STATE OF WISCONSIN CIRCUIT COURT EAU CLAIRE COUNTY
BRANCH 5

WISCONSIN PTA, et al.,

Plaintiffs,

v.

WISCONSIN STATE ASSEMBLY, et al.,

Defendants,

OLIVIA JIMENEZ and ANTHONY and GINA ELLIS,

Proposed Intervenor-Defendants.

Case No. 2026CV000103
Hon. Sarah Harless

MEMORANDUM IN SUPPORT OF OLIVIA JIMENEZ AND ANTHONY AND GINA ELLIS'S MOTION TO INTERVENE AS DEFENDANTS

Pursuant to Wis. Stat. § 803.09, Olivia Jimenez and Anthony and Gina Ellis (collectively, "Parent Intervenors") respectfully move to intervene as defendants in this action for the purpose of defending Wisconsin's school choice programs and to assert the defenses set forth in their proposed Answer to the Complaint, a copy of which is attached to their Motion as Exhibit C. Wis. Stat. § 803.09(3).

INTRODUCTION

Ostensibly, this lawsuit is a constitutional challenge to the funding of the public school system in Wisconsin. Plaintiffs are an assorted group of public education associations, school districts and their employees, and children who attend public schools and their parents. They allege that "an increasingly large number" of school districts "are struggling" and "falling short of the State's established thresholds for an adequate education" for their students and that "the shortcomings of our public schools are directly traceable to the Legislature's consistent failures to ensure adequate state funding

of public schools and to legislate a rational school finance system that meets constitutional mandates." Compl. ¶¶ 33, 35.

But the public-school funding formula is not the only target in the Plaintiffs' crosshairs. As part of their sweeping allegations, Plaintiffs point to another purported cause of Wisconsin public schools' alleged funding crisis—Wisconsin's four private school choice programs, namely the Wisconsin Parental Choice Program, the Racine Parental Choice Program, the Milwaukee Parental Choice Program, and the Special Needs Scholarship Program (collectively, the "Programs"). Despite the Wisconsin Supreme Court's longstanding precedent upholding school choice against constitutional challenge, *see Davis v. Grover*, 166 Wis.2d 501, 538–39, 480 N.W.2d 460 (Wis. 1992); *Jackson v. Benson*, 218 Wis. 2d 835, 578 N.W.2d 602 (Wis. 1998), Plaintiffs call the validity of the Programs into question. Plaintiffs assert, for example, that "[i]t is *impossible* to fully explain the inputs that constitute Wisconsin public school finance without also addressing" these Programs. Compl. ¶ 193 (emphasis added). They charge the Programs with "pull[ing] money out of school district coffers," thereby contributing to an alleged lack of adequate funding to public schools, and "violat[ing]" Wisconsin Supreme Court precedent upholding school choice programs. Compl. ¶¶ 25, 193. According to Plaintiffs, "[t]aken together," a variety of "factors"—including the Programs' existence and funding—"render the current school finance system unconstitutional." Compl. ¶ 460.

Plaintiffs' allegations thus place at risk the Programs, in addition to the public school district funding formula, in their request for relief in the form of "declar[ing] that Wisconsin's current school finance system violates" various sections of the Wisconsin Constitution. Compl., Prayer for Relief, pp.96–97.

Parent Intervenors, who are Wisconsin parents of children attending private schools through Wisconsin's choice programs, should be allowed to intervene in this lawsuit to defend the Programs.

BACKGROUND

I. Wisconsin Choice Programs

Wisconsin supports parental choice for their children's education through four distinct programs—the Wisconsin Parental Choice Program, the Racine Parental Choice Program, the Milwaukee Parental Choice Program, and the Special Needs Scholarship Program—which generally operate as "voucher" programs, paying private schools a set amount for participating students to attend.

The Wisconsin Parental Choice Program (the "statewide program") operates statewide for students who are residents of Wisconsin outside of the city of Milwaukee and the Racine Unified School District. Wis. Stat. § 118.60; Wis. Admin. Code Ch. PI 48. Students from lower-income Wisconsin families are eligible to apply if they meet one of several conditions, including entering kindergarten, first, or ninth grade, having been enrolled in public school, home school, or out of state the year before, or having been enrolled in a private school under a choice program the year before. Wis. Stat. § 118.60(2)(a). For participating students, the program pays for their attendance at participating private schools, $10,877 for grades K-8 and $13,371 for grades 9-12 in the 2025-26 school year, *Private School Choice Programs: Frequently Asked Questions for Parents*, Wis. Dep't of Pub. Instruction,[1] which the state superintendent directs to the schools in four payments over the course of the school year. Wis. Stat. § 118.60(4)(c). The amount of funds is determined by formula relating to a percentage of the revenue ceiling and the amounts paid in previous years. Wis. Stat. § 118.60(4)(bg).

The Racine Parental Choice Program ("Racine program") operates in the same way as the statewide program, except it is available only to students who reside in the Racine Unified School District. Wis. Stat. § 118.60; Wis. Admin. Code Ch. PI 48.

[1] https://dpi.wi.gov/parental-education-options/choice-programs/parent-faq#State%20Aid,%20Fees,%20and%20Tuition (last accessed Apr. 10, 2026).

The Milwaukee Parental Choice Program ("Milwaukee program") is available only to students who live in the city of Milwaukee. Wis. Stat. § 119.23; Wis. Admin. Code Ch. PI 35. First enacted in 1989, this is the longest-enacted school choice program in Wisconsin. *See Jackson*, 218 Wis. 2d at 846 (describing history of Milwaukee program's enactment). When first applying for the Milwaukee program, a child is eligible if the family income does not exceed three times the federal poverty level. Wis. Stat. § 119.23(2). For the 2025-2026 school year, the amount of funding per student is $10,877 for grades K-8 and $13,371 for grades 9-12, which is paid to the schools in four installments during the school year. Wis. Stat. § 119.23(4)(c); *Private School Choice Programs: Frequently Asked Questions for Parents*, Wis. Dep't of Pub. Instruction.[2] Those funds come from the appropriation to the Milwaukee program under Section 20.255(2)(fu). Wis. Stat. § 119.23(4)(bg). For students attending school grades 9 through 12, the school may charge additional tuition for families with incomes that exceed 220% the federal poverty level. Wis. Stat. § 119.23(3m).

The Special Needs Scholarship Program, available statewide, allows students who have an individualized education program or services plan to receive a scholarship to attend a participating private school. Wis. Stat. § 115.7915; Wis. Admin. Code Ch. PI 49. "[O]n behalf of a child's parent or guardian," the department pays to the participating school a percentage of the revenue ceiling in four payments throughout the school year. Wis. Stat. § 115.7915(4m). If the private school expends funds greater than 150 percent of that amount, the department will pay a greater amount. Wis. Stat. § 115.7915(4m)(cm). As long as the child continues to be eligible, he or she will continue to receive a scholarship until graduation or age 21. Wis. Stat. § 115.7915(4m)(d).

[2] https://dpi.wi.gov/parental-education-options/choice-programs/parent-faq#State%20Aid,%20Fees,%20and%20Tuition (last accessed Apr. 10, 2026).

II. Proposed Parent Intervenors

a. Olivia Jimenez

Olivia Jimenez is a resident of Racine, Wisconsin, and employed as a business analyst. Exhibit A, Jimenez Decl. ¶¶ 1–2. She is a single mother of three children. *Id.* ¶ 3. Her son E.J. is thirteen years old and in eighth grade. *Id.* Her daughter A.S.J. is eleven years old and in fifth grade. *Id.* And her son A.R.J. is four years old and in K-4. *Id.*

All three children currently attend Trinity Lutheran School in Racine. *Id.* ¶ 5. Before the 2023-2024 school year, E.J. and A.S.J. attended public school in Racine. *Id.* ¶ 6. Ms. Jimenez sought to move them to private school at Trinity Lutheran because she believes Trinity Lutheran provides a better educational environment for them, with faith-based education and community that is important to her. *Id.* ¶ 9.

Right now, her oldest two children are able to attend Trinity Lutheran through the Racine choice program. *Id.* ¶ 7. Next year, the Racine program will pay for all three children. *Id.* Without the Racine program, Ms. Jimenez would not be able to afford tuition for her three children to attend Trinity Lutheran School, which would be devastating to her and her children. *Id.* ¶¶ 11–12.

b. Anthony and Gina Ellis

Anthony and Gina Ellis are residents of Greenleaf, Wisconsin. Exhibit B, Ellis Decl. ¶ 1. They are the parents of nine children, five of whom are still school-aged. *Id.* ¶¶ 3–4. Three of their children attend St. John Paul II Classical School (pre-K through 8th grade) and Chesterton Academy (high school), which are private schools in Green Bay, Wisconsin. *Id.* ¶ 4. Their son S.E. is sixteen years old and a junior at Chesterton Academy. *Id.* Their daughter C.E. is fourteen years old and a freshman at Chesterton Academy. *Id.* Their daughter I.E. is twelve years old and in the sixth grade at St. John Paul II Classical School. *Id.* They currently homeschool their son L.E., who is seven years old and in the

first grade. *Id.* Their youngest son, J.E., is four years old and will be starting K-4 in the fall. Both L.E. and J.E. will begin attending St. John Paul II Classical School in the fall. *Id.*

Mr. Ellis works full-time as a cheese maker. *Id.* ¶ 2. Mrs. Ellis works as a homemaker and part-time bus driver. *Id.* Their children's quality of education and character development are of the utmost importance to them. *Id.* ¶¶ 7–8. Although they have used homeschooling for some of their children, they believe that private school—and in particular, St. John Paul II Classical School and Chesterton Academy—provide their children with the best educational option available to them. *Id.* The Ellises strongly believe that their children are best served by the faith-based and rigorous educational environment that their private schools provide. *Id.* ¶¶ 7–9. Indeed, their children are thriving at their private schools, and the Ellises plan to continue their children's education at St. John Paul II Classical School and Chesterton Academy. *Id.* ¶¶ 9–10.

As a large household with multiple school-age children, the Ellis family relies on the statewide choice program to afford to send their children to the private schools where they are thriving and which reflect the family's values. *Id.* ¶¶ 11–12. Taking away or limiting the statewide program would impose a serious financial burden on the family. *Id.* ¶ 12. If the Ellises could no longer use the statewide program, they would have to consider going back to homeschooling for some or all of their five school-age children, which they do not believe would be best for their school-age children individually and their family as a whole. *Id.*

III. This Lawsuit

On February 23, 2026, Plaintiffs filed their Complaint, alleging that Wisconsin's entire "school finance system" is unconstitutional on a number of grounds, citing several provisions of the Wisconsin Constitution. Compl., Prayer for Relief, p.96. Plaintiffs are a group of public education associations, school districts and their employees, children who attend public schools and their parents, and tax-

payers. Compl. ¶¶ 38–65. Plaintiffs named a number of legislators and legislative bodies as the defendants—the Wisconsin State Assembly, Senate, Speaker of the Assembly, Senate President, Senate Majority Leader, and the Joint Committee on Finance and its members. *Id.* ¶¶ 66–88.

Although mainly discussing public school district funding, the Complaint also makes allegations about the Legislature's funding of the separate Wisconsin school choice programs. Plaintiffs assert that "[i]t is *impossible* to fully explain the inputs that constitute Wisconsin public school finance without also addressing" these Programs. Compl. ¶ 193 (emphasis added). They contend that the Programs "pull money out of school district coffers," contributing to the alleged lack of adequate funding to public schools. *Id.*; *see id.* ¶ 459 ("[T]he Legislature has further exacerbated the funding problem by diverting more and more tax dollars that could be spent on public schools to private schools instead."). "Taken together," those "factors"—including the Programs' existence and funding—"render the current school finance system unconstitutional." *Id.* ¶ 460. Indeed, Plaintiffs contend that the "cost[]" of "private school vouchers" "violates the Wisconsin Supreme Court's ruling that private school vouchers are constitutionally permitted, so long as the State is already meeting its obligations to provide for public schools." *Id.* ¶¶ 24–25. Finally, Plaintiffs also assert an equal protection challenge as to students with "high needs," specifically identifying the Special Needs Scholarship Program in that claim. *Id.* ¶¶ 433–42.

Accordingly, Plaintiffs' request for relief in the form of "declar[ing] that Wisconsin's current school finance system violates" various sections of the Wisconsin Constitution apparently implicates the Programs as well as the school district funding formula. Compl., Prayer for Relief, pp.96–97. Likewise, their request for a "schedule that will enable the Court … to adopt and implement a new school finance system that meets all relevant state constitutional guarantees" seems to implicate the Programs. *Id.*

ARGUMENT

Courts around the country routinely grant parents intervention in lawsuits challenging school choice programs so that they, on behalf of their children who are the direct beneficiaries of those programs, can represent their unique interests and defend them.[3] That's true in Wisconsin, as well, where parent intervenors were granted intervention in one of the state's landmark school choice cases. *See, e.g. Jackson v. Benson*, 213 Wis. 2d 1, 16, 570 N.W.2d 407 (Wis. Ct. App. 1997), *rev'd by* 218 Wis. 2d 835, 578 N.W.2d 602 (Wis. 1998) (noting that "parents of pupils who seek to participate in the amended program … were granted leave to intervene and participate as defendants"). Wisconsin courts have granted intervention to impacted parents and students in other education-related cases as well. *See, e.g., Johnson v. Burmaster*, 2008 WI App 4, ¶ 5, 307 Wis. 2d 213 (Wis. Ct. App. 2007) (noting that circuit court granted defendant intervention to parent group in challenge to legality of charter school); *Doe v. Madison Metro. Sch. Dist.*, 2021 WI App 60, ¶ 2 n.2, 399 Wis. 2d 102 (Wis. Ct. App. 2021) (noting that circuit court granted defendant intervention to student groups in challenge to legality of school policy).

In the most recent example where parents moved to intervene to defend an educational choice program in Arkansas, the Arkansas Supreme Court held that the parent intervenors were entitled to intervene as a matter of right because, as beneficiaries, they have a recognized interest in the lawsuit that would be directly affected by the lawsuit's disposition, and the government defendants, whose

[3] *Lara v. Faulkenberry*, 725 S.W.3d 26 (Ark. 2025); Order, *McEwen v. Lee,* No. 20-0242-II (Davidson Cnty. Chancery Ct. April 3, 2020); Order Granting Intervention, *Mo. Nat'l Educ. Ass'n v. Missouri*, No. 25AC-CC05358 (Cole Cnty. Cir. Ct. August 13, 2025); Order Granting Intervention, *Wyo. Educ. Ass'n v. Degenfelder*, No. 2025-CV-020336 (Laramie Cnty. Dist. Ct. July 9, 2025); Order Granting Intervention, *Labresh v. Cox*, No. 240904193 (Salt Lake City Cnty. Dist. Ct. June 10, 2024); Order Granting Intervention, *Mont. Quality Educ. Coalition v. Montana*, No. ADV-25-2024-0000044-IJ (Lewis & Clark Cnty. Dist. Ct. May 2, 2024); Order Granting Intervention, *Columbus City Sch. Dist. v. Ohio*, No. 22-CV-67 (Franklin Cnty. Dist. Ct. May 12, 2022).

"primary focus is on the broad overhaul of public education," did not adequately represent their interests in the learning opportunities available to their children. *Lara*, 725 S.W.3d at 29.

Granting intervention to Parent Intervenors is warranted in this case as well, under both the standard for intervention by right and the standard for permissive intervention. Wis. Stat. § 803.09.

I. Intervention by Right

Parent Intervenors are entitled to intervene by right. Under Wis. Stat. § 803.09(1), an individual has the right to intervene, provided: "(1) that the motion to intervene be made in a timely fashion; (2) that the movant claims an interest relating to the property or transaction which is the subject of the action; (3) that the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and (4) that the movant's interest is not adequately represented by existing parties." *Armada Broadcasting, Inc. v. Stirn*, 183 Wis. 2d 463, 471, 516 N.W.2d 357 (Wis. 1994). "[T]here is interplay between the requirements," such that "a movant's strong showing with respect to one requirement may contribute to the movant's ability to meet other requirements as well." *Helgeland v. Wis. Municipalities*, 307 Wis.2d 1, 10, 745 N.W.2d 1 (Wis. 2008). Wisconsin Statute § 803.09 is based on Federal Rule of Civil Procedure 24, so Wisconsin courts also look to federal case law and commentary applying that rule. *Roth v. La Farge Sch. Dist. Bd. of Canvassers*, 247 Wis. 2d 708, 722–23, 643 N.W.2d 882 (Wis. Ct. App. 2001).

Parent Intervenors are entitled to intervene as of right under Wis. Stat. § 803.09(1).

1. **Parents' Motion is Timely.** First, Parent Intervenors' motion is timely. Generally, "[t]he question of timeliness is left to the discretion of the circuit court." *Armada*, 183 Wis. 2d at 471. Although "[t]here is no precise formula to determine whether a motion to intervene is timely," courts consider (1) "whether in view of all the circumstances the proposed intervenor acted promptly"—which is the "critical factor"—and (2) "whether the intervention will prejudice the original parties to the lawsuit." *State ex rel. Bilder v. Delavan Tp.*, 112 Wis. 2d 539, 550, 334 N.W.2d 252 (Wis. 1983). In

determining whether a proposed intervenor acted promptly, courts also consider "when the proposed intervenor discovered his or her interest was at risk" and "how far litigation has proceeded." *Roth*, 247 Wis. 2d at 721.

By filing this motion to intervene within a matter of weeks of the Complaint's filing—before any defendant has filed a responsive pleading, before Plaintiffs have filed a motion for any relief, and before any hearing has been scheduled—Parent Intervenors have satisfied the timeliness requirement. *See Armada*, 183 Wis. 2d at 472 (finding motion to intervene timely where it was "filed and argued … prior to the commencement of the first hearing on" the merits of the underlying action); *Roth*, 247 Wis. 2d at 721–22 (concluding that motion to intervene was timely when it was filed before the named defendant filed its answer, no hearing had been scheduled, and no proceedings on the merits had taken place).

Furthermore, the original parties will not be prejudiced by the intervention, as Parent Intervenors will not cause undue delay or add new claims to the lawsuit. *See Roth*, 247 Wis. 2d at 721–22; *Bilder*, 112 Wis. 2d at 551 (concluding that intervenors' "failure to apply for intervention at an earlier time did not harm or prejudice any party to the litigation," where "[e]ven though the parties had formulated a stipulation to settle the lawsuit, the circuit court had not yet considered or approved it"). Parent Intervenors seek to intervene to defend the Programs against the challenges in the Complaint, not to add any new claims in this matter. This motion is timely.

2. **Parents' Interests Could Be Impaired.** Second and third, as parents relying on the Programs to send their children to private schools, Parent Intervenors unquestionably have substantial, cognizable interests in their children's education and the funding for that education that will be impaired should they not be permitted to intervene to defend the Programs. "The interest which entitles one to intervene in a suit between other parties must be an interest of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment."

City of Madison v. Wis. Employment Relations Comm'n, 234 Wis. 2d 550, 557 n.9, 610 N.W.2d 94 (Wis. 2000) (quoting *Lodge 78, Int'l Ass'n of Machinists v. Nickel*, 20 Wis. 2d 42, 46, 121 N.W.2d 297 (Wis. 1963)); *see, e.g.*, *Ritter v. Farrow*, 2014 WI App 83, ¶ 32, 355 Wis. 2d 577, 851 N.W.2d 471 (Wis. Ct. App. 2014) (unpublished) (concluding that intervenors satisfied the second and third intervention factors where "it was possible the disposition of the lawsuit would impede [intervenors] from protecting their interests in" using the disputed trade name for business and marketing purposes).

Parent Intervenors' interests are "direct and immediate" because they are the direct and intended beneficiaries of the Wisconsin school choice programs. *See Lara*, 725 S.W.3d at 29. They are the ones who are using, and wish to continue using, the Programs for the much-needed financial support that allows them to send their children to the private schools that Parent Intervenors believe are best for their children's education. *See City of Madison*, 234 Wis. 2d at 557 n.9; Jimenez Decl. ¶¶ 7–12; Ellis Decl. ¶¶ 7–12. Their interest in directing their children's education is more than substantial—it is "fundamental." *See Matter of Visitation of A.A.L.*, 387 Wis. 2d 1, 14–16, 927 N.W.2d 486 (Wis. 2019) (describing the "fundamental liberty" interest of parents "to direct the upbringing and education of children under their control") (quoting *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925)); *accord Mirabelli v. Bonta*, 146 S. Ct. 797, 803 (2026). Parent Intervenors are currently using the Programs to fund their children's education, and they intend to continue to use the Programs in the years to come. Jimenez Decl. ¶¶ 7–12; Ellis Decl. ¶¶ 7–12. As the direct and intended beneficiaries of the Programs, Parent Intervenors' interests in defending those Programs are substantial. *Lara*, 725 S.W.3d at 29.

Meanwhile, Plaintiffs' lawsuit specifically requests a declaration that Wisconsin's entire "school finance system" is unconstitutional and asks this Court "to adopt and implement a new school finance system that meets all relevant state constitutional guarantees." Compl., Prayer for Relief, pp.96–97. Under Plaintiffs' apparent theory, the Programs are part of the allegedly "unconstitutional" school finance system, as Plaintiffs contend that the Programs cause "significant additional strain on public

education," "violat[ing] the Wisconsin Supreme Court's ruling that private school vouchers are constitutionally permitted, so long as the State is already meeting its obligations to provide for public schools." Compl. ¶¶ 24–25. Thus, if Plaintiffs succeed in their suit, Parent Intervenors stand to lose the financial support for their children's education that they are receiving from the Programs this year as well as the opportunity to continue receiving that support in years to come. Jimenez Decl. ¶¶ 10–12; Ellis Decl. ¶¶ 10–12. That would result in serious financial and educational consequences for Parent Intervenors and their children, including inability to afford their current schools that Parent Intervenors believe are best for their children. Jimenez Decl. ¶ 12; Ellis Decl. ¶ 12; *see Lara*, 725 S.W.3d at 29 (holding that parents' interests in continuing the education voucher program and avoiding "an economic loss if the voucher program was held to be unconstitutional" satisfied standard for intervention). Parent Intervenors' interests and the risks that the lawsuit poses to their interests are undeniable.

3. **Existing Party Representation is Inadequate**. Finally, no existing party adequately represents Parent Intervenors' interests. To satisfy this requirement, an intervenor need only show interests that "may be" inadequately represented, *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 747–48, 601 N.W.2d 301 (Wis. Ct. App. 1999), a burden described by the Wisconsin Supreme Court as "minimal." *Armada*, 183 Wis. 2d at 476 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Mere alignment of interests is insufficient to establish adequacy of representation. *See Ritter*, 2014 WI App at ¶ 37 (explaining that if an intervenor "share[s] a 'similar desired outcome'" with one of the existing parties, that does not mean the existing parties adequately represent intervenor's interests and concluding that although they "have some similar goals in th[e] litigation, their ultimate objectives are not identical").

For example, in *Wolff*, the Wisconsin Court of Appeals explained that the Town that sought to intervene in a lawsuit concerning a County's decision denying property owners a conditional use

permit to develop property located in the Town satisfied this requirement. 229 Wis. 2d at 748–49. The court found a "serious possibility" that the defendant County did not adequately represent the interests of the proposed intervenor Town because "the Town may have more at stake than the County should the Wolffs secure a reversal of the board of adjustment decision," and the Town, not being subject to all of the constitutional claims also alleged against the County, "may be in a position to defend the board's decision more vigorously than the County itself." *Id.* Similarly, in *Armada*, the Wisconsin Supreme Court explained that a teacher who sought to intervene in a mandamus action to prevent public disclosure of an investigative report that could harm his reputation "me[t] the minimal requirement for showing that his interests are not adequately represented by the [defendant school district]" because "we cannot expect the District to defend the mandamus action with the vehemence of someone who is directly affected by public disclosure of the report." 183 Wis. 2d at 476.

Parent Intervenors easily bear their "minimal" burden here because Defendants' interests are not the same as Parent Intervenors'. Parent Intervenors are direct beneficiaries of the Programs, and both their status as beneficiaries and their fundamental interest in the education of their children set their interests apart from all other parties in this case. *See Matter of Visitation of A.A.L.*, 387 Wis. 2d at 14–16; *Friends of Scott Walker v. Brennan*, 2012 WI App 40, ¶ 16, 340 Wis. 2d 499, 812 N.W.2d 540 (Wis. Ct. App. 2012) (unpublished) (holding that "the board does not adequately represent [intervenor] recall committees' interests because it does not fully share those interests"). While Parent Intervenors are interested in a narrow portion of the litigation concerning the Programs, Defendants have broader interests concerning the challenge to the entire school financing system and all of its various parts, including the public school districts and charter schools. Accordingly, Defendants will need to balance competing interests concerning all of the different aspects of school finance as they consider their arguments in this case. Parent Intervenors are solely focused on the Programs and not subject to those competing interests.

The recent intervention decision in the educational choice case *Lara v. Faulkenberry* further demonstrates this point. The court explained that in that litigation, the government defendants' "primary focus is on the broad overhaul of public education," while the parent intervenors have a "narrow concern over the education of their children." 725 S.W.3d at 29. As the court observed, the intervening parents' "participation in the case has the potential to provide a court of equity valuable evidence when it attempts to weigh the equities implicated by the … complaint." *Id.* Likewise here, as parents relying on the Programs to provide their children with the education they think is best for them, Parent Intervenors have the greatest stake in avoiding potential disruption to the Programs and, not being subject to the broader constitutional claims concerning the entire school finance system as are against the Defendants, are in a position to focus on defending those Programs vigorously. Parent Intervenors also have information that is not available to the government defendants that would be critically important if the Court reaches any equitable relief, as Plaintiffs request. Compl., Prayer for Relief, pp.96–97. Parent Intervenors thus satisfy the "minimal" burden of demonstrating that their interests are not adequately represented.

Although as part of this analysis, courts "look to see if there is a showing of collusion between the representative and the opposing party; if the representative's interest is adverse to that of the proposed intervenor; or if the representative fails in the fulfillment of his duty," *Armada*, 183 Wis. 2d at 476, a showing of collusion or adverseness is not strictly necessary to permit intervention. *See, e.g.*, *Friends of Walker*, 2012 WI App at ¶¶ 40–50 (finding inadequate representation where, "[a]s in *Armada*, the government entity here has an interest in complying with the law, but it does not share the same interest in the result," so "the interests of the board and the committees are not 'identical' or so 'substantially similar' as to block intervention") (citing *Helgeland*, 307 Wis. 2d at ¶ 86).

Parent Intervenor's demonstration that their interests are not adequately represented by Defendants satisfies their burden under Wis. Stat. § 803.09(1). In any event, it is not guaranteed that the

current political balance in the Wisconsin legislature will remain over the course of this litigation. While the current majorities in the houses of the Legislature appear to favor defending against the claims in this lawsuit, there is always a chance that future elections could change that balance and, accordingly, change the Defendants' interests in this lawsuit. This possibility that the Defendants' interests could become adverse to Parent Intervenors' interests further demonstrates that no party adequately represents Parent Intervenors' interests. It would be utterly unfair to deny the Parents' intervention now based on adequate representation, but then to deny it in a year as untimely if the legislative defendants change positions in the case.

Likewise, a rebuttable "presumption" may apply "[i]f a movant's interest is identical to that of one of the parties, or if a party is charged by law with representing the movant's interests," *Helgeland*, 307 Wis. 2d at 44–45, but that presumption does not apply here because no existing party represents Parent Intervenors' unique interests as parents seeking the best education for their children and the Defendants are not "charged by law" with representing their interests. *See Friends of Scott Walker*, 2012 WI App at ¶¶ 40–50 (explaining that intervenors' and the governments' "differences in perspective are significant" in this analysis "because they may lead to a divergence" during the litigation); *Armada*, 183 Wis. 2d at 476–77 (holding that defendant school district did not adequately represent intervenor's interest because "[t]he personal nature of the interests at stake in the Weiland report make [intervenor] Schauf the best person to protect those interests"). But even if the rebuttable presumption applied, Parent Intervenors more than make the "compelling" showing required to overcome the presumption. *See Helgeland*, 307 Wis. 2d at 22. Parent Intervenors hold unique interests as parents charged with the upbringing of their children and the financial implications for their families if the Programs were declared unconstitutional or otherwise negatively affected, and they are solely focused on defending those Programs in contrast to the existing parties.

Moreover, Parent Intervenors' interests and the State's interests "may not always dictate precisely the same approach to the conduct of the litigation," *Trbovich*, 404 U.S. at 539, which further demonstrates that their interests are "not 'identical' or so 'substantially similar' as to block intervention," *Friends of Scott Walker*, 2012 WI App at ¶ 40 (quoting *Helgeland*, 307 Wis. 2d at ¶ 86); *see also id.* at ¶ 47 (explaining that "[l]ater in the litigation, the different underlying interests of the board and the [intervenor] committees could plausibly lead to divergence of their positions on significant questions like whether to stipulate to certain facts, whether to settle and on what terms, or whether to appeal"). As past experience in educational choice litigation shows, government defendants and participating families often take different litigation approaches and present different arguments.

In *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011), for example, parent-intervenors successfully argued that the plaintiffs challenging the educational choice program lacked standing, which was an issue that the state had conceded. The state similarly conceded standing in *Duncan v. State*, 102 A.3d 913 (N.H. 2014), while the parent-intervenors successfully argued that the statute conferring standing was unconstitutional. Likewise in *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999), parent-intervenors—not the state—urged and persuaded the court to confront the bigoted origins of the provision of the Arizona Constitution that the plaintiffs were using to attack the state's educational choice program. In *Hart v. State*, 772 S.E.2d 855 (N.C. 2014), it was parent-intervenors—not the government—that obtained interlocutory relief ensuring that 2,000 students would not lose their scholarships after an adverse judgment from the trial court. Finally, in *Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education*, 645 S.W.3d 141 (Tenn. 2022), parent-intervenors pursued an argument regarding the Tennessee Home Rule Amendment—an argument that the state only later embraced—that proved decisive to upholding the school-choice program at

the Supreme Court. *See id.* at 151–52 (noting that "Intervenors, and now the State as well," had advanced the argument). Parent Intervenors should be permitted to intervene to preserve their ability to make independent arguments in defense of the Programs.

Parent Intervenors are entitled to intervene by right.

II. Permissive Intervention

In the alternative, permissive intervention is warranted to allow Parent Intervenors the opportunity to defend the Programs and protect their interests. Under Wis. Stat. § 803.09(2), a person "may be permitted to intervene" if the request is "timely," and the person's "claim or defense and the main action have a question of law or fact in common." Wis. Stat. § 803.09(2). The Court has discretion to permit intervention, and "[i]n exercising its discretion the [C]ourt shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Wis. Stat. § 803.09(2). Because this statute "is based on Rule 24(b)(2) of the Federal Rules of Civil Procedure," Wisconsin courts also look for guidance in federal cases and commentary. *Helgeland*, 307 Wis. 2d at 29. Permissive intervention is warranted here.

1. **Timeliness.** First, as demonstrated above, Parent Intervenors' motion to intervene is timely, as it was filed early in the case before the named defendants have filed a responsive pleading, before Plaintiffs have filed a motion for any relief, and before any hearing has been scheduled or held. *See Armada*, 183 Wis. 2d at 472.

2. **Common Questions of Law and Fact.** Second, Parent Intervenors share common questions of law and fact with the lawsuit. Wis. Stat. § 803.09(2). Parent Intervenors seek to resolve questions of law and fact raised by the Complaint regarding the constitutionality of the Programs under Wisconsin law—including whether the Programs are constitutional under precedent and existing circumstances and whether declaratory or other relief against the Programs is not warranted. *See* Compl. ¶ 25 (alleging there is a "violat[ion of] the Wisconsin Supreme Court's ruling that private

school vouchers are constitutionally permitted, so long as the State is already meeting its obligations to provide for public schools").

These shared common questions satisfy the standard for permissive intervention, which does not require a perfect unity but rather merely "*a* question of law or fact in common." Wis. Stat. § 803.09(2) (emphasis added); *see, e.g.*, *Watton v. City of Eau Claire Housing Auth.*, 2014 WI App 90, ¶¶ 3–5, 356 Wis. 2d 329, 855 N.W.2d 493 (Wis. Ct. App. 2014) (unpublished) (concluding that intervenor, "a housing authority insurer," "had common questions of law and fact" with existing parties in case brought against a housing authority where the intervenor insurer sought to intervene "to determine its obligation to provide coverage to the housing authority under a business owner's insurance policy").

3. **No Prejudice to Parties**. Third, intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties." Wis. Stat. § 803.09(2). Parent Intervenors will not present cross-claims or introduce any issues unrelated to Plaintiffs' challenge, nor will they complicate the factual record. And, as discussed above, Parent Intervenors are seeking to intervene at the initiation of the suit, which will prevent undue delay to the existing parties. None of the original parties will be prejudiced by the intervention.

4. Finally, Parent Intervenors will provide a more complete understanding and defense of the Programs and their constitutionality under Wisconsin law. Parent Intervenors' counsel with EdChoice Legal Advocates are currently representing intervenors as lead counsel in the defense of educational choice programs in multiple states, including defending Arkansas's education savings account program, Montana's education savings account program for students with special needs, Missouri's tax credit scholarship program, and Wyoming's education savings account program. *See, e.g.*, *Lara v. Faulkenberry*, 725 S.W.3d 26 (Ark. 2025); *Mo. Nat'l Educ. Ass'n v. Missouri*, No. 25AC-CC05358 (Cole Cnty. Cir. Ct.); *Mont. Quality Educ. Coalition v. Montana*, No. ADV-25-2024-0000044-IJ (Lewis &

Clark Cnty. Dist. Ct.); *Wyo. Educ. Asso'n v. Degenfelder*, No. 2025-CV-020336 (Laramie Cnty. Dist. Ct.). In addition, EdChoice Legal Advocates is partnered with Institute for Justice as co-counsel in educational choice cases in Tennessee, Ohio, and Utah. *See, e.g.*, *Bichell, et al. v. Lee, et al. and Natu Bah, et al.*, No. 20-0242-II (Davidson Cnty. Chancery Ct.); *Columbus City Sch. Dist. v. Ohio*, No. 22-CV-67 (Franklin Cnty. Dist. Ct.); *Labresh v. Cox*, No. 240904193 (Salt Lake City Cnty. Dist. Ct.). Moreover, the Parent-Intervenors' Wisconsin counsel is "a respected member of the Wisconsin Bar," *In re Amendment of Supreme Court Rule SCR 20:8.4,* 2023 Wisc. LEXIS 166, *11 (July 11, 2023) (R.G. Bradley, J., concurring), whose articles on Wisconsin law have been cited twenty times by the Wisconsin Supreme Court. He is also a nationally experienced attorney on educational freedom cases. S*ee, e.g., Espinoza v. Mont. Dep't of Revenue,* 591 U.S. 464, 548 (2020) (Alito, J., concurring) (citing amicus brief authored by counsel); *Metro. Gov't of Nashville & Davidson Cnty*, 645 S.W.3d at 146 (quoting counsel).

Permissive intervention is warranted to allow Parent Intervenors to participate in defense of the Programs.

CONCLUSION

Whether intervention is granted by right or by permission, the core application of the relevant elements should reinforce rather than obscure the fundamental observation: when the Wisconsin Supreme Court heard the last constitutional challenge to school choice (*Jackson*), parents were granted intervention to ensure they had a full and fair opportunity to defend their children's interests. This Court should adopt the same approach in this case. Parent Intervenors respectfully request the Court to grant their Motion to Intervene as Defendants.

Dated: April 13, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2026, the foregoing Memorandum in Support of Olivia Jimenez and Anthony and Gina Ellis's Motion to Intervene as Defendants was served on all parties to the action in accordance with applicable law by electronic delivery via the Eau Claire County Circuit Court's e-filing system and electronic mail on all counsel who have appeared and by mail via FedEx to the unrepresented parties:

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