

May 28, 1999

Honorable Pete T. Cenarrusa  
Secretary of State  
**HAND DELIVERED**

Re: Certificate of Review  
Initiative Concerning State Term Limits

Dear Mr. Cenarrusa:

An initiative petition was filed with your office on May 19, 1999 called the "Idaho Term Limits Act of 2000" (proposed initiative).<sup>1</sup> Pursuant to Idaho Code § 34-1809, this office has reviewed the proposed initiative 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 proposed initiative, 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 TITLES**

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 would recommend that they do so and their proposed language will be considered.

### **MATTERS OF SUBSTANTIVE IMPORT**

The proposed initiative makes a number of changes to Idaho Code § 34-907. Idaho Code § 34-907 contains the ballot access restrictions for statewide elected officials, state legislators and county officials that were adopted by voter initiative in 1994. None of these changes raises any statutory or constitutional concern.

#### **1. Addition of the term "Special"**

Currently, Idaho Code § 34-907(1) states that the ballot access restrictions apply for all multi-term incumbents planning to appear on the "primary or general election ballot." The proposed initiative would include ballots prepared for "special" elections in the list of ballots covered by the ballot access restrictions in Idaho Code § 34-907(1).

## **2. Repeal of Ballot Access Restrictions for Congressional Candidates**

Currently, Idaho Code §§ 34-907(1)(a) and (b) set out ballot access restrictions for multi-term congressional incumbents. Ballot access restrictions for congressional candidates were held to be unconstitutional in U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995). The initiative would remove the unconstitutional language from Idaho Code § 34-907.

## **3. Restriction on Switching from House to Senate and Vice Versa in Consecutive Elections**

Idaho Code § 34-907(1)(d) prohibits an individual from appearing on the ballot as a candidate for either the State Senate or House of Representatives when that individual has served as “a state legislator, representing any district within the state, including all House seats within the same district, during eight (8) or more of the previous fifteen (15) years.” However, the initial language in Idaho Code § 34-907(1) limits this restriction to service in the “same office.” Therefore, under the current version of Idaho Code § 34-907, a person who is prohibited from appearing on the ballot as a candidate for the State Senate, for example, could appear on the ballot as a candidate for the House of Representatives. The same would be true for a multi-term member of the House appearing on the ballot as a candidate for State Senate.

The initiative would narrow the ability of a multi-term incumbent in one house to appear on the ballot as a candidate for a position in the other house. A state legislator cannot appear on the ballot as a candidate for either the State Senate or the State House of Representatives once he or she has served as a “member of the state legislature during twelve (12) or more of the previous fifteen (15) years.”

## **4. Local Option to Opt Out of Ballot Access Restrictions for County Officials**

The proposed initiative would allow counties to hold local referenda to determine whether ballot access restrictions should apply to county commissioners and county row officers (sheriff, assessor, prosecuting attorney, clerk, treasurer, coroner). The proposed initiative specifies that county commissioners and county row officers be separated into two referendum questions for any local election that would be held pursuant to the new language.

The proposed initiative states that if a majority of votes is cast in favor of eliminating ballot access restrictions for multi-term incumbent candidates for county commission, then the restrictions that are set out in Idaho Code § 34-907(1) will not apply to county commissioner candidates. The drafters of the initiative have not included similar language that specifies what the effect would be of a majority vote against ballot

access restrictions for county row officers. Assuming that the drafters wish to treat the election results for both county commissioners and county row officers in the same fashion, the proposed initiative should be amended to include language that would specify the effect of a majority vote against ballot access restrictions for county row offices.

#### **5. Local Option to Opt Out of Ballot Access Restrictions for Municipal Officials**

The ballot access restrictions for municipal elected officials are set out in Idaho Code § 50-478. The proposed initiative would allow municipal corporations to hold local referenda to determine whether ballot access restrictions should apply to multi-term incumbent candidates for mayor and city council. While the process for conducting the referenda is the same as it is for county officials set out above, voters would not be able to consider ballot access restrictions for mayoral candidates and city council candidates separately. Voters would either have to vote against ballot access restrictions for “all elected offices” or for ballot access restrictions for “all elected offices.”

#### **6. Local Option to Opt Out of Ballot Access Restrictions for School District Trustees**

The ballot access restrictions for school district trustees are set out in Idaho Code § 33-443. The proposed initiative would allow school districts to hold local referenda to determine whether ballot access restrictions should apply to multi-term incumbent candidates for school district trustee. The process for conducting the referenda is the same as it would be for county and city referenda.

#### **7. Change of Effective Date for Terms Counted Toward Ballot Access Restrictions**

Section 5 of the 1994 initiative enacting the current version of Idaho Code § 34-907 stated that the effective date of the initiative was January 1, 1995. It also stated that “[s]ervice prior to January 1, 1995 shall not be counted for purpose of” calculating when the ballot access restrictions go into effect. Legislative terms begin on December 1 following the general election. Idaho Code § 67-404. Therefore, the term that resulted from the 1994 general election does not count toward the ballot access restriction calculations for state legislators only.

Section 5 of the proposed initiative would change the date from which terms are calculated to determine when ballot access restrictions begin. The initiative includes all “terms of office [that] began or begin at any time after December 1, 1994” in the calculation of terms leading toward ballot access restrictions. It is not clear what the drafters intend by this change. It does not cover the state legislative terms that were the subject of the 1994 general election because those terms began on December 1, 1994, not

after December 1, 1994. The drafters should clarify what they hope to accomplish with the language in section 5 that differs from the existing effective date of Idaho Code § 34-907.

Sincerely,

ALAN G. LANCE  
Attorney General

**Analysis by:**

MATTHEW J. MCKEOWN  
Deputy Attorney General

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<sup>1</sup> A companion petition called the "Idaho State Term Limits Act of 2000" was also submitted on May 19, 1999.