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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

KEVIN LABRESH, on behalf of himself and his minor child; TERRA COOPER, on behalf of herself and her minor children; AMY BARTON; CAROL LEAR, in her capacity as a member of the State Board of Education; UTAH EDUCATION ASSOCIATION,

Plaintiffs,

v.

GOVERNOR SPENCER J. COX, in his official capacity as Governor of Utah; SEAN D. REYES, in his official capacity as Attorney General of Utah; ALLIANCE FOR CHOICE IN EDUCATION, d/b/a ACE Scholarships,

Defendants.

**MOTION TO INTERVENE AS  
DEFENDANTS**

**ORAL ARGUMENT REQUESTED**

Case No. 240904193

Judge Laura Scott

**Tier 2**

**STATEMENT OF, AND GROUNDS FOR, RELIEF REQUESTED**

Applicants Maria Ruiz and Tiffany Brown (“Parents”), by and through counsel, hereby move this Court for leave to intervene as Intervenor-Defendants in order to defend the Utah Fits All Scholarship Program (“Scholarship Program” or “Program”), Utah Code §§ 53F-6-401 to -415, which Plaintiffs’ Complaint challenges. Specifically, Parents seek leave to intervene as of

right pursuant to Civil Rule 24(a), as well as Utah Code § 53F-6-413(3), which provides them a statutory right of intervention. Alternatively, Parents request permissive intervention pursuant to Civil Rule 24(b). If the Court grants the motion to intervene, Parents respectfully request that their response to Plaintiffs' complaint be due 21 days after the order allowing intervention.

Applicant Maria Ruiz is the mother of two children, both of whom attend private schools. Tiffany Brown is the mother of eight children, seven of whom attend private schools. Each mother struggles mightily to afford tuition, but each feels strongly that her children's schools are the best environment for their educational needs.

Both of Maria's children and seven of Tiffany's children have received Utah Fits All scholarships for the 2024-25 school year. The scholarships will be life changing for their families, helping relieve the immense financial burden of sending their children to the schools that Maria and Tiffany know to be best for them.

Plaintiffs, however, seek a declaration that the Scholarship Program is unconstitutional and an injunction barring its implementation. If successful, Plaintiffs' lawsuit would deprive Maria's and Tiffany's children—as well as approximately 10,000 other Utah children—of the educational opportunity that the Legislature, in its discretion, sought to provide them.

To prevent that from happening, Maria and Tiffany respectfully seek leave to intervene. They are prepared to demonstrate that, contrary to Plaintiffs' allegations, the Scholarship Program does not violate the Legislature's obligations toward the public schools, does not impermissibly use state income tax revenues, does not unconstitutionally delegate the authority of the State Board of Education, and does not impermissibly delegate constitutional functions to a private entity.

As discussed below, Maria and Tiffany have been “given an unconditional right to intervene by a statute,” Utah R. Civ. P. 24(a)(1)—specifically, Utah Code § 53F-6-413(3). Even without that statutory right, however, they would still be entitled to intervention of right under Civil Rule 24(a)(2). Alternatively, and as also discussed below, they satisfy the criteria for permissive intervention under Civil Rule 24(b).

## **STATEMENT OF FACTS**

### **I. The Utah Fits All Scholarship Program and the Lawsuit Challenging It**

On January 28, 2023, Governor Cox signed into law HB 215, which enacted the Scholarship Program, a publicly funded universal educational savings account program. Utah Code §§ 53F-6-401 to -415. The Program offers alternatives for students seeking a nonpublic education and creates flexibility for families to meet their children’s unique educational needs. It also helps address disparities in educational options.

Students eligible to enroll in public schools in kindergarten through twelfth grade may apply to the Program for scholarship accounts. *See id.* § 53F-6-401(1). For the 2024–25 school year, the maximum scholarship is \$8,000 per student. *Id.* § 53F-6-402(2)(c)(i). If a student receives a scholarship, the funds are deposited into an account that parents can use for an array of educational expenses, including: private school tuition; educational or therapeutic services for students with disabilities; tutoring services; textbooks, curricula or other instructional materials; educational software; fees for after-school or summer education programs; supplies or equipment related to a student’s educational needs; computer hardware or devices intended primarily for a student’s educational needs; fees for examinations or prep courses; transportation to and from a

qualifying provider, up to \$750 per school year; and expenses for extracurriculars, field trips, or other educational experiences. *Id.* § 53F-6-401(10)–(11).

Although this is a universal program, meaning any K-12 student in the state is eligible to apply, the number of scholarships awarded is limited by the available funding. The Legislature initially appropriated \$42.5 million for the Program. 2023 Utah Laws 1, § 19. In response to overwhelming demand for the Program, however, the Legislature subsequently appropriated an additional \$40 million, effectively providing funding for approximately 10,000 scholarships in the Program’s first year (the 2024-25 school year). 2024 Utah Laws 460 (Item 21).

Under the Program, if the number of scholarship applicants exceeds available funding, then the administrator must give preference to: (1) students who used a scholarship account in the previous school year; (2) eligible students who did not use a scholarship account in the previous school year and whose family income is at or below 200% of the federal poverty level; (3) eligible students with a sibling who uses a scholarship account or used one in the previous school year; and (4) eligible students who did not use a scholarship account in the previous school year and whose family income is between 200% and 555% of the federal poverty level. Utah Code § 53F-6-402(6)(a).

In May 2024, scholarships for the 2024-25 school year were awarded. The Program was oversubscribed nearly three to one; applications for approximately 27,270 students were received for the approximately 10,000 available scholarships. Marjorie Cortez, *How many Utah households applied for the Utah Fits All Scholarship?*, DESERET NEWS (April 23, 2024, 4:29 p.m.), <https://www.deseret.com/education/2024/04/23/utah-choice-scholarship-fits-all-legislature-voucher-ace/>.

On May 29, 2024, Plaintiffs filed this lawsuit challenging the Scholarship Program on state constitutional grounds. Specifically, Plaintiffs allege that the Scholarship Program: violates the Legislature’s obligations regarding public schools (Claim 1); impermissibly uses state income tax revenues (Claim 2); impermissibly delegates the authority of the State Board of Education (Claim 3); and impermissibly delegates constitutional functions to a private entity (Claim 4). *See* Compl. ¶¶ 75-103.

## **II. Parents and Their Interest in the Scholarship Program.**

Maria Ruiz and Tiffany Brown are mothers of children who have received Utah Fits All scholarships for the 2024-25 school year. As such, they and their children are the Program’s direct and intended beneficiaries.

### Ruiz Family

Maria Ruiz and her husband live in Tooele, Utah, with their two children. Attachment A (Ruiz Decl.) ¶¶ 1-2. Maria’s son, I.D., attends Juan Diego Catholic High School and her daughter, N.D., attends Saint John the Baptist Middle School, both in Draper. *Id.* ¶ 2. Maria is very happy with the education her children receive at their schools and believes fervently that the schools are the best fit for her children’s educational needs. *Id.* ¶ 9; *see also id.* ¶ 6.

When I.D. was in fourth grade, Maria and her husband decided to try a public school for him. *Id.* ¶ 4. It was not a good fit for I.D. *Id.* The class sizes were too big to allow for one-on-one attention, and the teachers did not seem to care about getting to know Maria’s family. *Id.* I.D. also experienced bullying, and the public school did not help with the development of his social skills. *Id.* Maria feared that if I.D. continued in public school, he would not take his education seriously in the future. *Id.* Maria was so concerned about I.D. that after one year at

the public school, she re-enrolled him at the private school he had previously attended, Kearns-Saint Ann. *Id.* ¶ 5.

One of the biggest motivations for Maria’s decision to send I.D. and N.D. to their current schools is the family’s Catholic faith. *Id.* ¶ 6. Maria wants them to attend schools that provide a curriculum grounded in the family’s faith and that teaches the same values and morals she teaches her children at home. *Id.*

Affording tuition at Juan Diego and Saint John the Baptist has been a significant hardship for Maria and her husband, even with the financial assistance they have received. *Id.* ¶ 9. Maria is the sole financial provider for her family; her husband recently suffered from a stroke and has been slowly recovering. *Id.* ¶ 7. Maria currently works as a manager at a restaurant, but in the past, she has done many things to try to supplement her income, including taking on a second restaurant job, cleaning houses, and selling baked goods. *Id.* Her salary is less than 200 percent of the federal poverty level, and she worries constantly that, in the future, she may not be able to continue to afford tuition for I.D. and N.D. *Id.* ¶ 8, 10.

That is why Maria viewed enactment of the Utah Fits All Scholarship Program as a “godsend” for her family. *Id.* ¶ 11. She applied for scholarships for both I.D. and N.D., and she learned in May of this year that both of them had, in fact, received scholarships for the 2024-25 school year. *Id.* The scholarships will be life-changing for Maria and her family, ensuring she has the financial ability to provide the education she knows is best for her children. *Id.* ¶ 12. With the financial burden of that education alleviated, Maria hopes to be able to catch up on past due bills, pay all of her utility bills every month, and buy better health insurance so that her husband can receive the healthcare he requires as a result of his stroke. *Id.*

If, however, the Scholarship Program is invalidated, as Plaintiffs request, it will be devastating for Maria and her family. Maria and her husband will continue to endure great financial hardship and will lack the security of knowing that they can continue providing I.D. and N.D. the education that is best for them as the years progress. *Id.* ¶ 13.

#### Brown Family

Tiffany Brown and her husband live in Riverton, Utah, with their eight children. Attachment B (Brown Decl.) ¶¶ 1-2. Seven of their children are school age. *Id.* ¶ 2. Tiffany's oldest, R.J.B., attends Juan Diego Catholic High School, where she will be entering eleventh grade in the 2024-25 school year. *Id.* Her second oldest, R.S.B., attended Saint John the Baptist Middle School this school year and will be a freshman at Juan Diego in the 2024-25 school year. *Id.* Her five other school-age children—M.A.B., M.D.B., P.B., H.B., and Q.B.—will be attending Saint John the Baptist Schools in the 2024-25 school year. *Id.* Tiffany's youngest child, N.B., is not yet of school age. *Id.*

Both Juan Diego and Saint John the Baptist are Catholic schools, and Tiffany and her husband have chosen the schools for their children despite the fact that the family is not Catholic. *Id.* ¶ 5. It is important to Tiffany that her children attend the schools because of the well-rounded education they receive there. *Id.* ¶ 3. The academics at the schools are demanding, and the schools have a community atmosphere that Tiffany very much appreciates; she volunteers often and knows many parents and staff. *Id.* Tiffany believes that the teachers and coaches at the schools really invest in her family. *Id.* Tiffany also appreciates the moral foundation that the schools are laying for her children. *Id.* ¶ 5.

Two of Tiffany’s children—MA.B. and MD.B.—are twins. *Id.* ¶ 4. Their older siblings, RJ.B. and RS.B., had attended pre-K at Saint John the Baptist, and Tiffany wished the same for MA.B. and MD.B. *Id.* Tiffany and her husband, however, could not afford the pre-K tuition for MA.B. and MD.B., so they instead sent the children to a public Head Start program for pre-K. *Id.* Tiffany was surprised by the differences in educational quality, expectations, and goals between the public program and Saint John the Baptist. *Id.* In fact, Tiffany had serious concerns about whether MA.B. and MD.B. were adequately prepared for kindergarten. *Id.*

Tiffany’s youngest child, N.B., has Down syndrome. *Id.* ¶ 6. As noted above, she is not yet school age. But when she is, Tiffany wants to ensure that N.B., like Tiffany’s other children, is able to attend a school or otherwise receive an education that best meets her needs. *Id.* That probably means she will not attend Saint John the Baptist like her siblings. *Id.* Instead, Tiffany has considered sending her to Elizabeth Academy, a private school in Salt Lake City focused on serving students of all ability levels. *Id.*

Tiffany often worries that, in the future, she and her husband, who is the sole financial provider for their family, will not be able to afford tuition for the schools that are the best fit for her children. *Id.* ¶ 7. The family’s household income is below 200 percent of the federal poverty level, and Tiffany and her husband have always made significant sacrifices to keep their children in their schools. *Id.* Even with the financial assistance they currently receive, paying tuition every month is a tremendous burden for them. *Id.*

That is why Tiffany breathed a huge sigh of relief when she learned that the Utah Fits All Scholarship applications that she submitted for all of her school-age children were approved for the 2024-25 school year. *Id.* ¶ 8. Tiffany plans to use the scholarships to provide for the



education of R.J.B., R.S.B., M.A.B., M.D.B., and P.B. *Id.* She may also use the scholarships for H.B. and Q.B., but she and her husband have not yet made that decision, because H.B. and Q.B. may be eligible for scholarships through the Children First Education Fund, which uses private donations to fund scholarships for children with special needs. *Id.*

When N.B. reaches school age, Tiffany plans to apply for a Utah Fits All Scholarship for her, as well. *Id.* ¶ 10. The Program will be especially important for her education, as it would enable Tiffany to find the school that is the best fit for her or otherwise customize her education and therapy based on her unique, individual needs. *Id.*

The Utah Fits All Scholarship Program has the potential to change the lives of Tiffany and her family. *Id.* ¶ 9. It will go a very long way in helping alleviate the significant expenses that Tiffany and her husband incur for the education of their children. *Id.* In turn, Tiffany hopes to one day be able to move her family out of their current apartment, which is income-restricted, and she and her husband both hope to be able to finish their degrees. *Id.*

A judgment taking away the educational opportunity that the Scholarship Program stands to provide Tiffany's children would be devastating. *Id.* ¶ 11. Tiffany and her husband would have to continue struggling mightily to keep their children in the schools they know are best for them and continue living with constant worry over their ability able to do so. *Id.*

## ARGUMENT

Applying the intervention rules “liberally,” *Lima v. Chambers*, 657 P.2d 279, 284 (Utah 1982); *see also Chatterton v. Walker*, 938 P.2d 255, 258 (Utah 1997), this Court should allow Maria and Tiffany to intervene as a matter of right. Alternatively, the Court should grant leave to intervene under the rules governing permissive intervention.

**I. Maria and Tiffany Meet the Requirements for Intervention of Right under Rule 24(a)**

A “court must permit” a party to intervene if it files a timely application and can show *either* that it: (1) has been “given an unconditional right to intervene by a statute,” Utah R. Civ. P. 24(a)(1); or (2) “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede [its] ability to protect [its] interest, unless existing parties adequately represent that interest,” Utah R. Civ. P. 24(a)(2). As explained below, Maria and Tiffany satisfy both paths to intervention of right.

**A. Maria and Tiffany’s Motion is Timely**

First, Maria and Tiffany’s motion is timely. Timeliness is based on “the facts and circumstances of each particular case, and in the sound discretion of the court.” *Jenner v. Real Estate Servs.*, 659 P.2d 1072, 1074 (Utah 1983). Generally speaking, however, a motion is considered timely if it is filed “before the final settlement of all issues by all parties, and before entry of judgment or dismissal.” *Supernova Media, Inc. v. Pia Anderson Dorius Reynard & Moss, LLC*, 2013 UT 7, ¶ 24, 297 P.3d 599, 607 (quotations omitted).

Here, Maria and Tiffany are moving to intervene just six days after Plaintiffs filed their complaint and before any meaningful development of this case has occurred—in other words, well within the recognized bounds of timeliness. *See Carlsen v. Bd. of Adjustment of City of Smithfield*, 2012 UT App 260, ¶¶ 24-29, 287 P.3d 440, 450-51 (holding motion to intervene filed seven months after litigation began, and after plaintiff had moved for summary judgment, was timely). In fact, this motion is filed well within the time for Defendants’ answer or responsive pleading, which has not yet been filed. *See Utah R. Civ. P. 12(a)(1)*. It comes at the very

beginning of the case and before any of the substantive legal questions relevant to the intervention have been raised, much less resolved. Accordingly, this application for intervention is timely.

**B. Maria and Tiffany have an Unconditional Statutory Right to Intervene**

Maria and Tiffany, moreover, have been “given an unconditional right to intervene by a statute,” Utah R. Civ. P. 24(a)(1)—specifically, Utah Code § 53F-6-413(3), which provides that “[i]f any provision” of the Scholarship Program “is the subject of a state or federal constitutional challenge in a state court, scholarship students and scholarship students’ parents may intervene as a matter of right to defend the program’s constitutionality.” Because they are “scholarship students’ parents,”<sup>1</sup> and because their application is timely, Maria and Tiffany are entitled to intervene as of right under Rule 24(a)(1).

**C. Even if They Did Not Have a Statutory Right to Intervene, Maria and Tiffany Would Still be Entitled to Intervene as of Right under Rule 24(a)(2)**

Even if Maria and Tiffany had not been given a statutory right of intervention by the Legislature, which they have, they would still be entitled to intervene as of right because they satisfy the criteria set forth in Rule 24(a)(2).

**1. Maria and Tiffany Have an Interest in This Litigation**

First, Maria and Tiffany have an obvious interest in this action. This is not a demanding standard. The Utah Supreme Court has noted that Rule 24(a)(2) requires only that an applicant “*claim*” an interest relating to the action; “[i]t does not require intervenors to ‘prove’ such an

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<sup>1</sup> “‘Scholarship student’ means an eligible student . . . for whom the program manager establishes and maintains a scholarship account in accordance with this part.” Utah Code § 53F-6-401(13)(a).

interest.” *Supernova Media, Inc.*, 2013 UT 7, ¶ 32, 297 P.3d at 608-09 (emphasis in original). And the interest does not even have to be “*in* the subject of the litigation but only *relating to* the subject of the litigation, such that the interest may be impacted by the judgment.” *Id.* (emphasis in original) (quotation omitted).

Here, Maria’s and Tiffany’s children are eligible for the Scholarship Program and have been awarded scholarships under it—scholarships they plan to use to defray the cost of their children’s education. Plaintiffs’ lawsuit, however, asks this Court for an order blocking the State from continuing to implement or administer the Program providing those scholarships. Maria and Tiffany therefore have an unquestionable interest that “may be impacted by the judgment.” *Id.*

Moreover, as parents of school-age children, Maria and Tiffany are the intended beneficiaries of the Program, and courts have repeatedly held that the beneficiaries of government programs or laws have the requisite interest to intervene as a matter of right when those programs or laws are challenged. *See, e.g., Texas v. United States*, 805 F.3d 653, 660 (5th Cir. 2015) (allowing immigrant parents to intervene as the “intended beneficiaries of the challenged federal policy” deferring deportation of parents of U.S. citizens); *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (allowing healthcare providers to intervene to defend a conscience protection law because “[t]hey [we]re the intended beneficiaries of th[e] law”); *Cnty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (allowing small farmers to intervene to defend rulemaking under reclamation acts because small farmers were “precisely those Congress intended to protect with the reclamation acts”).<sup>2</sup>

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<sup>2</sup> Utah courts look to interpretations of the federal rules of civil procedure where, as here, they

Finally, Maria and Tiffany’s interest in the Scholarship Program is inextricably linked with their fundamental liberty interest in “direct[ing] the upbringing and education of” their children. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925); *cf. Texas v. United States*, 805 F.3d at 660 (policy of deferring deportation of parents with U.S. citizen children impacted parents’ “legally protected liberty interest” in “directing the upbringing” of their children). The very purpose of the Program, after all, is to empower parents to exercise this liberty interest. As such, Maria and Tiffany have a sufficient interest in this litigation.

## **2. Maria and Tiffany’s Ability to Protect Their Interest is Impaired Without Intervention**

Second, Maria and Tiffany’s ability to protect their interest in the Scholarship Program will be impaired if they are not allowed to intervene. An applicant for intervention must demonstrate that “the disposition of the action may as a practical matter impair or impede [their] ability to protect [their] interest[.]” Rule 24(a)(2).

Here, there is not simply a risk that Maria and Tiffany’s interest “may” be impaired by Plaintiffs’ requested relief; it is an absolute certainty that their established interest in the Scholarship Program will be impaired—indeed, destroyed—if that relief is granted. They will lose not only the scholarships that their children have already been awarded, but also the hope of receiving any such scholarships in the future. If the Program is held unconstitutional, Maria, Tiffany, and their children—“the beneficiaries” of the Program—“would have no chance in future proceedings to have [the Program’s] constitutionality upheld.” *Saunders v. Superior*

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are “substantially similar” to the Utah rule. *Supernova Media, Inc.*, 2013 UT 7, ¶ 40 n.8, 297 P.3d at 610 n.8 (quoting *Tucker v. State Farm Mutual Auto. Ins. Co.*, 2002 UT 54, ¶ 7 n.2, 53 P.3d 947, 950 n.3).

*Court*, 510 P.2d 740, 741–42 (Ariz. 1973). “This practical disadvantage to the protection of their interest . . . warrants their intervention as of right.” *Id.* at 742; *see also* 6 James Wm. Moore et al., *Moore’s Federal Practice* § 24.03 (3d ed. Supp. 2007) (“An applicant’s interest is plainly impaired if disposition of the action in which intervention is sought will prevent any future attempts by the applicant to pursue its interest.”).

### **3. Maria and Tiffany’s Interests Are Not Adequately Represented by The Existing Parties**

Finally, Maria and Tiffany’s interests in the Scholarship Program are not adequately represented by the existing parties. Although Maria and Tiffany carry the burden of demonstrating inadequate representation, “this burden is a minimal one, requiring the intervenor to show only some evidence that the existing parties may not adequately represent [their] interests.” *Beacham v. Fritzi Realty Corp.*, 2006 UT App 35, ¶ 8, 131 P.3d 271, 274 (Utah App. 2006) (citing *Utahns for Better Transp. v. United States Dep’t of Transportation*, 295 F.3d 1111, 1117 (10th Cir. 2002)).

Here, the interests of Maria and Tiffany, on one hand, and those of the Defendants, on the other, diverge. The State Defendants have a duty to represent the broad interest of the public and, to that end, must integrate their defense of the Scholarship Program with the state’s overall approach to education. Maria and Tiffany’s interest, however, is narrower. They have determined that public education does not work best for their children and, to that end, have a particular interest in preserving the Scholarship Program so that they can participate in it. And, as noted above, they also possess a unique liberty interest in “direct[ing] the upbringing and education of children under their control[,]” an interest not shared by the State Defendants. *Pierce*, 268 U.S. at 534–35.

Courts routinely recognize that the government’s duty to represent the broad interests of the public diverge from a private party’s more “parochial” interests. *WildEarth Guardians v. U.S.F.S.*, 573 F.3d 992, 996 (10th Cir. 2009). Because of these distinct interests, beneficiaries of benefit programs are not adequately represented by the government in lawsuits challenging those programs. *See, e.g., Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538–39 (1972) (allowing intervention because the Secretary of Labor’s “interest in assuring free and democratic union elections . . . transcends the narrower interest of” intervening union member); *Nat’l Farm Lines v. I.C.C.*, 564 F.2d 381, 384 (10th Cir. 1977) (deeming a government agency’s attempt to protect both the interest of the public and the private interest of intervenors an “impossible” task); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir.1998) (holding a union had “demonstrated that the representation of its interests” by government defendants “may have been inadequate” because the union members’ interests in a prevailing wage law “were potentially more narrow and parochial than the interests of the public at large”).

The same is true here. The only way for Maria and Tiffany’s specific interests to be adequately represented is for them to be a part of this case. *See Utahns for Better Transp.*, 295 F.3d at 1117 (“[T]he government’s prospective task of protecting ‘not only the interest of the public but also the private interest of the [intervenors]’ is ‘on its face impossible’ and creates the kind of conflict of interest that ‘satisfies the minimal burden of showing inadequacy of representation.’” (quoting *Utah Ass’n of Cnty. v. Clinton*, 255 F.3d 1246, 1255 (10th Cir. 2001))).

Moreover, the distinct interests of Maria and Tiffany “may not always dictate precisely the same approach to the conduct of litigation” that the State Defendants’ interests will. *Trbovich*, 404 U.S. at 539. Indeed, experience in educational choice litigation confirms that the government and participating families often take different litigation approaches and present different arguments. In *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011), for example, parent-intervenors successfully argued that the plaintiffs challenging the educational choice program lacked standing, an issue that the state conceded. *See also Duncan v. State*, 166 N.H. 630, 102 A.3d 913 (2014) (same).

In *Kotterman v. Killian*, 193 Ariz. 273, 972 P.2d 606 (1999), meanwhile, parent-intervenors—not the state—persuaded the court to confront the bigoted origins of the provision of the Arizona Constitution that the plaintiffs were using to attack the state’s educational choice program. In *Hart v. State*, 367 N.C. 775, 772 S.E.2d 855 (2014) (mem.), it was parent-intervenors—not the government—who obtained interlocutory relief, saving 2,000 scholarships after an adverse judgment from the trial court. And parent-intervenors’ argument interpreting Tennessee’s Home Rule Amendment, a position that the state only later embraced, proved decisive in the protection of that state’s education savings account program. *See Metropolitan Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.*, 645 S.W.3d 141, 151–52 (Tenn. 2022) (noting that “Intervenors, and now the State as well,” had advanced the argument).

Finally, Maria and Tiffany can provide insight into issues that the current parties lack. *See Utahns for Better Transp.*, 295 F.3d at 1117 (noting proposed intervenor’s “expertise” that “the government agencies may be lacking”). Quite simply, without parents like Maria and Tiffany, this case will not include the individuals with the most to lose if Plaintiffs prevail: the



intended beneficiaries of the Scholarship Program. Maria and Tiffany will be able to provide testimony about how the Scholarship Program will help them meet the unique educational needs of their children, which, after all, is the very purpose of the Program.

### **III. Maria and Tiffany Alternatively Meet the Requirements for Permissive Intervention.**

If the Court denies Maria and Tiffany intervention under Rule 24(a)(2), it should still grant them permissive intervention. Rule 24(b) allows parties to intervene “on a timely motion” if they have “a claim or defense that shares with the main action a common question of law or fact.” Intervention should be granted so long as it would not “unduly delay” the action, “unduly complicate the issues,” or “unduly delay or prejudice the adjudication of the rights of the original parties.” *Interstate Land Corp. v. Patterson*, 797 P.2d 1101, 1108 (Utah App. 1990) (quotation omitted) (citing Rule 24(b)). Here, Maria and Tiffany easily satisfy this standard.

First, as already discussed, their motion is timely. Granting this motion will not delay the pending action. The motion to intervene was filed just six days after Plaintiffs filed this lawsuit. The lawsuit remains at the pleadings stage, well within the time for Defendants’ answer, which has not yet been filed. *See* Utah R. Civ. P. 12(a)(1).

Second, Maria and Tiffany’s defenses share a common question of law or fact with this action. This litigation will decide whether the Scholarship Program is constitutional, and they have an obvious interest in defending the Program so that they and their children can benefit.

Moreover, allowing intervention will not complicate the issues or prejudice the rights of any party. Rather, Maria and Tiffany’s participation will facilitate a thorough and timely resolution of this case and will provide the Court with an important perspective from the Program’s intended beneficiaries. No other party can provide that testimony.

Finally, Maria and Tiffany believe that participation of their counsel will also assist this Court in its resolution of the questions before it.<sup>3</sup> Their counsel have represented intervening parents in the successful defense of more than a dozen educational choice programs, at every level of federal and state court.<sup>4</sup> In fact, they have successfully defended parental choice in education five times at the U.S. Supreme Court alone.<sup>5</sup> And they are currently representing intervening parents in the defense of Tennessee’s education savings account program, Ohio’s voucher programs, and Alaska’s state correspondence program.

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<sup>3</sup> Maria and Tiffany have retained attorneys with the Institute for Justice to represent them in this matter. Motions for admission *pro hac vice* are forthcoming and will be filed with this Court in compliance with the applicable rules. *See* Utah S. Ct. Rule 14-806.

<sup>4</sup> These programs include Arizona’s individual tax credit scholarship program, *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011); *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999); Ohio’s Pilot Project Scholarship Program, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999); Douglas County, Colorado’s voucher program, *Doyle v. Taxpayers for Pub. Educ.*, 582 U.S. 950 (2017) (mem.); West Virginia’s educational savings account program, *State v. Beaver*, 887 S.E.2d 610 (W. Va. 2022); Tennessee’s education savings account program, *Metro. Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.*, 645 S.W.3d 141 (Tenn. 2022); Georgia’s tax credit scholarship program, *Gaddy v. Ga. Dep’t of Revenue*, 802 S.E.2d 225 (Ga. 2017); North Carolina’s voucher program, *Hart v. State*, 774 S.E.2d 281 (N.C. 2015); Alabama’s tax credit scholarship program, *Magee v. Boyd*, 175 So. 3d 79 (Ala. 2015); New Hampshire’s tax credit scholarship program, *Duncan v. State*, 102 A.3d 913 (N.H. 2014); Indiana’s voucher program, *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013); Arizona’s educational savings account program, *Niehaus v. Huppenthal*, 310 P.3d 983 (Ariz. Ct. App. 2013); Arizona’s corporate tax credit scholarship program, *Green v. Garriott*, 212 P.3d 96 (Ariz. Ct. App. 2009); Illinois’ tax credit program, *Toney v. Bower*, 744 N.E.2d 351 (Ill. App. Ct. 2001); *Griffith v. Bower*, 747 N.E.2d 423 (Ill. App. Ct. 2001); and Milwaukee’s voucher program, *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998); *Davis v. Grover*, 480 N.W.2d 460 (Wis. 1992).

<sup>5</sup> *Carson v. Makin*, 596 U.S. 767 (2022); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020); *Doyle*, 582 U.S. 590; *Ariz. Christian Sch. Tuition Org.*, 563 U.S. 125; *Zelman*, 536 U.S. 639.

## CONCLUSION

In nearly every legal challenge to an educational choice program over the past three decades, parents who have sought to intervene to defend the program have been permitted to do so. Maria and Tiffany simply request that they be permitted to do the same. Party status is necessary to ensure that their interests as beneficiaries of the Scholarship Program are fully protected. Should the Program be ruled unconstitutional, they would forever lose the opportunity to protect those interests.

Accordingly, and for the forgoing reasons, Maria and Tiffany respectfully request that this Court grant them leave to intervene as defendants and order that their response to Plaintiffs' complaint be due within 21 days after the Court's order allowing intervention.

Dated this 4th day of June, 2024.

Respectfully submitted,

/s/ John Mertens  
John Mertens (14522)  
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Attorney for Applicants for Intervention

## **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the word limit of U.R.C.P. 7(q) because it contains 5,384 words, including footnotes, based on the count of the processing system used to prepare it.

s/ John Mertens  
John Mertens

## CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2024, the foregoing MOTION TO INTERVENE AS DEFENDANTS and its supporting documents was served upon the following counsel of record via the court's electronic filing system:

Tracey M. Watson (Utah Bar No. 9881)  
UTAH EDUCATION ASSOCIATION  
PO Box 57880  
Murray UT 84157-0880  
Tel: (801) 918-9301  
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Troy L. Booher (Utah Bar No. 9419)  
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*Attorneys for Plaintiffs*

I further certify that the foregoing MOTION TO INTERVENE AS DEFENDANTS and its supporting documents was served upon the following parties via USPS first class mail:

Governor Spencer J. Cox, in his official capacity as Governor of Utah  
350 N. State Street, Suite 200  
P.O. Box 142220  
Salt Lake City, UT 84114-2220

Sean D. Reyes, in his official capacity as Attorney General of Utah  
Office of the Attorney General  
P.O. Box 142320  
Salt Lake City, Utah 84114-2320

Alliance for Choice in Education, d/b/a ACE Scholarships  
5251 DTC Parkway, Suite 1150  
Greenwood Village, CO 80111

/s/ Melanie Buervenich  
Melanie Buervenich

### Notice to responding party

You have a limited amount of time to respond to this motion. In most cases, you must file a written response with the court and provide a copy to the other party:

- within 14 days of this motion being filed, if the motion will be decided by a judge, or
- at least 14 days before the hearing, if the motion will be decided by a commissioner.

In some situations a statute or court order may specify a different deadline.

If you do not respond to this motion or attend the hearing, the person who filed the motion may get what they requested.

See the court's Motions page for more information about the motions process, deadlines and forms:

[utcourts.gov/motions](http://utcourts.gov/motions)



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### Finding help

The court's Finding Legal Help web page

[\(utcourts.gov/help\)](http://utcourts.gov/help)

provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.



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### Aviso para la parte que responde

Su tiempo para responder a esta moción es limitado. En la mayoría de casos deberá presentar una respuesta escrita con el tribunal y darle una copia de la misma a la otra parte:

- dentro de 14 días del día que se presenta la moción, si la misma será resuelta por un juez, o
- por lo menos 14 días antes de la audiencia, si la misma será resuelta por un comisionado.

En algunos casos debido a un estatuto o a una orden de un juez la fecha límite podrá ser distinta.

Si usted no responde a esta moción ni se presenta a la audiencia, la persona que presentó la moción podría recibir lo que pidió.

Vea la página del tribunal sobre Mociones para encontrar más información sobre el proceso de las mociones, las fechas límites y los formularios:

[utcourts.gov/motions-span](http://utcourts.gov/motions-span)



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### Cómo encontrar ayuda legal

La página de la internet del tribunal Cómo encontrar ayuda legal

[\(utcourts.gov/help-span\)](http://utcourts.gov/help-span)

tiene información sobre algunas maneras de encontrar ayuda legal, incluyendo el Centro de Ayuda de los Tribunales de Utah, abogados que ofrecen descuentos u ofrecen ayuda legal limitada, y talleres legales gratuitos.



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# **ATTACHMENT A**



**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

KEVIN LABRESH, on behalf of himself and his minor child; TERRA COOPER, on behalf of herself and her minor children; AMY BARTON; CAROL LEAR, in her capacity as a member of the State Board of Education; UTAH EDUCATION ASSOCIATION,

Plaintiffs,

v.

GOVERNOR SPENCER J. COX, in his official capacity as Governor of Utah; SEAN D. REYES, in his official capacity as Attorney General of Utah; ALLIANCE FOR CHOICE IN EDUCATION, d/b/a ACE Scholarships,

Defendants.

**DECLARATION OF MARIA RUIZ**

Case No. 240904193

Judge Laura Scott

**Tier 2**

I, Maria Ruiz, declare as follows:

1. I am a resident of Tooele, Utah and live at 462 East 700 N. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.

2. I am the mother of two children, I.D. and N.D. I.D. is a 16-year-old boy and will be an eleventh grader at Juan Diego Catholic High School in Draper, Utah, in the 2024-25 school year. N.D. is a 12-year-old girl and will be a seventh grader at Saint John the Baptist Middle School in Draper, Utah, in the 2024-25 school year.

3. I am very happy with the education that my kids receive at their schools. They both attended Kearns-Saint Ann Catholic School for elementary school, which I lovingly call the

escuelita, because it feels like a community. I really liked the smaller class sizes and the one-on-one attention my children received from their teachers there. I also liked that all the private schools my children have attended have taught them how to interact and build healthy relationships with adults and peers.

4. When I.D. was in fourth grade, he tried public school. It was not a good fit for him. The class sizes were too big to allow for one-on-one attention and the teachers did not seem to care about getting to know our family. I.D. also experienced bullying and the public schools did not help him develop his social skills. I feared that if I.D. continued in public school, he would not take his education seriously in the future.

5. After the one year in public school, I.D. returned to Kearns-Saint Ann. That was the same year that N.D. enrolled in kindergarten at Kearns-Saint Ann.

6. When I.D. reached ninth grade, we chose to send him to Juan Diego. One of the biggest motivations for sending him there was that we are Catholic and the school provides a curriculum grounded in our faith. I appreciate that the school teaches values and morals that are the same as the values and morals I teach my children at home. The same is true of St. John the Baptist, which N.D. currently attends.

7. I am the sole financial provider for my family. I am married, but my husband recently suffered from a stroke and has been slowly recovering. I work as a manager at a restaurant, but I have done many things to earn additional income in the past, including taking on a second restaurant job, cleaning houses, and selling baked goods.

8. My salary is less than 200% of the federal poverty level defined by the U.S. Department of Health and Human Services for a family of four.

9. Tuition to Juan Diego and St. John the Baptist is not cheap. Even with some financial assistance, it has been a hardship to pay tuition for both of my children. There are also additional costs for things such as extracurricular activities, sports, and field trips. It has been a sacrifice I have been willing to make, however, because I.D. and N.D. both like their schools very much and my husband and I know that the schools are the best educational environment for them. I believe giving them a good education is the best way I can set them up for success in the future.

10. I have always worried, however, that in the future I may not be able to continue to afford tuition for my children to attend the schools that are best for them. We are normally surviving paycheck to paycheck.

11. That is why the Utah Fits All Scholarship Program was a godsend for my family. I applied for scholarships for both I.D. and N.D., and we learned in May of this year that both of them had, in fact, received scholarships for the 2024-25 school year.

12. These scholarships will be life-changing for my family, helping me financially to provide the education that is best for my children. In turn, I hope to be able to catch up on past due bills, pay all of my utility bills every month, and buy better health insurance so that my husband can receive the healthcare he requires as a result of his stroke.

13. If the Utah Fits All Scholarship Program is invalidated, as the plaintiffs in this lawsuit request, it will be devastating for my family. We will continue to endure great financial hardship and we will lack the security of knowing that we can continue to fund I.D.'s and N.D.'s education as the years progress.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the 31 day of May, 2024, at  
Tooele, Utah.

Maria Ruiz  
Printed Name

Maria Ruiz  
Signature

# **ATTACHMENT B**

**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

KEVIN LABRESH, on behalf of himself and his minor child; TERRA COOPER, on behalf of herself and her minor children; AMY BARTON; CAROL LEAR, in her capacity as a member of the State Board of Education; UTAH EDUCATION ASSOCIATION,

Plaintiffs,

v.

GOVERNOR SPENCER J. COX, in his official capacity as Governor of Utah; SEAN D. REYES, in his official capacity as Attorney General of Utah; ALLIANCE FOR CHOICE IN EDUCATION, d/b/a ACE Scholarships,

Defendants.

**DECLARATION OF TIFFANY BROWN**

Case No. 240904193

Judge Laura Scott

**Tier 2**

I, Tiffany Brown, declare as follows:

1. I am a resident of Riverton, Utah and live at 15085 S. Plymouth Rock Lane. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.

2. I have eight children: R.J.B., R.S.B., M.A.B., M.D.B., P.B., H.B., Q.B., and N.B. All of my children except N.B attend private schools. R.J.B. will be entering eleventh grade at Juan Diego Catholic High School in Draper, Utah, in the 2024-25 school year. R.S.B. attended Saint John the Baptist Schools in Draper, Utah, this year and will be a freshman at Juan Diego in the

2024-25 school year. MA.B., MD.B., P.B., H.B., and Q.B. all attended Saint John the Baptist this year and will do so again next year. N.B. is not yet school age.

3. It is important to me that my children attend the schools they do because of the well-rounded education they are receiving. The academics at their schools are demanding, and there is a real community atmosphere at the schools. I volunteer often and know many parents and staff. Several of my children's sports coaches have coached them from elementary school up to middle school or even high school. The teachers and coaches really invest in my family.

4. MA.B and MD.B are twins. When they were in pre-K, they attended a public Head Start program. RJ.B and RS.B, on the other hand, had attended pre-K at Saint John the Baptist. I was surprised by the differences in educational quality, expectations, and goals between the public program and Saint John the Baptist. I had wanted to send MA.B and MD.B to Saint John the Baptist for pre-K, but I could not because the school was unable to offer them financial aid at the pre-K level. By the time they were able to start there for kindergarten, I had serious concerns that they had not been adequately prepared by the Head Start program.

5. My husband and I are not Catholic, but we like that the private schools our children attend are laying a moral foundation for them.

6. N.B. has Down syndrome. She is not in school yet, but when she is school age, I will make sure she is attending a school or getting an education that best meets her needs. That probably means she will not attend Saint John the Baptist Schools like her siblings. I have considered sending her to the Elizabeth Academy in Salt Lake City. It is a private school with a particular focus on inclusion for students with all levels of ability.

7. I often worry that in the future, my husband, who is the sole financial provider for our family, and I will not be able to continue to afford tuition for the schools that are the best fit

for my children. Our household income is below 200% of the federal poverty level defined by the U.S. Department of Health and Human Services. We have always made sacrifices to keep our children in their schools; even with the financial assistance we currently receive, however, paying tuition every month is a tremendous burden for us.

8. That is why I breathed a huge sigh of relief when I learned in May that Utah Fits All Scholarship applications for all of my school-aged children had been approved for the 2024-25 school year. My husband and I plan to use these scholarships to provide for the education of R.J.B., R.S.B., M.A.B., M.D.B., and P.B. We may also use Utah Fits All Scholarships for H.B. and Q.B., but we have not yet made that decision because they may be eligible for scholarships through the Children First Education Fund, which uses private donations to fund scholarships for children with special needs.

9. The Utah Fits All Scholarship Program has the potential to change our lives. It will go a very long way in helping alleviate the significant expenses we incur for the education of our children. In turn, I hope to one day be able to move our family out of our current apartment, which is income-restricted, and my husband and I both hope to be able to finish our degrees.

10. When N.B. reaches school age, I plan to apply for a Utah Fits All Scholarship for her, as well. The program will be especially important for her education, as it would enable me to find the school that is the best fit for her or otherwise customize her education and therapy based on her unique, individual needs.

11. A judgment taking away the educational opportunity that the Utah Fits All Scholarship Program stands to provide my children will be devastating. My husband and I would have to continue struggling mightily to keep our children in the schools we know to be best for



them, and we would have to continue living with the constant worry of whether we will be able to do so.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the 3<sup>rd</sup> day of June 2024 at \_\_\_\_\_, Utah.

Tiffany Brown  
Printed Name

[Signature]  
Signature