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Attorneys for Petitioners

IN THE SUPREME COURT OF THE STATE OF IDAHO

RECLAIM IDAHO, and the COMMITTEE TO
PROTECT AND PRESERVE THE IDAHO
CONSTITUTION, INC.,

Petitioners,

v.

LAWERENCE DENNEY, the Idaho Secretary of
State, and the STATE OF IDAHO,

Respondents, and

SCOTT BEDKE in his official capacity as
Speaker of the House of Representatives of the State
of Idaho; and CHUCK WINDER, in his official
capacity as President Pro Tempore of the Idaho State
Senate; SIXTY-SIXTH IDAHO LEGISLATURE,

Intervenor-Respondents.

Case No. 48784-2021

**PETITIONERS' MOTION
FOR AN AWARD OF
REASONABLE
ATTORNEYS' FEES AND
COSTS**

The Court has concluded that attorneys' fees are warranted in this case under the private attorney general doctrine. The Court found: "The contested legislation constituted a grave infringement on the people's constitutional rights, making this matter vital to the public interest to people across Idaho. Accordingly, this Court grants attorney fees for Reclaim and the Committee, to be apportioned equally between the SOS and the Legislature, inasmuch as both were active in opposing the petition." Decision dated August 23, at p. 46.

Based on that finding, Petitioners are entitled to recover their attorneys' fees and costs. They now move this Court to order Respondents and Intervenors to pay \$150,947.50 for Petitioners' reasonable attorneys' fees and \$918.50 in costs, to be shared equally between the Respondents and Intervenors. In support, Petitioners have attached the declarations of Deborah A. Ferguson, Craig H. Durham, Richard Eppink and Howard Belodoff, together with a memorandum of law.

Respectfully submitted,

/s/ Deborah A. Ferguson
Deborah A. Ferguson

Craig H. Durham
Ferguson Durham PLLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of September, 2021, I electronically filed the foregoing document using the iCourt E-File system, and emailed a copy to counsel for Respondents at:

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/s/ Deborah A. Ferguson
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RECLAIM IDAHO, and the COMMITTEE TO
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LAWERENCE DENNEY, the Idaho Secretary of
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SCOTT BEDKE in his official capacity as
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Senate; SIXTY-SIXTH IDAHO LEGISLATURE,

Intervenor-Respondents.

Case No. 48784-2021

**DECLARATION OF DEBORAH
A. FERGUSON IN SUPPORT OF
PETITIONERS' MOTION FOR
AN AWARD OF REASONABLE
ATTORNEYS' FEES AND
EXPENSES**

I, Deborah A. Ferguson, hereby declare and state as follows:

1. I am a partner at Ferguson Durham, PLLC, and counsel for the Petitioners in this action, along with my law partner, Craig Durham. I am submitting this declaration in support of the Petitioners' Motion for Reasonable Attorneys' Fees and Expenses. I have personal knowledge of the matters stated in this declaration and could competently testify to these facts.

2. I am a member in good standing of the Idaho State Bar, and am admitted to practice before this Court, the Ninth Circuit Court of Appeals and the Supreme Court of the United States.

3. Ferguson Durham has expended 332.20 hours in this case. As lead counsel, I have worked 240.90 through September 2, 2021. My hourly rate for civil rights and related work is \$475.00 an hour. I am therefore seeking \$114,427.50 in attorney fees. I have attached a true and correct copy of my timesheets in Exhibit A.

4. Ferguson Durham also incurred \$ 918.50 of costs in this litigation.

MY LEGAL BACKGROUND

5. I have practiced law in the area of civil litigation for 35 years. I am a 1986 graduate of Loyola University Chicago School of Law. I began practicing law in Chicago, Illinois in September 1986. I worked initially at a small law firm specializing in litigation, and then from 1987-1991 for Katten Muchin & Zavis, a national law firm in its

Chicago litigation department, where I tried cases in federal and state court.

6. I left private practice in 1991 and for twenty years, I was an Assistant United States Attorney in the U.S. Department of Justice. I served in the Civil Division of the Northern District of Illinois (Chicago) from 1991-1995 and in the District of Idaho from 1995-2012. During those two decades with the U.S. Department of Justice, I was lead counsel on hundreds of civil cases on behalf of a wide array of agencies and individuals, before the federal District Court of Idaho and the Northern District of Illinois, and on appeal before the Ninth and Seventh Circuit Courts of Appeals. As lead counsel, I handled and tried a wide variety of complex civil litigation, such as constitutional torts, environmental challenges, and medical malpractice defense. In March 2012, I left the U.S. Department of Justice to return to private practice, and began litigating and serving as a mediator civil matters.

FERGUSON DURHAM, PLLC

7. In August 2014 Craig Durham and I formed Ferguson Durham, PLLC, after we successfully established a right to same sex marriage in Idaho and the Ninth Circuit in the landmark case of *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014).

8. We are primarily a boutique firm that focuses on impact civil litigation in the area of civil rights and similar actions. A sample of recent cases of this type include:

- *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014) (establishing a right to marriage for lesbian and gay couples in Idaho and the Ninth Circuit);

- *Coeur D'Alene Tribe v. Denney*, 387 P.3d 761 (Idaho 2015) (granting a petition for writ of mandamus and finding that the Governor's veto of duly enacted legislation was invalid);
- *Visual Arts Collective, LLC v. Powell, et al.*, 1:16-cv-00414-BLW (D. Idaho 2016) (resulting in a settlement that changed an Idaho law that had chilled first amendment expression in artistic spaces);
- *Idaho Press Club v. Ada County*, CV01-19-16277 (Fourth Judicial Dist. 2019) (finding that Ada County had improperly and frivolously withheld public documents in violation of the public records act from journalists);
- *Edmo v. Corizon, et al.*, 935 F.3d 757 (2019) (upholding the district court's injunction requiring gender confirming surgery for an Idaho inmate who had consistently been denied medical care);
- And this case, *Reclaim Idaho et al. v. Denney et al.*, No. 48784-2021 (Idaho 2021) (petition for writ of prohibition granted by the Idaho Supreme Court striking down unconstitutional restrictions on citizens' initiatives and referenda in Idaho).

9. I have been appointed to serve as a Special Master by a federal Senior District Judge in a complex international electronic discovery dispute that arose in a commercial litigation in the District of Idaho. I have also been selected to serve as a Special Master in state court cases, and serve as a mediator and an arbitrator in dozens of civil cases each year.

10. I am active in the legal community in Idaho and in leadership positions in many professional organizations such as the Idaho State Bar where I served as President in 2011 and as a Bar Commissioner from 2008 to 2011. I also was the

founding chair of the Idaho Academy of Leadership for Lawyers (IALL). I have also served as the Idaho State Delegate and the Idaho State Bar Delegate to the American Bar Association since 2013, and I am a Life Time Fellow of the American Bar Foundation.

MY WORK IN THIS LITIGATION

11. There are not many private attorneys in Idaho who do plaintiff's side work in civil rights and related fields. Often the clients are unpopular, have unpopular causes, or cannot pay as they go. The risk is high that the attorneys will not be compensated. Only a small subset of attorneys in Idaho who do the work.

12. The present case fit the Ferguson Durham model. Reclaim Idaho is a grassroots volunteer group formed to improve the lives of Idaho's citizens through direct democracy, which sought to overturn an unjust law enacted by the powerful Legislature of Idaho. The Committee to Protect and Preserve the Idaho Constitution also sought to preserve the constitutional right to the initiative and referendum in Idaho. In the 2021 session, the Legislature enacted Senate Bill 1110, which we believed had effectively taken away Idahoans' right to initiative and repeal laws. Working with Reclaim Idaho and the Committee to Protect and Preserve the Idaho Constitution, we strategized how best to challenge the law. The timeline was short, because these groups were already starting to mount campaigns for the 2022 electoral cycle and they needed an immediate answer on the constitutionality of the law. Initially we attempted to

persuade the Governor to veto the law so that a costly and time-consuming legal challenge could be avoided. That proved unsuccessful.

13. Because of the expedited nature of the case, it required that we focus on this case and did not accept new cases during its pendency. We drafted the petition, gathered eight declarations in support and later supplemented it with two additional declarations and wrote a memorandum in support in a matter of days. It was filed on May 7 and I orally argued before this Court on June 29. In those seven weeks we invested a significant amount of time, 332.2 hours to be exact.

14. Mr. Durham and I did not duplicate our efforts. I took the lead role in the case and therefore expended the most time. I dove into researching this area of law and the complicated history of direct democracy in Idaho , gathering factual information and helping clients and witnesses put together very detailed declarations, responding to motions to strike, and, finally, orally arguing the case. We had conferences with each other and with our clients as was reasonably necessary. Mr. Durham took the first run at writing the petition and the opening and reply briefs which we then further refined together. We worked efficiently as a team.

15. Our work was made more onerous by the appearance of the Legislature as an Intervenor-Respondent. Not content to let the Attorney General's Office handle the government's interests, the Legislature hired private counsel at one of Idaho's largest and most expensive law firms, well-staffed with associates and paralegals. We now had

two opponents, each with three attorneys of record, to respond to. The Legislature and the Secretary of State's separate briefing did not overlap much. In some ways it was contradictory. We needed to address all those matters in responsive briefs and do so in a short period of time. And we prevailed on all of the issues presented.

16. My rate of \$475 an hour is also well in line with what I have been awarded by courts in the past. For example, an Idaho state court awarded me \$400 per hour and Mr. Durham \$350 per hour for work performed in 2019 in *Idaho Press Club v. Ada County*, CV-01-19-16277, Fourth Judicial District, Ada County. In the two years since we litigated that case, we increased our fees to be more consistent with the market. Five years ago, I received an hourly rate of \$400 per hour and Mr. Durham received an hourly rate of \$ 325 per hour in *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014). In 2017, I received a rate of \$425 per hour in *Idaho Rivers United v. U.S. Forest Service*, 16-cv-102-CWD. In 2018, I represented Hydro One Ltd., a publicly traded Canadian utility in a merger before the Idaho Public Utilities Commission at a rate of \$450 an hour. In that case, I was assured of payment for my services, without any contingency whatsoever. Likewise, and in direct contrast to this case, I was paid each month without delay, upon a submission of my invoice, and without the need to prevail in the matter and then submit a petition for fees.

17. Based on my 35 years as an attorney, my unique experience in these types of cases, my specific role in the case that relied on my strengths, and the complete

victory that we achieved for our clients, my rate and the time that I put into the case are reasonable.

18. Additional support comes from the declarations of Howard Belodoff and Ritchie Eppink, two esteemed and experienced civil rights attorneys in the community who do work similar to what Ferguson Durham does. These attorneys and others have been awarded rates like mine in other cases in Idaho.

19. Finally, it has been reported in the media that the Legislature's private attorney has "discounted" his rate to \$470 per hour to oppose this case. The total fee that the Legislature has paid to that attorney's firm for this matter, according to public reporting, is approximately \$180,000. If that fee is reasonable for the State of Idaho to pay in a losing effort, our lower request is eminently reasonable for a winning one. Further it appears that Ferguson Durham produced more work product in fewer hours than the Legislature's attorneys.

20. Accordingly, in light of the skill and experience needed to prosecute this case, the risks taken, the work required, the undesirability of the case, the need to attract competent counsel, and the excellent results achieved, I respectfully request that the Court approve this fee request.

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I declare under penalty of perjury that the foregoing is true and correct. Executed
in Boise, Idaho on this 3rd day of September, 2021.

/s _____
Deborah A. Ferguson

EXHIBIT A
To Ferguson Declaration

Activities Export

09/03/2021
11:24 AM

| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|-----------------|--|---|------------------|----------------|--------------|-----------------------|-------------------------------|
| 02/25/2021 | Ⓣ ● Unbilled | Review of SB1110. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 03/01/2021 | Ⓣ ● Unbilled | Research on comparison of UT and CO initiative restrictions. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 03/04/2021 | Ⓣ ● Unbilled | Research on Idaho initiative restrictions. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.50 | 475.00 | - | 712.50 |
| 03/08/2021 | Ⓣ ● Unbilled | Research on initiative challenges. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 03/09/2021 | Ⓣ ● Unbilled | Review of email from LM re: history of the signature requirements for initiatives. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 03/10/2021 | Ⓣ ● Unbilled | Strategy call with clients and CD. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.70 | 475.00 | - | 332.50 |
| 03/10/2021 | Ⓣ ● Unbilled | Teleconference with Brady Hall and others regarding governor vetoing the bill. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.70 | 475.00 | - | 332.50 |
| 03/11/2021 | Ⓣ ● Unbilled | Phone call with Luke Mayville and CD on structure and case strategy. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 03/12/2021 | Ⓣ ● Unbilled | Phone conference with Luke Mayville on litigation strategy. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

Activities Export

09/03/2021
11:24 AM

| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|---|---|------------------|----------------|--------------|-------------------|---------------------|
| | | ● Unbilled | | | | | | |
| 04/01/2021 | ⌵ | Research on state constitutional challenge. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.50 | 475.00 | - | 1,187.50 |
| 04/06/2021 | ⌵ | Research state constitutional challenge to SB 1110 and consult with legislative law librarian at Capital. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 3.10 | 475.00 | - | 1,472.50 |
| 04/08/2021 | ⌵ | Research Idaho constitutional challenge to SB 1110. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.20 | 475.00 | - | 1,995.00 |
| 04/12/2021 | ⌵ | Research on initiative challenge ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.50 | 475.00 | - | 1,187.50 |
| 04/14/2021 | ⌵ | Research on an initiative challenge. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.10 | 475.00 | - | 1,947.50 |
| 04/17/2021 | ⌵ | Strategy meeting with client for an initiative challenge to expand the scope to earlier restrictions. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.20 | 475.00 | - | 1,045.00 |
| 04/19/2021 | ⌵ | PC with CHD and LM to discuss strategy ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.40 | 475.00 | - | 665.00 |
| 04/19/2021 | ⌵ | Legal research on legislative history and appropriate test or | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.10 | 475.00 | - | 1,947.50 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|--|---|------------------|----------------|--------------|-------------------|---------------------|
| | | standard for judicial review of initiative procedures ● Unbilled | | | | | | |
| 04/20/2021 | 🕒 | Emails with Committee and research on referendum challenge. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.80 | 475.00 | - | 855.00 |
| 04/20/2021 | 🕒 | Research into Idaho legislative history. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.40 | 475.00 | - | 665.00 |
| 04/20/2021 | 🕒 | PC with LM on evidence in support of mandamus. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.10 | 475.00 | - | 522.50 |
| 04/21/2021 | 🕒 | Research with IR on declaration in support of referendum challenge. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 04/21/2021 | 🕒 | Outline Idaho initiative and referendum history. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.20 | 475.00 | - | 570.00 |
| 04/22/2021 | 🕒 | PC with LM on legal challenge strategy and declarations in support. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.60 | 475.00 | - | 285.00 |
| 04/22/2021 | 🕒 | Research on referendum statute and case law to confirm Idaho procedures. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.10 | 475.00 | - | 997.50 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|-----------------|--|---|------------------|----------------|--------------|-----------------------|-------------------------------|
| 04/23/2021 | 🕒 ● Unbilled | Phone conference with LM on case. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 04/23/2021 | 🕒 ● Unbilled | Phone conference with Committee on case strategy. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 04/23/2021 | 🕒 ● Unbilled | Initial contact with Robin Nettinga on possible declaration in support. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 04/23/2021 | 🕒 ● Unbilled | Research at Capitol library on the legislative history of gubernatorial vetoes in 1915 and 1984, and the 2020 amendment to IC 34-1813. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.50 | 475.00 | - | 712.50 |
| 04/23/2021 | 🕒 ● Unbilled | Confer with CD on the status of research and case strategy. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.70 | 475.00 | - | 332.50 |
| 04/23/2021 | 🕒 ● Unbilled | Email to BY with the legislative history and request to review same for meeting next week. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 04/23/2021 | 🕒 ● Unbilled | Bullet points on declarations of BY, DD, BY, GM and RN. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 04/25/2021 | 🕒 ● Unbilled | PC with Committee on case strategy. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

Activities Export

09/03/2021
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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|---|---|------------------|----------------|--------------|-----------------------|-------------------------------|
| 04/26/2021 | 🕒 | Phone conference with Prof. Gary Moncrief on declaration in support. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 04/26/2021 | 🕒 | Phone conference with David Daley and LM on Daley declaration in support of brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 04/26/2021 | 🕒 | Research on the repeal of a statute and impact on a prior version of same, discussion with CD. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.40 | 475.00 | - | 665.00 |
| 04/26/2021 | 🕒 | Email to DD on documents to review in support of his declaration. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 04/26/2021 | 🕒 | Review of email from RG on referendum efforts and response to same. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| 04/26/2021 | 🕒 | Email to LM on status of supporting declarations. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 04/26/2021 | 🕒 | Email to Prof. at the University of Florida about providing possible expert declaration in support of the petition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|---|--|---|------------------|----------------|--------------|-----------------------|-------------------------------|
| 04/27/2021 |  | Phone conference with Robin Nettinga on the content of her declaration in support of the petition.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.80 | 475.00 | - | 380.00 |
| 04/27/2021 |  | Phone conference with Ben Ysursa on his declaration in support of the petition.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.70 | 475.00 | - | 332.50 |
| 04/27/2021 |  | Draft initial declaration of Ben Ysursa.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 3.10 | 475.00 | - | 1,472.50 |
| 04/27/2021 |  | Review initial draft declaration of Karen Lansing.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 04/28/2021 |  | Review of suggested edits of LM and KL to her declaration, and incorporation re: same.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.20 | 475.00 | - | 570.00 |
| 04/28/2021 |  | Review of LM's edits and suggestions re: revision to BY's declaration and revisions to same.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.50 | 475.00 | - | 712.50 |
| 04/28/2021 |  | Response to Prof. Montcrief's questions on his declaration and review of his revised vita.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|--|---|---|------------------|----------------|--------------|-----------------------|-------------------------------|
| 04/28/2021 |  Unbilled | Contacted clerk of Idaho Supreme Court for briefing in a related case. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 04/28/2021 |  Unbilled | Phone conference with LM on case strategy and content of supporting declarations. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.90 | 475.00 | - | 427.50 |
| 04/28/2021 |  Unbilled | Email to LM on factual support for the private attorney general doctrine. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| 04/28/2021 |  Unbilled | Research on strict scrutiny test on constitutional challenges in Idaho involving a fundamental right. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 04/28/2021 |  Unbilled | Research on verification of petitions | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 04/28/2021 |  Unbilled | Email to client on verification on behalf of the Committee. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 04/29/2021 |  Unbilled | Draft section of brief on the history of initiative and referendum in Idaho for brief in support of the petition for a writ of prohibition. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.50 | 475.00 | - | 1,187.50 |
| 04/29/2021 |  Unbilled | Draft and revise declarations in | 00315-Reclaim Idaho | Deborah | 2.50 | 475.00 | - | 1,187.50 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|--|---|------------------|----------------|--------------|-----------------------|-------------------------------|
| | | support of the writ petition. ● Unbilled | Challenge to SB1110 | Ferguson | | | | |
| 04/29/2021 | ④ | Additional research in support of the petition for a writ of prohibition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.50 | 475.00 | - | 1,187.50 |
| 04/30/2021 | ④ | Review and edit declaration of R. Nettinga in support of the petition for writ of prohibition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 04/30/2021 | ④ | Phone conference with LM to prep for call with potential expert. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 04/30/2021 | ④ | Phone call with Dan Walker and LM to discuss his potential testimony. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 04/30/2021 | ④ | Email to Committee on Nettinga declaration, review edits and incorporate, review same with RN. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 04/30/2021 | ④ | Proof and revise BY declaration and incorporate additional edits. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| 04/30/2021 | ④ | Review materials provided by potential experts, DW. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.60 | 475.00 | - | 285.00 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|---|---|------------------|----------------|--------------|-------------------|---------------------|
| 04/30/2021 | 🕒 | Review and edit declaration of Linda Larson; email same to LM. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| 04/30/2021 | 🕒 | Observe recorded 2/17/21 testimony on SB1110 before Senate Affairs Committee. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.10 | 475.00 | - | 522.50 |
| 04/30/2021 | 🕒 | Review draft declaration of Prof. Gary Montcrief; discuss same with LM. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.60 | 475.00 | - | 285.00 |
| 04/30/2021 | 🕒 | Discussion with GC on modeling and possible declaration in support. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 04/30/2021 | 🕒 | Research private attorney general doctrine. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.20 | 475.00 | - | 570.00 |
| 05/01/2021 | 🕒 | Discussion with LM on AG review of Reclaim's Initiative on Initiative rights. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.60 | 475.00 | - | 285.00 |
| 05/01/2021 | 🕒 | Meeting with LM and JC on impacts of all 35 districts requirement. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.20 | 475.00 | - | 570.00 |
| 05/01/2021 | 🕒 | Drafting section of brief and | 00315-Reclaim Idaho | Deborah | 3.70 | 475.00 | - | 1,757.50 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|--|--|---------------------|----------------|--------------|-----------------------|-------------------------------|
| | | additional edits on declarations. ● Unbilled | Challenge to SB1110 | Ferguson | | | | |
| 05/01/2021 | Ⓣ | Review initial draft of brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 05/02/2021 | Ⓣ | Revision to Ysursa's declaration. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 05/02/2021 | Ⓣ | A final proof of Moncrief declaration and email same to LM. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 05/02/2021 | Ⓣ | Review and edits to initial draft brief in support of writ of prohibition, citing declarations and additional research re: same and a draft of PAG doctrine section of the brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 3.50 | 475.00 | - | 1,662.50 |
| 05/02/2021 | Ⓣ | Phone conference with LM on declaration statements. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.10 | 475.00 | - | 47.50 |
| 05/02/2021 | Ⓣ | Phone conference with CD discussing briefing assignments. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/02/2021 | Ⓣ | Phone call with CD on status of brief review. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|---|---|------------------|----------------|--------------|-----------------------|-------------------------------|
| 05/02/2021 | 📌 | Final review and edits to Montcrief declaration. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| 05/02/2021 | 📌 | Draft a summary sheet of the testimony in the 9 supporting declarations. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/02/2021 | 📌 | Emails with GC responding to questions concerning his declaration. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/03/2021 | 📌 | Confer with LM and CD on AG Cert. of Review. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/03/2021 | 📌 | Review of AG's Certificate of Review for Repeal initiative and discuss same with CD ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 05/03/2021 | 📌 | Conference with LM on strategy. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.80 | 475.00 | - | 380.00 |
| 05/03/2021 | 📌 | Revisions to Daley Declaration, review of Castle draft Declaration, and Mayville Declaration. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.50 | 475.00 | - | 1,187.50 |
| 05/03/2021 | 📌 | Research IAP rules re: writ of prohibition, and research other issues related to petition for writ of | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.60 | 475.00 | - | 1,235.00 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
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| | | prohibition. ● Unbilled | | | | | | |
| 05/04/2021 | Ⓣ | Review of the draft petition with edits. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.70 | 475.00 | - | 332.50 |
| 05/04/2021 | Ⓣ | Email with LM on his declaration, declaration of GC. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 05/04/2021 | Ⓣ | Confirm TP will review and verify the petition for the Committee. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.10 | 475.00 | - | 47.50 |
| 05/04/2021 | Ⓣ | Review and revise declaration of LM; meeting to discuss same and for further revisions. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 3.00 | 475.00 | - | 1,425.00 |
| 05/04/2021 | Ⓣ | Revises to Montcrief declaration; discussions of same with LM. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| 05/04/2021 | Ⓣ | Review of draft petition and revisions to same. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.00 | 475.00 | - | 950.00 |
| 05/04/2021 | Ⓣ | Draft new section in brief on constitutional interpretation. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 05/04/2021 | Ⓣ | Supplemental research on constitutional interpretation. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |
| | | | | | | | | 12/26 |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
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| | | ● Unbilled | | | | | | |
| 05/04/2021 | 🕒 | Distribute drafts to clients for review and comments. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 05/05/2021 | 🕒 | Revisions and edits to petition for writ of prohibition, eight supporting declarations, brief in support, and appendix to brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 6.50 | 475.00 | - | 3,087.50 |
| 05/06/2021 | 🕒 | Final review and proof and edits to petition, brief and Daley Declaration ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.10 | 475.00 | - | 1,947.50 |
| 05/07/2021 | 🕒 | Final proof and review; filed Petition for Writ of Prohibition with 8 supporting declarations, brief in support, and motion to expedite with the Idaho supreme court. Served a copy of same on the Secretary of State's office. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.00 | 475.00 | - | 950.00 |
| 05/07/2021 | 🕒 | Hand delivery of filings to Secretary of State's office; emailed same to Brain Kane. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 05/07/2021 | 🕒 | Phone conference with Committee on Gilmore filings with Idaho Supreme court. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|--|---|------------------|----------------|--------------|-------------------|---------------------|
| | | ● Unbilled | | | | | | |
| 05/07/2021 | 📌 | Phone conference with LM on Gilmore case filings and impact of same. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/07/2021 | 📌 | Response to media requests on the filing of the petition for writ of prohibition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 05/08/2021 | 📌 | Review of Gilmore petition for writ of mandamus and brief in support and filings of intervenor legislature, and court's scheduling order. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.30 | 475.00 | - | 617.50 |
| 05/08/2021 | 📌 | Discussion with LM of support the Gilmore "slice and dice" argument. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/10/2021 | 📌 | Phone conference with Committee on the impact of Gilmore petition on Reclaim case; potential of the consolidation of cases and standing issues in Gilmore. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.70 | 475.00 | - | 332.50 |
| 05/10/2021 | 📌 | Research of standing of the legislature in actions. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/10/2021 | 📌 | Review of State's opposition to | 00315-Reclaim Idaho | Deborah | 0.40 | 475.00 | - | 190.00 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
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| | | motion to expedite. ● Unbilled | Challenge to SB1110 | Ferguson | | | | |
| 05/10/2021 | 🕒 | Phone conference with Committee on State's opposition to motion to expedite. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 05/10/2021 | 🕒 | Phone conference with LM on our response to opposition to our motion to expedite. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 05/10/2021 | 🕒 | Confer with Committeeon response to opposition to expedite. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 05/10/2021 | 🕒 | Confer with CD on response to opposition to expedite. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 05/11/2021 | 🕒 | Draft reply brief on our motion to expedite, confer with both clients regarding same. Review the comments of clients and MG and finalize the same. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 6.20 | 475.00 | - | 2,945.00 |
| 05/11/2021 | 🕒 | Email from Bill Meyers with a request as counsel of legislature to intervene, confer with CD and respond to same. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|---|---|---|------------------|----------------|--------------|-------------------|---------------------|
| 05/11/2021 |  | Request dockets sheets from Supreme Court clerk on recent writ cases and review of same.  | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 05/12/2021 |  | Review of legislature's petition to intervene and brief in support; research re: standing; confer with CD and discussion of same with Committee.  | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.50 | 475.00 | - | 712.50 |
| 05/13/2021 |  | Research and draft opposition to intervention of the legislature.  | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 3.00 | 475.00 | - | 1,425.00 |
| 05/13/2021 |  | Communicated with S Ct help desk after i_Court web site crashed to get direction regarding filing.  | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 05/14/2021 |  | Phone conference with LM on briefing in Gilmore case.  | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/15/2021 |  | Review of AG's brief in opposition to Gilmore Petition, and declaration in support, and brief in opposition filed by Legislature Intervenors.  | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.50 | 475.00 | - | 712.50 |
| 05/15/2021 |  | Phone conference with clients on AG's and Legislature's brief in Gilmore case. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |

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| | | ● Unbilled | | | | | | |
| 05/19/2021 | 🕒 | Review Gilmore draft reply and respond with suggestions regarding the same. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| 05/19/2021 | 🕒 | Review of Court's order on intervention and scheduling; discussion of same with Committee. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/20/2021 | 🕒 | Discussion of Court's order granting intervention and establishing a schedule for the briefing of the case with LM. Follow up with an email explanation of the order. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/21/2021 | 🕒 | Research into a University with program that has provided mathematical analysis for civil rights actions. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 05/21/2021 | 🕒 | Emailed University about the calculation of the probability that signatures could be collected in all 35 districts of a popular initiative or referendum; discussion of same with LM. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
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| 05/21/2021 |  | Email response to the inquiry of University nd email exchange with professor and LM.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| 05/23/2021 |  | Review of the probability analysis and emailed same to LM, CD.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/23/2021 |  | Drafted new declaration and emailed same to CD and LM for review.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.60 | 475.00 | - | 285.00 |
| 05/23/2021 |  | Discussion with CD re: amending petition to include new Declaration.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.80 | 475.00 | - | 380.00 |
| 05/23/2021 |  | Discussion with LM re: declaration of MD and amending petition on 5/24.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/23/2021 |  | Revised petition to include Declaration.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 05/23/2021 |  | Email to MD with a revised draft declaration.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 05/23/2021 |  | Discussion with CD re: amending petition to include new Declaration.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.80 | 475.00 | - | 380.00 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|--|---|------------------|----------------|--------------|-------------------|---------------------|
| 05/25/2021 | 🕒 | Phone conference with LM for a status update. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.10 | 475.00 | - | 47.50 |
| 05/25/2021 | 🕒 | Phone conference with CD on additional legal research. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 05/28/2021 | 🕒 | Review research results of LF and feedback regarding same and additional research needed. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 05/30/2021 | 🕒 | Review of all briefing to date to date in preparation for the drafting of the reply brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.20 | 475.00 | - | 1,045.00 |
| 05/31/2021 | 🕒 | Phone conference with LM on probability analysis. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 06/01/2021 | 🕒 | Review of draft declaration and schedule team meeting for 6/3 to discuss response briefs. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 06/02/2021 | 🕒 | Conference call with LM, CD and JC on probability analysis. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.90 | 475.00 | - | 427.50 |
| 06/03/2021 | 🕒 | Review of the brief of AG and 3 declarations, and Legislature's brief in opposition. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.80 | 475.00 | - | 855.00 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
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| | | ● Unbilled | | | | | | |
| 06/03/2021 | 📌 | Phone conference with LM and CD discussing opposition briefs and declarations and strategy for the reply brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.40 | 475.00 | - | 665.00 |
| 06/03/2021 | 📌 | Email to G. Montcrief on the declaration of Cann. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.10 | 475.00 | - | 47.50 |
| 06/03/2021 | 📌 | Review of AG's motion to strike and memorandum in support, outline response to same. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.50 | 475.00 | - | 712.50 |
| 06/03/2021 | 📌 | Phone conference with LM on oral argument and reply brief issues. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 06/03/2021 | 📌 | Research on cases cited in AG's Motion to Strike ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 06/05/2021 | 📌 | Conferring with LM and JC on analysis for declaration in support of the petition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.30 | 475.00 | - | 617.50 |
| 06/05/2021 | 📌 | Review of draft of points for supplemental declaration of Montcrief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.10 | 475.00 | - | 522.50 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |
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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
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| 06/05/2021 | 🕒 | Confer with LM on Montcrief supplemental declaration. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 06/05/2021 | 🕒 | Research on the opposition on the motion to strike. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.00 | 475.00 | - | 1,900.00 |
| 06/06/2021 | 🕒 | Draft brief in opposition to the motion to strike. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.50 | 475.00 | - | 2,137.50 |
| 06/06/2021 | 🕒 | Finalizing Champion Declaration. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 06/07/2021 | 🕒 | Edits to reply brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.00 | 475.00 | - | 1,900.00 |
| 06/07/2021 | 🕒 | PC with LM on the Montcrief Declaration. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 06/07/2021 | 🕒 | Revisions to brief in opp. to motion to strike. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.80 | 475.00 | - | 855.00 |
| 06/08/2021 | 🕒 | Editing and review of the reply brief and additional research. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.10 | 475.00 | - | 1,947.50 |
| 06/08/2021 | 🕒 | Revisions to brief in opposition to the motion to strike. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.90 | 475.00 | - | 1,377.50 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|---|--|---|------------------|----------------|--------------|-----------------------|-------------------------------|
| 06/09/2021 |  | Final review and edits of the reply brief, brief in opposition to the motion to strike, Supplemental Declaration of Montcrief and supporting exhibits, and Declaration of Champion and filing of same.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 5.50 | 475.00 | - | 2,612.50 |
| 06/15/2021 |  | Phone conferences with CD and LM on SOS's failure to issue fiscal impact statement; Phone conference with BH in Gov. Little's Office regarding same.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.10 | 475.00 | - | 522.50 |
| 06/15/2021 |  | Review Joint motion to strike declarations of JC and GM and memo in support; confer with CD re: response to same.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.60 | 475.00 | - | 285.00 |
| 06/15/2021 |  | Drafted response to Respondents' Joint motion to strike the Declarations of Montcrief and Champion  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.10 | 475.00 | - | 997.50 |
| 06/15/2021 |  | Conferred with BH and LM on SOS's failure to provide a fiscal impact statement to Reclaim's educational initiative and proposal to remedy the same.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.40 | 475.00 | - | 190.00 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|---|--|---|------------------|----------------|--------------|-------------------|---------------------|
| 06/16/2021 |  | Reviewed suggested edits and comments to Memo in opposition to strike rebuttal declarations.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 06/16/2021 |  | Revised and finalized Petitioner's memo in opposition to the motion to strike rebuttal declarations.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.90 | 475.00 | - | 902.50 |
| 06/17/2021 |  | Informal moot court discussion with clients MG, CD in preparation for the upcoming oral argument.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.60 | 475.00 | - | 760.00 |
| 06/21/2021 |  | Meeting with CD on important points and themes of oral argument.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.00 | 475.00 | - | 475.00 |
| 06/21/2021 |  | Preparation for oral argument.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.00 | 475.00 | - | 950.00 |
| 06/22/2021 |  | Review of Respondents' Reply ISO Jt Motion to Strike, Motion for Leave to File Stevens Declarations and exhibits, and distribution of same to clients.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.50 | 475.00 | - | 712.50 |
| 06/22/2021 |  | Preparation for oral argument.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 3.00 | 475.00 | - | 1,425.00 |
| 06/23/2021 |  | Confer with Dr. Champion | 00315-Reclaim Idaho | Deborah | 0.30 | 475.00 | - | 142.50 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|---|---|------------------|----------------|--------------|-------------------|---------------------|
| | | regarding analysis of Dr. Steven's declaration. ● Unbilled | Challenge to SB1110 | Ferguson | | | | |
| 06/24/2021 | 🕒 | Draft outline for oral argument and preparation for moot court. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 5.20 | 475.00 | - | 2,470.00 |
| 06/24/2021 | 🕒 | Confer with CD on oral argument issues. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 06/25/2021 | 🕒 | Initial moot court session. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.00 | 475.00 | - | 950.00 |
| 06/25/2021 | 🕒 | 2nd Moot court with MG, clients and CD for upcoming argument on June 29th. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.60 | 475.00 | - | 760.00 |
| 06/26/2021 | 🕒 | Preparation for oral argument. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.00 | 475.00 | - | 1,900.00 |
| 06/27/2021 | 🕒 | Preparation for oral argument and argument on the motions to strike. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.50 | 475.00 | - | 2,137.50 |
| 06/28/2021 | 🕒 | Preparation for oral argument and argument on the motions to strike. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 5.50 | 475.00 | - | 2,612.50 |
| 06/28/2021 | 🕒 | Confer with CD for final argument preparation, going over potential questions, getting further feedback | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.30 | 475.00 | - | 617.50 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |
| | | | | | | | | 24/26 |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|--|---|------------------|----------------|--------------|-------------------|---------------------|
| | | and comments. ● Unbilled | | | | | | |
| 06/28/2021 | Ⓜ | Final preparation for oral argument and review of all briefing and declarations filled in the matter, significant case authority, as well as revision to bullet point outline. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 4.20 | 475.00 | - | 1,995.00 |
| 06/29/2021 | Ⓜ | Oral argument on merits and motions to strike. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.50 | 475.00 | - | 712.50 |
| 08/23/2021 | Ⓜ | Reviewing Court's published decision. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.50 | 475.00 | - | 237.50 |
| 08/23/2021 | Ⓜ | Confer with clients on Decision. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.30 | 475.00 | - | 142.50 |
| 08/24/2021 | Ⓜ | Email H. Belodoff to request declaration in support of fees, confer regarding same ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 08/25/2021 | Ⓜ | Review all firm timesheet entries on case for accuracy and completeness. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.80 | 475.00 | - | 855.00 |
| 08/26/2021 | Ⓜ | Respond to HB requests regarding fee declaration. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| | | | | | 240.90h | | \$0.00 | \$114,427.50 |
| | | | | | | | 0.0h | 240.9h |
| | | | | | | | | 25/26 |

Activities Export

09/03/2021
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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|--|---|---|------------------|----------------|--------------|-----------------------|-------------------------------|
| 08/30/2021 |  Unbilled | Draft declaration in support of fee petition. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 1.50 | 475.00 | - | 712.50 |
| 08/31/2021 |  Unbilled | Review the 12 factors to support recovery of attorney fees in IRCP 54 and draft outline of the memo in support of fees. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 2.00 | 475.00 | - | 950.00 |
| 08/31/2021 |  Unbilled | Review declaration of CH. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 09/01/2021 |  Unbilled | Draft memorandum in support of fees. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 6.30 | 475.00 | - | 2,992.50 |
| 09/01/2021 |  Unbilled | Review of costs associated with litigation, receipts. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| 09/02/2021 |  Unbilled | Draft motion for an attorney fee award. | 00315-Reclaim Idaho Challenge to SB1110 | Deborah Ferguson | 0.20 | 475.00 | - | 95.00 |
| | | | | | 240.90h | | \$0.00 0.0h | \$114,427.50 240.9h |

IN THE SUPREME COURT OF THE STATE OF IDAHO

RECLAIM IDAHO, and the COMMITTEE
TO PROTECT AND PRESERVE THE
IDAHO CONSTITUTION, INC.,

Petitioners,

v.

LAWERENCE DENNEY, the Idaho
Secretary of State, et al.,

Respondents.

Case No. 48784-2021

**DECLARATION OF CRAIG
H. DURHAM IN SUPPORT
OF REASONABLE
ATTORNEYS' FEES**

I, Craig H. Durham, declare under penalty of perjury:

1. I am a partner at Ferguson Durham, PLLC. I am submitting this declaration in support of the Petitioner's motion for attorneys' fees. I have personal knowledge of the matters stated in this declaration and could competently testify to these facts.

2. I am a member in good standing of the Idaho State Bar. I am also admitted to practice before the United States District Court in Idaho, the Ninth Circuit Court of Appeals, and the Supreme Court of the United States.

3. As co-counsel, I have put 91.3 hours of work into this case between February 4, 2021, and September 3, 2021. My hourly rate for civil rights and related work is \$400/hour. I am therefore seeking \$36,520.00 in attorneys' fees. I have attached a true and correct copy of my timesheets as Exhibit A.

MY LEGAL BACKGROUND AND EXPERIENCE

4. I have been an attorney for over 25 years. I graduated from the University of Kansas School of Law in 1996. I first received a license to practice in Kansas in September of 1996.

5. From 1996 until 2001, I worked at the Kansas Appellate Defender's Office, where I represented felony defendants on appeal in the Kansas Court of Appeals and the Kansas Supreme Court. At the ADO, I was tasked with challenging and complex cases, including several first-degree murder appeals. I researched and wrote approximately 150 briefs in my tenure there, and orally argued dozens of cases in the highest courts in Kansas.

6. I was steadily promoted based on the quality of my research, writing, and oral argument skills. I was assigned as a mentor and supervisor to junior attorneys. And, in 2000, I assigned to several death penalty appeals. The death penalty had recently been re-instated in Kansas, and our team worked efficiently on complex issues of first impression that were presented to the Kansas Supreme Court.

7. In 2001, I moved to Boise and became a member of the Idaho State Bar. I continued to practice appellate law and capital defense at the Idaho State Appellate Defender's Office. Between my experience in Kansas and Idaho, I have now probably written near or over 200 appellate briefs and have appeared at oral arguments at least 50 times in state and federal appellate courts.

8. My background also includes experience as a federal law clerk at the United States District Court in Boise. For nearly ten years, from 2003 until 2013, I was the only death penalty law clerk for the District of Idaho. In that capacity, I assisted federal judges in researching the law, drafting opinions, and resolving death penalty matters. Each case often spanned several years, contained thousands of pages of documents and records, and demanded knowledge of a large body of case law that is unique to the death penalty.

9. I also developed a deep knowledge of civil rights law under 42 U.S.C. § 1983. In addition to my duties as a death penalty law clerk, I was a member of the Prisoner Litigation Unit (PLU). The PLU is a small team of staff attorneys who are responsible for managing pro se cases brought by prisoners. This is a heavy case load. Prisoner cases make up approximately 25% to 33% of the Court's civil case assignments from year-to-year, and the majority of those cases are brought under 42 U.S.C. § 1983. In 2011 and again in 2012, I was assigned to assist judges in two § 1983 cases brought by death-sentenced inmates who were challenging Idaho's lethal injection protocol at the eleventh hour. *See Rhoads v. Reinke, et al.*, 1:11-cv-00455-REB; *Creech, et al. v. Reinke, et al.*, 1:12-cv-00173-EJL. Each of these cases carried high stakes and required exacting work under significant time pressure.

10. In May of 2013, I left on good terms from the Court and opened my own solo firm in Boise, where I could concentrate on civil rights cases and all aspects of criminal defense, from trials to appeals to post-conviction and habeas corpus. Since

then, I have represented almost exclusively plaintiffs in civil rights and related cases and criminal defendants in the state and federal courts.

FERGUSON DURHAM, PLLC

11. In August 2014 , Deborah Ferguson and I formed Ferguson Durham, PLLC after successfully partnering to establish a right through the federal courts to same-sex marriage in Idaho and the Ninth Circuit in the landmark case of *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014).

12. We are a boutique firm that focuses primarily on impact civil litigation in the area of plaintiff's side civil rights and related actions. We choose cases that we hope will help individuals in Idaho beyond just the case at hand. A sample of recent successful cases that we brought, or that we partnered with other firms, include:

- *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014) (establishing a right to marriage for lesbian and gay couples in Idaho and the Ninth Circuit);
- *Coeur D'Alene Tribe v. Denney*, 387 P.3d 761 (Idaho 2015) (granting a petition for writ of mandamus and finding that the Governor's veto of duly enacted legislation was invalid);
- *Visual Arts Collective, LLC v. Powell, et al.*, 1:16-cv-00414-BLW (D. Idaho 2016) (resulting in a settlement that changed an Idaho law that had chilled first amendment expression in artistic spaces);
- *Billy Ray Bartlett v. Atencio et al.*, 1:17-cv-00191-CWD (D. Idaho, 2017) (resulting in a settlement requiring the Idaho Department of Correction to provide a Kosher meal option for Jewish inmates);
- *Idaho Press Club v. Ada County*, CV01-19-16277(Fourth Judicial Dist. 2019) (finding that Ada County had improperly and frivolously withheld public documents in violation of the public records act from journalists);

- *Edmo v. Corizon, et al.*, 935 F.3d 757 (2019) (upholding the district court’s injunction requiring gender confirming surgery for an Idaho inmate who had consistently been denied medical care);
- *Lee Arthur Rice v. Morehouse, et al*, 989 F.3d 1112 (9th Cir. 2021) (reversing the district court’s grant of summary judgment in a case of excessive force against a black motorist and remanding for trial);
- And this case, *Reclaim Idaho e al. v. Denney et al.*, No. 48784-2021 (Idaho 2021).

MY WORK IN THIS LITIGATION

13. There are not many private attorneys in Idaho who do plaintiff’s side work in civil rights and related fields. Often the clients are unpopular, have unpopular causes, or cannot pay as they go. The risk is high that the attorneys will not be compensated. It is a small subset of attorneys who do the work. And an even smaller subset who do it well.

14. The present case fit the Ferguson Durham model. Reclaim Idaho is a grassroots volunteer group formed to improve the lives of Idaho’s citizens through direct democracy, which sought to overturn an unjust law enacted by the powerful Legislature of Idaho. The Committee to Protect and Preserve the Idaho Constitution also sought to preserve the constitutional right to the initiative and referendum in Idaho. In the 2021 session, the Legislature enacted Senate Bill 1110, which we believed had effectively taken away Idahoans’ right to initiative and repeal laws. Working with Reclaim Idaho and the Committee to Protect and Preserve the Idaho Constitution, we strategized how best to challenge the law. The timeline was short, because these groups

were already starting to mount campaigns for the 2022 electoral cycle and they needed an immediate answer on the constitutionality of the law. Initially we attempted to persuade the Governor to veto the law so that a costly and time-consuming legal challenge could be avoided. That proved unsuccessful.

15. Because of the expedited nature of the case, we had to put aside other paying matters and focused on this one. We drafted the petition, gathered affidavits in support, and wrote a memorandum in support in a matter of days. It was filed on May 7 and orally argued on June 29. In those seven weeks we invested a significant amount of time.

16. Ms. Ferguson and I did not duplicate our efforts. Ms. Ferguson took the lead role in the case and therefore expended more time than I did. I was tasked with taking the first run at writing the petition and the opening and reply briefs. Ms. Ferguson dove into researching this arcane area of law, gathering factual information and helping clients and witnesses put together affidavits, responding to motions to strike, and, finally, orally arguing the case. We had conferences with each other and with our clients as was reasonably necessary. We worked efficiently as a team.

17. But the work was made even more onerous by the appearance of the Legislature as an Intervenor-Respondent. Not content to let the Attorney General's Office handle the government's interests, the Legislature hired private counsel at one of Idaho's largest and most expensive law firms, well-staffed with associates and paralegals. We now had two opponents, each with multiple attorneys, to respond to.

The Legislature and the Secretary of State's separate briefing did not overlap much. In some ways it was contradictory. We needed to address all those matters in responsive briefs and do so in a short period of time. And we prevailed on all of them.

18. As our experience and success in these cases has grown, my rate has increased with it. Seven years ago, I was awarded \$325/hour in *Latta*, listed above. A few years ago, in *Idaho Press Club*, I was paid at \$350/hour. In *Edmo*, we will be supporting our fee petition that will be filed presently with my current rate of \$400/hour (although it may be subject to the Prison Litigation Reform Act caps).

19. Based on my 25 years as an attorney, my unique experience in these types of cases, my specific role in the case that relied on my strengths, and the complete victory that we achieved for our clients, my rate and the time that I put into the case are reasonable.

20. Additional support comes from the declarations of Howard Belodoff and Ritchie Eppink, two esteemed and experienced civil rights attorneys in the community who do work similar to what Ferguson Durham does. These attorneys and others have been awarded rates like mine in other cases in Idaho.

21. Finally, it has been reported in the media that the Legislature's private attorney has "discounted" his rate to \$470 per hour to oppose this case. The total fee that the Legislature has paid to that attorney's firm for this matter, according to public reporting, is approximately \$180,000. If that fee is reasonable for the State of Idaho to pay in a losing effort, our lower request is eminently reasonable for a winning one.

21. Accordingly, in light of the skill and experience needed to prosecute this case, the risks taken, the work required, the undesirability of the case, the need to attract competent counsel, and the excellent results achieved, I respectfully request that the Court approve this fee request.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Boise, Idaho on this 3rd day of September, 2021.

/s/Craig H. Durham
Craig H. Durham

Exhibit A
To Durham Declaration

Activities Export

09/03/2021
10:55 AM

| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|---|--|---|--------------|---------------|--------------|-----------------------|-----------------------------|
| 02/24/2021 |  | Researching state of initiative and referenda law in federal and state courts.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 3.00 | 400.00 | - | 1,200.00 |
| 03/10/2021 |  | Teleconference with Brady Hall and others regarding governor vetoing the bill.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.70 | 400.00 | - | 280.00 |
| 03/10/2021 |  | Strategy call with clients and Deborah regarding how to approach litigation.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.70 | 400.00 | - | 280.00 |
| 03/11/2021 |  | Phone call with client Luke Mayville and Deborah about fee recovery and strategy.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.00 | 400.00 | - | 400.00 |
| 04/19/2021 |  | Phone call with client LM and DAF to discuss strategy.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.40 | 400.00 | - | 560.00 |
| 04/23/2021 |  | Confer with DAF regarding strategy for brief and petition for writ of prohibition.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.70 | 400.00 | - | 280.00 |
| 04/25/2021 |  | Legal research, and beginning draft of brief in support of petition.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.80 | 400.00 | - | 720.00 |
| 04/29/2021 |  | Drafting brief in support of petition | 00315-Reclaim Idaho | Craig | 7.50 | 400.00 | - | 3,000.00 |
| | | | | | 91.30h | | \$0.00 0.0h | \$36,520.00 91.3h |

Activities Export

09/03/2021
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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|--|---|--------------|---------------|--------------|-------------------|--------------------|
| | | for writ of prohibition and application for declaratory judgment. ● Unbilled | Challenge to SB1110 | Durham | | | | |
| 04/30/2021 | Ⓣ | Drafting brief in support of petition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 2.00 | 400.00 | - | 800.00 |
| 05/01/2021 | Ⓣ | Drafting brief in support of petition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 6.50 | 400.00 | - | 2,600.00 |
| 05/02/2021 | Ⓣ | Reviewing of DAF edits to brief and correcting. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.50 | 400.00 | - | 600.00 |
| 05/02/2021 | Ⓣ | Drafting petition for writ of prohibition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 2.00 | 400.00 | - | 800.00 |
| 05/03/2021 | Ⓣ | Drafting the petition for writ of prohibition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 6.50 | 400.00 | - | 2,600.00 |
| 05/04/2021 | Ⓣ | Editing petition for writ of prohibition. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 2.50 | 400.00 | - | 1,000.00 |
| 05/05/2021 | Ⓣ | Revising section of the brief regarding "independent of the legislature." Including cites and additional argument. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.50 | 400.00 | - | 600.00 |
| | | | | | 91.30h | | \$0.00 | \$36,520.00 |
| | | | | | | | 0.0h | 91.3h |

Activities Export

09/03/2021
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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|---|--|---|--------------|---------------|--------------|-----------------------|-----------------------------|
| 05/05/2021 |  | Revising petition for writ of prohibition to add client comments and cites to declarations.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.00 | 400.00 | - | 400.00 |
| 05/05/2021 |  | Revising brief in support to include citations, additional argument, and polishing.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 4.30 | 400.00 | - | 1,720.00 |
| 05/06/2021 |  | Reviewing, editing and polishing petition and brief.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.50 | 400.00 | - | 600.00 |
| 05/06/2021 |  | Drafting motion to expedite.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.50 | 400.00 | - | 200.00 |
| 05/06/2021 |  | Conference with both clients regarding strategy for filing.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.70 | 400.00 | - | 280.00 |
| 05/07/2021 |  | Finalizing, reviewing, and filing petition, brief, and motion.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 2.00 | 400.00 | - | 800.00 |
| 05/11/2021 |  | Confer with DAF on response to objection to expedite.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.50 | 400.00 | - | 200.00 |
| 05/11/2021 |  | Reviewing DAF's draft of reply to objection to motion to expedite, editing the same, and filing.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.80 | 400.00 | - | 320.00 |
| | | | | | 91.30h | | \$0.00 0.0h | \$36,520.00 91.3h |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|------|--|---|--------------|---------------|--------------|-----------------------|-----------------------------|
| 05/15/2021 | 🕒 | Phone conference with clients on AG's and Legislature's brief in Gilmore case. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.00 | 400.00 | - | 400.00 |
| 05/25/2021 | 🕒 | Phone conference with DF on needed additional legal research. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.50 | 400.00 | - | 200.00 |
| 06/02/2021 | 🕒 | Phone conference with DF, IM and JC on probability analysis from expert. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.70 | 400.00 | - | 280.00 |
| 06/03/2021 | 🕒 | Reviewing briefing and declarations filed by the legislature and the State. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.00 | 400.00 | - | 400.00 |
| 06/03/2021 | 🕒 | Phone conference with LM and DF discussing opposition briefs, declarations and strategy for the reply brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.40 | 400.00 | - | 560.00 |
| 06/04/2021 | 🕒 | Drafting reply brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 4.50 | 400.00 | - | 1,800.00 |
| 06/06/2021 | 🕒 | Drafting reply brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 3.50 | 400.00 | - | 1,400.00 |
| 06/07/2021 | 🕒 | Drafting reply brief. ● Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 8.00 | 400.00 | - | 3,200.00 |
| | | | | | 91.30h | | \$0.00 0.0h | \$36,520.00 91.3h |

Activities Export

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| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|--|--|---|--------------|---------------|--------------|-----------------------|-----------------------------|
| 06/08/2021 |  Unbilled | Editing reply brief. | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 2.50 | 400.00 | - | 1,000.00 |
| 06/09/2021 |  Unbilled | Final edits to reply brief and declarations, polishing, and filing. | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 3.50 | 400.00 | - | 1,400.00 |
| 06/15/2021 |  Unbilled | Reviewing joint motion to strike and reviewing draft reply brief with Dr. Champion's opinion. | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.50 | 400.00 | - | 200.00 |
| 06/15/2021 |  Unbilled | Conference with DAF re: SOS several mistakes in getting Reclaim's initiative to the DFM. | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.50 | 400.00 | - | 200.00 |
| 06/15/2021 |  Unbilled | Phone call with LM re: SOS's several mistakes in getting initiative to the DFM in the Governor's office. | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.40 | 400.00 | - | 160.00 |
| 06/15/2021 |  Unbilled | Phone call with Brady Hall and DAF regarding getting DFM in the Governor's office to expedite due to SOS's mistakes re: approving ballot initiative. | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.20 | 400.00 | - | 80.00 |
| 06/16/2021 |  Unbilled | Reviwing DAF's draft response to second motion to strike, editing and commenting on the same. | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.00 | 400.00 | - | 400.00 |
| | | | | | 91.30h | | \$0.00 0.0h | \$36,520.00 91.3h |

Activities Export

09/03/2021
10:55 AM

| Date | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|---|---|---|--------------|---------------|--------------|-----------------------|-----------------------------|
| 06/16/2021 |  | Review of Respondents' reply to petitioners' response to first motion to strike.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.10 | 400.00 | - | 40.00 |
| 06/17/2021 |  | Meeting, brainstorming discussion, and modified moot court with clients and DAF regarding upcoming oral argument. General open discussion about potential areas of concern.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.60 | 400.00 | - | 640.00 |
| 06/21/2021 |  | Meeting with DAF and going over issues of importance of upcoming oral argument.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.00 | 400.00 | - | 400.00 |
| 06/24/2021 |  | Confer with DAF on oral argument strategy, discussing potential avenues of questions and responses.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.50 | 400.00 | - | 200.00 |
| 06/25/2021 |  | First Moot court with DAF, and clients for Deborah's upcoming argument.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 2.00 | 400.00 | - | 800.00 |
| 06/25/2021 |  | 2nd Moot court with DAF, MG, client for Deborah and Mike Gilmore's upcoming arguments.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.60 | 400.00 | - | 640.00 |
| | | | | | 91.30h | | \$0.00 0.0h | \$36,520.00 91.3h |

Activities Export

09/03/2021
10:55 AM

| Date ▲ | Type | Description | Matter | User | Hours | Rate (\$/hr) | Non-billable (\$) | Billable (\$) |
|------------|---|---|---|--------------|---------------|--------------|-----------------------|-----------------------------|
| 06/28/2021 |  | Moot court with DAF, going over potential questions, giving feed back and comments.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.30 | 400.00 | - | 520.00 |
| 06/29/2021 |  | Attending oral argument.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.50 | 400.00 | - | 600.00 |
| 08/23/2021 |  | Reviewing Court's published opinion.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.50 | 400.00 | - | 200.00 |
| 08/23/2021 |  | Confer with clients on Decision.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.30 | 400.00 | - | 120.00 |
| 08/27/2021 |  | Request declaration in support of fee petition from Ritchie Eppink.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 0.10 | 400.00 | - | 40.00 |
| 08/31/2021 |  | Draft declaration in support of attorneys' fees petition.  Unbilled | 00315-Reclaim Idaho Challenge to SB1110 | Craig Durham | 1.00 | 400.00 | - | 400.00 |
| | | | | | 91.30h | | \$0.00 0.0h | \$36,520.00 91.3h |

IN THE SUPREME COURT OF THE STATE OF IDAHO

RECLAIM IDAHO, and the
COMMITTEE TO PROTECT AND
PRESERVE THE IDAHO
CONSTITUTION, INC.,

Petitioners,

v.

LAWRENCE DENNEY, the
Idaho Secretary of State, et al.,

Respondents.

Case No. 48784-2021

**DECLARATION OF
RICHARD EPPINK**

I, Richard Eppink, declare under penalty of perjury as follows:

1. This is a declaration about (1) the hourly rates that the petitioners' attorneys are asking this Court to use to calculate a lodestar in figuring a fee award for their work and (2) the amount of time that those attorneys spent on this case. My opinion is that those hourly rates are reasonable and that the time those attorneys spent on this case was reasonable. I think that the hourly rates are reasonable because they are within the range of hourly rates awarded in similar cases in the Boise market. By "similar cases," I mean cases with significant public interest seeking non-monetary relief in Idaho where

the prospect of recovering attorney fees is limited. I think that the time spent on the case was reasonable based on my review of the attorneys' timesheets and my experience litigating before this Court, lower state courts, and federal courts in Idaho in civil cases.

2. I developed the opinions I express in this declaration completely on my own. I decided what information I needed and what documents I would review. I wrote and typed this declaration myself. I did not allow petitioner's counsel to write or modify any part of it.

3. To reach an opinion about whether these hourly rates are reasonable and whether the time the petitioners' attorneys spent on this case was reasonable, I had to learn about the litigation in this case, the quality of the petitioners' attorneys' filings, the nature and extent of the opposition, the outcome on the merits, and the time the petitioners' attorneys spent litigating the case. To do that, I reviewed these materials:

- This Court's August 23, 2021, opinion.
- The May 5, 2021, Verified Petition and the brief and exhibits in its support.

- The May 7, 2021, Motion to Expedite Briefing and Argument, the respondents' May 10, 2021, opposition to it, and the May 11, 2021, reply.
- The May 12, 2021, Verified Petition for Leave to Intervene Or, in the Alternative, Application for Leave to Participate as Amici Curiae, filed by Scott Bedke, Chuck Winder, and the Idaho Legislature and the brief in its support; together with the petitioners' opposition and the proposed intervenors' reply.
- The Court's May 19, 2021, Order Re: Verified Petition for Writ of Prohibition, granting intervention and setting a briefing schedule.
- The intervenors' June 2, 2021, opposition brief on the merits.
- Respondent Denney's June 2, 2021, verified answer.
- Respondents' June 2, 2021, opposition brief on the merits.
- Respondents' June 2, 2021, Motion to Strike and the brief in its support, petitioners' June 9, 2021, memorandum in opposition to that motion, and respondents' June 15, 2021, reply.

- Petitioners' June 9, 2021, reply brief on the merits, and the additional declarations filed with it.
- The respondents' and intervenors' June 14, 2021, Joint Motion to Strike and the brief in its support, petitioners' June 16, 2021, opposition to it, and the June 21, 2021, reply.
- Respondents' June 21, 2021, Motion for Leave to File Declaration of John R. Stevens, Ph.D.
- The Court's June 21, 2021, Order Re: Motions to Strike.
- The Court's June 24, 2021, Order Granting Motion for Leave to File Declaration of John R. Stevens, Ph.D.
- Information about the petitioners' attorneys' background and experience, found on the web and in my own files.
- The timekeeping records of Deborah Ferguson and Craig Durham regarding this case, from February 24, 2021, through September 2, 2021.
- Information from petitioners' attorneys about their fee arrangement with their clients.

- Press reports related to this case, covering the legislation challenged in this case, the litigation itself, and the Court's opinion.

I also spoke on the phone with one of the petitioner's attorneys, Craig Durham, to learn more information about 2.6 hours in the timekeeping records relating to a Secretary of State's office error concerning a pending Reclaim Idaho initiative petition. From my review of all of the materials and information identified in this paragraph, combined with my experience handling litigation before this Court and before Idaho state and federal courts, I feel like I have an adequate understanding of the case, the litigation involved, the petitioners' attorneys' background and qualifications, those attorneys' efforts, and the outcome on the merits.

4. My opinions are based on my review of the documents listed in the previous paragraph plus my experience in litigation in similar cases and my background knowledge of hourly rates and fee awards and settlements in public interest litigation in this Court, in Idaho state courts generally, and in courts in the federal Ninth Circuit, particularly in the District of Idaho.

5. My experience: I have been practicing law in Idaho for 14 years. I graduated from the University of Idaho College of Law in 2006 and was admitted to the Idaho State Bar in September 2006. I graduated from law school *summa cum laude*, ranked first in my class. I was a managing editor of the Idaho Law Review. Immediately after graduation, I was awarded a Fulbright Fellowship to study innovative poverty law and community law education projects in Canada, based at the University of Alberta Faculty of Law in Edmonton, Alberta.

6. Since I completed my Fulbright Fellowship in May 2007, I have been practicing primarily in the areas of civil rights, human rights, and poverty law, with a special focus for most of my career on impact litigation that seeks to challenge unconstitutional systems and laws.

7. From 2007 until 2010 I was a Staff Attorney with Idaho Legal Aid Services. During that time I was the only staff attorney at Legal Aid who covered two judicial districts—both the Third and Fourth Judicial Districts in Idaho, which spanned ten separate counties.

8. From 2010 until 2012 I was the Justice Architect for Idaho Legal Aid Services. The core responsibility of that position was handling major litigation, as well as identifying, strategizing, and pursuing new

major litigation and advocacy projects. I also trained Legal Aid lawyers across the state, coordinated statewide advocacy strategies, and collaborated with litigators, policy specialists, and state and federal agency officials throughout the nation.

9. From May 2012 through July 2021, I was the Legal Director of the American Civil Liberties Union of Idaho Foundation (ACLU of Idaho). Since August 1, 2021, I have been the Movement Support Lawyer at the ACLU of Idaho.

10. I currently practice exclusively in the areas of constitutional and civil liberties law and, aside from an average of roughly 60 hours each year of pro bono legal services, I handle only civil rights cases—similar to this case—with major societal significance. I have served as the only handling attorney, as lead counsel, and as co-counsel in major litigation in areas of significant public interest or developing law in both state and federal court. Among other major litigation projects, some of the results I have helped obtain as plaintiffs' counsel include:

- A \$1 million jury verdict on federal Fair Housing Claims against the City of Boise. *Community House v. City of Boise*,

No. 1:05-cv-283-CWD, 2014 WL 345630 (Jan. 30, 2014)

(upholding jury verdict).

- Federal court orders following a trial, affirmed by the Ninth Circuit, holding the Corrections Corporation of America in contempt of court concerning its operation of Idaho's largest prison and awarding me fees using an enhanced hourly rate for extraordinarily superior performance. *See Kelly v. Wengler*, 822 F.3d 1085 (9th Cir. 2016).
- A preliminary injunction on First Amendment grounds that resulted in the repeal of an unconstitutional ordinance restricting panhandling and solicitation. *ACLU of Idaho v. City of Boise*, 998 F. Supp. 2d 908 (D. Idaho 2014).
- A declaratory judgment and permanent injunction protecting protests near the Idaho capitol building from restrictions on free assembly and expression. *Watters v. Otter*, 26 F. Supp. 3d 1014 (D. Idaho 2014).
- Comprehensive, structural relief in a class action that Idaho's federal district court described as "immensely complex," restoring over \$30 million in health care

assistance annually and resulting in a sweeping overhaul to Idaho's Medicaid program for adults with developmental disabilities. *K.W. v. Armstrong*, 180 F. Supp. 3d 703, 710 (D. Idaho 2016); *see also K.W. v. Armstrong*, 789 F.3d 962 (9th Cir. 2015).

- This Court's opinion holding for the first time that the State of Idaho is not immune from state constitutional claims, *Tucker v. State*, 162 Idaho 11, 18, 394 P.3d 54, 61 (2017), and, more recently, the Court's opinion establishing, for the first time, the legal standard for challenging the constitutionality of a statewide public defense system, *Tucker v. State*, 168 Idaho 570, ___, 484 P.3d 851, 866 (2021).
- This Court's decision requiring public disclosure of lethal injection records withheld by the Idaho Board of Correction and Department of Correction, and correcting and further establishing the standards for awarding fees on appeal in Public Records Act cases. *Cover v. Idaho Bd. of Correction*, 167 Idaho 721, 735, 476 P.3d 388, 402 (2020).

11. My background knowledge of fee awards and settlements: I am very familiar with attorney fee awards in public interest litigation in Idaho. I have prepared and filed petitions for fees in those cases, including before this Court as well as in Idaho's federal district court and at the Ninth Circuit. I have discussed hourly rates and reasonable fee requests with many attorneys, including attorneys in Boise, attorneys in other parts of Idaho, and attorneys handling similar cases in other states. I review all "published" written opinions that the Idaho Supreme Court and Idaho Court of Appeals issue, including every opinion regarding attorney fees that those courts issue, as they are released. I also review all decisions and orders of the federal District of Idaho and all "published" written opinions that the Ninth Circuit issues, including every published decision or opinion involving a fee award, as they are released. I also often discuss hourly rates used in settlements involving attorney fees in public interest, civil rights, and discrimination litigation with the plaintiffs' attorneys involved when I learn about those settlements.

12. Public interest litigation usually requires litigation work that is both extensive and intensive. Often, as in this case, the opposing

parties are government entities or officials with an ideological or political stake in the litigation. This limits the opportunity for compromise. Government opponents also bring institutional-grade resources to the litigation, including the ability to assign multiple lawyers to the case (some of whom may not appear in court or be listed on the filings), who draw on the broader knowledge and expertise of a large law firm—in this case both the Idaho Attorney General’s office and Holland & Hart. The litigation, as a result, is often hard fought.

13. The market for plaintiffs’ side public interest litigation work is a special one. Because (1) fee shifting statutes and rules are usually the only avenue for recouping the resources required for this kind of litigation, (2) the plaintiffs’ lawyers who are available to do this work are often either employees of nonprofit organizations or lawyers willing to work pro bono or for a sharply reduced fee, and (3) the rare combination of extraordinary skills and passion necessary for this kind of plaintiffs’ work is mostly unavailable in the for-profit market due to the high risk involved, courts have acknowledged that the appropriate hourly rate for plaintiffs’ lawyers in these cases is at or near the highest end of the spectrum. The rates for plaintiffs’ work in public interest

cases cannot be adequately compared to the rates for defense work in the same cases or work on either side in commercial litigation, because of at least two reasons. First, commercial litigation and defense work in public interest litigation does not usually involve high risk to the lawyers and law firms involved, because the lawyering is governmentally or commercially funded and any private lawyers involved are often paid by the hour regardless of the outcome. Second, the lawyers capable and willing to do defense and commercial work are more fungible, because passion for the cause does not have to make up for the risk and uncertainty of monetary compensation (or job stability, in the case of salaried nonprofit employees) that plaintiffs' side lawyers, law firms, and nonprofit organizations face.

14. The hourly rates that the petitioners' lawyers are seeking for their work in winning this case are within the reasonable range for plaintiffs' lawyers handling public interest litigation in this district. Deborah Ferguson, with 35 years in practice including 20 years as an Assistant United States Attorney, plus significant experience as plaintiffs' counsel in major, civil public interest cases, seeks \$475/hour. This hourly rate is reasonable and within the range of reasonable

hourly rates for high risk plaintiffs' side work in the Boise market by attorneys with Ms. Ferguson's extensive experience. As long ago as 2014, a \$475/hour rate for experienced Boise litigators was within the reasonable range for appellate work even in commercial cases with little risk of nonpayment. *Community House v. City of Boise*, No. 1:05-CV-283-CWD, 2014 WL 1247758, at *5 (D. Idaho Mar. 25, 2014); *see also Idaho Conservation League v. Atlanta Gold Corp.*, No. 1:11-CV-161-REB, 2020 WL 5848339, at *7 (D. Idaho Sept. 30, 2020) (awarding contested \$450 hourly rate for work done in 2018–2019 in a Clean Water Act case for Boise attorney with about 30 years of experience).

15. The \$400/hour rate that Craig Durham seeks is also reasonable and at the low end of the range for similar attorneys, considering Mr. Durham's 25 years of experience, including extensive appellate and trial practice. For example, more than three years ago Judge David Nye approved a contested \$435/hour rate in commercial litigation (which is comparatively much lower risk litigation because the attorneys on both sides are usually paid by the hour regardless of outcome) for a Boise attorney with 20 years of experience. *Nelson-Ricks*

Cheese Co. v. Lakeview Cheese Co., No. 4:16-cv-00427-DCN, 2018 WL 2248588, at *2 (D. Idaho May 15, 2018).

16. Furthermore, a case like this one, seeking extraordinary relief directly before the State's highest court, without avenues for further appeal, are especially undesirable and present high risk for attorneys representing petitioners. This is because of several reasons, including because attorney fees may have only been recoverable here under the Private Attorney General doctrine, which will not be applicable in some cases and offers no reasonable assurance that petitioners' attorneys will be compensated for their time.

17. The amount of time that the two petitioners' attorneys spent on this case is also reasonable. I reviewed each entry in those attorneys' timekeeping records from February 24, 2021, through September 2, 2021. I understood each task recorded based on the description in each entry. I am familiar with all of the litigation tasks described there and have substantial experience doing those and similar tasks. None of the specific time amounts the attorneys devoted to any of the tasks described in their timekeeping records is excessive. Altogether, they seek an award for 332.2 hours, nearly all of those hours—315.9 of

them—spent winning this case on the merits and responding to and arguing the various motions filed by the respondents and intervenors (and most of the remainder, just 13.7 hours, spent seeking attorney fees that this Court awarded under the private attorney general doctrine). The 2.6 hours that petitioners’ attorneys spent assisting Reclaim Idaho with a Secretary of State’s office error in processing a pending initiative petition also appears reasonable because this case was about protecting Reclaim Idaho’s fundamental right to legislate directly. Thus, that work appears to be integral to understanding the hurdles Reclaim Idaho was experiencing in exercising that right and therefore also seems relevant to the attorneys’ preparation of this case.

18. For a case of this significance, involving relatively novel state constitutional issues, it would be alarming and concerning if the petitioners’ attorneys had not spent hundreds of hours on this case. Because this case invoked this Court’s original jurisdiction, the work necessarily involved building a record of evidence as well as preparing both written and oral argument with the depth and detail of appellate argument. Under these circumstances, the Court and the public should be troubled if the petitioners’ attorneys, awarded fees here as “private

attorney general[s],” had *not* spent hundreds of hours performing these tasks and presenting the case.

19. In reviewing the petitioners’ attorneys timekeeping records, I also evaluated whether those attorneys appeared to duplicate their efforts, such as by unnecessarily conferring with each other or attending the same phone calls and meetings. Especially in a case of this significance and legal novelty, the amount of time that the two petitioners’ attorneys spent conferring with each other and attending the same phone calls and meetings appears more than reasonable based on descriptions of those conferences, phone calls, and meetings in the timekeeping records.

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

DATED: September 3, 2021.

 /s/ Richard Eppink
Richard Eppink

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Attorneys for Petitioners

IN THE SUPREME COURT OF THE STATE OF IDAHO

RECLAIM IDAHO, and the COMMITTEE TO
PROTECT AND PRESERVE THE IDAHO
CONSTITUTION, INC.,

Petitioners,

v.

LAWRENCE DENNEY, the Idaho Secretary of
State, and the STATE OF IDAHO,

Respondents, and

SCOTT BEDKE in his official capacity as
Speaker of the House of Representatives of the State
of Idaho; and CHUCK WINDER, in his official
capacity as President Pro Tempore of the Idaho State
Senate; SIXTY-SIXTH IDAHO LEGISLATURE,

Intervenor-Respondents.

Case No. 48784-2021

**DECLARATION OF HOWARD
A. BELODOFF IN SUPPORT OF
PETITIONERS' MOTION FOR
AN AWARD OF REASONABLE
ATTORNEYS' FEES AND
EXPENSES**

I, Howard A. Belodoff, hereby declare and state as follows:

1. This declaration is submitted in support of Petitioners' Motion of an Award of Reasonable Attorneys' Fees and Expenses. I have personal knowledge of the matters stated in this Declaration and could and would competently testify to these facts.

2. I have been a member of the bar of the State of Idaho since September 1978. I am also admitted to practice before the United States District Court for the District of Idaho, the United States Court of Appeals for the Ninth Circuit, the United States Supreme Court, and the Shoshone-Bannock Tribal Court.

3. Since 1978, I have specialized in representing plaintiffs throughout the State of Idaho, in both the state and federal courts, including public interest and civil rights cases involving injunctive, declaratory and monetary relief.

4. I have over four decades of experience litigating complex civil lawsuits including various civil rights actions, employment, business and contract disputes, civil fraud cases, class actions, personal injury, insurance, construction cases and Native American trust and land issues. I have co-counseled some of these cases with national and regional law firms.

5. I have been counsel of record in sixteen successful appeals to the Ninth Circuit Court of Appeals and had numerous appeals Idaho Supreme Court. I have also filed briefs in three different cases in the United States Supreme Court.

6. These decisions have established new case precedent in the District of

Idaho and the Ninth Circuit Court of Appeals and some have involved an issue of national importance including for violations of numerous federal and state statutes and the Idaho State Constitution the United States Constitution.

7. I have served as Chairperson of the Idaho State Bar's Litigation Section and I am a past president of the Richard C. Fields American Inns of Court in Boise, Idaho.

8. Beginning in 2009, I litigated *Martin v. City of Boise*, which argued that Boise's law criminalizing unhoused people who slept in public places constituted cruel and unusual punishment prohibited by the 8th Amendment of the U.S. Constitution. The Ninth Circuit agreed with our arguments, resulting in a decision that has led public officials nationwide to seek non-criminal solutions to homelessness. The city filed a writ of certiorari with the U.S. Supreme Court related to that decision, but that Court denied review.

9. I have been the Associate Director of Idaho Legal Aid Services, Inc. (ILAS) and have been an employee since 1978. ILAS is a statewide non-profit law firm which is primarily funded by grants and donations. ILAS is the primary provider of free civil legal services in the State of Idaho. All of ILAS's clients have to be qualified as a low-income person or group and request legal representation in a case which is determined by the ILAS's Board of Directors to be eligible for services. The need for civil legal representation far outstrips ILAS's ability to provide those services and most

of the persons seeking assistance have to be turned down.

10. I also have had a part time private practice since 1996. My private office's primary focus is on public interest and civil rights cases.

11. On many occasions I have been contacted by other attorneys representing plaintiffs as well as governmental defendants to get my opinion and advice in these types of cases. On a regular basis, I receive referrals of civil rights cases from other attorneys in Boise who direct clients to me because they will not undertake this type of representation and recognize my expertise in these matters. I have been retained to co-counsel cases with other law firms due to my expertise in federal civil rights litigation. I have also been invited to speak at state and national conferences of civil rights attorneys on issues involving civil rights and federal litigation.

12. I was recognized by the Idaho Trial Lawyers Association as the James May 2018 Trial Lawyer of the Year. In November of 2020 the National Legal Aid and Defenders Association awarded me the Reginald Heber Smith Award for my public interest advocacy on behalf of low income persons. I was recently recognized by the Idaho State Bar as the 2021 Distinguished Lawyer. I have been recognized since 2010 as a Mountain States Super Lawyers by my fellow Idaho attorneys.

13. The hourly rate I currently charge in 2021 for my attorney time is \$475.00 hour. In my opinion \$475.00 an hour is the amount that other attorneys with similar skill, reputation and experience charge in Boise for similar work.

14. I have reviewed the Court's decision in this matter. I have also generally followed this case and reviewed the primary briefing.

15. I hold the opinions set forth in this Declaration to a reasonable degree of certainty given my four decades of experience practicing in the Boise legal community. This includes my knowledge of the rates charged by other law firms from my first-hand experience with requests for attorneys' fees in other complex civil cases.

16. I have also reviewed the Declaration of Deborah A. Ferguson, submitted in support of Plaintiff's fee petition. Ms. Ferguson has an excellent reputation, background, and experience as a lead attorney in complex federal and state cases in Idaho. Her law partner, Craig Durham, similarly has an excellent reputation and experience as a civil rights litigator in Idaho.

17. Based on the timesheets submitted by Ms. Ferguson and Mr. Durham, I believe that the 332.20 hours spent for the handling of this important constitutional challenge in an expedited manner to two unlawful statutes that violated the rights of all Idaho citizens, was reasonable and efficient.

18. There are very few attorneys in the state of Idaho who litigate public interest and civil rights cases.

19. I have become very familiar with the market hourly rates charged by attorneys in the Boise legal market. In my opinion \$475.00 an hour for Deborah A. Ferguson who has 35 years of experience and \$400.00 per hour for Craig H. Durham

with 25 years of experience is reasonable and justified based upon what other attorneys in Boise firms would charge clients.

20. I am aware, for instance, that Dean Bennett, a partner at the Boise law firm of Holland & Hart, has a 2021 hourly rate of \$400 per hour. Mr. Bennett graduated from law school in 2007, twenty-one (21) years after Ms. Ferguson and eleven (11) years after Mr. Durham. Another partner at Holland & Hart, Erik F. Stidman, has a 2021 hourly rate of \$485 per hour, which is higher than Ms. Ferguson's rate even though he graduated from law school in 1991, five years after Ms. Ferguson.

21. It is noteworthy that Ms. Ferguson and Mr. Durham were successful on the primary issues in this appeal and protected and preserved the fundamental rights granted under the Idaho State Constitution to all the people of Idaho and established case precedent for important legal issues of first impression.

22. The Respondent and Intervenor aggressively litigated this case, requiring extensive work on the part of Petitioners' counsel. Many of the issues were novel and complex and the litigation occurred in a very short period.

23. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Boise, Idaho on August 31, 2021.

/s/ Howard Belodoff
Howard A. Belodoff