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CASE NUMBER: S-25-0204

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; 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).

Case No. S-25-0204

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**APPELLEES' RESPONSE TO INTERVENOR-APPELLANTS' BRIEF**

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## **ISSUES PRESENTED**

1. Did the District Court correctly find Plaintiffs-Appellees' 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 Intervenor Appellants' ("Intervenors" or "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]ranteeing 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, 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 and timelines 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 seeking 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.<sup>1</sup> Before HB 166 was fully implemented, the Legislature passed HB 199, which expanded the Program to all students’ families regardless of their income.<sup>2</sup> 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

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<sup>1</sup> 2024 Wyo. Sess. Laws Ch. 108, <https://www.wyoleg.gov/Legislation/2024/hb0166>.

<sup>2</sup> 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.<sup>3</sup> 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 increasing their fees to capture all or part of the voucher benefit.

To receive a voucher account, the parent or legal guardian 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”;

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<sup>3</sup> See Wyo. Stat. Ann. § 21-2-909(d)(3) (appropriating \$30 million in 2025).

and certify that the 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.<sup>4</sup>

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

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<sup>4</sup> 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. R. at 1-30. 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 551, 555. 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 556.

On July 17, 2025, Intervenor Defendants filed a notice of intent to appeal the July 15 injunction. R. at 563-567. On July 18, 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 5, 2025, Intervenor Appellants filed a motion to stay the injunction with this Court, which was denied on September 23, 2025.

## **ARGUMENT**

### **I. Standard of Review**

The Wyoming's 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. *Brown v. Best Home Health & Hospice, LLC*, 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*, 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 545-546. 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, Inc.*, 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 directly 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 some 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 will be 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 another 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,<sup>5</sup> including a set of twelve core areas of knowledge and six kinds of skills in which all school districts must educate students.

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

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.<sup>6</sup> 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 number 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 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

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

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 and review 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.<sup>7</sup>

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 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

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<sup>7</sup> <https://casperchristianschool.org/admissions-criteria> (last visited November 21, 2025).

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.”<sup>8</sup>

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.”<sup>9</sup>

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.” 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.

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

<sup>9</sup> <https://hcsgillette.org/about-us> (last visited November 21, 2025).

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* 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 Fundamental Right to Education in Wyoming’s Declaration of Rights Does Not Negate the Education Article’s Mandates.

On appeal, Intervenors contend that one provision in the Wyoming Constitution’s Declaration of Rights overcomes the district court’s conclusion and Appellees’ position that the Voucher Program is barred by the plain language of Wyoming’s Education Article, the constitutional framers’ intent, and the policies the constitution advances, as interpreted by this Court. The Declaration of Rights provision states: “The right of the citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts.” Wyo. Const. art. 1, § 23. Intervenors urge that the Legislature’s “duty to encourage education” must be read to mean that the State can fund educational programs in addition to the public school system. *See Intervenors Appeal Br.* at 4, 22-23. Indeed, Intervenors go so far as to posit that

the District Court’s differing interpretation of the intersection between the Declaration of Rights and Education Article “renders Article 1, § 23 a nullity,” treating it as a “surplus clause.” *Intervenors Appeal Br.* at 23, 26.

But the better reading of this provision in the Declaration of Rights, is to read it as this Court has instructed, as part of, and to be consistent with, the whole constitution, including Education Article, Wyo. Const. art. 7, §§ 1-14, which sets forth the State’s responsibilities and requirements concerning the education system. *See Campbell I*, 907 P.2d at 1257. The constitutional articles must be read in tandem, not at cross-purposes. As this Court recognized in *Geringer v. Bebout*, “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.” 10 P.3d 514, 520 (Wyo. 2000). To this point, this Court held that the Wyoming Constitution “is not a grant but a limitation on legislative power.” *Witzenburger v. State ex rel. Wyoming Community Development Authority*, 575 P.2d 1100, 1124, reh’g denied 577 P.2d 1386 (Wyo. 1978).

Applying this understanding, this Court has explained, “[b]y establishing education first as a right in the Declaration of Rights Article and then detailing specific requirements in a separate Education Article in the state constitution, the framers and ratifiers ensured, protected and defined a long cherished principle” of publicly provided education services. *Campbell I*, 907 P.2d at 1257. Whereas Article 1 recognizes the right to education and the obligation to provide education, Article 7 specifies the Legislature’s duty to establish and support a comprehensive system of education subject to exacting constitutional requirements. *Id.*, citing *Washakie Cnty. Sch. Dist. v. Herschler*, 606 P.2d 310, 320 (Wyo. 1980). So read,

the provision in the Declaration of Rights has a meaning – conferring a right to education – and the Education Article’s specific mandates have meaning too, namely, that that right be satisfied through a single state system of uniform educational offerings. *Id.*

That same understanding is evident in the decision by the District Court regarding school funding, which explains that Article 1, § 23 establishes education as a right for the citizens of Wyoming and the Education Article explains how education must be implemented and funded by the Legislature by defining the nature of the education required. *Wyo. Educ. Ass’n v. State*, No. 200-788, Decision and Order at 141 (Wyo. Dist. Feb. 26, 2025). The education required by the terms of the Education Article’s detailed provisions is a public education system that fulfills the Legislature’s obligation to provide students with “an opportunity for a complete, proper, quality education” that is open to all students. *Campbell II*, 19 P.3d at 566, quoting *Campbell I*, 907 P.2d at 1279. The notion that Article 1 somehow justifies funding entirely different educational options, outside of the public education system and without any of the oversight or quality control requirements that apply to that system, cannot be reconciled with this settled understanding of how the different provision of the Wyoming Constitution on education are to be interpreted.<sup>10</sup> Based on this Court’s long-

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<sup>10</sup> Further, as discussed in detail below, even if one were to accept Appellants’ position that Article 1 authorizes the Voucher Program, there is no reason to believe that the language in Article 1, § 23 was meant to nullify the plain and unambiguous language of Wyoming’s Private Appropriations Clause, Wyo. Const. art. 36, § 6, which prohibits appropriations of public funds to private entities over which the State has no control.

standing interpretations, these constitutional provisions should be applied in a complimentary manner that gives full effect to each.

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

Based on the nature of the Voucher Program and its funding structure, the District Court reasonably found that “[t]here can be no serious dispute that the Act is an aspect of the State’s system for financing schools [...] In other words, through the Act, the legislature chose to provide another taxpayer funded method for providing the constitutionally required education to Wyoming students,” making the Program subject to the Education Article. R. at 550-551. Ultimately, the District Court found that the Voucher Program likely violates the Education Article because it allows parents 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 550-552.

Intervenor Appellants contend that the District Court erred in applying the Education Article to the Voucher Program because the Program “does not fund any schools. Rather it funds parents.” Intervenor Appeal Br. at 29 (emphasis in original). Further, Appellants argue that the District Court’s holding is flawed in characterizing the Voucher Program as “an alternate publicly funded method for providing the constitutionally required education ...[a] reconceptualization of a constitutionally required education,” which effectively requires that Wyoming students attend public schools. Intervenor Appeal Br. at 32. Appellants’ mischaracterizations of the Voucher Program and District Court holding should be rejected.

As an initial point, Appellants present a fiction – that the public funds go to parents and not schools or private education providers. This type of fiction was recently rejected in a challenge to a South Carolina school voucher program in which the South Carolina Supreme Court stated it could not “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.” R. at 549, quoting *Eidson v. South Carolina Dept. of Ed.*, 906 S.E.2d 345, 354 (S.C. 2024). Consistent with the South Carolina Supreme Court, the District Court squarely rejected Appellants’ reasoning. R. at 549. Now on appeal, Appellants attempt to bolster their argument that vouchers fund parents and not schools by referring to school vouchers as “scholarships.” Intervenors Appeal Br. at 31. Whether Appellants choose to refer to these funds as scholarships, education savings accounts, or vouchers does not change the reality of this Program, which provides for the appropriation and expenditure of public funds to finance the private education of Wyoming’s youth.

Further, it is well-settled that “[t]he legislature cannot do indirectly what it cannot do directly.” *Witzenburger*, 575 P.2d at 1117; *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 (Wyo. 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 (Wyo. 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 contrary 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 does 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 public 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 Bebout*, 10 P.3d at 520 (“every statement in the constitution must be interpreted in light of the entire document . . . 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.<sup>11</sup> Wyo. Const. art. 7, § 1–12, 14. And finally, Article 21, 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.”

The District Court 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. By so ruling, the court was not requiring all Wyoming students to attend public schools but was respecting our state’s constitutional limitations on the type of education that the state may support. It is agreed upon by all, including Appellees and the District Court, that the intervening parents, like all parents in Wyoming, have the right to choose the educational service or type of school that best fits their needs. *See* R. at 549-551; R. at 383-387; R. at 621. What is at issue in these cases is not that right, but the State’s proposal to fund these private educations. If the State chooses to

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<sup>11</sup> 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 framers’ overarching purpose: to establish a uniform and well-funded education system, and to protect the funding sources for that education system.

assume the financial burden of funding these private educations, to the amount of \$30 million, then the Legislature must ensure that fundamental educational rights and obligations are satisfied, as well as comply with all other applicable constitutional requirements and limitations. As *Witzenburger* instructs, the Legislature cannot purchase from private schools the type of non-uniform exclusionary education that it could not provide directly.

5. The District Court Properly Rejected Intervenors' Reliance on Case Law from Other States.

Before the District Court and again on appeal, Appellants rely heavily on case law from other states to support its position that this Voucher Program is lawful. *See* Intervenors Appeal Br. at 23, 32. But each of those states have constitutional text and interpretative case law that differ from Wyoming's in critical ways. The Indiana and Wisconsin Constitutions, for example, contain "uniformity" language but no requirement that the state make "adequate provision" for education. *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013) (interpreting Ind. Const. art. 8, § 1); *Davis v. Grover*, 480 N.W.2d 460, 473-74 Wis. 1992) (interpreting Wis. Const. art. X, § 3). The Wyoming Constitution contains both requirements. Wyo. Const. §§ 1, 9.

In *Meredith*, a critical feature of Indiana's voucher program was that funds were only provided to "eligible individuals," meaning a student must live in a "household with an annual income of not more than one hundred fifty percent of the amount required" for the family to qualify for reduced or federally subsidized lunch. *Id.* at 1219. Further, to be eligible to receive voucher funds, an education provider was required to satisfy several detailed criteria including, 1) accreditation from the Indiana State Board of Education, 2) the provider

must administer the Indiana statewide test for educational progress, and 3) the provider must participate in the Board of Education’s “School Improvement Program.” *Id.* And unlike Wyoming’s Constitution, Indiana’s does not contain “adequate provision” language requiring a heightened standard for publicly funded schooling. *Id.* at 1224.<sup>12</sup> Wyoming’s Legislature proposes a universal voucher program, with no income limits and virtually no quality control or State oversight of the education providers receiving public funds. As such, *Meredith* is distinguishable.

Intervenors’ reliance on state court rulings from Nevada and West Virginia fare no better. In *Schwartz v. Lopez*, the Nevada Supreme Court relied on the lack of “adequate provision” language in the Nevada Constitution’s education clause when it rejected a challenge to a school voucher program. 382 P.3d 886, 898-99 (Nev. 2016). Subsequently, Nevada’s Supreme Court held that school funding claims are nonjusticiable and that the Nevada Constitution’s education clause does not guarantee quality education to the state’s children, *Shea v. State*, 510 P.3d 148, 151 (Nev. 2022). In stark contrast, Wyoming’s Constitution contains an adequacy provision within its Education Article, guaranteeing a quality, proper education for all Wyoming students. In *State v. Beaver*, the West Virginia Supreme Court upheld a school voucher program, but like the other cases cited by

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<sup>12</sup> Notably, the Indiana Supreme Court has separately held – in sharp contrast to the Wyoming Supreme Court in the Campbell decisions – that the Indiana Constitution’s education provisions do not impose any qualitative standard on the legislative branch when it comes to education. *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 521 (Ind. 2009).

Intervenors, the *Beaver* case is distinguishable because while the West Virginia Constitution requires the state to provide a “thorough and efficient system of free education,” its education article does not contain a “uniformity clause.” 248 W. Va. 177, 186 (W. Va. 2022), quoting W. Va. Const. art. XII, § 1. Wyoming’s Education Article guarantees a uniform system of education.

This Court has not considered the constitutionality of a large-scale state initiative to fund private and home school education, and the out-of-state cases Intervenors cite are a poor fit. However, Appellees believe that there are other cases involving state constitutions that are similar to Wyoming’s, and these cases are instructive. 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.

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]he 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.*

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. Intervenors’ reliance on cases from other jurisdictions should be dismissed because none of those cases present education clauses that guarantee the same detailed standard of education as Wyoming. Distinguishing other states’ financing cases, the Wyoming Supreme Court explained the distinction between the Wyoming Constitution and other states which do not have requirements for both uniformity and high-quality requirements found in the Wyoming Constitution. In *State v. Campbell*, 19 P.3d 518, 538, 2001 WY 19 ¶ 51 (Wyo. 2008) (*Campbell II*) the Court explained “Unlike the majority of states that emphasized additional funding, equalized funding, or basic education, Wyoming views its state constitution as mandating legislative action to provide a through and uniform

education of a type that is both visionary and unsurpassed. To that end, this Court required the legislature to consider education as a paramount priority over all other considerations and has identified class space, class size, teacher quality, and local innovation as factors critical to its determination that it is providing a quality education.”

6. The District Court Decision Protects the Fundamental Right to a Constitutionally Compliant System of Public Education While Preserving Parents Rights to Educate their Children Outside the Public Education System.

Throughout this litigation, Appellants have contended that the challenge to the Voucher Program is not intended to defend our state’s commitment to its education system as set forth in the constitution, but rather, an attempt to control the educational choices of other families. According to Intervenor Appellants, the District Court’s application of the Education Article “afford[s] parents of public-school students a right to veto other families’ use of public benefits to educate their children outside of the system.” Intervenor Appeal Br. at 4. Such hyperbolic claims are without merit.

As noted above, Appellees recognize Appellants’ right to choose how to educate their children. But that right is one against state interference, not for state support. Once state support is provided for private educational choices and may be accessed only by waiving one’s right to attend public schools, that state support could flow only to schools that comply with the mandates of Wyoming’s Education Clause. *See* R. at 549-551, 554-56, 622; R. at 383-387. As the District Court explained:

This Court’s granting of the preliminary injunction does not give Plaintiffs the right to dictate the quality of education for the Intervenor. The preliminary injunction does not prevent Intervenor from enrolling their children in the private religious schools of their choosing or prevent Intervenor from removing

their children from their Wyoming public school. The preliminary injunction enjoins the use of taxpayer funds to pay for the Intervenors' private religious school of choice. Intervenors are free to enroll their students in a public school or a private school.

R. at 621.

If the State were not funding these private schools or had not created an entire structure for the education of Wyoming's youth through this universal Voucher Program, then it would not have a constitutional duty to regulate and provide oversight. But, as the District Court held, once the State decides to fund these private schools, then the mandates of the Education Clause attach. Appellants cannot have it both ways – they cannot push for public funds to subsidize private school education and at the same time assert that these schools are private, not publicly-funded, and therefore outside the reach of the Wyoming Constitution. The District Court recognized this contradiction and reasonably rejected this line of argument.

As the District Court explained in its order denying the request to stay the preliminary injunction: “the Act 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.

**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, Intervenors assert that strict scrutiny does not apply because the Voucher Program is not part of the public system of education and because the Wyoming school financing cases – *Washakie* and *Campbell* – “applied strict scrutiny only to changes to public-school funding.” *See* Intervenors Appeal Br. at 27-28. Further, they argue that the District Court’s holding “substitutes a policy judgment for analysis of constitutional text.” *Id.* at 31. Appellants’ arguments are unpersuasive and should be rejected.

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 correctly concluded that the Voucher Program must be met with strict scrutiny and is likely to fall. R. at 551. The District Court is not articulating a “policy judgment,” but rather, proposes a thoughtful examination of the constitutional text and this Court’s precedent, explaining that a strict scrutiny analysis applies due to the Program’s impact on fundamental rights.

In the first *Campbell* decision, this Court held 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.

In challenging the District Court’s finding that strict scrutiny applies to the Voucher Program, Appellants attempt to limit the scope of *Washakie* and *Campbell I & II*. Appellants assert that according to *Washakie* and *Campbell I & II*, strict scrutiny only applies “to changes to public-school funding.” Intervenors Appeal Br. at 28. As an initial point, this Court includes no such limitation in either case. In fact, this Court explained that the standard for applying strict scrutiny is much broader than Appellants suggest, requiring that a reviewing court apply strict scrutiny to “any legislative school financing reform.” *Campbell I*, 907 P.2d at 1266. But even if the application of strict scrutiny was as limited as Appellants claim, it would apply to the Voucher Program because the Program constitutes a dramatic, \$30 million change to the landscape of Wyoming’s public-school finance.

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.” *Campbell I*, 907 P.2d 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. R. at 550-551.

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. R. at 551. 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.

To this point, Intervenors have attempted to rationalize the educational disparities the Voucher Program will cause by pointing to individual parental choice. *See Intervenors Appeal Br.* at 30 (“[t]he *Washakie* and *Campbell* right is a floor – a right to attend a properly funded public school.”). But if “local control is not a constitutionally recognized interest and cannot be the basis for disparity in equal educational opportunity” when it comes to the public

education system, *Campbell I*, 907 P.2d at 1270, then individual parental choice cannot justify these disparities either; certainly not under the requisite strict scrutiny review. It's also notable that in *Bush v. Holmes*, the Florida Supreme Court encountered a "parental choice" argument and easily disposed of it, explaining that although parents certainly have the right to choose how to educate their children, by for example choosing to enroll at a private school at their own expense, Florida's Constitution does not "establish a 'floor' of what the state can do to provide for the education of Florida's children. The provision mandates that the state's obligation is to provide for the education of Florida's children, specifies that the manner of fulfilling this obligation is by providing a uniform, high quality system of free public education, and does not authorize additional equivalent alternatives." 919 So. 2d 392, 408 (Fla. 2006); see also *Strout v. Comm'n, Maine Dept. of Educ.*, 13 F.Supp.2d 112, 114 (D.Me. 1998).

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, Intervenors urge this Court to ignore the plain text and clear purpose of Wyoming’s constitutional provision in favor of other state courts’ interpretations of their own unique constitutional provisions. Intervenors Appeal Br. at 17. In addition, Intervenors challenge the District Court’s holding on the basis that “[n]o private appropriations are at issue here because no funding is appropriated to anyone except a state agency.” *Id.* at 13. Further, Intervenors assert that the Voucher Program does not fund any schools, but rather funds parents. Intervenors Appeal Br. at 29.

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 545, 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 545, 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 545. Looking to the use or purpose of the funding designation led the District Court to reject Appellants’ argument, offered again here, “that the only transaction subject to scrutiny under Art. 3, § 36, is the appropriation to the State Superintendent.” R. at 545.

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.”). Appellants’ assertions that the Voucher Program is no more than 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.

Intervenors urge 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. Intervenors Appeal Br. at 13-14.

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, Appellants look to other states' cases interpreting their own state constitutions to show that the Voucher Program satisfies Wyoming's Private Appropriations Clause. Intervenors Appeal Br. at 13-17. Notably, Intervenors rely heavily upon Colorado's case law, which establishes that state-controlled programs with private beneficiaries are permissible so long as these programs serve a public purpose. *Americans United for Separation of Church & State Fund, Inc. v. State*, 648 P.2d 1072, 1086 (Colo. 1982);<sup>13</sup> see also *Bedford v. White*, 106 P.2d 469 (Colo. 1940). In defining the scope of this "public purpose" exception, the Colorado Supreme Court explained that "if [the program] serves a present public interest it

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<sup>13</sup> The *Americans United* case is a particularly poor fit for this case, as the Wyoming Voucher Program covers students participating in K-12 grade education programs and the Colorado scholarship program applied to college and university (postsecondary) students attending public and private institutions that could be secular or sectarian. 648 P.2d at 1074, 1084. Wyoming's vouchers may only be used to support private education.

is not a mere private grant even though as an incident to the accomplishment of the public purpose the recipients thereof may be personally benefitted.” *Bedford*, 106 P.2d at 476. The purpose of the Voucher Program in Wyoming is to fund private schooling, and as such, the significant financial benefit to these private individuals and education providers is not incidental.

Like Colorado, 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, supra*, 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 complete 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, as discussed above, Intervenors’ reasoning was rejected in *Eidson*, where the court explained that the manner in which the program funneled money from the state to private school coffers was not “indirect and incidental.” *Eidson, supra*, 906 S.E.2d at 353–54. The court there condemned the 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, Intervenors attempt to deflect from the flaws of the Voucher Program by focusing on unrelated and distinguishable social welfare programs, such as Medicaid, Temporary Assistance for Needy Families (TANF), and unemployment benefits. Intervenors Appeal Br. at 19.<sup>14</sup> Intervenors oversimplify and misconstrue both the District Court’s decision and Appellees’ position, asserting “[i]n Plaintiffs’ view, whether a public benefit program amounts to an appropriation ‘to’ a private individual depends not on the text of the appropriations bill ... it depends on the precise level of regulatory control attendant to the program.” Intervenors Appeal Br. at 21. The Voucher Program, however, is unique in that it

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<sup>14</sup> As federally funded programs, there is a threshold question as to whether Wyoming’s Private Appropriations Clause even applies to Medicaid and TANF benefits.

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 or oversight of the voucher funds. Finally, programs like Medicaid and TANF are designed to low-income individuals and families, which is a permissible appropriation under Article 16, Section 6(a)(i) of Wyoming's Constitution.

Medicaid benefits are distributed as part of a highly regulated funding scheme with a significant degree of both federal and state government oversight. 42 U.S.C. § 1396. In Wyoming, Medicaid is governed by the Wyoming Department of Health (DOH).<sup>15</sup> While not exhaustive, the Medicaid program includes the following examples of strict government control and oversight: 1) establishment of specific medical standards that Medicaid providers must satisfy (42 U.S.C. § 1396a(9)); 2) establishment of detailed income-based participant eligibility requirements (42 U.S.C. § 1396a(10)); establishment of DOH's investigative authority for determining legal liability of third parties, such as health insurance and self-insurance plans (42 U.S.C. § 1396a(25)); establishment of mandatory agreements between participants, providers, and DOH requiring that participants and service providers maintain, and make available upon request, all information regarding payments claimed by a participant or service provider under Medicaid (42 U.S.C. § 1396a(27)); requirement that

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<sup>15</sup> <https://health.wyo.gov/healthcarefin/medicaid/programs-and-eligibility/> (last visited Nov. 24, 2025).

DOH conduct compliance reviews of facilities receiving Medicaid funds and publish results of compliance reviews (42 U.S.C. § 1396a(36)); and requirement that DOH inform all eligible people in the state under age 21 of early periodic and preventative screening, diagnostic, and treatment services for age-appropriate immunizations against vaccine preventable diseases (42 U.S.C. § 1396a(43)). The Medicaid Program requires levels of control, general oversight, and accountability entirely absent – and expressly disavowed – from the Voucher Program.

Like Medicaid, TANF benefits involve a high degree of both federal and state control, oversight, and accountability. *See* 42 U.S.C. § 602. In Wyoming, TANF benefits, also known as Personal Opportunities with Employment Responsibility (POWER) are controlled by Wyoming’s Department of Family Services (DFS).<sup>16</sup> This control and oversight includes establishing detailed eligibility requirements, as demonstrated by the more than twenty-page application that all participants must complete.<sup>17</sup> Further, in detailing aspects of TANF/POWER, DFS provides the following involvement: 1) skills and interest assessments; 2) regular check-in meetings with a DFS case manager; 3) child care and transportation assistance; and 4) DFS Workforce Center workshops, which include resume and job application assistance, short and long term employment planning, personal improvement

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<sup>16</sup> <https://dfs.wyo.gov/assistance-programs/cash-assistance/> (last visited Nov. 24, 2025).

<sup>17</sup> <https://drive.google.com/file/d/1G86bBOBsXLrCmyXmY15SmtjOZR--weYf/view> (last visited Nov. 24, 2025).

strategies, healthy parenting workshops, practice interview workshops, vocational training, and budgeting workshops.<sup>18</sup>

Simply put, Intervenors' attempt to equate expansive, highly regulated social welfare programs like Medicaid and TANF with the Voucher Program fails. The claim that striking down the Voucher Program will cause the demise of these well-settled, federally-funded social welfare programs is without merit, as even a cursory comparison of these programs reveals striking distinctions.

#### **IV. The District Court Correctly Held that the Voucher Program Irreparably Harms Appellees' Fundamental Education Rights.**

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*, 714 P.2d at 332. Here, the District Court properly determined that the nature of Appellees' claims demonstrated the possibility of irreparable harm.

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 556, citing *Campbell II*. Citing *Merbanco*, the District Court explained that “parents are keenly

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<sup>18</sup> <https://dfs.wyo.gov/assistance-programs/cash-assistance/power-work-program/> (last visited Nov. 24, 2025).

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.”).<sup>19</sup>

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, Intervenors contest the finding that Appellees are harmed by the Voucher Program, asserting that “[n]othing in the text of the Wyoming Constitution says that

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<sup>19</sup> Wyoming courts “look to federal precedent interpreting similar rules as persuasive authority.” *Adams v. State*, 534 P.3d 469, 476 (Wyo. 2023).

satisfaction of the right to a uniform, thorough, complete, and efficient public education depends on preventing other children from being educated outside the public school system using government benefits.” *Intervenors Appeal Br.* at 35; *see also* 35-36. The District Court’s decision makes no such finding. Despite *Intervenors* contentions, this case does not present the issue of whether one group of parents has the right to challenge or otherwise preclude the educational choices of another group of parents. Instead, this case is limited to the legal question of whether the Wyoming Constitution permits the Legislature to appropriate approximately \$30 million in public funds to subsidize private education that will not be available to all Wyoming students and will not be accountable for providing a uniform, quality education as the Education Article intended. Moreover, *Intervenors* have provided sworn testimony through affidavits describing why they chose to send their children to private schools and why they will continue to enroll their children in private schools, regardless of the fate of the Voucher Program. *R.* at 210-212; 221-222. As such, any suggestion that *Intervenors* have suffered irreparable injury as a result of the District Court’s preliminary injunction is baseless.

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

**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 Care*, 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).

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. Thus, maintaining the preliminary injunction until the merits of this action are determined is consistent with Wyoming law.

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; Wyo. Const. art. 16, § 6(a). The District Court recognized that the significant public interests at issue favored granting the preliminary injunction.

Rather than focusing primarily on Appellees' legal arguments, Intervenors open their brief by expressing disapproval of Wyoming public schools and proposing private school vouchers as a policy solution. Intervenors Appeal Br. at 3. Intervenors argue that as a policy matter the public interest weighs in favor of lifting the injunction and implementing the Voucher Program. They attempt to substantiate these views by referencing a declaration they filed in District Court from a purported expert on education policy.

As discussed in detail above, Appellees bring facial challenges to the Voucher Program under the Wyoming Constitution. This case presents questions of whether the Program runs afoul of the plain language, constitutional framers' intent, and case law interpreting these constitutional provisions. It is not an appropriate vehicle for debating the policy advantages and disadvantages of voucher programs and private schooling generally. For those reasons, Appellees objected to Intervenors' attempt to introduce expert testimony on these matters during preliminary injunction briefing as inappropriate under Wyo. R. Evid. 702, because it was not calculated to "help the trier of fact to understand the evidence or to determine a fact in issue." R. at 389-391. The District Court endorsed this view, declining to consider Dr. Wolf's affidavit given that the court's sole concern was whether the Voucher Program complies with the Wyoming Constitution—not whether it is good education policy. R. at 550 n.3. Those same arguments are valid here, and Appellees further object to Intervenors' attempts to characterize of Dr. Wolf's declaration as "testimony" of an expert properly qualified by the District Court.

If this Court nevertheless sees fit to consider Dr. Wolf's declaration, we submit that it fails to establish that voucher programs generally have positive impacts, much less that the Voucher Program at issue in this case is likely to do so. The declaration misrepresents the performance of Wyoming public schools, cherry-picks studies and data, and presents a biased view of a hotly contested area of research on the impacts of private school voucher programs. Wyoming's NAEP scores have been consistently above the national average and have also trended at around the same *level* above the national average. Wyo. Dep't of Educ., *2024 Wyoming NAEP Reading and Mathematics Scores Released* (Jan. 29, 2025).<sup>20</sup> To the extent there has been any statistically significant decline in scores, Intervenors do not link those declines to any inherent deficiencies in public education, as opposed to both local and nationwide trends towards decreased investment in public education.

There is evidence that voucher programs do real harm to student learning. Independent studies of voucher programs in several states that were among the earliest to enact voucher programs including Indiana, Louisiana, and Ohio have shown large negative impacts on student achievement scores, particularly in math.<sup>21</sup> These learning losses are on par with

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<sup>20</sup> <https://edu.wyoming.gov/2024-wyoming-naep-reading-and-mathematics-scores-released/> (last visited December 2, 2025).

<sup>21</sup> *See., e.g.,* R. Joseph Waddington & Mark Berends, *Impact of the Indiana Choice Scholarship Program: Achievement Effects for Students in Upper Elementary and Middle School*, 37 J. Pol'y Analysis & Mgmt. 783, 796 (Aug. 8, 2018) (showing statistically significant losses in mathematics achievement for low-income students who switched from

those associated with the COVID-19 pandemic.<sup>22</sup> Finally, even taking Dr. Wolf’s conclusions about the supposed positive impacts of voucher programs at face value, they are at best relevant to voucher programs narrowly tailored to serve low-income students.<sup>23</sup> They

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public to private schools using vouchers),

<https://onlinelibrary.wiley.com/doi/10.1002/pam.22086>; David Figlio & Krzysztof

Karbownik, Fordham Institute, *Evaluation of Ohio’s EdChoice Scholarship Program:*

*Selection, Competition, and Performance Effects* (July 2016) (finding that voucher students

“fared worse academically compared to their closely matched peers attending public schools” and that “[s]uch impacts also appear to persist over time,”),

<https://fordhaminstitute.org/ohio/research/evaluation-ohios-edchoice-scholarship->

[programsselection-competition-and-performance](https://fordhaminstitute.org/ohio/research/evaluation-ohios-edchoice-scholarship-); Megan Kuhfeld, et al., *The Pandemic Has*

*Had Devastating Impacts on Learning. What Will It Take To Help Students Catch Up?*,

Brookings Institute (Mar. 3, 2022),

<https://www.brookings.edu/blog/brown-center-chalkboard/2022/03/03/the-pandemic-has->

[haddevastating-impacts-on-learning-what-will-it-take-to-help-students-catch-up/](https://www.brookings.edu/blog/brown-center-chalkboard/2022/03/03/the-pandemic-has-)

<sup>22</sup> *Id.*

<sup>23</sup> Douglas N. Harris, *The Choice of Policy Comparisons and Relevant Evidence and*

*Approach to Selection Bias Are Keys to the Debate* 45 J. Pol’y Analysis and Mgmt. \_\_\_\_\_

(forthcoming Jan. 2026),

<https://onlinelibrary.wiley.com/doi/10.1002/pam.70069?af=R#:~:text=Our%20third%20dis>

[agreement%20pertains%20to,matching%20based%20on%20observable%20differences](https://onlinelibrary.wiley.com/doi/10.1002/pam.70069?af=R#:~:text=Our%20third%20dis)

are not generalizable to universal voucher programs like the one challenged in this case—which Dr. Wolf himself has admitted tend to serve higher-income students and students who were already in private schools.<sup>24</sup>

## CONCLUSION

For the reasons set forth, Appellees respectfully request that this Court dismiss Appellants’ appeal and affirm the District Court.

For the Appellees

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<sup>24</sup> Jule Pattison-Gordon, *Who Really Benefits from Universal School Choice?*, Governing (June 24, 2025) (noting that “studies tend to find that two-thirds of participants” in universal voucher programs never attended public school), <https://www.governing.com/policy/who-really-benefits-from-universal-school-choice#:~:text=In%20at%20least%20one%20state,21%20percent%20to%2025%20percent.> (last visited Nov. 24, 2025).

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *APPELLEES' RESPONSE TO INTERVENOR-APPELLANTS' BRIEF* was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System and/or via email, on the 5<sup>th</sup> 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