

EXHIBIT A

**IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT**

District No. 1, Carbon County School District No. 1, Lincoln County School District No. 1, Sweetwater County School District No. 1, Sweetwater County School District No. 2, and Uinta County School District No. 1 (School Districts) filed their *Response to State's Motion for Order on Burden of Proof* (School Districts' Response) and *Memorandum of Points and Authorities in Support of Response to State's Motion for Order on Burden of Proof* (School Districts' Brief) on June 6, 2023. The State filed its *Reply in Support of Motion for Order on Burden of Proof* (State's Reply) on June 21, 2023. The Court held an in-person hearing on the Motion, State's Brief, WEA's Response, School Districts' Response and Brief, and State's Reply on July 5, 2023. The Court has reviewed the file, Motion, State's Brief, WEA's Response, School District's Response and Brief, State's Reply, arguments made at the hearing, and is fully informed in the premises. The Court orders as follows:

I. CLAIMS IN THE COMPLAINTS

WEA and School Districts claims are brought pursuant to the Wyoming Uniform Declaratory Judgement Act (the Act). WEA alleges the Wyoming Supreme Court gave the legislature two duties: every two years it must adjust the amount of funding to reflect the effects of inflation (called "external cost adjustment" or "ECA"), and every five years it must review the components of a quality education and update the funding model and its funding levels to reflect actual, current costs as well as to provide funding for any innovations or changes in the nature of what constitutes a quality education. WEA claims the legislature failed to comply with both duties, leaving education underfunded, which resulted in the funding model being unconstitutional. It claims the legislature has commissioned consultants to determine what the funding amount should be but has ignored the consultants' suggestions and has continued to fund education at the same amount. Under the Act, WEA seeks to have the legislature perform both duties.

School Districts make similar claims. School Districts allege the State has misapplied the ECA and its misapplication is causing significant harms to the fundamental constitutional right to education. School Districts allege the legislature is not adequately funding all essential aspects of a quality public education, including staff salaries, counseling services, nutrition and food services, and security services. School Districts also allege the State is not adequately funding and addressing the maintenance and remediation of school facilities. School Districts assert the inadequate funding is causing disparities in the education provided by various school districts and causes an inadequate and lower quality education for some students.

II. BURDEN OF PROOF

To a limited extent, the nature of a proven constitutional violation affects the burden of proof at trial. In most cases a plaintiff bears the burden of proving state action or inaction is unconstitutional. That rule, however, does not apply when the challenged state action involves a fundamental constitutional right or a suspect class. In that case, “[t]he strong presumptions in favor of constitutionality are inverted, the burden then is on the governmental entity to justify the validity of the [statute], and [the] Court has a duty to declare legislative enactments invalid if they transgress [a] constitutional provision.” *Hardison v. State*, 2022 WY 45, ¶ 5, 507 P.3d 36, 39 (Wyo. 2020). Therefore, the parties seek some guidance from the Court on the applicable burden of proof for the trial.

A party’s burden of proof includes both the burden of production and the burden of persuasion. The burden of production is “‘the burden of producing evidence or going forward with the evidence,’ and it ‘involves the obligation of a party to present, at the appropriate time, evidence of sufficient substance on the issue involved to permit the fact finder to act upon it.’” *Little v. State Dep’t of Workforce Servs., Workers’ Comp. Div.*, 2013 WY 100, ¶ 34, 308 P.3d 832, 842 (Wyo.

2013). In most civil cases, the burden of persuasion is by a preponderance of the evidence. The preponderance of the evidence standard is defined as “proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence.” *Scherling v. Kilgore*, 599 P.2d 1352, 1359 (Wyo. 1979). Generally, the party asserting the affirmative of any issue has the burden of proof. *In re General Adjudication of All Rights to Use Water in Big Horn River System*, 2002 WY 89, ¶ 51, 48 P.3d 1040, 1056-57 (Wyo. 2002) (quoting *Morrison v. Reilly*, 511 P.2d 970, 971 (Wyo. 1973)).

Although WEA and School Districts have alleged that State actions and inactions have violated the fundamental right to education, no proven facts have yet to establish the existence or nonexistence of harm to the fundamental right to education or the existence of disparities in education. The disparity and/or constitutional harm must be demonstrated. *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310, 327 (Wyo. 1980) (*Washakie*) (a disparity must be demonstrated); *State v. Campbell County School Dist.*, 2001 WY 19, ¶ 45, 19 P.3d 518, 536 (Wyo. 2001) (*Campbell II*) (strict scrutiny applies when a disparity is proven). The Court, therefore, concludes WEA and School Districts, as the plaintiffs, will have the burden of producing evidence and going forward to establish the facts showing any alleged constitutional violations. WEA and School Districts will also have the burden of persuasion as to any disputed issues of fact regarding the existence of a constitutional violation.

III. APPLICABLE CONSTITUTIONAL SCRUTINY

As reflected in the parties’ filings, the primary question before the Court in the Motion is what constitutional test or level of constitutional scrutiny will be applied by the Court to any of the proven constitutional harms: strict scrutiny or the rational relationship test. In applying strict scrutiny, the Court must determine whether the state action or inaction is necessary to serve a

compelling state interest. When strict scrutiny is applied, the State has the burden to show the harmful state action or inaction is necessary to serve a compelling state interest. In applying the rational basis test, the Court must determine whether the harmful state action or inaction has a rational relationship to a legitimate state interest. When rational basis scrutiny is applied, the party challenging the state action or inaction has the burden to show the action or inaction is not rationally related to a legitimate state interest. *Hardison*, 2022 WY 45, ¶ 6, 507 P.3d at 39.

Article 1, Section 23 of the Wyoming Constitution establishes education as a right for the citizens of Wyoming. Article 7 explains how education must be implemented and funded. “The legislature shall make such further provision by taxation or otherwise, as with the income arising from the general school fund will create and maintain a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state...” Wyo. Con. Art. 7, § 9.

A series of cases involving challenges to school finance provide significant guidance on the proper level of scrutiny. To begin, the Wyoming Supreme Court has held “education for children of Wyoming is a matter of fundamental interest.” *Washakie*, 606 P.2d at 333. Next, the Court has clearly explained the legislature’s constitutional duties to provide for public education:

We find the true focus of this case to be whether the legislature has complied with its constitutional duty to provide an equal opportunity for a quality education by structuring both school financing and the education system in a manner, and at a level, that maintains “a complete and uniform system of public instruction” and a “thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state.” WYO. CONST. ART. 7, §§ 1 and 9. This language identifies three “duties” borne by the legislature in order to meet its constitutional responsibility to provide this equal opportunity:

1. The “system of public instruction” must be “complete and uniform”;
2. The “system of public schools” must be “thorough and efficient”; and
3. The thorough and efficient system of public schools must be “adequate to the proper instruction” of the state’s youth.

Campbell County School District v. State, 907 P.2d 1238, 1263-64 (Wyo. 1995) (*Campbell I*).

As to the applicable constitutional scrutiny, the *Washakie* Court held “when a fundamental interest is affected or if a classification is inherently suspect, then the classification must be subjected to strict scrutiny to determine if it is necessary to achieve a compelling state interest” and “the state [must] establish that there is no less onerous alternative by which its objective may be achieved.” *Washakie*, 606 P.2d at 333. In *Campbell I*, the Court described the applicable constitutional scrutiny as follows:

We hold the district court erred in applying equitable allocation/rational scrutiny. Among other valuable lessons, *Washakie* teaches that this court will review any legislative school financing reform with strict scrutiny to determine whether the evil of financial disparity, from whatever unjustifiable cause, has been exorcized from the Wyoming educational system. *Washakie*, 606 P.2d at 335. The triggering issue in *Washakie* was wealth-based disparities; however, we now extend that decision beyond a wealth-based disparity to other types of causes of disparities.

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

907 P.2d at 1266-67. The Court further stated, “the strict scrutiny test applies to legislative action which affects a child’s right to a proper education.” *Id.* at 1267.

The Wyoming Supreme Court confirmed the application of strict scrutiny in the cases that followed. It held, “[b]ecause education is a fundamental right and our citizens are entitled to equal protection under our state constitution, all aspects of the school finance system are subject to strict scrutiny, and statutes establishing the school financing system are not entitled to any presumption of validity.” *Campbell II*, 2001 WY 19, ¶ 42, 19 P.3d at 535.

In the most recent school financing decision, the Wyoming Supreme Court made the

following observation:

The issue presented to the district court was whether or not the state's revisions and the recalibration reflected costs as closely as could reasonably be expected. If they did, then any differences in funding between school districts were not wealth-based and, therefore, did not invoke the equal protection provisions of our constitution. In this context, the strict scrutiny test, discussed above, is not in play. We simply review the district court's factual findings using the clearly erroneous standard. Some of the challengers seem to contend that strict scrutiny (used to determine if a classification denies equal protection of the law) should be applied to determine whether the modifications adopted by the state resulted in what the challengers deem to be inadequate funding for public education. This argument is not supported by any authority and misconstrues the strict scrutiny test.

Campbell County School Dist. v. State, 2008 WY 2, ¶ 13, 181 P.3d 43, 50 (Wyo. 2008) (*Campbell IV*). The State argues this language stands for the proposition that strict scrutiny does not apply to issues involving the adequacy of funding public education. This Court disagrees with the State's interpretation of the quoted language.

The issues before the Court in *Campbell IV* were "factual" and concerned the State's compliance with the mandates of *Campbell II*. *Id.* at ¶ 13, 181 P.3d at 50. The *Campbell IV* case was a continuation of the previous Campbell County cases for which the Supreme Court retained jurisdiction and after which it terminated its jurisdiction. *Id.* at ¶¶ 4, 138, 181 P.3d at 48, 84. This case presents a new challenge to the constitutionality of the school finance system and the constitutionality of the quality of the public education being provided as it exists now. In other words, the Wyoming Supreme Court's statement in *Campbell IV* that strict scrutiny was "not in play" was a product of the issues before that Court, which were primarily factual, and not because the Court overruled its prior holding that "the strict scrutiny test applies to legislative action which affects a child's right to a proper education." *Campbell I*, 907 P.2d at 1267. Whether the challenge to legislative action or inaction is based on disparities in funding, disparities in the quality of the education being provided, or the general inadequacy of the quality of education being provided

because of a lack of funding, strict scrutiny must be applied to any proven harm to or disparity in the fundamental right to education.¹ The *Campbell IV* Court confirmed that the legislature must “provide an education system of a character which provides Wyoming Students with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually” and “provide a thorough and uniform education of a quality that is both visionary and unsurpassed,” and that courts should “protect against a failure of the state to fund a system capable of meeting” that standard. *Campbell IV*, 2008 WY 2, ¶¶ 14-15, 181 P.3d 50-51.

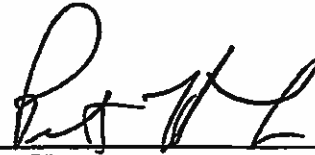
Therefore, this Court will apply strict scrutiny to proven legislative action or inaction which harms the fundamental right to a public education regardless of whether the harm is caused by disparities or is a harm to the constitutionally required quality or level of the education being provided.

IV. EXPERT DESIGNATIONS

The Court sees no reason to modify the expert designation deadlines provided in its May 11, 2023 Scheduling Order and Order Setting Bench Trial (Scheduling Order). Rule 26(a)(2)(D), W.R.C.P., gives the Court discretion to order the time and sequence of expert disclosures. This case is unique in that it involves potentially shifting burdens of persuasion depending upon the existence of constitutional harms. The Scheduling Order provides plaintiffs and defendant the opportunity to designate their affirmative experts and rebuttal experts. Therefore, the requests by plaintiffs and defendant to modify the expert designations set in the Scheduling Order are **DENIED**.

¹ The same strict scrutiny standard applies to substantive due process challenges where the state action affects a fundamental right. See, *Ailport v. Ailport*, 2022 WY 43, ¶ 7, 507 P.3d 427, 433 (Wyo. 2022); and *Michael v. Hertzler*, 900 P.2d 1144, 1146 (Wyo. 1995).

Dated this 28th day of July, 2023.



PETER H. FROELICHER
DISTRICT COURT JUDGE
First Judicial District Court

Please provide copies to:

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I hereby certify that I distributed a true and correct copy of the foregoing this 31 day of July 2023, as indicated. [M-mail; B-box in Clerk's Office, H-hand delivery; F-facsimile transmission.]


Deputy Clerk