



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 Relating to the Certification of Candidates For President,
Vice President and Presidential Electors

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

No State May Add to the Constitutional Qualifications of Office for Federal Officers

You have presented an initiative petition that, if adopted, will require candidates for President, Vice President, and their electors to provide copies of their birth certificates to the Secretary of State to permit the candidates to be placed on the ballot. The Constitution of

The Honorable Ben Ysursa

February 16, 2010

Page 2 of 2

the United States is the supreme law of the land, and all legislative, executive, and judicial officers of the United States and of the several states and all the people in the land are bound thereby. Dodge v. Woolsey, 59 U.S. 331, 1855 WL 8235 (U.S. Ohio), 15 L. Ed. 401 (1855). The United States Supreme Court held in Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L.Ed.2d 491 (1969), that the United States House of Representatives had DQ power to exclude from its membership any person who was duly elected by his or her constituents and who met the age, citizenship, and residence requirements specified in the United States Constitution. Under the Supremacy Clause of the United States Constitution, the states may not impose additional restrictions or limitations. So long as a candidate for the Senate or House meets the requirements set forth in the United States Constitution, he or she is qualified to run for federal office.

The same analysis applies to the Office of President. Article 2, Section 1, Clause 5 of the U.S. Constitution lists the qualifications of office. Notably, a person must be a natural born citizen, 35 years old, and a resident of the United States for at least 14 years. No requirement that birth certificates be shown to the Secretaries of State is contained within that provision. Naturally, following the previous analyses of the United States Supreme Court with regard to heightened state restrictions for Federal candidates, whose qualifications are outlined within the United State Constitution, these added qualifications are unconstitutional.

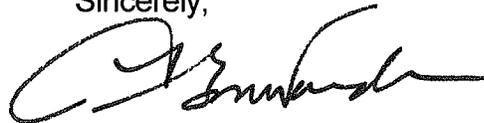
CONCLUSION

Based upon the above analysis and existing case law, it appears that the substantive provisions of this initiative, if adopted, would be declared unconstitutional.

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 Alana Grimm, 2817 E. St. James Ave., Hayden, Idaho 83835-7544.

Sincerely,



LAWRENCE G. WASDEN
Attorney General

Analysis by:

BRIAN P. KANE
Deputy Attorney General