

Marvin M. Smith, ISB No. 2236
Marvin K. Smith, ISB No. 6978
Craig L. Meadows, ISB No. 1081
Brandon Helgeson, ISB No. 11615
Jean Schroeder, ISB No. 12205
HAWLEY TROXELL ENNIS & HAWLEY LLP
2010 Jennie Lee Drive
Idaho Falls, ID 83404
Telephone: 208.529.3005
Facsimile: 208.529.3065
Email: mmsmith@hawleytroxell.com
mksmith@hawleytroxell.com
cmeadows@hawleytroxell.com
bhelgeson@hawleytroxell.com
jschroeder@hawleytroxell.com

Attorneys for Petitioners

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, individuals
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.

Case No. 53264-2025

PETITIONERS' OPPOSITION TO
RESPONDENT'S EXPEDITED MOTION
FOR DISCOVERY

I. INTRODUCTION

Petitioners respectfully oppose Respondent's motion seeking discovery, or in the alternative, to strike Petitioners' declarations and factual allegations drawn from them in connection with their original Petition. Discovery is neither necessary nor appropriate in this context. The purpose of Respondent's motions before the Court is to deflect and delay from the merits of the issues presented given the urgency and significance of the clear constitutional violation as a result of passing House Bill 93. The declarations prepared by Petitioners' accompanying the Petition and Brief were submitted for the purpose of demonstrating Petitioners' standing and jurisdictional facts, which is sufficient as a matter of law, for this Court to decide on the constitutional question presented.

II. BACKGROUND

On September 17, 2025, Petitioners filed their Petition and Brief in Support to assert that House Bill 93 ("HB 93") is facially unconstitutional as a violation of an express limitation on the Legislature's authority. Pet'rs' Br. 4 n.2. Nine (9) days later, on September 26, 2025, this Court granted expedited review of Petitioners' challenge to HB 93, ordering that Respondent's Brief and Verified Answer be filed by October 10, 2025, and ordered a Petitioners' Reply Brief within seven (7) days from the filing of Respondent's Brief. ("Sept. 26 Order"). This ruling underscores the urgency and importance of resolving the constitutional questions presented.

Respondent now moves for an extension of time to perform "limited discovery" into the factual assertions contained in those declarations. Resp't Mot. for Disc. 1. However, discovery is unnecessary and would undermine this Court's directive. As such, Respondent's Motion for Discovery should be denied.

III. ARGUMENT

A. Discovery Is Wholly Unnecessary In This Matter.

Before this Court is purely a question of law: whether HB 93 violates Article IX, section 1 of the Idaho Constitution. Article IX, section 1 provides that the Legislature has the duty to “establish and maintain a general, uniform and thorough system of public, free common schools.” IDAHO CONST. art. IX, § 1. Petitioners brought this constitutional issue before the Court in this manner, because there is no plain, speedy and adequate remedy at law available that can address the constitutional violations posed by HB 93, and in doing so, Petitioners have made a prima facie showing of standing sufficient for a response. Respondents instead of utilizing the twenty three (23) days between the filing Petitioner’s Petition and Brief and the Court ordered deadline to prepare their own response, are asking this Court to extend and delay its expedited order and subject the various Petitioners and Declarants to depositions or other methods of discovery. Resp’t. Mot. Disc. 3. Specifically, Respondent asserts that discovery is necessary to probe claims that private schools may discriminate in admissions or the standing of Petitioners. Resp’t. Mot. Ext. Time 3. However, Respondent is mistaken; resolution of disputed issues of fact is not necessary for this Court to render a decision. Pet’rs’ Br. 4 n.2.

Subjecting the various Petitioners and Declarants to depositions or other methods of discovery is more likely to harass and intimidate Petitioners and Declarants rather than shed light on whether H.B. 93 violates Article IX, section 1 of the Constitution. This Court is fully capable of analyzing the standing of Petitioners without need for discovery. Petitioners have either pleaded facts sufficient to establish standing, which they have. Or, they have not. Even if they have not,

relaxed standing is appropriate. Pet’rs’ Br. 14–15. Therefore, the Court need not engage in fact-intensive discovery to evaluate standing.

B. Respondent Can Contest The Standing of Petitioners and The Merits of the Constitutionality of H.B. 93 Without Written Discovery Or Depositions.

Respondent claims that “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.” Resp’t. Mot. for Disc. 2. This argument ignores the legal and factual reality that if HB 93 goes forward, public funds will be diverted to Idaho private schools that are legally permitted to discriminate based on religion, disability, and other classifications, with no law preventing such discrimination. HB 93 contains no governance by the State on the admissions criteria for nonpublic schools. I.C. § 63-3029N(20).

By their very nature, nonpublic schools do not serve the community as a whole. Pet’rs’ Br. 28. “Nonpublic schools are open to selected people in the state, as contrasted with public schools which are open to ‘all people in the state.’” *Id.* quoting *Fannin v. Williams*, 655 S.W.2d 480, 482 (Ky. 1983). Petitioners’ declarations detail actual harms experienced, including children being denied admission based on religion. *See* Pet. at ¶ 27; *see also* Decls. of Karli Hosman, Exhibit J, ¶ 3-9; McKenzie McFarland, Exhibit M, ¶ 3-8; Alexis Morgan, Exhibit H, ¶ 7-12. This is not speculation, but documented experiences directly relevant to this Court’s constitutional inquiry.

Respondent’s attempt to pursue discovery aimed at these parents risks intimidating and burdening families who have already provided sufficient factual support. There is no justification for subjecting these parents to invasive discovery when the declarations plainly establish harm warranting standing and support of Petitioners’ claims.

Moreover, if the Court determines standing is legally insufficient, it can dispose of the case without resort to factual development. Conversely, if the Court finds Petitioners have articulated a prima facie basis for standing, further discovery will add nothing to the legal merits. Permitting discovery and depositions at this stage would only cause delay on the Court's ruling when there is a significant constitutional violation of an urgent nature at stake.

IV. CONCLUSION

For the reasons set forth above, requiring discovery here would subvert the very purpose of petitioning for extraordinary relief and the Court's expedited Order in this case. As a result, Respondent's Motion should be denied in its entirety.

DATED THIS 30th day of September, 2025.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By /s/ Marvin M. Smith
Marvin M. Smith, ISB No. 2236
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September, 2025, I caused to be served a true copy of the foregoing PETITIONERS' OPPOSITION TO RESPONDENT'S EXPEDITED MOTION FOR DISCOVERY by the method indicated below, and addressed to each of the following:

Raul R. Labrador
Attorney General

Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010

Alan M. Hurst
Solicitor General
James E.M. Craig
Chief, Civil Litigation and Constitutional Defense
Michael A. Zarian
Deputy Solicitor General
Sean M. Corkery
Assistant Solicitor General

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ E-mail: alan.hurst@ag.idaho.gov
james.craig@ag.idaho.gov
michael.zarian@ag.idaho.gov
jack.corkery@ag.idaho.gov
- ☐ Facsimile
- ☒ iCourt

/s/ Marvin M. Smith

Marvin M. Smith