



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 Membership in Organizations Undermining
U.S. Sovereignty

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

Membership in Organizations Is a Policy Issue

This initiative seeks to directly prohibit local governments from joining the International Council for Local Environmental Initiatives as well as any entity of the United Nations. It appears that a prohibition of this nature may be permissible as a limitation on the

expenditure of public funds.¹ Although the provision contains significant penalty provisions, it does not contain any enforcement mechanism. In other words, if a county were to be in violation of this provision, who would be the reviewing or enforcing entity? Similarly, the initiative does not provide any entity with the authority to investigate a claim that one of the governmental entities has joined one of the prohibited organizations.

It appears that the initiative presupposes that the Office of the Attorney General would enforce this Act. But, it does not expressly state that fact, nor provide the means for enforcement. Additionally, the Act seeks to remove any discretion from the attorney general to refuse to bring an enforcement action. Such a limitation on discretion would likely not survive a constitutional challenge. The attorney general is an executive officer of the state. Idaho Const. art. IV, § 1. Initiative power is exercised under art. III, sec. 1 of the Idaho Constitution. As an exercise of legislative power, an initiative cannot invade the province of executive discretion. Idaho Const. art. II, §1. By removing the decisional authority of the attorney general in legal matters of the state, the initiative creates an improper exercise of executive power. Idaho Const. art. II, § 1.

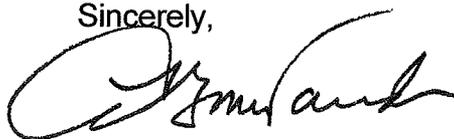
CONCLUSION

As outlined above, this initiative raises a significant policy issue, and improperly invades the province of executive authority. Additionally, care should be exercised in the abridgement or termination of any exchange of ideas at any level of government.

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

¹ But within this area, if the Federal government has directed participation, there may be preemption problems with this initiative as well. As this office is not well-versed in local/ federal/ international dynamics, this analysis is beyond the scope of this review. The Initiative proponents are encouraged to research and ensure that preemption has not occurred within this area.