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February 2, 1990

The Honorable Pete T. Cenarrusa
Secretary of State
STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Requirements for Candidacy for the United States
Senate and House of Representatives

Dear Mr. Cenarrusa:

You have inquired regarding the constitutionality of Idaho Code sections 34-604, 34-605, and 34-1904, pertaining to requirements for candidacy for the United States Senate and House of Representatives. Specifically, § 34-604 requires that a United States Senate candidate be an Idaho resident for a minimum of two years; § 34-605 requires the same of candidates for the House of Representatives, and § 34-1904 requires that a candidate for the United States House of Representatives be a resident of the congressional district he desires to represent.

As you have noted, the United States Constitution imposes restrictions on those persons who may be members of Congress. Article I, section 2, clause 2 provides:

No person shall be a representative who shall not have attained to the age of twenty-five years and been seven years a citizen of the United States and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

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Article I, section 3, clause 3 provides:

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

An "inhabitant of that state," as used in these constitutional provisions, has been taken to mean "resident."

E.S. Corwin, The Constitution and What it Means Today 10 (14th Ed. 1978).

It is a fundamental principle of American law that the Constitution of the United States is the supreme law of the land, and all legislative, executive, and judicial officers of the United States and of the several states and all the people in the land are bound thereby. Dodge v. Woolsey, 18 How. 331, 15 L.Ed. 401 (1855).

The Idaho statutes in question operate to limit the rights of Idaho residents to run for the U.S. House and Senate more stringently than the standards set forth in the United States Constitution. The United States Supreme Court held in Powell v. McCormack, 395 U.S. 486 (1969), that the United States House of Representatives had no power to exclude from its membership any person who was duly elected by his or her constituents and who met the age, citizenship, and residence requirements specified in the United States Constitution. Under the Supremacy Clause of the United States Constitution, the states may not impose additional restrictions or limitations. So long as a candidate for the Senate or House meets the requirements set forth in the U.S. Constitution, he or she is qualified to run for federal office.

With respect to the two-year residency requirement set forth in §§ 34-604, the courts would likely rule as they have with respect to similar residency requirements for voting in federal elections. The federal judiciary has consistently ruled that lengthy residency requirements for voting purposes are unconstitutional. Dunn v. Blumstein, 405 U.S. 330, 31 L.Ed.2d 274, 92 S.Ct. 995 (1972); Annot., 31 L.Ed.2d 861. Responding to these cases, the states have adopted fairly nominal residency requirements. Thus, Idaho Code § 34-402 sets a 30-day residency requirement for voting purposes.

With respect to Idaho Code § 34-1904, a similar result would obtain. Article I, section 2, clause 2 requires only that a person running for representative be an "inhabitant" of the state in question. A state requirement that the person also be a

resident of the congressional district in question goes beyond the U.S. constitutional provision and would be held unenforceable. The question was addressed in Chavez v. Evans, 79 NM 578, 446 P.2d 445 (1968), by the Supreme Court of New Mexico. The court struck down a New Mexico statute which read as follows:

Each candidate for the office of representative in Congress shall be a resident and qualified elector of the district in which he seeks office.

In doing so the court stated:

The constitutional qualifications for membership in the lower house of Congress exclude all other qualifications, and state law can neither add to nor subtract from them. . . .The state may provide such qualifications and restrictions as it deems proper for offices created by the state; but for offices created by the United States Constitution, we must look to the creating authority for all qualifications and restrictions.

Clearly, [the above-quoted statute], by requiring that each candidate for representative in Congress be a resident of and a qualified elector of the district in which he seeks office, adds additional qualifications to becoming a candidate for that office. Accordingly, we must hold the provisions of the Federal Constitution prevail and that this statute unconstitutionally adds additional qualifications.

446 P.2d at 448.

Similarly, Idaho Code § 34-1904, by imposing additional restrictions, would be held unconstitutional. See also, Joyner v. Mofford, 706 F.2d 1523 (9th Cir. 1983), rev'd on other grnds.

In summary it is clear that the residency restrictions you have inquired about would be held in contravention of the less restrictive standards of the United States Constitution. The state could not enforce the two year residency requirement set forth in Idaho Code §§ 34-604 and 34-605 with respect to candidates for the U.S. Senate or House, nor could it require, as set forth in Idaho Code § 34-1904, that candidates for the United States House of Representatives be residents of the district in which they seek election. With regard to the latter section, so long as any candidate has residency in the state in question, he or she would be qualified to run for the U.S. House, provided that he or she was 25 years of age and a resident of the United States for seven years.

The Honorable Pete T. Cenarrusa

Page 4

February 2, 1990

This letter is provided to assist you. The response is an informal and unofficial expression of the views of this office based upon the research of the author.

Sincerely,

DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division