

Legislating beyond the state

Randy Stapilus/Ridenbaugh Press

It may come as a shock to Idaho (and many other state) legislators, but their purview is limited to the borders carved out at statehood. They have a great deal of authority inside, and very little out.

You can pick up the nature of some of these limits, and the narrow ways they can be expanded, in two new House bills, 59 and 65.

HB 65, from Representative Paul Shepherd, R-Riggins, got the bigger headline splash, because its reach would be so broad if it passes (wouldn't bet against it) and survives a legal challenge (extremely unlikely).

Here's the key language: "The Idaho Legislature hereby declares that the state of Idaho, on behalf of its citizens, is the final arbiter of whether an act of Congress, a federal regulation or a court decision is unconstitutional and may declare that the federal laws, regulations or court decisions are not authorized by the Constitution of the United States and violate its meaning and intent, and further, are null, void and of no effect regarding any Idaho citizen residing within the borders of the state of Idaho."

The shorthand for this is "nullification" - a unilateral declaration by the state that if we here (well, actually, if the legislature here) don't like it, it doesn't apply to us. That's just a half-step away from secession from the union, a question pretty much resolved a century and a half ago.

A brand new legislator, Representative Randy Armstrong, R-Inkom, inquired in the meeting where the bill was presented: "Do we have that right as legislators or as citizens, to be able to declare something unconstitutional? Isn't that the area judges are supposed to rule on? How do we earn the position to declare something constitutional or unconstitutional?" Well, there you are. We do have courts whose job it is to rule on constitutionality; that's a court function, not legislative. The courts also get to parse when federal rulings apply to the states (mostly, but not always). A legislature can declare it has super-powers, but they won't last long in a real challenge.

Is the legislature completely confined to state boundaries in its impact? Not necessarily.

House Bill 59, proposed by Representatives Ilana Rubel and John McCrostie, both D-Boise, would have Idaho join an interstate compact in which - if all 50 joined - each state would commit that their electoral college representatives would vote for whoever won the national popular vote. Such a proposal coming in this season after last year's presidential carries a partisan tinge, but the idea has been around for many years, has been adopted by some states and others are considering it this year. (You can see more about it at <http://www.nationalpopularvote.com/>). Both red and blue states have entered into it.

The odds for passage in Idaho are not good, and we can't completely be sure what a court will make of the idea. But there's a good case for why it may be upheld. The federal constitution (in Article II) says "Each state shall appoint, in such Manner as the Legislature thereof shall direct, a number of Electors," and generally leaves the process in the hands of the legislatures. It would effect a change in an area where states seem to have full discretion to act.

For both bills, as a movie start once suggested, it's a matter of knowing your limits.

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