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Redistricting Committee  
March 16, 2011

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[LR102]

The Committee on Redistricting met at 12:00 p.m. on Wednesday, March 16, 2011, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR102. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Bill Avery; Danielle Conrad; Deb Fischer; Scott Lautenbaugh; Heath Mello; John Nelson; and Ken Schilz. Senators absent: None.

SENATOR LANGEMEIER: Good afternoon, and we'd like to welcome everybody to the first of many hearings that we'll have of the Nebraska Redistricting Committee. I'd like to welcome everybody that's here that's watching us on closed caption television and those that this is streaming over the Internet. This is your opportunity to weigh in on the legislation before the Legislature. I'd, first of all, like to start off by introducing the committee members here, and we'll start to my far left with Senator John Nelson from Omaha who is just about to take his seat, and then we have Senator Bill Avery from Lincoln. We have Senator Deb Fischer from Valentine; we have the Vice Chairman, Senator Annette Dubas, from Fullerton; we have...we'll come back there in a minute. We're going to go clear to my far right. We have Barb Koehlmoos who is the committee clerk, actually for the Natural Resources Committee. We have roped her into helping our committee through this process. And then we have Senator Mello from south Omaha; we have Senator Schilz from Ogallala; Senator Conrad from Lincoln; and Senator Lautenbaugh from Omaha. And then we have Nancy Cyr is the head of our...I'm not sure what your exact title is. She is the director of Research and also is going to help as our legal counsel and research involvement in redistricting, so we appreciate her help with that. We have one page that's going to be helping us today. We have Hadley Glaser who attends school at Southeast Community College and is a criminal justice major, and he's from Elwood, Nebraska. And there she is. So in our committee we do use the light system. We allow five minutes of testimony. You'll see the green light will come on. You will get to talk, and then the yellow light comes on and that's your one-minute warning. After that, you'll see a red light come on and then we would ask that you cease your testimony and then open yourself up for questions. And we can tell you from the past, if you're in the midst of a sentence or amidst a thought, somebody always asks you a question to let you get it finished, so don't let that be a scary thought for you. If you come up to testify today, we ask you to get one of these green sheets that are located in the corners of the room and you fill it out in its entirety, and when you come forward if you'd give that to Barb it helps us keep a more accurate record of today's events. When you come up to testify, we ask that you state and spell your name right off the bat, no matter how simple it is. It helps us keep a more accurate record of today's hearings. We do have just one legislative resolution before us, which is LR102, and with that we'll get this started. And Senator Dubas. [LR102]

SENATOR DUBAS: Welcome, Senator Langemeier. [LR102]

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SENATOR LANGEMEIER: (Exhibit 1) Good afternoon. My name is Chris Langemeier, C-h-r-i-s L-a-n-g-e-m-e-i-e-r. Good afternoon, Redistricting Committee. This is the first of many occasions for us to meet over the next couple months. The purpose of introducing LR102, it prescribes substantial guidelines to be used by the Nebraska Legislature during the 2011 redistricting process. The guidelines help ensure that the redistricting plans developed and passed by the Legislature meet legal parameters and are constitutionally acceptable. The Legislature is responsible for drawing district boundaries for the U.S. House of Representatives, the Legislature, the Supreme Court, the Board of Regents of the University of Nebraska, the Public Service Commission, and the State Board of Education. Generally, LR102 directs the Legislature, when drafting district boundaries: (1) to use population data from the 2010 U.S. Census, along with geography; (2) to follow county lines wherever practical; and (3) to use traditional districting principles, such as compactness, contiguity, preservation of the core priorities of the district and communities of interest, and respect boundaries of cities and villages. Additionally, LR102 prohibits drawing district boundaries that intentionally favor political parties' affiliations or registered voters. And most importantly, the resolution requires the creation of districts which are substantially equal in population. Population equality, known as one person, one vote, is the most fundamental requirement when drawing district boundaries. In practical terms, population equality means that each district in an apportionment plan should have roughly, if not precisely, the same number of people as every other district. But there are two different legal standards for determining whether the one person, one vote standard is satisfied. The U.S. Constitution and the Supreme Court requires the state's congressional districts to be as nearly equal in population as practicable. LR102 provides that no congressional plan will be considered which results in an overall range of deviation to exceed 1 percent. As applied to the state legislative districts, the U.S. Constitution and the Supreme Court requires that the state make a good-faith effort to create population equality among the districts. Generally, the equal population requirement for the state legislative districts is satisfied as long as the population of the smallest district and the population of the largest district does not vary by more than 10 percent. LR102 provides that no legal plan will be considered which results in an overall range of deviation to exceed 10 percent or a relative deviation of plus or minus 5 percent. LR102 also provides that a plan for the Supreme Court, Board of Regents, Public Service Commission, and the State Board of Education be drawn using the 10 percent overall deviation and relative deviation of plus or minus 5 percent. With that, I will conclude my testimony on LR102 and welcome any questions. [LR102]

SENATOR DUBAS: Thank you, Senator Langemeier. Questions from the committee? Senator Conrad. [LR102]

SENATOR CONRAD: Thank you, Senator Langemeier. This was an issue that came to mind as I was reviewing the legislation in preparation for today's hearing, and it seems to me that this resolution follows very closely the parameters set forth by the Legislature during the last redistricting process. But I was wondering, besides just mirroring some of

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those parameters, do you know the history on why the other areas that we have to redistrict outside of the congressional districts allow for a broader deviation than the congressional districts allow for? [LR102]

SENATOR LANGEMEIER: That I don't know. We'll have to get that for you, the exact. [LR102]

SENATOR CONRAD: Okay. Appreciate that. Thank you. [LR102]

SENATOR DUBAS: Other questions? Senator Lautenbaugh. [LR102]

SENATOR LAUTENBAUGH: Is it maybe the case that there's a U.S. Supreme Court decision that says that the congressional districts only have certain tolerances, but because legislative districts are smaller there can be greater deviance? [LR102]

SENATOR LANGEMEIER: I knew it was a court case but I will leave you to make that statement. [LR102]

SENATOR LAUTENBAUGH: Okay. So that's a yes then? [LR102]

SENATOR LANGEMEIER: I would agree. [LR102]

SENATOR LANGEMEIER: Okay. Thank you. [LR102]

SENATOR DUBAS: Senator Avery. [LR102]

SENATOR AVERY: Thank you, Madam Chair. You are Chair now, right? For now. There is a court case, in fact, that allows for almost no deviation for congressional districts. With the software that's now available, the courts have ruled that you just about have to get down to zero deviation. But, you're right, Senator Lautenbaugh, the courts have been a little more generous with those smaller districts. [LR102]

SENATOR DUBAS: Senator Conrad. [LR102]

SENATOR CONRAD: Thank you, Senator Langemeier, and thank you, committee members, for helping to build this record, which is what my question was intended to provoke. And I am familiar with the court case that was referenced earlier, and I'm sure each member of this committee will become very familiar with those issues as we move forward. But the reason I asked the question is, because of the changes in technology and because of that very strict standard that's applied to congressional districts, I'm really hoping that the committee will have a robust conversation about some potential narrowing of the deviation allowed for in other areas, so. Do you have any thoughts on that, Senator Langemeier? Please feel free, otherwise we can take it up later. [LR102]

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SENATOR LANGEMEIER: Well, LR102 was adopted from the last census, which was deemed a success. And so I think we started there as a starting point. And as this committee...that's why we had this public hearing, just to hear some thoughts from those that want to testify in regards. That's probably the biggest issue in here is the 10 percent, the plus or minus 5 percent. As we decide to send this forward for the body's acceptance, we have that opportunity to, and we've talked about that before, we have that opportunity. We just wanted to put what I would call a max parameter out there, and then as we hear testimony that says...you know, I think the reality is, is you shoot for as little as you can. And then you use that...in my mind, you have a variance to...the reason you use a variance is to meet some of those other requirements. To make a district so it doesn't have a lot of little fingers, so it's a little more compact, you have the variance. If you need to throw a county all together to meet the other requirement of trying to keep counties together, that's how you end up with a variance. But we'll make that decision as a committee. [LR102]

SENATOR CONRAD: Thank you so much. [LR102]

SENATOR DUBAS: Senator Nelson. [LR102]

SENATOR NELSON: Thank you, Madam Chair. Senator Langemeier, in your introduction here there are three subpoints here. Number 3 is to use traditional redistricting principles, such as compactness, contiguity, preservation of cores of prior districts and communities of interest. Yet, I don't see that language here in LR102, unless I'm missing it, with regard to community of interest and compactness. Is that something that maybe we should have in LR102 itself? [LR102]

SENATOR LANGEMEIER: Well, I think the traditional guidelines is what was put in there, and we're just trying to expand out what some of those are. I don't know that you could put a whole list in there without having a 200-page resolution. [LR102]

SENATOR NELSON: Well, but we wouldn't be restricted. I mean we could go ahead and use those, you know, as part... [LR102]

SENATOR LANGEMEIER: Correct. [LR102]

SENATOR NELSON: ...even though it's not in LR102. [LR102]

SENATOR LANGEMEIER: Correct. [LR102]

SENATOR NELSON: Okay. Thank you. Thank you, Madam Chair. [LR102]

SENATOR LANGEMEIER: And I think most of them are in there, but I don't have that in

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front of me at the present moment. [LR102]

SENATOR DUBAS: And for a point of clarification, they are outlined in guidelines 3 and 4 in the resolution, so. [LR102]

SENATOR NELSON: Oh, okay. [LR102]

SENATOR DUBAS: It's kind of hard to get everything read while we're talking too. But I...and we can talk about that further too, as a committee. But I think what you're looking for, Senator Nelson, is in there. [LR102]

SENATOR NELSON: I don't see anything about community of interest. Am I missing that? We understand what community... [LR102]

SENATOR DUBAS: That specific phrase probably isn't in it, and again, we're going to have the... [LR102]

SENATOR NELSON: Yeah. Community of interest involves communities that have something in common that might...when you're talking about an individual state senator, I mean you can get in situations where you've got communities that are just absolutely adverse, and that makes it difficult. So I think communities of interest is kind of important to take into consideration. [LR102]

SENATOR DUBAS: I think the point of the public hearing allows us that opportunity... [LR102]

SENATOR NELSON: Okay. [LR102]

SENATOR DUBAS: ...to get those issues raised and probably addressed in the final resolution. Senator Avery. [LR102]

SENATOR AVERY: These criteria that we're talking about, actually they're all defined in Supreme Court rulings. In particular, the community of interest, which is contained in the Civil Rights Act of 1964. But I have a question for you, Senator Langemeier. And would you explain a little bit about the variance, the overall variance, 10 percent, and how...what...how that applies to legislative districts compared to the 5 percent. I think...if I understand it, the 10 percent says that you cannot exceed 10 percent deviation from the smallest district to the largest district, right? [LR102]

SENATOR LANGEMEIER: Correct. [LR102]

SENATOR AVERY: And the 5 percent would apply to what? [LR102]

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SENATOR LANGEMEIER: The 5 percent is just a definition of saying that our population needs to be 27...I don't have that right in front of me, but 27... [LR102]

SENATOR AVERY: Thirty-seven. [LR102]

SENATOR LANGEMEIER: Oh, excuse me. Thirty-seven to something. Five percent below that number and 5 percent above that number. [LR102]

SENATOR AVERY: Okay. Thank you. [LR102]

SENATOR DUBAS: Other questions? Seeing none, thank you, Senator Langemeier. [LR102]

SENATOR LANGEMEIER: I would say to Senator Nelson on your questions of a district of similar nature, my district that I currently represent, District 23 that has western Douglas County, Saunders, Butler and Colfax, my district on Butler is night and day different than my requests I get in western Douglas County. I always tell people as I walk down the streets, I represent cornrows and potholes. And not a lot of other districts have that same diversity. Thank you. [LR102]

SENATOR DUBAS: Thank you. We have proponents for LR102. Any proponents? Any opponents? Welcome. [LR102]

BOB TWISS: Good afternoon. Chairman Langemeier, when he returns, Chairman Dubas, other members of the committee, my name is Bob Twiss, B-o-b T-w-i-s-s, as in Sam Sam. I actually could testify in favor, also opposed and neutral, on this bill. It's a good start. I do have concerns about the target deviation outside of the congressional districts, that is the plus or minus 5 percent which amounts to 10 percent. This is not an urban/rural argument at all. I grew up in northeast Nebraska and have followed the redistricting, as a matter of fact, testified in redistricting, since the census in 1990. So I've been around for '90, 2000, and this one. And it's very important and I'm sure that the committee wants to have a bill come out that is constitutionally sound. The last go-round, quite questionable, as a matter of fact. In 1990, the deviation, as I recall it, was plus or minus 2 percent for legislative and other things, at that point. It did move to plus or minus 5 percent with the 2000 Census. There was a court suit, a strong challenge, a successful challenge, after the 1990 Census came out of Madison County from some citizens up there. It went into special session. A special session was necessary. Boundaries were redrawn at that time. People who had run in the primary lost their opportunity to go anywhere else. They had nowhere to go. A lady from Crofton and a gentleman from Hartington won the primary up in that district at that time, which is very close to my hometown district, and they had nowhere to go. Madison County was split. They won their case basically on the county boundary issue, which I want to highlight here and I hope I have time. If not, please ask me some questions. But the

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county boundary, as I look at it, and this is in Article III, Section 5, really looks at two different things. One is the counties that are close to perfect with the deviation, which are basically Madison, Dodge, Lincoln, and Scotts Bluff, I believe are the current ones. Okay? They're pretty close, pretty close overall. The other thing it says, and this is very important in Section 5 of Article III, "Any counties that contain population sufficient to entitle it to two or more" legislative districts, and I'm paraphrasing a little bit, "shall be divided into separate and distinct" districts, as we know, "nearly equal in population," but very important, shall be "compact and contiguous." This is our state constitution. Compact and contiguous. In addition to that, county lines, county boundaries, shall be respected wherever practicable. I happen to live in Sarpy County now, and we currently have three full senators totally contained within the county boundaries, but we also have four pieces, and those four pieces are probably the things that made the last redistricting work. And those four pieces of legislative districts, including Senator Lautenbaugh (sic--Langemeier) I don't think mentioned western Sarpy but he has a portion of western Sarpy, those districts are not compact and contiguous. Some of them don't even touch each other. So I want to emphasize that. So deviation at plus or minus 5 percent, that would take you from 35,150 to 38,850. A 2 percent deviation, for example, would be 36,260 to 37,740, which I think would be more acceptable and tolerable to get that down. And again, my heart still remains in rural Nebraska. My mind, quite frankly, is where I reside now, so that the power of our voice is reflected accurately and constitutionally. And I might add, a community of interest, I could not see it in here at all, and we were chopped up very badly the last go-round. As a matter of fact, there was a court suit that was filed after the 2000 Census and redistricting. However, that court suit was not pursued. It was ultimately dismissed, without prejudice, I might add. It could have been refiled at any time. And that happened to have come out of Douglas County. I was relying on that to go forward in Sarpy County as well. So equality. Equality before the law. Constitutionally sound. And I know I need to wrap up as well, so I'd be glad to entertain any questions. I've been around the horn a few years. [LR102]

SENATOR DUBAS: All right. Thank you very much, Mr. Twiss. Questions from the committee? Senator Mello. [LR102]

SENATOR MELLO: Thank you, Mr. Twiss, for joining us today. And it just...maybe it was a number that was left out in part of your testimony. In the 1990 Census, we used a 2...plus or minus 2 percent deviation. The Legislature...it was thrown out legally in a court of law, and the Legislature came back for the special session. What was the number they ended up using in 1990? What was the plus or minus deviation they used? [LR102]

BOB TWISS: I'm not sure I can answer that question. I think they ended up probably with the plus or minus 2 percent, Senator Mello. I'm not sure that that was addressed. I haven't read that court suit. It was Day v. basically state of Nebraska... [LR102]

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SENATOR MELLO: Okay. [LR102]

BOB TWISS: ...is what that was. It came out of Madison County. And there were four citizens that brought that lawsuit as I recall. I don't know that the plus or minus 2 percent was addressed in that court battle. What was really addressed, I'm certain of, is the county boundary. [LR102]

SENATOR MELLO: Okay. All right, thank you. Maybe we'll follow up with our director of Research and find that out. [LR102]

SENATOR DUBAS: Other questions for Mr. Twiss? Seeing none, thank you very much for coming in today. [LR102]

BOB TWISS: Thank you very much for your time. I really appreciate it today, and I'll be glad to entertain any questions from the committee in the future and work with you as we can. Thank you. [LR102]

SENATOR DUBAS: Thank you. Other opposition to LR102? Anyone in the neutral? He was neutral? [LR102]

SENATOR LAUTENBAUGH: No, I'm sorry. I'm wrong. He was opposition. I apologize, Madam Chair. [LR102]

SENATOR DUBAS: Please don't confuse me. (Laugh) [LR102]

SENATOR LAUTENBAUGH: I confused myself. I apologize. [LR102]

SENATOR DUBAS: Thank you. Is there anyone in the neutral capacity? Seeing none, Senator Langemeier, would you like to close? Senator Langemeier waives closing. And that closes our hearing for today. We thank everyone for taking an interest and coming in today. [LR102]