IN THE SUPREME COURT, STATE OF WYOMING

MEGAN DEGENFELDER, in her official capacity as Wyoming Superintendent of Public Instruction; CURTIS E. MEIER, JR., in his official capacity as Wyoming State Treasurer; and STATE OF WYOMING,

Appellants
(State-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; KATHRINE and ZACHARY SCHNEIDER, individually and on behalf of their minor children; CHAD SHARPE and KIMBERLY LUDWIG SHARPE, individually and on behalf of their minor children, and CHRISTINA VICKERS and BRANDON VICKERS, individually and on behalf of their minor children,

Appellees
(Plaintiffs).

S-25-0203

APPELLEES' RESPONSE TO STATE-APPELLANTS' BRIEF

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STATEMENT OF ISSUES PRESENTED

1. Did the District Court correctly find Plaintiffs were entitled to a Preliminary Injunction based on their claim that enacting a universal school voucher program violates Wyoming's Education Article, Wyo. Const. art. 7, §§ 1 and 9?

2. Did the District Court correctly find that the Voucher Program appropriates public funds for educational purposes to persons and schools not under the absolute control of the state, violating Wyoming's Private Appropriations Clause, Wyo. Const. art. 3, § 36?

3. Did the District Court correctly find that deprivation of a fundamental constitutional right constitutes irreparable harm?

4. Did the District Court correctly find that the equities weigh in favor of granting the Preliminary Injunction?

STATEMENT OF JURISDICTION

As a threshold matter, this Court should deny State Appellants' appeal because it does not comply with the Wyo. R. App. P. (WRAP). WRAP 1.05 defines appealable orders. WRAP 1.05(e)(1) specifically allows parties to appeal interlocutory orders that grant, continue, or modify injunctions. Rule 1.05(e)(1) refers parties to WRAP 13 (Petitions for a Writ of Review) for additional guidance on appealing interlocutory orders. Rule 13.01(a) states that "all applications to the supreme court for interlocutory relief may be made as petitions for a writ of review," and "[g]ranting of a petition is within the discretion of the supreme court." Rule 13.03(a) requires that "a petition for writ of review must be filed with the reviewing court within 15 days after entry of the order." Rule 13.03(c) then leaves it to the discretion of this Court whether to grant the petition, with the petitioning party only able to pursue an appeal of an interlocutory order if this Court were to grant the petition.

In this matter, the District Court entered an order granting the preliminary injunction on July 15, 2025. Accordingly, State Appellants should have filed a petition for a writ of review no later than July 30, 2025. Appellants never filed a petition for a writ of review seeking this Court's approval for review of the District Court's order granting the preliminary injunction.

The WRAP deliberately provides a specific path for parties seeking review of interlocutory orders. WRAP Rule 1.05(e)(1), Rule 13. Appellants side-stepped the procedures under Rule 13, instead presenting this Court with a standard-form appeal of the injunction. Because Appellants did not file a timely petition for writ of review of the

interlocutory order for injunction pursuant to WRAP 13.03, this Court should use its discretion to dismiss the appeal.

Should this Court determine that the appeal is properly filed and jurisdiction established, then for the reasons detailed below, the Court should dismiss the appeal on the merits, affirming the District Court's preliminary injunction.

STATEMENT OF THE CASE

I. Wyoming's System of Public Education is the Legislature's Paramount Priority.

Under the Wyoming Constitution, public education is sacrosanct. Of all the public services mandated by the Constitution, education receives the most detailed and comprehensive treatment. Not only does the Constitution include a right to education, Wyo. Const. art. 1, § 23, but Wyoming's Education Article has thirteen provisions devoted solely to education, including the mandate that "[t]he legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction." Wyo. Const. art. 7, §1. Article 21 goes on to require 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.

In the landmark *Campbell* cases, the Wyoming Supreme Court held that these provisions impose exacting requirements on the Legislature by establishing, among other things, that "the legislature's paramount priority," *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1279 (Wyo. 1995) (*Campbell I*), is to provide a "thorough and uniform education of a quality that is both visionary and unsurpassed," *State v. Campbell Cnty. Sch. Dist*., 19 P.3d 518, 538 (Wyo.), on reh'g, 32 P.3d 325 (Wyo. 2001) (*Campbell II*). To ensure the Legislature abides by this duty, the Court reviews "any legislative school financing reform with strict scrutiny." *Campbell I*, 907 P.2d at 1266.

Despite the Education Article's constitutional mandates, and the additional constitutional prohibitions against diverting public funds to private purposes in Article 3, § 36 and Article 16, § 6(a)(i) of the Wyoming Constitution, the Legislature has enacted a

universal private school voucher program. Under the Steamboat Legacy Scholarship Act, Wyo. Stat. §§ 21-2-901—909, HB 199 ("Voucher Program" or "Voucher Statute"), the State proposed to pay out approximately $30 million in general funds, beginning on July 1, 2025, for education in schools and settings that are not uniform, free or open to all, through a program that is set up to further private rather than public purposes.

In response, the Wyoming Education Association (WEA) and several parents of Wyoming public school students (collectively "Plaintiffs" or "Appellees") filed a declaratory judgment action and moved for a preliminary injunction against the State Defendants from implementing the Voucher Program. Appellees allege that the Voucher Program squarely conflicts with the Wyoming Constitution, and if implemented, will cause them irreparable harm. On July 15, 2025, the District Court of the First Judicial District of Laramie County ("District Court") granted Plaintiffs' request for injunctive relief.

II. A Universal Voucher Program to Subsidize Private Education.

On March 21, 2024, the Wyoming Legislature passed, and Governor Gordon signed, HB 166, creating a limited Voucher Program offering vouchers to low-income families.[1] Before HB 166 was fully implemented, the Legislature passed HB 199, which expanded the Program to all students' families regardless of their income.[2] A year later, on March 4, 2025, Governor Gordon signed HB 199, expanding the Voucher Program to its current form–a universal private education voucher program open to all Wyoming families that will draw up

[1] 2024 Wyo. Sess. Laws Ch. 108, https://www.wyoleg.gov/Legislation/2024/hb0166.

[2] 2025 Wyo. Sess. Laws Ch. 107, https://www.wyoleg.gov/Legislation/2025/HB0199.

to $30 million in public funding, to be parceled out into individual "education savings account" amounts of up to $7,000, that each eligible student's family can use to pay for a variety of educational services, including private school tuition and home schooling expenses.[3] Only students who are not enrolled in public school are eligible to receive a voucher. Wyo. Stat. Ann. § 21-2-904(b). On May 15, 2025, the Voucher Program opened for applications from eligible students for the 2025-26 school year.

The Voucher Program is available to all Wyoming children who are eligible to attend K-12 public schools. Wyo. Stat. Ann. § 21-2-904(a)-(b). The Program does not prioritize funding lower-income students, nor does it restrict participation by existing private and home school families who could afford to—and previously did—pay for private or home schooling using their own personal funds. The Program does not prevent schools and service providers from increasing their fees to capture all or part of the voucher benefit.

To receive a voucher account, the parent of an eligible student must submit an application to the Wyoming State Superintendent of Public Instruction ("Superintendent"), who "shall" approve the application if the student meets eligibility requirements, if there are available funds, and if the parent signs an agreement with the Superintendent concerning the use of the voucher funds. Wyo. Stat. Ann. § 21-2-905(a)-(d). The agreement between the parent and Superintendent must certify that the parent will use voucher funds only for purposes permitted by the Statute; require that voucher students receive instruction in "reading, writing, mathematics, civics, history, literature and science"; and certify that the

[3] *See* Wyo. Stat. Ann. § 21-2-909(d)(3) (appropriating $30 million in 2025).

student will not be enrolled in a public school district and that the "applicable school district"—presumably, the student's zoned district—is released from all obligations to educate the student. *Id*. at § 21-2-904(b). The Statute also provides that the agreement satisfies the State's compulsory attendance requirements. *Id*. at §§ 21-2-905(f)(i).

Two types of entities may receive voucher payments under the Program: "qualified schools" and "education service providers." For primary and secondary providers, "qualified school" is defined to include only "nonpublic" primary and secondary schools that operate in Wyoming, including online providers. *Id.* at § 21-2-902(a)(vii). The broader category of "education service providers" includes qualified schools as well as non-school entities that provide qualifying services to voucher recipients. *Id.* at § 21-2-902(a)(iii).

Once a voucher account is approved for an eligible student, funds will be transferred from the Program into an individual account in the student's name, and those funds may be used for "qualifying expenses." Wyo. Stat. Ann. § 21-2-904(b)(i). The Statute specifies the following list of qualifying expenses:

> (A) tuition and fees at a "qualified school," meaning a nonpublic school;
> (B) tutoring services, which may not be provided by the eligible student's immediate family;
> (C) services provided by a public district or charter school, including individual classes and extracurricular activities;
> (D) textbooks, curricula, or other instructional materials, including any supplemental materials or associated online instruction required by a curriculum or education service provider;
> (E) computer hardware or other technological devices intended primarily for a scholarship student's educational needs;
> (F) educational software and applications;
> (G) school uniforms;
> (H) fees for certain specified examinations and exam preparation courses;
> (J) tuition and fees for summer and after school programs, excluding childcare programs;

(K) tuition, fees and other expenses related to attendance at a career or technical school;
(M) educational services and therapies including occupational, behavioral, physical, audiology, or speech-language therapies;
(N) higher education tuition and fees;
(O) fees for transportation to an education service provider; and
(Q) tuition and fees for nongovernmental online learning programs.

Id. In addition to these specified items, the Superintendent may approve "any other educational expense" a participating family incurs in the education of the student. *Id*. at § 21-2-904(b)(i)(P).

The Statute delegates administration of all aspects of the Voucher Program to the Superintendent. Wyo. Stat. Ann. § 21-2-903—906. But this delegation includes only limited accountability measures for public funds, and virtually no oversight authority with regard to the instruction that students will receive through the Program. To receive funds, education service providers must be certified by the Superintendent and agree not to share or refund voucher funds directly with parents. Wyo. Stat. Ann. § 21-2-907(a). However, apart from requiring that funds flow to service providers for their intended use, the Statute not only disclaims any oversight over service providers, but goes as far as to state that the act should not be construed to limit service providers' "independence or autonomy" or "expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the ESA program." *Id.* at § 21-2-907(b), (e).

The Superintendent is required to audit just two percent of voucher accounts on an annual basis. These audits will focus on possible fraud or misuse of the voucher funds; they will not evaluate the quality, thoroughness or adequacy of the instruction received using

voucher funds. *See* Wyo. Stat. Ann. § 21-2-906(a)(vi), (ix). The Statute forbids parents from placing their own funds into a voucher account or receiving refunds directly from the account, and any refunds or rebates must be credited back to the voucher account. *See* Wyo. Stat. Ann. § 21-2-904(c)-(d). Though as a practical matter, it is unclear how the State will track compliance with this requirement given the law's relatively bare-bones auditing and fraud reporting provisions.

In essence, so long as private schools or other educational service providers claim to offer instruction of some kind in the academic subjects enumerated in the Statute, the Superintendent is barred from scrutinizing the quality of their academic programs. The Superintendent's only means of evaluating the adequacy of the instruction received using voucher funds is the test performance of voucher students who voluntarily take part in statewide assessments. *Id*. at § 21-2-906(a)(xii). But the parent of any voucher student may opt to have their child take any "nationally normed achievement exam" in place of statewide assessments. *Id*. at § 21-2-904(b)(ii)(B). So, while the Superintendent must include and analyze certain Voucher Program performance data in an annual report to the legislature on public school accountability, Wyo. Stat. Ann. § 21-2-204(k), there will be no reliable way to assess the Program's impact on participating students' achievement or compare their performance with their peers who remain in public schools. Nor does the Voucher Program contain any other means to ensure students receive adequate educational instruction or opportunities on par with their peers who remain in the Wyoming public school system.

Notably, the Superintendent is only empowered to bar education service providers for misconduct. *Id.* at § 21-2-906(a)(x). The Superintendent cannot screen, review, or otherwise

evaluate qualified school or educational service providers' curricula for quality or to ensure that they prepare students for higher education or the workforce. Service providers must also be "given maximum freedom to provide instruction and services in their usual and customary manner." *Id.* at § 21-2-907(c). Instruction in specific subjects is required, but "[n]o parent shall be required to include any instruction that conflicts with the parent's or the ESA student's religious doctrines." *Id.* at § 21-2-904(b)(ii)(a). Private schools and qualified online education service providers participating in the Voucher Program will be free to depart from what Wyoming considers a standard curriculum.

Given the lack of meaningful oversight, the Voucher Program will almost certainly fund and exacerbate discrimination. The Voucher Program provides that by accepting a voucher, parents of students with disabilities are making a parental placement under the Individuals with Disabilities Act ("IDEA"), which lessens their protections under the IDEA. *Id*. at § 21-2- 906(a)(iv). Parentally placed students receive less protection and are entitled to fewer services when compared with disabled students who remain in public schools or are placed in a private school on the state's initiative.[4]

Further, the Statute mandates that no service provider can be required to alter its "creed, practices, admission policy or curriculum" in order to accept public funds under the Voucher Program. *Id.* at § 21-2-907(f). Since private schools can and some do screen out or

[4] *See* United States Government Accountability Office, *Private School Choice: Federal Actions Needed to Ensure Parents Are Notified about Changes in Rights for Students with Disabilities* 7-8 (Nov. 2017), https://www.gao.gov/assets/d1894.pdf.

otherwise marginalize students based on some protected characteristics such as race, color, national origin, religion, sex, age, marital status, disability, pregnancy, sexual orientation, gender identity, or political affiliation, this provision effectively licenses state-funded discrimination.

III. Procedural Posture

On June 13, 2025, Plaintiffs filed a complaint challenging the constitutionality of the Voucher Program and seeking injunctive and declaratory relief. On July 15, 2025, the District Court issued a decision and order finding that the Plaintiffs made a clear showing of probable success on the merits of their claims challenging the Voucher Program and have shown possible irreparable injury. R. at 561, 567. Further, the District Court held that halting the Voucher Program before its implementation maintains the *status quo*, holding public funds from being dispersed until the constitutionality of the Voucher Program is fully resolved. R. at 568-569.

On July 17, 2025, State Defendants and Intervenor Defendants filed a notice of intent to appeal the July 15 injunction. R. at 559-562. On July 18, 2025, pursuant to Wyo. R. Civ. P. 62(c), Defendants also filed a joint motion to stay the injunction pending appeal, which the District Court denied on August 12, 2025. R. at 619-625. On September 18, 2025, State Appellants filed a motion to stay the injunction with this Court, which was denied on October 7, 2025.

ARGUMENT

I. Standard of Review

The Wyoming Supreme Court generally applies an abuse of discretion standard of review to appeals of a district court's preliminary injunction. *Malave v. W. Wyo. Beverages, Inc.*, 2022 WY 14, 503 P.3d 36 (Wyo. 2022). However, the standard of review applicable to a particular issue presented on appeal depends on the nature of the issue. Legal conclusions are subject to *de novo* review, and factual findings are subject to clear error review. *Id; see also Brown v. Best Home Health & Hospice, LLC*, 2021 WY 83, ¶ 9, 491 P.3d 1021, 1026 (Wyo. 2021). Further, when reviewing a district court's factual findings for clear error, this Court reviews the evidence in the light most favorable to the prevailing party. *Id* at 1026-27, citing *Wyo. Ben, Inc. v. Van Fleet*, 2015 WY 146, ¶¶ 20, 31, 361 P.3d 852, 858, 861 (Wyo. 2015). Finally, the district court's weighing of the equities when deciding to grant or deny an injunction is reviewed under the abuse of discretion standard. *See id*.

II. The District Court Applied the Correct Legal Standard for Granting a Preliminary Injunction.

When evaluating and granting the preliminary injunction, the District Court applied the correct legal standard. R. at 544-545. The District Court explained that the party seeking a preliminary injunction must make a clear showing of probable success on the merits of the suit and possible irreparable injury to the plaintiff. *Best Home Health Care,* 491 P.3d at 1026, *see also Malave*, 503 P.3d at 39; *In re Kite Ranch, LLC*, 2008 WY 39, ¶ 22, 181 P.3d 920, 926 (Wyo. 2008) (holding that plaintiff must show "potential harm is irreparable"). This Court has explained that "[a]n injury is irreparable where it is of a peculiar nature, so that compensation in money cannot atone for it." *Polo Ranch Co. v. City of Cheyenne*, 2003 WY 15, ¶ 26, 61 P.3d 1255, 1264 (Wyo. 2003), citing *Rialto Theatre, Inc. v. Commonwealth Theatres, Inc*., 714 P.2d 328, 332 (Wyo. 1986). Further, consistent with this Court's

precedent, the District Court properly explained that "[t]he purpose of a preliminary injunction during the pendency of litigation is 'to preserve the status quo until the merits of an action can be determined.'" *Best Home Health Care*, 491 P.3d at 1026, quoting *CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp.*, 2009 WY 113, ¶ 7, 215 P.3d 1054, 1057 (Wyo. 2009).

As explained in detail below, Wyoming families' fundamental constitutional rights are jeopardized by the implementation of the Voucher Program. Such constitutional violations constitute possible irreparable harm and must be met with strict scrutiny. Further, the plain language of the Wyoming Constitution, as construed in well-settled Wyoming Supreme Court precedent, favors Appellees' arguments that the Voucher Program is fatally flawed. The District Court correctly found that Appellees are likely to prevail on multiple, independent constitutional grounds.

III. The District Court Correctly Held that Appellees are Likely to Succeed on the Merits.

A. The Voucher Program Creates a System of Publicly Funded Education that Violates the Education Article of Wyoming's Constitution.

The Wyoming Constitution's Education Article declares that "[t]he legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary." Wyo. Const. art. 7, § 1. Further, the Constitution obligates the State to "make such further provision by taxation or otherwise, as with the income arising from the general school fund will create and

maintain a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state . . ." Wyo. Const. art. 7, § 9. Collectively, these provisions require the Legislature to establish a uniform system of education that is thorough, efficient, adequate, and open to all youth in Wyoming.

By enacting the Voucher Program, the State now offers Wyoming parents two options for securing publicly funded education: traditional public schools, or a state-subsidized education provided by private parties. These two options both fall within the definition of "education system" contemplated by the Wyoming Constitution. *See Campbell I*, 907 P.2d at 1258 (noting that the word "system" referred to "any combination or assemblage of thing adjusted as a regular and connected whole"). Both the requirement that voucher recipients forego their place in traditional public schools, and the use of public funds for vouchers, bind the Voucher Program to the remainder of the public education system. Accordingly, the mandates of Wyoming's Education Article apply.

The District Court found that the Voucher Program "allows parents, on behalf 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." R. at 549, citing *Campbell I*. Accordingly, the District Court properly determined that the Program conflicts with mandatory constitutional provisions and is likely to be struck down. R. at 551.

1. The Voucher Program Violates the Plain and Unambiguous Text of Wyoming's Education Article.

In construing constitutional provisions, courts "attempt to understand the meaning of the language as it was understood at the time our Constitution was ratified." *Powers v. State*,

2014 WY 15, ¶ 36, 318 P.3d 300, 313 (Wyo. 2014). It must be presumed that the ratifiers intended to enact whatever has been plainly expressed in the document's text, and that intent is what must be given effect and enforced by this Court. *Rasmussen v. Baker*, 7 Wyo. 117, 128 (Wyo. 1897). In its plain text, the Wyoming Constitution's Education Article commands that "[t]he legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade" and that what they create must be a "thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state." Wyo. Const. art. 7, §§ 1, 9. As this Court recognized in *Campbell I*, at the time of ratification, these words carried the following meanings and definitions:

> *complete*: having no deficiency; wanting no part or element; perfect; whole; entire; full;
>
> *uniform*: having always the same form;
>
> *system*: any combination or assemblage of thing [sic] adjusted as a regular and connected whole;
>
> *instruction*: the act of instructing or teaching; communication of knowledge; education; enlightenment;
>
> *thorough*: fully executed; having no deficiencies; hence, complete in all respects; unqualified; perfect;
>
> *efficient*: acting or able to act with due effect; adequate in performance; bringing to bear the requisite knowledge, skill, and industry; capable, competent;
>
> *adequate*: equal to requirement or occasion; commensurate; fully sufficient, suitable or fit;
>
> *proper*: fit; suitable; appropriate;

> *education*: education in a broad sense, with reference to man, comprehends all that disciplines and enlightens the understanding, corrects the temper, cultivates the taste, and forms the manners and habits; in a narrower sense, it is the special course of training pursued, as by parents or teachers, to secure any one or all of these ends.

See Campbell I, 907 P.2d at 1258–59, quoting The Century Dictionary (1889).

In synthesizing these definitions, this Court defined "a thorough and efficient system of public schools adequate to the proper instruction of all youth of the state" as follows:

> [A]n organization forming a network for serving the common purpose of public schools which organization is marked by full detail or complete in all respects and productive without waste and is reasonably sufficient for the appropriate suitable teaching/education/ learning of the state's school age children.

Campbell I, 907 P.2d at 1258–59. The Wyoming Constitution thus commands that the State create and maintain an assembled whole of educational academic programs that have the same form throughout the entire state, that have no deficiencies, and that teach students in a competent and suitable manner. In practice, a thorough and uniform system of public instruction guards against certain students in Wyoming receiving a lesser public education than their peers within the State.

The Voucher Program will fund educational programs that are decidedly not uniform, injecting inconsistency and disparity into Wyoming's system of education. Private schools and other education service providers are expressly permitted to provide instruction through the Voucher Program that is not uniform, either when compared with the public schools or with other schools participating in the Program. Wyo. Stat. Ann. § 21-2-907(f). Indeed, rather than encouraging consistency in educational offerings, the Voucher Program's provisions tilt

the opposite way by guaranteeing participating private schools "maximum freedom" from State control. Wyo. Stat. Ann § 21-2-907(c).

Under the Voucher Program, each private school or qualified education service provider is allowed to operate independently within the "system" of publicly funded education. Students going to publicly funded private schools under the Program will not receive uniform instruction or opportunity. *See In re RM*, 102 P.3d 868, 874 (Wyo. 2004) (noting that the legislature has an obligation to provide "Wyoming students with . . . uniform opportunity"), quoting *Campbell I*, 907 P.2d at 1259. Nor will instruction be measured by any consistent standard. Rather, families participating in the Voucher Program may select from either the standard Wyoming state assessment or any other nationally normed assessment test. Wyo. Stat. Ann. § 21-2-904(b)(iii)(B). Even the potential for such disparate choices of assessments was held by the Wyoming Supreme Court in the first *Campbell* case to violate the constitutional uniformity requirement. *Campbell I*, 907 P.2d at 1263 (explaining that allowing each district to choose their assessments allowed them to "separately determine and define an education system for their students, potentially creating forty-nine autonomous education systems" in violation of the constitutional requirements). And the choice of different assessments is just one of the myriad of disparities written into the Voucher Program.

This lack of uniformity is also evident in that Wyoming's system of public education must adhere to rigorous Content and Performance standards,[5] including a set of twelve core areas of knowledge and six kinds of skills in which all school districts must educate students. Wyo. Stat. Ann. §21-9-101(b)(i), (iii). In addition to these requirements, all public school students must receive instruction and pass examinations on the state and federal constitutions in order to graduate. Wyo. Stat. Ann. 21-9-102. Per Wyoming Statute §21-2-304(a), public schools must be accredited by the State Board of Education under Wyo. Stat. Ann. §21-9-101 and §21-9-102. The State also requires that teachers in public schools be appropriately certified and endorsed. *See* Wyo. Stat. Ann. §21-2-303; Chapters 1–4 of the Rules of the Wyoming Professional Teaching Standards Board.[6] Finally, the State requires that school districts operate schools and classes for a minimum of 175 days. Wyo. Stat. Ann § 21-4-301(a).

By contrast, the Voucher Program merely requires that students be instructed in "reading, writing, mathematics, civics, history, literature and science." Wyo. Stat. Ann. § 21-2-904(b)(ii)(A). There are no required numbers of instructional days, no required qualifications for teachers, and no content standards. In fact, the Statute affirmatively ties the State's hands in exercising oversight over the Program by providing that the act cannot be construed to limit service providers' "independence or autonomy" or "expand the regulatory

[5] https://edu.wyoming.gov/transparency/content-performance-standards (last visited November 21, 2025).

[6] https://wyomingptsb.com/home/rules-and-regulations (last visited November 21, 2025).

authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the ESA program." Wyo. Stat. Ann. § 21-2-907(b),(e). The Superintendent is only empowered to bar education service providers for misconduct and cannot screen them for quality or ensure that they prepare students for higher education or the workforce—or that they provide any real value at all. *See Id.* at § 21-2-906(a)(x).

The lack of oversight of private educational offerings funded under the Voucher Program will spawn an array of disparate educational offerings that differ on every score, from the subjects taught, to the instructional format, to the ultimate educational objectives. The Voucher Program creates a disjointed education system that falls short of the plain and unambiguous constitutional mandates of a "complete and uniform system of public instruction" that is both "adequate" and "proper." Wyo. Const. art. 7, §§ 1, 9.

Nor does the Voucher Program comport with the constitution's directive that "all youth of the state" will have equal access to the system of publicly funded schools. *See* Wyo. Const. art. 7, § 9. Instead, the Statute requires that all service providers be "given maximum freedom to provide instruction and services in their usual and customary manner" and provides that they cannot be required to alter their "creed, practices, admission policy or curriculum" in order to accept public funds under the Program. *See* Wyo. Stat. Ann. § 21-2-907(c); § 21-2-907(f). In so doing, the Voucher Program effectively licenses and subsidizes discrimination by private entities, which raises a host of issues including the failure to comply with the educational mandates of the Wyoming Constitution. Private schools can and some will screen out or otherwise marginalize students based on characteristics that may include

academic ability, race, color, national origin, religion, sex, age, marital status, disability, pregnancy, sexual orientation, gender identity, or political affiliation.

For example, the Casper Christian School in Casper WY, which advertises that it is an approved educational provider for the Voucher Program, has the following required admissions criteria: (1) At least one parent must be a Christian, affiliated with a local church, and in regular attendance at the church; (2) The student must have semester averages of 80 or above on current year and previous years' report cards/transcript; (3) The student must be in good standing with previously attended schools; (4) The student must score within an acceptable range on admission tests administered by Casper Christian School; and (5) While there is no restriction on applicants, it should be noted that our School exists because of Jesus Christ and for the glory of God. Our families must agree in writing and adhere to our statement of faith as part of the application process. In addition, a lack of sincere support for the Christ-centered worldview taught at CCS would be both confusing and detrimental to the student.[7]

Another example is Laramie Christian Academy (LCA) in Laramie WY, which requires that all parents who wish to enroll their children to agree to be taught according to the school's "Statement of Faith." The Statement of Faith provides that "I commit, as a descendant of Adam and Eve, to submit to God's created design for humanity. I will respect all people as equal before God. I will acknowledge our differences as male and female

[7] https://casperchristianschool.org/admissions-criteria (last visited November 21, 2025).

according to God's design, recognizing that He has established these differences in our bodies from conception. I will honor the institution of marriage as a life-long covenant between one man and one woman, abstaining from all forms of sexual activity outside of marriage. (Leviticus 19:18, Psalm 139:13–16, Hebrews 13:4)." In addition, the LCA Handbook provides that "Laramie Christian Academy is not equipped in staff, resources, and logistics to handle students with severe learning disabilities or those who have trouble behaviorally to the point that they cannot participate in fully inclusive education. The application and interview process will be used to determine on a case-by-case basis whether a child with special needs can be accepted."[8]

Yet another example is Heritage Christian School (HCS) in Gillette, WY. On its website, HCS provides that it is not accredited. Further, HCS asserts that its "Statement of Faith" that HCS "believe[s] that God's command is that there be no sexual intimacy outside of or apart from marriage between a man and a woman. We believe that God wonderfully foreordained and immutably created each person as either male or female in conformity with their biological sex."[9]

Correctly, the District Court explained that "not all Certified Providers will be available and open to all Wyoming students. In other words, Certified Providers receiving public funds are free to discriminate against classes of students in their admission process."

[8] https://www.laramiechristianacademy.com/wp-content/uploads/2024/08/24-25-handbook-final.pdf (last visited November 21, 2025).

[9] https://hcsgillette.org/about-us (last visited November 21, 2025).

R. at 550. Further, the court recognized that the Voucher Program "does not assure that the students using an ESA to be educated outside the public school system will receive the education required by the constitution." R. at 551.

In sum, the plain language of Wyoming's Education Article supports a finding that the Voucher Program is likely unconstitutional.

2. Wyoming Constitution's Legislative History Reveals an Intent to Prohibit Spending of State Funds on Non-Public Schools.

Beyond the plain language of Wyoming's Education Article, the Constitution's legislative history demonstrates an intent of the drafters to prohibit the spending of state funds on non-public or "outside" schools and reserve public funds for public or "common" schools. Wyoming Constitutional Convention, *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* at 186 (1893). For example, during the constitutional debates, one delegate proposed instituting a two-dollar poll tax "for the support of the common schools" *Id*. at 703. Charles Potter, the delegate who proposed the poll tax, explained his belief that "if there is anything we believe in spending money for[,] it is to keep up the schools, and we ought not to have a limitation on that." *Id*. at 704. In defending Mr. Potter's proposed amendment, another delegate, Henry A. Coffeen, stated that "[t]here is not a dollar to be made on state funds to be used for private gain or purpose." *Id*. Other ratifiers, while maintaining their opposition to the poll tax, nonetheless admitted that school funding was a "very important question" that boiled down to the "common sense" conclusion that public funds should be reserved for public schools. *Id*. at 705. The poll tax proposal was ultimately

voted down because several delegates viewed it as redundant of the existing educational funding provisions.

Further, during the convention's debates over what would become the Wyoming Constitution's Article 7, Section 5, which states that "[a]ll fines and penalties under general laws of the state shall belong to the public school fund of the respective counties and be paid over to the custodians of such funds for the current support of the public schools therein," Delegate George W. Fox argued that because he had "been in the Albany county treasurer's office" during important financial discussions, he knew for certain that "all the money that comes in to the treasurer is put into the school fund, and is apportion[ed] by the school superintendent . . . according to the number of children" in that district in total. *Id*. at 732. This, in turn, sparked a debate about whether school funding should be allocated according to the total number of children living in that district or the total number of children in attendance in public schools in that district. *Id*. at 733–36.

The ensuing debate provides insight into how some of the framers viewed the use of public funds for the support of public versus private education. To this point, Delegate Charles H. Burritt asserted: "I don't go much on these outside [private] schools," adding that "[i]f the people want to send their children to outside schools[,] let them pay for it, and not take our money away." *Id*. at 734–35. Several other delegates noted their general agreement with Mr. Burritt and it seems to be the opinion amongst the delegates that no money from the State could be permissibly allocated to private schools over public schools. *Id*. In the end, Mr. Burritt withdrew his amendment, *id*. at 735, but numerous delegates agreed with Mr. Burritt that public funds should be ineligible for apportionment to private schools. *Id*. This

consensus amongst the delegates indicates their shared understanding of the State's founding education principle: Wyoming's public school system ought to be funded through public funds, and none of those funds should be permitted to benefit private schools.

During the very same debate, Delegate John K. Jeffrey proposed that, rather than codifying these funding mechanisms in the state constitution, the ratifiers should leave the decision up to future legislatures since "[i]t is very easy to repeal a statute, but a hard matter to change a constitution." *Id*. at 735. Several delegates strongly opposed Delegate Jeffrey's position, and Delegate Coffeen went so far as to issue a grave warning against leaving school funding decisions to future legislatures, stating "[y]ou will leave the distribution of quite a large fund to the legislature, to the bias and prejudice that may prevail there, and I do not approve of that." *Id*. at 736. Other delegates, including Territorial Governor John Hoyt, agreed with Delegate Coffeen, and their resistance ultimately prevailed as the convention rejected delegate Jeffrey's legislature-dependent school funding proposal. *Id*.

Despite their disagreements, the language currently contained in the Education Article represents days of debate and compromise. And these discussions confirm the ratifiers' deeply rooted fear that a future state legislative session may contemplate significant changes to the public-school funding structure they sought to enshrine, such as channeling a significant amount of public funding to support private education.

3. The Legislature Cannot Circumvent the Education Article's Mandates by Creating Alternative Education Options that Meet None of Them.

The State contends that the Voucher Program is not part of the public school system and therefore falls outside the scope of the Education Article altogether and is subject to none of its mandates. *See* State Appeal Br. at 26. The District Court, however, accurately

recognized that the Voucher Program "provides public funding to some Wyoming students for their education…[and] through the Act the legislature chose to provide another taxpayer funded method for providing the constitutionally required education to Wyoming students." R. at 550.

It is well-settled that "[t]he 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); *see also Powers v. State*, 318 P.3d 300, 308 (Wyo. 2014) ("what may not be done directly cannot be accomplished by indirection"), quoting *Hudson v. Kelly*, 263 P.2d 362, 369 (1953) (finding that the legislature cannot remove the powers of elected superintendent and transfer them to someone else, indirectly abolishing elected officer in violation of the constitution); *Gordon v. State by & through Capitol Bldg. Rehab*., 413 P.3d 1093, 1102–03 (Wyo. 2018); *State v. Snyder*, 225 P. 1102, 1105 (1924).

As detailed above, the Wyoming Constitution thoroughly sets forth how the educational needs of children in the State must be met. By necessary implication, the Legislature lacks the authority to disregard those mandates and provide for education in a contradictory manner. *See Walters v. State ex rel. Wyoming Dept. of Transp.*, 300 P.3d 879, 884 (Wyo. 2013) ("[w]here there is an express provision, there shall not be a provision by implication; *expressio unius est exclusion alterius*."); *Cathcart v Meyer*, 88 P.3d 1050, 1066 (Wyo. 2004) ("The doctrine of *expressio unius est exclusion alterius* requires us to construe a statute 'that enumerates the subjects or things on which it is to operate, or the persons affected, or forbids certain things…as excluding from its effect all those no expressly mentioned.'") (internal citation omitted). By expressly requiring that the Legislature fund

and operate a uniform system of public instruction, the Wyoming Constitution prohibits the Legislature from funding and operating an alternative educational system through private education providers that do not comply with the constitutional requirements. As stated in *Campbell I*, courts must consider the "[Wyoming education] system as a whole," 907 F.2d at 1266. such that constitutional provisions cannot be circumvented by simply diverting funding to private schools.

Not only do the specific terms of Article 7, Sections 1 and 9 direct that the education system must be "complete and uniform" as well as "thorough and efficient" and "open to all," but the remaining education provisions of the Wyoming Constitution further delineate how education must be delivered. *See Geringer v. Bebout*, 10 P.3d 514, 520 (Wyo. 2000) ("every statement in the constitution must be interpreted in light of the entire document . . . with all portions of it read *in pari materia* and every word, clause and sentence considered so that no part will be inoperative or superfluous"). In both the Constitution's Declaration of Rights, and again in the Education Article, the framers took great pains to establish a system of public schools, ensure general quality and uniformity, and restrict the Legislature from diverting public school funding to other purposes. The Education Article contains thirteen specific requirements for education.[10] Wyo. Const. art. 7, § 1–12, 14. And finally, Article 21,

[10] Most of the Education Article's provisions pertain specifically to the permanent school fund, which today supplies only a small portion of public-school funds. *See Office of State Lands & Invs. v. Merbanco*, 70 P.3d 241, 248 (Wyo. 1994). But they demonstrate the

Section 28 adopts Wyoming's Irrevocable Ordinance concerning education, which predates statehood and provides 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."

While this Court has not considered the constitutionality of a large-scale state initiative to fund private and home school education, other jurisdictions have, holding that such voucher programs violate their respective state education articles. For example, the Florida Supreme Court struck down a school voucher program because it failed to satisfy the same types of state constitutional provisions at issue here. *See Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006). Like Wyoming, the Florida Constitution includes both a "uniformity" and "adequacy" requirement for public schools. *See* Fla. Const. art. IX, § 1(a). The Florida court recognized that providing a systemic alternative to the public schools in the form of private school vouchers—was "a substantially different manner of providing a publicly funded education than . . . the one prescribed by the Constitution." *Id*. at 407 (internal quote omitted). Ultimately, the Florida court held that the voucher program violated the state constitution because it would use "public dollars" to create "separate private systems parallel to and in competition with the free public schools that are the sole means set out in the Constitution for the state to provide for the education of Florida's children." *Id*. at 398.

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framers' overarching purpose: to establish a uniform and well-funded education system, and to protect the funding sources for that education system.

Likewise, a recent decision from a Utah District Court held that because a universal school voucher program was a "legislatively created, publicly funded education program aimed at elementary and secondary education, it must satisfy the constitutional requirements applicable to the 'public education system,'" as set forth in the Utah Constitution. *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). The court held that "[t]the legislature does not have plenary authority to circumvent these constitutional requirements by simply declining to 'designate' the Program as part of the public education system. And because there is no genuine dispute that the Program fails to meet these 'open to all children' and 'free' requirements, it is unconstitutional under article X of the Utah Constitution." *Id*.

Consistent with courts' findings in other jurisdictions, Wyoming's Education Article and related constitutional provisions demonstrate an intent to establish and prioritize the Wyoming public school system by ensuring its general quality, uniformity, and openness to all youth. The Voucher Program violates these constitutional mandates by creating a publicly funded, alternative system of education outside the reach of State control.

B. The District Court Correctly Held that Strict Scrutiny Must Apply to Legislative Action Affecting the Fundamental Right to a Proper Education and Legislative Changes to School Finance.

When a fundamental interest is affected, the challenged action "must be subjected to strict scrutiny to determine if it is necessary to achieve a compelling state interest. In addition, this test requires that the state establish that there is no less onerous alternative by which its objective may be achieved." *Washakie Cnty. Sch. Dist. v. Herschler*, 606 P.2d 310, 333

(Wyo. 1980). This Court has held that "[i]n light of the emphasis which the Wyoming Constitution places on education, there is no room for any conclusion but that education for the children of Wyoming is a matter of fundamental interest." *Id*. On appeal, Appellants assert that strict scrutiny does not apply because the Voucher Program is not part of the public school system and does not impact any person's constitutional rights. State Appeal Br. at 26. Further, they argue that the "district court's strict scrutiny discussion is policy disagreement in the guise of a constitutional analysis." *Id* at 27.

Quoting *Campbell I*, the District Court explained that this Court "recognized at the time of adoption of the Wyoming Constitution, education was a 'vital concern' 'because an educated populace was viewed as a means of survival for the democratic principles of the state.'" R. at 549, quoting *Campbell I*, 907 P.2d at 1259. The District Court then stated that "[u]ndoubtedly, the [Voucher 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." R. at 549. Based on its application of well-settled controlling precedent, the District Court concluded that the Voucher Program must be met with strict scrutiny and is likely to fall. R. at 551. The District Court is not engaged in a "policy disagreement," but rather, based directly on the constitutional text and this Court's precedent, the court explained that a strict scrutiny analysis applies due to the Program's impact on fundamental rights.

In the first *Campbell* decision, this Court affirmed this position, holding that "the framers and ratifiers ensured, protected and defined a long-cherished principle" that education is a "fundamental right" and sought to "remedy the shortcomings of the schools

during the territorial years" by mandating that education be centralized and standardized. *Campbell I*, 907 P.2d at 1257. The Court explained that the State's obligation goes "well beyond simply allowing the legislature to dispense a minimal level of elementary and secondary education and then fund it as best it can amidst other competing priorities." *Id.* at 1279. This Court declared that "[s]upporting an opportunity for a complete, proper, quality education is the legislature's paramount priority; competing priorities not of constitutional magnitude are secondary, and the legislature may not yield to them until constitutionally sufficient provision is made for elementary and secondary education." *Id*. Accordingly, the Court has repeatedly found constitutionally suspect any legislative action that might undercut the public education system.

Applying these principles, this Court explained that courts must review "any legislative school financing reform with strict scrutiny to determine whether the evil of financial disparity, from whatever unjustifiable cause, has been exorcised from the Wyoming educational system." *Id*. at 1266. Further, this Court considered the "system as a whole" and held that "any state action interfering with [educational equity] must be closely examined before it can be said to pass constitutional muster." *Id*.; *see also Campbell II*, 19 P.3d at 535 (emphasizing that all aspects of the school finance system are subject to strict scrutiny). The District Court then reasoned that the State has no interest, let alone a compelling interest, in using Wyoming's public funding to subsidize private schools and other education service providers that are not required to satisfy educational standards set forth in the Wyoming Constitution.

Moreover, even if the State were to identify a compelling interest—which it cannot––the Voucher Program fails strict scrutiny because it is not narrowly tailored to meet a state interest. The Voucher Program is expansive by any measure. There is no limitation on eligibility such as family income, geographic location or school district, or the particular educational needs of the student. And there is virtually no oversight authority with regard to the quality of instruction that students will receive through the Program. The lack of accountability and oversight leave the Program ripe for abuse with no accountability to students, parents, and Wyoming taxpayers.

The District Court properly applied controlling precedent interpreting the Wyoming Constitution and determined that because the Voucher Program impacts fundamental rights and is school finance legislation, strict scrutiny applies. However, even if this Court disagrees with the District Court's determination that strict scrutiny applies, the Voucher Program is unlawful because it conflicts with the clear and unambiguous text and purpose of Wyoming's Education Article.

C. The Voucher Program Violates Wyoming's Constitutional Limitations on Appropriations and Donations to Private Entities.

The Wyoming Constitution contains two provisions intended to prevent public funds from being diverted to private interests. Article 3, Section 36 of the Wyoming Constitution provides that "[n]o appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association." Wyo. Const. art. 3, § 36. And Article 16, Section 6(a)(i) states that "[n]either the state nor any county, city, township, town, school district, or any other political subdivision, shall . . . [l]oan or give its

credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor." Wyo. Const. art. 16, § 6(a)(i).

The Voucher Program violates the plain language of these provisions by appropriating funds to benefit private persons and private educational enterprises, including by funding education at exclusive schools that are not open to all students, by funding students that already enrolled in private schools and paying for private education, and by permitting schools and education service providers to capture some or all of the voucher amount. The general funds that have been tapped to fund the Voucher Program are both an "appropriation" and "aid" within the meaning of these provisions. The participating schools and education service providers are in no way "under the absolute control of the state." The Voucher Statute specifies that the Program cannot "limit the independence or autonomy of an education service provider or to make the actions of an education service provider the actions of state government or public school district", that service providers are entitled to "maximum freedom" from state control and are not agents of the state or school district, and that the Voucher Program does not "expand the regulatory authority of the state" over service providers. Wyo. Stat. Ann. § 21-2-907(b)–(e).

Nor can the Voucher Program be construed as a benefit "for necessary support of the poor," as contemplated in Article 16, Section 6(a)(i) of the Wyoming Constitution. The Program, as amended in March 2025, lifted any prioritization or limitation of the program to low-income families, expanding the Program to all families of eligible students regardless of income level. *C.f. State v. Carter*, 30 Wyo. 22, 215 P. 477, 479 (Wyo. 1923) ("the constitutional provision that the Legislature may appropriate money for the necessary support

of the poor must necessarily be construed in the light of and in connection with the provision prohibiting the making of donations").

1. The Voucher Program Violates the Plain and Unambiguous Text of the Private Appropriations Clause by Appropriating Funds to Private Entities and Individuals, not a State Agency.

Applying the plain language of the Private Appropriations Clause to the statutory text, the District Court properly held that the Program "clearly violates the plain and unambiguous terms of Art. 3, § 36 of the Wyoming Constitution." R. at 547, citing Wyo. Stat. § 21-2-907(f). On appeal, the State argues that the "district court reasoned that it did not matter to whom the appropriation was directed if funding would eventually make its way to an entity that the State does not control." State Appeal Br. at 22. The State then asserts that the vouchers are not appropriated to private education service providers, but instead, to the Steamboat Legacy Scholarship Program, controlled by the Superintendent. *Id*. at 25.

In reaching its determination, the District Court followed this Court's instruction that courts use the Century Dictionary to help define the plain meaning of terms used in the Wyoming Constitution. R. at 546, citing *Campbell I*, 907 P.2d at 1258. The Century Dictionary defined "appropriation" as:

1. The act of appropriating, setting apart, or assigning to a particular use or purpose; specifically, an act of a legislature authorizing money to be paid from the treasury for a special use –
2. Anything appropriated or set apart for a special purpose, as money.

R. at 546, citing The Century Dictionary, Vol. 1, Part 2 (1889). Applying this definition, the District Court found that the term appropriation "plainly contemplates setting aside money for a use or purpose and not just to one person, except when done to the exclusion of all

others." R. at 546. Looking to the use or purpose of the funding designation led the District Court to reject the State's argument, offered again here, "that the only transaction subject to scrutiny under Art. 3, § 36, is the appropriation to the State Superintendent." R. at 546.

The District Court's interpretation of the term "appropriation" is supported by this Court's decisions examining the rule of statutory construction that "courts may not interpret the law in a manner that would render any part of the law meaningless." R. at 546, citing *Kobielusz v. State*, 541 P.3d 1101, 1107 (Wyo. 2024); *Powers v. State*, 318 P.3d 300, 304 (Wyo. 2014). ("[T]he constitution should not be interpreted to render any portion of it meaningless."). The State's assertion that the Voucher Program is an appropriation to the Superintendent asks the Court to ignore the intended purpose and use of the appropriation. Such a reading renders the Private Appropriations Clause a formalistic nullity that can be side-stepped simply by channeling funds destined for private hands through a state agency.

The State urges this Court to ignore the plain textual meaning of Wyoming's Private Appropriations Clause and, instead, adopt a rigid formalistic interpretation, limiting the scope of the clause to the initial inter-governmental disbursement. State Appeal Br. at 22, 25. The District Court correctly recognized that Appellants' position runs afoul of the well settled principle that "[t]he legislature cannot do indirectly what it cannot do directly." R. at 546, citing *Witzenburger*, 575 P.2d at 1117. Significantly, in *Witzenburger*, this Court emphasized that when examining the constitutionality of legislation, courts must "look to the substance, not the form." *Id*. Here, the voucher funds were clearly appropriated by the Legislature for the purpose of funding the individuals' costs of private education, and the fact that funds pass

through the Superintendent does not change the substance or character of these appropriations.

Further, Wyoming has long recognized that "it is elementary that the Legislature cannot levy a tax or make an appropriation except only for public purposes," *Carter*, 215 P. at 479. In *Carter*, the Court allowed the Legislature to make a one-off appropriation to the widow of a Sheridan County sheriff, after he was killed in a raid. *Id*. at 478. The Court determined that the payment constituted "a just claim against the state," not a private gift or donation. *Id*. at 478–79. But in so holding, the Court noted that appropriations cannot be made "except only for public purposes." *Id*. at 479; *see also George W. Condon Co. v. Bd. of Com'rs of Natrona Cnty.*, 103 P.2d 401, 406 (Wyo. 1940). Consistent with *Carter* and *Condon Co.*, when evaluating the validity of a statute, this Court has explained that courts must:

> [C]onsider the nature of the service of the persons intended to be benefited by [the statute] and the reasons which [the court] may assume influenced the Legislature in enacting it, to ascertain whether it may in any reasonable or substantial way promote the public welfare or be found to serve and to have been intended to serve a public purpose.

State ex rel. Bd. of Com'rs of Goshen County v. Snyder, 29 Wyo. 199, 212 P. 771, 777 (Wyo. 1923). The Court has explained that a public purpose is one which "is of general benefit to and for the welfare of all." *Unemployment Comp. Comm'n v. Renner*, 143 P.2d 181, 188 (1943). Given the Voucher Program's lack of meaningful oversight and accountability, as well as its allowance for education service providers to openly discriminate against multiple segments of Wyoming's youth, it cannot be said that the Voucher Program is of general benefit to and for the welfare of all Wyoming citizens.

Finally, the State's position that the voucher funds are paid to the Superintendent or individual savings accounts, and not private education providers, was rejected in a recent South Carolina case. Specifically, the South Carolina Supreme Court rejected the argument that the manner in which the challenged voucher program funneled money from the state to private school coffers made the financial benefits to private schools "indirect and incidental." *Eidson v. South Carolina Dept. of Ed.*, 906 S.E.2d 345, 353-54 (S.C. 2024). The court condemned this attempt to "read our Constitution as allowing public funds to be directly paid to private schools as tuition as long as the funds are nudged along their path by the student, who may, through an online portal, choose to use the funds that way." *Id*.

2. Wyoming's Social Welfare Programs are Distinguishable from the Universal Voucher Program.

On appeal, the State attempts to deflect from the flaws of the Voucher Program by focusing on unrelated and distinguishable social welfare programs, such as Supplemental Nutrition Assistance Program (SNAP) benefits and funding under the Individuals with Disabilities in Education Act (IDEA). *See* State Appeal Br. at 23–25.[11] The Voucher Program, however, is unique in that it operates within the constraints of Wyoming's Education Article. Further, the plain text of the Voucher Statute, as well as its clear substance and purpose, makes evident that the Voucher Program is intended to publicly fund private entities and individuals who in turn provide private education with virtually no state control

[11] As federally funded programs, there is a threshold question as to whether Wyoming's Private Appropriations Clause even applies to SNAP and IDEA benefits.

or oversight of the voucher funds. The same cannot be said of these other social welfare programs.

SNAP benefits are distributed as part of a highly regulated funding scheme with a significant degree of governmental oversight. The Wyoming Public Assistance and Social Services Act sets forth state-controlled social welfare programs, including the Wyoming SNAP system, which is overseen by the Wyoming Department of Health and Department of Family Services (DFS).[12] DFS is called to "[e]stablish policies and standards for the provision of public assistance and social services" as well as eligibility requirements. *See* Wyo. Stat. Ann. § 42-2-103. In addition, by statute, when the DFS receives an application requesting public assistance and social services it "shall investigate the facts stated in the application and obtain necessary information to determine eligibility" for such assistance. Wyo. Stat. Ann. § 42-2-105. Significantly, after applicants are vetted and social services are provided, DFS is required to continuously review this determination not less than once per year. Wyo. Stat. Ann. § 42-2-109(a). Finally, the State's eligibility determinations are subject to administrative and judicial review, Wyo. Stat. Ann. § 42-2-110, introducing yet another layer of oversight and accountability entirely absent from the Voucher Program.

These social services, including SNAP benefits, are expressly limited to low-income residents. Accordingly, even if the high degree of government control, oversight, and accountability were not enough to distinguish other social service programs from the Voucher Program, the Wyoming Constitution allows for appropriations designed to low-

[12] https://dfs.wyo.gov/assistance-programs/food-assistance/ (last visited Nov. 24, 2025).

income families. Article 16, Section 6(a)(i) provides that public funds may not be paid to "any individual, association or corporation, except for necessary support of the poor." The universal nature of the Voucher Program places it outside the scope of permissible private appropriations under the Wyoming Constitution.

Like SNAP benefits, the State's argument that finding the Voucher Program unconstitutional forecloses State funding under IDEA, 20 U.S.C. § 1412, is misplaced. *See* State Appeal Br. at 24–25. IDEA funding is controlled by the Wyoming Department of Education (WDE), which in turn is controlled by a detailed regulatory framework. 20 U.S.C. § 1412(a)(10). As a clear example of the State's control, IDEA requires that the WDE "consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children." 20 U.S.C. § 1412(a)(10)(iii). This consultation process is ongoing and identifies "how, where, and by whom special education and related services will be provided . . . including a discussion of the types of services, including direct services and alternative service delivery mechanisms." 20 U.S.C. § 1412(a)(10)(iii)(III)–(IV). Further if the WDE "disagrees with the views of the private school officials on the provision of services or the types of services," the Department must provide private school officials with a written explanation of the reasons why the WDE will not fund those particular services. 20 U.S.C. § 1412(a)(10)(iii)(V). The State's attempt to group together all government funded social welfare programs, including SNAP benefits and IDEA funds, fails once the purpose, structure, and degree of State oversight is examined.

IV. The District Court Correctly Held that Appellees have Demonstrated Possible Irreparable Harm.

The Wyoming Supreme Court has explained that "[a]n injury is irreparable where it is of a peculiar nature, so that compensation in money cannot atone for it." *Polo Ranch*, 61 P.3d at 1264, citing *Rialto Theatre, Inc.*, 714 P.2d at 332. Here, the District Court properly determined that the nature of Appellees' claims demonstrated the possibility of irreparable harm.

A. The Voucher Program Irreparably Harms Appellees' Fundamental Education Rights.

Relying on longstanding precedent, the District Court found the fundamental right to a proper education exists to benefit students and all Wyoming citizens. R. at 554-555. As such, this Court established that the Wyoming Legislature's paramount priority is to support "an opportunity for a complete, proper, quality education" that is open to all, and any competing priorities that are not of constitutional magnitude are secondary. R. at 555, citing *Campbell II*. Citing *Merbanco*, the District Court explained that "parents are keenly concerned and suffer tangible injury if their children do not receive a proper education." R. at 555, citing *Office of State Lands & Invs. v. Merbanco*, 70 P.3d 241, 248 (Wyo. 2003). The Voucher Program squarely conflicts with these fundamental constitutional rights, and such constitutional violations constitute per se irreparable harm. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) ("When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury

is necessary."); 11A Charles Allen Wright et al., Federal Practice and Procedure § 2948.1 (2d ed. 1995).[13]

The District Court properly held that allowing the State to disburse public funds to private education providers in violation of the Wyoming Constitution cannot be remedied by money damages. R. at 555. Specifically, the court explained that if the State implements the Voucher Program, expending approximately $30 million to private entities, and the Program is deemed unconstitutional, then "those funds are gone," and "[Appellees] have no remedy available in this case which would authorize the Court to order the Certified Providers to return the public funds." R. at 555. The court correctly concluded that "permitting the State Superintendent to disburse public funds in violation of the constitution would render 'the judgement ineffectual' because those funds would have been expended." R. at 555, citing Wyo. Stat. § 1-28-102.

On appeal, the State argues that Appellees' claims concern "preferences and policy interests in the ESA Program [which] do not amount to particularized harms." State Appeal Br. at 10. The State largely relies upon standing arguments raised in a motion to dismiss that the District Court denied on August 28, 2025. (1st Jud. Dist. Case No. 203-366). As discussed throughout, Appellees' challenge to the Voucher Program raises matters of great public interest and importance, and as such, Appellees have standing under the public importance doctrine. *See Maxfield v. State*, 294 P.3d 895, 899-900 (Wyo. 2013)(Where a case involves

[13] Wyoming courts "look to federal precedent interpreting similar rules as persuasive authority." *Adams v. State*, 534 P.3d 469, 476 (Wyo. 2023).

"matters of great public importance or interest," the Supreme Court recognized that standing requirements are "relaxed."). But even if the public importance doctrine did not apply, consistent with the District Court's August 28 finding, Appellees satisfy the traditional *Brimmer* test[14] because their challenge raises fundamental educational rights that Appellees have a direct interest in furthering and protecting.

As a general matter, Appellees have alleged direct and particular harms to their fundamental right to a publicly funded education system that complies with the mandates of Wyoming's Constitution. *See Merbanco*, 70 P.3d at 248. More specifically, many of the individual Appellees have children with disabilities who would be refused admission to private schools in their area. R. at 9 ¶ 22. Other individual Appellees have children who identify as queer, transgender, or non-binary. R. at 9 ¶ 23. The Voucher Program will harm students like Appellees' children because private schools receiving voucher funding can refuse admission to any child because of their academic ability, race, color, national origin, religion, sex, age, marital status, disability, pregnancy, sexual orientation, or gender identity. What is more, the system of private schools funded by the Voucher Program is supported by the State, necessarily conveying that such discrimination should not just be accepted by private parties but supported by the State. And that message itself harms Appellees and their children. Moreover, by creating a State-funded education program that lacks uniformity and

[14] *See Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974) (establishing a four-part analysis to determine standing in declaratory judgment actions).

quality control, the State undermines the uniformity and quality of the overall education system thereby harming Appellees and their children.

B. The Record Before the District Court Supports its Decision to Grant the Preliminary Injunction.

State Appellants also attack the District Court's decision as lacking sufficient evidence. *See* State Appeal Br. at 14–17. The District Court, however, recognized that it was presented with constitutional challenges to a statute, and as such, focused its decision almost entirely on the Wyoming Constitution, Wyoming jurisprudence interpreting its Constitution, and the Voucher Statute. To the extent the District Court included limited factual findings in its decision, these facts are not genuinely disputed for purposes of deciding the preliminary injunction.[15] Notably, Appellants have not emphasized any material factual disputes during the course of briefing and arguing the request for injunctive relief.

Wyo. R. Civ. P. 65 governs restraining orders and injunctions. The Wyoming Rule mirrors the Fed. R. Civ. P. 65(a), neither of which require that a court conduct an evidentiary hearing prior to issuing injunctive relief. Although this Court has not directly addressed this

[15] As the U.S. Supreme Court explained, "[t]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) (citations omitted).

issue, multiple Federal Courts of Appeals, including the Tenth Circuit, adopt the legal standard that a district court may resolve requests for injunctive relief solely on the written materials, without holding an evidentiary hearing, provided that the parties a fair opportunity to present their case. *See Northglenn Gunther Toody's LLC v. HQ8-10410-10450 Melody Lane LLC*, 702 Fed. App'x. 702, 705 (10th Cir. 2017). Further, where a motion for a preliminary injunction is "based upon the resolution of questions of law as to which there are no disputed issues of fact," it is "unnecessary to conduct an evidentiary hearing or oral argument." *Gess v. USMS and 10th Cir. Dist. Court*, 2020 WL 8838280, at *17 (D. Colo. Dec. 10, 2020), citing *Shaw v. AAA Eng'g & Drafting, Inc.*, 213 F.3d 538, 545 (10th Cir. 2000).

Similarly, the Sixth Circuit has explained that its "Rule 65 jurisprudence indicates that a hearing is only required when there are disputed factual issues, and not when the issues are primarily questions of law." *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 552–53 (6th Cir. 2007). In adopting this legal standard, the Sixth Circuit looked to the Eleventh Circuit, which initially announced this now widely accepted standard. In *McDonald's Corp. v. Robertson*, the Eleventh Circuit held that "where facts are bitterly contested and credibility determinations must be made to decide whether injunctive relief should issue, an evidentiary hearing must be held. [However,] where material facts are not in dispute, or where facts in dispute are not material to the preliminary injunction sought, district courts generally need not hold an evidentiary hearing." 147 F.3d 1301, 1312–13 (11th Cir. 1998).

Applying these legal standards to the present case, the District Court properly conducted its hearing, provided the parties a full and fair opportunity to present their positions and then issued a decision that rests almost entirely on its interpretation and application of the plain language of the Voucher Statute, the Wyoming Constitution, and controlling legal precedent. There are no "bitterly contested facts" nor a need for "credibility determinations," that might make an evidentiary hearing necessary. To this point, Appellants failed to identify any material factual disputes or issues that required credibility findings. Further, the State's reliance upon a handful of cases is misplaced, as these cases do not involve an appeal from a preliminary injunction order, and are thus entirely distinguishable. *See* State Appeal Br. at 14–17.

V. The District Court Properly Determined that the Equities Favored Granting the Preliminary Injunction.

A. The Preliminary Injunction Preserves the *Status Quo*.

This Court has established that when deciding an appeal of a preliminary injunction, a district court's weighing of the equities is reviewed under the abuse of discretion standard. *Best Home Health Care*, 491 P.3d at 1026–27, citing *Van Fleet*, 361 P.3d 852 at 861. In considering the weight of the equities, a critical factor is whether the injunction preserves the *status quo*. *See Best Home Health & Hospice, LLC*, 491 P.3d at 1026, quoting *CBM Geosolutions*, 215 P.3d at 1057.

The Wyoming Supreme Court recognized that "*status quo* is defined as 'the existing state of affairs.'" *In re Kite Ranch*, 181 P.3d at 928, citing Webster's Third New Int'l Dictionary (2002). That accords with the definition of *status quo* from 11A Charles A. Wright

& Arthur R. Miller, Federal Practice & Procedure § 2948 (3d ed. & Nov. 2018 update) followed by the Tenth Circuit: "the last peaceable uncontested status existing between the parties before the dispute developed." Applying that definition, the Tenth Circuit has concluded that the *status quo* is the status existing *before* enactment of a challenged ordinance. *Free the Nipple-Fort Collins v. City of Fort Collins, Colo.*, 916 F.3d 792, 798 n.3 (10th Cir. 2019); *see also Winney v. Jerup*, 539 P.3d 77, 84 (Wyo. 2023) (holding that "[a] request for an injunction is a proceeding in equity, and an injunction may be prohibitory or mandatory. A prohibitory injunction maintains the status quo by restraining an act.") (internal citation omitted).

Appellants' argument that allowing the State to implement the Voucher Program would somehow preserve the *status quo* was properly rejected by the District Court. *See* State Appeal Br. at 17–19. As the District Court explained, "[t]he existing state of affairs" is that no public funds have been paid to the Voucher Program. Payments of approximately $30 million in public funds to hundreds of private education service providers would drastically alter the *status quo*. R. at 557. The District Court applied controlling law to correctly determine that the injunction preserves the *status quo* and insulates Appellees, the State, and Wyoming citizens against the irreparable harms that will occur if the Voucher Program is implemented before the merits of this matter are fully resolved.

B. The Significant Public Interest at Issue Weighs in Favor of Granting the Preliminary Injunction.

As a rule, "allegations that statutes . . . violate the Wyoming Constitution raise matters of great public interest and importance." *Bebout,* 409 P.3d at 276. This case raises vital constitutional questions concerning the right to education and the apportionment of the

State's budget. Appellees seek to vindicate their right to participate in an education system that meets the requirements set out in the Wyoming Constitution. *See* Wyo. Const. art. 7, § 1, 9. Further, Appellees challenge the misappropriation of public funds for private purposes. *See* Wyo. Const. art. 3, § 36. The District Court recognized that the significant public interests at issue favored granting the preliminary injunction.

Relying upon an equitable argument, Appellants challenge the injunction on the grounds that "Appellees should not profit from their strategic delay in bringing this action." State Appeal Br. at 17. But the challenged legislation, HB 199, was introduced on January 20, 2025, and signed into law about six weeks later on March 4, 2025. Appellees filed their complaint and preliminary injunction motion as soon as practicable after passage, on June 13, 2025.[16] Their filing was made before applications for the Program had closed, before any funds were disbursed, and more than ten weeks before the official start of the academic year for most Wyoming students.

The State claims all this is insufficient on the theory that Appellees should have brought suit to challenge an earlier iteration of the Voucher Program, HB 166, known as the Wyoming Education Savings Accounts Program.[17] But Appellees, not the State, determine the law they will challenge. And, in any event, even if there could be some theory on which to insist that Appellees should have challenged an earlier version of the statute, passed on

[16] https://edu.wyoming.gov/sups-memo/06-02-2025-esa-universal-family-application-to-close-june-25/ (last visited December 2, 2025).

[17] 2024 Wyo. Sess. Laws Ch. 108, https://www.wyoleg.gov/Legislation/2024/hb0166.

March 8, 2024, but drastically reduced in scope by Governor Gordon on March 21, 2024, that program was scheduled to take effect only in the 2025-26 school year. Accordingly, that program, which would have provided vouchers only to students from families making no more than 150 percent of the federal poverty level was not even implemented by the time the Legislature passed HB 199, which made major changes to the Program including making it universal in terms of student eligibility.[18] WDE did not open Program participant applications until April of 2025, and continued to release rules and guidance between January and July of 2025 when funds were scheduled to be released. It certainly would by no stretch have been unreasonable for Appellees to wait to challenge HB 166 until WDE had taken substantial steps to implement the Program.

CONCLUSION

For the reasons set forth, Appellees respectfully request that this Court dismiss Appellants' appeal and affirm the District Court's preliminary injunction order.

For the Appellees

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[18] 2025 Wyo. Sess. Laws Ch. 107, https://www.wyoleg.gov/Legislation/2025/HB0199.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing *APPELLEES' RESPONSE TO STATE-APPELLANTS' BRIEF* was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System, on the 5th day of December 2025, on the following parties:

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

/s/ Erin M. Kendall