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INTEROFFICE MEMORANDUM

TO: ASSEMBLYMAN PRICE
FROM: TED JOHNSON
SUBJECT: BALLOT QUESTION 17
DATE: DECEMBER 16, 1998

You have asked this office to determine whether Ballot Question No. 17, which was an initiative approved at the November 1998 general election, is constitutional. Ballot Question No. 17 amended the Nevada Constitution to (1) instruct the Nevada Congressional delegation and members of the Nevada Legislature to provide for term limits for members of the United States House of Representatives and Senate through the action of Congress or through a Constitutional Convention and (2) inform the voters of this state regarding the manner in which their elected representatives acted with respect to the issue of congressional term limits. Several federal and state courts have considered the constitutionality of initiatives approved in other states on this same issue. See Barker v. Hazeltine, 3 F. Supp. 2d 1088 (D.S.D. 1998); Morrissey v. State, 951 P.2d 911 (Colo. 1998); Gralike v. Cook, 996 F. Supp. 901 (W.D. Mo. 1998); Simpson v. Cenarrusa, 944 P.2d 1372 (Idaho 1997); League of Women Voters v. Gwadosky, 966 F. Supp. 52 (D. Me. 1997); In re Initiative Petition No. 364, 930 P.2d 186 (Okla. 1996); Donovan v. Priest, 931 S.W.2d 119 (Ark. 1996), *cert. denied*, 117 S. Ct. 1081 (1997). All of these courts, except the Idaho Supreme Court in Simpson,¹ held that the congressional term limits initiative violated Article V of the United States Constitution, which sets forth the procedure by which the U.S. Constitution may be amended. Because Ballot Question No. 17 contains language that is substantively identical to the initiatives considered in the cases mentioned above, it is the opinion of this office that a court would find that Ballot Question No. 17 violates Article V of the U.S. Constitution.

Attached are copies of the above-mentioned cases and Ballot Question No. 17. If you have any further questions regarding this matter, please do not hesitate to contact this office.

¹ The Idaho Supreme Court in Simpson v. Cenarrusa, determined that the ballot designations contemplated by the state constitutional amendment, which embodied the congressional term limitations initiative, violated the Speech and Debate Clause of and the First Amendment to the U.S. Constitution. 944 P.2d at 1374-76. After making this determination, the Idaho Supreme Court severed the portions of the state constitutional amendment that contained the ballot designations and analyzed the remainder of the amendment under Article V. *Id.* at 1376. The Idaho Supreme Court held that the remaining portions of the amendment did not violate Article V because, without the ballot designations, the amendment was merely a non-binding advisory opinion by the voters. *Id.* However, the Simpson decision was strongly criticized by a federal district court in Barker v. Hazeltine, 3 F. Supp. 2d 1088, 1094 (D.S.D. 1998) and its reasoning has not been followed in any of the subsequent cases addressing this issue.