

Stagnation by Decree: How the courts hold Wyoming hostage

Justice Louis Brandeis famously described the American states as “laboratories of democracy.” The genius of our federal system is that it allows a state to experiment — to try novel solutions without risk to the rest of the country. If a policy fails, we scrap it. If it succeeds, we copy it. This competitive friction is the engine of progress.

But in Wyoming, the laboratory is shuttered. It is locked down by a judiciary that views the Constitution not as a legal text to be obeyed, but as a vehicle for their own policy preferences. Through aggressive rulings, the courts place the Legislature in handcuffs, replacing the “thorough and efficient” mandate of the Constitution with a new doctrine: Stagnation by Decree.

The root of this paralysis lies in a specific weapon the Wyoming courts wield with increasing recklessness: “strict scrutiny.”

The trouble begins with the Campbell decisions. In 1995, the Wyoming Supreme Court made the fateful decision to declare education a “fundamental right” under our state constitution. This triggers strict scrutiny — the highest bar of judicial review. Instead of presuming laws passed by the Legislature are constitutional, the Court presumes the system is flawed until proven perfect.

This reversal of power transforms the legislative session into a compliance hearing. Every year, our representatives are forced to dedicate a massive portion of the budget session to education financing, not because they are debating policy, but because they are dictating checks to satisfy the court’s “basket of educational goods.”

Because the courts define “adequacy” as a dollar figure rather than an outcome, the state is forced to pour money into the system, regardless of results. Today, Wyoming spends \$20,000 a year for every single student.

Let that sink in: \$20,000 a year.

We pay for a Ferrari and drive a Pinto. Private schools in Wyoming often educate children for half that amount, yet produce superior results. In any rational market, this would spark immediate restructuring. But because the Court consecrates this “basket” under strict scrutiny, the Legislature is forced to keep feeding the beast.



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The court’s invasion of the Legislature does not stop at the budget. We see the same judicial imperialism in *State v. Johnson*. There, a District Court “discovered” a right to abortion in a health care amendment explicitly designed to limit federal bureaucracy. By inventing a “fundamental right” where none exists in the text, the court again triggers strict scrutiny.

The result is that the Legislature will now spend significant time trying to comply with this ruling, as well. Think about that: Two significant issues facing our state — education funding and abortion — are effectively managed by the courts. The elected representatives of the people are reduced to mere middle-managers, scrambling to implement mandates handed down by unelected judges. This is overblown judicial interference in the province of the Legislature.

This control freakishness hits its peak with the recent blockade of the Wyoming Education Savings Account (ESA) program. The Legislature attempted to introduce market discipline by creating ESAs — deposits into parent-controlled accounts. It was a modest attempt to open the laboratory door.

But the District Court slams it shut. Applying the strict scrutiny logic of Campbell, the court rules that “adequacy” essentially requires a state monopoly. They argue that because the state has a heavy duty to fund the “basket of goods,” allowing parents to control their own tax dollars to find a better alternative is suspect.

Consider the absurdity if we apply

this reasoning to food. If these judges “discover” a fundamental right to food tomorrow, strict scrutiny compels them to rule that the state must build a government grocery store. They mandate that you shop at the State Commissary, buying rotting vegetables at inflated prices, simply because the Court defines those specific vegetables as the “basket of goods.” And if you try to take your food allowance to the private market — where produce is fresh and costs half as much — they stop you, arguing that competition “harms” the state monopoly. It is madness, yet this is exactly how they treat our children.

The result is a broken separation of powers. The judiciary invades the province of the Legislature, usurping the authority to write laws and manage the budget. Our elected representatives are stuck in a defensive crouch, paralyzed by the fear of judicial veto.

We need to break this egg-sucking dog. The judiciary has developed a taste for legislative power, and it will not stop until we force it to.

The Legislature must stop acting as compliance officers for the bench. They must assert their own authority. This begins with reforming the jurisdiction of the courts to prevent “forum shopping,” where opponents of reform race to a single friendly judge to secure statewide injunctions. One lawyer in a robe should not have the power to freeze the entire state before a trial has even concluded. The Legislature must entertain strict jurisdictional limits to ensure that the policy decisions of Wyoming are made in the Capitol, not the courtroom.

It is time to reopen the laboratories of democracy. Innovation is waiting; we only need the courage to tell the courts to get out of the way.

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