**For Release Wednesday, June 29, 2022**

**Capitol View
*Commentary by J.L. Schmidt***

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**Federal Judge’s Ruling Changes Face of Petition Drives**

A federal judge’s ruling to temporarily bar the state from enforcing a requirement on petition circulators will likely open the door for several groups to get their measures before voters in November.

Nebraska U.S. District Judge John Gerrard issued the order that petition circulators no longer must gather signatures from at least five percent of voters in 38 or more counties. It came in a challenge to the requirement filed by Nebraskans for Medical Marijuana and the American Civil Liberties Union of Nebraska.

Medical marijuana supporters have until July 7 to submit at least 87,000 valid signatures on each of two petitions to Nebraska’s secretary of state. The campaign began with strong prospects but has struggled a bit since one of its biggest donors died, forcing organizers to rely primarily on volunteers.

In what looks like a classic urban-rural split, the marijuana folks argued that the signature of one voter in sparsely populated Arthur County is equal to 1,216 voters in Douglas County, which includes Omaha. The five percent rule was enshrined in the Nebraska Constitution years ago to guarantee at least some buy-in from rural voters before an issue can appear on a statewide ballot.

“The state of Nebraska is absolutely free to require a showing of statewide support for a ballot initiative — but it may not do so based on units of dramatically differing population, resulting in discrimination among voters,” Gerrard wrote in his ruling, which will remain in effect until a final decision is made.

Nebraska’s Attorney General appealed the decision the next day on behalf of Secretary of State Bob Evnen. Gerrard said the state failed to meet the standard to grant a stay on the matter and let his earlier ruling stand. We haven’t seen the last of this issue, but obviously won’t see another challenge anytime soon.

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In case you haven’t been paying attention, Nebraska’s population is heavily concentrated in its largest and medium-sized cities. The smallest of its 93 counties are among the least populated nationally, with several having fewer than 500 residents.

Nebraska state Sen. Anna Wishart, a leader of the medical campaign, said she and others still intend to gather signatures in all 93 counties, but that striking the constitutional restriction is a “big win” for Nebraskans who want legal access to the drug for medicinal use. ACLU attorney Jane Seu said the ruling would help protect direct democracy in Nebraska for all residents, regardless of where they live.

The five percent requirement has faced legal challenges before, including a federal judge’s 2014 ruling that declared it unconstitutional. An appeals court later overturned the decision on a technical, procedural matter but didn't rule on the merits of the case. The ACLU said courts have struck down similar requirements in Idaho, Utah and Wyoming.

Nebraska Solicitor General James Campbell, writing to the court in support of the motion to stay the preliminary injunction, said without the multicounty rules, as many as 16 total initiatives or referendum measures could be put before voters in November. If those petitions qualify for the November ballot and the preliminary injunction is later overturned, those measures could be invalidated. That, he reasoned, could hurt the petition process, and undermine voter trust in the process.

Bill Hawkins of the Nebraska Hemp Company said in the spirit of supporting geographic distribution, he won’t be pushing a proposal to legalize all marijuana use in the state.

 “I believe central and western Nebraska count as much or more than urban Lincoln and Omaha,” Hawkins said. “We are a rural state. The people reserve the right to petition, not just the people of Douglas, Sarpy and Lancaster.”

The sponsor of an initiative to repeal Nebraska’s motorcycle helmet laws said the campaign “wasn’t doing very well.” But Robert Rhodes of Elkhorn said the drive is still alive and has been handed off to several motorcycle clubs to gather signatures.

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Citizens for Voter ID, which is seeking to enact a constitutional amendment requiring voters to show a photographic identification before they cast their ballot, will continue as planned, said co-sponsor state Sen. Julie Slama of Dunbar. She said the group is on track to exceed the threshold number of counties.

The largely Republican supported measure needs 124,000 valid signatures to succeed.

At last, it appears there will be some issues to make the November ballot interesting given the lack of Democrat challengers and an expected shoe-in of yet another Republican governor.

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