



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

April 15, 2009

The Honorable Ben Ysursa  
Idaho Secretary of State  
**STATEHOUSE MAIL**

Re: Certificate of Review  
Proposed Initiative Petition Regarding Bible Curriculum

Dear Secretary of State Ysursa:

A proposed initiative petition was filed with your office on March 19, 2009, and received by this office on the same day. Pursuant to Idaho Code § 34-1809, this office has reviewed the proposed initiative and prepared the following advisory comments. This office offers no opinion regarding any policy issues raised by the initiative; the opinions expressed in this review pertain only to the legal issues raised by the initiative.

**MATTERS OF SUBSTANTIVE IMPORT**

**Introduction**

Titled "Public Schools – Bible Curriculum," the initiative seeks to amend the Idaho Constitution to allow elective courses on the Bible to be offered in the public school systems of the state of Idaho.

Petitioner seeks to:

1. Amend the Constitution to permit the Bible to be taught as an academic elective course in public schools; and
2. Accomplish this constitutional amendment through a proposed initiative referendum.

Petitioner may not accomplish the constitutional amendment through the method that Petitioner has chosen.

**The Idaho Constitution Provides the Only Means by Which a Constitutional Amendment may be Accomplished**

The Idaho Constitution, Article 20, § 1, states:

HOW AMENDMENTS MAY BE PROPOSED. Any amendment or amendments to this Constitution may be proposed in either branch of the legislature, and if the same shall be agreed to by two-thirds of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the legislature to submit such amendment or amendments to the electors of the state at the next general election, and cause the same to be published without delay for at least three times in every newspaper qualified to publish legal notices as provided by law. Said publication shall provide the arguments proposing and opposing said amendment or amendments as provided by law, and if a majority of the electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

According to the Idaho Constitution, the only method for proposing constitutional amendments is through the legislature. Prior to placement of a constitutional amendment on the ballot, a two-thirds vote of each house of the legislature is required. Although citizens may stand in the place of the legislature by exercising their initiative power, this power does not extend to constitutional amendments. Any amendment to the Idaho Constitution must originate in the legislature.

If the citizens of Idaho wish to see changes to the Constitution, they should consult with members of the Idaho Legislature, who may follow the process set forth in the Idaho Constitution for proposing a constitutional amendment.

**Litigation is Likely if a Law Were Adopted Permitting the Use of Bibles in Public Schools**

The use of the Bible in the classroom, even when taught as a non-religious text, has been challenged in both state and federal courts around the country. The use of religious texts in public schools raises many issues of concern with respect to the First Amendment, as well as the provision in Idaho's Constitution that prohibits sectarian teaching in public schools. Idaho Const., Art. IX, § 6.

Idaho Code reflects Idaho's Constitution, which has been interpreted as drawing a sharper line between church and state than the U.S. Constitution. See Idaho Code § 33-1603 ("No sectarian or denominational doctrine shall be taught in public schools, nor shall any books, tracts, papers or documents of sectarian or denominational character be used therein.")

The use of the Bible in the classroom has been both upheld and struck down by courts. Given the difference in outcome around the country, it is impossible to forecast the result of any litigation that would arise should a law be enacted that would permit the Bible to be used in the classroom.

### **MATTERS OF FORM**

A constitutional amendment cannot be initiated directly by citizens, but only by the legislature; nevertheless, a law can be proposed directly by citizens through an initiative. If citizens desire that a law be enacted, for example, a law permitting the Bible to be used in the classroom, then an initiative should suggest a statute rather than a constitutional amendment.

Under Article III, § 1, of the Idaho Constitution, legislative power can be exercised by either of two means: It can be proposed as a bill and enacted by both houses of the legislature, or it may be enacted by means of an initiative. Regardless of whether it is put forth as a bill or as an initiative, it should appear in a format capable of being included in the Idaho Code. The drafter should endeavor to put this initiative in a more traditional legislative format. In other words, the initiative should be drafted as legislation and in such a manner as to facilitate its inclusion in the Idaho Code. Legislation is to be complete upon passage and should not require any further acts to become law. This initiative, even if it were to be considered as legislation and not a constitutional amendment, fails this test and could be subject to challenge. It needs to be redrafted in a legislative format. If this initiative is to be altered to propose a law, several changes should be made: (1) the bracketed text reading "setting out full text of measure proposed" and the brackets themselves should be deleted; (2) all references to "referendum" should be removed from the initiative to be clear that the petitioner is advancing an initiative, not a referendum (which is the citizens' determination through voting of a measure passed by the legislature); (3) every effort should be made to remove typographical errors and misspellings; and (4) it should be drafted in the form it will appear in the Idaho Code.

### **CONCLUSION**

The proposed initiative seeks to do what it cannot do under Idaho's Constitution: generate a constitutional amendment through initiative/referendum. Because,

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according to Idaho's Constitution, a constitutional amendment must originate in the legislature, this initiative as proposed conflicts with constitutional law in Idaho.

Suggestions for amending the initiative to conform with the permissible uses of the initiative power have been set forth in this review. These suggestions are not policy recommendations, nor are they comments on the underlying merits of the petitioner's proposed constitutional amendment. The suggestions are set forth for the sole purpose of providing the correct legal framework for an initiative.

### **CERTIFICATION**

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style, and matters of substantive import, and that the recommendations set forth above have been communicated directly to petitioner Charles Seldon, 3077 E. Bonview Dr., Boise, Idaho, 83712-8502, by deposit in the U.S. Mail of a copy of this Certificate of Review.

Sincerely,



LAWRENCE G. WASDEN  
ATTORNEY GENERAL

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