

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

VERIFIED ANSWER

RAÚL R. LABRADOR
ATTORNEY GENERAL

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Attorneys for Respondent

Respondent Idaho State Tax Commission hereby responds to the Petition and asserts affirmative defenses in this matter as follows:

RESPONSE

Respondent denies every allegation contained in the Petition unless expressly admitted herein.

RESPONSE TO “INTRODUCTION”

1. To the extent paragraph 1 states the relief that Petitioner seeks, no response is required. To the extent paragraph 1 states otherwise, Respondent denies the allegations of paragraph 1, except that the cited statutes speak for themselves.
2. Respondent admits that the Idaho Parental Choice Tax Credit program provides a refundable tax credit to help full-time Idaho residents pay for eligible nonpublic school expenses. To the extent paragraph 2 states otherwise, Respondent denies the allegations of paragraph 2.
3. Respondent admits that the Idaho Parental Choice Tax Credit program provides a dollar-for-dollar refundable tax credit to some parent applicants who incur qualified expenses and have filed an application with the Tax Commission. To the extent paragraph 3 states otherwise, Respondent denies the allegations of paragraph 3, except that the cited statute speaks for itself.
4. Respondent admits that the Idaho Parental Choice Tax Credit program will sometimes allow a tax credit of up to \$7,500 for students of up to 21 years of age who are considered children with disabilities requiring ancillary personnel. To the extent

paragraph 4 states otherwise, Respondent denies the allegations of paragraph 4, except that the cited statutes speak for themselves.

5. Respondent admits that the Idaho Parental Choice Tax Credit program does not allow parents to claim a tax credit under this program if the student was enrolled full-time or part-time in a public school, including public charter schools, public virtual charter schools, public magnet schools, or part-time public kindergarten. Moreover, Respondent admits that the Idaho Parental Choice Tax Credit program does not allow a parent to claim a tax credit for any tuition or fees related to academic instruction provided by the parent to such parent's eligible student. To the extent paragraph 5 states otherwise, Respondent denies the allegations of paragraph 5, except that the cited statutes speak for themselves.

6. Respondent admits that the Idaho Parental Choice Tax Credit program provides a refundable tax credit, which refunds excess credit to the taxpayer if the credit exceeds the total tax imposed by the State. Moreover, Respondent admits that in some instances, for certain qualified applicants with limited means, the program allows for a one-time advance payment. To the extent paragraph 6 states otherwise, Respondent denies the allegations of paragraph 6, except that the cited statutes speak for themselves.

7. Respondent admits that the total amount of tax credits authorized for all taxpayers under the Idaho Parental Choice Tax Credit program is limited to \$50,000,000 each tax year. Moreover, Respondent admits that one of the potential

sources of funds to pay for the tax credit is through legislative appropriation of State funds. To the extent paragraph 7 states otherwise, Respondent denies the allegations of paragraph 7, except that the cited statutes speak for themselves.

8. Respondent admits that Idaho Code § 63-3029N shall not be construed to permit any government agency to exercise control or supervision over any nonpublic school or to give the state authority to regulate the education of nonpublic school students. Moreover, Respondent admits that the provision does not give the State Board of Education or the State Superintendent of Education the authority to regulate the education of nonpublic school students. To the extent paragraph 8 states otherwise, Respondent denies the allegations of paragraph 8, except that the cited statutes speak for themselves.

9. Respondent denies the allegations of paragraph 9, except that the cited statutes speak for themselves.

10. Respondent denies the allegations of paragraph 10, except that the cited constitutional provision speaks for itself.

11. To the extent paragraph 11 states the relief that Petitioner seeks, no response is required. To the extent paragraph 11 states otherwise, Respondent denies the allegations of paragraph 11, except that the cited statute speaks for itself.

12. To the extent paragraph 12 states the relief that Petitioner seeks, no response is required. Respondent admits that the Idaho Constitution provides a process for amending it. To the extent paragraph 12 states otherwise, Respondent denies the

allegations of paragraph 12, except that the cited constitutional provision speaks for itself.

RESPONSE TO “JURISDICTION”

13. Respondent admits the Court has “original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to complete the exercise of its appellate jurisdiction.”

14. Respondent admits that a writ of prohibition may be used in certain circumstances to arrest the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person. To the extent paragraph 14 states otherwise, Respondent denies the allegations of paragraph 14, except that the cited statutes speak for themselves.

15. Respondent denies the allegations of paragraph 15.

16. To the extent paragraph 16 states the relief that Petitioner seeks, no response is required. To the extent paragraph 16 states otherwise, Respondent denies the allegations of paragraph 16.

RESPONSE TO “PARTIES AND STANDING”

17. Respondent is without knowledge or information sufficient to form a belief as to the truth of paragraph 17 and therefore denies the same.

18. Respondent is without knowledge or information sufficient to form a belief as to the truth of paragraph 18 and therefore denies the same.

19. Respondent admits that School District No. 281 is a statutory creation that assists in the provision of public education to students in that district. Respondent denies that School District No. 281 has standing. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 19 and therefore denies the same.

20. Respondent denies that the Idaho Education Association has standing. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 20 and therefore denies the same.

21. Respondent denies that the Idaho Parental Choice Tax Credit program is unconstitutional. Respondent denies that the program diminishes the role of the State Board of Education and the State Superintendent of Public Instruction. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 21 and therefore denies the same.

22. Respondent denies that Marta Hernandez has standing. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 22 and therefore denies the same.

23. Respondent is without knowledge or information sufficient to form a belief as to the truth of paragraph 23 and therefore denies the same.

24. Respondent denies that Alexis Morgan has standing. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 24 and therefore denies the same.

25. Respondent denies that Kristine Anderson has standing. Respondent is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 25 and therefore denies the same.

26. Respondent is without knowledge or information sufficient to form a belief as to the truth of the first sentence of paragraph 26 and therefore denies the same. Respondent denies the remaining allegations of paragraph 26, except that the cited case speaks for itself.

27. Respondent admits that Petitioners have attached declarations to their Petition. Respondent otherwise denies the allegations of paragraph 27.

28. Respondent admits that the Idaho Tax Commission is the respondent in that case and that one of its duties is to assess and collect all taxes and administer all programs relating to taxes that are the responsibility of the state tax commission. Moreover, Respondent admits that it is the Commission designated to administer the challenged program.

RESPONSE TO “FACTS”

A. The Program

29. Respondent admits the Legislature enacted HB 93 during the 2025 Legislative Session with an effective date retroactive to January 1, 2025.

30. Respondent admits that HB 93 has not been amended or appealed since its enactment.

31. Respondent admits that the Idaho Parental Choice Tax Credit program provides a refundable tax credit to some parent applicants who incur qualified expenses and have filed an application with the Tax Commission. Respondent further admits that maximum tax credit available is \$5,000 per year unless the student is considered a child with disabilities requiring ancillary personnel, in which case the maximum tax credit available is \$7,500. To the extent paragraph 4 states otherwise, Respondent denies the allegations of paragraph 31, except that the cited statutes speak for themselves.

32. Respondent admits that an “eligible” student under the Idaho Parental Choice Tax Credit program includes, but is not limited to, full-time residents of Idaho who is five (5) to eighteen (18) years of age. Moreover, Respondent admits that students who are enrolled full-time or part-time in a public school cannot have a tax credit claimed on their behalf. To the extent paragraph 32 states otherwise, Respondent denies the allegations of paragraph 32, except that the cited statutes speak for themselves.

33. Respondent admits that an “eligible” student under the Idaho Parental Choice Tax Credit program includes, but is not limited to, children with disabilities requiring ancillary personnel as defined in section 33-2001, Idaho Code, who are five (5) to twenty-one (21) years of age. To the extent paragraph 33 states otherwise, Respondent denies the allegations of paragraph 33, except that the cited statute speaks for itself.

34. Respondent admits that the amount of tax credits available under the program per taxable year is \$50,000,000. To the extent paragraph 34 states otherwise,

Respondent denies the allegations of paragraph 34, except that the cited statute speaks for itself.

35. Respondent admits the program prohibits Idaho parents from taking advantage of the advance payment if their income exceeds 300% of the federal poverty level. Respondent admits that the program does not prohibit Idaho residents from taking advantage of the tax credit on the basis of income apart from the advance credit. Moreover, Respondent admits that the program prioritizes parents whose income does not exceed 300% of the federal poverty level. To the extent paragraph 35 states otherwise, Respondent denies the allegations of paragraph 35, except that the cited statutes speak for themselves.

36. Respondent admits that in the years following 2026, the Idaho State Tax Commission shall give priority status to applications from parents who received a credit in the prior year, followed by parents whose taxable income as indicated on their most recently filed tax return does not exceed three hundred percent (300%) of the federal poverty level.

37. Respondent admits that the program's tax credit can only be claimed for qualified expenses incurred on behalf of an eligible student.

38. Respondent admits "qualified expenses" means: kindergarten through grade 12 tuition or fees for attending a nonpublic school, tutoring, nationally standardized assessments, assessments used to determine college admission, advance placement examinations, industry-recognized certification exams, and preparatory courses for

nationally standardized assessments; costs for textbooks, curricula used for kindergarten through grade 12 academic instruction, and transportation costs to and from a facility incurred for the purposes of receiving kindergarten through grade 12 academic instruction, including public transportation, ridesharing, and the use of privately owned vehicles.

39. Respondent admits that parents may not claim the credit for any tuition or fees related to academic instruction provided by the parent to such parent's eligible student. Moreover, Respondent admits that parents may not claim the credit for any semester in which a student was enrolled full-time or part-time in a public school, public charter school, public virtual charter school, public magnet school, or part-time public kindergarten. Respondent admits that the Empowering Parents program provided grants to Idaho residents for eligible education expenses. Moreover, Respondent admits that the Empowering Parents program provided grants to public, private, and homeschool students.

B. The Transfer of Public Funds to Private Schools.

40. Respondent admits that the application period for the program opens on January 15, 2026.

41. Respondent admits that the program provides a refundable tax credit.

42. Respondent admits that certain applicants with limited means might be able to receive a one-time advance payment of the tax credit.

43. Respondent admits that HB 93 creates the “Idaho Parental Choice Tax Credit Advance Payment Fund,” which will be administered by Respondent, the Idaho Tax Commission. Respondent further admits that the money in the fund will consist of legislative appropriations and transfers; donations and contributions made to the fund; reversions of unused, paid back, or recovered advance payment funds; and interest earned on idle moneys in the fund.

44. Respondent admits the money in the fund will be continuously used to pay advance payments awarded under the Idaho parental choice tax credit program. To the extent paragraph 44 states otherwise, Respondent denies the allegations of paragraph 44, except that the cited statute speaks for itself.

45. Respondent admits that the deadline to provide advance payments is August 30. Respondent admits that under its proposed timeline, it plans on notifying parents whether they will receive the advance tax credit beginning on April 15, 2026. Respondent admits that the advance payment will be issued within sixty (60) days of notifying a parent of such credit award. To the extent paragraph 45 states otherwise, Respondent denies the allegations of paragraph 45.

46. Respondent denies the allegations of paragraph 46, except that the cited statute speaks for itself.

47. Respondent denies the allegations of paragraph 47, except that the cited Arizona Mirror article concerning the fiscal projections for Arizona’s school choice program

speaks for itself. Respondent lacks information to admit or deny the statements in the Arizona Mirror article.

C. Private Schools Receiving Funds Through The Program Are Not Subject To The Same Standards And Accountability As Public Schools.

48. Respondent admits that qualified expenses under the program include tuition at a nonpublic school—either accredited or not—that provides academic instruction which includes, at a minimum, English language arts, mathematics, science, and social studies. Respondent admits that the program does not discriminate on the basis of religion. Respondent admits that nonpublic school tuition may go towards religious instruction. Respondent admits that the statute does not limit qualified expenses to tuition at nonpublic schools located exclusively in the State. To the extent paragraph 48 states otherwise, Respondent denies the allegations of paragraph 48, except that the cited statutes speak for themselves.

49. Respondent admits that the Idaho Parental Choice Tax Credit program does not restrict how nonpublic schools use tuition payments, nor does the program place restrictions on the tuition or fees private schools charge parents.

50. Respondent admits that Article IX, Section 2 of the Idaho Constitution states, “The general supervision of the state educational institutions and public school system of the state of Idaho, shall be vested in a state board of education, the membership, powers and duties of which shall be prescribed by law. The state superintendent of public instruction shall be ex officio member of said board.”

51. Respondent admits that this Court has stated the State Board of Education is “the single constitutionally mandated board of authority to act as a whole body on all educational issues.” Respondent admits that the tax credit is administered by Respondent, rather than the State Board of Education. To the extent Petitioners are asking this Court to “compare” different program relationships, no response is required. To the extent paragraph 51 states otherwise, Respondent denies the allegations of paragraph 51, except that the cited statute and case speak for themselves.

52. Respondent admits that Idaho Code § 63-3029N shall not be construed to permit any government agency to exercise control or supervision over any nonpublic school or to give the state authority to regulate the education of nonpublic school students. Moreover, Respondent admits that a nonpublic school that enrolls a student whose parent directs a refundable tax credit to the school pursuant to this section is not an agent of the state or federal government. Further, Respondent admits that this program does not require any nonpublic school to alter its creed, practices, admissions policy, or curriculum in order to accept students whose payment of tuition or fees stems from a refundable tax credit. Finally, Respondent admits that the provision does not give the State Board of Education or the State Superintendent of Education the authority to regulate the education of nonpublic school students.

53. Respondent admits that the Idaho State Tax Commission has the power to audit parents receiving tax credits and deny or recapture credits claimed by a parent for expenditures not authorized by the program. Respondent admits that the Legislative

Services Office will deliver to parents who received a tax credit a parent satisfaction and engagement survey to evaluate the performance of the nonpublic school that the eligible student attended. Respondent admits the survey shall include, but is not limited to, the quality of school leadership, school safety, student engagement, quality of academic instruction, and quality of learning outcomes. Respondent admits that the legislative services office will submit a report to the governor, the senate local government and taxation committee, the house revenue and taxation committee, and the joint finance-appropriations committee that will include a summary of the survey results. Respondent admits that the legislative services office is not required to send the report to the State Board of Education or the State Superintendent of Public Instruction. To the extent paragraph 53 states otherwise, Respondent denies the allegations of paragraph 53, except that the cited statutes speak for themselves.

54. Respondent admits that a nonpublic school is not required to alter its creed, practices, admissions policy, or curriculum in order to accept students whose payment of tuition or fees stems from a refundable tax credit under the program. Respondent admits that the nonpublic school need not be accredited for parents to incur qualified expenses.

55. Respondent denies the allegations of paragraph 55.

RESPONSE TO “FIRST CAUSE OF ACTION”

56. Respondent incorporates the preceding paragraphs as if set out here in full.

57. Respondent admits that Article IX, Section 1 of the Idaho Constitution states, “The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.”

58. Respondent denies the allegations of paragraph 58.

59. Respondent denies the allegations of paragraph 59.

60. Respondent denies the allegations of paragraph 60.

RESPONSE TO “SECOND CAUSE OF ACTION”

61. Respondent incorporates the preceding paragraphs as if set out here in full.

62. Respondent admits that this Court has stated, “it is a fundamental constitutional limitation upon the powers of government that activities engaged in by the state, funded by tax revenues, must have primarily a public rather than a private purpose.”

63. Respondent admits that this Court has stated, “[a] public purpose is an activity that serves to benefit the community as a whole and which is directly related to the functions of government.”

64. Respondent denies the allegations of paragraph 64.

65. Respondent denies the allegations of paragraph 65.

66. Respondent denies the allegations of paragraph 66.

AFFIRMATIVE AND OTHER DEFENSES

The following are defenses that Respondent asserts based on the facts alleged in the action. In disclosing these defenses, Respondent does not assume any burden of proof not otherwise required by law. Moreover, Respondent undertakes the burden of proof only as to those defenses deemed “affirmative” defenses by law, regardless of how such defenses are denominated herein.

FIRST AFFIRMATIVE DEFENSE

Petitioners lack standing.

SECOND AFFIRMATIVE DEFENSE

The Petition fails to state a claim upon which relief may be granted.

PRAYER FOR RELIEF

Respondent requests judgment and prays for relief as follows:

1. Petitioner’s petition be dismissed and that the Petitioner take nothing thereby;
2. Award attorney fees and costs of this action to Respondent under either Idaho Code § 12-117(4) or § 117(1);
3. For any other relief that the Court deems just and equitable under the circumstances of this action.

Respectfully submitted.

DATED: November 10, 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

VERIFICATION

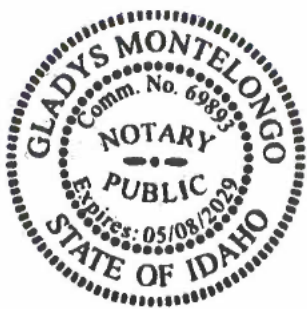
Under Idaho Code § 9-1406, I, Janet Moyle, State Tax Commissioner of the Idaho State Tax Commission, declare that I have read this ANSWER and believe the facts stated therein are true based upon my own information and belief.

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED:

November 10, 2025,

Signed and verified before me:



Janet Moyle

JANET MOYLE
STATE TAX COMMISSIONER
IDAHO STATE TAX COMMISSION

Gladys Montelongo
11/10/2025
Ada County, ID

CERTIFICATE OF SERVICE

I certify that on November 10, 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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