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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH	
<p>KEVIN LABRESH, on behalf of himself and his minor child; TERRA COOPER, on behalf of herself and her minor children; AMY BARTON; CAROL LEAR, in her capacity as a member of the State Board of Education; UTAH EDUCATION ASSOCIATION,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>GOVERNOR SPENCER J. COX, in his official capacity as Governor of Utah; SEAN D. REYES, in his official capacity as Attorney General of Utah; Alliance for Choice in Education, d/b/a ACE Scholarships,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF</p> <p>Case No: _____</p> <p>Judge: _____</p> <p style="text-align: center;">Tier 2</p>

PLAINTIFFS hereby submit this Complaint for Declaratory Relief and Permanent Injunction and allege as follows:

INTRODUCTION

1. This lawsuit challenges the Utah Fits All Scholarship Program, codified at Utah Code Ann. §§ 53F-6-401-15 (“Voucher Program”). The Voucher Program diverts state income tax revenues to pay tuition and other expenses at exclusive, admissions-based private schools.

2. Utah’s commitment to free public education is older than the state itself. At the time Utah applied for statehood, its Enabling Act provided that “[t]he schools, colleges, and university provided for in this Act shall forever remain under the exclusive control of said State . . .” Utah Enabling Act § 11. Accordingly, in drafting the education provisions in the original 1895 Constitution, the framers sought to “draw[] around the public schools such protection and defense as will secure for them, it is believed, the steady upward progress which is the enthusiastic desire of this people.” Utah Const., Address to the People of Utah (1895).

3. The 1895 convention delegates enshrined four provisions in the Constitution establishing the State’s duty to establish and maintain an education system that is free, open to all students, and under the control of the State Board of Education. All those provisions exist in similar form today. Ordinance 4 of the Utah Constitution’s Irrevocable Ordinances, found in Article 3, provides that “[t]he Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and be free from sectarian control.” Article 10, Section 1 of the Constitution provides that “[t]he Legislature shall provide for the establishment and maintenance of the state’s education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.” Article 10, Section 2 of the Constitution defines the state’s public education system as “all public elementary and secondary schools and such other schools and programs as the Legislature may designate,” and further provides that

“[p]ublic elementary and secondary schools shall be free, except the Legislature may authorize the imposition of fees in the secondary schools.” And Article 10, Section 3 vests “general control and supervision of the public education system” in the State Board of Education.

4. Since 1895, the Constitution’s core education mandates have remained essentially unchanged: the State must provide education, and its education systems must be (1) free, (2) open to all students, and (3) controlled and supervised by the State Board of Education.

5. The Utah Constitution also safeguards public school funding by restricting the uses to which income tax revenue may be put. When Utah adopted its first income tax, voters opted to restrict use of income tax revenues primarily to public education. Those restrictions continue in modified form today in Article 13, Section 5(5) of the Constitution, which explicitly earmarks income tax revenue for three purposes: public K-12 education, public higher education, and social services.

6. The Voucher Program violates these constitutional requirements. It diverts income tax revenues to fund private schools that are (1) not free, (2) not open to all students, and (3) not controlled and supervised by the State Board of Education.

7. Virtually all students in Utah will be eligible to apply for a voucher under the Voucher Program. Given that reality and the manner in which the program is structured, it comes as no surprise that a prominent lobbyist for the Program said privately that it was intended to “destroy public education.”¹

¹ Cassidy Wixom, “Utah Lawmakers Denounce Comments Claiming They’re Trying to ‘Destroy Public Education,’” *Deseret News* (Jan. 24, 2023), <https://www.deseret.com/utah/2023/1/24/23568990/utah-lawmakers-denounce-claims-of-destroying-public-education> (citing statement of Utah Fits All Executive Director Allison Sorenson, <https://twitter.com/iamlisalogan/status/1617371111741874176>).

8. To prevent these violations of the Utah Constitution, Plaintiffs respectfully request that this Court enter an Order declaring the Voucher Program unconstitutional and permanently enjoining Defendants from enforcing or implementing the Voucher Program.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to Article 8, Section 5 of the Utah Constitution; Utah Code Ann. §§ 78A-5-102 and 78B-6-401; and Rules 57 and 65A of the Utah Rules of Civil Procedure.

10. Venue is proper in this Court because this cause of action arises in Salt Lake County. Utah Code Ann. § 78B-3-307 (renumbered July 1, 2024, at § 78B-3a-201).

11. This Court has personal jurisdiction over the Defendants, who are sued in their official capacities and whose offices are located in Salt Lake County.

THE PARTIES

Plaintiffs

12. Plaintiff Kevin Labresh is a Davis County resident, a taxpayer, and the parent of a minor child with a disability. His child attends a public school in Davis School District. Kevin's child has an Individualized Education Plan ("IEP") under the Individuals with Disabilities Education Act and receives special education services through his public school. In addition to being a public-school parent, Kevin is also a school psychologist who has worked in Davis School District for seven years.

13. Kevin chooses to send his child to public school to benefit from the support and protections that his child's IEP provides. Before beginning kindergarten in public school, Kevin's child was expelled from private preschool and daycare for behaviors related to his disability. Kevin opposes the Voucher Program due to the harmful impact it will have on his child. The Voucher

Program will harm students like Kevin's child because private schools receiving voucher funding can refuse admission to children with disabilities like Kevin's child and are not required to provide special education services or comply with IEPs.

14. At the same time, the Voucher Program will have a negative impact on funding at the public school where Kevin works, as well as the public school his child attends. As students leave Davis School District public schools using public funds provided through the Voucher Program, the public schools in that district will lose funding under the Weighted Pupil Unit funding formula, thereby resulting in fewer resources available to educate and support the students remaining in public schools like Kevin's child.

15. As both a public-school parent and a school psychologist, Kevin has seen the impact of inadequate funding for public schools, such as underfunded school-based mental health support, insufficient access to mental health services, and an insufficient number of school psychologists according to national recommendations, which will only be exacerbated by a further reduction in funding. Kevin believes that public funds should be used to support public schools that his child and all other Utah children can attend, and objects to the use of taxpayer money at exclusive private schools that can refuse admission to and discriminate against his child and that lack the same accountability, teacher licensure requirements, and curriculum standards required at public schools.

16. Kevin also objects to the unconstitutional delegation of this state's education obligations to a private program manager and other private entities that are not accountable to the public.

17. Plaintiff Terra Cooper is a Davis County resident, a taxpayer, and the parent of two minor children. Her children attend public school in Davis School District. One of Terra's children

has ADHD, and she receives services in her public school through a 504 Plan under Section 504 of the Rehabilitation Act.

18. Terra chooses to send her children to public school because of the resources available there, including the services available to her daughter under her 504 Plan. Terra opposes the Voucher Program due to the harmful impact it will have on her children. The Voucher Program will harm students like Terra's child because private schools receiving voucher funding can refuse admission to children with disabilities like Terra's daughter and are not required to provide special education services or comply with 504 Plans.

19. At the same time, the Voucher Program will have a negative impact on funding at the public schools Terra's children attend. As students leave Davis School District public schools using public funds provided through the Voucher Program, the public schools in that district will lose funding under the Weighted Pupil Unit funding formula, thereby resulting in fewer resources available to educate and support the students remaining in public schools like Terra's children.

20. As a parent of children in public schools, Terra has seen the impact of inadequate funding for public schools, such as access to mental health services and staffing, which will only be exacerbated by a further reduction in funding. Terra believes that public funds should be used to support public schools that her children and all other Utah children can attend, and objects to the use of taxpayer money at exclusive private schools that can refuse admission to and discriminate against her children and that lack the same accountability, teacher licensure requirements, and curriculum standards required at public schools.

21. Terra also objects to the unconstitutional delegation of this state's education obligations to a private program manager and other private entities that are not accountable to the public.

22. Plaintiff Amy Barton is a Utah resident and taxpayer. She lives in Washington County and has been a public school teacher for 27 years, with 20 years as a teacher in the Washington County School District public schools.

23. Amy opposes the Voucher Program due to the harmful impact it will have on the public school district in which she teaches and the resources available to her to fully support her students in meeting their potential. Amy believes that public education can be an equalizer and stepping stone for students. The Voucher Program will harm public schools and undermine the work of public school teachers like Amy by reducing funding for public schools. As students leave Washington County School District public schools using public funds provided through the Voucher Program, the public schools in that district will lose funding under the Weighted Pupil Unit funding formula, thereby resulting in fewer resources available to teachers like Amy to educate and support the students remaining in public schools.

24. As a long-time teacher in public schools, Amy has seen the impact of inadequate funding for public schools, such as her school's ability to hire necessary special education paraprofessionals, which will only be exacerbated by a further reduction in funding. As a taxpayer and educator, Amy believes that public funds should be used to support public schools and objects to the use of taxpayer money at private schools that can refuse admission to students and that lack the same accountability, teacher licensure requirements, and curriculum standards required at public schools.

25. Amy also objects to the unconstitutional delegation of this state's education obligations to a private program manager and other private entities that are not accountable to the public.

26. Plaintiff Carol Lear has served as an elected member of the Utah State Board of Education since 2016. As a Board member, she carries out her constitutional duties of “general control and supervision of the public education system.” Utah Const. art. X, § 3. Those duties include setting standards for public schools such as teacher licensure and graduation credits, which Board Member Lear believes are essential components to ensuring that every child receives a quality education.

27. Board Member Lear opposes the Voucher Program because it directly undermines her work as a Board member by publicly funding private schools that are not required to comply with the standards that the State Board sets for public schools and by delegating oversight authority that should belong to the State Board to a private entity that is not accountable to the public. Board Member Lear believes that students receiving a publicly funded education should benefit from instruction that complies with the standards and criteria developed by the State Board—the entity entrusted by and responsible to the public to oversee and supervise education funded by the public.

28. As a former public high school teacher, Board Member Lear also opposes the Voucher Program because it will divert public money to private schools that can discriminate against students on the basis of religion, disability status, disciplinary history, past academic performance, standardized test scores, gender identity, and sexual orientation and deny students with disabilities the services that are available in public schools. In addition, as students leave public schools using public funds provided through the Voucher Program, the public schools in that district will lose funding under the Weighted Pupil Unit funding formula, thereby resulting in fewer resources available to educate and support the students remaining in public schools and exacerbating existing underfunding problems at public schools.

29. Plaintiff Utah Education Association (“the UEA”) is a voluntary membership association organized under Section 501(c)(5) of the Internal Revenue Code. The UEA represents approximately 18,000 active classroom teachers, retired educators, administrators, licensed educational support personnel and students in education programs at universities. For more than a century, the UEA has been dedicated to preserving and enhancing Utah public education. As a result of that mission, the UEA has a direct interest in the funding and operation of public schools and opposes the use of public funds to benefit private schools that operate in a manner inconsistent with the promise of public education.

30. UEA opposes the Voucher Program due to the harmful impact it will have on the public schools in which their members work and the resources available to their members to carry out their duties as educators of Utah schoolchildren. The Voucher Program will harm public schools and undermine the work of UEA members by reducing funding for public schools. As students leave public school districts using public funds provided through the Voucher Program, the public schools in that district will lose funding under the Weighted Pupil Unit funding formula, thereby resulting in fewer resources available to UEA members to educate and support the students remaining in public schools. As classroom teachers, administrators, and educational support personnel in the public schools, UEA members experience directly the impact of inadequate funding for public schools, which will only be exacerbated by a further reduction in funding.

Defendants

31. Spencer J. Cox is the Governor of Utah. Governor Cox is named in his official capacity. Article VII, Section 5 of the Constitution provides that Governor Cox “shall see that the laws are faithfully executed” and “transact all executive business with the officers of the

government.” He supervises all executive officers, and ensures their duties are performed. Utah Code Ann. §§ 67-1-1(1)-(2),

32. Defendant Sean D. Reyes is the Attorney General of Utah. As the State’s chief legal officer, Utah Const. art. VII, § 16, Mr. Reyes has a “interest[. . . in sustaining the validity of enactments of the legislative branch of government.” *Parker v. Rampton*, 497 P.2d 848, 852 (Utah 1972). He is named in his official capacity. This Complaint also serves as notice of this declaratory judgment action as required by Utah Code Ann. §78B-6-403(3).

33. Defendant Alliance for Choice in Education, d/b/a ACE Scholarships, is a 501(c)(3) organization. ACE Scholarships was selected by the Utah State Board of Education as the private program manager for the Voucher Program and is tasked with administering the Voucher Program. Utah State Board of Education, *Agreements for Board Approval* (Nov. 2023), <https://www.utah.gov/pmn/files/1040571.pdf>.

FACTUAL ALLEGATIONS

The Voucher Program

34. On January 28, 2023, Governor Cox signed into law the bill creating the Voucher Program, titled “Funding for Teacher Salaries and Optional Education Opportunities.” 2023 Utah Laws Ch. 1, §§ 1-19. The law took effect on May 3, 2023. *Id.*

35. The law created the “Utah Fits All Scholarship Program,” a voucher program which allows eligible students to receive up to \$8,000² in state income tax funds to pay “qualifying providers” for private school tuition, homeschooling expenses, and other eligible education expenses, using “scholarship accounts” managed by a private “program manager” selected by the

² This amount will increase each year based on inflation. *See* Utah Code Ann. § 53F-6-402(2)(c).

State Board of Education. 2023 Utah Laws Ch. 1 §§ 1, 3-19, codified at Utah Code Ann. §§ 53F-6-401–15.

36. Applications for the Voucher Program opened on March 1, 2024, and the Voucher Program is scheduled to begin operating in the 2024-2025 school year.

37. The eligible expenses that will be paid through the Voucher Program using public funds are:

- a. Tuition and fees of a qualifying provider;
- b. Fees and instructional materials at a technical college;
- c. Tutoring services;
- d. Fees for after-school or summer education programs;
- e. Textbooks, curricula, and other instructional materials;
- f. Educational software and applications;
- g. Supplies or other equipment related to a scholarship student’s educational needs;
- h. Computer hardware or other technological devices intended primarily for a scholarship student’s educational needs;
- i. Fees for exams and exam preparation courses;
- j. Educational services for students with disabilities such as occupational, behavioral, physical, audiology, or speech-language therapies;
- k. Contracted services provided by a public school district such as individual classes, after-school tutoring services, transportation, or fees for extracurricular activities;
- l. Fees for transportation to and from a qualifying provider, not to exceed \$750 in a given school year;

m. Expenses related to extracurricular activities, field trips, educational supplements, and other educational experiences; and

n. Any other expense for a good or service that the program manager approves.

Utah Code Ann. § 53F-6-401(11).

38. Students who participate in the Voucher Program are barred from enrolling in public school. Utah Code Ann. § 53F-6-401(1)(c)(ii)(A). Moreover, of the expenses paid for through the Voucher Program, private school tuition is by the far the costliest, particularly given that most of the eligible services for which vouchers may be used would be provided for free at public schools.³ Thus, the majority of Voucher Program funds will be used to pay for eligible students to attend private schools.

39. With the exception only of students already participating in the State's two existing disability voucher programs or the Statewide Online Education Program, all students in Utah will be eligible to apply for the Voucher Program, including current private school and home-schooled students. Utah Code Ann. § 53F-6-401(1)(c).

40. A student may apply for a voucher if: (1) they are eligible to enroll in public schools at the K-12 level; (2) they are not receiving funding under either of the state's two disability voucher programs; (3) they are not enrolled in the Statewide Online Education Program; and (4) their parents agree to submit a "portfolio" each year "describing the scholarship student's educational opportunities and achievements under the program." Utah Code Ann. §§ 53F-6-401(1), 53F-6-402(3)(d)(i).

³ See Utah Code Ann. § 53F-6-401(8).

41. The Voucher Program gives enrollment priority to prior Program participants, followed by students from households with incomes below 200% of the federal poverty line, siblings of participating students, and students from households with incomes between 200% and 555% of the federal poverty line. Utah Code Ann. § 53F-6-402(6). Students must reapply to the Voucher Program annually.

42. The number of students participating in the Voucher Program each year is not capped and will be limited only by the level of funding the Legislature chooses to appropriate. *See* 2023 Utah Laws Ch. 1, § 19.

Administration of the Voucher Program by a Private “Program Manager”

43. Rather than delegating management of the Voucher Program to the State Board of Education or another governmental entity, the Legislature delegated day-to-day administration to a private entity it calls the “program manager.” Utah Code Ann. § 53F-6-405. The Voucher Program directs the State Board to submit a request for proposals and select one program manager to administer the Voucher Program by September 1, 2023. *Id.* at § 53F-6-404.

44. In November 2023, as required by law, the State Board selected ACE Scholarships as the program manager. Utah State Board of Education, *Utah Fits All Scholarship Program*, <https://schools.utah.gov/utahfitsallscholarship> (last visited May 24, 2024). The contract awards \$9,151,808.83 to ACE Scholarships for administering the program through June 30, 2028. Utah State Board of Education, *Agreements for Board Approval* (Nov. 2023), <https://www.utah.gov/pmn/files/1040571.pdf>.

45. The program manager is subject to minimal requirements: (1) it must be a 501(c)(3) nonprofit organization; (2) it must not be affiliated with any international organization, harvest data in order to distribute it to other entities or be involved in guiding any curriculum standards;

and (3) it must not manage either of the State’s two existing disability voucher programs. Utah Code Ann. § 53F-6-401(5). The Voucher Program does not require the program manager to have any prior experience administering education programs or any other public services.

46. The program manager is delegated the authority to manage every aspect of the Voucher Program, from maintaining an application website and student waitlist to suspending accounts in the event of intentional misuse of voucher funds. Utah Code Ann. § 53F-6-405. The program manager must also approve private schools and other educational service providers, known as qualifying providers, *Id.* at § 53F-6-401(8), and disburse payments to and process reimbursements from those providers. *Id.* at §§ 53F-6-405(1)-(3), 408-409.

47. The program manager is authorized but not required to withhold voucher funds from a qualifying provider that fails to comply with statutory requirements or no longer meets eligibility requirements. Utah Code Ann. §§ 53F-6-403(2)-(3).

48. The State Board’s role in the Voucher Program is largely limited to selecting the program manager and making sure its agreement with the program manager “ensures the efficiency and success” of the Voucher Program. Utah Code Ann. § 53F-6-404(c)(i). The State Board may not impose any requirements on the program manager that are “not essential to the basic administration of the program”—including, in particular, any requirements concerning instruction or curriculum. *Id.* at § 53F-6-404(1)(c), (8).

49. The Board is required to notify the program manager of any failure to comply with the statute, but it is not required to take any further action. Utah Code Ann. § 53F-6-404(3). Apart from that limited *ad hoc* review action, the Board has no authority over the operation of the Voucher Program itself. In fact, under amendments to the Voucher Program made in the most recent legislative session, authority over appeals from parents aggrieved by the program manager

was taken away from the Board and given to the program manager. 2024 Utah Laws H.B. 529, § 4 (amending Utah Code Ann. § 53F-6-404(7)).

Academic and Fiscal Oversight

50. The Voucher Program imposes minimal requirements on who may become a qualifying provider and receive public funds. Qualifying providers must be approved by the program manager and cannot be “a parent of a home-based scholarship student or a home school student solely in relation to the parent’s child.” Utah Code Ann. §§ 53F-6-401(8), 408, 409. The Voucher Program requires the program manager to reject applications from qualifying providers who do not meet certain bare minimum requirements, but otherwise it “shall” approve applications from providers. *Id.* at §§ 53F-6-408(9)(a), 409(4)(a).

51. With respect to non-school qualifying providers in particular, the statute directs the program manager to “maximize the number of eligible” entities without regard to the quality of service they provide. Utah Code Ann. § 53F-6-409(2).

52. The Voucher Program imposes no academic standards on qualifying providers that are accepted into the program. In fact, the statute establishing the Voucher Program contains an entire section exempting qualifying providers from regulation. These provisions promise qualifying providers “maximum freedom from unlawful government control.” Utah Code. Ann. § 53F-6-406(2).

53. The Voucher Program does not require qualifying providers to provide sound basic education, satisfy any academic standards, or prepare students for higher education or the workforce. They may instruct students in pseudoscience, conspiracy theories, or nothing at all.

54. Under the terms of the Voucher Program, participating private schools that enroll 150 or more students must disclose basic information to participating families about their programs

and costs, and some employees must submit to fingerprint-based background checks. Utah Code Ann. § 53F-6-408(1). But they are not required to disclose information that might help parents evaluate the quality of their services, such as rankings, ratings, accreditation history, or test scores.

55. Instead of requiring accountability from providers, the Voucher Program requires parents to assume the risk of evaluating educational quality provided under the Voucher Program. To receive a voucher, parents of eligible students must submit an application and sign an agreement certifying that the “qualifying provider” the parent has selected can meet the student’s educational needs, acknowledging that the student may not receive the same level of disability services in the voucher school that they might in a public school, recognizing that accepting the voucher has the same effect as refusing to consent to services under IDEA, and assuming full financial responsibility for the student’s education. Utah Code Ann. § 53F-6-402(4).

56. Unlike Utah public schools, which are open to all resident students, qualifying providers are permitted to refuse admission or continued enrollment to voucher students based on their identity, abilities, or educational record.

57. The Voucher Program’s provisions include a broad and explicit license to discriminate: a qualifying provider cannot be required to alter its “creed, practices, admissions policies, hiring practices, or curricula” as a condition of receiving public voucher funds. Utah Code Ann. § 53F-6-406(3). Qualifying providers must only refrain from discriminating on the basis of race, color, or national origin. *Id.* at § 53F-6-408(1)(b). They are not prohibited from discriminating on any other basis they choose, including religion, sex, age, marital status, disability, pregnancy, sexual orientation, gender identity, or political affiliation.

58. On information and belief, the majority of private schools in Utah eligible to participate in the Voucher Program are not open to all children and are selective in their admissions

and retention policies. As a result, at least some qualifying providers can and will refuse admission or continued enrollment to voucher students on various grounds, including but not limited to religion, sex, sexual orientation, gender identity, academic history, disciplinary history, and disability status.

59. The program manager has no incentive to ensure that qualifying providers offer value to students, because the program manager will be paid in proportion to the amount of voucher funds it distributes.

60. Fiscal accountability for voucher funds is minimal. Public schools are subject to extensive financial reporting requirements and must “use uniform budgeting, accounting, and auditing procedures and forms approved by the State Board of Education, which shall be in accordance with generally accepted accounting principles or auditing standards.” Utah Code Ann. §§ 53G-4-303(5).⁴ In contrast, qualifying providers are required to submit only the most cursory information to the private program manager:⁵

a. Qualifying providers receiving \$500,000 or more in Voucher Program funds per year must file a surety bond with the program manager in an amount equal to the total amount of scholarship funds the provider expects to receive in the upcoming school year. Utah Code. Ann. §§ 53F-6-403(1).

b. Participating private schools that enroll 150 or more students are required to have a certified public accountant create an audit report at the time the school first agrees

⁴ For a complete listing of these requirements *see* Utah State Board of Education, *Financial Operations: Reporting*, <https://www.schools.utah.gov/financialoperations/reporting> (last visited May 24, 2024).

⁵ Based on the allowable voucher amount of \$8,000 per student, a school could take more than 60 voucher students each year without meeting this requirement.

to receive voucher funds, which must show that the school has the funds to maintain operations for the first year of participation. Utah Code. Ann. § 53F-6-408(1). This audit report only needs to be submitted to the program manager, not the State Board. *Id.* And there is no requirement that the audit be repeated.

c. Private schools enrolling fewer than 150 voucher students are subject to only the most minimal requirements and must give the program manager only their employer identification number, address, and contact information, a description of the programs and services they propose to provide, and any other information requested by the program manager. Utah Code. Ann. §§ 53F-6-408(3), (5). Schools enrolling fewer than 150 voucher students are not required to demonstrate that they are solvent enough to survive for a year in order to participate in the Program.

61. The program manager is not required to independently verify these submissions or submit them to the State Board.

62. The program manager must contract for random, annual audits of voucher accounts by an independent certified public accountant, report on those audits to the State Board, and establish a process to suspend accounts in the event of intentional misuse of voucher funds. Utah Code Ann. §§ 53F-6-405(4)-(5), (8). But the Voucher Program does not specify how many accounts must be audited.

63. The Voucher Program also imposes no requirements to control costs for families participating in the Voucher Program or to ensure the State receives a good return on its investment of voucher funds. Unlike public schools, which are free, qualifying providers may charge participating students tuition and fees in excess of the voucher amount. And the Voucher Program does not bar qualifying providers from increasing tuition in response to inflows of funds from the

Voucher Program or from collecting higher tuition from Voucher Program participants than other students.

64. For the 2022-2023 school year, private school tuition in Utah cost upwards of \$10,000 on average.⁶ This estimate does not account for other “educational expenses” such as fees, required services, and materials that families must pay as a condition of admission. As such, on average families participating in the Voucher Program can expect to pay several thousands of dollars out-of-pocket for their child’s education on top of the amounts paid by the State.

Funding the Voucher Program with Income Tax Revenues

65. The Voucher Program is funded by diverting funds annually from the Income Tax Fund. 2023 Utah Laws Ch. 1, § 19 ¶ 1487. In 2023, the Legislature appropriated \$42.5 million from the Fund on an ongoing basis. *Id.* at § 19. The Legislature appropriated an additional \$40 million during the 2024 legislative session. 2024 Utah General Session, *Budget Summary*, <https://le.utah.gov/interim/2024/pdf/00001946.pdf>.

66. From the initial \$42.5 million appropriated, the State Board may give up to \$1 million to the program manager for start-up, marketing, and other costs associated with initiating the Voucher Program. 2023 Utah Laws Ch. 1, § 19 ¶¶ 1490-94.

67. In addition to one-time startup costs, each year the program manager may use the lesser of \$2.5 million or 5 percent of the funds appropriated for the Voucher Program. Utah Code Ann. § 53F-6-411(3)(a). This equates to \$2,125,000 during the 2024-25 school year. *See* 2023 Utah Laws Ch. 1, § 19.

⁶ *See* Private School Review, *Utah Private Schools by Tuition Cost*, <https://www.privateschoolreview.com/tuition-stats/utah> (last visited May 24, 2024).

68. The balance of the funds appropriated for the Voucher Program, approximately \$39,375,000 for the 2024-2025 school year, will flow directly from voucher accounts to private schools and other private educational service providers.

69. After accounting for the diversion of funds to the Program Manager, there will be enough funding for approximately 5,000 students to participate in the Program's first year.

The Passage of Amendment G

70. Before 2021, Article 13, Section 5(5) of the Utah Constitution provided that “All revenue from taxes on intangible property or from a tax on income shall be used to support the systems of public education and higher education as defined in Article X, Section 2.” Utah Const. art. XIII, § 5(5) (2020).

71. During the 2020 election, Utah voters approved Amendment G, which added Subsection (b) to Article 13, Section 5(5). Subsection (b) provides that income tax revenues may also be used “to support children and to support individuals with a disability.” Utah Const. art XIII, § 5(5)(b) (2021).

72. The ballot pamphlet presented to voters reflects the understanding that income tax revenues unlocked by Amendment G would be earmarked for public social services. The sponsors of the amendment, Senator Daniel McCay and Representative Mike Schultz, said the measure would account for the “increasing importance of physical and mental health for academic success.” They also assured voters that the measure would protect—not divert—public education funding.⁷

73. From the time Amendment G was pending in the Legislature to the time it was placed on the 2020 ballot, news reports, editorial comments, and public statements from the

⁷ Constitutional Amendment G at 2, <https://voteinfo.utah.gov/wp-content/uploads/sites/42/2020/10/Constitutional-Amendment-G.pdf>.

Amendment’s sponsors reflect that the Amendment would do two things: fund existing social services programs and allow additional funding to flow to public schools.⁸ For example, Senator McCay was quoted in the press saying that the purpose of Amendment G was to “focus on the whole kid,” and ensure that state policy reflects that mental health and other social services programs are part of a quality education.⁹ Similarly, the Utah PTA, which endorsed Amendment G, explained that “services for children and people with disabilities” meant funding Children’s Justice Centers, Child Protection Services, Juvenile Justice Services, Immediate Care Facilities for the Intellectually Disabled, Mental Health Centers and Substance Abuse Services.”¹⁰

74. Little if any discussion of Amendment G described it as a conduit to divert income tax revenue to a private school voucher program. Describing it that way would almost certainly

⁸ Marjorie Cortez, “Amendment G would ‘protect, stabilize’ education funding over the long term, backers say,” *Deseret News* (Oct. 12, 2020), <https://www.deseret.com/utah/2020/10/12/21513036/utah-amendment-g-protect-stabilize-education-funding>; Jon Reed, “A Deeper Dive Into Amendment G: What It Does And Who’s Behind It,” *KUER* (Oct. 26, 2020), <https://www.kuer.org/politics-government/2020-10-26/a-deeper-dive-into-amendment-g-what-it-does-and-whos-behind-it>. Chris Jones and Nadia Pflaum, “Amendment G could end decades of ‘sleight of hand’ regarding Utah budget process,” *KMYU* (Oct. 16, 2020) (claiming Amendment G “would add some social services to the list of items that could be drawn from the state’s income tax fund” in exchange for funding public school “enrollment growth and inflation before everything else in the state budget”), <https://kmyu.tv/news/local/amendment-g-could-end-decades-of-sleight-of-hand-regarding-utah-budget-process>.

⁹ Robert Gehrke, “What’s Amendment G on your ballot? It’s a legislative shell game involving education,” *Salt Lake Tribune* (Oct. 19, 2020), <https://www.sltrib.com/news/2020/10/19/robert-gehrke-whats/>.

¹⁰ Utah PTA, “Utah PTA supports 2020 General Election Constitutional Amendment G,” <https://www.utahpta.org/2020-constitutional-amendment-g> (last visited May 24, 2024).

have doomed the amendment, considering that in a 2007 public referendum, Utah voters vetoed a school voucher bill by a margin of 62% to 38%.¹¹

FIRST CLAIM FOR RELIEF
Violation of art. III, Ord. 4 and art. X, §§ 1, 2 of the
Utah Constitution: Free and Open Schools
(Declaratory and Injunctive Relief, against all Defendants)

75. Paragraphs 1-74 are incorporated here by reference.

76. Plaintiffs bring this claim against all Defendants for the purposes of seeking declaratory and injunctive relief.

77. Article 3, Ordinance 4 of the Utah Constitution declares that “[t]he Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be free and open to all the children of the State and be free from sectarian control.”

78. Article 10, Section 1 of the Utah Constitution restates the commitment announced in Article 3, specifying that “[t]he Legislature shall provide for the establishment and maintenance of the state’s education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.”

79. These provisions are “mandatory and prohibitory” and serve as “a prohibition against any law or rule which would separate or divide the children of the state into classes or groups, and grant, allow, or provide one group or class educational privileges or advantages denied another.” *Spackman ex rel. Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 2000 UT 87, ¶ 16, 16 P.3d 533 (citation omitted).

¹¹ Vote.Utah.Gov, *Historical Election Results* (2007), https://vote.utah.gov/wp-content/uploads/sites/42/2023/09/2007Muni_Special.pdf; “Utah School Vouchers, Referendum 1, 2007,” Ballotpedia, [https://ballotpedia.org/Utah_School_Vouchers,_Referendum_1_\(2007\)](https://ballotpedia.org/Utah_School_Vouchers,_Referendum_1_(2007)) (last visited May 24, 2024).

80. Article 10, Section 2 of the Utah Constitution defines the state’s public education system to include “all public elementary and secondary schools and such other schools and programs as the Legislature may designate.” Section 2 goes on to reinforce the state’s commitment to a free system of public education by providing that “[p]ublic elementary and secondary schools shall be free, except the Legislature may authorize the imposition of fees in the secondary schools.”

81. These constitutional mandates limit the Legislature’s discretion in fulfilling its educational obligations; for instance, it “cannot establish schools and programs that are not open to all the children of Utah or free from sectarian control, and it cannot establish public elementary and secondary schools that are not free of charge, for such would be a violation of articles III and X of the Utah Constitution.” *Utah Sch. Bds. Ass’n v. Utah State Bd. of Educ.*, 2001 UT 2, ¶ 14, 17 P.3d 1125.

82. The Voucher Program violates Article 3 and Article 10 by establishing a program within the public education system that is not free and is not “open to all the children of Utah,” *Id.* at ¶ 12, 17 P.3d 1125 (citation omitted).

83. The Utah Supreme Court has noted that the Constitution may restrict the Legislature either “expressly or by necessary implication.” *Univ. of Utah v. Bd. of Exam’rs of State of Utah*, 295 P.2d 348, 360 (Utah 1956).

84. The State cannot outsource its obligation to provide a free and open public education system. Nor can it circumvent or frustrate its core constitutional duty to ensure that state education programs are free of charge and open without discrimination to all students by funding private entities and licensing them to do indirectly what the State cannot do directly. *State v. Armstrong*, 53 P. 981, 983 (Utah 1898) (holding that enactments are unconstitutional where they attempt to “do indirectly that which could not be done directly.”).

85. For these reasons, the Voucher Program violates Article 3, Section 4 and Article 10, Sections 1 and 2 of the Utah Constitution.

SECOND CLAIM FOR RELIEF
Violation of art. XIII, § 5(5) of the Utah Constitution:
Use of Income Tax Revenues
(Declaratory and Injunctive Relief, against all Defendants)

86. The allegations in Paragraphs 1-74 are incorporated here by reference.

87. Plaintiffs bring this claim against all Defendants for the purposes of seeking declaratory and injunctive relief.

88. Article 13, Section 5, Paragraph 5 of the Utah Constitution declares that “[a]ll revenue from taxes on intangible property or from a tax on income shall be used: (a) to support the systems of public education and higher education as defined in Article X, Section 2; and (b) to support children and to support individuals with a disability.”

89. The Constitution “enshrines principles, not application of those principles,” and when constitutional language is amended, it is the understanding of the voters who enacted that amendment “that the amendment enshrines.” *State v. Barnett*, 2023 UT 20, ¶¶ 55-58, 537 P.3d 212 (internal quotation omitted). Thus, voter education materials and contemporaneous news coverage are essential in determining the original public meaning of Article 13, Section 5, Paragraph 5 as understood by the voters at the time of passage of Amendment G. *Id.* at ¶¶ 59-64, 537 P.3d 212.

90. The original public meaning of Article 13, Section 5, Paragraph 5 does not authorize the Legislature to divert income tax revenue from public schools into a system of vouchers to subsidize private school tuition and home-schooling expenses for children without disabilities. As shown by contemporaneous voter education materials and news coverage leading up to the 2020 election regarding Amendment G, the original public meaning of the language “to support children and to support individuals with a disability” is that income tax revenue may only

be used for public and higher education and public social services programs. *See supra* ¶¶ 72-74 (citing voter information pamphlet and media reports).

91. Because the Voucher Program diverts millions of dollars of income tax revenue to the private program manager, private schools, and other nonpublic educational service providers, the Voucher Program violates Article 13, Section 5, Paragraph 5 of the Utah Constitution.

THIRD CLAIM FOR RELIEF
Violation of art. X, §§ 2, 3 of the Utah Constitution:
Delegation of the State Board’s Authority
(Declaratory and Injunctive Relief,
against Governor Cox and Sean Reyes in their Official Capacities)

92. The allegations in Paragraphs 1-74 are incorporated here by reference.

93. Plaintiffs bring this claim against the Governor and Attorney General for purposes of seeking declaratory and injunctive relief.

94. Article 10, Section 3 of the Constitution declares that “[t]he general control and supervision of the public education system shall be vested in a State Board of Education.”

95. Article 10, Section 2 further declares that “the public education system” consists of “all public elementary and secondary schools and such other schools and programs as the Legislature may designate.”

96. Accordingly, “the State Board has been vested with the authority to direct and manage all aspects of the public education system in accordance with the laws made by the legislature. This must include not only the laws regarding the public elementary and secondary schools, but also the laws regarding any other schools and programs that the legislature designates as part of the public education system.” *Utah Sch. Bds. Ass’n*, 2001 UT 2, ¶ 22, 17 P.3d 1125.

97. For these reasons, the Voucher Program violates Article 10 by vesting control and supervision of a public education program in a private program manager and prohibiting the Board

from promulgating any rules concerning instructional content and curriculum in voucher-funded schools. Utah Code Ann. § 53F-6-404(c).

FOURTH CLAIM FOR RELIEF

**Violation of art. I, § 2 and art. VI, § 1 of the Utah Constitution:
Delegation of Constitutional Functions to Private Entities
(Declaratory and Injunctive Relief, against all Defendants)**

98. The allegations in Paragraphs 1-74 are incorporated here by reference.

99. Plaintiffs bring this claim against all Defendants for purposes of seeking declaratory and injunctive relief.

100. Article 1, Section 2 of the Utah Constitution declares that “[a]ll political power is inherent in the people” and the Utah Government is “founded on their authority for their equal protection and benefit.”

101. Article 6, Section 1, Paragraph 1 provides that “[t]he Legislative power of the State shall be vested in,” “a Senate and House of Representatives,” and “the people of the State of Utah.”

102. These provisions bar the state from allowing “private citizens with no responsibility to the public, to make binding determinations affecting the quantity, quality, and cost of an essential public service,” particularly where “the public interest is subjected to the interest of a group which may be antagonistic to the public interest.” *Salt Lake City v. Int’l Ass’n of Firefighters, Locs. 1645, 593, 1654 & 2064*, 563 P.2d 786, 789 (Utah 1977).

103. The Voucher Program violates these provisions by delegating an essential public service and one of the Legislature’s core constitutional functions—providing education—to private entities and exempting them from oversight over both fiscal management and the quality of educational services they provide. Utah Code Ann. § 53F-6-406.

ELECTION OF DISCOVERY TIER

Plaintiffs designate this case as a Tier 2 case as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure, as this action seeks non-monetary relief.

PRAYER FOR RELIEF

For the foregoing reasons, Plaintiffs request that this Court:

1. Declare that the Voucher Program violates the Utah Constitution;
2. Permanently enjoin Defendants and their officers, employees, servants, agents, appointees, or successors from implementing, administering, and enforcing the Voucher Program;
3. Waive any bond requirement for any injunction issued under Utah Rule of Civil Procedure 65(A)(c)(1);
4. Retain jurisdiction over this action to render any further orders that this Court may deem appropriate; and
5. Grant any further relief this Court deems necessary and proper.

DATED this 29th day of May, 2024.

**SCHOLNICK BIRCH
HALLAM HARSTAD THORNE**

/s/ Kass Harstad

Kass Harstad
One of the Attorneys for Plaintiffs