

IN THE SUPREME COURT OF THE STATE OF IDAHO

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,

Petitioners,

v.

STATE OF IDAHO, acting by and through the
IDAHO STATE TAX COMMISSION,

Respondent,

and

IDAHO STATE LEGISLATURE,

Intervenor-Respondent.

Docket No. 53264-2025

**BRIEF OF AMICUS CURIAE MOUNTAIN STATES POLICY CENTER, INC.
IN SUPPORT OF RESPONDENTS**

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IDENTITY AND INTERESTS OF AMICUS CURIAE

Mountain States Policy Center, Inc. (“MSPC”) is a 501(c)3 non-profit organization, founded to empower individuals to succeed through non-partisan, quality research that promotes free enterprise, individual liberty and limited government. MSPC is headquartered in Idaho. Drawing from top policy experts and leaders from across the region, MSPC champions commonsense policy solutions in the public square while making the case for a dynamic and innovation-driven market economy to the public as a whole.

As a free-market think tank based in Idaho, MSPC is interested in this matter because it worked directly with lawmakers on designing the policy, based on research and experiences in other states.

MSPC advocates for policies, like HB 93’s Parental Choice Tax Credit Program (“Parental Choice Tax Credit” or the “Tax Credit Measure”), that advance freedom, free enterprise, and prosperity, and has published numerous articles and studies relevant to this action. In submitting this brief, MSPC offers a unique perspective to the Court on a variety of issues highlighted in MSPC’s scholarship, including: (A) how similar tax credit measures have withheld constitutional scrutiny in other jurisdictions, (B) the fallacy inherent in Petitioners’ argument that the Parental Choice Tax Credit will defund public schools, (C) the legitimate public purposes served by the Tax Credit Measure, and (D) the potential that Petitioners’ arguments will trigger additional legal challenges to a variety of Idaho’s publicly funded measures and its system of public school funding.

MSPC’s authority to file this brief is Idaho Appellate Rule 8(a). No counsel of a party drafted this amicus brief, in whole or in part; no party or counsel of a party contributed money

that was intended to fund preparing or submitting this brief; and no person or entity other than MSPC and its supporters contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

This Court should decline to grant a writ of prohibition and reject Petitioners' constitutional arguments because, as indicated by legal challenges in sister states, refundable tax credit policies like the Tax Credit Measure are constitutional and will result in savings to the state rather than a defunding of public schools. Moreover, as highlighted by polling data, parental stories, and empirical studies, the Tax Credit Measure serves the legitimate public purpose of ensuring that all Idaho children receive the best possible education to meet their individual needs. Finally, if endorsed by this Court, Petitioners' public purpose doctrine and uniformity clause arguments will lead to additional legal challenges to Idaho's publicly funded tax credit measures and policies of public school funding.

A. Parental School Choice Measures like the Tax Credit Measure have consistently been upheld as constitutional in other states because they effectuate the private action of parents' use of their own funds.

Multiple state supreme courts have upheld the constitutionality of policies like the Tax Credit Measure against various substantive challenges. In the few cases in which a plaintiff was able to establish sufficient standing to challenge parental school choice measures based upon similar arguments made by the Petitioners here, the measures have been upheld. Alabama and Wisconsin have rejected constitutional challenges on the basis that their parental school choice measures were a *de facto* passthrough of taxpayer funds to private schools. *Magee v. Boyd*, 175 So.3d 79 (2015); *Jackson v. Benson*, 218 Wis.2d 835 (1998). North Carolina and Wisconsin have

also rejected constitutional challenges on the basis that their policies effectively created two state run education systems, one for public education and one for private education, which was alleged to be a violation of the uniformity clause in their state constitution. *Hart v. State*, 368 N.C. 122 (2015); *Davis v. Grover*, 166 Wis.2d 501 (1992). Finally, Arizona’s dollar-for-dollar tax credit measure for student tuition organizations provides instructive corollaries regarding the primacy of the parental choice involved in policies like the Tax Credit Measure that obviates the specter of unconstitutional governmental involvement. *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011). These cases are instructive in deciding the challenges to the Tax Credit Measure raised by the Petitioners here and demonstrate why this Court should reject Petitioners’ arguments. The most relevant decisions from sister states are discussed in turn below.

1. Alabama

Alabama passed Alabama House Bill 84 in 2013; Section 8 of that bill provided a tax credit for parents of students who were zoned for a “failing school” and who chose to instead send their children to a nonpublic school or a nonfailing public school. *Magee*, 175 So.3d at 90, 135. The tax credit was designed to offset the expenses incurred by transferring the child and was paid out of Alabama’s Education Trust Fund. *Id.*

A group of plaintiffs sued the Alabama Commissioner of Revenue and the State Comptroller to challenge the constitutionality of House Bill 84 under multiple provisions of the Alabama State Constitution, including Article XIV, § 263, which states: “No money raised for the support of public schools shall be appropriated or used for the support of any sectarian or denominational school.” *Id.* at 131. Specifically, the plaintiffs in *Magee* argued that the tax credit

diverted money from the Alabama Education Trust Fund and instead appropriated that money in support of private religious schools. *Id.*

Ultimately, the Alabama Supreme Court rejected the constitutional challenge under § 263 of the Alabama State Constitution because the HB 84 tax credit could not be equated to a governmental expenditure. *Id.* at 132. The *Magee* court reasoned that the ultimate decision to confer the aid rested with a private individual, as opposed to the government. *Id.* Accordingly, the court held that the Section 8 tax credit provision was not a government funding of a separate system of private school because any money flowing to private schools would only be a result of the private decision of individual parents, rather than money directly spent by the state. *Id.* at 135.

Here, the Tax Credit Measure, like Alabama’s HB 84 tax credit, vests the choice of whether to engage in the refundable tax credit with parents. Stated differently, the choice to spend private dollars on compensable expenses or rely purely on the government funding of public education rests with individual parents. *Magee* teaches that under such a policy, private schools are not the beneficiary of state funds, the parents are; accordingly, the legal challenge here should be rejected for the same reasons articulated by the *Magee* court.

2. Wisconsin

In Wisconsin, the state legislature enacted the Milwaukee Parental Choice Program (“MPCP”), which permitted up to 1.5% of the student membership of Milwaukee Public Schools to attend a private nonsectarian school located in Milwaukee at no cost, subject to certain eligibility requirements. *Jackson*, 218 Wis.2d at 846. Plaintiffs challenged the constitutionality of the MPCP on multiple bases, including claiming that the MPCP violated Wisconsin’s public

purpose doctrine and the uniformity provision of Article X, § 3 of the Wisconsin Constitution. *Id.* at 844. Wisconsin’s public purpose doctrine, like Idaho’s, is not an express provision of the Wisconsin Constitution, but rather a creature of case law establishing the requirement that public expenditures may be made only for public purposes. *Warren v. Reuter*, 44 Wis.2d 201, 207 (1969).

Public Purpose Doctrine. In addressing the public purpose doctrine challenge, the Wisconsin Supreme Court noted that it has consistently held since 1969 that an appropriation of public funds that ends up being used for private education does not violate the public purpose doctrine because the legitimate public purpose ultimately served by public funds in this context is providing a quality education, not in funding a private school. *Id.*, 44 Wis.2d at 207 (upholding an appropriation of public funds to the Marquette School of Medicine for the purpose of providing quality medical education); *Davis*, 166 Wis.2d at 544 (“Parents generally know their children better than anyone . . . In this way, parental choice preserves accountability [of education quality] for the best interests of the children”); *Jackson*, 218 Wis.2d at 883-84 (“In this case, we limit our analysis to determining whether the amendments made to the original MPCP change either the analyses we relied upon or conclusions we reached in *Davis*. Upon review, we conclude that they do not.”).

In setting this precedent, the Wisconsin Supreme Court specifically recognized that, “under the amended MPCP the State sends checks directly to the participating private school and the parents must restrictively endorse the checks to the private schools. Nevertheless, we do not view these precautionary provisions as amounting to some type of ‘sham’ to funnel public funds to sectarian private schools.” *Jackson*, 218 Wis.2d at 872.

Idaho's Parental Choice Tax Program, like Wisconsin's MPCP, does not violate Idaho's public purpose doctrine because the public purpose served is in providing a quality education for the children of Idaho, not in specifically ensuring that public funding ends up supporting private education. The legislative intent of the Tax Credit Measure was explicitly stated in the bill: (1) ensuring that parents in Idaho are able to choose educational services that meet the needs of their individual children; (2) upholding the fundamental right of parents recognized in Idaho Code Section 32-1010 to nurture and direct their children's education; and (3) allowing parents whose taxable income does not exceed 300% of the federal poverty level to request advance payment of the tax credit to pay for qualified student expenses. Idaho Parental Choice Tax Credit Act, 2025 Idaho Sess. Laws ch. 9 at 29. Considering that the Tax Credit Measure merely provides tax credit refunds to parents and does not provide checks directly to private schools like Wisconsin's MPCP, the public purpose challenge in this action is even more tenuous than the challenge rejected in *Jackson*.

Uniformity Clause. Wisconsin's constitution also contains a uniformity clause that is similar to the clause in Article IX, § 1 of the Idaho Constitution. Article X, § 3 of the Wisconsin Constitution states, "The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein." The Wisconsin Supreme Court held that the MPCP did not violate its state uniformity clause because the program in no way deprives any student of the opportunity to attend a public school with a uniform character of education. *Davis*, 166 Wis.2d at 538-39 ("The MPCP merely reflects a legislative desire to do more than that which is constitutionally

mandated.”) In so holding, the *Davis* court clarified that the uniformity clause was intended to assure certain minimal educational opportunities for the children of Wisconsin, not require that the district school system was the *only* system of state-supported education.¹ *Id.* at 539; *see also Jackson*, 218 Wis.2d at 894–95 (“Similar to the original MPCP upheld in *Davis*, the amended MPCP in no way deprives any student of the opportunity to attend a public school with a uniform character of education. By enacting the amended MPCP, the State has merely allowed certain disadvantaged children to take advantage of alternative educational opportunities in addition to those provided by the State.”).

Like Wisconsin’s MPCP, the Tax Credit Measure is similarly framed only to provide Idaho parents with alternative educational opportunities by reducing the burden of some of the expenses of schooling outside of the public system, which *may* include private school tuition. In doing so, the Tax Credit Measure does not in any way infringe upon Article IX, § 1’s requirement to provide, “a general, uniform and thorough system of public, free common schools.” Like Wisconsin’s uniformity clause, Article IX, § 1, merely describes the floor for

¹ The West Virginia Supreme Court made a similar holding in finding West Virginia’s school choice education-savings account legislation constitutional: “we find that the West Virginia Constitution does not prohibit the Legislature from enacting the Hope Scholarship Act in addition to providing for a thorough and efficient system of free schools. *The Constitution allows the Legislature to do both of these things.*” *State v. Beaver*, 248 W. Va. 177, 186 (2022) (emphasis added).

public schools; the legislature can raise the ceiling by building additional opportunities for school children in Idaho.

3. North Carolina

North Carolina created the Opportunity Scholarship Program, which allows students in lower-income families to receive scholarships from the State to attend private school. *Hart v. State*, 368 N.C. 122, 126-27 (2015). Under the provisions of the Opportunity Scholarship Program, North Carolina’s Educational Assistance Authority makes applications available to eligible students for the award of scholarship grants to attend any nonpublic school. *Id.* Opponents challenged the scholarship measure by claiming that it violated the uniformity clause of Article IX, § 6 of the North Carolina Constitution by creating an alternate system of education through funding scholarships for schools that were not part of the public school system. *Id.* at 131-32.

Article IX, § 6 of the North Carolina Constitution designates the creation of a “state school fund” that “shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.” N.C. Const. art. IX, § 6. Ultimately, the North Carolina Supreme Court rejected the argument that the scholarship measure violated the state’s uniformity clause. *Hart*, 368 N.C. at 132. The North Carolina Supreme Court held that Article IX, Section 6 merely required adequate funding of the “state school fund” to preserve and support the public school system and did not limit the State’s ability to spend on education generally, including using the State’s general tax revenue as an additional source of funding to support other educational initiatives. *Id.* at 132-33.

As explained in detail in Section B *infra*, the Tax Credit Measure creates tax savings by relieving Idaho of the burden of educating students who choose non-public education. In seeking to enact the tax measure, the State is not creating an alternate system of education but simply offering a tax credit to alleviate the burden to parents seeking to pursue other educational alternatives for their children. As long as the needs of the public school system are met, the Tax Credit Measure simply augments that existing system by providing additional educational opportunities for the children of Idaho.

4. Arizona

In Arizona, the state legislature enacted a program that provided dollar-for-dollar tax credits of up to \$500 for contributions to Student Tuition Organizations (“STOs”), who in turn distributed scholarships to students attending private schools. *Kotterman v. Killian*, 193 Ariz. 273, 281 (1999). Plaintiffs have challenged the STO program several times over the years by arguing that the STO tax credit diverted state revenue funds to private schools and imposed a de facto tax liability on those not taking advantage of the tax credit. *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125, 142 (2011). In challenging the Tax Credit Measure, Petitioners make similar arguments here—*i.e.*, claiming that the Parental Choice Tax Credit creates a de facto system setting parents who take advantage of the tax credit against parents who continue to participate in the public school system. *See* Petitioners Brief in Support of Verified Petition for Writ of Prohibition (“Petitioners’ Br.”) at 18.

The challenges in Arizona have been rejected on the premise that the tax credit is not an appropriation of public money that is directed to private education because the STO measure simply reduces tax liability for those choosing to donate to STOs. *Winn*, 563 U.S. at 141-42;

Kotterman, 193 Ariz. at 288. As a result, the legislature cannot be said to have violated the law by increasing the tax liability of those not taking advantage of it. *Kotterman*, 193 Ariz at 288. While tax credits and government expenditures can have similar economic consequences, the Arizona cases teach that private parental choice on whether to engage with the program eliminates the government tie that would be necessary to argue that the Tax Credit Measure is operating as some secondary state education system.²

In sum, high courts in sister states have consistently upheld parental choice tax credits against very similar challenges to those advanced by Petitioners here; the Idaho Supreme Court should similarly uphold the legislature's power to establish the Tax Credit Measure as part of its efforts to ensure a quality education for all Idaho children.

² Indeed, similar parental choice measures are becoming increasingly common and were even recently implemented at the federal level. On July 4, 2025, the FY2025 reconciliation act (P.L. 119-21), commonly referred to as the One Big Beautiful Bill Act, was signed into law. Among its provisions, the law created a federally funded tax credit scholarship program for elementary and secondary education that will be effective beginning on January 1, 2027. Under the program, taxpayers will be eligible to receive a tax credit of up to \$1,700 for the value of cash contributions to certain *scholarship granting organizations* (SGOs). These organizations, in turn, will be required to use these contributions to grant scholarships to students at private and public elementary and secondary schools located within their states. Congressional Research Service, *Federal Tax Credit Scholarship Program Included in P.L. 119-21, the FY 2025 Reconciliation Law*, available at: <https://www.congress.gov/crs-product/R48724>.

B. Refundable tax credit policies like the Tax Credit Measure create tax savings by relieving the State of the burden of educating students who choose non-public education.

Petitioners argue that HB 93 “has the effect of reducing funding for the state’s public schools.” Petitioners’ Br. at 4. That argument has been advanced by opponents to refundable tax credit policies throughout the country, but logic and data show it should be rejected. As an initial matter, the Tax Credit Measure is not funded by any money from the public school budget.³ But more fundamentally, as explained by the Georgia Supreme Court when addressing such an argument in 2017, “a tax credit that funds a program that encourages attendance at private schools might, in fact, create a tax savings by relieving the public schools of the burden of educating the students who chose to attend private schools.” *Gaddy v. Georgia Department of Revenue*, 301 Ga. 552, 556 (2017).

The data supports the conclusion reached by the *Gaddy* Court.

Numerous studies have analyzed the fiscal impact of school choice. Researchers have examined 24 voucher programs, 18 tax-credit scholarship programs, three education savings

³ See I.C. § 67-1230; see also Mountain States Policy Center, *Fact checking claims about latest Idaho education choice proposal* (Feb. 2, 2024), available at:

<https://www.mountainstatespolicy.org/fact-checking-claims-about-latest-idaho-education-choice-proposal> (discussing a similar initiative and explaining that “[t]he tax credit . . . takes \$0 out of the state’s public school budget. It is a completely separate line item of \$50 million. The public school budget will remain at \$2.698 billion. Comparatively speaking, the tax credit equals less than one half of one percent of the state’s K-12 allocation.”).

account programs, and one privately funded scholarship program in 23 states and Washington, D.C.⁴ Of the 74 studies reviewed, 68 found that these programs generated net savings for taxpayers.⁵ Another 5 studies found the programs to be cost-neutral, while 5 estimated net costs.⁶ However, 4 of the studies that found net costs also reported net savings over the long term, with only short-term costs.⁷

And every indication is that Idaho will continue to save money if families choose alternatives to public schools. On average, the state of Idaho now spends \$8,472 per student, per year on K-12 schooling.⁸ This does not include large amounts of local funding, approved via levies and bonds, nor does it include federal funding. The estimated number of K-12 students in private schools and home schooling throughout the state now exceeds 30,000, meaning the net

⁴ Mountain States Policy Center, *There are 187 studies on impact of education choice – and the results are overwhelming* (Jan. 23, 2024), available at:

<https://www.mountainstatespolicy.org/there-are-187-studies-on-impact-of-education-choice-and-the-results-are-overwhelming> (collecting and summarizing study results).

⁵ See *supra* note 4.

⁶ See *supra* note 4.

⁷ See *supra* note 4.

⁸ Legislative Services Office, *Idaho K-12 education spending from Idaho General Fund years 2014-2024*, available at

<https://legislature.idaho.gov/lso/bpa/budgetinformation/agency/?YEAR=2024&FA=2.Education&DEP=Public%20School%20Support>.

savings to the state from families who choose to educate outside of the public school system is currently over \$300 million per year.⁹ The Tax Credit Measure will cost no more than \$50 million per year—less than a sixth of what private and home-schooling families are saving the state by educating their children outside the public system.¹⁰ The Tax Credit Measure does not seek to reimburse families for the entire amount that would otherwise have been spent by the State on their children’s K-12 education; rather the amount of the credit is capped at \$5,000 for most eligible children. I.C. § 63-3029N(3). This means that even after the Parental Choice Tax Credit is enacted, Idaho will have a net increase in state funds resulting from children schooled outside the public system. Petitioners claim that “students will withdraw from public schools to take advantage of the tax credit,”¹¹ if that is true, Idaho will save even more. In other words, the result of more children being educated outside of the public school system is that Idaho ends up with *more* money in its state coffers resulting from no longer having to provide the public schooling benefit guaranteed under the state constitution.

⁹ Mountain States Policy Center, *The incredible savings private and home schooling families offer taxpayers* (November 2024), available at:

https://www.mountainstatespolicy.org/_files/ugd/f1dfe7_184e55c4427c46cdbbf3301be52c6f6.pdf.

¹⁰ *See supra* n.1.

¹¹ Petitioners’ Br. at 4.

C. The Parental Choice Tax Credit serves the legitimate public purpose of ensuring Idaho students receive a quality education that works for them.

As recognized by the Wisconsin Supreme Court (amongst others), appropriations of public funds for school choice initiatives do not violate the public purpose doctrine because there is a legitimate public purpose in providing students with a quality education, not in specifically funding the private school. *See, e.g., Davis*, 166 Wis.2d at 544 (“Parents generally know their children better than anyone . . . In this way, parental choice preserves accountability [of education quality] for the best interests of the children”).

Idaho voters overwhelmingly agree and support the Parental Choice Tax Credit. In a recent survey, 64% of Idaho voters approve of Idaho’s new Parental Choice Tax Credit.¹² Of those surveyed, 71% indicated they support the Parental Choice Tax Credit because it gives families more say in their children’s education.¹³ Another 66% indicated they support the Parental Choice Tax Credit because it helps tailor learning for each child.

While Petitioners argue that the Parental Choice Tax Credit cannot benefit a large portion of Idahoans—particularly, Idaho’s rural families—that argument should be rejected. Petitioners’ contention is based on the statistic that 48% of Idaho counties currently lack a private school (Petitioners’ Brief at 13) and incorrectly assumes that parents would spend tax credit exclusively on a private institution. It is just as likely, however, that a parent may use the tax credit on

¹² yes. every kid. foundation. *Idaho Statewide Education Survey Findings* (October 2025), available at: <https://yeseverykidfoundation.org/new-poll-idaho-voters-strongly-support-education-freedom/>.

¹³ *See supra* note 10.

homeschooling expenses or tutoring as provided by the legislation.

While some Idaho counties may currently lack private school options, that is likely to change with passage of the Parental Choice Tax Credit; states with robust education choice policies have seen a significant increase in education options in rural areas.¹⁴ And even without a private school nearby, rural areas have more education options than public schooling, including microschoools¹⁵ and virtual learning.¹⁶

Stories from individual parents further demonstrate the legitimate public purpose that HB 93 law serves.¹⁷ As explained by Amy Russell, a mother of children aged one to nine years old who lives in Nampa, her family chose private school because:

After looking at the public school options, we felt that the quality of education, standards, and support would be found in a private school. While we support our public school teachers, we should have the option to educate our children in a school system that listens to us. We have paid into the public school system but do not

¹⁴ The Heritage Foundation, *Rustic Renaissance: Education Choice in Rural America* (January 9, 2023) available at: <https://www.heritage.org/education/report/rustic-renaissance-education-choice-rural-america>.

¹⁵ While “there is no universally agreed-upon definition of a ‘microschool’” the concept generally refers to “small clusters of families that pool resources and collaborate to educate their children.” *Supra* note 14.

¹⁶ *See supra* note 14.

¹⁷ Mountain States gathered these stories from some of its supporters about the impact of the Parental Choice Tax Credit; all parents quoted in this brief granted Mountain States’ permission to do so.

have any control about what they learn. The only option for us is a private school.

Other parents, like Amy Carter of Kuna, report that their children have done better outside the public school environment due to their special needs:

My oldest struggled with ADHD & tics. He is smart but couldn't keep assignments organized and teachers thought he wasn't paying attention.

As explained by Toshia Stott, a mother with four children aged ten through seventeen, parents are often in the best position to understand what school environment works for their children:

The most exciting part about the parental choice tax credit is that the money our state has allocated to support our children will then follow the child and have the potential to support them in whatever learning environment and styles are best suited for them. I believe that parents have the ability to manage these funds more efficiently and with greater attention to the actual needs of the individual children.

A common thread through all of these parent stories is that these parents believe schooling outside the public system allowed their children the best education possible for their individual needs. And as Amy Russell puts it: "Isn't that what we all should want for our kids? The best education they can get?"

Ultimately, Idaho recognizes the importance in cultivating an educated population for the benefit of the general public. Idaho const. art. IX, sec. 1 ("The stability of a republican form of government depending mainly upon the intelligence of the people..." For many children and families, public schools work well, but for those that decide another option is better for the children's needs, supporting that choice through offsetting part of the financial cost is certainly a legitimate public purpose. Moreover, data supports the conclusion that school choice results in

real benefits to the community. Research tends to indicate that school choice policies increase student test scores, both in private and public schools, as well as educational attainment, racial integration, and school climate and safety.¹⁸ As explained in an empirical research review published in the Peabody Journal of Education: “private school choice delivers some benefits to participating students—particularly in the area of educational attainment—and tends to help, albeit to a limited degree, the achievement of students who remain in public schools.”¹⁹ There is no dispute that public schools serve the goal of providing an educated general population. However, it is a fallacy to believe that providing alternatives to those with needs that public school cannot entirely meet detracts from, rather than augments that legitimate public purpose of educating the general population.

D. Petitioners ask this Court to stretch the public purpose doctrine and the uniformity clause too far, leading to a potential proliferation of new legal challenges.

Petitioners’ challenges to the Parental Choice Tax Credit, if accepted by the Court, will breed additional challenges. According to Petitioners, the public purpose doctrine requires any initiative funded by tax revenues to (1) serve the community as a whole and (2) be directly related to the functions of government. Petitioners’ Brief at 26, 28. Petitioners argue that “[a]dvancing private education does not serve a public purpose” and “is not directly related to the functions of government,” thus rendering the Tax Credit Measure illegal under the public purpose doctrine. Petitioners’ Br. at 31. But endorsing such a restrictive view of the public

¹⁸ See *supra* note 4.

¹⁹ Anna J. Egalite & Patrick J. Wolf, A Review of the Empirical Research on Private School Choice, 91 Peabody J. Educ. 441 (2016), <https://doi.org/10.1080/0161956X.2016.1207436>.

purpose doctrine risks undermining a variety of tax credits and publicly-funded programs already on the books. For example, the popular Idaho Launch and Idaho Opportunity Scholarship programs provides tuition credit to institutions of higher education; in particular, students can get up to 80% of the published tuition and fees at an eligible institution covered, and eligible institutions include some non-public institutions with religious affiliations.²⁰ Such a program could be challenged under the same logic advanced by the petitioners here, *i.e.*, that it advances private education and is not directly related to the functions of government. After all, data from the Idaho Workforce Development Council shows more than 700 students are using the Launch program to attend Brigham Young University – Idaho, an institution owned and operated by The Church of Jesus Christ of Latter-Day Saints, and an additional 70 are using Launch to achieve their education at Northwest Nazarene University.²¹

Other non-education tax credits could be at risk of challenge as well, including for example the grocery tax credit which is a refundable credit designed to offset sales tax paid on

²⁰ See Idaho Opportunity Scholarship and Idaho Launch Comparison Chart, available at: https://nextsteps.idaho.gov/assets/uploads/2024/10/NSI_LAUNCH-v-IOS-handout-10-7-24.pdf (accessed Oct. 9, 2025) (indicating eligible institutions include The College of Idaho, Northwest Nazarene University, and Brigham Young University – Idaho).

²¹ Mountain States Policy Center, *Idaho Launch award data: Oh, the irony* (Oct 15, 2024), available at: <https://www.mountainstatespolicy.org/idaho-launch-award-data-oh-the-irony>.

groceries.²² While that credit likely qualifies as a measure that serves the community as a whole, one could argue it is not directly related to the functions of government. Similarly, the Petitioners take aim at the refundable nature of the Tax Credit Measure, arguing that it allows “public funds received to pay for private education” leading to a violation of Article IX, section 1 of the Idaho Constitution. Petitioner’s Br. at 4, 18. By that logic, any tax credit could be challenged based on the argument that the way the taxpayer ultimately spends the proceeds is something that would be unconstitutional if the State itself had directly paid the expense itself. As recognized by courts across the country, *see supra* Section A, individual spending is not equated to government spending simply because that individual obtains a tax credit.

Petitioners’ argument based on the uniformity clause could also call into question the legality of local school district tax levies that provide non-uniform resources across the state. Much of the Petition is dedicated to the (erroneous) argument that the Parental Choice Tax Credit somehow “maintains a system of schools” that is not “general, *uniform*, thorough, public or free” enough to satisfy the requirements of Article IX, section 1 of the Idaho Constitution. Petitioners’ Br. at 6 (emphasis added). Petitioners rely on the ISEEO cases to argue that “Article IX, section 1 requires the state to take great care in setting up public schools, creating a regulatory scheme to ensure they are ‘uniform’ and ‘thorough’ and properly funded.” Petitioners’ Br. at 25. To the extent that this Court agrees with this argument and issues an opinion that could

²² Idaho State Tax Commission, *Idaho Grocery Credit*, available at:

<https://tax.idaho.gov/taxes/income-tax/individual-income/popular-credits-and-deductions/idaho-grocery-credit/> (accessed Oct. 10, 2025).

be read as requiring uniform funding of public schools, local school district tax levies would be at risk. Indeed the Arizona Supreme Court has ruled a system of public education that depends on local district funding is unconstitutional under that state’s uniformity clause. *See, e.g., Hull v. Albrecht*, 190 Ariz. 520, 524, 950 P.2d 1141, 1145 (1997) (“If the legislature chooses to continue to rely on district based property taxation, substantial equalization to meet statewide standards is required by the uniformity clause.”). Idaho itself has struggled with legal challenges to the public school funding system in the ISEEO cases, but this Court has previously rejected uniformity-in-funding claims, explaining that “the uniformity requirement in the education clause requires only uniformity in curriculum, not uniformity in funding.” *Idaho Sch. for Equal Educ. Opportunity v. Evans*, (“ISEEO I”), 123 Idaho 573, 579–80, 850 P.2d 724, 740–41. To the extent the Petitioners seek to reopen the door to uniformity-in-funding claims in Idaho, this Court should expect new challenges to Idaho’s public education funding system, which depends, in part on local school district tax levies.

In sum, Petitioners in this case appear to call for an unprecedented expansion of Idaho’s public purpose doctrine and uniformity clause; endorsing such arguments has the potential for far reaching impacts beyond this action.

CONCLUSION

For the foregoing reasons, as well as the reasons articulated in Respondents' briefs, this Court should not stop implementation of the Parental Choice Tax Credit, as it is a constitutional program that serves the legitimate public purpose of ensuring a quality education for all Idaho children.

DATED this 10th day of November, 2025.

MILLER NASH LLP

/s/ KC Hovda

By: KC Hovda

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of November, 2025, I filed the foregoing electronically with the Clerk of the Court through the iCourt System, which caused the following parties or counsel to be served by electronic means:

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