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Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

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| COMMITTEE TO PROTECT AND PRESERVE THE IDAHO CONSTITUTION, INC.; MORMON WOMEN FOR ETHICAL GOVERNMENT; SCHOOL DISTRICT NO. 281, LATAH COUNTY, STATE OF IDAHO; IDAHO EDUCATION ASSOCIATION, INC.; JERRY EVANS; MARTA HERNANDEZ; STEPHANIE MICKELSEN; ALEXIS MORGAN, on behalf of herself and her minor children; KRISTINE ANDERSON, on behalf of herself and her minor children; each of the foregoing individually and as private attorneys general on behalf of the public of the State of Idaho,<br><br>Petitioners,<br><br>v.<br><br>STATE OF IDAHO, acting by and through the IDAHO STATE TAX COMMISSION,<br><br>Respondent. | Case No. 53264-2025 |

# VERIFIED PETITION TO INTERVENE AND BRIEF IN SUPPORT

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Pursuant to Idaho Appellate Rules 7.1 and 32, Parent Petitioners Rubi Dagostino, Katie Demczyk, and Joshua and Eleanor LoBue ("Parent Petitioners") respectfully petition for leave to intervene as Respondents in this action and to assert the defenses set forth in their proposed Verified Answer to the Petition, a copy of which is attached to this motion.

## INTRODUCTION

Parent Petitioners are the parents of children who are eligible for and filed their 2024 Form 40, Idaho Individual Income Tax Returns and who have registered for a Taxpayer Access Point (TAP) for purposes of receiving the Idaho Parental Choice Tax Credit ("Tax Credit") created by 2025 H.B. 93. The Tax Credit offsets owed taxes, and refund of any excess, up to $5,000 per eligible K-12 student for qualifying education expenses, such as private school tuition, tutoring, and textbooks. For students with disabilities, the credit can be as high as $7,500. Parent Petitioners are the intended and direct beneficiaries of the program and are therefore, in essence, the real parties in interest. They accordingly seek party status as Intervenor-Respondents under Appellate Rule 7.1 to defend the constitutionality of the program from which they benefit.

Because Petition for Writ of Prohibition is an original action in this Court, Idaho Appellate Rule 7.1 governs this petition. It provides that "[a]ny person or entity who is a real party in interest to . . . [a] proceeding governed by these rules or whose interest would be affected by the outcome of . . . [a] proceeding under these rules may file a verified petition with the Supreme Court asking for leave to intervene as a party to the . . . proceeding." Idaho Appellate Rule 7.1 Intervention. The Court has discretion whether to permit intervention by an applicant who demonstrates a sufficient interest, and "[i]n exercising its discretion, the Court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights."

As families who plan to use—and have priority to use—the Idaho Parental Choice Tax Credit, Parent Petitioners are real parties in interest to this case, and in all events have interests that will be

affected by the outcome of this proceeding. They file this verified petition within four calendar days (and two business days) of the Court's September 26, 2025, Order directing Respondents to file a Verified Answer to the Petition for Writ of Prohibition. In addition, Parent Petitioners align with Respondents and will meet the October 10, 2025 briefing deadline the Court has set for Respondents. Accordingly, their intervention will not delay or prejudice adjudication of the original parties' rights.

While no decisions of this Court further expound on the standard for Rule 7.1 intervention, with respect to intervention more generally, this Court has "consistently adhered to the view that the statutes providing for intervention should be given a liberal construction." *Herzog v. City of Pocatello*, 82 Idaho 505, 509, 356 P.2d 54, 55 (1960) (citing *State ex. rel. McKelvey v. Barnes*, 55 Idaho 578, 45 P.2d 293, 295 (1935). Furthermore, "[i]f there is any doubt as to whether intervention is appropriate, a motion to intervene should usually be granted." *City of Boise v. Ada County*, 147 Idaho 794, 803, 215 P.3d 514, 523 (2009).

Furthermore, around the country, parents of children participating in educational choice programs are routinely granted intervention to defend the programs when they are challenged in court. *See infra* at 15–19 & nn.1–2 . This case is no different, and intervention is therefore warranted.

This motion is based on the law and verified facts set forth here and in Parent Petitioners' declarations, attached as Exhibits A through C. The motion proffers for filing Parent Petitioners' proposed answer to the Petition for Writ of Prohibition.

## STATEMENT OF STATUTORY BACKGROUND AND FACTS

### I. Idaho's Parental Choice Tax Credit

The Parental Choice Tax Credit provides a refundable tax credit of up to $5,000 per eligible student (and up to $7,500 per eligible student who has a disability) for qualifying expenses, including private school tuition and fees, tutoring, fees for standardized assessments, textbooks, and curricular materials. I.C. §§ 63-3029N(3); 63-3029N(7). Eligible students are either full-time residents of

Idaho who are five to eighteen years of age or children with disabilities requiring ancillary personnel as defined in section 33-2001, Idaho Code, who are five to twenty-one years of age. *Id.* at § 63-3029N(2)(b). Parent Petitioners must claim the student as a dependent on their full-time Idaho resident individual income tax return and timely and properly file a tax credit application, pursuant to the state tax commission's prescribed process, to demonstrate eligibility. *Id.* at §§ 63-3029N(3)(a)–(b); 63-3029N(4); *Id.* at § 63-3029N(2)(b).

Qualifying expenses include tuition or fees for attending a nonpublic school for kindergarten through grade 12, tutoring, nationally standardized assessments, assessments used to determine college admission, advance placement examinations, industry-recognized certification exams, and preparatory courses for nationally standardized assessments. Parent Petitioners can also receive a tax credit for costs incurred for textbooks, curricula used for K-12 academic instruction, and transportation costs to and from a facility incurred for the purposes of receiving K-12 academic instruction, including public transportation, ridesharing, and the use of privately owned vehicles. *Id.* at § 63-3029N(2)(f).

The Idaho State Tax Commission ("the Commission") issues credits on a yearly basis. *Id.* at § 63-3029N(6). For applications received in 2026, the state tax commission will give priority to parents whose modified adjusted gross income does not exceed 300% of the federal poverty level. *Id.* Starting in the 2027 application period, the Commission will give priority status to applications from parents who received a credit in the prior year, followed by parents whose taxable income as individuals does not exceed 300% of the federal poverty level. *Id.* The Tax Credit also gives parents who don't exceed 300% of the federal poverty level the ability to elect a one-time advance payment of the credit for each eligible student. *Id.* at § 63-3029N(9).

If the credit exceeds the tax owed, the extra amount will be refunded to the taxpayer. *Id.* at § 63-3029N(11). Idaho's legislature authorized up to $50,000,000 each tax year for the Parental Choice Tax Credit Program. In the event the total amount of claims for tax credits allowed by the program

exceeds $50,000,000, the credits will be allowed in full to parents whose applications were properly and timely filed and who have priority status under § 63-3029N(6), followed by the remaining parents who filed complete applications on a first-come, first-served basis, until the annual maximum limit is reached. The Commission will create a waiting list demonstrating who would be eligible on a first-come, first-served basis if the annual maximum limit for credits is increased. § 63-3029N(12).

Idaho's H.B. 93 also established an advanced payment fund that is administered by the state tax commission and is continuously appropriated to pay advance payments. Idaho H.B. 93 (2025); I.C. § 67-1230. The fund consists of legislative appropriations, donations, reversions of unused funds, and interest earned. *Id.*

## II. The Challenge to Idaho's Parental Choice Tax Credit

The Committee to Protect and Preserve the Idaho Constitution, Inc.—along with a collection of co-petitioners including another advocacy group, a teacher's union, a public school, and a handful of public-school teachers and parents—filed this lawsuit on September 18, 2025. They raise only two claims: (1) that Article IX § 1 of the Idaho Constitution, which requires the legislature to create public schools, precludes any legislative appropriation to support private school choice; and (2) that a single precedent from this Court imposes a "public purpose" requirement on government spending that the Parental Choice Tax Credit violates. *See* Petition for Writ of Prohibition ¶¶ 56-60; 61-66. They ask this Court to declare the Parental Choice Tax Credit unconstitutional and issue an injunction prohibiting the State from distributing the credits as planned to families in Idaho, including to Parent Petitioners.

## III. Parent Petitioners Will Apply For The Tax Credit This Schoolyear

Rubi Dagostino, Katie Demczyk, and Joshua and Eleanor LoBue are all residents of Idaho and parent children who stand to benefit from Idaho's Parental Choice Tax Credit Program. As such, they now seek leave to intervene in this case to defend the Program and their interests in it.

### A. The Dagostino Family

Rubi Dagostino and her husband, Rogelio, are naturalized United States citizens and residents of Nampa, Idaho. Ex. A, Dagostino Decl. ¶ 2. They are both natives of Mexico, and while they understand, read, and write English fluently, they can speak only a limited amount of English. *Id.* Rubi is currently a homemaker and Rogelio works as a sign painter, which earns them a very modest household income of under $100,000 per year to support five people and pay for educational expenses. *Id.* ¶ 5. At times, Rubi has worked three or four part-time jobs in order to provide for her family. *Id.* ¶ 6. Rubi has worked at a nursing home in the kitchen and in housekeeping. *Id.* Rogelio has also worked as a custodian/housekeeper at a nursing home. *Id.*

The Dagostinos are the parents of one son and three daughters, each of whom has widely varying experiences and educational needs that traditional public schools do not always meet. *Id.* ¶ 3, 6. They prioritize offering their children the best educational opportunities tailored to their unique needs, prompting them to explore alternatives to public school. *Id.* ¶ 6. Their youngest daughter, F.A. is an eleven year old rising sixth-grader and is currently homeschooled. *Id.* ¶ 3, 10. The public school did not provide a structured environment for learning. *Id.* ¶ 10. There was a lot of time spent on busy work and movies and not enough time focused on the core subjects of math, reading, and English. *Id.* F.A. is behind grade level, especially in math and English, but the Dagostinos are confident that, with tutoring, she can catch up to her peers and become prepared for college. *Id.* Rubi and Rogelio Dagostino intend to use the Idaho Parental Choice Tax Credit established by HB 93 to pay for private tutors in math, science, and language arts. *Id.* ¶ 10. These tutors would severely strain Rubi's family finances without the Parental Choice Tax Credit. *Id.* ¶ 13. The Dagostino family qualifies as priority applicants for the Program. *Id.* ¶ 11.

**B. The Demczyk Family**

Katie Demczyk and her husband, Daniel Martin, are residents of Post Falls, Idaho. Ex.B, Demczyk Decl. ¶ 1. They married in August 2024 and are parents of a blended family of three sons and two daughters. *Id.* ¶ 2. Katie works as an Office Manager in a healthcare setting and Daniel is a manager at a moving company. *Id.* ¶ 4. Katie's oldest son, T.D., is a fifteen-year-old sophomore at Post Falls High School. *Id.* ¶ 2. Her stepchildren, C.M., O.M., and G.M., are eleven, ten, and eight respectively and attend Seltice Elementary School in Post Falls. *Id.* ¶ 2.

When Katie's daughter, A.D, was seven, during first grade, she underwent an EEG that diagnosed a seizure disorder. *Id.* ¶ 6. A.D. was suffering from upwards of 25 small seizures per hour. *Id.* It took approximately two years to stabilize her with medication. *Id.* ¶ 7. At the time, A.D. attended Ponderosa Elementary School where, despite well-meaning and talented teachers, she continued to fall behind and failed to meet educational milestones. *Id.* ¶ 8. If A.D.'s teachers saw that she was having a seizure, they would notify Katie and follow protocols for addressing them. *Id.* But A.D.'s seizures can be hard to detect. *Id.* If teachers were not familiar with A.D.'s seizures or looking directly at A.D., they could easily miss them or mistake them for "zoning out" or staring into space. *Id.* The resulting uncertainty about the occurrence of seizures made it very difficult for both the teachers and A.D. to know what information she was hearing, retaining, and understanding. *Id.* Unfortunately, A.D. also suffered bullying at public school. *Id.* ¶ 9.

When A.D. turned eleven and was in 5th grade, Katie concluded she needed a different learning environment—one smaller where teachers can watch for warning signs related to her medical history. *Id.* ¶ 5, 10. Katie discovered Wired2Learn Academy, met Alyssa Pukkila, the founder and executive director, and enrolled A.D. in Wired2Learn shortly thereafter. *Id.* ¶ 10. A.D. is starting her third year at Wired2Learn and participates in the Arrowsmith Program which is a suite of cognitive programs designed to address a series of cognitive functions underlying a range of specific learning

disabilities. *Id.* ¶ 11. This training drives positive changes in the brain and encourages new and stronger connections among neurons. *Id.* Since attending Wired2Learn, A.D. is thriving and more confident and hopeful now. *Id.* ¶ 12.

However, the tuition at Wired2Learn is expensive—about $25,000 per year. *Id.* ¶ 14. A.D. attends speech therapy and an annual neurology appointment in addition to her medication. *Id.* Insurance covers some portion, but Katie pays the remainder. *Id.* When Katie was a single mom of two children, she could barely manage the cost. *Id.* Now that they are a household of seven, even with two incomes, the Wired2Learn tuition is even more challenging to pay. *Id.* The Demczyks intend to use the Idaho Parental Choice Tax Credit to cover a portion of the tuition at Wired2Learn so that they can keep A.D. in their program, where she has overcome her seizures and thrived like never before. *Id.* ¶ 15. The Demczyk family qualifies as priority applicants for the Program. *Id.* ¶ 16.

**C. The LoBue Family**

Joshua and Eleanor LoBue are residents of Hayden, Idaho. Ex. C, LoBue Decl. ¶ 1. Joshua is an attorney employed as a Title Officer at a title insurance company and Eleanor works as a homemaker. *Id.* . They parent four sons and three daughters. *Id.* ¶ 2. Their oldest son, A.J.L., is a seventeen-year-old senior at Venture Academy, a public school in Coeur d'Alene, and participates in the Kootenai Technical Education "KTEC" Program. *Id.* Their daughters, A.E.L. and L.K.L., are fifteen and eleven, respectively, and attend Wired2Learn Academy in Post Falls. *Id.* Their two middle children, L.F.L., and R.V.L., are aged seven, and six. L.F.L is homeschooled through a co-op program and R.V.L. attends an online school called Overture and also attends a co-op program. *Id.* Their youngest two children, J.R.L. and E.D.L., are aged three and twelve months. *Id.*

A.J.L. and A.E.L., their oldest son and daughter, are on the autism spectrum. *Id.* ¶ 6. In addition, both A.J.L. and A.E.L. have had to overcome dyslexia to differing degrees. *Id.* For both, they have tried different approaches to education at various times—including homeschooling, co-ops, on-

line charter schools, private academies and alternative public schools—to address their very different intellectual, social and emotional needs. *Id.* Wired2Learn has played a critical role in cognitive development and education for both, and will likely do the same for their third child, L.K.L. *Id.*

A.E.L. participates in the Arrowsmith Program at Wired2Learn. *Id.* ¶ 7. Arrowsmith is a suite of cognitive programs designed to address a series of cognitive functions underlying a range of specific learning disabilities. *Id.* This training drives positive changes in the brain by encouraging new and stronger connections among neurons. *Id.* A.E.L. has made significant progress since enrolling at Wired2Learn, due in large part to the cognitive training, skills-based remediation, project-based learning, and wellness coaching provided at the school. *Id.* ¶ 8.

L.K.L., their third child, has dyslexia and has an Individualized Education Program ("IEP") under the Individuals with Disabilities Education Act (IDEA). *Id.* ¶ 9. L.K.L. was participating in an online school program called BrainTree, previously TechTrep, through the Oneida School District. *Id.* She was receiving additional support via her IEP for reading and writing. *Id.* It was difficult to find times for these additional supports that worked for their family's busy schedule. Initially the tutoring was 1:1 and then it was changed to 2:1. *Id.* Over time the online method proved to be more burdensome than beneficial with technological challenges and the school's demands for work samples. *Id.* The family is continuing to fight to see that her needs are met. *Id.* L.K.L. took cognitive classes at Wired2Learn this summer and began attending the school full time this fall. *Id.*

The tuition at Wired2Learn is expensive—about $25,000.00 per year—and challenging to pay with a household of nine. *Id.* ¶ 10. In addition, L.K.L., took summer cognitive classes at Wired2learn, which cost $2,600, adding significantly to their family's total education bill. *Id.* A judgment taking away the Program would impose a real financial burden on the LoBue family, and it would be more difficult for them to afford tuition for A.E.L. and L.K.L. as well as additional services and learning materials. *Id.* ¶ 12. The LoBue family qualifies as priority applicants for the Program. *Id.* ¶ 11.

## ARGUMENT

Applying the intervention rules liberally, *Herzog v. City of Pocatello*, 82 Idaho 505, 509, 356 P.2d 54, 55 (1960) (citing *State ex. rel. McKelvey v. Barnes*, 55 Idaho 578, 45 P.2d 293, 295 (1935), this Court should allow Parent Petitioners to intervene. "Courts [should] look with favor on intervention in a proper case, and . . . be liberal in permitting parties to intervene under the proper circumstances," *City of Boise v. Ada County*, 147 Idaho 794, 803, 215 P.3d 514, 523 (2009) (quoting 67 C.J.S. *Parties* 93 (2009)). Furthermore, courts should assume that the "pertinent factual allegations contained [in the motion] are true." *Herzog*, 82 Idaho at 509, 356 P.2d at 56.

Parent Petitioners are the intended beneficiaries of Idaho's Parental Choice Tax Credit. Intended beneficiaries of private education choice programs are routinely granted leave to intervene to defend those programs in court.

### I. Parent Petitioners, As The Intended Beneficiaries Of The Education Tax Credit Program, Have Ample Grounds To Intervene In This Action.

This Court's rules permit intervention by anyone who is a "real party in interest" or "whose interest would be affected by the outcome" of this proceeding. I.A.R. 7.1. This Court must also consider whether intervention "will unduly delay or prejudice the adjudication of the original parties' rights." *Id.* Parent Petitioners satisfy the criteria for intervention, and they filed this Petition in a timely manner to prevent any delay or prejudice.

#### A. Parent Petitioners Have An Interest That Would Be Affected By The Outcome.

Parent Petitioners have an interest in the outcome of this litigation that justifies intervention, and that interest would be impaired if Petitioners receive the relief they seek. Interests justifying intervention are ones that are "of such a direct and immediate character that the intervener will either gain or lose by the direct legal operation and effect of the judgment." *Angelos v. Schatzel*, 174 Idaho 324, 328, 554 P.3d 585, 589 (2024) (quoting *People ex rel. Glidden v. Green*, 1 Idaho 235, 240 (1869); and citing *Pittock v. Buck*, 15 Idaho 47, 54, 96 P. 212, 214 (1908)).

Parent Petitioners are parents of children for whom they will purchase private education services using the Parental Choice Tax Credit. The Tax Credit Program requires that parents claiming the Idaho parental choice tax credit shall "claim the credit for only qualified expenses incurred on behalf of an eligible student," and the credits "shall be issued on a yearly basis." Idaho H.B. 93 (2025); I.C. §§ 63-3029(N)(6); 63-3029(N)(10). Petitioners' lawsuit directly asks for an order blocking the State from issuing those tax credits to Parent Petitioners and other parents and guardians. Petition, Prayer for Relief, ¶ 3.

Accordingly, this matter will have a "such a direct and immediate character" that the Parent Petitioners will either "gain or lose" the tax credit in this proceeding, to which they have a statutory legal right. *See Herzog*, 82 Idaho at 509, 356 P.2d at 56 (holding that appellants, as owners of adjoining or adjacent property, were entitled to intervene because their property would be damaged if the rezoning was granted, and their interest was substantially different from the city's); *see also, e.g.*, *Western Watersheds Project v. Haaland*, 22 F.4th 828 (9th Cir. 2022) ("significant financial and property interests at stake" satisfies interest requirement).

Although this Court has not addressed how its intervention rules affect program beneficiaries, this Court may look to the decisions of the federal courts in applying Rule 7.1 because it is similar to federal intervention rules. The Idaho Supreme Court has held that "where the Idaho Rules of Civil Procedure mirror the federal rules, we have applied the interpretations of the federal courts to the Idaho rules." *Contest of Hart v. Shepherd*, 164 Idaho 102, 107, 425 P.3d 1245, 1250 (2018) (citing *Chacon v. Sperry Corp.*, 111 Idaho 270, 275, 723 P.2d 814, 819 (1986)). *See also Nelsen v. Nelsen*, 170 Idaho 102, 115, 508 P.3d 301, 314 (2021) (holding that when an Idaho Rule of Civil Procedure is nearly identical to a Federal Rule of Civil Procedure, the State "prefer[s] to interpret the Idaho Rules of Civil Procedure in conformance with interpretations of the same language in the federal rules." (quoting *Hammer v. Ribi*, 162 Idaho 570, 575, 401 P.3d 148, 153 (2017) (quoting *Westby v. Schaefer*, 157 Idaho 616, 622,

338 P.3d 1220, 1226 (2014))). Thus, the Court "look[s] not only to Idaho authority, but also to cases interpreting the federal rule to establish the legal standards applicable . . . ." *Id.* To the extend that considerations applicable under Idaho Civil Rule 24 may be helpful or instructive, the Court may look to cases interpreting it, as well as its federal analog.

Federal courts have repeatedly held that the beneficiaries of a government program or law have the requisite interest to intervene as a matter of right when the program or law is challenged. *See, e.g.*, *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (allowing health care providers to intervene to defend conscience protection law because "[t]hey [we]re the intended beneficiaries of th[e] law"); *Cnty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (allowing small farmers to intervene to defend rulemaking under reclamation acts because small farmers were "precisely those Congress intended to protect with the reclamation acts"); *Texas v. United States*, 805 F.3d 653, 660 (5th Cir. 2015) (allowing immigrant parents to intervene as the "intended beneficiaries of the challenged federal policy" deferring deportation of parents of U.S. citizens); *Associated Gen. Contractors of Am. V. Cal. Dep't of Transp.*, No. 09-01622, 2009 WL 5206722, at *2 (E.D. Cal. Dec. 23, 2009) ("Intervenors have a protectable interest in the lawsuit, as they represent the intended beneficiaries of the government program at issue."); *United States v. Dixwell Hous. Dev. Corp.*, 71 F.R.D. 558, 560 (D. Conn. 1976) (allowing housing project tenants to intervene to defend portions of National Housing Act because "their interest as beneficiaries of two aspects of the … Act" was "sufficient to support intervention").

Finally, Parent Petitioners' interest in the Tax Credit Program is also inextricably intertwined with their fundamental liberty interest in "direct[ing] the upbringing and education of" their children. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925); *cf. Texas v. United States*, 805 F.3d at 660 (policy of deferring deportation of parents with U.S.-citizen children impacted parents' "legally protected liberty

interest" in "directing the upbringing" of their children). The very purpose of the Program, after all, is to empower parents and guardians to exercise this liberty interest.

These interests will undoubtedly be impacted if Petitioners receive the relief they are requesting. Parent Petitioners are slated to receive tax credits annually for their children's education. Idaho H.B. 93 (2025); I.C. § 63-3029N. If this Court grants Petitioners' requested injunction, however, Parent Petitioners will receive nothing. Should the Tax Credit Program be held unconstitutional, Parent Petitioners and their children—who, again, are the beneficiaries of the program—"would have no chance in future proceedings to have its constitutionality upheld." *Saunders v. Superior Court*, 109 Ariz. 424, 425-26, 510 P.2d 740, 741-42 (1973); *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003); *see also U.S. v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004) (holding that "a non-speculative, economic interest may be sufficient to support a right of intervention" and clarifying that "an economic interest must be concrete and related to the underlying subject matter of the action."). "This practical disadvantage to the protection of their interest … warrants their intervention as of right." *Id.* at 742; *see also* 6 James Wm. Moore et al., Moore's Federal Practice § 24.03 (3d ed. Supp.2007) ("An applicant's interest is plainly impaired if disposition of the action in which intervention is sought will prevent any future attempts by the applicant to pursue its interest.").

Here, Parent Petitioners have a non-speculative, economic interest in receiving the tax credit for their children's educational expenses, and that interest is both concrete and directly related to the subject matter of this action, which is the constitutionality of the program.

### B. Parent Petitioners' Motion is Timely and Will Not Delay or Prejudice the Parties.

Timeliness of intervention is "determined from all the circumstances: the point to which the suit has progressed is not solely dispositive." *State v. United States*, 134 Idaho 106, 109, 996 P.2d 806, 809 (2000) (citing *National Ass'n for Advancement of Colored People v. New York*, 413 U.S. 345, 366 (1973)). Intervention is timely as long as it will not "unnecessarily and unreasonably delay the trial of issues

between the original parties." *Herzog*, 82 at 508, 356 P.2d at 55. To determine timeliness, courts consider three factors: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *United States v. Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996) (quoting *United States ex rel. McGough v. Covington Technologies Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992)).

This petition comes just four calendar days (and two business days) after the Court issued its September 26, 2025, Order granting Petitioners' request to expedite and ordering Respondent to file a Verified Answer and separate response brief by October 10, 2025. Parent-Petitioners's Verified Answer is tendered herewith, and Parent Petitioners will file their own response brief by the Court's October 10, 2025, deadline.

The lawsuit has not progressed in any meaningful sense. *See Kalbers v. United States Department of Justice*, 22 F.4th 816, 827 (9th Cir. 2021) (holding that motion to intervene was timely when the case was "in its early stages" and "began gathering speed."). And Parent-Petitioners seek to intervene specifically to defend the constitutionality of the Tax Credit Program, which has not yet been addressed on the merits. Finally, allowing the Tax Credit beneficiaries to intervene will facilitate a full and final resolution of the issues presented among all the affected parties, benefiting rather than prejudicing the original parties. In short, intervention here will not cause any delay or prejudice because it comes at the very beginning of the case before the substance of the issues relevant to the intervention have been resolved.

### C. Using Discretion to Grant Intervention is also Appropriate Because Parent Petitioners' Interests Are Not Adequately Represented By The Existing Parties.

Parents of children participating in educational choice programs are routinely granted intervention to defend the programs when they are challenged in court. These interventions are often granted under Rule 24(a) of the civil rules because representation by the State may be inadequate to vindicate beneficiaries' separate interests. *Cf. Duff v. Draper*, 96 Idaho 299, 302, 527 P.2d 1257, 1260

(1974) (holding that the drafters of Rule 24(a)(2) did not contemplate that the petitioner be required to show that the representation "is" inadequate—only that the representation "may" be inadequate); *see also United States v. City of Los Angeles*, 288 F.3d 391 (9th Cir. 2002) (holding that "[t]he requirement of inadequate representation 'is satisfied if the applicant shows that representation of his interest [by existing parties] 'may be' inadequate.'"). (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972))).

This requirement is not part of Rule 7.1, but because Rule 7.1 is discretionary and has little case law developing its tests, Parent Intervenors are briefing the remaining element of Rule 24(a) out of an abundance of caution. To evaluate adequacy of representation, courts consider three factors: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *W. Watersheds Project v. Haaland*, 22 F.4th 828, 840-41 (9th Cir. 2022) (quoting *Oakland Bulk & Oversized Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th Cir. 2020)). The "most important factor" for the adequacy of representation is "how the intervenor's interest compares with the interests of existing parties." *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950-51 (9th Cir. 2009) (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003).

Intervention is warranted even when existing parties and prospective intervenors share the same ultimate objective. *See Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810 (9th Cir. 2001) (holding that intervention was appropriate even though the City and proposed Construction industry intervenors shared the same ultimate objective of defending the City's land management plan against an environmental challenge). It is sufficient for prospective intervenors to show that "because of the difference in interests, it is likely that Defendants will not advance the same arguments." *Id.* at 824. Ultimately, "[t]he burden of showing inadequacy of representation is 'minimal' and satisfied if the

applicant can demonstrate that representation of its interests 'may be' inadequate." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki*, 324 F.3d at 1086). Additionally, the government's representation of the public interest may not be "identical to the individual parochial interest" of a particular group just because "both entities occupy the same posture in the litigation." *See Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 899 (9th Cir. 2011) (quoting a "persuasive" explanation of a "sister circuit" opinion, *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009)).

Here, the Parent Petitioners and the State have dissimilar interests. The State has a duty to represent the broad interests of the public and, to that end, must integrate its defense of the Program with the State's overall approach to education. Parent Petitioners, on the other hand, have a narrower, more parochial interest: They have determined that public education *does not work* best for their children and, to that end, have a particular interest in preserving the tax credits they will receive to cover some of the cost of educating their children. Parent Petitioners likewise possess a unique liberty interest in "direct[ing] the upbringing and education of children under their control." *Pierce*, 268 U.S. at 534-35.

Courts nationwide recognize that the government's "broader" responsibility to represent the interests of the public diverges from a private party's "narrow and parochial" interests. *Western Watersheds Project v. Zinke*, 2018 WL 6816048 at *3 (citing *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995); *see also State ex. rel. Lockyer v. United States*, 450 F.3d 436, 445 (9th Cir. 2006) (holding that proposed intervenors, like those in *Forest Conservation Council*, *Id.*, have "more narrow, parochial interests" than the government. Consequently, the court instructed the lower court to grant intervention to the proposed intervenors.); *Miller Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 1000 (8th Cir. 1993) (holding that the counties' and landowners' concerns with property value, land management, and revenue were narrower and more parochial than the state's broader, sovereign

interest in conserving fish and game, the court found these differing interests meant the state could not adequately represent them).

Because of these distinct interests, individual beneficiaries of a program are not adequately represented by the government in lawsuits challenging the program. *See, e.g.*, *Trbovich*, 404 U.S. at 538–39 (Secretary of Labor's "interest in assuring free and democratic union elections . . . transcends the narrower interest of" intervening union member); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir.1998) (union "demonstrated that the representation of its interests" by government defendants "may have been inadequate" because union members' interests in prevailing wage law "were potentially more narrow and parochial than the interests of the public at large"). *See also Nat'l Farm Lines v. I.C.C.*, 564 F.2d 381, 384 (10th Cir. 1977) ("We have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible."); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 15 (D.D.C. 2010) ("[I]t is well-established that governmental entities generally cannot represent the more narrow and parochial financial interest of a private party." (internal quotation marks omitted)); *Ass'n for Fairness in Bus., Inc. v. New Jersey*, 193 F.R.D. 228, 232 (D.N.J. 2000) (government's "numerous complex and conflicting interests" meant proposed intervenors' "parochial interests . . . may not be adequately represented" (internal quotation marks omitted)).

This proposition is equally true here: The only way Parent Petitioners' interests can be adequately represented is for them to be a part of it.

Moreover, these distinct interests between the Parent Petitioners and the State "may not always dictate precisely the same approach to the conduct of the litigation." *Trbovich*, 404 U.S. at 539. Indeed, past experience in educational choice litigation confirms that the government and participating families often take different litigation approaches and present different arguments.

In *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011), for example, parent-intervenors successfully argued that the plaintiffs challenging the educational choice program lacked standing, an issue that the state conceded. The state similarly conceded standing in *Duncan v. State*, 166 N.H. 630, 102 A.3d 913 (2014), while the parent-intervenors successfully argued that the statute conferring standing was unconstitutional.

In *Kotterman v. Killian*, 193 Ariz. 273, 972 P.2d 606 (1999), parent-intervenors—not the state—urged and persuaded the court to confront the bigoted origins of the provision of the Arizona Constitution that the plaintiffs were using to attack the state's educational choice program.

In *Hart* v. *State*, 367 N.C. 775 (N.C. 2014), it was parent-intervenors—not the government—that obtained interlocutory relief ensuring that 2,000 students would not lose their scholarships after an adverse judgment from the trial court. And parent-intervenors' argument regarding the Tennessee Home Rule Amendment—an argument that the state only later embraced—proved decisive to upholding that state's program. *See Metropolitan Government of Nashville & Davidson County v. Tennessee Department of Education*, 645 S.W.3d 141, 151–52 (Tenn. 2022) (noting that "Intervenors, and now the State as well," had advanced the argument).

As to "practical concerns," Parent Petitioners can provide insights into the issues that the current parties lack. *See Nat'l Parks Conservation Ass'n*, 759 F.3d 969, 977 (8th Cir. 2014) (noting proposed intervenor's "expertise" about the issues in dispute). Simply put, without Parent Petitioners, this case will not include those with the most to lose if Petitioners prevail: the Program's intended beneficiaries. Parent Petitioners' accompanying declarations show how the Tax Credit Program will help them meet the unique educational needs of their children and how an injunction against it will harm those efforts. This Court should have that testimony to fully comprehend the repercussions of invalidating a program designed to empower Idaho families to secure the education that will best meet their individual needs.

Finally, Parent Petitioners believe that participation of their counsel will also assist this Court in its resolution of the questions before it. Parent Petitioners' counsel have represented intervening parents in the successful defense of over a dozen educational choice programs, at every level of federal and state court.[1] Moreover, Parent Petitioners' counsel are currently representing intervening parents in the defense of Tennessee's education savings account program, Ohio's education savings account program, the Utah Fits All scholarship program, Montana's education savings account program for students with special needs, Alaska's correspondence program, Missouri's tax credit scholarship program, and Wyoming's education savings account program.[2]

[1] These programs include Arizona's individual tax credit scholarship program, *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011); *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999); Ohio's Pilot Project Scholarship Program, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999); Douglas County, Colorado's voucher program, *Doyle v. Taxpayers for Pub. Educ.*, 582 U.S. 950, 137 S. Ct. 2324 (2017) (mem.); West Virginia's educational savings account program, *State v. Beaver*, 887 S.E.2d 610, 2022 WL 17038564 (Nov. 17, 2022); Tennessee's education savings account program, *Metro. Gov't of Nashville & Davidson Cnty. v. Tennessee Dep't of Educ.*, 645 S.W.3d 141 (Tenn. 2022); Georgia's tax credit scholarship program, *Gaddy v. Ga. Dep't of Revenue*, 802 S.E.2d 225 (Ga. 2017); North Carolina's voucher program, *Hart v. State*, 774 S.E.2d 281 (N.C. 2015); Alabama's tax credit scholarship program, *Magee v. Boyd*, 175 So. 3d 79 (Ala. 2015); New Hampshire's tax credit scholarship program, *Duncan v. State*, 102 A.3d 913 (N.H. 2014); Indiana's voucher program, *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013); Arizona's educational savings account program, *Niehaus v. Huppenthal*, 310 P.3d 983 (Ariz. Ct. App. 2013); Arizona's corporate tax credit scholarship program, *Green v. Garriott*, 233 Ariz. 195, 212 P.3d 96 (Ariz. Ct. App. 2009); Illinois' tax credit program, *Toney v. Bower*, 744 N.E.2d 351 (Ill. App. Ct. 2001); *Griffith v. Bower*, 747 N.E.2d 423 (Ill. App. Ct. 2001); and Milwaukee's voucher program, *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998); *Davis v. Grover*, 480 N.W.2d 460 (Wis. 1992). *See also Carson as next friend of O. C. v. Makin*, 596 U.S. 767 (2022); *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464 (2020).

[2] Order Granting Intervention, *Missouri National Education Association v. State of Missouri*, No. 25AC-CC05358 (Cir. Ct. of Cole County August 13, 2025); Order Granting Intervention, *Wyoming Education Association v. Megan Degenfelder*, No. 2025-CV-020336 (Dist. Ct. of Laramie County July 9, 2025); Order Granting Intervention, *Kevin Labresh v. Governor Spencer J. Cox*, No. 240904193 (Dist. Ct. of Salt Lake City County June 10, 2024; Order Granting Intervention, *Montana Quality Education Coalition v. State of Montana*, No. ADV-25-2024-0000044-IJ (Dist. Ct. of Lewis & Clark County May 2, 2024); Order Granting Intervention, *Edward Alexander v. Acting Commissioner Heidi Teshner*, No. 3AN-23-04309CI (Superior Ct. of the 3rd Jud. Dist. February 10, 2023); Order Granting Intervention, *Columbus City School District v. State of Ohio*, No. 22-CV-67 (Dist. Ct. of Franklin County May 12, 2022); Order Granting Intervention, *The Metropolitan Government of Nashville & Davidson County v. Tennessee Department of Education,* No. 20-0143-II (Chancery Ct. of Davidson County March 6, 2020).

***

In sum, Parent Petitioners have the requisite interest to intervene because they are the beneficiaries of a government program being challenged and their interests will be impaired significantly—they will lose annual tax credits for their children's education—if the injunction is granted. Parent Petitioners also will not delay or prejudice anyone from intervention, as this Petition is timely filed just four calendar days (and two business days) after this Court's order requesting an answer to the Petition. Finally, this Court should exercise its discretion to permit intervention because individual beneficiaries of a program are not adequately represented by the government in lawsuits challenging the program. For these reasons, intervention is warranted.

## CONCLUSION

In nearly every legal challenge to an educational choice program over the past three and a half decades, parents who have sought to intervene to defend the program have been permitted to do so. Parent Petitioners respectfully request that they be permitted to do the same. Party status is necessary to ensure that the interests of the Tax Credit Program's beneficiaries are fully protected. Should the Program be ruled unconstitutional here, Parent Petitioners will forever lose the opportunity to protect their interests.

Parent Petitioners therefore respectfully request that this Court grant them leave to intervene as respondents.

Dated: September 30, 2025.

PARSONS BEHLE & LATIMER

By: _____
Jason R. Mau, ISB No. 8440

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IN Bar No. 17949-49
Bryan Cleveland*
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*Attorneys for Parent Petitioners for Intervention*

*Application to appear *pro hac vice* pending

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of September, 2025, a true and correct copy of the foregoing document was filed with the Clerk of the Court using the iCourt Efile System which sent a Notice of Electronic Filing to the following persons, and I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

| | |
|---|---|
| Marvin M. Smith, Marvin K. Smith,<br>Craig L. Meadows, Brandon Helgeson,<br>Jean Schroeder<br>Hawley Troxell Ennis & Hawley llp<br>2010 Jennie Lee Drive<br>Idaho Falls, ID 83404<br>*Attorneys for Petitioners* | ☐ U.S. Mail<br>☐ Facsimile: (208) 529-3065<br>☐ Hand Delivery<br>☐ Overnight Delivery<br>☒ Email / iCourt: mmsmith@hawleytroxell.com; mksmith@hawleytroxell.com; cmeadows@hawleytroxell.com; bhelgeson@hawleytroxell.com; jschroeder@hawleytroxell.com |
| Raul R. Labrador, Attorney General<br>Alan M. Hurst, Solicitor General<br>James E.M. Craig, Chief Civil Litigation & Constitutional Defense<br>Michael A. Zarian, Deputy Solicitor General<br>Sean M. Corkery, Assistant Solicitor General<br>OFFICE OF THE ATTORNEY GENERAL<br>P. O. Box 83720<br>Boise, ID 83720-0010<br>*Attorneys for Respondent* | ☐ U.S. Mail<br>☐ Facsimile:<br>☐ Hand Delivery<br>☐ Overnight Delivery<br>☒ Email / iCourt: alan.hurst@ag.idaho.gov |

| | |
|---|---|
| Thomas M. Fisher, *pro hac vice pending*<br>Bryan Cleveland, *pro hac vice pending*<br>EDCHOICE LEGAL ADVOCATES<br>111 Monument Circle, Suite 2650<br>Indianapolis, IN 46204<br>*Attorneys for Parent Petitioners for Intervention* | ☐ U.S. Mail<br>☐ Facsimile:<br>☐ Hand Delivery<br>☐ Overnight Delivery<br>☒ Email / iCourt: tfisher@edchoice.org; bcleveland@edchoice.org |
| Renée Flaherty, *pro hac vice pending*<br>INSTITUTE FOR JUSTICE<br>901 N. Glebe Road, Suite 900<br>Arlington, VA 22203<br>*Attorneys for Parent Petitioners for Intervention* | ☐ U.S. Mail<br>☐ Facsimile:<br>☐ Hand Delivery<br>☐ Overnight Delivery<br>☒ Email / iCourt: rflaherty@ij.org |

Jason R. Mau

## VERIFICATION

I, Rubi Dagostino, certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

That I am a Parent Petitioner in the above-entitled action, and have reviewed the foregoing motion, that I know of the contents thereof, and that the matters and allegations therein set forth are true to the best of my knowledge and belief.

Signed by:
Rubi Dagostino
FBD0877A1F0547B...

Rubi Dagostino

9/29/2025

Date

## VERIFICATION

I, Katie Demczyk, certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

That I am a Parent Petitioner in the above-entitled action, and have reviewed the foregoing motion, that I know of the contents thereof, and that the matters and allegations therein set forth are true to the best of my knowledge and belief.

DocuSigned by:
Katie Demczyk
A0526F6802324FA...

Katie Demczyk

9/29/2025

Date

## VERIFICATION

I, Joshua LoBue, certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

That I am a Parent Petitioner in the above-entitled action, and have reviewed the foregoing motion, that I know of the contents thereof, and that the matters and allegations therein set forth are true to the best of my knowledge and belief.

Signed by:
32B7B0936DB34F0...

Joshua LoBue

9/29/2025

Date

## VERIFICATION

I, Eleanor LoBue, certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

That I am a Parent Petitioner in the above-entitled action, and have reviewed the foregoing motion, that I know of the contents thereof, and that the matters and allegations therein set forth are true to the best of my knowledge and belief.

Signed by:
9D115752CAC1408...

Eleanor LoBue

9/29/2025

Date

# EXHIBIT A

Declaration of Rubi Dagostino

State of Idaho )
) ss.
)

I, Rubi Dagostino, declare as follows:

1. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.

2. My husband, Rogelio Alanis, and I are naturalized United States citizens and residents of Nampa, Idaho. We are natives of Mexico, and while we understand, read, and write English fluently, we can speak only a limited amount of English.

3. We are the parents of one son and three daughters. Our oldest daughter, Z.D., is thirty-one years old and attended public schools during her academic career. Our second oldest daughter, N.D., is twenty-one years old and entering her senior year of college. Our son, P.A., is seventeen and attends a public virtual high school. Our youngest daughter, F.A., is eleven years old and is currently homeschooled.

4. We have sole legal and physical custody of our minor children.

5. I am currently a homemaker and Rogelio works as a sign painter. We have a very modest household income under $100,000 per year to support five people and pay for educational expenses.

6. Our children have widely varying educational needs that traditional public schools do not always meet. It is important to us to provide our children with the best educational opportunities tailored to their specific needs. At times, we have worked 3 or 4 part-time jobs in order to provide for our family. I have worked at a nursing home in the kitchen and in housekeeping. Rogelio has also worked as a custodian/housekeeper at a nursing home.

7. Our oldest daughter attended traditional public school through high school, and while she found academic success, I later learned that she also experienced bullying.

8. Our second-oldest, N.D., attended public virtual high school, which enabled her to focus on the basics of reading, writing, and math. It also took her out of the public-school environment where she was being bullied very severely. This fall, N.D. entered her senior year of college at Northwest Nazarene University, studying computer science and biology. After graduation she plans to enter the Air Force and ultimately study osteopathic medicine. We currently support N.D. and I contribute about $600 per month towards her education.

9. Our other two children are still school age and have different needs. Our son, P.A., who is a senior in high school, has severe allergies and autism. Traditional public school did not work for him because of severe food and environmental allergies. P.A. now attends a public virtual high school (the same one N.D. attended), which has enabled us to monitor his environment and provide him with special foods. He has performed very well and has amassed almost 70 college credits through dual-credit courses.

10. Our youngest daughter, F.A., is going into the 6th grade in the fall of 2025 and is currently homeschooled. She previously attended a traditional public school, but it did not provide a structured environment for learning. There was a lot of time spent on busy work and movies and not enough time focused on the core subjects of math, reading, and English. We have now transitioned F.A. to homeschooling, but she is behind grade level, especially in math and English. Accordingly, this fall, we plan to engage the services of tutors for F.A. in science, math and English/language arts. We are confident that with tutoring she can catch up to her peers and eventually become prepared for college.

11. Our family qualifies as a priority applicant for the Program because our annual household income is under $112,950 for a family of five.

12. We have filed our 2024 Form 40, Idaho Individual Income Tax Return, and we have registered for a Taxpayer Access Point (TAP) account.

13. If the Program is struck down, it would be devastating for my family as it would strain our resources to pay for the tutors F.A. needs to catch up academically to her age cohorts and eventually be prepared for college.

I declare under penalty of perjury that the foregoing is true and correct.

Signed by:
Rubi Dagostino
FBD0877A1F0547B...

Rubi Dagostino

9/26/2025

Date

Nampa, Idaho
City and State

# EXHIBIT B

Declaration of Katie Demczyk

State of Idaho )
) ss.
)

I, Katie Demczyk, declare as follows:

1. My husband, Daniel Martin, and I are residents of Post Falls, Idaho. I am an adult over the age of 18 years, have personal knowledge as to all matters contained herein, and am fully competent to make this declaration.

2. Daniel and I married in August 2024. We are a blended family and the parents of three sons and two daughters. My oldest son, T.D., is a fifteen-year-old boy and a sophomore at Post Falls High School. My daughter, A.D., is a thirteen-year-old girl and a eighth grader at Wired2Learn Academy, a nonprofit treatment and learning center in Post Falls, ID. My stepchildren are C.M., O.M., and G.M., and they are aged eleven, ten, and eight respectively. They attend Seltice Elementary School in Post Falls.

3. I have sole legal and physical custody of my two children, T.D. and A.D.

4. I work as an Office Manager in a healthcare setting and my husband is a manager at a moving company.

5. My daughter, A.D., needs a small learning environment where teachers can watch for warning signs related to her medical history.

6. When A.D. was seven, during first grade, she underwent an EEG and was diagnosed with absence seizures, a type of generalized seizure characterized by brief (usually less than 15 seconds) lapses in awareness. A.D. was suffering from upwards of 5-10 small seizures per hour, which caused her to miss large chunks of time where she was not responsive and not retaining any information.

7. It took approximately two years to stabilize A.D. with medication.

8. A.D. attended Ponderosa Elementary School where, despite well-meaning and talented teachers, she continued to fall behind and failed to meet educational milestones. If A.D.'s teachers saw

that she was having a seizure, they would notify me and follow protocols for addressing them. But A.D.'s seizures can be hard to detect. If teachers were not familiar with A.D.'s seizures or looking directly at A.D., they could easily miss them or mistake them for "zoning out" or staring into space. The resulting uncertainty about the occurrence of seizures made it very difficult for both the teachers and A.D. to know what information she was hearing, retaining, and understanding.

9. A.D. also suffered bullying at public school.

10. By the time A.D. turned eleven and was in 5th grade, I concluded she needed a different learning environment. I found Wired2Learn Academy while searching the web. I met Alyssa Pukkila, the founder and executive director, and enrolled A.D. in Wired2Learn shortly thereafter.

11. A.D. is starting her third year at Wired2Learn and participates in the Arrowsmith Program which is a suite of cognitive programs designed to address a series of cognitive functions underlying a range of specific learning disabilities. This training drives positive changes in the brain and encourages new and stronger connections among neurons.

12. A.D. is thriving and more confident and hopeful now that she is at Wired2Learn.

13. I appreciate the cognitive training, skills-based remediation, project-based learning and wellness coaching provided by Wired2Learn.

14. The tuition at Wired2Learn is expensive—about $25,000.00 per year. A.D. attends speech therapy and an annual neurology appointment in addition to her medication. Insurance covers some portion, but I pay the remainder. When I was a single mom of two children, I could barely manage the cost. Now that we are a household of seven, even with two incomes, the Wired2Learn tuition is even more challenging to pay.

15. We intend to use the Idaho Parental Choice Tax Credit ("Program") established by HB 93 to cover a portion of the tuition at Wired2Learn so that we can keep A.D. in their program, where she has overcome her seizures and thrived like never before.

16. Our family qualifies as a priority applicant for the Program because our annual household income is under $145,950 for a family of seven.

17. We have filed our 2024 Form 40, Idaho Individual Income Tax Return, and we have registered for a Taxpayer Access Point (TAP) account.

18. A judgment taking away the educational opportunity that the Idaho Parental Choice Tax Credit stands to provide for my daughter will be devastating. My husband and I would struggle mightily to keep her in the school that we know is best for her.

I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:
Katie Demczyk
A0526F6802324FA...

Katie Demczyk

9/26/2025
Date

Post Falls, Idaho
City and State

# EXHIBIT C

Declaration of Joshua and Eleanor LoBue

State of Idaho )
) ss.
)

We, Joshua and Eleanor LoBue, declare as follows:

1. We are residents of Hayden, Idaho. We are adults over the age of 18 years, have personal knowledge as to all matters contained herein, and are fully competent to make this declaration. Joshua is an attorney employed as a Title Officer at a title insurance company and Eleanor works as a homemaker.

2. We are the parents of four sons and three daughters. Our oldest son, A.J.L., is a seventeen-year-old boy and a senior at Venture Academy, an alternative public school in Coeur d'Alene, and participates in the Kootenai Technical Education "KTEC" Program. Our daughters, A.E.L. and L.K.L., are fifteen and eleven, respectively, and attend Wired2Learn Academy, a nonprofit treatment and learning center in Post Falls, ID. Our two middle children, L.F.L., and R.V.L., are aged seven, and six. L.F.L. is homeschooled through a co-op program and R.V.L. attends an online school called Overture and also attends a co-op program. Our youngest two children, J.R.L. and E.D.L., are aged three and twelve months.

3. We have sole legal and physical custody of our children.

4. We intend to use the Idaho Parental Choice Tax Credit established by HB 93 to pay a portion of A.E.L.'s and L.K.L.'s Wired2Learn tuition. We enrolled L.K.L. in Wired2Learn this fall.

5. We have filed our 2024 Form 40, Idaho Individual Income Tax Return, and we have not yet registered for a Taxpayer Access Point (TAP) account.

6. Our children's varied educational experiences shape our view that each child has unique needs that we must meet through tailored educational approaches. Our oldest son and daughter, A.J.L. and A.E.L., are on the autism spectrum. In addition, both A.J.L. and A.E.L. have had to overcome dyslexia to differing degrees. For both, we have tried different approaches to education at various times—including homeschooling, co-ops, on-line charter schools, private academies and alternative public schools—to

address their very different intellectual, social and emotional needs. Wired2Learn has played a critical role in cognitive development and education for both, and will likely do the same for our third child, L.K.L.

7. A.E.L. participates in the Arrowsmith Program at Wired2Learn. Arrowsmith is a suite of cognitive programs designed to address a series of cognitive functions underlying a range of specific learning disabilities. This training drives positive changes in the brain by encouraging new and stronger connections among neurons.

8. A.E.L. has made significant progress since enrolling at Wired2Learn. We appreciate the cognitive training, skills-based remediation, project-based learning and wellness coaching provided by Wired2Learn.

9. Our third child, L.K.L., has dyslexia and had an Individualized Education Program ("IEP") under the Individuals with Disabilities Education Act (IDEA). L.K.L. was participating in an online school program called BrainTree, previously TechTrep, through the Oneida School District. She was receiving additional support via her IEP for reading and writing. It was difficult to find times for these additional supports that worked for our family's busy schedule. Initially the tutoring was 1:1 and then it was changed to 2:1. Over time the online method proved to be more burdensome than beneficial with technological challenges and the school's demands for work samples. We are continuing to fight to see that her needs are met. L.K.L. took cognitive classes at Wired2Learn this summer and began attending the school full time this fall.

10. The tuition at Wired2Learn is expensive—about $25,000.00 per year—and challenging to pay with a household of nine. In addition, the summer cognitive exercise classes that L.K.L. took this summer and her placement testing for this school year totaled $2,600, adding significantly to our family's total education bill.

11. Our family qualifies as a priority applicant for the Program because our annual household income is under $178,950 for a family of nine.

12. A judgment taking away the Program would impose a real financial burden on our family. It would be more difficult for us to be able to afford tuition for A.E.L. and L.K.L. as well as the additional services and learning materials that we know greatly enrich our children's learning experiences.

We declare under penalty of perjury that the foregoing is true and correct.

Signed by:
32B7B9936DB34F0...
Joshua LoBue — 9/29/2025
Date

Signed by:
9D115752CAC1408...
Eleanor LoBue — 9/29/2025
Date

Hayden, Idaho
City and State