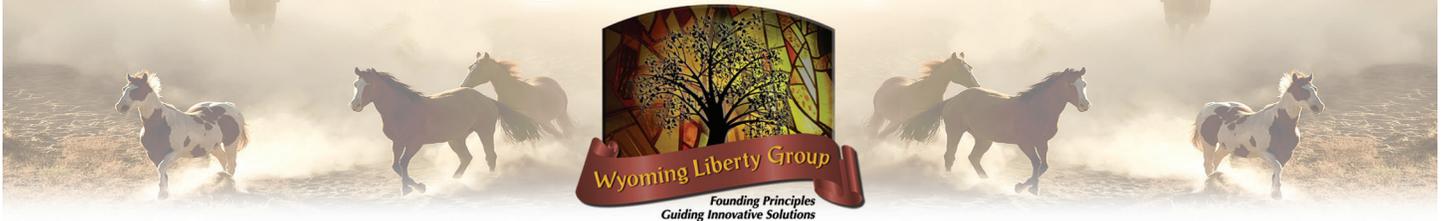


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All Kids Deserve to Thrive: Making the Case for Education Choice Access in Wyoming

CHAPTER 1

WHAT THE *CAMPBELL* CASES TAUGHT US ABOUT EQUAL PROTECTION, THE CONSTITUTION AND ACCESS TO EDUCATION

The Wyoming Constitution expresses an individual right for each and every student to receive an education of “every needed kind”.¹ Most notably, this should be “embraced”.²

While a funded system may be mandated, education is an individual right and this has been held explicitly by the Wyoming Supreme Court. “Constitutional provisions imposing an affirmative mandatory duty upon the legislature are judicially enforceable **in protecting individual rights, such as educational rights.**”³

Since education is an individual right, shouldn't it be customized and catered to the individual – not institutionalized? Shouldn't a child with special needs be able to pay for tutoring with funds available to him, irrespective of his zip code or financial allowances?

What did our founders intend with the educational provision of our constitution articles? During that time, of course, Wyoming was more full of cattle rustlers and outlaws than small school children. Nonetheless, perhaps our founders had in mind the need for a strong education and the rural nature and way of life that existed at that time.

It is only appropriate then to consider vocational and technical opportunities that can exist in a blended learning environment through education choice funding modules. Throughout the decades of litigation on education finance in Wyoming, three cases provide the primary structure for school finance law – *Campbell I*, *II*, and *III*.

In 1995, *Campbell I* held that the education article of the Wyoming Constitution was a mandate by the framers to the state legislature to provide the education system with such funding that provides Wyoming students an opportunity to be equipped for their future roles as citizens, participants in political system, and competitors both economically and intellectually.

The constitutional question of equal access to education comes in to play in questions of funding. We all know of the school on the wrong side of town and the school that is the best in town. Is it fair, and moreover constitutionally



allowable, that a child should be restricted or hindered in any way on the basis of economy and zip code? Similarly, some families can send their kids to private schools while others don't have that option due to family income. This only perpetuates systemic, cultural inequities and puts people of color, lower IQ and lower wealth at a statistical disadvantage. Moreover, education choice and blended learning options have been proven to save states money.

But, driving need to create accessibility to education choice in Wyoming relies on the guarantee of equal education access as a constitutional requirement in the State of Wyoming. Education access on an equal and individualized level is a constitutional mandate.

Unequal Education Is Unconstitutional and Violates the Education Article Provisions of the Wyoming Constitution

To begin, it is important to understand that the Constitution is clear about the requirements of our state officials:

Const. Art. 7, § 1

§ 1. Legislature to provide for public schools

The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary.⁴

“A thorough and efficient system of public schools adequate to the proper instruction of the state's youth, as required under the education article provisions of the Wyoming Constitution, is an organization forming a network for serving the common purpose of public schools which organization is marked by full detail or **complete in all respects** and **productive without waste** and is reasonably sufficient for the appropriate or suitable of teaching/education/learning of the state's school age children.”⁵

But is education **complete in all respects** and **sufficient** when many of our kids still can't read in high school? Is the education system **productive without waste** when we are funding it over the Constitutional requirement and we are in education budget deficit in excess of millions of dollars in a fiscally unsustainable system?

Unequal education means that kids in one part of town don't have the same educational experience as teachers on the other side of town because their school doesn't have the resources that are best for that particular student's learning environment needs. Or maybe it means that one kid in the same classroom doesn't have the same educational experience as another kid in the same room because he has special needs that aren't being met or because he learns in a different way.

This disparity can result from funding or systematic socioeconomic constraints, not anticipated in the legislative funding model. Meanwhile, the holding of our court in *Campbell III* is clear that the legislature must set the educational standards and provide an amount of funding equal to what it determines is necessary to meet those standards; so long as the process seeks to provide a quality education in a uniform and equal fashion, the constitutional standard has been met.⁶

Why not use education choice options to enhance the proficiency of children, relieve the system and save tax dollars at a more flexible level, involving parents in the education of the child?

The Constitutional right to education is one that the Wyoming Supreme Court has held must be broadly construed, stating that the language of education article provisions of Wyoming Constitution, requiring a complete and



uniform system of public instruction and a thorough and efficient system of public schools, adequate to the proper instruction of all youth of the state, must not be narrowly construed; since the right to quality education under the Wyoming Constitution is a fundamental right, that right must be construed broadly.⁷ Thus this individual right must be interpreted to afford every opportunity under its fundamental right status.

The limitations on options aside from government-run schools or paid methods without assistance, like private schools must come to an end. It is time to create a diverse education network with different modules and blended learning scenarios for children, while making those options accessible to all children through tax credit scholarships, education savings accounts or other innovative programs.

Moreover, the Wyoming Constitution education article requires that proper education for Wyoming child is the best that a state can do.⁸ Education for children is a matter of fundamental interest⁹ and parents must have the financial options guaranteed to their children's education so that poor and rich have the same opportunity. This is the only alternative that ensures constitutionality.

It is notable from a legal perspective that all aspects of the public school finance system are subject to strict scrutiny, and statutes establishing the school financing system are not entitled to any presumption of validity, in light of the fact that education is a fundamental right.

Furthermore, Wyoming citizens are entitled to equal protection under the state Constitution. Education legislation is not entitled to a presumption of constitutionality and withstands the test of strict scrutiny only if, when a disparity in public school funding is proven, it can prove that a compelling state interest justifies the disparity and the methods chosen to protect that state interest result in the least possible limitation upon the constitutional right in question.¹⁰

Because right to equal opportunity to proper public education is a constitutionally recognized right in Wyoming, any state action interfering with that right must be closely examined before it can be said to pass constitutional muster; such state action will not be entitled to the usual presumption of validity, but rather, the state must establish that its interference with that right is forced by some compelling state interest and its interference is the least onerous means of accomplishing that objective.¹¹

In the 2001 *Campbell* case, the Court outlined the procedural steps of how it came to analyze the education funding model as a whole. They elaborated that the proper role of the court is to interpret the meaning of the language of constitutional provisions for public schools in order to determine the duties those provisions impose upon the legislature.¹² The Court analyzed that the complexity of the block grant model system to fund public schools, as chosen by legislature, forced a constitutional challenge and with that a directive to scrutinize all aspects of system.

The main question the Court had to consider was whether contested components of the funding system accurately reflected costs school district should incur to provide that component. The Court stated it had no desire, nor was it the constitutional responsibility, to pass judgment on each line item of school funding model in determining whether overall school funding model was constitutional, in light of fact that each particular item was legislative choice for which legislators were accountable to respective constituencies.

This came after *Campbell I* had held that the legislatively created public school finance system which distributed dollars without regard for need to level the playing field did not provide "equal opportunity for a quality education," as required by Wyoming Constitution.¹³ In summary, it is the job of the legislature to design the best educational system by identifying the proper educational package each Wyoming student is entitled to have.¹⁴



“...Supporting an opportunity for a complete, proper, quality education is the legislature’s paramount priority, whereas competing priorities not of constitutional magnitude are secondary, and the legislature may not yield to them until constitutionally sufficient provision is made for elementary and secondary education. Wyoming views its state constitution as mandating legislative action to provide a thorough and uniform education of a quality that is both visionary and unsurpassed, and to that end, the legislature is required to **consider education as a paramount priority** over all other considerations and has identified class space, class size, teacher quality, and local innovation as factors critical to its determination that the legislature is providing a quality education.”¹⁵ What is most notable about this section is that the Supreme Court’s interpretation of our Constitution placed education as a paramount priority, not the public school system, not the funding – education. If only half of children coming out of the public grade schools are proficient at reading, has that mandate been fulfilled?

The Wyoming Supreme Court has spoken to the local financing element of education as follows, “Once the legislature achieves the constitutional mandate of cost based, state-financed proper education, then assuming the legislature has a compelling reason for providing a mechanism by which local districts may tax themselves in order to enhance their programs in equitable manner, that appears to be constitutionally permissible.”¹⁶

Campbell I really defined the meaning of equal access within the context of education. First, “there doesn’t have to be losers in the system” is the definitive meaning of “equal opportunity for a proper education,” under the Wyoming Constitution. “Equal opportunity for a proper education” necessarily contemplates the playing field will be leveled so each child has equal chance for educational success. “Educational success” must be defined as graduating from high school equipped for one’s role as a citizen, participant in political system and competitor both intellectually and economically. Const. Art. 7, §§ 1-23; *Campbell County School Dist. v. State*, 1995, 907 P.2d 1238, *clarified on denial of rehearing, opinion after remand* 32 P.3d 325.

The Court in 1995 found that having “no losers” in the public school system required there be no shrinking of the pie but pie of size needed and once education need is determined, the pie must be large enough to fund that need. The Court held that lack of financial resources will not be an acceptable reason for failure to provide the best educational system and that all other financial considerations must yield until education is funded.”¹⁷

In providing funding for education for students at risk of experiencing educational failure, the state was not constitutionally required to reimburse school districts for actual costs of programs offered to at-risk students. *Campbell County School Dist. v. State*, 2008, 181 P.3d 43. Additionally, the state system of financing public education, whereby funds were distributed upon basis of wealth or lack of it, was a “suspect classification” and therefore the burden was on the State to show a compelling interest served by such system which could not be satisfied by any other convenient legal structure.¹⁸

These two issues demonstrate the true constitutional problems under a funding model where individualized funding through education savings accounts are not available. First, because school districts are not receiving more funding for special needs, many of these students are pushed out of their districts because they do not have access to the programs they need. This is unconstitutional. Second, any distribution of funds that appears unfair likely is, and the distribution between the rich and poor has been noted by the Supreme Court and should be noted in new innovative laws to allow true constitutional education funding.

Throughout the *Campbell* progeny the perception, if not the reality, emerged that the Legislature was ultimately going to be compelled to pay whatever sum upon which the litigants agree or the Court directed. Thus, the Legislature is compelled to surrender its power to the litigants and the courts. Thus, an additional problem has resulted from years of Constitutional shoehorning for a system’s alleged right versus a well-established individual right.



This premise also disregards the separation of powers provision found in Art. 2, s. 1, Wyo. Const. It also appears to be contrary to Wyoming Supreme Court case law. See *Bulova Watch Co. v. Zale Jewelry*, 371 P.2d 409, 419 (Wyo. 1962). In short, the separation of powers doctrine found in the state constitution speaks for itself and needs no judicial interpretation.

Nevertheless, numerous words and phrases in the *Campbell* cases appear to have engaged in such interpretation. If these statements actually appeared in the state constitution, numerous other provisions of that same constitution would have to be ignored by the Legislature. What is the meaning of Art. 2, s. 1, if it is not to restrain one branch of government from encroaching upon the power of another co-equal branch of government?

Conclusion

The children of Wyoming have a right to a thorough and efficient education. This is an individual right, not the right of a system.

We must determine how we are to be efficient in our delivery of a public education without delivering it only in one mechanism. All children need access to education that works best for them, especially those in poverty and with those with special needs. Furthermore, we must execute this constitutional requirement and deliver it in a way that's efficient and cost effective without being cheap.

How do we live out this Constitution in 2019? This is an important question to consider given the fiscal concerns of our state. How do we get to efficiency and complete equity in education? We need to open our minds and begin considering more opportunities.

Some policy considerations to move the needle toward fiscal sustainability of government-run schools include choice and efficiency alternatives such as:

- Managing the system better so that the money gets where it is supposed to, in the classrooms for the student through student-based funding;
- Creating more space for entrepreneurs in education and figuring out ways to innovate;
- Expanding options and resources available while cutting red tape and providing financial opportunity to those who cannot afford current education choice through good legislation.

If we keep funding the education system at catastrophic levels it will become, at some point, *too big to succeed*. If the charge of the Constitution is to fund the education system, we should leverage all assets and resources and follow the college and pre-k model of competition in education. This model can yield positive results for kids and more opportunities suitable for their needs. A constellation of providers will provide the best outcomes for kids. These methods can drive the education choice that we already have to a better place through education savings accounts or tax credit scholarships.

Accessibility to education choice is a powerful opportunity to customize a child's education to fit that student's needs. Parents must have ownership over their child's education and meaningful options, whether rich or poor, this right is paramount. In education, we must look to varying modules to get to the greatest good and the Equal Protection Clause and the Education Clause ensure the right to a complete education.

We must constantly question, how equally accessible is the choice we have in Wyoming, keeping in mind that the goal is to educate kids – it doesn't matter how you do it, just do it.

