

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,

v.

STATE OF IDAHO, acting by and through the
IDAHO STATE TAX COMMISSION,

Respondent,

and

IDAHO STATE LEGISLATURE,

Proposed Intervenor-Respondent.

Docket No. 53264-2025

**THE IDAHO STATE LEGISLATURE'S BRIEF IN SUPPORT OF
VERIFIED PETITION TO INTERVENE**

Jeremy C. Chou, ISB No. 5680
Morgan D. Goodin, ISB No. 11184
GIVENS PURSLEY LLP
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720
Attorneys for proposed Intervenor-Respondent

The Idaho State Legislature, through President Pro Tempore of the Senate, Kelly Arthur Anthon, and Speaker of the Idaho House of Representatives, Mike Moyle, moves the Court for leave to intervene under Idaho Appellate Rules 5(a) and 7.1.

The Idaho Constitution vests the Legislature with plenary power over taxation. *See generally* IDAHO CONST. art. VII. That power includes awarding tax credits. *See Emps. Res. Mgmt. Co. v. Kealey*, 166 Idaho 449, 452 (2020). And the Legislature has “absolute control” over state finances, except as limited by the Constitution. *Ybarra v. Legislature of the State of Idaho*, 166 Idaho 902, 913 (2020).

The Legislature has exercised that power to provide tax credits to parents making certain educational choices for their children. During the 2025 legislative session, the Legislature enacted House Bill 93, which reflects policy decisions about tax credits. Because this petition challenges both the constitutionality of House Bill 93 and the scope of the Legislature’s taxing power, the Legislature seeks intervention.

Intervention is appropriate under both Idaho Code § 67-465 and Idaho Appellate Rule 7.1.

Idaho Code § 67-465 gives the Legislature an unconditional right to intervene; it authorizes the Legislature to intervene in an action “as a matter of right, or permissively,” when a party challenges the “constitutionality of an Idaho statute, facially or as applied” or “otherwise challenges the construction or validity of an Idaho statute.” The Petition challenges the constitutionality of House Bill 93, codified as Idaho Code §§ 63-3029N and 67-1230. Petition ¶¶ 1, 13. So the Legislature’s intervention is appropriate.

Idaho Appellate Rule 7.1 also provides an independent basis for granting intervention because the Legislature’s “interest would be affected by the outcome of” this

proceeding. The Legislature has an interest in defending the scope of its power over taxation, including tax credits. *See* IDAHO CONST. art. VII; *Emps. Res. Mgmt. Co. v. Kealey*, 166 Idaho 449, 452 (2020). The outcome of this proceeding affects that interest because the Petitioners’ challenge to the constitutionality of House Bill 93 implicates the Legislature’s taxing power.

Intervention will not unduly delay or prejudice the adjudication of the original parties’ rights. *See* Idaho App. R. 7.1. The petition was filed on September 17, 2025. This Court set a briefing schedule on September 26, 2025; the Legislature seeks intervention just three business days later.¹ Because this proceeding is in its early stages, the Legislature’s intervention will not unduly delay or prejudice the original parties.

For these reasons, the Legislature respectfully requests that this Court grant intervention.

Dated: October 1, 2025.

GIVENS PURSLEY LLP

By /s/ Jeremy C. Chou
Jeremy C. Chou
Morgan D. Goodin
Attorneys for the Idaho State
Legislature

¹ The State recently moved for an extension of time. The Legislature does not oppose the State’s extension. If the Court grants the extension, the Legislature asks that its response brief be due at the same time as the State’s so that briefing proceeds on the same track.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 1, 2025, I filed the foregoing electronically through the iCourt System, which caused the following parties or counsel to be served by electronic means:

Marvin M. Smith
Marvin K. Smith
Craig L. Meadows
Brandon Helgeson
Jean Schroeder
Hawley Troxell Ennis & Hawley LLP
2010 Jennie Lee Drive
Idaho Falls, Idaho 83404
877 W. Main Street, Suite 200
P.O. Box 1617
Boise, ID 83701-1617
mmsmith@hawleytroxell.com
mksmith@hawleytroxell.com
cmeadows@hawleytroxell.com
bhelgeson@hawleytroxell.com
jschroeder@hawleytroxell.com
Attorneys for Petitioners

Thomas M. Fisher
Bryan Cleveland
EdChoice Legal Advocates
111 Monument Circle, Suite 2650
Indianapolis, IN 46204
tfisher@edchoice.org
bcleveland@edchoice.org
*Attorneys for Proposed Intervenor-
Respondents Parent Petitioners*

Renee Flaherty
Institute for Justice
901 North Glebe Road, Suite 900
Arlington, VA 22203
rflaherty@ij.org
*Attorneys for Proposed Intervenor-
Respondents Parent Petitioners*

Alan M. Hurst
James E.M. Craig
Michael A. Zarian
Sean M. Corkery
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010
alan.hurst@ag.idaho.gov
james.craig@ag.idaho.gov
michael.zarian@ag.idaho.gov
jack.corkery@ag.idaho.gov
Attorneys for Respondent

Jason R. Mau
Parsons Behle & Latimer
800 West Main Street, Suite 1300
Boise, Idaho 83702
jmau@parsonsbehle.com
*Attorneys for Proposed Intervenor-
Respondents Parent Petitioners*

/s/ Jeremy C. Chou
Jeremy C. Chou