

Statement of Jim Jones in opposition to House Bill 322  
Senate State Affairs Committee  
May 3, 2021

Honorable Chairman Lodge and members of the Committee:

House Bill 322 seeks to place the Idaho Legislature on a par with the United States Supreme Court--able to “make null and void and of no force and effect federal executive orders, agency orders, rules, policy directives, regulations, acts of congress, or federal court rulings.” Usually, legislatures just exercise legislative powers, leaving it up to the courts to exercise judicial powers, such as ruling upon the constitutionality of actions by all three branches of government. I’m inclined to think the House has overreached a bit with this bill.

The problem, as I see it, is that Article VI of the United States Constitution states, in pertinent part, “This Constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land.” All of the “federal actions” that House Bill 322 purports to give the Idaho Legislature the ability to invalidate are presumed to be the law of the land until such time as they might be invalidated by a federal court.

From the beginning of this country, it has been assumed that the way to challenge the constitutionality of any action taken by the federal government is to do so in the federal court system. Since “federal actions” are presumed to be valid laws of the United States, unless and until found to be otherwise by a federal court, another potential problem arises under Idaho Code section 59-401. Legislators are required to take an official oath that they will “support the Constitution of the United States.” If legislators seek to invalidate any “federal actions” on their own, without the benefit of a federal court ruling, it would seem to be a clear-cut violation of their oath of office.

Finally, it seems a bit cheeky for the House to contend it has the power to declare “acts of congress or federal court rulings” to be null and void. I’m sure that won’t work too well. I can recall an instance that illustrates the point. When I was working for the late Senator Len Jordan in Washington in 1970, the U.S. Supreme Court found that a provision of the Idaho Constitution was violative of an Act of Congress. Our Constitution said Idahoans could not vote until they were 21 years of age, but Congress set the voting age at 18 that year. Idaho lost, at least with respect to federal elections. The case is *Oregon v. Mitchell*, 400 U.S.112(1970).

If the Legislature wishes to send a message to the federal government, it would be best to do so in a non-binding resolution, rather than by way of a legislative act that is unconstitutional and bound to fail. I would urge the defeat of House Bill 322.

Respectfully submitted,  
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