

July 7, 1997

The Honorable Pete T. Cenarrusa  
Secretary of State

**HAND DELIVERED**

RE: Certificate of Review; Initiative Regarding  
State, County, Municipal and School District Term Limits Pledges

Dear Mr. Cenarrusa:

An initiative petition was filed with your office on June 26, 1997, concerning term limits pledges for state, county, municipal and school district offices. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and has prepared the following advisory comments. It must be stressed that, given the strict statutory time frame in which this office must respond and the complexity of the legal issues raised in this petition, our review can only isolate areas of concern and cannot provide in-depth analysis of each issue that may present problems. Further, under the review statute, the Attorney General's recommendations are "advisory only," and the petitioners are free to "accept or reject them in whole or in part."

### **BALLOT TITLE**

Following the filing of the proposed initiative, our office will prepare short and long ballot titles. The ballot titles should impartially and succinctly state the purpose of the measure without being argumentative and without creating prejudice for or against the measure. While our office prepares the titles, if petitioners would like to propose language with these standards in mind, we recommend that they do so and their proposed language will be considered.

### **MATTERS OF SUBSTANTIVE IMPORT**

The proposed initiative would authorize candidates for state, county, municipal and school district office to sign the following pledge:

I hereby declare that during my term of office, if elected, I will adhere to the 1994 Term Limits Act, as passed by the voters of Idaho.

Candidates for those offices are also authorized to submit the signed pledge along with their declaration of candidacy or nomination paper. Once the candidate has signed and submitted the pledge, the following legend is required to appear on the official ballots:

“Pledges to adhere to the 1994 Term Limits Act, as passed by the voters of Idaho.” Apparently, candidates who decline to sign the pledge would have their names appear on the ballot with no legend.

### **Section 1**

Section 1 of the proposed initiative states that the law, upon passage, should be referred to as the “State, County, Municipal and School District Term Limits Pledge Act of 1998.”

### **Section 2**

Section 2 of the proposed initiative would create Idaho Code § 34-907C, which contains the pledge procedure for candidates for state and county office.

### **Section 3**

Section 3 of the proposed initiative would create Idaho Code § 50-478A, which contains the identical pledge procedure for candidates for municipal office.

### **Section 4**

Section 4 of the proposed initiative would create Idaho Code § 33-443A, which contains the identical pledge procedure for school district trustee candidates.

### **Section 5**

Section 5 of the proposed initiative states that the pledge procedure can be initiated by any candidate who files for candidacy “on or after one day after” passage of the initiative by the voters.

### **Section 6**

Section 6 of the proposed initiative contains a severability clause.

The proposed initiative raises two distinct substantive issues. First, the necessity for the act is not apparent. State, county, municipal and school district officials are already subject to the ballot access restrictions enacted by the voters in 1994. Only the portion of the 1994 initiative mandating term limits for congressional offices has been struck down by reviewing courts. Therefore, the proposed initiative does nothing more than permit candidates to pledge their intention to comply with a state law that is already compulsory. Candidates who opt not to sign the pledge would be subject to the same

ballot access restrictions as those who choose to sign the pledge. The fact that the legend, "Pledges to adhere to the 1994 Term Limits Act, as passed by the voters of Idaho," would appear after some candidates' names on the ballot and would not appear after others' would only serve to confuse the voters since the 1994 Term Limits Act applies equally to all candidates.

Second, whether ballot legends of any kind are permissible in Idaho is still an open question. In Simpson v. Cenarrusa, Supreme Court No. 23526 (argued May 7, 1997), one of the arguments presented by the petitioners was that ballot legends are an unconstitutional infringement on the right to vote. The Idaho Supreme Court is likely to rule on that question in the near future. If the Idaho Supreme Court rules in favor of the petitioners on the issue of ballot legends, the proposed initiative will probably be invalidated by a reviewing court.

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style and matters of substantive import and that the recommendations set forth above have been communicated to petitioner Beau Parent by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,

ALAN G. LANCE  
Attorney General

**Analysis by:**

MATTHEW J. MCKEOWN  
Deputy Attorney General