

**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,

and

IDAHO STATE LEGISLATURE,  
Intervenor-Respondent.

**Docket No. 53264-2025**

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**MEMORANDUM OF COSTS AND FEES**

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RAÚL R. LABRADOR  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 83720  
Boise, ID 83720-0010  
(208) 334-2400  
michael.zarian@ag.idaho.gov

MICHAEL A. ZARIAN, ISB #12418  
Solicitor General

JAMES E. M. CRAIG, ISB #6365  
Chief, Civil Litigation and  
Constitutional Defense

SEAN M. CORKERY, ISB #12350  
Assistant Solicitor General

*Attorneys for Respondent*

On February 5, 2026, the Court denied the Verified Petition for Writ of Prohibition in this proceeding and concluded that the Idaho State Tax Commission was entitled to receive an award of its reasonable attorney fees under Idaho Code § 12-117(4). Pursuant to Idaho Rules of Appellate Procedure 40(c) and 41(d), the Tax Commission now files its Memorandum of Costs and Fees.

### **SUMMARY OF REQUESTED AWARD**

The Tax Commission requests an attorney fee award of \$106,827.50. A table of relevant rates and hours is attached to a declaration accompanying this memorandum. *See* Declaration of James E. M. Craig (“Craig Decl.”), Ex. A. The Tax Commission does not request any costs associated with this proceeding.

### **ARGUMENT**

Because this proceeding was an original action in this Court, “the amount of attorney fees” should be “determine[d]” by this Court. I.A.R. 41(d). To decide what is a “reasonable” amount, Idaho Code § 12-117(4), the factors listed in Idaho Rule of Civil Procedure 54(e)(3) provide a helpful guide. *See Bailey v. Bailey*, 153 Idaho 526, 530, 284 P.3d 970, 974 (2012) (“When a court makes a determination regarding the reasonableness of the amount of an award of attorney fees, it is to consider the factors set forth in I.R.C.P. 54(e)(3).”). Each of those factors will be addressed in turn.

#### **A. The time and labor required.**

Opposing the Petition was no small endeavor. Counting the 17 supporting declarations, the Petition was 134 pages long. The brief supporting the Petition was 40

pages long and raised four different issues—including standing, which had to be evaluated for each of the nine Petitioners based on factual allegations unique to each. Responding to the Petition required preparing a Verified Answer, drafting a responsive brief, and securing declarations to counter the claims made in Petitioners’ many declarations. It also ultimately required preparing for and delivering an oral argument, which reasonably entailed further legal research, additional review of materials cited in the briefs, and moot oral arguments.

Several aspects of the Petition made it particularly time-consuming to respond to. For one, the Petition raised novel legal theories regarding the scope of Article IX, Section 1 of the Idaho Constitution and the public purpose doctrine. Without settled Idaho law to rely on, refuting Petitioners’ theories required an appeal to first principles, historical sources, and the decisions of sister state supreme courts. Moreover, it was quite burdensome to negate Petitioners’ “speculative and hypothetical” assertions of harm. Op. at 7. Respondent sought to draw out the gaps in Petitioners’ factual support through discovery, but when the request for discovery was denied, Respondent had to comb through publicly available data to gather evidence that would expose the speculative nature of Petitioners’ claims of harm.

The task of responding to the Petition was only made more demanding by the abbreviated timeline requested by the Petitioners. Even after Respondent secured an extension of time (over Petitioners’ objection), responsive pleadings had to be prepared

within a compressed time frame of less than six weeks—much shorter than the “roughly seven months” Petitioners had to prepare for the lawsuit. Op. at 9.

A summary of the hours spent by Respondent’s counsel and the hourly rate requested for each attorney and paralegal is reproduced below. Respondent has excluded the time spent on the matter by at least six other attorneys, many of them supervisory attorneys who do not typically track their time spent on individual cases, including the Attorney General himself, his Chief Deputy, and the Division Chief of the Civil Litigation and Constitutional Defense Division (James Craig). Respondent has also excluded more than 20 hours spent preparing for potential discovery while the motion for discovery was pending—even though excluding such time was not necessary. *Burns Concrete v. Teton Cnty.*, 172 Idaho 82, 91, 529 P.3d 747, 756 (2023). Finally, Respondent excluded all time spent preparing this memorandum of costs and fees.

Alan Hurst:	24.0 hours at \$315 an hour = \$7,560
Michael Zarian:	166.3 hours at \$275 an hour = \$45,732.50
Sean Corkery:	86.5 hours at \$225 an hour = \$19,462.50
Gader Wren:	56.9 hours at \$225 an hour = \$12,802.50
Jaden Steeves:	74.3 hours at \$225 an hour = \$16,717.50
Caleb Pirc:	7.5 hours at \$225 an hour = \$1,687.50
Isaac Considine:	19.1 hours at \$150 an hour = \$2,865
Total Fees:	\$106,827.50

**B. The novelty and difficulty of the questions.**

The questions presented in this case were both novel and significant. As the Court explained, “this matter present[ed] a question of great importance and constitutional urgency.” Op. at 11. Yet the Court’s precedents had not yet addressed whether Article IX, Section 1 of the Idaho Constitution was a ceiling or a floor. While the outcome ultimately was not a close call, *see* Op. at 19 (Moeller, J., specially concurring) (ruling did not require a “fundamental change in the constitutional landscape”), the novelty and importance of the questions of constitutional interpretation raised by the Petition—combined with the short timeline—made the case difficult to defend.

**C. The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.**

Respondent was represented by the Office of the Attorney General, with the Office of the Solicitor General (OSG) taking a leading role.<sup>1</sup> The OSG oversees all appellate litigation within the Office of the Attorney General, taking a more active role in matters involving constitutional challenges to Idaho’s statutes. The OSG regularly briefs and argues constitutional cases before the Idaho Supreme Court, the United States Supreme Court, and the United States Court of Appeals for the Ninth Circuit. Very few attorneys in the State engage in as much appellate and constitutional litigation on a day-to-day basis as the attorneys in the OSG.

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<sup>1</sup> The OSG received assistance from the Civil Litigation and Constitutional Defense Division.

As for the particular OSG attorneys who worked on the case, their credentials and experience are outlined in the accompanying declaration. Craig Decl. ¶¶ 7–12. It suffices to highlight that the two attorneys overseeing the matter—then-Solicitor General Alan Hurst and then-Deputy Solicitor General Michael Zarian—graduated from some of the top law schools in the nation, completed multiple clerkships with appellate courts, spent years practicing commercial litigation at respected national law firms, and had been in their roles with the OSG for nearly two years by the time they performed work responding to the Petition. Craig Decl. ¶¶ 7–8.

**D. The prevailing charges for like work.**

The State is seeking reasonable attorney fees between \$225 and \$315 per hour, and \$150 per hour for paralegals. As described in the accompanying declaration, these rates were set based on prevailing rates for attorneys with similar levels of experience across the State of Idaho. Craig Decl. ¶ 13.

Previous fee determinations made by Idaho courts support the hourly rates sought in this case. In a recent expedited original action before this Court, attorneys sought fees at \$435 and \$485 hourly rates. *Idahoans for Open Primaries v. Labrador*, No. 50940-2023 (Idaho) (Aug. 22, 2023 Petitioner’s Memorandum in Support of Motion for an Award of Reasonable Attorneys’ Fees and Costs). The Court reduced the requested fee award by nearly 20% without explaining whether that reduction was attributable to a reduction in claimed hourly rate or claimed hours, but even if the entire reduction was attributable to a reduced rate, the Court would still have approved hourly rates of approximately \$350

and \$400. *Id.* (Oct. 2, 2023 Order Awarding Attorney Fees and Costs). The fees requested by Respondent are lower than these rates and are more in line with rates awarded by courts in less complex matters. *Redmon v. State of Idaho*, Case No. CV01-23-00379 (June 23, 2025 Memorandum Decision and Order RE: Defendant's Motion for Attorney Fees and Motion for Rule 11 Attorney Fees) (Craig Decl., Ex. B) (finding that the \$315 hourly rates of two attorneys from the Attorney General's Civil Litigation and Constitutional Defense Division in a simple tort action was reasonable); *cf. Crane v. Godfrey*, 2024 WL 3381811, at \*13 (Idaho Ct. App. July 12, 2024) (reversing a district court's decision to lower a requested hourly rate from \$325 to \$300 in a property boundary dispute, because the \$325 rate was reasonable).

Rate determinations in Idaho's federal district court also support the reasonableness of these rates. A court recently found that a law firm partner's \$400 hourly rate and a seventh-year associate's \$325 hourly rate in an employment case were both reasonable. *See Ivanov v. Fitness Elite Training Ctr., Inc.*, 2024 WL 2978627, at \*4 (D. Idaho June 13, 2024) (considering Rule 54(e) factors). This is consistent with (and often lower than) other hourly rates recently found to be reasonable. *See, e.g., Carbajal v. Hayes Mgmt. Servs.*, 2025 WL 2418787, at \*2 (D. Idaho Aug. 21, 2025) (hourly rates of \$360 and \$310 reasonable in Title VII case); *SBP LLLP v. Hoffman Constr. Co. of Am.*, 2025 WL 959517, at \*4 (D. Idaho Mar. 31, 2025) (hourly rates of \$460, \$410, \$375, \$335, and \$230 reasonable for attorneys of various experience levels in contract case); *Sapphire Hosp. Invs.*,

*LLC v. Oregon Mut. Ins. Co.*, 2025 WL 3187382, at \*2 (D. Idaho Nov. 14, 2025) (rates of \$500 for partner and \$265 for associate reasonable in insurance case).

Likewise, the \$150 paralegal rate is reasonable in the Boise market. *Hanigan v. OpSec Sec., Inc.*, 2023 WL 6878762, at \*3 & n.5 (D. Idaho Oct. 18, 2023) (approving paralegal rates of \$175 and \$150 per hour, and citing multiple cases with similar attorney and paralegal rates as those requested by Respondent here); *see Redmon*, Case No. CV01-23-00379 (finding \$150 per hour reasonable for OAG paralegals). Again, this is lower than other rates found to be reasonable. *Sapphire Hosp.*, 2025 WL 3187382 at \*2 (hourly staff rate of \$200 reasonable); *SB LLLP*, 2025 WL 959517 at \*4 (hourly paralegal rates between \$155 and \$195 were reasonable).

**E. Whether the fee is fixed or contingent.**

This factor does not apply here. The Attorney General does not have a fee arrangement with the Tax Commission—he is required by law to represent the Tax Commission. Idaho Code § 67-1401(1). Moreover, fees awarded to attorneys working for the Office of the Attorney General are calculated based on reasonable hourly rates, not rates actually billed. *Inclusion, Inc. v. Idaho Dep’t of Health and Welfare*, 161 Idaho 239, 241–42, 385 P.3d 1, 3–4 (2016).

**F. The time limitations imposed by the client or the circumstances of the case.**

Because the Petitioners delayed “roughly seven months” in filing the Petition, the circumstances of this case imposed significant time limitations. *Op.* at 8–9 (“The urgency associated with the Petition appears, at least in part, to have been created by the

Petitioners.”). By the time Petitioners filed the Petition on September 17, 2025, the date on which the Tax Commission was expected to receive applications for the parental choice tax credit (January 15, 2026)—and the date on which Petitioners requested that the Petition be resolved—was less than four months away. That meant Respondent had roughly six weeks to respond to the Petition (after the Court granted an extension). This time crunch required more attorneys to be involved to finish the necessary work products in a timely manner.

**G. The amount involved and the results obtained.**

While no damages were at stake in this proceeding, the law whose implementation Petitioners sought to prohibit involved \$50 million of tax credit supporting educational opportunities for Idaho children. Because Respondent prevailed and the Petition was denied in its entirety, that money may now be distributed to Idaho families. The decision also reinforced several important principles of law, including the plenary power of the Legislature and its ability to support educational opportunities outside of the public school system, including through tax credits. Respondent could hardly have hoped for a more favorable outcome.

**H. The undesirability of the case.**

This factor does not apply here. The factor takes into account that representing a client in certain matters may not be “pleasantly received by the community,” and thereby may have an “economic impact on [an attorney’s] practice.” *Johnson v. Ga. Hwy Exp., Inc.*, 488 F.2d 714, 719 (5th Cir. 1975), *abrogated on other grounds*; *see also Stanley v. McDaniel*, 128

Idaho 343, 346, 913 P.2d 76, 79 (Ct. App. 1996) (noting “I.R.C.P. 54(e)(3) and federal law are substantially similar” and citing *Johnson*). H.B. 93 certainly has its proponents and opponents, but the Attorney General is required by Idaho law to represent the Tax Commission, so the desirability of the case had no impact on his decision to represent the Commission. Idaho Code § 67-1401(1).

**I. The nature and length of the professional relationship with the client.**

This factor does not apply here. The Attorney General is required by law to represent the Tax Commission and has been since the State was founded. Idaho Code § 67-1401(1); *see also* Idaho Rev. Stat. § 250 (1887) (“It is the duty of the Attorney General . . . [to] prosecute or defend all causes to which the Territory or any officer thereof is, in his official capacity, a party”).

**J. Awards in similar cases.**

The award requested in this case is right in line with the amount of fees sought and awarded in similar cases. In *Reclaim Idaho v. Denney*, where petitioners sought a writ of prohibition and raised standing and constitutional issues, the Court awarded the petitioners attorney fees. 169 Idaho 406, 497 P.3d 160 (2021). The petitioners there sought more than \$150,000 in attorney fees, and the amount of fees was ultimately settled by the parties. Craig Decl., ¶ 15; *id.*, Ex. C. Another similar case was *Idahoans for Open Primaries v. Labrador*, in which petitioners sought writs of certiorari and mandamus to challenge ballot titles assigned to an initiative. 172 Idaho 466, 533 P.3d 1262 (2023). That case was simpler than this one, and the Court awarded \$79,968 in attorney fees and costs.

**K. The reasonable cost of automated legal research, if the court finds it was reasonably necessary.**

This factor is inapplicable because the Attorney General has an annual subscription to online legal research services. Because the cost cannot be attributed to any individual case, Respondent does not request any costs related to legal research.

**L. Any other appropriate factor.**

Respondent is unaware of any other appropriate factor in this case.

**CONCLUSION**

Respondent respectfully requests that the Court grant its request for a reasonable attorney fees award of \$106,827.50.

DATED: February 19, 2026

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Michael A. Zarian

Michael A. Zarian  
Solicitor General

James E. M. Craig  
Chief, Civil Litigation  
and Constitutional Defense

Sean M. Corkery  
Assistant Solicitor General

**CERTIFICATE OF SERVICE**

I certify that on February 19, 2026, 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:

Marvin M. Smith  
mmsmith@hawleytroxell.com  
Marvin K. Smith  
mksmith@hawleytroxell.com  
Craig L. Meadows  
cmeadows@hawleytroxell.com  
Brandon Helgeson  
bhelgeson@hawleytroxell.com  
Jean Schroeder  
jschroeder@hawleytroxell.com

*Attorneys for Petitioners*

Jeremy C. Chou  
jcc@givenspursley.com  
Morgan D. Goodin  
morgangoodin@givenspursley.com  
  
*Attorneys for Intervenor-Respondent Idaho State  
Legislature*

/s/ Michael A. Zarian  
Michael A. Zarian