Constitutionality of Nebraska's Initiative Measure Prohibiting Corporate Farming and Ranching

by

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CONSTITUTIONALITY OF NEBRASKA'S INITIATIVE MEASURE PROHIBITING CORPORATE FARMING AND RANCHING

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INTRODUCTION

For a number of years, various interested persons and groups sought to have the Nebraska Unicameral enact legislation restricting corporate ownership of farm and ranch lands.[1] These efforts were unsuccessful and in 1982 a new strategy was employed. Those interested in the legislation sought to accomplish their purposes by means of the initiative process.[2] Moreover, the initiative petition[3] provided that the restrictions set out therein would become a part of the Nebraska Constitution.

Initiative Petition No. 300 (Initiative 300) was submitted to the voters at the general election on November 2, 1982. On November 29, 1982, Governor Charles Thone issued a proclamation[4] reciting

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Fitzgerald, Brown, Leahy, Strom, Schorr and Barmettler, Omaha, Nebraska, is presently representing the plaintiff in a declaratory judgment action in which it is contended that Initiative 300 conflicts with provisions of the Nebraska and United States Constitutions and the National Bank Act and was not intended to prohibit corporate trustees from holding farm and ranch lands for noncorporate and nonsyndicate beneficiaries. *See* The Omaha Nat'l Bank v. Douglas, No. 372-191 (Dist. Ct. of Lancaster County, Neb. filed July 6, 1983).

1. *E.g.*, L.B. 184, 1981 Neb. Legis. J. 2235-36; L.B. 512, 1979 Neb. Legis. J. 853; L.B. 191, 1979 Neb. Legis. J. 885; L.B. 190, 1979 Neb. Legis. J. 918; L.B. 751, 1978 Neb. Legis. J. 2300; L.B. 728, 1978 Neb. Legis. J. 1158; L.B. 130, 1977 Neb. Legis. J. 925; L.B. 363, 1975 Neb. Legis. J. 1462; L.B. 214, 1975 Neb. Legis. J. 1462; L.B. 8, 1975 Neb. Legis. J. 1503; L.B. 1137, 1972 Neb. Legis. J. 1313; L.B. 668, 1969 Neb. Legis. J. 3545.

2. NEB. CONST. art. III, §§ 1-4; NEB. REV. STAT. §§ 32-702 to -713.01 (Reissue 1977 & Supp. 1982).

3. A copy of the form of the petition used was, pursuant to the requirements of NEB. REV. STAT. § 32-704 (Reissue 1977 & Supp. 1983), filed in the office of the Secretary of State on February 16, 1982, No. 05002. Because of the unusual arrangement of the material in the petition, citation to particular provisions is difficult. Therefore, references will be to the petition generally and will not be footnoted to specific parts. A copy of the Initiative Petition appears as an appendix to this article. *See also* NEB. CONST. art. XII, § 8.

4. Filed in the Secretary of State's office on November 29, 1982.

that 290,377 votes were cast for the measure, 224,555 votes were cast against it, and the votes in favor were not less than 35 per cent of the votes cast at the election. The proclamation declared that Initiative 300 was therefore in full force and effect.[5]

The purpose of this article is to examine the constitutionality of Initiative 300. We will also discuss whether its prohibition extends to corporate trust operations.

First, we will set out the general provisions of Initiative 300 and some of the exceptions to the restrictions it imposes on corporate farming and ranching. The discussion of these provisions is not intended to be exhaustive. It is intended only to furnish some general background for the analysis of the constitutional and constructional issues that follow.

GENERAL PROVISIONS OF INITIATIVE 300

Initiative 300 provides that article XII of the Nebraska Constitution is amended:

> [B]y adding a new section numbered 8 and subsections as numbered, notwithstanding any other provisions of this Constitution.[6]

The basic prohibition contained in Initiative 300 is that:

> No corporation or syndicate shall acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any title to real estate used for farming or ranching in this state, or engage in farming or ranching.[7]

A corporation is defined to include any partnership in which a corporation is a partner. A syndicate is defined as a limited partnership with an exception for what might, for convenience, be called a family limited partnership. Farming and ranching are defined as follows:

> Farming or ranching shall mean (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or (ii) the ownership, keeping or feeding of animals for the production of livestock or livestock products.[8]

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5. *See* NEB. CONST. art. III, § 4.
6. Initiative Petition 300. See the appendix to this article.
7. *Id.*
8. *Id.*

EXCEPTIONS TO CORPORATE FARMING AND RANCHING PROHIBITIONS

The greater part of Initiative 300 consists of the enumeration of exceptions to the general prohibitions against corporate farming and ranching. Some of these exceptions relate to a specific, limited kind of agricultural operation. Among these are the use of agricultural lands for research and experimentation, the raising of poultry, the raising of alfalfa on leased land by alfalfa processors, and the growing of seed, nursery plants or sod.

Exceptions are also made for interests in agricultural lands held for non-agricultural purposes. Thus, an exception is made for mineral interests in agricultural lands and for agricultural lands held "for immediate or potential use for non-farming and non-ranching purposes."[9] The latter exception is limited to a period of five years and requires that during this period "such land may not be used for farming or ranching except under lease to a family farm or ranch corporation or a non-syndicate and non-corporate farm or ranch."[10]

As will be discussed more fully later,[11] an exception is made for agricultural lands acquired by process of law in the collection of debts and through the enforcement of any security interest. In addition, two kinds of corporations are excepted from the operation of Initiative 300, nonprofit corporations and family farm and ranch corporations.

A family farm or ranch corporation is defined as a corporation that is engaged in farming or ranching or the ownership of agricultural lands which meets certain family stock ownership requirements and which also meets either a family residence or a family operational requirement.

The family farm stock ownership requirement is that a majority of the voting stock must be held by or in trust for the members of a family or their spouses. The family relationship must be within the fourth degree of kindred under the rules of the civil law. This would include, in addition to lineal ascendants and descendants, brothers and sisters, uncles and aunts, first cousins, nieces and nephews, and grandnieces and grandnephews. Non-resident aliens may not be stockholders, and partnerships and corporations may be stockholders only if all their own stockholders or partners are within the fourth degree of kindred to the "majority of stockholders" in the family farm corporation. At least one family mem-

9. *Id.*
10. *Id.*
11. *See* notes 82-103 and accompanying text *infra*.

ber or spouse must reside on the farm or ranch or be actively engaged in its day-to-day labor and management.

An exception in the nature of a "grandfather" right is made with respect to agricultural land which, as of the effective date of Initiative 300, November 29, 1982, was being farmed or ranched by a corporation or syndicate or in which a corporation or syndicate had an ownership interest or a contract to acquire such interest. This exception continues only so long as the interest "is held in continuous ownership or under continuous lease by the same corporation or syndicate. . . ."[12]

We will now proceed to an examination of the constitutionality of Initiative 300.

IS INITIATIVE 300 STATUTORY OR CONSTITUTIONAL IN NATURE?

As we have seen, proponents of restrictions on corporate farming and ranching attempted for a number of years to have the legislature enact laws imposing such restrictions.[13] On a number of occasions, when bills for this purpose were pending, legislators requested opinions of the Attorney General as to the validity of the proposed legislation. Pursuant to such requests, the Attorney General issued a number of opinions in which he stated that such legislation was of doubtful constitutionality.[14] The legislature did not pass any of these bills.

Presumably because of the lack of success before the legislature, promoters of such legislation then turned to the initiative process. As we have seen, another change in approach was also made. The initiative petition provided that the restrictions would become not simply legislation but a part of the constitution itself. This approach was probably intended to avoid problems under the Nebraska Constitution and also to prevent the legislature from repealing the measure or weakening its restrictions through legislative amendments.[15]

The issue thus presented is whether the provisions of Initia-

12. Initiative Petition 300. See the appendix to this article.

13. *See* note 1 *supra*.

14. Op. Neb. Att'y Gen. No. 105 (May 20, 1981); Op. Neb. Att'y Gen. No. 77 (Apr. 13, 1981); Op. Neb. Att'y Gen. No. 172 (Jan. 20, 1978); Op. Neb. Att'y Gen. No. 40 (Mar. 12, 1975); Op. Neb. Att'y Gen. No. 5 (Jan. 23, 1975); Op. Neb. Att'y Gen. No. 116 (Jan. 7, 1974); Op. Neb. Att'y Gen. No. 118 (Mar. 21, 1972); Op. Neb. Att'y Gen. No. 86 (Jan. 4, 1972).

15. "In the absence of specific constitutional restraint, either [the legislature or the people through the initiative process] may amend or repeal the enactments of the other." Klosterman v. Marsh, 180 Neb. 506, 511, 143 N.W.2d 744, 748 (1966).

tive 300 remain statutory in nature or, as stated in the initiative petition, are a part of the constitution. Consideration of this question follows.

The initiative procedure is provided for in section 2 of article III of the Nebraska Constitution. The provision is in part as follows:

> 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 per cent of the electors of the state and if the petition be for the amendment of the Constitution, the petition therefor shall be signed by ten per cent of such electors."[16]

This provision makes a clear distinction between a statute and a constitutional amendment and provides different procedures for each. We must, therefore, determine what is a law and what is a constitutional amendment within the meaning of this provision.

If there is a constitutional distinction between a law and a constitutional amendment, those preparing an initiative petition cannot eliminate that distinction by mere labeling.[17] The nature of the enactment rather than its label determines whether it is legislative or constitutional. And the test as to what is a constitutional amendment appears to be supplied by the constitution itself. The preamble to the Nebraska Constitution states:

> We, the people, grateful to almighty God for our freedom, do ordain and *establish the following declaration of rights and frame of government as the Constitution of the State of Nebraska*.[18]

The preamble thus defines the Nebraska Constitution as a declaration of rights and frame of government. From this it would seem to follow that a constitutional amendment as contemplated by section 2 of article III would be a change in the declaration of rights or a change in the frame of government. Initiative 300 does not fit either of these requirements. It would therefore appear to be statutory in nature and not a constitutional amendment as contemplated by section 2 of article III of the Nebraska Constitution.

Courts in other states have arrived at this result even in the

16. NEB. CONST. art. III, § 2.

17. Stovall v. Gartrell, 332 S.W.2d 256, 262 (Ky. 1960); Cheeks v. Cedlair Corp., 287 Md. 595, 415 A.2d 255, 261 (1980); State *ex rel.* Halliburton v. Roach, 230 Mo. 408, —, 130 S.W. 689, 692-96 (1910).

18. NEB. CONST. preamble (emphasis added).

absence of a definition of their constitution such as is contained in the preamble to the Nebraska Constitution.

The Missouri Supreme Court in *State ex rel. Halliburton v. Roach*[19] held that a constitutional provision permitting the enactment of laws and the amendment of the constitution by the initiative method made a clear distinction between the two and that an initiative petition could not convert what was in fact and law a statute into a constitutional amendment.[20] The primary issue in the *Roach* case was whether an initiative measure dividing the state into new senatorial districts was statutory or constitutional in nature.[21] The court held it was statutory and, because it conflicted with another provision of the state constitution, was void.[22] The court stated in its opinion:

> The distinction between constitutional provisions and legislative acts is distinctly and clearly recognized by the initiative and referendum amendment to the Constitution, for it is there that we find it expressly provided for the proposal and adoption of legislative measures as well as amendments to the Constitution. . . .
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> . . . .
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> Obviously in determining the nature and character of the measure proposed in the petitions presented to the respondent we must look to the subject-matter with which they deal. The mere calling it an amendment to the Constitution unless the subject-matter verifies the correctness of that name is not binding either upon the respondent or upon this court.
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> . . . .
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> . . . The initiative and referendum amendment to the Constitution speaks of laws and amendments to the Constitution. Manifestly those terms are used in their plain and ordinary sense, and in our opinion the petitioners

19. 230 Mo. 408, 130 S.W. 689 (1910). *See generally* Buchanan v. Kirkpatrick, 615 S.W.2d 6, 12-14 (Mo. 1981); Moore v. Brown, 350 Mo. 256, —, 165 S.W.2d 657, 661 (1942); Marsh v. Bartlett, 343 Mo. 526, —, 121 S.W.2d 737, 742 (1938); State *ex rel.* State Highway Comm'n v. Thompson, 323 Mo. 742, —, 19 S.W.2d 642, 646 (1929); State *ex rel.* Stokes v. Roach, 290 Mo. 578, —, 190 S.W. 277, 280 (1916). It was held in *In re* Initiative Petition Number 259, 316 P.2d 139, 146 (Okla. 1957) and Downs v. City of Birmingham, 240 Ala. 177, —, 198 So. 231, 234-35 (1940), that under the constitutions involved legislative provisions could be placed in the constitutions by the initiative process. In City of Jackson v. Nims, 316 Mich. 694, 26 N.W.2d 569 (1947), it was held that: "As applied to this amendment, the line of demarcation between legislation and constitutional provision is too indefinite to require that an arbitrary decision must be made in advance of submitting a proposal to the voters . . . ." *Id.* at —, 26 N.W.2d at 575.

20. 230 Mo. at —, 130 S.W. at 693-96.

21. *Id.*

22. *Id.*

> have no right to undertake to put in the Constitution, which is regarded as the organic and permanent law of the state, mere legislative acts providing for the exercise of certain powers.[23]

In *Stovall v. Gartrell*,[24] the Kentucky Court of Appeals reached a similar result.[25] The measure before the court was a purported constitutional amendment which provided for the payment of a veterans' bonus.[26] The proposal had been passed by the legislature and submitted to the vote of the people.[27] It was approved by a majority vote in the election.[28]

The court held that the measure was legislative in character and not an amendment to the constitution. In the course of its opinion, the court stated: "The legislature proposed this measure as a constitutional amendment. Outside of the label, it is not such a contrivance."[29] The court then discussed the *Roach* case and concluded as follows:

> We believe this authority sound. It seems reasonable and logical that as guardians of our organic law, the courts have the duty and the power to prevent the encumbrance of our Constitution by legislative matters which in no way affect, alter or add to the Constitution. . . .
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> . . . .
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> For the reasons stated above, it is our considered opinion that this Act, though ostensibly proposing a constitutional amendment, did not either in fact or in law, from the standpoint of substance, possess such character. Even the vote of the people cannot give it that dignity.[30]

The facts and legal issues in the Maryland case of *Cheeks v. Cedlair Corporation*[31] are strikingly similar to those involved with Initiative 300. While the proposed amendment was to the charter of the City of Baltimore, such a charter, as the court pointed out, "is, in effect, a local constitution."[32]

The charter amendment was initiated by "a number of individuals and organizations who were dissatisfied with the refusal of

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23. *Id.* at —, 130 S.W. at 694-96.
24. 332 S.W.2d 256 (Ky. 1960).
25. *Id.* at 262-63.
26. *Id.* at 258.
27. *Id.*
28. *Id.*
29. *Id.* at 261-62.
30. *Id.* at 262-63.
31. 287 Md. 595, 415 A.2d 255 (1980).
32. *Id.* at —, 415 A.2d at 261. "Such a charter has been aptly termed the Constitution of the City . . ." Consumers Coal Co. v. City of Lincoln, 109 Neb. 51, 64, 189 N.W. 643, 648 (1922).

the Baltimore City Council to enact continuing rent control legislation. . . ."[33] A declaratory judgment action was brought to test the constitutionality of the asserted charter amendment.

The Court of Appeals of Maryland held that the charter was in effect a local constitution, that a constitution is the organic, fundamental law that establishes basic principles and the framework of government, and that the purported amendment was statutory in nature and was not an amendment of the charter. The court held the amendment "invalid and of no effect."[34] The court declared:

> A charter is thus a permanent document intended to provide a broad organizational framework establishing the form and structure of government in pursuance of which the political subdivision is to be governed and local laws enacted. It is the organic, the fundamental law, establishing basic principles governing relationships between the government and the people, and among the various governmental branches and bodies. . . .
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> . . . A charter amendment, therefore, differs in its fundamental character from a simple legislative enactment.
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> . . . .
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> We think it clear that the amendment is essentially legislative in character.[35]

Initiative 300 purports to regulate the actions of corporations and limited partnerships. These are purely legislative matters, and extensive regulations of corporations and partnerships are contained in our statutes.[36] In fact, repeated attempts were made to have the legislature enact laws imposing substantially the same restrictions as are contained in Initiative 300.[37] In view of the definition of our constitution contained in the preamble and the decisions of the courts discussed above, it is reasonable to conclude that Initiative 300 is statutory in nature. As such it is subject to the provisions of the Nebraska Constitution, including sections 1, 3 and 25 of article I. It is also subject to the power of the legislature to amend or repeal.[38]

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33. 287 Md. at —, 415 A.2d at 258.

34. *Id.* at —, 415 A.2d at 265.

35. *Id.* at —, 415 A.2d at 261-62.

36. *See* Nebraska Business Corporation Act, NEB. REV. STAT. §§ 21-2001 to -20,147 (Reissue 1977); Uniform Limited Partnership Act, NEB. REV. STAT. §§ 67-233 to -297 (Reissue 1981).

37. *See* note 1 *supra*.

38. *See* note 15 *supra*.

ASSUMING INITIATIVE 300 IS STATUTORY, DOES IT CONFLICT WITH SECTIONS 1, 3 and 25 OF ARTICLE I OF THE NEBRASKA CONSTITUTION?

If we conclude that Initiative 300 is statutory, the next inquiry is whether it conflicts with the Nebraska Constitution, particularly sections 1, 3 and 25 of article I. These sections provide as follows:

> Section 1. All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty and the pursuit of happiness. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed.
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> . . . .
>
> Section 3. No person shall be deprived of life, liberty, or property, without due process of law.
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> . . . .
>
> Section 25. There shall be no discrimination between citizens of the United States in respect to the acquisition, ownership, possession, enjoyment or descent of property. The right of aliens in respect to the acquisition, enjoyment and descent of property may be regulated by law.[39]

Each of these declarations emphasizes that the freedom to own and enjoy property is a fundamental constitutional right.

The Nebraska Supreme Court has held that the terms "persons" and "person" in sections 1 and 3 apply to corporations.[40] It appears that a corporation is a "citizen" within the meaning of section 25. In upholding a constitutional claim made by a corporation, the Nebraska Supreme Court has stated: "A citizen has a constitutional right to own, acquire, and sell property. . . ."[41] Likewise, the Attorney General has expressed the opinion that the Nebraska courts would hold that statutes prohibiting corporate farming "violate Article I, Sections 3 and 25. . . ."[42] If section 25 applies to corporations, Initiative 300, if it is statutory in nature, is clearly invalid.

Regardless of the application of section 25, it is clear that under the decisions of the Nebraska Supreme Court, Initiative 300, if statutory in nature, is invalid under sections 1 and 3 of article I.

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39. NEB. CONST. art, I, §§ 1, 3, 25.

40. Terry Carpenter, Inc. v. Wood, 177 Neb. 515, 517, 129 N.W.2d 475, 477 (1964); Lincoln Dairy Co. v. Finigan, 170 Neb. 777, 780-81, 104 N.W.2d 227, 230-31 (1960).

41. 170 Neb. at 786, 104 N.W.2d at 233. Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388 (1939) held in an action by both corporate and individual plaintiffs that the statute involved contravened "sections 1, 3, 16, and 25 of art. I of the Constitution of Nebraska." *Id.* at 333, 289 N.W. at 393.

42. Op. Neb. Att'y Gen. No. 40 (Mar. 12, 1975).

The Nebraska Supreme Court has consistently held that every person (including a corporation) has a constitutional right to own, acquire and sell property of every kind and to engage in any business that is not detrimental to the public health, safety and welfare.

In *Lincoln Dairy Company v. Finigan*,[43] a corporation challenged a regulation which prohibited the sale of milk unless it was labeled Grade A and met certain stated standards.[44] The corporate plaintiff alleged that this regulation prevented it from processing and selling wholesome and nutritious milk and milk products.[45] In holding that the regulation and the statute under which it was issued were invalid, the Nebraska court stated that a "citizen clearly has the right to engage in any occupation not detrimental to the public health, safety, and welfare."[46] The court thus held the regulations and the statute under which they were issued to be violative of article I, section 3, and to be "void and of no effect."[47]

In *Nelsen v. Tilley*,[48] the court held that the sale of new motor vehicles "is a lawful business which any person has the right to pursue. . .,"[49] and that legislation denying that right "contravenes . . . sections 1, 3, 16 and 25, art. I, of the Constitution of Nebraska."[50]

The holdings of the Nebraska Supreme Court in this area have been summarized in an Attorney General's opinion as follows:

> In general, these cases hold that a citizen has the right to engage in any occupation not detrimental to the public health, safety and welfare, and that a business or occupation which has no tendency to affect or endanger the public in connection with health, safety, morals or welfare is not within the police power, and that access to such an occupation cannot be restricted by the Legislature.[51]

On the basis, therefore, of the decisions of the Nebraska Supreme Court, Initiative 300, if it is statutory in nature, conflicts with sections 1 and 3 (and probably section 25) of article I of the Nebraska Constitution and is invalid.

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43. 170 Neb. 777, 104 N.W.2d 277 (1960).
44. *Id.* at 779-80, 104 N.W.2d at 229-30.
45. *Id.*
46. *Id.* at 785, 104 N.W.2d at 233.
47. *Id.* at 789, 104 N.W.2d at 235.
48. 137 Neb. 327, 289 N.W. 388 (1939).
49. *Id.* at 333, 289 N.W. at 393.
50. *Id.*
51. Op. Neb. Att'y Gen. No. 40 (Mar. 12, 1975).

DID INITIATIVE 300 AMEND SECTIONS 1, 3 and 25 OF ARTICLE I OF THE CONSTITUTION?

Next we must determine if Initiative 300 validly amended sections 1, 3 and 25 of article I of the Nebraska Constitution. Those sections are a part of the Bill of Rights. The rights therein declared reflect the principles which the people have determined are most essential to their freedom, the retention of their form of government and the welfare of their State.

The enumeration of these principles in the constitution serves at least two primary functions. One is to articulate and focus attention on the most important values held by the people. The other is to limit legislative and other governmental action. The declaration of these rights is designed to protect against even legislative and popular majorities. Specific legislation and governmental actions must be measured against these general principles. This is the essence of constitutional government.[52]

However, we recognize that even primary values may change and that provision for constitutional change is necessary.[53] In view of the fundamental nature and importance of the constitution, however, we would expect any such change to be made knowingly, deliberately and with attention focused on the particular change.

This is what the constitution contemplates. Two methods for amending the constitution are contained in article XVI. The first method requires: (1) a three-fifths recorded vote of the members of the legislature; (2) publication for three consecutive weeks of the proposed amendment in at least one newspaper in each county in the state prior to the next election of members of the legislature or prior to a special election called by four-fifths of the members of the legislature; (3) submission of the proposed amendment on a ballot for the vote of the people, which ballot shall be separate from other ballots; and (4) a majority vote by the people in favor of such amendment, provided at least thirty-five per cent of the votes

52. *See, e.g.*, State *ex rel.* Caldwell v. Peterson, 153 Neb. 402, 408, 45 N.W.2d 122, 127 (1950), where the court stated:

> 'A written Constitution is not only the direct and basic expression of the sovereign will, but is the absolute rule of action and decision for all departments and offices of government with respect to all matters covered by it and must control as it is written until it shall be changed by the authority that established it. . . . The legislature, the executive officers, and the judiciary cannot lawfully act beyond the limitations of such Constitution.' 11 Am. Jur., Constitutional Law, § 44, p. 651.

53. "If the spirit of our free institutions and republican form of government is to be preserved, some orderly and lawful way, avoiding tumult or revolution, must exist to make Constitutions conform to the will of the vast majority of the people." Baker v. Moorehead, 103 Neb. 811, 813-14, 174 N.W. 430, 431 (1919).

cast at the election are in favor of the amendment.[54]

The other method is through a constitutional convention.[55] The steps required under this method are: (1) a three-fifths vote of the members of the legislature recommending the calling of such convention; (2) the vote of a majority of the electors calling for such a convention, provided that the votes in favor of a convention are not less than thirty-five per cent of the total votes cast at that election; (3) the holding of the convention and approval of the constitutional amendments; and (4) submission of those amendments to the electors for adoption.[56] These procedures reflect the importance that the constitution attaches to the amendment process. They also assure that the people approve the exact change that is made.

The initiative is the other means by which the Nebraska Constitution can be amended. Section 2 of article III provides in part:

> 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.[57]

Strict compliance with such provisions is required.[58]

If Initiative 300 is statutory in nature, the contention might still be made that the effect of the "notwithstanding" phrase[59] would be to free the legislative measure of constitutional restraints. Such a contention could not be squared with the requirement that any amendment must be set forth at length. The "notwithstanding" phrase clearly does not meet this requirement.

A more difficult question is presented if Initiative 300 is determined to be a part of the Nebraska Constitution. The question would then be whether the conflict between these provisions and the other parts of the constitution, or the "notwithstanding" phrase, or both, would result in the amendment of the other provisions of the constitution that are in conflict with Initiative 300.

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54. NEB. CONST. art. XVI, § 1.
55. *Id.* § 2.
56. *Id.*
57. *Id.* art. III, § 2.
58. Stovall v. Gartrell, 332 S.W.2d 256 (Ky. 1960). "Provisions of a constitution regulating its own amendment, otherwise than by a convention, are not merely directory, but are mandatory; and a strict observance of every substantial requirement is essential to the validity of the proposed amendment." [citation omitted]. 16 C.J.S. *Constitutional Law* § 7 (1956).
59. The introductory sentence of Initiative 300 provided: "That article XII of the Constitution of the State of Nebraska be amended by adding a new section numbered 8 and subsections as numbered, notwithstanding any other provision of this constitution."

The general principles usually invoked in the construction of constitutional amendments are discussed in *Swanson v. State*.[60] One of these is that "a constitutional amendment will prevail over a provision in the original instrument inconsistent with the amendment. . . ."[61] The court also points out, however, "that, while it is the duty of the courts to ascertain and carry into effect the intent and purposes . . . of an amendment . . . this intent must be that which they have embodied in the instrument itself."[62]

Those who voted for Initiative 300 clearly expressed approval of its provisions. It is doubtful, however, that they understood that they were amending basic provisions of the Bill of Rights or wished to do so. Many legislative acts, administrative regulations and other governmental actions have been held unconstitutional. But enactment of the legislation or promulgation of the regulation in no way demonstrated dissatisfaction with the constitution on the part of the legislature or government official. Once the determination of invalidity is made, they concur in the recognition of the greater importance of the constitutional provision. We believe the same is true with respect to Initiative 300. Certainly there is no satisfactory evidence that the voters knew they were amending the Bill of Rights or intended to do so. The vague "notwithstanding" phrase is wholly inadequate to show such intent, especially when a change in the Bill of Rights is involved. The least that should be required is that the people have an opportunity to make a clear choice. These problems demonstrate the wisdom of keeping legislative material out of the constitution.

FEDERAL CONSTITUTIONAL REQUIREMENTS

Initiative 300 must, of course, comply with federal constitutional requirements. Probably the most relevant of these are the equal protection, due process and commerce clauses. Section 1 of the fourteenth amendment to the United States Constitution provides in part:

> [N]or shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[63]

Since the Supreme Court of the United States has established that a corporation is a person within the meaning of the above pro-

60. 132 Neb. 82, 271 N.W. 264 (1937).
61. *Id.* at 94, 271 N.W. at 271.
62. *Id.* at 94-95, 271 N.W. at 271.
63. U.S. CONST. amend. XIV, § 1.

vision,[64] the first question we address is whether the prohibition of corporate ownership and operation of farm and ranch lands denies to corporations equal protection of the law. The United States Supreme Court has left little room for application of the equal protection clause in the economic legislation field. The Court has declared that state legislation in this area will not be invalidated under the equal protection clause if the legislative classification is rationally related to the statutory purposes.[65]

Moreover, one who challenges the statute on this ground cannot succeed by showing that the legislative judgment was incorrect. "Rather, 'those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.' "[66] Litigants cannot succeed "merely by tendering evidence in court that the legislature was mistaken."[67]

An initiative petition is required to state the object of the measure.[68] The Initiative 300 petition stated that its object is "to prohibit non-family farm corporations from further purchase of Nebraska farm and ranch land, and to prohibit further establishment of non-family corporate crop and livestock operations."[69] It would be difficult to challenge Initiative 300 on the ground that its provisions were not rationally related to this purpose.

A question might be raised as to whether the objective is a legitimate state purpose. Again, it is unlikely that a challenge on this ground would be successful. In *Asbury Hospital v. Cass*

64. "[A] corporation is as much entitled to equal protection of the laws as an individual." Frost v. Corporation Comm'n, 278 U.S. 515, 522 (1928). "[A] corporation is a 'person' within the meaning of the equal protection and due process of law clauses . . ." Grosjean v. American Press Co., 297 U.S. 233, 244 (1936).

65. *See* Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 461-63 (1981). The court applies a drastically different test if the state classification affects what the court considers a "fundamental right" or if it "operates to the peculiar disadvantage of a suspect class." As stated in Player v. Doe, 457 U.S. 202, 216-17 (1982):

> But we would not be faithful to our obligations under the Fourteenth Amendment if we applied so deferential a standard to every classification. The Equal Protection Clause was intended as a restriction on state legislature action inconsistent with elemental constitutional premises. Thus we have treated as presumptively invidious those classifications that disadvantage a 'suspect class,' or that impinge upon the exercise of a 'fundamental right.' With respect to such classifications, it is appropriate to enforce the mandate of equal protection by requiring the State to demonstrate that its classification has been precisely tailored to serve a compelling governmental interest. [footnotes omitted]

66. 449 U.S. at 464 (citing Vance v. Bradley, 440 U.S. 93, 111 (1979)).

67. *Id.*

68. NEB. REV. STAT. § 32-703 (Supp. 1983).

69. Initiative Petition 300. See the appendix to this article.

County,[70] the United States Supreme Court appears to have recognized as legitimate "a state policy against the concentration of farming lands in corporate ownership."[71]

It is true that corporations "may not be separately classified merely because they are corporations."[72] A legislative classification of corporations for regulatory purposes "must be based upon some real and substantive distinction having a just relation to the legislative object in view."[73] However, in light of *Asbury Hospital* and the Court's extreme reluctance to apply the equal protection clause in the economic area, it is doubtful that a claim of unconstitutional discrimination on this ground would be successful.

A challenge under the due process clause is subject to a similar assessment. As the United States Supreme Court declared in *Minnesota v. Clover Leaf Creamery Co.*:[74] "From our conclusion under equal protection, however, it follows *a fortiori* that the Act does not violate the Fourteenth Amendment's Due Process Clause."[75]

The attitude of the Court with respect to due process challenges to economic regulation has been summarized as follows: "The modern Court has turned away due process challenges to economic regulation with a broad 'hands off' approach. No such law has been invalidated on substantive due process grounds since 1937."[76]

Nor does it appear that a challenge under the commerce clause would be any more successful. If state legislative action addresses a legitimate local concern and does not discriminate

70. 326 U.S. 207 (1945).

71. *Id.* at 214. "We cannot say that there are no differences between corporations generally and those falling into the excepted classes which may appropriately receive recognition in the legislative application of a state policy against the concentration of farming lands in corporate ownership." *Id.* The only equal protection issue decided by the court was whether two exceptions to the prohibition against corporate farming resulted in a denial of equal protection. The exceptions were for corporations whose business was dealing in farm lands and cooperatives. The above statement was made in connection with the rejection of this contention. The petitioner was not a Minnesota corporation and the court had stated the basic principle: "The Fourteenth Amendment does not deny to the state power to exclude a foreign corporation from doing business or acquiring or holding property within it." *Id.* at 211. Consequently the decision is narrow and the statement quoted above is dictum. However, it does provide some indication of the court's attitude toward the legitimacy of a state policy against concentration of farming lands in corporate ownership.

72. State v. Fishman, 2 Conn. Cir. Ct. 83, —, 194 A.2d 725, 727 (1963).

73. Mallinckrodt Chem. Works v. Missouri *ex rel.* Jones, 238 U.S. 41, 55 (1915).

74. 449 U.S. 456 (1981).

75. *Id.* at 470 n.12.

76. G. GUNTHER, CASES AND MATERIALS ON CONSTITUTIONAL LAW 540 (10th ed. 1980).

against interstate commerce, the constitutional question is whether the incidental burden on interstate commerce " 'is clearly excessive in relation to the putative local benefits.' "[77]

The statute under review in *Clover Leaf* banned the retail sale of milk in plastic nonreturnable, nonrefillable containers while permitting such sale in other nonreturnable, nonrefillable containers.[78] Notwithstanding the finding of the state trial court that the real purpose of the act was to promote the economic interests of the local dairy and pulpwood industries at the expense of other segments of the dairy industry and the plastics industry, the Supreme Court rejected a claim of invalidity under the commerce clause. The court declared:

> Even granting that the out-of-state plastics industry is burdened relatively more heavily than the Minnesota pulpwood industry, we find that this burden is not 'clearly excessive' in light of the substantial state interest in promoting conservation of energy and other natural resources and easing solid waste disposal problems. . . .[79]

The ownership and operation of farm and ranch land is much more a local activity. In view of the *Clover Leaf* case and the principles therein stated, it is unlikely that Initiative 300 can be successfully challenged under the commerce clause.

It should be noted that a state court, in interpreting the state's constitutional provisions similar to the federal equal protection and due process clauses, need not follow the interpretation of the federal provisions.[80] As we have seen, the Nebraska Supreme Court has interpreted the Nebraska Constitution to protect the property rights of its people. These decisions appear to be required by our equal rights clause which clearly makes the protection of property a fundamental right under our constitution. Section 1 of article I of the Nebraska Constitution provides:

> To secure these rights [life, liberty and the pursuit of happiness], *and the protection of property*, governments are instituted among people. . . .[81]

Also, as we have seen, Sections 3 and 25 of Article I expressly provide for the protection of the right to property.

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77. 449 U.S. at 471 (citing Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970)).

78. *Id.* at 458-59.

79. *Id.* at 473.

80. "A state court may, of course, apply a more stringent standard of review as a matter of state law under the State's equivalent to the Equal Protection or Due Process Clauses." 449 U.S. at 461 n.6.

81. NEB. CONST. art. I, § 1 (emphasis added).

THE NATIONAL BANK ACT

Under the supremacy clause of the United States Constitution,[82] state statutory and constitutional provisions that conflict with federal statutes are invalid.[83] A national bank has brought an action seeking a declaratory judgment that Initiative 300 is invalid because, among other reasons, it conflicts with the provisions of the National Bank Act.[84]

The United States Supreme Court has held that national banks are instrumentalities of the federal government, and an attempt by a state to define their duties or control the conduct of their affairs is absolutely void if it frustrates the purposes of the National Bank Act or impairs the efficiency of the national banks.[85] Several provisions of Initiative 300 clearly conflict with the National Bank Act and, if applied to national banks, appear to be invalid.

Initiative 300 contains the general provision: "No corporation . . . shall . . . engage in farming or ranching."[86] It does permit a corporation to acquire agricultural land by process of law in the collection of debts or through the enforcement of a lien. It then provides that land so acquired shall be disposed of within five years and that, while held during this period "shall not be used for farming or ranching . . . except under a lease to a farm or ranch corporation or a non-syndicate and non-corporate farm or ranch."[87]

The National Bank Act provides that a national bank "may purchase, hold and convey real estate for the following purposes, and for no others. . . ."[88] The Act then permits a national bank to acquire and hold real estate for use in its banking business and to acquire and hold real estate: (1) mortgaged to it in good faith as security for debts previously contracted; (2) conveyed to it in satisfaction of debts previously contracted; (3) purchased under judgments, decrees or mortgages held by the bank; and (4) purchased to secure debts due it.[89] The Act provides that a national bank shall not hold such real estate (except that used in its banking business) for more than five years or for such additional time, not

82. U.S. CONST. art. VI, cl. 2.

83. Reynolds v. Simms, 377 U.S. 533, 540 (1964); Public Utils. Comm'n v. United States, 355 U.S. 534, 544-45 (1958).

84. The Omaha Nat'l Bank v. Douglas, No. 372-191 (Dist. Ct. of Lancaster County, Neb. filed July 6, 1983); see 12 U.S.C. § 29 (1982).

85. Davis v. Elmira Savs. Bank, 161 U.S. 275, 283-84 (1896).

86. Initiative Petition 300. See the appendix to the article.

87. *Id.*

88. 12 U.S.C. § 29 (1982).

89. *Id.*

exceeding five years, as the Comptroller of Currency may approve.[90]

The courts have held that the National Bank Act not only empowers the directors of a national bank but imposes upon them the duty to manage and dispose of property received by the bank in connection with its banking business in a manner that will result in the realization by the bank of the full value of the property.[91] Any action, including the operation of a business, which the directors honestly believe will help accomplish this duty can and should be taken. In order to assure realization of the full value of real estate, the National Bank Act permits the directors a period of five years in which to dispose of it and up to an additional five years if disposition within the original five-year period would be detrimental to the bank.[92]

Initiative 300 purports to prohibit national banks from operating the farm or ranch or leasing it to anyone other than a family farm corporation. The provision is rather curious. It provides:

> Any lands so acquired . . . shall not be used for farming or ranching prior to being disposed of, except under a lease to a family farm or ranch corporation or a non-syndicate and non-corporate *farm or ranch*.[93]

Since a farm or a ranch is not a legal entity, it would appear

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90. *Id.*

91. Cooper v. Hill, 94 F. 582 (8th Cir. 1899). The court stated:

> When a national bank has lawfully acquired real estate or other property, it may sell that property and convert it into money; and, in order to do so, it may clean it, make reasonable repairs upon it, and put it in presentable condition to attract purchasers, in the same way that an individual of sound judgment and prudence would do if he desired to make a sale of the property. The authority to do these things is one of the incidental powers vested in the corporation under section 5136 of the Revised statutes . . . .

Id. at 585. The court continued, holding that:

> The duty of exercising this power is imposed upon the directors and officers of such a bank, and the authority to determine in the first instance when and to what extent it shall be exercised is necessarily intrusted to their judgment. Moreover, they cannot escape the discharge of this duty. They are bound to consider and decide the question at their peril.

Id. at 588. The courts hold that the directors of a national bank may and should take whatever action they deem prudent in the management and operation of such property, including the continuation of a business, if the purpose is to realize the value rather than engage in a business for its own sake. First Nat'l Bank v. National Exch. Bank, 92 U.S. 122, 127-28 (1876); First Nat'l Bank v. National Exch. Bank, 92 U.S. 112, 126-27 (1875); Atherton v. Anderson, 86 F.2d 518, 525-26 (6th Cir. 1936); Morris v. Third Nat'l Bank, 142 F. 25, 32-33 (8th Cir. 1905); Cockrill v. Abeles, 86 F. 505, 510-11 (8th Cir. 1898); Allis-Chalmers Mfg. Co. v. Citizen's Bank and Trust Co., 3 F.2d 316, 319 (D.Idaho 1924); Lincoln Joint Stock Land Bank v. Bexten, 125 Neb. 310, 317-18, 250 N.W. 84, 87 (1933); Shawnee Nat'l Bank v. Purcell Wholesale Grocery Co., 124 P. 603, 605-08 (Okla. 1912).

92. 12 U.S.C. § 29.

93. Initiative Petition 300. See the appendix to this article.

that Initiative 300 purports to prohibit a national bank from operating farm or ranch lands and from leasing them to anyone other than a family farm or ranch corporation.[94] If valid, this provision would severely restrict what a national bank could do with farm and ranch land. Such a provision squarely conflicts with what we have seen are the powers and duties of national banks with respect to such properties. It is totally inconsistent with the power conferred upon national banks by the National Bank Act. As the United States Court of Appeals, Ninth Circuit stated in *Swords v. Nutt*:[95] "The power conferred upon national banks to own real estate is not a mere power to hold the legal title thereof until the property is disposed of. It is a power to hold with the usual incidents of ownership. . . ."[96]

The limitation sought to be imposed on national banks with respect to the operation and leasing of farm and ranch lands directly conflicts with the powers given to those banks under the National Bank Act and would seriously impair the duties of directors of those banks to take every action deemed necessary and prudent to realize the full value of such properties.

Initiative 300 likewise limits the ability of national banks to dispose of such lands by preventing them from selling to corporations and limited partnerships. This is a substantial limitation on a bank's ability to realize the full value of its properties.

Such a limitation is contrary to the provisions and policy of the National Bank Act. That Act confers the power and imposes the duty on the bank "to convey" and places no limitations on that power and duty. The policy of the law is not to restrict this power. As the Louisiana court in *New Orleans National Bank v. Raymond*[97] declared:

> The act is authority to purchase under certain restrictions, but there is no restriction upon the power 'to convey.' The intent and policy of the law is manifest. It was to discourage, to prevent, the accumulation of real estate in the hands of these banks. But if such was the intent, it would be strange if the power and right 'to convey,' to sell, were restricted. *We would expect the largest liberty in this direction, as being in furtherance of the purpose of the lawgiver.*[98]

94. The intention may have been to permit leasing to individuals and other non-syndicate and non-corporate lessees. If so, that intention was not expressed.

95. 11 F.2d 936 (9th Cir. 1926).

96. *Id.* at 937.

97. 29 La. Ann. 355 (1877).

98. *Id.* at 359 (emphasis added).

The limitations of Initiative 300 on the power of a national bank to convey such real estate would seem to be " 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' "[99] Consequently, those limitations are of doubtful validity as applied to a national bank.

The next conflict is the provision of Initiative 300 that farm and ranch lands acquired by a corporation in connection with debt enforcement must be disposed of within a period of five years. Under the National Bank Act, a national bank can, with the approval of the Comptroller of Currency, retain the real estate for an additional period of up to five years.[100] The limitation to a maximum of five years by Initiative 300 is consequently void as applied to a national bank.

It should also be noted that this provision of Initiative 300 is limited to agricultural lands "acquired by a corporation by process of law in the collection of debts, or by any procedures for the enforcement of a lien, encumbrance, or claim thereon. . . ."[101]

This is considerably more restrictive than the National Bank Act. For example, under the latter Act, a national bank may acquire and hold real estate voluntarily conveyed to it in satisfaction of a debt, whether it previously held a mortgage on the property or not.[102] Likewise, under the National Bank Act, a national bank may purchase outstanding interests in property in which it has a security interest.[103] Initiative 300 is void to the extent it limits a national bank's rights more narrowly than the National Bank Act.

DOES INITIATIVE 300 PROHIBIT THE HOLDING OF FARM AND RANCH LANDS BY CORPORATE TRUSTEES FOR NON-SYNDICATE AND NON-CORPORATE BENEFICIARIES?

Initiative 300 prohibits a corporation from acquiring "an interest, whether legal, beneficial or otherwise in any title to real estate used for farming or ranching in this state. . . ."[104] As we have seen, a declaratory judgment action has been brought by a national bank to have determined, among other questions, whether this provision prevents a national bank from holding such real es-

99. Nash v. Florida Indus. Comm'n, 389 U.S. 235, 240 (1967) (citing Hill v. Florida *ex rel.* Watson, 325 U.S. 538, 542 (1945)).

100. 12 U.S.C. § 29.

101. Initiative Petition 300. See the appendix to this article.

102. 12 U.S.C. § 29.

103. Williams v. Merchants' Nat'l Bank, 42 F.2d 243, 247 (D. Minn. 1930); Lincoln Joint Stock Land Bank v. Bexten, 125 Neb. 310, 318-19, 250 N.W. 84, 87 (1933).

104. Initiative Petition 300. See the appendix to this article.

tate in trust for non-syndicate and non-corporate beneficiaries.[105]

Literally, if "legal" interest means legal title only without beneficial interest, the prohibition would apply to such trustees. Since we are dealing with an initiative measure, there is little in the way of legislative history to aid in the construction of the provision. Likewise, the promoters of Initiative 300 are split on this question. One of the leading proponents has stated: "We never felt the amendment applied to trusts and we never intended that it should."[106] He asserted that this issue is merely a smoke screen.[107] On the other hand, six promoters of Initiative 300 have filed a petition in intervention in the pending declaratory judgment action in which they allege that Initiative 300 "prohibits Plaintiff from acquiring, holding and administering farm and ranch lands in trust for the benefit of others."[108]

For several reasons we believe that Initiative 300 will be construed as not prohibiting corporate trustees from holding farm and ranch lands in trust for non-corporate and non-syndicate beneficiaries. These reasons are discussed below.

First, the terms "legal" and "interest" were quite likely used in their ordinary sense of the usual kind of ownership, the holding of legal title for one's own benefit. If the term is not so used, Initiative 300 does not specifically refer to this most common form of ownership.

Second, prohibition of the mere holding of legal title as trustee for the benefit of individuals does not appear to be within the purpose of Initiative 300. All beneficial interest is in the individuals and the corporate trustee is essentially furnishing a service for those equitable owners. The purpose of Initiative 300 is to prohibit corporate ownership in its usual sense of having the benefits from the property. If there was an intent to extend the prohibition to holding property in trust, it would be reasonable to expect that this intent would have been made clear.

Third, the ballot, the legal notice and the initiative petition all indicate that the purpose of the measure was the prohibition of ownership in its ordinary sense and not the furnishing of trustee services. Consider, for example, the fact that the description of the proposal in the introductory part of the ballot and legal notice (presumably authorized by section 4 of article III of the Nebraska

105. *See* note 84 *supra*.

106. Midlands Bus. J., Sept. 23, 1983, at 9 (quoting Neil Oxton, President of the Nebraska Farmers Union).

107. *Id.*

108. Petition in Intervention, The Omaha Nat'l Bank v. Douglas, No. 372-191 (Dist. Ct. of Lancaster County, Neb. filed July 6, 1983).

Constitution)[109] provides that adoption of the proposal:

> [W]ill create a constitutional prohibition against further *purchase* of Nebraska farm and ranch lands by any corporation. . . .[110]

Likewise, the issue as defined in this explanation was:

> Shall a constitutional prohibition be created prohibiting *ownership* of Nebraska farm or ranch land by any corporation. . . .[111]

The initiative petition goes on to provide:

> If the Attorney General has reason to believe that a corporation . . . is violating this amendment, he or she shall commence an action in district court to enjoin any pending illegal *land purchase*, or livestock operation, or to force divestiture of land held in violation of this amendment.[112]

The most compelling consideration is the statement in the initiative petition itself of its object. The petition states:

> The object of this initiative petition is to prohibit non-family farm corporations from further *purchase* of Nebraska farm and ranch land, and to prohibit further establishment of non-family corporate crop and livestock operations.[113]

All of these factors require the conclusion that the prohibition is against corporate *ownership* in its ordinary and usual sense and that the Initiative was not intended to deal with the question of holding property as trustee for others.

A contrary construction would probably conflict with the equal protection clause of the federal Constitution. As we have seen, under this clause, a legislative classification must at least be "rationally related to the achievement of the statutory purpose."[114]

The issue on which the people voted with respect to Initiative

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109. NEB. CONST. art. III, § 4, provides: "The provisions with respect to the initiative . . . shall be self-executing, but legislation may be enacted to facilitate their operation . . . . Only the title or proper descriptive words of measures shall be printed on the ballot . . . ." NEB. REV. STAT. § 32-711 (Reissue 1978) provides:

> Immediately preceding any general election at which any initiated law . . . or amendment to the Constitution is to be submitted to the people, the Secretary of State will cause to be published . . . a true copy of the title and text of each measure to be submitted, with the number and form in which the ballot title thereof will be printed on the official ballot . . . .

110. Legal Notice of Measure to be Voted upon November 2, 1982, Ballot Title and Text of an Initiative Petition published in Sun Newspapers on Oct. 20, 1982 (emphasis added).

111. *Id.* (emphasis added).

112. Initiative Petition 300. See the appendix to this article (emphasis added).

113. *Id.* The statement of object is required by NEB. REV. STAT. § 32-703 (Supp. 1982) (emphasis added).

114. *See* note 65 and accompanying text *supra*.

300 was whether "ownership" by corporations of farm and ranch lands should be prohibited. The voters were also told that a vote for Initiative 300 would create a prohibition against further "purchase" of such lands by corporations. There was not the slightest indication of any purpose to regulate the trust business in the State of Nebraska. Accordingly, we believe that if, as does not seem likely, Initiative 300 is construed to prohibit the holding of farm and ranch lands as trustee for non-syndicate and non-corporate beneficiaries, the provisions would be struck down as violative of the federal equal protection clause.

CONCLUSION

Initiative 300 is, in our opinion, statutory in nature and contravenes sections 1 and 3, and probably section 25, of article III of the Nebraska Constitution. Some of its provisions conflict with the National Bank Act and are invalid to that extent under the supremacy clause.

While the constitutionality of Initiative 300 is of major importance, the procedure by which it was assertedly made a part of the constitution is, from the constitutional law standpoint, of much greater importance. If approved, this procedure would permit special interest groups to enact legislation which violates basic constitutional rights by simply calling the measure a constitutional amendment and declaring that it shall be effective "notwithstanding any other provisions of this Constitution."[115]

This potential and the pattern to follow are clearly outlined in the proceedings involving Initiative Petition 300. That petition was titled "Initiative Petition to Preserve the Family Farm."[116] Six promoters of that measure, however, have filed a petition in intervention in the pending declaratory judgment action in which they allege that Initiative 300 "has a direct legal effect"[117]upon them in that it "[a]llows them to purchase additional land . . . without competing in the marketplace . . ."[118] against corporations. Regardless of the good intentions of many supporters of Initiative 300, the procedure adopted in enacting the measure raises major concern. Approval of this procedure could seriously impair constitutional government in Nebraska.

115. Initiative Petition 300. See the appendix to this article.
116. *Id.*
117. Petition in Intervention, The Omaha Nat'l Bank v. Douglas, No. 372-191 (Dist. Ct. of Lancaster County, Neb. filed July 6, 1983).
118. *Id.*

APPENDIX

INITIATIVE PETITION TO PRESERVE THE FAMILY FARM

WARNING

ANY PERSON SIGNING ANY NAME OTHER THAN HIS OWN TO AN INITIATIVE PETITION, OR KNOWINGLY SIGNING HIS NAME MORE THAN ONCE FOR THE SAME MEASURE AT ONE ELECTION, OR WHO IS NOT, AT THE TIME OF SIGNING OR CIRCULATING THE SAME, A REGISTERED VOTER AND QUALIFIED TO SIGN OR CIRCULATE THE SAME, OR ANY PERSON WHO SHALL FALSELY SWEAR TO ANY SIGNATURE UPON ANY SUCH PETITION, OR ANY PERSON WHO ACCEPTS MONEY OR OTHER THINGS OF VALUE FOR SIGNING THE PETITION, OR ANY CIRCULATOR WHO OFFERS MONEY OR OTHER THINGS OF VALUE IN EXCHANGE FOR A SIGNATURE UPON ANY SUCH PETITION, OR ANY OFFICER OR PERSON WILLFULLY VIOLATING ANY PROVISION OF SECTIONS 32-702 to 32-713, SHALL BE GUILTY OF A FELONY AND SHALL, UPON CONVICTION THEREOF, BE PUNISHED BY A FINE NOT EXCEEDING $500.00, OR BY IMPRISONMENT IN THE NEBRASKA PENAL AND CORRECTIONAL COMPLEX NOT EXCEEDING TWO YEARS, OR BY BOTH SUCH FINE AND IMPRISONMENT.

INITIATIVE PETITION

THE OBJECT OF THIS INITIATIVE PETITION IS TO PROHIBIT NON-FAMILY FARM CORPORATIONS FROM FURTHER PURCHASE OF NEBRASKA FARM AND RANCH LAND, AND TO PROHIBIT FURTHER ESTABLISHMENT OF NON-FAMILY CORPORATE CROP AND LIVESTOCK OPERATIONS.

TO THE HONORABLE ALLEN J. BEERMANN, SECRETARY OF STATE FOR THE STATE OF NEBRASKA:

We, the undersigned legal voters of the State of Nebraska and the County of _____, being severally qualified to sign this petition, respectfully demand that the following constitutional amendment shall be submitted to the voters of the State of Nebraska for their approval or rejection at the general election to be held on the 2nd day of November, 1982:

That Article XII of the Constitution of the State of Nebraska be amended by adding a new section numbered 8 and sub-sections

as numbered, notwithstanding any other provisions of this Constitution.

Sec. 8(1) No corporation or syndicate shall acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any title to real estate used for farming or ranching in this state, or engage in farming or ranching.

Corporation shall mean any corporation organized under the laws of any state of the United States or any country or any partnership of which such corporation is a partner.

Farming or ranching shall mean (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or (ii) the ownership, keeping or feeding of animals for the production of livestock or livestock products.

Syndicate shall mean any limited partnership organized under the laws of any state of the United States or any country, other than limited partnerships in which the partners are members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day to day labor and management of the farm or ranch, and none of whom are non-resident aliens. This shall not include general partnerships.

These restrictions shall not apply to:

(A) A family farm or ranch corporation. Family farm or ranch corporation shall mean a corporation engaged in farming or ranching or the ownership of agricultural land, in which the majority of the voting stock is held by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day to day labor and management of the farm or ranch and none of whose stockholders are non-resident aliens and none of whose stockholders are corporations or partnerships, unless all of the stockholders or partners of such entities are persons related within the fourth degree of kindred to the majority of stockholders in the family farm corporation.

These restrictions shall not apply to:

(B) Non-profit corporations.

These restrictions shall not apply to:

(C) Nebraska Indian tribal corporations.

These restrictions shall not apply to:

(D) Agricultural land, which, as of the effective date of this Act, is being farmed or ranched, or which is owned or leased, or in which there is a legal or beneficial interest in title directly or indirectly owned, acquired, or obtained by a corporation or syndicate, so long as such land or other interest in title shall be held in continuous ownership or under continuous lease by the same such corporation or syndicate, and including such additional ownership or leasehold as is reasonably necessary to meet the requirements of pollution control regulations. For the purposes of this exemption, land purchased on a contract signed as of the effective date of this amendment, shall be considered as owned on the effective date of this amendment.

These restrictions shall not apply to:

(E) A farm or ranch operated for research or experimental purposes, if any commercial sales from such farm or ranch are only incidental to the research or experimental objectives of the corporation or syndicate.

These restrictions shall not apply to:

(F) Agricultural land operated by a corporation for the purpose of raising poultry.

These restrictions shall not apply to:

(G) Land leases by alfalfa processors for the production of alfalfa.

These restrictions shall not apply to:

(H) Agriculture land operated for the purpose of growing seed, nursery plants, or sod.

These restrictions shall not apply to:

(I) Mineral rights on agricultural land.

These restrictions shall not apply to:

(J) Agricultural land acquired or leased by a corporation or syndicate for immediate or potential use for nonfarming or nonranching purposes. A corporation or syndicate may hold such agricultural land in such acreage as may be necessary to its nonfarm or nonranch business operation, but pending the development of such agricultural land for nonfarm or nonranch purposes, not to exceed a period of five years, such land may not be used for farming or ranching except under lease to a family farm or ranch corporation or a non-syndicate and non-corporate farm or ranch.

These restrictions shall not apply to:

(K) Agricultural lands or livestock acquired by a corporation or syndicate by process of law in the collection of debts, or by any procedures for the enforcement of a lien, encumbrance, or claim thereon, whether created by mortgage or otherwise.

Any lands so acquired shall be disposed of within a period of five years and shall not be used for farming or ranching prior to being disposed of, except under a lease to a family farm or ranch corporation or a non-syndicate and non-corporate farm or ranch.

These restrictions shall not apply to:

(L) A bona fide encumbrance taken for purposes of security.

These restrictions shall not apply to:

(M) Custom spraying, fertilizing, or harvesting.

These restrictions shall not apply to:

(N) Livestock futures contracts, livestock purchased for slaughter, or livestock purchased and resold within two weeks.

If a family farm corporation, which has qualified under all the requirements of a family farm or ranch corporation, ceases to meet the defined criteria, it shall have fifty years, if the ownership of the majority of the stock of such corporation continues to be held by persons related to one another within the fourth degree of kindred or their spouses, and their landholdings are not increased, to either re-qualify as a family farm corporation or dissolve and return to personal ownership.

The Secretary of State shall monitor corporate and syndicate agricultural land purchases and corporate and syndicate farming and ranching operations, and notify the Attorney General of any possible violations. If the Attorney General has reason to believe that a corporation or syndicate is violating this amendment, he or she shall commence an action in district court to enjoin any pending illegal land purchase, or livestock operation, or to force divestiture of land held in violation of this amendment. The court shall order any land held in violation of this amendment to be divested within two years. If land so ordered by the court has not been divested within two years, the court shall declare the land escheated to the State of Nebraska.

If the Secretary of State or Attorney General fails to perform his or her duties as directed by this amendment, Nebraska citizens and entities shall have standing in district court to seek enforcement.

The Nebraska Legislature may enact, by general law, further restrictions prohibiting certain agricultural operations that the legislature deems contrary to the intent of this section.