

FILED

STATE OF WYOMING)
)
COUNTY OF LARAMIE) SS.
)
) FIRST JUDICIAL DISTRICT

WYOMING EDUCATION ASSOCIATION,)
a Wyoming Nonprofit Membership Corporation;)
JENY GARDNER on behalf of herself and her)
Minor child; CHRISTINA HUTCHISON on)
Behalf of herself and her minor children;)
KATHRYNE PENNOCK III on behalf of herself)
and her minor children; KATHARINE AND)
ZACHARY SCHNEIDER on behalf of)
themselves and their minor children;)
CHAD SHARPE AND KIMBERLY)
LUDWIG-SHARPE on behalf of themselves and)
their minor child; and CHRISTINA VICKERS)
AND BRANDON VICKERS on behalf of)
themselves and their minor children,)

Plaintiffs,)

vs.)

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

Defendants,)

And)

NICOLETTE and TRAVIS LECK, and)
VICTORIA HAIGHT,)

Intervenor Defendants.)

Case. No. 203-366

ORDER GRANTING PRELIMINARY INJUNCTION

This matter is before the Court on Plaintiffs' *Motion for a Preliminary Injunction* (Motion) and *Memorandum of Law in Support of Preliminary Injunction* (Plaintiff's Brief), filed on June 13, 2025. Defendants filed their *Response to Plaintiff's Motion for Preliminary Injunction* (State's Response) on June 24, 2025. Intervenor Defendants (Intervenors) filed their *Memorandum in Opposition to Motion for Preliminary Injunction* (Intervenors' Brief) on June 24, 2025. Plaintiffs filed their *Reply Brief in Support of Motion for Preliminary Injunction* (Plaintiffs' Reply) on June 26, 2025. The Court held an in-person hearing on the Motion, the responses and the reply on June 27, 2025. The Court has reviewed all the filings, considered the arguments made at the hearing, and is fully informed in the premises. The Court orders as follows:

I. CLAIMS IN THE COMPLAINT

Plaintiffs' claims are brought pursuant to the Wyoming Uniform Declaratory Judgement Act. Plaintiffs assert the recently enacted Steamboat Legacy Scholarship Act and Education Savings Account (ESA) Program (the Act), Wyo. Stat. §§ 21-2-901 – 909, violates several Wyoming Constitutional provisions. In general, the Act appropriates general fund money to the Wyoming Superintendent of Public Instruction (State Superintendent) to allocate up to \$7,000.00 into individual ESAs for Wyoming students opting to not be enrolled in a public school for school year 2025-2026. Plaintiffs request the Court declare the Act violates several separate sections of the Wyoming Constitution.

First, Plaintiffs argue the Act violates multiple sections in Art. 7 of the Wyoming Constitution, the Education Article, because the Act creates a new system of education that is not uniform, thorough, efficient, adequate, or open to all Wyoming students. Second, Plaintiffs contend the Act violates Art. 3, § 36, because the Act appropriates public funds to private persons and corporations who are not under the absolute control of the State and because the Act

appropriates public funds to sectarian or denominational institutions. Finally, Plaintiffs assert the Act violates Art. 16, § 6(a)(i) in the Wyoming Constitution because the Act donates public funds to individuals, associations, and corporations which are not for the necessary support of the poor.

Plaintiffs also request injunctive relief, specifically a permanent and a preliminary injunction enjoining the State from implementing the Act.

II. THE ACT

The Act creates the Steamboat Legacy Scholarship Program Account (ESA Program Account), which is to be administered by the State Superintendent. Wyo. Stat. § 21-2-903(b). In 2025, the Wyoming Legislature (legislature) appropriated \$30 million from the State's general fund into the ESA Program Account to fund individual student ESAs and another \$880,000.00 to administer the ESA Program. [State's Brief, p. 13, n. 4] The Act authorizes the State Superintendent to contract with a private entity to administer the ESA Program or specific parts of the ESA Program, including a payment system for direct payment to the education service provider. Wyo. Stat. § 21-2-906(a)(v) and (vi). No county, city, or school district tax revenues may be used to fund the ESA Program. Wyo. Stat. § 21-2-903(d).

The Act directs the State Superintendent to create an application process for parents to establish a student ESA. Wyo. Stat. § 21-2-905(b) and (c). A Wyoming parent may apply to the State Superintendent to establish an ESA for an eligible student. Wyo. Stat. § 21-2-905(a). A child who is a Wyoming resident, is eligible to attend a Wyoming public school, and has not graduated from high school or received a high school equivalency certificate is eligible to receive an ESA. Wyo. Stat. § 21-2-904(a)(i). The State Superintendent must approve an ESA application if the parent properly follows the application process, the student is eligible, funds are available, and the parent signs an ESA Program Agreement. Wyo. Stat. § 21-2-905(d).

By signing an ESA Program Agreement, Wyoming parents agree to only use ESA funds for the expenses listed in the Act, which include:

- (A) Tuition and fees at a qualified school;
- (B) Tutoring services provided by an individual or a tutoring facility. The tutoring services shall not be provided by an ESA student's immediate family;
- (C) Services contracted for and provided by a public school district, including services provided by a public charter school. Services under this subparagraph may include, without limitation, individual classes and extracurricular activities and programs;
- (D) Textbooks, curriculum and other instructional materials, including, but not limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;
- (E) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;
- (F) Educational software and applications;
- (G) School uniforms;
- (H) Fees for nationally standardized assessments, advanced placement examinations, examinations related to college or university admission and tuition and fees for preparatory courses for the exams;
- (J) Tuition and fees for summer education programs and specialized after school education programs, but not including after school childcare programs;
- (K) Tuition, fees, instructional materials and examination fees at a career or technical school;
- (M) Educational services and therapies including, but not limited to, occupational, behavioral, physical, speech-language and audiology therapies;
- (N) Tuition and fees at an institution of higher education;
- (O) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider;
- (P) Any other educational expense approved by the state superintendent;
- (Q) Tuition and fees for nongovernmental online learning programs.

Wyo. Stat. § 21-2-904(b)(i). Parents agree that the student will receive instruction in reading, writing, mathematics, civics (including studies of the United States Constitution and Wyoming Constitution), history, literature, and science. Wyo. Stat. § 21-2-904(b)(ii)(A). Parents agree their student will be assessed on academic progress and the student will take the statewide assessments or a nationally normed achievement exam. Wyo. Stat. § 21-2-904(b)(ii)(B). By signing the ESA Program Agreement, parents certify that their student is not and will not be enrolled in a Wyoming public school upon receipt of the ESA account and parents release the student's public school district from any obligation to educate their student. Wyo. Stat. § 21-2-904(b)(ii)(C). Parents must annually give notice of their intent to participate in the ESA Program to their student's public school district. Wyo. Stat. § 21-2-905(f).

Each student determined to be eligible to participate in the ESA Program may receive a total of \$7,000.00 annually for their ESA account. Wyo. Stat. § 21-2-903(a). The State Superintendent, or her designee, pays the money quarterly into the student's ESA Account from the ESA Program Account. Wyo. Stat. § 21-2-903(b) and (c). Parents may not make personal deposits into their student's ESA Account. Wyo. Stat. § 21-2-904(d).

Only certified education service providers (Certified Providers) may receive funds from a student's ESA Account. Wyo. Stat. § 21-2-907(a). The Act directs the State Superintendent to establish a certification process for Certified Providers. The certification process must ensure each student attending school at a Certified Provider receives instruction in reading, writing, mathematics, civics, history, literature, and science throughout kindergarten through grade 12. Wyo. Stat. § 21-2-906(a)(i). The Act prohibits the State Superintendent from requiring a Certified Provider to "alter its creed, practices, admission policy or curriculum." Wyo. Stat. § 21-2-907(f). The Act states that a Certified Provider is "not an agent of the state." Wyo. Stat. § 21-2-907(d).

The Act directs the State Superintendent to randomly audit at least 2% of all ESAs annually. Wyo. Stat. § 21-2-906(a)(viii). The State Superintendent shall also investigate “reports of intentional and substantial” misuses of ESA funds and may refer suspected cases of intentional and substantial misuse of ESA funds to law enforcement or the Wyoming Department of Audit. Wyo. Stat. § 21-2-906(a)(ix).

As of the date of the hearing, the State Superintendent and the Wyoming Department of Education (DOE) had approved 531 Certified Providers in accordance with the Act, including 109 private schools and 422 other educational providers. In addition, 3,965 applications for ESA Program have been submitted to the State Superintendent pursuant to the Act. [Attachment B, Intervenor’s Brief]

III. DISCUSSION

A. Legal Standard for Issuance of Preliminary Injunction

Wyoming Statute § 1-28-102 provides:

When it appears by the petition that the plaintiff is entitled to relief consisting of restraining the commission or continuance of some act the commission or continuance of which during the litigation would produce great or irreparable injury to the plaintiff, or when during the litigation it appears that the defendant is doing, threatens to do, or is procuring to be done some act in violation of the plaintiff’s rights respecting the subject of the action and tending to render the judgment ineffectual, a temporary order may be granted restraining the act.

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. *Brown v. Best Home Health Care, LLC*, 2021 WY 83, ¶ 7, 491 P.3d 1021, 1026 (Wyo. 2021), *see also Malave v. Western Wyoming Beverages, Inc.*, 2022 WY 14, ¶ 8, 503 P.3d 36, 39 (Wyo. 2022), and *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”). “The 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.’ ” *Brown*, 2021 WY 83, ¶ 7, 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)). A preliminary injunction is a form of equitable relief and an extraordinary remedy. *Id.*

B. Probable Success on the Merits

1. Article 3, § 36

In determining whether Plaintiffs have clearly shown probable success on the merits of their declaratory judgment action, the Court will first focus on the contention that the Act violates Art. 3, § 36 of the Wyoming Constitution. Article 3 creates, empowers, and limits the powers of the legislature. Article 3, § 36 of the Wyoming Constitution expressly limits legislative power, and provides:

No 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.

In other words, the legislature shall not make an appropriation for charitable, industrial, educational, or benevolent purposes: (1) to any person, corporation, or community not under the absolute control of the state; or (2) to any denominational or sectarian institution or organization.¹

Defendants’ and Intervenors’ only argument that the Act does not violate Art. 3, § 36, is that the Act appropriates public funds only to the State Superintendent. They assert the Court must confine its analysis of Art. 3, § 36, to the initial appropriation by the legislature.

“In construing our constitution, [courts] follow essentially the same rules as those

¹ Article 1, § 19 of the Wyoming Constitution states, “No money of the state shall ever be given or appropriated to any sectarian or religious society or institution.” This provision is much more explicit than the United States Constitution’s Establishment Clause and should be read in *pari materia* with Article 3, § 36. See *Gordon v. State by and through Capitol Building Rehabilitation*, 2018 WY 32, ¶ 40, 413 P.3d 1093, 1105 (Wyo. 2018) (reading constitutional provisions relating to the same subject in *pari materia*).

governing the construction of a statute... to ascertain the intent of the framers.” *Director of Office of State Lands and Investments v. Merbanco*, 2003 WY 73, ¶ 33, 70 P.3d 241, 252 (Wyo. 2003).

The Wyoming Supreme Court has utilized the Century Dictionary to help define the plain meaning of terms used in the Wyoming Constitution. *See Campbell County School District v. State*, 907 P.2d 1238, 1258 (Wyo. 1995) (*Campbell I*). The Century Dictionary defined “appropriation” as:

1. The act of appropriating, setting apart, or assigning to a particular use or person in exclusion of all others; application to a special 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.

The Century Dictionary, Vol. 1, Part 2, (1889), <https://archive.org/details/centurydictipt200whituoft/mode/2uppp. 278>. A court should also consider contemporary definitions of the words in the constitution because it is “in a sense, a living thing, designed to meet the needs of progressive society amid all the detail changes to which such society is subject.” *Campbell I*, 907 P.2d at 1257. The definition of “appropriation” today is:

- 1: an act or instance of appropriating something
 - 2: something that has been appropriated
- specifically* : money set aside by formal action for a specific use
the city’s *appropriation* for schools

Miriam-Websters Online Dictionary, <https://www.merriam-webster.com>.

The definitions from the time of ratification of the Wyoming Constitution and today are not significantly different. The term “appropriation” plainly contemplates setting aside money for a specific use or purpose and not just to one person, except when done to the exclusion of all others. Therefore, the Court disagrees with Defendants and Intervenors that the only transaction subject to scrutiny under Art. 3, § 36, is the appropriation to the State Superintendent. Instead, this Court must examine the purpose and potential uses of the Act’s appropriation to determine if that

appropriation violates Art. 3, § 36.

The Court’s interpretation of the term “appropriation” is supported by the rule of construction which says that courts may not interpret the law in a manner that would render any part of the law meaningless. *Kobielusz v. State*, 2024 WY 10, ¶ 19, 541 P.3d 1101, 1107 (Wyo. 2024); *Powers v. State*, 2014 WY 15, ¶ 9, 318 P.3d 300, 304 (“[T]he constitution should not be interpreted to render any portion of it meaningless.”); *Bain v. City of Cheyenne*, 2025 WY 67, ¶ 13, ___ P.3d. ____ (Wyo. 2025) (holding a court must not give a statute a meaning that will nullify its operation). If the Defendants’ and Intervenor’s interpretation of the term “appropriation” was correct, Art. 3, § 36 would be rendered meaningless and a nullity because the legislature could easily and routinely avoid the limitations of Art. 3, § 36 by first appropriating funds for an improper use to a state agency or state official. For example, using the Defendants’ and Intervenor’s definition of “appropriation,” the legislature could appropriate \$30 million to the Director of the Department of Workforce Services for the sole purpose of building more places of worship for certain religious organizations.

The Defendants’ and Intervenor’s contention that this Court must only look at the initial transfer of state funding to the State Superintendent in analyzing compliance with Art. 3, § 36 has been rejected by the Wyoming Supreme Court. The Wyoming Supreme Court held that “[t]he legislature cannot do indirectly what it cannot do directly.” *Witzenburger v. State ex rel. Wyoming Cmty. Dev. Auth.*, 575 P.2d 1100, 1117 (Wyo. 1978). There, the legislature attempted to circumvent the prohibition on state indebtedness by issuing bonds through the farm loan board, ultimately secured by tax revenue. 575 P.2d at 1119-20. The Wyoming Supreme Court “look[ed] to the substance, not the form” of the bonds, and held the scheme unconstitutional. *Id.* at 1117; *see also Powers*, 2014 WY 15, ¶ 22, 318 P.3d at 308 (“[W]hat may not be done directly cannot be

accomplished by indirection”) (quoting *Hudson v. Kelly*, 76 Ariz. 255, 266, 263 P.2d 362, 369 (1953)). In this case, the legislature seeks to circumvent the prohibition on giving public funds for educational purposes to private persons, private entities, and sectarian institutions by passing the funding through the State Superintendent.

There is no dispute that the Act appropriates funds for educational purposes to persons who are not under the absolute control of the state and to denominational or sectarian institutions or organizations.² The funds appropriated by the legislature will be deposited in a student’s ESA to be paid directly to Certified Providers of the student’s parent’s choosing. Neither the parents, the students, nor the Certified Providers are under the absolute control of the state. To the contrary, the Act prohibits the State Superintendent from requiring a Certified Provider to “alter its creed, practices, admission policy or curriculum[,]” and states that a Certified Provider is “not an agent of the state.” Wyo. Stat. § 21-2-907(f), Wyo. Stat. § 21-2-907(d). Therefore, the Act clearly violates the plain and unambiguous terms of Art. 3, § 36 of the Wyoming Constitution. To read Art. 3, § 36 as suggested by the Defendants and Intervenors, would be inconsistent with the Wyoming Supreme Court’s recognition that the framers of our constitution intended to constrain legislative power and protect against corruption. *Gordon*, 2018 WY 32, ¶ 40, 413 P.3d at 1105.

This Court agrees with a recent South Carolina Supreme Court’s analysis of a very similar scholarship program created by the South Carolina Legislature. *Eidson v. South Carolina Dept. of Ed.*, 906 S.E.2d 345 (S.C. 2024). In that case, state officials argued the creation of the scholarship funds did not violate the South Carolina constitutional provision against paying public funds for the direct benefit of any religious or other private educational institution because the funding is

² Intervening Defendant Victoria Haight stated she intends to use her children’s ESA Accounts pay tuition to the Mount Hope Lutheran School for her two school-aged children, which she described as “a small private religious school.” [Declaration of Victoria Haight, attached to Motion to Intervene]

first placed in a trust and then the parents decide where to use the funds. The South Carolina Supreme Court rejected that argument and 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, who may, through an online portal, choose to use the funds that way.” *Id.* at 354. Although the South Carolina Constitutional language is different, using “paid from public funds . . . for the direct benefit” of a religious or private educational institution instead of “appropriation”, this Court believes both constitutional provisions have the same purpose, preventing the legislature from using public funds to support private and religious schools.

2. Strict Scrutiny of Educational Funding and Effects on the Fundamental Right to Education

Plaintiffs have also clearly demonstrated a likelihood of success on the merits because the Act does not satisfy the strict scrutiny standard. A series of cases involving challenges to public school finance have established that strict scrutiny must be applied to legislative changes to school finance and to legislative action which affects a child’s right to a proper education. When it comes to education, the Wyoming Supreme Court has adopted several specific principles. “[E]ducation for children of Wyoming is a matter of fundamental interest.” *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310, 333 (Wyo. 1980). “[T]he strict scrutiny test applies to legislative action which affects a child’s right to a proper education.” *Campbell I*, 907 P.2d at 1267. “[A]ll aspects of the school finance system are subject to strict scrutiny, and statutes establishing the school financing system are not entitled to any presumption of validity.” *State v. Campbell County School District*, 2001 WY 19, ¶ 42, 19 P.3d 518, 535 (Wyo. 2001) (*Campbell II*).

Strict scrutiny requires the State to show the state action or legislation is necessary to achieve a compelling state interest and “the state [must] establish that there is no less onerous alternative by which its objective may be achieved.” *Washakie*, 606 P.2d at 333. In *Campbell I*,

the Court described the applicable constitutional scrutiny as follows:

Because the right to an equal opportunity to a proper public education is constitutionally recognized in Wyoming, any state action interfering with that right must be closely examined before it can be said to pass constitutional muster. Such state action will not be entitled to the usual presumption of validity; rather, the state must establish its interference with that right is forced by some compelling state interest and its interference is the least onerous means of accomplishing that objective. *Miller v. City of Laramie*, 880 P.2d 594, 597 (Wyo. 1994).

907 P.2d at 1266-67.

Defendants and Intervenors suggest the Act does not affect a child's right to a proper education and is not an aspect of the school finance system. The Court disagrees. The Act allows parents, on behalf of their school-aged children, to use public funds to educate their children in a manner which does not necessarily provide the constitutionally mandated equal opportunity to a complete and uniform, thorough and efficient, and quality education open to all. *See Campbell I*, 907 P.2d at 1263-64. One of the purposes of Wyoming's Constitutional fundamental right to education is to equip Wyoming students "for their future roles as citizens, participants in the political system, and competitors both economically and intellectually." *Id.* at 1259. The Wyoming Supreme 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." *Id.* at 1259. Undoubtedly, 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.

Although the funding for the Act and its ESAs may not come directly from the statutorily created public school Funding Model, there can be no serious dispute that the Act is an aspect of the State's system for financing schools. The Wyoming Constitution requires the legislature to

provide an education to its students, and the Act provides public funding to some Wyoming students for their education. In other words, through the Act, the legislature chose to provide another taxpayer funded method for providing the constitutionally required education to Wyoming students. Therefore, the Court concludes that strict scrutiny must be applied to the Act.

The Defendants and Intervenors contend the Act is supported by the compelling governmental interest of providing school choice at a time when some statewide assessment scores have been declining. They further assert, without any significant analysis, that the Act is “sufficiently narrowly tailored.” [Intervening Defendant’s Brief at 20]

Assuming Defendants and Intervening Defendants could convince the Court that school choice is a compelling interest³, the Act is certainly not the least onerous means of accomplishing that objective. The Act does not assure that the ESA funded Certified Providers will provide the constitutionally mandated equal opportunity to a complete and uniform, thorough and efficient, and quality education open to all. To the contrary, the Act expressly prohibits the State Superintendent from requiring a Certified Provider to “alter its creed, practices, admission policy or curriculum.” The plain meaning of “creed” is “a brief authoritative formula of religious belief . . .” and “a set of fundamental beliefs” and “guiding principle.” Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/creed>. As a result, 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.

³ It is important to note that the Court is not weighing in on the policy merits of the legislature trying to provide for more school choice. The Court’s role is to determine whether the Act is limited by the provisions of Wyoming Constitution. It is this Court’s Constitutional duty and power to interpret, define, and apply the words, phrases, and sentences of the Wyoming Constitution. *Campbell I*, 907 P.2d at 1264. If a statute plainly violates the direct words in the Constitution, this Court must find it unconstitutional.

The Act 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. As the Wyoming Supreme Court held, the legislature must “provide an education system of a character which provides Wyoming Students with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually” and “provide a thorough and uniform education of a quality that is both visionary and unsurpassed,” and that courts should “protect against a failure of the state to fund a system capable of meeting” that standard. *Campbell County School District v. State*, 2008 WY 2, ¶¶ 14-15, 181 P.3d 43, 50-51 (Wyo. 2008) (*Campbell IV*). The Court further explained that the public-school financing system must “assure each child the opportunity to receive a quality education regardless of where that child resides or the location of the school which that child attends” and assure each school “is staffed with competent and sufficient teachers and which contains appropriate and sufficient teaching material and equipment.” *Id.* at ¶ 138, 84 (quoting *Campbell I*, 907 P.2d at 1278). The Act does not require Certified Providers to use competent and sufficient teachers or to use sufficient teaching materials and equipment. The Act sets a very simple bare minimum standard for Certified Providers of ensuring each student attending school at a Certified Provider receives instruction in reading, writing, mathematics, civics, history, literature, and science throughout kindergarten through grade 12. If the purpose of the Act is to provide school choice for allegedly underperforming public schools, a narrowly tailored law would require some demonstration by the parent that their child’s public school is failing.

The Court finds and concludes Plaintiffs are, therefore, likely to succeed on the merits of their claims that the Act fails when strict scrutiny is applied.

C. Existence of an Irreparable Injury

“An injury is irreparable where it is of a peculiar nature, so that compensation in money cannot atone for it.” *Brown*, 2021 WY 83, ¶ 7, 491 P.3d at 1026 (quoting *Polo Ranch Co. v. City of Cheyenne*, 2003 WY 15, ¶ 26, 61 P.3d 1255, 1264 (Wyo. 2003)). A harm is irreparable where there is no adequate remedy at law to atone for the harm. *Id.*

Plaintiff Wyoming Education Association (WEA) is a nonprofit membership corporation with approximately 5,000 members. Members of WEA work as educators and educational support personnel in Wyoming public schools. WEA members are also taxpayers, and many are parents of children who attend public schools in districts across every county in Wyoming. WEA has been an advocate for public schools for more than 100 years, and its nonprofit purpose is to further public education and the education profession in Wyoming. WEA regularly appears before boards, commissions, state agencies and other entities as a spokesperson on behalf of public-school students and public education issues. [Complaint, ¶ 13]

Plaintiff Jeny Gardner is a resident of Park County, a Wyoming citizen and taxpayer, and the parent of a minor child with a disability. Her child attends a public school in Park County, Wyoming. Ms. Gardner’s child has Individualized Education Plan (IEP) under the Individuals with Disabilities Education Act (IDEA), has a Section 504 Plan under the Rehabilitation Act, and receives special education services through his public school. Her child also identifies as queer. [Complaint, ¶ 16]

Plaintiff Christina Hutchison is a resident of Albany County, a Wyoming citizen and taxpayer, and the parent of minor children who attend public schools in Albany County, Wyoming. Some of her children have disabilities, have either an IEP under the IDEA or a Section 504 plan, and receive special services through the school district. Ms. Hutchinson also works as a special

education teacher in the school district where she resides. [Complaint, ¶ 17]

Plaintiff Kathryne Pennock is a resident of Natrona County, Wyoming, a Wyoming citizen and taxpayer, and the parent of minor children with disabilities. Her children attend public schools in Natrona County. She has children who have IEPs, and they receive special education services through their school district. Ms. Pennock also works as an educational support person in the public school district. [Complaint, ¶ 18]

Plaintiffs Katharine and Zachary Schneider are residents of Natrona County, Wyoming, Wyoming citizens and taxpayers, and parents of minor children who attend public school in Natrona County. Mr. Schneider is also employed as a teacher in Natrona County School District and Ms. Schneider is certified as a school counselor as well as a Licensed Professional Counselor (LPC) in private practice. One of their minor children is non-binary. [Complaint, ¶ 19]

Plaintiffs Chad Sharpe and Kimberly Ludwig-Sharpe are residents of Natrona County, Wyoming citizens and taxpayers, and parents of a minor child who attends public school in Natrona County. That minor child has an IEP and receives special education services through her public school. Mr. Sharpe is employed as a teacher in Natrona County School District. [Complaint, ¶ 20]

Plaintiffs Christina and Brandon Vickers are residents of Washakie County, Wyoming, and are citizens and taxpayers. They have two minor children who attend public school in Washakie County. Both of those students have IEPs. One of their children is trans-female. Both the Vickers are long-time teachers in the public school district in Washakie County. [Complaint, ¶ 21]

Plaintiffs argue if the Act were to be implemented, they would suffer irreparable injuries. WEA claims its membership would be harmed because the \$30 million appropriated for the Act could be used to fund public education, which this Court recently held to be unconstitutionally

funded, including failing to properly fund teacher salaries. WEA also asserts public school funding will be reduced due to the loss of Average Daily Membership (ADM) at the school districts that lose students who opt into the Act. WEA further contends there will be irreparable injury if public funding is paid to Certified Providers and must be recovered by the State if the Act is determined to be unconstitutional. The individual Plaintiffs assert irreparable injury because their students, who are on IEPs, Section 504 Plans, and/or are non-binary, will not have equal access to funds and services under the Act because Certified Providers are permitted to deny those students admission. Plaintiffs also argue that there is a presumption of irreparable injury because the constitutional fundamental right to education is involved.

Defendants and Intervenors counter that Plaintiffs have not established any individual student, parental, or teacher harm or injury. Specifically, they assert that the individual Plaintiff students will continue to be educated in public schools and the individual Plaintiff teachers will not individually lose compensation. Defendants and Intervenors further argue that teachers have no right to governmental employment.⁴

Defendants and Intervenors ignore the well-established doctrine that the fundamental right to an education exists to benefit not just students but all Wyoming citizens through education of their youth. “Our constitution, as we shall see, plainly expresses the commitment of a free people to the value of a thorough education.” *Washakie*, 606 P.2d at 317. The fundamental right to education includes the State’s obligation to equip Wyoming’s students for their future roles as citizens and participants in the political system. *Campbell I*, 907 P.2d at 1259. Article 1, Section

⁴ This contention is not completely accurate. School districts must employ a Continuing Contract Teacher from year to year without an annual contract renewal unless the school district gives notice of recommendation to terminate to the teacher by April 15 of any year and, if requested, provides the teacher with an administrative hearing. Wyo. Stat. Ann. §§ 21-7-104(a), 21-7-106(a), 21-7-110(c). A school district may only terminate a Continuing Contract Teacher on the grounds listed in Wyo. Stat. Ann. § 21-7-110(a).

23 of the Wyoming Constitution expressly refers to “citizens” right to education, and Art. 1, § 34 is not limited to the equal protection of just students. The Wyoming Supreme Court recognized the expansive nature of the fundamental constitutional right to education when it concluded WEA, teachers, parents, and students had standing to challenge the constitutionality of the exchange of state school trust lands for private lands without a public auction. It stated:

Educating the youth of our state is an important function performed by our state government. Our constitution, as we shall see, plainly expresses the commitment of a free people to the value of a thorough education. The school districts and the members of school boards are charged with the responsibility of providing education to the children of Wyoming and are tangibly injured if the statutes which guide their hands disenable them from so providing. Parents are keenly concerned and suffer tangible injury if their children do not receive a proper education. The children themselves are, obviously, tangibly injured if they do not uniformly receive the best education that tax resources can provide.

Merbanco, 2003 WY 73, ¶ 17, 70 P.3d at 248.

Plaintiffs have demonstrated possible irreparable injury because there is no adequate remedy at law, the injuries are peculiar, and money damages will not remedy the harm. Allowing the State Superintendent to disburse public funds to private education providers in violation of the Wyoming Constitution cannot be remedied by money damages. If the State Superintendent expends any of the \$30 million into ESAs and to Certified Providers, those funds will be gone, and Plaintiffs have no remedy available in this case which would authorize the Court to order the Certified Providers to return the public funds. The Certified Providers are not parties to this action and damages are not available in a Declaratory judgment action. In other words, permitting the State Superintendent to disburse public funds in violation of the constitution would render “the judgment ineffectual” because those funds would have been expended. Wyo. Stat. § 1-28-102.

The Act allows public funding of private schools that have discriminatory admission policies. The individual Plaintiff parents and students on IEPs, Section 504 plans, and who are

nonbinary, will not be permitted equal access to the ESA program because the Act permits public funding of private schools that have discriminatory admission policies. The Wyoming Supreme Court has repeatedly held that the legislature’s paramount priority is to support “an opportunity for a complete, proper, quality education” and any competing priorities that are not of constitutional magnitude are secondary. *Campbell II*, 2001 WY 19, ¶ 51, 19 P.3d at 538. In other words, the fundamental right to a complete, uniform, adequate, efficient, and equal education must be the legislature’s priority. It is worth repeating that, “Parents are keenly concerned and suffer tangible injury if their children do not receive a proper education” and “children themselves are, obviously, tangibly injured if they do not uniformly receive the best education that tax resources can provide.” *Merbanco*, 2003 WY 73, ¶ 17, 70 P.3d at 248.

Regardless of which fund the legislature uses to pay for the ESA Program, appropriating \$30 million for private schooling of Wyoming students is inconsistent with the undisputed doctrine that its paramount priority is to support “an opportunity for a complete, proper, quality education” and any competing priorities that are not of constitutional magnitude are secondary. *Campbell II*, 2001 WY 19, ¶ 51, 19 P.3d at 538. The lack of financial resources is not an acceptable reason to fail to provide the best educational system. *Id.* at ¶ 138, 566 (quoting *Campbell I*, 907 P.2d at 1279).

Enjoining the Defendants from distributing public funds to Certified Providers will also maintain the status quo. Status quo is defined as “the existing state of affairs.” *In re Kite Ranch, LLC*, 2008 WY 39, ¶ 30, 181 P.3d at 928 (citing Webster’s Third New Int’l Dictionary 2230 (2002)). The Act as it exists now was enacted by the 2025 legislature in March and the State Superintendent was to begin distributing funds into ESAs starting on July 1, 2025. Plaintiffs filed their Complaint and Motion on June 13, 2025, before any funds were deposited into any ESAs.

No public funds have been paid to any Certified Providers and nor have public funds have been paid into a student ESA. The existing state of affairs is that no public funds have been paid into an ESA or to Certified Providers. Allowing the potential disbursement of \$7,000.00 into 3,965 ESA Accounts, a total of over \$27 million, to potentially be paid to over 500 different Certified Providers would significantly alter the status quo.

IV. CONCLUSION AND ORDER

Plaintiffs have made a clear showing of probable success on the merits of their claims and have shown possible irreparable injury to the Plaintiffs.

IT IS THEREFORE ORDERED that the Plaintiffs Motion is **GRANTED**; and

IT IS FURTHER ORDERED that:

1. Defendants State of Wyoming, State Superintendent Megan Degenfelder, and State Treasurer Curtis Meier, as well as any employees, agents or officials of those Defendants, are restrained from directly or indirectly transferring, expending, reimbursing, releasing or distributing state funds to or on behalf of scholarship program participants, scholarship recipients, or education service providers under the Act.
2. Defendants may continue to expend funds to employees and contractors for the purpose of administering the ESA Program, provided that any distribution of funds to or on behalf of scholarship program participants, scholarship recipients, or education service providers is restrained as described in paragraph 1.
3. The State may otherwise continue the administrative functions of the ESA Program, including accepting, reviewing, and approving applications for scholarship program participants and Certified Providers.
4. This order shall remain in effect until the merits of Plaintiffs' claims have been fully

litigated and decided by this Court.

5. No security is necessary because no party has an existing perfected right to funding under the Act. No applications have been approved, no ESA accounts have been created and funded, and no payments to Certified Providers have been authorized by the State Superintendent.

Dated this 15th day of July 2025.

/s/ Peter H. Froelicher
PETER H. FROELICHER
DISTRICT COURT JUDGE
First Judicial District Court

Please provide copies to:

Patrick Hacker
Gregory Hacker
Erin Kendall
Mackenzie Williams
Matthew J. Micheli
Macrina M. Sharpe