

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 *AMICI CURIAE*
NOTRE DAME EDUCATION LAW PROJECT AND CATHOLIC
EDUCATION PARTNERS IN SUPPORT OF
RESPONDENT AND INTERVENOR PARENTS

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INTEREST OF AMICI CURIAE¹

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

Catholic Education Partners (CEP) believes that parental empowerment over their children's education opportunities will allow more families to benefit from Catholic schools, which have long served the common good by providing an excellent, faith-filled education to young people, Catholic and non-Catholic alike, including the most-disadvantaged students. CEP partners with Catholic school leaders and families, bishops, clergy and other stakeholders to advance state policies that allow more families to access Catholic education, while protecting the freedom of Catholic schools to advance their unique mission.

¹ No counsel for any party authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than the amici curiae listed here contributed money intended to fund preparing or submitting this brief.

ARGUMENT

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

No one doubts the significant public interest in K–12 education. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“[E]ducation is perhaps the most important function of state and local governments.”). While in Idaho, as elsewhere, public schools are more often recognized as advancing that important interest, private schools also have a long record of promoting the public interest in K-12 education. The Idaho Parental Choice Tax Credit appropriately advances the public interest in K-12 education by expanding the menu of the publicly funded educational options available to families in Idaho to include private schools and other private education providers, while at the same time preserving and respecting the core role of public schools in the state’s K-12 educational system.

A. Private schools have long contributed to the goal of universal education.

In the early decades of our nation’s history, public schools as we now know them did not exist. If children were to be formally educated at all it was typically in a private school. See Michael W. McConnell, *Scalia and the Secret History of School Choice*, in *Scalia’s Constitution: Essays on Law and*

Education 72–73 (Peterson & McConnell, eds., 2018). Well into the nineteenth century, American “education was almost without exception under private sponsorship and supervision.” *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 238 n.7 (1963) (Brennan, J., concurring). Today’s public-school system is the outgrowth of the common-school movement of the mid-nineteenth century. Before then, nearly all schools were privately operated, often by religious organizations, which were sometimes then funded by public money. See McConnell, *supra*, at 72–74. Consequently, “[a]s a result of this diverse system of [private] schooling, the young nation enjoyed a high rate of literacy; by 1840, for example, 90% of northerners and 81% of southerners were literate.” Dick M. Carpenter II & Krista Kafer, *A History of Private School Choice*, 87 PEABODY J. EDUC. 336, 337 (2012).

This was equally true in Idaho as in the nation more broadly. Indeed, in Idaho, private schools have always been an important supplement to public education. During the territorial period in 1863-1890, the establishment of a public school system was “a rocky, difficult and frustrating undertaking.” U.S. Dep’t of the Interior, *Public School Buildings in Idaho* 4 (Jan. 1987), <https://perma.cc/8UV6-9RUA>. In the absence of public schools, nearly 500

children were educated in private schools by 1864. *Id.* And “until the public school system was well under way, schools depended on entrepreneurial teachers and charitable donations from parents.” *Id.* at 5. Indeed, in Idaho, private schools have always been a necessary supplement to public education.

Today, private schools continue to perform the critical task of educating children in the United States and Idaho. Nationally, private schools educate more than 5 million pre-K–12 students a year. NAT’L CTR. FOR EDUC. STATS., *Table 205.10: Private Elementary & Secondary School Enrollment* (Oct. 2021), <https://perma.cc/H95J-F6U8>. In Idaho, a dedicated network of 160 private schools educates 23,290 students each year. NAT’L CTR. FOR EDUC. STAT., *Idaho Digest State Dashboard*, <https://perma.cc/FNX6-A5SL>. It can hardly be doubted that Idaho’s children would suffer—and along with them, the public’s vital interest in education—if it were not for the efforts of these private schools, which complement the state’s public school system by providing educational options to meet the diverse needs of Idaho children.

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

Private schools not only do the critical work of educating children, but they excel at it. This Court has repeated that “the stability of a republican form

of government depend[s] mainly upon the intelligence of the people,” *Thompson v. Engelking*, 537 P.2d 635, 636 (Idaho 1975) (quoting IDAHO CONST. Art. IX, § 1). This foundational principle underscores why K-12 education in Idaho is vastly important and is why private schools perform an essential public function by ensuring Idaho children receive the quality education this state’s constitution demands.

Private schools boast an impressive record of academic success. These schools often have demanding academic requirements and, controlling for demographics, “private school students generally perform higher than their public-school counterparts on standardized achievement tests.” NAT’L CTR. FOR EDUC. STATS., *Private Schools: A Brief Portrait* 21 (2002), <https://perma.cc/C5F8-XRL8>. For example, a study of nearly two million high-school students who took the ACT in 2015 found that “[i]n every racial and ethnic subgroup, ACT-tested students in private schools outscored their public school counterparts.” *Private School Students More Likely to Be Ready for College*, CAPEoutlook (Council For Am. Priv. Educ., Germantown, MD), Nov. 2015, <https://perma.cc/T82P-SJWK>. A recent study of education across more than 50 countries likewise found that, as the proportion of students

enrolled in private schools increases, so does student performance in math, reading, and science; the author estimates that even a 10% increase in private-school enrollment would significantly increase the United States' standardized test scores and international ranking in student achievement. See Corey A. DeAngelis, *The Public Benefit of Private Schooling* 7–10, CATO INST. (Jan. 22, 2018), <https://perma.cc/NUP8-RDFX>.

Importantly, these effects are not driven by selection bias, or the fact that wealthier, better educated, parents can afford to pay private school tuition. On the contrary, the vast majority of empirical research on private school choice programs has found that such programs “improve[] academic outcomes.” Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Choice* 1, FRIEDMAN FOUND. FOR EDUC. CHOICE (May 2016), <https://perma.cc/92P4-R5UH>. Studies of the effects of choice programs, like the Idaho Parental Choice Tax Credit, consistently demonstrate that school choice leads to both “modest positive effects on academic performance over time” and “more-significant longer-term effects on noncognitive variables, including high school graduation rates [and] college matriculation and

persistence.” Nicole Stelle Garnett, *Post-Accountability Accountability*, 52 U. MICH. J. L. REFORM 157, 175 (2018).

Moreover, the benefits of private schools, and therefore the promise of expanding access to them through parental choice, extends beyond academics. As previously noted, this Court has recognized the interest between an educated public and societal stability. *See Thompson* 537 P.2d at 636. Real-world experience shows that private schools advance this interest. Studies have shown that, overall, private schools and especially faith-based schools “do a better job of preparing students to be engaged members of a diverse, democratic society.” MARGARET F. BRINIG & NICOLE STELLE GARNETT, LOST CLASSROOM, LOST COMMUNITY 144 (2014). Students who attend private schools are “significantly more likely to engage in community service . . . , [are] more likely to learn civic skills in school, [are] better informed about the political process, and [are], on average, more politically tolerant than students in public schools.” *Id.* And even “spending one year in a private school led to a considerable increase in a student’s political tolerance and political knowledge.” *Id.* at 145. Correspondingly, studies have shown that private-school-choice programs “improve[] civic values and practices,” including

students’ “respect for the rights of others.” Forster, *supra*, at 1–2; *see also* Garnett, *Post-Accountability*, *supra*, at 175 (school-choice programs lead to “a reduced likelihood of involvement in the criminal justice system”).

II. Parental choice programs improve life outcomes for all students

The petitioners argue that Idaho’s Parental Choice Tax Credit is not a legitimate way for the state to provide for the education of its children. *See* Pet’rs’ Verified Pet. for Writ of Prohibition, ¶¶ 25–26, 28–29, Sept. 17, 2025. The argument is incorrect. As established above, private schools have historically played a crucial role in serving the state’s educational interests. Moreover, the available evidence makes clear that parental choice tax credits like Idaho’s HB 93 play a critical role in this mission as well. Empirical research spanning decades demonstrates that parental choice programs both (1) improve the educational—and life—outcomes of participating students, including those from traditionally marginalized backgrounds, and (2) improve public-school performance through competition. In contrast to petitioners’ claims, the legislation challenged here does not present the Court with an ‘either-or’ decision between school choice and public schools, but a ‘both-and’ opportunity to endorse the Legislature’s decision to increase educational

opportunities for all of Idaho’s students.

A. Private school choice provides all students with high-quality options that will improve life outcomes

This Court has stated that “the system of public education affects the present and future quality of life of Idaho's citizens and its future leaders, its children.” *Idaho Sch. for Equal Educ. Opportunity v. Idaho State Bd. of Educ.*, 912 P.2d 644, 652 (Idaho 1996). The statement is true of all forms of education in the state. This is because the “intelligence of the people,” IDAHO CONST. art. IX, § 1, is not merely an abstract statement about test scores, but a statement of holistic educational value. An education prepares students to be contributors to their families, their communities, and the state in which they live. Simply put, an education is valuable because, when done properly, it leads to a good life. If the state does not avail itself of the very best means to educate its students, the entire community is worse off.

Studies of existing parental choice programs consistently conclude that students participating in private school choice programs demonstrate a positive effect in rates of high school graduation, college enrollment, and college completion. *See The 123s of School Choice*, EDCHOICE, 15–16 (2024), <https://perma.cc/4HX5-QDKU>. Almost all studies find that parental choice

positively affects student academic performance (as measured by standardized tests), but even those few studies where the measured impact has not been meaningfully positive, do not find negative effects. *See, e.g., id.* at 6–7; Matthew M. Chingos et al., *The Effects of Means-Tested Private School Choice Programs on College Enrollment and Graduation*, URBAN INST. (July 2019). Meanwhile in Idaho, students’ math and reading scores have gone down consistently over the past seven years, tracking national trends. *See State Profiles*, THE NATION’S REPORT CARD, <https://perma.cc/7433-22PF>. And although Idaho scored above the national average, its advantage relative to the nation has halved since 2017. *Id.* Studies consistently find that private school choice has a “statistically significant” positive impact on student achievement in both reading and math. M. Danish Shakeel, Kaitlin P. Anderson & Patrick J. Wolf, *The participant effects of private school vouchers around the globe: a meta-analytic and systematic review*, 32 *School Effectiveness and School Improvement* 509, 525–26 (2021).

Of course, measuring an education’s value solely by standardized test performance is disconnected from what parents say that they value most. “[W]hile parents clearly value academic performance, it is not the only

factor influencing their decisions to choose a school for their children. . . . Studies suggest that only a minority of parents rank test scores as the most important predictor of school quality.” Nicole Stelle Garnett, *Accountability and Private School Choice* 11–12, MANHATTAN INST. (2021), <https://perma.cc/NW86-JXPC>. Rather, the educational pluralism provided by private school choice has a deeply personal value, particularly for disadvantaged students and students with special learning needs.

Private education providers, accessible through school-choice programs like Idaho’s tax credit, regularly provide students with smaller class sizes and a more tailored educational experience. With respect to class size, in states with similar programs, “[a]s families commit [to school choice], providers are multiplying.” Robert Pondiscio, *Families Aren’t Waiting for Schools to be Fixed*, AEI Blog (Oct. 9, 2025), <https://perma.cc/AP79-PD4G>. And, as providers continue to grow in number, so too will the opportunity for individualized student attention. This is “the larger dynamic” of choice availability: that “new and durable funding streams invite new entrants: low-cost private schools, microschools, hybrids—much as the charter movement did a generation ago.” *Id.*

Choice also provides critical educational opportunities for students from disadvantaged backgrounds. One of the most salient benefits of school choice programs is the access it provides to high quality educational options for low-income and traditionally underserved families. Detractors falsely allege that school choice programs disproportionately benefit wealthier families. This is not true, in Idaho or elsewhere. Parental choice programs like Idaho’s provide a means to reverse the “sorting across schools by family income level” that correlated with the rise of the “public education system in the U.S.” *The 123s of School Choice, supra*, at 54. Here are just a few examples: In Utah, all but 110 of 10,000 Utah Fits All scholarships distributed were awarded to students in the lowest income tier. Jenna Bree, *Utah Fits All scholarships awarded to 10,000 families*, FOX 13 NEWS UTAH (May 3, 2024), <https://perma.cc/W6FN-XBZG>. And in Florida, over 120,000 of the 300,000 students utilizing ESAs qualify for the Federal Free or Reduced Price Lunch Program. *Florida’s Private School Education Savings Accounts, Step Up for Students*, <https://perma.cc/7Y7B-898R>. In North Carolina, “[f]amilies that receive vouchers are among the lowest-income households in the state.” Anna J. Egalite et al., *A Profile of Applicants to North Carolina’s Opportunity*

Scholarship Program 1 (May 2019), <https://perma.cc/6Z4B-JDQY>. School choice provides a means to reverse the “sorting across schools by family income level” that correlated with the rise of the “public education system in the U.S.” *The 123s of School Choice, supra*, at 54. Wide and persistent participation in school-choice programs has helped bridge the opportunity gap that traditional solutions seemed unable to traverse.

Finally, parental choice programs lower barriers for families looking to access specialized services for children with unique learning need. A study surveying parents of special-needs students in Florida’s school-choice program asked families about the services their child received through the program. In one recent study, “Only 30 percent of [program] participants said they received all services required under federal law from their public school, whereas 86 percent reported their choice school provided all the services they promised to provide.” *Can school choice help students with special needs?*, EDCHOICE, <https://perma.cc/Z2BH-LTJF>.

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

“A public purpose is an activity that serves to benefit the community as a whole and which is directly related to the functions of government.” *Idaho*

Water Res. Bd. v. Kramer, 548 P.2d 35, 59 (Idaho 1976). At the same time, the Idaho Constitution states that the stability of the government enjoyed in the state depends on educating the people. See IDAHO CONST. art. IX, § 1. By providing a tax credit that facilitates parental choice, Idaho has provided an additional means of using valuable public resources to provide for the state’s common educational mission. Tax credits like these are a mechanism for the state to produce higher-achieving schools across the board. This is because, in the absence of competition, “public schools don’t have to compete for students,” and thus have “less of an incentive to enhance their performance.” David Figlio, Cassandra M.D. Hart & Krzysztof Karbownik, *The Ripple Effect: How private-school choice programs boost competition and benefit public-school students*, EDUC. NEXT (Oct. 26, 2022), <https://perma.cc/U3XY-9FZL>.

Consider, for example, the positive effects of market competition in both Ohio and Florida, which have resulted in positive effects for all students. A recent study of the EdChoice school voucher program in Ohio found “evidence that allowing students to use public funding to attend private schools [does] not harm outcomes for public school students.” Matthew M. Chingos, David N. Figlio, Krzysztof Karbownik, *The Effects of Ohio’s EdChoice Voucher Program*

on *College Enrollment and Graduation* 15, URBAN INST. (2025). And the same study which yielded those results also found “increases in college enrollment and graduation of public school students associated with the EdChoice program, complementing evidence of increases in more contemporaneous test scores previously documented.” *Id.* at 15–16. In a separate report on the same program, researchers noted: “The academic achievement of district students—as measured by the state’s performance index—was significantly higher than it would have been had districts not been exposed to the EdChoice program.” Stéphane Lavertu & John J. Gregg, *The Ohio EdChoice Program’s Impact on School District Enrollments, Finances, and Academics*, THOMAS B. FORDHAM INST. 6 (2022). “For the average student in a district exposed to performance-based EdChoice, their district’s achievement went from approximately the second percentile (the twelfth-lowest-achieving Ohio district) to approximately the sixth percentile (the thirty-seventh-lowest-achieving Ohio district).” *Id.*

Florida—the state with the most students participating in a parental choice program and which has had a variety of parental choice offerings since 2002—has seen “broad and growing benefits for students at local public schools as the school-choice program scales up.” Figlio, *The Ripple Effect*, *supra*. This

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

The Executive Director of the Idaho Education Association, one of the petitioners in this case, said that “[i]n the end, this isn’t just about schools. It’s about the kind of future we want for Idaho. We want communities where every child . . . has access to a strong, free, public education.” IDAHO EDUCATION ASSOCIATION, *Press Conference Announcing Legal Challenge of Idaho’s Voucher Subsidy Program*, at 14:13 (YouTube, Sept. 17, 2025), <https://www.youtube.com/watch?v=iy4O5vCPcRs>. Parental choice will advance, rather than hinder, that goal. The research evidence above suggests that greater access to school choice will *strengthen* the future of the public

school system in Idaho. And this is just one of the ways that choice programs are a valuable use of public resources.

Private school choice also saves tax dollars. See Martin F. Lueken, *Fiscal Effects of School Choice* 5–9, EDCHOICE (Oct. 15, 2024), <https://perma.cc/T2YC-FSDF>. And the savings are more extensive the longer a program stays in place. *Id.* at 32 (“The short-run estimates indicate that most programs result in savings for taxpayers, while the long-run estimates show that all programs generate fiscal benefits. . . . Savings are likely larger in the long run because districts encounter increasing opportunities to refine their operations and budgets over time.”). In an analysis of 26 state choice programs, “each dollar spent on education choice programs” created “between \$1.70 and \$2.64 in estimated fiscal savings.” *Id.* And the ink is still drying on a new report from the University of Arkansas which corroborates the cost-effectiveness of voucher programs. The report, which evaluates Arkansas’ Education Freedom Accounts, found that school-choice increased state per-pupil spending efficiency. Daion L. Daniels, et al., *2024–25 Arkansas Education Freedom Accounts Program Annual Report*, UNIV. OF ARK. DEP’T OF EDUC. REFORM (Oct. 2025), <https://perma.cc/7FKA-XYR6>. In the upcoming year, the ratio of

efficient-spending is set to progress even further. Projections estimate that “the program would account for only 7.4% of the roughly \$3.7 billion” state education budget, “while serving just under 10% of Arkansas students.” *Id.* at 27. The cost savings of private school choice is driven by program student-participants who would have otherwise attended a public school. *Id.* at 25 (“Switchers matter because the per-student cost of an EFA is lower than the state funding that would have been directed to a public school for the same student.”). We have already discussed the positive educational impacts generated by competition for switchers. But the cost savings also produce opportunities to reinvest in the students remaining in the public education system.

CONCLUSION

Petitioners argue that the Idaho Parental Choice Tax Credit program is inconsistent with the state’s uncontested duty to establish and support the systems of public schools and higher education, but as the State and the intervening parents have demonstrated, this is not true as a matter of law. Additionally, the assumptions underlying petitioners’ argument, which suggest that parental choice will undermine public schools and undercut the

quality of educational opportunities available to Idaho families, are also not true. Families and students in Idaho—both those enrolled in public schools and those availing themselves of the opportunities provided by Idaho’s tax credit program—will benefit from the state providing more choices, not less.

Amici curiae respectfully urges this Court to reverse the order below.

Dated: November 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November, 2025, I filed a true and correct copy of the foregoing through the iCourt system, which caused the following parties or counsel to be served by electronic means:

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