

July 8, 1997

The Honorable Pete T. Cenarrusa
Secretary of State
HAND DELIVERED

Re: Certificate of Review
Initiative Regarding Congressional Term Limits Pledges

Dear Mr. Cenarrusa:

A proposed initiative petition was filed with your office on June 26, 1997. 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 timeframe 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 authorizes candidates for either the United States House of Representatives or the United States Senate to sign a "term limits pledge." Section 2 of the proposed initiative contains the following pledge form language:

I voluntarily pledge not to serve in the United States [House of Representatives for more than three (3) terms] [Senate more than two (2) terms] after the effective date of this provision. I understand that informing the voters that I have taken this pledge is important to voters. I therefore authorize, instruct and ask the Secretary of State to notify the voters of this action by placing the applicable ballot information, "Signed **TERM LIMITS** pledge to serve no more than [three (3) terms] [two (2) terms]" or

“Broke **TERM LIMITS** pledge” next to my name on every election ballot and in all state sponsored voter education material in which my name appears as a candidate for the office to which the pledge refers.

Once the candidate signs the pledge, sections three and four of the proposed initiative require the Idaho Secretary of State to place the applicable term limits legend next to candidates’ names in every election ballot and in all state-sponsored voter education material.

The constitutionality of ballot legends of any kind is still an open question in Idaho. In Simpson v. Cenarrusa, Supreme Court No. 23526 (argued May 7, 1997) (challenge to the 1996 term limits legend initiative), 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 Simpson petitioners on the issue of ballot legends, the provisions authorizing the congressional term limits pledges will probably be invalidated by a reviewing court.

Section Five

Section five of the proposed initiative requires the secretary of state, or other designated election officials, to “post in a conspicuous place in every polling location a copy of the Term Limits Pledge.” Currently, Idaho Code § 18-2318(1)(b) prohibits any person from “circulating cards or handbills of any kind” within one hundred feet of a polling place. In addition, Idaho Code § 18-2323 prohibits the placing of placards in voting booths that are “intended or likely to call the attention of the voter to any candidate, or to urge the voter to vote for any particular candidate.” Since section five of the proposed initiative has the potential to conflict with Idaho Code §§ 18-2318 and 18-2323, it should be revised to specify that section five takes precedence over other potential conflicting statutes.

Section Six

Section six of the proposed initiative states that, “service in office for more than one-half of a term shall be deemed service for a term.” In U.S. Term Limits v. Bryant, — U.S. —, 115 S. Ct. 1842 (1995), the United States Supreme Court ruled that states may not impose qualifications for offices of the United States Representative or United States Senator in addition to those set forth by the Constitution. Therefore, a reviewing court will probably refuse to implement section six if it is deemed to conflict with the United States Constitution.

Section Seven

Section seven states that the “state recognized proponents and sponsors of this initiative have standing to defend this initiative against any challenge in any court.” Idaho Code § 67-1401 states that the Idaho Attorney General, or his designee, is responsible for defending state laws against challenges in court. If it is the intention of the sponsor to relieve the Office of the Attorney General from the obligation of defending the proposed initiative in court, then that intention should be specifically incorporated into section seven. Even without section 7, the Idaho Rules of Civil Procedure probably give the initiative sponsors the ability to intervene as a defendant in any action challenging the proposed initiative.

Section Eight

Section eight of the proposed initiative authorizes the secretary of state to promulgate rules in order to implement the proposed initiative.

Section Nine

Section nine of the proposed initiative contains a severability clause.

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 Donna Weaver 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