



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

July 15, 2009

The Honorable Ben Ysursa
Idaho Secretary of State
STATEHOUSE MAIL

Re: Certificate of Review – Proposed Initiative Related to Absentee Voting

Dear Secretary of State Ysursa:

An initiative petition was filed with your office on June 15, 2009. 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 to the complexity of the legal issues raised in this petition, this office's 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". The petitioners are free to "accept or reject them in whole or in part." The opinions expressed in this review are only those that may affect the legality of the initiative. This office offers no opinion with regard to the policy issues raised by the proposed initiative.

BALLOT TITLES

Following the filing of the proposed initiative, 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 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 seeks to amend Idaho Code § 34-1002 by adding the paragraph:

Any registered elector may make written application to the county clerk for status as a permanent absentee voter. The county clerk shall notify each political subdivision of an elector's status as a permanent absentee voter pursuant to section 34-1408, Idaho Code. Each qualified registered permanent absentee voter shall automatically receive an absentee ballot for each election for which the elector is entitled to vote and need not submit a separate request for each election. Ballots received from permanent absentee voters shall be validated, processed and tabulated in the same manner as other absentee ballots. Status as a permanent absentee voter shall be terminated upon any of the following events: the written request of the voter; the death or disqualification of the voter; the cancellation of the voter's registration record; or the return of an ongoing absentee ballot as undeliverable.

Petitioners' language is clear, but it would be better if they put the initiative into legislative format. In other words, the petitioners may wish to consider restating Idaho Code § 34-1002 and show precisely how the initiative would change that section of Idaho Code. Since petitioners are proposing to add language, the added language should be shown as underscored and in the location in the statute where petitioners propose that the new language should be placed. Although petitioners are not seeking to delete any language from Idaho Code § 34-1002, deletions could be shown with strikeout, should they be proposed. Putting the proposed initiative into legislative format would eliminate the possibility (albeit remote) that the initiative, if passed, would be codified in a manner other than intended by the petitioners. Failure to do so means that, should the initiative pass, codifiers, or perhaps the Legislature, may be called upon to put the language of the proposed initiative into a legislative or code format. The underscoring, while not required constitutionally, may facilitate informed decision-making with respect to individuals who are considering whether to sign the petition. It is recommended, although not required, that an underlined draft be used for circulation and collection of signatures in order to facilitate informed decision-making, as well as to assist the codification of the initiative, should it pass.

Article III, § 1, of the Idaho Constitution vests the legislative power of the state in the Senate and House of Representatives and in the people, through the initiative process. Laws passed by initiative are on equal footing with legislation enacted by the Legislature, and the two must comply with the same constitutional requirements. Westerberg v. Andrus, 114 Idaho 401, 757 P.2d 664 (1984). As the proposed initiative is on equal footing with other legislation passed and considered by the Legislature, it does not appear that the initiative raises any significant legal issues.

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 Larry Grant by deposit in the U.S. Mail a copy of this Certificate of Review.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence G. Wasden", written in a cursive style.

LAWRENCE G. WASDEN
Attorney General

Analysis by:

William A. von Tagen
Deputy Attorney General

LGW/wat/mdw