



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

February 8, 2010

The Honorable Ben Ysursa
Idaho Secretary of State
STATEHOUSE MAIL

Re: Certificate of Review
Proposed Initiative Related to Arrest Authority

Dear Secretary of State Ysursa:

An initiative petition was filed with your office on January 19, 2010. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and has prepared the following advisory comments. Given the strict statutory timeframe within which this office must review the 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." The petitioners are free to "accept or reject them in whole or in part." Due to the number of initiatives that were submitted for review and the available resources for performing the reviews, we did not communicate directly with the petitioner as part of the review process. 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 must 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 titles for the initiative, petitioners may submit proposed titles for consideration. Any proposed titles should be consistent with the standard set forth above.

MATTERS OF SUBSTANTIVE IMPORT

A. Introduction

This section would declare that a federal officer may not make any "arrest, search or seizure in this state without the written permission of the [county] sheriff" unless such act meets certain limited exceptions, some of which require the permission of the Idaho attorney general.

Secretary of State Ysursa

February 8, 2010

Page 2 of 2

The sheriff can deny permission "for any reason that the sheriff or his designee considers sufficient." The initiative requires the arrest and prosecution of any federal officer who acts without the permission of the sheriff for kidnapping, trespassing, or theft, respectively. The initiative also declares invalid any federal laws purporting to give federal officers "the authority of a county sheriff."

B. The Initiative is Clearly Unconstitutional

The Supremacy Clause of the United States Constitution provides: "This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." U.S. Const., art. VI, § 2 (emphasis added). State law that conflicts with federal law is "without effect." Altria Group, Inc., v. Good, U.S., 129 S. Ct. 538, 543, 172 L.Ed.2d 398 (2008). Under the Preemption clause, it is "clear that federal law is as much the law of the several States as are the laws passed by their legislatures." Haywood v. Drown, U.S., 129 S. Ct. 2108, 2114, 173 L.Ed.2d 920 (2009). "Preemption doctrine stems from the Supremacy Clause of the United States Constitution and invalidates any state law that contradicts or interferes with any Act of Congress." Hayfield Northern Railroad Co., Inc. v. Chicago and Northwestern Transp. Co., 467 U.S. 622, 627, 104 S. Ct. 2610, 81 L.Ed.2d 527 (1984). The State of Idaho would violate the federal Constitution if it interfered with the acts of Congress, which would include preventing enforcement of federal laws by federal law enforcement officers and criminally prosecuting them for performing their legal duties.

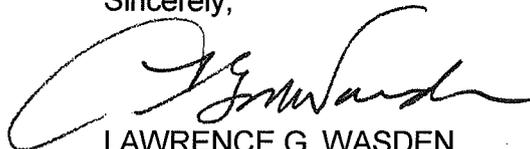
C. Recommended Revisions or Alterations

There are no alterations or revisions to this initiative that would render it constitutional.

CERTIFICATION

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style, and matters of substantive import. The recommendations set forth above have been communicated to Petitioner via a copy of this Certificate of Review, deposited in the U.S. Mail to Alanna Grimm, 2817 E. St. James Ave., Hayden, Idaho 83835-7544.

Sincerely,



LAWRENCE G. WASDEN
Attorney General

Analysis by:

KENNETH K. JORGENSEN
Deputy Attorney General