STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

May 31, 2023

VIA HAND DELIVERY
The Honorable Phil McGrane
Idaho Secretary of State
Statehouse

RE: Certificate of Review
Proposed Initiative Amending Title 34, Idaho Code, to change Idaho's elections for U.S. House and Senate, State Offices, Legislative Offices, and County Offices.

Dear Secretary of State McGrane:

An initiative petition was filed on May 2, 2023, proposing to amend title 34 of the Idaho Code. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and 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 legal or constitutional issue that may present problems. This letter therefore addresses only those matters of substance that are "deemed necessary and appropriate" to address at this time and does not address or catalogue all problems of substance or of form that the proposed initiative may pose under federal or Idaho law. Idaho Code § 34-1809(1)(a). Further, under the review statute, the Attorney General's recommendations are "advisory only," and the petitioners are free to "accept or reject them in whole or in part." *Id.* § 34-1809(1)(b). This office offers no opinion with regard to the policy issues raised by the proposed initiative or the potential revenue impact to the state budget from likely litigation over the initiative's validity.

SUMMARY OF PROPOSED INITIATIVE

The proposed initiative broadly addresses two distinct subjects in Idaho law: (I) the replacement of Idaho's current party primary system for most offices with what the proposed initiative calls an "open primary"; and (II) the institution of an "instant run-off," otherwise known as "ranked choice voting," for the general election. The initiative contains a severability clause in the event that any of its provisions are

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declared unconstitutional and, if passed, would take effect January 1, 2026. Pet. §§ 41–42.

I. "Open Primary"

The proposed initiative would replace Idaho's system of party primary elections with what it calls an "open primary." *Id.* § 5. The new primary system would apply to elections for United States Senator, Member of the United States House of Representatives, and elective state, district and county offices. *Id.* § 14. The new system would consist of a single primary for all voters regardless of affiliation. *See id.* §§ 9–10.

Idaho's current primary system allows each political party to nominate general election candidates by conducting a primary election in which the political party may limit participation to only those voters with particular party affiliations. Idaho Code § 34-404. The proposed initiative, by contrast, would create a single primary election where all voters, regardless of affiliation, narrow the field of eligible candidates for the general election. *See* Pet. §§ 10, 25. All candidates for a given office would appear on the same ballot and would be allowed to select any party affiliation, or nonpartisan or undeclared. Pet. § 16, Idaho Code § 34-704A(1). Each voter would be allowed to vote for a single candidate for each office whom they desire to advance to the general election. Pet. § 14.

Under the proposed initiative, the four top vote-earners for each office would advance to the general election ballot. *Id.* §§ 14, 26. The general election ballot would include each candidate's stated party affiliation along with a disclaimer stating that a candidate's indicated party affiliation does not represent an endorsement or nomination by that party. *Id.* § 26. Write-in candidates from the open primary could advance to the general election ballot only by meeting certain vote totals and filing a declaration of intent. *Id.* § 12–13.

The proposed initiative would abolish the process of parties nominating candidates for office. Under Idaho's current election system, a primary candidate may declare an affiliation with any party, but on the general election ballot, a candidate may express that affiliation only if they have been nominated by that party in the primary. Idaho Code § 34-1214(1). The proposed initiative, in contrast, would permit candidates to express any party affiliation they wished, both in the "open primary" and, if they advanced, on the general election ballot. *See* Pet. §§ 5, 24. The general election ballot would state that the candidate's listed affiliation was not an endorsement of that candidate by the party. *Id.* § 24.

The proposed initiative then makes a series of other changes to Idaho statutory law intended to implement the provisions described above. *Id.* §§ 12, 15–23. This includes other changes to repeal aspects of Idaho election law where political parties

have a role in the process, such as the ability to replace candidates for office on the primary and general election ballots. *Id.* §§ 22–23.

II. Instant Run-off General Election

The proposed initiative would also repeal Idaho statutes that prohibit instant runoff or ranked-choice voting. Idaho Code § 34-903B (effective 7/1/23). The proposed initiative would institute an "instant run-off" process for each covered elective office, Pet. § 6, provided that three or more candidates have advanced to the general election. *Id.* § 35, Idaho Code § 34-1218(2). While current Idaho law allows voters to vote for no more than one candidate for each office in the general election, the instant run-off system would require voters to rank all general election candidates in order of preference. Pet. § 6. The votes in this system would then be tabulated in rounds as follows:

- In each round, each ballot counts as a vote for its highest-ranked candidate still remaining in that round. Pet. § 35, Idaho Code § 34-1218(3).

- If in any round of voting, an active candidate has a majority of votes, that candidate is elected. *Id.*, Idaho Code § 34-1218(3)(a).

- In the first round, if no candidate has a majority and there are write-in candidates who have filed a declaration of intent but received fewer than 100 votes or fewer than any non-write-in candidate, then the votes for that candidate are transferred to the next-highest ranked active candidate on each ballot. *Id.*, Idaho Code § 34-1218(3)(b); *see also* Pet. § 12.

- In subsequent rounds, if no candidate has a majority, then the active candidate with the fewest votes is eliminated and the votes for that candidate are transferred to the next-highest ranked active candidate on each ballot. Pet. § 35, Idaho Code § 34-1218(3)(b).

- A ballot is inactive if it does not contain rankings for an active candidate or it contains an overvote—that is, two candidates with the same ranking—for its highest-ranked candidate. *Id.*, Idaho Code § 34-1218(4).

- Tie votes, both for candidate elimination and wins, are broken by lot. *Id.*, Idaho Code § 34-1218(5); Pet. § 34.

The proposed initiative also makes changes to determination of party vote share under article III, section 2, of the Idaho Constitution, which allows the two largest political parties to nominate members for the legislative redistricting commission. Under current law, party vote share is determined by the votes for party nominees in the general election. In contrast, under the proposed initiative, party vote share is determined by total votes in the first round for candidates who have indicated

an affiliation for that party, regardless of whether they have been nominated or supported by that party. Pet. § 35, § 34-1218(6). The proposed initiative makes related changes to the statute setting forth the methods for creating a political party. Pet. § 11.

The proposed initiative then makes a series of other changes to Idaho statutory law intended to implement the provisions above. *See* Pet. §§ 28–32, 36–40.

MATTERS OF STYLE AND FORM

This office has identified the following matters of style and form that may affect the validity of the proposed initiative.

I. Misleading Use of "Open Primary"

The use of the term "open primary" in the proposed initiative is misleading. "Open primary" is a term that refers to primaries that do not require voters to declare party affiliation to vote in a party's primary contest to nominate a candidate for the general election. *See State Primary Election Types*, NAT'L CONF. OF STATE LEGISLATURES, https://tinyurl.com/nhz8n5jm (Updated Jan. 5, 2021). Under current law, Idaho is best characterized as having a "partially closed" primary because it allows parties to "let in unaffiliated voters, while still excluding members of opposing parties," thus giving parties "more flexibility from year-to-year about which voters to include." *Id.* The proposed initiative would not create an open primary system; it abolishes the system of party primaries for most offices. To avoid misleading voters, the proposed initiative should select terminology other than "open primary." For example, courts have referred to similar systems as a "blanket primary," which "is distinct from an 'open primary.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 445 n.1 (2008).

II. Inconsistent Treatment of Party Nomination/Endorsement

The proposed initiative contains inconsistent and potentially misleading language regarding whether candidates are nominees of a party. For example, the initiative requires the Secretary of State to issue "certificates of nomination" to candidates who advance from the "open primary" to the general election. Pet. § 33. This is problematic because the initiative states elsewhere that advancing to the general election does not reflect that a candidate has been nominated by the party that the candidate claims. *Id.* § 26. The proposed initiative also provides conditions for write-in candidates of political parties to appear on the general election ballot, *id.* § 12, yet at the same time it otherwise prohibits candidates for "open primary" offices from being the nominees of a political party. And the proposed initiative makes parties' rights under Idaho law contingent on the general election performance of candidates who express

an affiliation with them, yet at the same time it abolishes the parties' ability to nominate candidates for any office.

III. Miscellaneous Matters

Sections 1 and 2 of the proposed initiative contain, respectively, the law's title and its findings and purposes, but as this office understands these sections, they will not be codified in the Idaho Code. Only sections 3 through 38 are in proper legislative format for showing new statutory provisions.

Sections 6 and 7 of the proposed initiative are identical and thus redundant of one another.

Sections 14, 15, and 19 of the initiative appear to prohibit independent candidates from appearing on any primary election ballot. Section 14 retains current law that independent candidates shall not be voted on at primary elections, which is problematic if party primaries no longer exist. And while section 15 requires independent candidates to file their declaration of candidacy pursuant to Idaho Code § 34-708, section 19 then repeals Idaho Code § 34-708. As a result, the initiative would prohibit independent candidates from running for United States Senate, United States House of Representatives, any state office, and any county office by having them declare their candidacy in the manner provided by a statute that does not exist, prohibiting them from participation in the blanket primary, and prohibiting them from appearing on the general election ballot.

Section 16 requires candidates for the blanket primary to file a declaration of candidacy no later than the tenth Friday preceding the primary election, per Idaho Code § 34-704. However, section 13 of the initiative allows write-in candidates to file their declaration of candidacy no later than the eighth Friday before the election, per Idaho Code § 34-702A. As a result, write-in candidates for the blanket primary are instructed that they may timely file a declaration of candidacy for two additional weeks, but if they file within that period of time they cannot be recognized as a candidate in the blanket primary. This conflict should be addressed.

Section 17 of the proposed initiative provides for political party candidates for county offices to file with the county clerk. This appears to conflict with section 26, which only allows candidates who advanced from the blanket primary to be included on the general election ballot.

Section 24 of the initiative provides for the printing of primary election ballots for party nominations for federal or statewide offices and provides that unopposed party candidates for party nomination advance to the general election ballot. This conflicts with section 26, which prohibits such candidates from being included on the general election ballot.

Section 25 states that electors who have designated a party affiliation may only vote in the primary election of their party but also contains a new provision that allows all electors to vote in the blanket primary. These clauses appear to be in conflict with each other.

Section 26 purports to limit the inclusion of party candidates on the general election ballot to party candidates for precinct committeeman. This could be construed to prohibit the inclusion of party candidates for President from appearing on the general election ballot in Idaho. It also would move precinct committeeman elections to the general election instead of the primary election where they currently occur. This would conflict with Idaho Code § 34-502 which requires that the new officers of county central committees be elected at a meeting held within 10 days after the primary election, and Idaho Code § 34-503, which requires the same of the legislative district committees within 11 days after the primary election. This portion of the initiative should be clarified.

Section 40 of the initiative is a general repeal of "[a]ll statutes inconsistent with the provisions of this act." The general nature of this prevents voters from having fair notice of what the initiative might be repealing and would be difficult to make effective because different people may have a different understanding of whether something is inconsistent. In addition, this section purports to accomplish this reconciliation by requiring the codifiers correction bill to include a repeal of any such statute, but an initiative cannot require the Legislature to write or pass any particular bill.

MATTERS OF SUBSTANTIVE IMPORT

These problems of style and form give way to more serious legal defects. Broadly considered, the initiative conflicts with (I) statutory requirements for a ballot initiative; (II) state and federal constitutional dictates about elections for specific offices; (III) party rights of expression and association; and (IV) voter rights of expression and association.

I. The Proposed Initiative Violates Statutory Requirements.

Idaho statutory law imposes specific requirements for the submission of ballot initiatives. The proposed initiative fails to meet these in two critical respects.

A. The Proposed Initiative Violates the Single-Subject Rule.

The single-subject rule, adopted by the Legislature in 2020, provides that "[a]n initiative petition shall embrace only one (1) subject and matters properly connected with it." Idaho Code § 34-1801A. This standard codifies for initiatives Idaho's single-subject rule for constitutional amendments, Idaho Constitution article XX, section 2, and legislative acts, *id.* article III, section 16. That rule considers whether a proposed

change can "be divided into subjects distinct and independent, ... any one of which be adopted without in any way being controlled, modified or qualified by the other." *Idaho Watersheds Project v. State Bd. Of Land Comm'rs*, 133 Idaho 55, 60, 982 P.2d 358, 363 (1999). This rule is intended to prevent initiatives from addressing multiple subjects at the same time and "forcing the voter to approve or reject such amendment as a whole." *Id.* (citation omitted). Voters cannot be "required to either support both proposals or to reject both." *Id.* Thus, the rule stops "the pernicious practice of 'log-rolling' in the submission of a constitutional amendment." *Id.* (citation omitted).

The proposed initiative plainly violates Idaho Code § 34-1801A. It addresses two distinct subjects: (1) the so-called "open primary" that eliminates party primaries; and (2) the institution of ranked choice voting for the general election. These two matters are separate subjects and neither one depends on the other. The presence of these two distinct subjects is also apparent from the "Findings and Intent" section of the initiative, which separately describes two different purposes for each of these two voting measures. Pet. § 2.

Idaho voters cannot be required to either adopt the "open primary" system and the ranked choice voting method of general election voting or to reject both of them. That is the very type of "logrolling" the Idaho Supreme Court has held violates the single subject requirement. *Idaho Watersheds Project*, 133 Idaho at 60.

B. The Proposed Initiative Cannot Provide Its Own Ballot Title.

To the extent the proposed initiative attempts to provide its own ballot title, it violates Idaho statutory law. Idaho law makes it the duty of the Attorney General to provide a ballot title that gives a "true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure." Idaho Code § 34-1809(2)I. That consists of a "[d]istinctive short title not exceeding twenty (20) words by which the measure is commonly referred to or spoken of" and "[a] general title expressing in not more than two hundred (200) words the purpose of the measure." *Id.* § 34-1809(2)(d)(i)–(ii). Here, however, the proposed initiative provides both its own short and general titles, describing itself as "The Idaho Open Primaries Act" and making detailed descriptions of the purported "findings and intent" for the law. Pet. §§ 1–2. As noted above, these sections would not be enacted in Idaho Code as part of the law itself. And rather than being written as "true and impartial" descriptions of what the law accomplishes, the descriptions contain misleading phrases such as "open primary" that, for the reasons noted above, are likely to confuse voters about what the proposed initiative would do. Unlike a statutory enactment approved by the legislature, a proposed ballot initiative is not the product of legislative give-and-take, inclusive of amendments, nor is it tested against expert testimony. As such, it's inappropriate for the proposed initiative to assert "findings and intent" for the law.

II. Both Constitutions Impose Election Requirements for Certain Offices.

A. State Constitution Sets Vote Thresholds for State Executives.

The proposed initiative's application of ranked choice voting for state executive office violates the Idaho Constitution. The Idaho Constitution provides that for the statewide executive branch offices, the candidate "having the highest number of votes for the office voted for shall be elected." IDAHO CONST. art. IV, § 2. This means that a majority of the votes cast is not necessary; instead, whoever gets the most votes wins. In contrast, the proposed initiative sets the threshold to win election to any office at a majority of the remaining vote through a sequential tabulation process. The proposed initiative states that if no candidate receives a majority of the votes upon the count of the vote in the election, the election goes to a series of what it calls "instant runoff elections," but which are really subsequent rounds tabulating lower-ranked votes cast on general election ballots. The candidate with the fewest votes is eliminated in each round until one candidate has received a majority of ranked votes.

Other state supreme courts have addressed whether procedures like this run afoul of similar state constitutional provisions setting vote thresholds at less than a majority. The Supreme Court of Maine unanimously held that this method of voting violated a state constitutional provision stating that candidates for governor or the legislature win election if they receive more votes than their opponents for the race. *Opinion of the Justices*, 162 A.3d 188 (Me. 2017). "[W]hen a statute—including one enacted by citizen initiative—conflicts with a constitutional provision, the Constitution prevails." *Id.* At 198. Ranked choice voting "prevents the recognition of the winning candidate when the first plurality is identified," but the state constitution required "a candidate who receives a plurality of the votes would be declared the winner in that election." *Id.* At 211. Because the instant runoff method "would not declare the plurality candidate the winner of the election but would require continued tabulation until a majority is achieved or all votes are exhausted," it was "in direct conflict with the Constitution." *Id.*

In contrast, the Alaska Supreme Court upheld the state's ranked-choice election system as consistent with a similar provision of the Alaska Constitution. *Kohlhaas v. State*, 518 P.3d 1095 (Alaska 2022). It concluded that the system was in fact a single election in which the vote count was complete only when all rounds of counting and elimination of candidates had concluded. *Id.* at 1120. It rejected the reasoning of the Maine Supreme Court that "each round of vote *tabulation* is a separate round of *voting*" and thus "that the system is akin to a series of runoff elections." *Id.* at 1121.

This office believes that the opinion of the Maine Supreme Court better accords with principles of interpretation as they relate to the Idaho Constitution and the proposed initiative. The proposed initiative's clear emphasis is on obtaining majority

support to elect a candidate, even though the Idaho Constitution nowhere states that a majority is required. *See* Pet. §§ 2, 35. As the Maine Supreme Court explained, the constitution requires that a candidate who wins a plurality be elected, yet the system set out in the proposed initiative demands further rounds of vote counting and sets a threshold far exceeding a plurality.

This office disagrees with the Alaska Supreme Court's explanation that ranked choice voting constitutes a single round of voting that "is not complete until the final round of tabulation." *Kohlhaas*, 518 P.3d at 1121. Under the system proposed here, lower-ranked candidate choices on ballots will never be considered, much less tabulated, if a candidate attains a majority in an earlier round. And the final round of tabulation is deemed "final" only because a candidate has attained a majority of ranked votes cast: a different standard than that required by the Idaho Constitution.

A related problem arises for the method for breaking ties in the proposed initiative. Unlike both Maine and Alaska, article IV, section 2 of the Idaho Constitution provides that in the event of a tie in the election for statewide executive branch officials, the election result is determined by vote of the Legislature. The instant runoff election system violates this provision by stating that ties will be broken by proceeding to another round of eliminating the candidate with the least votes and counting the lower choices of those whose candidate is eliminated.[1] Thus, this aspect of the instant runoff election system also violates the Idaho Constitution as applied to statewide executive branch officials.

B. U.S. Constitution Commits Congressional Elections to Legislature.

The proposed initiative likely violates the Federal Constitution with respect to the election of United States Senators and Representatives. The United States Constitution states that "[t]he times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof." U.S. CONST. art. I, § 4 (the "Elections Clause"). Because the U.S. Constitution commits the manner for electing Senators and Representatives to state legislators, there are substantial questions surrounding whether it can lawfully be changed via the initiative process. The U.S. Supreme Court in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015), upheld a redistricting commission that operated independent of the legislature, while four dissenting justices held that this was contrary to the history and plain language of the constitution.

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[1] The proposed initiative also states that, if there is still a tie after all rounds are completed, then the tie is broken by a coin toss by the Secretary of State, which is the same method provided for breaking ties in Idaho statutory law. *See* Pet. § 34, Idaho Code § 34-1216. For the reasons above, this office believes that this coin toss provision—both in the proposed initiative and in current law—is plainly unconstitutional for state executive officers under article IV, section 2 of the Idaho Constitution.

Id. at 824 (Roberts, C.J., dissenting). More recently, however, the Supreme Court granted certiorari and has heard oral argument in *Moore v. Harper*, 142 S. Ct. 2901 (2022), which may revisit aspects of *Arizona State Legislature*. *Moore* concerns whether the Elections Clause prohibits a state supreme court from construing the state constitution contrary to the will of the legislature with respect to congressional elections. Thus, if the U.S. Supreme Court revisits its holding in *Arizona State Legislature*, it may prevent the proposed initiative from changing the legislature's prescribed manner for electing Senators and Representatives.

III. The Proposed Initiative May Violate the Rights of Parties.

By abolishing the party primary system for most offices, the proposed initiative may violate state and federal constitutional provisions that protect the expression, association, and political rights of political parties. The party primary system, adopted in Idaho and most other U.S. jurisdictions, was instituted to make political parties accountable to their members. Under the prior system, party bosses made the decision about which candidates would run in the general election. *See Political Primaries: How Are Candidates Nominated?*, LIBRARY OF CONGRESS, https://tinyurl.com/mrxbehyc (last visited May 30, 2023). Primaries were adopted so that members of recognized parties could vote on the candidates that they wished to represent their interests in the general election. *Id.* By going through that process, a party creates a formal association with a candidate that the party presents as its nominee for a given office. *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 573 (2000).

The ability of a political party to nominate a candidate for public office is a powerful right of speech and association in the democratic process. The U.S. Supreme Court has "continually stressed that when States regulate parties' internal processes they must act within limits imposed by the Constitution." *Id.* "Representative democracy" in our country requires that citizens be able "to band together in promoting among the electorate candidates who espouse their political views," which is a right "that the First Amendment protects." *Id.* at 574. That "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only," that is, the right not to associate just as much as the right to associate. *Id.* (citation omitted). "'Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being.'" *Id.* at 574–75 (citation omitted).

There is "no area" of a political party's association right to exclude that is "more important than ... the process of selecting its nominee." *Id.* at 575. Thus, the U.S. Supreme Court has "vigorously affirm[ed] the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party selects a standard bearer who best represents the party's ideologies and preferences."

Id. (citation omitted). In doing so, it has overturned a California law that created a single primary in which voters could vote for non-party members to select party nominees, *see id.*, but it upheld against a facial challenge a Washington law that created a single primary but did not make any candidate the nominee of the party. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442 (2008).

The proposed initiative alters the rights of political parties granted by the Idaho Constitution. Significantly, the Idaho State Constitution accords political parties rights that do not exist in every state constitution. For example, Idaho has made the expressive rights of parties fundamental to its constitution by according the two largest parties rights to select members of the redistricting commission. Specifically, "[t]he leaders of the two largest political parties of each house of the legislature" are each entitled to designate one member of the redistricting commission, as are "the state chairmen of the two largest political parties, determined by the vote cast for governor in the last gubernatorial election." IDAHO CONST. art. III, § 2.

By removing the ability of the parties to nominate a candidate through the primary process, the constitutionally granted right of parties to designate members of the redistricting commission is impaired, if not entirely voided. Pet. §§ 2(1), 5. No analogous constitutional provision was addressed in *Washington State Grange*. Unlike in *Washington State Grange*, the issue with the proposed initiative is not simply the removal of the party primary nomination process. Instead, the proposed initiative also circumscribes the right of political parties to participate in redistricting in the form and manner laid out in the Idaho State Constitution. If this change does not significantly impair the right, it will certainly dilute it.

IV. The Proposed Initiative Violates Rights of Voters.

The proposed initiative also violates voters' rights of suffrage under the Idaho Constitution, which states that "[n]o power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage." IDAHO CONST. art. 1, § 19. In an ordinary election, a voter may vote for one of the candidates on the ballot, a write-in candidate, or no candidate at all. But the proposed initiative interferes with suffrage by requiring voters to vote for all candidates on the ballot. It does so through its instruction prohibiting the voter from, among other things, skipping a ranking of candidates, Pet. § 26, and its requirement that the voter "shall" mark his ballot to indicate the specific ranking order the voter wishes to assign to each candidate. *Id.* § 27. Taken separately or together, these provisions require voters to rank every candidate in the election and thus to cast ballots in favor of candidates they may not support. And these "shall" provisions are not without teeth: the potential consequence of failing to rank a candidate is to have one's ballot not considered in successive rounds of the tabulation procedure. Pet. § 35, Idaho Code § 34-1218(4).

Idaho caselaw suggests this constitutes direct interference with the right to vote only for candidates the voter supports. In *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 127–28, 15 P.3d 1129, 1135–36 (2000), the Idaho Supreme Court struck down a statute that provided for the inclusion of a statement regarding the candidates making of a term limits pledge as interfering with the right to vote. The court reasoned that including this information on the ballot was equivalent to having a state official in the voting booth telling the voter what was important to consider in voting. If that indication on the ballot interfered with the right to vote, then instructing the voter to cast ranked votes for every candidate on their ballot represents a much greater interference with the right to vote.

These requirements of ranked choice voting not only violate the prohibition of interfering with suffrage, but also likely violate constitutional protections for free speech by compelling citizens to confess by act their faith in candidates they do not support. *See Janus*, 138 S. Ct. at 2463. "As Justice Jackson memorably put it: 'If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.'" *Id.* (citing *W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943)). The proposed initiative thus unlawfully compels speech from voters in connection with casting their ballots.

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 copy of this Certificate of Review, deposited in the U.S. Mail to Ashley Prince, 1424 S. Loveland Street, Boise, ID 83705.

Sincerely,

Raúl R. Labrador

RAÚL R. LABRADOR
Attorney General

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