

HJR 5 IS A SOLUTION IN SEARCH OF A PROBLEM

By Governor C.L. "Butch" Otter

Continuous bickering and name calling at the top of the ticket in this election year are understandably creating a lot of anxiety among voters. So there's no need for anyone to add to that angst by frightening folks about the Idaho Legislature having too little authority to protect them from government bureaucrats run amok.

Yet that is precisely what advocates of HJR 5 on the November 8th ballot are doing. They should get no more support in their effort this year than they did two years ago when Idaho voters rejected the same idea – putting into the Idaho Constitution what already is the law of the land.

When it first emerged last spring, my initial impression was that it wasn't a bad idea. After all, everyone wants government to be more accountable, right? But after considering it further, my conclusion is that HJR 5 is about as good an example as you will ever find of a solution desperately in search of a problem. I'd call it unnecessary but its potential consequences are more serious than that implies.

The Idaho Supreme Court decided in 1990 that legislators have the authority to reject rules from Executive agencies that they believe are inconsistent with the legislative intent of the law behind the rule. The review process dominates the opening weeks of each annual legislative session.

But HJR 5 would go further, embedding in the Idaho Constitution a legislative practice that can be found nowhere in existing law. The amendment would give lawmakers additional authority to reject rules "in whole or in part" – essentially creating a lawmaking process in which the governor is constitutionally barred from vetoing the result. For example, the governor could do nothing if the Legislature unilaterally altered the basic intent of an agency's rule simply by changing its language "in part" from "the department shall not" to "the department shall" take a particular action.

That fundamentally changes the dynamic of legislative review and is a serious breach of the balance and separation of powers between the Legislative, Executive and Judicial branches – a hallmark of our form of government. Forget about "checks and balances." By taking a belt-and-suspenders approach to the rules review process, HJR 5 would disenfranchise the other branches and make the Legislature Idaho's preeminent government organ.

I want to make it clear that I have no problem with the Legislature's rules review process as it now exists in statute. It is designed to protect Idaho citizens from what HJR 5 proponents contend are the threats of rules that undermine legislative intent and bureaucrats imposing unreasonable regulations – shortcomings more accurately attributed to the federal government. Not satisfied with the existing guarantees that legislative intent will be protected in rules, HJR 5 backers now are seeking constitutional protection against the existing law and court precedent somehow being overturned.

That prospect seems pretty dim 26 years after the court upheld the constitutionality of legislative rules review. And the price for reassuring concerned legislators of their authority in the

event of some future court challenge could be endless opportunities for mischief. It could mean opening the door for self-serving interests to further assert their influence in the process and running the legitimate risk of needlessly extending annual legislative sessions.

Does any of that sound good to you? Does anyone want a single branch of government writing the laws and developing the rules for how those laws are implemented with no check on its authority? If not, I encourage you to join me in voting NO on HJR 5 on November 8th.