STATE OF NEBRASKA

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VIA EMAIL

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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 Constitution[1] 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

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[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 along, 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 legislation[7]. 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.

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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 Regulator 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.

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,

Robert B. Evnen
Nebraska Secretary of State