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## State asked to pay \$152K for winning side's fees, after losing initiatives lawsuit

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BETSY Z. RUSSELL/Idaho Press

BOISE — Attorneys for the winning side in the successful lawsuit to overturn a restrictive new voter initiative law have submitted their fees and costs to the Idaho Supreme Court for payment by the state, and the tally comes to just under \$152,000.

That's less than the \$180,763 the Legislature already has paid to its private counsel for just part of the state's defense of the law in the same case. Lawmakers opted to hire their own private lawyers, from the prominent Boise law firm of Holland & Hart, in addition to the Idaho Attorney General's office's defense of the law.

"If that fee is reasonable for the state of Idaho to pay for one half of its defense in a losing effort, the lower request of Ferguson Durham for a winning one is eminently reasonable," lead attorney Deborah Ferguson write in her Friday court filing. It was accompanied by detailed breakdowns of the work done, rates and hours involved in the case, along with declarations from other attorneys who practice in related areas about the reasonableness of the fees.

Wrote Ferguson, "This is underscored by the fact that Ferguson Durham spent fewer hours than intervenors' (the Legislature's) counsel, while being required to produce more work product to advance and win this case."

State taxpayers were ordered to pay the fees and costs when the state lost the case; the state's highest court ruled that SB 1110, the law passed this year to restrict future voter initiatives and referenda, "constituted a grave infringement on the people's constitutional rights," and overturned it as unconstitutional.

Under current law, it takes signatures from 6% of the registered voters in 18 of Idaho's 35 legislative districts to qualify any measure for the statewide ballot. SB 1110 increased that to 6% of the registered voters in each and every one of the 35 districts. Reclaim Idaho, the group that sponsored the successful Medicaid expansion voter initiative in 2018, and the Committee to Protect and Preserve the Idaho Constitution, a lawyers' group, contended the change made it impossible for Idaho citizens to exercise their initiative and referendum rights, which have been guaranteed to them by the Idaho Constitution since 1912.

Reclaim Idaho is now gathering signatures for a new initiative to increase education funding in Idaho.

The court ordered the Legislature and the Idaho Secretary of State, who was the initial named defendant in the lawsuit, to split the expense of the winning side's attorney fees and costs. Now that the amounts have been submitted to the court, the state will have an opportunity to dispute it before the court issues its final order.

Neither Senate President Pro Tem Chuck Winder nor House Speaker Scott Bedke could be reached for comment Friday.

"What was at stake was far greater than any amount of money," Ferguson wrote in documents submitted to the court Friday. "The results obtained were excellent and unequivocal. The court's unanimous finding that the contested legislation was unconstitutional provides a much-needed course correction for the Legislature and protects the rights of Idaho citizens to direct democracy now and for the generations to come."

*Betsy Z. Russell is the Boise bureau chief and state capitol reporter for the Idaho Press and Adams Publishing Group. Follow her on Twitter at @BetsyZRussell.*

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