IN THE SUPREME COURT, STATE OF WYOMING

NICOLETTE and TRAVIS LECK and VICTORIA HAIGHT, Appellants (Intervenor-Defendants), v. WYOMING EDUCATION ASSOCIATION, a Wyoming nonprofit membership corporation; JENY GARDNER, individually and on behalf of her minor child; CHRISTINA HUTCHISON, individually and on behalf of her minor children; KATHRYNE PENNOCK III, individually and on behalf of her minor children; KATHARINE and ZACHARY SCHNEIDER, individually and on behalf of their minor children; CHAD SHARPE and KIMBERLY LUDWIG-SHARPE; individually and on behalf of their minor child; and CHRISTINA VICKERS and BRANDON VICKERS, individually and on behalf of their minor children, Appellees (Plaintiffs).	S-25-0204

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STATEMENT OF JURISDICTION

This Court has both inherent jurisdiction and statutory jurisdiction to vacate or modify a preliminary injunction. *Farmers' St. Bank of Riverton v. Haun*, 213 P. 361, 365 (Wyo. 1923); n The Rules of Appellate Procedure require the timely filing of a notice of appeal in order to appeal the grant or denial of a preliminary injunction. *See* Wyo. R. App. P. 1.05(e), 2.01. Parent-Intervenors Nicolette and Travis Leck and Victoria Haight ("Parents") filed their notice of appeal on July 17, 2025, just two days after the district court entered its preliminary injunction order at issue in this appeal enjoining the education savings account program and their ability to use ESAs to benefit their children.

Wyoming Appellate Rule 1.05 defines "appealable orders" to include "[i]nterlocutory orders and decrees of the district courts which: (1) Grant, continue, or modify injunctions." Wyo. R. App. P. 1.05(e). Rule 2.01 then directs that an appeal from anything defined as an "appealable order" is commenced by "filing the notice of appeal with the clerk of the trial court within 30 days from entry of the appealable order and concurrently serving the same." *Id.* 2.01(a). Thus, because Parents are appealing an interlocutory order granting an injunction, they filed a notice of appeal in compliance with Rules 1.05(e) and 2.01(a). *Cf. Tram Tower Townhouse Association v. Weiner*, 2022 WY 58, ¶ 37, 509 P.3d 357 (Wyo. 2022) (holding that a "receivership order is appealable" under Rule 1.05(e)(2)).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The district court preliminarily enjoined the education savings account program ("ESA Program") created by the Steamboat Legacy Scholarship Act, which appropriates funds to the State Department of Education for scholarships that Wyoming families may spend on their children's tuition, textbooks, tutoring, lessons, homeschool curriculum or other educational needs. It held that the ESA Program is likely unconstitutional because Article 3, Section 36 of the Wyoming Constitution prohibits government programs with private beneficiaries and because any educator accepting ESA dollars as payment is a "public school" governed by the "uniform system of common schools" and related provisions of Articles 7 and 21. In reaching that conclusion, it set aside legislative authority under Article 1, Section 23 to encourage "means and agencies" of education and found irreparable harm to "a child" from "non-uniform" education, without specifying what child would be harmed or how. The preliminary injunction order creates the following issues for review:

1. Does the Wyoming Constitution's requirement that appropriations go to state-controlled entities permit the legislature to appropriate money to a state agency for a social welfare program with private beneficiaries, such as the ESA Program?

2. Does Article 1, Section 23's legislative duty to "suitably encourage means and agencies calculated to advance the sciences and liberal arts" permit the ESA Program?

3. Does a private education provider, by accepting publicly funded scholarships as payment from parents, become a non-uniform public school, and thereby deprive "a child" of a "uniform system of common schools" guaranteed by the Wyoming Constitution?

4. Does the balance of equities favor permitting the ESA program to go into effect?

INTRODUCTION AND STATEMENT OF THE CASE

While they provide appropriate education for many students, public schools do not, and cannot, satisfy every family's educational needs. Some students need more individualized attention or have special needs that public schools are not equipped to meet. For others, their families may prefer a classical or religious education, each with specialized curricula that public schools often do not (or cannot) provide. For them, no less than for families happy with public-school education, government has a role to play in financing, for the betterment of the whole community, individual educational choices. Across the country, school choice programs enable families to find educational success for their children. Dr. Patrick Wolf, an expert in education policy and education reform and a Distinguished Professor at the University of Arkansas, testified in the district court that "Private school voucher and tax-credit scholarship programs have a strong record of producing gains in educational achievement and educational attainment for program participants." TR 285, ¶ 14.

Not only that, but the benefits of private choice programs boost public-school students as well. Dr. Wolf observed in his testimony that "[p]rivate school choice programs tend to improve public school performance . . . ," TR 287, ¶ 17, and indeed, "[f]ew questions in education policy have been answered so definitively by scholarly research: Competition from private school choice programs usually has positive effects on the performance of affected public schools." TR 291, ¶ 22.

In the 2024 session, the Wyoming legislature decided to pursue the advantages of private school choice for Wyoming students and enacted the Education Savings Account Program, House Bill 0166. *See* Wyo. Stat. Ann. §§ 21-2-901–909; 21-4-102; 21-4-301; 21-13-

310. Education Savings accounts ("ESAs") are a form of educational choice wherein a student receives funds that may be spent on multiple, but restricted, educational uses. Participation is optional, and families can continue to attend their traditional public school. But if a family determines that is not the best option for their child, the ESA Program creates additional opportunity and flexibility in education. It also helps address disparities in educational options to children throughout the state.

The district court, however, enjoined the ESA Program from taking effect using legal theories ungrounded in constitutional text, history, or precedent. Equally critical, the district court erred because it never answered three fundamental questions raised by its decision:

- How can a "no-private-beneficiaries" Private Appropriations Clause theory be squared with longstanding Wyoming public benefit programs with private beneficiaries, such as Medicaid, TANF, unemployment and others?
- How does Article 1 § 23's duty to "encourage" education—a component of the Wyoming Declaration of Rights—have independent meaning if the Legislature cannot support educational programs in addition to the public school system?
- How does the "uniform system of common schools" afford parents of public-school students a right to veto other families' use of public benefits to educate their children *outside* that system?

The district court's injunction—which imposes substantial financial and educational harm on the families of Parent-Intervenors Nicolette and Travis Leck and Victoria Haight (and hundreds of other Wyoming families)—cannot survive without adequate answers to these questions. Those answers do not exist, and the injunction must be reversed.

I. Facts

Because this appeal concerns questions of law, the facts at this stage are essentially undisputed. The details of the ESA Program and the facts regarding Parents are summarized below for the Court's reference.

A. The Wyoming ESA Program Provides Critical Government Support for Parents to Access Much-Needed Education Options.

Under the ESA Program, all school-aged students who have not graduated high school or received a high school equivalency certificate and are not enrolled in a public school are eligible. *See* Wyo. Stat. Ann. § 21-2-904(a). With the Steamboat Legacy Scholarship Act amendments to the ESA Program, starting with the 2025–2026 school year, under the Program, each student may receive up to $7,000.00 deposited into their ESA annually to fund approved educational expenses. *Id.* § 21-2-903(a). Parents and guardians may use Program funds to pay for a variety of educational expenses—including, for example, tuition and fees for various kinds of qualified schools, tutoring programs, and services and therapies; or for supplies like uniforms, technology, or textbooks and instructional materials. *See id.* § 21-2-904(b)(i).

To receive an ESA on their child's behalf, every Wyoming parent must sign a binding agreement in which they promise to use funds only for qualifying expenses and ensure that their child receives an education in certain subjects, including reading, writing, and mathematics, among others. *Id.* § 21-2-904. Parents using the ESA must also "release[] the applicable school district from all obligations to educate the ESA student." *See id.* § 21-2-904(b)(ii)(C).

The ESA Program does not use any funds set aside for public schools. Instead, the legislature has funded it through separate appropriations from the general fund. The 2024 version of the ESA Program appropriated twenty million dollars from the general fund to the ESAs expenditure account. H.B. 166 § 3, 2024 Leg., 67th Sess. (Wyo. 2024). The 2025 expansion then appropriated an additional thirty million dollars from the general fund "to the steamboat legacy scholarship program account created by section 1 of this act for the purposes of the Steamboat Legacy Scholarship Act." H.B. 199 § 3, 2025 Leg., 68th Sess. (Wyo. 2025). The 2025 legislation also expressly prohibits funding the Program with any "county, city or school district tax revenues." Wyo. Stat. Ann. § 21-2-903(d). Beginning the 2025–2026 school year, payments to approved ESAs will be disbursed on a quarterly basis for families to use. *Id.* § 21-2-903(c).

According to the Wyoming Department of Education, 3,965 student applications were submitted at the time of the district court's injunction hearing. TR 350, ¶ 3. In addition, the state has approved 109 private schools and 422 other education service providers for participation in the program. *Id.* ¶ 4.

B. Wyoming's Public Schools Do Not Meet the Needs of Parent-Intervenors, Who Will Benefit from the ESA Program.

Parent-Intervenors Nicolette and Travis Leck and Victoria Haight are Wyoming parents with children who are eligible for and have applied for the Program, and who expected to receive ESA awards. Each is depending on the Program's financial aid to fund the educational options that best suit their children.

1. The Leck Family

Nicolette and Travis Leck have three sons: twins T.L. and M.L., who are twelve and in seventh grade, and C.L., who is eight and in fourth grade. TR 230–232, ¶ 3. The children are eligible for the Program this school year, and the family applied as soon as the application portal opened. *Id.* ¶ 12. Nicolette and Travis believe that a classical education model is the best fit for their children. *See id.* ¶¶ 5, 6, 9. Because no public schools in their area offer a classical education, *id.* ¶ 6, they planned to rely on the ESA Program to pay for tuition at Veritas Academy, a private classical school in Cody. *Id.* ¶ 12. Their ESA application was approved and they received a signed contract before any injunction was issued in this case. TR 403.

Nicolette and Travis believe that Veritas Academy is the best educational option for their children. *See id.* ¶¶ 9–11. When they lived in Casper, Wyoming, the children attended a classical public school that the family loved because of its high time on task, high academic and behavioral expectations, and traditional math and reading curriculum. *Id.* ¶ 5. But when they moved back to Cody, the Lecks were disappointed that no classical public school options existed; they sent their children to a traditional public school for one school year instead. *Id.* ¶¶ 6–7. They missed the classical education and decided to send their children to Veritas because of its high behavioral and academic expectations, demanding coursework, and curricular offerings. *Id.* ¶¶ 7, 8, 9. Veritas also teaches Latin. *Id.* ¶ 8. The classical curriculum has been a much better fit for the children, who are much happier than they were at the public school. *Id.* ¶ 10. For the coming school year, tuition is $8,000.00 for each child, an amount the family struggles to afford without the Program—especially since Nicolette and Travis also pay an additional $1,100.00 monthly for private tutoring. *Id.* ¶ 11.

2. The Haight Family

Victoria Haight has four young children: V.H., who is seven and in second grade, M.H., who is five and in kindergarten, and L.H. and F.H., who are three and two and too young to attend school during the 2025–2026 school year. TR 241–242, ¶¶ 2, 5. V.H. and M.H. are eligible for the Program this school year and the family applied for the Program as soon as the application portal opened. *Id.* ¶ 13. Victoria believes that traditional public schools are not a good fit for her children and, accordingly, planned to rely on the ESA Program to afford tuition at Mount Hope Lutheran School, an approved provider under the Program. *Id.* ¶¶ 6, 7, 9, 11. Her ESA application was approved and she received a signed contract before any injunction was issued in this case. TR 406.

As a former public school teacher, *see id.* ¶ 4, Victoria understands that public school is a wonderful option for many families, but not her own. *See id.* ¶¶ 4, 6, 9. While she was teaching in public school, Victoria was concerned about the prevalence of behavioral problems—including bullying and students' sharing of inappropriate material. *Id.* ¶¶ 4, 6. Victoria and her husband decided they wanted their children to have a religious education in an environment that aligned with the family's values and moral code. *Id.* ¶ 7. Mount Hope provides that type of education, focused on creating well-rounded citizens and good human beings. *Id.* It also uses a classical learning model that has higher academic expectations than the local public school. *Id.* ¶¶ 7–8. As a one-income household, Victoria and her husband struggle to afford tuition at Mount Hope without the Program—especially as they expect also to enroll the two younger children, L.H. and F.H., in Mount Hope once they reach school age. *Id.* ¶ 12.

II. Procedural History

Plaintiffs filed their complaint and their motion for preliminary injunction on June 13, 2025. TR 1, 75. Parent-Intervenors sought to intervene on June 20, and both the State Defendants and Parents filed their opposition to the preliminary injunction motion on June 24. TR 167, 247, 351. The district court held a hearing on June 27 where it orally granted intervention and orally issued a temporary restraining order, enjoining the program pending a written decision on a preliminary injunction. TR 428–430, 459–463 (memorializing the oral decisions). The district court issued its written order granting a preliminary injunction on July 15, TR 538–558, and all Defendants appealed that order on July 17, TR 559–562, 563–570.

The district court found probable success on the merits on two claims. First, it found it likely that the ESA Program violates the constitutional clause forbidding appropriations directly to private individuals and corporations. TR 547. It reached this conclusion by holding that the clause prohibits appropriations for any state program that will ultimately distribute funds "to persons who are not under the absolute control of the state." *Id.* It also concluded this holding does not affect other state social welfare programs because "[t]he only program at issue before the Court is the Steamboat Legacy Scholarship Act." TR. 621.

Second, it found it likely that the ESA Program violates "a child's right to a proper education." TR 548. It held that any education program that uses "public funding" is part of "the State's system for financing schools." TR 549–50. Then, it held that the ESA Program does not satisfy the uniformity requirements for any school receiving public funds because it does not regulate schools that enroll scholarship students. TR 551.

The district court further held that the balance of the equities favors an injunction because "the fundamental right to an education exists to benefit not just students but all Wyoming citizens" and the status quo favors denying educational funds to Parent-Intervenors and other similarly situated families. TR 554–556.

STANDARD OF REVIEW

This appeal raises three questions of law, which are reviewed de novo. *See Brown v. Best Home Health & Hospice, LLC*, 2021 WY 83, ¶ 9, 491 P.3d 1021, 1026 (Wyo. 2021). The decision to grant or deny an injunction on the equities is reviewed for abuse of discretion. *See id.*

SUMMARY OF ARGUMENT

The district court committed at least three errors of law that this Court should reverse.

First, Article 3, § 36—which merely prohibits any "appropriation . . . *to* any person . . . not under the absolute control of the state," Wyo. Const. art. 3, § 36 (emphasis added)—does not ban *all* state-controlled benefit programs that have private beneficiaries. When the legislature appropriates money for benefits *to* a state agency rather than *to* a private person or entity, the constitution permits those benefits. Most state supreme courts with similar clauses have rejected the district court's interpretation. *See, e.g.*, *Moses v. Ruszkowski*, 458 P.3d 406, 420–21 (N.M. 2019); *Magee v. Boyd*, 175 So. 3d 79, 123–24 (Ala. 2015); *Huber v. Groff*, 558 P.2d 1124, 1132 (Mont. 1976); *see also Americans United for Separation of Church & State Fund, Inc. v. State*, 648 P.2d 1072, 1086 (Colo. 1982). As with other analogous programs such as Medicaid, TANF, and unemployment, the appropriation here goes "to" a state agency, which makes it constitutional no matter who might eventually derive a benefit from the appropriation. Besides, a state agency exercises control over authorized ESA Program expenses and retains

the authority to audit outlays, so the program expenditures remain subject to state control. Because the Private Appropriation Clause requires at most state control over the *program* rather than all *beneficiaries*, the ESA Program satisfies the clause.

Second, instead of finding an express restriction on the legislature's plenary power in the Wyoming Constitution, the district court held that the duty to create a uniform system of common schools *implicitly* negates the duty—and even the ability—to "suitably encourage means and agencies" to advance education in Article 1, § 23 of the Wyoming Constitution. Both state supreme courts that have interpreted similar "encourage education" state constitutional provisions have rejected that argument. *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016) (holding that the existence of separate provisions for encouraging education and for establishing a uniform system of common schools means both are effective and allow an ESA program); *Meredith v. Pence*, 984 N.E.2d 1213, 1224 (Ind. 2013) (upholding a K-12 state scholarship program because the two constitutional provisions provide two distinct duties that cannot be conflated using an *in pari materia* construction). The district court held differently because Wyoming's "encourage education" clause appears in Article 1 instead of Article 7. *See* TR 623. No rule of construction supports that interpretation; indeed, locating a commitment in the Declaration of Rights usually makes it *more* enforceable, not less.

Third, the public school education clauses at issue in *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310, 333 (Wyo. 1980), and *Campbell County School District v. State*, 907 P.2d 1238, 1258 (Wyo. 1995) (*Campbell I*), do not confer a "uniform system of common schools" (or any other) standard applicable to private providers that accept publicly funded scholarships as payment from families. The ESA Program funds students, not schools, and the

constitutional requirement for public schools is an educational floor, not a ceiling. It does not apply to additional programs like the ESA Program.

The injunction order finds a constitutional violation not because the ESA Program harms public schools—indeed, Plaintiffs disclaimed any such theory—but because the Program will not guarantee the "quality education" required of public schools. TR 549. In effect, that holding grants Plaintiffs—public school parents and a teachers' union—a right to challenge the quality of education other parents obtain for their children using government benefits. *Id.* Plaintiffs, however, do not seek to attend a school using the ESA Program, and the Wyoming Constitution does not entitle them to question the quality of education that other parents provide their children—indeed it would be preempted by Parents' federal constitutional rights if it did.

The balance of the equities also disfavors an injunction here due to the harm it inflicts on Parents, their children, and hundreds of other families. These families already received approval of their ESA applications and signed contracts before any injunction was issued. TR 403, 406. They will be harmed if they must pay those bills while the ESA program is enjoined. In contrast, any injury Plaintiffs face is minimal, as they make no claim their children's education improves or changes in any way with the imposition of the injunction. They appeal to the status quo to cover for their lack of injury, but the status quo is the lawful enactment of a bill on which Parents relied, as no provision of the Wyoming Constitution requires judicial preclearance for a law. Plaintiffs' speculative interests in enforcing uniformity at other schools cannot justify inflicting real financial harm on Parents. Accordingly, equity favors reversal of the preliminary injunction.

ARGUMENT

I. This Court should join its sister states and hold that private appropriations clauses do not prohibit state-controlled social welfare programs with private beneficiaries.

This Court should uphold the constitutionality of appropriations to state agencies for social benefit programs that also benefit private individuals. The Private Appropriations Clause merely prohibits appropriations "*to* any person, corporation or community not under the absolute control of the state." Wyo. Const. art. 3, § 36 (emphasis added). Shockingly, the district court declared that "[t]here is no dispute that the Act appropriates funds for educational purposes to persons who are not under the absolute control of the state and to denominational or sectarian institutions or organizations." TR. 547. That is precisely what Parent-Intervenors dispute—and have always disputed. No private appropriation is at issue here because no funding is appropriated *to* anyone except a state agency, which also retains authority over the funding, certification, and auditing for the program. H.B. 166, 2024 Leg., 67th Sess. (Wyo. 2024); H.B. 199 § 3, 2025 Leg., 68th Sess. (Wyo. 2025); Wyo. Stat. §§ 21-2-906, 907. The district court erroneously expanded the impact of the clause beyond its textual limits to interfere with programs that might happen to benefit some individuals.

A. Private appropriations clauses were written to ensure state law prevents direct appropriations to railroads and other companies.

The district court erroneously adopted a purposive rather than textual understanding of the Private Appropriations Clause, but even at that misunderstood the history and purpose of constitutional provisions banning direct appropriations to individuals and corporations.

Private appropriations clauses were added to some state constitutions in the late nineteenth century as a response to the growing issues of direct appropriations to companies,

primarily railroads. The question of "aid voted to railroads" consumed the attention of federal courts and almost every state's courts. *See Citizens' Sav. & Loan Ass'n v. City of Topeka*, 87 U.S. 655, 660 (1874).

Federal courts assumed primary authority over the question whether such direct aid to railroads fulfilled a "public purpose." *See id.* at 664–65. The U.S. Supreme Court even refused to give binding effect to a Wisconsin Supreme Court holding that aid to railroads violated the state constitution. *See Olcott v. Fond du Lac Cnty.*, 83 U.S. 678, 689–90 (1872). The Wisconsin Legislature had authorized Fond du Lac County to appropriate funds directly to a railroad company, and the Wisconsin Supreme Court held that such an expenditure was unconstitutional because it served no public purpose. *See id.* at 679–80. The U.S. Supreme Court reversed, reasoning that this public purpose holding was not a state constitutional interpretation because "[t]he meaning of no provision of the State constitution was considered or declared." *Id.* at 689. Instead, it held that the question of public purpose was a question of *federal common law* in the absence of an express state constitutional provision on point. *See id.*

State constitutional conventions responded by adding express provisions addressing direct appropriations to companies, making the matter a question of state law. Thus, the 1872 and 1874 U.S. Supreme Court cases were followed by the addition of private appropriations clauses to the constitutions of Alabama in 1875 and Colorado in 1876. *See* Alabama Constitution of 1875, art. IV, § 34[1] (later renumbered as Ala. Const. § 73); Colo. Const. art. V, § 34. The Montana constitutional convention copied Colorado's version of the clause. *Compare*

[1] https://digital.archives.alabama.gov/digital/collection/constitutions/id/51

Montana Const. of 1889, art. V, § 35,[2] *with* Colo. Const. art. V, § 34. Then, the Wyoming constitutional convention used Montana's constitution. *See* Michael J. Horan, *The Wyoming Constitution: A Centennial Assessment*, 26 Land & Water L. Rev. 13, 19 & n.50 (1991). With these express provisions added, states made the question of direct appropriations to companies (and railroads in particular) a matter of state constitutional law, avoiding the oversight of federal common law that affected states like Wisconsin.

This history in no way suggests that the purpose of such clauses was to preclude government benefit programs with private beneficiaries. It demonstrates only that state constitutional framers were determined to prevent powerful railroad interests from procuring government handouts directly to themselves. The district court found a different purpose to enforce beyond the plain constitutional text, but that purpose was errant and disconnected from the actual history of private appropriations clauses.

B. In light of this history, state supreme courts examine whether the legislature appropriated money directly *to* a private entity, not whether private entities or individuals are intended beneficiaries.

Because private appropriations clauses were written to address direct appropriations alone, most states enforce them by examining whether funds were appropriated directly to a state agency or to a private entity, bypassing entirely a government agency. *See Moses v. Ruszkowski*, 458 P.3d 406, 420–21 (N.M. 2019) ("The fact that students derive a benefit from the [state program] does not implicate Article IV, Section 31."); *Magee v. Boyd*, 175 So. 3d 79, 123–24 (Ala. 2015); *Huber v. Groff*, 558 P.2d 1124, 1132 (Mont. 1976).

[2] https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1002&context=montanaconstitution_docs

In *Moses*, the New Mexico Supreme Court reviewed the use of state funds for textbooks at private schools. 458 P.3d at 420–21. Plaintiffs challenged the program as an unlawful appropriation to a private person or private entity for educational purposes. *See id.* The New Mexico Supreme Court rejected that reasoning, citing its case law holding that the clause forbids appropriations *to* private entities but does not forbid benefits for private entities from state programs where the money is appropriated *to* a state agency. *See id.* (citing *State ex rel. Interstate Stream Comm'n v. Reynolds*, 378 P.2d 622 (N.M. 1963)).

New Mexico's longstanding interpretation is the most common interpretation of private appropriations clauses in other states. The Montana Supreme Court approved housing payments for individuals because the funds were appropriated to a state agency. *See Huber*, 558 P.2d at 1132. It found no violation of the private appropriations clause when a state agency uses the funds for a state-controlled program with private beneficiaries, applying the same reasoning as the New Mexico Supreme Court. *See id.* Similarly, the Alabama Supreme Court approved tax credits for individuals paying private school tuition because tax credits are not appropriations and because scholarships are not appropriations to private schools. *See Magee*, 175 So. 3d at 123–24. Under any of these states' interpretations, the key question in enforcing a private appropriations clause is who receives the appropriation, not the identity of the ultimate beneficiary.

Colorado also interprets its private appropriations clause to permit state-controlled programs with private beneficiaries so long as those programs serve a public purpose. In *Americans United for Separation of Church & State Fund, Inc. v. State*, 648 P.2d 1072, 1086 (Colo. 1982), the Colorado Commission for Higher Education was appropriated funds to distribute

to college students for tuition. *See id.* at 1074–75. The court held that the validity of the appropriation did not depend on the recipient or the ultimate beneficiary but instead on whether the public purpose "preponderates over any individual interests incidentally served by the statutory program." *Id.* at 1086. It then held that the scholarship program's primary purpose was education—a quintessential public purpose. *See id.* In reaching this result, it interpreted the private appropriations clause to require a public purpose to any appropriation. *See id.* (citing *Bedford v. White*, 106 P.2d 469 (Colo. 1940)).

In each of these states, Wyoming's ESA Program appropriation would be valid. In New Mexico, Alabama, and Montana, it would be constitutional because it was directed to the Wyoming Department of Education, an undisputed state agency. H.B. 199 § 3, 2025 Leg., 68th Sess. (Wyo. 2025); *see* Wyo. Stat. § 21-2-903(b). And in Colorado, it would be valid because it serves the public purpose of education. *Americans United*, 648 P.2d at 1086. As the Wisconsin Supreme Court observed in *Jackson v. Benson*, 218 Wis. 2d 835, 897, 578 N.W.2d 602, 628–29 (1998), "education constitutes a valid public purpose," and "private schools may be employed to further that purpose." Citing *Wisconsin v. Yoder,* 406 U.S. 205, 213 (1972), and *Brown v. Board of Education,* 347 U.S. 483, 493 (1954), the *Jackson* court concluded that "[e]ducation ranks at the apex of a state's function." *Jackson,* 578 N.W.2d at 629. Critically, the public or private status of a particular school is irrelevant to the public purpose of education because "(The State's) interest is education, broadly; its method, comprehensive." *Bd. of Ed. of Cent. Sch. Dist. No. 1 v. Allen*, 392 U.S. 236, 247 (1968) (quoting *Cochran v. Louisiana State Bd. of Educ.*, 281 U.S. 370, 375 (1930)) (upholding state program purchasing textbooks supplied to private schools).

C. The trial court errantly rejected both the majority interpretation and Colorado's alternative interpretation of private appropriations clauses.

The trial court here reached a different result by rejecting the text of the clause and adopting neither interpretation of private appropriations clauses used in other states. Instead of examining the direct recipient of the appropriation or the public purpose of the government program, the district court rewrote the clause to require government control over not only the program for which the legislature appropriated the money, but also every secondhand or thirdhand recipient of funds, including parents and any certified providers they use. TR 547. The text of Section 36 does not require direct government control over every beneficiary of a government program, which is why so many other states have rejected that interpretation for similar clauses.

In support of its holding, the district court cited a South Carolina case even though South Carolina does not have a Private Appropriations Clause. TR 547–548. South Carolina has a clause that states "No money shall be paid from public funds. . . for the direct benefit of any religious or other private educational institution." S.C. Const. art. XI, Section 4. Its Supreme Court addressed what constitutes a prohibited "benefit" under that provision. *See Eidson v. S.C. Dep't of Educ.*, 906 S.E.2d 345, 351-56 (S.C. 2024)).

The Wyoming Constitution does not include any such broad prohibition against "benefits" to any private educational institutions (or anyone else) regardless of (1) the means of distributing the funds or (2) social utility. Wyoming instead restricts only recipients of direct "appropriations," which is a specific, well-defined method of distributing money, namely "a law that authorizes expenditures from a specified source of public money for designated purposes." *Consumer Financial Protection Bureau v. Community Financial Assoc. of America*, 601 U.S.

4164 (2024). The only such "laws" authorizing expenditures at issue here are H.B. 166, 2024 Leg., 67th Sess. (Wyo. 2024), and H.B. 199 § 3, 2025 Leg., 68th Sess. (Wyo. 2025), which authorize expenditures from the general fund "to the steamboat legacy scholarship program account," *i.e.*, not to any individual, corporation, or other entity not under the state's control.

Decisions of other state supreme courts on provisions that are *not* in the Wyoming Constitution are the wrong cases to consult when interpreting the Wyoming Constitution.

D. A constitutional rule invalidating programs that advance public interests by granting benefits to a wide array of individuals would strike down a host of state welfare programs.

The district court's interpretation is not only incorrect but also risks invalidating a wide range of programs and contracts in Wyoming, including social welfare programs such as Medicaid, 42 U.S.C. §§ 1396–1396w-8; Temporary Assistance for Needy Families (TANF), 42 U.S.C. §§ 601–619, and unemployment benefits, 26 U.S.C. § 85, and social programs that are not means tested, such as the workforce development training fund, Wyo. Stat. § 9-2-2604. In each of these programs, the legislature appropriates money to a state agency, which in turn either uses it to pay private individuals' and providers' claims (in the case of Medicaid) or distributes it to private individuals to use at private businesses (in other benefit programs). *See* Wyo. Stat. § 42-4-104 (authorizing payment of state funds for private individuals' health care); *id.* 42-2-104 (authorizing payment of state funds as cash benefits to private individuals under POWER, Wyoming's state program for TANF); *id.* §§ 27-3-301–304 (authorizing payment of state funds to private individuals who are unemployed); Wyoming Medicaid Annual Report, Wyo. Dep't of Health,[3] at 10–11 (showing use of state appropriations for Medicaid); H.B. 0001

[3] https://health.wyo.gov/wp-content/uploads/2025/03/SFY-2024-Annual-Report.pdf

(2024) at 27 (appropriating over $12 million in state funds for unemployment). Funds from those programs, in other words, flow to medical care providers, grocery stores, individual beneficiaries, landlords, mechanics, and other private entities not subject to state control, just like the ESA Program.

The Nebraska Supreme Court previously made the same point in *Lenstrom v. Thone*, 311 N.W.2d 884, 889 (Neb. 1981), which overturned a district court ruling that scholarships for students were an unconstitutional appropriation to schools not under the control of the state. *See id.* at 886. The supreme court held that "the literal language of the amendment prohibits 'appropriation . . . to' any school" and "says what it means and means what it says." *Id.* at 887–888. It reversed the district court's search for some broader application or purpose as defying the text of the constitution. *See id.* It further observed that adopting a purposive rule invalidating an educational scholarship program as an unlawful appropriation would also render "all state welfare programs" unconstitutional. *Id.* at 889.

The Nebraska Supreme Court also rejected an argument that a restriction on *direct* appropriations extends to restrict any "indirect aid." *See id.* at 888. Like most states, Wyoming has a general rule of interpretation that "the legislature cannot do indirectly what it cannot do directly." *Witzenburger v. State ex rel. Wyoming Cmty. Dev. Auth.*, 575 P.2d 1100, 1117 (Wyo. 1978). The district court cited this rule below. TR 546. In the context of appropriations and expenditures, though, states have carefully defined whether restrictions apply only to direct actions or to both direct and indirect actions. *Lenstrom*, 311 N.W.2d at 888. Restricting social welfare programs in a state that prohibits only direct appropriations would impermissibly modify the constitution, as the decision to restrict only direct appropriations was a conscious

choice of the constitution's drafters. *See id.* Those states that wanted further restrictions used different language. *See id.* (collecting cites).

In response to Parents' motion in this Court to suspend the district court's injunction, Plaintiffs recognized the implausibility of a rule that prohibits all programs benefiting private individuals. Appellees' Opp'n to Mot. for Suspension at 20. Unable to save Medicaid, TANF, unemployment and other programs under the district court's theory, Plaintiffs were left to argue about proper and precise *degrees* of government control completely unmoored from constitutional text. *See id.* In Plaintiffs' view, whether a public benefit program amounts to an appropriation "to" a private individual depends not on the text of the appropriations bill saying where the money goes, or even on whether a private individual ultimately benefits from the appropriation. It instead depends on the precise level of regulatory control attendant to the program.

The text of the Private Appropriations Clause plainly does not permit such granular examination of legislatively enacted programs. It concerns itself only with whom the appropriation goes "to." Regardless, Plaintiffs' alternative "level-of-control" theory would not save longstanding social welfare programs. Both TANF and unemployment insurance are cash benefit programs, with no controls over the institutions where recipients spend the money. Wyo. Stat. §§ 42-2-104, 27-3-301–304. If the Wyoming Constitution's Private Appropriations Clause permits social welfare programs that do not control physicians, hospitals, landlords or grocery stores where citizens spend social welfare funds, it also permits the ESA Program, where parents spend government benefits at private education providers.

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This Court should construe the Private Appropriations Clause in conformance with longstanding precedents in other states with similar constitutional clauses permitting state-controlled programs that simultaneously advance government interests and benefit individuals. The district court may only be deciding the program in front of it, *see* TR 621, but this Court's constitutional interpretations are binding beyond this case. Nothing in the Wyoming Constitution demands a different result for education programs than for any other welfare program, and the district court's conclusion to the contrary should be reversed.

II. This Court should uphold the ESA Program because Article 1, § 23 directs the legislature to adopt "means and agencies" for improving education.

By its plain text, Article 1, § 23 permits rather than restricts programs like Wyoming's ESA Program that go beyond state support for traditional public schools. The district court erred by nullifying its meaning, either by rendering it surplus of other education clauses, or by finding it held no meaning because it conflicts with the Private Appropriations Clause.

A. The text of Article 1, Section 23 is authorization for additional education programs, not meaningless language that repeats later constitutional sections.

Article 1, § 23 expressly authorizes the legislature to enact programs supporting individual education choices. A part of the Wyoming Declaration of Rights, it says that "[t]he right of the citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts." Wyo. Const. art. 1, § 23. The Wyoming ESA Program falls squarely under that clause because it is a legislative enactment to afford "practical recognition" of individual citizens' "opportunities for education" and to "encourage means and agencies" that "advance the sciences and liberal arts," *i.e.*, education.

Yet the district court inferred a restriction on such "means and agencies" from the legislature's duty to provide public schools and set aside the text of Article 1 § 23 (which it mentioned only once and only in passing). That mode of analysis renders Article 1, § 23 a nullity. "[T]he constitution should not be interpreted to render any portion of it meaningless." *Powers v. State*, 2014 WY 15, ¶ 9, 318 P.3d 300, 304 (Wyo. 2014) (quoting *Geringer v. Bebout*, 10 P.3d 514, 520 (Wyo. 2000)). Despite Section 23's textual command saying what the legislature "shall" do, the district court interpreted it to impose *no* legislative obligations and authorize *no* legislative activity, holding that the only provisions of the Wyoming Constitution containing actionable commitments to education lie within Articles 7 and 21. *See* TR 548-549.

The other state supreme courts to review similar textual provisions of state constitutions have held that clauses directing legislatures to "encourage" education through various "means" *permit* school choice programs. "[D]ecisions in other states bearing on the same or similar constitutional language are afforded persuasive effect." *Geringer v. Bebout*, 10 P.3d 514, 522 (Wyo. 2000). In Indiana, the state constitution says that "it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement." Ind. Const. art. VIII, § 1. The Indiana Supreme Court held that this language and the duty to provide "for a general and uniform system of Common Schools" are "*two distinct duties*." *Meredith v. Pence*, 984 N.E.2d 1213, 1224 (Ind. 2013) (emphasis in original). It rejected an argument that would collapse the two duties, holding that the *in pari materia* canon does not extend to nullifying one of the two duties in the constitution. *Id.*

The Nevada Supreme Court in *Schwartz v. Lopez*, 132 Nev. 732, 747, 382 P.3d 886, 897 (2016), adopted the same reasoning in a decision virtually identical to the arguments presented

here. The Nevada Constitution provides that "The legislature shall encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements." Nev. Const. art. XI, § 1. It has a separate provision stating that "The legislature shall provide for a uniform system of common schools." Nev. Const. art. 11, § 2. *Schwartz* held that these are two separate duties, observing that the framers "placed these directives in two separate sections of Article 11, neither of which references the other." 382 P.3d at 897. It declined to restrict Article 11, § 1 without any text of the Constitution requiring "such a limited interpretation." *Id.*

Yet the district court rejected *Meredith* and *Schwartz* because they "encourage education" analogues in Indiana and Nevada were located in the education article of the state constitution rather than the Declaration of Rights, as it is in Wyoming. *See* TR 623. That holding might be the first time a court has ever said being part of a Declaration of Rights *weakens* rather than *strengthens* constitutional commitments. *Cf., e.g., Members of Medical Licensing Board of Indiana v. Planned Parenthood Great Northwest, Hawai'I, Alaska, Indiana, Kentucky, Inc.,* 211 N.E.3d 957 (2023) ("Placing the Guarantee in the Bill of Rights rather than a preamble suggests the framers and ratifiers intended to make the provision judicially enforceable along with the rest of the Bill of Rights."); *Atchison Street Ry. Co. v. Missouri Pac. Ry. Co*., 31 Kan. 660 (1884) ("The bill of rights is something more than a mere collection of glittering generalities . . . all are binding on legislatures and courts . . . .").

No sound interpretive methodology supports the district court's feeble effort to distinguish the Indiana and Nevada precedents. Instead, constitutional interpretation examines the text of the clause at issue in order to give effect to its plain meaning.

B. Article 1, Section 23 does not conflict with the Private Appropriations Clause.

The district court alternatively held that even if the Indiana and Nevada supreme courts were correct, it would rely on the Wyoming Private Appropriations Clause as controlling over the education authority conferred by Article 1, § 23. *See* TR 621. But this alternative holding both lacks textual logic and reverses the standard rule of construction that specific constitutional provisions control over more general provisions.

Textually, the provisions are not in conflict, as one has to do with spending money to support education and the other to do with appropriating money directly to individuals or corporations. *See* Part I*, supra* (collecting cites regarding private appropriations clauses). The argument here is about whether § 23 has any meaning at all, not about the precise mechanism for giving that meaning "practical effect" (to borrow a phrase from § 23). The district court's logic is like saying § 23 cannot be given effect because all bills appropriating money must be introduced within five days of the close of the legislative session. *See* Wyo. Const. art. 3, § 22. No tension exists between the two—the legislature can (and must) comply with both.

Even if § 23 and the Private Appropriations Clause were in conflict, however, "a specific statute will control over a general one dealing with the same subject when they are in apparent conflict." *Cheyenne Newspapers, Inc. v. Bd. of Trs. of Laramie Cnty. Sch. Dist. No. One*, 2016 WY 113, ¶ 23, 384 P.3d 679, 685 (Wyo. 2016) (citation omitted); *see also Powers*, ¶ 9, 318 P.3d at 304 ("In construing our constitution, we follow essentially the same rules as those governing the construction of a statute." (citation omitted)). Section 23's duty to "suitably encourage means and agencies for advancing" education is specific to expenditures on education alone. In contrast, the Private Appropriations Clause is a more general provision that addresses all

expenditures regardless of subject. Under this Court's rules of construction, the specific duty for educational expenditures should control over a more general limit on all appropriations.

In short, the district court enjoined a lawful program by treating Article 1, § 23 as a surplus clause, disregarding its text as well as persuasive decisions from sister states and standard rules of construction. This Court should enforce Article 1, § 23 in the same manner as similar clauses in other states have been enforced and reverse the district court's injunction.

III. Enabling Parents to use public benefits to pay private education providers rather than send their children to public schools does not deprive *any* child of a "uniform system of common schools" under the Wyoming Constitution.

The district court erred by finding a violation of education clauses in the Wyoming Constitution. Without specifying what constitutional text impelled its restriction of the Legislature's power to create the ESA Program, the court concluded that the Program likely violates rights attendant to public education recognized in *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310, 333 (Wyo. 1980), and *Campbell County School District v. State*, 907 P.2d 1238, 1258 (Wyo. 1995) (*Campbell I*).

This Court should reverse because (1) those cases define only the right to attend a properly funded public school; (2) the ESA Program does not impact the educational rights of public school students not using the Program, including Plaintiffs; and (3) accepting payment from individuals in public welfare programs does not convert a private institution into a public entity. If the Wyoming Constitution allows courts to supervise the quality or uniformity of education obtained by families who are not Plaintiffs, it would be preempted by Parents' federal constitutional rights.

A. The Public School Clauses and precedents interpreting them say nothing to negate legislative authority to enact additional education programs.

Even aside from the "encourage education" duty of Article 1 § 23, the Wyoming Legislature has plenary police-power authority to enact any law not restricted by the state or federal constitution. *See Bd. of Trs. of Laramie Cnty. v. Bd. of Cnty. Commissioners of Laramie Cnty.*, 2020 WY 41, ¶ 15, 460 P.3d 251, 258 (Wyo. 2020) (citing *State ex rel. Wyoming Agr. Coll. v. Irvine*, 14 Wyo. 318, 84 P. 90, 107 (1906)). Such plenary authority distinguishes the Wyoming Legislature from the federal Congress, which may only enact legislation specifically authorized by the federal constitution. Plenary authority means that any supposed restrictions on legislative power set forth in the Wyoming Constitution must be express and limited to their plain text. "[C]onstitutional restrictions upon the Legislature are not to be enlarged by construction beyond their terms." *Bd. of Trs. of Laramie Cnty.,* 2020 WY 41, ¶ 15, 460 P.3d at 258 (quoting *Irvine,* 14 Wyo. 318, 84 P. at 106). The education clauses contain no such restriction, so plenary authority is sufficient to support the ESA Program.

Article 21 of the Wyoming Constitution directs that "[t]he legislature shall make laws for the establishment and maintenance of systems of public schools which shall be open to all the children of the state and free from sectarian control." Wyo. Const. art. 21, § 28. Additional provisions supplement that requirement by specifying that "[t]he legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction" and "create and maintain a thorough and efficient system of public schools." *Id.* art. 7, §§ 1, 9.

In this case, no one disputes that the Legislature has established and funded public schools in both Plaintiffs' and Parents' districts (and elsewhere) that meet those requirements

and that are available to their children. Plaintiffs are not alleging deficient-school-funding claims in this case. *Contrast Washakie*, 606 P.2d 310; *Campbell I*, 907 P.2d 1238.

The district court, however, invoked strict scrutiny from *Washakie* and *Campbell I* (and not any constitutional text) because "the State's system for financing schools" is allegedly at issue, saying that the Constitution requires the legislature "to provide an education to its students," that the ESA Program is "*another* taxpayer funded method for providing the constitutionally required education," such that "there can be no serious dispute that the Act is an aspect of the State's system for financing schools." TR 549-550 (emphasis added).

This theory is wrong thrice over. First, the text of Article 21, § 28 and the related provisions in Article 7 apply only to public schools, while Article 1, § 23 addresses other methods for educating Wyoming residents (and the district court did not analyze any constitutional text in reaching a different conclusion). Different words used in related provisions must be assigned different meanings. *See Big Al's Towing & Recovery v. Dep't of Revenue*, 2022 WY 145, ¶ 24, 520 P.3d 97, 103 (Wyo. 2022). Article 21, § 28 uses the term "public schools" and Article 7 uses the terms "public schools" or "public instruction." Wyo. Const. art. 7, §§ 1, 9; art. 21, § 28. In contrast, Article 1, § 23 refers to "means and agencies calculated to advance the sciences and liberal arts." *Id.* art. 1, § 23. This difference in word choices shows that the clauses in Article 21, § 28 and the related provisions in Article 7 are not intended to address any education program beyond the public schools.

Second, for that exact reason, *Washakie* and *Campbell I* applied strict scrutiny only to changes to public-school funding, *Washakie*, 606 P.2d at 333, *Campbell I*, 907 P.2d at 1258, and here Plaintiffs have *disclaimed* any such impact. TR 88. Those cases addressed a lack of funding

at public schools, which yielded a denial of opportunity to receive a constitutionally sufficient education at a *public school*. *See Washakie*, 606 P.2d at 333, *Campbell I*, 907 P.2d at 1258. Here, Plaintiffs attend or work to maintain public schools that all admit satisfy students' educational needs and that suffer no financial harm owing to the ESA Program. TR 88. The ESA Program uses general revenue funding entirely separate from the public-school funds—a fact that Plaintiffs do not challenge. As should be plain, the right to a "uniform," "thorough," "efficient," "complete," or "quality" education at public schools is not impacted by an ESA Program that does not affect funding for those public schools.

Third, the ESA Program not only has no bearing on public school funding but also does not fund *any* schools. Rather, it funds parents, who may use ESA funds to purchase a variety of education services that are *not* private schools—including tutoring, lessons, and homeschool curriculum (among other services and products)—all within the regulatory framework that the law and Department of Education establish. *See, e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (the decision whereby funds reach schools "is reasonably attributable to the individual recipient, not to the government, whose role ends with the disbursement of benefits"); *Meredith v. Pence*, 984 N.E.2d 1213, 1228–29 (Ind. 2013) ("The direct beneficiaries under the voucher program are the families of eligible students and not the schools selected by the parents for their children to attend."); *Simmons-Harris v. Goff*, 711 N.E.2d 203, 211 (Ohio 1999) ("The primary beneficiaries of the School Voucher Program are children, not . . . schools."); *Kotterman v. Killian*, 972 P.2d 606, 616 (Ariz. 1999) ("The primary beneficiaries of this credit are taxpayers who contribute to the STOs, parents who might

otherwise be deprived of an opportunity to make meaningful decisions about their children's educations, and the students themselves.").

Many state supreme courts around the country have relied on plenary legislative power to uphold scholarship programs like the ESA Program, holding that constitutional duties to create public schools are not restrictions on such plenary power. *See State v. Beaver*, 887 S.E.2d 610, 627 (W. Va. 2022) (upholding a scholarship program like the Wyoming ESA Program because the legislature had inherent authority to enact "additional educational initiatives" beyond its constitutional mandate to create and maintain a public school system); *Hart v. State*, 774 S.E.2d 281, 131, 141 (N.C. 2015) (upholding constitutionally of a state-funded scholarship program because the legislature's "plenary police power" enables it to "seek[] to improve the educational outcomes" through a scholarship program outside the public system); *Davis v. Grover*, 480 N.W.2d 460, 474 (Wis. 1992) ("[T]he uniformity clause requires the legislature to provide . . . a free uniform basic education. . . . [E]xperimental attempts to improve upon that foundation in no way denies any student the opportunity to receive the basic education in the public school system."); *Jackson v. Benson*, 578 N.W.2d 602, 628 (Wis. 1998) ("[A]rt. X, § 3 provides not a ceiling but a floor upon which the legislature can build additional opportunities for school children in Wisconsin[.]").

In sum, the *Washakie* and *Campbell* right is the floor—a right to attend a properly funded public school. Nothing in them or the text of the Wyoming Constitution imposes a ceiling prohibiting additional government-supported education programs beyond public schools.

B. Neither Plaintiffs nor the District Court identified any textual constitutional rights impinged by the ESA Program.

The district court reached a different result through two analytical errors. First, it held that any school where publicly funded scholarships are spent is converted into a public school. Second, it then held that "a child" at these schools is denied the right to a uniform education. The first holding is errant, and the second holding has no connection to Plaintiffs' rights and is belied by the choices of all parents who choose education outside the public school system.

1. A private education provider does not become a public school by accepting publicly funded scholarships as payment from parents.

The district court held that private schools accepting ESA students must be treated as public schools, such that the ESA Program violates the uniformity clause of Article 21 or other clauses in Article 7 because such schools are permitted wide variation in admission and curriculum (among other things). That holding departs from precedent analyzing similar text in other states and substitutes a policy judgment for analysis of constitutional text.

First, Plaintiffs and the district court concluded that "publicly funded scholarships equals public schools" only by mischaracterizing the ESA Program and ultimately rewriting Wyoming's constitutional text. For example, in response to Parents' motion to suspend in this Court, Plaintiffs declared that one "cannot push for public funds to subsidize private school education and at the same time assert that these schools are private, not publicly-funded, and therefore outside the reach of the Wyoming Constitution." Appellees' Opp'n to Mot. for Suspension at 17. Again, however, the ESA Program is a government benefits program for parents, not schools. *See* Wyo. Stat. Ann. § 21-2-904. Indeed, parents need not use the benefits at a *school* at all—homeschoolers, for example, might use it to purchase curriculum or music

lessons. The predicate for Plaintiffs' assertions about "these schools" being "publicly funded" is therefore inaccurate, and regardless no legal principle says that a private business that accepts government benefits as payment—such as a hospital or grocery store—becomes a public entity as a result.

Equally flawed is the district court's characterization of the ESA Program as "an alternate publicly funded method for providing the constitutionally required education." TR 550. The Wyoming Constitution commands only the existence of uniform (and thorough, complete, and efficient) *public schools*, not the uniformity of all means of education. *Compare* Wyo. Const. art. 7, §§ 1, 9, *and id.* art. 21, § 28, *with id.* art. 1, § 23. The district court's reconceptualization of a "constitutionally required education" has no textual basis—no one in Wyoming is required to attend public schools.

Furthermore, the consensus in sister states is that constitutional requirements for public schools do not apply to schools that accept state scholarship students. *See Geringer*, 10 P.3d at 522. As the Wisconsin Supreme Court explained long ago, a requirement to create uniform public schools is not a requirement to make all children attend uniform schools. *Davis v. Grover*, 480 N.W.2d 460, 474 (1992). If public schools are available to all children, the legislature may offer additional educational options that are not part of the public school system even if those other options use publicly funded scholarships. *Id.* This reasoning has been widely adopted in other states. *See, e.g.*, *Schwartz v. Lopez*, 132 Nev. 732, 747, 382 P.3d 886, 897 (2016); *Hart v. State*, 774 S.E.2d 281, 289 (N.C. 2015); *Simmons-Harris v. Goff,* 86 Ohio St.3d 1, 11, 1999-Ohio-77, 711 N.E.2d 203; *see also Meredith v. Pence*, 984 N.E.2d 1213, 1224 (Ind. 2013). In contrast, Plaintiffs' and the district court's contrary view—that accepting a

public scholarship requires a private school (or other education provider) to comply with the uniformity of public schools—has no support in state supreme court decisions.

Even so, the district court attempted to distinguish those precedents by focusing on unrelated claims or granular details of other states' school choice programs instead of the text of their constitutions' education clauses. *See* TR 622-624. For example, it distinguished the Nevada case based on that state's lack of doctrine governing direct versus indirect violations of religious establishment clauses. TR. 622-23. It distinguished the Ohio precedent because Ohio does not have a private appropriations clause. TR 624. And it distinguished the North Carolina and Indiana Supreme Court decisions because programs in those states were means-tested. *See id.* at 623-24. Those unrelated doctrines, constitutional provisions, and program income limits do not affect whether the text of a state's public school clause in its constitution converts a private entity into a public school when it accepts government-provided scholarships as payment. *See id.* The district court's theory that public dollars turn private entities into public schools has no grounding in any constitutional text or doctrine.

2. The district court did not identify any harm to Plaintiffs' educational rights when it referred to "a child" using an ESA.

Because the ESA Program does not intersect with public-school funding, Plaintiffs and the district court could not even agree on how the ESA program supposedly violates public education rights. The district court held that the ESA Program "affects a child's right to a proper education," TR 549, but never said *what* child's rights it was talking about. Plaintiffs ultimately disavowed that rationale.

The district court concluded that the Wyoming Constitution entitles public school parents to challenge the uniformity or quality of private education that *other* parents choose

for their children. It criticized the ESA Program because it "allows parents, on behalf of their school-aged children, to use public funds to educate their children in a manner which does not necessarily provide the constitutionally mandated equal opportunity to a complete and uniform, thorough and efficient, and quality education open to all." Relying on the public-school-finance case *Campbell I,* it elaborated that the "fundamental right of education" is critical for creating "citizens, participants in the political system," as well as economic and intellectual "competitors," to the point that "education" is a " 'vital concern'" and a " 'means of survival for the democratic principles of the state.'" TR 549 (quoting *Campbell I*, 907 P.2d at 1259, 1263-64). Accordingly, said the district court, the ESA Program, "affects a child's right to a proper education because it does not require or guarantee that a Certified Provider will provide an equal opportunity to a complete and uniform, thorough and efficient, and quality education open to all."

Plaintiffs, for their part, do not use the ESA Program and do not intend to, so their children's rights are not implicated, and again they disclaim any theory that the ESA Program diverts money away from public schools. TR 88. What this case amounts to, therefore, is families who do *not* use the program asserting a right to declare what constitutes a "quality education" for families who *do* use it.

Yet, when Parents pointed out that the district court conferred on Plaintiffs the right to litigate the quality of education provided to other people's children, Plaintiffs were quick to disclaim, "that is not alleged nor at issue." TR 608. And in their response to the motion to suspend in this Court, they again emphasized that they are not complaining about any supposed deficiencies at Parents' schools. Appellees' Opp'n to Mot. for Suspension at 16.

Plaintiffs have thus repeatedly disavowed the district court's entire rationale for finding a violation of the Wyoming Constitution's education rights.

In this Court, Plaintiffs have attempted to defend the decision below by asserting a "right to a constitutionally compliant system of public education." Appellees' Opp'n to Mot. for Suspension at 17. This formulation is circular, however, because it does not explain what a "compliant system" is. If Plaintiffs' children are receiving an education at a uniform (and constitutionally adequate) public school, then they are receiving an education from a constitutionally compliant system.

What Plaintiffs appear to be saying is that public school students have a right to an education in a system where no one using government benefits will be educated in a non-uniform way. If so, that is just a repackaging of the district court's theory permitting public school parents to question the education of other peoples' children. Nothing in the text of the Wyoming Constitution says that satisfaction of the right to a uniform, thorough, complete, and efficient public education depends on preventing other children from being educated outside the public school system using government benefits.

C. The district court's understanding that the Wyoming Constitution prescribes a right to adjudicate the quality of education provided to non-public-school students impinges on Parents' federal rights.

If the Wyoming Constitution did mean that public school parents may object to the lack of uniform education that *other* parents choose for their children using public benefits, it would be preempted by longstanding federal parental constitutional rights.

All parents have fundamental rights to direct the care and upbringing of their own children, including in education. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v.*

Nebraska, 262 U.S. 390, 401 (1923). A state constitutional provision that *ipse dixit* converts private education to public education and permits public school parents and courts to decide whether the education choices of other families are sound would run afoul of the right recognized in *Pierce* and *Meyer*. Parents, not courts at the behest of other families and teachers' unions, decide whether the education they provide their children is "proper," "complete," "adequate," "thorough," "efficient," or "quality." Plaintiffs' claim that their children's rights are violated by other children's education must therefore fail.

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In sum, this Court should reverse the district court for any of three legal errors. First the district court's interpretation that Article 3, § 36 prohibits all public programs with private beneficiaries is not supported by Wyoming authorities, is contrary to authority from other states, and would invalidate many state programs. Second, the district court nullified Article 1, § 23, by ignoring its plain text and persuasive authority from other states showing that it authorizes the ESA Program. Third, the district court misapplied the public school education clauses by finding that those clauses allow Plaintiffs to challenge the quality of education provided to other children using government benefits, like Parents' children, in violation of the U.S. Constitution. Because of the district court's errors in constitutional interpretation, its preliminary injunction should be reversed.

IV. The balance of equities disfavors an injunction harming Parents.

The balance of the equities also favors reversing the injunction. Parents and families like theirs are direct beneficiaries of the Program and will suffer irreparable harm if the injunction stands. The district court rightly emphasized that "[p]arents are keenly concerned

and suffer tangible injury if their children do not receive a proper education." TR 556 (quoting *Dir. of Off. of State Lands & Invs. v. Merbanco, Inc.*, 2003 WY 73, ¶ 17, 70 P.3d 241, 248 (Wyo. 2003)). Parents have specifically alleged that the public school system does not meet their children's needs. It is therefore difficult to reconcile the concern for educational adequacy with an order that blocks a program that enhances adequacy, effectively denying many families the ability to pursue what they believe is best for their children.

In addition, tuition bills will accrue, meaning the injunction inflicts irreparable harm on Parents by forcing them to pay those bills during the injunction's effect. The Lecks and the Haights are among the hundreds of parents who were approved for the ESA Program for the 2025-2026 school year and received signed contracts. The Wyoming Department of Education reports that, as of June 23, 2025, 3,965 students have signed up for ESAs and over 500 providers have been approved for participation. TR 350. Many of those parents have signed contracts. TR 403 and 406.

The concrete financial and educational harms to Parents, their children, and families like theirs far outweigh the Plaintiffs' speculative interests. Plaintiffs essentially conceded that Parents will be harmed financially if the injunction is not reversed. TR 614. Plaintiffs' broad philosophical interest in enforcing uniformity at schools they neither attend nor have sought to attend does not constitute a personal right warranting the extraordinary remedy of a preliminary injunction. The Wyoming Constitution grants the right to receive a quality education for their children at a public school, and that right is fulfilled when their children attend the local public school. Where other children are educated has no impact on the educational rights of Plaintiffs' children.

The Program also does not divert a single dollar from public education funding because it uses a separate fund from the public education system. Plaintiffs concede as much. *See* TR 88. The court nonetheless accepted Plaintiffs' invitation to use this lawsuit to litigate the remedy in a different lawsuit. *See* TR 556 (addressing the "lack of financial resources" for public schools); TR 107-108 (citing *Wyo. Educ. Ass'n v. State*, No. 2022-CV-0200-788 (Wyo. Dist. Feb. 26, 2025)). Enjoining the ESA Program simply because the Legislature could use the money elsewhere is not a proper remedy, as the question of what programs to cut to fund public schools is a legislative issue. Such a remedy is also especially unwarranted in a case that all parties agree does not involve funding for public schools.

Because it could not find any material harm to Plaintiffs, the district court otherwise focused on status quo arguments, but its concept of status quo presumes that duly enacted laws are unlawful until blessed by judicial review. TR 556–557. That presumption contravenes not only the legislature's lawmaking prerogative but also this Court's insistence that failure to demonstrate likelihood of success on the merits is fatal to a motion for preliminary injunction. *CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp.*, 2009 WY 113, ¶ 8, 215 P.3d 1054, 1057 (Wyo. 2009). The status quo presumption here favors the statute, not its challengers.

"Status quo" assessment is not a substitute for *merits* assessment in constitutional challenges for good reason: The definition of "status quo" is inherently malleable. As U.S. Supreme Court Justice Kavanaugh recently pointed out, the status quo can be defined as "the situation on the ground *before* enactment of the new law" or "the situation *after* enactment of the new law, but before any judicial injunction." *Labrador v. Poe*, 144 S.Ct. 921, 930 (Kavanaugh, J., joined by Barrett, J., concurring). These definitions are equally plausible, but their use can

lead to drastically different outcomes. *See id.* Courts can use the first definition of status quo to block "constitutional and democratically enacted laws" where plaintiffs are unlikely to succeed, and courts can use the second definition of status quo to decline to enjoin "unconstitutional or otherwise illegal laws" where Plaintiffs are likely to succeed. *Id.* at 930–31. Accordingly, courts should not use the assessment of "status quo" to avoid resolving the likelihood of success on the merits. *See id.*

In short, the only risk of irreparable injury is from the injunction, and a district court cannot rely on status quo arguments to sidestep the weaknesses of a Plaintiffs merits arguments and thereby inflict unconstitutional harm on Parents. As Parents have demonstrated a clear likelihood of success on the constitutional arguments and are the only ones facing substantial injury, the balance of the equities favors reversal.

Conclusion

For the reasons stated above, this Court should reverse the trial court's grant of a preliminary injunction.

DATED October 13, 2025.

/s/ Macrina M. Sharpe

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2025, I served a true and correct copy of the foregoing electronically to the following:

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The original plus six copies were hand delivered to the Wyoming Supreme Court on October 13, 2025.

I have accepted the terms for e-filing and this document is an exact copy of the written document filed with the Clerk. This document is free of viruses.

/s/ Macrina M. Sharpe

APPENDIX

Pursuant to Rule 7.01(k) of the Wyoming Rules of Appellate Procedure, Appellants Nicolette and Travis Leck and Victoria Haight's Appendix is as follows:

1. **WYO. R. APP. P. 7.01(k)(1) – Judgment or Final Order Appealed From**

    - Order Granting Preliminary Injunction, issued by the First Judicial District Court on July 15, 2025.

2. **WYO. R. APP. P. 7.01(k)(3) and 10.01 – Statement of Costs**

Pursuant to Rule 10.01 of the Wyoming Rules of Appellate Procedure, Appellants present their costs and certify that they have paid these costs:

- Appellant paid Kathy Kendrick $477.40 on July 31, 2025 for the transcript of the hearing on Plaintiffs' Motion for Preliminary Injunction, by check #10410699.

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