

IN THE SUPREME COURT, STATE OF WYOMING

STATE OF WYOMING,

Petitioner (Defendant),

v.

WYOMING EDUCATION ASSOCIATION,
a Wyoming Nonprofit Membership Corporation,

Respondent (Plaintiff),

and,

ALBANY COUNTY SCHOOL DISTRICT NUMBER
ONE, CAMPBELL COUNTY SCHOOL DISTRICT
NUMBER ONE, CARBON COUNTY SCHOOL
DISTRICT NUMBER ONE, LARAMIE COUNTY
SCHOOL DISTRICT NUMBER ONE, LINCOLN
COUNTY SCHOOL DISTRICT NUMBER ONE,
SWEETWATER COUNTY SCHOOL DISTRICT
NUMBER ONE, SWEETWATER COUNTY SCHOOL
DISTRICT NUMBER TWO, and UINTA COUNTY
SCHOOL DISTRICT NUMBER ONE,

Respondents (Intervening Plaintiffs).

No.

S-23-0180

IN THE SUPREME COURT
STATE OF WYOMING
FILED

AUG 14 2023

SHAWNA GOETZ, CLERK
Shawna Goetz
by CHIEF DEPUTY

PETITION FOR WRIT OF REVIEW

Mark Klaassen, #6-4511
Deputy Attorney General

Sean Towles, #7-5992
Senior Assistant Attorney General

Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
307-777-8935
sean.towles@wyo.gov

Timothy M. Stubson, #6-3233
Crowley Fleck PLLP
111 West Second Street, Ste. 220
Casper, WY 82601
(307) 265-2279
tstubson@crowleyfleck.com

**ATTORNEYS FOR PETITIONER
STATE OF WYOMING**

TABLE OF CONTENTS

I.	Nature of Review Desired and Relief Sought.....	1
II.	Statement of the Facts	2
III.	Question Presented.....	4
IV.	Applicable Principles of Law.....	4
V.	Why the Ends of Justice Require this Court’s Review	6
	A. An important state question or a matter of sufficient public significance is at issue.....	7
	B. No adequate alternative remedy is available.	8
	C. Timely resolution is of lasting importance to the citizens of Wyoming.....	8
	D. Review of the Order will contribute to judicial efficiency.	9
	E. This case presents issues that have not been addressed or require further clarification.	10
VI.	Certification that this Petition is Not Interposed for Purposes of Delay.....	11
	CERTIFICATE OF SERVICE	12
	Exhibit A – Order on Burden of Proof	
	Exhibit B – State’s Motion for Order on Burden of Proof with supporting memorandum	
	Exhibit C – Plaintiff Wyoming Education Association’s Response in Opposition to State’s Motion for Order on Burden of Proof	
	Exhibit D – School Districts’ Response to State’s Motion for Order on Burden of Proof with supporting memorandum	
	Exhibit E – State’s Reply in Support of Motion for Order on Burden of Proof	
	Exhibit F – Complaint filed by Plaintiff, Wyoming Education Association	
	Exhibit G – Complaint for Declaratory Judgment filed by Intervening Plaintiff School Districts	

Petitioner, State of Wyoming, through counsel, petitions this Court for a writ of review under Rule 13 of the Wyoming Rules of Appellate Procedure.

I. Nature of Review Desired and Relief Sought

The State seeks *de novo* review of a legal ruling contained in the *Order on Burden of Proof* (hereinafter “Order”) (Ex. A) entered by the District Court for the First Judicial District, Laramie County on July 28, 2023, in *Wyoming Education Association v. State*, Docket No. 2022-CV-200-788. The State respectfully requests this Court: (1) clarify its precedent regarding the circumstances in which strict scrutiny applies to constitutional challenges to education funding; and (2) hold that such a rigorous standard applies only in the equal protection context, not to claims of inadequate funding.¹

The Order states that strict scrutiny applies to any claims involving the fundamental right to education. This ruling is contrary to this Court’s most recent precedent in *Campbell IV*, which expressly differentiates between adequacy and equity claims and holds that strict scrutiny applies only to allegations of funding disparities that “invoke the equal protection provisions of our constitution.” ¶ 13, 181 P.3d at 50.

¹ The relevant precedent consists of the following cases: *Washakie Cnty. Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310 (Wyo. 1980); *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238 (Wyo. 1995) (*Campbell I*); *State v. Campbell Cnty. Sch. Dist.*, 2001 WY 19, 19 P.3d 518 (Wyo. 2001) (*Campbell II*); *State v. Campbell Cnty. Sch. Dist.*, 2001 WY 90, 32 P.3d 325 (Wyo. 2001) (*Campbell III*); *Campbell Cnty. Sch. Dist. v. State*, 2008 WY 2, 181 P.3d 43 (Wyo. 2008) (*Campbell IV*).

Through this Petition, the State requests this Court confirm this important distinction, and affirm the presumption of validity and the need for deference to legislative action in determining how much to spend on education. The significant legal and policy implications of misapplying strict scrutiny to adequacy claims, the foundational importance of this issue to this case, and the potential waste of judicial resources warrants immediate review.

II. Statement of the Facts

Plaintiff, the Wyoming Education Association (WEA) and Intervening Plaintiff school districts (collectively referred to as “Respondents”), have filed suit seeking a judgment declaring the current level of K-12 public education funding to be unconstitutional. (WEA Compl. at 9 [Ex. F]; Sch. Dists. Compl. at 2 [Ex. G]). The Respondents’ claims are largely the same. They allege the State is inadequately funding inflationary adjustments (referred to as “external cost adjustments”), salaries, and capital construction, and must increase or initiate spending for other components of the education program. (WEA Compl. at 9-40; 51-66; Sch. Dists. Compl. at 4-16).

The intervening school districts seek a declaration that the current funding is unconstitutional and demand the courts retain jurisdiction until “the legislature provides for a constitutionally-compliant school finance system[.]” (Sch. Dists. Compl. at 17). The WEA requests monetary relief requiring the State to provide additional funding to remedy alleged shortfalls. (WEA Compl. at 66-69).

In making these claims, the Respondents allege “the right to public education in Wyoming is a fundamental right and that violations of that right are subject to standards of strict scrutiny.” (WEA Compl. at 5-6; *see also* Sch. Dists. Compl. at 3). Respondents rely upon broad pronouncements from *Campbell II* in support of this assertion. *See* ¶ 42, 19 P.3d at 535.

At an initial scheduling conference, a dispute arose over the constitutional test and accompanying burden of proof. Respondents insisted that strict scrutiny applies to all claims involving the fundamental right to education, thus shifting the burden to the State. The State conceded that the right to education is fundamental, but argued that *Campbell IV* clarifies that not every challenge to education funding is subject to strict scrutiny, particularly where the claims involve the adequacy of funding rather than equitable allocation of that funding.

Recognizing the importance of resolving this issue before proceeding, the district court invited the parties to file a motion and submit memoranda outlining their respective legal arguments. (*See* Exs. B-E). After a hearing on the matter, the district court ruled that strict scrutiny applies to all claims. (Order, 8). In doing so, the court limited the holding of *Campbell IV* to its context, relying instead on earlier language from *Campbell II*. (Order, 6-8). The State seeks interlocutory review of the Order to ensure that the district court has accurately interpreted this Court’s precedent on a legal issue that is fundamental to the outcome of this case.

III. Question Presented

Whether strict scrutiny should apply to claims of inadequate education funding?

IV. Applicable Principles of Law

Legislative action is “presumed to be constitutional,” and any doubt will be resolved “in favor of constitutionality.” *Hardison v. State*, 2022 WY 45, ¶ 5, 507 P.3d 36, 39 (Wyo. 2022). The party challenging such action bears a “heavy” burden of proof and “must clearly and exactly show the unconstitutionality beyond any reasonable doubt.” *Id.* Plaintiffs are only relieved of this burden in specific, limited circumstances. One of those circumstances arises when state action is alleged to deny equal protection by infringing on a fundamental right. *Washakie*, 606 P.2d at 333. In such cases, the court applies a strict scrutiny test that removes the usual presumption of validity of state action and requires the State to prove that its action is necessary to achieve a compelling state interest and the least onerous means of doing so. *Id.*² “[T]he Wyoming constitution establishes education as a fundamental right.” *Campbell IV*, ¶ 11, 181 P.3d at 49. Equal protection claims involving the right to education are thus subject to strict scrutiny. *Id.*

Equal protection claims predominated as this Court reviewed challenges to the school finance system beginning in *Washakie* and through the first two *Campbell* cases that followed. *Washakie*, 606 P.2d at 315; *Campbell I*, 907 P.2d at 1263, 1266; *Campbell*

² This standard can also apply to alleged violations of substantive due process associated with a fundamental right. *See, e.g., Ailport v. Ailport*, 2022 WY 43, 507 P.3d 427 (Wyo. 2022). No such issue or claim is present in this case.

II, ¶¶ 42, 43, 45, 19 P.3d at 535-36. While the strict scrutiny test is designed to address the equal protection implications of the disparities at issue in those earlier cases, it remains unclear whether or how a court could logically apply such a test to evaluate challenges to the adequacy of funding the Legislature chooses to provide for education.

In contrast to the broad pronouncement of *Campbell II*, where lingering disparities led this Court to strictly scrutinize “all aspects of the school finance system,” ¶ 42, 19 P.3d at 535, *Campbell IV* goes out of its way to deny application of that same standard to challenges of adequacy, clarifying that “state action resulting in a wealth-based disparity ... will be subject to strict scrutiny[,]” but that application to claims of “inadequate funding ... is not supported by any authority and misconstrues the strict scrutiny test.” ¶¶ 11, 13, 181 P.3d at 49-50. This most recent holding marked an important shift, implicitly recognizing that the right to education encompasses two different, albeit related, rights that are subject to different levels of scrutiny.³

Campbell IV further emphasized the need for deference to legislative prerogatives in defining the education program and determining what level of funding to provide. *Campbell IV*, ¶ 15, 181 P.3d at 51 (“[W]e have consistently held that the constitution imposes on the *legislature* the obligation to determine the kind of education Wyoming’s

³ The right to an equitable education derives from the equal protection clause and the requirement that education be provided in a “uniform” manner. Wyo. Const. art. 1, § 34; art. 7, § 1. The right to an adequate education system is based on the requirement that education be “thorough” and “adequate”. *Id.* at art. 7, § 9.

children will be afforded.”) (*italics in original*). In recognition of the need for such restraint, this Court went on to establish a “good faith effort” standard for evaluating legislative enactments as to the adequacy of funding rather than the rigorous standard of strict scrutiny. *Id.*, ¶ 79, 181 P.3d at 67 (“While perfection is not required or expected, a good faith effort to preserve and protect our constitution’s commitment to a sound public education system is.”).

V. Why the Ends of Justice Require this Court’s Review

This Court may grant a writ of review where the issue raised “involves a controlling question of law as to which there are substantial bases for difference of opinion of which an immediate appeal from the order may materially advance resolution of the litigation.” Wyo. R. App. P. 13.02. The Order addresses a fundamental and controlling question of law as to the constitutional test the district court will apply in this case. This Court’s previous rulings, which are difficult to reconcile, create substantial bases for difference of opinion regarding this issue. *Compare Campbell II*, ¶ 42, 19 P.3d at 535 (“all aspects of the school finance system are subject to strict scrutiny”) *with Campbell IV*, ¶¶ 11, 13, 181 P.3d at 49-50 (“state action resulting in a wealth-based disparity ... will be subject to strict scrutiny” and applying the strict scrutiny standard to questions of “inadequate funding ... is not supported by any authority and misconstrues the strict scrutiny test”). An immediate review and ruling clarifying whether the strict scrutiny test applies to claims of inadequate education funding would resolve unsettled questions and not only benefit the litigants and district court in this case but provide further guidance for future cases involving school finance.

In applying Rule 13 to determine whether interlocutory review is appropriate, this Court has identified several factors to be considered. Review is appropriate when:

- [1] a case involves an important state question or is of sufficient public significance[;] ...
- [2] [no] adequate alternative remedy is available[;] ...
- [3] the timely resolution of a matter is of extreme and lasting importance to the citizens of Wyoming[;] ...
- [4] [review] may contribute to judicial efficiency[; and] ...
- [5] [the] case raises an issue that has not been addressed by this Court.

Grove v. Pfister, 2005 WY 51, ¶ 6, 110 P.3d 275, 278 (Wyo. 2005) (citation omitted and alterations added). Here, the Order presents each of the hallmarks of review as recognized by this Court:

A. An important state question or a matter of sufficient public significance is at issue.

This case involves a dispute over the right to education and the vast sums of taxpayer money appropriated toward that endeavor. The broad challenges to education funding in Respondents' complaints are matters of great public importance. *See Washakie*, 606 P.2d at 316. This case is not a routine civil action or private dispute between individuals. It involves a sweeping effort by several school districts and an association of education professionals to compel more education spending and override decisions of the elected representatives of the citizens of Wyoming. The constitutional test applied to these claims will substantially impact the outcome of a dispute that has ramifications for the entire State and the future of public education. The issue presented is therefore a matter of great public significance.

B. No adequate alternative remedy is available.

The Order is not otherwise immediately appealable. Under the Wyoming Rules of Appellate Procedure, an “appealable order” is “[a]n order affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment[.]” Wyo. R. App. P. 1.05(a). The Order does not determine the action, and with the case still pending it is not appealable except through a writ of review.

C. Timely resolution is of lasting importance to the citizens of Wyoming.

The question presented is of lasting legal importance, not only in this case but in any future case involving the right to education. The Order effectively ratifies Respondents’ argument that the courts in Wyoming are, upon filing of a lawsuit, empowered to second-guess and effectively dictate the amount of education spending by reviewing legislative spending decisions under the most exacting constitutional standard possible, regardless of the nature of the claims at issue. Such an approach is not only contrary to the important limitations expressed in *Campbell IV*, but threatens to embroil the courts in an unending stream of litigation over funding levels for years to come.

The citizens of Wyoming have an interest in seeing the laws enacted by their elected representatives implemented as written. In scrutinizing such laws, it is one thing for courts to vigorously promote equal protection and fairness among recipients of education funding, strictly scrutinizing state action to protect such interests even against the express will of the majority. It is quite another for judges to strictly scrutinize legislative policy choices about how much funding is enough. The first inquiry is squarely within the mandate of the

judiciary, while the second should be considered with more deference, as this Court recognized in *Campbell IV*. ¶¶ 15, 79, 181 P.3d at 51, 67.

D. Review of the Order will contribute to judicial efficiency.

Delaying a ruling on the constitutional test to apply to the claims in this case until an appeal following entry of a final judgment risks a tremendous waste of judicial resources. This case is currently scheduled for a five week bench trial preceded by months of discovery and preparation. Denying interlocutory review will force the parties to engage in that complex, lengthy, and costly litigation process under a potentially erroneous standard of constitutional scrutiny. Delaying review places the parties at risk of proving too little or being forced to prove too much under the disputed constitutional test. Such an approach undermines the parties' efforts to reasonably present their case with a clear understanding of their obligations, and may leave the district court managing the presentation and consideration of the evidence under a faulty assumption. Indeed, later clarification of the constitutional test may entirely shift the burden of proof and the manner in which the court evaluates the claims.

Reversal on appeal of a final judgment may also require remand for re-trial or the presentation of additional evidence, exacerbating costs to the litigants and the burden to the court. This Court can avoid such uncertainty and promote judicial economy by conclusively settling the issue through interlocutory review.

E. This case presents issues that have not been addressed or require further clarification.

The Order itself and the discussion it contains serve as evidence of the confusion that has arisen due to the apparently conflicting statements of *Campbell II* and *Campbell IV* regarding the constitutional test courts are to apply in this context. These issues have not been fully addressed and deserve further clarification.

The district court relied on *Campbell II*'s finding that “‘all aspects of the school finance system are subject to strict scrutiny,’” and ordered that the strict scrutiny test would apply to all questions in the case, including the adequacy of funding. (Order, 6-8 (quoting *Campbell II*, ¶ 42, 19 P.3d at 535)). In doing so, the court distinguished the conflicting holding of *Campbell IV* on the basis that “[t]he issues before the Court in *Campbell IV* were ‘factual’ and concerned the State’s compliance with the mandates of *Campbell II*.” (*Id.* at 7). While this is an accurate statement regarding the posture of the case and the continuing jurisdiction of the court in *Campbell IV*, the Order does not explain why such a posture makes a difference or would obviate the unqualified holding that “state action resulting in a wealth-based disparity ... will be subject to strict scrutiny” and that applying the strict scrutiny standard to questions of inadequate funding “is not supported by any authority and misconstrues the strict scrutiny test.” *Campbell IV*, ¶¶ 11, 13, 181 P.3d at 49-50. This holding represents an important distinction this Court went out of its way to articulate. The distinction is not expressly limited to the compliance review context.

This Court's holding in *Campbell IV* limited the application of strict scrutiny. If that ruling is to have lasting meaning, this Court should conclusively resolve the apparent tension between *Campbell II* and *Campbell IV* so that all parties have fair notice of the constitutional test to be applied to claims in this case.

VI. Certification that this Petition is Not Interposed for Purposes of Delay

By signing this Petition, counsel for the State of Wyoming certifies that this Petition is not interposed for purposes of delay.

DATED this 14th day of August, 2023.



Mark A. Klaassen, # 6-4511
Deputy Attorney General



Sean Towles, #7-5992
Senior Assistant Attorney General
Wyoming Attorney General's Office
109 State Capitol
Cheyenne, WY 82002
Telephone: (307) 777-8935
sean.towles@wyo.gov

Timothy M. Stubson, #6-3233
Crowley Fleck PLLP
111 West Second Street, Ste. 220
Casper, WY 82601
(307) 265-2279
tstubson@crowleyfleck.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Rule 13.04 of the Wyoming Rules of Appellate Procedure, the undersigned does certify that on the 14th day of August, 2023, a true and correct copy of the foregoing **Petition for Writ of Review** was served as indicated on the following:

Patrick E. Hacker (without attachments) [✓] Email
Gregory P. Hacker [✓] U.S. Mail
Erin M. Kendall
HACKER, HACKER & KENDALL, P.C.
2515 Pioneer Avenue
Cheyenne, WY 82001
phacker@hackerlaw.net
ghacker@hackerlaw.net
ekendall@hackerlaw.net

Richard D. Bush (without attachments) [✓] Email
Dami R. Metzler
COAL CREEK LAW, LLP
P.O. Box 467
Cheyenne, WY 82003-0467
rbush@hickeyevans.com
dmetzler@coalcreeklaw.com

O'Kelley H. Pearson (without attachments) [✓] Email
PARKER POE ADAMS & BERNSTEIN LLP
1075 Peachtree Street N.E., Ste. 1500
Atlanta, GA 30309
kelleypearson@parkerpoe.com

George E. Lemich (without attachments) [✓] Email
Kari Moneyhun
LEMICH LAW CENTER
205 C Street
Rock Springs, WY 82901
george@lemichlaw.com
kari@lemichlaw.com

Clerk of Court (without attachments)
First Judicial District
309 W. 20th Street
Cheyenne, WY 82001

[✓] Hand Delivery

Courtesy Copy (without attachments)
The Honorable Peter H. Froelicher
First Judicial District Court
309 W. 20th Street
Cheyenne, WY 82001

[✓] Hand Delivery



Sean Towles,
Senior Assistant Attorney General