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February 13, 1990

Honorable Lee Barnes  
State Representative, District 23C  
House of Representatives  
STATEHOUSE MAIL

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

RE: RS23576  
Amendments to Idaho Code § 34-1805

Dear Representative Barnes:

In your letter of January 25, 1990, you ask whether the amendments to Idaho Code § 34-1805 which you propose are constitutional. As I read the amendment, it is your intention to require that not more than 20% of the minimum number of signatures for an initiative or referendum petition can come from any one county.

Article 3, section 1, of the Idaho Constitution provides that the power of initiative and referendum are reserved to the people. This section further provides that for both initiative and referendum, the procedure shall be "under such conditions and in such manner as may be provided by acts of the legislature . . . ." This constitutional provision is not self-enacting, but requires legislation to provide for its utilization. *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 566, 548 P.2d 35 (1976); and *Johnson v. Diefendorf*, 56 Idaho 620, 636, 57 P.2d 1068 (1936).

Requiring a certain number of signatures in order to give effect to the process is a condition precedent and is an acceptable form of legislative enactment. *Idaho Water Resources*

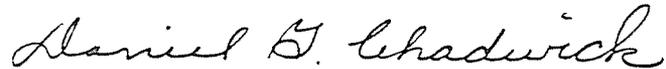
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*Board v. Kramer*, 97 Idaho at 567; 42 Am. Jur. 2d *Initiative and Referendum* § 27 (1969). While there is no case law specifically on point, your proposal to limit the number of signatures from any one county appears to fall within the scope of legislative enactment permitted by article 3, section 1, and likely would be constitutional.

If you have additional questions, please do not hesitate to contact me.

Sincerely,



DANIEL G. CHADWICK  
Chief, Intergovernmental  
Affairs Division

DGC/dp

cc Ben Ysursa