

February 28, 2002

The 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 February 12, 2002, called the “Idaho State Term Limits Act of 2002” (proposed initiative).

Idaho Code § 34-1809 provides in relevant part:

**Review of initiative and referendum measures by attorney general**— . . . the attorney general . . . shall, within twenty (20) working days from receipt thereof, review the proposal for matters of substantive import and shall recommend to the petitioner such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the attorney general shall be advisory only and the petitioner may accept or reject them in whole or in part. The attorney general shall issue a certificate of review to the secretary of state certifying that he has reviewed the measure for form and style . . .

Pursuant to this duty, this office has reviewed the proposed initiative and prepared the following advisory comments.

This office offers no opinion with regard to the policy issues addressed by the proposed initiative. 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 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 and pursuant to Idaho Code § 34-1809, this 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 this 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 would create a new code provision entitled Idaho Code § 34-907. The proposed Idaho Code § 34-907 contains ballot access restrictions for statewide elected officials and state legislators.

### **1. The Initiative**

This initiative is similar to former Idaho Code § 34-907, which was upheld by the Idaho Supreme Court on December 13, 2001, and then repealed by the Idaho Legislature on February 6, 2002. Former Idaho Code § 34-907, was also passed pursuant to an initiative. As indicated previously, former Idaho Code § 34-907, which is nearly identical to the proposed Idaho Code § 34-907 was upheld as constitutionally permissible in Rudeen v. Cenarrusa, — Idaho —, 38 P.3d 598 (2001). This initiative also appears to be constitutionally permissible because it imposes the same ballot access restrictions that were previously upheld as constitutionally permissible in Rudeen.

The primary change in the current initiative is that it omits the limitation on ballot access for local government elected officials at the county and municipal levels. As previously stated, ballot access restrictions imposed upon statewide elected officials and state legislators are constitutionally permissible. As a result, this initiative does not appear to raise any substantive legal or constitutional issues.

### **2. A Note on the Effective Date for Terms Counted Toward Ballot Access Restrictions**

Section 3 of the 2002 initiative states that the effective date of the initiative is December 1, 1994. It also states that “[s]ervice prior to December 1, 1994 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 § 34-907. Therefore, the term that resulted from the 1994 general election will count toward the ballot access restriction calculations for state legislators only.

Section 3 of the proposed initiative establishes the date from which terms are calculated to determine when ballot access restrictions begin. The initiative includes all “terms of office [that] began on or after December 1, 1994” in the calculation of terms leading toward ballot access restrictions. It will cover the state legislative terms that were the subject of the 1994 general election because those terms began on December 1, 1994.

This initiative, if passed, would take effect pursuant to its enacting clause, “one day after passage. . . .”

This provision will not operate retrospectively. This provision will have no effect on officeholders lawfully on the ballot for the 2002 primary or general election and subsequently elected. Those officeholders, lawfully elected prior to passage of this initiative, will serve their term, but may be prohibited from being listed as a candidate in a future election. This provision will prohibit affected officeholders from having their names listed on the ballot in certain elections held after passage of this initiative.

### **CONCLUSION**

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 Peter C. Erbland by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,

ALAN G. LANCE  
Attorney General

**Analysis by:**

BRIAN P. KANE  
Deputy Attorney General