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Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Melanie Gagnepain, Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

COMMITTEE TO PROTECT AND PRESERVE THE IDAHO CONSTITUTION, INC.; MORMON WOMEN FOR ETHICAL GOVERNMENT; SCHOOL DISTRICT NO. 281, LATAH COUNTY, STATE OF IDAHO; IDAHO EDUCATION ASSOCIATION, INC.; JERRY EVANS; MARTA HERNANDEZ; STEPHANIE MICKELSEN; ALEXIS MORGAN, on behalf of herself and her minor children; KRISTINE ANDERSON, on behalf of herself and her minor children; each of the foregoing individually and as private attorneys general on behalf of the public of the State of Idaho, Petitioners, vs. STATE OF IDAHO, acting by and through the IDAHO STATE TAX COMMISSION, Respondent.	**Docket No. 53264-2025**

EXPEDITED MOTION FOR DISCOVERY

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The Petitioners' brief cites twenty-four times to the seventeen declarations appended to their petition, supporting a variety of factual assertions about standing and the effects of the law they challenge. Respondent moves for leave to explore these factual allegations through a brief discovery period or, in the alternative, for the factual assertions and the supporting declarations to be stricken from the record.

Respondent requests that this motion be resolved expeditiously. Petitioners oppose this motion.

ARGUMENT

The Idaho Appellate Rules countenance discovery for petitions for writs of prohibition at the Idaho Supreme Court. *See*, *e.g.*, I.A.R. 5(g) (providing that "[c]harges for reporting and transcribing of a deposition taken in preparation for trial of an action" are allowable costs). In addition, this Court has recognized that in an original action for a petition for a writ, parties may seek discovery. *Idahoans United for Women & Fams. v. Labrador*, 570 P.3d 1137, 1156 (Idaho 2025) (noting that the Attorney General could have "move[d] for expedited discovery concerning [the expert's] report" or "for additional time to submit an opposing expert declaration").

Here, Petitioners' writ request is supported by numerous factual allegations made across seventeen declarations submitted with the petition. For example, Petitioners dedicate nearly eight pages of their Petition and five pages of their opening brief to alleging that they have suffered or will suffer harm sufficient to confer standing—all based on factual allegations made in the declarations. *See* Petition at 5–

13, Br. at 9–15. One petitioner alleges that it "has diverted resources from its normal practices to specifically challenge the program." Br. at 12. Another (a school district) argues that it will experience "decreased enrollment," "decreased funding," and "reduc[ed] [] quality of education for all students" because of H.B. 93. *Id.* A third (a union) asserts that its "members would have standing to sue in their own right." Br. at 13–14.

Petitioners rely on these declarations in support of their claims on the merits, too. The declarations provide opinions and speculation about H.B. 93's potential impact on the funding and quality of public schools, as well as the possibility that private schools will discriminate on the basis of religion in admission (including a specific instance of alleged discrimination that has already occurred). *See*, *e.g.*, Pet. at Exs. C. and H. Petitioners claim that "these sworn statements show how [H.B 93] undermines the constitutional promise of a general uniform public school system open to all children." Pet. at 12.

In all, the declarations are cited twenty-four times for various propositions in the opening brief. Respondent should not be forced to accept every one of those propositions as true. "[D]iscovery . . . promote[s] fairness and candor" by allowing opposing parties to probe the accuracy, completeness, and relevance of factual allegations. *Edmunds v. Kraner*, 142 Idaho 867, 878, 136 P.3d 338, 349 (2006). That is just as true in an original action in this Court as it is in an action that begins in the trial court.

To facilitate completion of discovery within the time frame requested in Respondent's concurrently filed motion for extension, Respondent requests that it be allowed to propound written discovery and take depositions as necessary. Respondent proposes an October 3 deadline for Respondent to serve any written discovery requests, an October 13 deadline for Petitioner to serve responses to these requests, and an October 31 deadline for Respondent to complete its depositions. This schedule would require completion of all discovery in time for the Respondent's response brief deadline, which (as requested in another motion) should be November 10.

If the Court does not allow Respondent to conduct discovery into the allegations made in the declarations, it should strike the declarations and all factual allegations drawn from them. Fundamental fairness dictates that claims against the Respondent should not be decided based on factual claims that Respondent has had no opportunity to investigate and contest.

CONCLUSION

The Court should grant the Respondent's motion for a brief discovery period: written discovery requests by October 3, responses by October 13, and depositions by October 31, with the Respondent's briefing deadline (as requested in a separate motion) falling on November 10.

DATED: September 29, 2025

STATE OF IDAHO
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CERTIFICATE OF SERVICE

I certify that on September 29, 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:

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