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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHOANS UNITED FOR WOMEN AND FAMILIES,

Petitioner,

vs.

RAÚL R. LABRADOR, in his official capacity as the Idaho Attorney General; PHIL MCGRANE, in his official capacity as the Idaho Secretary of State; LORI WOLFF, in her official capacity as the Administrator of the Idaho Division of Financial Management; and the IDAHO DIVISION OF FINANCIAL MANAGEMENT,

Respondents.

Docket No. 52636-2025

RESPONSE BRIEF OF LORI WOLFF AND IDAHO DIVISION OF FINANCIAL MANAGEMENT TO VERIFIED PETITION

RAÚL R. LABRADOR
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 83720
Boise, ID 83720-0010
(208) 334-2400
alan.hurst@ag.idaho.gov
michael.zarian@ag.idaho.gov
jack.corkery@ag.idaho.gov

Alan M. Hurst, ISB #12425
Solicitor General

Michael A. Zarian, ISB #12418
Deputy Solicitor General

Sean M. Corkery, ISB #12350
Assistant Solicitor General

Attorneys for Respondents Lori Wolff and Idaho Division of Financial Management

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INTRODUCTION

The Legislature has assigned the Division of Financial Management (DFM) the responsibility of preparing a "fiscal impact statement" for each initiative petition. Economists at DFM must review the initiative, canvass internal sources, and produce an estimate of the costs to the State within 20 working days of receiving the initiative.

But the Legislature has *not* assigned initiative proponents any role in developing fiscal impact statements. That's because the statement is not intended to inform the public of the proponents' point of view, but rather the view of the State's budget experts. The fiscal impact statement has no binding effect, and initiative proponents are free to spread their own opinion to the public when they promote the initiative or solicit signatures, even if it contradicts DFM's.

With a proper understanding of the fiscal impact statement, it's clear that the Court lacks jurisdiction to review fiscal impact statements. Because DFM uses its discretion in applying general legal standards to develop a fiscal impact statement—standards directing it to project costs in "good faith" or express its conclusions "clear[ly]," Idaho Code § 34-1812—there is no clear legal duty to arrive at any particular conclusion or use any particular words, so there is no mandamus jurisdiction. There is no certiorari jurisdiction either—the division is not performing a quasi-judicial function (i.e. the type of work courts do) because courts do not find their own sources, make complex financial forecasts, and issue non-binding conclusions without receiving any evidence or argument from interested parties.

Still, DFM substantially complied with all its statutory duties. Idahoans United has not presented any evidence showing that DFM's prediction of "nominal" and "insignificant" costs was reached by anything other than a good faith and unbiased effort by the division. Folwell Decl., Ex. G at 4. While Idahoans United alleges a concerted effort to fabricate costs, its own evidence disagrees. And its attempt to show a lack of subjective good faith through objective inaccuracy misunderstands the standard and the role of the fiscal impact statement.

STATEMENT OF THE CASE

I. Idahoans United Submits Multiple Initiative Petitions; DFM Issues Fiscal Impact Statements Projecting Costs.

The history of this initiative petition and the associated fiscal impact statement begins in August 2024—not November 2024, where Idahoans United begins its summary of the facts. Mem. Supp. Pet. at 5.

On August 15, Idahoans United submitted four distinct initiative petitions. Craig Decl., Exs. A–D. Each initiative proposed expanding access to abortion, ranging from one creating a right to abortion until 24 weeks gestational age to one creating a right to abortion until the fetus is viable. *Id.*

The Secretary of State promptly sent all four petitions to DFM, triggering the division's 20-working-day period to produce a 100-word fiscal impact statement. Idaho Code §§ 34-1804(2), 34-1812(1). The fiscal impact statement must "describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the

state . . . will experience" if the initiative is approved, including "immediate expected fiscal impacts" and "an estimate of any state . . . long-term financial implications." *Id.* § 34-1812(2). The statement must be accompanied by a "more detailed statement" explaining any assumptions underlying DFM's estimates. *Id.* § 34-1812(3).

DFM's Chief Economist Greg Piepmeyer took the lead in preparing the fiscal impact statement for the four petitions. On September 11, he sent the statement to the Secretary of State's Office, indicating that the same statement should be used for all four petitions because they were so similar. Folwell Decl., Ex. G at 24. The statement predicted that there would be "no revenue impact" from the initiative, but that "[c]hanges in costs associated with the Medicaid populations and prisoner population may occur," which may "vary depending upon . . . the extent to which the new provisions from the ballot initiative expand rights" to abortion. Folwell Decl., Ex. G at 2 ("Laws affected by the ballot initiative could change state government expenditures.").

Representatives from the Secretary of State's Office responded on September 13 to note that the fiscal impact statement had omitted the required "more detailed statement" with assumptions. Folwell Decl., Ex. G at 18–19 (citing Idaho Code § 34-1812(3)). Mr. Piepmeyer separately emailed Ms. Wolff (DFM's Administrator) the next day saying he was not sure it was necessary to list any assumptions because his conclusion was based on "a reading of the current law." Folwell Decl., Ex. G at 21.

On the morning of Sunday, September 15, Ms. Wolff responded to the Secretary of State's representatives explaining that "there aren't really assumptions to share"

because "there is no impact to state dollars from a revenue or expenditure perspective." Folwell Decl., Ex. G at 18. While the "revenue" observation accurately tracked the conclusion of the fiscal impact statement Ms. Wolff was referring to, her inclusion of the word "expenditure," when read in isolation, perhaps confuses the fiscal impact statement's bottom line. However, the next sentence of her email clarified any confusion by noting that the fiscal impact statement had described "the potential impacts on other agencies such as IDOC if there are requirements they have to comply with when and if the initiative passes." *Id.*

The next day, Mr. Piepmeyer sent the Secretary of State's Office a revised fiscal impact statement that included the more detailed statement explaining assumptions underlying DFM's conclusions. The statement retained the same projection of increased costs to Medicaid and prisons, and added an assumption that "[c]hanges in costs associated with the ballot initiative could impact IDOC and Medicaid budgets." Folwell Decl., Ex. G at 3, 16. The revised version was transmitted to Idahoans United. Fitzgerald Decl., Ex. A.

II. Idahoans United Seeks a Modified Fiscal Impact Statement.

Dissatisfied that the fiscal impact statement had concluded that the initiative would impose costs on the State, Idahoans United sought ways to procure a new fiscal impact statement written to its liking.

On October 4, Idahoans United sent a request to the Secretary of State for an "updated fiscal impact statement." Fitzgerald Decl., Ex. B; Craig Decl., Ex. F at 2. The

organization informed the Secretary that it was proceeding with only one of its four initiative petitions, and that it had made "changes to the text of [that] Initiative" after receiving the fiscal impact statement and the certificate of review from the Attorney General. Craig Decl., Ex. F at 2. The new version of the initiative stated that "[n]othing in this section shall be construed to impose a financial obligation on the state, its agencies, or their programs for delivery of health care services protected by this section." *Id.* at 4. Idahoans United requested that the Secretary of State's Office ask DFM to issue an "official fiscal impact statement" for the initiative using this "language." *Id.* at 2.

Although the initiative statutes do not authorize requests for "updated" fiscal impact statements and do not grant the Secretary of State the ability to request any specific language in a fiscal impact statement, DFM decided to accommodate the initiative proponents and explore revising the statement. Mr. Piepmeyer, however, sought to verify for himself whether there would be costs associated with the initiative notwithstanding the revised language—otherwise, "all initiative drafters [could] include some language that there is no cost to the state when indeed there will be some." Folwell Decl., Ex. G at 15.

To better understand the potential effects of the initiative on Medicaid, Mr. Piepmeyer sought assistance from Juliet Charron, a former Idaho Medicaid Administrator and the current Deputy Director for Medicaid & Behavioral Health

within the Idaho Department of Health and Welfare (IDHW).[1] Folwell Decl., Ex. G at 8. He asked her how the initiative would interact with specific provisions of Idaho law, including provisions (1) requiring IDHW to pay for "medically necessary" services like "[p]hysicians' services," "[h]ospital care," or "[l]aboratory and x-ray services," Idaho Code § 56-255(5)(a); and (2) requiring the state board of correction to pay medical providers for medical services rendered, *id.* § 20-237B(1). Folwell Decl., Ex. G at 8 (citing those provisions).

Following a discussion with Ms. Charron, Mr. Piepmeyer sent her an email asking whether Medicaid data would support an estimate of "10k–250k costs per year." Folwell Decl., Ex. G at 6–7. Ms. Charron responded by sending yearly historical data for abortion claims submitted to Medicaid. *Id.* For the three years preceding the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the data showed an average of nearly $16,000 per year in abortion claims submitted and more than $3,350 per year in abortion claims paid. On the belief that reinstituting a pre-*Dobbs* legal landscape for abortion rights would result in pre-*Dobbs* levels of Medicaid payments, Mr. Piepmeyer determined that "there was evidence that there would be" costs, but the phrase "de minim[i]s"—or "very small, but reoccurring"—appropriately described the magnitude of those costs. Fitzgerald Decl.,

[1] About DHW, Leadership Bios and Photos, Idaho Dep't of Health & Welfare, https://tinyurl.com/4ckpedme (last visited Mar. 4, 2025).

Ex. C; Folwell Decl., Ex. G at 8 (noting that the initiative "seeks to undo 18-622"—i.e., the Defense of Life Act, which went into effect after *Dobbs*).

On November 1, before DFM had provided any updates or revisions to the fiscal impact statement, Idahoans United sent a letter to the Secretary of State formally withdrawing its request for an "updated fiscal impact statement." Fitzgerald Decl., Ex. B. A representative from Idahoans United visited Mr. Piepmeyer's office a few days later and "indicated that the rewording [Idahoans United] attempted didn't seem to be bringing about the spot-on $0 fiscal impact they were desiring." Fitzgerald Decl., Ex. C.

III. Idahoans United Re-Submits a Materially Identical Petition; DFM Again Issues a Fiscal Impact Statement Projecting Low Costs.

On November 20, Idahoans United submitted a new initiative petition that made "slight revisions" to the one it had been pursuing while "avoid[ing] substantive changes." Folwell Decl., Ex. C at 1. The only revision to the initiative flagged in the cover letter of the submission was the change to "further clarify" that the initiative would impose no financial obligations on the State—specifically, the initiative now contained a provision stating, "This act does not create a financial obligation on the state, its agencies, or their programs to pay for, fund, or subsidize the reproductive health care protected by this act." Folwell Decl., Ex. C at 1, 5. As before, Idahoans United requested that the Secretary of State's Office ask DFM to issue a fiscal impact statement that "reflect[s] the enclosed Initiative's further clarified provision." Folwell Decl., Ex. C at 1.

Mr. Piepmeyer once again was assigned the responsibility of preparing a fiscal impact statement for the initiative, and he consulted again with Ms. Charron from IDHW for guidance. Folwell Decl., Ex. G at 5, 10–12. He indicated that he was searching for the right words to convey "positive but small"—an effort to avoid using the more legal-sounding phrase "de minimis" he had previously considered. Folwell Decl., Ex. G at 5, 15.

On December 20, the Secretary of State sent Idahoans United the following fiscal impact statement prepared by DFM (Folwell Decl., Ex. D at 1–2):

> The laws affected by the initiative would not impact income, sales, or product taxes. There is no revenue impact to the General Fund found.
>
> The initiative could change state expenditures in minor ways. Costs associated with the Medicaid and prisoner populations may occur; see Idaho Codes 20-237B and 56-255 and the Medicaid references from Health and Welfare.
>
> Passage of this initiative is likely to cost less than $20,000 per year. The Medicaid budget for providing services was about $850 million in FY2024. If passed, nominal costs in the context of the affected total budget are insignificant to the state.
>
> Assumptions
>
> Changes in costs associated with the ballot initiative could impact state funding expenditures for Corrections and Medicaid budgets. The amount of those costs would be dependent on the frequency of need for reproductive services within the agencies. The manner of the budget impacts would be different for Corrections due to the health care provisions used by the agency; there is no expected changes to the Corrections health care budget. Billing history prior to the Dobbs decision suggests that $20,000 per year is

> a conservative over-estimate of the costs. Neither of these agencies reverted funding when the Dobbs decision was made in 2022 (and already established legislation in Idaho code took effect). It is assumed that any additional costs due to the passage of this ballot initiative could be absorbed in the Corrections and Health and Welfare budgets should the ballot initiative pass.

ISSUES PRESENTED

1. Does the Court have jurisdiction to review the fiscal impact statement through a writ of mandamus?

2. Does the Court have jurisdiction to review the fiscal impact statement through a writ of certiorari?

3. If the Court has jurisdiction, does the fiscal impact statement comply with Idaho Code § 34-1812?

STANDARDS OF REVIEW

"Jurisdiction is . . . a question of law and is reviewed de novo." *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 821, 367 P.3d 208, 216 (2016).

If the fiscal impact statement is reviewable, the parties agree it should be reviewed for substantial compliance. Mem. Supp. Pet. at 30. "Generally, substantial compliance does not require absolute conformity with the form prescribed in the statute, but does require a good faith attempt to comply, and that the general purpose detailed in the statute is accomplished." *In re Termination of Parental Rts. of Doe*, 155 Idaho 896, 901, 318 P.3d 886, 891 (2014) (citing Black's Law Dictionary 1566 (9th ed. 2009));

see Barber v. Honorof, 116 Idaho 767, 769, 780 P.2d 89, 91 (1989) (relying on good faith to conclude that there had been substantial compliance).

ARGUMENT

Idahoans United has tried several times to write its own fiscal impact statement for its initiative. It amended its initiative to say the law would not cost the State money, then requested an "updated fiscal impact statement" even though it had no right to do so. Craig Decl., Ex. F at 2. It withdrew its original petition and submitted a nearly identical one with similar cost language to get another shot at a fiscal impact statement. And it twice asked the Secretary of State to become involved in the process, even though the statute doesn't allow it. Now Idahoans United asks this Court to order DFM to use the fiscal impact statement that the organization itself has written. Pet. at 14; *but see Idahoans for Open Primaries v. Labrador*, 172 Idaho 466, 489, 533 P.3d 1262, 1285 (2023) (refusing to certify proponent-drafted titles because the Court lacks the power to "draft ballot titles and certify them to the Secretary of State").

Idahoans United's desire to control the details of its initiative is understandable, but the Legislature has entrusted certain aspects of the initiative process to government officials instead of initiative proponents. Here, Idaho law assigns DFM—who has access to the State's budget and finances—the job of projecting the initiative's economic effects and providing the public with its forecast. Idaho Code § 34-1812. That forecast is not reviewable, and even if it were, it easily satisfies the lenient standard of review Idahoans United asks the Court to apply.

I. Fiscal Impact Statements Are Not Reviewable Through the Court's Original Jurisdiction.

The Court has never used its original jurisdiction to review a fiscal impact statement since the Legislature enacted the requirement in 2020. *See* Mem. Supp. Pet. at 30 (agreeing). It should not start now. Nothing in the Court's power "to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction" authorizes the Court to review fiscal impact statements. Idaho Const. art. V, § 9.

Idahoans United gives two possible bases for jurisdiction—the authority to issue writs of mandamus and to issue writs of certiorari—but both should be rejected.[2]

A. The Authority to Issue Writs of Mandamus Does Not Confer Jurisdiction in This Proceeding.

Starting with the most straightforward, there is no jurisdiction to issue a writ of mandamus in this case. Idahoans United hardly argues otherwise—it briefly restates the overarching standard, then summarily asserts it has been satisfied in one citation-free sentence. Mem. Supp. Pet. at 11, 31; Pet. at ¶¶ 14, 60.

Mandamus against a state officer is appropriate only where there is a "clear duty of the officer to act"—that is, a duty that does "not require the exercise of discretion."

[2] Idahoans United also requests a declaration in its verified petition, Pet. at 13–14, but the Court only has "original jurisdiction to issue a declaration of law when necessary to adjudicate a claim for one of the enumerated writs," so mandamus or certiorari would need to be proper for the Court to issue a declaration. *Idaho State Athletic Comm'n ex rel. Stoddard v. Off. of the Admin. Rules Coordinator,* 173 Idaho 384, 542 P.3d 718, 726 (2024).

State ex rel. Williams v. Adams, 90 Idaho 195, 202, 409 P.2d 415, 419 (1965). Where a "duty is not [] plainly prescribed but depends upon a statute or statutes the construction or application of which is not free from doubt, it is regarded as involving the character of judgment or discretion which cannot be controlled by mandamus." *Logan v. Carter*, 49 Idaho 393, 288 P. 424, 426–27 (1930); *see also Moerder v. City of Moscow*, 74 Idaho 410, 415, 263 P.2d 993, 996 (1953) (writ of mandamus may compel officials to "perform their official duties, although the details of such performance are left to their discretion").

Here, although DFM has a clear duty to prepare a fiscal impact statement—which it did—the division has discretion in deciding the content of the fiscal impact statement. That means mandamus is improper even if there are standards that guide DFM's discretion—terms like "good faith," "unbiased," "clear and concise language" or "avoid legal and technical terms whenever possible," Idaho Code § 34-1812, are "not capable of precise application to the instant factual situation to the extent that [the Court] may legally state that no discretionary decision on the part of [DFM] was necessary." *Saviers v. Richey*, 96 Idaho 413, 415, 529 P.2d 1285, 1287 (1974); *see Brady v. City of Homedale*, 130 Idaho 569, 571–72, 944 P.2d 704, 706–07 (1997) (mandamus improper to review city council "discretionary" decision to approve permit, even though discretion was guided by standards).

The Washington Supreme Court addressed this exact question four months ago and reached the same result. There, an initiative proponent sought mandamus to

compel Washington's Office of Financial Management to "revise" the fiscal impact statement accompanying an initiative. *Walsh v. Hobbs*, 557 P.3d 701, 703 (Wash. 2024) (en banc); *see* Wash. Rev. Code § 29A.72.025 (standards for fiscal impact statement nearly identical to Idaho's). Yet the court denied mandamus because the agency had prepared a fiscal impact statement as it was required to do—the proponent may have "disagree[d] with [the agency's] conclusions about what the fiscal impact of [the initiative] [would] be," "[b]ut those conclusions involve the exercise of judgment within the director's discretion and are not subject to mandamus relief." *Walsh*, 557 P.3d at 705.

Stated differently, mandamus can "compel action on the part of [DFM], but it cannot direct what the result of the action must be." *Davies v. Bd. of Comm'rs of Nez Perce Cnty.*, 26 Idaho 450, 143 P. 945, 946 (1914) (refusing to hear mandamus petition contesting the results of the board of canvassers' ballot count). DFM prepared a fiscal impact statement as it was required to do, and mandamus is not available to require the statement to reach any particular outcome or use any specific language because those matters fall within DFM's discretion.

B. The Authority to Issue Writs of Certiorari Does Not Confer Jurisdiction in This Proceeding.

The fiscal impact statement likewise cannot be reviewed through a writ of certiorari. A writ of certiorari—sometimes called a "writ of review" in Idaho, *Beus v. Terrell*, 46 Idaho 635, 269 P. 593, 593 (1928)—is available to review decisions the

executive branch makes while exercising a "quasi judicial function." *In re The Petition of Idaho State Fed'n of Lab.*, 75 Idaho 367, 374, 272 P.2d 707, 711 (1954). Although this Court has not attempted to set forth a definition of what constitutes a "quasi-judicial function," other States considering petitions for writs of certiorari have done so, and this Court's usage of the writ broadly tracks the guiding principles from those States.

The essential characteristic of a quasi-judicial function is that it affects individual rights "analogous to the way they are affected by court proceedings." *Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 574 (Minn. 2000). It is not enough that the "public officer or body exercises judgment and discretion in the performance of his duties." *Neddo v. Schrade*, 200 N.E. 657, 659 (N.Y. 1936).[3] Instead, the inquiry focuses on factors like whether "a court could have been charged with making the agency's decision," or whether the decision-making process "resembles the ordinary business of courts as opposed to that of legislators or administrators." *Dorsten v. Port of Skagit Cnty.*, 650 P.2d 220, 222 (Wash. Ct. App. 1982).

Courts have concentrated on two key attributes in assessing whether an agency decision is sufficiently similar to a court decision to make it quasi-judicial.

First, courts look to the process that an agency uses to render the decision—in particular, whether the process involves "notice" and "a hearing of objections" like a

[3] *See also Sirmans v. Owen*, 100 So. 734, 735 (Fla. 1924) (same); *Gardner v. Cumberland Town Council*, 826 A.2d 972, 976 (R.I. 2003) (same).

court proceeding would. *Stuart v. Winslow Elementary Sch. Dist. No. 1, Navajo Cnty.*, 414 P.2d 976, 985 (Ariz. 1966); *Jarman v. Bd. of Rev. of Schuyler Cnty.*, 178 N.E. 91, 93 (Ill. 1931) ("written notice of the 'hearing'"). A "quasi-judicial act occurs in situations when all parties are as a matter of right entitled to notice and to a hearing, with the opportunity afforded to present evidence under judicial forms of procedure." *City of Rincon v. Ernest Communities, LLC*, 846 S.E.2d 250, 257 (Ga. Ct. App. 2020).[4]

Second, courts evaluate the effect of the agency's decision on individual rights. If the decision results in an "order . . . which affects the property or rights of citizens," it is more likely to be quasi-judicial. *Stuart*, 414 P.2d at 985; *Jarman*, 178 N.E. at 93 (agency function is quasi-judicial "if the officers acting are invested by the Legislature with power to decide on the property rights of others").

This Court's precedents follow these principles. The Court has reviewed by certiorari a decision to revoke a mining permit where the Land Board "noticed th[e] matter for a hearing" and made "findings of fact." *State v. Finch*, 79 Idaho 275, 279, 281–83, 315 P.2d 529, 530, 531–33 (1957). But certiorari did not let the Court review

[4] *Teston v. City of Tampa*, 143 So. 2d 473, 476 (Fla. 1962) ("the instant case was not quasi-judicial for the simple reason that it was a purely administrative determination without hearing or adversary evidence"); *State Farm Mut. Auto. Ins. Co. v. City of Lakewood*, 788 P.2d 808, 813 (Colo. 1990) ("Quasi-judicial action . . . generally involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing"); *Stueckemann v. City of Basehor*, 348 P.3d 526 (Kan. 2015) (requiring notice and hearing).

a city council's decision to enter "a contract for the making of public improvements" because it was "an administrative function" and not of a "judicial or quasi judicial nature." *Adleman v. Pierce*, 6 Idaho 294, 55 P. 658, 658 (1898); *see Nuckols v. Lyle*, 8 Idaho 589, 70 P. 401, 401 (1902) (similar).

The same principles are also reflected in the Court's precedent about whether a local governing body sat in a "quasi-judicial capacity," which would trigger an obligation for the body to disclose *ex parte* communications received before meeting. *S Bar Ranch v. Elmore Cnty.*, 170 Idaho 282, 304, 510 P.3d 635, 657 (2022). A board of commissioners' decision to approve certain permits was taken in the board's quasi-judicial capacity where it issued a notice, held a hearing, heard evidence, and issued findings of fact and conclusions of law. *Id.* at 291–92, 304, 510 P.3d at 644–45, 657. But a city council's decision to *take up consideration* of a special use permit was not made in a "quasi-judicial capacity" because it "was not required to be made after an evidentiary hearing" or "to be based upon evidence in the record," and did not involve "applying general rules or policies to specific individuals." *Marcia T. Turner, LLC v. City of Twin Falls*, 144 Idaho 203, 210–11, 159 P.3d 840, 847–48 (2007) (cleaned up).

With this understanding, a fiscal impact statement cannot be the product of a quasi-judicial function. The statement does not "adjudicat[e]" anyone's rights or apply general legal rules to initiative proponents—it is merely a projection by the State of the financial costs the State will incur if the initiative is approved. *City of Rincon*, 846 S.E.2d at 257. Its sole purpose is to supply the public with more information by conveying

the view of the government's budget experts. Idahoans United is free to tell any potential petition signers that they believe the statement is inaccurate or that the assumptions made in reaching the projection are erroneous. *See* Idaho Code § 34-1812(3) (statement must be offered to signers).

Nor is there any "hearing," submission of "evidence [for] the record," or even presentation of argument before DFM issues a fiscal impact statement. *Marcia T. Turner*, 144 Idaho at 210–11, 159 P.3d at 847–48. Instead, an economist is given 20 working days to read and interpret the initiative, consult his own internal sources, and develop a projection. There is no procedure for interested parties to submit briefs or letters explaining how the initiative might interact with other laws, or to submit evidence showing what they believe the initiative will cost.

This does not "resemble[] the ordinary business of courts"—rather, it resembles the work of "legislators or administrators." *Dorsten*, 650 P.2d at 222. Administrators, not courts, track down figures that the parties don't have, crunch their own numbers, and issue non-binding projections. Legislative officials do this type of work too when they prepare fiscal notes that accompany bills, which can similarly affect the bill's chance of enactment. But this Court has never suggested that fiscal notes could be judicially reviewed (by certiorari or otherwise).

Indeed, the factual legwork behind the fiscal impact statement sets it apart from the Attorney General's ballot-drafting responsibilities, which the Court has held to be a quasi-judicial function. The Attorney General's task is far more analogous to the

work of courts—courts are well-versed in "analyz[ing] and apprais[ing]" a law, "determin[ing] what it means," and "drafting and making an impartial" recitation of the law. *Idaho State Fed'n of Lab.*, 75 Idaho at 374, 272 P.2d at 710–11. And the ballot titles have a binding effect that fiscal impact statements lack in that ballot titles effectively *are* the text of the initiative on election day—the only description of the initiative's content that appears on the ballot—while fiscal impact statements are only advisory.

To be sure, forecasting financial impacts requires economists at DFM to have some understanding of the initiative's legal effect. But that's where the similarities between the economists' job and a court's traditional tasks end. And while the mathematics behind Mr. Piepmeyer's analysis in this case may seem simple enough for a court to perform (setting aside that a court cannot procure its own data as Mr. Piepmeyer did), the financial projections will rarely be so straightforward. Consider several fiscal impact statements from initiatives proposed for the 2022 election:

- For an initiative to raise the minimum wage to $15 by 2027, DFM had to project changes to income tax, sales tax, and government payrolls. The division ignored the dynamic effects of the law on "job counts" and "wage compression effects," but the computation still required soliciting state agency data, computing the consumer price index of wages, taking a "weighted average of Cobb-Douglass equations," fitting data, and accounting for "[e]xponential decay."[5]

[5] Idahoans for a Fair Wage Ballot Initiative, at 3, Idaho Secretary of State, (2022), https://tinyurl.com/43rb3vsz.

- For an initiative to alter tax rates to generate funds to spend on schools, DFM had to project how the new rates (adjusted for inflation) would affect State revenue. DFM used "an existing algorithm" that "applie[d] the tax-table computation to average taxable incomes across a distribution of tax filing data," which had "just shy of 500 categories, cutting across filing status and the full income range." It also used "growth rates from the latest General Fund revenue forecast," though it acknowledged dynamic variables that could alter those growth rates.[6]

- For an initiative providing access to medical marijuana, DFM had to project internal government costs to create a registry of users, enact rules regulating use, and retrain staff. It forecasted 6- to 7-figure increases across four different divisions of government. To calculate increased revenue from the corresponding excise tax on medical marijuana, DFM used data from other States to estimate the number and activity of medical marijuana users.[7]

Unlike true judicial and quasi-judicial decisions, these types of estimates are poorly suited for original-jurisdiction review in this Court. Proponents disputing accuracy will often present data or legal arguments that DFM has never seen nor heard. *Cf.* Idaho Code § 67-5277 ("[J]udicial review of disputed issues of fact must be confined to the agency record"). Expert discovery will often be necessary, but will rarely be feasible on the accelerated timeline initiative proponents ordinarily request. *See* Mot. to Expedite at 2 ("Time is of the essence."). In fact, the only sort of "discovery" that can generally take place will be one-sided—it will be initiative proponents submitting public records requests, as Idahoans United has done twice now. *E.g.*, Folwell Decl. at ¶ 10.

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[6] Quality Education Ballot Initiative, at 5–6, Idaho Secretary of State, (2022), https://tinyurl.com/r6zjkpyh.

[7] Idaho Medical Marijuana Ballot Initiative, at 18, Idaho Secretary of State, (2022), https://tinyurl.com/564wwy2d.

In other words, reviewing fiscal impact statements would rarely entail merely "declar[ing] the law," *Labrador v. Idahoans for Open Primaries*, 554 P.3d 85, 96 (Idaho 2024), and would not resemble any other class of writ-petition this Court hears through its original jurisdiction. That fact underscores what was already clear—drafting a fiscal impact statement is not a quasi-judicial function.

* * *

Not every executive-branch action must be judicially reviewable: "some issues may be left to the political and democratic processes." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 396 (2024). Indeed, agency actions are routinely "committed to agency discretion by law." 5 U.S.C. § 701(a)(2); *In re City of Shelley*, 151 Idaho 289, 292, 255 P.3d 1175, 1178 (2011) ("[A]ctions of state agencies or officers, or actions of local government, its officers or its units, are not subject to judicial review unless expressly authorized by statute"). Nowhere is this more true than in the context of elections. *Lansdon v. State Bd. of Canvassers*, 18 Idaho 596, 111 P. 133, 135 (1910) (declining to exercise original jurisdiction to review ballot count via writ of certiorari); *cf. United States v. Texas*, 599 U.S. 670, 676 (2023) ("By ensuring that a plaintiff has standing to sue, federal courts prevent the judicial process from being used to usurp the powers of the political branches.") (cleaned up).

Thus, to the extent initiative sponsors are concerned about the lack of reviewability, their recourse is with the Legislature. Though the Legislature cannot expand this Court's original jurisdiction, *Regan v. Denney*, 165 Idaho 15, 20, 437 P.3d

15, 20 (2019), it can authorize challenges to a fiscal impact statement in district court, as it has done for other agency actions, Idaho Code § 67-5270, and even other steps in the initiative process. *Id.* § 34-1808 (granting cause of action to sue in district court if the Secretary of State does not accept and file initiative petition with the requisite number of signatures). In some other States that require fiscal impact statements for initiative petitions, the legislature has chosen to authorize judicial review—though no other State reviews fiscal impact statements through certiorari.[8]

But Idaho's Legislature has not authorized judicial review of fiscal impact statements, even though it clearly knew how. *See* Idaho Code § 34-1808, 34-1809(3), (4); Mem. Supp. Pet. at 12 (agreeing that DFM orders are not reviewable under IDAPA). Rather than invite fact-intensive litigation, the Legislature has decided that the fiscal impact statement should reflect solely DFM's non-binding point of view on the potential costs. This Court should respect that decision rather than distort its standard for original jurisdiction, as Idahoans United urges. *See Walsh*, 557 P.3d at 705 (declining to water down original jurisdiction standards to review fiscal impact statements); *Advisory Opinion to the Att'y Gen. re Raising Florida's Minimum Wage*, 285 So. 3d 1273, 1275 (Fla. 2019) (same).

[8] Utah Code § 20A–7–202.5(4); Or. Rev. Stat. § 250.131; Colo. Rev. St. § 1-40-107(2); Mont. Code Ann. § 13-27-605(1); Cal. Elec. Code § 9190(b)(1); Mo. Rev. Stat. § 116.190.4(1).

II. The Fiscal Impact Statement Substantially Complied with All Statutory Requirements.

To the extent fiscal impact statements are reviewable at all, DFM agrees they should be reviewed for substantial compliance, *see* Mem. Supp. Pet. at 30, a standard of review that "does not require absolute conformity with the form prescribed in the statute, but does require a good faith attempt to comply, and that the general purpose detailed in the statute is accomplished." *In re Termination of Parental Rts. of Doe*, 155 Idaho at 901, 318 P.3d at 891.

Here, DFM was tasked by statute with "prepar[ing] an unbiased, good faith statement of the fiscal impact of the law proposed by the initiative." Idaho Code § 34-1812(1). The statement must "describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the ballot measure is approved," including "immediate expected fiscal impacts and an estimate of any state or local government long-term financial implications." *Id.* § 34-1812(2). Moreover, the statement must "be written in clear and concise language" and "avoid legal and technical terms whenever possible," but "may include both estimated dollar amounts and a description placing the estimated dollar amounts into context." *Id.*

DFM substantially complied with each of these requirements in preparing the fiscal impact statement for this initiative.

A. DFM Prepared the Fiscal Impact Statement in Good Faith.

The evidence conclusively demonstrates that DFM prepared the fiscal impact statement for Idahoans United's initiative in good faith and without bias. It is undisputed that each time a fiscal impact statement was requested, DFM promptly responded within 20 working days. Idaho Code § 34-1812(1); Folwell Decl., Ex. G at 3–4. In fact, even though proponents have no statutory right to contest the fiscal impact statement with DFM, the division accommodated Idahoans United's request for an "updated" fiscal impact statement and conducted additional research in response. Craig Decl., Ex. F; Folwell Decl., Ex. G at 6–9.

Moreover, to obtain the most accurate prediction possible, Mr. Piepmeyer consulted with a Medicaid expert within IDHW on at least three separate occasions, which included requesting data, sharing and soliciting feedback on a draft of the second fiscal impact statement, and meeting in person. Folwell Decl., Ex. G at 5–12; *see* Idaho Code § 34-1812(1) (authorizing such consultation). In Mr. Piepmeyer's discussions with IDHW, he specifically cited the provisions of law he believed were relevant to the potential costs. Folwell Decl., Ex. G at 8.

And when DFM determined that the fiscal impacts were modest, it went through great lengths to convey that fact in the fiscal impact statement. Mr. Piepmeyer initially referred to the costs internally as "de minim[i]s," and after searching for more commonly used verbiage, he ultimately projected that the initiative "could change state expenditures in minor ways," would be "nominal" and "insignificant," and would cost

"less than $20,000 per year," which was contextualized by placing it next to Medicaid's overall budget of "$850 million in FY 2024." Folwell Decl., Ex. G at 4, 15; Fitzgerald Decl., Ex. C.

Idahoans United misstates the relevant facts, asserting that "[w]hen the Division first looked at an early draft of the Initiative in September 2024, it initially concluded [] that there is 'no impact to state dollars from a revenue or expenditure perspective.'" Mem. Supp. Pet. at 33–34. On Idahoans United's telling, DFM "changed course" and "began speculating internally about" costs only once Idahoans United submitted an "updated version of the Initiative" stating that "it will not cause any new state expenditures"—apparently to "set a precedent" and "discourage" future initiatives from containing similar statements attempting to project their own costs. Mem. Supp. Pet. at 34.

This narrative is false, as Idahoans United's own documents show. The *very first draft* of the fiscal impact statement projects that "[c]hanges in costs associated with the Medicaid populations and prisoner population may occur." Folwell Decl., Ex. G at 2, 24. So does the fiscal impact statement prepared in response to Idahoans United's first submitted petition—twice, in fact: "Changes in costs associated with the ballot initiative could impact IDOC and Medicaid budgets." Folwell Decl., Ex. G at 3, 16. It was in response to this first fiscal impact statement—and not before—that Idahoans United added language regarding whether the initiative should be construed to impose costs. *See* Folwell Decl., Ex. C at 1; Craig Decl., Ex. F.

Thus, the internal email from Ms. Wolff that Idahoans United cites does nothing to show bad faith. She sent the email on September 15 to the Secretary of State's Office explaining the first draft of the fiscal impact statement (sent September 11), which already predicted increased Medicaid and prison costs. Folwell Decl., Ex. G at 2. Ms. Wolff (who did not personally draft the fiscal impact statement) wrote generally that the statement projected "no impact to state dollars from a revenue *or expenditure* perspective," but immediately clarified her remark in the next sentence by explaining that there would be "impacts on other agencies such as IDOC." Folwell Decl., Ex. G at 18 (emphasis added). And the fiscal impact statement that was issued the next day (September 16) continued to project costs to Medicaid and prisons. Folwell Decl., Ex. G at 3.

Clarifying the relevant history also dispels any speculation that DFM intentionally manufactured costs in response to Idahoans United adding language to its initiative about the lack of costs. Again, DFM had already projected costs *before* Idahoans United added that language. Folwell Decl., Ex. G at 2–3.

Moreover, when Idahoans United did add cost-related language, it was reasonable for DFM not to drop the projection immediately to $0. Both times this occurred, the new language was presented as a non-"substantive" change that merely "clarif[ied]" the scope of the initiative. Folwell Decl., Ex. C at 1; Craig Decl., Ex. F. And for good reason: the cost language provides that "*[t]his act*" does not require the state to pay for abortion or reproductive care, but it does not address the possibility

that *other* state or federal laws will impose financial obligations on the state as a consequence of the initiative. Folwell Decl., Ex. F at 5; Craig Decl., Ex. F at 4 (containing a rule of "constru[ction]"); *see infra* (describing potential costs).

And since similar language could easily be (inaccurately) inserted into an initiative that simultaneously creates obligations that *would* cost the state money, DFM was required to verify the purported lack of costs itself. Folwell Decl., Ex. G at 15.

B. Idahoans United Cannot Show Bad Faith by Contesting Accuracy.

The core of Idahoans United's challenge to the fiscal impact statement is that the statement is not "accurate." Mem. Supp. Pet. at 33, 35–42. But even though Idahoans United routinely slips in "accurate" with terms that actually appear in the statute like "good faith," "unbiased," and "clear and concise," Mem. Supp. Pet. at 2, 31, 33, there is no statutory command that the fiscal impact statement be accurate.

Sensibly so. Given the number of uncertainties and moving variables in forecasting the costs of an initiative petition—a law that hasn't been passed yet, much less interpreted by a court—it would be impossible for DFM to ensure accuracy. Indeed, at times, the best an agency can do is explain that the "fiscal impact of the measure is unknown." *Stop Over Spending Mont. v. State, ex rel. McGrath*, 139 P.3d 788, 792–93 (Mont. 2006) (upholding the statement).[9] All the Legislature has asked is that DFM make an

[9] *See also* Idahoans for Open Primaries Ballot Initiative, at 18, Idaho Secretary of State, (2024), https://tinyurl.com/2c6tfudx (DFM explaining that it "cannot estimate the cost of software for tabulation" to implement the "Open Primaries Initiative").

"unbiased" and "good faith" effort to project the costs and then write that projection as "clear[ly]" as possible, all within 20 working days. Idaho Code § 34-1812. That much achieves the fiscal impact statement's purpose of supplying the public with a government-provided "estimate." *Id.*

"Accuracy" cannot be shoe-horned into "good faith" either. As the Court has previously explained, "good faith" is "clearly a subjective standard, focusing on the [official's] judgment" instead of "objective reasonableness." *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 445–46, 522 P.3d 1132, 1203–04 (2023).

The absence of any statutory "accuracy" duty is fatal to Idahoans United's challenge. Its argument is that the Court can override the fiscal impact statement because DFM has violated "statutory requirements" (certiorari) and a "clear legal duty" (mandamus). Mem. Supp. Pet. at 30–31. As explained, those arguments fail across the board based on DFM's discretionary, non-quasi-judicial role. *See supra* Section I. But they *certainly* fail where no "requirement" or "duty" is expressed in the statute to begin with.

In any event, the fiscal impact statement *is* perfectly accurate, even on Idahoans United's reading of the law. It predicts that "[c]osts associated with the Medicaid and prisoner populations *may* occur" if the initiative is approved, and that the amount is "likely to cost *less than $20,000* per year." Folwell Decl., Ex. G at 4 (emphases added). Or as Idahoans United rephrases the statement, "the Initiative will probably cost the state nothing, but could cost the state something, and if it does cost the state

something, presumably it is because of Medicaid beneficiaries and prisoners." Mem. Supp. Pet. at 32 (emphases omitted). Idahoans United's own projected cost of $0 thus lies within the range of outcomes predicted by the fiscal impact statement—it's even the "probabl[e]" outcome predicted by the statement. *Id.* (emphasis omitted).

The reason fiscal impact statements use ranges and less-definite language is to hedge for uncertainty. Idaho Code § 34-1812(2) (statement makes an "estimate"). Until the initiative is enacted into law, it cannot be certain how the initiative will interact with federal statutory and constitutional law. For example, when Idaho enacted a "No Public Funds for Gender Transition" statute last year, it was surely anticipated that $0 would be spent on gender transition treatments. *See* 2024 Idaho Sess. Laws 744 (H.B. 668). Yet the statute was preliminarily enjoined as to a class of prison inmates based on the Eighth Amendment, so the State has continued spending some public funds on hormone therapy used for gender transition. *Robinson v. Labrador*, 2024 WL 4027946, at *13 (D. Idaho Sept. 3, 2024).

It is not unreasonable to anticipate similar challenges from inmates in the abortion context, using the Eighth Amendment to trump Idaho statutes and regulations like the No Public Funds for Abortion law. Idaho Code § 18-8705. And where the circumstances include "medical emergencies" that the initiative would create a right to abortion for, the legality of the treatment under state law will undoubtedly be advanced as support for the treatment being medically necessary, *e.g.*, *Roper v. Simmons*, 543 U.S. 551, 565 (2005), making Idaho liable even though the initiative did

not "create" the liability. Folwell Decl., Ex. C at 5. The standard for "medical necessity" under the Eighth Amendment is indeed high, Mem. Supp. Pet. at 40–42, but is not always rigorously applied. *See Edmo v. Corizon, Inc.*, 935 F.3d 757, 786 (9th Cir. 2019) (sex-reassignment surgery was medically necessary based on threats to mental health).

And Idahoans United does not dispute other Medicaid costs that are nearly certain to materialize—namely, those incurred from covering abortion *complications*. "As a matter of State policy, Idaho Medicaid provides coverage for treatment and follow-up care at hospitals following abortion complications." Charron Decl. at ¶ 8. Since the initiative expands access to abortion, simple math suggests it will simultaneously increase instances of abortion complications.

These potential costs are anything but hypothetical. About half of all abortions administered to Idaho residents over the 7 years before *Dobbs* were chemical abortions, which overwhelmingly utilize a drug called mifepristone. Unsworth Decl. at 2. According to the FDA, "about 5-8 out of 100 women taking [mifepristone] will need a surgical procedure to end the pregnancy or to stop too much bleeding," and 2.9 to 4.6% will visit the emergency room.[10] Unsurprisingly, "[b]illing history prior to the Dobbs decision," Folwell Decl., Ex. G at 4, shows Idaho spent thousands of dollars in Medicaid paying for these complications, and similar levels of spending—or higher,

[10] Mifeprex Risk Evaluation and Mitigation Strategies, at 4, FDA (2005), https://tinyurl.com/53k8cf3m; Mifeprex Label, at 8, FDA (2016), https://tinyurl.com/yu8fd7fw.

now that mifepristone can be prescribed virtually, *FDA v. All. for Hippocratic Med.*, 602 U.S. at 376—can be expected if the initiative is approved. Charron Decl. at ¶¶ 11–12. Idahoans United is therefore wrong to claim that the initiative "will have no financial impact to Idaho's Medicaid program." Mem. Supp. Pet. at 37.

But these potential costs are beside the point—indeed, the entire question of accuracy is irrelevant. DFM determined in good faith that the initiative could cost the State money, so the fiscal impact statement substantially complies with the statutory requirements.

C. Idahoans United's Remaining Challenges Fail.

Idahoans United finishes with three brief challenges to the wording of the financial impact statement rather than its bottom-line conclusion. In all respects, DFM substantially complied with its statutory obligations by making a "a good faith attempt to comply" with the statute's drafting directions. *In re Termination of Parental Rts. of Doe*, 155 Idaho at 901, 318 P.3d at 891.

First, Idahoans United argues that the fiscal impact statement's inclusion of two citations (one for Medicaid, one for prisons) violates the requirement to "avoid legal and technical terms whenever possible." Idaho Code § 34-1812(2); Mem. Supp. Pet. at 43. Importantly, that requirement does not forbid the use of *any* legal terms. Rather, it leaves DFM with the discretion to decide when legal terms are unavoidable. In the case of a phrase like "de minimis," there are adequate non-legal terms the agency was able to use instead, like "nominal," "minor," or "insignificant." Folwell Decl., Ex. G at 4;

Fitzgerald Decl., Ex. C. But there are no adequate substitutes to convey to the public which provisions of law DFM believes may impose costs on the State in conjunction with the initiative. To that point, fiscal impact statements have previously included statute citations without objection.[11]

Indeed, a minimal number of legal citations in the fiscal impact statement strikes an appropriate balance. It supplies more legally-inclined readers like Idahoans United—who also complains that the DFM did not include *enough* "supporting evidence or reasoning," Mem. Supp. Pet. at 32—with some sense of where the projected costs may come from and avenues for further research if they desire. Readers who are less interested in the statutory citations, however, will not be forced to "find the referenced statutes," "interpret the law," or "speculate as to how it applies," as Idahoans United suggests. Mem. Supp. Pet. at 43. Instead, those readers can simply skip over the short citations to the next sentence.

Idahoans United's expert believes readers cannot skip over the citations without being "turn[ed] off" by the statement's "nuance." Shulman Decl., Ex. A at 8 (based on research that did not discuss fiscal impact statements or legal citations and that

[11] Idaho Initiative Rights Act Ballot Initiative, at 2, Idaho Secretary of State (2022), https://tinyurl.com/4373dxe6; Personal Adult Marijuana Decriminalization Act Ballot Initiative, at 10, Idaho Secretary of State (2022), https://tinyurl.com/d6c7bcha.

reviewed only ballot initiatives about which voters had no feelings beforehand).[12] But academic opinions cannot override statutory text allowing some legal language or show a lack of good faith for purposes of substantial compliance. *Barber*, 116 Idaho at 769, 780 P.2d at 91.

Second, Idahoans United complains that DFM's use of the terms "Medicaid" and "prisoner populations" will increase "negative sentiment" toward the initiative, which it bases on its expert's claim that these terms are "implicit racial appeals." Mem. Supp. Pet. at 44–45; Shulman Decl., Ex. A at 9. It is not clear what other words Idahoans United would prefer DFM to have used to make the fiscal impact statement less "racially coded," Shulman Decl., Ex. A at 9–10, or whether Idahoans United would prefer that DFM provide no explanation at all of where the costs could come from to avoid using any "dog whistle[s]." *Id.* Regardless, these are not "legal [or] technical terms" that the public would not understand, Idaho Code § 34-1812(2), so Idahoans United's "negative sentiment" objection is irrelevant.

[12] None of the opinions of Idahoans United's expert are relevant, but they should not be considered in any event because they could not possibly have been considered by DFM when it issued the fiscal impact statement, and therefore have no bearing on the division's substantial compliance. *See Idahoans for Open Primaries*, 172 Idaho at 479, 533 P.3d at 1275 (on certiorari review of ballot titles, there is a "lack of a record" because "there is no presentation of evidence or process through which the Attorney General documents the reasons he chose to draft the ballot titles as he did"); *cf. Union Pac. Land Res. Corp. v. Shoshone Cnty. Assessor*, 140 Idaho 528, 532, 96 P.3d 629, 633 (2004) (noting certiorari's origins as a writ to "bring up for review the record of the proceedings in the court below") (quoting Black's Law Dictionary 1605 (7th ed. 1999)).

Third, Idahoans United contests that including Medicaid's overall budget ($850 million) in the fiscal impact statement is "unnecessary and prejudicial." Mem. Supp. Pet. at 44. Again, Idahoans United cites no statutory requirement that it believes was violated by this figure's inclusion. In fact, the statute explicitly *authorizes* DFM to include "a description placing [any] estimated dollar amounts into context." Idaho Code § 34-1812(2). That is the role of the $850 million figure—without it, $20,000 might sound like a lot of money to ordinary voters, so DFM included the overall budget to reiterate how "nominal" and "insignificant" the costs would be. Folwell Decl., Ex. G at 4. Idahoans United's expert may believe that contextualizing figures does more harm than good because people "do not read [ballots] left to right and up and down," Shulman Decl., Ex. A at 8–9, but the expert's objections are really to the authorization for such figures in the statute itself.

CONCLUSION

The Court should deny the petition because it lacks jurisdiction to review the fiscal impact statement. And in all events, DFM has substantially complied with all relevant statutory requirements.[13]

[13] Idahoans United should not "prevail[]" in this action, and therefore should not be awarded attorneys' fees. Idaho Code § 12-117(1) (requiring no "reasonable basis").

DATED: March 4, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By*: /s/ Alan M. Hurst*
Alan M. Hurst
Solicitor General

Michael A. Zarian
Deputy Solicitor General

Sean M. Corkery
Assistant Solicitor General

CERTIFICATE OF SERVICE

I certify that on March 4, 2025, I filed the foregoing electronically through the iCourt E-File system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notification of Service:

Jennifer M. Jensen
jmjensen@hollandhart.com

Anne Henderson Haws
ahhaws@hollandhart.com

Attorneys for Petitioner

/s/ *Alan M. Hurst*
Alan M. Hurst