July 9, 1997

The Honorable Pete T. Cenarrusa
Secretary of State
HAND DELIVERED

Re: Certificate of Review
Initiative Regarding Process Governing Initiatives

Dear Mr. Cenarrusa:

An initiative petition was filed with your office on June 24, 1997, concerning the process for enacting an initiative under Idaho law. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and has prepared the following advisory comments. It must be stressed that, given the strict statutory time frame in which this office must respond and the complexity of the legal issues raised in this 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," and the petitioners are free to "accept or reject them in whole or in part."

BALLOT TITLE

Following the filing of the proposed initiative, our office will prepare short and long ballot titles. The ballot titles should 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 the titles, if petitioners would like to propose language with these standards in mind, we recommend that they do so and their proposed language will be considered.

MATTERS OF SUBSTANTIVE IMPORT

During the 1997 legislative session, the legislature passed House Bill 265. As amended, House Bill 265 established certain procedures for the gathering of signatures for the purpose of placing an initiative on the ballot. House Bill 265 was signed into law by Governor Batt on March 20, 1997. If it is successful, the proposed initiative would repeal the majority of the changes to Idaho's initiative law contained in House Bill 265.

Section 1

Section 1 of the proposed initiative would repeal House Bill 265's redesignation of Idaho Code § 34-1801 as Idaho Code § 34-1801A.

Section 2

Section 2 of the proposed initiative would repeal the statement of legislative intent and legislative purpose, codified as Idaho Code § 34-1801, contained in House Bill 265.

Section 3

Section 3 of the proposed initiative would repeal all of the new time limits for gathering signatures that House Bill 265 adds to Idaho Code § 34-1802.

Section 4

Section 4 of the proposed initiative would repeal House Bill 265's new provisions governing the removal of signatures from an initiative petition (codified as Idaho Code § 34-1803B).

Section 5

Section 5 of the proposed initiative would amend Idaho Code § 34-1805, the geographical proportionality requirement for signature collection created by House Bill 265. Under section 5, Idaho Code § 34-1805 would retain the reduction of required signatures, six percent of the qualified electors at the time of the last general election, originally contained in House Bill 265, but would drop the requirement that a proportional number of signatures be gathered in twenty-two counties.

Section 6

Section 6 of the proposed initiative would repeal the judicial review provisions added to Idaho Code § 34-1809 by House Bill 265.

Section 7

Section 7 of the proposed initiative would repeal the new requirements for initiative petition signature gatherers established by House Bill 265 (codified as Idaho Code § 34-1814A).

Section 8

Section 8 of the propose initiative would repeal certain disclosure requirements placed on initiative petition signature gatherers by House Bill 265 (codified as Idaho Code § 34-1815).

Section 9

Section 9 of the proposed initiative designates January 1, 1999, as the effective date for the changes it makes to title 34, chapter 18, Idaho Code.

Section 10

Section 10 contains a severability clause.

The only significant legal issue raised by the proposed initiative is whether art. 3, sec. 1 of the Idaho Constitution allows the electorate to alter the process for enacting an initiative through the initiative process. In Luker v. Curtis, 64 Idaho 703, 706, 136 P.2d 978 (1943), the Idaho Supreme Court compared the power of initiative to the power of legislation:

> This power of legislation, reclaimed by the people through the medium of the amendment to the constitution, did not give any more force or effect to initiative legislation than to legislative acts but placed them on equal footing. The power to thus legislate is derived from the same source and, when exercised through one method of legislation, it is asserted, is just as binding and efficient as if accomplished by the other method; that the legislative will and result is as validly consummated the one way as the other.

(Emphasis added.) The supreme court reiterated its adherence to the "equal footing" rule for initiative and legislative acts in Westerberg v. Andrus, 114 Idaho 401, 404, 757 P.2d 664 (1988). It is the opinion of this office that the supreme court's "equal footing" rule would most likely be judicially interpreted to permit the electorate to amend the process for enacting an initiative in the same manner, and to the same extent, that the legislature is permitted to do so.

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 to petitioner Dennis Mansfield by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,

ALAN G. LANCE
Attorney General

Analysis by:
MATTHEW J. MCKEOWN
Deputy Attorney General