



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

February 10, 2010

The Honorable Ben Ysursa  
Idaho Secretary of State  
**STATEHOUSE MAIL**

Re: Certificate of Review  
Proposed Initiative Related to Enforcement of Federal Laws

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 initiative declares that it receives its authority from the rules of the House of Representatives and the Tenth Amendment, and seeks to declare as nullities and

unenforceable in Idaho all federal statutes that do not specifically state the enumerated grant of power to Congress in the United States Constitution authorizing passage of said statute, or which are inconsistent with the framer's intent regarding such enumerated power. It requires the Secretary Of State to keep a registry of nullified federal statutes, and the Attorney General to certify a statute as nullified or not nullified. The initiative would also grant that the Idaho Legislature can certify federal laws as nullities, and delegates to county sheriffs the authority to unilaterally deem federal laws nullities. The initiative then prohibits sheriffs from enforcing federal laws deemed nullities, criminalizes enforcement of nullified federal laws by federal employees, and grants unspecified civil remedies to any person who has had a nullified federal law enforced or attempted to be enforced against them.

### **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). This initiative clearly and plainly (and in fact has the stated purpose) of contradicting and interfering with acts of Congress.

The rationale of the initiative seems to be that federal statutes that exceed the grant of limited powers in the Constitution or that do not expressly state what enumerated power justified that act are unconstitutional. Even assuming this underlying premise, the fatal flaw in this initiative is that it usurps the Constitutional authority to declare federal law unconstitutional. It is simply not within the Idaho Attorney General's or the Idaho Legislature's authority to declare federal laws null and void; that authority lies exclusively with the Supreme Court of the United States and the federal courts created by Congress. U.S. Const., art. III. Both state and federal courts are constitutionally bound to declare void any state action that contradicts or interferes with the acts of Congress.

### **C. Recommended Revisions or Alterations**

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

Secretary of State Ysursa

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### 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,

A handwritten signature in black ink, appearing to read 'L. Wasden', written over a horizontal line.

LAWRENCE G. WASDEN  
Attorney General

**Analysis by:**

KENNETH K. JORGENSEN  
Deputy Attorney General