

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. \_\_\_\_\_

APPLICATION FOR LEAVE TO  
COMMENCE AN ORIGINAL ACTION

COME NOW Relators M. Lynne McNally and Keep the Money in Nebraska and pursuant to Neb. Ct. R. § 2-115 hereby submit this Application for Leave to Commence an Original Action in this Court, which sets forth the basis of the Court's jurisdiction and the reasons which make it necessary to commence the action in this Court. In support hereof and in accordance with Neb. Ct. R. § 2-115, Relators also submit the accompanying Verified Petition for Writ of Mandamus setting forth the action. In further support hereof, Relators state as follows:

INTRODUCTION

1. Relator McNally is a member of Relator Keep the Money in Nebraska, which is a ballot question committee and sponsor of three ballot initiatives filed with the Nebraska Secretary of State. On August 25, 2020, the Secretary of State issued a written decision refusing to place the initiatives on the ballot. Relators seek to bring this mandamus action to require the Secretary of State to place each of the initiatives on the ballot, as the measures are legally sufficient and satisfy the constitutional and statutory requirements of Nebraska law.

## JURISDICTION

2. 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. While Neb. Rev. Stat. § 32-1412(1) provides that a resident “may” seek mandamus in the district court of Lancaster County, the does not purport to limit this Court’s exercise of its original jurisdiction established by the Nebraska Constitution, nor could a statute constitutionally do so. In addition, in this case, there would not be adequate time for review by this Court if an action were required to be filed in the first instance in district court.

3. The Secretary of State’s duties and responsibilities when determining the legal sufficiency of ballot initiatives for placement on the ballot are ministerial in nature and therefore the proper subject of an original mandamus action in this Court. See State ex rel. Loontjer v. Gale, 288 Neb. 973, 1005–06, 853 N.W.2d 494, 516–17 (2014); State ex rel. Wieland v. Beerman, 246 Neb. 808, 815, 523 N.W.2d 518, 524 (1994).

### AN ORIGINAL ACTION IN THE SUPRME COURT IS NECESSARY

4. Pursuant to Neb. Rev. Stat. § 32-801, the Secretary of State is required to certify the issues appearing on the state ballot at least 50 days before the November 3, 2020 general election. According to the Secretary of State’s Official Election Calendar, this date falls on September 11, 2020. Consequently, only 17 days remain from the date of this filing to the ballot certification deadline.

5. Relators diligently filed this action on August 25, 2020—the same day she received the refusal from the Secretary of State. That refusal was prompted by

requests from opponents of the initiatives, who waited until August 7, 2020 to submit their requests—over one month after the initiative petition signatures were submitted in a number sufficient for placement on the ballot. In his communications with the parties, the Secretary of State acknowledged the importance of having his decision reviewed in court proceedings.

6. Adjudication of this matter in the District Court of Lancaster County is not a practical alternative in this case. With only 17 days remaining before the statutory deadline for ballot certification, district court litigation would leave little or no time for consideration of this matter by this Court on appeal by either party. Furthermore, this matter presents solely questions of law pertaining to constitutional and statutory interpretation, and this Court would review any district court decision de novo. These questions will ultimately require resolution by this Court, in any event. District court litigation would serve only to delay final resolution of this matter.

7. There are significantly fewer days available for adjudication in this case than were available in previous ballot initiative cases in which the Court has exercised original jurisdiction. In Loontjer, for example, there were 46 days remaining from the date of the application to commence an original action before the ballot certification deadline. App. For Leave to Commence an Original Action at ¶ 1, Loontjer, 288 Neb. 973, 853 N.W.2d 494 (2014) (Case No. S-14-684). With less than half that time available here, the exercise of original jurisdiction is especially important in this case.

8. The issues in this case are confined solely to the legal sufficiency of the language in each of the three ballot initiatives. This case does not require the

resolution of any factual issues. Should the establishment of any facts be necessary, Relators would seek to agree with Respondent upon jointly stipulated facts.

9. Relators further respectfully suggest that original jurisdiction is appropriate because the ability of Nebraskans to exercise the power of initiative touches upon interests of significant constitutional magnitude. Here, the sponsors of the initiatives have diligently endeavored to comply with all aspects of the constitutional and statutory requirements for the proposal of ballot initiatives. However, due to the significantly reduced timeframe resulting from the opponents' delay in requesting that the initiatives be kept off the ballot, the exercise of original jurisdiction is necessary to protect the people's right to exercise the initiative power in this case.

10. A copy of this Application, together with the Verified Petition for Writ of Mandamus, is being filed with this Court and served upon the Nebraska Secretary of State and Attorney General via U.S. Mail and email.

11. Counsel for Relators has conferred with the Office of the Attorney General, which has no objection to Relators' request for the Court to exercise original jurisdiction in this case.

WHEREFORE, Relators M. Lynne McNally and Keep the Money in Nebraska respectfully requests that the Court grant leave to commence an original action in mandamus as set forth herein, accept the Verified Petition for Writ of Mandamus accompanying this Application, docket this case as an original action on the Supreme Court docket, and for any other action necessary or appropriate for the commencement of said original action.

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

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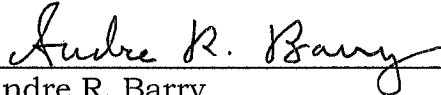
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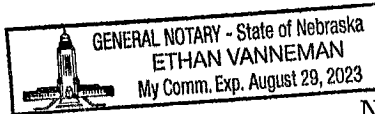
I, the undersigned Andre R. Barry, being first duly sworn on oath, state that on this 25<sup>th</sup> day of August, 2020, a copy of the foregoing Application for Leave to Commence and Original Action, together with the Verified Petition for Writ of Mandamus filed herewith, were served upon Respondent 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 were sent by email on this 25<sup>th</sup> 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 25th day of August, 2020.



  
\_\_\_\_\_  
Notary Public