



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

February 16, 2010

The Honorable Ben Ysursa
Idaho Secretary of State
STATEHOUSE MAIL

Re: Certificate of Review
Proposed Initiative Related to Animal Identification

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". 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

The proposed initiative ("Initiative") seeks to add a new chapter to Title 25, which is the Idaho Code title pertaining to animals. The Initiative proposes to add a chapter that would prohibit the state of Idaho from participating in the national Animal Identification system.

The National Animal Identification System (“NAIS”) has historically been a voluntary endeavor, although there have been efforts to make the system mandatory. On February 5, 2010, the United States Department of Agriculture (“USDA”) Animal and Plant Health Inspection Service (“APHIS”) announced that it was refocusing NAIS efforts on disease traceability, and that the new focus would be only on animals that move in interstate commerce. Specifically, the USDA stated that, “Producers who raise animals and move them within a State, Tribal Nation, or to local markets, as well as to feed themselves, their families, and their neighbors are not part of USDA’s framework’s scope and focus. Animals moving in interstate commerce into normal marketing channels are those that will fall under USDA’s new animal disease traceability approach.” *APHIS Factsheet: Questions and Answers: New Animal Disease Traceability Framework* (February 2010) (“Fact Sheet”). Producers who are local only will not be required to participate in the federal program (although states may have their own internal systems used to address specific diseases).

Given that recent change, the Initiative authors may wish to revise the Initiative to ensure that the Initiative is consistent with USDA’s new focus.

A. The Initiative Contains an Incorrect State Name at Material Points in the Initiative

It is a basic tenet of constitutional law that a state may enforce laws only within its own borders. See, e.g., *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336, 109 S. Ct. 2491, 2499, 105 L.Ed.2d 275 (1989 (stating that, “[A] statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State’s authority and is invalid regardless of whether the statute’s extraterritorial reach was intended by the legislature.”) However, at three different points, the Initiative references Missouri, rather than Idaho.

First, proposed subsection 25-4001(2) provides that, “As used in this chapter, the following terms mean: . . . ‘Department,’ the Missouri department of agriculture.” That presumed error renders the entirety of proposed section 25-4003 ineffective, because that section sets forth the duties of “the department of agriculture.” Neither the Idaho Legislature, nor the Idaho voters through the initiative process, may impose duties upon the *Missouri* department of agriculture.

Second, to the extent that any portion of section 25-4003 would remain effective, subsection 25-4003(2) attempts to require that the “department of agriculture” “[d]evelop a procedure with the United States Department of Agriculture whereby such citizen’s data shall be expunged from the USDA National Premises Information Repository as well as the *Missouri* animal identification plan system.” (Emphasis added.) Similarly, section 25-4004, as proposed, provides that, “Nothing in this section shall be construed as: . . . (4) authorizing the *department of agriculture* to establish any requirement of participation in the *Missouri* specific source

verification.” (Emphasis added.) Idaho lacks authority to require that actions be taken by the Missouri department of agriculture, or regarding the Missouri animal identification plan system.

The state of Idaho cannot regulate nor impose duties on the Missouri Department of Agriculture. Therefore, those provisions of the Initiative set forth in the preceding paragraph would be unenforceable.

B. The Initiative Impairs the Obligation of Contracts

The Initiative seeks to add a new subsection providing that:

All cooperative agreements between the federal government and this state, or between this state and other states, established before the effective date of this section and related to the establishment of animal tracking, tagging, registration, or information databases, premises registration, or information databases, use of electronic identification for animal tagging purposes, and other matters related to the national animal identification system are hereby terminated and null and void as to this state’s participation.

Article I, Section 10 of the United States Constitution (the “Contract Clause”) provides that “no state shall . . . pass any . . . law impairing the obligation of contracts. . . .” The “Contract Clause limits the power of the States to modify their own contracts as well as to regulate those between private parties.” U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 17, 97 S. Ct. 1505, 1515, 52 L.Ed.2d 92 (1977). The Contract Clause applies to contracts which pre-exist the effective date of a law, or in which a right has become vested. Stated differently, the Initiative could not terminate an agreement nor render its provisions null and void, if a party to the agreement had a vested interest in the performance of the given provision. Moreover, assuming the Initiative is approved, the Initiative could not terminate an agreement that was effective prior to the approval of the Initiative.

C. The Initiative May Fit More Appropriately in Title 25, Chapter 2, Idaho Code

Title 25, chapter 2, Idaho Code, addresses the “Inspection and Suppression of Diseases Among Livestock.” Idaho Code § 25-207B specifically addresses the “Identification of livestock, poultry or fish – Rules for disease control.” While I have not found any specific inconsistencies or conflicts between section 25-207B and the Initiative, the authors may want to review that section and determine whether the Initiative may fit more appropriately as part of section 25-207B.

The Honorable Ben 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 the 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 large, stylized flourish.

LAWRENCE G. WASDEN
Attorney General

Analysis by:

ANGELA SCHAER KAUFMANN
Deputy Attorney General