

IN THE SUPREME COURT OF NEBRASKA

STATE OF NEBRASKA ex rel. M. LYNNE
MCNALLY, KEEP THE MONEY IN
NEBRASKA,

Relators,

v.

ROBERT B. EVNEN, Secretary of state of
the State of Nebraska.

Respondent.

Case No. _____

VERIFIED PETITION
FOR WRIT OF MANDAMUS

COMES NOW Relators M. LYNNE MCNALLY and KEEP THE MONEY IN NEBRASKA and seek a writ of mandamus requiring Respondent to place three initiative measures on the ballot for the November 3, 2020 general election on the grounds that each measure meets the constitutional and statutory requirements for placement on the ballot. In support of this Petition, Relator states and alleges as follows:

PARTIES

1. Relator M. Lynne McNally is a registered voter and resident of Lancaster County, Nebraska.
2. Relator Keep the Money in Nebraska is a ballot question committee registered with the Nebraska Accountability and Disclosure Commission.
3. McNally is a member of Keep the Money in Nebraska and Executive Vice President of Nebraska Horsemen's Benevolent & Protective Association, Inc., which is a Nebraska nonprofit corporation with its principal office in Lancaster County, Nebraska.
4. Keep the Money in Nebraska and Nebraska Horsemen's Benevolent & Protective Association, Inc., along with Ho-Chunk, Inc. and Omaha Exposition and Racing, Inc., are the sponsors (together, the "Sponsors") of the ballot initiative measures that are described herein and the subject of this action.

5. Respondent Robert B. Evnen is the duly elected and serving Secretary of State of the State of Nebraska.

JURISDICTION AND VENUE

6. Relators are authorized to bring this action pursuant to Neb. Rev. Stat. § 25-2156 et seq. and Neb. Rev. Stat. § 32-1412(1).

7. The Court has original jurisdiction over this action pursuant to Neb. Const. art. V, § 2, as recognized in Neb. Rev. Stat. § 24-204, because Relators seek a writ of mandamus and because this is a cause of action relating to revenue in which the state has a direct interest.

CONSTITUTIONAL AND STATUTORY FRAMEWORK

8. “The power of initiative in article III, § 1 of the Nebraska Constitution is ‘[t]he first power reserved by the people.’ The right of initiative is precious to the people and one which the courts are zealous to preserve to the fullest tenable measure of spirit as well as letter. Statutory provisions authorizing initiative petitions should be construed in such a manner that the legislative power reserved in the people is effectual and should not be circumscribed by restrictive legislation or narrow and strict interpretation of the statutes pertaining to its exercise.” State ex rel. Christensen v. Gale, 301 Neb. 19, 27, 917 N.W.2d 145, 153 (2018) (internal citations omitted).

9. As Secretary of State of the State of Nebraska, Respondent is obligated to fulfill certain official duties pursuant to the Election Act, Neb. Rev. Stat. §§ 32-101 to 32-1551.

10. If a ballot initiative petition is found to be valid and sufficient, and if it is regularly and legally filed, Respondent is required to place the measure on the general election ballot. See Neb. Rev. Stat. §§ 32-1409(3), 32-1411(2).

11. Pursuant to Neb. Rev. Stat. § 32-801, at least 50 days before any general election, Respondent shall transmit in ballot form to each election commissioner or county clerk a certification of the issues that appear on the state ballot.

12. The date of the 2020 general election is November 3, 2020.

13. The Secretary of State's duty to place a legally sufficient initiative on the ballot is a ministerial act and a proper subject of a writ of mandamus. See, e.g., Neb. Rev. Stat. § 32-1412(1).

AUTHORIZATION INITIATIVE

14. On April 10, 2019, the Sponsors filed with Respondent the text of a proposed ballot initiative petition to amend the Nebraska Constitution to allow the Legislature to authorize games of chance to be conducted within licensed racetrack enclosures in the State (the "Authorization Initiative"). A true and correct copy of the Authorization Initiative is attached hereto as Exhibit A and incorporated herein by this reference.

15. Along with the text of the proposed Authorization Initiative, the Sponsors filed on April 10, 2019 a statement of the object of the petition and sworn statement containing the names and addresses of every person, corporation, and association sponsoring the petition.

16. At least four months prior to the November 3, 2020 general election, on July 2, 2020, the Sponsors submitted to the Nebraska Secretary of State more than 200,000 signatures for the Authorization Initiative petition.

17. Sponsors properly submitted sufficient and valid signatures to Respondent for placement of the Authorization Initiative on the November 3, 2020 general election ballot.

18. The Authorization Initiative is comprised of a single subject and the text and submission of the Authorization Initiative otherwise comply with all requirements of Nebraska law.

19. On July 24, 2020, the Attorney General sent a letter to Respondent setting forth the ballot title and explanatory statement for the Authorization Initiative. A true and correct copy of this letter is attached hereto as Exhibit B.

REGULATION INITIATIVE

20. On April 10, 2019, the Sponsors filed with Respondent the text of a proposed statutory ballot initiative petition to allow for and regulate all games of chance conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska (the "Regulation Initiative"). A true and correct copy of the Regulation initiative is attached hereto as Exhibit C and incorporated herein by this reference.

21. Along with the text of the proposed Regulation Initiative, the Sponsors filed on April 10, 2019 a statement of the object of the petition and sworn statement containing the names and addresses of every person, corporation, and association sponsoring the petition.

22. At least four months prior to the November 3, 2020 general election, on July 2, 2020, the Sponsors submitted to the Nebraska Secretary of State more than 135,000 signatures for the Regulation Initiative petition.

23. Sponsors properly submitted sufficient and valid signatures to Respondent for placement of the Regulation Initiative on the November 3, 2020 general election ballot.

24. The Regulation Initiative is comprised of a single subject and the text and submission of the Regulation Initiative otherwise comply with all requirements of Nebraska law.

25. On July 30, 2020, the Attorney General sent a letter to Respondent setting forth the ballot title and explanatory statement for the Regulation Initiative. A true and correct copy of this letter is attached hereto as Exhibit D.

TAXATION INITIATIVE

26. On April 10, 2019, the Sponsors filed with Respondent the text of a proposed statutory ballot initiative petition to provide for a tax on the operation of games of chance conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska (the "Taxation Initiative"). A true and correct copy of the Regulation initiative is attached hereto as Exhibit E and incorporated herein by this reference.

27. Along with the text of the proposed Taxation Initiative, the Sponsors filed on April 10, 2019 a statement of the object of the petition and sworn statement containing the names and addresses of every person, corporation, and association sponsoring the petition.

28. At least four months prior to the November 3, 2020 general election, on July 2, 2020, the Sponsors submitted to the Nebraska Secretary of State more than 135,000 signatures for the Taxation Initiative petition.

29. Sponsors properly submitted sufficient and valid signatures to Respondent for placement of the Regulation Initiative on the November 3, 2020 general election ballot.

30. The Taxation Initiative is comprised of a single subject and the text and submission of the Authorization Initiative otherwise complies with all requirements of Nebraska law.

31. On July 31, 2020, the Attorney General sent a letter to Respondent setting forth the ballot title and explanatory statement for the Taxation Initiative. A true and correct copy of this letter is attached hereto as Exhibit F.

32. On August 25, 2020, the Secretary of State issued a decision explaining that he had decided to keep each the Authorization Initiative, the Regulation Initiative, and the Taxation Initiative off of the ballot. A true and correct copy of the Secretary of State's decision is attached hereto as Exhibit G.

33. The Secretary of State's decision is incorrect as a matter of law because each of the three initiatives meets the applicable requirements of the Nebraska Constitution as to form and procedure, including but not limited to the requirements of article III, section 2 that "constitutional limitations as to scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative" and that "[i]nitiative measures shall contain only one subject."

COUNT ONE – AUTHORIZATION INITIATIVE

34. Relators incorporate paragraphs 1–33, above, as if fully set forth herein.

35. The Authorization Initiative is legally sufficient and therefore required to be placed on the ballot for the November 3, 2020 general election. In particular, the Authorization Initiative meets the requirements of article III, section 2 of the Nebraska Constitution, as well as all other constitutional and statutory requirements for placement on the ballot.

COUNT TWO – REGULATION INITIATIVE

36. Relators incorporate paragraphs 1–35, above, as if fully set forth herein.

37. The Regulation Initiative is legally sufficient and therefore required to be included on the ballot for the November 3, 2020 general election. In particular, the Regulation Initiative meets the requirements of article III, section 2 of the Nebraska

Constitution, as well as all other constitutional and statutory requirements for placement on the ballot.

COUNT THREE

38. Relators incorporate paragraphs 1–37, above, as if fully set forth herein.

39. The Taxation Initiative is legally sufficient and therefore required to be included on the ballot for the November 3, 2020 general election. In particular, the Regulation Initiative meets the requirements of article III, section 2 of the Nebraska Constitution, as well as all other constitutional and statutory requirements for placement on the ballot.

ADVANCEMENT ON DOCKET

40. Consistent with Neb. Rev. Stat. § 32-1412(3), Relators respectfully request that this suit be advanced on the docket and heard and decided by the Court as quickly as possible.

WHEREFORE, Relators respectfully request the Court grant relief as follows:

1. That the Court issue a briefing schedule as soon as possible, advance this matter on the docket, and hear and decide this matter in an expedited manner.
2. That the Court issue a writ of mandamus requiring Respondent to order the Authorization Initiative described above to be placed upon the ballot for the November 3, 2020 general election.
3. That the Court issue a writ of mandamus requiring Respondent to order the Regulation Initiative described above to be placed upon the ballot for the November 3, 2020 general election.
4. That the Court issue a writ of mandamus requiring Respondent to order the Taxation Initiative described above to be placed upon the ballot for the November 3, 2020 general election.

5. That the Court award Relators costs and reasonable attorney's fees pursuant to Neb. Rev. Stat. § 25-2165 or as otherwise permitted by Nebraska law; and
6. For such other and further relief as is appropriate at law and equity.

DATED this 25th day of August, 2020.

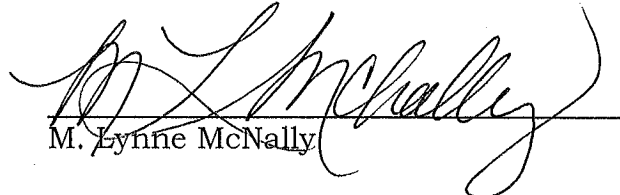
M. LYNNE MCNALLY and KEEP THE MONEY IN
NEBRASKA, Relators

By: s/ Andre R. Barry
Andre R. Barry - #22505
John F. Zimmer, V - #26127
CLINE WILLIAMS
WRIGHT JOHNSON & OLDFATHER, L.L.P.
233 South 13th Street
1900 U.S. Bank Building
Lincoln, NE 68508-2095
(402) 474-6900
abarry@clnewilliams.com
jzimmer@clnewilliams.com

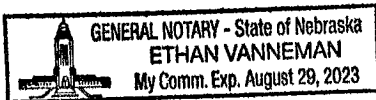
VERIFICATION

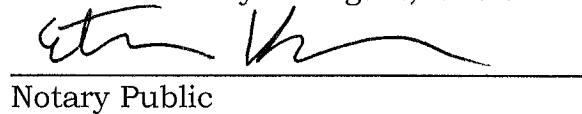
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

M. Lynne McNally, being first duly sworn upon oath, deposes and states that she is the relator herein, that she has read the foregoing Verified Petition for Writ of Mandamus and knows the contents thereof; and that the facts stated therein are true and correct.


M. Lynne McNally

SUBSCRIBED AND SWORN to before me this 25th day of August, 2020.



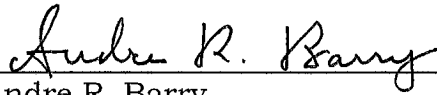

Notary Public

AFFIDAVIT OF SERVICE

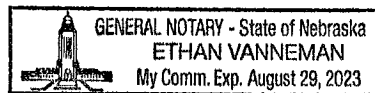
I, the undersigned Andre R. Barry, being first duly sworn on oath, state that on this 24th day of August, 2020, a copy of the foregoing Verified Petition for Writ of Mandamus, was served upon Respondent by certified mail as follows:


Robert B. Evnen, Secretary of State
c/o Douglas Peterson, Attorney General
2115 State Capitol
PO Box 98920
Lincoln, NE 68509

In addition, the same was sent by email on this 24th day of August, 2020 to Respondent and Respondent's counsel as follows: Robert B. Evnen at Robert.Evnen@nebraska.gov; Wayne Bena at Wayne.Bena@nebraska.gov; and Doug Peterson at Doug.Peterson@nebraska.gov.


Andre R. Barry

SUBSCRIBED AND SWORN TO before me by Andre R. Barry this 25 day of August, 2020.




Notary Public



CONSTITUTIONAL AMENDMENT 1

OBJECT STATEMENT

The object of this petition amends the Nebraska Constitution to state that laws may be enacted allowing for the licensing, authorization, taxation, and regulation of all forms of games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in the state.

BALLOT QUESTION

Shall the Nebraska Constitution be amended to state that laws may be enacted to allow for the licensing, authorization, taxation, and regulation of all forms of games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska?

TEXT OF AMENDMENT

Article III, Section 24, of the Constitution of Nebraska shall be amended as shown:

(1) Except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time.

(2) The Legislature may authorize and regulate a state lottery pursuant to subsection (3) of this section and other lotteries, raffles, and gift enterprises which are intended solely as business promotions or the proceeds of which are to be used solely for charitable or community betterment purposes without profit to the promoter of such lotteries, raffles, or gift enterprises.

(3)(a) The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for the following purposes, as directed by the Legislature:

(i) The first five hundred thousand dollars after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund;

(ii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(iii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be used for education as the Legislature may direct;

(iv) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(v) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund.

(b) No lottery game shall be conducted as part of the lottery unless the type of game has been approved by a majority of the members of the Legislature.

(4) Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure or (b) the enactment of laws providing for the licensing and regulation of bingo games conducted by nonprofit associations which have been in existence for a period of five years immediately preceding the application for license, except that bingo games cannot be conducted by agents or lessees of such associations on a percentage basis.

(5) This section shall not apply to any law which is enacted contemporaneously with the adoption of this subsection or at any time thereafter and which provides for the licensing, authorization, regulation, or taxation of all forms of games of chance when such games of chance are conducted by authorized gaming operators within a licensed racetrack enclosure.

INITIATIVE PETITION

For Secretary of State Use Only

The object of this petition is to: (See reverse side for actual text of measure)

Amend the Nebraska Constitution to state that laws may be enacted allowing for the licensing, authorization, taxation, and regulation of all forms of games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in the state.

To the Honorable Robert Evnen, Secretary of State for the State of Nebraska:

We, the undersigned residents of the State of Nebraska and the county of _____, respectfully demand that the following proposed amendment to the Constitution of Nebraska shall be referred to the registered voters of the state for their approval or rejection at the general election to be held on the 3rd day of November 2020, and each for himself or herself says: I have personally signed this petition on the date opposite my name; I am a registered voter of the State of Nebraska and county of _____ and am qualified to sign this petition or I will be so registered and qualified on or before the date on which this petition is required to be filed with the Secretary of State; and My printed name, date of birth, street and number or voting precinct, and city, village, or post office address are correctly written after my signature.

WARNING TO PETITION SIGNERS-- VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any person who signs any name other than his or her own to any petition or who is not qualified to sign the petition shall be guilty of a Class I misdemeanor. Any person who falsely swears to a circulator's affidavit on a petition, who accepts money or other things of value for signing a petition or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

	DATE	SIGNATURE	PRINTED NAME	DATE OF BIRTH	ADDRESS (Street Number & Name)	CITY OR VILLAGE	ZIP CODE
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STATE OF NEBRASKA)
) ss
COUNTY OF _____)

_____, (name of circulator) being first duly sworn, deposes and says that he or she is the circulator of this petition containing _____ signatures, that he or she is at least eighteen years of age, that each person whose name appears on the petition personally signed the petition in the presence of the affiant, that the date to the left of each signature is the correct date on which the signature was affixed to the petition and that the date was personally affixed by the person signing such petition, that the affiant believes that each signer has written his or her name, street and number or voting precinct, and city, village, or post office address correctly, that the affiant believes that each signer was qualified to sign the petition, and that the affiant stated to each signer the object of the petition as printed on the petition before he or she affixed his or her signature to the petition.

Circulator

Address

City, State, Zip

Subscribed and sworn to before me, a notary public, this _____ day of _____, 20__ at _____, Nebraska.

(Seal)

Notary Public

Proposed Constitutional Amendment Language:

Article III, Section 24, of the Constitution of Nebraska shall be amended as shown:

(1) Except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time.

(2) The Legislature may authorize and regulate a state lottery pursuant to subsection (3) of this section and other lotteries, raffles, and gift enterprises which are intended solely as business promotions or the proceeds of which are to be used solely for charitable or community betterment purposes without profit to the promoter of such lotteries, raffles, or gift enterprises.

(3)(a) The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for the following purposes, as directed by the Legislature:

(i) The first five hundred thousand dollars after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund;

(ii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(iii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be used for education as the Legislature may direct;

(iv) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(v) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund.

(b) No lottery game shall be conducted as part of the lottery unless the type of game has been approved by a majority of the members of the Legislature.

(4) Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure or (b) the enactment of laws providing for the licensing and regulation of bingo games conducted by nonprofit associations which have been in existence for a period of five years immediately preceding the application for license, except that bingo games cannot be conducted by agents or lessees of such associations on a percentage basis.

(5) This section shall not apply to any law which is enacted contemporaneously with the adoption of this subsection or at any time thereafter and which provides for the licensing, authorization, regulation, or taxation of all forms of games of chance when such games of chance are conducted by authorized gaming operators within a licensed racetrack enclosure.



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

EXHIBIT

B

RECEIVED

JUL 24 2020

SECRETARY OF STATE

DOUGLAS J. PETERSON
ATTORNEY GENERAL

L. JAY BARTEL
ASSISTANT ATTORNEY GENERAL
CHIEF, LEGAL SERVICES BUREAU

July 24, 2020

The Honorable Robert B. Evnen
Nebraska Secretary of State
Room 2300, State Capitol
P.O. Box 95608
Lincoln, NE 68509-4608

Dear Secretary Evnen:

Pursuant to Neb. Rev. Stat. § 32-1410(1) (2016), you have notified us that you have received a constitutional amendment proposed by initiative petition for referral to the people of Nebraska on the November 2020 general election ballot. Your notification was received by our office on July 14, 2020.

In accordance with the duty imposed by § 32-1410(1), we have prepared the following ballot title and explanatory statement for that initiative. As provided by statute, the explanatory statement is to directly precede the ballot title on the ballot and be printed in italics:

A vote "FOR" will amend the Nebraska Constitution to state that laws may be enacted to provide for the authorization, regulation, and taxation of all forms of games of chance to be conducted by licensees within licensed racetrack enclosures in Nebraska.

A vote "AGAINST" will not cause the Nebraska Constitution to be amended in such manner.

Below this explanatory statement, the following language should be inserted for the ballot title:

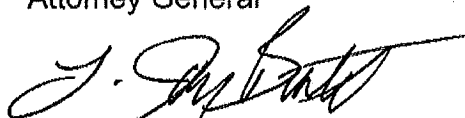
Shall the Nebraska Constitution be amended to state that laws may be enacted to provide for the authorization, regulation, and taxation of all forms of games of chance to be conducted by licensees within licensed racetrack enclosures in Nebraska?

Honorable Robert B. Evnen
July 24, 2020
Page 2

You are reminded that § 32-1410(3) requires that you serve a copy of this language upon the persons offering or filing the initiative petition by mail or electronic transmission.

Very truly yours,

DOUGLAS J. PETERSON
Attorney General

A handwritten signature in black ink, appearing to read "L. Jay Bartel", with a long horizontal flourish extending to the right.

L. Jay Bartel
Assistant Attorney General
Chief, Legal Services Bureau

07-1339-29

STATUTORY INITIATIVE _____

OBJECT STATEMENT

The object of this petition enacts a statute allowing all games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska and establishes a Nebraska Gaming Commission to regulate such gaming in Nebraska.

BALLOT QUESTION

Shall a statute be enacted which: (1) allows all games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska, (2) establishes a Nebraska Gaming Commission to regulate such gaming, and (3) amends and repeals existing sections of law to harmonize provisions consistent with the enactment of such statute?

TEXT OF STATUTORY INITIATIVE

A BILL

FOR AN ACT relating to gaming; to amend sections 28-1101, 28-1105, 28-1113, 77-2704.20, and 77-3001, Reissue Revised Statutes of Nebraska, and section 2-1203.01, Revised Statutes Cumulative Supplement, 2018; to adopt the Nebraska Racetrack Gaming Act; to authorize games of chance as prescribed; to create a commission; to provide for the regulation of games of chance; to define terms; to provide duties for the State Racing Commission; to exempt the Nebraska Racetrack Gaming Act from prohibitions and penalties on gambling; to exempt purchases by the Nebraska Gaming Commission from sales and use taxes; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Nebraska Racetrack Gaming Act.

Sec. 2. Notwithstanding any other provision of law, and to the full extent permitted by the Constitution of Nebraska, including amendments to the Constitution of Nebraska adopted contemporaneously with the enactment of the Nebraska Racetrack Gaming Act, the operation of games of chance is permitted only by authorized gaming operators within licensed racetrack enclosures as provided in the act.

Sec. 3. For purposes of the Nebraska Racetrack Gaming Act:

(1) Authorized gaming operator means a person or entity licensed pursuant to the act to operate games of chance within a licensed racetrack enclosure;

(2) Authorized gaming operator license means a license to operate games of chance as an authorized gaming operator at a licensed racetrack enclosure;

(3) Game of chance means any game which has the elements of chance, prize, and consideration, including any wager on a slot machine, table game, counter game, or card game. Game of chance does not include any game the operation of which is prohibited at a casino by federal law;

(4) Gaming device means an electronic, mechanical, or other device which plays a game of chance when activated by a player using currency, a token, or other item of value;

(5) Licensed racetrack enclosure means premises at which licensed live horseracing is conducted in accordance with the Constitution of Nebraska and applicable Nebraska law;

(6) Limited gaming device means an electronic gaming device which (a) offers games of chance, (b) does not dispense currency, tokens, or other items of value, and (c) does not have a cash winnings hopper, mechanical or simulated spinning reel, or side handle; and

(7) Racing license means a license issued by the State Racing Commission.

Sec. 4. (1) The operation of games of chance at a licensed racetrack enclosure may be conducted by an authorized gaming operator who holds an authorized gaming operator license.

(2) No more than one authorized gaming operator license shall be granted for each licensed racetrack enclosure within the state; provided that, it shall not be a requirement that the person or entity applying for or to be granted such authorized gaming operator license hold a racing license or be the same person or entity who operates the licensed racetrack enclosure at which such authorized gaming operator license shall be granted.

(3) Gaming devices, limited gaming devices, and all other games of chance may be operated by authorized gaming operators at a licensed racetrack enclosure.

(4) No person younger than twenty-one years of age shall play or participate in any way in any game of chance or use any gaming device or limited gaming device at a licensed racetrack enclosure.

(5) No authorized gaming operator shall permit an individual younger than twenty-one years of age to play or participate in any game of chance or use any gaming device or limited gaming device conducted or operated pursuant to the Nebraska Racetrack Gaming Act.

Sec. 5. (1) For purposes of providing the necessary licensing and regulation of the operation of games of chance by authorized gaming operators within licensed racetrack enclosures pursuant to the Nebraska Racetrack Gaming Act, the Nebraska Gaming Commission is created.

(2) The commission shall consist of seven members. Not more than four of the seven members shall be affiliated with the same political party. No member shall have any personal financial interest in any licensed racetrack enclosure or authorized gaming operator for the duration of his or her term. The members of the commission shall elect one of the members to be chairperson.

(3) The five members of the State Racing Commission shall be *ex officio* members of the Nebraska Gaming Commission, serving terms and receiving appointment in the same manner as provided in sections 2-1201 and 2-1202.

(4) The Governor shall appoint two additional members to serve with the members of the State Racing Commission as members of the Nebraska Gaming Commission. The members appointed pursuant to this subsection shall serve five-year terms. One of such members shall have experience in the Nebraska gaming industry, and one shall be a member of the organization representing the majority of licensed owners and trainers of horses at racetracks in Nebraska.

(5) The compensation of the members of the Nebraska Gaming Commission shall be one thousand dollars per month, which may be adjusted every two years in an amount not to exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the first year to June 30 of the year of adjustment.

Sec. 6. The Nebraska Gaming Commission shall:

(1) License and regulate authorized gaming operators for the operation of all games of chance authorized pursuant to the Nebraska Racetrack Gaming Act, including adopting, promulgating, and enforcing rules and regulations governing such authorized gaming operators consistent with the act;

(2) Regulate the operation of games of chance in order to prevent and eliminate corrupt practices and fraudulent behavior, and thereby promote integrity, security, and honest administration in, and accurate accounting of, the operation of games of chance which are subject to the act;

(3) Establish criteria to license applicants for authorized gaming operator licenses and all other types of gaming licenses for other positions and functions incident to the operation of games of chance, including adopting, promulgating, and enforcing rules, regulations, and eligibility standards for such authorized gaming operator licenses, gaming licenses, and positions and functions incident to the operation of games of chance;

(4) Charge fees for applications for licenses and for the issuance of authorized gaming operator licenses and all other types of gaming licenses to successful applicants which shall be payable to the Nebraska Gaming Commission;

(5) Charge fees to authorized gaming operators in an amount necessary to offset the cost of oversight and regulatory services to be provided which shall be payable to the Nebraska Gaming Commission;

(6) Impose a one-time authorized gaming operator license fee of one million dollars on each authorized gaming operator for each licensed racetrack enclosure payable to the Nebraska Gaming Commission;

(7) Grant, deny, revoke, and suspend authorized gaming operator licenses and all other types of gaming licenses based upon reasonable criteria and procedures established by the commission to facilitate the integrity, productivity, and lawful conduct of gaming within the state;

(8) Grant or deny for cause applications for authorized gaming operator licenses of not less than twenty years in duration with no more than one such authorized gaming operator license granted for any licensed racetrack enclosure within the state;

(9) Conduct background investigations of applicants for authorized gaming operator licenses and all other types of gaming licenses;

(10) Adopt and promulgate rules and regulations for the standards of manufacture of gaming equipment;

(11) Inspect the operation of any authorized gaming operator conducting games of chance for the purpose of certifying the revenue thereof and receiving complaints from the public;

(12) Issue subpoenas for the attendance of witnesses or the production of any

records, books, memoranda, documents, or other papers or things at or prior to any hearing as is necessary to enable the commission to effectively discharge its duties;

(13) Administer oaths or affirmations as necessary to carry out the act;

(14) Have the authority to impose, subject to judicial review, administrative fines not to exceed twenty-five thousand dollars for each violation of the act or any rules and regulations adopted and promulgated pursuant to the act;

(15) Collect and remit administrative fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska;

(16) Adopt and promulgate rules and regulations for any gaming taxes assessed to authorized gaming operators;

(17) Collect and account for any gaming taxes assessed to authorized gaming operators and remit such taxes to the State Treasurer or county treasurer as required by Nebraska law;

(18) Promote treatment of gaming-related behavioral disorders;

(19) Establish procedures for the governance of the commission;

(20) Acquire necessary offices, facilities, counsel, and staff;

(21) Establish procedures for an applicant for a staff position to disclose conflicts of interest as part of the application for employment; and

(22) Do all things necessary and proper to carry out its powers and duties under the act, including the adoption and promulgation of rules and regulations and such other actions as permitted by the Administrative Procedure Act.

Sec. 7. Section 2-1203.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-1203.01. The State Racing Commission shall:

(1) Enforce all state laws covering horseracing as required by sections 2-1201 to 2-1229 and enforce rules and regulations adopted and promulgated by the commission under the authority of section 2-1203;

(2) License racing industry participants, race officials, mutuel employees, concessionaires, and such other persons as deemed necessary by the commission if the license applicants meet eligibility standards established by the commission;

(3) Prescribe and enforce security provisions, including, but not limited to, the restricted access to areas within track enclosures and backstretch areas, and prohibitions against

misconduct or corrupt practices;

- (4) Determine or cause to be determined by chemical testing and analysis of body fluids whether or not any prohibited substance has been administered to the winning horse of each race and any other horse selected by the board of stewards;
- (5) Verify the certification of horses registered as being Nebraska-bred under section 2-1213; and
- (6) Collect and verify the amount of revenue received by the commission under section 2-1208; and
- (7) Serve as *ex officio* members of the Nebraska Gaming Commission, and perform the duties set forth in the Nebraska Racetrack Gaming Act.

read: Sec. 8. Section 28-1101, Reissue Revised Statutes of Nebraska, is amended to

28-1101.

As used in this article, unless the context otherwise requires:

- (1) A person advances gambling activity if, acting other than as a player, he or she engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes, but shall not be limited to, conduct directed toward (a) the creation or establishment of the particular game, contest, scheme, device, or activity involved, (b) the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, or (c) engaging in the procurement, sale, or offering for sale within this state of any chance, share, or interest in a lottery of another state or government whether or not such chance, share, or interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest except as provided in the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;
- (2) Bookmaking shall mean advancing gambling activity by unlawfully accepting bets from members of the public as a business upon the outcome of future contingent events;
- (3) A person profits from gambling activity if, other than as a player, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of gambling activity;
- (4) A person engages in gambling if he or she bets something of value upon the outcome of a future event, which outcome is determined by an element of chance, or upon the outcome of a game, contest, or election, or conducts or participates in any bingo, lottery by the sale of pickle cards, lottery, raffle, gift enterprise, or other scheme not authorized or conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City

Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701, but a person does not engage in gambling by:

(a) Entering into a lawful business transaction;

(b) Playing an amusement device or a coin-operated mechanical game which confers as a prize an immediate, unrecorded right of replay not exchangeable for something of value;

(c) Conducting or participating in a prize contest; or

(d) Conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, game of chance, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;

(5) Gambling device shall mean any device, machine, paraphernalia, writing, paper, instrument, article, or equipment that is used or usable for engaging in gambling, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Gambling device shall also include any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, instant-win tickets which also provide the possibility of participating in a subsequent drawing or event, or tickets or stubs redeemable for something of value, except as authorized in the furtherance of parimutuel wagering. Supplies, equipment, cards, tickets, stubs, and other items used in any bingo, lottery by the sale of pickle cards, other lottery, raffle, game of chance, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701 are not gambling devices within this definition;

(6) Something of value shall mean any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment; and

(7) Prize contest shall mean any competition in which one or more competitors are awarded something of value as a consequence of winning or achieving a certain result in the competition and (a) the value of such awards made to competitors participating in the contest does not depend upon the number of participants in the contest or upon the amount of consideration, if any, paid for the opportunity to participate in the contest or upon chance and (b) the value or identity of such awards to be made to competitors is published before the competition begins.

Sec. 9. Section 28-1105, Reissue Revised Statutes of Nebraska, is amended to read:

28-1105.

(1) A person commits the offense of possession of gambling records if, other than as a player, he or she knowingly possesses any writing, paper, instrument, or article which is:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise and such writing, paper, instrument, or article has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise or other scheme not conducted pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701 and such writing, paper, instrument, or article has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information not permitted by such acts or section.

(2) Possession of gambling records in the first degree is a Class II misdemeanor.

Sec. 10. Section 28-1113, Reissue Revised Statutes of Nebraska, is amended to read:

28-1113. Nothing in this article shall be construed to:

(1) Apply to or prohibit wagering on the results of horseraces by the parimutuel or certificate method when conducted by licensees within the racetrack enclosure at licensed horserace meetings; or

(2) Prohibit or punish the conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise when conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701; or

(3) Apply to or prohibit the operation of games of chance, whether using a gambling device or otherwise, by authorized gaming operators within licensed racetrack enclosures or the participation or playing of such games of chance, whether participated in or played using a gambling device or otherwise, by individuals twenty-one years of age or older within licensed racetrack enclosures as provided in the Nebraska Racetrack Gaming Act.

Sec. 11. Section 77-2704.20, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.20.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or

rental of and the storage, use, or other consumption in this state of purchases made by licensees of the State Racing Commission, or of purchases made by licensees of the Nebraska Gaming Commission.

Sec. 12. Section 77-3001, Reissue Revised Statutes of Nebraska, is amended to read:

77-3001.

For purposes of the Mechanical Amusement Device Tax Act, unless the context otherwise requires:

(1) Person means an individual, partnership, limited liability company, society, association, joint-stock company, corporation, estate, receiver, lessee, trustee, assignee, referee, or other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals;

(2) Mechanical amusement device means any machine which, upon insertion of a coin, currency, credit card, or substitute into the machine, operates or may be operated or used for a game, contest, or amusement of any description, such as, by way of example, but not by way of limitation, pinball games, shuffleboard, bowling games, radio-ray rifle games, baseball, football, racing, boxing games, and coin-operated pool tables. Mechanical amusement device also includes game and draw lotteries and coin-operated automatic musical devices. The term does not mean vending machines which dispense tangible personal property, devices located in private homes for private use, pickle card dispensing devices which are required to be registered with the Department of Revenue pursuant to section 9-345.03, gaming devices or limited gaming devices as defined in and operated pursuant to the Nebraska Racetrack Gaming Act, or devices which are mechanically constructed in a manner that would render their operation illegal under the laws of the State of Nebraska;

(3) Operator means any person who operates a place of business in which a machine or device owned by him or her is physically located or any person who places and who either directly or indirectly controls or manages any machine or device;

(4) Distributor means any person who sells, leases, or delivers possession or custody of a machine or mechanical device to operators thereof for a consideration either directly or indirectly received;

(5) Whenever in the act, the words machine or device are used, they refer to mechanical amusement device; and

(6) Whenever in the act, the words machine, device, person, operator, or distributor are used, the words in the singular include the plural and in the plural include the singular.

Sec. 13. This act becomes operative on January 1, 2021.

Sec. 14. Original sections 28-1101, 28-1105, 28-1113, 77-2704.20, and 77-3001,

Reissue Revised Statutes of Nebraska, and section 2-1203.01, Revised Statutes Cumulative Supplement, 2018, are repealed.

Sec. 15. If any section or provision of this act is determined by a court of competent jurisdiction to be unconstitutional or otherwise void or invalid for any reason, such determination shall not affect the validity of the act as a whole or any part thereof, other than the part so determined to be unconstitutional or otherwise void or invalid.

INITIATIVE PETITION

For Secretary of State Use Only

The object of this petition is to: (See reverse side for actual text of measure)

Enact a statute allowing all games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska and establishes a Nebraska Gaming Commission to regulate such gaming in Nebraska.

To the Honorable Robert Evnen, Secretary of State for the State of Nebraska:

We, the undersigned residents of the State of Nebraska and the county of _____, respectfully demand that the following proposed law shall be referred to the registered voters of the state for their approval or rejection at the general election to be held on the 3rd day of November 2020, and each for himself or herself says: I have personally signed this petition on the date opposite my name; I am a registered voter of the State of Nebraska and county of _____ and am qualified to sign this petition or I will be so registered and qualified on or before the date on which this petition is required to be filed with the Secretary of State; and My printed name, date of birth, street and number or voting precinct, and city, village, or post office address are correctly written after my signature.

WARNING TO PETITION SIGNERS-- VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any person who signs any name other than his or her own to any petition or who is not qualified to sign the petition shall be guilty of a Class I misdemeanor. Any person who falsely swears to a circulator's affidavit on a petition, who accepts money or other things of value for signing a petition or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

	DATE	SIGNATURE	PRINTED NAME	DATE OF BIRTH	ADDRESS (Street Number & Name)	CITY OR VILLAGE	ZIP CODE
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STATE OF NEBRASKA)
) ss
COUNTY OF _____)

_____, (name of circulator) being first duly sworn, deposes and says that he or she is the circulator of this petition containing _____ signatures, that he or she is at least eighteen years of age, that each person whose name appears on the petition personally signed the petition in the presence of the affiant, that the date to the left of each signature is the correct date on which the signature was affixed to the petition and that the date was personally affixed by the person signing such petition, that the affiant believes that each signer has written his or her name, street and number or voting precinct, and city, village, or post office address correctly, that the affiant believes that each signer was qualified to sign the petition, and that the affiant stated to each signer the object of the petition as printed on the petition before he or she affixed his or her signature to the petition.

Circulator

Address

City, State, Zip

Subscribed and sworn to before me, a notary public, this _____ day of _____, 20____ at _____, Nebraska.

(Seal)

Notary Public

Proposed Statutory Amendment Language:

A BILL

FOR AN ACT relating to gaming; to amend sections 28-1101, 28-1105, 28-1113, 77-2704.20, and 77-3001, Reissue Revised Statutes of Nebraska, and section 2-1203.01, Revised Statutes Cumulative Supplement, 2018; to adopt the Nebraska Racetrack Gaming Act; to authorize games of chance as prescribed; to create a commission; to provide for the regulation of games of chance; to define terms; to provide duties for the State Racing Commission; to exempt the Nebraska Racetrack Gaming Act from prohibitions and penalties on gambling; to exempt purchases by the Nebraska Gaming Commission from sales and use taxes; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Nebraska Racetrack Gaming Act.

Sec. 2. Notwithstanding any other provision of law, and to the full extent permitted by the Constitution of Nebraska, including amendments to the Constitution of Nebraska adopted contemporaneously with the enactment of the Nebraska Racetrack Gaming Act, the operation of games of chance is permitted only by authorized gaming operators within licensed racetrack enclosures as provided in the act.

Sec. 3. For purposes of the Nebraska Racetrack Gaming Act:

(1) Authorized gaming operator means a person or entity licensed pursuant to the act to operate games of chance within a licensed racetrack enclosure;

(2) Authorized gaming operator license means a license to operate games of chance as an authorized gaming operator at a licensed racetrack enclosure;

(3) Game of chance means any game which has the elements of chance, prize, and consideration, including any wager on a slot machine, table game, counter game, or card game. Game of chance does not include any game the operation of which is prohibited at a casino by federal law;

(4) Gaming device means an electronic, mechanical, or other device which plays a game of chance when activated by a player using currency, a token, or other item of value;

(5) Licensed racetrack enclosure means premises at which licensed live horseracing is conducted in accordance with the Constitution of Nebraska and applicable Nebraska law;

(6) Limited gaming device means an electronic gaming device which (a) offers games of chance, (b) does not dispense currency, tokens, or other items of value, and (c) does not have a cash winnings hopper, mechanical or simulated spinning reel, or side handle; and

(7) Racing license means a license issued by the State Racing Commission.

Sec. 4. (1) The operation of games of chance at a licensed racetrack enclosure may be conducted by an authorized gaming operator who holds an authorized gaming operator license.

(2) No more than one authorized gaming operator license shall be granted for each licensed racetrack enclosure within the state; provided that, it shall not be a requirement that the person or entity applying for, or to be granted such authorized gaming operator license hold a racing license or be the same person or entity who operates the licensed racetrack enclosure at which such authorized gaming operator license shall be granted.

(3) Gaming devices, limited gaming devices, and all other games of chance may be operated by authorized gaming operators at a licensed racetrack enclosure.

(4) No person younger than twenty-one years of age shall play or participate in any way in any game of chance or use any gaming device or limited gaming device at a licensed racetrack enclosure.

(5) No authorized gaming operator shall permit an individual younger than twenty-one years of age to play or participate in any game of chance or use any gaming device or limited gaming device conducted or operated pursuant to the Nebraska Racetrack Gaming Act.

Sec. 5. (1) For purposes of providing the necessary licensing and regulation of the operation of games of chance by authorized gaming operators within licensed racetrack enclosures pursuant to the Nebraska Racetrack Gaming Act, the Nebraska Gaming Commission is created.

(2) The commission shall consist of seven members. Not more than four of the seven members shall be affiliated with the same political party. No member shall have any personal financial interest in any licensed racetrack enclosure or authorized gaming operator for the duration of his or her term. The members of the commission shall elect one of the members to be chairperson.

(3) Three members of the State Racing Commission shall be *ex officio* members of the Nebraska Gaming Commission, serving terms and receiving appointment in the same manner as provided in sections 2-1201 and 2-1202.

(4) The Governor shall appoint two additional members to serve with the members of the State Racing Commission as members of the Nebraska Gaming Commission. The members appointed pursuant to this subsection shall serve five-year terms. One of such members shall have experience in the Nebraska gaming industry, and one shall be a member of the organization representing the majority of licensed owners and trainers of horses at racetracks in Nebraska.

(5) The compensation of the members of the Nebraska Gaming Commission shall be one thousand dollars per month, which may be adjusted every two years in an amount not to exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the first year to June 30 of the year of adjustment.

Sec. 6. The Nebraska Gaming Commission shall:

(1) License and regulate authorized gaming operators for the operation of all games of chance authorized pursuant to the Nebraska Racetrack Gaming Act, including adopting, promulgating, and enforcing rules and regulations governing such authorized gaming operators consistent with the act;

(2) Regulate the operation of games of chance in order to prevent and eliminate corrupt practices and fraudulent behavior, and thereby promote integrity, security, and honest administration in, and accurate accounting of, the operation of games of chance which are subject to the act;

(3) Establish criteria to license applicants for authorized gaming operator licenses and all other types of gaming licenses for other positions and functions incident to the operation of games of chance, including adopting, promulgating, and enforcing rules, regulations, and eligibility standards for such authorized gaming operator licenses, gaming licenses, and positions and functions incident to the operation of games of chance;

(4) Charge fees for applications for licenses and for the issuance of authorized gaming operator licenses and all other types of gaming licenses to successful applicants which shall be payable to the Nebraska Gaming Commission;

(5) Charge fees to authorized gaming operators in an amount necessary to offset the cost of oversight and regulatory services to be provided which shall be payable to the Nebraska Gaming Commission;

(6) Impose a one-time authorized gaming operator license fee of one million dollars on each authorized gaming operator for each licensed racetrack enclosure payable to the Nebraska Gaming Commission;

- (7) Grant, deny, revoke, and suspend authorized gaming operator licenses and all other types of gaming licenses based upon reasonable criteria and procedures established by the commission to facilitate the integrity, productivity, and lawful conduct of gaming within the state;
- (8) Grant or deny for cause applications for authorized gaming operator licenses of not less than twenty years in duration with no more than one such authorized gaming operator license granted for any licensed racetrack enclosure within the state;
- (9) Conduct background investigations of applicants for authorized gaming operator licenses and all other types of gaming licenses;
- (10) Adopt and promulgate rules and regulations for the standards of manufacture of gaming equipment;
- (11) Inspect the operation of any authorized gaming operator conducting games of chance for the purpose of certifying the revenue thereof and receiving complaints from the public;
- (12) Issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things at or prior to any hearing as is necessary to enable the commission to effectively discharge its duties;
- (13) Administer oaths or affirmations as necessary to carry out the act;
- (14) Have the authority to impose, subject to judicial review, administrative fines not to exceed twenty-five thousand dollars for each violation of the act or any rules and regulations adopted and promulgated pursuant to the act;
- (15) Collect and remit administrative fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska;
- (16) Adopt and promulgate rules and regulations for any gaming taxes assessed to authorized gaming operators;
- (17) Collect and account for any gaming taxes assessed to authorized gaming operators and remit such taxes to the State Treasurer or county treasurer as required by Nebraska law;
- (18) Promote treatment of gaming-related behavioral disorders;
- (19) Establish procedures for the governance of the commission;
- (20) Acquire necessary offices, facilities, counsel, and staff;
- (21) Establish procedures for an applicant for a staff position to disclose conflicts of interest as part of the application for employment; and
- (22) Do all things necessary and proper to carry out its powers and duties under the act, including the adoption and promulgation of rules and regulations and such other actions as permitted by the Administrative Procedure Act.

Sec. 7. Section 2-1203.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

2-1203.01. The State Racing Commission shall:

- (1) Enforce all state laws covering horseracing as required by sections 2-1201 to 2-1229 and enforce rules and regulations adopted and promulgated by the commission under the authority of section 2-1203;
- (2) License racing industry participants, race officials, mutual employees, concessionaires, and such other persons as deemed necessary by the commission if the license applicants meet eligibility standards established by the commission;
- (3) Prescribe and enforce security provisions, including, but not limited to, the restricted access to areas within track enclosures and backstretch areas, and prohibitions against misconduct or corrupt practices;
- (4) Determine or cause to be determined by chemical testing and analysis of body fluids whether or not any prohibited substance has been administered to the winning horse of each race and any other horse selected by the board of stewards;
- (5) Verify the certification of horses registered as being Nebraska-bred under section 2-1213; and
- (6) Collect and verify the amount of revenue received by the commission under section 2-1208; and
- (7) Serve as ex officio members of the Nebraska Gaming Commission, and perform the duties set forth in the Nebraska Racetrack Gaming Act.

Sec. 8. Section 28-1101, Revised Statutes of Nebraska, is amended to read:

28-1101.

As used in this article, unless the context otherwise requires:

- (1) A person advances gambling activity if, acting other than as a player, he or she engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes, but shall not be limited to, conduct directed toward (a) the creation or establishment of the particular game, contest, scheme, device, or activity involved, (b) the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, or (c) engaging in the procurement, sale, or offering for sale within this state of any chance, share, or interest in a lottery of another state or government, whether or not such chance, share, or interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest except as provided in the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;
- (2) Bookmaking shall mean advancing gambling activity by unlawfully accepting bets from members of the public as a business upon the outcome of future contingent events;
- (3) A person profits from gambling activity if, other than as a player, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of gambling activity;
- (4) A person engages in gambling if he or she bets something of value upon the outcome of a future event, which outcome is determined by an element of chance, or upon the outcome of a game, contest, or election, or conducts or participates in any bingo, lottery by the sale of pickle cards, lottery, raffle, gift enterprise, or other scheme not authorized or conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701, but a person does not engage in gambling by:
 - (a) Entering into a lawful business transaction;
 - (b) Playing an amusement device or a coin-operated mechanical game which confers as a prize an immediate, unrecorded right of replay not exchangeable for something of value; (c) Conducting or participating in a prize contest; or
 - (d) Conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, game of chance, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701;
- (5) Gambling device shall mean any device, machine, paraphernalia, writing, paper, instrument, article, or equipment that is used or usable for engaging in gambling, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Gambling device shall also include any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, instant-win tickets which also provide the possibility of participating in a subsequent drawing or event, or tickets or stubs redeemable for something of value, except as authorized in the furtherance of parimutuel wagering. Supplies, equipment, cards, tickets, stubs, and other items used in any bingo, lottery by the sale of pickle cards, other lottery, raffle, game of chance, or gift enterprise conducted in accordance with the

Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701 are not gambling devices within this definition;

(6) Something of value shall mean any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment; and

(7) Prize contest shall mean any competition in which one or more competitors are awarded something of value as a consequence of winning or achieving a certain result in the competition and (a) the value of such awards made to competitors participating in the contest does not depend upon the number of participants in the contest or upon the amount of consideration, if any, paid for the opportunity to participate in the contest or upon chance and (b) the value or identity of such awards to be made to competitors is published before the competition begins.

Sec. 9. Section 28-1105, Reissue Revised Statutes of Nebraska, is amended to read:
28-1105.

(1) A person commits the offense of possession of gambling records if, other than as a player, he or she knowingly possesses any writing, paper, instrument, or article which is:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise and such writing, paper, instrument, or article has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise or other scheme not conducted pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, the Nebraska Racetrack Gaming Act, or section 9-701 and such writing, paper, instrument, or article has been used for the purpose of recording, memorializing, or registering any bet, wager, or other gambling information not permitted by such acts or section.

(2) Possession of gambling records in the first degree is a Class II misdemeanor.

Sec. 10. Section 28-1113, Reissue Revised Statutes of Nebraska, is amended to read:
28-1113. Nothing in this article shall be construed to:

(1) Apply to or prohibit wagering on the results of horseraces by the parimutuel or certificate method when conducted by licensees within the racetrack enclosure at licensed horserace meetings; or

(2) Prohibit or punish the conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise when conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701; or

(3) Apply to or prohibit the operation of games of chance, whether using a gambling device or otherwise, by authorized gaming operators within licensed racetrack enclosures or the participation or playing of such games of chance, whether participated in or played using a gambling device or otherwise, by individuals twenty-one years of age or older within licensed racetrack enclosures as provided in the Nebraska Racetrack Gaming Act.

Sec. 11. Section 77-2704.20, Reissue Revised Statutes of Nebraska, is amended to read:
77-2704.20.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases made by licensees of the State Racing Commission- or of purchases made by licensees of the Nebraska Gaming Commission.

Sec. 12. Section 77-3001, Reissue Revised Statutes of Nebraska, is amended to read:
77-3001.

For purposes of the Mechanical Amusement Device Tax Act unless the context otherwise requires:

(1) Person means an individual, partnership, limited liability company, society, association, joint-stock company, corporation, estate, receiver, lessee, trustee, assignee, referee, or other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

(2) Mechanical amusement device means any machine which upon insertion of a coin, currency, credit card, or substitute into the machine, operates or may be operated or used for a game, contest, or amusement of any description, such as, by way of example, but not by way of limitation, pinball games, shuffleboard, bowling games, radio-ray rifle games, baseball, football, racing, boxing games, and coin-operated pool tables. Mechanical amusement device also includes game and draw lotteries and coin-operated automatic musical devices. The term does not mean vending machines which dispense tangible personal property, devices located in private homes for private use, pickle card dispensing devices which are required to be registered with the Department of Revenue pursuant to section 9-345.03, gaming devices or limited gaming devices as defined in and operated pursuant to the Nebraska Racetrack Gaming Act, or devices which are mechanically constructed in a manner that would render their operation illegal under the laws of the State of Nebraska;

(3) Operator means any person who operates a place of business in which a machine or device owned by him or her is physically located for any person who places and who either directly or indirectly controls or manages any machine or device;

(4) Distributor means any person who sells, leases, or delivers possession or custody of a machine or mechanical device to operators thereof for consideration either directly or indirectly received;

(5) Whenever in the act the words machine or device are used, they refer to mechanical amusement device; and

(6) Whenever in the act the words machine, device, person, operator, or distributor are used, the words in the singular include the plural and in the plural include the singular.

Sec. 13. This act becomes operative on January 1, 2021.

Sec. 14. Original sections 28-1101, 28-1105, 28-1113, 77-2704.20, and 77-3001, Reissue Revised Statutes of Nebraska, and section 2-1203.01, Revised Statutes Cumulative Supplement, 2018, are repealed.

Sec. 15. If any section or provision of this act is determined by a court of competent jurisdiction to be unconstitutional or otherwise void or invalid for any reason, such determination shall not affect the validity of the act as a whole or any part thereof, other than the part so determined to be unconstitutional or otherwise void or invalid.



STATE OF NEBRASKA
Office of the Attorney General

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LINCOLN, NE 68509-8920
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FAX (402) 471-3297 or (402) 471-4725

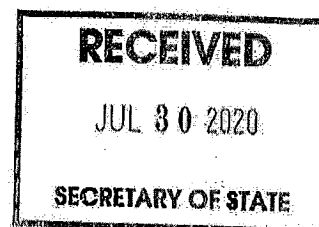


DOUGLAS J. PETERSON
ATTORNEY GENERAL

L. JAY BARTEL
ASSISTANT ATTORNEY GENERAL
CHIEF, LEGAL SERVICES BUREAU

July 30, 2020

The Honorable Robert B. Evnen
Nebraska Secretary of State
Room 2300, State Capitol
P.O. Box 95608
Lincoln, NE 68509-4608



Dear Secretary Evnen:

Pursuant to Neb. Rev. Stat. § 32-1410(1) (2016), you have notified us that you received an initiative petition proposing to enact a statute to allow games of chance when conducted by authorized gaming operators within licensed racetrack enclosures, and establishing a Nebraska Gaming Commission to license and regulate such gaming, for referral to the people of Nebraska on the November 2020 general election ballot. Your notification was received by our office on July 20, 2020.

In accordance with the duty imposed by § 32-1410(1), we have prepared the following ballot title and explanatory statement for that initiative. As provided by statute, the explanatory statement is to directly precede the ballot title on the ballot and be printed in italics:

A vote "FOR" will enact a statute which: (1) allows games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska; (2) establishes a Nebraska Gaming Commission to license and regulate such gaming; and (3) amends and repeals existing sections of law to harmonize provisions consistent with the enactment of such statute.

A vote "AGAINST" will not cause such a statute to be enacted.

Below this explanatory statement, the following language should be inserted for the ballot title:

Honorable Robert B. Evnen
July 30, 2020
Page 2

Shall a statute be enacted which: (1) allows games of chance to be conducted by authorized gaming operators within licensed racetrack enclosures in Nebraska; (2) establishes a Nebraska Gaming Commission to license and regulate such gaming; and (3) amends and repeals existing sections of law to harmonize provisions consistent with the enactment of such statute?

You are reminded that § 32-1410(3) requires that you serve a copy of this language upon the persons offering or filing the initiative petition by mail or electronic transmission.

Very truly yours,

DOUGLAS J. PETERSON
Attorney General

A handwritten signature in black ink, appearing to read "L. Jay Bartel", with a long horizontal flourish extending to the right.

L. Jay Bartel
Assistant Attorney General
Chief, Legal Services Bureau



STATUTORY INITIATIVE _____

OBJECT STATEMENT

The object of this petition enacts a statute establishing an annual tax on gross gaming revenue generated by authorized gaming operators of games of chance within licensed racetrack enclosures and directs the collection, enforcement, and distribution of revenue from such gaming tax.

BALLOT QUESTION

Shall a statute be enacted which: (1) establishes an annual tax on gross gaming revenue generated by authorized gaming operators of games of chance within licensed racetrack enclosures of 20% of gross gaming revenue; (2) distributes 75% of such gaming tax revenues to the State for credit of 2.5% to the Compulsive Gamblers Assistance Fund, 2.5% to the General Fund, and 70.0% to the Property Tax Credit Cash Fund; (3) distributes 25% of such gaming tax revenues to the county where such licensed racetrack enclosure is located if the licensed racetrack enclosure is solely in an unincorporated area of a county or distributes 25% of such gaming tax revenues evenly between the county and the city or village where such licensed racetrack enclosure is located where the licensed racetrack enclosure is at least partially within the limits of a city or village in such county; and (4) designates the Nebraska Gaming Commission to collect, remit for distribution, and enforce penalties associated with such tax?

TEXT OF STATUTORY INITIATIVE

A BILL

FOR AN ACT relating to gaming; to provide a tax on gaming as prescribed; to provide for distribution of tax proceeds; and to define terms.

Be it enacted by the people of the State of Nebraska,

Section 1. To the full extent permitted by the Constitution of Nebraska, including amendments to the Constitution of Nebraska adopted contemporaneously with the enactment of this act, an annual gaming tax is hereby imposed on the operation of all games of chance by authorized gaming operators within licensed racetrack enclosures.

Sec. 2. For purposes of this act:

(1) Authorized gaming operator means a person or entity licensed pursuant to the Nebraska Racetrack Gaming Act to operate games of chance within a licensed racetrack enclosure;

(2) Dollar amount collected means the total dollar amount wagered by players of games of chance less the total dollar amount returned to such players as prizes;

(3) Game of chance means any game which has the elements of chance, prize, and consideration, including any wager on a slot machine, table game, counter game, or card game. Game of chance does not include any game the operation of which is prohibited at a casino by federal law;

(4) Gaming commission means the Nebraska Gaming Commission established pursuant to the Nebraska Racetrack Gaming Act;

(5) Gross gaming revenue means the dollar amount collected by an authorized gaming operator from operation of all games of chance within a licensed racetrack enclosure as computed pursuant to applicable statutes, rules, and regulations less the total of (a) all federal taxes, other than income taxes, imposed on the operation of such games of chance and (b) the amount provided to players by an authorized gaming operator as promotional gaming credits, but only to the extent such promotional gaming credits are redeemed by players to play one or more games of chance being operated by the authorized gaming operator;

(6) Licensed racetrack enclosure means a premises at which licensed live horseracing is conducted in accordance with the Constitution of Nebraska and applicable Nebraska law; and

(7) Promotional gaming credit means a credit, token, or other item of value provided by an authorized gaming operator to a player for the purpose of enabling the player to play a game of chance.

Sec. 3. An annual gaming tax is imposed on gross gaming revenue generated by authorized gaming operators within licensed racetrack enclosures from the operation of all games

of chance equal to twenty percent of such gross gaming revenue. The gaming commission shall collect the tax and shall account for and remit such tax as set forth by law.

Sec. 4. Of the tax imposed by section 3 of this act, seventy-five percent shall be remitted to the State Treasurer for credit as follows: Two and one-half percent to the Compulsive Gamblers Assistance Fund, two and one-half percent to the General Fund, and seventy percent to the Property Tax Credit Cash Fund. The remaining twenty-five percent of the tax shall be remitted to the county treasurer of the county in which the licensed racetrack enclosure is located to be distributed as follows: (1) If the licensed racetrack enclosure is located completely within an unincorporated area of a county, the remaining twenty-five percent shall be distributed to the county in which such licensed racetrack enclosure is located; or (2) if the licensed racetrack enclosure is located at least partially within the limits of a city or village in such county, one-half of the remaining twenty-five percent shall be distributed to such county and one-half of the remaining twenty-five percent to the city or village in which such licensed racetrack enclosure is at least partially located.

Sec. 5. Every authorized gaming operator subject to taxation as set forth in this act shall pay such tax and make report thereof to the gaming commission under such rules and regulations as may be prescribed by the gaming commission.

Sec. 6. If the tax provided for in this act is not paid within such time as may be prescribed for payment thereof by rules and regulations prescribed by the gaming commission, the same shall become delinquent and a penalty of ten percent shall be added thereto, together with interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, until paid.

Sec. 7. Any authorized gaming operator that willfully fails, neglects, or refuses to make any report required by this act, or by rules and regulations adopted and promulgated under this act, or that knowingly makes any false statement in any such report, is guilty of a Class IV misdemeanor.

Sec. 8. If any section or provision of this act is determined by a court of competent jurisdiction to be unconstitutional or otherwise void or invalid for any reason, such determination shall not affect the validity of the act as a whole or any part thereof, other than the part so determined to be unconstitutional or otherwise void or invalid.

INITIATIVE PETITION

For Secretary of State Use Only

The object of this petition is to: (See reverse side for actual text of measure)

Enact a statute establishing an annual tax on gross gaming revenue generated by authorized gaming operators of games of chance within licensed racetrack enclosures and directs the collection, enforcement, and distribution of revenue from such gaming tax.

To the Honorable Robert Evnen, Secretary of State for the State of Nebraska:

We, the undersigned residents of the State of Nebraska and the county of _____, respectfully demand that the following proposed law shall be referred to the registered voters of the state for their approval or rejection at the general election to be held on the 3rd day of November 2020, and each for himself or herself says: I have personally signed this petition on the date opposite my name; I am a registered voter of the State of Nebraska and county of _____ and am qualified to sign this petition or I will be so registered and qualified on or before the date on which this petition is required to be filed with the Secretary of State; and My printed name, date of birth, street and number or voting precinct, and city, village, or post office address are correctly written after my signature.

WARNING TO PETITION SIGNERS-- VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OF LAW MAY RESULT IN THE FILING OF CRIMINAL CHARGES: Any person who signs any name other than his or her own to any petition or who is not qualified to sign the petition shall be guilty of a Class I misdemeanor. Any person who falsely swears to a circulator's affidavit on a petition, who accepts money or other things of value for signing a petition or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

	DATE	SIGNATURE	PRINTED NAME	DATE OF BIRTH	ADDRESS (Street Number & Name)	CITY OR VILLAGE	ZIP CODE
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STATE OF NEBRASKA)
) ss
COUNTY OF _____)

_____ (name of circulator) being first duly sworn, deposes and says that he or she is the circulator of this petition containing _____ signatures, that he or she is at least eighteen years of age, that each person whose name appears on the petition personally signed the petition in the presence of the affiant, that the date to the left of each signature is the correct date on which the signature was affixed to the petition and that the date was personally affixed by the person signing such petition, that the affiant believes that each signer has written his or her name, street and number or voting precinct, and city, village, or post office address correctly, that the affiant believes that each signer was qualified to sign the petition, and that the affiant stated to each signer the object of the petition as printed on the petition before he or she affixed his or her signature to the petition.

Circulator

Address

City, State, Zip

Subscribed and sworn to before me, a notary public, this _____ day of _____, 20__ at _____, Nebraska.

(Seal)

Notary Public

Proposed Statutory Amendment Language:

A BILL

FOR AN ACT relating to gaming; to provide a tax on gaming as prescribed; to provide for distribution of tax proceeds; and to define terms.

Be it enacted by the people of the State of Nebraska,

Section 1. To the full extent permitted by the Constitution of Nebraska, including amendments to the Constitution of Nebraska adopted contemporaneously with the enactment of this act, an annual gaming tax is hereby imposed on the operation of all games of chance by authorized gaming operators within licensed racetrack enclosures.

Sec. 2. For purposes of this act:

(1) Authorized gaming operator means a person or entity licensed pursuant to the Nebraska Racetrack Gaming Act to operate games of chance within a licensed racetrack enclosure;

(2) Dollar amount collected means the total dollar amount wagered by players of games of chance less the total dollar amount returned to such players as prizes;

(3) Game of chance means any game which has the elements of chance, prize, and consideration, including any wager on a slot machine, table game, counter game, or card game. Game of chance does not include any game the operation of which is prohibited at a casino by federal law;

(4) Gaming commission means the Nebraska Gaming Commission established pursuant to the Nebraska Racetrack Gaming Act;

(5) Gross gaming revenue means the dollar amount collected by an authorized gaming operator from operation of all games of chance within a licensed racetrack enclosure as computed pursuant to applicable statutes, rules, and regulations less the total of (a) all federal taxes, other than income taxes, imposed on the operation of such games of chance and (b) the amount provided to players by an authorized gaming operator as promotional gaming credits, but only to the extent such promotional gaming credits are redeemed by players to play one or more games of chance being operated by the authorized gaming operator;

(6) Licensed racetrack enclosure means a premises at which licensed live horseracing is conducted in accordance with the Constitution of Nebraska and applicable Nebraska law; and

(7) Promotional gaming credit means a credit, token, or other item of value provided by an authorized gaming operator to a player for the purpose of enabling the player to play a game of chance.

Sec. 3. An annual gaming tax is imposed on gross gaming revenue generated by authorized gaming operators within licensed racetrack enclosures from the operation of all games of chance equal to twenty percent of such gross gaming revenue. The gaming commission shall collect the tax and shall account for and remit such tax as set forth by law.

Sec. 4. Of the tax imposed by section 3 of this act, seventy-five percent shall be remitted to the State Treasurer for credit as follows: two and one-half percent to the Compulsive Gamblers Assistance Fund, two and one-half percent to the General Fund, and seventy percent to the Property Tax Credit Cash Fund. The remaining twenty-five percent of the tax shall be remitted to the county treasurer of the county in which the licensed racetrack enclosure is located to be distributed as follows: (1) If the licensed racetrack enclosure is located completely within an unincorporated area of a county, the remaining twenty-five percent shall be distributed to the county in which such licensed racetrack enclosure is located; or (2) if the licensed racetrack enclosure is located at least partially within the limits of a city or village in such county, one-half of the remaining twenty-five percent shall be distributed to such county and one-half of the remaining twenty-five percent to the city or village in which such licensed racetrack enclosure is at least partially located.

Sec. 5. Every authorized gaming operator subject to taxation as set forth in this act shall pay such tax and make report thereof to the gaming commission under such rules and regulations as may be prescribed by the gaming commission.

Sec. 6. If the tax provided for in this act is not paid within such time as may be prescribed for payment thereof by rules and regulations prescribed by the gaming commission, the same shall become delinquent and a penalty of ten percent shall be added thereto, together with interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, until paid.

Sec. 7. Any authorized gaming operator that willfully fails, neglects, or refuses to make any report required by this act, or by rules and regulations adopted and promulgated under this act, or that knowingly makes any false statement in any such report, is guilty of a Class IV misdemeanor.

Sec. 8. If any section or provision of this act is determined by a court of competent jurisdiction to be unconstitutional or otherwise void or invalid for any reason, such determination shall not affect the validity of the act as a whole or any part thereof, other than the part so determined to be unconstitutional or otherwise void or invalid.



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

L. JAY BARTEL
ASSISTANT ATTORNEY GENERAL
CHIEF, LEGAL SERVICES BUREAU

July 31, 2020

The Honorable Robert B. Evnen
Nebraska Secretary of State
Room 2300, State Capitol
P.O. Box 95608
Lincoln, NE 68509-4608

Dear Secretary Evnen:

Pursuant to Neb. Rev. Stat. § 32-1410(1) (2016), you have notified us that you received an initiative petition proposing to enact a statute to establish an annual tax on gross gaming revenue generated by authorized gaming operators of games of chance within licensed racetrack enclosures, and directing the distribution of such gaming tax, for referral to the people of Nebraska on the November 2020 general election ballot. Your notification was received by our office on July 22, 2020.

In accordance with the duty imposed by § 32-1410(1), we have prepared the following ballot title and explanatory statement for that initiative. As provided by statute, the explanatory statement is to directly precede the ballot title on the ballot and be printed in italics:

A vote "FOR" will enact a statute which: (1) imposes a 20% annual tax on gross gaming revenue from games of chance operated at licensed racetrack locations; (2) distributes 75% of such gaming tax revenues to the State for credit of 2.5% to both the Compulsive Gamblers Assistance Fund and General Fund, and 70% to the Property Tax Credit Cash Fund; and (3) distributes 25% of such gaming tax revenues to the county where the licensed racetrack is located, or, if the racetrack is located partially within a city or village, distributes this percentage evenly between the county and city or village.

A vote "AGAINST" will not cause such a statute to be enacted.

Honorable Robert B. Evnen
July 31, 2020
Page 2

Below this explanatory statement, the following language should be inserted for the ballot title:

Shall a statute be enacted which: (1) imposes a 20% annual tax on gross gaming revenue from games of chance operated at licensed racetrack locations; (2) distributes 75% of such gaming tax revenues to the State for credit of 2.5% to both the Compulsive Gamblers Assistance Fund and General Fund, and 70% to the Property Tax Credit Cash Fund; and (3) distributes 25% of such gaming tax revenues to the county where the licensed racetrack is located, or, if the racetrack is located partially within a city or village, distributes this percentage evenly between the county and city or village?

You are reminded that § 32-1410(3) requires that you serve a copy of this language upon the persons offering or filing the initiative petition by mail or electronic transmission.

Very truly yours,

DOUGLAS J. PETERSON
Attorney General



L. Jay Bartel
Assistant Attorney General
Chief, Legal Services Bureau



STATE OF NEBRASKA

ROBERT B. EVNEN
SECRETARY OF STATE

P.O. Box 94608
State Capitol, Suite 2300
Lincoln, NE 68509-4608
Phone: 402-471-2554
Fax: 402-471-3237
www.sos.ne.gov

August 25, 2020

VIA EMAIL

David A. Lopez
Husch Blackwell
13330 California Street, Suite 200
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Email: dave.lopez@huschblackwell.com

J.L. Spray
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Andre R. Barry
Cline Williams
Wright Johnson & Oldfather, L.L.P.
233 South 13th Street
Lincoln, NE 68508
Email: abarry@clينewilliams.com

Re: Legal Sufficiency of Gambling Ballot Initiatives

Dear Messrs. Lopez, Spray and Barry:

Three "Games of Chance" ballot initiatives have been submitted to this office for placement on the November 2020, general election ballot. The first of these is a proposed amendment to Article III, Section 24, of the Nebraska Constitution¹ to allow games of chance conducted by authorized gaming operators within licensed racetracks (the "Constitutional Initiative"). The second is the proposed enactment of statutory provisions setting forth a structure for authorizing gaming operators, creation of a gaming commission and other matters (the "Regulatory Initiative"). The third is the proposed enactment of statutory provisions setting forth a tax on gross gaming revenue, collection of the tax and the distribution of revenue from the tax (the "Tax Initiative"). (I will refer to these collectively as the "Initiatives.")

By separate letters dated and received by me on August 7, 2020, Dr. Richard Loveless (represented by David Lopez of Husch Blackwell LLP), and Ann and Todd Zohner (represented by J. L. Spray of the Mattson Ricketts Law Firm) have asked that the Initiatives be withheld from the ballot due to their claimed legal insufficiency. (Hereinafter, I will refer to Dr. Loveless and the Zohners collectively as the "Objectors.")

¹ Hereinafter, all references to articles and sections refer to the Nebraska State Constitution.

In response to my request, on August 14, 2020, I received the letter of Andre Barry of Cline Williams Wright Johnson & Oldfather, L.L.P. on behalf of the sponsors of the Initiatives.² Further replies were received from the Objectors on August 14, 2020, and a final response from the Sponsors was received on August 17, 2020.

Neb. Rev. Stat. § 32-1409(3) directs the Secretary of State to total the valid petition signatures and determine whether constitutional and statutory requirements have been met for initiative petitions. The Secretary of State, pursuant to Neb. Rev. Stat. §§ 32-201 and 32-202, has the duty to decide disputed points of election law and to supervise the conduct of primary and general elections in this state. The Nebraska Supreme Court has held that the Secretary of State has the duty to determine the legal sufficiency of ballot measures such as these, and to withhold such measures from the ballot if they are legally insufficient. *See State ex rel. Wieland v. Beermann*, 246 Neb. 808, 816, 523 N.W.2d 518, 525 (1994). *See also State ex rel. Lemon v. Gale*, 272 Neb. 295, 297, 721 N.W.2d 347, 351 (2006); *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 986-993, 853 N.W.2d 494, 505-508 (2014).

Having now reviewed and considered the submissions of the Objectors and the Sponsors, and based upon my independent review, this letter sets forth my determination of the legal sufficiency of the Initiatives.

The Primary Purpose of the Initiatives

A determination of legal sufficiency must begin with a statement of the primary purpose of the Initiatives. Here, the primary purpose for each is the same: to permit previously prohibited games of chance to be conducted in the State of Nebraska. As will be discussed in more detail below, each of the three initiatives relates to this single primary purpose. That all three share a single primary purpose is easily seen; without the Constitutional Initiative, neither the Regulatory Initiative nor the Tax Initiative serves any purpose.³

Even assuming arguendo that there are separate primary purposes for each of the initiatives, the outcome is the same.

Single Subject Rule

“Initiative measures shall contain only one subject.” Neb. Const. art. III, § 2. The Nebraska Supreme Court has reviewed the single subject rule in a number of initiative and

² The sponsors of the three initiatives are Keep the Money in Nebraska, Inc., Nebraska Horsemen’s Benevolent & Protective Association, Ho-Chunk, Inc., and Omaha Exposition & Racing, Inc. (Hereinafter, these parties will be referred to as the “Sponsors.”)

³ Without the passage of the Constitutional Initiative, the passage of the Regulatory Initiative and the Tax Initiative would be orphaned idle acts, with no force or effect. This has occurred previously, in 2004, when the voters rejected a Constitutional amendment that would have permitted gambling, but enacted a statutory initiative for the taxation and appropriation of gambling revenues. The statute was briefly codified, then repealed by the legislature. Neb. Rev. Stats. §§ 9-901 to 9-904 (R.S.Supp., 2005). (As best I can determine, neither initiative had been challenged as legally insufficient.)

referendum cases. In *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014), the Court concluded that the natural and necessary connection test that had been applied to municipal ballot measures also applies to voter initiatives under article III, § 2. The test provides that a proposed ballot measure is invalid if it would:

(1) compel voters to vote for or against distinct propositions in a single vote-when they might not do so if presented separately; (2) confuse voters on the issues they are asked to decide; or (3) create doubt as to what action they have authorized after the election.

Id. at 1000, 853 N.W.2d at 513.

The court expanded upon this standard in *Christensen v. Gale*, 301 Neb. 19, 917 N.W.2d 145 (2018):

Where the limits of a proposed law, having natural and necessary connection with each other, and, together, are a part of one general subject, the proposal is a single and not a dual proposition. The controlling consideration in determining the singleness of a proposed amendment is its singleness of purpose and the relationship of the details to the general subject. The general subject is defined by its primary purpose.

Id. at 32, 917 N.W.2d at 156 (internal quotation omitted) (2018).

In cases objecting to legal sufficiency under the single subject rule, the question has arisen in the context of a single initiative: Does the initiative contain more than a single subject? In this case, however, a single general subject constitutes the primary purpose of all three of the initiatives that have been sponsored, circulated and submitted together. This appears to be a novel situation that has not been present in any case heretofore decided by the Supreme Court on this issue.

Constitutional Initiative

Mr. Lopez argues that the Constitutional Initiative is invalid because it proposes to repeal the default prohibition on all forms of games of chance in certain situations, thus depriving voters of the opportunity to distinguish between the various types of games of chance. He argues that voter confusion would ensue from lumping the legalization of “all” gambling forms into a single measure.

The Supreme Court has provided guidance as to what constitutes a “game of chance.” *American Amusements Co. v. Nebraska Dep’t of Revenue*, 282 Neb. 908, 919, 807 N.W.2d 492, 500 (2011). The use of that phrase in the Constitutional Initiative is consistent with the terminology of Article III, Section 24 of the Constitution and can be interpreted using the existing Supreme Court precedent. Mr. Lopez argues for the “game by game” approach which has been used in the existing exceptions to the general games of chance prohibition set forth in subsections (2), (3) and (4) of Article III, Section 24. While the “game by game” approach has

been utilized historically, I do not see anything that requires this approach or that is fundamentally confusing by grouping all games of chance into a single measure.

The proposed Constitutional Initiative provides for a broad expansion of gambling in the state, but this approach in and of itself does not create confusion and does not violate the single subject rule.⁴

Mr. Lopez also asserts that the Constitutional Initiative contains a “hidden authorization” of Class III gaming on tribal lands. Mr. Lopez correctly points out that, under the Indian Gaming Regulation Act, 25 U.S.C. §§ 2701 to 2721 (“IGRA”), the authorization of expanded gaming in Nebraska proposed in the Constitutional Initiative would authorize expanded gaming on Indian lands whether or not the gaming is conducted within licensed racetrack enclosures.

Expanded gambling on Indian lands is a question not being directly proposed to the voters. Nowhere is this effect of the IGRA apparent from or set forth in the Constitutional Initiative, nor is it stated in the object statement or ballot question in the petitions that voters were asked to sign. This effect also would not be set forth on the ballot when voters determine how they wish to cast their vote on the issue of expanded gambling.

To the contrary, the language of the Constitutional Initiative is likely to mislead voters into thinking that they are voting for an initiative that would prohibit the conduct of games of chance anywhere but at racetracks. That, after all, is the plain meaning of the amendment proposed in the Constitutional Initiative. Were the Constitutional Initiative to be adopted, however, gambling would not be limited to racetracks.

The IGRA provides that Class III gaming includes forms of gaming that are not Class I or Class II. Examples of Class III games are slot machines, roulette, craps, and house-banked card games. 25 U.S.C. § 2703(6)-(8). If a tribe wishes to conduct Class III gaming it must negotiate a compact with the state that establishes the scope and regulation of such activities. 25 U.S.C. § 2710(d)(1)(A) to (C). States are required to negotiate with tribes for Class III gaming if the state permits such gaming activities “for *any* purpose by *any* person, organization, or entity.” 25 U.S.C. § 2710(d)(1)(B) (emphasis supplied). The IGRA limits the state’s regulatory authority to that expressly agreed upon in a compact. *Florida v. Seminole Tribe of Florida*, 181 F.3d 1237, 1247 (11th Cir. 1999). Thus, if the Constitutional Initiative were adopted, under the IGRA tribal gaming could not be limited to racetracks. It is the allowance of Class III games itself that trigger rights under the IGRA. Those rights are not limited except by the compact between the tribe and the state.

Mr. Barry does not deny the legal effect under the IGRA that I have described above. Instead, he argues that there is no “hidden authorization” on tribal lands, that the IGRA is not a secret and that opponents of the Constitutional Initiative are free to argue the legal effect of adoption of the Constitutional Initiative under IGRA. Mr. Barry asserts that the likelihood that

⁴ Mr. Lopez argues that the Constitutional Initiative provides for inconsistent and potentially conflicting regulation of activities that are already regulated, for example, lotteries, bingo and raffles. This is a matter of constitutional interpretation properly left to the Courts, and I will not consider it further here.

adoption of the Constitutional Initiative will result in Class III gaming on tribal lands is speculative at best.

It appears that there are three Class II tribal casinos presently in operation in this state. The State has an existing compact with the Omaha Tribe of Nebraska which specifically provides that the Omaha Tribe may engage in Class III gaming on Indian lands if such gaming is lawful under the IGRA and conducted in accordance with the requirements of the compact. The compact provides a process for the Omaha Tribe to notify the state regarding additional Class III gaming activities in which it wishes to engage. One of the sponsors of the Initiatives is affiliated with a tribal Class III casino in Iowa within a few miles of the Nebraska border that is not operating within a racetrack.⁵ I do not agree with Mr. Barry that this issue is speculative.

A determination of legal sufficiency involves an evaluation of whether the ballot proposal is likely to "confuse voters on the issues they are asked to decide" or "create doubt as to what action they have authorized after the election." *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 1000, 853 N.W. 2d 494, 513 (2014). The Constitutional Initiative is likely to confuse voters on the issues they are asked to decide; indeed, it is likely to materially mislead voters since the language of the Constitutional Initiative creates the incorrect appearance that, if adopted, games of chance could only be conducted in racetrack enclosures. Even accepting Mr. Barry's assertion that the likelihood of gaming on tribal lands is speculative, the Constitutional Initiative creates doubt about what action would be authorized.

Further, the Constitutional Initiative effectively puts forth dual proposals: (1) authorizing expanded gambling at tribal casinos and (2) authorizing expanded gambling at racetracks by authorized operators. But the first proposal is hidden from the voters and impossible to ascertain from the text of the proposal. Putting forth dual propositions in a single proposal violates the single subject rule as it does not permit voters to express a clear preference on dual propositions. *City of North Platte v. Tilgner*, 282 Neb. 328, 351, 803 N.W.2d 469, 488 (2011). The Constitutional Initiative is materially misleading. It is likely to confuse voters and create doubt as to what they have authorized were the Constitutional Initiative to be adopted. Stated otherwise, it requires voters to vote for dual propositions with a single vote. I conclude that the Constitutional Initiative is legally insufficient and for that reason I shall withhold it from the ballot.

Alternatively, Mr. Spray argues that the Constitutional Initiative has two subjects, which are, first, permitting the conduct of games of chance by authorized operators, and second, that such activity is permitted only at racetracks. He asserts that the limitation of permitting gaming only within "licensed racetrack enclosures" is a second purpose that renders the Constitutional Initiative legally insufficient.

Mr. Spray asserts that granting racetrack owners the exclusive constitutional right to host the businesses which operate these newly authorized games of chance (i.e. casinos) constitutes a separate subject. The newly approved games of chance have no relation or connection to wagering on horseraces. Voters who would like to allow the expansion of gambling may not

⁵ WinnaVegas Casino-Resort, Sloan, Iowa.

want to give racetrack owners the exclusive constitutional right to host casino operations in Nebraska. Putting forth dual propositions in a single proposal violates the single subject rule as it does not permit voters to express a clear preference on dual propositions. *City of North Platte v. Tilgner*, 282 Neb. 328, 351, 803 N.W.2d 469, 488 (2011). Mr. Spray asserts that the proposal to expand gambling does not have a natural and necessary connection to racetracks.

The primary purpose of all three initiatives is to permit previously prohibited games of chance to be conducted in the State of Nebraska. Mr. Spray has a strong argument that the Constitutional Initiative consists of two subjects which do not have a natural and necessary connection with each other and should be withheld from the ballot for that reason. The second subject asserted by Mr. Spray to be contained in the Constitutional Initiative, which is that gambling be limited to racetracks, is not a benign purpose; it is misleading, as discussed above.

Regulatory Initiative

Mr. Spray argues that the Regulatory Initiative violates the single subject rule by including multiple purposes, giving racetrack owners an exclusive right to house casinos, creating a gaming commission and one million dollar license fee, providing tax breaks, and decriminalizing gaming activities all in the same initiative. He argues that the amendment both creates a tax (the one million dollar license fee) and provides tax breaks (exemption from sales and use taxes and the mechanical amusement device tax), and that voters who prefer one aspect of the proposal over the other are deprived of their opportunity to vote on the proposals separately.

The Regulatory Initiative is similar to the Medicaid proposal discussed in *Christensen v. Gale*, 301 Neb. 19, 917 N.W.2d 145 (2018), and the immigration ordinance discussed in *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

City of Fremont v. Kotas involved an extensive city immigration ordinance proposed by initiative petition in the City of Fremont. The district court in that case found that the measure had one general subject – the regulation of undocumented aliens in Fremont. Additionally, the district court found that every provision within the measure was part of its general subject, even though the ordinance had several components, dealing with occupancy, licensing, electronic verification, government uses, resources, and penalty provisions. The Supreme Court held that the measure was not confusing or deceiving to the voters. *Id.* at 727-728, 781 N.W.2d at 463.

The initiative petition at issue in *Christensen v. Gale* was the expansion of Medicaid coverage. The petition proposed the addition of “Section 2” to the Medical Assistance Act with five subsections. The subsections would (1) expand Medicaid to adults ages 19 through 64 who met a certain income threshold, (2) direct the Department of Health and Human Services (DHHS) to submit a state plan amendment seeking approval of federal centers for services, (3) direct DHHS to take all actions necessary to maximize federal financial participation in funding medical assistance, (4) require no greater burden or restriction be imposed on persons eligible for medical assistance under section 2 than any other population eligible for medical assistance, and

(5) require that section 2 would apply notwithstanding any other provision of law or federal waiver. *Christensen v. Gale*, 301 Neb. at 23, 917 N.W.2d at 151 (2018).

After reviewing the proposed petition, the Supreme Court, citing *City of Fremont v. Kotas*, held that the proposal for the expansion of Medicaid and its funding had a natural and necessary connection with each other and thus, a singleness of purpose. The court distinguished the case from *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014), by rejecting the argument that the provision related to federal funding was only included to enhance the odds that voters would approve Medicaid expansion. The Court indicated that the general subject was Medicaid expansion and maximizing federal funding for that expansion was a detail related to the primary purpose of expanding Medicaid. *Christensen v. Gale*, 301 Neb. at 33-34, 917 N.W.2d at 157 (2018).

The primary purpose of the Regulatory Initiative is the same as the other two initiatives with which it has been packaged: to permit previously prohibited games of chance to be conducted in the State of Nebraska. The regulatory requirements set forth in the Regulatory Initiative have a natural and necessary connection to the general subject. The creation of a gaming commission to regulate and establish who would be authorized to provide gaming activities, as well as decriminalizing gaming, all relate to the primary purpose of the Initiatives.

Mr. Spray asserts that the one million dollar licensing fee contained in the Regulatory Initiative is a tax that constitutes a second subject. However, significant initial license fees are common in other states that authorize gaming and serve a function related to the primary purpose with respect to vetting applicants to ensure that they have sufficient resources to be credible gaming operators.

These provisions all appear to have a natural and necessary connection with the primary purpose. The possibility of other policy choices does not in and of itself create a dual purpose. *Id.* at 35, 917 N.W.2d at 158.

Tax breaks are set forth in the Regulatory Initiative which exempt purchases by licensees of the gaming commission from sales and use taxes and the mechanical amusement device tax. Whether tax exemptions which are included in an initiative that is otherwise concerned with regulatory measures constitute a separate subject is a close question. Assuming arguendo that the primary purpose of the Regulatory Initiative is to regulate gambling, the tax breaks contained in the Regulatory Initiative do not have a natural and necessary connection to such a primary purpose.

The exemption of the licensees (the gaming operators) from taxes is not mentioned in the object statement of the Regulatory Initiative and is incorrectly stated in the introduction to the bill (the word "licensee" is omitted from the introductory language making it appear that the exemption applies to the Nebraska Gaming Commission). Thus, these descriptions of the content of the Regulatory Initiative are misleading.

Moreover, a separate initiative in this package – the Tax Initiative – provides for the taxation of newly expanded gaming activities. As a result, some of the tax provisions of the Initiatives are found in the Regulatory Initiative, and others are found in the Tax Initiative. By dividing the tax proposals between two of the Initiatives, voters cannot know the effect of their vote. Because the tax aspects of the Initiatives are split between the Regulatory Initiative and the Tax Initiative, voters who wish to adopt the tax breaks contained in the Regulatory Initiative but only if the new taxes contained in the Tax Initiative also are adopted have no way of voting to do so.

By dividing the tax proposals between two initiatives, and by failing to disclose the tax breaks contained in the Regulatory Initiative, the Regulatory Initiative creates a condition under which voters will be confused and cannot know the effect of their vote. For those reasons, the Regulatory Initiative is not legally sufficient.

There is an additional, separate basis for the legal insufficiency of the Regulatory Initiative. Because the Constitutional Initiative will be withheld from the ballot, the provisions of the Regulatory Initiative, which have a natural and necessary connection to the primary purpose of the Constitutional Initiative, and share that primary purpose, would have no purpose at all. Without the Constitutional Initiative, adoption of the Regulatory Initiative would be an idle act.

For the foregoing reasons, the Regulatory Initiative is legally insufficient and I shall withhold it from the ballot.

Tax Initiative

Mr. Spray argues that the Tax Initiative violates the single subject requirement because there are two distinct and independent proposals in the initiative: (1) raise revenue by imposing an annual gaming tax and (2) distribute the bulk of the tax revenue for property tax relief. Mr. Spray indicates that some of the distribution of the tax revenue had a natural and necessary connection with the tax proposed, but that property tax relief is a separate topic included only to entice voters to vote in favor of the gaming tax.

The Supreme Court has unambiguously invalidated proposals which include the enticement of property tax relief as violating the single subject rule. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011). *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014).

In *City of North Platte v. Tilgner*, the city proposed a municipal ballot measure to amend an occupation tax ordinance so that the tax revenues from the ordinance could be used to pay off the loan for the city's visitor center. After the debt was retired, the initiative would have prohibited the city from using the revenue to operate the center and instead would have required the city to use the revenue for property tax relief. The Supreme Court found that the municipal ballot measure contained two proposals: (1) prohibiting the use of an occupation tax for a visitor center's operating expenses and (2) requiring the city to use the revenue for property tax relief.

The Court held that the property tax proposals did not have a natural and necessary connection. *City of North Platte v. Tilgner*, 282 Neb. at 349-350, 803 N.W.2d at 487 (2011)

The question in *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014), was whether the proposal to use tax revenues from parimutuel wagering for property tax relief and education had a natural and necessary connection to legalizing a new form of wagering. The Court found that it did not and that the appropriation proposal's only connection to the wagering proposal was to enhance the odds that voters would approve the new form of wagering. *Id.* at 1004, 853 N.W.2d at 515 (2014). The Court indicated that many voters who might oppose proposals for new forms of wagering, standing alone, might nonetheless want new funding for property tax relief and education. The court indicated this type of proposition was at the heart of the prohibition against logrolling. *Id.*

Were the contents of the Tax Initiative contained in the Constitutional Initiative, the initiative would be legally insufficient and would be withheld from the ballot as logrolling. *City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011). *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014).

Mr. Barry seems to have conceded as much when he pointed out that "[t]here is no violation of the single subject rule because these provisions regarding tax revenues" are contained in the separate Tax Initiative and not in the Constitutional Initiative. He goes on to write that logrolling only occurs when such provisions "increase the odds that voters will approve a different proposal in the same initiative." (Emphasis in original.) He cites *Christensen v. Gale*, 301 Neb. at 33, 917 N.W.2d at 156-157 (2018), to support his argument.

Based on this position, the Sponsors attempt to avoid the prohibition against logrolling by setting forth the logrolling provisions in one of the Initiatives but not the others. That logrolling is going on here is not difficult to ascertain. Just as in *Loontjer*, if a voter wants the property tax relief, they will have to vote to expand gambling. It is Mr. Barry's position that, because the property tax enticement is contained in a separate initiative from that which expands gambling, it must be allowed.

Such a result is not compelled. Whether the property tax relief provisions are to be allowed depends upon the primary purpose of the Tax Initiative. The primary purpose of all three Initiatives is the same. It is the expansion of gambling, as described above. Other than the logrolling provisions, the provisions of the Tax Initiative have a natural and necessary connection to the expansion of gambling. The adoption of the Tax Initiative would be an idle act without meaning unless the Constitutional Initiative allowing the expansion of gambling was adopted.⁶ The Court has ruled plainly that property tax relief has no natural and necessary

⁶ That the Initiatives share a single primary purpose is further illustrated by the interlocking of the provisions of the Tax Initiative and the Regulatory Initiative. The Tax Initiative specifically provides that an annual gaming tax is imposed on gross gaming revenue generated by "authorized gaming operators." "Authorized gaming operator" is defined in Section 2 of the Tax Initiative as a person or entity licensed pursuant to the Nebraska Racetrack Gaming Act. Section 3 of the Tax Initiative provides that the tax shall be collected by the "gaming commission." The "gaming commission" is defined in Section 2 of the Tax Initiative as the Nebraska Gaming Commission established

connection to the expansion of gambling. The only purpose of the property tax provisions of the Tax Initiative is to entice voters to vote for the Constitutional Initiative. This is at the heart of the prohibition against logrolling and the test set forth in *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014).

Whether the primary purpose of the Tax Initiative is the same as the other two initiatives with which it is packaged, or its primary purpose is to provide for the taxation of gambling revenues, as Mr. Spray argues, the property tax relief provisions contained in the Tax Initiative constitute logrolling and violate the single subject rule. In addition, the tax provisions related to the primary purpose of the Initiatives are confusingly split between the Regulatory Initiative and the Tax Initiative. For those reasons, the Tax Initiative is legally insufficient.

As with the Regulatory Initiative, there is an additional, separate basis for the legal insufficiency of the Tax Initiative. Because the Constitutional Initiative will be withheld from the ballot, the provisions of the Tax Initiative, which have a natural and necessary connection to the primary purpose of the Constitutional Initiative, and share that primary purpose, would have no purpose at all. Without the Constitutional Initiative, adoption of the Tax Initiative would be an idle act.

For the foregoing reasons, the Tax Initiative is legally insufficient and I shall withhold it from the ballot.

Free Election Clause and Special Legislation

Mr. Spray asserts that the Initiatives violate the Free Election clause of the Constitution Neb. Const. art. I, § 22 and constitute impermissible special legislation⁷. I express no opinion on these objections because it is not clear that these issues are within the purview of a legal sufficiency review by the Secretary of State and because they do not appear to be ripe for decision.

Conclusion

The constitutional right to bring forward initiative petitions for a vote of the people is fundamental to our state governance and is to be zealously protected. *Christensen v. Gale*, 301 Neb. 19, 27, 917 N.W.2d 145, 153 (2018). Part of the protection of the right of initiative is to assure that such petitions are neither misleading nor manipulative.

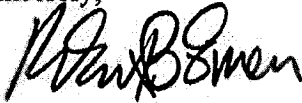
pursuant to the Nebraska Racetrack Gaming Act. The Nebraska Gaming Commission, the Nebraska Racetrack Gaming Act and "authorized gaming operators," however, are all concepts created by the Regulatory Initiative. Thus, the Regulatory Initiative and the Tax Initiative are part and parcel of the same overarching statutory scheme created by the sponsors of the petitions. The adoption of the Tax Initiative by the voters without the adoption of the Regulatory Initiative would be an idle act.

⁷ Mr. Spray argues that the prohibition against special legislation enacted by the Legislature is equally applicable to those enacted by initiative.

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Based upon my review, and for the reasons set forth above, I shall withhold all three of the Initiatives from the ballot unless otherwise ordered by a court of competent jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert B. Evnen". The signature is written in a cursive, flowing style with some capitalization.

Robert B. Evnen
Nebraska Secretary of State