From the Office of Secretary of State John A. Gale

www.sos.ne.gov

For Release
July 23, 2014

Contact: Laura Strimple
402-471-8408
laura.strimple@nebraska.gov

Statement by Secretary John Gale
RE: Placement of LR 41CA on November 2014 ballot

On Tuesday, July 22, 2014, I issued a legal opinion in response to a written request by Steve Grasz, an Omaha attorney with Husch and Blackwell. The request asked me to find LR 41CA unconstitutional and to withhold the measure from the ballot.

LR 41CA, a constitutional amendment, was proposed and approved by the Nebraska Legislature on April 7, 2014 for placement on the November 2014 ballot. It adds replayed horseracing by the parimutuel method to the existing law allowing horseracing by the parimutuel method and adds provisions dealing with the distribution of revenues arising from the parimutuel taxes from horseracing, namely for education, for property tax relief, and for the Compulsive Gamblers Assistance Fund. It also brings existing live horseracing by the parimutuel method into the same revenue distribution scheme devised for the new form of replayed horseracing.

When a constitutional amendment proposed by the legislature is submitted to my office, my general duty is to place it on the ballot. However, if a formal objection is raised requesting that I withhold it from the ballot, it must be based upon whether the ballot measure has a procedural constitutional defect. My authority is limited to whether the alleged defect is patent and appears on the face of the proposed constitutional amendment.

Grasz argued that LR 41CA violates the ‘separate presentation’ provisions of Article XVI, Section 1, of the Nebraska Constitution by having two or more amendments submitted in the same ballot question.

While normal logic and reasonable thought might readily reach the same conclusion, the many distinctions in case law make such a conclusion much less apparent. The prevailing Nebraska Supreme Court rule of ‘having a natural and necessary connection with each other, and, together, part of one general subject’ precludes me from finding LR 41CA to be patently unconstitutional. An argument can be made that on its face LR 41CA appears to violate the separate presentation provision, but a contrary argument can also be made that LR 41CA connects its subjects together to be part of one general subject.

While the constitutional issue is properly raised in the request for relief from Grasz, I do not find LR 41 CA to be patently unconstitutional on its face.

It is possible this decision and other substantive legal issues will be challenged in court. Should that be the case, it may allow for a judicial interpretation to crystalize the breadth and scope of the ‘natural and necessary’ rule.

###