

FIRST DAY - JANUARY 5, 2022**LEGISLATIVE JOURNAL****ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION****FIRST DAY**

Legislative Chamber, Lincoln, Nebraska
Wednesday, January 5, 2022

PRAYER

The prayer was offered by Senator Williams.

PRESENTATION OF COLORS

Presentation of Colors by the Nebraska State Patrol - Headquarters Troop Honor Guard.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was offered by Senator Sanders.

ROLL CALL

Pursuant to the provisions of Article III, Section 10 of the Constitution of Nebraska, the One Hundred Seventh Legislature, Second Session of the Legislature of Nebraska assembled in the George W. Norris Legislative Chamber of the State Capitol at the hour of 10:00 a.m., on Wednesday, January 5, 2022, and was called to order by President Foley.

The roll was called and the following members were present:

Aguilar, Raymond	Friesen, Curt	McDonnell, Mike
Albrecht, Joni	Geist, Suzanne	McKinney, Terrell M.
Arch, John	Gragert, Tim	Morfeld, Adam
Blood, Carol	Groene, Mike	Moser, Mike
Bostar, Eliot	Halloran, Steve	Murman, Dave
Bostelman, Bruce	Hansen, Ben	Pahls, Rich
Brandt, Tom	Hansen, Matt	Pansing Brooks, Patty
Brewer, Tom	Hilgers, Mike	Sanders, Rita
Briese, Tom	Hilkemann, Robert	Slama, Julie
Cavanaugh, John, Jr.	Hughes, Dan	Stinner, John
Cavanaugh, Machaela	Hunt, Megan	Vargas, Tony
Clements, Robert	Kolterman, Mark	Walz, Lynne
Day, Jen	Lathrop, Steve	Williams, Matt
DeBoer, Wendy	Lindstrom, Brett	Wishart, Anna
Dorn, Myron	Lowe, John S., Sr.	
Erdman, Steve	McCollister, John S.	
Flood, Mike		

12	Steve Lathrop	November 6, 2018
13	Justin T. Wayne	November 3, 2020
14	John Arch	November 6, 2018
15	Lynne M. Walz	November 3, 2020
16	Ben Hansen	November 6, 2018
17	Joni Albrecht	November 3, 2020
18	Brett Lindstrom	November 6, 2018
19	Mike Flood	November 3, 2020
20	John S. McCollister	November 6, 2018
21	Mike Hilgers	November 3, 2020
22	Mike Moser	November 6, 2018
23	Bruce Bostelman	November 3, 2020
24	Mark A. Kolterman	November 6, 2018
25	Suzanne Geist	November 3, 2020
26	Matt Hansen	November 6, 2018
27	Anna Wishart	November 3, 2020
28	Patty Pansing Brooks	November 6, 2018
29	Eliot Bostar	November 3, 2020
30	Myron Dorn	November 6, 2018
31	Rich Pahls	November 3, 2020
32	Tom Brandt	November 6, 2018
33	Steve Halloran	November 3, 2020
34	Curt Friesen	November 6, 2018
35	Raymond M. Aguilar	November 3, 2020
36	Matt Williams	November 6, 2018
37	John S. Lowe Sr.	November 3, 2020
38	Dave Murman	November 6, 2018
39	Lou Ann Linehan	November 3, 2020
40	Tim Gragert	November 6, 2018
41	Tom Briese	November 3, 2020
42	Michael Groene	November 6, 2018
43	Tom Brewer	November 3, 2020
44	Dan Hughes	November 6, 2018
45	Rita Sanders	November 3, 2020
46	Adam Morfeld	November 6, 2018
47	Steve Erdman	November 3, 2020
48	John P. Stinner Sr.	November 6, 2018
49	Jen Day	November 3, 2020

MESSAGE(S) FROM THE GOVERNOR

October 4, 2021

Mr. President, Speaker Hilgers
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Hilgers and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Climate Assessment Response Committee:

Ervin L. Portis, Nebraska Emergency Management Agency, 2433 NW 24th Street, Lincoln, NE 68524-5086

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

October 28, 2021

Mr. President, Speaker Hilgers
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Hilgers and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Child Abuse Prevention Fund Board:

Clarie K. Bazata, 34 McCormick Drive, Cozad, NE 69130

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

November 9, 2021

Mr. President, Speaker Hilgers
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Hilgers and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed

to the Commission for the Deaf and Hard of Hearing:

Peggy A. Williams, 4515 Hill Drive, Lincoln, NE 68510

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

November 9, 2021

Mr. President, Speaker Hilgers
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Hilgers and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Foster Care Advisory Committee:

Richard L. Wiener, Ph.D., 16310 Charles Circle, Omaha, NE 68118

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

November 24, 2021

Mr. President, Speaker Hilgers
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Hilgers and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Crime Victim's Reparations Committee:

Gerald Randall (Rand) Hansen, 2303 S. 154 Circle, Omaha, NE 68144

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

November 24, 2021

Mr. President, Speaker Hilgers
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Hilgers and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the State Personnel Board:

Jerry Lee Jensen, 2137 South 58 Street, Lincoln, NE 68506

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

November 24, 2021

Mr. President, Speaker Hilgers
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Hilgers and Members of the Legislature:

Contingent upon your approval, the following individuals are being reappointed to the Nebraska Ethanol Board:

Scott B. McPheeters, 26118 S. McNickle Road, Gothenburg, NE 69138
Taylor D. Nelson, 831 137 Street, South Sioux City, NE 68776

The aforementioned appointees are respectfully submitted for your

consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

November 24, 2021

Mr. President, Speaker Hilgers
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Hilgers and Members of the Legislature:

Contingent upon your approval, the following individual is being reappointed to the Nebraska Brand Committee:

Terry L. Cone, 97 S. 1st Avenue, Burwell, NE 68823

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

ATTORNEY GENERAL'S OPINIONS

Opinion 21-013

SUBJECT: Constitutionality of the Statutory Requirement that a Political Party Nominee for Governor Select a Candidate for Lieutenant Governor of the Same Political Party (LB 635).

REQUESTED BY: Senator Carol Blood
Nebraska Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
L. Jay Bartel, Assistant Attorney General

INTRODUCTION

Nebraska law currently provides that "[t]he candidate for Governor of each political party receiving the highest number of votes in the primary election shall select a candidate for Lieutenant Governor of the same political party by filing an affidavit indicating his or her choice with the Secretary of State." Neb. Rev. Stat. § 32-619.01 (2016). Under the Nebraska Constitution, "[e]ach candidate for Governor shall select a person to be the candidate for Lieutenant Governor on the general election ballot. In the general election one vote shall be cast jointly for the candidates for Governor and Lieutenant Governor." Neb. Const. art. IV, § 1. Further, "[n]o person shall be eligible for the office of Governor, or Lieutenant Governor, who shall not have attained the age of thirty years, and who shall not have been for five years next preceding his election a resident and citizen of this state and a citizen of the United States." Neb. Const. art. IV, § 2.

You ask us to address the constitutionality of the requirement in § 32-619.01 that a candidate for Governor of a political party select a candidate for Lieutenant Governor of the same political party. You question whether this requirement unconstitutionally imposes a qualification for the office of Lieutenant Governor beyond what is required under art. IV, § 2, and impermissibly limits a Governor candidate's selection of a Lieutenant Governor candidate under art. IV, § 1. You further raise issues regarding whether § 32-619.01 "violates candidates' rights to choose running mates of their own choosing without regard to partisan designation," or "voters' rights to vote for candidates separate from political party or right to vote for candidates of different parties." You also ask us to consider "[w]hat happens if a gubernatorial candidate chooses a running mate with no party affiliation or a different party affiliation" and, if so, "[w]ill that candidate for Governor be listed on the ballot?"

Initially, we note it is our long-standing policy not to provide opinions to members of the Legislature on the interpretation or constitutionality of existing statutes. Op. Att'y Gen. No. 157 (Dec. 24, 1985). Rather, we only issue opinions to state legislators which pertain "to pending or proposed legislation." *Id.* at 1. Because your request makes no reference to any pending or proposed legislation, we normally would decline to provide an opinion on the questions presented. We have, however, identified pending legislation which would provide for nonpartisan primary elections for statewide offices and U.S. Congressional offices. LB 635. Section 13 of LB 635 proposes to amend § 32-619.01 to remove the "same political party" requirement for Lieutenant Governor candidates and provide instead that the two candidates for Governor receiving the highest number of votes in the primary election shall each select a candidate for Lieutenant Governor without regard for his or her political party. Because our conclusions could impact consideration of this pending legislation, we will respond to your request.

BACKGROUND

Prior to 1970, the Nebraska Constitution provided for the separate election of the Governor and Lieutenant Governor. *See* Neb. Const. art. IV, § 1 (Cum. Supp. 1967) ("The Governor, [and] Lieutenant Governor . . . shall be chosen at the general election . . ."). In 1970, an amendment was adopted providing that "[i]n the general election one vote shall be cast jointly for the candidates for Governor and Lieutenant Governor nominated by the same party." 1969 Neb. Laws, ch. 417, § 1, p. 1428 (Neb. Const. art. IV, § 1 (Cum. Supp. 1972)). At the general election in 2000, the voters approved a constitutional amendment (LR 14CA) requiring "[e]ach candidate for Governor to select a person to be the candidate for Lieutenant Governor on the general election ballot." 1999 Neb. Laws LR 14CA (Neb. Const. art. IV, § 1 (Supp. 2001)). The amendment left the language stating that "[i]n the general election one vote shall be cast jointly for the candidates for Governor and Lieutenant Governor," but removed the previous language stating that the candidates be "nominated by the same party."

After LR 14CA was approved by the voters in 2000, the Legislature passed enabling legislation. 2001 Neb. Laws LB 768. The bill proposed "that the candidates for Governor of each political party receiving the highest number of votes in the primary election will select a candidate for Lieutenant Governor of the same political party within sixty days after the statewide primary election. Each of these two candidates would then run as a team on the general election ballot." Committee Records on LB 768, 97th Leg., 1st Sess., Introducer's Statement of Intent (Feb. 14, 2001). The bill's principal introducer, Senator Schrock, noted the requirement that the Governor select a Lieutenant Governor candidate from "the same political party" could be "controversial." *Id.* at 2. LB 768 was, however, passed with no subsequent discussion of the party affiliation requirement. The bill, codified at Neb. Rev. Stat. § 32-619.01, has not been changed since its enactment.

ANALYSIS

Your primary question is whether the "party affiliation" rule in § 32-619.01 unconstitutionally imposes a qualification for the office of Lieutenant Governor beyond what is required under art. IV, § 2, and impermissibly limits a Governor candidate's selection of a Lieutenant Governor candidate under art. IV, § 1. As explained below, we conclude the "same political party" provision in § 32-619.01 does not conflict with the constitution's requirement that a candidate for Governor select the Lieutenant Governor candidate for the general election ballot and that "one vote shall be cast jointly for the candidates for Governor and Lieutenant Governor." Neb. Const. art. IV, § 1. This interpretation is consistent with the constitutional language and the historical facts contained in the legislative record. Further, the "same political party" requirement imposes no additional qualification for the office of Lieutenant Governor and places no improper limit on the selection of a running mate by a candidate for Governor of a political party.

A. The Party Affiliation Rule Is Consistent with the Joint Vote Requirement in Neb. Const. Art. IV, § 1.

The Nebraska Supreme Court has recognized the following general rules governing the interpretation of constitutional provisions:

The intent and understanding of [the] framers [of a constitutional provision] and the people who adopted it as expressed in the instrument is the main inquiry in construing it The words of a constitutional provision will be interpreted and understood in their most natural and obvious meaning unless the subject indicates or the text suggests they are used in a technical sense. The court may not supply any supposed omission, or add words to or take words from the provision as framed. It must be construed as a whole, and no part will be rejected as meaningless or surplusage, if it can be avoided. If the meaning is clear, the court will give to it the meaning that obviously would be accepted and understood by the layman It is permissible to consider the facts of history in determining the meaning of the language of the Constitution It is also appropriate and helpful to consider, in connection with the historical background, the evil and mischief attempted to be remedied, the objects sought to be accomplished, and the scope of the remedy its terms imply.

State ex rel. Spire v. Beermann, 235 Neb. 384, 389-90, 455 N.W.2d 749, 752 (1990) (quoting *State ex rel. State Railway Comm'n v. Ramsey*, 151 Neb. 333, 340-41, 37 N.W.2d 502, 508 (1949) (citations omitted)).

Under art. IV, § 1, the candidate for Governor must select the candidate for Lieutenant Governor for the general election and "one vote shall be cast jointly for the candidates for Governor and Lieutenant Governor." The crucial inquiry in assessing the propriety of the statutory "party affiliation" rule is whether it is consistent with the intent and meaning of the constitutional "joint vote" requirement in art. IV, § 1.

In Nebraska, "[t]he Governor and Lieutenant Governor shall be elected on the partisan ballot." Neb. Rev. Stat. § 32-506 (2016). A candidate filing for a partisan office must "be a registered voter affiliated with the appropriate party if required pursuant to section 32-702." Neb. Rev. Stat. § 32-602(2) (Cum. Supp. 2020). A person cannot file a candidate filing form as a partisan candidate to have their name placed on the primary election ballot of a political party unless they are "a registered voter of the political party if required by section 32-702" and the party satisfies certain requirements. Neb. Rev. Stat. § 32-610 (Cum. Supp. 2020).

Thus, a person must be affiliated with and be a registered voter of a political party to have their name placed on the primary election ballot as the party's candidate for a partisan office. The offices of Governor and Lieutenant Governor are elected on a partisan ballot. Under § 32-619.01, the winning candidate of a political party in the primary election for Governor must select a candidate for Lieutenant Governor "of the same political

party" to run in the general election. Art. IV, § 1, provides that the candidate for Governor must select a Lieutenant Governor candidate and that one vote must be cast jointly for the candidates for Governor and Lieutenant Governor in the general election. The requirement in § 32-619.01 that a political party candidate for Governor receiving the most votes in the primary election must select a Lieutenant Governor candidate of the same political party for the general election contest for these partisan offices is consistent with the intent and meaning of the "joint vote" requirement in art. IV, § 1.

"The Nebraska Constitution is not a grant, but, rather, a restriction on legislative power, and the Legislature is free to act on any subject not inhibited by the Constitution." *Jaksha v. Thomas*, 243 Neb. 794, 798, 502 N.W.2d 826, 829 (1993). "[C]ourts can enforce only those limitations which the Constitution imposes." *Lenstrom v. Thone*, 209 Neb. 783, 789, 311 N.W.2d 884, 888 (1981). Art. IV, § 1, places no restriction on the Legislature's power to establish a party affiliation rule for nominees for Governor of a political party in selecting a candidate to run with them jointly on the general election ballot. Absent such a restriction in the Constitution, the Legislature was free to enact such a requirement in § 32-619.01.

Construing the "joint vote" requirement in art. IV, § 1, to permit § 32-619.01's "same political party" requirement is also consistent with the historical development of the language in Art. IV, § 1. That section previously required that "the candidates for Governor and Lieutenant Governor [be] nominated by the same party." 1969 Neb. Laws, ch. 417, § 1, p. 1428 (Neb. Const. art. IV, § 1 (Cum. Supp. 1972)). But the people removed that language in 2000, and in so doing, they demonstrated their intent to leave that issue to the Legislature. Notably, the people did not resolve that question in a different way - by, for example, directing that "the candidates for Governor and Lieutenant Governor need not be nominated by the same party." Rather, they decided that the Constitution would be silent. Because the Constitution does not take a position on whether a candidate for Lieutenant Governor must be of the same party as the candidate for Governor, it is open for the Legislature to decide.

The historical facts surrounding the Legislature's consideration of LR 14CA further confirm this conclusion. As originally introduced, LR 14CA required each candidate for Governor to select a Lieutenant Governor candidate "of the same political party status." 1999 Neb. Leg. Journal, 96th Leg., 1st Sess. at 157 (Jan. 12, 1999). Senator Chambers offered a floor amendment (FA23) to strike this language. *Id.* at 596 (Feb. 17, 1999). Opening discussion on the amendment, Senator Chambers stated "[w]e should just make a general statement in the constitution to make it clear that the person who is to be Lieutenant Governor will be selected by the person running for Governor." Floor Debate on LR 14CA, 96th Leg., 1st Sess. at 1149 (Feb. 7, 1999). He noted "there is no need for us to put this type of language in the constitution which would better be argued when we're

considering a statute." *Id.* at 1150. Senator Schimek, citing the existing constitutional language providing that votes were to be cast jointly for the Governor and Lieutenant Governor "nominated by the same party," raised a concern that adoption of FA23 "would change the meaning that is . . . in the constitution now." *Id.* In response, Senator Chambers stated that the language referred to by Senator Schimek was "to prevent, in the general election, the public having the option of voting for a Governor of one party and a Lieutenant Governor of another party . . ." by "put[ting] the Democrat for Governor and the Democrat for Lieutenant Governor on one spot on the ballot, and a vote cast was a vote for both of them. The same with the [Republican] side—a vote for one was a vote for both." *Id.* at 1154. He continued by stating he "was not changing anything by [his] amendment," explaining: "When the names appear on the ballot, there will still have to be one vote cast for the candidate for Governor and Lieutenant Governor of the same party on one ballot, the candidates for Governor and Lieutenant Governor for the other party on the other ballot." *Id.* Advocating that "we should put as little restrictive language in the constitution as possible," Senator Chambers stated:

It will still be clear, with the adoption of this amendment that I'm offering, that in the general election, which is the only time that a person will have to vote for a Lieutenant Governor, they must be of the same political party. One vote will be cast jointly for the Governor and Lieutenant Governor candidate of the same party. *Id.* at 1155.

After FA23 was adopted, Senator Schimek again expressed "concern[] about the Chambers amendment." *Id.* at 1780 (March 4, 1999). Senator Schrock, noting that the "original constitutional amendment" required the Governor candidate to "choose a Lieutenant Governor of the same party," stated: "[S]hould LR 14CA be passed this session then we will need enabling legislation in the statutes next year, and then the issue could be decided by this legislative body as to whether we should require that the Governor candidate choose a Lieutenant Governor candidate from their same party or not." *Id.* at 1781. Toward the end of debate, Senator Schrock urged advancement of the amendment, stating "that [the] issue of whether the Lieutenant Governor should be from the same political party can be addressed statutorily." *Id.* at 1798.

This history reflects a legislative understanding that the "joint vote" requirement authorized the Legislature to implement the amendment by enacting a statute imposing a party affiliation requirement. These historical facts further support concluding that the party affiliation rule in § 32-619.01 is consistent with art. IV, § 1.

B. The Party Affiliation Rule Does Not Impose an Additional Qualification for the Office of Lieutenant Governor.

The constitutional qualifications to be eligible for the offices of Governor and Lieutenant Governor are "hav[ing] attained the age of thirty years" and

being a resident and citizen of this state and the United States "for five years next preceding" election to office. Neb. Const. art. IV, § 2. You contend the party affiliation rule in § 32-619.01 "conflicts with the constitutional qualifications for eligibility for candidates for Governor and Lieutenant Governor because it requires consistency of party membership as eligibility for being candidates for these offices."

"[W]here the Constitution creates an office and enumerates the qualifications for eligibility to the office the legislature is without power to impose other conditions for eligibility." *State ex rel. Quinn v. Marsh*, 141 Neb. 436, 439, 3 N.W.2d 892, 894 (1942). *See also State ex rel. Brazda v. Marsh*, 141 Neb. 817, 830, 5 N.W.2d 206, 214 (1942) ("[W]hen a state Constitution creates an office and names the qualifications of the incumbent, the legislature has no authority to prescribe additional qualifications or to remove any of the requirements provided for by the Constitution.").

While this rule is well-established, the issue here is whether the party affiliation rule in § 32-619.01 imposes an additional qualification for the offices of Governor or Lieutenant Governor. As explained below, the party affiliation rule is not an additional qualification for the offices of Governor or Lieutenant Governor and thus does not violate art. IV, § 2.

In *Roberts v. Cleveland*, 48 N.M. 226, 149 P.2d 120 (N.M. 1944) [*Roberts*], the Supreme Court of New Mexico considered a challenge to the constitutionality of a statute requiring that a person be registered with a political party for a certain length of time to be eligible as that party's nominee for office. The relator asserted that the statute imposed an additional qualification for eligibility to the office of Representative in Congress in violation of the United States Constitution. *Id.* at ___, 149 P.2d at 121. While it was conceded "that the state legislature cannot add to or subtract from the qualifications to hold the office of Congressman," the court noted a "difference between the qualifications of a person to hold the office" and "the qualifications to enter the contest in the Primary Election for the nomination of [a party] as its candidate for said office." *Id.* "Every voter has a right to be a candidate for a public office if he possesses the qualifications required to fill the office. It does not necessarily follow that he can be the candidate of a particular political party." *Id.* "The statute provides when and how one may be a candidate of a political party. If he cannot fill the requirement so as to be the candidate of the political party of his choice, he may still be a candidate at the general election by petition." *Id.* Concluding that the statute did not impose an improper additional qualification for office, the court stated:

[N]o political party under our system can be compelled to put forward as its candidate one who does not affiliate with it. The voter at the general election may vote for whom he pleases but may not be deceived by false labels. It surely is within the power of the legislature to prevent such deception, and we think it clearly appears that it was intended to do so and, likewise, that it was not intended to enlarge upon or subtract

from the constitutional qualifications of our citizens to hold public office. We are determining the qualifications for nomination as the candidate of a political party, and not the right to be a candidate for election to the office. *Id.* at 122.

Roberts instructs that there is a distinction between qualifications necessary to be a candidate for an office and eligibility to be nominated as the candidate of a political party running for an office. Because § 32-619.01 applies to candidates of a "political party" for Governor and requires such candidates to select a Lieutenant Governor candidate of the "same political party," it imposes no qualification for either office.¹ The Legislature has authority to require that candidates of a political party seeking election to an office be affiliated with that party. This requirement does not impose an additional qualification for office. It merely recognizes "the power of the legislature to protect the various political parties in their right to present candidates at the general election who affiliate with the party that presents them." *Roberts*, 48 N.M. at ___, 149 P.2d at 121.²

C. The Party Affiliation Rule Does Not Violate the Rights of Candidates or Voters.

You further raise issues regarding whether § 32-619.01 "violates candidates' rights to choose running mates of their own choosing without regard to partisan designation," or "voters' rights to vote for candidates separate from political party or right to vote for candidates of different parties." It does not.

As explained above, the Legislature may require that candidates of a political party seeking election to an office be affiliated with that party. A candidate for Governor that does not wish to run as a candidate of a political party retains the option to be a candidate by petition and is free to select any person as a Lieutenant Governor candidate without regard to party affiliation. Neb. Rev. Stat. § 32-619 (2016). Section 32-619.01 only requires that a political party's candidate for Governor select a Lieutenant Governor candidate of the same political party. There is no improper restriction on a candidate's right to select a running mate.

Nor does § 32-619 improperly restrict the rights of voters. Again, art. IV, § 1, provides for a joint vote in the general election for the candidate for Governor that wins the primary election and the person that candidate selects for Lieutenant Governor. The Constitution does not permit a separate vote for Governor and Lieutenant Governor. Voters are not denied the right to vote for any candidates running jointly for Governor or Lieutenant Governor, whether they be on the ballot on a party basis or by petition.

D. Effect of a Political Party Nominee for Governor Selecting a Lieutenant Governor Candidate Who Is Not of the Same Political Party.

Finally, you ask us to address "[w]hat happens if a gubernatorial candidate chooses a running mate with no party affiliation or a different party affiliation" and, if so, "[w]ill that candidate for Governor be listed on the ballot?" As a member of the Legislature, you are entitled to ask our opinion about the constitutionality of pending or proposed legislation. While we have found it appropriate to address the constitutional issues you raise based on certain provisions in pending LB 635, your final questions regarding the effect of a political party nominee for Governor selecting a Lieutenant Governor candidate who is not of the same political party, and the placement of those candidates on the ballot, do not involve any pending legislation. Accordingly, we must decline to respond to these questions.

CONCLUSION

"A statute is presumed to be constitutional, and all reasonable doubts are resolved in favor of its constitutionality. *Yant v. City of Grand Island*, 279 Neb. 935, 939, 784 N.W.2d 101, 105 (2010). "The unconstitutionality of a statute must be clearly established before it will be declared void." *Id.* We conclude the "same political party" provision in § 32-619.01 is not in conflict with the Constitution's requirements that a candidate for Governor select the Lieutenant Governor candidate for the general election ballot and that "one vote shall be cast jointly for the candidates for Governor and Lieutenant Governor." Neb. Const. art. IV, § 1. This interpretation is consistent with the constitutional language and the historical facts in the legislative record. Further, the "same political party" requirement imposes no additional qualification for the office of Lieutenant Governor and places no improper limit on the selection of a running mate by the Governor candidate of a political party.

Very truly yours,
(Signed) DOUGLAS J. PETERSON
Attorney General
(Signed) L. Jay Bartel
Assistant Attorney General

pc Patrick J. O'Donnell
Clerk of the Nebraska Legislature

07-1416-29

¹ There is, of course, no "party affiliation" requirement for candidates for Governor seeking to be placed on the general election ballot by petition. Neb. Rev. Stat. § 32-619 (2016). Under the petition process, a person not seeking to be the candidate of a political party for the office of Governor may be a candidate for Governor and select a Lieutenant Governor candidate without any political party affiliation requirement. This further illustrates the party affiliation rule is not an additional qualification for these offices.

² There is some authority supporting the view that requiring a Lieutenant Governor candidate to be of the same political party as a candidate for Governor unconstitutionally adds to the constitutional qualifications for the office of Lieutenant Governor. *Opinion of the Justices*, 290 A.2d 645 (Del. 1972); Wash. Op. Att'y Gen. 1975 No. 4 (March 18, 1975), 1975 WL 165893. Unlike Nebraska, however, Delaware and Washington require the separate election of the Governor and Lieutenant Governor in the general election. While imposing a political party requirement when these offices are constitutionally required to be elected separately may well impose an additional qualification on a Lieutenant Governor candidate, Nebraska does not follow the separate vote model. Nebraska has chosen a "team ticket" model where the candidate for Governor selects the Lieutenant Governor candidate for the general election, and one vote is cast jointly for both candidates. See generally Yeargain, T. Quinn, *One Vote, Two Winners: Team-Ticket Gubernatorial Elections and the Need for Further Reform*, 75 U. Miami L. Rev. 751 (2021). Thus, the Delaware and Washington authority is not persuasive or relevant to interpreting our Constitution.

Opinion 21-015

SUBJECT: Constitutionality of LB 670 – Authorization of
Roadway Memorial Signs

REQUESTED BY: Senator Dave Murman
Nebraska Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
James A. Campbell, Solicitor General

INTRODUCTION

On March 2, 2021, you requested our opinion on the constitutionality of LB 670. That bill authorizes relatives of individuals killed on Nebraska roadways to apply to the Nebraska Department of Transportation (the Department) for roadway memorial signs commemorating their lost loved ones. Those signs display a safety message and a commemorative message about the deceased, including, at the request of the relative, an emblem of belief.

Your request includes two specific questions. First, you ask whether "the provision allowing a qualified relative the option to request . . . an emblem of belief . . . violate[s] the Establishment Clause of the First Amendment to the U.S. Constitution." We conclude that it does not. Second, you ask whether the Department would violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution if it denies a requested emblem of belief based on the criteria in LB 670. We likewise determine that it would not.

ANALYSIS

LB 670 authorizes the placement of memorial signs on Nebraska roadways "to raise public awareness about highway safety and the dangers of impaired driving and to afford families an opportunity to memorialize family victims." LB 670, § 4(1). Any "qualified relative" of a person killed on the roadways may request one of these memorial signs. *Id.* They do so by filling out a Department-created form and paying "a fee of seventy-five dollars." *Id.*

The signs are "erected by or at the direction of the Department . . . and maintained within the right-of-way at appropriate distances from roadways of the state primary system, but not within any municipality," and they are placed "as close to the location requested by a qualified relative as practicable." LB 670, § 5(1). Each sign will contain two messages: (1) "a safety message"; and (2) a message "memorializ[ing] and commemorat[ing] the deceased." *Id.* at § 5(2)(a). For the safety message, each sign will "[c]ontain one of the following messages: 'Please Drive Safely'; 'Seat Belts Save Lives'; 'Don't Drink and Drive'; 'Don't Text and Drive'; or 'Don't Drive Impaired.'" *Id.* at § 5(2)(d). And for the commemorative message, each sign will "[c]ontain the words 'In Memory of' and the name . . . of the deceased" and "an emblem of belief" if requested by "the qualified relative." *Id.* at § 5(2)(c).

An emblem of belief is "an emblem that represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent." LB 670, § 5(2)(c). "In the absence of evidence to the contrary, the department will accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system of a deceased eligible individual." *Id.* Although the "religion or belief system represented by an emblem need not be associated with or endorsed by a church, group, or organized denomination," the emblem cannot be a "social, cultural, ethnic, civic, fraternal, trade, commercial, political, professional, or military emblem[]." *Id.* Nor will the Department "accept any emblem that would have an adverse impact on the dignity and solemnity of the sign honoring the deceased person, including, but not limited to, emblems that contain explicit or graphic depictions or descriptions of sexual organs or sexual activities that are shocking, titillating, or pandering in nature and emblems that display coarse or abusive language or images." *Id.* All the requirements outlined in this paragraph mirror the requirements prescribed in a U.S. Department of Veterans Affairs' regulation defining the emblems of belief that may be placed on government-issued cemetery headstones or markers. *See* 38 C.F.R. § 38.632(b)(2). If the State "determines that [a] proposed emblem does not meet the criteria," it will allow the applicant to either omit "the part of the emblem that is problematic," if feasible, or choose "a different emblem." LB 670, § 5(2)(c).

An emblem of belief included on the list that the Department of Veterans Affairs has approved for government-issued headstones and markers "is presumed to meet the criteria" established in LB 670. LB 670, § 5(2)(c) (as amended). That list currently contains over 75 different emblems. *See Available Emblems of Belief for Placement on Government Headstones and Markers*, U.S. Dep't of Veterans Affairs, <https://www.cem.va.gov/cehm/hmm/emblems.asp>. Among them are Judaism's Star of David, the Buddhist Wheel of Righteousness, the Muslim Crescent and Star, Hindu imagery, and various emblems (such as Latin crosses) associated with different Christian denominations. *Id.* Also included are the Atheist symbol, the American Humanist Association's emblem, the Wiccan Pentacle, the Hammer of Thor, a Landing Eagle, a Sandhill Crane, and Druid imagery. *Id.*

Each memorial sign will be "blue with white lettering" that is "legible from the roadway." LB 670, § 5(2)(b). It will be "posted for five years," after which, if the relative does not file another application asking for the sign to remain "for an additional five years," "the sign shall be removed." *Id.* at § 5(2)(e). When the sign is removed, the relative has "the option of retaining the sign before the department discards or recycles it." *Id.*

For the reasons explained below, LB 670's authorization of these signs does not violate the Constitution.

1. The option to request an emblem of belief does not violate the Establishment Clause of the U.S. Constitution.

The Establishment Clause of the U.S. Constitution states that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I. While the text applies this prohibition only against Congress, the U.S. Supreme Court has long held that the Establishment Clause also restricts state governments. *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 8 (1947).

Allowing relatives to select an emblem of belief for their loved ones' memorial sign poses no Establishment Clause problem for two reasons. First, the Establishment Clause does not apply to the speech of a private individual, and a court would likely conclude that the emblem of belief on a memorial sign is the speech of the honored individual and her family instead of the government. Second, even if the emblem of belief is the government's speech, allowing relatives to select one does not violate the Establishment Clause because it is consistent with our national tradition of recognizing religion's importance in the lives of many Americans and does not impermissibly endorse religion.

- A. The Establishment Clause does not apply because the emblem of belief is the expression of the honored individual and her family rather than the government.

The Establishment Clause applies only to government speech—not the expression of private individuals. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 468 (2009) ("[G]overnment speech must comport with the Establishment Clause."); *Capitol Square Rev. & Advisory Bd. v. Pinette*, 515 U.S. 753, 767 (1995) (plurality opinion) ("By its terms [the Establishment] Clause applies only to the words and acts of *government*."). (emphasis in original)). As the U.S. Supreme Court has explained, "there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 302 (2000) (quoting *Board of Ed. of Westside Community Schools (Dist.66) v. Mergens*, 496 U.S. 226, 250 (1990) (opinion of J. O'Connor) (emphasis in original)).

Here, the emblem of belief on each memorial sign is either government speech or private speech within a government-created forum. If the former, then the Establishment Clause must be considered, but if the latter, the Clause is not violated. As we explain below, it is likely that a court would view the emblem of belief as private speech within a government-created forum and thus conclude that the Establishment Clause does not apply.

Numerous U.S. Supreme Court justices have already recognized that religious symbols on individual memorials are the private speech of the deceased instead of the government. For example, in 2019, the late Justice Ruth Bader Ginsburg, joined by Justice Sonia Sotomayor, wrote that the "privately selected religious symbols on individual graves" located on government land "are best understood as the private speech of each veteran." *Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2112 (2019) (Ginsburg, J., joined by Sotomayor, J., dissenting) (quoting Douglas Laycock, *Government-Sponsored Religious Displays: Transparent Rationalizations and Expedient Post-Modernism*, 61 Case W. Res. L. Rev. 1211, 1242 (2011)). Justice David Souter similarly acknowledged that religious symbols on gravestone "markers in Arlington Cemetery," which are selected by the fallen soldier's family, do "not look like government speech at all." *Summum*, 555 U.S. at 487 (Souter, J., concurring).

The U.S. Supreme Court has established factors for distinguishing government speech from private speech. Those factors ask whether (1) governments have historically used that speech "to convey state messages," (2) the speech is "closely identified in the public mind" with the government, and (3) the government has "direct control over the messages conveyed." *Matal v. Tam*, 137 S. Ct. 1744, 1760 (2017) (discussing *Summum* and *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015)). As applied here, those factors demonstrate that the emblems of belief at issue here are private (not government) speech.

First, governments have not historically used emblems of belief on individualized memorials to convey state messages. The closest historical analogues to LB 670's emblems of belief are the religious symbols placed on

the headstones of fallen soldiers in military cemeteries. But the government has not included those emblems to communicate its own messages; rather, it does so, as many U.S. Supreme Court justices have recognized, to "sho[w] respect for[] the individual honoree's faith and beliefs." *Am. Legion*, 139 S. Ct. at 2112 (Ginsburg, J., dissenting) (quoting *Salazar v. Buono*, 559 U.S. 700, 748 n.8 (2010) (Stevens, J., dissenting)).

Second, emblems of belief on individualized memorials located on public land are not closely identified in the public mind with the government. Those emblems appear next to the name of the deceased individuals, and the public commonly understands that the family of those individuals selects them. That imagery is thus "linked to . . . the individual honoree[]" rather than the government. *Am. Legion*, 139 S. Ct. at 2112 (Ginsburg, J., dissenting) (quoting *Salazar*, 559 U.S. at 748 n.8 (Stevens, J., dissenting)).

Third, even though the Department maintains ultimate approval authority over the emblem, the U.S. Supreme Court has made clear that such approval alone is not sufficient to transform private speech into government speech. In *Matal*, the federal government argued that trademarks are government speech because the federal government registers—and thereby approves—each one submitted. 137 S. Ct. at 1757-60. But the Court determined that such approval was not enough to make all trademarks government speech. If it were, then the approving governmental entity, which accepts so many different messages, is "babbling . . . incoherently" and "expressing contradictory views." *Id.* at 1758. To illustrate the point in this context, emblems of beliefs available under LB 670 include religious symbols tied to Judaism, Christianity, Islam, Buddhism, Hinduism, and Wicca, to name a few. But it is unreasonable to suggest that the State is simultaneously speaking all these varying messages about religion. Thus, the mere fact that the Department approves the emblems of belief does not transform the privately selected images into the government's speech. As the Court in *Matal* said, "private speech [cannot] be passed off as government speech by simply affixing a government seal of approval." *Id.*

The U.S. Supreme Court's decision in *Sumnum* further confirms that the emblem of belief on each memorial sign is private speech. Although the Court there held that permanent monuments on public land are typically government speech, it recognized that there are "circumstances in which the forum doctrine" that protects private speech "might properly be applied to a permanent monument." *Sumnum*, 555 U.S. at 480. In particular, the Court said that monuments on which citizens "meeting some . . . criterion[]" could place the name of a person to be honored or some other private message" are likely a form of private speech subject to forum analysis. *Id.* That is precisely what LB 670 creates by allowing relatives of people killed on Nebraska roadways to place the name of their loved ones and their emblem of belief on a memorial sign. Thus, these emblems are private (not government) speech.

Because your request asks specifically whether including the emblem of belief violates the Establishment Clause, our foregoing analysis has focused on whether the emblem is government or private speech. This opinion expresses no view on whether other aspects of the memorial sign—such as the five available safety messages ("Please Drive Safely," "Seat Belts Save Lives," "Don't Drink and Drive," "Don't Text and Drive," or "Don't Drive Impaired")—qualify as government speech.

B. Allowing relatives to select an emblem of belief is consistent with our national tradition of recognizing religion's importance in the lives of many Americans and does not impermissibly endorse religion.

Even if the emblem of belief is government speech, allowing relatives to select an emblem does not violate the Establishment Clause. The U.S. Supreme Court and other federal appellate courts have been unclear about what test applies to Establishment Clause challenges to religious symbols on public land. In some cases, courts have applied the so-called *Lemon* test as modified by Justice Sandra Day O'Connor's endorsement inquiry. *E.g.*, *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (establishing the three *Lemon* factors); *Am. Atheists, Inc. v. Davenport*, 637 F.3d 1095, 1117-18 (10th Cir. 2010) (applying the *Lemon* test when resolving an Establishment Clause challenge to cross-shaped roadside memorials). But in other cases, the U.S. Supreme Court and the U.S. Court of Appeals for the Eighth Circuit sitting en banc have applied a historical analysis. *E.g.*, *Van Orden v. Perry*, 545 U.S. 677, 686 (2005) (plurality opinion) (explaining that "the *Lemon* test" is "not useful in dealing with the sort of passive monument" at issue and that the Court's analysis instead was "driven both by the nature of the monument and by our Nation's history"); *ACLU Nebraska Found. v. City of Plattsmouth, Neb.*, 419 F.3d 772, 778 n.8 (8th Cir. 2005) (en banc) ("[W]e do not apply the *Lemon* test.").

The U.S. Supreme Court most recently discussed the appropriate test for these kinds of cases in its 2019 decision in *American Legion*. That case involved a challenge to a large cross-shaped World War I memorial that had been on public land since the 1920s. A majority of the Justices voted to uphold the memorial, but their reasoning was not uniform. The four-Justice plurality explained that "the *Lemon* test presents particularly daunting problems in cases . . . that involve the use, for ceremonial, celebratory, or commemorative purposes, of words or symbols with religious associations." *Am. Legion*, 139 S. Ct. at 2081. Instead of *Lemon*, the plurality opted for an "approach that focuse[d] on the particular" kind of monument or practice at issue "and look[ed] to history for guidance." *Id.* at 2087. Other Justices would have gone further by explicitly overruling *Lemon*. *See id.* at 2097 (Thomas, J., concurring) (preferring to "overrule the *Lemon* test in all contexts"); *id.* at 2101-02 (Gorsuch, J., concurring) (calling *Lemon* "a misadventure" and expressing the view that it is "now shelved").

Some have questioned whether *American Legion's* historical analysis is limited to cases challenging monuments that have stood for a long time or whether it extends to all monument cases. Opting for the broader reading, Justice Gorsuch said that the "message for our lower court colleagues seems unmistakable: Whether a monument . . . is old or new," apply the historical analysis rather than *Lemon. Id.* at 2102. Notably, many federal circuit courts since *American Legion* agree that *Lemon* no longer applies to public display cases. *E.g., Woodring v. Jackson Cty., Indiana*, 986 F.3d 979, 995 (7th Cir. 2021) ("*American Legion* requires us to analyze the County's [display] under the historical approach" because "at least six Justices rejected *Lemon* in cases that involve the use, for ceremonial, celebratory, or commemorative purposes, of words or symbols with religious associations" and "a majority of the Justices" endorsed "the historical approach") (quotation marks omitted); *Kondrat'yev v. City of Pensacola*, 949 F.3d 1319, 1322 (11th Cir. 2020) ("*American Legion* . . . jettisoned *Lemon* . . . at least for cases involving religious references or imagery in public monuments, symbols, mottos, displays, and ceremonies—in favor of an approach that focuses on the particular issue at hand and looks to history for guidance.") (quotation marks omitted); *id.* at 1326 ("*American Legion's* clearest message is this: *Lemon* is dead. Well, sort of. It's dead, that is, at least with respect to cases involving religious displays and monuments"); *Freedom From Religion Found., Inc. v. Cty. of Lehigh*, 933 F.3d 275, 281 (3rd Cir. 2019) ("*American Legion* confirms that *Lemon* does not apply to religious references or imagery in public monuments, symbols, mottos, displays, and ceremonies.") (quotation marks omitted).

Given this consensus after *American Legion*, it is likely that a court would apply the historical analysis, rather than the *Lemon* test, when reviewing LB 670's roadside memorials. But we need not definitively decide which test applies because allowing relatives to select an emblem of belief for the memorial signs passes constitutional muster under either approach.

Starting with the historical analysis, it "is driven both by the nature of the monument and by our Nation's history." *Van Orden*, 545 U.S. at 686 (plurality opinion). Courts "focus[] on the particular" kind of public display at issue "and look[] to history for guidance." *Am. Legion*, 139 S. Ct. at 2087 (plurality opinion). That historical inquiry uncovers an "unbroken" tradition of "official acknowledgment by . . . government of the role of religion in American life." *Van Orden*, 545 U.S. at 686 (plurality opinion) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 674 (1984)). Accordingly, "categories of monuments . . . with a longstanding history" are "constitutional" when they follow in the American "tradition" of recognizing "the important role that religion plays in the lives of many Americans." *Am. Legion*, 139 S. Ct. at 2089 (plurality opinion).

Americans have a long tradition of placing religious symbols on individualized memorials found on public land. The foremost example is the federal government's venerable practice of permitting the families of deceased veterans to mark their gravesites with religious imagery. Since

World War I, the federal government has allowed "a religious emblem" to be included "on government headstones." History of Government Furnished Headstones and Markers, U.S. Dept of Veterans Affairs, <https://www.cem.va.gov/history/hmhist.asp>. Initially, "[t]he choice of emblem was limited to the Latin Cross for the Christian faith and the Star of David for the Jewish faith." *Id.*; see also *Salazar*, 559 U.S. at 726 (Alito, J., concurring) (noting that "the graves of soldiers who perished in [World War I] were marked with either a white cross or a white Star of David"). Now, the approved emblems have expanded to include more than 75 images.

The emblems of belief on the memorial signs authorized by LB 670 are akin to this tradition of religious imagery on government-issued headstones. Both involve individualized memorials on public property bearing privately chosen religious emblems. Since LB 670 is consistent with our nation's long tradition of publicly acknowledging religion on government property, including on individual memorials, the memorials authorized by LB 670 do not violate the Establishment Clause under the historical analysis.

The conclusion is the same under the *Lemon* test, which imposes three requirements on governments. "First, the statute must have a secular legislative purpose." *Lemon*, 403 U.S. at 612. "[S]econd, its principal or primary effect must be one that neither advances nor inhibits religion." *Id.* Third, "the statute must not foster an excessive government entanglement with religion." *Id.* at 613 (quotation marks omitted); see also *Cunningham v. Lutjeharms*, 231 Neb. 756, 760, 437 N.W.2d 806, 810 (1989) (reciting and applying the *Lemon* test). Justice O'Connor slightly altered that test for challenges to displays on public land, and her approach eventually gained widespread acceptance. According to her, "[t]he purpose prong of the *Lemon* test asks whether government's actual purpose is to endorse or disapprove of religion," and "[t]he effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval." *Lynch*, 465 U.S. at 690 (O'Connor, J., concurring).

Permitting relatives to select an emblem of belief for the memorial signs satisfies the three *Lemon* factors. First, LB 670 undeniably has secular legislative purposes. The bill explicitly recognizes that the purposes of the memorial signs are "[1] to raise public awareness about highway safety and the dangers of impaired driving and [2] to afford families an opportunity to memorialize family victims." LB 670, § 4(1). Choosing an emblem of belief is an integral part of family members commemorating their loved ones. These twin purposes—"promot[ing] safety on the State's highways" and "honor[ing] fallen [motorists]"—are undoubtedly legitimate "secular" purposes. *Davenport*, 637 F.3d at 1118.

Second, the effect of allowing an emblem of belief does not convey a message of endorsement for any specific religion or for religion in general. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v.*

Valente, 456 U.S. 228, 244 (1982). But LB 670 does not do this because the available emblems of belief are associated with diverse religions, including but not limited to Judaism, Christianity, Islam, Buddhism, Hinduism, and Wicca. Nor does LB 670 prefer "religion to irreligion." *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 703 (1994). The emblem of belief "need not be associated with or endorsed by a church, group, or organized denomination," nor connected with religion at all. LB 670, § 5(2)(c). It may instead represent "a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent." *Id.* Indeed, many of the available emblems include nonreligious images, such as the American Humanist Association's symbol, the Hammer of Thor, a Landing Eagle, and a Sandhill Crane. Because options are available for the religious and irreligious alike, LB 670 simply does not endorse religion.

That the emblems are chosen by the honored individual's relatives further demonstrates that the government is not endorsing religion. The U.S. Supreme Court has consistently rejected Establishment Clause challenges when the alleged endorsement of religion arises from "the genuine and independent choices of private individuals." *Zelman v. Simmons-Harris*, 536 U.S. 639, 649 (2002). Here, a private person—the relative who applies for the memorial sign—selects the emblem of belief. Such privately chosen symbols, as Justice Ginsberg explained, "sho[w] respect for[] the individual honoree's faith and beliefs" but "do not suggest governmental endorsement of those faith and beliefs." *Am. Legion*, 139 S. Ct. at 2112 (Ginsburg, J., dissenting). "The goal of avoiding governmental endorsement does not require eradication of all religious symbols in the public realm." *Salazar*, 559 U.S. at 718 (Kennedy, J., joined by Roberts, C.J., and Alito, J.). The Establishment Clause "leaves room to accommodate divergent values within a constitutionally permissible framework." *Id.* at 719.

Third, LB 670 does not excessively entangle the government with religion. When approving a requested emblem of belief, the Department does not interact with any religious organizations. Nor does it decide whether the "religion or belief system represented by an emblem" is "associated with or endorsed by a church, group, or organized denomination." LB 670, § 5(2)(c). Instead, the Department determines whether the requested emblem "represents the decedent's religious affiliation or sincerely held religious belief system, or a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent." *Id.* And in so doing, the Department will generally "accept as genuine an applicant's statement regarding the sincerity of the religious or functionally equivalent belief system of a deceased eligible individual." *Id.* Because the Department does not interact with religious organizations or evaluate the correctness or value of any religious belief, LB 670 does not impermissibly intermingle the State in religious affairs.

Over ten years ago, the U.S. Court of Appeals for the Tenth Circuit applied the *Lemon* test and concluded that twelve-foot-tall cross-shaped

roadside memorials commemorating fallen Utah state troopers violated the Establishment Clause because "the cross memorials would convey to a reasonable observer that the state . . . is endorsing Christianity." *Davenport*, 637 F.3d at 1121. That case, however, is not persuasive when analyzing LB 670. Most importantly, it was decided long before *American Legion*, and thus its use of the *Lemon* test is suspect. But even under *Lemon*, the outcome there does not dictate the outcome here because those memorials were different from LB 670's memorial signs in at least three critical ways. First, the memorials in *Davenport* took the shape of a religious symbol (the cross), yet LB 670's memorials are the shape of a standard road sign. *See id.* at 1120 (noting that the Utah memorials were in the shape of "a Latin cross"). Second, all the Utah memorials featured religious symbolism associated with only one religion (Christianity), but here, LB 670 authorizes a vast array of diverse religious and nonreligious emblems. *See id.* at 1121 (observing that "all of the fallen [Utah] troopers are memorialized with a Christian symbol"). Third, the trooper memorials displayed the logo of the Utah Highway Patrol—a governmental agency—yet no state logo is found on LB 670's memorial signs. *See id.* (stating that the Utah memorials "conspicuously bear[] the imprimatur of a state entity"). For these reasons, even if the Utah cross memorials conveyed endorsement of Christianity, the very different memorial signs authorized by LB 670 do not impermissibly endorse religion.

In sum, whether a court applies the historical analysis or the *Lemon* test, LB 670's roadside memorials do not violate the Establishment Clause.

2. Denying an emblem of belief that does not meet LB 670's requirements would not violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution forbids a State from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. In essence, this is a directive "that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

"The general rule is that legislation is presumed to be valid and will be sustained" under the Equal Protection Clause "if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 440. A more demanding level of scrutiny is warranted only if the statute "impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 312 (1976) (per curiam) (footnotes omitted). Neither of those conditions is present here.

To begin with, LB 670's criteria for emblems of belief do not discriminate against a suspect class. While "religion" is an "inherently suspect distinction[]," *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976), LB

670 does not distinguish based on religion. The bill permits both (1) emblems of belief connected to religion and (2) emblems of belief related to "a sincerely held belief system" that is not religious but is "functionally equivalent to a religious belief system in the life of the decedent." LB 670, § 5(2)(c). Because LB 670 allows both religious and nonreligious emblems, it does not discriminate based on religion.

Nor does LB 670 infringe a fundamental right. The only potentially relevant fundamental right is freedom of expression protected by the Free Speech Clause of the First Amendment to the U.S. Constitution. *See* U.S. Const. amend. I (forbidding governments from "abridging the freedom of speech"). As explained above, LB 670's authorization of emblems of belief on the memorial signs creates a forum for private individuals to engage in expression. To determine whether the bill's parameters for those emblems violates the Free Speech Clause, it is first necessary to decide what type of speech forum LB 670 creates.

The U.S. Supreme Court has recognized three different kinds of forums for speech: (1) a traditional public forum; (2) a designated public forum; and (3) a nonpublic forum. A traditional public forum is a place, like a sidewalk or park, that has historically "been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45 (1983). A designated public forum is a location, such as a public school's "meeting facilities" or a "municipal theater," *id.*, that "has not traditionally been regarded as a public forum" but "is intentionally opened up for that purpose." *Sumnum*, 555 U.S. at 469. And a nonpublic forum is "a forum that is limited to use by certain groups or dedicated solely to the discussion of certain subjects." *Id.* at 470.

LB 670 creates a nonpublic forum. Government-created signs in public rights of way, unlike sidewalks or parks, are not places that have historically been used for private expression. Nor does LB 670 intentionally open memorial signs or rights of way for the widespread discussion of public questions. Rather, the government-created forum is limited to use by certain individuals (relatives of people killed on Nebraska roadways) and dedicated solely to certain subjects (safety and commemorative messages). That is a quintessential nonpublic forum.

In a nonpublic forum, the government may impose restrictions on speech that "reserve the forum for its intended purposes." *Perry Educ. Ass'n*, 460 U.S. at 46; *see also Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 830 (1995) (excluding certain content is "permissible if it preserves the purposes of that limited forum"). "Implicit in the concept of the nonpublic forum is the right to make distinctions in access on the basis of subject matter and speaker identity." *Perry Educ. Ass'n*, 460 U.S. at 49. It is well established that speech restrictions in a nonpublic forum are constitutional so long as they are (1) "reasonable in light of the purpose

which the forum at issue serves," *id.* at 49, and (2) "viewpoint neutral." *Sumnum*, 555 U.S. at 470.

LB 670's two main criteria for emblems of belief satisfy these requirements. The first criterion requires that the emblem represent a religion or "a sincerely held belief system that was functionally equivalent to a religious belief system in the life of the decedent." LB 670, § 5(2)(c). This limitation is reasonable in light of the forum's commemorative purpose. Death and the commemoration of death are closely tied to religion, religious beliefs, and other deeply held beliefs that are functionally equivalent to religion. It is thus sensible to restrict emblems of belief in this way. To be sure, LB 670 could have been drafted to allow applicants to choose "social, cultural, ethnic, civic, fraternal, trade, commercial, political, professional, or military emblems." *Id.* But it is not unreasonable for the legislature to exclude such symbols, perhaps worrying that some might lessen or detract from the solemn commemorative message that the memorial sign is supposed to convey. Moreover, restricting emblems to images associated with religion or a functionally equivalent belief system is viewpoint neutral. It identifies a permissible subject matter and allows varying views on those topics. This is a classic example of a content-based but viewpoint-neutral standard that is permitted in a nonpublic forum.

LB 670's second key criterion for emblems of belief prohibits imagery "that would have an adverse impact on the dignity and solemnity of the sign honoring the deceased person, including, but not limited to, emblems that contain explicit or graphic depictions or descriptions of sexual organs or sexual activities that are shocking, titillating, or pandering in nature and emblems that display coarse or abusive language or images." LB 670, § 5(2)(c). This too is directly related to the commemorative purpose of the sign. Emblems that harm the "dignity" of the deceased's memorial surely undercut the commemorative purpose of the forum. Therefore, it is reasonable for the government to exclude such images. Furthermore, this requirement excludes content in a viewpoint neutral manner. It does not matter if a "sexual," "coarse," or "abusive" image expresses a pro-religious or an anti-religious message—if it would undermine the dignity of the memorial, it is not permitted. The Free Speech Clause does not forbid such a modest effort to preserve the dignity of solemn memorials posted on the roadside for the public to see.

Since LB 670 does not infringe on a fundamental right or discriminate against a suspect class, any claim under the Equal Protection Clause would be subject to rational-basis review. *City of Cleburne*, 473 U.S. at 439. For all the reasons that the bill's restrictions are reasonable under the Free Speech Clause as discussed above, it easily withstands rational-basis review under the Equal Protection Clause. *See Perry Educ. Ass'n*, 460 U.S. at 54 ("We have rejected this contention [of impermissible content-based discrimination] when cast as a First Amendment argument, and it fares no better in equal protection garb."); *OSU Student All. v. Ray*, 699 F.3d 1053, 1067 (9th Cir. 2012) (observing that the "equal protection claims rise and fall

with the First Amendment claims" and that the U.S. Supreme Court "has noted that one analysis will often control both claims").

For these reasons, we conclude that the Department would not violate the Equal Protection Clause by denying an emblem of belief based on the criteria in LB 670.

CONCLUSION

Based on the information currently available to us, we conclude that LB 670 is constitutional. Allowing the deceased's relatives to choose from a diverse array of religious and nonreligious emblems of belief does not violate the Establishment Clause. And denying an emblem of belief that fails to conform to the prescribed criteria does not violate the Equal Protection Clause.

Very truly yours,
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(Signed) James A. Campbell
Assistant Attorney General

pc Patrick J. O'Donnell
Clerk of the Legislature

Opinion 21-016

SUBJECT: Interpretation of the Phrase "Actively Engaged in the Teaching Profession" in Neb. Rev. Stat. § 79-313 (2014).

REQUESTED BY: Senator Steve Erdman
Nebraska Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
L. Jay Bartel, Assistant Attorney General

INTRODUCTION

Persons who are "actively engaged in the teaching profession" are ineligible for membership on the State Board of Education ["State Board"]. Neb. Rev. Stat. § 79-313(1) (2014). You have asked our opinion on "two gray areas" concerning the meaning of this phrase. Restated, your specific questions are:

1. Does tutoring K-12 students for a stipend while serving on the State Board violate § 79-313(1)?
2. Does concurrently teaching high school students in a dual credit course offered at a community college, college, or university while serving on the State Board violate § 79-313(1)?

It is our long-standing policy not to provide opinions to members of the Legislature on the interpretation or constitutionality of existing statutes. Op. Att'y Gen. No. 157 (Dec. 24, 1985). Rather, we only issue opinions to state legislators which pertain "to pending or proposed legislation." *Id.* at 1. Although you reference no pending or proposed legislation, your request letter states you are considering introducing legislation to "clarify" the meaning of § 79-313. Accordingly, we will proceed to consider your questions.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Neb. Const. art. VII, § 3, provides:

The State Board of Education shall be composed of eight members, who shall be elected from eight districts of substantially equal population as provided by the Legislature. Their term of office shall be for four years each. Their duties and powers shall be prescribed by the Legislature, and they shall receive no compensation, but shall be reimbursed their actual expense incurred in the performance of their duties. The members of the State Board of Education shall not be actively engaged in the educational profession and they shall be elected on a nonpartisan ballot. (emphasis added).

In addition, Neb. Rev. Stat. § 79-313 (2014) provides:

No person shall be eligible to membership on the State Board of Education (1) who is actively engaged in the teaching profession, (2) who is a holder of any state office or a member of a state board or commission unless the board or commission is limited to an advisory capacity, or (3) unless he or she is a citizen of the United States, a resident of the state for a period of at least six months, and a resident of the district from which he or she is elected for a period of at least six months immediately preceding his or her election. (emphasis added).

In Op. Att'y Gen. No. 02013 (April 11, 2002), we concluded that "educational profession" and "teaching profession" have the same meaning. The legislative history of § 79-313 indicates the statute was enacted in accordance with the constitutional amendment creating the State Board. We reasoned that construing "teaching profession" and "educational profession" to have the same meaning was consistent with Op. Att'y Gen. No. 95004 (January 18, 1995) and *State ex rel. Brazda v. Marsh*, 141 Neb. 817, 830, 5 N.W.2d 206, 214 (1942) [*"Brazda"*], holding that "when a state Constitution creates an office and names the qualifications of the incumbent, the legislature has no authority to prescribe additional qualifications or to remove any of the requirements provided for by the Constitution." Op. Att'y Gen. No. 02013 at 7. We concluded that if the terms had different meanings, § 79-313 could be construed to impose an additional eligibility requirement for membership on the State Board contrary to the rule in *Brazda*. *Id.* at 8.

We also "conclude[d] that 'teaching profession' and 'educational profession' include positions in a school setting other than teaching." Op. Att'y Gen. No. 02013 at 8. In reaching this conclusion, we noted an earlier opinion construing the prohibition in Neb. Rev. Stat. § 72-201(2) against a member of the Board of Educational Lands and Funds being actively engaged in the "teaching profession." We relied on the legislative intent language in Neb. Rev. Stat. § 79-1280, now codified as § 79-859, which "declares teaching in public schools in this state and the related services, including administrative and supervisory services, to be a profession, with all of the rights, responsibilities, and privileges accorded other recognized professions." *Id.* (citing Op. Att'y Gen. No. 33 at 2 (February 25, 1983)). Accordingly, "'educational profession' as used in Neb. Const. art. VII, § 3 and 'teaching profession' as used in § 79-313 have the same meaning and that definition includes not only teaching but also services related to teaching, such as administrative and supervisory services." Op. Att'y Gen. No. 02013 at 9.

ANALYSIS

Recently, in *State ex rel. Peterson v. Shively*, 310 Neb. 1, 10-11, ___ N.W.2d ___, ___ (2021), the Nebraska Supreme Court recounted the following general rules governing the interpretation of constitutional provisions:

The words in a constitutional provision must be interpreted and understood in their most natural and obvious meaning unless the subject indicates or the text suggests that they are used in a technical sense. If the meaning of a constitutional provision is clear, the court will give to it the meaning that obviously would be accepted and understood by laypersons. Constitutional provisions are not subject to strict construction and receive a broader and more liberal construction than do statutes. It is the duty of courts to ascertain and to carry into effect the intent and purpose of the framers of the constitution or of an amendment thereto. (footnotes omitted).

"Educational" means "pertaining to education." <https://www.dictionary.com/browse/educational>. "Education" is "the act or process of imparting or acquiring knowledge, developing the powers of reasoning and judgment, and generally of preparing oneself or others intellectually for mature life." <https://www.dictionary.com/browse/education>. "Teaching" is "the act or profession of a person who teaches." <https://www.dictionary.com/browse/teaching>. "Profession" means "a vocation requiring knowledge or some department of learning or science; . . . the body of persons engaged in an occupation or calling." <https://www.dictionary.com/browse/profession>.

Art. VII, § 3 and § 79-313(1) prohibit members of the State Board from being "actively engaged" in the educational or teaching profession. Construing the meaning of the term "actively engaged in the day to day

labor and management of" a farm or ranch in Neb. Const. art. XII, § 8, the Nebraska Supreme Court found the "most natural and obvious meaning" of "actively" is "constantly engaged." *Hall v. Progress Pig, Inc.*, 259 Neb. 407, 414, 610 N.W.2d 420, 427-28 (2000).

Your first scenario involves a person tutoring K-12 students for a stipend. While you do not further define this role, a "tutor" ordinarily means "a person employed to instruct another in some branch or branches of learning, especially a private instructor." <https://www.dictionary.com/browse/tutor>. Teachers, as well as educational administrators and supervisors, are required to hold Nebraska certificates or permits. *See* Neb. Rev. Stat. §§ 79-801 and 79-802 (2014). While a tutor may be certificated, there is no statute or rule imposing such a requirement or regulating persons engaged in tutoring. While tutors provide instruction to students, this type of assistance does not seem to fall within the common understanding of what constitutes the "educational" or "teaching" profession. That is particularly true if the tutoring is not performed on a constant and regular basis, which would be necessary to meet the "actively engaged" requirement.

Your second question concerns teaching a course at a community college, college, or university where high school students can participate and receive dual credit. In 2008, this office issued an informal opinion to a member of the State Board addressing whether he could teach a class at the University of Nebraska at Omaha ["UNO"] in light of the constitutional requirement that members not be actively engaged in the educational profession. Op. Att'y Gen. No. I08012 (July 1, 2008). We noted the underlying objective of the prohibition against State Board members being actively engaged in the educational profession was "to prevent conflicts of interest." *Id.* at 3. The State Board, along with the Commissioner of Education, are "responsible for the general supervision and administration of the Nebraska school system, which encompasses grades Kindergarten through 12." *Id.* (emphasis in original). The member's proposed employment, however, involved teaching a class at UNO, which is not part of the Nebraska school system and not under the State Board's supervision. Because the potential for any conflict of interest due to the member's service on the State Board and teaching the class was "negligible," we concluded that the member's teaching of a class at UNO was likely permissible. *Id.* at 3-4.

Applying the reasoning of this opinion here, we find that a member's teaching of a community college, college, or university course likely does not constitute actively engaging in the "educational profession" within the prohibition in art. VII, § 3. While high school students would participate in the class for dual credit, the instruction is still part of a post K-12 educational curriculum, which is outside the State Board's general supervision. As there is no real potential conflict of interest posed by a member engaging in this activity, we doubt it would be construed as barred by the constitutional prohibition.

Finally we point out that, to the extent you contemplate legislation, bear in mind that the statutory prohibition against members of the State Board being "actively engaged in the teaching profession" in § 79-313(1) is based on, and has the same meaning as, the constitutional prohibition in art. VII, § 3, against members being "actively engaged in the educational profession." "The Legislature's power of definition may not be employed to nullify or circumvent the provisions of the Nebraska Constitution." *MAPCO Ammonia Pipeline, Inc. v. State Bd. of Equalization & Assessment*, 238 Neb. 565, 571, 471 N.W.2d 734, 739 (1991). Any legislative attempt to amend the statutory prohibition in § 79-313 must be consistent with the intent and meaning of the constitutional requirement that State Board members not be actively engaged in the educational profession.

Very truly yours,
DOUGLAS J. PETERSON
(Signed) L. Jay Bartel
Assistant Attorney General

pc Patrick J. O'Donnell
Clerk of the Nebraska Legislature

07-1418-29

Opinion 21-018

SUBJECT: Constitutionality of the Absence of a Voter Petition Process for Reorganization of School Districts That Are Members of a Learning Community

REQUESTED BY: Senator Robert Hilkemann
Nebraska Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
Leslie S. Donley, Assistant Attorney General

INTRODUCTION

You have requested an opinion of the Attorney General as to the constitutionality of certain school reorganization statutes which impact the Learning Community of Douglas and Sarpy Counties ("Learning Community"). You state in your request letter that voters in Nebraska "generally have the statutory right to petition to reorganize their school district," but voters who reside within a learning community "are expressly deprived of this petition right." You point to the difference between statutes which authorize legal voters to petition for school reorganization and the Learning Community Reorganization Act ("LCRA"), Neb. Rev. Stat. §§ 79-4,117 to 79-4,129 (2014, Cum. Supp. 2020), where plans for reorganization may only be proposed by the school boards of the affected districts. In this respect, you state that "in *any* public school district

*anywhere in Nebraska other than Douglas and Sarpy Counties,*¹ the voters may petition for the reorganization of their district, notwithstanding the views of their school board members. But voters in my district—and indeed in the entire Learning Community of Douglas and Sarpy Counties—lack this petition right." (Your emphasis.)

You indicate that you "have concerns regarding the constitutionality of the differentiated treatment" of Nebraskans under the school district reorganization law. As you consider legislation to address this issue, you have sought our opinion on the following questions:

1. Would Nebraska's exclusion of learning community voters from the school district reorganization petition right otherwise afforded to every other voter in the state withstand equal protection scrutiny under the Nebraska and federal Constitutions?

This question includes, but is not limited to, the following subissues:

- a. Would the petition right afforded under the Reorganization of School Districts Act sufficiently parallel the fundamental right to petition guaranteed by the First Amendment, such that Nebraska's exclusion of learning community voters from the reorganization petition right would be subject to a heightened—*i.e.*, greater than rational basis—level of judicial scrutiny?
 - b. Even if Nebraska's exclusion of learning community voters from the reorganization petition right is subject only to rational basis scrutiny, what legitimate interest does the state have in restricting the reorganization initiation right to school boards in learning communities, but not everywhere else in the state?
2. Other than equal protection, would the exclusion of learning community voters from the reorganization petition right suffer from any other constitutional infirmity known to the Attorney General, including, but not limited to, violating the special legislation clause under Article III, Section 18 of the Nebraska Constitution?

BACKGROUND

In 2006, the Nebraska Legislature enacted LB 1024, creating "a new type of educational service unit . . . to be referred to as a learning community."² Neb. Rev. Stat. § 79-2101 (2014) defines learning community as "a political subdivision which shares the territory of member school districts and is governed by a learning community coordinating council." Pursuant to Neb. Rev. Stat. § 79-2102 (2014), "[a] learning community shall be established for each city of the metropolitan class and shall include all school districts for which the principal office of the school district is located in the county where the city of the metropolitan class is located and all school districts for which the principal office of the school district is located in a county that

has a contiguous border of at least five miles in the aggregate with such city of the metropolitan class."

The petition process referenced in your opinion request is set out in Neb. Rev. Stat. §§ 79-413 to 79-422 (2014, Cum. Supp. 2020, Supp. 2021), not the Reorganization of School Districts Act ("RSDA"), Neb. Rev. Stat. §§ 79-432 to 79-451 (2014, Cum. Supp. 2020, Supp. 2021).³ With respect to petitions from legal voters, § 79-413 provides, in pertinent part:

(1) The State Committee for the Reorganization of School Districts ["State Committee"] created under section 79-435 may create a new school district from other districts or change the boundaries of any district that is not a member of a learning community upon receipt of petitions signed by sixty percent of the legal voters of each district affected. If the petitions contain signatures of at least sixty-five percent of the legal voters of each district affected, the state committee shall approve the petitions.

(2) Petitions proposing to change the boundaries of existing school districts that are not members of a learning community through the transfer of a parcel of land, not to exceed six hundred forty acres, shall be approved by the state committee when the petitions involve the transfer of land between Class III or IV school districts or when there would be an exchange of parcels of land between Class III or IV school districts and the petitions have the approval of at least sixty-five percent of the school board of each affected district.

(3)(a) Petitions proposing to create a new school district or to change the boundary lines of existing school districts that are not members of a learning community, any of which involves the transfer of more than six hundred forty acres, shall, when signed by at least sixty percent of the legal voters in each district affected, be submitted to the state committee. The state committee shall, within forty days after receipt of the petition, hold one or more public hearings and review and approve or disapprove such proposal.⁴

Neb. Rev. Stat. § 79-413 (Cum. Supp. 2020). Under this provision, petitions must contain the items listed in § 79-419 when a new district is created from other districts. In addition, § 79-415 provides that petitions "may be initiated and accepted by the school board or board of education of any district that is not a member of a learning community."

"Reorganization" under the LCRA "means the formation of new school districts that will become members of a learning community, the alteration of boundaries of established school districts that are members of a learning community, the dissolution or disorganization of established school districts that are members of a learning community through or by means of any one or combination of the methods set out in section 79-4,120, and any other alteration of school district boundaries involving a school district that is a member of a learning community" Neb. Rev. Stat. § 79-4,118(2)

(2014). Reorganization is accomplished by one or more of the following methods:

(1) The creation of new districts; (2) the uniting of one or more established districts; (3) the subdivision of one or more established districts; (4) the transfer and attachment to an established district of a part of the territory of one or more districts; and (5) the dissolution or disorganization of an established district for any of the reasons specified by law.

Neb. Rev. Stat. § 79-4,120 (2014). Pursuant to § 79-4,126(1), "[t]he school board of any school district in a learning community may propose a plan of reorganization." Such plan may be submitted to the State Committee when approved by "at least sixty percent of the members of the school board of each affected school district . . ." *Id.* The contents of any plan must include the items set out in § 79-4,123, including

[a] summary of the reasons for each proposed change, realignment, or adjustment of the boundaries which shall include, but not be limited to, an explanation of how the plan complies with any statutory requirements for learning community organization and an assurance that the plan does not increase the geographic size of any school district that has more than twenty-five thousand formula students for the most recent certification of state aid pursuant to section 79-1022[.]

The State Committee is required to hold one or more public hearings on any plan of reorganization prior to approval. § 79-4,122. In determining whether to approve a plan, the State Committee must consider the following criteria:

(1) the educational needs of pupils in the learning community, (2) economies in administration costs, (3) the future use of existing satisfactory school buildings, sites, and play fields, (4) the convenience and welfare of pupils, (5) transportation requirements, (6) the equalization of the educational opportunity of pupils, (7) the amount of outstanding indebtedness of each district and proposed disposition thereof, (8) the equitable adjustment of all property, debts, and liabilities among the districts involved, (9) any additional statutory requirements for learning community organization, and (10) any other matters which, in its judgment, are of importance.

§ 79-4,121. Once the State Committee approves a plan or part of a plan, it shall be designated as the "final approved plan" and submitted to the county clerk pursuant to § 79-4,128 and to the boards of the affected school districts. § 79-4,126(2).

ANALYSIS

The Fourteenth Amendment of the U.S. Constitution prohibits the state from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend XIV, § 1. Article I, § 3 of the Nebraska Constitution states that "[n]o person shall be deprived of life, liberty, or property, without due process of law, nor be denied equal protection of the laws." When a statute is challenged under the Equal Protection Clause, "[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985); *Pick v. Nelson*, 247 Neb. 487, 528 N.W.2d 309 (1995); *Robotham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992). "When a classification created by state action does not jeopardize the exercise of a fundamental right or categorize because of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest." *Citizens of Decatur for Equal Educ. v. Lyons-Decatur School Dist.*, 274 Neb. 278, 303, 739 N.W.2d 742, 763 (2007) ["*Citizens of Decatur*"].

I. The Equal Protection Clause Protects People, Not Geographic Areas.

In *Hawkins v. Johanns*, 88 F. Supp. 2d 1027 (D. Neb. 2000) ["*Hawkins*"], the court considered an equal protection challenge brought by residents of Class I (elementary only) school districts. At issue were statutes that required association between Class I districts and other districts (Class II-VI) and imposed restrictions on Class I districts pertaining to budgets, tax levies, special building funds, and merger, dissolution or reorganization. The plaintiffs claimed they were treated differently because their school districts lacked the same powers as the other districts in the state. Prior to determining the level of scrutiny to be applied, the court noted that "the Equal Protection Clause protects people and not places, such as political subdivisions of a state," citing *Missouri v. Lewis*, 101 U.S. 22 (1879) ["*Lewis*"]. *Id.* at 1042. In *Lewis*, the U.S. Supreme Court upheld a Missouri law that gave all citizens in the state, except those residing in four counties and the City of St. Louis, a right to appeal to the Missouri Supreme Court. The Court observed that

[e]ach State has the right to make political subdivisions of its territory for municipal purposes, and to regulate their local government. . . . The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. . . . If diversities of laws and judicial proceedings may exist in the several States without violating the equality clause in the Fourteenth Amendment, there is no solid reason why there may not be such diversities in different parts of the same State.

Lewis, 101 U.S. at 30-31. The *Hawkins* court stated that "the *Lewis* rule applies where the statutory rights of citizens of a state are unequal because

of the way in which that state has created and empowered political subdivisions." *Hawkins*, 88 F. Supp. 2d at 1042. The court further stated that

[t]he *Lewis* doctrine stands for the proposition that such inequality of power does not (1) warrant an inference that the Equal Protection Clause is violated or (2) permit the court to ignore the separate identities and boundaries of the subdivisions when it conducts an equal protection analysis. Therefore, in deciding what level of scrutiny to apply, we start with the assumption that the State of Nebraska is free to create political subdivisions even though Nebraska's law lands unequally on the residents of those subdivisions. To put it simply, the court should not be suspicious of differences created by political subdivisions.

Id. at 1042-1043.⁵

Courts in other jurisdictions have applied the *Lewis* rule when the distinctions at issue are geographically based. In *Salsburg v. Maryland*, 346 U.S. 545 (1954), the U.S. Supreme Court considered the validity of a criminal statute that made illegally procured evidence inadmissible except in prosecutions in one particular county for violations of state gambling laws. The Court found that the statute did not violate equal protection of the law, stating: "We find little substance to appellant's claim that distinctions based on county areas are necessarily so unreasonable as to deprive him of the equal protection of the laws guaranteed by the Federal Constitution. The Equal Protection Clause relates to equality between persons as such rather than between areas. . . . Territorial uniformity is not a constitutional requisite." *Id.* at 550-552. See also *McGowan v. Maryland*, 366 U.S. 420 (1961) (Sunday closing laws that discriminated between various counties held not to violate equal protection.); *Reeder v. Kansas City Board of Police Commissioners*, 796 F.2d 1050, 1053 (8th Cir. 1986) ("So long as all persons within the jurisdictional reach of the statute are equally affected by the law, it matters not that those outside the territorial reach of the law are free to behave differently."); *Sherwood School Dist. 88J v. Washington Cty. Education Service Dist.*, 167 Or. App. 372, 6 P.3d 518 (2000) ["*Sherwood*"] (Statute which denied voters within affected geographical area the right to bring remonstrance petition, where the statute was intended to resolve longstanding dispute between school districts and improve traffic flow in the affected areas, found not to violate equal protection.).

You assert in your request letter that legal voters in the Learning Community are expressly denied the petition right given to the voters in all other public school districts in the state. While the Learning Community may share the territory of member school districts, it is not a school district. It is a separate and distinct political subdivision, governed by a coordinating council. The Learning Community is a clear example of how the statutory rights of citizens are unequal based on how the Legislature "created and empowered political subdivisions." Based on *Lewis* and its progeny, no equal protection violation is implicated by the fact that legal voters outside

the Learning Community have a right to petition for school boundary changes, while Learning Community voters do not.

II. The Legal Voters in the Learning Community Have No Right to Petition to Change School District Boundaries.

Neb. Const. art. VII, § 1 states, in part: "The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years." "What methods and what means should be adopted in order to furnish free instruction to the children of the state has been left by the constitution to the legislature." *Affolder v. State*, 51 Neb. 91, 93, 70 N.W. 544, 545 (1897). "Nebraska's constitutional history shows that the people of Nebraska have repeatedly left school funding decisions to the Legislature's discretion." *Nebraska Coalition for Educational Equity and Adequacy v. Heineman*, 273 Neb. 531, 550, 731 N.W.2d 164, 179 (2007). "This provision of the Constitution leaves all matters pertaining to schools and school districts, their creation, dissolution, government, and control with the Legislature. In all such matters the State is supreme." *Farrell v. School Dist. No. 54, Lincoln Cty.*, 164 Neb. 853, 858, 84 N.W.2d 126, 131 (1957). In *Halstead v. Rozmiarek*, 167 Neb. 652, 660-661, 94 N.W.2d 37, 43-44 (1959), the Nebraska Supreme Court stated:

A school district in this state has no territorial integrity. It is subject to the reserve power of the state exercised through administrative authority to change its territory according to current educational needs and good educational principles. The state may change or repeal all powers of a school district, take without compensation its property, expand or restrict its territorial area, unite the whole or a part of it with another subdivision or agency of the state, or destroy the district with or without the consent of the citizens.

See also *Petition of DeJonge*, 179 Neb. 539, 545, 139 N.W.2d 296, 300 (1966) ("The state is supreme in the creation and control of school districts and may as it thinks proper, modify or withdraw any of their powers, or destroy such school districts without consent of residents thereof, or even over their protests."); *Kaup v. Sweet*, 187 Neb. 226, 229, 188 N.W.2d 891, 894 (1971) ("[T]he Legislature has plenary power over the boundaries of school districts."); *Clark v. Sweet*, 187 Neb. 232, 234, 188 N.W.2d 889, 891 (1971) ("[T]he inhabitants of school districts have no vested rights in the territorial integrity of school districts."); *McDonald v. Rentfrow*, 176 Neb. 796, 800, 127 N.W.2d 480, 483 (1964) ("The fixing of boundaries of school districts is exclusively a legislative function, and it may be properly delegated to a subordinate agency, providing the Legislature prescribes the manner and the standards under which the power of the designated board may be exercised."); and 78 C.J.S., *Schools and School Districts*, § 15 ("The formation of school districts is a governmental function and, generally, a state legislative function. . . . [T]he legislature has power to create, abolish, divide, merge or alter school districts, or to prescribe or change the form of

organization and functions of school districts, and its power is plenary, or unrestricted, but may be delegated.").

The Legislature has the sole power to determine school district boundaries. It has delegated some of this authority with the enactment of the petition process provisions in §§ 79-413–79-422, the RSDA and the LCRA, among others. Those statutes set out the procedures through which school reorganization may be achieved at the local level and represent the current official policy of school reorganization in Nebraska. Since the Legislature's power with respect to school district's boundaries is supreme, there is no right, either express or implied, to petition for school boundary changes.

III. The First Amendment Right to Petition the Government for Redress of Grievances Does Not "Sufficiently Parallel" the Petition Right Authorized in § 79-413 *et seq.*

The First Amendment provides that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for a redress of grievances." U.S. Const. amend. XIV. The Nebraska Constitution also provides that "[t]he right of the people peaceably to assemble to consult for the common good, and to petition the government, or any department thereof, shall never be abridged." Neb. Const. art. I, § 19. "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." *U.S. v. Cruikshank*, 92 U.S. 542, 552 (1875). "The right to petition is cut from the same cloth as the other guarantees of [the First Amendment], and is an assurance of a particular freedom of expression." *McDonald v. Smith*, 472 U.S. 479, 482 (1985). "[T]he rights to assemble peaceably and to petition for a redress of grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected both in origin and in purpose, with the other First Amendment rights of free speech and free press." *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967).

The right to petition extends to all departments of government, and includes the right to access the courts. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). "[T]he Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes." *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011). "But 'the text of the First Amendment [does not] speak in terms of successful petitioning—it speaks simply of 'the right of the people . . . to petition the Government for a redress of grievances.'" *Santa Fe Alliance for Public Health and Safety v. City of Santa Fe*, 993 F.3d 802, 819 (10th Cir. 2021) ["*Santa Fe*"] (quoting *BE & K Const. Co. v. NLRB*, 536 U.S. 516, 532 (2002) (omission in original)).

With these principles in mind, we have considered your question as to whether the right to petition for a boundary change sufficiently parallels the First Amendment right to petition such that the exclusion of the petition process for Learning Community voters would be subject to a heightened level of scrutiny, i.e., above rational basis. In this respect, we have identified no cases which would establish, infer or suggest that the constitutional right to petition the government is in any way analogous to petitioning the government to change a school district boundary which, as previously discussed, is strictly a legislative function. For example, in *Baptiste v. Kennealy*, 490 F. Supp. 3d 353 (D. Mass. 2020), a recent case involving a challenge to the legislative moratorium on residential evictions due to the COVID-19 emergency, the court stated:

"In a nutshell, while there is a constitutional right to court access, there is no complementary constitutional right to receive or be eligible for a particular form of relief." *Inmates of Suffolk Cnty. Jail*, 129 F.3d at 660. This means that a legislature may, among other things, alter rights and remedies without violating the First Amendment right to petition if doing so does not violate another guarantee of the United States Constitution.

Id. at 393. *See also Santa Fe* (Alliance members' right to petition the government was not violated under telecommunications legislation because local officials could not adopt their desired outcome and because the members could not prevail on legal claims seeking compensation for injuries allegedly caused by radio-frequency emissions.); *Doherty v. Merck & Co., Inc.*, 892 F.3d 493 (1st Cir. 2018) (Maine statute prohibiting wrongful birth actions did not infringe on patient's First Amendment right to petition.); *Patchak v. Jewell*, 828 F.3d 995 (D.C. Cir. 2016) (Legislation which removed federal court jurisdiction over any claims relating to Indian land taken into trust on behalf of the tribe for casino use did not violate resident's First Amendment right to petition.); *Ruiz v. Hull*, 191 Ariz. 441, 457, 957 P.2d 984, 1000 (1998), *cert. denied*, 525 U.S. 1093 (1999) ("The right to petition bars state action interfering with access to the legislature, the executive branch and its various agencies, and the judicial branch."); *Highland Park Women's Club v. Dept. of Revenue*, 206 Ill. App. 3d 447, 459, 564 N.E.2d 890, 897 (1990) (The First Amendment right to petition did not entitle plaintiff to a specific administrative remedy; the right only "entitles citizens to communicate and address their government in matters which they deem to be important and to lodge complaints with appropriate governmental agencies.").

Legal voters in the Learning Community have a First Amendment right to bring their district boundary concerns to their local school boards, the Learning Community Coordinating Council, county boards, the State Committee, the Nebraska Legislature, the governor, etc. Learning Community voters do not have a First Amendment right to a specific remedy or outcome, i.e., a boundary change. Since the First Amendment right is inapposite to the petition right set out in the reorganization statutes,

there is no basis to apply a heightened level of scrutiny to the challenge presented.

IV. The Absence of a Petition Process for Learning Community Voters Does Not Violate the Equal Protection Clause.

We will now turn to your question as to whether the absence of a petition process for Learning Community voters violates the Equal Protection Clause or art. I, § 3. Since the classification does not implicate a fundamental right or suspect class,⁶ any challenge would be subject to rational basis scrutiny. Moreover, "[u]nder the Fourteenth Amendment, differentiation on the basis of geographic location is subject to rational basis analysis only. *Sherwood*, 167 Or. App. at 393, 6 P.3d at 531. Under that standard, Nebraska would have to demonstrate that the absence of the petition process for Learning Community voters is based upon a legitimate public purpose and that the separate classification bears a reasonable relation to that purpose.

As originally enacted, the boundaries of all school districts required to be in the learning community would remain as they existed on March 1, 2006, until a learning community was formed. 2006 Neb. Laws LB 1024, § 109, codified at Neb. Rev. Stat. § 79-2107. Legislation enacted in 2007 Neb. Laws LB 647, § 41 "permanently froze school district boundaries." *Sarpy County Farm Bureau v. Learning Community of Douglas and Sarpy Counties*, 283 Neb. 212, 234, 808 N.W.2d 598, 615 (2012) [*Sarpy Cty. Farm Bureau*"]. In 2016, the Legislature outright repealed § 79-2107. 2016 Neb. Laws LB 1067, § 70.

In *Sarpy Cty. Farm Bureau*, the Nebraska Supreme Court considered an action brought by three taxpayers seeking a declaration that the Learning Community's common general fund levy was unconstitutional. The court's summary of the "extensive" legislative history of the Learning Community indicates that during the committee hearing, the principal introducer of LB 1024 stated that the bill "was intended to address 'the metro area school organization issue.'" *Id.* at 232, 808 N.W.2d at 614. This issue involved an attempt by Omaha Public Schools ("OPS") to "expand its school district boundaries to the city limits of Omaha" *Id.* at 233, 808 N.W.2d at 614. The plan, known as "One City, One School District," was predicated on two statutes: Section 79-409, which provided in part that "[e]ach incorporated city of the metropolitan class in the State of Nebraska shall constitute one Class V school district" (2003) and § 79-535 ("All schools erected or organized within the limits of cities of the metropolitan class shall be under the direction and control of the board of education") (2003). Under the plan, OPS would assume control of a number of schools currently in the Millard and Ralston school districts located within the boundaries of the City of Omaha. In addition, schools located within Elkhorn Public Schools would be subject to the same proposal in the event the City of Elkhorn was annexed into the City of Omaha.

At an open meeting on June 6, 2005, the OPS Board of Education unanimously adopted a resolution directing OPS administration and legal counsel "to take all necessary steps to assure that all schools organized or existing within the city of Omaha are under the direction of the [OPS] Board of Education, that all property and students within the city of Omaha are part of [OPS], that [OPS] has the means necessary to provide the necessary education to all such students, and to otherwise carry out the intent of the Legislature that as the city of Omaha grows, Omaha Public Schools also grow." Minutes of the OPS Board of Education, June 6, 2005 at 27, 28. The proposal came in the midst of pending litigation brought by OPS in 2003 seeking a declaration in the Douglas County District Court that the state's school funding system was unconstitutional. *See Douglas County School District 0001 a/k/a Omaha Public Schools, et al. v. Heineman*, Doc. 1028, No. 017, Douglas County District Court (JUSTICE Case No. CI 10 9348401).

During floor debate on LB 1024, Senator Raikes described the gains to be made by enacting LB 1024:

We achieve an opportunity for cooperation between school districts that is locally directed. The benefit of individual school districts and the variety of choices they offer students and parents is retained. The financial underpinnings of districts are made more equitable. Student mobility and opportunity [are] enhanced, and the possibility of focus programs or campuses that serve the entire metro area is created.

Id. at 232, 808 N.W.2d at 614. The court noted that the legislative history

also reflects concern about educational issues unique to a metropolitan area. One senator stated that L.B. 1024 encouraged "suburban districts" "to be involved with the urban district in making sure that all children have the best opportunities for educational success." The principal introducer of L.B. 1024 stated, "One of the main objectives of the learning community is to address . . . the issue of integration within the entire learning community . . ." He stated that the legislation "basically involves a cooperative arrangement for funding, for addressing building needs, and for addressing whatever student mobility issues and educational opportunity issues that may be available, and the last may be the most important." Another senator described the learning community structure as one in which the member districts are "interrelated," explaining, "We're trying to find a way to bring better delivery of services, to bring the benefits of local control and shared responsibilities in the larger group all together in one bill . . ."

Id. at 234, 808 N.W.2d at 615 (internal citations omitted).

The legislative history of LB 641 in 2007 included further discussion on the boundary issues that precipitated LB 1024:

So you had a situation in June of 2005 where, all of a sudden, this policy was to be put in place and a huge amount of disruption resulted, amounting to taking over school buildings put there by other districts, operated by other districts, in addition to changing district allegiances and so on and so forth. We were left at that time with the proposition or the issue of, if you believe one city, one school district is a good policy—and I do, for the reasons I have mentioned—how do you adjust state policy given the situation that had arisen? The answer that was offered at that time, and I think has remained throughout the discussion which dates back more than two years now, involves five key components. In the metro area specifically, there should be a two-county area involved in public education that involves both the cooperation and competition among public school districts. There should be shared financial resource. There should be governance relating both to the individual school districts and to the cooperative involving all the school districts. And there should be a combined dedication to the expansion of educational opportunities for students, as well as diversity opportunities for students.

Floor Debate on LB 641, 100th Neb. Leg., 1st Sess. 55 (May 9, 2007) (Statement of Sen. Raikes).

"The Legislature has plenary legislative authority except as limited by the state and federal Constitutions." *Pony Lake School Dist. 30 v. State Comm. for Reorganization of School Districts*, 271 Neb. 173, 181, 710 N.W.2d 609, 618 (2006). "The Nebraska Constitution is not a grant, but, rather, is a restriction on legislative power, and the Legislature may legislate on any subject not inhibited by the constitution." *State ex rel. Peterson v. Shively*, 310 Neb. 1, 11, 963 N.W.2d 508, 516 (2021). As noted in *Hawkins*, "in order to meet changing conditions, '[v]iable local governments may need many innovations, numerous combinations of old and new devices, [and] great flexibility in municipal arrangements . . .'" *Hawkins*, 88 F. Supp. 2d at 1045 (quoting *Sailors v. Board of Education of Kent Cty.*, 387 U.S. 105, 110 (1967)). The legislative history reveals that the Legislature created a learning community to address the "metro area issue" created by OPS' One City, One School District proposal. A learning community was established for the purpose of working to integrate our schools, for the purpose of creating a common levy, for the purpose of trying to address the problems in Omaha." *Sarpy Cty. Farm Bureau*, 283 Neb. at 233, 808 N.W.2d at 614. Based on the foregoing, the Legislature had a legitimate government purpose for enacting LB 1024, which included a unique reorganization scheme for school districts within the newly formed entity. And so long as the voters residing within the Learning Community are treated similarly under the LCRA, there is no equal protection violation.

V. The Absence of a Petition Process for Learning Community Voters Does Not Constitute Special Legislation in Violation of Neb. Const. art. III, § 18.

Your final question asks whether the absence of a petition process would violate any other portion of the Nebraska Constitution, including the prohibition against special legislation in Neb. Const. art. III, § 18. This provision states, in pertinent part:

The Legislature shall not pass local or special laws in any of the following cases, that is to say: . . . Granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever In all other cases where a general law can be made applicable, no special law shall be enacted.

The Nebraska Supreme Court has determined that "[b]y definition, a legislative act is general, and not special, if it operates alike on all persons of a class or on persons who are brought within the relations and circumstances provided for and if the classification so adopted by the Legislature has a basis in reason and is not purely arbitrary." *Haman v. Marsh*, 237 Neb. 699, 709, 467 N.W.2d 836, 844 (1991) ["*Haman*"]. "A legislative act that applies only to particular individuals or things of a class is special legislation." *Id.*

"A legislative act can violate Neb. Const. art. III, § 18, as special legislation in one of two ways: (1) by creating a totally arbitrary and unreasonable method of classification, or (2) by creating a permanently closed class." *Id.* at 709, 467 N.W.2d at 845. "A special legislation analysis focuses on a legislative body's purpose in creating a challenged class and asks if there is a substantial difference of circumstances to suggest the expediency of diverse legislation." *J.M. v. Hobbs*, 288 Neb. 546, 557, 849 N.W.2d 480, 489 (2014). "The prohibition aims to prevent legislation that arbitrarily benefits a special class." *Id.* "[L]egislative classifications must be real and not illusive; they cannot be based on distinctions without a substantial difference." *Id.* at 558, 849 N.W.2d at 489. "A legislative body's distinctive treatment of a class is proper if the class has some reasonable distinction from other subjects of a like general character." *Big John's Billiards, Inc. v. State*, 288 Neb. 938, 945, 852 N.W.2d 727, 735 (2014) ["*Big John's*"]. "And that distinction must bear some reasonable relation to the legitimate objectives and purposes of the legislative act." *Id.* Since no closed class is implicated here, the question is whether the distinction created in the reorganization statutes for legal voters residing within the Learning Community establishes an arbitrary and unreasonable classification.

Applying these principles to the petition process statutes and the LCRA, we believe that the distinctions presented do not violate art. III, § 18. As discussed in Section IV. above, the Legislature created a new kind of political subdivision to address the "metro area issue." The decision was made to create a two-county system comprised of member school districts. The school districts retained their individual governance, but are subject to the collective governance of the coordinating council. Thus, a substantial difference of circumstances exists to warrant diverse legislation on the matter of reorganization. Consequently, for all the reasons that the LCRA is

reasonable under the rational-basis test, it is also reasonable under a special legislation review.

Finally, "[a] statute is presumed to be constitutional, and all reasonable doubts are resolved in favor of its constitutionality." *Sarpy Cty. Farm Bureau*, 283 Neb. at 239, 808 N.W.2d at 618. "[T]he unconstitutionality of a statute must be clearly established before it will be declared void." *State ex rel. Stenberg v. Omaha Racing and Exposition, Inc.*, 263 Neb. 991, 992, 644 N.W.2d 563, 565 (2002). "The burden of establishing the unconstitutionality of a statute is on the one attacking its validity." *Big John's*, 288 Neb. at 943-944, 852 N.W.2d at 734.

CONCLUSION

Neb. Const. art. VII, § 1 leaves all matters pertaining to schools and school districts to the Legislature, and its power is supreme. In this respect, the legal voters of the Learning Community have neither an express nor fundamental right to petition for school boundary changes. The First Amendment right to petition the government for redress of grievances is not analogous to petitioning the government for a boundary change. Thus, no greater judicial scrutiny than rational basis review is warranted. The fact that the statutory rights of citizens may be unequal in different areas of the state does not implicate an equal protection violation. The legislative history of 2006 Neb. Laws LB 1024 demonstrates that the Legislature had a legitimate public purpose for establishing a learning community to address the metro area organization issue, create cooperation and competition among school districts, share resources, and expand educational and diversity opportunities for students, among other things. Such legislation, including a specific reorganization scheme for member school districts, is neither arbitrary nor irrational. Consequently, it is the opinion of this office that the absence of a voter petition process for school district reorganization for legal voters in the Learning Community does not violate the Equal Protection Clause, Neb. Const. art. I, § 3, or art. III, § 18.

Sincerely,
DOUGLAS J. PETERSON
(Signed) Leslie S. Donley
Assistant Attorney General

pc Patrick J. O'Donnell
Clerk of the Nebraska Legislature

49-2824-29

¹ The member school districts in the Learning Community include Bellevue, Bennington, Douglas County West, Elkhorn, Gretna, Millard, Omaha, Papillion-La Vista, Ralston, Springfield Platteview, and Westside.

² Committee Records on LB 1024, 99th Neb. Leg., 2nd Sess., Introducer's Statement of Intent (Jan. 30, 2006).

³ Under the RSDA, school boards may file plans of reorganization with the State Committee. § 79-441. Prior to completion or approval, the State Committee is required to hold a public hearing or hearings regarding the proposed plan. § 79-442. Within thirty days of holding the hearing(s), the State Committee must notify the school district as to whether it approves or disapproves the proposed plan. § 79-444. An approved plan must contain the items listed in § 79-443, e.g., a map showing both established and proposed boundaries. A "final approved plan" is then returned to the school district to be submitted to the voters of the affected districts at a special election. § 79-446. Rules pertaining to the special election are set out in § 79-447. If the proposed plan is adopted, the county clerk shall implement the changes proposed in the plan. § 79-450.

⁴ Section 79-413(3)(b) and (c) set out the procedures when a bond election is held in conjunction with the petition.

⁵ Applying a rational basis level of scrutiny, the *Hawkins* court found that the Legislature had a legitimate government purpose in enacting the challenged statutes. "By using an ingenious strategy, Nebraska hoped to promote tax equity, educational effectiveness, and cost efficiency while still maintaining the separate identities of various political subdivisions." *Id.* at 1046. The court further found that "the relationship between the governmental purpose and the challenged statutes is neither arbitrary nor irrational." *Id.* The court concluded that "Nebraska's innovation in the reorganization of Class I school districts is rationally related to a legitimate governmental purpose and such an experiment is, therefore, not violative of the Constitutional guarantee of equal protection." *Id.* at 1047.

⁶ "A suspect class is one that has been "'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment . . . as to command extraordinary protection from the majoritarian political process.'" *Citizens of Decatur*, 274 Neb. at 303, 739 N.W.2d at 762.

COMMUNICATION(S)

Received a copy of HCR 2023 from the state of Arizona relating to the State of Arizona's opposition to any Federal action infringing on Arizona's constitutional power to manage, control and administer elections.

COMMUNICATION(S)

December 1, 2021

Patrick O'Donnell
Clerk of the Legislature
State Capitol
Lincoln NE 68508

Good Morning,

We are writing to inform you of the delay in the issuance of the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended June 30, 2021. Auditing standards state that we are responsible for communicating significant matters related to the financial statement audit that are, in the auditor's professional judgment, relevant to the responsibilities of those charged with governance. In accordance with Neb. Rev. Stat. § 81-1125.01, the Director of Administrative Services is to provide the audited ACFR at least twenty days before the commencement of each regular session of the Legislature. However, based on the current progress of the ACFR and back log of items still to be completed by the Department of Administrative Services (DAS), for the Auditor of Public Accounts (APA) to audit, the ACFR will not be completed by the statutory deadline of December 16, 2021.

Our process for completing the audit of the ACFR involves an extensive list of items that were to be provided by DAS, by certain dates to assist with meeting the statutory deadline. There are over 100 items that have exceeded the communicated dates and are yet to be provided to the APA. When those items are provided, our office will need sufficient time to perform auditing procedures to ensure the financials are materially correct for our opinion. In addition to the delay of items provided, the APA has also encountered significant errors in those items audited to date. At this time we have proposed 45 adjustments to the financial statements totaling nearly \$7 billion. We have also concluded that the Unemployment Insurance Fund will have a modified opinion as neither DAS nor the Department of Labor were able to provide accurate financial statements for the fund.

Given the items noted above, we feel it necessary at this time to communicate the situation to you, so you are aware of the expected noncompliance and the delay in the ACFR for this year.

Please feel free to contact us with any questions you may have.

Thank you,

Craig Kubicek, CPA, CFE
Deputy Auditor
Auditor of Public Accounts

ANNOUNCEMENT(S)

Priority designation(s) received:

Halloran - LR14

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 685. Introduced by Executive Board: Hughes, 44, Chairperson.

A BILL FOR AN ACT relating to appropriations; to eliminate obsolete provisions appropriating funds for FY2017-18 and FY2018-19; and to outright repeal section 90-561, Revised Statutes Cumulative Supplement, 2020.

LEGISLATIVE BILL 686. Introduced by Hughes, 44.

A BILL FOR AN ACT relating to the Legislature; to amend section 50-401.01, Reissue Revised Statutes of Nebraska; to change the composition of the Executive Board of the Legislative Council; and to repeal the original section.

LEGISLATIVE BILL 687. Introduced by Blood, 3.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2715.07, Revised Statutes Supplement, 2021; to adopt the Property Tax Circuit Breaker Act; to harmonize provisions; to provide an operative date; and to repeal the original section.

LEGISLATIVE BILL 688. Introduced by Blood, 3.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-6702 and 81-12,193, Revised Statutes Cumulative Supplement, 2020, and sections 77-6703 and 84-612, Revised Statutes Supplement, 2021; to adopt the Property Tax Reduction Act; to eliminate credits under the Nebraska Property Tax Incentive Act; to harmonize provisions; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 689. Introduced by Blood, 3.

A BILL FOR AN ACT relating to the Nebraska Uniform Limited Liability Company Act; to amend section 21-192, Revised Statutes Supplement, 2021; to change provisions relating to fees; and to repeal the original section.

LEGISLATIVE BILL 690. Introduced by Blood, 3.

A BILL FOR AN ACT relating to education; to amend section 79-807, Revised Statutes Cumulative Supplement, 2020; to redefine a term; and to repeal the original section.

LEGISLATIVE BILL 691. Introduced by Blood, 3.

A BILL FOR AN ACT relating to the Address Confidentiality Act; to amend section 42-1202, Reissue Revised Statutes of Nebraska, and sections 42-1203, 42-1204, and 42-1209, Revised Statutes Cumulative Supplement, 2020; to provide enrollment eligibility to kidnapping survivors; to define a term; and to repeal the original sections.

LEGISLATIVE BILL 692. Introduced by Blood, 3.

A BILL FOR AN ACT relating to civil actions; to prohibit causing sexual contact when a condom has been removed without consent as prescribed; to provide for a civil action; and to define a term.

LEGISLATIVE BILL 693. Introduced by Blood, 3.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 60-3,184, 60-3,185, 60-3,189, 60-3,190, 77-202.23, and 77-202.24, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change provisions relating to motor vehicle tax exemptions, motor vehicle fee exemptions, and property tax exemptions for certain veterans; to harmonize provisions; to provide an operative date; and to repeal the original sections.

LEGISLATIVE BILL 694. Introduced by Blood, 3.

A BILL FOR AN ACT relating to civil actions; to amend section 25-224, Reissue Revised Statutes of Nebraska; to provide for a statute of limitations for exposure to certain chemicals, prescription drugs, or medical devices; to define terms; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 695. Introduced by Blood, 3.

A BILL FOR AN ACT relating to political subdivisions; to amend section 23-114.01, Reissue Revised Statutes of Nebraska, section 19-929, Revised Statutes Cumulative Supplement, 2020, and section 18-2119, Revised Statutes Supplement, 2021; to prohibit granting conditional use permits or zoning exceptions to persons delinquent in the payment of real property taxes; to provide a duty and a contracting requirement under the Community Development Law; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

LEGISLATIVE BILL 696. Introduced by Blood, 3.

A BILL FOR AN ACT relating to appropriations; to appropriate federal funds to the State Department of Education; and to declare an emergency.

LEGISLATIVE BILL 697. Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to health care facilities; to amend sections 71-401 and 71-403, Revised Statutes Cumulative Supplement, 2020; to

define terms; to provide for licensure of rural emergency hospitals; to require coverage for rural emergency hospital services; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 698. Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to the Medical Assistance Act; to amend section 68-911, Reissue Revised Statutes of Nebraska; to provide requirements regarding coverage; and to repeal the original section.

LEGISLATIVE BILL 699. Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to appropriations; to appropriate federal funds to the Department of Economic Development; and to declare an emergency.

LEGISLATIVE BILL 700. Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to retirement; to amend sections 23-2317.01, 84-1319.01, and 84-1511, Reissue Revised Statutes of Nebraska, sections 23-2309.01, 23-2310.05, 72-1243, 79-921, 84-1310.01, 84-1311.03, and 84-1322, Revised Statutes Cumulative Supplement, 2020, and sections 79-9,117 and 84-1503, Revised Statutes Supplement, 2021; to eliminate obsolete provisions relating to investment options under certain acts, the state investment officer, and the Public Employees Retirement Board; to change provisions relating to certain funds; to eliminate provisions relating to termination of employment and early retirement inducement notification; to change provisions relating to preretirement planning and repayment of a distribution after reemployment; to change duties of and provide duties for the Public Employees Retirement Board; to provide a deadline for a certain compliance audit; to define terms; to provide for retirement training sessions; to eliminate a retirement education and financial planning program; to harmonize provisions; to repeal the original sections; to outright repeal section 84-1511.01, Reissue Revised Statutes of Nebraska; and to declare an emergency.

LEGISLATIVE BILL 701. Introduced by Williams, 36.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2912 and 77-5806, Reissue Revised Statutes of Nebraska; to change certain deadlines under the Nebraska Job Creation and Mainstreet Revitalization Act and the Nebraska Advantage Research and Development Act; and to repeal the original sections.

LEGISLATIVE BILL 702. Introduced by Williams, 36.

A BILL FOR AN ACT relating to the School Readiness Tax Credit Act; to amend section 77-3605, Reissue Revised Statutes of Nebraska, and section 77-3604, Revised Statutes Cumulative Supplement, 2020; to change

provisions relating to the availability of tax credits; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 703. Introduced by Williams, 36.

A BILL FOR AN ACT relating to appropriations; to appropriate federal funds to the University of Nebraska; and to declare an emergency.

LEGISLATIVE BILL 704. Introduced by Williams, 36.

A BILL FOR AN ACT relating to public health and welfare; to amend sections 38-1414 and 38-1416, Reissue Revised Statutes of Nebraska; to change education requirements for funeral directing and embalming licensure; to eliminate reporting requirements relating to caskets; to harmonize provisions; to repeal the original sections; and to outright repeal section 71-609, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 705. Introduced by Williams, 36.

A BILL FOR AN ACT relating to the Barber Act; to amend sections 71-201, 71-208.02, and 71-219, Reissue Revised Statutes of Nebraska; to eliminate provisions relating to booth rental permits; to change requirements for registration as a barber instructor or assistant barber instructor; to harmonize provisions; to repeal the original sections; and to outright repeal section 71-219.05, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 706. Introduced by Williams, 36.

A BILL FOR AN ACT relating to the Real Property Appraiser Act; to amend sections 76-2201, 76-2203, 76-2207.23, and 76-2218, Reissue Revised Statutes of Nebraska, sections 76-2233.01 and 76-2236, Revised Statutes Cumulative Supplement, 2020, and sections 76-2207.30, 76-2221, 76-2230, 76-2231.01, and 76-2232, Revised Statutes Supplement, 2021; to define and redefine terms; to change provisions relating to continuing education, experience, and educational requirements for real property appraisers; to change provisions relating to exemptions to the Real Property Appraiser Act; to change provisions relating to temporary credentials for nonresident real property appraisers; to harmonize provisions; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 707. Introduced by Williams, 36.

A BILL FOR AN ACT relating to banking and finance; to amend sections 8-148.06, 8-1502, 45-736, and 59-1722, Reissue Revised Statutes of Nebraska, sections 8-108, 8-148.07, and 8-148.08, Revised Statutes Cumulative Supplement, 2020, sections 8-101.03, 8-135, 8-141, 8-143.01, 8-157.01, 8-183.04, 8-1,140, 8-318, 8-355, 8-1101, 8-1101.01, 8-1704, 8-1707, 8-2724, 8-2903, 8-3005, 8-3007, 21-17,115, 69-2103, 69-2104, and 69-2112, Revised Statutes Supplement, 2021, and section 4A-108, Uniform

Commercial Code, Revised Statutes Supplement, 2021; to redefine a term; to change provisions relating to banks, financial institutions, bank subsidiaries, and residential mortgage loans; to adopt updates to federal law relating to banks, financial institutions, securities, money transmitters, commodities, financial exploitation of vulnerable adults, digital asset depository institutions, credit unions, transactions involving franchises, consumer rental purchase agreements, and funds transfers; and to repeal the original sections.

LEGISLATIVE BILL 708. Introduced by Hughes, 44.

A BILL FOR AN ACT relating to law; to amend section 49-707, Reissue Revised Statutes of Nebraska; to eliminate a copyright requirement; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 709. Introduced by McCollister, 20.

A BILL FOR AN ACT relating to the Occupational Board Reform Act; to amend section 84-947, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to preliminary applications by individuals with a criminal conviction; and to repeal the original section.

LEGISLATIVE BILL 710. Introduced by McCollister, 20.

A BILL FOR AN ACT relating to public assistance; to amend section 68-1017.02, Revised Statutes Supplement, 2021; to change provisions relating to federal Supplemental Nutrition Assistance Program eligibility; and to repeal the original section.

LEGISLATIVE BILL 711. Introduced by Hughes, 44.

A BILL FOR AN ACT relating to the Board of Educational Lands and Funds; to amend sections 72-257, 72-257.01, 72-258, 72-258.01, 72-258.02, and 72-258.03, Reissue Revised Statutes of Nebraska; to change provisions relating to the sale of educational land; to provide duties; to redefine a term; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 712. Introduced by Hughes, 44.

A BILL FOR AN ACT relating to prairie dogs; to amend sections 23-3803, 23-3804, 23-3805, 23-3806, and 23-3808, Reissue Revised Statutes of Nebraska; to change provisions of the Black-Tailed Prairie Dog Management Act relating to management plans, duties, powers, notices, liens, penalties, appeals, trespass, damages, and liability as prescribed; to harmonize provisions; to provide severability; and to repeal the original sections.

LEGISLATIVE BILL 713. Introduced by Flood, 19.

A BILL FOR AN ACT relating to the Community Development Law; to amend section 18-2147, Revised Statutes Supplement, 2021; to prohibit the use of tax-increment financing for certain purposes; and to repeal the original section.

LEGISLATIVE BILL 714. Introduced by Geist, 25.

A BILL FOR AN ACT relating to the Motor Vehicle Operator's License Act; to amend section 60-4,115, Reissue Revised Statutes of Nebraska; to change the distribution of certain fees; to provide an operative date; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 715. Introduced by Hunt, 8.

A BILL FOR AN ACT relating to insurance; to eliminate the prohibition regarding certain group insurance contracts and health maintenance agreements providing coverage for abortion; to eliminate the Mandate Opt-Out and Insurance Coverage Clarification Act; and to outright repeal sections 44-1615.01, 44-8401, 44-8402, 44-8403, and 44-8404, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 716. Introduced by Hunt, 8.

A BILL FOR AN ACT relating to abortion; to amend sections 28-325, 28-327.02, 28-327.03, 28-327.04, 28-327.07, 28-327.09, 28-327.10, 28-327.11, 28-327.12, 28-328, 28-329, 28-330, 28-331, 28-335, 28-343, 28-3,103, 28-3,105, 28-3,106, 28-3,107, 38-193, 38-201, 38-601, 44-1615.01, 44-8403, 71-6901, 71-6902.01, 71-6903, 71-6906, 71-6907, and 71-6909, Reissue Revised Statutes of Nebraska, and sections 28-326, 28-327, 28-327.01, 28-345, 28-347, and 38-2021, Revised Statutes Cumulative Supplement, 2020; to allow advanced practice registered nurses, certified nurse midwives, and physician assistants to perform abortions as prescribed; to define and redefine terms; to change applicability of provisions relating to unprofessional conduct; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 717. Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to the In the Line of Duty Compensation Act; to amend section 81-8,317, Revised Statutes Supplement, 2021; to change the amount of compensation under the act; and to repeal the original section.

LEGISLATIVE BILL 718. Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to health care benefits; to define terms; to provide requirements for cost-sharing and coverage; to provide for applicability; to provide for rules and regulations; and to provide a duty for the Revisor of Statutes.

LEGISLATIVE BILL 719. Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to amend sections 48-120, 48-121, 48-121.01, 48-122, 48-122.01, 48-122.03, 48-126, 48-134, and 48-134.01, Reissue Revised Statutes of Nebraska; to require payment for interpreter services; to change provisions relating to the right to select a physician, compensation schedules, maximum and minimum weekly income benefits, and calculation of wages; to require annual cost-of-living adjustments to benefits as prescribed; to define terms; to require payment of benefits to a personal representative; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 720. Introduced by Albrecht, 17.

A BILL FOR AN ACT relating to motor vehicles; to amend sections 60-107, 60-119.01, 60-169, 60-302.01, 60-336.01, 60-386, 60-3,113.04, 60-3,193.01, 60-462.01, 60-479.01, 60-4,111.01, 60-4,132, 60-4,134, 60-4,138, 60-4,147.02, 60-4,168, 60-501, 60-628.01, 60-6,265, 60-2705, and 60-2909.01, Reissue Revised Statutes of Nebraska, section 75-369.03, Revised Statutes Cumulative Supplement, 2020, and sections 75-363, 75-364, 75-366, 75-392, and 75-393, Revised Statutes Supplement, 2021; to adopt updates to federal law and update certain federal references; to change certain civil penalties; and to repeal the original sections.

LEGISLATIVE BILL 721. Introduced by Hilkemann, 4; Lowe, 37; Stinner, 48; Williams, 36.

A BILL FOR AN ACT relating to appropriations; to appropriate federal funds to the University of Nebraska; and to declare an emergency.

LEGISLATIVE BILL 722. Introduced by Hilkemann, 4.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to the Department of Economic Development; and to provide for a transfer of funds.

LEGISLATIVE BILL 723. Introduced by Briese, 41.

A BILL FOR AN ACT relating to the Nebraska Property Tax Incentive Act; to amend section 77-6703, Revised Statutes Supplement, 2021; to change provisions relating to the calculation of tax credits; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 724. Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to the Local Option Municipal Economic Development Act; to amend section 18-2705, Revised Statutes Supplement, 2021; to provide certain funding for the development and implementation of

an affordable housing action plan as part of an economic development program; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 725. Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to the Community Development Law; to amend section 18-2105, Reissue Revised Statutes of Nebraska; to authorize guidelines for the consideration and approval of certain redevelopment projects; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 726. Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to sanitary and improvement districts; to amend sections 31-727.01, 31-736, 31-767, 31-768, 31-769, and 31-771, Reissue Revised Statutes of Nebraska, and sections 31-727, 31-727.02, 31-728, 31-740, 31-744, and 31-749, Revised Statutes Supplement, 2021; to change provisions relating to powers and duties, extraterritorial zoning jurisdiction, and publication of notice; to require compliance with municipal planning requirements; to harmonize provisions; to eliminate obsolete provisions; and to repeal the original sections.

LEGISLATIVE BILL 727. Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to sanitary and improvement districts; to amend section 31-735, Reissue Revised Statutes of Nebraska; to change the procedure for election of the board of trustees of a district as prescribed; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 728. Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to insurance; to amend section 44-4052, Reissue Revised Statutes of Nebraska; to adopt the Travel Insurance Act; to eliminate travel insurance provisions; to harmonize provisions; to provide an operative date; to repeal the original section; and to outright repeal section 44-4068, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 729. Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to economic development; to adopt the Quick Action Closing Fund Act.

LEGISLATIVE BILL 730. Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2717 and 77-2734.03, Revised Statutes Cumulative Supplement, 2020, and section 77-2715.07, Revised Statutes Supplement, 2021; to adopt the Growing Our Workforce Investment Now Act; to provide tax credits; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 731. Introduced by Cavanaugh, J., 9; Hunt, 8.

A BILL FOR AN ACT relating to the Small Wireless Facilities Deployment Act; to amend section 86-1236, Revised Statutes Cumulative Supplement, 2020; to provide requirements for a wireless provider as prescribed; and to repeal the original section.

LEGISLATIVE BILL 732. Introduced by Cavanaugh, J., 9; McKinney, 11.

A BILL FOR AN ACT relating to juveniles; to prohibit use of deception in questioning juveniles; to prohibit admission of certain evidence; and to define terms.

LEGISLATIVE BILL 733. Introduced by Cavanaugh, J., 9.

A BILL FOR AN ACT relating to the Nebraska Political Accountability and Disclosure Act; to amend section 49-1401, Reissue Revised Statutes of Nebraska; to regulate ballot question contributions and expenditures by foreign nationals and their subsidiaries as prescribed; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 734. Introduced by Cavanaugh, J., 9.

A BILL FOR AN ACT relating to the Nebraska Political Accountability and Disclosure Act; to amend section 49-1401, Reissue Revised Statutes of Nebraska; to provide a limit on contributions made to a candidate committee as prescribed; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 735. Introduced by Bostar, 29; Halloran, 33; Hansen, B., 16.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-1736.06, Revised Statutes Supplement, 2021; to change an interest rate relating to property tax refunds; and to repeal the original section.

LEGISLATIVE BILL 736. Introduced by Bostar, 29.

A BILL FOR AN ACT relating to renewable fuels; to amend section 66-2201, Revised Statutes Cumulative Supplement, 2020; to redefine a term; and to repeal the original section.

LEGISLATIVE BILL 737. Introduced by Bostar, 29.

A BILL FOR AN ACT relating to public health; to adopt the Primary Care Investment Act.

LEGISLATIVE BILL 738. Introduced by Bostar, 29.

A BILL FOR AN ACT relating to LIBOR; to adopt the LIBOR Transition Act; to provide severability; and to declare an emergency.

LEGISLATIVE BILL 739. Introduced by Bostar, 29.

A BILL FOR AN ACT relating to insurance; to amend section 44-7,102, Reissue Revised Statutes of Nebraska; to change the requirement for screening coverage for colorectal cancer; and to repeal the original section.

LEGISLATIVE BILL 740. Introduced by DeBoer, 10.

A BILL FOR AN ACT relating to income taxes; to amend section 77-2716, Revised Statutes Supplement, 2021; to provide a deduction for rent paid on dwellings as prescribed; and to repeal the original section.

LEGISLATIVE BILL 741. Introduced by DeBoer, 10.

A BILL FOR AN ACT relating to the Child and Maternal Death Review Act; to amend sections 71-3404, 71-3407, 71-3409, and 71-3410, Reissue Revised Statutes of Nebraska, and section 71-3405, Revised Statutes Cumulative Supplement, 2020; to define and redefine terms; to provide for the review of stillbirths; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 742. Introduced by Erdman, 47; Brewer, 43.

A BILL FOR AN ACT relating to the Open Meetings Act; to amend sections 84-1411 and 84-1413, Revised Statutes Supplement, 2021; to change provisions relating to minutes kept as an electronic record; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 743. Introduced by Erdman, 47; Brewer, 43.

A BILL FOR AN ACT relating to the Open Meetings Act; to amend section 84-1410, Reissue Revised Statutes of Nebraska; to change provisions relating to when closed sessions may be held; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 744. Introduced by Erdman, 47; Brewer, 43.

A BILL FOR AN ACT relating to the livestock; to amend sections 54-170, 54-171, 54-172, 54-173, 54-176, 54-179, 54-182, 54-189, 54-199, 54-1,108, 54-1,111, 54-1,122, and 54-415, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change provisions under the Livestock Brand Act relating to approved nonvisual identifiers, physical inspections, electronic inspections, powers and duties of the Nebraska Brand Committee, and fees; to eliminate terms, obsolete provisions, and a penalty; to harmonize provisions; to repeal the original sections; to outright repeal sections 54-171.01, 54-179.03, 54-179.04, 54-187.01, and 54-1,124.01,

Reissue Revised Statutes of Nebraska; and to declare an emergency.

LEGISLATIVE BILL 745. Introduced by Cavanaugh, M., 6; Cavanaugh, J., 9; Hansen, M., 26; Hunt, 8; Pansing Brooks, 28.

A BILL FOR AN ACT relating to marriage; to amend sections 42-102, 42-103, 42-104, 42-106, 42-109, and 42-110, Reissue Revised Statutes of Nebraska; to change terminology; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 746. Introduced by Friesen, 34.

A BILL FOR AN ACT relating to the Department of Natural Resources; to amend section 61-201, Reissue Revised Statutes of Nebraska; to remove the requirement that the Director of Natural Resources be a professional engineer; and to repeal the original section.

LEGISLATIVE BILL 747. Introduced by Friesen, 34.

A BILL FOR AN ACT relating to aeronautics; to amend sections 3-103 and 11-201, Revised Statutes Cumulative Supplement, 2020; to remove a requirement that the appointment of the Director of Aeronautics be subject to confirmation by the Legislature; to eliminate obsolete provisions; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 748. Introduced by Friesen, 34.

A BILL FOR AN ACT relating to forfeiture of property; to amend section 28-431, Reissue Revised Statutes of Nebraska; to change provisions relating to issuance of title; and to repeal the original section.

LEGISLATIVE BILL 749. Introduced by Friesen, 34.

A BILL FOR AN ACT relating to the Motor Vehicle Certificate of Title Act; to amend section 60-146, Reissue Revised Statutes of Nebraska; to change an identification inspection provision; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 750. Introduced by Friesen, 34.

A BILL FOR AN ACT relating to motor vehicles; to amend sections 60-144, 60-149, 60-151, 60-392, 60-3,102, 60-3,119, 60-3,122, 60-3,122.02, 60-3,122.03, 60-3,123, 60-3,124, 60-3,125, 60-3,126, 60-3,128, 60-3,130.02, 60-3,135.01, 60-3,198, 60-3,203, 60-3,221, 60-3,226, 60-3,232, 60-3,233, 60-3,237, 60-3,241, 60-3,243, 60-3,245, 60-3,247, 60-3,249, 60-3,251, 60-3,253, 60-462, 60-463, 60-481, 60-490, 60-4,122, 60-4,124, 60-4,130.03, 60-4,130.04, 60-4,139.01, 60-4,149.01, 60-4,174, 60-4,183, 60-4,188, 66-1401, and 66-1421, Reissue Revised Statutes of

Nebraska, and section 30-2715.01, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to transfer-on-death certificates of title as prescribed, the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, the Motor Vehicle Operator's License Act, and the International Fuel Tax Agreement Act; to provide for a postage and handling fee as prescribed; to define a term; to eliminate obsolete provisions; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 751. Introduced by Arch, 14.

A BILL FOR AN ACT relating to the Transportation Innovation Act; to amend section 39-2806, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to the Economic Opportunity Program; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 752. Introduced by Arch, 14.

A BILL FOR AN ACT relating to the Respiratory Care Practice Act; to amend section 38-3205, Reissue Revised Statutes of Nebraska; to redefine a term; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 753. Introduced by Arch, 14; Lathrop, 12.

A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend sections 38-178 and 38-2894, Revised Statutes Cumulative Supplement, 2020, and section 38-101, Revised Statutes Supplement, 2021; to define terms; to require notification regarding stem cell therapy as prescribed; to provide for disciplinary action; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 754. Introduced by Bostar, 29.

A BILL FOR AN ACT relating to schools; to amend section 79-10,110.03, Revised Statutes Supplement, 2021; to extend the commercial air filter pilot program; and to repeal the original section.

LEGISLATIVE BILL 755. Introduced by Brandt, 32.

A BILL FOR AN ACT relating to appropriations; to appropriate federal funds to the Department of Agriculture for the Independent Processor Assistance Program; and to declare an emergency.

LEGISLATIVE BILL 756. Introduced by Brandt, 32.

A BILL FOR AN ACT relating to public health; to amend sections 71-2432, 71-2434, and 71-2435, Reissue Revised Statutes of Nebraska, and section 71-2433, Revised Statutes Cumulative Supplement, 2020; to change and eliminate definitions; to change powers and duties relating to reporting and rehabilitation of properties contaminated by methamphetamine,

enforcement, and terminations of leases; to remove obsolete language; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 757. Introduced by Brandt, 32.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend sections 60-6,298 and 60-6,301, Reissue Revised Statutes of Nebraska; to change provisions relating to the allowable distance traveled by vehicles exceeding the maximum weight, length, or load when carrying grain or other seasonally harvested products; and to repeal the original sections.

LEGISLATIVE BILL 758. Introduced by Brandt, 32.

A BILL FOR AN ACT relating to the Nebraska Farm-to-School Program Act; to amend sections 79-2902 and 79-2904, Revised Statutes Supplement, 2021; to define terms; to change provisions relating to the Nebraska farm-to-school program; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 759. Introduced by Dorn, 30.

A BILL FOR AN ACT relating to the Business Innovation Act; to amend section 81-12,162, Revised Statutes Cumulative Supplement, 2020; to change a limitation relating to microloans; and to repeal the original section.

LEGISLATIVE BILL 760. Introduced by Dorn, 30.

A BILL FOR AN ACT relating to appropriations; to appropriate federal funds to the Department of Health and Human Services; and to declare an emergency.

LEGISLATIVE BILL 761. Introduced by Dorn, 30.

A BILL FOR AN ACT relating to agriculture; to adopt the Precision Agriculture Infrastructure Grant Act.

LEGISLATIVE BILL 762. Introduced by Dorn, 30.

A BILL FOR AN ACT relating to appropriations; to state intent regarding appropriations to the Department of Health and Human Services; and to declare an emergency.

LEGISLATIVE BILL 763. Introduced by Dorn, 30.

A BILL FOR AN ACT relating to recreational liability; to amend section 37-729, Reissue Revised Statutes of Nebraska; to redefine terms; and to repeal the original section.

LEGISLATIVE BILL 764. Introduced by Aguilar, 35.

A BILL FOR AN ACT relating to the Nebraska County and City Lottery Act; to amend section 9-606, Reissue Revised Statutes of Nebraska; to redefine a term; and to repeal the original section.

LEGISLATIVE BILL 765. Introduced by Aguilar, 35.

A BILL FOR AN ACT relating to the Nebraska Visitors Development Act; to amend sections 81-3717 and 81-3720, Reissue Revised Statutes of Nebraska; to change provisions relating to authorized uses for a County Visitors Improvement Fund; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 766. Introduced by Kolterman, 24; Blood, 3; Bostar, 29; Brandt, 32; Brewer, 43; Cavanaugh, J., 9; DeBoer, 10; Dorn, 30; Gragert, 40; Hilkemann, 4; Lathrop, 12; Lindstrom, 18; McCollister, 20; McDonnell, 5; Morfeld, 46; Pahls, 31; Pansing Brooks, 28; Stinner, 48; Walz, 15; Williams, 36; Wishart, 27.

A BILL FOR AN ACT relating to appropriations; to appropriate federal funds to the University of Nebraska for pancreatic cancer research; and to declare an emergency.

LEGISLATIVE BILL 767. Introduced by Kolterman, 24; Aguilar, 35; Bostar, 29; Flood, 19; Lindstrom, 18; McCollister, 20; Morfeld, 46; Pahls, 31; Stinner, 48; Wishart, 27.

A BILL FOR AN ACT relating to pharmacy benefit managers; to adopt the Pharmacy Benefit Manager Licensure and Regulation Act; to eliminate provisions relating to pharmacy benefit managers; to provide an operative date; to provide severability; and to outright repeal section 71-2484, Revised Statutes Cumulative Supplement, 2020.

LEGISLATIVE BILL 768. Introduced by Albrecht, 17; Bostelman, 23; Briese, 41; Lowe, 37; McDonnell, 5; Murman, 38; Sanders, 45; Slama, 1.

A BILL FOR AN ACT relating to schools; to amend sections 79-712 and 79-713, Reissue Revised Statutes of Nebraska, and section 79-760.01, Revised Statutes Supplement, 2021; to change provisions relating to comprehensive health education; to prohibit academic content standards in new areas; and to repeal the original sections.

LEGISLATIVE BILL 769. Introduced by Halloran, 33; Arch, 14; Erdman, 47; Hansen, B., 16; Kolterman, 24; McDonnell, 5; Murman, 38; Williams, 36.

A BILL FOR AN ACT relating to state employees; to require certain state employees to submit to fingerprinting and criminal history record checks.

LEGISLATIVE BILL 770. Introduced by Day, 49.

A BILL FOR AN ACT relating to the Dentistry Practice Act; to amend section 38-1114, Reissue Revised Statutes of Nebraska; to change provisions relating to board membership; to provide an operative date; and to repeal the original section.

LEGISLATIVE BILL 771. Introduced by Day, 49; Hilkemann, 4.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend sections 60-601, 60-605, 60-611, 60-640, and 60-678, Reissue Revised Statutes of Nebraska; to define and redefine terms; to provide for the regulation of electric bicycles as prescribed; to provide a penalty; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 772. Introduced by Day, 49; Blood, 3; Cavanaugh, M., 6.

A BILL FOR AN ACT relating to public health and welfare; to prohibit providers of services relating to examination or treatment of injuries arising from sexual assault, domestic assault, and child abuse from taking actions relating to victims' debts for such services.

LEGISLATIVE BILL 773. Introduced by Brewer, 43; Albrecht, 17; Bostelman, 23; Briese, 41; Clements, 2; Erdman, 47; Flood, 19; Gragert, 40; Groene, 42; Halloran, 33; Hansen, B., 16; Lindstrom, 18; McDonnell, 5; Murman, 38; Slama, 1.

A BILL FOR AN ACT relating to firearms; to amend sections 18-1703, 69-2429, 69-2435, 69-2439, 69-2440, 69-2441, 69-2442, 69-2443, and 69-2445, Reissue Revised Statutes of Nebraska, sections 14-102, 15-255, 16-227, 17-556, 28-101, 28-1201, and 28-1351, Revised Statutes Cumulative Supplement, 2020, and sections 28-1202 and 69-2436, Revised Statutes Supplement, 2021; to prohibit regulation of the carrying of concealed handguns by cities, villages, and counties; to provide for the carrying of a concealed handgun without a permit; to provide for requirements, limits, and offenses relating to carrying a concealed handgun; to change provisions of the Concealed Handgun Permit Act; to provide penalties; to change, provide, and eliminate definitions; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 774. Introduced by Brewer, 43; Bostelman, 23; Erdman, 47; Gragert, 40; Hansen, B., 16; Lowe, 37; McDonnell, 5.

A BILL FOR AN ACT relating to government; to adopt the First Freedom Act.

LEGISLATIVE BILL 775. Introduced by Brewer, 43; Gragert, 40.

A BILL FOR AN ACT relating to the Integrated Solid Waste Management Act; to amend section 13-2039, Reissue Revised Statutes of Nebraska; to prohibit land disposal of wind turbine blades and their component parts; and to repeal the original section.

LEGISLATIVE BILL 776. Introduced by Brewer, 43; Gragert, 40.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2716, Revised Statutes Supplement, 2021; to provide an income tax deduction for certain military pay as prescribed; and to repeal the original section.

LEGISLATIVE BILL 777. Introduced by Brewer, 43; Erdman, 47; Geist, 25.

A BILL FOR AN ACT relating to the Nebraska Educational Telecommunications Act; to amend sections 79-1312, 79-1313, and 79-1316, Reissue Revised Statutes of Nebraska; to require the Nebraska Educational Telecommunications Commission to develop and maintain a digital archive of Nebraska Legislature video coverage as prescribed; to change powers and duties of the commission; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 778. Introduced by Brewer, 43.

A BILL FOR AN ACT relating to public lettings and contracts; to adopt the Government Neutrality in Contracting Act.

LEGISLATIVE BILL 779. Introduced by Gragert, 40; Bostelman, 23; Brewer, 43; Wishart, 27.

A BILL FOR AN ACT relating to the Nebraska National Guard; to amend section 85-505.01, Revised Statutes Cumulative Supplement, 2020, and section 85-505, Revised Statutes Supplement, 2021; to eliminate an entitlement period relating to tuition assistance; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 780. Introduced by Gragert, 40.

A BILL FOR AN ACT relating to employment; to amend sections 48-302, 48-303, and 48-675, Reissue Revised Statutes of Nebraska; to change provisions relating to child labor; to change provisions relating to employment certificate approval and record keeping; to change provisions relating to Employment Security Law and short-time compensation plans; and to repeal the original sections.

LEGISLATIVE BILL 781. Introduced by Slama, 1; Aguilar, 35; Albrecht, 17; Bostelman, 23; Brewer, 43; Briese, 41; Clements, 2; Erdman, 47; Flood, 19; Friesen, 34; Geist, 25; Gragert, 40; Groene, 42; Halloran, 33;

Hansen, B., 16; Lindstrom, 18; Lowe, 37; McDonnell, 5; Moser, 22; Murman, 38; Sanders, 45.

A BILL FOR AN ACT relating to abortion; to amend sections 28-101 and 38-2021, Revised Statutes Cumulative Supplement, 2020; to adopt the Heartbeat Act; to provide a penalty; to redefine unprofessional conduct; to harmonize provisions; to provide severability; and to repeal the original sections.

LEGISLATIVE BILL 782. Introduced by Vargas, 7; Cavanaugh, J., 9; Cavanaugh, M., 6.

A BILL FOR AN ACT relating to appropriations; to amend Laws 2021, LB380, section 104; to change provisions regarding appropriations for the Department of Health and Human Services; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 783. Introduced by Groene, 42; Halloran, 33; Murman, 38; Williams, 36.

A BILL FOR AN ACT relating to appropriations; to appropriate federal funds to the Department of Economic Development; and to declare an emergency.

LEGISLATIVE BILL 784. Introduced by Groene, 42; Erdman, 47.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-202, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to a property tax exemption for hospitals; and to repeal the original section.

LEGISLATIVE BILL 785. Introduced by Groene, 42; Albrecht, 17; Arch, 14; Brewer, 43; Clements, 2; Erdman, 47; Geist, 25; Halloran, 33; Murman, 38; Sanders, 45; Slama, 1.

A BILL FOR AN ACT relating to elections; to amend sections 32-808, 32-942, and 32-943, Reissue Revised Statutes of Nebraska; to change provisions relating to early voting; and to repeal the original sections.

LEGISLATIVE BILL 786. Introduced by Groene, 42; Albrecht, 17; Brewer, 43; Clements, 2; Erdman, 47; Geist, 25; Halloran, 33; Murman, 38; Williams, 36.

A BILL FOR AN ACT relating to the Nebraska Political Accountability and Disclosure Act; to amend section 49-1496, Reissue Revised Statutes of Nebraska; to change information required for a statement of financial interests; to provide an operative date; and to repeal the original section.

LEGISLATIVE BILL 787. Introduced by Groene, 42; Albrecht, 17;

Clements, 2; Erdman, 47; Halloran, 33.

A BILL FOR AN ACT relating to the Nebraska Budget Act; to amend section 13-502, Reissue Revised Statutes of Nebraska, and section 13-503, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to the applicability of the act; to redefine a term; and to repeal the original sections.

LEGISLATIVE BILL 788. Introduced by Groene, 42; Brewer, 43; Halloran, 33; Murman, 38.

A BILL FOR AN ACT relating to the Nebraska Rural Projects Act; to amend sections 81-12,213 and 81-12,218, Revised Statutes Supplement, 2021; to change provisions relating to certain limits on matching funds; to change legislative intent regarding appropriations; to provide for transfers of funds; to harmonize provisions; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 789. Introduced by Groene, 42; Clements, 2; Halloran, 33.

A BILL FOR AN ACT relating to urban housing; to amend sections 19-5504 and 81-1237, Revised Statutes Cumulative Supplement, 2020, and sections 18-2119 and 19-5505, Revised Statutes Supplement, 2021; to provide an exception for an affordable housing report and change an affordable housing action plan requirement under the Municipal Density and Missing Middle Housing Act; to redefine a term under the Middle Income Workforce Housing Investment Act; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 790. Introduced by Groene, 42; Williams, 36.

A BILL FOR AN ACT relating to the Community Development Law; to amend section 18-2155, Revised Statutes Cumulative Supplement, 2020, and sections 18-2101.02 and 18-2147, Revised Statutes Supplement, 2021; to change provisions relating to redevelopment plans receiving an expedited review; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 791. Introduced by Lowe, 37; Aguilar, 35; Briese, 41; Friesen, 34.

A BILL FOR AN ACT relating to county government and officers; to amend sections 23-1901, 23-1901.02, 33-116, and 39-1506, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to county surveyors, engineers, and highway superintendents; to change a county population requirement; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 792. Introduced by Lowe, 37; Albrecht, 17; Arch,

14; Brewer, 43; Clements, 2; Day, 49; Erdman, 47; Halloran, 33; Hansen, B., 16; Hilkemann, 4; Lathrop, 12; Murman, 38; Pansing Brooks, 28; Sanders, 45; Slama, 1; Stinner, 48; Vargas, 7; Williams, 36.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to the Department of Health and Human Services.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 262. Introduced by Blood, 3.

WHEREAS, the United States cattle industry is the largest segment of American agriculture, annually generating about sixty-seven billion dollars in cash receipts; and

WHEREAS, virtually all imported consumer goods, including pet treats, clothing, tools, and electronic equipment, are required to be labeled indicating their country of origin as a condition of entry into the United States; and

WHEREAS, Nebraska consumers appreciate such labeling because it allows them to exercise a choice in the marketplace of which countries of origin to support with their purchasing dollars; and

WHEREAS, beef cattle production is a leading industry in Nebraska and plays a large role in the agriculture economy; and

WHEREAS, the state leads the nation in cattle on feed and ranks fourth in the total number of cows; and

WHEREAS, mandatory country of origin labeling for beef provides cattle producers in Nebraska and across the United States with a greater ability to compete in the retail grocery market by allowing consumers to choose between purchasing a superior beef product born, raised, and slaughtered in America or a foreign beef product imported from among twenty countries; and

WHEREAS, without mandatory country of origin labeling, multinational beef packers and other importers can harm the American beef industry by offering foreign-sourced beef products without providing consumers knowledge about what they are purchasing; and

WHEREAS, the competitive price established for fed cattle on the fed cattle spot market makes it the most important market for the live cattle industry; and

WHEREAS, over the past several years the volume of spot-market sales of fed cattle shrank to historic lows; and

WHEREAS, the cattle industry recognizes that the shrinking spot market volume reduces competition in the United States cattle industry and that voluntary and industry-led efforts do not produce meaningful improvements regarding this issue; and

WHEREAS, the spot-market price for fed cattle influences prices for nearly all cattle sold throughout the live cattle supply chain, regardless of age or weight; and

WHEREAS, demand for Nebraska beef increases when American consumers choose to purchase beef entirely produced in Nebraska; and

WHEREAS, Nebraska cattlemen play an incredibly important role in growing Nebraska's economy; and

WHEREAS, the federal American Beef Labeling Act of 2021 introduced by Senator John Thune requires retailers to indicate country of origin labeling for beef products; and

WHEREAS, United States Senate Bill 949 introduced by Senator Chuck Grassley requires beef packers to purchase at least fifty percent of their cattle needs through the spot market and to slaughter those cattle within fourteen days.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature supports both the federal American Beef Labeling Act of 2021 and United States Senate Bill 949 and encourages all members of Congress to cosponsor and quickly pass these bills.

2. That the Clerk of the Legislature prepare and transmit a copy of this resolution to the majority and minority leaders of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Nebraska congressional delegation.

Laid over.

SPEAKER'S ANNOUNCEMENT

Pursuant to Rule 4, Section 8, LR262 was referred to the Reference Committee.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 263CA. Introduced by Blood, 3.

THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION, RESOLVE THAT:

Section 1. At the general election in November 2022, the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article III, section 22:

III-22 (1) Each Legislature shall make appropriations for the expenses of the Government. And whenever it is deemed necessary to make further appropriations for deficiencies, the same shall require a two-thirds vote of all the members elected to the Legislature.

(2) Bills making appropriations for the pay of members and officers of the Legislature, and for the salaries of the officers of the Government, shall contain no provision on any other subject.

(3) The Legislature shall not impose responsibility for a program created after the year 2022 or an increased level of service required under an existing program after the year 2022 on any political subdivision of the state unless the subdivision is fully reimbursed by the state for the cost of such

program or increase in level of service. Reimbursement by the state shall be in the form of a specific appropriation or an increase in state distribution of revenue to such political subdivision.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to require the state to reimburse political subdivisions for responsibilities imposed or increased levels of service required after the year 2022.

For

Against.

LEGISLATIVE RESOLUTION 264CA. Introduced by Erdman, 47; Albrecht, 17; Brewer, 43; Clements, 2; Halloran, 33; Hansen, B., 16; McDonnell, 5; Murman, 38.

THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION, RESOLVE THAT:

Section 1. At the general election in November 2022, the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article VIII, section 1:

VIII-1 (1) This subsection applies on and after January 1, 2024. Notwithstanding any other provision of this Constitution to the contrary, no taxes other than retail consumption taxes and excise taxes shall be imposed upon the people of Nebraska.

(2) This subsection applies prior to January 1, 2024. The necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the Legislature may direct. Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 4, of this Constitution or any other provision of this Constitution to the contrary: (a)(1) Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchises as defined by the Legislature except as otherwise provided in or permitted by this Constitution; (b)(2) tangible personal property, as defined by the Legislature, not exempted by this Constitution or by legislation, shall all be taxed at depreciated cost using the same depreciation method with reasonable class lives, as determined by the Legislature, or shall all be taxed by valuation uniformly and proportionately; (c)(3) the Legislature may provide for a different method of taxing motor vehicles and may also establish a separate class of motor vehicles consisting of those owned and held for resale by motor vehicle dealers which shall be taxed in the manner and to the extent provided by the Legislature and may also establish a separate class for trucks, trailers, semitrailers, truck-tractors, or combinations thereof, consisting of those owned by residents and nonresidents of this state, and operating in interstate commerce, and may provide reciprocal and proportionate taxation of such vehicles. The tax proceeds from motor vehicles taxed in each county shall be allocated to the county and the cities, villages, and school districts of such county; (d)(4) the

Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural land and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land; ~~(e)(5)~~ the Legislature may enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses; ~~(f)(6)~~ the Legislature may prescribe standards and methods for the determination of the value of real property at uniform and proportionate values; ~~(g)(7)~~ in furtherance of the purposes for which such a law of the United States has been adopted, whenever there exists a law of the United States which is intended to protect a specifically designated type, use, user, or owner of property or franchise from discriminatory state or local taxation, such property or franchise shall constitute a separate class of property or franchise under the laws of the State of Nebraska, and such property or franchise may not be taken into consideration in determining whether taxes are levied by valuation uniformly or proportionately upon any property or franchise, and the Legislature may enact laws which statutorily recognize such class and which tax or exempt from taxation such class of property or franchise in such manner as it determines; and ~~(h)(8)~~ the Legislature may provide that livestock shall constitute a separate and distinct class of property for purposes of taxation and may further provide for reciprocal and proportionate taxation of livestock located in this state for only part of a year. Each actual property tax rate levied for a governmental subdivision shall be the same for all classes of taxed property and franchises. Taxes uniform as to class of property or the ownership or use thereof may be levied by valuation or otherwise upon classes of intangible property as the Legislature may determine, and such intangible property held in trust or otherwise for the purpose of funding pension, profit-sharing, or other employee benefit plans as defined by the Legislature may be declared exempt from taxation. Taxes other than property taxes may be authorized by law. Existing revenue laws shall continue in effect until changed by the Legislature.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to provide that, beginning January 1, 2024, no taxes other than retail consumption taxes and excise taxes shall be imposed upon the people of Nebraska.

For

Against.

LEGISLATIVE RESOLUTION 265. Introduced by Geist, 25.

WHEREAS, Lux Middle School was recognized as a 2021 National Blue Ribbon School by the United States Department of Education; and

WHEREAS, the National Blue Ribbon Schools Program honors schools for their overall academic performance or for closing achievement gaps between student subgroups; and

WHEREAS, Lux Middle School was recognized for its work spotlighting specific instructional practices as part of its teachers' professional learning; and

WHEREAS, recipients are determined by their performance on state assessments or other tests or how well they closed achievement disparities between students over the past five years.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates the students, faculty, and staff of Lux Middle School on their admirable achievements and applauds their dedication to a high standard of education.
2. That a copy of this resolution be sent to Lux Middle School.

Laid over.

LEGISLATIVE RESOLUTION 266. Introduced by Day, 49; Lindstrom, 18.

PURPOSE: The purpose of this resolution is to propose an interim study to examine Nebraska's processes relating to investigation of reports of child abuse or neglect in licensed child care facilities.

Allegations of child abuse by a staff member and owner of Rosewood Academy in Omaha, Nebraska, occurring in December 2020 and January 2021 were unknown to parents who entrusted Rosewood Academy to care for their children. The Department of Health and Human Services is responsible for licensing child care facilities to ensure the safety of children. Additionally, the Department of Health and Human Services or law enforcement is responsible for investigating reports of child abuse in licensed child care facilities and immediately notifying each person having custody of a child who has allegedly been abused or neglected of the report.

The interim study shall include, but not be limited to, an examination of:

- (1) The current statutory requirements for parental notice of abuse or neglect in licensed child care facilities;
- (2) The responsibilities of the Division of Children and Family Services and the Division of Public Health of the Department of Health and Human Services and law enforcement agencies when an allegation of child abuse or neglect involves a licensed child care facility;
- (3) How Nebraska's statutes relating to out-of-home child abuse or neglect compare to other states;
- (4) The rights of parents whose children are alleged victims of abuse or neglect in licensed child care facilities to receive notice of such allegations;

(5) The remedies available to parents whose children are alleged victims of abuse or neglect in licensed child care facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Judiciary Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

LEGISLATIVE RESOLUTION 267. Introduced by Gragert, 40.

WHEREAS, the Crofton High School girls' cross country team won the 2021 Class D Girls' State Cross Country Championship; and

WHEREAS, the 2021 Crofton High School girls' cross country team consisted of Jordyn Arens, Rylie Arens, Kiera Altwine, Elizabeth Wortmann, and Ashley Tramp; and

WHEREAS, under the direction of Coach Mickey Doerr, Crofton High School outscored runner-up Nebraska Christian by a score of 46 to 48; and

WHEREAS, this is the twentieth such championship title for Crofton High School; and

WHEREAS, Jordyn Arens, a sophomore on the cross country team, placed first overall at the championship meet with a time of 19 minutes and 11.43 seconds; and

WHEREAS, such a team achievement is made possible through the support of teachers, administrators, parents, and the community; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SEVENTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates the Crofton High School girls' cross country team on winning the 2021 Class D Girls' State Cross Country Championship.

2. That a copy of this resolution be sent to the Crofton High School girls' cross country team and Coach Mickey Doerr.

Laid over.

AMENDMENT(S) - Print in Journal

Senator Albrecht filed the following amendment to [LB310](#):
[AM1511](#)

(Amendments to Standing Committee amendments, AM635)

1 1. Strike the original sections and all amendments thereto and

2 insert the following new sections:

3 Section 1. Section 77-2004, Reissue Revised Statutes of Nebraska, is

4 amended to read:

5 77-2004 (1) In the case of a father, mother, grandfather,
6 grandmother, brother, sister, son, daughter, child or children legally
7 adopted as such in conformity with the laws of the state where adopted,
8 any lineal descendant, any lineal descendant legally adopted as such in
9 conformity with the laws of the state where adopted, any person to whom
10 the deceased for not less than ten years prior to death stood in the
11 acknowledged relation of a parent, or the spouse or surviving spouse of
12 any such persons, the rate of tax shall be:

13 (a) For decedents dying prior to January 1, 2023, one percent of the
14 clear market value of the property ~~in excess of forty thousand dollars~~
15 received by each person in excess of forty thousand dollars; -

16 (b) For decedents dying on or after January 1, 2023, and before
17 January 1, 2025, one percent of the clear market value of the property
18 received by each person in excess of one hundred thousand dollars;

19 (c) For decedents dying on or after January 1, 2025, and before
20 January 1, 2026, seventy-five hundredths of one percent of the clear
21 market value of the property received by each person in excess of one
22 hundred thousand dollars;

23 (d) For decedents dying on or after January 1, 2026, and before
24 January 1, 2027, five-tenths of one percent of the clear market value of
25 the property received by each person in excess of one hundred thousand
26 dollars;

1 (e) For decedents dying on or after January 1, 2027, and before
2 January 1, 2028, twenty-five hundredths of one percent of the clear
3 market value of the property received by each person in excess of one
4 hundred thousand dollars; and

5 (f) For decedents dying on or after January 1, 2028, zero percent.
6 (2) Any interest in property, including any interest acquired in the
7 manner set forth in section 77-2002, which may be valued at a sum less
8 than or equal to the applicable exempt amount under subsection (1) of
9 this section ~~forty thousand dollars~~ shall not be subject to tax. In
10 addition, the homestead allowance, exempt property, and family
11 maintenance allowance shall not be subject to tax. Interests passing to
12 the surviving spouse by will, in the manner set forth in section 77-2002,
13 or in any other manner shall not be subject to tax. Any interest passing
14 to a person described in subsection (1) of this section who is under
15 twenty-two years of age shall not be subject to tax.

16 Sec. 2. Section 77-2005, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-2005 (1) In the case of an uncle, aunt, niece, or nephew related
19 to the deceased by blood or legal adoption, or other lineal descendant of
20 the same, or the spouse or surviving spouse of any of such persons, the
21 rate of tax shall be:

22 (a) For decedents dying prior to January 1, 2023, thirteen percent
23 of the clear market value of the property received by each person in
24 excess of fifteen thousand dollars; -

25 (b) For decedents dying on or after January 1, 2023, and before
26 January 1, 2024, eleven percent of the clear market value of the property
27 received by each person in excess of forty thousand dollars;

28 (c) For decedents dying on or after January 1, 2024, and before
29 January 1, 2025, nine percent of the clear market value of the property
30 received by each person in excess of forty thousand dollars;

31 (d) For decedents dying on or after January 1, 2025, and before
1 January 1, 2026, seven percent of the clear market value of the property
2 received by each person in excess of forty thousand dollars;

3 (e) For decedents dying on or after January 1, 2026, and before
4 January 1, 2027, five percent of the clear market value of the property
5 received by each person in excess of forty thousand dollars;

6 (f) For decedents dying on or after January 1, 2027, and before

7 January 1, 2028, three percent of the clear market value of the property
 8 received by each person in excess of forty thousand dollars; and
 9 (g) For decedents dying on or after January 1, 2028, zero percent.
 10 (2) If the clear market value of the beneficial interest is less
 11 than or equal to the applicable exempt amount under subsection (1) of
 12 this section fifteen thousand dollars or less, it shall not be subject to
 13 tax. In addition, any interest passing to a person described in
 14 subsection (1) of this section who is under twenty-two years of age shall
 15 not be subject to tax.
 16 Sec. 3. Section 77-2006, Reissue Revised Statutes of Nebraska, is
 17 amended to read:
 18 77-2006 (1) In all other cases the rate of tax shall be:
 19 (a) For decedents dying prior to January 1, 2023, eighteen percent
 20 of the clear market value of the beneficial interests received by each
 21 person in excess of ten thousand dollars; -
 22 (b) For decedents dying on or after January 1, 2023, and before
 23 January 1, 2024, fifteen percent of the clear market value of the
 24 beneficial interests received by each person in excess of twenty-five
 25 thousand dollars;
 26 (c) For decedents dying on or after January 1, 2024, and before
 27 January 1, 2025, twelve percent of the clear market value of the
 28 beneficial interests received by each person in excess of twenty-five
 29 thousand dollars;
 30 (d) For decedents dying on or after January 1, 2025, and before
 31 January 1, 2026, nine percent of the clear market value of the beneficial
 1 interests received by each person in excess of twenty-five thousand
 2 dollars;
 3 (e) For decedents dying on or after January 1, 2026, and before
 4 January 1, 2027, six percent of the clear market value of the beneficial
 5 interests received by each person in excess of twenty-five thousand
 6 dollars;
 7 (f) For decedents dying on or after January 1, 2027, and before
 8 January 1, 2028, three percent of the clear market value of the
 9 beneficial interests received by each person in excess of twenty-five
 10 thousand dollars; and
 11 (g) For decedents dying on or after January 1, 2028, zero percent.
 12 Such rates of tax shall be applied to the clear market value of the
 13 beneficial interests in excess of ten thousand dollars received by each
 14 person.
 15 (2) If the clear market value of the beneficial interest is less
 16 than or equal to the applicable exempt amount under subsection (1) of
 17 this section ten thousand dollars or less, it shall not be subject to any
 18 tax. In addition, any interest passing to a person who is under twenty-
 19 two years of age shall not be subject to tax.
 20 Sec. 4. On or before July 1, 2023, and on or before July 1 of each
 21 year thereafter through July 1, 2029, the county treasurer of each county
 22 shall submit a report regarding inheritance taxes to the Department of
 23 Revenue. The report shall be submitted on a form prescribed by the
 24 department and shall include the following information for the most
 25 recently completed calendar year:
 26 (1) The amount of inheritance tax revenue generated under section
 27 77-2004 and the number of persons receiving property that was subject to
 28 tax under section 77-2004;
 29 (2) The amount of inheritance tax revenue generated under section
 30 77-2005 and the number of persons receiving property that was subject to
 31 tax under section 77-2005;
 1 (3) The amount of inheritance tax revenue generated under section
 2 77-2006 and the number of persons receiving property that was subject to
 3 tax under section 77-2006; and
 4 (4) The number of persons who do not reside in this state and who

5 received any property that was subject to tax under section 77-2004,
6 77-2005, or 77-2006.
7 Sec. 5. The Revisor of Statutes shall assign section 4 of this act
8 to Chapter 77, article 20.
9 Sec. 6. Original sections 77-2004, 77-2005, and 77-2006, Reissue
10 Revised Statutes of Nebraska, are repealed.

Senator Albrecht filed the following amendment to LB596:

AM1520

1 1. On page 3, line 11, strike "2021" and insert "2022".
2 2. On page 4, line 19, strike "2025" and insert "2026".

Senator Flood filed the following amendment to LB502:

AM1514 is available in the Bill Room.

VISITOR(S)

The Doctor of the Day was Dr. Dale Michels from Walton.

ADJOURNMENT

At 11:29 a.m., on a motion by Speaker Hilgers, the Legislature adjourned until 11:00 a.m., Thursday, January 6, 2022.

Patrick J. O'Donnell
Clerk of the Legislature