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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2. **Private Appropriations Clause (Article 3, § 36):** Plaintiffs' dictionary definition of "appropriation" does not convey the meaning they need to win the argument and cannot override the decisions of four state supreme courts holding that private appropriations clauses regulate the initial recipient, not the beneficiaries of state programs. Wyo. Const. art. 3, § 36.

3. **Private Appropriations Clause (Article 3, § 36):** If this clause requires absolute control over indirect recipients, as Plaintiffs argue, then programs like Medicaid and TANF that only regulate some involved parties—not to mention unemployment and workforce benefit programs—would be unconstitutional. *Id.*

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7. **Uniformity Clauses (Article 7, §§ 1, 9; Article 21, § 28)**: *Campbell I* requires the state to provide a uniform public school to every child, but it does not mandate that all Wyoming children must attend uniform schools. Wyo. Const. art. 7, §§ 1, 9; art. 21, § 28.

8. **Uniformity Clauses (Article 7, §§ 1, 9; Article 21, § 28)**: Plaintiffs confuse the right at issue in the Uniformity Clauses with the question of who holds that right. Granting this right to anyone other than parents would violate federal parental rights. *Id.*

Introduction

The new authorities and arguments in Plaintiffs' response brief mostly avoid the weaknesses of the order on appeal. To affirm the injunction of the education savings account program ("ESA Program") created by the Steamboat Legacy Scholarship Act, the Court must answer three key questions:

- 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 public instruction" clause give parents of public-school students a veto on other families' use of public benefits to educate their children?

Intervenor-Parents' Opening Br. at 4. Plaintiffs' brief fails to provide any guidance on how to address these gaps in the district court's reasoning.

Plaintiffs argue that the Private Appropriations Clause prohibits any social welfare program that indirectly gives money to private individuals. They cite no authority for this proposition but instead rely solely on the dictionary to argue that New Mexico, Alabama, Montana, and Colorado all misinterpreted similar clauses. They argue that Medicaid and TANF can be saved under their novel interpretation, but they tacitly concede that unemployment benefits and workforce training funds are unconstitutional by failing to distinguish either program. They also never tell this Court how the regulations in Medicaid and TANF amount to the "absolute control" required by the constitutional text.

Plaintiffs' argument on Article 1, Section 23 still asks this Court to set aside its rules of interpretation and give the "encourage education" clause no meaning. The *in pari materia* canon interprets similar clauses together while giving meaning to *all* clauses, which Plaintiffs' analysis denies. Plaintiffs cite Florida and Utah cases, but those states lack similar "encourage education" clauses in their Constitutions. The only relevant authorities are the Indiana and Nevada decisions that reject Plaintiffs' interpretation. And stray convention delegate quotes on whether to assign public-school funds to counties or the state provide no insight on education clauses the delegates were not debating.

Plaintiffs rely on Article 7, §§ 1 and 9 and Article 21, § 28, to argue that all education providers participating in the ESA Program must be part of the same "uniform," "complete," "thorough" and "efficient" system as public schools. But this "Uniformity Clause" argument misreads precedent and misrepresents Intervenors' parental-rights argument. First, the Uniformity Clauses say only that *public schools* need to be complete and uniform; they do not imply restrictions on additional education programs because the Legislature has plenary power

over anything not expressly prohibited. Second, *Campbell I* says only that the legislature must ensure that a uniform system of public schools is available for all students, not that all students are compelled to attend uniform schools if they use publicly funded scholarships. *See Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1258 (Wyo. 1995). Third, even if some constitutional standard dictated that schools accepting ESA funds must be the same quality as public schools, that right would belong to parents (like Intervenor Parents) who use ESAs to educate their children. Neither the Wyoming nor Federal Constitution permits Plaintiffs to demand strict scrutiny of how Intervenor Parents exercise their children's education rights.

Reply on Jurisdiction

Plaintiffs' jurisdiction argument disregards both the rule text and the authority cited in the opening brief. They argue that the Rule 13 process for permissive writs applies to orders granting injunctions. Appellees' Br. at 2. That position cannot be reconciled with Rule 13.02, which states that a writ of review is available only for an interlocutory order "which is not otherwise appealable under these rules." Wyo. R. App. P. 13.02. The rules expressly define interlocutory orders granting injunctions to be "appealable orders." *Id.* 1.05(e).

This Court has interpreted the reference to Rule 13 in Rule 1.05(e) consistent with Intervenors' position. That parenthetical supplies additional information for interlocutory orders that are *not* listed as appealable in Rule 1.05(e). It does not convert orders listed in Rule 1.05(e) into non-appealable orders. Consistent with that reading, this Court has previously said that interlocutory orders listed in Rule 1.05(e) are appealable. *Tram Tower Townhouse Ass'n v. Weiner*, 2022 WY 58, ¶ 37, 509 P.3d 357, 365 (Wyo. 2022) (holding that a "receivership order is appealable" under Rule 1.05(e)(2)).

Plaintiffs identify no authority contrary to *Tram Tower*, which was cited in the opening brief. If they are inviting the Court to reconsider its interpretation of the rules, this case presents no reason for it. Plaintiffs suffer no material prejudice no matter which rule applies because Intervenors filed this appeal well within the 15-day period for permissive writs and the 30-day period for appeals. If the Court prefers a different procedure prospectively, it could treat this timely filed notice of appeal as a petition for a writ to avoid unfair prejudice here. *See* Notes to Wyo. R. App. P. 13.01 (citing *Alexander v. United States*, 803 P.2d 61 (Wyo. 1990)).

Reply on the Merits

I. The Private Appropriations Clause cannot be interpreted to prohibit all state programs with private beneficiaries without rendering all social welfare programs unconstitutional.

Plaintiffs offer no plausible reading of the Private Appropriations Clause that would invalidate the ESA Program but not also every *other* Wyoming social welfare program. They cite only a dictionary to ask this Court to reject the reasoning of four sister state courts, argue that sufficient regulation short of "absolute control" somehow saves other social welfare programs, and urge the Court to affirm based on other constitutional clauses that did not persuade the district court. None of these arguments is a basis to affirm.

A. Plaintiffs' dictionary definition does not say what they need it to say and cannot overcome contrary authority from four state supreme courts.

Plaintiffs offer no answer to the four state supreme courts that have already rejected the interpretation they propose. *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). Their only attempted distinction—that Colorado's decision upholding public programs with private beneficiaries was not addressing a K-12 program—fails because that decision did not turn on the level of education being purchased. *See Americans United*, 648 P.2d at 1086. Regardless, New Mexico's *Moses* case said a K-12 program is valid so long as appropriations are made to public agencies, not to private entities themselves. *Compare* Appellee's Br. at 44 n.13, with *Moses*, 458 P.3d at 420–21.

Plaintiffs say a dictionary defining an appropriation as "an act of a legislature authorizing money to be paid from the treasury for a special use" somehow supports splitting from sister state courts. Appellee's Br. at 42–43 (quoting The Century Dictionary, Vol. 1, Part 2 (1889)). But no one disputes the meaning of "appropriation"—for a special purpose or otherwise. The question is whether constitutional text that prohibits appropriations "*to*" private individuals, Wyo. Const. art. 3, § 36, also prohibits appropriations that *benefit* individuals. Plaintiffs' dictionary provides no help with that theory.

Plaintiffs also cite *Eidson v. South Carolina Department of Education*, 906 S.E.2d 345, 353–54 (S.C. 2024), Appellee's Br. at 46, but *Eidson* addressed a broader prohibition against using public money to "benefit" private schools, not a narrow restriction against *appropriations to* all private individuals. *See Eidson*, 906 S.E.2d at 353–54.

B. If the Private Appropriations Clause applies to beneficiaries, Medicaid and TANF are invalid because participants are not under the absolute control of the state.

Plaintiffs fail to explain how their reading would spare other social welfare programs. First, they suggest—in a footnote—that "there is a threshold question" whether the Wyoming Constitution "even applies" to Medicaid and TANF. Appellee's Br. at 46 n.14. But both

programs use appropriated state funds, *see* Wyo. Stat. Ann. § 42-2-104, 42-4-104, and Wyoming cannot violate its own constitution through cooperative federal agreements. *See, e.g., Salem Coll. & Acad., Inc. v. Emp. Div.*, 695 P.2d 25, 29–30 (Or. 1985) ("a legislature cannot violate the state's constitution in order to qualify for a benefit that Congress leaves optional.").

Next, they argue that Medicaid and TANF could be saved because they involve "a significant degree of both federal and state government oversight." Appellee's Br. at 47; *see id.* at 48. But when the Private Appropriation Clause applies, the constitutional text requires "absolute" *state* control, not merely "significant" control involving the feds. In Medicaid, providers are regulated, but beneficiaries are not. In TANF, beneficiaries are regulated, but food providers are not. In neither situation does the state exercise "absolute control" over any, much less all, program participants. An alternative test turning on the precise degree of government control would be both textually ungrounded and impossible to administer. No principled regulatory distinction exists between the ESA Program, on one hand, and Medicaid, TANF, unemployment, and workforce development programs, on the other.

Third, Plaintiffs argue that Medicaid and TANF could instead be saved under the Donations Clause in Article 16, Section 6, which allows donations to low-income individuals. *See* Appellee's Br. at 46-47 (citing Wyo. Const. art. 16, § 6). But unlike the Donations Clause the Private Appropriations clause contains no exception for aid to low-income individuals. Wyo. Const. art. 3, § 36. And the two clauses work together (and maintain independent meaning) only if the Private Appropriations Clause is understood to require appropriations *to* state agencies (rather than individuals or companies), while the Donations Clause is understood separately to require consideration for any benefits beyond support for the poor.

Plaintiffs' reading would both rewrite the Private Appropriations Clause *and* render it superfluous.

Finally, while they try to distinguish Medicaid and TANF, Plaintiffs offer *no* explanation whatsoever for how their interpretation would spare unemployment benefits and workforce training programs—neither of which is means-tested or heavily regulated. *See* Intervenor-Parents' Opening Br. at 19–20. Failing to respond, Plaintiffs effectively concede that their reading of the Private Appropriations Clause would wipe out those programs.

C. The Donations Clause argument that did not persuade the district court cannot be used to save the injunction.

Plaintiffs alternatively suggest in passing that the ESA Program violates the Donations Clause in Article 16, Section 6. Appellee's Br. at 40–41. Even the district court did not find they were likely to succeed on this argument. The Donations Clause "has no application when there is an exchange of consideration between the parties." *See Frank v. City of Cody*, 572 P.2d 1106, 1111–12 (Wyo. 1977). The ESA Program is not a donation because parents waive their child's rights to an education in a traditional public school in exchange for ESA funds, meaning they give consideration. *See* Wyo. Stat. Ann. § 21-2-904(b)(ii)(C).

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Plaintiffs provide no authority and no limiting principle for their novel reading of the constitutional text. Their interpretation contradicts four state supreme courts, depends entirely on a dictionary, and would invalidate Wyoming's social welfare programs. This Court should give "persuasive effect" to "decisions in other states bearing on the same or similar constitutional language," *Geringer v. Bebout*, 10 P.3d 514, 522 (Wyo. 2000), and join New

Mexico, Alabama, Montana, and Colorado in holding that appropriations to state agencies are constitutional even if private individuals or entities may ultimately benefit.

II. Article 1, Section 23 provides an independent duty of the Legislature, not a superfluous repetition of other constitutional clauses.

Plaintiffs contend Article 1, Section 23 does nothing more than "confer[] a right to education" that is "satisfied" in Article 7's "single state system." Appellee's Br. at 26. First, they say Section 23 should be construed "*in pari materia*" with the education clauses in Articles 7 and 21, Appellees' Br. at 24–27, but their argument improperly nullifies any independent meaning for Section 23 *and* (incorrectly) assumes what must be demonstrated—that Articles 7 and 21 implicitly exclude all other education programs. *See infra* Part III. Citations to stray constitutional debate comments and states lacking any similar "encourage education" clauses, Appellee's Br. at 21–24, 31-35, fall far short of justifying an interpretation that would negate any independent meaning for Section 23.

A. The *in pari materia* canon cannot negate text.

Plaintiffs argue that because Articles 7 and 21 concern only public schools, Article 1 *also* can only address public schools to remain "consistent with" the rest of the constitution. Appellees' Br. at 25. In effect they contend that Section 23's duty to encourage education through "all suitable means" does nothing more than restate the public-school right set forth in other Articles. *See id.* at 25–26. This argument cannot succeed because Plaintiffs never explain what independent meaning would be left for Article 1, Section 23.

As Plaintiffs observe, this Court construes constitutional clauses *in pari materia* to give similar clauses related meanings "so that no part will be inoperative or superfluous." Appellee's Br. at 25 (quoting *Geringer*, 10 P.3d at 520). When applying *in pari materia* to multiple provisions,

a court's "mandate is to harmonize them and, to the extent possible, give effect to each one." *Fontaine v. Bd. of Cnty. Comm'rs of Park Cnty.*, 4 P.3d 890, 895 (Wyo. 2000). Plaintiffs argue that Section 23 "establishes education as a right" while Article 7 "explains how education must be implemented and funded by the Legislature." Appellees' Br. at 26. But they offer no explanation of what right Article 1, Section 23 establishes apart from the one created in Articles 7 and 21. Saying Section 23 "describes" the right in Article 7 is just a fancy way of saying it is superfluous.

Plaintiffs' use of *in pari materia* is especially odd as a structural matter because it interprets text in Article 1 to be subordinate to (assumed) meanings of text in Articles 7 and 21. The more natural reading would be to say that the Declaration of Rights—Article 1—establishes the basic framework of liberty against which later Articles must be understood. Viewed that way, the Section 23 text saying that the Legislature "shall suitably encourage means and agencies calculated to advance" education refers to *multiple* means and agencies, while Article 7 declares that a uniform system of public schools must be *among* the means and agencies referred to in Section 23. *Compare id.*, *with id.* art 7, § 1. That use of *in pari materia* actuates all clauses without rendering any superfluous, but it does not favor Plaintiffs.

B. Cases from states without comparable text provide no guidance.

This Court gives persuasive effect to sister state decisions "bearing on the same or similar constitutional language." *Geringer*, 10 P.3d at 522. Yet to interpret Article 1, Section 23, Plaintiffs cite two states that lack an "encourage education" clause: Florida and Utah. Appellees' Br. at 33-34 (citing *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006) and *Labresh et al v. Cox*

et al, Ruling and Order RE: Defendant's Motions to Dismiss and Plaintiffs' Motion for Summary Judgment, Case No. 240904193 at 37 (Utah Third Jud. Dist. Ct. April 18, 2025)).

Both cases—one of which is a trial court ruling currently on appeal—concluded that having *only* an express duty to create public schools and *no other* education duties forecloses other education programs. *Bush*, 919 So. 2d at 398; *Labresh*, Ruling and Order at 37. The Wyoming Constitution, however, is different because it enshrines both the public-schools duty and the separate "encourage education" duty. Wyo. Const. art. 1, § 23; *id.* art. 7, § 1. Relying on *Bush* and *Labresh* is just asking the Court to disregard Section 23's text.

Plaintiffs also fail to distinguish the contrary, on-point authority from Indiana and Nevada. They say this Court should not follow those decisions on "encourage education" clauses because those states have different *uniformity* clauses. Appellees' Br. at 31–32. The Indiana Supreme Court offered two independent rationales for its holding: that the duty to create public schools was worded differently from states like Florida because it included no "adequate provision" public education guarantees *and* that the duty to "encourage" education through "suitable means" was a separate duty. *Meredith v. Pence*, 984 N.E.2d 1213, 1224 (Ind. 2013). What matters here is the second rationale, *i.e.*, the significance of separate text directing the legislature to encourage means of education *other* than public schools.

Under text such as Indiana's and Wyoming's, in other words, no one can reasonably infer that public schools—whether they be "uniform," "thorough," "efficient," "complete," or have no minimal adequacy standard whatever—restrict other sections of the constitution. *See also, e.g.*, *State v. Beaver*, 887 S.E.2d 610, 628 n.20 (W. Va. 2022) (citing *Meredith* and *Schwartz* to interpret the West Virginia "encourage education" clause and uphold an ESA program).

Indeed, the North Carolina Supreme Court has held that "encourage education" clauses make "educational opportunity" to be "of paramount public importance." *Hart v. State*, 774 S.E.2d 281, 292 (N.C. 2015).

Next, contrary to Plaintiffs' representation, the Nevada Supreme Court held that the duty to encourage education and the duty to create a system of public schools are "two distinct duties." *Schwartz v. Lopez*, 382 P.3d 886, 898 (Nev. 2016). Plaintiffs inaccurately claim that case relied on the lack of "paramount duty" language in its duty to create public schools. Appellees' Br. at 32. But that court relied only on its "encourage education" clause, not its uniformity clause, to reach its holding. *Compare Schwartz*, 382 P.3d at 898 (summarizing Indiana's two holdings), with *id.* at 898 ("We conclude that as long as the Legislature maintains a uniform public school system, open and available to all students, the constitutional mandate of Section 2 is satisfied, and the Legislature may encourage other suitable educational measures under Section 1.").

Meredith and *Schwartz* are squarely on point on the "encourage education" clause. Both cases interpreted similar text to reject Plaintiffs' *in pari materia* argument, while no state supreme court has adopted Plaintiffs' interpretation of an "encourage education" clause.

C. Constitutional convention quotes on other clauses are not a relevant source of information to interpret the "encourage education" clause.

This Court has repeatedly held that delegate quotes from the convention "are not a very reliable source of information upon the subject of the construction of any particular word or provision of the constitution." *Powers v. State*, 2014 WY 15, ¶ 39, 318 P.3d 300, 314 (Wyo. 2014) (quoting *Rasmussen v. Baker*, 7 Wyo. 117, 138, 50 P. 819, 824 (Wyo. 1897)). As this Court has explained, the remarks of individual delegates may not be representative of the convention

because "for all that we can know, that but few may have heard or learned of the remarks referred to." *Id.* (quoting *Rasmussen*, 7 Wyo. at 137, 50 P. at 824).

The constitutional convention citations offered by Plaintiffs do not address any education clause at issue in this case, let alone interpret Article 1, Section 23—indeed, Plaintiffs' citations are good examples of why the Court has adopted a rule against using convention statements. Plaintiffs cite pages 703 through 705 as though they were one continuous debate on funding public or private schools. Appellees' Br. at 22 (discussing *Journal and debates of the Constitutional Convention of the state of Wyoming: Begun at the city of Cheyenne on September 2, 1889, and concluded September 30, 1889* 703–05 (1893)). But those debates concerned mechanics of taxation like whether to require a poll tax for public schools to go to the county or the state or whether to impose a state property millage of three or five mills. *See Journal* at 703–05. Then, delegates debated whether to require the Treasurer to devote any profit from the public-school fund to public schools instead of his own purposes. *See id.* These quotes have nothing to do with any debate over whether to fund public schools to the exclusion of funding private education choices, particularly via benefits to parents. These debates are far afield from the meaning of Article 1, Section 23.

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In sum, Plaintiffs' new arguments and authorities ask this Court to nullify Article 1, Section 23 by (1) using the *in pari materia* canon to give the clause no meaning apart from Article 7, (2) applying decisions from states that do not have similar constitutional text, and (3) cherry-picking quotes from individual delegates at the constitutional convention that do not even purport to address Section 23. This Court should instead follow its sister state courts

in holding that the duty to encourage education through suitable means is separate from the duty to create public schools—and broad enough to include education benefits to families.

III. The Uniformity Clauses neither regulate schools that ultimately receive ESA funds nor transfer any children's rights to choose those schools from their parents to these Plaintiffs.

Regardless of the meaning of Article 1, Section 23, the Uniformity Clauses in Articles 7 and 21 do not entitle Plaintiffs to an injunction here. Plaintiffs argue that the Uniformity Clauses prohibit the ESA Program because "[s]tudents going to publicly funded private schools under the Program will not receive uniform instruction or opportunity." Appellees' Br. at 17. This argument makes three assumptions. First, it assumes that the phrase "complete and uniform" in Article 7 modifies all education programs, not just public schools. Wyo. Const. art. 7, § 1. Second, it assumes that any school that educates a child receiving a publicly funded scholarship is a part of the system of public schools, which is plainly false. Third, it assumes that someone other than the parents of students who choose private education can sue to enforce their right to uniform public education—which plainly undermines the rights of parents such as Intervenors. *Campbell I* in no way supports any of these counterintuitive inferential leaps.

Plaintiffs' first assumption is incorrect because Article 7 cannot be construed to affect anything other than public schools. By its plain text, the Article uses "complete and uniform" to describe the "system of public instruction," not all education programs adopted by the state. Wyo. Const. art. 7, § 1. This article also cannot be read to imply limits on the legislature because, under the plenary power doctrine, the Wyoming Legislature is never restricted by implication, as it has all powers not expressly forbidden by the state constitution. *State v.*

Langley, 53 Wyo. 332, 84 P.2d 767, 770 (1938); *see also* Wyo. Const. art. 10, § 2 ("The police power of the state is supreme over all corporations as well as individuals.").

Numerous other state courts have held that a legislature's plenary power permits it to enact scholarship programs beyond funding traditional public schools. The West Virginia Supreme Court, for example, recently upheld 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. *Beaver*, 887 S.E.2d at 627; *see also, e.g.*, *Hart*, 774 S.E.2d at 287-88, 294 (upholding constitutionality 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."). As these courts concluded, Legislatures are subject only to express restrictions, which means Articles 7 and 21 cannot be read to imply restrictions.

Plaintiffs' second assumption—that all schools who ultimately receive a student's ESA funds as tuition payment are public schools—is incorrect because accepting public benefits as payment does not turn a private provider into a public entity. *See Schwartz*, 382 P.3d at 897; *Hart*, 774 S.E.2d at 289; *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999); *Davis*, 480 N.W.2d at 474. *Campbell I* said the funding formula for traditional public-school funding was

insufficient, *see* 907 P.2d at 1258, but in no way did it address the numerous authorities saying publicly funded scholarships do not convert private education providers into public schools.

The core weakness in Plaintiffs' *Campbell I* argument is that it converts the duty to create a system of uniform public schools into a duty to make every child attend a uniform school. Plaintiffs recount at length the standards of completeness and uniformity for public schools, which no one disputes. Appellees' Br. at 15–17. Then, they take *Campbell I*'s requirement for "uniform opportunity," 907 P.2d at 1259, and recast it without citation as a mandate that all students must attend a uniform school. *Id.* at 17–19. If a student can elect to enroll in a uniform public school *or* a non-uniform (and perhaps better) alternative, the state has satisfied the uniform opportunity requirement because it created a "uniform" public school the student can use. Plaintiffs' theory would transform the Uniformity Clauses from a mandate on the state into a restriction on parents and students, compelling families to use a uniform option. Article 7 at most obligates the state to provide a uniform public school for every child, not to dictate whether individual families attend a uniform school.

Plaintiffs' third assumption is incorrect because any right to a uniform quality education when using ESA funds would belong to parents using ESAs. Because these Plaintiffs are not using ESA funds, they have no Uniformity Clause rights at stake here. They are strangers to the decisions of parents choosing to send their children to private schools using ESA funds. This part of the argument does not concern *what* the rights are in the Uniformity Clauses but rather *who* gets to assert those rights. *Contra* Appellees' Br. at 35–36. Likewise, this part of the argument does not assert that parents have a right for the ESA Program to exist or that courts may not adjudicate compliance with the Uniformity Clauses. *Contra id.* Rather, the point is that

any uniformity right that might plausibly attach to ESA funds belongs to Intervenor Parents (and others similarly situated)—*not* these Plaintiffs.

Nor could it be otherwise given the reach of fundamental *federal* parental rights. Plaintiffs' theory violates federal parental rights because it gives Plaintiffs a right to interfere in how Intervenor Parents educate their children. Under federal law, the Lecks have the fundamental constitutional right to direct the education and upbringing of T.L, M.L., and C.L, and Victoria has the right to direct the education and upbringing of M.H, L.H., and F.H. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923). Under Plaintiffs' interpretation of Wyoming law, those six children have a constitutional right to a uniform quality education, and these Plaintiffs can sue to challenge an alleged deprivation of those rights, regardless of the views (and parental decisions) of Nicolette, Travis, and Victoria regarding whether their children's constitutional rights are satisfied at their schools. Such transfer of the children's rights from parents to the Plaintiffs would violate federal law.

Hypothesizing an alternative scenario may help illuminate the problem with Plaintiffs' argument. Suppose the Leck children were attending the public schools in Cody, and the Haight children were attending the public schools in Casper. Now assume that Plaintiffs believed those public-school districts are not providing a uniform quality education to those six kids, while the Lecks and Haights were happy with the local public schools—perhaps precisely because of those asserted "inequalities." Could these Plaintiffs sue those public schools to assert the rights of the six children? Plainly not.

Plaintiffs' extended discussion of strict scrutiny is an irrelevant sidestep of the two arguments on appeal. *See* Appellees' Br. at 36–40. If the Uniformity Clauses have no

application to the ESA Program, no legal standard would apply. Intervenor-Parents' Opening Br. at 31–33. Likewise, if only parents are entitled to assert any uniform education quality rights of their children, the Court cannot apply any legal standard because Intervenor Parents are not asserting any violation of their children's rights. *See id.* at 33–35.

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The Uniformity Clauses do not apply to the private schools that Intervenor Parents' children attend, as many other states have held. But even if this Court disagreed, it should not assess whether those schools are satisfying any such mandate until the relevant parents claim a violation of rights. The district court erred by telling the Intervenor Parents that it was going to assess the quality of education provided to their children at the invitation of third parties and over their objection. Nothing in the text of the Wyoming Constitution permits this interference, and this Court should decline to adopt such an interpretation because it would be an unlawful violation of parental rights under the U.S. Constitution.

Conclusion

For the reasons stated above and in the opening brief, this Court should reverse the district court's preliminary injunction of the ESA Program.

DATED: December 22, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2025, a true and correct copy of the foregoing was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System and/or via email, to the following:

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