**For Release Wednesday, September 23, 2020**

**Capitol View**

**Commentary by J.L. Schmidt**

**Statehouse Correspondent**

**The Nebraska Press Association**

**Court Decides Ballot Issue for November Election**

The state Supreme Court has twice reversed Nebraska Secretary of State Bob Evnen and decided what issues will be on the November ballot. Expanded gambling and a cap on the interest rates that so-called “payday lenders” can charge will be on the ballot. Medical marijuana will not.

In a 4-3 decision, the high court ordered Evnen to place a three-pronged casino gambling initiative on the November general election ballot. It would authorize casino gambling at Nebraska horse race tracks and allocate the bulk of the funding derived from that new state revenue source to local property tax relief. Evnen had argued that it did not adhere to requirements for a single topic because it was split into three separate votes.

The court said it was defending the right of the initiative, which 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. The ruling said the court concluded that none of the three initiatives is legally insufficient and that all three should be placed on the ballot. Dissenting judges agreed with the Secretary of State that the initiative violated the single-subject requirement.

Called the Keep the Money in Nebraska proposal, it was sponsored by Ho-Chunk Inc., the Winnebago Tribe's economic development corporation, in partnership with the Nebraska Horsemen's Benevolent and Protective Association and Omaha Exposition and Racing. Racetracks operate in or near Omaha, Lincoln, South Sioux City, Grand Island, Hastings and Columbus. Expanded gambling at racetracks has been touted for years by various lawmakers as a way to save horse racing in Nebraska.

For Release Wednesday, September 23, 2020 – Page 2

Pay Attention: The property tax angle is a new, but apparently popular twist. What has been overlooked is the fact that new tracks could spring up – how many do we really need? – and the measure could allow Indian casinos a foot in the door. The proposal is expected to trigger a major advertising effort by both supporters and opponents with opposition led by Gambling with the Good Life, an organization that has successfully resisted previous expansion of gambling options in the state.

The high court also upheld the Lancaster County District Court that said the language used in the payday lenders ballot title was both “sufficient” and “fair.” A Lincoln woman who operates a Paycheck Advance business sued Nebraska Attorney General Doug Peterson and Evnen to stop the measure. She said by referring to “payday lenders” instead of “delayed deposit services licensees,” which appears in state statute, voters would be prejudiced to support the initiative capping annual percentage rates at 36 percent instead of the 400 percent currently allowed.

The Supreme Court opinion said the Attorney General’s decision to use ‘payday lenders’ clarifies the measure, because no evidence was presented that the general public knows the meaning of the term ‘delayed deposit services licensees.’

Pay Attention: Nebraskans for Responsible Lending called challenges to the ballot issue thinly veiled attempts at preventing the measure from going before voters because the opponents don’t think they can win in the court of public opinion. Who can support an industry that charges vulnerable adults 400 percent, often in their hour of deepest need?

Finally, Evnen’s decision to put medical marijuana legalization to a vote of the people in November was also reversed. With dissenting opinions from two justices, the court issued an order for Evnen to withhold the initiative from the ballot.

Supporters, led by Lincoln Sens. Anna Wishart and Adam Morfeld, had turned in more than 182,000 signatures to get the issue on the ballot. The number needed was about 122,000 signatures, more than 10% of the voters in the state. After the signatures were verified, Lancaster County Sheriff Terry Wagner challenged the decision to put it on the ballot, arguing

**For Release Wednesday, September 23, 2020 – Page 3**

the question was confusing and created voter doubt, and that it violated the single subject requirement of a constitutional question.

The court agreed the ballot issue violated the single subject rule because its general subject and various other provisions lacked natural and necessary connection with each other. It determined, in fact, the act has eight subjects. The initiative would grant rights to use, possess, access, purchase and safely produce an adequate supply of cannabis and its products to alleviate serious medical conditions.

Pay Attention: The court found the general purpose of the initiative was to create a constitutional right for people with serious medical conditions to produce and medicinally use cannabis, subject to a recommendation by a licensed physician or nurse practitioner. But subsections of the act would allow private entities in Nebraska a constitutional property right to legally grow and sell the substance to those who qualify to use it and would civilly and criminally immunize those entities to do so.

In the majority opinion, the high court agreed with Wagner that clauses in subsections of the act, such as disallowing the smoking of cannabis in public or the operation of a motor vehicle while impaired by cannabis, represented distinct constitutional rights and policies not naturally connected to the general subject of the act.

-30-

*J.L. Schmidt has been covering Nebraska government and politics since 1979. He has been a registered Independent for 20 years.*