one standard, strict scrutiny, the State now suggests that it might be "logical" to have two different standards. Per the State, when the funding is not distributed on an equitable basis, strict scrutiny would be used, but if the funding is only just inadequate, then there would be a presumption of constitutionality and rational basis applied. That position is neither logical

nor workable. It would diminish the multiple education clauses of the constitution to mean now mean that equal shares of inadequate resources for education are constitutional as long as the legislature can think up any theoretical rational justification for inadequacy. Such an approach would effectively neuter the strong mandate for quality in the constitution as recognized in the *Campbell* cases. The State cites no cases where such a bifurcated standard has been adopted.

Education is a fundamental right. It should not be turned into some kind of a hybrid, second class right that is no longer "fundamental." The State's argument not only calls for reversal of the *Campbell* cases, but it also would represent a kind of judicial repeal of article 1, section 23 and most of article 7.

C. The State Failed to Establish a Compelling State Interest

The District Court found:

> The State neither proved there is a compelling state interest, nor that its actions and inactions were necessary to achieve that compelling state interest. Although the State mentioned "efficiency" as a compelling state interest in its closing argument, the State's proposed findings of fact and conclusions of law do not assert that there is a compelling governmental interest which is supported by its actions and inactions. The State provided no argument or evidence that its actions and inaction are the least onerous to achieve the goal of efficiency.

(R. at 6618)

Because the State neither asserts nor proves a compelling state interest, under strict scrutiny the only question left is whether the State has met its burden to prove that the State has funded the model components in "a manner and at a level" that meets the constitutional mandate for a high-quality system. *Campbell I* at 1263. The state's actions and inactions are

not entitled to any deference. *Id.* at 1266.

ARGUMENT

I. THE STATE HAS FAILED TO PROVIDE ADEQUATE SALARIES FOR DISTRICTS TO RECRUIT AND RETAIN PERSONNEL NEEDED TO DELIVER A HIGH-QUALITY EDUCATIONAL OPPORTUNITY

A. THE STATE'S ARGUMENT THAT THE COURT ORDERED THE STATE TO FUND WHATEVER SALARIES DISTRICTS CHOOSE TO PAY IS FALSE AND MISCONSTRUES THE DECISION.

The State's argument at page 56 of its brief is that "The district court erred in requiring the legislature to fund whatever salaries the districts pay as the actual cost of salaries." That seriously misrepresents the District Court's findings and conclusions and amounts to a red herring. What the Court actually found is that the fact that districts are paying far more in salaries that the model allots is *evidence* that the model is underfunded. Obviously, what districts are paying in the real world has relevance to deciding what the cost of personnel should be. That is particularly true when even paying those higher salaries is still not sufficient to allow districts to recruit and retain the needed numbers and quality of personnel.

The Court was essentially saying that the gap between actual salaries and model salary is one of form evidence indicating the funding is too low. The Court was considering the key issue of whether the legislative funding model's level of funding for salaries is sufficient to allow districts to recruit and retain necessary personnel. Based on a variety of evidence presented at trial, the Court found that the model level of funding is not sufficient

to do that, and so the Court found the State's funding to be unconstitutional.

The Court is following precedent that components must be cost-based so districts can hire personnel at the statutory model salaries. "Actual salaries" is used to indicate actual cost, not what every district might pay. It has already been decided that to fund education at a constitutionally adequate level, the State must provide the actual cost of the component as close as it can reasonably and accurately be calculated. *Campbell IV* at 55.

B. THE FUNDING MODEL NO LONGER PROPERLY FUNDS SALARIES TO MEET THE CONSITUTIONAL MANDATES.

As referenced above, personnel costs are the most expensive components in the modern, comprising approximately 80% of total costs experienced by school districts to provide students education. Teacher salaries are not only a very expensive component of delivering education, but they are also very important in their relation to school districts' ability to hire sufficient numbers of quality teachers to appropriately deliver that education. "If it cannot be concluded that the estimate of teacher costs reflects the actual cost of teachers necessary to deliver the basket, the system cannot be constitutional." *Campbell II*, 19 P.3d at 540. "Teacher quality is *critical* to providing a constitutional education" (emphasis added) and "it is unacceptable for essential teaching positions to remain unfilled or to be consistently filled by under-qualified applicants" *Id*. at 55. "The school financing system cannot be constitutional if the estimate of teacher costs used in the funding model does not reflect the actual cost of teachers necessary to deliver the basket of goods." (R.at 6586 citing *Campbell IV* at 54, emphasis added)

The District Court found that the funding model does not meet its constitutional requirements: "The court finds Plaintiffs proved by a preponderance of the evidence that the Funding Model's estimate of the cost of salaries for personnel no longer accurately reflects the actual cost of school district personnel and therefore violates the *Campbell* holdings." (R. at 6586) The Court recited extensive evidence supporting this conclusion in addition to the gap between the salaries being paid by districts to recruit and retain teachers and the level of salary funded by the model. For example, the Court cited data from the state's expert, the State Education report on recruitment and retention, extensive evidence that even paying an average of $10,000 more than the model salaries still was not enough for districts to fill all the necessary positions and that there was a significant increase in the number of positions filled by substitutes or persons who were working on emergency permits because a licensed teacher could not be found. (R. at 6533) The Director of the state licensing agency (PTSB) testimony that there is a shortage of available teachers and the problem is growing was also cited by the Court. (R. at 6533)

The beginning salary in the salary schedule used in the financing model was $37,000 for a teacher with a bachelor's degree in 2010. It rose to just $37,540 for the 2022-23 school year. An increase of $540 over 12 years belies any idea the state has updated salaries to the current market. (R. at 6587) That low base salary is on average, approximately $10,000 below what districts find it necessary to pay and yet finding themselves having vacant positions and positions filled by underqualified teachers. The Court also found "[t]he increased use of EAs, PIC permits and long-term substitutes support the district

professional's experience with [difficulties in] hiring." (R. at 6590)

The District Court also noted that the data from the state's labor expert actually showed that the model was under funded: "Many of Dr. Stoddard's opinions and conclusions showed the Funding Model's salaries were not cost-based or were not the amount a school district must pay to hire personnel." (R. at 6588)

The Court also observed that the was a wealth of evidence in the record showing inadequate funding for personnel costs. The state's brief falls far short of demonstrating that the District Courts findings regarding salaries are "clearly erroneous." There is indeed a wealth of evidence supporting the fact that state funding for personnel costs is woefully inadequate, causing districts to be unable to recruit and retain the high-quality teachers required for a quality educational system.

According to the state's labor economist, Dr. Stoddard, 2022-23 Wyoming model salaries were lower than every adjacent state except for South Dakota. (R. at 6588) Adjacent states were increasing teacher salaries at a rate faster than Wyoming salaries. (R. at 6588) Since 2020, the number of teachers with 4-20 years of experience leaving teaching in Wyoming has increased. (R. at 6587-6588)

The State's brief largely ignores these specific factual findings and evidence supporting the conclusion that the model inadequately funds salaries for educational personnel. Instead, the State mischaracterizes the District Court's Findings and Conclusions, setting up a straw man argument which it then seeks to refute. Thus, much of the State's argument is irrelevant to the Court's actual decision.

It is notable that nowhere does the State's brief discuss the quality of the teachers currently being hired, something which *Campbell* said was critical. Neither the brief nor the State's experts offer any evidence that the model funding is sufficient to recruit and retain *high quality* teachers. The evidence from trial showed that not only are school districts unable to recruit and retain needed personnel at the salary levels funded in the model, but that are also unable to sufficiently recruit and retain needed personnel, including high quality teachers, even at the higher levels of salary that they are barely able to pay. The District Court summarized the reality of salaries:

> "There is no dispute that the salaries paid to school district personnel have been consistently higher than the Funding Model salaries which is evidence that the Funding Model salaries are below cost. From school year 2006-07 through school year 2022-23 the actual average paid to instructional staff-teachers, tutors, librarians, and instructional facilitators, by all school districts has exceeded the funding model salary. The difference between actual salaries paid to teachers and the Funding Model salaries has grown from 6 per cent in school year 2010 to 16% in school year 2022-23.

(R. at 6587)

No school district in the state of Wyoming pays salaries at the low finance model salaries. The evidence was that if districts attempted to pay only the model salary, they not only be unable to recruit, but they would also lose the majority of their current faculty. (R. at 6586-6587)

In 2017 the State hired a different consultant, John Augenblick (APA). He recommended that the legislature increase salaries in the model to the actual salary that districts were paying at that time. (R. at 6588) The legislature rejected that consultant's

recommendation and instead persisted on a course of inaction for increasing model salaries instead. As referenced above, the gap between real world actual salaries and the theoretical model salaries kept growing after that. As the Court found, data from the State's own experts supported the conclusion that salaries are underfunded. Dr. Stoddard found that Wyoming model salaries were lower that every adjacent state with the exception of South Dakota.((R. at 6588; Ex 1104) The same report from Dr. Stoddard concluded that the gap between teacher salaries and other private sector employees had grown incrementally every year. (*Id*.) The same exhibit showed that teachers in Wyoming were leaving the profession at an increasing rate. (*Id.)* Dr. Stoddard testified that it was particularly troublesome that teachers with 4 or more years of experience were leaving at increasing rates because normally those teachers tend to be reluctant to move. (R. at 6589)

The Legislature asked the Department of Education to study the issue of recruitment and retention of teachers. That report concluded that salary was the primary concern of teachers who had left or were considering it was salaries. The report recommended raising teacher salaries in the model. (Ex. 1020)

The evidence at trial included extensive testimony about the number of unfilled positions, the hiring of underqualified teachers, and the adverse impact such practices have on the quality of education. Paying thousands more per teacher than the model, districts are still unable to fill necessary positions and resort to filling others with underqualified personnel. Thus, even the higher levels being currently paid are not adequate to allow districts to recruit and retain the necessary quality teachers. (Tr. Vol. IV, pp. 848-850, 936-

937; Tr. Vol. VII, pp. 1841-1844, 1983-1984, 1995-1996, 2015-2016; Vol. II pp. 36-67) In *Campbell II*, this Court warned the state to closely monitor the developing teacher shortage. *Campbell II* at ¶¶ 66, 91

While the State's brief touts its "monitoring" process, there is little, if any, evidence that the process kept the model cost based or constitutional. For example, the Court in *Campbell II* noted that there were already issues with emergency certifications and that the state needed to monitor the teacher shortage carefully and act before it becomes a full crisis:

> Because teacher quality is critical to providing a constitutional education and all parties recognize the looming national problem of a teacher shortage, the legislature is also directed to monitor the supply of qualified teachers and take appropriate action should national conditions continue to worsen to the detriment of Wyoming schools. It is unacceptable for essential teaching positions to remain unfilled or to be consistently filled by unqualified applicants.

Campbell II at ¶ 91.

The overwhelming evidence at trial was that the legislature has not adequately monitored and responded to the teacher shortage. Teacher supply in the United States has shrunk dramatically and that there is both a national and a local shortage of teachers. State expert Koedel acknowledged that from 2007 to 2021 there has been a 40% drop in the supply of teachers nationally. (R. at 6589) The Director of the Wyoming Professional Teaching Standards Board testified that Wyoming has a shortage of teachers. He explained that the agency grants emergency "exception authorizations" or EAs in circumstances where districts can certify that they are unable to hire a licensed teacher. He testified that there has been a notable increase in the need to issue emergency, temporary licenses when districts cannot

find a licensed teacher. Those permits are called "exception authorizations "or EA's. From 2018 to 2022 the number of EA's rose from 184 to 500. (R. at 6590; Exhibits D-12, 1070) The number of teachers graduating from the University of Wyoming has also declined. *Id*.

Campbell II, in summarizing *Campbell I,* emphasized that Wyoming's constitutional requirements are different and impose a higher standard for quality than other states may use:

> Unlike the majority of other states which emphasize additional funding, equalized funding, or basic education, Wyoming views its state constitution as mandating legislative action to fund a thorough and uniform education that is both **visionary and unsurpassed**. To that end, this court to consider education as a paramount priority over all other considerations and have identified, class size, **teacher quality and local innovation as factors critical** to its determination that the legislature is providing a quality education."

Campbell II at 538. (Emphasis added.)

The legislature's responsibility to create a model which funds a high-quality educational opportunity for all students is further emphasized in *Campbell I*:

> To summarize, considering all these various factors the legislature must first design the **best** educational system identifying the "proper" educational package each Wyoming student is entitled to have whether she lives in Laramie or Sundance. The cost of the educational package must then be determined and the legislature must take the necessary action to fund the package. Because education is one of the state's most important functions, lack of financial resources will not be an acceptable reason for failure to fund the **best** educational system. All other financial considerations must yield until education is funded.

907 P.2d at 1279. (Emphasis added)

There is no evidence that the State or its experts gave any consideration to the *quality* of educators Wyoming districts are able to hire. When districts are hiring teachers who cannot even qualify for a regular license, when positions are filled with substitutes, when

districts are hiring teachers who are not fully educated and require the supervision of other teachers, and when districts are hiring people who previously did not even qualify to be interviewed, then there is an obvious problem with quality. School District witnesses explained that students suffer with instruction from less qualified teachers. Other teachers also suffer because every EA and substitute has to be supervised and mentored by a regular classroom teacher, taking time away from the regular teachers' preparation time. The comparison to teacher salaries in other states gives no consideration to the quality of the teachers each state is able to hire. It is unknown if their salaries in other states are the result of political choices, availability of resources, or other factors. Other states use a system highly reliant on local property taxes, creating rich and poor districts, which is not represented in "average" salaries. No Wyoming school district competes using Wyoming's average salary or against the average salary of the other state. They compete with specific districts, using their actual salaries, and their testimony is they are losing the battle for the limited supply of teachers. *Campbell I* instructed that Wyoming needs to compete both regionally and nationally. Nationally, Wyoming ranked 34th, paying $14,000 less than the national average. (Ex. 1104)

The District Court listed by name eight witnesses who "testified extensively about the significant difficulty hiring and retaining professional and non-professional staff." (R. at 6589). "The Court gave significant weight to the testimony of each of these very experienced educational professionals and found it more convincing than the statewide statistical evidence presented by the State. *Id.*

School districts have consistently paid more for salaries out of their block grant than is provided by the model. On average the districts pay $10,000 more per teacher than the State funds (Exs. 1104,1105) Multiple witnesses testified that they pay higher salaries than the model because the market requires such higher salaries. (Tr. vol IV, p.93; vol. VII, p. 198; vol. V, pp 178-79; vol. III, pl 750; vol. I, p. 219). The State has held salary levels in the model essentially flat for more than 15 years while neighboring states increased salaries, resulting in a situation where some of the districts were paying $14,000 above the model in an effort to be able to compete to recruit and retain teachers. (Tr .Vol IV, pp. 88-9, Ex 1104, p. 22)

Dr. Stoddard testified that non-salary amenities affect whether employees are willing to take a job in a particular location. Factors which could affect an applicant's willingness to work in Wyoming include climate, shopping, isolation, entertainment, access to medical care, air service, distance from family, lack of job availability for a spouse, and other similar circumstances. (Tr. vol. IV, pp. 850-53) District officials testified that such factors cause the districts to have to pay higher salaries to be able to hire teachers. (Tr. Vol. III, pp. 963; Tr. Vol. V, pp. 1142-43, Tr. Vol. V, p 1981) School districts are seeing increasing numbers of positions they cannot fill and increasing numbers of certified employees leaving. (Tr. vol. VII, pp. 1835-36, 1972; vol. V, pp. 1124,1126.1133-34; vol. III, pp. 712-714; vol. I pp. 170-173, 197-20; vol. II p. 406; Exs. 2148, 2239) In addition to adjacent states, Wyoming school districts are competing with districts from further away locations like Los Angeles, Arizona, Alaska and Houston. (Tr. vol. IV, 941-2; vol. V pp. 1114,1124-29; vol. 1861-62; vol. III, pp

713-14; vol. I, pp. 83-84,170,172-3.) Lack of competitive salaries and lack of applicants have caused districts to hire lower quality teachers than they have in the past, including applicants they would not have interviewed or hired previously. (Tr. Pp 962-3; vol. V, p 1839; vol. III, pp 711-713,761; vol. II p.368)

Because these long-term substitutes and exception authorizations require other staff to supervise and mentor them, spend time and effort helping the less qualified individuals to learn on the job, harming the delivery of education in both of their classrooms. (Tr. vol. V, pp. 1139-41, 1148;1167,1166-89; vol. III pp 740-42; vol. I pp. 204-07, 257-258) The use of such less qualified teachers has led to a higher turnover rate. (Tr. vol. III, pp. 740-42, 753-55, 756-59; vol. I. pp. 204-207; vol. II pp. 375-6, 378) School districts also struggle to hire and retain classified staff also known as non-certified staff and educational support personnel. (Tr. vol. IV, 932,941-42, vol. V p. 1114.)

School districts would not be able to hire teachers, let alone high-quality teachers, if they only paid the model salary. (Tr. vol. I, pp. 85, 88, 219; vol. VII, p.197-80) Because of inadequate funding to hire the teachers needed at salaries closer to market, districts have had to reduce the number of staff they employ, For example, Lincoln County School District 1 laid off 75 staff members in order to be able to pay sufficiently high salaries to be able to hire the minimal teachers they had to have. Those let go included graduation coaches who were working to help struggling students graduate. (Tr. Vol 1996-8, 2025-26, 2032.; Vol. IV, pp. 936-7, 976; Vol. VIII, pp. 182-44,1846,1983-84,1995-6, 2024-5;Vol II, pp. 365-67; Vol III, pp. 750-751) While school districts had competitive salaries in the early years of the

operation of the model, the failure of the state to increase funding for salaries has led to a situation where salaries are no longer competitive because other states have been increasing their salaries. (Tr. vol. IV pp. 935-6; vol. III pp 662-67; vol. VIII, pp.1980-1, 2024-5, 2039-40; vol. VII pp.1840-42; vol. III, pp. 704-07, 708-10,712-14, 743; vol. I, pp.184-88,189-92, 222)

C. THE STATE'S DEFENSE OF PERSONNEL FUNDING BASED ON THEORETICAL ARGUMENTS IS SERIOUSLY FLAWED AND NOT SUPPORTED BY THE EVIDENCE

The State's argument that personnel are overpaid is in direct odds with the Court's finding that the Appellees proved their case by a preponderance of the evidence. Where the State has not demonstrated that the District Court's findings are clearly erroneous, the State cannot validly ask this Court to reverse that decision. The state of the evidence as found by the District Court is presumed to be true, and the weight attached by the District Court cannot be re-weighed. Nevertheless, the State persists in arguing that their expert is right and the Court and all the other witnesses are wrong.

The State's reliance on its experts is like a weatherman who assessed statistical weather data and selectively concluded there would be no snow while in reality people were outside shoveling the falling snow off their sidewalks. The weatherman doubles down, continuing to insist that he is right because he wants to justify his own data interpretation and work. The State is similarly ignoring reality and clinging to theoretical economic arguments that simply do not pan out in the real world.

The State's reliance on expert conclusions is not valid proof when the experts'

theories and their data are unreliable and incorrect. The test of constitutionality is not whether the State can find and pay an expert who generates numbers and asserts the model is constitutional. The test is whether, in light of the Plaintiffs having proven their claims through evidence at trial, the State has proven by a preponderance of all the evidence that the funding level meets the mandates of the constitution for a high-quality education system, the best, unsurpassed. The State must show they properly identified all the necessary resources and that they have estimated the cost of the resources in a manner that is reasonably accurate. *Campbell I at 1279-1280; Campbell II* at 535-536. The State needs to demonstrate that the cost of the components in the statutory model are reasonably accurate. Dr. Seder himself explained the statutory model is cost-based only if each of the components have "a reasonable and accurate cost basis to them." (R. at 6592-4; *Campbell IV* at 55)

The State asserts that problems with their methodology and calculations create issues at the margins, implying that throughout the brief that any problem is very small and inconsequential. However, the mistakes go to the underlying basis of their analysis. Salaries are 80% of a district's budget and the State's data shows that statutory model salaries are $10,000 below, on average, what districts actually spend for teachers. The State's chart included in their brief also shows at least a $150 shortfall.

Initially, after Campbell IV, the State continued to use the same methodology to calculate statutory model salaries that was approved in that case. However, after 2010, the legislature abandoned that approach and operated instead on the assumption that the salaries in the model approved by this Court in *Campbell IV* were excessive, and from 2010 forward,

froze the salary in the model and denied ECAs on the excuse that salaries were allegedly overfunded. In order to measure adequacy and the need for an ECA, the legislature calculated the total gross dollars of the statutory model and the total gross dollars that would be made available under the consultant's model. If the total dollars paid under the statutory model were higher than what the consultant recommended, the legislature used that to justify not raising salaries in the model and not providing an ECA or even taking back a previously applied ECA. As the District Court found, this approach has numerous flaws and doesn't justify either the low salary or the ECA failures.

The State's theory and its argument in its brief hangs almost entirely on the testimony of their expert Dr. Seder. The Court found neither the expert nor his theory were credible. (R. at 6578-79, 6591-94)

1. The State Experts Lack Credibility

The "overfunded" and "cost plus" theories come almost entirely from Dr. Seder. The District Court, however, found that Dr. Seder was biased and his analysis was not credible. The Court provided a lengthy exposition on why he found bias and placed little weight on Seder's testimony. In summary, he noted: Seder called the model he helped create and defended in court "a socialist utopia" and that he had said that Wyoming was a red state, but it doesn't know what kind of red state it is ;he demonstrated a strong bias in favor of his position that public schools teachers are overpaid; he refused to acknowledge the national teacher shortage even though other witnesses including state witnesses agreed; he repeatedly gave nonresponsive answers to straightforward questions with the Court providing multiple

examples; he had strong motivation to defend the model since much of the advice for the model came from him; he spent 20 years drafting reports, providing advice, helping to implement the model and was essentially opining on his own work. (R. at 6578-79)

The Court also noted that it gave limited weight to the data from Drs. Stoddard, Taylor, and Koedel because they used actual salaries paid by districts to conduct their analysis, rather than statutory model salaries.

2. The two-model convergence theory relied upon by the State to justify underfunding is inherently flawed.

The methodology adopted by the State to determine adequacy and the need for an ECA involves comparing the gross total of statutory estimates of total cost of the statutory model to the total of the consultant's model. In short, the State uses the total cost of one set of resources to determine the cost of a different set of resources. Comparing the two different gross totals does not demonstrate that the components of the statutory model are reasonably and accurately costed. The consultant's model is nothing more than one person's opinion of what resources are necessary and how much those cost. It is not sufficient for adequate funding and constitutional compliance for the State to say that there is probably enough money somewhere in the model to demonstrate that the components are properly funded.

3. Using the Consultant' s model as the measure of constitutionality is flawed.

The Consultant's model is simply one expert's opinion. The State did not prove that the Consultant's model is an accurate representation of the actual costs of providing a

thorough and uniform, high quality education or even that it includes all the necessary elements of a high-quality education. The State is attempting to use the consultant's model as a tool to measure whether funding is adequate when there is not evidence in the record to establish that the consultant's model consists of necessary components and actual costs sufficient to meet constitutional standards.

Furthermore, the consultant's model has a different set of resources than the statutory model. They have different quantities of resources and a different configuration of the resources. Illustrations of the differences can be seen by the comparisons included in the Consultant's 2020 recalibration report, Ex. E1, which identifies where the consultant's model differs from the resources in the statutory model, and how the dollar amounts therefore differ for the various components including, most significantly, personnel costs. There are more than 30 differences between the allocation of resources in the two models. (Ex. E1) Thus, the State is trying to prove the accuracy of the statutory model costs by showing what a different model, with different resources, might theoretically cost in an expert's opinion. While it is fine for the State to total the cost of the individual components to arrive at a total amount of funding, such a total can only be valid if the cost of the individual components are accurate and the component resources meet the constitutional tests of adequacy (thoroughness and high-quality).

4. Both the State's adequacy and inflation analysis is erroneously based on using the wrong salaries for comparison.

A fundamental flaw in the analysis used by all of the State's experts is that they all

attempted to justify the *model* salary funding by using the *actual* salaries paid by school districts, even though the model salaries do not provide enough money for districts to pay the actual salaries they are paying (causing districts to have to redirect money from other educational components and needs to pay those higher salaries).

The State complains about the District Court's conclusions that the model salaries should be brought up to the level of actual salaries being paid while in reality its own experts were using actual salaries being paid in forming their opinions that the model sufficiently funds salaries. Any analysis by the State's experts as to the adequacy of personnel costs should have been based on whether the *model* salaries provide sufficient funding to allow districts to recruit and retain high quality personnel. The overwhelming evidence was that the model funding is not sufficient for the recruitment and retention of needed, quality personnel.

5. The State's methodology depends on unproven assumptions.

The State's argument that the model provides sufficient funding depends on a number of unwarranted assumptions. The State's experts assume that the package of resources in the consultant's model and the cost of those resources represents what is needed under the constitution. The Consultants' model is not adopted into statute. It has never been peer reviewed. There is no evidence to test whether it works in the real world. The experts assume that there is a correlation between "cost pressures" and the rate of inflation that needs to be applied as an ECA. The Court found there was no such correlation. (R. at 6582) While such "cost pressures" might give some idea whether inflation is happening, they do not give

a percentage of inflation to apply to the model

The truly erroneous assumption that the State and its experts make is the idea that starting in 2010 school personnel costs were being over funded by the State and that the overfunding continued into the 2022-23 school year. Based on this assumption, the State deliberately kept funding for salaries flat for 12 years. As noted elsewhere, that assumption flies in the face of reality, where districts were unable to hire qualified teachers, the WDE found there was a need to raise salaries, the PTSB recognized the serious problem hiring licensed teachers and made increasing numbers of EAs, the state's own reports showed increasing gaps between actual and model salaries, increasing numbers of teachers were leaving the profession, teacher wages were falling even farther behind wages of "comparable" Wyoming Professionals, and adjacent states were increasing salaries at a rate faster than Wyoming.

The assumption that teachers are "overpaid" needs further examination. When this Court reviewed and approved the original funding model in *Campbell II* and *IV*, the State represented that the salaries in that model at that time represented the actual costs of personnel. That cost analysis was provided by two labor economists and the State's consultant at that time (MAP). For purposes of personnel cost, that original model funding level for salaries represented the cost of personnel and anything lower than that original model funding level would represent funding personnel at less than cost. *Campbell IV* at 62-63. This Court observed that "the state, for the first time, proposed a model allocating funds for the operation of schools on the basis of a model it claimed was cost." *Campbell IV* at 62.

The Court went on to note that the salary figure in the model is cost and "We simply must assume that the figures in the model are the minimum." *Id.* at 63

Dr. Seder and the others refused to accept the determination of the state's own experts in *Campbell II* and *Campbell IV* regarding the cost of personnel, and instead created a rationalization for not providing salary increases or ECAs in the model. Dr. Seder gave the contradictory opinion that the salaries from the MAP model and the two ECAs granted which the Court praised in *Campbell IV,* resulted in an alleged large overpayment to teachers. Assuming that Seder was right, the legislature then denied increases in salary and ECAs based on that alleged overpayment. Instead, they indulged in another unproved theoretical exercise involving comparison of Wyoming teacher salaries to other comparable workers. As discussed above, in doing so they used the wrong salaries for comparison, resulting in a meaningless comparison and invalid conclusions.

There are other flaws in this method of determining adequacy of Wyoming salaries. Dr. Stoddard acknowledged that there is no one correct ratio of the salary of Wyoming teachers to the salaries of other Wyoming professionals. The selection of which other professions that might be argued as comparable to teachers varied between each of the experts. It is doubtful that the "comparable" private market professionals were truly comparable. As Dr. Koedel testified, the teaching market is unique and there may not be an accurate set of "comparable' private market salaries. It is debatable whether, for example whether workers in Wyoming classified as "managers" are the same as a teacher. (Tr. Vol. X p. 2482; Ex. 1104) Likewise, many of the professions used as comparisons do not have to

have a degree or be licensed. (Tr. Vol. X, p. 248))

No effort was made to control *where* the allegedly comparable professionals used in the comparison were located despite the obvious logic that such persons are more likely to be centered in more populated areas and not truly be comparable to the many small school and communities where teachers must be hired. One could ask, "How many managers, human relations supervisors, or other private professionals are living in Chugwater?" The ratios of Wyoming teachers salaries to allegedly comparable workers being used by the State are arbitrary guesswork.

Dr. Stoddard suggested a range of 75-85% ratio of comparison of teacher salaries to private market salaries, a range which when translated to dollars, represents easily more than a range of a hundred million dollars statewide. Stoddard's report and testimony was that there is no one correct ratio for any state. More importantly, she testified that she could not render an opinion as to whether current model funding is sufficient to allow districts to recruit and retain necessary teachers because she lacked information about number of applicants, vacant positions, quality of applicant and related information. (Tr. Vol. I, pp. 245-46) That is exactly the information which was provided by district witnesses. They testified about vacancies, increasing number of EAs, hiring applicants who had been previously found unqualified, using substitutes, and simply cancelling some classes. (Tr. Vol. I, pp. 174-181, 200-202, 203-204, Tr. Vol. VIII pp. 1972, 1976-1977; Exs. 2001, 2218, 2267, 2294; R. at 6590)

Although Dr. Seder claimed that the original model salaries overpaid teachers, the

same year those salaries were established, he wrote a report for Montana which calculated that Montana's ratio for teacher salaries was 110% of ostensible comparables, while Wyoming's ratio of teacher salaries was at 96% of ostensible comparable workers. (Tr. Vol. IV p. 887) The legislature has chosen the lowest ratio as it requires the least money to fund, despite the state's own experts saying that increasing salaries has the effect of increasing the quality of teachers. (Tr. Vol. IV p. 872) The range of 75-85% of comparable professionals is simply trying to represent a rough average of other states' ratios despite the fact that Wyoming requires higher quality than other states and there is no real evidence that the hiring circumstances in other states is the equivalent to those in Wyoming.

The MAP consultant and two labor experts hired by the State found that the actual cost of salaries was represented by the statewide average of the actual salaries being paid at that time. *Campbell II* at 54-55; *Campbell IV* at 61-64. When the State attempted to implement a regional cost adjustment that would have reduced salary levels for some districts below the base salary cost in the model, this Court held that the state could not reduce salaries below the personnel cost numbers the state had put in its model. *Campbell IV* at 64.

The State's brief asserts that there is "extrinsic data" and the opinions of their experts to support their contention that teachers are actually overpaid. In making this argument the State totally fails to address that the Districts Court found that there is a wealth of evidence to the contrary, not to mention evidence that more convincing. Having some "data" is not some kind of magic for the State that overcomes the wealth of evidence to the contrary,

particularly where the data and its interpretation depends on experts who are not credible or who simply do not know whether the model funding is sufficient.

It should be noted that many of the items cited as "facts" in the state's argument are actually just unsupported assertions by Dr. Seder, who was found not to be credible. Likewise, the analysis from Stoddard and Seder uses actual salaries paid by districts, not the lower model salaries which the state funds, making most of their analysis inapplicable because it is measuring the wrong thing.

Dr. Seder provided a lengthy extrapolation to present his argument that teachers were overpaid, a theory which relies on unfounded assumptions and is inconsistent with other known information. As discussed above Seder begins with the unfounded and contradictory assertion that the salaries established in the original model paid too much despite the fact that those salaries represented the experts' best opinions at the time and they were presented and approved by the Court in *Campbell I* as cost-based salaries. Seder's analysis assumes those salaries are excessive and then argues that the external cost adjustments made by the legislature in the two following years should not have been made because the original salaries were allegedly excessive. His analysis does not include additions to the basket of services districts had to purchase, like the addition of computer education, and the addition of some courses which were needed to provide the curriculum that would allow students to qualify for the Hathaway scholarship. He uses the Consultant's model as his measure of resources to be costed, even though this model has never been fully adopted by the legislature or approved by the court and there is insufficient evidence in the record for the

court to do so. He assumes there has been no significant innovation in teaching methods and procedures between 2006 and now. (Tr. Vol. XIV pp. 3640-44) He assumes that the Picus model represents what the statutory model should cost even though there is no basis to do so.

At no time does Seder, or any other expert for the state, attempt to explain why districts have experienced increased vacancies, increased numbers of teachers leaving the profession, increased use of underqualified personnel on emergency licenses and the increased use of long term substitutes. It defies logic to suggest that teachers are grossly overpaid, as the state experts assert, yet districts cannot recruit and retain even the minimum number of teachers needed, let alone hire highly qualified teachers. This is a classic case of a purely academic argument that is refuted by what is happening in the real world.

II. THE LEGISLATURE FAILED TO PROPERLY ADJUST THE MODEL FOR INFLATION.

A. The Statutory Model Adjusts an Incorrect Base for Inflation

Because the State's analysis of salaries is wrong, the State's calculations of inflation are also wrong. As demonstrated above, the State's analysis that teachers are overpaid is contrary to the evidence at trial and to the findings of the District Court. Thus, those inflation adjustments actually made to the statutory model were completed using an artificially low number for the cost of salaries. The underestimation of actual salary costs in the real world and inadequate level of personnel funding in the model renders the state's ECA calculations inherently invalid: (1) Since the model salaries are below cost, any inflation adjustment is being made to a base number that is too low.[real world salaries cost x rate of inflation =

actual cost higher than using inadequate model salaries as the base cost], and (2) The entire rationale for not paying higher salaries and not adjusting for inflation is based on the premise that employees were overpaid under the model. If teachers were not overpaid, then the justification for denying ECAs is gone and there is no justification to deny regular ECA adjustments.

A beginning point is to remember what an inflation adjustment is intended to accomplish–it is to "preserve the status quo" protecting the purchasing power of the dollars appropriated for education. (R. at 6585) "Dr. Taylor acknowledged that inflation adjustments keep cost-based school funding cost-based and that when prices change, the dollar amount of the cost -based model must change." (*Id.)* Thus, granting an ECA is not an unwarranted increase in funds for higher salaries; rather, it means increasing the funding needed for districts to pay higher salaries in order to maintain the same purchasing power for recruiting and retaining needed personnel.

B. The State has Failed to Adjust the Model for Inflation as Directed by the *Campbell* Cases

The District Court concluded that the state had not met its duty to adjust the funding model for inflation as required by the *Campbell* cases. (*Id.)* The State argues that the Court erred in finding that the legislature had not properly adjusted for inflation and "denying the legislative discretion to monitor cost pressures and cost estimates" in determining inflation. (St. Br. p. i) This is a mischaracterization of the District Court's holdings. The Court did not limit the State's discretion to monitor the model. It did conclude that the "monitoring" as

had been conducted by the legislature failed to properly account for inflation. The Court did not prohibit the State from monitoring cost pressures and cost estimates but instead found a number of serious flaws in the approach taken by the legislature.

Campbell II instructed that the "legislature shall conduct a review of all the components every five years to assure that funding reflects the actual costs school districts are paying because of current market or economic conditions' and shall adjust for inflation or deflation every two years at a minimum." *Campbell II* ¶¶ 89-90,19 P.3d at 549 (R. at 6580)

Wyoming Statute 21-13-309(o) is apparently intended to implement that holding from *Campbell II.* That statute states that "...between periods of model recalibration required under section (t)of this section, the amount computed for each district under subsection (m) of this section shall be adjusted for the effects of inflation..." However, the District Court judge correctly found that "[t]he parties agreed that since 2010, the legislature has not adopted ECAs for every year between recalibrations, has repealed previously enacted ECAs`, and enacted time-limited ECAs. (R. at 6581)

The State instead adopted a process of "monitoring cost pressures." Using the erroneous analysis discussed above, the State assumed that salaries were overfunded and therefore concluded that no ECA would be approved or applied. The different methodology of "monitoring" involved comparing the total cost of the statutory model to the consultant's model as a gross figure. The District Court found that comparing gross estimates did not measure inflation in individual components because a resource model requires that each component be cost based and the gross figure does not indicate whether any one component

is or is not cost based. (R. at 6582) The Court found that the State's method used to account for inflation is "flawed because it does not properly adjust for inflation of each of the required components of the model." (R. at 6582) Whether or not the Funding Model's total expenditures are more than would result from the Consultant's Model does not necessarily account for inflation that exists for each of the four broad categories of components. *Id.* As Dr. Seder explained the statutory model is cost-based only if each of the components have "a reasonable and accurate cost basis to them." *Id.*

The State's methodology depends on its convoluted "two model" approach. The actual resources provided to school districts are determined by the statutory model and the legislature compares this to the cost of the consultant's model. If expenditures in the statutory model exceed the consultant's model, then the statutory model is treated as overfunded, despite the fact that the consultant's model has never been adopted by the legislature, nor has it ever been vetted by any court or even by a peer review. The State did not present evidence at the trial to prove that it is an accurate representation of the actual cost of education. It is simply one consultant's opinion. There are multiple economic models in existence. The Consultant Dr. Picus' model is just one approach. In 2017 the state hired a different consultant, APA, who ultimately recommended that salaries in the model be increased to the act5ual salaries districts were paying at that time while Picus was saying that employees were grossly overpaid. It is important to note that the consultant's model is markedly different than the statutory model in quantity, components, and prices. As discussed above, there are 30 differences between the two models identified in the

consultant's report. (Ex. E1)

Ultimately, the constitutional test is not whether there is a consultant who might recommend a cheaper approach, but whether in the real world, districts can purchase the resources that the legislature itself has identified as necessary for a high-quality education and enacted into statute. The evidence in this case is overwhelming that the level of funding being provided for personnel is seriously underfunded and that underfunding is compounded because the legislature has failed to make the required inflation adjustments as required by the statutes and the constitution.

"The State's method is further flawed because its expert on ECA's, Dr. Taylor, based most of her advice on salaries being over market on in 2010 and 2015 upon the actual salaries being paid by school districts and not upon salaries being funded in the Funding Model." (R. at 6582) For the state to establish that salaries were over funded, it is essential to measure the correct item–**salaries funded in the model.** Although the state's two model theory is seriously flawed and invalid as a measure of inflation, it is worth noting that even under the State's approach, the State deliberately underfunded personnel. The State's brief at pp.20-21 has a chart comparing the statutory and consultant's model which documents the serious failure to fully fund the model. If the consultant's model were hypothetically a measure of cost, that the State's chart shows that in 2018-19 the model was, in total, underfunded by $1,318,056; that in 2020-21 the model was underfunding the total cost of education by $20,668,777; that in 2021-22, the model was underfunded by $29,781,180; 2022-23 the model was underfunded by $53,767,679. (St. Br. pp. 20-21) Over those four

years, this underfunding totals $105,535,692. The State repeatedly argues essentially that the Court should use some kind of "close enough" standard and excuse their obvious underfunding. By any measure, more than $105 million is not a minor shortfall. That amount of money could obviously make a huge difference for the public schools. To paraphrase an old political adage from the 1960s "a million here, a million there, pretty soon we're talking about real money."

What makes the shortfall, even by the State's flawed methodology, so egregious is that it was known and deliberately ignored by the State. This same chart appeared in the consultant's previous reports, meaning that starting in 2019 the consultant was telling the legislature that by their own logic, the legislature had underfunded education. It is instructive that the legislature continued to deny ECAs until after this case was filed in August 2022 and then acted in the following legislative sessions to approve some form of ECAs. The State's plea for this Court to ignore its own documented failure amounts to asking for a four year constitutional mulligan. The only rationale proffered by the State for failing to apply ECAs appropriately is the assertion that personnel costs were being overfunded, a fact the Court found was not true. The Court's findings were to the contrary - that the model was underfunded for personnel - a finding that the State fails to demonstrate was "clearly erroneous." None of the school finance precedents allow for the State to deliberately funding less than even its own (invalid) methodology says should be funded.

Finally, it is important to remember the measurement inflation is a lagging indicator. The data shows up only *after* districts have already felt the impact of inflation. Thus, as a

practical matter, when the ECAs were granted, districts were playing catch-up for previous inflation already experienced. (See R. at 6583-4 and fn 20)

C. The Statutory Funding Model Relies on Historic Salary Data

The State argues that it no longer bases salaries on historic salary data, so it should not have to adjust for inflation. However, the current model actually still does rely on historic salary data. When Picus took over the consultant role, the salaries in the previous model were carried over in the recalibration's determination of salary. (Tr. Vol. XIV p. 3637) Picus incorporated the salaries and inflation adjustments that had been made up to the 2005 recalibration. (Tr. Vol. XIV, p. 3638) As discussed earlier in this brief, at the next recalibration in 2010, the State took the position that those salaries in the model overpaid teachers and so began the long freeze of salaries and the state's rationalization justification to deny ECAs. That is why the model salary level only increased $540 from 2010 to 2023. (*Opinion* p. 152) The same base salary from the 2005 recalibration, carried over into the 2010 recalibration, remains in the model today with the exception of the ECAs belatedly added by the legislature. The current statutory model is built upon the 2004-2005 salary model.

III. THE DISTRICT COURT USED THE CORRECT STANDARD TO ASSESS ADEQUACY OF FUNDING

The State argues that the District Court used an improper standard to measure if the model funding is adequate. The Court used the correct and valid measure. The Court applied the standard that the funding must be "reasonably accurate" in order for a component to be

considered constitutional. That is the standard that has been used by the courts in previous cases. *Campbell IV* at ¶¶ 7, 17, 31. The District Court did not require the "extreme precision" which the State inaccurately asserts was the Court's measure.

It is puzzling why the State complains that the Court used "reasonably accurate" as a standard when their own expert, Dr. Seder, testified that in order to be constitutional the cost of each component must be "reasonable" and "accurate." (Tr. Vol. IX pp. 3676-3677) The State's complaint about the degree of precision is little more than a semantic argument with no practical application in this case.

The State provides a lengthy exposition on why it is not possible to have exact precision and how terrible it would be to apply that standard. But such a standard was not articulated or applied. The State begins its argument with a reference to article 7 of the Wyoming Constitution, taking a rather unrealistic interpretation of the term "instruction." The argument ignores the fact that there are additional related provisions that say "complete," "thorough," and "appropriate for the times" which the State disregards and which would be diminished or nullified if the State's argument over the specific term "instruction". Read together, these terms clearly demonstrate that the State's argument over the isolated term "instruction" is invalid. "Every statement in the constitution must be interpreted in light of the entire document. . . with all portions of it read in pari materia and every word, clause and sentence considered so that no part will be inoperative or superfluous" *Geringer v. Bebout*, 10 P.3d 514, 520 (Wyo. 2000)

Those provisions have all been interpreted in the *Campbell* cases to mean far more

than the state suggests. The meaning of the broad, comprehensive, quality education required has been well outlined in those cases. While the State talks extensively about what it deems as too much precision without identifying exactly where the reasonably accurate standard would have made a difference. The evidence showing inadequate salaries and improper inflation adjustments was overwhelming in the record. This is not a case where the parties are discussing something on the margins of the model. It is a case where funding levels of core fundamental components are not just inaccurate, they are extremely and manifestly inaccurate by multiple measures.

The State's brief has a series of quotations from *Campbell* to the effect that school districts don't get whoever they want, that the legislature decides the nature of the education to be offered, etc. However, those quotations are taken out of context, applying to something other than this situation where the *funding was found inadequate to comply with the constitution.* As discussed earlier in this brief, the critical element missing from the State's argument is the context that those quotations are referring to – when a school district requests above and beyond what is needed to fund the model. In *Campbell IV ,* this Court first noted that the factual findings of the district court were that the funding was adequate to fund all of the components in the model. Having established that the constitution had been met, the Court held the requests for funding above what was needed to fund the model were treated as discretionary with the legislature. That is not the case here; it is just the opposite. The District Court made evidence-based findings that funding model aspects pertaining to underfunding salaries, funding inflation increases, and the exclusion of necessary

components each violated the constitution.

IV. THE STATE'S FINANCE MODEL ALSO VIOLATES EQUAL PROTECTION

The District Court correctly found: "The Court finds that the Plaintiffs proved the existence of disparities arising from the Funding Model and the state's facility system." (R. at 6617*)* "[D]isparate treatment of schools based upon arbitrary standards cannot be justified." *Campbell II, 19 P.3d* at 535. "The state-financed basket of goods and services available to school-age youth must be available from district to district." *Campbell I,* 907 P.2d at 1266-67.

The impact of the failure to properly fund educational operations and facilities is to create a disparate patchwork of educational opportunity due to the need to take funding from different components to make up the personnel shortfall. The lack of funding forces districts to take from other components. The State argues that the differences in opportunities are the result of local choice. But they miss the essential point–*districts are forced to cut corners on educational opportunities because the state has not properly funded the model.*

For example, small schools have less flexibility in their budgets than larger schools. The Lincoln County Superintendent testified "that there is inequity between larger and smaller schools." (R. at 6616) Lincoln County cannot offer advanced placement classes offered by larger schools. Students cannot schedule all the advanced classes they need due to the small number of teachers available because the model does not fully fund salaries causing a reduction in the number that can be hired. *Id.* A larger school has more options on how to configure classes because of the greater numbers of teachers.

The Campbell County High school principal testified that the many facility issues in the building causes disruptions in classes while the new school in Buffalo does not have any such disruptions to the educational process. (R. at 6617) As referenced in the discussion of SROs, a number of larger schools have been able to provide SROS while other districts, particularly smaller districts, are unable to provide them. Thus, some students are safer than others.

The evidence regarding salaries documented that there are classes being taught by substitute teachers and teachers who are underqualified, operating on emergency permits. Thus, some students have the benefit of an experienced, highly qualified teacher, while others receive instruction form persons who are not properly trained. Some districts have canceled offerings while others are able to maintain those offerings, finding money elsewhere. Larger districts have combined classes, resulting in higher class membership while smaller districts have smaller classes due to the small enrollment.

The overall effect of underfunding the model is to force districts to short-change some elements of the education, and those forced compromises in education vary due to the nature and location of schools. But the culprit behind the disparities is the underfunding of core elements of the model. Contrary to the state's assertion that these disparities are a "choice' these are the kinds of choices made where there is no choice. They have to fund a basic number of personnel to operate any school. When salaries are underfunded and ECAs not provided, district are forced to make these educational compromises if they want to keep the doors open.

V. THE CURRENT FUNDING MODEL IS INCOMPLETE AND ADDITIONAL ELEMENTS NEED TO BE INCLUDED AND FUNDED

A. The Court has the authority and duty to require the funding of missing elements

The District Court held that there were several items that needed to be added to the model in order to cover the full cost of a proper constitutional education. The State argues that the Court cannot require additions, and that each of the additions are unnecessary. *Campbell I* required that the first step in creating a constitutional system is for the legislature to define what resources are needed for a complete, thorough education appropriate for the times education. W.S. § 21-9-101 is the State's definition, which incorporates the educational standards of the State Board of Education, as well as the courses required for the Hathaway scholarship. The State argues that once the model was approved in 2008 in *Campbell IV*, there is no ability of the court to require any additional or different components.

*"*The definition of a proper education is not static and necessarily will change." *Campbell I,* 907 P.2d at 1257. The State appears to contend that once the legislature provides a statutory definition of a proper education, that definition cannot change even if in the real world the nature or needs of a proper education actually changes, grows, or evolves. The State also suggests that it is entirely up to the legislature, not the courts to determine the components of the model. Both positions are wrong. *Campbell I* is clear that the elements of a high-quality, proper education will change over time and *Campbell II* provides clear illustration of the courts' authority to require additional elements when the evidence supports

it. There is no case law supporting the proposition that when this Court approved the original model in 2008, that the definition was carved in granite, never to be adjusted.

Likewise, the case law does not support the idea that whatever the legislature decides to include in an educational "basket" the judiciary cannot review. As this Court pointed out, while the legislature has the authority to define a basket of educational goods and services, this court has the authority and duty to determine if that basket satisfies the affirmative mandates of the constitution. *Campbell II*, 19 P.3d at 526-27 The Court noted the State's concern that the legislature should have the primary responsibility for defining the kind of education students in Wyoming will receive. While the legislature takes that initial step, "[t]he Court, however, interprets the above statements from the Wyoming Supreme Court [Citing to *Campbell I, II, and IV*] to authorize and require this Court to determine whether Plaintiffs have proved elementary counselors, SROs, nutrition programs, and one-to-one technology devices are substantive innovations that should be available to all school districts and students because they are appropriate for the times and necessary to provide a 'thorough and uniform education of a quality that is both visionary and unsurpassed.'" R. at 6596

In *Campbell I,* the court reviewed the components of the prior system, found them unconstitutional, and then laid out guidance as to what kind of resources and what quality must be included in any replacement system. "[T]he Wyoming constitution's language must not be narrowly construed." *Campbell I, 907 P.2d* at 1257-58 The court explained: "The definition of a proper education is not static and necessarily will change because there may be local substantive innovations that should be available to all school districts." *Id.* at 1274.

If there are changes to what constitutes a proper education under local innovation then "all students are entitled to the benefit of the change." *Id.* at 1274. A quality education is one that is dynamic and evolving and one that is "appropriate for the times." *Campbell II,* paragraph 55, 125, 19 P.3d at 539,560.

In *Campbell II,* review of the newly developed funding model was conducted by this Court in order to determine whether the model as created met constitutional muster. *Campbell II* held that the model was, in general, capable of being constitutional but that a number of changes were required. One was that the State was required to add a new, separate component for the costs of career and technical education. The Court also ordered the State to add a feature to administrative and classified salaries to account for experience, responsibility, and seniority. The State was also required to develop a formula that would account for cost of maintenance, including utilities, or alternatively reimburse actual costs. The Court required that the cost of teacher and vocational training must be included as a line item in the model. *Campbell II*, 19 P.3d at 526. In reaching these conclusions and directing for funding to be provided for different components beyond what the State had put into the model to that point in time, the Court demonstrated the role of the Court in necessarily evaluating what and how the State was funding as part of the educational system.

There is no support for the State's proposition that the definition of a proper education must remain the same, despite what is happening in the real world. Such an approach does not produce an education "appropriate for the times."

B. The legislature should be required to fund mental health counselors, and related personnel.

The District Court found that mental health support personnel should be included in the statutory model, particularly in elementary grades. (R. at 6597) The States's brief includes facts about mental health but does not provide specific evidence or argument to demonstrate the District Court's Findings and Conclusions are clearly erroneous. Therefore, this part of the Court's decision should be affirmed.

The Court found that "The evidence about elementary level Mental Health Counselors is mostly undisputed." (R. at 6596) The state's Consultant and the Consultant's model both recommended including elementary level counselors. (R. at 6597) The Court also referenced the extensive testimony from District witnesses as to the need for such counselors. The Court found that "based on the undisputed evidence" elementary counselors should be included. *Id.*

There has been an acceleration of mental health issues with students in recent years. (Tr. Vol. III pp 813-814,818; Vol. VII p. 1973-40; Vol VIII p. 1850) The increase in student mental health issues, including emotional and behavioral issues, are across all grades, all ages including the younger elementary grades. (Tr. Vol III, p. 813, Vol. VIII, p 1974,1978-9; Tr. Vol. II, pp 32, 38; Tr. Vol. IV, p.929-30; Tr. Vol. VII, pp. 1974,1976,1978-9; Tr. Vol. II, p. 360) The mental health and behavior issues prevent students from success at school and in some instances prevent them from even attending school. (Tr. Vol III, 813-4) School Districts lack the necessary funds to hire and retain the necessary mental health personnel. (Tr. Vol. III, pp 813-817, 818-20; Vol. IV, p. 959; Vol. VIII, pp. 1975-6,1977-79; Ex. 1023)

The legislature recognized the issue of mental health and requested the Wyoming Department of Education to conduct a study. That study recommended counselors in the elementary grades. (Ex.1024) The legislature did not accept that recommendation, so the statutory model does not have funding for mental health counselors in the elementary grades.

C. There is a need to fund school resource officers for all schools.

The District Court found that it was necessary to fund school resource officers (SROs) as part of an education "appropriate for the times." The State has not provided evidence to show that the Court's findings were "clearly erroneous."

School resource officers are a classic example where times have changed and it is now "appropriate for the times" to fund them. In regard to SRO's, the Order states: "...the Court concludes that the plaintiffs proved SROs should be included as a component of the education provided to Wyoming students. (R. at 6600) Again, the state has not addressed the specific underlying facts on which the Court relied to reach this factual conclusion.

School resource officers are individuals from law enforcement who are trained to operate in a school setting. Many Wyoming school districts have employed school resource officers using money from their general fund. They are provided by cooperative agreements with city or county law enforcement, sharing costs, with the law officers working full time for their agencies when school is not in session. (Tr. Vol. p.100-101; Vol. III, p. 730; Vol. V p. 1309; Vol. VIII p. 1855, 2019)

The state does not provide any funding for SROs, which means that districts take money from their general fund which is funded by the block grant. (Vol VIII p. 1855-60;

Vol. III pp. 730, 732-3, Vol. I 100-101) Nor have all school districts have been able to afford school resource officers though they are needed. (Tr. Vol IV pp. 958, 996; Tr. Vol. VIII p. 2020-1)

School district witnesses credibly presented testimony that school resource officers are now a component necessary to provide a safe and quality education. SRO's help fulfill multiple needs and roles including: 1) being present to provide immediate response to threats, outbursts and violence when they occur; 2) helping to recognize and prevent situation of threats, harm, disruptions and violence before they occur; 3) helping students to learn better when they feel safe in their learning environment; 4) building trust and relationships with student so that students are more willing to communicate concerns and events; 5) provide security training and monitor security situation regarding the school. (R. at 6599-6600*;* Vol VI pp. 2019-2022; Vol VIII p. 1855-1860; Vol III pp.730-31,733-4)

The need for, and benefits of, SROs was also found in reports submitted to the legislature. In December 2014 a formal report, commissioned by the Governor studying safety and security of the schools was submitted to the education committees of the legislature. That study conducted by law enforcement and security experts recommended that schools be provided school resource officers. Those responsible for the study included the State Department of Education, an advisory panel of law enforcement experts, emergency preparedness, Homeland Security and the Wyoming Attorney General's Office. (Ex. 1218)

The only witness to testify in opposition to SROs was Dr. Seder, who the Court found

to be biased and lack credibility. The Court placed more weight on the testimony of the educational professionals than on Dr. Seder." (R. at 6600), Dr. Seder is not a K-12 professional and he had no training or experience in school security issues His research was limited to reviewing available articles about SROs. (R. at 6600)

The Court's ultimate determination was : "As a result of local innovation, SROs have been shown as needed for education. Therefore, all Wyoming school students are entitled to the benefit of SROs. SROs have been established as appropriate for the times and should be implemented for all districts." (R. at 6600)

D. Nutrition programs are an integral part of a modern education system and must be funded by the State.

The District Court found that funding the portion of a nutritional program not covered by the federal government was a necessary part of an education appropriate for the times. The State failed to demonstrate that the Court's findings were "clearly erroneous."

School nutrition programs exist in every Wyoming school district and are widely implemented both nationally and in Wyoming. (R. at 6602) Despite the widespread implementation, the state does not provide any funding to districts for the portion of program costs not covered by the federal nutrition programs. Those costs should be paid by the state government as a necessary cost of modern education.

The Court reviewed the evidence noting that both educational professionals and the Department of Education nutrition program supervisor agreed that nutrition at school was necessary and beneficial. The Court then summarized, "In other words, all agree that

students must have sufficient nourishment for a successful education. Therefore, the Court must conclude that providing meals to students while at school is an essential part of successful teaching and learning." (R. at 6601) The federal nutrition program does not provide sufficient funds to pay all the costs of these programs. For example, Laramie County School District No. 1 transfers $1.3 million each year out of its general fund to cover the deficit in revenues. Uintah County SD 1 transfers $300,000 out of general funds to cover costs of its nutrition program. (R. at 6602)

The consultant, Dr. Picus' report and Dr. Seder's testimony mirror each other in arguing that these programs should be self-sustaining. However, the programs were never intended to be self-sustaining. The design of this program was never intended to pay for itself out of charges for meals. (Tr. Vol XI, p 2682-3) The fact that there was no evidence that Dr. Picus and Dr. Seder have any kind of expertise in food service issues in school and their ignorance of the actual operation of the federal program undercut the credibility of their testimony. The federal requirements include that states must have a maintenance of effort, a kind of matching funds in order to participate in the program. The State counts the money districts spend out of their block grant funds as the *State's* contribution, even though the State itself contributes nothing. "In other words, the state passes on its matching requirement to the districts." (R. at 6621)

The state argues that nutrition programs should be run like a business. A business raises prices and cuts services/quality to reach profitability. The goal of these programs is not to make a profit, but to provide quality meals to the students. There are nutritional guidelines

which have to be met. Even more, raising prices has the effect of reducing participation as prices go up. (Tr. vol. I, pp.92-95) As prices go up and students start to drop out of the program, the goal of seeing that all children are well-nourished is undermined. One of the ironies of the State's approach to nutrition is that it has found it appropriate to participate in the federal nutrition program; that the State designs schools to include a place for meal service; and that the State agrees that nutrition programs are necessary for students, but despite all of that the State just doesn't want to pay for them.

As noted by the Court, there is no dispute about the need or virtue of nutrition programs. (R. at 6601) The State has not shown either the facts or inferences drawn by the Court are clearly erroneous. The practice of passing on the matching cost to local districts is anathema to the holdings of *Washakie,* and *Campbell I-IV* which firmly hold education is a *state* responsibility

E. One-to-one technology device to student ratios are a necessary part of a modern education.

One of the clear areas where education has changed in recent years is the implementation of technology in the classroom. As reflected in the testimony of educators at trial, the use of technology has grown, just as it has grown in our society in general. An education "appropriate for the times" now includes knowledge of and use of digital technology. After the statutory model was created, the legislature, recognizing the importance of digital literacy, modified the "basket of goods" statute to delete the term "keyboarding" and substitute "computer science" instead, creating a requirement that all

students be educated in the use of computers and the digital world. W.S. 21-9-101 (O). Despite the new technology requirement, the legislature did not appropriate any funding for it, and left the old ratio of one computer or device for every three students. The technology funded by the statutory model is clearly based on an outdated standard that needs to be updated.

The District Court found: "The Court concludes that the Plaintiffs proved that the Funding Model should include one-to-one computer to student ratio. All evidence presented supports a finding that a one computer to student ratio is a substantive innovation which should be available to all districts and students because it is appropriate for the times and necessary to provide a 'thorough and uniform education of a quality that is both visionary and unsurpassed." (R. at 6604)

The state in its brief does not really challenge the issue of the benefit of such devices, but instead makes a technical argument that they did not have sufficient notice of the issue. The question of increased technology was woven into the other discussions of teaching, and the state itself introduced the discussion at several points

The State's brief acknowledges that "Appellees' pleadings make generalized claims of underfunding, including references to technology needs. (R. at 16, 28, 42, 66-70, 337, 334, 5828-31)" (St. Brief p. 90) The inclusion of so many references should have put the state on notice that the sufficiency of technology funding was an issue. The Consultant's 2020 recalibration report includes funding for technology as one of the components. (R. at 6604; Ex. E1) In addition, testimony regarding technology practices, and the increased need

for technology was included throughout the testimony of district witnesses. (Tr. vol. III, pp. 801-802; Tr. vol. VII, pp. 1817-1818)

But perhaps most of all, the state itself raised the issue in its direct examination of Dr. Seder. Dr. Seder, state expert, raised the issue when he testified on direct that high "technology ratios" are one of the indicators of a quality system. (Tr. Vol. XIII, p, 3465) He also injected the issue into the trial by testifying that the technology of teaching has not changed in 20 years. (Tr. Vol. XIV, pp. 3640-44)

On cross examination, Dr. Seder testified that the ratio of students to electronic device in the model is 3:1. He then said:" As a response to the COVID pandemic many districts across the nation moved to a 1:1 policy." (Tr. Vol XIV p. 3641-2) He acknowledged some teachers are preparing their lesson plans on such devices, and it is becoming more normal for students to turn in their homework on such devices. (Tr. XIV, p. 3642) He indicated that the ratio of students to devices should be a subject of the next recalibration. *Id.*

The state cites two cases, *J Bar H, Inc v. Johnson,* 822 P.2d 849 (Wyo. 1991) and *Gould v. Ochsmer*, 354 P.3d 965 (Wyo. 2015) to support an argument that the state did not have adequate notice that technology funding was an issue. Both cases ultimately held that the questioned matters were permitted. The State's brief cites *J Bar* for the proposition that " ...[t]he existence of implied consent is a more complex issue." (St. Br. p.89)

Such an analysis depends on the facts of the individual case. In this situation the State was clearly aware that funding technology was discussed in the Consultant's report, Ex E1, which the state introduced into evidence. District witnesses testified regarding the use of

technology, and how they had funded it out of federal money. (Tr. Vol III p. 767; Tr. Vol. VII pp. 1783-4) The State obviously intended to discuss the issue since Dr. Seder's direct testimony sought to elicit an answer that technology ratios were allegedly a demonstration of the quality of the model. The state's witness, Seder, also set up the controversy by saying that the technology of teaching had not changed in 20 years, volunteering that student technology was an issue that should be taken up in the next recalibration, and testifying that many schools across the nation were using a 1:1 technology to student ratio. If the state wanted to dispute the appropriateness of a 1:1 technology approach, Seder could have done so when being examined about the difference between the two ratios.

The question of what technology the state will fund is obviously one of the components of the statutory model. Plaintiffs referenced technology in regard to its claims of underfunding. The use of 1:1 technology was raised by district witnesses, but the state's expert specifically raised technology ratios as one measure of quality. The state was sufficiently aware that Dr. Seder was suggesting that it should be a subject for the next recalibration. All of the testimony regarding technology came into evidence without any objection. The state affirmatively introduced the issue of the appropriate technology ratio in their own case. The state was not surprised or unprepared, as they had clearly planned to discuss technology ratios. The state, having made no objection, and having affirmatively introduced the issue, should not be heard to complain that they were not on notice technology funding was an issue.

VI. THE DISTRICT COURT PROPERLY CONCLUDED THAT THE STATE FAILED TO MAINTAIN A CONSTITUIONALLY COMPLIANT SYSTEM OF SCHOOL FACILITIES

A. The State's Funding for Capital Facilities is Inadequate

The State has indicated it is not appealing the Court's finding that "the legislature has allowed unequal and inadequate facilities to exist for too long." (St. Br. pp. 35-36, fn4) While this does not fully represent the scope of the Court's decision related to capital facilities funding, it appears that the State is not appealing any of the judge's rulings on facilities other than those related to its current handling of educational suitability. The Court's rulings that the State is not appealing include findings that the state has not "acted in good faith to assure school facilities have sufficient funding to provide adequate school facilities" (R. at 6611) ; that the State itself acknowledges that major maintenance is underfunded (R. at 6610-6611) ; that "[t]here are schools that have been inadequate for at least ten years" and even now that they are being addressed "it will be at least another six years until they are replaced; and that "it is unacceptable for generations of students to pass through inadequate schools." (R. at 6609-6612)

Despite indicating that it was not appealing the judge's ruling on capital facilities funding, the State makes the point of mentioning the legislature's "generous commitment of resources." Regardless of the amount of money the legislature has appropriated for school facilities, the District Court's conclusion that this funding has been insufficient to provide for adequate school facilities remains unchallenged.

B. The State Has Failed to Appropriately Assess and Address Educational Suitability of Schools

The District Court properly concluded that "the Wyoming Constitution requires the State to assess all school facilities for educational suitability." (R. at 6606) Educational suitability, or the ability of a facility to perform its educational purpose and provide the educational program, has been acknowledged by both state and district witnesses as a fundamental element of whether buildings are adequate. (Tr. vol. II, pp. 308-309; Tr. vol. 13, p. 3426) The failure to properly assess facilities prevents the State from meeting its responsibility to ensure their adequacy; if the State does not have current and accurate information about the suitability of facilities, it cannot identify and remedy inadequacies in a timely manner. This allows inadequacies in suitability to persist or compound, contributing to a backlog of remedies deficient facilities needing remedies. The State does not dispute that addressing educational suitability is an essential part ensuring the adequacy of school facilities or that the State is responsible for addressing the suitability of school facilities

The Court determined that "[t]he state does not assess existing school facilities for educational suitability in the same manner it assesses existing school facilities for condition and capacity." (R. at 6606) The Court further held that the process the State is attempting to use to more specifically address suitability, Chapter 3, Section 8 of the School Facilities Commission (SFC) rules, "is not constitutionally assessing school facilities to assure all existing school facilities are safe and efficient." (R. at 6608)

The State argues the administrative processes currently in place meet their obligation

to assess educational suitability and that the District Court's ruling "overstates the legal requirement and imposes an inefficient mandate." (St. Br. p. 82) The State asserts that the District Court's decision on suitability exceeds the requirements of *Campbell II*. In ordering that "all facilities must ultimately be made safe and efficient" in *Campbell II*, this Court explained that this meant that "the goal for providing facilities which are safe and efficient is to attain a score of 90 or above for building condition, an educational suitability score and technological readiness score of 80 or above, and a score of 4 for building accessibility" ensuring that "each facility achieves a rating of 'good.'" *Campbell II* at ¶137. Further in *Campbell III*, this Court clarified that with regard to the condition score of 90, "future studies could use different methodologies to measure capital construction needs", but the mandate of the court was still clear that it is the State's responsibility to use a methodology to measure those needs. *State v. Campbell Cty School Dist*, 2001 WY 90 at ¶15 (*Campbell III)*. The Supreme Court has clearly recognized that educational suitability is an essential element of constitutionally adequate facilities and that measuring and addressing educational suitability is the responsibility of the State. *Campbell II* at ¶¶ 134, 137; *Campbell III* at ¶¶ 16, 18.

WEA does not disagree that the State can "utilize different methodologies" to assess suitability. However, the current administrative processes are not an appropriate "different methodology" to meet constitutional standards because they do not effectively "measure capital construction needs" related to educational suitability. *Campbell III*'s provision that the state is free to use "different methodologies" does not mean that the State can use any methodology, regardless of effectiveness, equity, or accuracy. The State appears to be

arguing that because the District Court rejected the State's current system as inadequate to remedy suitability issues and mandated that the State assess the suitability of all buildings, that means that the District Court is prescribing a specific methodology for the State to use to address suitability. This argument is not accurate. While the District Court rejected the State's current system as inadequate, it did not find that all potential administrative processes would be inherently inadequate, nor did the Court otherwise mandate a specific methodology be used. While the State must "assess all school facilities for suitability," nowhere does the District Court prescribe any specific process, scoring system, criteria, standard, or formula the State must use, mandate that the State hire a particular consultant, or even that the State use a consultant at all.

As the District Court identified, one of the primary flaws in the State's current administrative scheme is that it does nothing to meaningfully measure or assess educational suitability (R. at 6608) It is undisputed that the State has no process that assesses the educational suitability of all buildings in any systemic, consistent, or concrete way and that there are no meaningful standards used to evaluate, measure, or appraise the suitability of facilities.

The administrative scheme that the State claims is an appropriate and adequate assessment of suitability includes the annual district planning process, major maintenance, component funding, capital construction, and MCER studies. (Tr. Vol. XIII p. 3436) While these elements may incidentally identify or address suitability issues they do not directly or systematically assess or provide specific remedies or funding for suitability.") Even the

State's expert, Dr. Seder acknowledged that these processes will not necessarily address all suitability issues. (Tr. Vol. XIII p. 3439)

The State asserts that procedure in Chapter 3, Section 8 of the SFC rules is the mechanism used to address suitability issues not addressed through the processes that address buildings with condition and capacity needs. They dispute the District Court's determination that the SFC Chapter 3, Section 8 rules are inadequate to appropriately address suitability because it imposes the burden to establish the need for a suitability remedy on school districts and has the "significant potential for arbitrary, unequal and disparate results." (R. at 6607-6608; St. Br. pp. 84-85)

The State claims that the Chapter 3 Section 8 process merely imposes a "de minimus" burden on districts consistent with other processes. However, the reality of the Chapter 3, Section 8 process both creates as a series of "hoops" a district has to jump through in order to get the issue of suitability even considered by the SFC and also operates as a practical deterrent or barrier to addressing suitability issues. Under Chapter 3, Section 8, it is the district's responsibility to identify any potential suitability issues, essentially requiring districts to assess the suitability of their own facilities. Then, the school board must publicly make a finding that the district is unable to offer the "required educational program." This serves as a deterrent to discourage districts from making claims under Chapter 3, Section 8, as school boards are likely to be understandably reluctant to publicly declare they are not offering the required education. The district must then prepare a "detailed report" to support their claim that a facility is inadequate, including such things as "objective and measurable

impacts on students," aggregate performance data, comparables with other buildings in the state, and deficits under the SFC adequacy standards or national standards. (Exhibit Y5, Chapter 3 Section 8 of the SFC Rules) This effectively requires districts to assemble evidence to *prove* the need for a remedy, which not only is likely to use substantial district time and resources, but also literally places the burden on districts to demonstrate a building is unsuitable. Furthermore, this burden also increases the potential for unequal or disparate treatment between districts, as districts have varying resources, expertise, and personnel to devote to this process.

Chapter 3, Section 8 is also inadequate to address the state's obligation to ensure educational suitability because the process does not address suitability in an equitable, consistent, or reliable manner. The decision under this process of whether a "remedy is necessary" for suitability is entirely within the discretion of the SFC and is based on the district's report and the School Construction Division's (SCD's) recommendation, with no other objective criteria or standards. (Ex. Y5) Chapter 3, Section 8 provides no meaningful criteria by which a school district could identify or assess whether their facilities may qualify for a remedy. As the District Court determined, there is no "criteria, standard, or score" that qualifies a building for a MCER study, or for a remedy, for suitability. (R. at 6608) This is established by the plain language of Chapter 3, Section 8 itself. The lack of any meaningful criteria invites arbitrary, inequitable, and inconsistent decisions about remedies for suitability. As the District Court pointed out, the SFC has "unfettered discretion" whether or not to fund a remedy that addresses suitability because of Chapter 3, section 8. (R. at 6608)

Exhibit Y5, Chapter 3, Section 8) Thus, the process is inherently at risk for "arbitrary, unequal, and disparate results" because the SFC is free to use different standards, or no standards at all, for each facility it considers under Chapter 3, Section 8. (R. at 6608). As the Court pointed out, "disparate treatment of schools based on arbitrary standards cannot be justified." *Campbell II*, ¶100, 19 P.3d at 553.

While the State may have recommended remedies and undertaken MCER reports under Chapter 3, Section 8, the failure to base these ad hoc decisions on clear standards or objective criteria inevitably leads to inequity between districts and over time. The lack of standards to ensure consistency not only invites arbitrary and unequal handling of suitability needs, but it also makes these funding decisions particularly vulnerable to the influences of factors like politics or individual bias. The discretionary nature of the Chapter 3 Section 8 process also allows the State to do nothing to remedy suitability issues, even if submitted projects qualify under the rule and are appropriately raised to the SFC. Even though the SFC has authorized MCER studies and appears to be ready to proceed with implementing remedies under Chapter 3, Section 8, there is nothing in the rules that require the SFC to actually approve or fund these remedies, meaning that future suitability concerns brought to the SFC may never be addressed, despite how legitimate they may be.

The Chapter 3, Section 8 procedure is also limited only to circumstances where facilities are so unsuitable that districts cannot provide the "required educational program." The rule does not allow districts to raise all claims that their facilities are educationally unsuitable unless the problems have become so severe that they prevent the district entirely

from offering the required educational program or "basket of goods". (Ex. Y5) It is unacceptable and inconsistent with constitutional mandates for the State to wait to even consider taking action until facilities are so inadequate that students cannot even be offered the basic educational program required by the State. Since a new facility will likely take several years before completion after it is approved under Ch. 3, Section 8, even the State's expert, Dr. Seder, acknowledged that this standard means the district may have to go several years without being able to offer some students the basket of goods. (Tr. vol. XIV p. 3584)

There is no evidence in the record that the State's current process effectively measures or addresses suitability issues or that it does so in a consistent, equal manner. On the other hand, there is substantial evidence in the record that under the current administrative scheme, many facilities remained unsuitable at the time of the trial. (Tr. Vol. V pp.1257-1258; Tr. Vol. II p. 309; Tr. Vol. V pp. 1269-1270; Ex. 2272; Tr. Vol. I pp. 267-268, 278-280) Evaluating and addressing suitability on a discretionary, ad hoc basis without any standards cannot be considered a legitimate alternate "methodology."

The State argues that its current processes are more consistent than a statewide assessment and therefore a legitimate, constitutional alternative methodology to address suitability. This argument is primarily based on the testimony of Dr. Seder, an expert witness for the state who the District Court determined was not credible. (R. at 6578-6579) While the State fails to identify this, Dr. Seder's testimony is what is referenced to support its argument that suitability assessments are inherently non-uniform and inconsistent. (St. Brief pp. 86-87) Dr. Seder clearly lacks the expertise and experience to offer reliable opinions on

suitability assessment. Dr. Seder has no expertise in facilities or educational suitability: he has no expertise in planning or designing school facilities, he is not an engineer, he has never assessed a building, written a peer reviewed article on school facilities, or testified on school facilities. (Tr. Vol. XIV pp. 3569-3571) In reaching his opinion on suitability, Dr. Seder considered some methods that other states or districts use to assess suitability, but only looked at the definitions they used for suitability rather than their scoring methodology (Tr. Vol IV pp. 3587-3598) His opinion did not rely on any academic research on suitability assessment or any professional standards for suitability. (Tr. Vol IV pp. 3598-3599) He did not study the implementation of the new Ch. 3, Section 8 procedure or whether it was effective in addressing suitability issues. (Tr. Vol IV p. 3600) In the past ten years, Dr. Seder has not been in a Wyoming school or participated in the district facility planning process, and has possibility participated in the planning and design process of a facility once or twice. (Tr. vol. XIV, pp. 3569-3570) In reaching his opinion, Dr. Seder did not get information from any school districts about how well the adequacy standards currently address suitability, review a district facility plan or a recent MCER study. (Tr. vol. XIV, p. 3574-3577) Any personal experience he has with these processes would have occurred more than 10 years ago. (Tr. vol. XIV, p. 3576-3580) Dr. Seder was unable to provide any specific examples of a MCER study, component funding, or major maintenance that addressed suitability. (Tr. Vol. XIV pp. 3577-3582)

The State has provided no evidence to establish that the District Court's finding on Dr. Seder's lack of credibility is clearly erroneous. In fact, his lack of expertise and personal

knowledge establishes that his testimony regarding suitability is not reliable. Dr. Seder's only experience with suitability is advising Wyoming on the development of its own suitability assessment in approximately 2009 and he bases his criticism of suitability assessments largely on his understanding that this attempt at developing a suitability assessment was unsuccessful. (Tr. Vol IV p. 3598) Dr. Seder simply cannot offer an informed or credible opinion about suitability assessments beyond his personal experience. His personal experience with one failed attempt to establish a suitability assessment is insufficient evidence to establish that any form of statewide suitability assessment would be inherently unreliable.

Furthermore, the State has failed to present any evidence that the States' current process has the "practical advantages" it claims exist over a statewide assessment. One of these purported advantages is the school district's direct involvement. However, there is no evidence that a statewide suitability assessment would not or could not involve the direct involvement of the school district. Other advantages claimed by the State include that the State's current processes are supposedly less likely to miss or delay addressing suitability issues. This is inconsistent with the Chapter 3, Section 8 process that puts the burden on districts to raise suitability issues and only allows them to do so when they have become so serious they render the district unable to provide the required educational program. The State also asserts that its current practices are more efficient than a statewide assessment. While the current system may be less expensive for the State, it fails to meaningfully and fairly assess suitability. The State's practices cannot be considered "efficient" if they fail to

accomplish the required purpose. The fact that an assessment of all school facilities might be more expensive does not justify the State's failures. The Supreme Court has made it clear that cost cannot be an excuse for the State to fail in its constitutional obligation for education. "Because education is one of the state's most important functions, lack of financial resources will not be an acceptable reason for failure to provide the best educational system. All other financial considerations must yield until education is funded." *Campbell I* at ¶146.

When the evidence at trial is evaluated, it is clear that formal suitability assessments are the standard and that Wyoming has used them in the past, without any concern about their reliability. According to industry standards, functionality (suitability) is a component of a comprehensive educational building assessment. (Ex. A12; Tr. Vol. XII pp. 2993-2994) The state has used the professional firm MGT of America to conduct assessments of suitability, along with condition and other aspects of facility adequacy. (Tr. Vol. XIII pp. 3424-3425; Tr. Vol. V, pp. 1203-1205) The results of these assessments were presented to the Court in *Campbell II* and acknowledged in that decision and MGT's assessment and methodology was effectively endorsed by the Court in Campbell II. (Tr. Vol. XIV, pp. 3583-3586; *Campbell II* at ¶34) Laramie County School District #1 hired MGT to conduct a suitability assessment of its facilities in 2018 and MGT presented it to the SFC. (Ex. 2272; Tr. vol. VII, p. 1600) Even the State's expert, Dr. Seder, acknowledged MGT's expertise in conducting suitability assessments. (Tr. Vol. XIV p. 3586) Testimony from State witnesses and experts confirmed that other professional consulting firms besides MGT conduct

assessments of education suitability, including Bureau Veritas, who the State utilized to conduct FCA's in 2022-2023. (Tr. Vol. XIV, p. 3603; Tr. Vol. XII, p. 2938) In 2020, the State, with the assistant of a consultant, developed a new method for assessing suitability. However, that suitability assessment was never adopted or implemented and the requirement to assess suitability has been removed from W.S. 21-15-117 by the legislature. (Tr. Vol. VII, pp. 1597-1598,1609-1610; Tr. Vol. XIV, p. 3595-3596) There is no evidence in the record that any of these methodologies were unreliable or inefficient.

While suitability may be challenging to define or measure, this is not an excuse for the State to ignore this essential element of school facilities, or for it to shift its responsibility to school districts. Evidence that defining and implementing criteria for building suitability may be challenging or "inefficient" is also not sufficient to establish a compelling state interest to excuse the State from assessing suitability. As the District Court correctly identified, "[t]he *Campbell* decisions do not authorize the State to fail to assess educational suitability because educational suitability is difficult to assess." (R. at 6609)

Since the State does not track the suitability of school facilities and does not maintain any data related to suitability in its database, it is impossible for the State to accurately monitor whether school facilities are suitable. (Tr. vol. XI p. 2745) Without this information, the State cannot establish that it is actually successfully monitoring and addressing suitability issues in its current administrative processes. The State cannot meet its obligation by just assuming that not many facilities in Wyoming have significant suitability issues because they were built within the last 20 years, just as they could not avoid assessing them for condition

by assuming that those buildings don't have significant condition issues. (St. Br. p. 88) Such assumptions are not evidence on which a court can rely to prove the state is meeting constitutional requirements.

VII. THE STATE'S FAILURES TO APPROPRIATELY FUND EDUCATION CAUSES HARM.

Although the State argues there is no harm from the state's failures to fund education properly, case law demonstrates that if the model is not cost based, it is unconstitutional *Campbell II* at 54. There was no requirement to show specific harm in *Campbell II*. The only issue was whether the components were all present and properly funded. This Court has indicated that if personnel costs are not cost-based without having to prove that vacant positions or under-qualified teachers. If the model is not cost based in adjusting for inflation, the model is unconstitutional. The State fails to discuss precedents which make it clear that it is not necessary for Plaintiffs to prove any specific harm if they demonstrate that the model is not cost-based. It is fundamental that if the model is not cost based, it is inherently unconstitutional.

Even though proof of harm is not required, the District Court nonetheless found plenty of evidence that harm is occurring due to the funding failures:

> Plaintiffs proved by a preponderance of the evidence that the State's actions and inactions in failing to properly adjust for inflation, failing to assure that personnel salaries are funded based on cost, failing to maintain a cost-based funding model, failure to include and fund all necessary components of a quality education, and failure to maintain and full that assures educationally suitable and adequate have each caused harm to the fundamental right to education. The failures regarding inflation, personnel salaries stem have too many students being taught by unqualified teachers.

(R. at 6609)

See further the District Court's summary of harm (R. at 6612-6616) For testimony that underqualified teachers harm student success, see Tr. Vol. V pp. 1139-41; Tr. Vol. VII pp. 1834-41; Tr. Vol. III p. 740-742; Tr. Vol. pp. 204-207, 247-58.

VIII. THE DISTRICT COURT CORRECTLY FOUND THAT THE MODEL IS NOT COST BASED.

The State argues at page 63 of their Brief that the District Court erred in finding that the model is not cost-based. All of the foregoing arguments that personnel salaries are not properly funded, inflation adjustments are not properly applied, that the model is missing important elements go to demonstrate that it is not cost-based. Again, the State does not address the underlying facts used by the Court in any effort to show they are clearly erroneous.

The State argues that the model is a "block grant", which is a true claim but also one which ignores the factual findings and case law that requires that each individual component of the model must be costed in a reasonably accurate manner. Saying there is a lot of money in the model and so districts can just move it around, does not demonstrate that the components are properly funded. If any of the components are not properly funded, then the model is invalid. The Court specifically addressed this kind of argument in finding that using total dollars does not answer the question whether the components are properly funded.

The State argues that "cost plus" was previously approved by the Court. As noted in the earlier discussion, in *Campbell IV* the Court only found there was a "plus" after first

finding factually that all the components were properly funded, so expenditures in that instance above the amount needed for proper funding might be considered to be "cost plus" in a certain sense of that term for those specific components in that specific assessment due to the finding of the district court at that time that the State was providing sufficient funding of those components. As discussed previously in this brief, however, that assessment in *Campbell IV* was made in a very different context than what has occurred in this case. In this case, the District court factually found that funding was not sufficient to meet costs, so there is no "cost plus" concept applicable to this case. "Cost plus" is not a magic term that can be applied to render a cost excessive. It is relevant only where it is proven that the constitutional funding requirements have been met, which is not what the District Court found or the evidence supports. In order to argue that any elements of the legislature's statutory model are "cost plus," the State must prove that that all costs of education area actually accounted for, which it did not. The State's argument is even less viable because of its dependence on the flawed Dr. Seder's testimony.

CONCLUSION

WEA asks this Court to affirm the District Court Findings of Fact and Order declaring the finance system unconstitutional. WEA requests that the Court remand the case to the District Court to determine if the State has corrected the constitutional defects found in the District Court Order and take such further steps pursuant to its equitable powers to remove incentives currently existing for the legislature to delay or to comply briefly, then go out of

compliance and wait for someone to litigate again. WEA seeks to have a stable finance system that is properly funded on an ongoing basis, avoiding the need to litigate school finance again.

DATED this 8th day of September 2025.

For Wyoming Education Association, Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing *Brief of Appellee Wyoming Education Association* was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System, on the 8th day of September 2025, on the following parties:

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The undersigned also certifies that all the required privacy redactions have been made and, with the exception of those redactions, every document submitted in digital form or scanned .pdf is an exact copy of the written document filed with the Clerk, and that the document has been scanned and is free of viruses.

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