

SUMMARY STATEMENT

Committee to Protect & Preserve v. State, Docket No. 53264

During the 2025 legislative session, the Idaho State Legislature enacted the Idaho parental choice tax credit. Now codified at Idaho Code section 63-3029N, it is a refundable tax credit available to parents who incur expenses to provide certain private educational services to children who do not attend public school. Those services include, but are not limited to, private school tuition and fees. The Idaho State Tax Commission is charged with implementing the credit, accepting and approving applications for it, and distributing advance payments to certain eligible applicants.

This matter involves a challenge to the constitutionality of the tax credit brought in a petition for a writ of prohibition. The petitioners are a variety of individuals and entities—including advocacy organizations, educators, parents with children in Idaho's public schools, and an Idaho school district—asking the Court to exercise its original jurisdiction and issue a writ prohibiting the Idaho State Tax Commission from implementing the tax credit. The petitioners argue that relief is appropriate because the tax credit violates the Idaho Constitution in two ways.

First, they argue that it is inconsistent with Article IX, section 1 of the Idaho Constitution, which provides, in relevant part, that it “shall be the duty” of the legislature to “establish and maintain a general, uniform and thorough system of public, free common schools.” They contend that the provision is both a mandate and a limitation, mandating that the legislature establish a public school system and limiting the legislature’s power to establish any additional or separate “system” of education. The petitioners do not dispute that the legislature has satisfied the mandate by establishing and maintaining a system of public schools. Instead, they argue that the legislature violated the alleged limitation because the tax credit indirectly funds private schools and thereby impermissibly establishes an additional and separate system of education.

Second, the petitioners argue that the tax credit violates the “public purpose doctrine,” a requirement that activities engaged in by the state, funded by tax revenues, must have primarily a public rather than a private purpose. The petitioners argue that the tax credit primarily has a private purpose because it benefits private, for-profit entities.

The Supreme Court first addressed the issue of the petitioners’ standing. The Court held that the parties had not established standing to request a writ of prohibition. Though they clearly disagree with the tax credit as public policy, the Court held that disagreement with a law is not an injury sufficient for standing to challenge its constitutionality. Several petitioners argued they would be injured because the tax credit would harm the public school system, which would harm them or their children. The Court concluded that prospective injury is too speculative to support the petitioners’ standing.

The Supreme Court nevertheless determined to address the petitioners’ challenge to the tax credit. The Court noted that it has occasionally relaxed the traditional standing requirements to address requests for extraordinary relief where the petition concerns a significant and urgent constitutional question and there is no other party with standing who is “ready or willing” to bring the question before a court. Considering the importance of education, the statutory deadlines for implementation of the tax credit, and the need for certainty for parents attempting to make

decisions regarding the education of their children, the Court decided to relax its traditional requirements and address the merits of the petition.

Turning to the merits, the Supreme Court held that the petitioners had not shown that the tax credit violates Article IX, section 1 of the Idaho Constitution. While Article IX, section 1 imposes a mandate on the legislature, requiring it to create a public school system satisfying certain conditions, the Court recognized that the petitioners did not argue that the legislature failed to satisfy that mandate. Instead, the petitioners argued that Article IX, section 1 imposes a limitation on the legislature's power to do something more than what was mandated. The Court disagreed, holding Article IX, section 1 "establishes a floor, and not a ceiling." The Court determined that it is not reasonable to read a provision mandating that the legislature create a system of public schools as limiting the legislature's authority to pass other legislation addressing education, including by adopting the tax credit at issue here.

The Supreme Court held next that the petitioners had not shown that the tax credit is unconstitutional because it primarily has a private purpose. In evaluating the purpose of legislation, the Court looks to the legislature's statement regarding its purpose, which the Court accepts unless it is arbitrary or unreasonable. The Court recognized that the legislature identified the purpose of the tax credit as enhancing the ability of parents "to choose educational services that meet the needs of their individual children." As the Court has previously held, education is undoubtedly a public purpose. The Court rejected the argument that the tax credit primarily has a private purpose because it will benefit private, for-profit entities, holding that legislation does not primarily have a private purpose because it incidentally benefits private entities. The Court also rejected the argument that the tax credit primarily has a private purpose because private schools are not required to admit all applicants and are not subject to the extensive regulation to which public schools are subject. The Court concluded that the tax credit is available for a broad range of educational services, including, but not limited to, private schools, and the legislature could reasonably conclude that the public would benefit from making that range of services more affordable. The Court held that while reasonable minds may differ over the wisdom or effectiveness of the tax credit, policy considerations are primarily the business of the legislature.

Finally, the Court awarded the Idaho State Tax Commission its reasonable attorney fees under Idaho Code section 12-117(4), which mandates an award in any civil proceeding where a governmental entity is adverse to another governmental entity.

******This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.******