

HJR 5 Essential to the Separation of Powers

By Representative Tom Loertscher

In his recent editorial Attorney General Lawrence Wasden voiced his personal objection to HJR 5 saying it "... threatens to permanently invade the executive and judicial Branches of Idaho's government, disrupting the balance and separation of powers contemplated by Idaho's founders." Nothing could be further from the truth.

Government is out of control proposing new regulations at a break-neck pace. Changes to law made in this fashion, without a mechanism for review and action, needs to be remedied. Federal agency bureaucrats changing law has eroded the constitutional powers delegated to the congress and has made the executive branch much too powerful. These bureaucracies are not accountable to voters in any way.

In 1969 the Idaho Legislature passed what became Idaho Code [67-5291](#). Even then it was recognized the executive branch had a tendency to overstep its bounds and change laws known as administrative rules, that have the full force and effect of law.

The three branches of government in Idaho each have their own exclusive role to play. The responsibility of the legislature is to make law. The executive branch is to administer the law, not write it. The judicial branch is to make sure the other branches do not exceed their constitutional limits, but also, not to write law.

Without the ability of the legislature to approve or reject agency rules, you the voters have no one to hold accountable for agencies not following what the legislature intended. Who do you call when an administrative rule goes beyond what the law says and places an undue burden upon you to run your business or raises the cost of everything you do? The agency head? Do you call the governor? Will you have the ear of the Attorney General? Can you get an audience with the Supreme Court? No! But you can call and meet with your legislators and hold them accountable. Your legislators stand for election every two years and are much more likely to listen and help.

The rules review process of the legislature was challenged as mentioned by the Attorney General in the case of [Mead vs. Arnell](#). What he failed to mention was that the decision of the Supreme Court was a 3 to 2 decision. If sometime in the future there were to be another court challenge it is possible that the Supreme Court could reverse itself and remove the ability of the legislature to review rules. If that were to happen, increased power would be placed with the executive branch to change laws, much like federal agencies do. What HJR 5 really does is to make sure that you, the citizens of the state of Idaho, have the ability through your legislators to oversee the rules making process into the future. It preserves lawmaking to the legislature, not to non-elected bureaucracies that are not accountable to the voters.

The legislature supported HJR 5 with broad support of both political parties. It is not a partisan issue, nor is it any type of a power grab by the legislature. This amendment is essential to insure that state government remains in your hands and holds your legislators feet to the fire. It will protect you from bureaucratic overreach and leave lawmaking to those who must stand for election every two years. Vote yes on HJR 5!