

IN THE SUPREME COURT, STATE OF WYOMING

CAMPBELL COUNTY SCHOOL DISTRICT,)
STATE OF WYOMING, et al.,)
)
Appellants)
(Plaintiffs),)
)
LARAMIE COUNTY SCHOOL DISTRICT)
NO. ONE, et al; WYOMING EDUCATION)
ASSOCIATION; WYOMING SCHOOL BOARD)
ASSOCIATION)
)
Appellants)
(Intervening Plaintiffs),)
)
BIG HORN COUNTY SCHOOL DISTRICT)
NO. ONE, et al.,)
)
Appellants)
(Plaintiffs),)
)
v.) No. 06-74
)
THE STATE OF WYOMING)
)
Appellee)
(Defendant).)

**BRIEF OF AMICI CURIAE NORTHERN ARAPAHO TRIBE & WYOMING
PARENT TEACHER ASSOCIATION**

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In support of Appellants and for Reversal of District Court order entering partial summary judgment

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Introduction

Amici curiae Northern Arapaho Tribe and Wyoming Parent Teacher Association submit this Brief in support of Appellant Laramie County School District No.1’s request for reversal of the district court’s order entering partial summary judgment dismissing their claim for State funding for preschool education. In this Brief, *Amici* set forth the factual bases for including high quality, voluntary preschool in the “basket” of educational programs due Wyoming children under the State Constitution.¹ *Amici* urge this Court to remand the preschool claim for a trial on the merits.

¹ “Preschool” is generally defined as a center-based program that provides educational experiences for children during the year or years before kindergarten. *See* Linda M. Espinosa. *High Quality Preschool: Why We Need It and What It Looks Like*. (New Brunswick, NJ: National Institute for Early Education Research, Rutgers University, 2002). The benchmarks for “high quality preschool” include teachers with a bachelor’s degree and specialized training in early childhood development, developmentally appropriate curriculum, class size of no more than 20, and a teacher-child ratio of no more than 1:10. *See* W. Steven Barnett, Jason T. Hustedt, Kenneth B. Robin, & Karen L. Schulman, *The State of Preschool: 2005 State Preschool Yearbook*, at 32. (“NIEER State Preschool Yearbook”) (New Brunswick, NJ: National Institute for Early Education Research, Rutgers University, 2005) available at: <http://nieer.org/yearbook>. By “voluntary preschool program,” *amici* mean that, similar to kindergarten, participation is a matter of parental choice.

Argument

I. The Wyoming Constitution Directs the Legislature to Fund a High Quality Preschool Program.

Public education is a fundamental right in Wyoming, expressly declared in Art. 1, § 23 of the Wyoming Constitution. *Campbell v. State*, 907 P.2d 1238,1257 (Wyo. 1995) (*Campbell I*). Art. 7, §§ 1 – 14, address the responsibilities and requirements of the education system. Sections 1 and 9 of this article “contain education clauses addressing the type of system to be established and maintained.” *Id.* These provisions require the legislature to create a “complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade...and such other institutions as may be necessary,” Wyo. Const. Art. 7, § 1, and “a thorough and efficient system of public schools,” Wyo. Const. Art. 7, § 9.² This Court has interpreted these constitutional provisions expansively, finding that “since...the right to a quality education under our state constitution is a fundamental right, that right must be construed broadly.” *Campbell I*, 907 P.2d at 1257-58. The Legislature has a duty to “design the *best* educational system by identifying the ‘proper’ educational package each Wyoming student is entitled to have.” *State v. Campbell*, 201 WY 19, ¶51, 19 P.3d 518 (Wy.2001) (*Campbell II*) (*quoting Campbell I*, 907 P.2d at 1259). [emphasis supplied by the Court] Indeed,

² *Amici curiae* rely on the argument of Appellant Laramie County School District No. 1 respecting the Legislature’s constitutional duty under these sections to create and maintain schools and programs for children under the age of 6.

“[s]upporting an opportunity for a complete, proper, quality education is the legislature’s paramount priority.” *Id.*

The Legislature’s constitutional duty requires that it “provide and fund an education system which is of a quality ‘*appropriate for the times.*’” *Id.* [emphasis supplied] Moreover, the Constitution commands the Legislature to “provide a thorough and uniform education of a quality that is both *visionary and unsurpassed.*” *Campbell II*, ¶51. [emphasis supplied]

This Court is called upon again to answer the constitutional question of what is a complete, proper, quality education “appropriate for the times.” The following sections of this Brief answer this question by presenting early childhood research on the educational and social benefits of high quality preschool education, in particular research showing that such programs help level the playing field by preparing economically disadvantaged and other at-risk children for success in school; information on preschool programs funded by the vast majority of states in the country; and data on the particularized need of Wyoming children for high quality preschool education. The information and analyses presented here lead inextricably to the conclusion that the Wyoming Constitution imposes a duty on the Legislature to include high quality preschool in the educational “basket of goods and services” due all Wyoming children. *See Campbell II*, ¶ 109 (finding that the State “has the obligation to appropriate the necessary monies to fund the educational basket [of goods and services]).”

II. Research Evidence Supports the Inclusion of High Quality Preschool in the “Basket” of Educational Goods and Services the State Must Make Available to Wyoming Children under the Constitution

a. Recent Research Proves the Educational, Social and Economic Benefits of High Quality Preschool Programs

Research shows that in order for all Wyoming children to “graduat[e] from high school equipped for a role as a citizen, participant in the political system and competitor both intellectually and economically,” *Campbell I*, 907 P.2d at 1278, high quality preschool must be included in the “basket” of educational goods and services required under the Wyoming Constitution. For many children, Wyoming’s investment in high curriculum standards, assessment-based accountability, improved teaching, and other K-12 education reforms, comes too late to produce educational success. If children are to receive the “complete, proper, quality education,” *id.* at 1278-1279, mandated by the Constitution, the State must also take steps to prepare all children to succeed in the K-12 education system.

Research in the field of neurological development indicates that the foundation for early learning and academic achievement is laid before the age of 5, by which time more than 85% of the brains pathways are developed.³ A variety of socioeconomic factors,

³ See National Research Council & Institute of Medicine, *Neurons to Neighborhoods: The Science of Early Childhood Development*, Deborah A. Phillips & Jack P. Shonkoff, eds. (National Academy Press: Washington, D.C., 2001); Academy of Sciences, *How People Learn: Brain, Mind, Experience, & School*, John D. Bransford, Ann L. Brown, & Rodney R. Cocking, eds. (National Academy Press: Washington, D.C., 2000); see also National

including race and ethnicity, low family income, family structure, poorly educated mothers, and limited English proficiency, affect this development and put many children at risk for school failure before they even begin kindergarten.⁴ Studies show that children of less well-educated parents, parents who receive welfare benefits, and single parents are far less likely to be read to and told stories and have fewer books in their homes than their peers with more affluent, better educated parents.⁵ Cognitive development for these children may be stymied and the acquisition of early language, math and reasoning skills may be limited.⁶ Consequently, at the point they enter school, many children from disadvantaged backgrounds are far behind and ill equipped to succeed along with their more advantaged peers. Unfortunately, they are also unlikely to catch up, and the gap

Research Council, *Eager To Learn: Educating Our Preschoolers*, Barbara T. Bowman, M. Suzanne Donovan, and M. Susan Burns, eds. (National Academy Press: Washington, D.C., 2001) (finding young children's brain cell development increases in stimulating environments).

⁴ David Burkham & Valerie Lee, *Inequality at the Starting Gate: Social Background Differences in Achievement as Children Begin School* (Economic Policy Institute 2002).

⁵ National Research Council, *Eager to Learn*, *supra* (citing data compiled by the National Center for Education Statistics (NCES)).

⁶ See, Burkham & Lee, *supra*.

between them and their more advantaged peers widens as they move on through grades.⁷

In the field of early childhood education, research demonstrates that high quality preschool programs can help level the playing field by improving children's cognitive development and giving them the skills they need to succeed in school and beyond.⁸

Three prominent longitudinal studies of children who attended high quality early childhood programs—Carolina Abecedarian Project, Chicago Parent Child Program, and High/Scope Perry Preschool Program—revealed dramatic effects in academic achievement. Participants in the Carolina Abecedarian Project (CAP), a year-round, full-day early education program for low-income children, achieved much higher IQ and achievement test scores through age 21 than non-participants and were over 20% less likely than the control group to have repeated a grade or been placed in special education

⁷ See National Research Council, *Eager to Learn, supra* (finding disadvantaged children more likely to start school without the early literacy skills needed to learn to read); Burkham & Lee, *supra* (concluding that socio-economically disadvantaged children disproportionately enter school without the basic skills needed to learn math, reading, and other essential subjects, and often are unable to catch up); B. Hart & T.R. Risley, *Meaningful Differences In The Everyday Experiences Of Young American Children*. (Brookes Publishing: Baltimore MD, 1995) (showing early disparity in basic vocabulary grows as children proceed through school).

⁸ See fn.9 - 16, *infra*.

though age 15.⁹ These children were also over 20% more likely than members of the control group to have attended college through age 21.¹⁰ Low-income children enrolled in the Chicago Parent Child Project, a preschool and kindergarten program in the Chicago Public Schools that emphasized parental involvement and early literacy skills, were more likely to complete high school and had more years of completed education than those who had not attended the program.¹¹ And economically disadvantaged three- and four-year-olds who received two- and one-half hours of daily classroom instruction by state-certified teachers in the High/Scope Perry Preschool Program were more than 10% less likely to be placed in special education through age 19, and more than twice as likely to graduate from high school than a similar group of children who did not participate in the program.¹²

⁹ W. Steven Barnett & Leonard Mass. *A Benefit-Cost Analysis of the Abecedarian Early Childhood Intervention*. (New Brunswick, NJ: National Institute for Early Education Research, Rutgers University, 2002).

¹⁰ *Id.*

¹¹ Arthur J. Reynolds, Judy A. Temple, et al., *Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Center Program* (Madison, WI: Waisman Center, University of Wisconsin, 2001).

¹² H.V. Barnes & L.J. Schweinhart. *Significant Benefits: The High/Scope Perry Preschool Study Through Age 27*, in *Monographs of the High/Scope Educational Research Foundation* (1993).

A study by the National Institute of Child Health and Human Development (NICHD) found that children who participated in high quality, center-based early childhood education programs scored significantly higher on assessments of vocabulary, short-term memory and attention, all critical skills for early success in school, than did children who were cared for in an environment that was not enriching.¹³ Children who attended center-based programs also exhibited, through sixth grade, positive behaviors that contribute to school success: they were less aggressive, had fewer behavioral problems and more success getting along with peers, and were better at following instructions when compared to children cared for in a non-enriching environment.¹⁴

Recent studies of large-scale, state-funded preschool programs provide additional evidence of the educational benefits of high quality preschool. For example, a study of Oklahoma’s universal preschool program showed considerable impacts of the program on three subtests of a standardized, nationally normed achievement test that measures pre-reading, pre-writing and pre-numeracy skills.¹⁵ Each of four racial and ethnic groups—Hispanic, Black, White and American Indian children—made significant gains in school

¹³ J.M. Currie, *Early Childhood Intervention Programs: What Do We Know?* (National Institute of Child Health & Human Development, 1998).

¹⁴ *Id.*

¹⁵ William T. Gormley, Ted Gayer, Deborah Phillips and Brittany Dawson. *The Effects of Universal Pre-K on Cognitive Development.* (Washington, D.C.: Georgetown University, 2004).

readiness skills, as did both children who were eligible for the federal lunch program and those who were not, although the greatest benefits were evidenced by low-income and limited-English children. Similarly, a recent study of the effects of state-funded, high quality preschool programs in five states—Michigan, New Jersey, Oklahoma, South Carolina and West Virginia—showed that across the states, children who participated in these programs made significant gains in early language, literacy, and mathematical development.¹⁶ Improved school readiness skills were notable for all children, regardless of ethnicity or economic background.¹⁷

Research also shows that a child’s participation in high quality preschool results in long-term success in life. Participants in such programs are more likely to have higher earnings, own their home and marry, and less likely to be involved in the criminal justice

¹⁶ W. Steven Barnett, Cynthia Lamy & Kwanghee Jung. *The Effect of State Prekindergarten Programs on Young Children’s School Readiness in Five States*. (New Brunswick, NJ: National Institute for Early Education Research, Rutgers University, 2005).

¹⁷ It is not only the very poor who are disadvantaged at entry to school. A growing body of research shows that young middle-income children also lag behind their wealthy peers in the social and cognitive skills important for school success, and these children, too, benefit from high quality preschool. See W. Steven Barnett and Donald J. Yarosz. *Who Goes to Preschool and Why Does It Matter?* (New Brunswick, NJ: National Institute for Early Education Research, Rutgers University, 2004).

and welfare systems, have children by age 21, and smoke.¹⁸ When added to the benefits accrued during the school years—lower incidence of grade retention, school drop-out and placement in special education and remedial services—many economists have concluded that high quality preschool is also a smart public investment.¹⁹

¹⁸ Barnett & Maas, *supra* (finding that participants in the Carolina Abecedarian Program earned up to \$143,000 more from employment over their lifetime than non-participants and their mothers earned up to \$133,000 more, and were less likely to have children by age 21); Lawrence J. Schweinhart. *High/Scope Perry Preschool Study: Through Age 40*, in Monographs of High/Scope Educational Research Foundation (2004) (longitudinal study of participants in the Perry Preschool Program shows that at age 40, long-term benefits have continued: in a comparison with non-participants, program participants had median annual incomes approximately \$5,000 higher; were far more likely to have a savings account and own their own home, and had significantly fewer arrests).

¹⁹ *E.g.*, James. J. Heckman & Dimitriy Masterov. *The Productivity Argument for Investing in Young Children*. (Washington, D.C.: Committee for Economic Development, 2004) (finding that investment in high quality early childhood education is likely to yield a higher rate of return than all other forms of public economic development); Robert Grunewald & Art Rolnick. *Early Childhood Development: Economic Development with a High Public Return*. (Minneapolis, MN: Federal Reserve Bank of Minneapolis, 2003) (finding that investment in early childhood programs results in better public schools, more educated workers and less crime, resulting in an “extraordinary” return on investment).

This Court has recognized that a child's readiness to learn is influenced by a variety of personal and social factors. It has also found that redressing children's learning deficits is a constitutional imperative:

An equal opportunity for a proper education necessarily contemplates the playing field will be leveled so each child has an equal chance for educational success. [citation omitted] ... Our children's readiness to learn is impacted by social ills [and] learning deficiencies....

Children with an impaired readiness to learn do not have the same equal opportunity for a quality education as do those children not impacted by personal or social ills simply because they do not have the same starting point in learning. A legislatively created finance system which distributes dollars without regard for the need to level the playing field does not provide an equal opportunity for a quality education.

Campbell I, 907 P.2d at 1278 - 1279.

The State's failure to fund a high quality preschool program to help level the playing field and prepare all children for success in school amounts to a violation of the constitutional requirement for a complete, proper, quality education.

b. Most States Have Implemented State-Funded Preschool Programs, Recognizing Their Effectiveness and Importance

Based on the compelling research on the benefits of high quality preschool, has been astounding growth in state-funded programs nationwide. Thirty-nine states and the District of Columbia funded a preschool program in the 2005-2006 school year. In the school years between 2001-2002 and 2004-2005, there was a dramatic jump nationwide in the number of children served: 20% for four-year-olds and 8% for three-year-olds. It is expected that nearly a million children will be served in state preschool programs during the 2006-2007 school year. Despite severe budget constraints in most states, state

spending increased during this time period by 7.5%. Two states with far fewer resources than Wyoming—Oklahoma and Georgia—offer universal preschool programs and enroll the highest percentage of preschoolers in a publicly funded program: in 2004-2005, more than 90% of Oklahoma’s four-year-olds were enrolled in state-funded preschool, Head Start, or special education preschool; during this same period, Georgia enrolled 67% of four-year-olds in one of these programs.²⁰

Wyoming state officials and educators are well aware of the research evidence on the benefits of high quality preschool, see section V, *infra*, yet Wyoming remains one of 11 states that fails to fund this essential program, notwithstanding budget surpluses in recent years. Given its failure to keep pace with best educational practices in the area of early childhood education, the State is violating the constitutional mandate for an education system that is *appropriate for the times, visionary and unsurpassed*, and the *best* we can offer.

c. Evolving Concepts of an Appropriate Education Require the Legislature to Fund a High Quality Preschool Program

The scope of a system of education “appropriate for the times” will necessarily evolve over time, depending on educational research, social context, and other changes. *See Campbell II*, ¶ 125 (stating that “[t]he definition of a proper education is not static and necessarily will change”); *accord Montoy v. State*, 102 P.3d 1160, 1163, 278 Kan. 769, 771-772 (Kan.2005) (*Montoy II*) (noting that the definition of a “suitable” education under the Kansas Constitution “is not stagnant but requires constant monitoring,” and

²⁰ NIEER State Preschool Yearbook, at 4 – 5.

accepting the trial court’s “findings regarding the various statutory and societal changes which occurred after [the Court’s earlier decision]”); *Robinson v. Cahill*, 355 A.2d 129, 134, 69 N.J. 449, 457-58 (N.J. 1976) (*Robinson V*) (finding that “[b]ecause the sufficiency of education is a growing and evolving concept, the definition of a thorough and efficient system of education and the delineation of all the factors necessary to be included therein, depend upon the economic, historical, social and cultural context in which that education is delivered”).

In earlier decisions, this Court looked to research and the testimony of experts and educators to determine the components of an appropriate education. *See Campbell I*, 907 P.2d at 1278 (finding that the “indicia of educational opportunity,” as defined by “[t]oday’s educators,” must be provided); *Campbell II*, ¶ 51 (noting the Court’s reliance “upon the expert testimony...to identify[y] some aspects of a quality education, which included small classes and low pupil/teacher ratios for both rural and urban schools and ample, appropriate provisions for at-risk students and talented students). The District court’s order entering partial summary judgment dismissing Appellants’ preschool claim precluded them from establishing through expert witnesses and State and school district employees the essentiality of high quality preschool to the provision of a constitutionally appropriate education.

III. A Substantial Number of Wyoming Three- and Four-Year-Olds Live in Poverty, Are At Risk for School Failure, and Require State-Funded High Quality Prekindergarten Programs to Prepare Them to Enter Kindergarten Ready to Learn

In 2004, there were 113,615 children under the age of 18 living in Wyoming, and 15,941, or 14%, lived below the Federal Poverty Level (“FPL”).²¹ (The FPL for 2006 equals an annual income of \$16,600 for a family of three.²²) About 6,000 children under age 5, or 20%, lived below the FPL.²³ On the Wind River Reservation,²⁴ home to *amicus curiae* Northern Arapaho Tribe, 1,874 out of 6,823 children under 18, or 28%, lived below the FPL in 2000.²⁵ 517 out of 1,689 children under the age of 5 on the reservation, or 31%, lived below the FPL in 2000.²⁶ When broken down by race, almost *half*—

²¹ Food Research and Action Center, *State of the States: A Profile of Food and Nutrition Programs Across the Nation* (2006), available at:

<http://www.frac.org/html/publications/pubs.html>. See also NCCP, Wyoming—

Demographics of Children in Poverty (2006), available at:

http://www.nccp.org/state_detail_demographic_poor_WY.html.

²² See 71 Fed. Reg. 13338 (Mar. 15, 2006).

²³ Data from The Annie E. Casey Foundation Kids Count! Project (“Kids Count!”), Census Data Online, available at: <http://www.aecf.org/kidscount/census>.

²⁴ Including Off-Reservation Trust Land in Wyoming.

²⁵ Kids Count! Data, *supra*.

²⁶ *Id.* According to the tribe’s own records, 403 Northern Arapaho members are 3 to 5 years old.

48.3%—of American Indian²⁷ children under 18 on the Wind River Reservation were living in poverty in 2000.²⁸

The National Center for Children in Poverty (“NCCP”) reports that “families need an income of about twice the FPL to meet their most basic needs.”²⁹ The NCCP found that 43,847 Wyoming children under 18, or 37%, live in these low-income families earning less than 200% of FPL.³⁰ (200% of FPL in 2006 is \$33,200 for a family of three.³¹)

According to the 2000 U.S. Census, there were 6,196 three-year-old children in Wyoming and 6,183 four-year-olds, or a total of 12,379 preschool age children.³² Applying the 20% poverty rate³³ and 37% low-income rate discussed above, it is likely that 2,476 of these three- and four-year-olds live below the FPL, and an additional 2,104

²⁷ Or Alaska Native.

²⁸ Kids Count! Data, *supra*. Also, 58.8% of all children under 18 on the reservation were below 200% of FPL. *Id.*

²⁹ NCCP, Measuring Income and Poverty in the United States, available at: <http://www.nccp.org/measuring.html>.

³⁰ NCCP, Wyoming—Demographics of Low-Income Children (2006), available at: http://www.nccp.org/state_detail_demographic_low_income_WY.html

³¹ See 71 Fed. Reg. 13338 (Mar. 15, 2006).

³² Data available through the United States Census Bureau at <http://factfinder.census.gov>.

³³ For Wyoming children under five years old living in poverty in 2004.

live below 200% FPL. These 4,580 children—37% of all three- and four-year-olds in the State—live in families who struggle to meet basic needs because they are either poor or low-income.

Another common measure of poverty or “at risk” status is eligibility for Free or Reduced Price Lunch under the National School Lunch Program (NSLP).³⁴ Students are eligible for Reduced Price Lunches if their family income is no more than 185% of FPL, or \$24,420 for a family of three in 2006.³⁵ Statewide, 26,816 public school students, or 32% of total enrollment in Wyoming, are eligible for free or reduced price lunch under the program.³⁶ The three school districts with the highest proportion of free or reduced price lunch eligibility are the three districts on the Wind River Reservation, where the student body is nearly 100% Native American: Fremont #14 (87% eligible), Fremont #21

³⁴ This Court has recognized the limitations of using free lunch enrollment as an accurate proxy for low-income status, since many students choose not to take advantage of the program. *Campbell II*, ¶ 75. Furthermore, “[w]hile use of the free lunch enrollment may serve as a partial proxy by roughly identifying EDY [economically disadvantaged youth], it fails to capture students equally at-risk for other reasons.” *Id.* at ¶ 77.

³⁵ See 71 Fed. Reg. 13338 (Mar. 15, 2006).

³⁶ Wyoming Department of Education (“WDE”), Fall Enrollment by District Total with Free/Reduced Lunch Eligibility (2004), available at:

<http://www.k12.wy.us/statistics/stat2.aspx>.

(81% eligible), and Fremont #38 (95% eligible).³⁷ By comparison, the fourth highest ranked district (Park #16) has 52% of its total enrollment eligible for the NSLP.³⁸

Many other factors besides poverty can place a child at risk for school failure. Wyoming has addressed “limited English speaking students” as a category of students requiring special programming and additional instruction,³⁹ as well as “parental absence or neglect.”⁴⁰ Other states have adopted comprehensive criteria in an attempt to identify the greatest number children with educational deficits, whether they be cognitive or behavioral, who would profit from participation in high quality preschool programs. Michigan has identified two dozen factors that indicate the probability that a child is educationally disadvantaged and at risk of school failure, including: low birth-weight, developmental immaturity, physical and/or sexual abuse and neglect, nutritional deficiency, chronic illness, substance abuse or addiction, single parent, unemployed parent or parents, teenage parent, and housing in rural or segregated area.⁴¹ Similarly, Colorado school districts offer their preschool programs to children who exhibit

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Campbell II*, ¶ 74.

⁴⁰ *Campbell I*, 907 P.2d at 1253, n. 20.

⁴¹ Michigan State Department of Education, *School Readiness Program Implementation Manual* (July 2002) at 31, available at

http://www.michigan.gov/documents/ImpManual_11363_7.PDF.

“significant family risk factors,” including: homelessness, an abusive adult residing in the home, drug or alcohol abuse in the family, an unmarried teenage parent, parent or guardian without a high school education, frequent relocation by the child’s family, and poor social skills.⁴²

Regardless of the predisposing risk factors, many Wyoming three- and four-year-olds are desperately in need of a high quality prekindergarten experience: “[J]ust over half of Wyoming kindergartners are identified ‘not ready to learn’ their first day at school.”⁴³

IV. All Wyoming Children Have Inadequate Access to High Quality Prekindergarten Programs; Affordable Publicly-Funded High Quality Prekindergarten Programs Are Especially Unavailable to Low-Income and At-Risk Three- and Four-Year-Olds

Wyoming is one of only eleven states that provide no state-funded preschool programs of any kind for three- or four-year-olds.⁴⁴ Consequently, access to high quality care and education for preschoolers is a problem for *all* Wyoming families, especially those where parents work. “Licensed child care only serves 40% of the children in the State who need child care while their parents work.”⁴⁵

⁴² Colo.Rev.Stat. § 22-28-106(1)(a.5).

⁴³ Children and Families Initiative Report (2005) (“CFI Report”) at 4, available from the Department of Family Services at: <http://dfsweb.state.wy.us/CFIRReport.html>.

⁴⁴ NIEER State Preschool Yearbook, *supra*, at 4. Florida began a program in 2005.

⁴⁵ CFI Report at 25-26. Sixty-four percent of children under six in Wyoming live in households where all the parents work. *Id.* at 25.

The virtual absence of publicly-funded high quality early childhood education in Wyoming means that families must turn to private providers for their preschool needs. The *average* cost of center-based childcare for a four-year-old in Wyoming is \$4,056 a year.⁴⁶ The annual rate in 2004 at the 75th percentile for center-based childcare was \$5,252.⁴⁷ By comparison, a year of college tuition at a public college averaged only \$2,416.⁴⁸ If they can even find a private preschool, middle income families, as well as low-income families, “must settle for something less” than a quality educational experience for their preschool aged children.⁴⁹

Some federal funds are available in Wyoming for early childhood education for three- and four-year-olds, primarily through Head Start and a consolidated federal grant program administered by the State. A select few school districts are able to channel local funds into limited pre-k programs.⁵⁰

⁴⁶ Children’s Defense Fund, *Children in Wyoming*, available at: <http://www.childrensdefense.org/data/childreninthestates/wy.pdf>.

⁴⁷ CFI Report at 33.

⁴⁸ Children’s Defense Fund, *Wyoming Early Childhood Development Facts*, available at: <http://www.childrensdefense.org/earlychildhood/statefacts/WY.pdf>.

⁴⁹ CFI Report at 24.

⁵⁰ *See* Wyo. Stat. § 21-4-302(c): “The board of trustees of a school district may permit the enrollment of pupils in a part-time preschool program . . .;” *See also* deposition testimony of former Superintendent of Public Instruction Blankenship, noting that, although “it is

The Consolidated Grant Program⁵¹ is used by some school districts to fund the All Ready Preschool Program in the public schools. (Schools and other grantees can opt to use these funds from federal programs for a wide variety of educational purposes. Preschool programs are only one of many options, and the State has not even made this a priority for these grants.) The Consolidated Grant Program channels Federal TANF funds, along with Title I and Title VI-B funds,⁵² to the All Ready Program to create a

the best dollar you can spend ... because it prevents so many problems on the other end,” very few districts are able to run preschool programs, and they do it without state funds. Challengers’ Response in Opposition to State’s Motion for Partial Summary Judgment on Pre-School Funding at 13-14; Exhibits 5 and 7 (*R.O.A. Vol. X, pp. 1589-90c; R.O.A. Vol. X, p. 1660c; R.O.A. Vol. X, p. 1711c*). For example, LCSD#1—solely using funds from its K-12 block grant model—runs a select summer pre-k program for a limited number of at-risk students about to enter kindergarten. Affidavit of Dr. Mike Klopfenstein, Assistant Superintendent, LCSD#1, Challengers’ Response in Opposition at 13; Exhibit 5 (*R.O.A. Vol. X, p. 1660-61c*).

⁵¹ “The Consolidated Grant Application is the means through which public school districts may apply to the Wyoming Department of Education for Federal entitlement and formula funding.” WDE, Consolidated Grant Manual (2003-2004) at 7. Available at: http://www.k12.wy.us/FP/consolidated_grant.asp.

⁵² TANF is Temporary Assistance for Needy Families. Title I-A programs “help at-risk students meet challenging content and performance standards [in reading and

small but successful network of preschools that served about 374 students in 2004, primarily in Natrona County.⁵³ Twenty-six “Indian/Alaskan Native” prekindergarteners in Fremont County, home to the Wind River Reservation, were among the students enrolled in these federally funded preschool programs.⁵⁴

As in all other states, Federal funds are used in Wyoming to fund the Head Start program, “a comprehensive child development program” that provides poor preschoolers with a free program “to meet their emotional, social, health, nutritional, and psychological needs.”⁵⁵ States often supplement the Head Start program with state funds to expand the number of children served, extend the length of the program day, and/or improve program quality.⁵⁶ Regrettably, Wyoming does not. Head Start programs are also only available to

mathematics].” Title VI-B “provides additional financial assistance to support special education and related services to children with disabilities aged 3 through 5.” See Consolidated Grant Manual, *supra*, at 15, 81.

⁵³ WDE, PK Students (2004 Pre-Kindergarten Enrollment Data), available at: <http://www.k12.wy.us/statistics/stat2.aspx>.

⁵⁴ *Id.*

⁵⁵ NCCP, “Head Start,” available at: http://www.nccp.org/policy_long_description_30.html.

⁵⁶ See NIEER State Preschool Yearbook, *supra*, at 31.

the very poorest children, those whose family income is at or below the FPL.⁵⁷

Furthermore, Head Start is not an entitlement: “Slots are limited, and not all eligible applicants are served.”⁵⁸

In the 2004-2005 program year, Wyoming Head Start programs were able to serve 801 three-year-olds and 1,231 four-year-olds, or a total of 2,032 “prekindergarteners” statewide.⁵⁹ As discussed above, at least 4,580 three- and four-year-olds in the State live in families with a household income lower than 200% of the FPL. That means that 2,548 low-income three- and four-year-olds may not be participating in a high quality, comprehensive educational and developmental program.⁶⁰

Wyoming Head Start programs served a total of 378 American Indian or Alaska

⁵⁷ With some exceptions. See NCCP, “Wyoming–Head Start,” available at: http://www.nccp.org/state_detail_WY_policy_30.html. Ninety percent of children in the program must be below 100% FPL, which is \$16,600 a year for a single-parent family of three in 2006. *Id.*

⁵⁸ NCCP, “Head Start,” available at: http://www.nccp.org/policy_long_description_30.html.

⁵⁹ Wyoming Head Start Programs Report 2004–2005 at 3 (“Head Start Programs Report”), available at: <http://wind.uwyo.edu/headstart/project/report04-05.asp>.

⁶⁰ Some of these children, especially in Natrona County, may be among the 374 or so students participating in the Federally-funded All Ready Preschools Program.

Native children of all ages (not just three- and four-year-olds).⁶¹ The Shoshone and Arapaho Head Start program on the Wind River Reservation serves 247 children; 199 are three- and four-year-olds.⁶² There are an estimated 676 three- and four-year-olds on the reservation.⁶³ If 81-95% of them would be eligible for Free or Reduced Price Lunches,⁶⁴ then 548 to 642 of them could be considered at risk, based on family income alone. After subtracting Head Start participants, there may be another 349 to 443 three- and four-year-olds on the reservation who would derive immeasurable benefit from affordable high quality preschool programs. The lack of high quality state-funded early childhood education in Wyoming has a disproportionate impact on the youngest inhabitants of the Wind River Reservation.

Reliance on Federal grants and programs is not a viable solution to the scarcity of preschool programs in Wyoming. The State will see a continuous, rapid decline in the availability of Head Start funds and the Federal funding sources administered through the Consolidated Grant Program. The current administration's 2007 budget proposal would

⁶¹ Head Start Programs Report at 3.

⁶² Records of Joseph Henry, Director of the Shoshone and Arapaho Head Start (May 23, 2006).

⁶³ Based on a population of 1,689 under age 5, discussed *supra*, 403 members of the whole Northern Arapaho Tribe are 3 to 5 years old. Records of Northern Arapaho Enrollment Department, May 30, 2006.

⁶⁴ See discussion *supra*.

freeze discretionary childcare funding for the fifth consecutive year, and other proposed cuts for childcare would total \$1 billion over the next five years.⁶⁵

Outside of Head Start, the quality of the care and instruction in early childhood programs in Wyoming is likely to be under par, and not only for children from low-income families. Less than 42% of teachers in such programs in Wyoming have finished any college courses in early childhood or related fields.⁶⁶ More than 57% of childcare center directors have not earned bachelor's degrees.⁶⁷ Early childhood teachers earn only an average of \$7.00 to \$9.50 an hour, or \$14,560 to \$19,760 annually, compared to the

⁶⁵ See Center for Law and Social Policy, "Toward a Decade of Indifference: Administration Ignores Child Care Needs of Working Families" (2006) at 1, available at: http://www.clasp.org/publications/childcare_2007budget.pdf.

⁶⁶ CFI Report (2005) at 34. "[O]ne of the most crucial influences on the quality and effectiveness of preschool programs is teacher education and training." Debra J. Ackerman and W. Steven Barnett, *Increasing the Effectiveness of Preschool Programs* (New Brunswick, NJ: National Institute for Early Education Research, Rutgers University, 2006) at 3, available at: <http://nieer.org/resources/research/IncreasingEffectiveness.pdf>.

⁶⁷ Wyoming Department of Family Services, Wyoming 2004 Child Care Market Survey (2004) at 11, available at: <http://dfswapps.state.wy.us/DFSDivEC/Home/documents/2004MarketSurvey.pdf> ("Child Care Market Survey").

average hourly wage for all Wyoming workers in all occupations of \$14.62.⁶⁸ Studies have shown that low teacher salaries in preschool programs “limit the quality of teacher who can be hired” and “limit the educational effectiveness” of the programs.⁶⁹

Low-income Wyoming families will need tremendous assistance from the State in obtaining high-quality preschool education for their children. “Nationally, the most commonly cited figure for assuring quality child care for a three- or four-year-old is \$8,000 annually[.]”⁷⁰ The State has to take the initiative to create and fund high-quality preschool programs, making them available to the thousands of families who need them, but can’t afford them.

⁶⁸ Child Care Market Survey, *supra*, at 28.

⁶⁹ Debra J. Ackerman and W. Steven Barnett, *Increasing the Effectiveness of Preschool Programs*, *supra*, at 8.

⁷⁰ CFI Report (2005) at 34.

V. The Policy Agendas and Goals Pursued by Wyoming’s Governor, the Legislature, the Department of Education, and the Department of Family Services Support a Mandate for the Creation of State-Funded Preschool Programs.

Wyoming has recognized the overwhelming benefits of high quality preschool education and childcare, and has signaled its intent and desire to improve the quality and availability of preschool programs and facilities. In 2004, the legislature initiated a process to develop a comprehensive master plan that would address the needs of children and families in Wyoming. 2004 Wyoming Session Laws, Chap. 44, Section 1. One goal of that Children and Families Initiative (“CFI”) was to “[i]nclude life span recommendations, including, in particular, prenatal and early childhood intervention and development practices that promote meaningful lifetime changes and minimize delays in life skills development[.]” *Id.*, Section 1(a)(ii). In December 2005, the fruits of that process were released as the “Children and Families Initiative Report.”⁷¹

Recommendation #1 in that report was: “Wyoming must invest in high quality early childhood development.” CFI Report, Recommendation Synopsis at 8.⁷² The philosophy

⁷¹ Available from the Department of Family Services at:

<http://dfsweb.state.wy.us/CFIReport.html>.

⁷² Two of the five goals of the CFI related to education and early childhood development. Goal 4 was, “Children born healthy and achieving their highest potential during their early development years.” CFI HB33 Preliminary Report (November 2004) at 7, available from the Department of Family Services at:

behind this was the realization, “It is better to commit fully to early childhood development for *all children* than to budget at the expense of quality.” *Id.* at 9 (emphasis added).

The focus of the CFI recommendations was on programs that would benefit, and be available to, *all* Wyoming children. The CFI members urged creation of an early childhood development system that would provide “all families equal access to quality early childhood development programs.”⁷³

In March 2006, the legislature adopted a Quality Child Care System (as recommended in the CFI Report) that will reward preschools and childcare facilities that take steps to implement high quality programs by including elements such as a developmentally appropriate curriculum and certified early childhood staff. Wyo. Stat. § 14-4-202(c). Unfortunately, the Quality Child Care System does nothing to expand the number of preschool slots available to at-risk children, and does not provide funds to

<http://dfsweb.state.wy.us/dfsHeroes/pdf/05CFIFINAL%20CHILDREN%20AND%20FAMILIES%20NOV%201%20REPORT.pdf>. One of the key indicators of progress being made towards that goal would be “% of children demonstrating school readiness at 5 yrs of age.” *Id.* Goal 5 was, “Students successfully educated and prepared for life’s opportunities.” One of the key indicators of progress being made towards that goal would be “% of free and reduced lunch students testing proficient in the state assessments.” *Id.* at 8.

⁷³ CFI Report (2005) at 29.

actually assist low-income families in paying for much-needed preschool.⁷⁴

State officials are also aware of the research on the benefits of a high quality early childhood education for preparing children to learn and succeed in school and later in life.

In his letter introducing the CFI Report, Governor Dave Freudenthal remarked,

Not enough of our children show up at the schoolhouse door healthy and ready to learn. Teachers tell us they see a big difference on the very first day of kindergarten between the child who had educational stimulation and the one who didn't. ... Investing in kids is to "strike while the iron is hot," and pays off immediately on the first day of school.

CFI Report, Recommendation Synopsis at 4. The governor focused on this "top priority recommendation" in his 2006 State of the State address:

As you know, this is a concentrated effort to improve the quality and availability of childcare and early childhood education in Wyoming. ... This proposal enjoys wide support from parents, grandparents and childcare providers because of their daily experience with a Wyoming childcare environment which is stretched too thin, under-funded and in some places, non-existent.

It is also supported by educators, healthcare providers, mental health professionals and social workers, who have long argued the importance of quality early-childhood programs as the key to future success in school and good health.

... [I]f we do nothing, our grandchildren will live in a society of neglected

⁷⁴ Although the CFI members recognized the need to "provide[e] every Wyoming child access to high quality, early childhood development," CFI Report at 25, the Report did not explicitly recommend increased state funding to enable preschool programs to serve more children, perhaps acknowledging the lack of commitment on the part of the Legislature to fund such increases.

children and struggling families. For me, that is simply not acceptable.⁷⁵

The development of the Early Childhood Readiness Standards by the Wyoming Department of Education is another indication that the State is concerned about the school readiness of children entering school in kindergarten or first grade.⁷⁶

Despite such professed support for high quality early childhood education from the Governor, the Legislature, and state officials responsible for the care and education of Wyoming's youngest citizens, it is remarkable that Wyoming remains one of only eleven states in the nation without any state-funded preschool program. The small steps being made towards improving preschool education in Wyoming are notable, but inadequate. Much more needs to be done—and soon—to ensure a quality future for Wyoming's children.

High quality preschool alone won't solve all educational problems, but it can have appreciable impacts on children's learning and later success in life. At the same time, the educational reforms enacted by the legislature to comply with *Campbell I* and *II* will not, standing alone, remedy low academic achievement for many Wyoming children. In order for all children to reap the benefits of these reforms, learning deficits must be redressed

⁷⁵ 2006 State of the State Address by Gov. Dave Freudenthal (Part II) (February 13, 2006), available at:

http://wyoming.gov/governor/press_releases/2006/feb%2006/text_stateofstate.asp.

⁷⁶WDE, *Early Childhood Readiness Standards*, available at:

<http://www.k12.wy.us/eqa/nca/pubs/standards/earlychild.pdf>.

before children enter the K-12 education system. High quality preschool is the first link in the chain of educational programs needed to equip Wyoming children to participate in a democratic society and compete in an increasingly competitive global economy. *See Campbell I*, 907 P.2d at 1278.

CONCLUSION

For the reasons stated above, amici curiae Northern Arapaho Tribe and Wyoming Parent Teacher Association respectfully request that this Court reverse the District Court's order granting partial summary judgment dismissing Challengers' claim for State preschool funding and remand the claim to District Court for a trial on the merits.

DATED this ____ day of June, 2006

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ____ day of June, 2006, the foregoing Motion to Participate As Amici Curiae and Brief of Amici Curiae Northern Arapaho Tribe and Wyoming Parent Teacher Association was served upon the parties by depositing true and correct copies of the same in the U. S. Mail, postage prepaid, to the following attorneys of record in the above-entitled action:

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