



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

February 17, 2010

The Honorable Ben Ysursa
Idaho Secretary of State
STATEHOUSE MAIL

Re: Certificate of Review
Proposed Initiative Relating to the State Sovereignty Act

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 Initiative Violates the Supremacy Clause

The Supremacy Clause of the United States Constitution provides that federal laws and treaties are "the supreme law of the land." U.S. Const. art. VI, cl. 2. Accordingly, when Congress acts within the scope of its constitutional authority, the laws it enacts may preempt

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state or local action within that field. The Sixteenth Amendment to the United States Constitution provides Congress with the power to levy income taxes, without any requirement that the states receive a portion thereof. U. S. Const. amend. XVI. No authority exists for the states to withhold without federal authorization any part of these taxes. No state law, such as this initiative, would permit a state to undertake any denial or abridgment of the federal power to levy and collect taxes without a corresponding federal enactment. It appears that this initiative would likely be preempted.

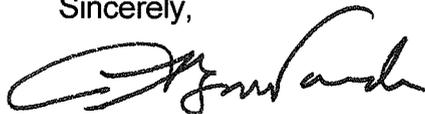
CONCLUSION

Based upon the above analysis, this initiative if adopted, and subsequently challenged, would likely be struck down as an unconstitutional enactment.

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