

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

**RESPONDENT'S EXPEDITED
MOTION FOR EXTENSION OF TIME**

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Pursuant to Idaho Appellate Rules 34(d) and 46, Respondent respectfully requests a one-month extension of the deadline to file a verified answer and response brief in this proceeding, which would make them due on November 10, 2025. Respondent requests that this motion be expeditiously resolved. Petitioners oppose this extension.

Preparing a verified answer and response brief before the current October 10 deadline is not practicable. The attorneys who have been assigned by the Attorney General to prepare the verified answer and response brief in this proceeding (Mr. Hurst, Mr. Zarian, Mr. Corkery, and Mr. Craig) have unavoidable time conflicts—largely involving cases before this Court—that are expected to consume a significant amount of time over the next two weeks. These time conflicts include:

- Mr. Hurst will be preparing for and presenting oral argument in the Ninth Circuit in *SAGA v. Critchfield*, No. 25-5036 (9th Cir.), on October 1, 2025. *See* Hurst Declaration.
- Mr. Zarian will be preparing for and presenting oral argument before this Court in *Ridgeline Medical v. Lyon*, No. 52069-2024 (Idaho), on October 9, 2025. *Id.*
- Mr. Hurst and Mr. Zarian are representing the Attorney General as an intervener in *Doe v. Doe*, Nos. 53148-2025, 53137-2025 (Idaho), upon this Court's invitation, and are drafting a brief to respond to questions posed by the Court. That brief is due on October 6, 2025. *Id.*

- Mr. Zarian is assisting in the preparation of two oral arguments before this Court in the next two weeks—*PacifiCorp v. Idaho Public Utilities Commission*, No. 52508-2024 (Idaho), on October 3, 2025, and *City of Idaho Falls v. Idaho Department of Water Resources*, No. 52102-2024 (Idaho), on October 6, 2025.
- Mr. Corkery is currently traveling out of the state for a family vacation, which began before the Court ordered a response to the petition on Friday, September 26, 2025. He will not return until October 4, 2025, and is generally unavailable to work on this case until he returns. *Id.*
- Mr. Craig leads the Civil Litigation and Constitutional Defense division of the Office of the Attorney General. The division is already short-handed, yet will be extraordinarily busy over the next two weeks responding to discovery and briefing deadlines in state and federal trial courts. *Id.*

Moreover, Respondents will need additional time to effectively evaluate and respond to the petition, 17 declarations, and nearly 40-page opening brief. Petitioners' materials were certainly not compiled in two weeks—indeed, according to one of the Petitioner's declarations, the Committee to Protect and Preserve the Idaho Constitution emailed the Legislature on January 6, 2025 (nearly nine months ago) threatening to file this lawsuit challenging the constitutionality of H.B. 93 if it passed, and H.B. 93 was signed into law on February 27, 2025. *See* Mickelson Decl., Ex. 1; H.B. 93, 68th Leg., 1st Reg. Sess. (Idaho 2025), <https://tinyurl.com/34wshh76>. A four-

week extension to respond to the petition would help balance the asymmetry of preparation time. It would also afford Respondent at least as much time to respond as in an ordinary appeal, where the appellant is already familiar with the factual record and legal claims. *See* I.A.R. 34(c) (28 days).

To that point, additional time will allow Respondent sufficient time to conduct the discovery needed to respond to the petition. Respondent is filing a motion for discovery contemporaneously with this motion to extend time, as the Court has indicated writ respondents should do in original actions when they want to rebut or exclude evidence presented by petitioners. *Idahoans United for Women & Fams. v. Labrador*, 570 P.3d 1137, 1156 (Idaho 2025) (rejecting Attorney General’s objection to evidence submitted with writ petition because the Attorney General “did not . . . move for expedited discovery . . . or move for additional time to submit” opposing evidence). Rather than merely accept as true the factual claims made across 17 declarations that are cited 24 times across the opening brief, Respondent intends to probe those claims and the extent to which they support, for example, Petitioners’ assertion of standing or their allegation that nonpublic schools “discriminate in admissions.” Br. at 28 (discrimination), Pet. at 5–13 (standing).

The additional month that Respondent requests will not prejudice Petitioners’ desired time frame—which Respondent has had no opportunity to oppose because Petitioners made their request for expedited treatment within their petition rather than a separately filed motion. *See Idahoans United*, 570 P.3d at 1156 (contemplating that

respondent would be able to “oppose [a petitioner’s] motion to expedite”); I.A.R. 5(a) (“There shall be no response to applications filed pursuant to this rule unless the Supreme Court requests a party to respond”). Nevertheless, there is still plenty of time to resolve the petition before January 15, 2026—the date when applications can be submitted for the Idaho Parental Choice Tax Credit Program—as Petitioners request.

And to the extent any party should bear the hardship of proceeding on a compressed time frame, it should not be Respondent. As explained, the need for expedited review is a problem entirely of Petitioners’ own making—they have planned to bring this lawsuit for nearly nine months, and could have brought it at any time after H.B. 93 was signed into law on February 27, yet have delayed filing until now. Mickelson Decl., Ex. 1. While Petitioners claim that “[t]he matter is urgent and calls for the Court’s expedited review,” Pet. at ¶ 16, their actions delaying the filing of their petition by almost seven months after the bill was signed into law show otherwise. *See Lydo Enterprises, Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213–14 (9th Cir. 1984) (“By sleeping on its rights a plaintiff demonstrates the lack of need for speedy action.”) (quotation omitted).

Petitioners should not be rewarded for their procrastination by requiring Respondent to proceed at breakneck speed. Respondent should be allowed to test Petitioner’s numerous factual assertions, carefully review the legal claims Petitioners advanced, and fully develop a cogent response in defense of the duly enacted state law.

To the extent that cannot be done fast enough for Petitioners' liking, that risk should fall on Petitioners, not Respondent.

Pursuant to Idaho Appellate Rule 34(d), an affidavit supporting the motion is attached. Respondent respectfully asks the Court to grant the motion.

DATED: September 29, 2025

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Alan M. Hurst

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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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