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STATE OF NEBRASKA EX REL. AL DAVIS ET AL., RELATORS, V. ROBERT B. EVNEN, NEBRASKA SECRETARY OF STATE, RESPONDENT.

___ N.W.3d ___

Filed September 10, 2026. No. S-26-720.

1. **Constitutional Law: Justiciable Issues: Appeal and Error.** Questions of justiciability and of constitutional interpretation that do not involve factual dispute are questions of law.
2. **Appeal and Error.** An appellate court reviews questions of law de novo, drawing independent conclusions irrespective of any decision made by the Nebraska Secretary of State.
3. **Mandamus: Words and Phrases.** Mandamus is a law action and represents an extraordinary remedy, not a writ of right.
4. **Mandamus.** Whether to grant a writ of mandamus is within a court's discretion.
5. **Mandamus: Proof.** Mandamus relief is available if the movant can show (1) a clear right to the relief sought, (2) a corresponding clear duty to perform the act requested, and (3) that no other plain and adequate remedy is available in the ordinary course of the law.
6. ____: ____. In a mandamus action, the burden lies on the party seeking mandamus to show clearly and conclusively that the party is entitled to the particular thing the relator asks, as the respondent is legally obligated to act.
7. **Initiative and Referendum: Justiciable Issues.** A preelection challenge based on the procedural requirements to a voter ballot initiative's placement on the ballot is ripe for resolution.
8. **Initiative and Referendum.** Sufficiency of a ballot, including the single subject requirement, is a procedural requirement suitable for preelection determination.
9. **Constitutional Law.** A constitution represents the supreme written will of the people regarding the framework for their government.

10. **Constitutional Law: Initiative and Referendum.** 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.
11. ____: ____. The power of initiative must be liberally construed to promote the democratic process, and provisions authorizing the initiative should be construed in such a manner that the legislative power reserved in the people is effectual.
12. ____: ____. A purpose of the single subject rule is to avoid logrolling. That is the practice of combining dissimilar propositions into one proposed amendment so that voters must vote for or against the whole package even though they would have voted differently had the propositions been submitted separately.
13. ____: ____. The Nebraska Supreme Court applies the natural and necessary connection test to the single subject requirement for voter initiatives under Neb. Const. art. III, § 2.
14. **Initiative and Referendum.** Under the natural and necessary connection test, 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.
15. **Constitutional Law: Initiative and Referendum: Intent.** The controlling consideration in determining the singleness of a subject for purposes of article III, § 2, of the Nebraska Constitution is its singleness of purpose and relationship of the details to the general subject, not the strict necessity of any given detail to carry out the general subject.
16. **Initiative and Referendum: Intent.** An initiative's general subject is defined by its primary purpose.
17. **Constitutional Law: Initiative and Referendum.** A review of a constitutional initiative for legal sufficiency should focus on the actual text of the initiative.
18. **Initiative and Referendum.** A general subject must be characterized at a level of specificity that allows for meaningful review of the natural and necessary connection between it and the initiative's other purposes.
19. **Constitutional Law: Initiative and Referendum.** The single subject requirement may not be circumvented by selecting a general subject so broad that the rule is evaded as a meaningful constitutional check on the initiative process.

Original action. Writ of mandamus denied.

Alexander S. Arkfeld and Daniel J. Gutman, of Gutman Law Group, for relators.

Michael T. Hilgers, Attorney General, Zachary B. Pohlman, and Cody S. Barnett for respondent.

Funke, C.J., Cassel, Stacy, Papik, Freudenberg, Bergevin, and Vaughn, JJ.

Per Curiam.

INTRODUCTION

Sponsors of a ballot initiative brought this mandamus action to compel the Nebraska Secretary of State to place on the November 2026 general election ballot their proposed initiative seeking a constitutional amendment to protect the initiative and referendum powers. Because the proposed initiative violates the "single subject rule" set forth in Neb. Const. art. III, § 2, we deny the writ.

BACKGROUND

Article III, § 2

We start by setting forth, in its entirety, the constitutional section reserving the power of initiative:

> The first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature. This power may be invoked by petition wherein the proposed measure shall be set forth at length. If the petition be for the enactment of a law, it shall be signed by seven percent of the registered voters of the state, and if the petition be for the amendment of the Constitution, the petition therefor shall be signed by ten percent of such registered voters. In all cases the registered voters signing such petition shall be so distributed as to include five percent of the registered voters of each of two-fifths of the counties of the state, and when thus signed, the petition shall be filed with the Secretary of State who shall submit the measure thus proposed to the electors of the state at the first general election held not less than four months after such petition shall have been

> filed. The same measure, either in form or in essential substance, shall not be submitted to the people by initiative petition, either affirmatively or negatively, more often than once in three years. If conflicting measures submitted to the people at the same election be approved, the one receiving the highest number of affirmative votes shall thereby become law as to all conflicting provisions. The constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative. *Initiative measures shall contain only one subject.* The Legislature shall not amend, repeal, modify, or impair a law enacted by the people by initiative, contemporaneously with the adoption of this initiative measure or at any time thereafter, except upon a vote of at least two-thirds of all the members of the Legislature.[1]

Although we have emphasized the language imposing the single subject rule, all of § 2 is important. Context matters. And § 2 sets forth the parameters of the reserved power of initiative.

Ballot Initiative

Al Davis, Dawn Essink, and JoVanora Galbreath (collectively the Sponsors) are the sponsors of the ballot initiative measure that is the subject of this action. They seek to have the "Protect Nebraskans' Initiative & Referendum Powers" (the Initiative) placed on the November 2026 general election ballot. The stated object of the Initiative is to

> [a]mend the Nebraska Constitution to protect the people's reserved initiative and referendum powers by requiring a four-fifths vote of the Legislature to change, impair, or repeal citizen-initiated laws or to pass new laws affecting the initiative and referendum process, and prohibiting all legislative enactments that condition, restrict, burden, or impair these reserved powers.

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[1] Neb. Const. art. III, § 2 (emphasis supplied).

The proposed constitutional amendment would amend two sections of the Nebraska Constitution. Above, we set forth the entire text of article III, § 2. The proposed amendment would alter only the last sentence:

> The Legislature shall not amend, repeal, modify, or impair a law enacted by the people by initiative, contemporaneously with the adoption of ~~this initiative measure~~ Initiative Measure 418, adopted November 2, 2004, or at any time thereafter, except upon a vote of at least ~~two-thirds~~ four-fifths of all the members of the Legislature.

It would amend article III, § 4, as follows:

> The whole number of votes cast for Governor at the general election next preceding the filing of an initiative or referendum petition shall be the basis on which the number of signatures to such petition shall be computed. The veto power of the Governor shall not extend to measures initiated by or referred to the people. A measure initiated shall become a law or part of the Constitution, as the case may be, when a majority of the votes cast thereon, and not less than thirty-five per cent of the total vote cast at the election at which the same was submitted, are cast in favor thereof, and shall take effect upon proclamation by the Governor which shall be made within ten days after the official canvass of such votes. The vote upon initiative and referendum measures shall be returned and canvassed in the manner prescribed for the canvass of votes for president. The method of submitting and adopting amendments to the Constitution provided by this section shall be supplementary to the method prescribed in the article of this Constitution, entitled, "Amendments" and the latter shall in no case be construed to conflict herewith. The provisions with respect to the initiative and referendum shall be self-executing, but legislation may be enacted to facilitate and safeguard their operation~~.~~ upon a vote of at least four-fifths of all the members of the Legislature, and only to advance a compelling state

> interest achieved by the least restrictive means. Such laws may include neutral, ministerial, and administrative laws necessary to facilitate the fair, orderly, and efficient administration of these powers, but no law shall be valid that conditions, restricts, burdens, or otherwise impairs the exercise of these powers. All propositions submitted in pursuance hereof shall be submitted in a non-partisan manner and without any indication or suggestion on the ballot that they have been approved or endorsed by any political party or organization. Only the title or proper descriptive words of measures shall be printed on the ballot and when two or more measures have the same title they shall be numbered consecutively in the order of filing with the Secretary of State and the number shall be followed by the name of the first petitioner on the corresponding petition.

The Sponsors delivered to Nebraska Secretary of State Robert B. Evnen (the Secretary) enough signatures to place the Initiative on the ballot.

The Secretary notified the Nebraska Attorney General of the initiative petition, and the Attorney General's office prepared an explanatory statement and ballot title to be printed on the ballot. The explanatory statement would provide:

> *A vote "FOR" will amend the Nebraska Constitution to: (1) Require a four-fifths vote of the Legislature to amend, repeal, modify, or impair a law enacted by the people by initiative on or after November 2, 2004; (2) Require a four-fifths vote of the Legislature to pass laws to facilitate and safeguard the initiative and referendum process only to advance a compelling state interest achieved by the least restrictive means; and (3) Prohibit the Legislature from passing laws that condition, restrict, burden, or impair the exercise of the initiative and referendum powers.*
>
> *A vote "AGAINST" means the Nebraska Constitution will not be amended in this manner.*

(Emphasis in original.) Below the explanatory statement, the ballot title would state:

> Shall the Nebraska Constitution be amended to: (1) Require a four-fifths vote of the Legislature to amend, repeal, modify, or impair a law enacted by the people by initiative on or after November 2, 2004; (2) Require a four-fifths vote of the Legislature to pass laws to facilitate and safeguard the initiative and referendum process only to advance a compelling state interest achieved by the least restrictive means; and (3) Prohibit the Legislature from passing laws that condition, restrict, burden, or impair the exercise of the initiative and referendum powers?

The Challenge

A current and a former state senator filed a joint objection with the Secretary. They asserted that the Initiative violates Nebraska's constitutional single subject rule and should be withheld from the general election ballot.

On August 31, 2026, the Secretary informed the Sponsors that he would not place the Initiative on the ballot. He determined that the Initiative violated the single subject rule.

Proceedings in Nebraska Supreme Court

The Sponsors filed with this court an emergency application for leave to commence an original action, which we granted. They asserted in their verified petition for writ of mandamus that the Initiative contains a single subject and meets all applicable constitutional and statutory requirements to place an initiative measure on the ballot.

Based on the verified petition, we issued an alternative writ of mandamus instructing the Secretary to certify the Initiative for placement on the November 2026 general election ballot or show cause why a preemptory writ commanding him to do so should not issue. We later sustained a stipulated motion to supplement the verified petition in order to include as an exhibit the Secretary's formal determination letter.

The Secretary responded to our alterative writ. He denied having a purely ministerial and clear legal duty to certify the initiative for placement on the general election ballot. The Secretary asserted that he has a legal obligation under Neb. Rev. Stat. § 32-1409(3) (Supp. 2025) to "determine if constitutional and statutory requirements have been met" before placing an initiative on the general election ballot. According to the Secretary, the Initiative violated the single subject rule and, thus, was legally insufficient to be placed on the ballot.

We ordered the parties to file simultaneous briefs and ordered that the matter be submitted without oral argument.[2]

ISSUE PRESENTED

The question is whether a peremptory writ should be issued to the Secretary. The answer depends on whether the Initiative satisfies the single subject rule.

APPLICABLE STANDARDS

[1,2] Questions of justiciability and of constitutional interpretation that do not involve factual dispute are questions of law.[3] An appellate court reviews questions of law de novo, drawing independent conclusions irrespective of any decision made by the Nebraska Secretary of State.[4]

[3,4] Mandamus is a law action and represents an extraordinary remedy, not a writ of right.[5] Whether to grant a writ of mandamus is within a court's discretion.[6]

[5,6] Mandamus relief is available if the movant can show (1) a clear right to the relief sought, (2) a corresponding clear duty to perform the act requested, and (3) that no other plain and adequate remedy is available in the ordinary course of the

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[2] See Neb. Ct. R. App. P. § 2-111(B)(1)(a) (rev. 2022).

[3] *State ex rel. Constance v. Evnen*, 317 Neb. 600, 10 N.W.3d 763 (2024).

[4] See *State ex rel. Wagner v. Evnen*, 307 Neb. 142, 948 N.W.2d 244 (2020).

[5] *State ex rel. Constance v. Evnen, supra* note 3.

[6] *Id*.

law.[7] In a mandamus action, the burden lies on the party seeking mandamus to show clearly and conclusively that the party is entitled to the particular thing the relator asks, as the respondent is legally obligated to act.[8]

[7,8] A preelection challenge based on the procedural requirements to a voter ballot initiative's placement on the ballot is ripe for resolution.[9] Sufficiency of a ballot, including the single subject requirement, is a procedural requirement suitable for preelection determination.[10]

ANALYSIS

We begin our analysis with a discussion of the initiative right and the single subject limitation on that right. Next, we summarize the parties' arguments related to whether the Initiative contains a single subject. Then, we discuss our case law applying a natural and necessary connection test to ballot initiatives. Finally, we apply the law to the Initiative.

RIGHT OF INITIATIVE AND SINGLE SUBJECT RULE

[9] A constitution represents the supreme written will of the people regarding the framework for their government.[11] Nebraska's constitution allows the people to enact laws and amend the constitution through the initiative process. Neb. Const. art. III, § 2, begins by declaring that "[t]he first power reserved by the people is the initiative whereby laws may be enacted and constitutional amendments adopted by the people independently of the Legislature."

[10,11] On numerous occasions, we have stated that the right of initiative is precious to the people and one which the courts are zealous to preserve to the fullest tenable

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[7] *State ex rel. Brooks v. Evnen*, 317 Neb. 581, 10 N.W.3d 887 (2024).

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

measure of spirit as well as letter.[12] The power of initiative must be liberally construed to promote the democratic process, and provisions authorizing the initiative should be construed in such a manner that the legislative power reserved in the people is effectual.[13]

In 1998, the people adopted the single subject rule by voter ballot initiative.[14] We have described the rule as a "'"self-imposed limitation[]"'"[15] on the power of initiative. That limitation on the power of initiative must be enforced with equal vigor.

[12] A purpose of the single subject rule is to avoid log-rolling.[16] That is the practice of combining dissimilar propositions into one proposed amendment so that voters must vote for or against the whole package even though they would have voted differently had the propositions been submitted separately.[17]

[13-16] We apply the natural and necessary connection test to the single subject requirement for voter initiatives under Neb. Const. art. III, § 2.[18] Under the test, 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.[19] The controlling consideration in determining the singleness of a subject for purposes of article III, § 2, of the Nebraska Constitution is its singleness of purpose and relationship of the details to

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[12] See *id.* (listing cases).

[13] *Id*.

[14] See 1997 Neb. Laws, L.R. 32CA, § 1.

[15] *State ex rel. Wagner v. Evnen, supra* note 4, 307 Neb. at 163, 948 N.W.2d at 260.

[16] See *State ex rel. Brooks v. Evnen, supra* note 7.

[17] See *id*.

[18] See *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014).

[19] *State ex rel. Brooks v. Evnen, supra* note 7.

the general subject, not the strict necessity of any given detail to carry out the general subject.[20] An initiative's general subject is defined by its primary purpose.[21]

Arguments

The Sponsors contend that each provision of the Initiative is naturally and necessarily connected to its general subject. They characterize the Initiative's general subject as "limiting the Legislature's ability to interfere with the People's reserved power to make laws."[22] The Sponsors assert that the Legislature may interfere with the people's lawmaking power at two junctures: (1) before the power is exercised, by changing the procedural rules governing the qualification of initiatives and referendums for the ballot, and (2) after the power is exercised, by amending or repealing voter-approved laws. The Sponsors argue, "The Initiative expressly restricts legislative interference at these two points in the process, which are the only times when the Legislature has any role to play."[23]

The Secretary disagrees. He reasons that the Initiative contains at least two subjects—one limiting the Legislature's regulatory authority over the initiative process and the other limiting the Legislature's plenary authority over the subject matter of any law enacted by initiative. And the Secretary contends that the two subjects are not naturally and necessarily connected, pointing out that the initiative process could be protected without regulating its results. According to the Secretary, "protecting the People's power to make law is distinct from protecting the laws the People make."[24]

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[20] *Id*.

[21] See *id*.

[22] Brief for relators at 10.

[23] *Id.* at 11.

[24] Brief for respondent at 9.

Case Law Discussion

Since the addition of the single subject rule in 1998, we have applied the natural and necessary connection test to an initiative petition on a few occasions.

We first applied the test in *Christensen v. Gale*,[25] which involved a challenge to an initiative petition seeking to expand Medicaid coverage. The petition proposed to add a section 2, containing five subsections, to the Medical Assistance Act. We summarized that the subsections would:

> (1) expand Medicaid to adults ages 19 through 64 whose income is equal to or less than 138 percent of the federal poverty level, (2) direct the Department of Health and Human Services (DHHS) to submit a state plan amendment and all other necessary documents seeking required approvals or waivers to the federal centers for Medicare and Medicaid services, (3) direct DHHS to take all actions necessary to maximize federal financial participation in funding medical assistance pursuant to section 2, (4) require that no greater burdens or restrictions may 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 shall apply notwithstanding any other provision of law or federal waiver.[26]

Challengers argued that the initiative had two distinct subjects—the expansion of Medicaid eligibility and maximization of federal financial participation in funding Medicaid. But we reasoned that the expansion of Medicaid and its funding had a natural and necessary connection and a singleness of purpose.

In *State ex rel. McNally v. Evnen*,[27] sponsors filed three proposed ballot initiatives relating to gaming devices. We

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[25] *Christensen v. Gale*, 301 Neb. 19, 917 N.W.2d 145 (2018).

[26] *Id.* at 22-23, 917 N.W.2d at 151.

[27] *State ex rel. McNally v. Evnen*, 307 Neb. 103, 948 N.W.2d 463 (2020).

determined that our single subject review would focus on the specific initiative being reviewed without reference to the other initiatives. This focus naturally followed, because each initiative would be separately considered by the electorate.

We described the initiatives as follows:

> Generally, the first initiative would amend the prohibition against gambling contained in Nebraska Const. art. III, § 24, by permitting enactment of an exception which would authorize games of chance conducted within licensed racetrack enclosures; the second initiative would enact certain statutes and amend certain existing statutes to regulate games of chance operated by licensed gaming operators within licensed racetrack enclosures; and the third initiative would enact statutes that impose a tax on revenues from games of chance and specify how such taxes would be distributed.[28]

With respect to the first initiative, the Secretary of State asserted that it contained two subjects—authorizing all forms of games of chance and restricting those games of chance to racetrack enclosures. A plurality of this court found no single subject violation, reasoning that "[i]dentifying and limiting the location of a new activity is a detail naturally and necessarily connected to its creation and not a separate subject."[29] A concurrence providing the necessary fourth vote reasoned, "The primary purpose of the proposal is to provide another exception to the basic prohibition of [gaming]. The detail of 'where' is naturally and necessarily related to the 'what.' Expansion of gaming presumes some location. The racetrack limitation merely specifies the place."[30]

The Secretary of State argued that the second initiative violated the single subject rule because it exempted licensees of the Nebraska Gaming Commission from sales and use tax and

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[28] *Id.* at 105, 948 N.W.2d at 469.

[29] *Id.* at 123, 948 N.W.2d at 479.

[30] *Id.* at 135, 948 N.W.2d at 486 (Cassel, J., concurring).

excluded gaming devices from the Mechanical Amusement Device Tax Act. But the majority opinion[31] determined that both tax-related provisions had a natural and necessary connection to the regulation of games of chance, because its parts all related to the same general subject of expanding games of chance.

As to the third initiative, the majority reasoned that the distribution of a tax had a natural and necessary connection to the imposition of the tax. Thus, a majority of this court found no single subject violation.

In *State ex rel. Wagner v. Evnen*,[32] we determined that an initiative contained more than one subject. We characterized the initiative's general subject as creation of a constitutional right for persons with serious medical conditions to produce and medicinally use cannabis, subject to a recommendation by a licensed physician or nurse practitioner. We reasoned that subsections (1) and (2) of the proposed amendment concerned a personal constitutional right of patients with serious medical conditions to produce and use cannabis for themselves, but subsection (3) concerned a constitutional right of private entities to grow and sell cannabis to others and subsection (4) would confer immunity from civil or criminal liability on any private entity acting under the color of constitutional right under subsection (3). Ultimately, we determined that the initiative contained at least eight subjects. We explained:

> In addition to enshrining in our constitution a right of certain persons to produce and medicinally use cannabis under subsections (1) and (2), in subsections (3) and (4), the [proposed amendment] would enshrine a right and immunity for entities to grow and sell cannabis; and in subsections (6), (7), and (8), it would regulate the role of cannabis in at least six areas of public life. These

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[31] See *id.* at 136, 948 N.W.2d at 486 (Cassel, J., concurring) ("I join the . . . lead opinion regarding [the second and third initiatives]").

[32] *State ex rel. Wagner v. Evnen, supra* note 4.

> secondary purposes are not naturally and necessarily connected to the [proposed amendment's] primary purpose. As such, they constitute logrolling.[33]

In *State ex rel. Brooks v. Evnen*,[34] we found no single subject violation concerning a constitutional amendment to include a right to abortion. The proposed amendment would have added a new constitutional section stating:

> "All persons shall have a fundamental right to abortion until fetal viability, or when needed to protect the life or health of the pregnant patient, without interference from the state or its political subdivisions. Fetal viability means the point in pregnancy when, in the professional judgment of the patient's treating health care practitioner, there is a significant likelihood of the fetus' sustained survival outside the uterus without the application of extraordinary medical measures."[35]

Challengers to the proposed initiative essentially argued that the limitations, parameters, and definitions were each separate subjects. However, we determined that the parts of the initiative were all naturally and necessarily related to the initiative's subject—creating a constitutional right to abortion.

APPLICATION

With the teachings from our prior decisions in mind, we apply them to the Initiative. They are not easily applied.

[17-19] The first step in a single subject rule inquiry is to determine the general subject or primary purpose of the initiative measure. A review of a constitutional initiative for legal sufficiency should focus on the actual text of the initiative.[36] A general subject must be characterized at a level of specificity that allows for meaningful review of the natural

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[33] *Id.* at 164, 948 N.W.2d at 260.

[34] *State ex rel. Brooks v. Evnen, supra* note 7.

[35] *Id.* at 584, 10 N.W.3d at 891.

[36] See *State ex rel. McNally v. Evnen, supra* note 27.

and necessary connection between it and the initiative's other purposes.[37] The single subject requirement may not be circumvented by selecting a general subject so broad that the rule is evaded as a meaningful constitutional check on the initiative process.[38]

We recall the various provisions of the Initiative. In doing so, we note that they would amend two sections of article III. First, it would amend the constitutional section reserving the power of initiative.[39] It would require a four-fifths vote of the Legislature to amend, repeal, modify, or impair an initiative-enacted law on or after November 2, 2004. Second, it would change the constitutional section authorizing the Legislature to enact laws that facilitate the initiative and referendum process.[40] The Initiative would require a four-fifths vote of the Legislature to enact laws that would facilitate and safeguard the initiative and referendum process. It would require that any such laws "advance a compelling state interest achieved by the least restrictive means." And the Initiative would prohibit the Legislature from passing any law that conditions, restricts, burdens, or impairs the exercise of the initiative and referendum powers.

Regarding the general subject here, the parties disagree. According to the Sponsors, "The general subject of the Initiative is limiting the Legislature's ability to interfere with the People's reserved power to make laws."[41] The Secretary identifies "at least two subjects."[42] He argues that "the Initiative limits the Legislature's *regulatory* authority over the initiative process itself."[43] He adds that "the Initiative

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[37] *State ex rel. Wagner v. Evnen, supra* note 4.

[38] *Id.*

[39] See Neb. Const. art. III, § 2.

[40] See Neb. Const. art. III, § 4.

[41] Brief for relators at 10.

[42] Brief for respondent at 11.

[43] *Id.* (emphasis in original).

also limits the Legislature's *plenary* authority to legislate on subjects unrelated to the initiative process."[44] This, he argues, "protects two different things: the initiative *process* itself and the *ends* the process produces."[45]

We agree that the Initiative addresses at least two subjects. The Initiative would not only strengthen the requirement of a Legislative supermajority necessary to "amend, repeal, modify, or impair a law,"[46] it would fundamentally change the balance of legislative powers between the people, through the reserved powers, and the Legislature.

The second step in the inquiry is whether the various provisions of the Initiative have a natural and necessary connection to the primary purpose. The provision requiring a vote of at least four-fifths of the Legislature to enact legislation that affects an initiative-enacted law bears a natural and necessary connection to the Initiative's primary purpose. By requiring a heightened voting requirement, the provisions restrict the Legislature's ability to alter a law enacted through initiative.

But other provisions lack a clear connection. The proposed amendments to article III, § 4, concern the initiative and referendum process, rather than an initiative-enacted law. They require that any legislation seeking to facilitate or safeguard the process also "advance a compelling state interest" and that it be "achieved by the least restrictive means." Essentially, this language makes any such legislation subject to strict scrutiny.[47] And by doing so, the Initiative injects the judicial branch into matters of legislative policy. These requirements

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[44] *Id.* at 12 (emphasis in original).

[45] *Id.* at 13 (emphasis in original).

[46] Neb. Const. art. III, § 2.

[47] *Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist.*, 274 Neb. 278, 739 N.W.2d 742 (2007) (under strict scrutiny review, law must be justified by compelling governmental interest and must be narrowly tailored to advance that interest). See, also, *State ex rel. Bruning v. Gale*, 284 Neb. 257, 817 N.W.2d 768 (2012).

also demonstrate a secondary purpose. Although a strict scrutiny review would restrict the Legislature's ability to alter a law affecting the initiative or referendum process, it has no connection to protecting initiative-enacted laws. Because it is not naturally and necessarily connected to the purpose of the Initiative, we determine that the Initiative contains more than one subject.

An initiative containing more than one subject does not meet the constitutional requirement of a single subject. The Secretary of State has no duty to place on the general election ballot a measure that is not valid and sufficient.[48] We need not determine whether the Initiative also contains more than two subjects. An appellate court is not obligated to engage in an analysis that is not necessary to adjudicate the case and controversy before it.[49]

CONCLUSION

We conclude that the Initiative violates the single subject rule. Accordingly, the Secretary does not have a duty to place it on the general election ballot. The Sponsors' application for a writ of mandamus is denied. The alternative writ is dissolved.

Writ of mandamus denied.

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[48] See § 32-1409(3).

[49] *Nebraska Republican Party v. Shively*, 311 Neb. 160, 971 N.W.2d 128 (2022).

Papik, J., dissenting.

I respectfully disagree with the majority's conclusion that the ballot initiative before us contains more than one subject in violation of Neb. Const. art. III, § 2. Under the test we have recently applied to analyze single subject challenges to ballot initiatives, I would conclude that this initiative contains one subject. At a more fundamental level, however, I question whether we should be using this test to resolve such challenges. I write separately to address both points.

Natural and Necessary Connection Test.

In several recent single subject challenges to ballot initiatives, we have applied what we have called "the natural and necessary connection test." *State ex rel. Brooks v. Evnen*, 317 Neb. 581, 595, 10 N.W.3d 887, 897 (2024). We have described the test as follows:

> [W]here 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 factors in this inquiry are the initiative's singleness of purpose and the relationship of other details to its general subject. An initiative's general subject is defined by its primary purpose.

State ex rel. Wagner v. Evnen, 307 Neb. 142, 151, 948 N.W.2d 244, 253 (2020) (internal quotation marks omitted).

While that description of the test is, in isolation, somewhat opaque, our prior cases provide assistance in understanding how the test has been applied. Our practice has been to first identify the proposed initiative's general subject. See, *State ex rel. Brooks, supra; State ex rel. Wagner, supra*. We then ask whether the various details of the proposed initiative are naturally and necessarily connected to that general subject and each other. See, *State ex rel. Brooks, supra*; *State ex rel. Wagner, supra*; *Christensen v. Gale*, 301 Neb. 19, 917 N.W.2d 145 (2018). We have emphasized, however, that in determining whether the various details of the proposed initiative are sufficiently connected, the question is not whether one part of the initiative could have been proposed without others or whether the initiative presents "different policy issues," see *Christensen*, 301 Neb. at 35, 917 N.W.2d at 158, but, rather, whether all the details relate to the general subject, see *id*. at 34, 917 N.W.2d at 157 (explaining that "controlling consideration" in single subject analysis is "relationship of the details to the general subject" and "not the strict necessity of any given detail to carry out the general subject"). For reasons I

will explain, I conclude that the proposed initiative passes the natural and necessary connection test.

Our first task under the natural and necessary connection test is to review the various aspects of the initiative proposal and determine its general subject. The majority opinion clearly explains the various aspects of the initiative proposal, so I feel no need to rehash them here. The sponsors of the initiative proposal characterize its subject as "limiting the Legislature's ability to interfere with the People's reserved power to make laws." Brief for relators at 10. That description is, unsurprisingly, framed in the language of an advocate. Put more neutrally, but still consistent with the content of the proposed initiative, the general subject of the proposed initiative might be described as the Legislature's authority over the people's reserved power to make laws.

I recognize that we have previously cautioned that under the natural and necessary connection test, a court cannot allow a general subject to be characterized at so high a level of generality that the single subject requirement is circumvented. See *State ex rel. Wagner, supra*. I grant that such a requirement is necessary because of the ease with which one can, in defining the "subject" of any measure, raise the level of generality to encompass all of its potentially disparate elements. See, e.g., *Planned Parenthood of the Heartland v. Hilgers*, 317 Neb. 217, 9 N.W.3d 604 (2024) (Papik, J., concurring). But as easy as it is to raise and lower the level of generality, it is equally difficult to identify and describe the point at which a subject has been defined so broadly that the single subject requirement has been circumvented. We have never attempted to explain when that point is reached, I am not aware of another court that has, and, frankly, I question whether it is even possible. See, e.g., Jeffrey S. Sutton, Who Decides? States as Laboratories of Constitutional Experimentation 260 (2022) (discussing "soaring level of generality problem" in deciding "[h]ow high up the ladder of abstraction should a court go in deciding what counts as a subject").

Given this difficulty, perhaps the best we can do is to attempt to be consistent from case to case. But our prior cases have permitted the general subject to be defined with considerable breadth. This court has found that ballot initiative measures passed the natural and necessary connection test with general subjects as broad as the "constitutional right to abortion," see *State ex rel. Brooks*, 317 Neb. at 597, 10 N.W.3d at 898; "a regulatory scheme for operation of games of chance," see *State ex rel. McNally v. Evnen*, 307 Neb. 103, 127, 948 N.W.2d 463, 482 (2020); "Medicaid expansion," see *Christensen*, 301 Neb. at 34, 917 N.W.2d at 157; and "regulating illegal aliens," see *City of Fremont v. Kotas*, 279 Neb. 720, 728, 781 N.W.2d 456, 463 (2010), *abrogated on other grounds, City of North Platte v. Tilgner*, 282 Neb. 328, 803 N.W.2d 469 (2011). Even in the one recent case in which this court found that an initiative measure failed the natural and necessary connection test, it was not because the general subject of the measure—"[a] constitutional right to produce and medicinally use cannabis"—was too broad; indeed, this court expressly found otherwise. See *State ex rel. Wagner v. Evnen*, 307 Neb. 142, 155, 948 N.W.2d 244, 255 (2020) ("[a] constitutional right to produce and medicinally use cannabis is not so broad as to evade the single subject rule"). In my view, a general subject of the Legislature's authority over the people's reserved power to make laws is not any broader than the general subjects of which we have already approved.

The natural and necessary connection test requires that a court go on to consider whether all the details of the proposed initiative are naturally and necessarily connected to that general subject and each other. I would conclude that the various aspects of this initiative are sufficiently connected. The provision of the initiative that raises the number of votes necessary for the Legislature to change a law enacted by initiative concerns the Legislature's authority over the people's power to make laws.

So too, as I see it, do the other provisions of the initiative. The initiative's second provision would require a four-fifths vote of the Legislature to enact laws that would "facilitate and safeguard the initiative and referendum process." It would require that any such laws "advance a compelling state interest achieved by the least restrictive means." And the initiative would prohibit the Legislature from passing any law that conditions, restricts, burdens, or impairs the exercise of the initiative and referendum powers. These provisions are, in my view, like the first, insofar as they too limit legislative authority over the people's reserved lawmaking power. Even the "strict scrutiny" language and the possible attendant involvement of the judiciary, which the majority finds problematic, merely adds a limitation to the Legislature's authority to regulate the process by which the people are allowed to make law.

The requirements of the initiative are also, in my view, naturally and necessarily connected to each other. Although some of the proposed initiative's details apply to the initiative and referendum process and others apply to laws passed by voter initiative, each detail of the initiative takes aim at the constitutional provisions granting the Legislature authority over the initiative process. Each detail limits the power of the Legislature over the people's reserved power to make laws.

For these reasons, I would conclude that the initiative measure has one subject under the natural and necessary connection test.

Natural and Necessary Connection Test?

Although I would find that the initiative measure before us has one subject under the natural and necessary connection test, I question whether we should be using the natural and necessary connection test to analyze single subject challenges to ballot initiatives. The single subject requirement in article III, § 2, is not the only time the term "single subject" is referenced in the Nebraska Constitution. Long before the single subject prohibition in article III, § 2, became a part

of the constitution, another provision of the constitution provided that no legislative bill "shall contain more than one subject." See Neb. Const. art. III, § 14; Neb. Const. art. III, § 11 (1875).

Given the essentially identical language in article III, § 2, and article III, § 14, one might assume that this court would use the same analysis when considering single subject challenges to ballot initiatives and statutes passed by the Legislature. That assumption would be wrong. Although this court has articulated multiple tests to analyze single subject challenges to statutes passed by the Legislature, see *Planned Parenthood of the Heartland v. Hilgers*, 317 Neb. 217, 9 N.W.3d 604 (2024), it has made clear that the natural and necessary connection test is stricter than tests to be used for assessing whether a legislative bill contains more than one subject. See *id.* at 229, 9 N.W.3d at 613 ("[a]s a practical matter [the natural and necessary connection test], when applied, tends to be stricter than the test utilized in assessing whether a legislative enactment comports with article III, § 14"). Because one test is stricter than another, a statute enacted by the Legislature and an initiative proposal might be identical in all respects and yet the statute passed by the Legislature could be found to have one subject while the initiative proposal could be found to have more than one.

I question whether the term "subject" should mean one thing for purposes of article III, § 14, and something else for purposes of article III, § 2. When the same word or phrase is used in different parts of the same legal text, courts usually attempt to give the word or phrase consistent meaning. See *Adair Asset Mgmt. v. Terry's Legacy*, 293 Neb. 32, 37, 875 N.W.2d 421, 425 (2016) ("where the same words are used repeatedly in the same act, unless the context requires otherwise, the words are to have the same meaning"); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012) ("[a] word or phrase is presumed to bear the same meaning throughout a text"). See, also, *District*

of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) (recognizing consistent usage of phrase "the people" across various provisions of U.S. Constitution).

We appear to have concluded that initiative proposals should face a stricter single subject review than bills passed by the Legislature in *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014). I am not sure, however, that the rationale put forward in *State ex rel. Loontjer* for that conclusion withstands scrutiny. The language in article III, § 2, providing that "[i]nitiative measures shall contain only one subject" was adopted by the voters in 1998. Prior to 1998, article III, § 2, had already provided that "[t]he constitutional limitations as to the scope and subject matter of statutes enacted by the Legislature shall apply to those enacted by the initiative." In *State ex rel. Loontjer*, the court reasoned that the language applying the limitations on the scope and subject matter of statutes to initiatives meant that initiatives were already governed by the single subject limitation of article III, § 14, and therefore, if the 1998 amendment was to accomplish anything, it had to impose something beyond the single subject limit on legislative bills. See 288 Neb. at 998, 853 N.W.2d at 512 ("[b]ecause it was added later, it necessarily implies a requirement that exceeds the requirement that the subject matter of initiatives shall be subject to the same requirements as legislative enactments"). This conclusion, however, overlooked the fact that the 1998 amendment did something else. It subjected initiatives proposing constitutional amendments to a single subject requirement when they were previously not governed by one. See Anthony B. Schutz, *Direct Democracy: From Theory to Practice*, 101 Neb. L. Rev. 1 (2022).

Aligning our tests for reviewing single subject challenges to legislative bills and initiative proposals would also give us an opportunity to adopt a test for assessing single subject challenges to initiative proposals that is, in my view, more consistent with the word "subject." Although the language of the natural and necessary connection test mentions the constitutional

term "subject," it also calls for substantial consideration of a measure's *purpose*. Indeed, we usually say that 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." See, e.g., *Christensen v. Gale*, 301 Neb. 19, 32, 917 N.W.2d 145, 156 (2018) (emphasis supplied). We also say that the general subject is to be "defined by its *primary purpose*." *Id.* (emphasis supplied).

As I have previously written with reference to the single subject rule in article III, § 14, I believe that the history and text of single subject provisions counsel against consideration of a measure's purpose in analyzing single subject challenges. See *Planned Parenthood of the Heartland v. Hilgers*, 317 Neb. 217, 9 N.W.3d 604 (2024) (Papik, J., concurring). Instead, I have suggested that this court analyze single subject challenges under article III, § 14, by using a test used by several other state supreme courts that, in summary, asks whether an act "embrace[s] two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other." *Planned Parenthood of the Heartland*, 317 Neb. at 243, 9 N.W.3d at 621 (Papik, J., concurring) (quoting *Johnson v. Harrison*, 47 Minn. 575, 50 N.W. 923 (1891)). In a future case, I would be open to considering whether that same test, or something like it, is the appropriate test for resolving single subject challenges to initiative proposals under article III, § 2.

I acknowledge that such a test would be less strict than the natural and necessary connection test. Indeed, it might fairly be critiqued as leading to invalidation of measures in only "the most egregious cases." See Richard Briffault, *The Single-Subject Rule: A State Constitutional Dilemma*, 82 Alb. L. Rev. 1629, 1659 (2018-19). Yet that is an outcome that we appear to have accepted at least when it comes to reviewing single subject challenges to legislative bills. Furthermore, I fear a stricter approach is not without drawbacks of its own.

I do not question that the Secretary of State and all the members of this court are doing their level best to fairly and consistently apply the natural and necessary connection test. But given the difficulty in identifying how broad a "subject" is allowed to be, a stringent single subject review can feel like a bit of an "[e]ye of the [b]eholder" inquiry, rather than the usual work of the judicial branch. See Daniel H. Lowenstein, *California Initiatives and the Single-Subject Rule*, 30 UCLA L. Rev. 936, 938 (1983). See, also, *Grutter v. Bollinger*, 539 U.S. 306, 357, 123 S. Ct. 2325, 156 L. Ed. 2d 304 (2003) (Thomas, J., concurring in part and dissenting in part) (stating that "'we know it when we see it' approach" is "not capable of judicial application").

Conclusion.

I do not dispute that the initiative proposal before us amends the state constitution in more than one way. It both makes it more difficult for the Legislature to amend statutes that have been passed by initiative and makes it more difficult for the Legislature to pass statutes that regulate the initiative and referendum process. But, as I understand our single subject law, the relevant question is not whether a measure "does two things"; it is whether those "things" are sufficiently related to each other as to fall under a single subject. Because the different aspects of this initiative proposal are both limitations on the Legislature's authority over the people's power to make law under our state constitution, I believe the aspects are sufficiently related and I do not perceive a single subject problem. I respectfully dissent from the majority's decision to the contrary.