

APR 06 2026

No. 20250512-SC

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IN THE

SUPREME COURT OF THE STATE OF UTAH

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KEVIN LABRESH, ET AL.,  
*Plaintiffs-Appellees,*

v.

DEREK BROWN, ATTORNEY GENERAL, ET AL.,  
*Defendants-Appellants,*

and

MARIA RUIZ, ET AL.,  
*Intervenor-Defendants-Appellants.*

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**Brief of *Amici Curiae* Public Funds Public Schools, Council of Parent Attorneys and Advocates, the NAACP Tri-State Conference of Idaho, Nevada, and Utah, and the League of Women Voters of Utah in Support of Plaintiffs-Appellees and Affirmance**

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On appeal from the Third Judicial District Court,  
Honorable Laura S. Scott, District Court No. 240904193

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## Statement of Interest of *Amici Curiae*

The *amici curiae*<sup>1</sup>—Public Funds Public Schools, Council of Parent Attorneys and Advocates, the NAACP Tri-State Conference of Idaho, Nevada, and Utah, and the League of Women Voters of Utah (“*Amici*”)—respectfully submit this brief in support of Plaintiffs-Appellees to provide the Court with important information about the negative effects of private school voucher programs, which undermine states’ ability to fulfill their constitutional obligation to provide high-quality public education to all students. *Amici* draw on their longstanding experience and expertise in civil rights, disability rights, and education law and policy to provide the Court with this crucial context.

**Public Funds Public Schools** (“PFPS”) is a national campaign to ensure that public funds for education are used to support and strengthen public schools. PFPS opposes all forms of private school vouchers and other diversions of public funds to private education. PFPS is a partnership between Education Law Center (“ELC”) and the Southern Poverty Law Center (“SPLC”). ELC, based in Newark, New Jersey, is a nonprofit organization founded in 1973 that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. SPLC, based in Montgomery, Alabama, is a nonprofit civil

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<sup>1</sup> Pursuant to Utah R. App. P. 25(a), (b)(2), and (e)(4)-(5), all parties received timely notice and consented to the filing of this brief. Pursuant to Utah R. App. P. 25(e)(6), no party or party’s counsel authored or funded this brief, and no person other than *amici*, their members, or their counsel funded it.

rights organization founded in 1971 that serves as a catalyst for racial justice in the South and beyond, working to advance human rights. PFPS has participated as *amicus curiae* before numerous state and federal courts in matters involving private school voucher programs.

**Council of Parent Attorneys and Advocates** (“COPAA”) is a not-for-profit organization for parents of children with disabilities, their attorneys, and advocates. COPAA provides resources, training, and information for parents, advocates, and attorneys to assist in obtaining the free appropriate public education such children are entitled to under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* Our attorney members represent children in civil rights matters. COPAA also supports individuals with disabilities, their parents, and advocates, in attempts to safeguard the civil rights guaranteed to those individuals under federal laws, including the Civil Rights Act of 1871, ch. 22, 17 Stat. 13 (codified as amended at 42 U.S.C. § 1983), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* COPAA brings to the Court the unique perspective of parents, advocates, and attorneys for children with disabilities. COPAA has previously filed briefs as an *amicus curiae* in numerous cases in the U.S. Supreme Court and across the country.

**The NAACP Tri-State Conference of Idaho, Nevada, and Utah** is an active regional body of the NAACP focused on civil rights, voting rights, and advocacy within these three states. The NAACP was founded in 1909 and has more

than 2,200 local units across the country. The organization's principal objectives are to ensure the political, educational, social, and economic equality of all citizens; to achieve equality of rights and eliminate racial prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state, and local laws securing civil rights; and to inform the public of the continued adverse effects of racial discrimination while working toward its elimination. The NAACP and its branches and conferences have worked for over a century to address issues of racial discrimination and inequality in public education and have been at the forefront of every major advancement in ensuring equal educational opportunities at all levels of the nation's public schools. *See, e.g.,* Br. of Resp't as Amicus Curiae, *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297 (2013); *Swanson v. Rector & Visitors of Univ. of Va.*, No. 30 (W.D. Va. Sept. 5, 1950). Throughout its history, the NAACP has used the legal process to champion equality and justice for all persons, including lesbian, gay, bisexual, transgender, and queer individuals. *See, e.g.,* Br. for Pet'r as Amicus Curiae, *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020).

**The League of Women Voters of Utah** is a nonpartisan, grassroots organization working to empower voters and to defend democracy through advocacy and education at the local, state, and national levels. We promote a healthy, inclusive education system and advocate for equitable, quality public education. In 2025 we conducted a study regarding the Utah Fits All Scholarship

voucher program, which confirmed the numerous concerns we have with the program.

### **Summary of the Argument**

Utah's Constitution is clear—the State must provide for the establishment and maintenance of a public education system that is “open to all children of the state” and “free.” Utah Const. art. X, §§ 1-2. The state's universal private school voucher program, which constitutes a state-funded education program that is neither open to all children nor free, violates these Education Clause mandates. Moreover, the voucher program's diversion of scarce resources to private entities threatens the state's ability to provide an adequate public education to all children.

Private school voucher programs come in various forms, but research and experience show that they always undermine critical funding for public education. This results in a reduction of resources for public school students, state budget deficits, and increased burdens on taxpayers. Utah's voucher program falls at the extreme end of the spectrum: it has universal eligibility, meaning there are no significant eligibility limitations, including based on income level or prior enrollment in public school. Utah Code § 53F-6-401(8). In addition, participating families can use public funds deposited into individual accounts for not just private school tuition but a broad range of private education expenses. Utah Code § 53F-6-401(20)(a). These features increase the risk that program costs will balloon and negative fiscal consequences will multiply.

Voucher programs cause particular harm to the most vulnerable students,

including students with disabilities, multilingual learners, and economically disadvantaged students, who require additional resources to ensure they have the opportunity to receive an adequate education. Research shows that increasing public school funding improves academic and life outcomes, particularly for students from low-income families. However, vouchers undermine the ability of districts, particularly those serving high need students, to adequately address the specific needs of these students. Moreover, vouchers do not improve educational outcomes for students who use them to attend private school. And students with disabilities, multilingual learners, and LGBTQ+ students who participate in voucher programs like Utah's lose crucial antidiscrimination protections and rights to key educational services. Finally, most vouchers serve as subsidies to more affluent families whose children already attend private school.

### **Argument**

#### **I. Voucher Programs Threaten the State's Ability to Provide Adequate Public Education to All Children, Including Vulnerable Student Populations**

##### **A. Research and Empirical Evidence Show that Vouchers Undermine Funding for Public Education, Leaving Public Schools with Fewer Resources and Increasing Costs to Taxpayers and the State**

In states with voucher programs, voucher costs almost inevitably increase over time. A report examining private school voucher programs in seven states found that from fiscal years 2008 through 2019, each state dramatically increased expenditures of public funds on vouchers, with growth in Georgia reaching 883

percent.<sup>2</sup> State voucher programs and their costs continue to expand as they move toward universal eligibility. For example, another report found that public school funds diverted annually to vouchers in Florida increased by approximately \$1 billion between 2019-20 and 2022-23.<sup>3</sup> Florida’s now-universal voucher programs cost almost \$4 billion in 2024-25<sup>4</sup> and created budget crises that set off school closures and mass layoffs in districts across the state.<sup>5</sup>

Moreover, public schools, including Utah’s, receive state funding largely based on the number of students enrolled. Thus, when a student takes a voucher and leaves their local district to attend a private school, the public school’s funding decreases. However, many “fixed” costs, such as facilities, staff, and programs,

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<sup>2</sup> Samuel E. Abrams & Steven J. Koutsavlis, *The Fiscal Consequences of Private School Vouchers*, Public Funds Public Schools 4 (Mar. 2023), [https://pfps.org/assets/uploads/SPLC\\_ELC\\_PFPS\\_2023Report\\_Final.pdf](https://pfps.org/assets/uploads/SPLC_ELC_PFPS_2023Report_Final.pdf).

<sup>3</sup> Mary McKillip & Norín Dollard, *Florida’s Hidden Voucher Expansion: Over \$1 Billion from Public Schools to Fund Private Education*, Education Law Center & Florida Policy Institute 1 (Sept. 2022), <https://edlawcenter.org/assets/Florida/Florida-Hidden-Voucher-Expansion.pdf>.

<sup>4</sup> Mary McKillip, *Universal Vouchers to Cost Florida Nearly \$4 Billion in 2024-25 School Year*, Education Law Center (2024), <https://public.tableau.com/app/profile/mary.mckillip/viz/FLvouchers-5-2024/FloridaVoucher2023-24?publish=yes>.

<sup>5</sup> See, e.g., Gerard Albert & Kate Payne, *As schools lose students, Broward’s superintendent grapples with possibility of closures*, WLRN Public Media (Nov. 21, 2023), <https://www.wlrn.org/education/2023-11-21/browards-schools-enrollment-closure>; Megan Mallicoat, *3 Duval elementary schools will close soon; 3 more after a year*, JAX Today (Nov. 5, 2024), <https://jaxtoday.org/2024/11/05/3-duval-elementary-schools-will-close-soon-3-more-after-a-year/>.

remain the same or cannot be proportionally reduced.<sup>6</sup> Because a school district cannot operate at a deficit, “[w]hen revenues are reduced, expenditures must also be reduced.”<sup>7</sup> For example, after losing an estimated \$1.3 million in revenue to the state’s voucher program, Iowa City Community School District closed an elementary school, delayed curriculum purchases, reduced staff, and increased class sizes.<sup>8</sup> Thus, vouchers impede the ability of public schools to adequately serve their students, who then attend schools with fewer resources, programs, and educational opportunities.

At the same time that they divert funding from public education, voucher programs concentrate higher-need students who are more costly to educate, such as students with disabilities, in public schools. As explained below, *see infra* Section II.B.1, many private schools refuse to serve these students, and public schools are the only schools in which they retain their special education and civil rights. Often, students who took a voucher but did not receive the promised benefits return to public schools, but the funds that had already been diverted to a private school via a voucher do not return with them. Thus, voucher programs

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<sup>6</sup> Stuart S. Yeh, *The Cost-Effectiveness of Five Policies for Improving Student Achievement*, 28 Am. J. Evaluation 416, 426 (2007).

<sup>7</sup> *Id.*

<sup>8</sup> Grace King, *Iowa City schools losing \$1.3 million in revenue because of private school vouchers*, The Gazette (Apr. 22, 2024), <https://www.thegazette.com/k/iowa-city-schools-losing-1-3-million-in-revenue-because-of-private-school-vouchers/>.

leave public schools—which welcome all students and serve the vast majority of them—with fewer resources to serve a higher-need student population.

Increasingly, voucher programs—particularly in states with universal vouchers—are causing public schools in highly affected districts to lose such significant amounts of funding that they must close down entirely, threatening the very existence of neighborhood public schools.<sup>9</sup> When neighborhood schools close, students and their communities face devastating educational, social, and civic effects.<sup>10</sup>

Finally, taxpayers feel the disastrous financial impact of vouchers. For example, a 2018 Arizona study found that, instead of the promised savings, vouchers cost taxpayers 75% more than public school education.<sup>11</sup> When the state

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<sup>9</sup> See, e.g., Amelia Ferrell Knisely, *Morrissey pushes school choice; lawmakers face ‘balancing act’ as counties lose public schools*, West Virginia Watch (Feb. 12, 2025), <https://westvirginiawatch.com/2025/02/12/morrissey-pushes-school-choice-lawmakers-face-balancing-act-as-counties-lose-public-schools/>; Beth Lewis, *Neighborhood schools are closing across Arizona. It’s because of vouchers*, AZMirror (Oct. 6, 2025), <https://azmirror.com/2025/10/06/neighborhood-schools-are-closing-across-arizona-its-because-of-vouchers/>.

<sup>10</sup> See e.g., Public Funds Public Schools & Advancement Project, *Save Neighborhood Schools – Say No to Private School Vouchers!* 1, 3 (Apr. 2025), [https://pfps.org/assets/uploads/Save\\_Neighborhood\\_Schools\\_\\_\\_Say\\_No\\_to\\_Private\\_School\\_Vouchers\\_\\_\\_FINAL\\_.pdf](https://pfps.org/assets/uploads/Save_Neighborhood_Schools___Say_No_to_Private_School_Vouchers___FINAL_.pdf); Advancement Project, *Action Kit: Stop Public School Closures 17-18* (2024), [https://advancementproject.org/wp-content/uploads/2024/05/AP-SchoolClosureActionKit\\_FINAL.pdf](https://advancementproject.org/wp-content/uploads/2024/05/AP-SchoolClosureActionKit_FINAL.pdf).

<sup>11</sup> Dave Wells, *\$10,700 Per Student: The Estimated Cost of Arizona’s Private School Subsidy Programs*, Grand Canyon Institute 4 (Sept. 2018), [https://grandcanyoninstitute.org/wp-content/uploads/2018/09/GCI\\_Policy\\_Private\\_School\\_Program\\_Costs\\_2018\\_Sept\\_5\\_2018.pdf](https://grandcanyoninstitute.org/wp-content/uploads/2018/09/GCI_Policy_Private_School_Program_Costs_2018_Sept_5_2018.pdf).

instituted universal vouchers in 2022, the program “blew a massive hole in Arizona’s budget,”<sup>12</sup> and fueled declines in public school enrollment costing districts hundreds of millions of dollars in per-pupil funding.<sup>13</sup>

### **B. Students with Elevated Needs Require Additional Resources and Research Shows Increased Public School Funding Improves Outcomes**

Students come to school from different socioeconomic backgrounds and with diverse learning needs, requiring different types and levels of support to access adequate and equitable educational opportunities. For example, students with disabilities, multilingual learners, and economically disadvantaged students often face unique challenges—including the need for specialized instruction and accommodations, language support, and additional resources to overcome socioeconomic barriers—all of which entail elevated costs for school districts.<sup>14</sup>

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<sup>12</sup> Eli Hager, *School Vouchers Were Supposed to Save Taxpayer Money. Instead They Blew a Massive Hole in Arizona’s Budget*, ProPublica (July 16, 2024), <https://www.propublica.org/article/arizona-school-vouchers-budget-meltdown>.

<sup>13</sup> Casey Tolan, Rene Marsh & Nelli Black, *Arizona is sending taxpayer money to religious schools – and billionaires see it as a model for the US*, CNN (June 19, 2024), <https://www.cnn.com/2024/06/19/politics/arizona-private-school-vouchers-invs/index.html>.

<sup>14</sup> See, e.g., Michael Griffith & Dion Burns, *Funding Student Needs: A Review of State Funding Policies for English Learners and Students From Low-Income Backgrounds*, Learning Policy Institute 1, 5-6 (Jan. 2025), <https://learningpolicyinstitute.org/product/funding-school-needs-report>; Mary McKillip & Theresa Luhm, *Investing Additional Resources in Schools Serving Low-Income Students: Evidence for Advocates*, Education Law Center 1-2 (Apr. 2020), [https://edlawcenter.org/assets/files/pdfs/publications/Investing\\_in\\_Students\\_Policy\\_Bri.pdf](https://edlawcenter.org/assets/files/pdfs/publications/Investing_in_Students_Policy_Bri.pdf).

Research consistently demonstrates that increasing public school funding leads to improved student achievement and other positive outcomes. Studies conducted across the nation over many decades provide “compelling evidence that there is a positive causal relationship” between increased spending and the academic and life outcomes of students, including higher educational attainment, increased earnings, and a reduction in adult poverty.<sup>15</sup> Moreover, the positive effects of increased school spending are more pronounced for students from low-income families.<sup>16</sup> For example, a study of school finance reform in California found that a \$1,000 per-pupil funding increase for three consecutive years led to a full grade-level of improvement in math and reading achievement across all grades.<sup>17</sup> A study in Texas found that a 10% increase in spending led to improved reading and math scores, reduced dropout rates, and improved graduation rates.<sup>18</sup> These gains accrued in later grades with greater exposure to funding increases and were largely concentrated in poorer districts.<sup>19</sup>

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<sup>15</sup> C. Kirabo Jackson, *Does School Spending Matter? The New Literature on an Old Question*, Nat’l Bureau of Econ. Rsch., Working Paper No. 25368 9 (2018), <http://www.nber.org/papers/w25368>.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> Rucker Johnson, *School Funding Effectiveness: Evidence from California’s Local Control Funding Formula*, Learning Policy Institute 31-32 (Aug. 2023), <https://learningpolicyinstitute.org/product/school-funding-effectiveness-ca-lcff-report>.

<sup>18</sup> Daniel Kreisman & Matthew P. Steinberg, *The Effect of Increased Funding on Student Achievement: Evidence from Texas’s Small District Adjustment*, *Journal of Public Economics* 136 (2019), <https://doi.org/10.1016/j.jpubeco.2019.04.003>.

<sup>19</sup> *Id.*

Research also shows that public school spending *cuts* have resulted in lower test scores, lower college attendance rates, and larger achievement gaps by poverty level and race.<sup>20</sup> Moreover, a study of state funding reductions in Kansas between 2010 and 2018 showed that funding cuts had more severe negative effects on achievement in rural districts.<sup>21</sup>

Adequate and equitable funding for public schools improves academic achievement and graduation rates, and leads to better life outcomes, particularly for economically disadvantaged students. Private school voucher programs divert funding from educational programs and services that are empirically proven to help students and promote equal access to educational opportunity.

### **C. Utah Must Improve Funding for its Public Schools, Rather than Undermining Them with Vouchers**

Utah’s public schools suffer from chronic underfunding,<sup>22</sup> and the State’s effort to fund public education is on a downward trajectory. Education Law Center’s latest annual report on school funding fairness concluded that Utah ranks

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<sup>20</sup> C. Kirabo Jackson, Cora Wigger & Heyu Xiong, *Do School Spending Cuts Matter? Evidence from the Great Recession*, American Economic Journal: Economic Policy 304 (2021), <https://files.eric.ed.gov/fulltext/ED664520.pdf>.

<sup>21</sup> Emily Rauscher, *Does Money Matter More in the Country? Education Funding Reductions and Achievement in Kansas, 2010–2018*, AERA Open 15 (2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9385189/>.

<sup>22</sup> See, e.g., Jason Willis et al., *Utah Education Funding Study: Phase 1 Report*, WestEd 3 (2021), [https://schools.utah.gov/policy/\\_policy\\_/2020utaheducationfundingstudy\\_/UtahEducationFundingStudyPhase1Report.pdf](https://schools.utah.gov/policy/_policy_/2020utaheducationfundingstudy_/UtahEducationFundingStudyPhase1Report.pdf) (“[T]he funding formula is not providing sufficient additional resources for students with greater needs, such as economically disadvantaged students, English Learners, and students with disabilities.”).

49 out of 51 in state per pupil funding levels, spending \$5,331 below the national average.<sup>23</sup> Utah also makes a lower-than-average effort to fund public schools, as measured by K-12 revenue as a percentage of state GDP, ranking 43 out of 50;<sup>24</sup> further, Utah's funding effort has precipitously declined over the last two decades.<sup>25</sup>

Instead of wasting state funds on vouchers, Utah must improve funding for the public schools its constitution guarantees, which are open to all and serve the vast majority of students.

## **II. Vouchers Lead to Worse Educational Outcomes, Strip Students of Legal Protections, and Largely Subsidize Wealthy Families Already Paying for Private School**

### **A. Vouchers Lead to Worse Educational Outcomes for Students**

Available data reveal that academic outcomes for voucher students are dismal. Study after study demonstrate that vouchers not only fail to improve education outcomes, they actually have a detrimental academic impact on participating students.

Studies of voucher programs in Louisiana, Indiana, and Ohio found that students who attended private schools using vouchers performed worse than their

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<sup>23</sup> Danielle Farrie & Robert Kim, *Making the Grade: How Fair is School Funding in Your State?*, Education Law Center 10 (2025), <https://edlawcenter.org/wp-content/uploads/2025/12/Making-the-Grade-2025.pdf>.

<sup>24</sup> *Id.* at 21. This is the ranking for 2023, the latest year for which data was available.

<sup>25</sup> Education Law Center, *Making the Grade 2025 Funding Effort Profile: Utah* (2025), <https://edlawcenter.org/research/making-the-grade-funding-effort-profile/>.

public school peers.<sup>26</sup> In Louisiana, participation in the state’s voucher program “dramatically reduce[d] academic achievement. Attending [a] [voucher]-eligible private school lower[ed] math scores by an average of 0.41 standard deviations. . . and reduce[d] reading, science, and social studies scores” as well after one year.<sup>27</sup> After four years, Louisiana voucher students “performed noticeably worse on state assessments than their control group counterparts.”<sup>28</sup>

In fact, seven of nine large-scale studies conducted between 2015 and 2019—some spearheaded by voucher advocates—found detrimental effects from voucher programs, while the remaining two showed no statistically significant effects.<sup>29</sup> The negative educational effects of voucher programs are “on par with what the

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<sup>26</sup> Jonathan N. Mills & Patrick J. Wolf, *The Effects of the Louisiana Scholarship Program on Student Achievement after Four Years*, University of Arkansas, EDRE Working Paper 2019-10 42 (2019), <https://bpb-us-e1.wpmucdn.com/wordpressua.uark.edu/dist/9/544/files/2019/04/Mills-Wolf-LSP-Achievement-After-4-Years-final-ut3mor.pdf>; Megan Austin, R. Joseph Waddington & Mark Berends, *Voucher Pathways and Student Achievement in Indiana’s Choice Scholarship Program*, *The Russell Sage Foundation Journal of the Social Sciences*, 36 (2019), <https://www.jstor.org/stable/10.7758/rsf.2019.5.3.02>; David Figlio & Krzysztof Karbownik, *Evaluation of Ohio’s EdChoice Scholarship Program: Selection, Competition, and Performance Effects*, *Thomas B. Fordham Institute* 2 (2016), <https://fordhaminstitute.org/ohio/research/evaluation-ohios-edchoice-scholarship-program-selection-competition-and-performance>.

<sup>27</sup> Atila Abdulkadiroglu, Parag A. Pathak & Christopher R. Walters, *Free to Choose: Can School Choice Reduce Student Achievement?*, *American Economic Journal: Applied Economics* 176 (2018), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/app.20160634>.

<sup>28</sup> Mills & Wolf, *supra* note 26, at 4.

<sup>29</sup> Christopher Lubienski & Joel Malin, *The New Terrain of the School Voucher Wars*, *The Hill* (Aug. 30, 2019), <https://thehill.com/blogs/congress-blog/education/459400-the-new-terrain-of-the-school-voucher-wars/>.

COVID-19 pandemic did to test scores, and larger than Hurricane Katrina’s impacts on academics in New Orleans.”<sup>30</sup>

## **B. Vouchers Harm Vulnerable Students and Fund Schools that Actively Discriminate**

### **1. Students with Disabilities**

Students who use vouchers, including those in Utah’s universal voucher program, lose most of the state and federal special education rights guaranteed to public school students. *See* Utah Code § 53F-6-402(4)(b). Unlike public schools, private schools are permitted to discriminate against students with disabilities in

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<sup>30</sup> Joshua Cowen, *How School Voucher Programs Hurt Students*, Time (Apr. 19, 2023), <https://time.com/6272666/school-voucher-programs-hurt-students/>. Voucher advocates consistently highlight selected studies suggesting neutral to small positive results, but those studies suffer from critical flaws. For example, an analysis by pro-voucher group EdChoice purports to survey the existing literature and concludes most studies show vouchers have positive effects. EdChoice, *The 123s of School Choice: What the Research Says About Private School Choice Programs in America, 2023 Edition* (2023), <https://www.edchoice.org/wp-content/uploads/2023/07/123s-of-School-Choice-WEB-07-10-23.pdf>. But a National Education Policy Center review of EdChoice’s analysis found that it relies on a “flawed approach that obscures important differences in studies and can create a misleading narrative about the research evidence.” Christopher Lubienski, *NEPC Review: The 123s of School Choice: What the Research Says About Private School Choice Programs, 2023 Edition*, National Education Policy Center 3 (Oct. 2023), [https://nepc.colorado.edu/sites/default/files/reviews/NR%20Lubienski\\_o.pdf](https://nepc.colorado.edu/sites/default/files/reviews/NR%20Lubienski_o.pdf). Similarly, in 2019, a National Education Policy Center review found EdChoice’s *123s of School Choice, 2019 Edition*, to constitute “a misrepresentation of what research has been conducted” because it makes exaggerated claims based on studies that are selectively chosen and often not peer reviewed. T. Jameson Brewer, *NEPC Review: The 123s of School Choice: What the Research Says About Private School Choice: 2019 Edition*, National Education Policy Center 8–9, 12 (June 2019), <https://nepc.colorado.edu/sites/default/files/reviews/TTR%20Brewer.pdf>.

areas including admissions and discipline; they often do so in policy or practice.<sup>31</sup> Even when private schools are willing to admit students with disabilities, many refuse to provide the special education services they need to make progress and thrive in school.

Federal law provides three sets of statutory protections for students with disabilities attending public school. First, the Individuals with Disabilities Education Act (“IDEA”) ensures public school students receive a “free appropriate public education” (“FAPE”), including a written “individualized education program” (“IEP”) and services delivered by certified special education teachers. 20 U.S.C. §§ 1401(26)(A), 1412(a)(1), (a)(4), (a)(14)(C), 1414(d). The IDEA also protects students with disabilities from segregation within the school system by requiring, to the maximum extent appropriate, that their education take place together with their non-disabled peers in the “least restrictive environment” (“LRE”). 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 104.34. Additionally, the IDEA protects students from discipline, such as lengthy suspension or expulsion, based on behavior caused by their disabilities. 20 U.S.C. § 1415(k)(1)(E)–(G); 34 C.F.R. §§ 300.530–.536. Finally, it gives parents the right to request a due process hearing to resolve special education disputes. 20 U.S.C. §§ 1415(b), (f); 34 C.F.R. § 300.507(a)(1).

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<sup>31</sup> See Decl. of Debra S. Corr in Support of Pls.’ Mot. for Summ. J., Aug. 29, 2024 at 2-3.

Second, Section 504 of the Rehabilitation Act prohibits disability-based discrimination in programs that receive federal financial assistance. 34 C.F.R. § 104.4(a). Section 504 also requires school districts to provide all eligible students with disabilities a FAPE in the LRE, 34 C.F.R. §§ 104.33(a), 104.34(a), and it applies to a broader range of students than the IDEA, *see* 29 U.S.C. §§ 705(20), 794; 34 C.F.R. § 104.3(j). Third, Title II of the Americans with Disabilities Act (“ADA”) prohibits disability-based discrimination by state and local entities, including public schools, and requires that public schools be physically accessible. 42 U.S.C. §§ 12131(1), 12132; 28 C.F.R. § 35.130(a).

When students with disabilities use vouchers to attend private schools, they forgo the vast majority of these protections. They lose the right to an individualized education that meets their specific needs, as well as protection against unfair discipline and intra-school segregation. *See* 20 U.S.C. §§ 1412(a)(10), 1415(k)(1)(E)–(F); 29 U.S.C. § 794(b)(1).<sup>32</sup> And parents typically give up their IDEA rights to receive notification of, provide input on, and seek judicial remedies

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<sup>32</sup> *See also* U.S. Gov’t Accountability Office, *Private School Choice: Federal Actions Needed to Ensure Parents Are Notified About Changes in Rights for Students with Disabilities* 8-9, Tbl.2 (Nov. 2017), <https://tinyurl.com/ye5v5vzd> [hereinafter GAO, *Notified*]; Claire Raj, *Coerced Choice: School Vouchers and Students with Disabilities*, 68 Emory L.J. 1037, 1059 (2019).

regarding most changes to their children’s education and services.<sup>33</sup> Often, there is no notice to parents of the loss of these rights.<sup>34</sup>

Additionally, Title II of the ADA does not apply to private schools. Disability accommodations under Title III of the ADA are required in private schools only if they would not change the fundamental nature of the program or result in difficulty or expense constituting an “undue burden.” 42 U.S.C. §§ 12182(b)(2)(A)(ii)-(iii). Moreover, Title III does not cover private religious schools at all, 42 U.S.C. § 12187, even though they comprise the majority of private schools nationwide<sup>35</sup> and one quarter of private schools in Utah.<sup>36</sup>

Finally, private schools may have admissions criteria that effectively bar students with disabilities, while others provide no special education services or disability accommodations. Those that do enroll students with disabilities may charge additional fees for special education services that public schools must provide for free, which will often be borne out of pocket by parents because they are far more expensive than the value of a voucher.

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<sup>33</sup> See Raj, *supra* note 32, at 1058-59; U.S. Dep’t of Educ., *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools* 30 (Apr. 2011), <https://tinyurl.com/s6ww83kw>.

<sup>34</sup> GAO, *Notified*, *supra* note 32, at 24-29.

<sup>35</sup> See Stephen P. Broughman et al., *Characteristics of Private Schools in the United States: Results from the 2015–16 Private School Universe Survey*, U.S. Dep’t of Educ., Inst. of Educ. Scis. 2 (Aug. 2017), <https://tinyurl.com/6d22ubk5>.

<sup>36</sup> Private School Review, *Find Schools – Utah*, <https://www.privateschoolreview.com/utah> (last visited Apr. 5, 2026).

## 2. English Learners

Federal laws including the Equal Educational Opportunities Act (“EEOA”) require public schools to remove barriers that “impede equal participation by [English learner (“EL”)] students in [their] instructional programs.” 20 U.S.C. § 1703(f).<sup>37</sup> This includes measures to: identify ELs who may need language assistance; sufficiently staff and support such programs; guarantee equal opportunities to participate in all curricular and extracurricular activities; avoid unnecessary segregation of ELs; monitor and evaluate EL students’ progress; and appropriately communicate with parents who do not speak English, among other requirements.<sup>38</sup> But, the EEOA applies only to states and their public schools.<sup>39</sup> Private schools are not obligated to enroll all students who apply, and voucher schools may elect not to provide language assistance services. For example, two thirds of private schools participating in Washington, D.C.’s voucher program in 2017 did not provide language assistance services for students or families whose language spoken at home is not English.<sup>40</sup> Other barriers—including the difficulty

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<sup>37</sup> See also 20 U.S.C. 1703 *et seq.*; 42 U.S.C. § 2000d *et seq.*; *Lau v. Nichols*, 414 U.S. 563, 566-68 (1974) (upholding regulations under Title VI of the Civil Rights Act that required public schools to take “affirmative steps” to address ELs’ educational needs).

<sup>38</sup> *Id.*

<sup>39</sup> Julie F. Mead & Suzanne E. Eckes, *How School Privatization Opens the Door for Discrimination*, National Education Policy Center 10 (Dec. 2018), <https://nepc.colorado.edu/publication/privatization>. Moreover, Title VI prohibits discrimination on the basis of race, color, and national origin only in programs and activities receiving federal financial assistance.

<sup>40</sup> See Tony Hanna, *How School Vouchers Affect English Learners*, New America (July 24, 2017), <https://www.newamerica.org/education-policy/edcentral/how-school-vouchers-affect-english-learners/>; see also Mandy McLaren & Emma

in navigating the enrollment process for parents who are not native English speakers—may also result in the exclusion of ELs from voucher schools.<sup>41</sup>

### 3. LGBTQ+ Students

Federal law protects LGBTQ+ students enrolled in public schools against discrimination based on sexual orientation and gender identity, but this does not apply to private schools unless they receive federal financial assistance. *See* 20 U.S.C. §§ 1681–1688.<sup>42</sup> Even with the receipt of federal dollars, private schools run by religious organizations may be exempt from Title IX’s sex-discrimination prohibition. *See* 20 U.S.C. § 1681(a)(3). Many private schools adopt and enforce explicit anti-LGBTQ+ policies, and many states’ voucher laws, including Utah’s, Utah Code § 53F-6-406(3), expressly allow voucher schools to base admissions decisions on criteria consistent with the schools’ religious tenets, which often include opposition to homosexuality.<sup>43</sup> As a result, many private schools receiving

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Brown, *Trump Wants to Spend Millions More on School Vouchers. But What’s Happened to the Millions Already Spent?*, Washington Post (July 15, 2017), [https://www.washingtonpost.com/local/education/trump-wants-to-spend-millions-more-on-school-vouchers-but-whats-happened-to-the-millions-already-spent/2017/07/15/ab6002a8-6267-11e7-84a1-a26b75ad39fe\\_story.html](https://www.washingtonpost.com/local/education/trump-wants-to-spend-millions-more-on-school-vouchers-but-whats-happened-to-the-millions-already-spent/2017/07/15/ab6002a8-6267-11e7-84a1-a26b75ad39fe_story.html).

<sup>41</sup> *See* Hanna, *supra* note 40.

<sup>42</sup> *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021) (to be codified at 34 C.F.R. ch. 1); *see also Bostock v. Clayton County*, 140 S. Ct. 1731, 1741-42 (2020).

<sup>43</sup> *See* Kevin G. Welner & Preston C. Green, *Private School Vouchers: Legal Challenges and Civil Rights Protections*, UCLA Civil Rights Project 8 (2018), [https://civilrightsproject.ucla.edu/wp-content/uploads/2018/03/Welner-Green-JT\\_022818-for-post.pdf](https://civilrightsproject.ucla.edu/wp-content/uploads/2018/03/Welner-Green-JT_022818-for-post.pdf); Adam Mengler, *Public Dollars, Private Discrimination: Protecting LGBT Students from School Voucher Discrimination*, 87 Fordham L. Rev. 1251, 1264 (2018) (quoting Ariz. Rev. Stat. § 15-2404 (2018)).

voucher funds, including many of those participating in Utah’s universal voucher program,<sup>44</sup> openly discriminate against LGBTQ+ students and families.

### **C. Voucher Programs Largely Benefit Wealthy Families**

Vouchers frequently do not cover the full cost of private school tuition, not to mention the expense of other essentials that are provided for free in public schools.<sup>45</sup> Thus, most vouchers go to families whose children are already attending private schools, and who can afford to cover the cost themselves. This is particularly true for universal voucher programs, like Utah’s, that have no significant eligibility limitations.

Tuition rates alone are often prohibitive for low-income families, even with a voucher. One report found that, across states, vouchers created a tuition shortfall between \$500 and \$13,775; and if the family chose a specialized school serving students with learning disabilities, that number jumped upwards of \$28,000.<sup>46</sup> Another study found that the implementation of Iowa’s voucher program led private schools to increase tuition prices, and these increases were largest in schools where all students were eligible to receive vouchers.<sup>47</sup> In Utah, the average

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<sup>44</sup> See Decl. of Debra S. Corr, *supra* note 31, at 5-6.

<sup>45</sup> See National Center for Learning Disabilities, *Private School Vouchers, Education Savings Accounts, and Tax Incentive Programs: Implications and Considerations for Students With Disabilities* 16 (2024), [https://nclد.org/wp-content/uploads/2024/12/241219-Vouchers-Report\\_2024-Final.pdf](https://nclد.org/wp-content/uploads/2024/12/241219-Vouchers-Report_2024-Final.pdf).

<sup>46</sup> *Id.* at 17.

<sup>47</sup> Jason Fontana & Jennifer L. Jennings, *The Effect of Taxpayer-Funded Education Savings Accounts on Private School Tuition: Evidence from Iowa*, EdWorkingPaper No. 24-949 8 (Apr. 2024), <https://edworkingpapers.com/sites/default/files/ai24-949.pdf>.

private school tuition is \$13,331 for elementary schools and \$17,046 for high schools.<sup>48</sup> But Utah’s universal voucher program provides vouchers only up to \$8,000 per student annually. Utah Code § 53F-6-402(2)(c).

Moreover, public schools provide for free many services and resources, such as transportation, books, and free or reduced-price meals, that often must be purchased separately by families using vouchers to attend private schools. Thus, vouchers simply shift the cost of many core educational resources to families or put them out of reach for all but the wealthiest. This reality is magnified for students with disabilities, whose education often costs several times more than that of a student without disabilities. While Utah’s vouchers provide a maximum of \$8,000, private school tuition for a student with disabilities can range from \$40,000 to \$100,000 per year.<sup>49</sup>

Empirical evidence bears out the reality that vouchers are not realistically available to most low-income families, meaning they are mainly a subsidy for the wealthy. Data from multiple states, including several with universal or near-universal voucher programs, show that the majority of vouchers are used by families who were already sending their children to private schools without the

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<sup>48</sup> Private School Review, *supra* note 36.

<sup>49</sup> Selene Almazan & Denise Stile Marshall, *School Vouchers and Students with Disabilities: Examining Impact in the Name of Choice*, Council of Parent Attorneys & Advocates 16 (2016), [https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/Policy\\_Docs/CO\\_PAA\\_Voucher\\_paper\\_final\\_R6.pdf](https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/Policy_Docs/CO_PAA_Voucher_paper_final_R6.pdf).

help of a voucher.<sup>50</sup> A recent national analysis of universal school voucher programs found that “the lion’s share of universal voucher awards seems to go towards families with students already in private school, likely making the tax and subsidy system less progressive.”<sup>51</sup>

Far from creating opportunities for high need students, in reality, voucher programs strip participants of crucial legal rights and protections while leading to poorer educational outcomes. Meanwhile, they funnel limited public resources to families that can already afford private school, increasing the fiscal burden on the state and its taxpayers.

### **Conclusion**

For the foregoing reasons, this Court should affirm the judgment of the district court.

DATED this 6th day of April, 2026.

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<sup>50</sup> Josh Cowen, *School Vouchers: There Is No Upside*, Albert Shanker Institute (Feb. 21, 2023), <https://www.shankerinstitute.org/blog/school-vouchers-there-no-upside> (“Despite supporter rhetoric that voucher schemes are about new opportunities, the reality is 70-80 percent of kids in states like Arizona, Missouri, and Wisconsin were already in private school before taxpayers picked up the tab.”); *see also* Indiana Department of Education, *Choice Scholarship Program Annual Report: Participation & Payment Data: 2024-2025* 11 (2025), <https://www.in.gov/doe/files/2024-2025-Annual-Choice-Report.pdf> (finding that 70% of voucher recipients in 2024-25 had never attended an Indiana public school, a three percentage point increase from the prior school year).

<sup>51</sup> Douglas Harris & Gabriel Oliver, *The Effects of Universal School Vouchers on Private School Tuition and Enrollment: A National Analysis*, National Center for Research on Education Access and Choice 45 (Sept. 2025), <https://reachcentered.org/publications/the-effects-of-universal-school-vouchers-on-private-school-tuition-and-enrollment-a-national-analysis>.

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I hereby certify that:

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DATED this 6th day of April, 2026.

/s/ Skylar Walker  
Skylar Walker