

FILED

**IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT STATE OF
WYOMING, COUNTY OF LARAMIE**

WYOMING EDUCATION
ASSOCIATION, a Wyoming Nonprofit
Membership Corporation et al.,

Plaintiffs,

v.

MEGAN DEGENFELDER, in her official
capacity as Wyoming Superintendent of
Public Instruction et al.,

Defendants.

Civil Action No: 2025-CV-0203366

**MEMORANDUM SUPPORTING STATE DEFENDANTS' MOTION TO
DISMISS**

The State of Wyoming, Superintendent Degenfelder, and Treasurer Meier—collectively the State Defendants—through the Wyoming Attorney General's Office, submit this memorandum supporting their motion to dismiss Plaintiffs' complaint for failure to state a claim for which relief may be granted pursuant to Wyo. R. Civ. P. 12(b)(6).

Specifically, Plaintiffs have not alleged facts sufficient to establish standing. While they may rely on the great public importance doctrine, that principle does not confer standing because they do not have an individualized interest in this matter.

BACKGROUND

I. Parties

The Wyoming Education Association and various parents of students, both on their own behalf and on their students' behalf, bring this case against various state officers. (*Compl.* ¶¶ 26-28) The WEA is a voluntary association of education employees working in Wyoming's public schools. (*Id.* ¶ 13). Its membership includes public school teachers, administrators, education support professionals, retired educators, and college students preparing for careers in education. (*Id.* ¶ 13). The WEA brings this lawsuit on its own behalf and on behalf of its members, asserting its and its members' interests as taxpayers to support public schools. (*Id.* ¶ 15).

The parent plaintiffs are residents of various Wyoming counties, including Laramie County. (*Id.* ¶¶ 16-21). They are parents or legal guardians of school-aged children who attend public schools within their respective school districts. (*Id.*). The parent plaintiffs are also Wyoming taxpayers. (*Id.*). They have chosen to send their children to public schools. (*Id.* ¶ 22). While the caption indicates that the parents are bringing the case also on their children's behalf, presumably indicating next friend status, there are no allegations about the children other than in connection with their parents. There is no allegation that they have chosen their parents as next friends, or that they meet the age requirements to be parties to this action. Wyo. Stat. Ann. § 1-1-102.

II. Allegations

This lawsuit challenges the constitutionality of the Steamboat Legacy Scholarship Act, codified at Wyo. Stat. Ann. §§ 21-2-901 through -909 and referred to here as the ESA program. (*Compl.* ¶ 1). Plaintiffs allege that the ESA program impermissibly funds private education outside of Wyoming’s public school system using a framework that is not uniform and fails to satisfy constitutional standards for quality, accountability, and the proper use of public funds. (*Id.* ¶ 1). The Complaint seeks both a judicial declaration that the ESA program is unconstitutional and an injunction to prohibit its implementation and enforcement by the Defendants. (*Id.* ¶¶ 84, 96, 111, 112).

A. Factual Background in Complaint

On March 21, 2024, Governor Mark Gordon signed into law 2024 House Enrolled Act 53, which first created the ESA program. (*Id.* ¶ 29; 2024 Wyo. Sess. Laws 231-42). This initial program was designed to use state general funds to establish an education savings accounts expenditure account in the treasury. (*Compl.* ¶ 29) From this account, funds are distributed into individual accounts for eligible families to use on qualifying educational expenses, like private school tuition and homeschooling costs. (*Id.*). As originally enacted, only income-eligible families qualified for the ESA program. (*Id.* ¶ 31).

After the income-restricted program became effective, but before it was up and running, the Legislature passed 2025 House Enrolled Act 52, the Steamboat Legacy Scholarship Act. (*Compl.* ¶ 34; 2024 Wyo. Sess. Laws 242; 2025 Wyo. Sess. Laws 216-20). This revision removed the income cap from the ESA program, making all K-12

students in Wyoming eligible to participate. (*Compl.* ¶ 34). The 2025 revision became effective on March 4, 2025. (*Id.* ¶ 34).

B. Funding and Administration

Under the program, eligible students may access up to \$7,000 per year for qualifying educational expenses. (*Id.* ¶ 37); Wyo. Stat. Ann. § 21-2-903(a)(i). The Superintendent has administrative responsibility for the ESA program. (*Compl.* ¶ 42). The Superintendent is permitted to contract with private organizations to manage all or part of the program, including its payment system. (*Id.* ¶ 45); 2024 Wyo. Sess. Laws 241. To cover administrative expenses, the Legislature appropriated \$480,000 for two temporary full-time positions at the WDE and \$400,000 for contractual services. (*Id.*); 2024 Wyo. Sess. Laws 241. All funds expended to run the program or to purchase educational goods or services are appropriated from the general fund. 2024 Wyo. Sess. Laws 241; 2025 Wyo. Sess. Laws 220.

The ESA program is not available to parents who choose to enroll their children in the public schools. As a condition of participation, a parent must agree that the student will not enroll in a public school and must release the local school district from all obligations to educate the student. (*Compl.* ¶ 39); Wyo. Stat. Ann. §§ 21-2-904(b)(ii)(C), 21-4-102. The funds may be used to pay for education expenses from education service providers, some of which are qualified schools. (*Compl.* ¶¶ 37, 38); Wyo. Stat. Ann. §§ 21-2-902(a)(iii), (vii); 21-2-904(b)(i).

C. Plaintiffs' Allegations of Harm

Plaintiffs generally allege that the ESA program violates the constitution in several ways. (*Compl.* ¶ 8). Several individual plaintiffs make conclusory assertions that they will suffer personal harm from this framework. (*Compl.* ¶¶ 22, 23). Plaintiffs with minor children in public schools who have disabilities and receive special education services through Individualized Education or Section 504 plans allege that private schools receiving ESA program funds can refuse to admit their children and are not required to provide the same services as public schools. (*Id.* ¶ 22). Similarly, plaintiffs with children who identify as queer, transgender, or non-binary allege that private schools can refuse to admit their children based on their gender identity or sexual orientation, in contrast to public schools, which are required to protect against discrimination (*Id.* ¶ 23). They do not allege that the ESA program exempts private schools or any entity from generally applicable civil rights laws. These plaintiffs state they are unaware of any private schools in their areas that would admit their children and provide the necessary support and protections. (*Id.* ¶¶ 22, 23). They do not allege that they have comprehensive knowledge of public schools in their areas or that they have conducted any search for private schools that would admit their children. They do not allege that, if available, they would prefer to send their children to a private school instead of their local public schools that they have “chosen.” (*Id.* ¶ 22).

Plaintiffs make a conclusory allegation that the ESA program will cause financial harm to the state’s public school system (*Id.* ¶ 25). They allege that, as students leave public schools using voucher funds, the public schools will lose funding under the state’s school funding model. (*Id.*). This loss of funding, Plaintiffs claim, will result in fewer resources

being available to educate and support the students who remain in the public schools (*Id.*). Plaintiffs do not allege that the number of students opting out of the public schools will be affected by the ESA program.

III. Relief Requested

All individual plaintiffs generally object to using taxpayer money to purchase education for other students at private schools that may refuse to admit their children and that lack the accountability, uniformity, and curriculum standards required of public schools (*Id.* ¶ 24). Plaintiffs ask this Court to declare that the ESA program is unconstitutional under the Wyoming Constitution and to enjoin the state defendants from executing it. (*Id.* ¶¶ 111-12). They ask this Court to waive the security requirement expressed in Wyo. R. Civ. P. 65(c) and to retain jurisdiction over this matter “to assure that all orders entered in this case have been carried out.” (*Id.* ¶¶ 113-14).

ARGUMENT

I. Plaintiffs lack standing because they have suffered no cognizable injury.

A. Legal Standard

Plaintiffs ask that this Court enter declaratory judgment under the Uniform Declaratory Judgments Act, Wyo. Stat. Ann. § 1-37-101 through -115. (*Compl.* ¶¶ 111). This Court should dismiss Plaintiffs’ claims for declaratory relief because they lack standing to pursue those claims against the State Defendants.

When considering whether to grant a Wyo. R. Civ. P. 12(b)(6) motion to dismiss, courts accept all facts stated in the petition as true and view them in the light most favorable to the petitioner. *E.g., Rissler McMurry Co. v. State*, 917 P.2d 1157, 1160 (Wyo. 1996).

Courts do not give deference to legal conclusions. *Dowlin v. Dowlin*, 2007 WY 114, ¶ 8, 162 P.3d 1202, 1204 (Wyo. 2007). Dismissal is appropriate if, on the face of the petition, the petitioner is not entitled to the relief requested. *Rissler McMurry*, 917 P.2d at 1160. While all factual allegations must be accepted as true for the purpose of this motion, a plaintiff still must affirmatively demonstrate that it has standing. *Protect Our Water Jackson Hole v. Wyo. Dep't of Env'l Quality*, 2025 WY 36, ¶ 24, 566 P.3d 181, 188 (Wyo. 2025). This demonstration necessarily requires factual allegations showing standing, not merely conclusory statements asserting an injury to a protectable right. *Id.*

While the Wyoming Supreme Court has historically referred to standing as a jurisdictional issue, it has recently confirmed that standing is not jurisdictional. *Matter of Adoption of L-MHB, TC v. State*, 2018 WY 140, ¶¶ 18–24, 431 P.3d 560, 566–68 (Wyo. 2018). A complaint in which a plaintiff lacks standing should be dismissed not for lack of subject-matter jurisdiction, but for the failure to state a claim for which relief may be granted, which is the relief State Defendants seek here. *Id.* ¶ 20, 431 P.3d at 567.

Standing is an easy question when a law is being enforced against an individual or group. *Protect Our Water*, ¶ 16, 566 P.3d at 186. It is more difficult for a non-regulated person or entity. *Id.* In *Allred v. Bebout*, the Supreme Court found that a “citizen Plaintiff” and a legislator lacked sufficient interest to establish standing in a case concerning the capital renovation project. 2018 WY 8, ¶¶ 7, 49, 409 P.3d 260, 263-64, 274 (Wyo. 2018). They suffered no particularized injuries, that is, they were affected by the alleged unconstitutional actions the same as any Wyoming citizen. *Id.* ¶ 49.

In *Northern Laramie Range Foundation v. Converse County Board of County Commissioners*, the Supreme Court was unpersuaded by the fact that the challenged wind energy project would harm a nonprofit corporation's mission and purpose. 2012 WY 158, ¶ 35, 290 P.3d 1063, 1076 (Wyo. 2012). The nonprofit's "allegations [were] extremely general and [did] not show a causal relationship between these perceived threats and the project. There [was] no description of the foundation's planned programs, where specifically they will be located, or how the programs would actually be harmed by the wind project." *Id.* The court cautioned that, "[i]n establishing a true interest sufficient to warrant a finding of standing, the pleadings must be something more than an ingenious academic exercise in the conceivable." *Id.* (quotation marks omitted; quoting *Warth v. Seldin*, 422 U.S. 490 at 509 (1975)). Organizations not directly affected may have a sufficient interest to demonstrate standing, however, if their members are directly affected. *Id.* ¶ 29.

The Wyoming Supreme Court established its standing analysis in *Brimmer v. Thomson*, 521 P. 2d 547 (Wyo. 1974), and still uses that test today. *Id.* ¶ 19, 431 P.3d at 567. To demonstrate a justiciable controversy under the *Brimmer* test, the Plaintiffs must demonstrate each of the following:

1. The parties must have "existing and genuine, as distinguished from theoretical, rights or interests." *Brimmer*, 521 P. 2d at 578 (quoting *Sorenson v. City of Bellingham*, 496 P. 2d 512, 517 (Wash. 1972)).
2. The controversy must be "one upon which the judgment of the court may effectively operate." *Id.* Plaintiffs must allege that "a judicial decision in their

favor will effectively remedy the harm.” *William F. Ranch, LLC v. Tyrrell*, 2009 WY 62, ¶ 22, 206 P.3d 722, 731 (Wyo. 2009).

3. Judicial determination of the controversy must “have the force and effect of a final judgment in law or decree in equity upon the rights, status or other legal relationships of one or more of the real parties in interest, or, wanting these qualities to be of such great and overriding public moment as to constitute the legal equivalent of all of them.” *Brimmer*, 521 P .2d at 578 (quoting *Sorenson*, 496 P .2d at 517).

4. “[T]he proceedings must be genuinely adversary in character and not a mere disputation, but advanced with sufficient militancy to engender a thorough research and analysis of the major issues.” *Id.*

B. Plaintiffs do not allege facts sufficient to satisfy the Brimmer test.

As a matter of law, Plaintiffs have no particularized and legally cognizable interest that is harmed by the ESA program. The parents and students allege that they choose public schools, a choice that is unaffected by the ESA program’s existence. The WEA speculates that school funding will be reduced without factual allegations to sustain that result. Even if the WEA is correct and enrollment in public schools declines, declining enrollment is accounted for in the school funding system; districts will continue to receive the funding to which they are entitled under the law.

As an initial matter, all Plaintiffs’ allegations concerning their preferences and policy interests in the ESA program do not state cognizable harms. WEA alleges that it has an interest in the abstract concept of “the funding and operation of public schools and

opposes the use of public funds to benefit private schools.” (*Compl.* ¶ 13). Parents allege that they “believe that public funds should be used to support public schools” and other disagreements with the policy behind the ESA program. (*Id.* ¶ 24). Plaintiffs’ allegations along these lines are no different from the separation of powers concerns raised in *Allred* or the policy interests raised by the lead plaintiffs in *Northern Laramie Range Foundation* and *Protect Our Water. Northern Laramie Range Found.*, ¶ 35, 290 P.3d at 1076; *Protect Our Water Jackson Hole*, ¶¶ 10-23, 566 P.3d at 184-88.

The individual plaintiffs do not allege that they will actually suffer harm. The parents allege that they “choose[] to send their children to public school.” (*Compl.* ¶ 22). They follow with articulating some features of the public school system that lead them to that choice. (*Id.*). They oppose the ESA “due to the harmful impact it will have on their children.” (*Id.*). They do make specific claims that their children will be harmed, but rather that “students like plaintiffs’ children” will be harmed because private schools can refuse admission to children with disabilities who are “like plaintiffs’ children” and are not required to provide the same services. (*Id.*). They make the same allegations concerning children “like these plaintiffs’ children” who identify as queer, transgender, or non-binary. (*Id.* ¶ 23).

Aside from the fact that plaintiffs claim that *other people’s children* will be harmed, not their own, those allegations do not contain anything “more than a conclusory assertion that a party has a legitimate claim of entitlement to a protectable right.” *Protect Our Water Jackson Hole*, ¶ 24, 566 P.3d at 188. They do not precisely allege the effect on their children by private schools that receive ESA program funds being able to refuse admission

to certain students. (*Compl.* ¶ 22). Their allegations are quintessential conclusory assertions.

The parents do not allege that they are harmed by the program by not being able to send their children to preferred private schools. Indeed, they affirmatively state that they choose public schools for their children. (*Id.* ¶ 22). They do not assert that they have requested enrollment at their chosen private school and been declined. In fact, they are unable to allege that there are no private schools in their areas that would refuse to enroll their children, only that they are “unaware” of a school that would admit their children. (*Id.*). Moreover, private school attendance is already an option for Wyoming parents. Wyo. Stat. Ann. § 21-4-102(a). General and conclusory statements aside, the parents do not allege facts showing that the ESA program will result in any difference to their children’s education. State general funds will now be available to pay for services that are already available to parents opting out of public schools. (*Id.*). The ESA program has no effect on public school funding or availability.

Finally, Plaintiffs allege that the ESA program will negatively impact public school funding where some of them work. (*Id.* ¶ 25). They suggest, without actually alleging, that the program will increase the number of students opting out of the public school system. (*Id.*). They claim that this reduction will cause schools to “lose funding under the Average Daily Member (“ADM”) formula.” (*Id.*). They are presumably referring to the education resource block grant model, which uses average daily membership, or ADM, as a significant input to calculate funding. Wyo. Stat. Ann. §§ 21-13-101(a)(xiv), -309(m)(v).

They suggest that a funding reduction due to decreasing students would exacerbate the impact of inadequate funding. (*Compl.* ¶ 25).

Plaintiffs' statements about school funding are, like their earlier allegations, mere conclusory assertions. *See Protect Our Water Jackson Hole*, ¶ 24, 566 P.3d at 188. They do not allege—perhaps because there is no factual basis on which to base an allegation—that students will leave district enrollment in any significant number. Even if one engages in speculation, it is not a necessary conclusion that funding would be reduced. As this Court is aware, the funding model, while relying significantly on ADM, includes other inputs. Wyo. Stat. Ann. § 21-13-101(a)(xiv), (xvi). Reducing the number of students could, for example, change a school from one size to the next down, which may actually increase the per-pupil funding and therefore a district's overall funding.¹ *See id.* and associated model spreadsheets; Wyo. Stat. Ann. § 21-13-309(m)(v).

But even if districts receive less funding, that does not constitute a legally cognizable harm. Wyoming's school financing is cost based, that is, districts receive funding according to the costs necessary to provide a high-quality education. *Campbell Cnty. Schl. Dist. v. State*, 907 P.2d 1238, 1274 (Wyo. 1995); *Campbell Cnty. Schl. Dist. v. State*, 2008 WY 2, ¶ 70, 181 P.3d 43, 65 (Wyo. 2008); Wyo. Stat. Ann. § 21-13-309(o), (t).

¹ The model spreadsheets, as modified by the Legislature, are incorporated into Wyoming statutory law. Wyo. Stat. Ann. § 21-13-101(a)(xiv). Accordingly, relying on them does not require this motion to be converted to one for summary judgment. Wyo. R. Civ. P. 12(d).

Funding is a means to an end, not the goal. Districts are only entitled to the funding that their student enrollment and other factors justify according to the funding model and other state payments, such as special education and transportation reimbursements. *See* Wyo. Stat. Ann. §§ 21-13-309(m), -320, and -321. They have no legal interest in money just for the sake of money. Indeed, revenue recapture is intended to ensure not just that schools have adequate funding, but that public school funding remains equitable, with no districts being advantaged by a wealthy tax base or disadvantaged by a poor one. *State v. Campbell Cnty. Schl. Dist.* 2001 WY 19, ¶ 7, 19 P.3d 518, 528 (Wyo. 2001). If student population decreases—for any reason—the district’s funding is affected. Wyo. Stat. Ann. § 21-13-309(m)(v). In a cost-based system, the district has fewer students to educate, so it makes sense that the amount necessary to educate those students may decrease. Districts have no legal entitlement to additional funding beyond that required to educate their enrolled students. Accordingly, if student population reduces for any reason—whether the ESA program, the military base closing, or a bust in mineral development—the school district’s costs and funding are both affected.² The school district is not legally entitled to more funding, so it cannot have a legally cognizable claim based on the funding being reduced consistent with the model.

² Even then, district funding would likely decrease slowly because ADM used in the model is the greater amount comparing the most recent year or the average of the last three years. Wyo. Stat. Ann. § 21-13-309(m)(iv)(A). This effectively over-funds districts that experience enrollment drops while allowing them to benefit from sudden enrollment increases. In other words, the school funding system is designed to allow districts time to adjust to student population decreases.

In sum, Plaintiffs present nothing more than the usual taxpayer and policy harms of preferring that public funding not be devoted to the ESA program. (*Compl.* ¶¶ 13, 15-21, 24); *see Allred* ¶ 57, 409 P.3d at 276-77 (explaining that public interest standing, or taxpayer standing, must still be supported by a particularized cognizable interest); *Village Rd. Coal. v. Teton Cnty. Housing Auth.*, 2013 WY 38, ¶ 16 n.2, 298 P.3d 163, 169 n.2 (Wyo. 2013) (noting that taxpayers do not have standing absent a showing that the law being challenged increases the taxpayer’s tax burden). But policy determinations are properly made by the Wyoming Legislature. Nothing about their alleged harms is any different from any member of the Wyoming public. Accordingly, they have failed to identify a particularized injury and do not meet the *Brimmer* test’s first element.

Given Plaintiffs’ failure to meet the first *Brimmer* element, this Court need go no further and could dismiss Plaintiffs’ complaint. *Protect our Water*, ¶ 25 n.6, 566 P.3d at 189 n.6. This conclusion is reinforced by considering the second element, redressability. While a ruling in Plaintiffs favor would achieve their policy goals of blocking the program, nothing in their allegations suggest that it would actually change their individual lives or circumstances. It could, however, impact parents that have opted out of the public education system and were planning on using these funds—even for pre-K students, despite the fact that Plaintiffs do not challenge that aspect of the ESA program. Nothing in the complaint suggests that private schools in their area that parents are “aware of” would accept their children even if the ESA program did not exist. Nothing in the complaint suggests that the parent would change their children’s educational placement: they would continue to attend public schools. School districts would continue to receive the state

funding as required under the school foundation program based on their student population, no more than they are entitled to and no less. In other words, there are no allegations in the complaint saying or suggesting that any of plaintiffs lives will change if this Court dismisses their complaint or grants them all the relief they claim.

Plaintiffs also fail the third *Brimmer* element, whether the controversy is one in which “a judicial determination may have the force and effect of a final judgment upon the rights, status, or legal relationships of a real party in interest.” *Cranston v. Thomson*, 530 P.2d 726, 729 (Wyo. 1975). As already discussed, Plaintiffs have no rights, status, or legal relationships, and they are not a real party in interest. This element has not been met.

Finally, the fourth *Brimmer* element is that “the proceedings must be genuinely adversary in character and not a mere disputation, but advanced with sufficient militancy to engender a thorough research and analysis of the major issues.” *Brimmer*, 521 P.2d at 578 (quoting *Sorenson*, 496 P.2d at 517). Notably, this requirement is not always part of the court’s *Brimmer* analysis. *Cranston*, 530 P.2d at 729. Nevertheless, having already established that Plaintiffs lack a cognizable interest, it is impossible for this case to be “genuinely adversary in character” given that Plaintiffs do not allege that they will suffer any harms. Their allegations of harm are indistinguishable from the ESA program’s effect on all Wyoming residents, reflecting policy arguments above all. *Supra* at 9. Without a legally cognizable harm, Plaintiffs’ claims are “a mere disputation.” *Brimmer*, 521 P.2d at 578.

C. The Treasurer is not a proper party because his involvement is purely ministerial.

The Treasurer, in particular among the State Defendants, is not a proper party to this lawsuit because he has no discretion related to the ESA program. The Wyoming Constitution provides that money is to be paid out from the state treasury solely according to legislative appropriation. Wyo. Const. art. 16, § 7; art. 3, § 35. The Constitution further provides that the Legislature has authority to proscribe the duties of the State Treasurer and other statewide elected officials. *Id.* art. 4, § 12. The Legislature has done so for the State Treasurer in Wyo. Stat. Ann. § 9-1-409(a). Among other duties, the Treasurer is to “[p]ay all warrants duly and legally issued by the auditor so long as there are in his hands funds sufficient to pay the warrants.” Wyo. Stat. Ann. § 9-1-409(a)(ii). Key to this discussion, this provision provides the Treasurer exactly zero discretion: he is to pay out funds for “*all* warrants duly and *legally* issued by the auditor”; the only exception is if he lacks sufficient funds to do so. *Id.* (Emphasis added).

In this case, the Treasurer’s responsibility under the ESA program Act is simply to allocate funds to the steamboat legacy scholarship program account within the treasury and allow the withdrawals from that account. The Treasurer will only do so if, as noted, the Auditor issues a legally valid warrant for those funds. The Auditor, for her part, has a duty to “[d]raw all warrants upon the treasurer for money unless otherwise provided by law.” Wyo. Stat. Ann. § 9-1-403(a)(i). The State Superintendent has administrative authority to manage ESA program finances. *See* Wyo. Stat. Ann. § 21-2-906(a). But once she requests

a warrant and the State Auditor draws that warrant on the Treasurer, there is no longer any space for the Treasurer to make an independent decision.

Given the State Treasurer's lack of discretionary authority over payments made against valid and duly issued, legal warrants for payment, he is not a proper defendant in this suit. A necessary implication of the *Brimmer* test's second element is that a party is not a proper defendant where the relief sought is outside the defendant's authority. *Brimmer*, 521 P .2d at 578. Adding the Treasurer to this suit is superfluous: the Treasurer will only pay out funds in accordance with the ESA program if the Auditor draws a warrant—and the State Auditor will draw a warrant only if the Superintendent requests that she do so. Were plaintiffs to prevail, the State Superintendent would be prohibited from requesting a warrant from the Auditor, and therefore no warrant would be drawn and no funds disbursed. At best then, any relief as against the State Treasurer would be cumulative with relief granted against the Superintendent.

Overall, a matter lacking any of the four *Brimmer* factors “becomes an exercise in academics and is not properly before the courts for solution.” *Brimmer*, 521 P.2d at 578 (quoting *Sorenson*, 496 P.2d at 517). Viewed as a whole, and aside from the vagueness and uncertainties in the claims as pleaded, Plaintiffs have not shown that the ESA program particularly affects Plaintiffs. Accordingly, Plaintiffs have not alleged facts sufficient to meet the *Brimmer* elements and consequently fail to state a claim for which relief can be granted. This Court should dismiss all declaratory relief claims against State Defendants.

II. The public importance standing exception does not apply in this case because Plaintiffs have not shown a tangible interest and that they would receive a practical benefit if they succeed.

Plaintiffs are likely to rely on the public importance exception to standing requirements. In the education law context, the Wyoming Supreme Court referred to “great public importance” as a basis to address the school finance issues presented in that case. *Washakie Cnty. Schl. Dist. No. One v. Herschler*, 606 P.2d 310, 318 (Wyo. 1980). The *Washakie* court, however, did not decide the standing issue based on the plaintiffs presenting issues of great public importance. *Id.* The court’s dictum discussing the public importance discussion came only after it had already decided that the plaintiffs met the *Brimmer* standing test. *Id.*

The risk of the doctrine is that what constitutes a matter of great public importance may be in the eye of the judicial beholder. As early as *Brimmer* itself, the Supreme Court recognized that the doctrine should be cautiously applied, lest judicial officers be “tempt[ed] to apply the judge’s own beliefs and philosophies to a determination of what questions are of great public importance.” *Brimmer*, 521 P.2d at 578.

In recent years, the Wyoming Supreme Court has placed guardrails around the doctrine to ensure the public importance exception does not swallow prudential standing. In 2009, it recognized that, if a litigant fails to meet the *Brimmer* test, “a great public interest alone is insufficient” to allow the matter to proceed. *William F. West Ranch*, ¶ 46, 206 P.3d at 737. The court noted that in cases granting the great public importance exception, the plaintiffs nevertheless alleged “a tangible interest that would receive some practical benefit from a judicial decision.” *Id.*

The court reinforced those guardrails several times since then. In 2018, it held that parties must “assert enough of a stake in the outcome to permit the judiciary to exercise jurisdiction over a case without exceeding its authority.” *Allred*, ¶ 58, 409 P.3d at 277. The court affirmed that if plaintiffs fail to meet the *Brimmer* test, “a matter of great public importance is insufficient to confer standing on them.” *Id.* ¶ 56, 409 P.3d at 276. Even though alleged Wyoming constitutional violations may raise matters of great public interest, that is insufficient by itself to confer standing. *Id.* ¶ 55, 409 P.3d at 276. In 2019, the court recognized that it has been more restrictive and skeptical in applying the great public importance doctrine. *Williams v. State ex rel. Univ. of Wyo. Bd. of Trustees*, 2019 WY 90, ¶ 10, 448 P.3d 222, 227 (Wyo. 2019). It determined that the plaintiff in that case had standing not because he raised a matter of great public importance, but because it found that he was adversely affected in fact. *Id.*

In this case, as in *Cranston*, *William F. West Ranch*, *Allred*, and *Williams*, the great public importance doctrine does not apply. As discussed above, Plaintiffs have not alleged facts meeting the *Brimmer* elements. The plaintiff parents choose public schools for their children’s education, and nothing about the ESA program affects that choice. Even if a school district’s ADM decreases due to parents opting to participate in the ESA program instead of public schools, the districts will continue to receive cost-based funding to educate their enrolled students, no matter their number. No plaintiff has a tangible interest, and no decision of this Court, in either direction, affects their entitlement or opportunity to a high-quality public education.

Finally, it is worth addressing the great public importance doctrine in the educational context. As an initial matter, this case is not about the public education system. The ESA program, while supporting education, is no more part of the public school system than educational programs like vocational rehabilitation implemented through the Department of Workforce Services. *See* Wyo. Stat. Ann. §§ 27-13-101 through -103. Indeed, the program is only available to parents who opt their children out of public education. Wyo. Stat. Ann. § 21-2-904(b)(ii)(C). Plaintiffs who question the wisdom of using general funds for this purpose present a legislative question, not a judicial one.

That aside, the great public importance doctrine does not apply here. As discussed briefly above, standing in *Washakie* did not depend on the great public importance doctrine. 606 P.2d at 318. But even if it did, the claims presented in *Washakie* and the *Campbell* cases are significantly different from those in this case. In those cases, the issues concerned whether Wyoming's public school system provided an equal educational opportunity. *Washakie*, 606 P.2d at 314; *Campbell*, 907 P.2d at 1243-44; *Campbell*, 2008 WY 2, ¶¶ 1-4, 181 P.3d at 47-48. The WEA and parents of public-school students have individualized interests in equitable, cost-based funding because a failure to provide equality has a tangible effect on public school students. But in this case, the parents and WEA do not have an individual stake, different and specific to them above any other Wyoming citizen, in whether the ESA program continues.

CONCLUSION

For the reasons articulated above, State Defendants ask that this Court find that Plaintiffs lack standing to pursue their claims and dismiss this matter for failure to state a claim for which relief may be granted pursuant to Wyo. R. Civ. P. 12(b)(6).

Dated this 3rd day of July, 2025.

/s/ Mackenzie Williams

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of July, 2025, the foregoing was served on the following using the indicated methods:

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