

FILED
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CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

NO. _____

JULIE UNDERWOOD, CHARLES UPHOFF, RANDY WENDT, FATHER
TOM MUELLER, ANGELA RAPPL, DUSTIN IMRAY,
AND SCOTT WALKER

Petitioners,

v.

ROBIN VOS, SPEAKER OF THE WISCONSIN STATE ASSEMBLY, JILL
UNDERLY, WISCONSIN STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION, AND KATHY BLUMENFELD, SECRETARY OF THE
DEPARTMENT OF ADMINISTRATION

Respondents.

**PETITION TO THE SUPREME COURT OF WISCONSIN TO
TAKE JURISDICTION OF AN ORIGINAL ACTION**

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ISSUES PRESENTED

1. Whether the Milwaukee Parental Choice Program (Wis. Stat. § 119.23), the Independent Charter School Program (Wis. Stat. § 118.40(2r),(2x)), the Wisconsin Parental Choice Program (Wis. Stat. § 118.60), and the Special Needs Scholarship Program (Wis. Stat. §§ 115.7915) violate the Wisconsin Constitution's public-purpose requirement because they require local school districts to spend significantly more per pupil on private schools than public schools, their funding mechanisms are designed to destructively defund public schools, they do not provide for adequate oversight of private schools, they do not require private schools to meet adequate educational standards, and they do not require the private schools to provide essential services to students?
2. Whether the Milwaukee Parental Choice Program (Wis. Stat. § 119.23), the Independent Charter School Program (Wis. Stat. § 118.40(2r),(2x)), the Wisconsin Parental Choice Program (Wis. Stat. § 118.60), and the Special Needs Scholarship Program (Wis. Stat. §§ 115.7915) violate the Wisconsin Constitution's Uniform Taxation Clause by forcing local school districts to pay the private tuition of voucher students going to school in other districts through aid reduction, moving local funds out of local districts, redistributing a

district's property tax burden across district lines, and forcing some school districts to raise property taxes more than others to replenish funds diverted to private schools?

3. Whether the Milwaukee Parental Choice Program (Wis. Stat. § 119.23), the Independent Charter School Program (Wis. Stat. § 118.40(2r),(2x)), the Wisconsin Parental Choice Program (Wis. Stat. § 118.60), and the Special Needs Scholarship Program (Wis. Stat. §§ 115.7915) violate the Wisconsin Constitution's superintendent supervision clause because these programs do not provide the state superintendent with sufficient supervisory control over participating private schools?
4. Whether the legislatively created revenue limit (Wis. Stat. § 121.905, § 121.91, and § 121.92), which places a cap on the amount of funds local school districts can raise from property taxes to pay for their own local public education, violates the Wisconsin Constitution's Uniform Taxation Clause and Article X, Section 4?

INTRODUCTION

The Legislature has been attacking Wisconsin's public schools under the guise of providing school choice for over a decade. But instead of creating a choice, the Legislature has created a cancer. And that cancer is growing rapidly, decimating Wisconsin's public schools.

The Legislature's current school financing system should be abhorrent to anyone who supports education of any type. Rather than simply allowing students to choose to go to private school - and to have the State of Wisconsin pay for it - the Legislature has adopted laws that actually *penalize* public schools and their students when other students from their district go to private school and obtain funding from the state. For example, every time one student from the Madison school district obtains funding to go to a private school, the state takes away the entire state aid provided to that school district for five public school students.

The obvious implication of this predatory scheme is that as the number of private school students funded in a school district increases, the average amount of funding per public school student in that district decreases—until it eventually hits zero. These private school funding mechanisms are quite literally draining some school districts' entire pool of money allocated from the state for public education down to

zero, and then shipping that money to private schools throughout the state.

Meanwhile, the Legislature has also imposed a statewide cap on how much revenue each school district can raise from its local taxpayers to pay for public education. This means even if the Madison or Appleton (or any other) school districts want to increase their own property taxes to spend more on educating their own students, the Legislature has banned them from doing so.

These laws are unconscionable. These laws are unconstitutional. This Court should strike them down as quickly as possible.

More specifically, the Petitioners bring this action to challenge the constitutionality of the Milwaukee Parental Choice Program (Wis. Stat. § 119.23), the Independent Charter School Program (Wis. Stat. § 118.40(2r),(2x)), the Wisconsin Parental Choice Program (Wis. Stat. § 118.60), the Special Needs Scholarship Program (Wis. Stat. §§ 115.7915), and the legislatively-created revenue limit (Wis. Stat. § 121.905, § 121.91, and § 121.92)), which limits the amount of funding local school districts can raise via property taxes for local education.

The first of these laws and programs originated in 1989, when the Wisconsin Legislature created what it called the Milwaukee Parental Choice Program. It was the nation's first taxpayer-funded

school voucher program that diverted education funds from public schools to pay for students' private school tuition.¹

Proponents touted the Milwaukee voucher program as a tiny, temporary experiment designed to help low-income, largely minority students escape struggling public schools. Unfortunately, the program was nothing more than a trojan horse.

In the 34 years since the Milwaukee Parental Choice Program was first adopted, private school funding programs have exploded in both size and scope in Wisconsin. The "experimental" Milwaukee voucher program led to the adoption of Wisconsin's charter school program in 1993, and to numerous additional expansions of private school funding programs since.

At the outset of this experiment in 1992, the Wisconsin Supreme Court evaluated the constitutionality of Milwaukee's voucher program in *Davis v. Grover*, 160 Wis. 2d 501, 480 N.W.2d 460. After expressly

¹ Molly Jackman, *ALEC's Influence Over Lawmaking in State Legislatures*, Brookings (Dec. 6, 2013), <https://www.brookings.edu/articles/alecs-influence-over-lawmaking-in-state-legislatures/>. (Vouchers were the brainchild of the American Legislative Exchange Council, a "notoriously secretive" organization that drafts model legislation "linked to controversial social and economic issues."); Andy Kroll, *ALEC's Own US Senator?*, Mother Jones (Sept. 4, 2012), <https://www.motherjones.com/politics/2012/09/tommy-thompson-alec/> (Then-Governor Thompson was an early and influential ALEC member; he once boasted that he would bring ALEC ideas "back to Wisconsin, disguise them a little bit, and declare that it's mine.").

relying on numerous facts and limitations contained in the original Milwaukee program, the Supreme Court upheld the constitutionality of the program "under the circumstances." *Id.* at 545.

Petitioners bring this case because the circumstances have changed dramatically since 1992. What started out as a small experimental program in Milwaukee in the 1990s has been transformed by our Legislature into a large and growing cancer on Wisconsin's public schools.

One need not look any further than the current statutory language of these laws to determine that they were drafted by legislators wanting to intentionally harm Wisconsin's public schools, not to better educate Wisconsin's citizens.

The formulas in the school funding statutes are incredibly complicated—but their impact on public school districts is not: as more private school students obtain public funding, public school district funding goes down by a disproportionate amount.

In 1992, when the Wisconsin Supreme Court evaluated the constitutionality of Milwaukee's experimental voucher program, the Court noted that "the amount of money allocated to a private school to educate a participating student is less than 40 percent of the full cost of

educating that same student in the [Milwaukee public schools]." *Davis*, 160 Wis.2d at 513.

Today, the converse is true. Private school students are getting allocated more dollars per student out of each public school district's budget than virtually all of those public school districts get allocated by the state to spend on each of their own students. In other words, the Legislature has mandated that school districts must spend MORE to educate a student in a private school than the district gets to spend from the state on its own students.

More specifically, the statutes force well over 90% of the school districts to subtract a larger amount from their annual state allocation for each private school student from their district than they get allocated for each of those students (and every other student) by the state. That means every time an eligible student either switches from public school to a private school or just applies for funding for a private school without ever wanting to go to public school, the public school district's state education funding goes down by a disproportionate amount, leaving less per pupil aid for the remaining public district school students.

The result of this parasitic funding scheme is that substantial growth in state-funded private school enrollment will force public

school districts into a funding death spiral. And a death spiral is exactly what is happening today.

In 1992, Milwaukee's first experimental program cost state taxpayers a total of \$2.5 million per year. *Davis*, 166 Wis. 2d at 545. Last school year, the voucher programs cost state taxpayers approximately \$444.4 million,² and the SN program and the independent charter school programs cost state taxpayers an additional \$27.7 million and \$96.4 million, respectively.³ The total cost of these programs last year was therefore \$568.5 million—meaning the cost of these private school funding programs has skyrocketed by over 22,500% since *Davis* was decided in 1992. In fact, back in 1992, the Wisconsin Supreme Court also noted that a private school would receive \$2,500 per child and that "[i]n contrast, it costs the [Milwaukee

² *Private School Choice Programs (MPCP, RPCP, WPCP) & Special Needs Scholarship Program (SNSP) Summary 2022-23 School Year Student HC, FTE & Annualized Payment*, (October 2022),

https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Choice/Data_and_Reports/2022-23/2022-23_summary_mpcp_wpcp_rpcp_snsp.pdf

³ Russ Kava & Maria Toniolo, *Informational Paper #28-State Aid to School Districts* 19, (2023),

https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023; Maria Toniolo, *Informational Paper #30 -Private School Choice and Special Needs Scholarship Program* 21, (2023),

https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2023/0030_private_school_choice_and_special_needs_scholarship_programs_informational_paper_30.pdf.

Public Schools] an average of \$6,451 to educate each student." *Davis*, 166 Wis. 2d at 545. Today, a private school generally receives between \$9,893 to \$12,387 from the state per pupil, depending on grade level, which is then deducted from the resident school district's state-provided education aid in full. Meanwhile, that same public school district typically receives anywhere from \$0 to \$8,000 from the state for each of its other students.⁴ The specific funding amounts per pupil change per district based on property values and per pupil spending.⁵ But the statutory formulas always lead to the same result in virtually every district that has participating private school students: the state pays more for the private school student to attend private school than it allocates to the district per student for students attending public schools.

⁴ See *Private School Choice Programs (MPCP, RPCP, WPCP) & Special Needs Scholarship Program (SNSP) Summary 2022-23 School Year Student HC, FTE & Annualized Payment*, (October 2022), https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Choice/Data_and_Reports/2022-23/2022-23_summary_mpcp_wpcp_rpcp_snsf.pdf. There are a few isolated school districts in Wisconsin that were allocated more per student in equalization aid than was paid to independent charter schools (\$9,240) in 2022-2023, but the total number of students attending those districts was less than 10,000 statewide. See *id.* (Showing the total state equalization aid allocated as compared to the number of members for the Arcadia, Beloit, Highland, Ithaca, Ladysmith, Norris, Randolph, Sharon J11, and Wauzeka school districts.).

⁵ *Id.*

For example, the state reduced the Racine Unified School District's (RUSD) general education budget by \$8,593.75 for every private voucher school student funded in the district during the 2022-2023 school year, yet the state only allocated \$7,764.97 in equalization aid per student during that school year to the district.⁶ Similarly, the Madison and Appleton school districts had their general education budgets reduced by \$9,264 per eligible student going to an independent charter school during the 2022-2023 school, while the Madison and Appleton school districts only obtained \$1,636 and \$6,629, respectively, per student from the state in equalization aid during that school year.⁷ Put another way, every Madison public school student was allocated 17% of the amount that was allocated to each Madison independent charter school student last school year (\$1,636 v. \$9,264)—meaning every time an independent charter student in Madison received

⁶ See Toniolo, *supra* note 3, at 21 (demonstrating that the Racine private school program was estimated to cost \$33 million in 2022-2023 for 3,840 students, which equates to a per pupil cost of \$8,593.75); see generally, *October 15 Certification of 2022-23 Equalization Aid*, Department of Public Instruction, Department of Public Instruction, https://dpi.wi.gov/sites/default/files/imce/sfs/xls/percent_aid_2223_Oct15.xls, (last visited Oct. 10, 2023), (spreadsheet showing the total equalization aid allocated for each Wisconsin school district and the total numbers of “members”, i.e., students, in the school districts).

⁷ *Id.*; see Erin Faith, *Fiscal Estimate-2023 Session 4* (2023), https://docs.legis.wisconsin.gov/2023/related/fe/ab305/ab305_dpi.pdf

funding from the state, funding for approximately five public school students was taken out of the Madison school district's state aid allocation. The recently raised voucher payments will only serve to exacerbate this problem for the 2023-2024 school year and into the future.

As if this were not unconscionable enough, over the decades, the Legislature has also slowly removed the participation caps—leading to enormous and continued growth of these programs. The private school funding programs at issue in this complaint have expanded both geographically (they are no longer limited to Milwaukee) and in size (most of the programs no longer have enrollment caps) since 1992. They have also become even more flagrantly untethered from their stated purpose of helping low-income students trapped in failing public schools.

In the past 15 years, the state has loosened both income caps and the requirement of previous enrollment in public school; by 2026, there will be no enrollment caps at all.

Back in 1992, the Milwaukee program was "available to approximately 1,000 Milwaukee students." *Davis*, 166 Wis.2d at 512.

Last school year, there were 48,543.4 FTE voucher school students⁸ and 10,802 independent charter school students⁹ receiving state funding.¹⁰ Given this huge growth and the parasitic nature of these programs, it is not surprising that public school districts are suffering significant funding shortages.

The following figures show the state funding that the voucher and SN programs drained from Wisconsin's more sizeable school districts last school year alone:

**State General Aid Funding Reduction
From Voucher & SN Programs in 2022-2023¹¹**

District	Reduction
Appleton	\$5,612,335
Green Bay	\$8,871,632
Madison	\$3,713,829
Oshkosh	\$4,744,834
Sheboygan	\$4,620,626
Racine	\$30,487,948

⁸ See Toniolo, *supra* note 3, at 38, 29, and 28.

⁹ *Wisconsin Charter School, Quick Facts*, (Department of Public Instruction), 2023, https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Charter-Schools/pdf/Wisconsin_Charter_Schools_Quick_Facts.pdf.

¹⁰ See generally *WISEdash Public Portal* (Department of Public Instruction), <https://wisedash.dpi.wi.gov/Dashboard/dashboard/22275>. For context, there were 822,804 public school students in Wisconsin in 2022-2023. (last visited October 11, 2023).

¹¹ Toniolo, *supra* note 3, at Appendix IV and VI.

Far from having an "inconsequential" financial impact, as the Supreme Court described the initial Milwaukee program, the current programs are decimating the finances of our public schools. Numerous school districts around the state are having budget crises due to these programs.

For example, the Madison school district's 2023-2024 budget states: "In the current state funding model for Wisconsin school districts, declining enrollment experienced during the past several years will continue to have a lasting impact on our operating revenue. This, combined with other state commitments made for voucher and charter programming, will continue to apply downward pressure to our operating budget."¹²

The Racine school district is facing similar problems (as are dozens of other school districts). The 2022-2023 RUSD budget states that the district "is projected to continue the trend of declining enrollment over the next several fiscal years. As part of the state revenue limit calculation for every student lost RUSD must reduce

¹² *June Preliminary Budget 2023-2024*, Madison Metropolitan School District 13, (2023), <https://resources.finalsite.net/images/v1688066709/madisonk12wius/hyn0nu8flopq75eomuno/PreliminaryBudget2023-2024AprilDraftFinal.pdf>.

expenditures by over \$10,731. As our enrollment FTE drops, this is largely due to student enrollment in RUSD dropping, as voucher and open enrollment out of the district is expected to increase."¹³

Additional problems other than funding have surfaced over the last few decades of these private school funding programs' existence. The most prominent of which stems from a lack of oversight.

Although the Wisconsin Constitution in Article X, Section 1 expressly provides that "[t]he supervision of public instruction shall be vested in a state superintendent," the current private school funding programs do not allow Wisconsin's school superintendent to supervise the instruction paid for by the public that is occurring at these private schools. The school superintendent has no control over these private schools other than the ability to revoke their funding for eligible students.

Despite their ballooning funding, these private schools are not subject to state performance standards, need not and often do not provide basic services to students with disabilities, and receive minimal oversight. If and when private schools leave eligible students stranded,

¹³ *Interim Budget Fiscal Year 2023-24*, Racine Unified School District 20, (2023), <https://rusd.org/sites/default/files/Departments/BudgetFinance/%242023-24%20Interim%20Budget%2009152023.pdf>.

the public schools remain responsible for picking up the slack—with even fewer resources with which to do so.

As public schools lose more and more resources to taxpayer-funded private schools, it will be more and more difficult for them to properly educate their students. As written, Wisconsin's taxpayer-funded private school programs serve no public purpose, which the Wisconsin Constitution requires; on the contrary, they are affirmatively designed to undermine Wisconsin's public education system by robbing it blind and forcing local districts into financial death spirals.

The taxpayer funded private school programs also violate the Wisconsin Constitution's Uniform Taxation Clause by forcing local districts to pay the private tuition of voucher students going to school in other districts through aid reduction, moving local funds out of local districts, redistributing a district's property tax burden across district lines, and forcing some school districts to raise property taxes more than others to replenish funds diverted to private schools.

Finally, these programs violate the Wisconsin Constitution's express requirement that all public instruction be supervised by the independently elected school superintendent. Because these private schools are not overseen by the school superintendent, it is

unconstitutional for them to be providing instruction paid for by the public.

To be clear, the Petitioners are not making the blanket assertion that the state cannot fund private schools in Wisconsin. The Petitioners are also not challenging any statute on equal protection grounds or on U.S. constitutional grounds. Instead, the Petitioners are asserting that these private school funding laws, as currently written, are unconstitutional under various Wisconsin-specific provisions in the Wisconsin Constitution.¹⁴

The Petitioners recognize that striking down these private school funding programs - which have grown to be very large in size - will impact tens of thousands of children who attend these schools. They therefore do not make these claims lightly. In the end, however, the Petitioners feel that the interests of the hundreds of thousands of Wisconsin's public school children who have been - and continue to be - negatively impacted by these parasitic funding programs outweighs the negative impacts to the children currently benefiting from these

¹⁴ Petitioners are also not bringing this action on the grounds that voucher and/or independent charter schools violate the Uniform Schools Clause of Article X Section 3 of the Wisconsin Constitution.

programs. This Court should therefore strike down these private school funding programs forthwith.

Unfortunately, the private school funding programs are not the only devices by which the Legislature is destroying the ability of local districts to educate their students. Local districts must also operate under the equally unconstitutional revenue limit. The revenue limit is enforced through Wis. Stat. § 121.905-§ 121.92. These statutes place a per-pupil spending limit on Wisconsin's school districts, which as of the 2022-2023 school year, was approximately \$12,000 dollars per student;¹⁵ a figure lower than the value of many of the private school vouchers that students are receiving from the state.

The revenue limit is nothing more than an anchor holding back Wisconsin's school districts from providing a quality education to Wisconsin students. It is unconstitutional under both the Uniform Taxation Clause of Wisconsin's Constitution and under Article X, Section 4, which this Court has stated does not allow the Legislature to interfere with a local school district's ability to raise funding for its schools. *Buse v. Smith*, 74 Wis. 2d 550, 579 (Wis. 1976).

¹⁵ See Russ Kava, *Informational Paper 27- School District Revenue Limits and Referenda 10*, (2023), <https://docs.legis.wisconsin.gov/misc/lfb/informationalpapers/january2023>

Therefore, the Petitioners also ask that the Court assert original jurisdiction and strike down Wis. Stat. § 121.905, § 121.91, and § 121.92. Local school districts must be allowed to provide Wisconsin's youth with the education that they deserve.

**STATEMENT OF THE REASONS
WHY THIS COURT SHOULD TAKE JURISDICTION**

Wisconsin's Constitution and rules of appellate procedure authorize this Court to take jurisdiction of original actions. Wis. Const. art. VII, § 3; Wis. Stat. § 809.70. Original jurisdiction is appropriate where "the questions presented are of such importance as under the circumstances [] call for [a] speedy and authoritative determination by this court in the first instance." *State ex rel. Ozanne v. Fitzgerald*, 2011 WI 43, ¶99 n.9, 334 Wis. 2d 70, 798 N.W.2d 436 (Abrahamson, C.J., concurring in part and dissenting in part). This Court should particularly grant such a petition when the case is a matter of significant public concern and importance, such that it affects the entire state. *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 362, 338 N.W.2d 684 (1983); see also *Jefferson v. Dane County*, 2020 WI 90, ¶12, 394 Wis. 2d 602, 951 N.W.2d 556.

Here, the issues presented in this petition are timely and of significant public concern and importance. They also affect the entire state.

The Petitioners' claims herein do not rely on any disputed facts. The funding mechanisms that the Petitioners are challenging are located in the statutory language itself. There is therefore no fact-finding necessary for this Court to determine their constitutionality.¹⁶

The questions presented herein are entirely questions of law, and as such, any lower court's decision on these issues would be reviewed by this Court *de novo*.

Finally, the statutory funding mechanisms at issue herein are causing irreparable harm to Wisconsin's public education system. Every additional month that goes by with these laws in place causes public school students' irreparable harm.

At a bare minimum, the Petitioners therefore believe these programs must be halted before the next school year begins, and in order to do so as efficiently and responsibly as possible, this Court would need to make a final decision by the end of this school year in

¹⁶ Moreover, all the facts and figures provided in this petition come directly from the Respondents' own publicly released data, which the Respondents cannot themselves challenge or dispute.

June 2024 so that an orderly transition of school funding can occur prior to the 2024-2025 school year beginning. If this Court does not grant this petition for original jurisdiction, it is unlikely that this case will be resolved by then.

PARTIES

1. Each petitioner and hopeful plaintiff brings this original action in their individual capacity and as a concerned citizen with standing as a Wisconsin taxpayer and/or parent of a student in a Wisconsin public school.
2. Petitioner and plaintiff **Julie Underwood** is a retired attorney, former Dean of the University of Wisconsin School of Education, and a homeowner in Madison, Wisconsin. Ms. Underwood has two grandchildren currently attending Wisconsin public schools.
3. Petitioner and plaintiff **Charles Uphoff** is a former member of the Oregon School Board, a member of the Fitchburg Town Council, and a homeowner in Fitchburg, Wisconsin. Mr. Uphoff has two grandchildren currently enrolled in Wisconsin public schools.
4. Petitioner and plaintiff **Randy Wendt** is a former police officer, a former school counselor from the Arbor Vitae Woodruff School District, and a homeowner in Minocqua, Wisconsin.

5. Petitioner and plaintiff **Father Tom Mueller** is a priest in The Orthodox Church of America and owns property in Campbellsport, Wisconsin. Father Mueller has two grandchildren currently enrolled in Wisconsin public schools.

6. Petitioner and plaintiff **Angela Rappl** is a special education liaison for families with children with special needs in the Milwaukee public schools system and a homeowner in Milwaukee, Wisconsin. Ms. Rappl currently has two children enrolled in Milwaukee public schools.

7. Petitioner and plaintiff **Dustin Imray** is a resident of Madison, Wisconsin and a parent. Mr. Imray currently has one child enrolled in Madison public schools.

8. Petitioner and plaintiff **Scott Walker** is a family physician in Prairie du Chien with a child currently enrolled in the Prairie du Chien Area School District.

9. Respondent and defendant **Robin Vos** is the speaker of the Wisconsin State Assembly and is responsible for enacting, maintaining, and/or expanding the unconstitutional and destructive statutes challenged in this petition. Mr. Vos is sued in his official capacity.

10. Respondent and defendant **Jill Underly** is the Wisconsin State Superintendent of Public Instruction. Ms. Underly is sued in her official capacity only.

11. Respondent and defendant **Kathy Blumenfeld** is the Secretary of the Wisconsin Department of Administration. The Wisconsin Department of Administration is responsible for overseeing the budget and state expenditures. Ms. Blumenfeld is sued in her official capacity only.

FACTS COMMON TO ALL CLAIMS

12. The private school funding laws at issue in this complaint are the Milwaukee Parental Choice Program (Wis. Stat. § 119.23), the Independent Charter School Program (Wis. Stat. § 118.40(2r),(2x)), the Wisconsin Parental Choice Program (Wis. Stat. § 118.60), and the Special Needs Scholarship Program (Wis. Stat. §§ 115.7915).

13. Each program gives taxpayer funds to private schools—including for-profit schools—and takes those funds away from Wisconsin’s public schools in a disproportionate amount.

A. The history and expansion of Wisconsin’s taxpayer-funded private schools.

1. Milwaukee voucher program

14. In 1989, the Wisconsin Legislature created the Milwaukee Parental Choice Program pursuant to Act 336. Under this program, eligible Milwaukee students could receive a taxpayer funded voucher that could be put towards tuition at a participating private school. Wis. Stat. § 119.23(4)(bg)1.

15. At the time, the voucher proponents claimed that the Milwaukee program was an experiment designed to help low-income students escape from struggling public schools in Milwaukee. *Davis*, 166 Wis. 2d at 529 ("[T]he only reasonable inference to be drawn from the [Milwaukee Parental Choice Program] was that it was an experiment intended to address a perceived problem of inadequate educational opportunities for disadvantaged children.")

16. From the beginning, taxpayer-funded vouchers were available to for-profit schools.¹⁷ *See generally* Wis. Stat. § 119.23. In addition, many of these schools have relied heavily on voucher funding. Indeed, there are a number of private schools that only enroll students who are being paid for through the voucher programs.

17. Initially, vouchers were only available to one percent of students in Milwaukee public schools. *Davis*, 166 Wis.2d at 514. Those students, moreover, came from families with incomes of no more than 175% of the federal poverty level. *Id.* At the same time, no individual private school could enroll more than 49 percent of its students through the voucher program. *Id.*¹⁸

¹⁷ *See also* Toniolo, *supra* note 3, at 6.

¹⁸ *See* Toniolo, *supra* note 3, at 4.

18. In 2005, Act 125 further expanded the Milwaukee voucher program, making taxpayer-funded vouchers available to 22,500 students.¹⁹

19. Act 32, enacted in 2011, not only eliminated the enrollment cap but also increased the income cap to 300% of the federal poverty line: about \$90,000 in 2023.²⁰

20. The income caps are merely illusory, however. Family income is evaluated only when the student first enrolls; once admitted, students continue to receive taxpayer-funded vouchers even if their families' income exceeds the cap. Wis. Stat. §§ 118.60(2)(a)1.b ("The department of public instruction may not request any additional verification of income from the family of a pupil once the department of revenue has verified that the pupil is eligible...").²¹

21. Also starting in 2011, high-school students could be charged tuition—exceeding the value of their voucher—if their families' incomes exceeded 220 percent of the federal poverty level. Wis. Stat. § 119.23(3)(3m)2.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ *Id.* at 3.

22. The Milwaukee voucher program is currently funded differently than every other voucher program in the state. Wis. Stat. § 119.23. It is funded through an independent appropriation and after this year, will not result in an aid reduction to the Milwaukee Public Schools (MPS). Instead, Milwaukee voucher students are not included in the MPS headcount for the purposes of state equalization aid (unlike every other voucher student in the state).

2. The Independent Charter School Program

23. The Wisconsin Legislature established the Wisconsin Charter School Program in 1993.²² The initial law permitted 10 school districts to establish up to two charter schools each, thereby capping the total number of charter schools at 20 statewide.

24. In 1997, the state gave chartering authority in Milwaukee to the chancellor of the University of Wisconsin - Milwaukee, the Milwaukee Area Technical College, and the Common Council of the City of Milwaukee.²³

²² *Statutory Report Series Legislative Report on Charter Schools 2021-2022 2*, (2023), https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Charter-Schools/pdf/2021-22_Charter_Legislative_Report.pdf.

²³ *Id.*

25. Since that time, the Legislature has made numerous changes and expansions to the charter school program, including in 2015 Wisconsin Act 55.²⁴

26. Act 55 created the independent charter school program by allowing five different entities to authorize independent charter schools: (a) the Office of Educational Opportunity (OEO) in the UW System; (b) the Gateway Technical College District Board; (c) the College of the Menominee Nation; (d) the Lac Courte Oreilles Ojibwa Community College; and (e) the Waukesha County Executive.²⁵

27. During the 2021-2022 school year, 236 charter schools were in operation and 32 of them were independent charter schools.²⁶

28. The relevant independent charter school provisions are located at Wis. Stat. § 118.40(2r) and (2x).

29. In 2022-2023, the independent charter school program cost state taxpayers \$96.4 million and caused commensurate reductions in state equalization funding to school districts around the state.²⁷

²⁴ See generally *id.* (summarizing all of the changes to the charter school program).

²⁵ *Id.* at 2.

²⁶ *Id.* at 4.

²⁷ Kava & Toniolo, *supra* note 3, at 19.

3. *The Racine Parental Choice Program and Wisconsin Parental Choice Program*

30. In 2011, the legislature created the Racine Parental Choice Program. Initially, enrollment was limited to 250 students. But that cap was doubled in 2012–2013 and abolished the following year.²⁸

31. Private school vouchers were extended to the entire state in 2013 with Act 20, which statutorily expanded the Racine program and added the statewide Wisconsin Parental Choice Program (WPCP or "statewide voucher program"). *See generally* Wis. Stat. § 118.60.²⁹

32. Initially, the statewide voucher program was limited to 500 students who came from families with incomes below 185% of the federal poverty level.³⁰

33. For the 2014–15 school year, the enrollment cap was raised to 1,000 students. The next year, the legislature eliminated the 1,000-student cap altogether. Instead, the participation limit was set at 1 percent of a school district's prior year enrollment for 2015-2016 and 2016-2017.³¹

²⁸ Toniolo, *supra* note 3, at 2.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

34. This limit will increase by one percentage point each year and will reach 10 percent in 2025–2026. Wis Stat 118.60(2)(be)2. For the 2026-2027 school year, there will be no limit at all. Wis Stat 118.60(2)(be)3.

35. Act 55 also eliminated restrictions on the number of private schools that could receive taxpayer-funded vouchers through the statewide program.³²

36. The statewide voucher program now pays for many students who already were enrolled in private schools. During the 2014-2015 academic year, for example, 858 of 1,008 voucher students attended private school before receiving vouchers; just 101 students came from public schools.³³

4. The voucher program for students with disabilities

37. The Special Needs Scholarship Program (SN program) was established through Act 55 and began accepting students for the 2016-2017 school year. Any student with an Individualized Education Program (IEP) is eligible for the SN program, and the program has no participation limits or financial requirements. For the 2023-24

³² *Id.*

³³ Ruth Conniff, *Lies, Damn Lies and School Voucher Statistics*, Wisconsin Examiner, (May 13, 2021), <https://wisconsinexaminer.com/2021/05/13/lies-damn-lies-and-school-voucher-statistics/>

academic year, the maximum voucher amount is set at \$14,671. Wis Stat. § 115.7915(4m)(a)2.b.

38. Since the 2018-2019 academic year, participating schools in the SN program also have had the option of submitting a financial statement to the DPI outlining the actual cost of educating a participating student for reimbursement beyond the value of a SN program voucher. Wis Stat. § 115.7915(4c).

B. These private school funding programs send taxpayer funds to private and for-profit schools while simultaneously stripping resources from public schools.

39. All of these private school funding programs reduce the funding provided to public school districts across the state. But importantly, they do not do so on an equal basis. Private school students get a larger proportion of school district equalization aid funds on a per pupil basis than public school students, and by a wide margin.

40. Public education in Wisconsin is primarily funded through a combination of state equalization aid and local property taxes. The specific mix of these two revenue sources is influenced by factors such as a district's property valuations and the amount of money spent per pupil by the districts.³⁴

³⁴ Kava & Toniolo, *supra* note 3, at 3.

41. Because the two funding sources - state equalization aid and local property taxes - are linked, anytime the state decreases state equalization aid to a school district, the state funding must be replaced by the local property tax levy if the district wants to maintain its per student spending.³⁵

42. For example, if school district A wants to spend \$10,000 per pupil on education in a particular year, the state funds a portion of the \$10,000 and the local property tax levy would fund the rest. The amount of state aid provided to each school district is calculated using a somewhat complicated formula that factors in property values in the district and prior spending per pupil in the district. Wis. Stat. § 121.07. For this example, however, assume that district A receives \$6,000 per student from the state in equalization and other aid. The district would therefore have to assess property taxes on local property to make up the additional \$4,000 per pupil.

43. In other words, there is an inverse relationship between the state equalization aid being provided to districts and the local tax levy

³⁵ *Id.*

needed to fund the district's schools. As the state aid increases, local property taxes decrease, and vice versa.³⁶

44. In order to limit how much a local school district can raise through local property taxes for education, the Legislature put a cap - called the "revenue limit" - on how much a school district is allowed to raise via local property taxes to spend per student on its operations. The revenue limit cap for 2022-2023 varied per district but averaged about \$12,000 per student.³⁷

45. Using the same example as above, if the school district wanted to spend \$15,000 per pupil on its students rather than \$10,000, the revenue limit would not allow the local school district to raise the funding to do so through property taxes. The local district would only be able to assess property taxes to raise funds up to the revenue limit cap of approximately \$12,000 per student.³⁸

46. Given the way this system is structured, when the state raises the per pupil revenue limit cap, if an equivalent amount of state aid funding is provided, there is no impact on the local levy. If no additional general aid funding is allocated, however, school boards then

³⁶ *Id.*

³⁷ Kava, *supra* note 15, at 10.

³⁸ *Id.*

have the discretion to increase their levy by an amount matching the additional revenue limit authority. In some cases, school districts are required by local law to do so.

47. Equalization aid is the primary component of the state general aid, and again, the amount of equalization aid provided to each district depends primarily on the district's property tax base and the district's prior per pupil spending.³⁹ Wis. Stat. § 121.07.

48. When a student enters the Wisconsin voucher program, SN program, or goes to an independent charter school, the state pays their private school tuition from an independent appropriation but also reduces the equalization aid paid to their local school district by the same value. Wis Stat 118.60 § (4d)(b)1.

49. For the current 2023–2024 school year, Wisconsin state-wide vouchers are valued at \$9,893 for grades K-8 and \$12,387 for grades 9-12. Wis Stat. § 118.60(4)(bg)3. SN program vouchers have a value of \$15,065. Wis Stat. § 115.7915(4m)(a)2.b. Independent charter schools will be paid \$11,385 per student. Wis Stat. § 118.40(2r)(e)2p.

50. As described above, these amounts are deducted in full from each district's state equalization aid allocation. Moreover, the value of the

³⁹ Kava & Toniolo, *supra* note 3, at 7.

school vouchers and the independent charter payments being deducted is far greater than the equalization aid provided by the state for each student.

51. For 2023-2024, the State of Wisconsin appropriated \$5,356,290,000 in equalization aid for approximately 859,846 (2022-23) students, which amounts to an average equalization aid payment of \$6,230 per student.

52. That means the average public high school student in Wisconsin gets half of the amount of money allocated from the state for his or her education (\$6,230) as compared to an eligible private high school student (\$12,387).

53. This discrepancy in per student funding will eventually result in many school districts losing all of their equalization aid payments to private school voucher aid reductions as these parasitic programs continue to expand.

54. When school districts lose state equalization aid due to private school funding programs, these school districts must raise property taxes—subject to state limits—to replenish the lost funds.⁴⁰ In practice,

⁴⁰Kava, *supra* note 15, at 2

therefore, it “is as though the choice/voucher expansion is funded statewide with property taxes.”⁴¹

C. These Private School Funding Programs Also Force School Districts to Levy Taxes for Education Unequally

55. The Wisconsin voucher program, SN program, and independent charter programs skew equalization aid and redistribute the educational funding burden from property taxpayers in school districts with a high percentage of voucher students to property taxpayers in districts with a low percentage of voucher students.⁴²

56. This occurs because students in these private school funding programs are counted in the equalization aid formula as students of their resident school district, even though they do not go to district public schools. Wis Stat. § 121.07(2)(b). This artificially increases enrollment in school districts with a lot of students who reside in their district but attend private schools paid for by these programs. The increased enrollment is often artificial because many Wisconsin voucher students were either previously enrolled in private schools or entered the voucher program in kindergarten but would have never

⁴¹ Elworthy & Soldner, DPI, *Private School Voucher Funding and the Impact on School Districts* 39, (2023), <https://dpi.wi.gov/sites/default/files/imce/sfs/pdf/WASBOAccConf23-PrivateSchoolVouchers.pdf>

⁴²*Id.*

enrolled in public school. These students increase a school district's headcount for the purposes of the equalization aid formula but would have never been counted for the purposes of equalization aid were it not for the private school funding programs.

57. Each of the students that enters the "public school" system by attending a private school increases a district's overall aid payment from the state, thereby decreasing the total pool of equalization aid funding appropriated for all districts across the state, which in turn increases the total property tax burden on property taxpayers in school districts with a low percentage of private school funded students.⁴³

58. Conversely, these programs also increase the property tax burden on property taxpayers in districts with eligible students through the aid reduction scheme. Wis. Stat. § 118.60(4d)(b)1.

59. For example, if a student residing in Madison who is already attending a private school in another district applies for voucher funding for the first time and is eligible during the current school year, the Madison school district will get a reduction in its state equalization aid in the current school year equal to the full voucher payment to the private school. The reduction in aid for the private school funding

⁴³ *Id.*

programs is tied to where the student resides, not where the private school he or she attends is located. In this case, because the student resides in Madison, the Madison school district would have its state equalization aid reduced.

60. After the Madison school district equalization aid reduction occurs because of this student, the only means the school district has to make up for the private school student's deduction from the district's general aid is to increase the local property tax levy. The Madison school district is therefore having to tax its local property owners to pay for a student to go to a private school in another district.

61. Using the same example, in the following year, the private school student who resides in Madison but goes to school in another district will count as a Madison school district student for purposes of the state equalization aid allocation. This means in the private school student's second year in the program, the Madison school district will get additional equalization aid because it has more students. This additional equalization aid allocation to Madison then reduces the total pool of equalization aid available to all other school districts. In this way, Madison's private school funded student is also actually being paid for by local property tax levies across all of the remaining school districts because they will all have to raise their local property tax

revenues to offset the lower allocation of equalization aid they are now getting from the state.

D. Voucher schools receive minimal oversight and are subject to few standards.

62. Unlike public schools, the voucher and independent charter schools operate with minimal regulation and oversight. For years, critics have observed that the lack of academic oversight “contrasts strikingly with the ever-greater attention paid to the public school system’s performance.”⁴⁴

63. Public schools in Wisconsin, on the other hand, are subject to rigorous oversight by DPI to ensure that Wisconsin students are well-educated in an appropriate environment. For instance, Wis. Stat. § 118.33 furnishes the high school graduation requirements for Wisconsin public school students, but there are no similar requirements for voucher school funded students; these schools can effectively graduate any student regardless of the education they receive. Similarly, participating voucher school teachers are not required to have teaching certificates like public school teachers. Wis. Stat. §§ 118.60(2)(a)6.a; 118.197. Wisconsin voucher schools are not

⁴⁴ Erik Gunn, *Vouchers and Public Accountability*, Rethinking Schools, (Fall 1999), <https://rethinkingschools.org/articles/vouchers-and-public-accountability/>.

even required to have textbooks, while Wis. Stat. § 118.03 mandates that students in public schools have them.

64. The bottom line is that these voucher schools receiving public funding to ostensibly provide public instruction have very limited oversight and are only required to obtain accreditation from an outside accrediting authority and provide information to the state about various school policies. The state superintendent does not mandate what those policies include, however. Nor are there any requirements about their curriculum, student promotion, suspension and expulsion, and non-harassment.⁴⁵

65. Given this lack of oversight and accountability, scams and abuse are inevitable. Voucher schools have emerged in strip malls, rundown office buildings, old car dealerships, and abandoned factories.

66. In 2013, for instance, a Milwaukee voucher school named LifeSkills Academy “abruptly closed in the middle of December.”⁴⁶ The K–8 school, which shuttered after less than six years in the voucher

⁴⁵ Toniolo, *supra* note 3, at 6.

⁴⁶ Erin Richards, *Milwaukee Voucher School LifeSkills Academy Closes “In the Dead of the Night,”* Jsonline.com (Jan. 14, 2014), <https://archive.jsonline.com/news/education/milwaukee-voucher-school-closes-in-the-dead-of-the-night-b99183859z1-240125681.html> (citing a letter from the Department of Public Instruction).

program, received more than \$2 million in taxpayer voucher funds.⁴⁷

Yet in its final full year in the voucher program, only one LifeSkills Academy student was proficient in reading or math.⁴⁸

67. Even though LifeSkills abruptly closed just a few months into the school year, it retained the \$202,000 in taxpayer funds it had already received for that year. The Department of Public Instruction “is not able to recoup public money spent by voucher schools that do not finish the year.”⁴⁹

68. The voucher programs also have attracted “pop-up schools.” These schools open to take advantage of taxpayer-funded vouchers, collect those vouchers for a few years, and then close. The average lifespan for these pop-up schools is only four years.⁵⁰ For example, “41 percent of all private voucher schools operating in Milwaukee between 1991 and 2015 failed.”⁵¹

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Joshua Cowen, *How School Voucher Programs Hurt Students*, TIME (Apr. 19, 2023), <https://time.com/6272666/school-voucher-programs-hurt-students/>.

⁵¹ Michael R. Ford & Fredrik O. Andersson, *Determinants of Organizational Failure in the Milwaukee School Voucher Program*, 47 *Pol’y Stud. J.* 1048 (2019).

E. The private schools accepting public funds are permitted to deny essential services to students with disabilities.

69. The lack of basic standards and oversight is exacerbated by the Legislature's failure to require these private voucher and charter schools to provide basic services and accommodations for students with disabilities. This is no niche group. Across the country, more than one in seven public school students receive disability-related services.⁵²

70. In Wisconsin public schools, students with disabilities are guaranteed a range of accommodations and services to ensure that they receive an adequate education tailored to their unique needs. The Individuals with Disabilities Education Act (IDEA) ensures that public school students receive a free appropriate public education in the least restrictive setting. *See* 20 U.S.C. §§ 1412(a)(1) & (a)(5). Section 504 of the Rehabilitation Act of 1973 prohibits disability-based discrimination in programs or activities that receive money from the U.S. Department of Education. 29 U.S.C. § 794; 34 C.F.R. 104.4(a). And Title II of the Americans with Disabilities Act bans disability-based discrimination by

⁵² Véronique Irwin et al., *Report on the Condition of Education*, Inst. of Educ. Scis. NCES 2023-144rev. 15, (2023), <https://law.resource.org/pub/us/code/blue/IndigoBook.pdf>

state and local governments. *See* 42 U.S.C. §§ 12131(1) & 12132; 28 C.F.R. § 35.130(a).

71. In Wisconsin public schools, these federal requirements are implemented by a detailed set of state laws.⁵³ These laws have enabled millions of students to be educated at local schools, with adequate support and services, alongside their peers who do not have disabilities.

72. Not so in voucher schools. Despite their hundreds of millions of dollars in taxpayer funding, the Legislature has not mandated that Wisconsin voucher schools provide even basic services to students with disabilities.⁵⁴ According to the state, “as a private school, a Choice school is only required to offer services to assist students with special needs that it can provide with minor adjustments.”⁵⁵

73. In response to a recent inquiry from the U.S. Department of Justice, the Wisconsin Department of Public Instruction confirmed that

⁵³ *See generally* Emily Hicks, *Overview of State and Federal Special Education Laws*, Wis. Legis. Council, IM-2021-12 3–8 (2021),

https://docs.legis.wisconsin.gov/misc/lc/information_memos/2021/im_2021_12

⁵⁴ *See, e.g.*, Barbara Miner, *Vouchers, Rethinking Schools* (Winter 2003/2004), <https://rethinkingschools.org/articles/vouchers-special-ed-students-need-not-apply/> (several Milwaukee voucher schools do not serve children in wheelchairs or children “who are unable to climb stairs”).

⁵⁵ *2023–2024 Overview of Private School Choice Programs in Wisconsin*, Dep’t of Pub. Instruction 2, https://dpi.wi.gov/sites/default/files/imce/parental-education-options/Choice/Student_Application_Webpage/Final_-_Overview_of_Private_School_Choice_Programs_in_Wisconsin_Handout_23-24.pdf (last visited October 11, 2023).

it “has no authority to address discrimination against [voucher students with disabilities] outside the admission context.”⁵⁶

74. For students with disabilities, the difference between public schools and private schools is striking.

a. Private schools are not required to provide a “free appropriate public education” under IDEA, 20 U.S.C. §§ 1412(a), 1414(d).

b. Private schools are not required to place students with disabilities in the least restrictive environment. *Id.* § 1412(a).

c. Title II of the Americans with Disabilities Act does not apply to private schools.⁵⁷

d. Private school students have little protection against disability-related discipline. *See* 20 U.S.C. § 1415(k)(1)(E)–(G); 34 C.F.R. §§ 300.530–300.536. In fact, Wisconsin voucher schools “may legally expel students with disabilities if staff determines they cannot accommodate their needs with minor adjustments or deem their behavior too disruptive.”⁵⁸

⁵⁶ Letter from Robert A. Soldner, Asst. State Superintendent, Dep’t Pub. Instruction, to U.S. Dep’t of Justice, C.R. Div.—Educ. Opportunities Section 2 (Dec. 15, 2020), https://www.documentcloud.org/documents/23787477-doj-letter_disability-related-discrimination-complaint-process_final_ras-signed.

⁵⁷ *See* Claire Raj, *Coerced Choice: School Vouchers and Students with Disabilities*, 68 Emory L.J. 1037, 1052–1053 (2019).

⁵⁸ Phoebe Petrovic, *Federal, State Law Permit Disability Discrimination in Wisconsin Voucher Schools*, Wis. Watch (May 30, 2023),

e. Private schools are also not required to keep parents informed, let alone allow parents to participate in developing an education program tailored to their children's disabilities. *See* 20 U.S.C. § 1414(d)(1)(B).

75. These services and protections are unavailable even to students who participate in the inaptly named Special Needs Scholarship Program, Wis. Stat § 115.7915. Instead of ensuring that students with disabilities receive basic services in private schools, the Legislature required DPI to prepare a detailed, two-page chart highlighting just how few protections the Special Needs voucher program offers to students with special needs.⁵⁹

76. In December 2020, DPI also terminated its “formal disability-related discrimination complaint procedure.”⁶⁰ This drastic step was necessary, says DPI, to “avoid giving complainants false hope that DPI

<https://pbswisconsin.org/news-item/federal-state-law-permit-disability-discrimination-in-wisconsin-voucher-schools/>.

⁵⁹ *See generally, Comparison of Rights of Students with Disabilities and their Families Under State and Federal Special Education Law and Under the Wisconsin Special Needs Scholarship Program*, Dep't of Pub. Instruction, PI-SNSP-0002, https://dpi.wi.gov/sites/default/files/imce/parental-education-options/SNSP/2020-21_Comparison_Document.pdf (last visited October 11, 2023) (citing Wis. Stat. § 115.7915).

⁶⁰ Petrovic, *supra*.

has the ability to address their concerns” about voucher schools’ discrimination against students with disabilities.⁶¹

77. Combined with other features of the private school funding programs, the lack of disability protections has produced perverse incentives. There have been reports that some participating private schools enroll students with disabilities at the beginning of the school year but then expel some or all these students immediately after the annual headcount on the third Friday of the school year. This practice allows private schools to receive state payments without incurring the costs of actually educating students with disabilities.

78. For the expelled students, who required extra services even before their abrupt expulsions, the educational disruption is intolerable. In the end, public schools remain responsible for educating these students—but with fewer resources than before.

F. The State Imposed Revenue Limit Places Further Financial Strain On Local School Districts.

79. The revenue limit under Wis. Stat. § 121.905, § 121.91, and § 121.92 places a literal cap on how much revenue a school district can spend per pupil and consequently raise. The limit is based on a

⁶¹ *Id.*

statutory formula that varies for each school district but is typically about \$12,000 per student.⁶²

80. The revenue limit has not grown at a fast enough rate to keep up with inflation and has accelerated the decline of the quality of education available to students in Wisconsin.

81. Ultimately, the revenue limit prevents school districts from operating as they see fit and providing the education that Wisconsin students deserve.

82. The legislatively created revenue limit is an integral part of the levy, assessment and collection of district taxes.

83. The legislatively created revenue limit - if it has a legitimate purpose at all - serves only local purposes: it limits the amount of funding local school districts can raise to spend on their local schools and it limits the amount of property taxes that the local school district can collect from local property owners.

CAUSES OF ACTION

84. Petitioners incorporate by reference paragraphs 1–83.

⁶² Kava, *supra* note 15, at 10.

COUNT 1:**THE MILWAUKEE PARENTAL CHOICE PROGRAM,
THE INDEPENDENT CHARTER SCHOOL PROGRAM,
THE WISCONSIN PARENTAL CHOICE PROGRAM, AND
THE SPECIAL NEEDS SCHOLARSHIP PROGRAM
ALL VIOLATE THE PUBLIC-PURPOSE REQUIREMENT
OF THE WISCONSIN CONSTITUTION**

85. Under the Wisconsin Constitution, “public funds can only be used for public purposes.” *State ex rel. Warren v. Reuter*, 170 N.W.2d 790, 790 (Wis. 1969).

86. Although in 1992 the Wisconsin Supreme Court rejected a public-purpose challenge to the Milwaukee voucher program, circumstances have changed dramatically since that decision in *Davis v. Grover*, 480 N.W.2d 460 (Wis. 1992).

87. In *Davis*, the majority repeatedly stressed that the Milwaukee voucher program was “experimental.” *Id.* at 473, 474, 477; *see also id.* at 477 (Ceci, J., concurring) (using “experimental” four times in an 8-paragraph concurrence).

88. More than 30 years later, the state’s original experimental voucher program has morphed and multiplied. The assumptions underlying *Davis* no longer apply.

89. These programs divert significant resources away from public schools, weaken the public education system, and will continue to do so until the public education system breaks entirely. Rather than creating

better educational opportunities for all students, the programs primarily serve as a conduit for public funds to flow to private businesses.

90. The private school funding programs all spend taxpayer funds in violation of the public-purpose requirement.

91. Spending more public funds for a student to go to private school than are allocated for a student to go to public school serves no public purpose.

92. Structuring a private school funding system that is designed to act like a cancer on the public school system serves no public purpose.

93. Spending public funds on private schools that do not have the same educational standards and oversight as public schools serves no public purpose.

94. Spending public funds on private schools that are permitted to deny essential services to students with disabilities serves no public purpose.

95. The court should therefore declare the following statutes unconstitutional: the Milwaukee Parental Choice Program (Wis. Stat. § 119.23), the Independent Charter School Program (Wis. Stat. § 118.40(2r),(2x)), the Wisconsin Parental Choice Program (Wis. Stat. §

118.60), and the Special Needs Scholarship Program (Wis. Stat. §§ 115.7915).

96. The court should also permanently enjoin the Respondents from implementing these unconstitutional programs.

COUNT 2

**THE MILWAUKEE PARENTAL CHOICE PROGRAM,
THE INDEPENDENT CHARTER SCHOOL PROGRAM,
THE WISCONSIN PARENTAL CHOICE PROGRAM, AND
THE SPECIAL NEEDS SCHOLARSHIP PROGRAM
VIOLATE THE UNIFORM TAXATION CLAUSE**

97. The legislatively created private school funding programs are an integral part of the levy, assessment and collection of district taxes.

98. As this Court stated in *Busy*:

Negative-aid payments are not part of the levy, assessment or collection of . . . district taxes, but they are . . . an integral part of the taxing process, and subject to those constitutional rules which relate to the distribution and disbursement of tax proceeds. *Busy*, 74 Wis.2d at 574.

99. Under the Wisconsin Constitution, “[t]he rule of taxation shall be uniform.” Wis. Const., art. VIII, § 1. This is called the “Uniform Taxation Clause.”

100. Because of the Uniform Taxation Clause, “the state cannot compel one school district to levy and collect a tax for the direct benefit

of other school districts, or for the sole benefit of the state.” *Buse v. Smith*, 74 Wis. 2d 550, 579 (Wis. 1976).

101. School districts are funded up to the state-imposed revenue limit by state aid and/or local property tax levies.

102. In other words, state aid is linked directly to local property taxes.

103. When a school district’s state aid appropriation is increased, it lessens the burden on the local taxpayer. When the state aid appropriation is decreased to fund voucher programs, on the other hand, the converse is true, and local property taxpayers are often required by their local taxing authority to make up the difference.

104. The varying private school funding programs result in different equalization aid reductions and cause different tax increases around the state violating Art. VIII, Sec. 1 of the Wisconsin Constitution.

105. Under Art. VIII, Sec. 1, of the Wisconsin Constitution, local taxes must be used locally. *Id* at 572. “By taxation is meant a certain mode of raising revenue for a public purpose in which the community that pays it has an interest.” *Id* at 577 (Quoting *Sharpless v. Philadelphia*, 21 Pa. St. 148.”).

106. The current private school funding programs redistribute the property tax burden across the state so that local taxes are no longer being used locally.

107. The redistribution occurs because, for example, new students who were never enrolled in public schools or were never going to be enrolled in public schools increase a school district's equalization aid payments by artificially increasing a school district's headcount. This artificially inflated headcount increases the district's aid payment, and when one district's equalization aid payments increase, every other school district's equalization aid payment must decrease.

108. That in turn forces every other district to rely more heavily on property taxes to fund their schools and can cause residents in districts without private school funded students to face a rise in their property taxes.

109. These programs, on their face, also violate the rule of uniform taxation set forth in Art. VIII, Sec. 1, of the Wisconsin Constitution because they allow eligible students to attend private schools outside of their district, which moves local tax dollars into another taxing authority.

110. The Court should therefore declare the following statutes unconstitutional: the Milwaukee Parental Choice Program (Wis. Stat. § 119.23), the Independent Charter School Program (Wis. Stat. § 118.40(2r),(2x)), the Wisconsin Parental Choice Program (Wis. Stat. §

118.60), and the Special Needs Scholarship Program (Wis. Stat. §§ 115.7915).

111. The Court should also permanently enjoin the Respondents from implementing these unconstitutional programs.

COUNT 3:

**THE MILWAUKEE PARENTAL CHOICE PROGRAM,
THE INDEPENDENT CHARTER SCHOOL PROGRAM,
THE WISCONSIN PARENTAL CHOICE PROGRAM, AND
THE SPECIAL NEEDS SCHOLARSHIP PROGRAM
VIOLATE THE SUPERINTENDENT SUPERVISION CLAUSE**

112. Art. X, Sec. 1 of the Wisconsin Constitution instructs that "the supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct"

113. "[T]he office of state Superintendent of Public Instruction was intended by the framers of the constitution to be a supervisory position, and that the "other officers" mentioned in the provision were intended to be subordinate to the state Superintendent of Public Instruction" *Thompson v. Craney*, 199 Wis. 2d 674, 698 (Wis. 1996)

114. Under the current statutory scheme, the private school funding programs have created a dual public instruction system in Wisconsin: one for traditional public school students and one for private school funded students.

115. The private school funding programs do not provide the state superintendent with sufficient supervisory control over participating private schools.

116. Instead, for example, Wis. Stats. § 115.7915, §119.23, and §118.60 give the voucher schools the authority to supervise themselves, directly violating both Article X § 1 of the Wisconsin Constitution and *Thompson v. Craney*.

117. Wis. Stats. § 115.7915, §119.23, and §118.60 provide no supervisory authority to the state superintendent, only the authority to withdraw funding if a voucher school fails to meet very minimal expectations.

118. Similarly, none of the individuals with control or authority over the voucher or independent charter schools is subordinate to the state superintendent as required by Article X § 1 of the Wisconsin Constitution.

119. The Court should therefore declare the following statutes unconstitutional: the Milwaukee Parental Choice Program (Wis. Stat. § 119.23), the Independent Charter School Program (Wis. Stat. § 118.40(2r),(2x)), the Wisconsin Parental Choice Program (Wis. Stat. § 118.60), and the Special Needs Scholarship Program (Wis. Stat. §§ 115.7915).

120. The Court should also permanently enjoin the Respondents from implementing these unconstitutional programs.

COUNT 4:

**THE LEGISLATURE'S IMPOSED REVENUE LIMIT
VIOLATES THE UNIFORM TAXATION CLAUSE
AND ART. X, SECTION 4 OF WISCONSIN'S CONSTITUTION.**

121. Under the Wisconsin Constitution, "[t]he rule of taxation shall be uniform." Wis. Const., art. VIII, § 1. This is called the "Uniform Taxation Clause."

122. Because of the Uniform Taxation Clause, "[i]t is well established that there are certain inherent limitations and restrictions on the power to tax, particularly as they relate to territorial equality and uniformity." *Buse*, 74 Wis. 2d at 576. For example, the Legislature may not "tax a local subdivision for a purely local purpose" or "compel such subdivision to tax itself for such a purpose." *Id.*

123. The revenue limit at issue here is the Legislature doing the exact opposite. Instead of attempting to impose a tax on a local subdivision for a purely local purpose, the Legislature here has prohibited the local subdivisions from being able to impose a tax on themselves for purely local purposes.

124. If the Legislature cannot force a local subdivision to levy a tax for local purposes, it surely cannot prohibit the local subdivision from doing so.

125. This Court should therefore declare that the revenue limit is unconstitutional for the same reasons articulated in *Buse*.

126. The revenue limit also violates Art. X, Section 4 of Wisconsin's Constitution.

127. This Court in *Buse* examined Section 4's legislative history in detail. *Buse*, 74 Wis.2d at 572. In so doing, the *Buse* court noted that local school districts "retain the control [over the Legislature] to provide educational opportunities over and above those required by the state and they retain the power to raise and spend revenue ' . . . for the support; of common schools therein, . . . ' These rights of the local districts have their foundations in the constitution." *Id.*

128. The revenue limit authorized by Wis. Stat. § 121.905, § 121.91, and § 121.92 places a statutory cap on the amount of funding a school district can raise via local property taxes per student.

129. The statutory revenue cap imposes limitations on school districts and prevents them from providing the educational opportunities to students that they believe are appropriate.

130. The revenue limit authorized by Wis. Stat. § 121.905, § 121.91, and § 121.92 unconstitutionally interferes with a school district's right to determine what educational subjects it will offer and to raise and spend revenue to make those educational offerings in violation of Art. X, Sec. 4 of Wisconsin's Constitution.

131. The Court should therefore declare the following revenue limit statutes unconstitutional: Wis. Stat. §§ 121.905, 121.91, and 121.92.

132. The Court should also permanently enjoin the Respondents from implementing any statutory scheme which interferes with a school district's constitutional right to raise revenue for purely local purposes.

PRAYER FOR RELIEF

If the Court grants this petition, the Petitioners will seek the following relief:

A. A declaration that the private school funding programs described herein violate Wisconsin's Constitution.

B. A declaration that the revenue limit described herein violates Wisconsin's Constitution.

C. An order permanently enjoining all Respondents from approving the distribution of, or otherwise providing funding for, any of the private school funding programs described herein.

D. An order permanently enjoining all respondents from placing or otherwise enforcing limitations on a school district's constitutional right to raise revenue for local purposes.

E. An award of the attorneys' fees and costs incurred.

F. All other remedies authorized by law.

Respectfully submitted,

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