

No. 20250512-SC

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**In the Supreme Court of the State of Utah**

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Derek Brown, Attorney General, et al.,

*Defendants-Petitioners,*

v.

Kevin Labresh, et al.,

*Plaintiffs-Respondents.*

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**BRIEF OF *AMICI CURIAE*  
THE NOTRE DAME LAW EDUCATION PROJECT AND  
UTAH EDUCATION FITS ALL  
IN SUPPORT OF APPELLANTS**

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## TABLE OF CONTENTS

Table of Authorities .....	ii
Interest of Amici Curiae .....	1
Background .....	1
Argument.....	3
I.    Private schools have long served the critical public function of educating and forming children to be productive citizens and members of their communities. ....	3
A.    Private schools have long been critical sources of education in America. ....	4
B.    Private schools prepare students to excel in and out of the classroom. ....	7
II.   Parental choice programs improve life outcomes for all students. ....	9
A.    Parental choice programs provide all students with high- quality options that will improve life outcomes. ....	10
B.    Parental choice enhances public school performance, improves public school student outcomes, and stewards tax dollars for the public good.....	14
Conclusion .....	18
Certificate of Compliance .....	19
Certificate of Service.....	20

## TABLE OF AUTHORITIES

### Cases

<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954).....	3
<i>Logan City Sch. Dist. v. Kowallis</i> , 77 P.2d 348 (Utah 1938).....	7, 10
<i>Sch. Dist. of Abington Twp., Pa. v. Schempp</i> , 374 U.S. 203 (1963).....	4

### Other Authorities

Anna J. Egalite et al., <i>A Profile of Applicants to North Carolina’s Opportunity Scholarship Program</i> (May 2019), <a href="https://bit.ly/4nCVR31">https://bit.ly/4nCVR31</a> .....	13
Archives West, <i>Rowland Hall St. Mark’s School Photograph Collection, 1890–2005</i> , <a href="https://bit.ly/43aNFzw">https://bit.ly/43aNFzw</a> . ....	5
<i>Can School Choice Help Students with Special Needs?</i> , EdChoice, <a href="https://bit.ly/4hMJVdG">https://bit.ly/4hMJVdG</a> . ....	14
Carmen Nesbitt, <i>Only a Third of Utah School Voucher Applicants Will Get One. Here’s What’s Next.</i> , Salt Lake Trib. (Apr. 23, 2024), <a href="https://bit.ly/437zpYh">https://bit.ly/437zpYh</a> .....	2
Corey A. DeAngelis, Cato Inst., <i>The Public Benefit of Private Schooling</i> (Jan. 22, 2018), <a href="https://bit.ly/48Yi1Ji">https://bit.ly/48Yi1Ji</a> . ....	8
Council For Am. Priv. Educ., <i>Private School Students More Likely to Be Ready for College</i> , CAPEoutlook (Nov. 2015), <a href="https://bit.ly/48YPDXw">https://bit.ly/48YPDXw</a> .....	8
Daion L. Daniels, Alison Heape Johnson, Joshua B. McGee & Patrick J. Wolf, <i>2024–25 Arkansas Education Freedom Accounts Program Annual Report</i> , Univ. of Ark. Dep’t of Educ. Reform (Oct. 2025), <a href="https://bit.ly/3WvJ3jM">https://bit.ly/3WvJ3jM</a> . ...	17
David Figlio, Cassandra M.D. Hart & Krzysztof Karbownik, <i>The Ripple Effect: How Private-School Choice Programs Boost Competition and Benefit Public-School Students</i> , Educ. Next (Oct. 26, 2022), <a href="https://bit.ly/4oJ8Wsd">https://bit.ly/4oJ8Wsd</a> . ....	14, 15, 16

Dick M. Carpenter II & Krista Kafer, <i>A History of Private School Choice</i> , 87 Peabody J. Educ. 336 (2012).....	4
Diocese of Salt Lake City, <i>Frequently Asked Questions</i> , <a href="https://bit.ly/4qy9L93">https://bit.ly/4qy9L93</a> .....	6
<i>Families Share Their Stories</i> , Utah Educ. Fits All, <a href="https://bit.ly/3WzHVLW">https://bit.ly/3WzHVLW</a> ..	3
<i>FAQs</i> , Utah Educ. Fits All, <a href="https://bit.ly/3X5Bj8a">https://bit.ly/3X5Bj8a</a> . ....	2
<i>Florida’s Private School Education Savings Accounts</i> , Step Up for Students, <a href="https://bit.ly/3JDjx9c">https://bit.ly/3JDjx9c</a> .....	13
Frederick S. Buchanan, <i>Education in Utah</i> , Utah Hist. Encyclopedia (1994), <a href="https://bit.ly/493NE4h">https://bit.ly/493NE4h</a> . ....	5
Greg Forster, <i>A Win-Win Solution: The Empirical Evidence on School Choice</i> (May 2016), <a href="https://bit.ly/39ufbiD">https://bit.ly/39ufbiD</a> . ....	8, 9
James B. Crosby, <i>Wasatch Academy</i> , Utah Hist. Encyclopedia (1994), <a href="https://bit.ly/47TaUAH">https://bit.ly/47TaUAH</a> . ....	5
Jenna Bree, <i>Utah Fits All Scholarships Awarded to 10,000 Families</i> , FOX 13 News Utah (May 3, 2024, at 23:04 MT), <a href="https://bit.ly/47ln7hB">https://bit.ly/47ln7hB</a> . ....	2, 13
Margaret F. Brinig & Nicole Stelle Garnett, <i>Lost Classroom, Lost Community</i> (2014). ....	9
Martin F. Lueken. <i>Fiscal Effects of School Choice</i> , EdChoice (Oct. 15, 2024), <a href="https://bit.ly/47kjBE1">https://bit.ly/47kjBE1</a> .....	16
Matthew M. Chingos et al., <i>The Effects of Means-Tested Private School Choice</i> <i>Programs on College Enrollment and Graduation</i> (Urb. Inst. 2019). ....	11
Matthew M. Chingos, David N. Figlio, Krzysztof Karbownik, <i>The Effects of</i> <i>Ohio’s EdChoice Voucher Program on College Enrollment and Graduation</i> (Urb. Inst. 2025). ....	15
Michael W. McConnell, <i>Scalia and the Secret History of School Choice</i> , in <i>Scalia’s Constitution</i> (Peterson & McConnell, eds., 2018).....	4
Miriam B. Murphy, <i>Arrival of the Episcopal Church in Utah, 1867</i> , History To Go: History Blazer (Oct. 1995), <a href="https://bit.ly/4oDdZet">https://bit.ly/4oDdZet</a> .....	5

Nat'l Ctr. for Educ. Stat., <i>Utah</i> , Digest of Educ. Stat., <a href="https://bit.ly/4okEgxX">https://bit.ly/4okEgxX</a> .	7
Nat'l Ctr. for Educ. Stats., <i>Private Schools: A Brief Portrait</i> (2002), <a href="https://bit.ly/3McPSil">https://bit.ly/3McPSil</a> .	7
Nat'l Ctr. For Educ. Stats., <i>Table 205.10: Private Elementary &amp; Secondary School Enrollment</i> (Oct. 2021), <a href="https://bit.ly/3wCDmDp">https://bit.ly/3wCDmDp</a> .	6
Nicole Stelle Garnett, <i>Accountability and Private School Choice</i> (Manhattan Inst. 2021).	12
Nicole Stelle Garnett, <i>Post-Accountability Accountability</i> , 52 U. Mich. J. L. Reform 157 (2018).	8, 9
Order Granting Summary Judgment, <i>Labresh v. Cox</i> , No. 240904193, 6 (Utah Dist. Ct. Apr. 18, 2025).	9, 10
Renée Pinkney, <i>UEA Sues State of Utah for Unconstitutional Voucher Program</i> , Utah Educ. Ass'n (May 29, 2024), <a href="https://bit.ly/47nX8Gk">https://bit.ly/47nX8Gk</a> .	12, 14, 16
Robert Pondiscio, <i>Families Aren't Waiting for Schools to be Fixed</i> , AEI Blog (Oct. 9, 2025), <a href="https://bit.ly/47FuFe1">https://bit.ly/47FuFe1</a> .	12
Salt Lake Trib., <i>Commentary, Utah's Catholic Schools Have Been Educating Kids for 150 Years</i> (Aug. 3, 2025), <a href="https://bit.ly/3WAzy2H">https://bit.ly/3WAzy2H</a> .	6
Stéphane Lavertu & John J. Gregg, <i>The Ohio EdChoice Program's Impact on School District Enrollments, Finances, and Academics</i> , Thomas B. Fordham Inst. (2022).	15
<i>The 123s of School Choice</i> , EdChoice (2024), <a href="https://bit.ly/3WwppUP">https://bit.ly/3WwppUP</a> .	11, 13
The Church Of Jesus Christ Of Latter-Day Saints, <i>Church Academies</i> , <a href="https://bit.ly/4olUiaM">https://bit.ly/4olUiaM</a> .	6
<i>Utah Education Fits All Responds to Court Allowing Utah Fits All Program to Continue Uninterrupted</i> , Utah Educ. Fits All (Apr. 23, 2025), <a href="https://bit.ly/3JGfj0D">https://bit.ly/3JGfj0D</a> .	7
<i>Utah Fits All Scholarship Program</i> , Utah State Bd. of Educ., <a href="https://bit.ly/43Iquwv">https://bit.ly/43Iquwv</a> .	2

## **Constitutional Provisions**

Utah Const. art. XIII, § 5.....	10
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## **INTEREST OF AMICI CURIAE<sup>1</sup>**

The Notre Dame Education Law Project seeks to enhance civil society, promote educational opportunity, and protect religious liberty by supporting educational pluralism through research, scholarship, and legal advocacy. The Education Law Project's work focuses in particular on parental choice and faith-based schools, both domestically and abroad.<sup>2</sup>

Utah Education Fits All (UEFA) is a grassroots, non-profit organization that champions universal educational choice for Utah families. UEFA empowers over 23,000 families, representing more than 50,000 children, to choose the path that best fits their children's unique needs, regardless of zip code or economic background. UEFA cultivates a statewide network through community events and provider partnerships, communicates vital program information, and advocates to safeguard the Utah Fits All Scholarship.

## **BACKGROUND**

The Utah Legislature created the Utah Fits All Scholarship Program in 2023 under HB 215 and structured it as a universal education savings account

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<sup>1</sup> In accordance with Utah R. App. P. 25(a), (b)(2), and (e)(4)–(6), all parties have consented to the filing of this amicus brief, and counsel for all parties received timely notice. No party or party's counsel authored or funded this brief, and no person other than amicus, its members, or its counsel funded it.

<sup>2</sup> The views expressed in this brief do not necessarily reflect those of the University of Notre Dame or Notre Dame Law School.

(ESA) for K-12 students residing in Utah. *Utah Fits All Scholarship Program*, Utah State Bd. of Educ., <https://bit.ly/43Iquwv>. It is open to all K–12 students in Utah—regardless of income or zip code—limited only by available funds. *FAQs*, Utah Educ. Fits All, <https://bit.ly/3X5Bj8a>. To participate, families apply for a scholarship that can be used toward approved educational expenses, including private school tuition, tutoring, curriculum materials, and other personalized learning services. *Id.* Each participating student is eligible for approximately \$8,000 per year, drawn from a capped state appropriation. *Id.* Student recipients are selected from the application process in order of household income level, beginning with those below 300% of the poverty level and working upward. *Id.*

Demand for the program is far outpacing both expectations and appropriations. When the application portal closed for the inaugural year, nearly 16,000 applications—representing over 27,000 students—had been submitted. Carmen Nesbitt, *Only a Third of Utah School Voucher Applicants Will Get One. Here's What's Next.*, Salt Lake Trib. (Apr. 23, 2024), <https://bit.ly/437zpYh>. In the first awarding round, almost all of the 10,000 scholarships awarded (~9,890) went to students in the lowest-income priority tier. Jenna Bree, *Utah Fits All Scholarships Awarded to 10,000 Families*, FOX 13 News Utah (May 3, 2024, at 23:04 MT), <https://bit.ly/47ln7hB>. Now that the program is operating and serving 10,000 families, the positive feedback has



been overwhelming. *See* Utah Educ. Fits All, <https://bit.ly/3WzHVLW>. During the current school year, over 23,000 students applied for, and over 14,000 were awarded, scholarships. And many more hopefuls await the opportunity to take advantage of the scholarships and the educational pluralism it provides. *Id.*

## ARGUMENT

### **I. Private schools have long served the critical public function of educating and forming children to be productive citizens and members of their communities.**

No one doubts the significant public interest in K-12 education. *Brown v. Board of Education*, 347 U.S. 483, 493 (1954) (“[E]ducation is perhaps the most important function of state and local governments.”). And, for centuries, the critical responsibility for educating young people has been borne in significant part by private schools. Indeed, for many decades, private schools were essentially the *only* source of childhood education in the United States. It is a role those schools served—and continue to serve—well. While in Utah, as elsewhere, public schools are the cornerstone of policies that promote the goal of K-12 education, private schools also have a long record of advancing that goal. The Utah Fits All Scholarship Program appropriately serves the public interest in K-12 education by expanding the menu of the publicly funded educational options available to families to include private schools and other private education services, while at the same time preserving and respecting the core role of public schools in the state’s K-12 educational system.

**A. Private schools have long been critical sources of education in America.**

Any suggestion that only state-run schools can serve the public's interest in ensuring widespread K-12 education ignores the reality of elementary and secondary education in both Utah and the United States. In our Nation's early years, if children were to be formally educated at all it was typically to be in a private school. See Michael W. McConnell, *Scalia and the Secret History of School Choice*, in *Scalia's Constitution* 72–73 (Peterson & McConnell, eds., 2018). Well into the nineteenth century, American “education was almost without exception under private sponsorship and supervision.” *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 239 n.7 (1963) (Brennan, J., concurring). Today's public-school system is the outgrowth of the common-school movement of the mid-nineteenth century. Before then, nearly all schools were privately operated, often by religious organizations, even when funded by public money. See McConnell, *supra*, at 72–74. And, “[a]s a result of this diverse system of [private] schooling [in the United States], the young nation enjoyed a high rate of literacy; by 1840, for example, 90% of northerners and 81% of southerners were literate.” Dick M. Carpenter II & Krista Kafer, *A History of Private School Choice*, 87 *Peabody J. Educ.* 336, 337 (2012).

Private schools have long been indispensable to Utah's educational landscape as well. Beginning in 1867, mission boards established around one hundred private schools to serve Utah's growing non-LDS population, institutions that proved essential in "serv[ing] as models for public schools and for the professionalization of teaching." Frederick S. Buchanan, *Education in Utah*, Utah Hist. Encyclopedia (1994), <https://bit.ly/493NE4h>. Further, denominational diversity drove educational innovation in four distinct ways. First, Daniel S. Tuttle, Utah's first Episcopal Bishop, established St. Mark's Grammar School and opened the first non-LDS day school in Utah in 1867. Miriam B. Murphy, *Arrival of the Episcopal Church in Utah, 1867*, History To Go: History Blazer (Oct. 1995), <https://bit.ly/4oDdZet>. The Episcopal Church subsequently expanded its educational mission in 1890 by founding Rowland Hall, a boarding school for girls. Archives West, *Rowland Hall St. Mark's School Photograph Collection, 1890–2005*, <https://bit.ly/43aNFzw>. Second, Presbyterian educational efforts likewise took firm root in Utah. Most notably, Duncan McMillan, a young Presbyterian minister, founded Wasatch Academy in 1875. James B. Crosby, *Wasatch Academy*, Utah Hist. Encyclopedia (1994), <https://bit.ly/47TaUAH>. Third, Catholic education likewise was established in 1875 when Father Lawrence Scanlan sought assistance in educating approximately 800 Catholics scattered across the Utah Territory. Salt Lake Trib., *Commentary, Utah's Catholic Schools Have Been Educating Kids for 150*

*Years* (Aug. 3, 2025), <https://bit.ly/3WAzy2H>. Sisters Raymond Sullivan and Augusta Anderson answered this call: the two arrived in Salt Lake City on June 6, 1875, and within months established St. Mary’s Academy for girls. *Id.* These foundations grew into a robust network of Catholic schools serving students of all faith traditions across the state. See Diocese of Salt Lake City, *Frequently Asked Questions*, <https://bit.ly/4qy9L93>. Finally, The Church of Jesus Christ of Latter-day Saints contributed to Utah’s educational landscape in the absence of public high schools. The Church “operated three dozen secondary schools called academies” between the 1870s and 1930s, closing or selling most of them as public high schools expanded. The Church Of Jesus Christ Of Latter-Day Saints, *Church Academies*, <https://bit.ly/4olUiaM>.

This rich tapestry of educational institutions demonstrates that private schools have fostered educational pluralism in Utah for over 150 years. These diverse institutions welcomed students across denominational lines, creating a tradition of genuine educational choice.

Today, private schools continue to perform the critical task of educating children in the United States and Utah. Nationally, private schools educate more than 5 million pre-K–12 students a year. Nat’l Ctr. For Educ. Stats., *Table 205.10: Private Elementary & Secondary School Enrollment* (Oct. 2021), <https://bit.ly/3wCDmDp>. In Utah, a dedicated network of 160 private schools educates 19,330 students each year. Nat’l Ctr. for Educ. Stat., *Utah*, Digest of

Educ. Stat., <https://bit.ly/4okEgxX>. Over 10,000 of those students are served by the Utah Fits All Scholarship program. *Utah Education Fits All Responds to Court Allowing Utah Fits All Program to Continue Uninterrupted*, Utah Educ. Fits All (Apr. 23, 2025), <https://bit.ly/3JGfj0D>. No one can seriously dispute that Utah’s children would suffer—and along with them, the public’s vital interest in education—if it were not for the efforts of these private schools and the scholarship program supporting so many of them.

**B. Private schools prepare students to excel in and out of the classroom.**

Private schools excel at the critical work of educating children. This Court stated that the state’s education system “from the first settlements to the very latest enactments, shows a devotion to the ideal of intellectual development.” *Logan City Sch. Dist. v. Kowallis*, 77 P.2d 348, 353 (Utah 1938). Private school students receive an education that serves this goal.

First, private schools boast an impressive record of academic success. These schools often have demanding academic requirements and “private school students generally perform higher than their public-school counterparts on standardized achievement tests.” Nat’l Ctr. for Educ. Stats., *Private Schools: A Brief Portrait* (2002), <https://bit.ly/3McPSil>. For example, a study of nearly two million high-school students who took the ACT in 2015 found that “[i]n every racial and ethnic subgroup, ACT-tested students in private schools

outscored their public school counterparts.” Council For Am. Priv. Educ., *Private School Students More Likely to Be Ready for College*, CAPEoutlook (Nov. 2015), <https://bit.ly/48YPDXw>. A recent study of education across more than 50 countries likewise found that, as the proportion of students enrolled in private schools increases, so does student performance in math, reading, and science; the author estimates that even a 10% increase in private-school enrollment would significantly increase the United States’ standardized test scores and international ranking in student achievement. See Corey A. DeAngelis, Cato Inst., *The Public Benefit of Private Schooling* 7–10 (Jan. 22, 2018), <https://bit.ly/48Yi1Ji>. And the vast majority of empirical research on private school choice programs has found that such programs “improve[] academic outcomes.” Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Choice* 1 (May 2016), <https://bit.ly/39ufbiD>. These studies show that parental choice leads to both “modest positive effects on academic performance over time” and “more-significant longer-term effects on noncognitive variables, including high school graduation rates [and] college matriculation and persistence.” Nicole Stelle Garnett, *Post-Accountability Accountability*, 52 U. Mich. J. L. Reform 157, 175 (2018).

But the benefits of private schools, and therefore the promise of expanding access to them through parental choice, extend beyond academics. As previously noted, this Court has held that the education system is devoted

to intellectual development. *See Logan City Sch. Dist*, 77 P.2d at 353. Real-world experience shows that private schools do just that. Studies have shown that, overall, private schools and especially faith-based schools “do a better job of preparing students to be engaged members of a diverse, democratic society.” Margaret F. Brinig & Nicole Stelle Garnett, *Lost Classroom, Lost Community* 144 (2014). Students who attend private schools are “significantly more likely to engage in community service . . . , [are] more likely to learn civic skills in school, [are] better informed about the political process, and [are], on average, more politically tolerant than students in public schools.” *Id.* And even “spending one year in a private school led to a considerable increase in a student’s political tolerance and political knowledge.” *Id.* at 145. Correspondingly, studies have shown that private-school-choice programs “improve[] civic values and practices,” including students’ “respect for the rights of others.” Forster, *supra*, at 1–2; *see also* Garnett, *Post-Accountability*, *supra*, at 175 (school-choice programs lead to “a reduced likelihood of involvement in the criminal justice system”).

## **II. Parental choice programs improve life outcomes for all students.**

The parties to this case and the court below agree: Providing for the education of Utah’s youth is one of the legislature’s “core constitutional functions.” Order Granting Summary Judgment, *Labresh v. Cox*, No. 240904193, 6 (Utah Dist. Ct. Apr. 18, 2025). Appellees allege that Utah Fits

All Scholarship program undermines this obligation. *See id.* This allegation is incorrect. As demonstrated above, private schools contribute to the state’s interest in ensuring that all Utah students have access to a high-quality education that serves their unique learning needs. And the available evidence makes clear that publicly funded parental choice programs like Utah Fits All play a critical role in this mission as well. Empirical research, which spans decades, demonstrates that parental choice programs both (1) improve the educational—and life—outcomes of participating students, including those from traditionally marginalized backgrounds, and (2) improve public-school performance through competition. The legislation challenged here does not, as appellees contend, present the Court with an “either-or” decision between private and public schools, but a “both-and” opportunity to endorse the Legislature’s decision to increase educational opportunities for Utah children at both public and private schools.

**A. Parental choice programs provide all students with high-quality options that will improve life outcomes.**

The Utah Constitution imposes on the legislature a firm duty “to support children and to support individuals with a disability.” Utah Const. art. XIII, § 5. This is because “the ideal of intellectual development” is not intended to be an abstract mission statement, but a concrete reality. *See Logan City Sch. Dist.*, 77 P.2d at 353. An education prepares students to contribute to their



families, their communities, and the state in which they live. Simply put, an education is valuable because, when done properly, it leads to a good life. If the state does not avail itself of the very best means to educate its students, the entire community suffers.

Studies of existing parental choice programs consistently conclude that participating in parental choice programs has a positive effect on rates of high school graduation, college enrollment, and college completion. *See The 123s of School Choice*, EdChoice, 15–16 (2024), <https://bit.ly/3WwppUP>. Almost all studies find that parental choice positively impacts student academic performance (as measured by standardized tests), but even those few studies where the measured impact has not been meaningfully positive do not find negative effects. *See, e.g., id.* at 6–7; Matthew M. Chingos et al., *The Effects of Means-Tested Private School Choice Programs on College Enrollment and Graduation* (Urb. Inst. 2019).

Of course, measuring an education’s value solely by student test performance is disconnected from what most parents actually value most. “[W]hile parents clearly value academic performance, it is not the only factor influencing their decisions to choose a school for their children. . . . Studies suggest that only a minority of parents rank test scores as the most important predictor of school quality.” Nicole Stelle Garnett, *Accountability and Private School Choice*, 11–12 (Manhattan Inst. 2021),

bit.ly/4nFGO8G. Rather, the educational pluralism provided by parental choice has a deeply personal value, particularly for disadvantaged students and students with special learning needs.

The Utah Education Association president recently stated that schools need “smaller class sizes,” and “enhanced resources to adequately address the mental health of our students and the current educator shortage.” Renée Pinkney, *UEA Sues State of Utah for Unconstitutional Voucher Program*, Utah Educ. Ass’n (May 29, 2024), <https://bit.ly/47nX8Gk>. Those are characteristics that readily describe private education providers, accessible through school-choice programs like Utah Fits All. With respect to class size, in states with similar programs, “[a]s families commit [to school choice], providers are multiplying.” Robert Pondiscio, *Families Aren’t Waiting for Schools to be Fixed*, AEI Blog (Oct. 9, 2025), <https://bit.ly/47FuFe1>. And, as providers continue to grow in number, so too will the opportunity for individualized student attention. This is “the larger dynamic” of choice availability: that “new and durable funding streams invite new entrants: low-cost private schools, microschools, hybrids—much as the charter movement did a generation ago.” *Id.*

Parental choice also provides critical educational opportunities for students from disadvantaged backgrounds. One of the most salient benefits of parental choice programs is the access it provides to high quality educational

options for low-income and traditionally underserved families. Detractors falsely allege that parental choice programs disproportionately benefit wealthier families. This is not true, in Utah or elsewhere. Parental choice programs like UFA primarily provide a means to reverse the “sorting across schools by family income level” that correlated with the rise of the “public education system in the U.S.” *The 123s of School Choice*, EdChoice, 54 (2024), <https://bit.ly/3WwppUP>. In Utah all but 110 of the first round of 10,000 UFA scholarships distributed were awarded to students in the lowest income tier. Bree, *supra*. The same is true in other states. For example, in Florida, over 120,000 of the 300,000 students participating in the state’s education savings account program qualify for the Federal Free or Reduced-Price Lunch Program. *Florida’s Private School Education Savings Accounts*, Step Up for Students, <https://bit.ly/3JDjx9c> In North Carolina, “[f]amilies that receive vouchers are among the lowest-income households in the state.” Anna J. Egalite et al., *A Profile of Applicants to North Carolina’s Opportunity Scholarship Program* 1 (May 2019), <https://bit.ly/4nCVR31>. Wide and persistent participation in school-choice programs has helped bridge the opportunity gap that traditional solutions seemed unable to traverse.

Finally, parental choice programs lower barriers for families looking to access specialized services for children with unique learning needs. A study surveying parents of special-needs students in Florida’s school-choice program

asked families about the services their child received through the program. In one recent study, “Only 30 percent of [program] participants said they received all services required under federal law from their public school, whereas 86 percent reported their choice school provided all the services they promised to provide.” *Can School Choice Help Students with Special Needs?*, EdChoice, <https://bit.ly/4hMJVdG>.

**B. Parental choice enhances public school performance, improves public school student outcomes, and stewards tax dollars for the public good.**

The Utah Fits All Scholarship program provides school choice and an additional means of using valuable public resources for Utah’s common educational mission. But programs like these are not a mechanism intended to “divert funds from . . . public schools.” Pinkney, *supra*. They are a mechanism for the state to produce higher-achieving schools across the board. After all, without competition, “public schools don’t have to compete for students,” and thus have “less of an incentive to enhance their performance.” David Figlio, Cassandra M.D. Hart & Krzysztof Karbownik, *The Ripple Effect: How Private-School Choice Programs Boost Competition and Benefit Public-School Students*, Educ. Next (Oct. 26, 2022), <https://bit.ly/4oJ8Wsd>.

Consider, for example, how market competition in both Ohio and Florida has resulted in positive effects for all students. A recent study of the EdChoice Scholarship program in Ohio found “evidence that allowing students to use

public funding to attend private schools [does] not harm outcomes for public school students.” Matthew M. Chingos, David N. Figlio, Krzysztof Karbownik, *The Effects of Ohio’s EdChoice Voucher Program on College Enrollment and Graduation* 1, 15 (Urb. Inst. 2025). That same study also found “increases in college enrollment and graduation of public school students associated with the EdChoice program, complementing evidence of increases in more contemporaneous test scores previously documented.” *Id.* at 15–16. In a separate report on the same program, researchers noted: “The academic achievement of district students—as measured by the state’s performance index—was significantly higher than it would have been had districts not been exposed to the EdChoice program.” Stéphane Lavertu & John J. Gregg, *The Ohio EdChoice Program’s Impact on School District Enrollments, Finances, and Academics*, Thomas B. Fordham Inst. 1, 6 (2022). “For the average student in a district exposed to performance-based EdChoice, their district’s achievement went from approximately the second percentile (the twelfth-lowest-achieving Ohio district) to approximately the sixth percentile (the thirty-seventh-lowest-achieving Ohio district).” *Id.*

Florida is the state with the most students participating in a parental choice program; a variety of its parental choice offerings date to 2002. Since then, Florida has seen “broad and growing benefits for students at local public schools as the school-choice program scales up.” Figlio, *supra*. In fact, areas

with more school-market competition from parents saw corresponding increases in reading and math test scores in public schools. *Id.* And the benefits extended beyond just pure academic performance. For instance, there were also significantly “lower rates of suspensions and absences.” *Id.* And among the districts whose students saw these beneficial changes, the “difference was more pronounced for low-income students than their wealthier peers, suggesting that students eligible for the program benefited most from the increased competition it created.” *Id.*

Appellees in this case echo concerns that Utah’s education savings accounts “should raise serious concerns about the future of our public education system in Utah.” Pinkney, *supra*. In fact, just the opposite is true. The research evidence cited above suggests that the Utah Fits All Scholarship program will *strengthen* public schools in Utah.

And this is just one of the ways that choice programs are a valuable use of public resources. Parental choice programs also save tax dollars. *See* Martin F. Lueken. *Fiscal Effects of School Choice*, EdChoice 5–9 (Oct. 15, 2024), <https://bit.ly/47kjBE1>. And the savings are more extensive the longer a program stays in place. *Id.* at 32 (“The short-run estimates indicate that most programs result in savings for taxpayers, while the long-run estimates show that all programs generate fiscal benefits. . . . Savings are likely larger in the long run because districts encounter increasing opportunities to refine their

operations and budgets over time.”). In an analysis of 26 state parental choice programs, “each dollar spent on education choice programs” created “between \$1.70 and \$2.64 in estimated fiscal savings.” *Id.* And, a recent report from the University of Arkansas corroborates the cost-effectiveness of education savings account programs like Utah Fits All. The report, which evaluates Arkansas’ Education Freedom Accounts, found that school-choice increased state per-pupil spending efficiency. Daion L. Daniels, Alison Heape Johnson, Joshua B. McGee & Patrick J. Wolf, *2024–25 Arkansas Education Freedom Accounts Program Annual Report*, Univ. of Ark. Dep’t of Educ. Reform (Oct. 2025), <https://bit.ly/3WvJ3jM>. In the upcoming year, the ratio of efficient-spending is set to progress even further. Projections estimate that “the program would account for only 7.4% of the roughly \$3.7 billion” state education budget, “while serving just under 10% of Arkansas students.” *Id.* The cost savings of parental choice is driven by program student-participants who would have otherwise attended a public school. *Id.* at 25 (“Switchers matter because the per-student cost of an EFA is lower than the state funding that would have been directed to a public school for the same student.”). We have already discussed the positive educational impacts generated by competition for switchers. But the cost savings also produce opportunities to support students in the public schools as well.

## CONCLUSION

Appellees argue that the Utah Fits All Scholarship program is inconsistent with the state's uncontested duty to establish and support the systems of public schools and higher education. As the state and intervenors have demonstrated, this is not true as a matter of law. But the assumptions underlying this argument, which suggest that parental choice will undermine public schools and undercut the quality of educational opportunities available to Utah families, are also false. Families and students in Utah—both those enrolled in public schools and those availing themselves of the opportunities provided by the Utah Fits All Scholarship program—will benefit from the state providing more choices.

*Amici curiae* respectfully urge this Court to reverse the order below.

Dated this 20th day of January, 2026.

Respectfully submitted.

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## **CERTIFICATE OF COMPLIANCE**

1. This brief contains 3,898 words, excluding any tables, in compliance with Utah Rule of Appellate Procedure 25(f).
2. This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Century Schoolbook font in compliance with the typeface requirements of Utah Rule of Appellate Procedure 27(a).
3. This brief contains no non-public information and complies with Utah Rule of Appellate Procedure 21(h).

s/ Tyler R. Green

## **CERTIFICATE OF SERVICE**

I certify that on January 20, 2026, a true, correct, and complete copy of the foregoing **Brief of Amici Curiae The Notre Dame Law Education Project and Utah Education Fits All in Support of Appellants** was filed with the Court and served via the appellate e-filing system on counsel of record.

s/ Tyler R. Green