

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BREWER: Good morning and welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer from Gordon representing the 43rd Legislative District and I'm the Chair of this committee. For the safety of our committee members, staff, pages, and the public, we're asking those attending our hearing today to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for the bill that you're here to speak on. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard and then the next one up. Committee will pause between bills to allow time for the pages to reset the room. We request that everyone utilize the identified entrance on my left, exit on my left-- right in the hearing room. And please note that these will be monitored by the Sergeant at Arms. We request that you wear face coverings while you're in the hearing room. Testifiers may remove their face covering during the testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. For committee members, I will leave it up to your discretion on the wearing of face coverings because we have adequate protection by the Plexiglas dividers and we have adequate social distancing from the testifiers and the general public. Public hearings for which attendance reaches seating capacity or near, the entrance door will again be monitored by the Sergeant at Arms to allow folks to enter the room based upon seating availability. Persons awaiting to enter the hearing room are asked to observe social distancing and wear a face covering while in the hallway or in the building. The Legislature does not have available due to HVAC a overflow hearing room. So just be aware of that. I would also ask that you please limit handouts. The committee will take up the bills in the order posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. Committee members may be coming and going during the hearing. This is just part of the process. We have bills to introduce in other committees. Also, be aware that the members of the committee may also be required to take cell or computer messages. So we will be on both of those systems. Ask that you abide by the following procedures to better facilitate today's meeting: silence or turn off any electronic devices, no food or drink in the hearing room, please move to the reserved chairs when

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 18, 2021

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

you are ready to testify. There are-- chairs are all identified. Introducers will take-- will make the initial statement, followed by proponents, opponents, and those in-- testifying in the neutral. Closing remarks will be reserved for the introducing senator. If you are planning to testify, please pick up a green sheet that is on the table in the back of the room. Please fill out the green sign-in sheet before you testify. Please print. And it is important to complete the entire form. All letters of support need to have been in by 1200 hours central standard time the day prior to the hearing. If you have hand--handouts, please be sure to have 12 copies available. The letters must indicate the bill number, whether you're proponent, opponent, or in neutral. Mass mailings will not be used. When you come up to testify, please speak clearly into the microphone. Tell us your name and please spell your first and last name to ensure accuracy for the record. We will using-- let's see, let me do a quick head count here. How many are here to speak on the first bill? All right, well, we'll, we'll go with the five minute here and, and see how that works out for us. So you'll have five minutes to make your initial remarks to the committee. You'll have an indication through our light system of a yellow light and one minute to go and a red light when your time is complete. And the audible alarm will also indicate that your time has expired. No displays of support or opposition for a bill, vocal or otherwise, will be allowed during the hearing. Committee members that are with us here today will introduce themselves-- themselves starting on my right.

BLOOD: Good morning, I'm Senator Carol Blood, representing District 3, which represents western Bellevue and southeastern Papillion, Nebraska.

McCOLLISTER: My name is John McCollister, representing District 20 in central Omaha.

SANDERS: Good morning, my name is Rita Sanders, representing District 45, the Bellevue, Offutt community.

LOWE: John Lowe, District 37: Kearney, Gibbon, and Shelton.

HALLORAN: Good morning. Steve Halloran, District 33, which is Adams and parts of Hall County.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BREWER: Dick Clark, the legal counsel for the Government Committee. And Julie Condon, the committee clerk. And let's see, this is the morning, so we have Jon. Yep, there's Jon Laska. He's a senior at UNL from Genoa. And tucked way back over there is Ryan Koch. Ryan is also a senior at UNL and he is from Hebron, Nebraska. So with that said, Senator Groene, welcome to the Government Committee.

GROENE: Thank you, Chairman Brewer. Good to see you back.

BREWER: Good to be back.

GROENE: Glad I never served under you because as a leader, I, I don't think you'd put up with anybody that didn't tolerate pain.

BREWER: Well, it depends on some of these jobs.

GROENE: But anyway, LB590-- this last election, we have had doubt cast on the trust of America's election system. Without 100 percent proof I cannot adhere to any of the conspiracy theories that have been brought forward, but I do believe our national leaders owe all Americans a rigorous examination of our election process. That said, I do believe we have allowed the election process to be distorted by extending the time allowed to cast a ballot. Information on candidate positions can be exposed right up to Election Day. Health issues can be exposed, etcetera. Candidates can drop out of a race. Meanwhile, some citizens may have voted a month earlier. Voting is an individual right. Should be made-- decisions should be made by an individual not influenced by anybody but the candidate. It should be a private decision. No one should be looking over our shoulder or coaching us as we fill out our ballot. There exists today organizations who have rabid political philosophies, who, who have as a mission to harvest votes, to go out in the communities to register voters. I'm fine with that. The League of Women Voters have done that for years. What concerns me is they encourage citizens to ask for mail-in ballots and then return later in the communities and help the voters fill out their mail-in ballots. Is it fraud? Legally, no. Is it unethical? Yes. By allowing long preelection periods of time for, for ballot access, we have extended the harvest season for these radical groups to increase their influence over elections. It happens. I've been told personally by people that they got knocked on the door and then people showed up later seeing if they had any questions about the ballot they received. I've not got, got involved in the integrity of our elections debate,

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

but I do know there is never smoke without fire and that fire will spread unless you take away the source of the fuel. You have a couple of handouts that we gave you. One is comparison to other states. We sit right in the middle right now about days before elections and that mail-in ballots are sent out. And then also we sit right in the middle-- well, we sit on the top end. We top in before-- on the amount of days you can vote, I believe, physically at the Clerk's office. The period is way too long and you also have an analysis of that. My staff put together those numbers. Instantly, instantly enough-- interesting enough-- my fat tongue, excuse it. But there's little difference between voter turnout between the top-- the nine states. Overall, I believe it was 60-some percent nationally voter turnout of registered voters. The ones that are in the top 10-- I can't read this well, they voted like 67, 68 percent. Those in our group at 35 that are in the middle, voter turnout was about the same. Those under 20 days, the voter turnout was close to the same. But it's the integrity I'm looking at. The longer you leave that harvest season open for these radical groups, the more they're going try-- go out into communities and try to influence voters. Once that ballot is filled out, somebody's sitting beside him, helps him fill it out. Once it's in the envelope and that person signs that envelope, it's a legitimate ballot. There's a reason our forefathers invented these little canvas booths so that your spouse didn't know how you voted. Your boss didn't know how you voted. Your neighbor didn't know how you voted. I always tell the story about my mother and father. My mother was a Kennedy Democrat, McNally, Irish working class Democrat. My grandfather was a county commissioner. My dad was a hard core conservative. If a mail-in ballot was laying on our table, my mother would have never voted for, for Kennedy. There's something instinctively wrong with mail-in ballots. It's a public ballot. It is not a private ballot anymore once it is delivered in the mail. And there's other problems with it, lost in the mail. You got too many hands on that ballot. We need to encourage people to show up at the, at the-- a ballot box and vote there at the precinct. Broadening the time just leads to distrust, ballot harvesting. It's, it's not a good thing. And we-- one of the things-- [INAUDIBLE] got a letter from the social workers. That really concerned me. What do social workers have to do with voting? They're supposed to help people make sure they got the heat on, a place to live, something to eat, medical help. Are some of these radical social workers helping people fill out ballots? Why would they be involved in LB590? It's not their purvey. It's not what we hire them for as

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

government employees. That shows you how bad it can get, ballot
harvesting and influence and influencing the ballot. So anyway, that's
why I brought-- start a conversation, LB590, and I'd like to go back
to the old lead pencil, actually, ballots. So that's my opening.

BREWER: All right. Thank you, Senator Groene, for your opening on
LB590. Questions for Senator Groene? Senator Blood.

BLOOD: Thank you, Chair Brewer. And how are you today, Senator Groene?

GROENE: Just great.

BLOOD: I got a couple of questions.

GROENE: It's warmer. It's double digits.

BLOOD: It's like a heat wave outside now, isn't it?

GROENE: Yes.

BLOOD: I have a couple of questions for you. So as long as I've known
you, you've been a huge proponent of eliminating government overreach.
So the first question that I have for you is why in the world is it
the state's business how much someone-- how much time someone uses to
assess a candidate? And that was in your statement of intent, that's
why I'm--

GROENE: Well, it-- actually by early voting, you limit their time to
assess a candidate. Because if they vote 30 or 45 days ahead of time,
as I said, a lot of things can happen. A candidate can withdraw from
the race. That's happened. A candidate can die. That's happened,
nationally. A candidate can be exposed for corruption. That's
happened. And these people have voted 30 days ahead of time. So I'm
lengthening the time they can, they can. Everybody's voting on the
same facts if you vote on Election Day. Everybody is voting on the
same facts. Right now, that's not happening, Senator Blood.

BLOOD: Well, but we're are also a very mobile society. And I'm leading
to a question. And I will use myself as an example, judges are the
ones that are always really important to me, but it takes quite a
while to properly research judges. You can. You can't properly do it
in a day in addition to other people that you research. Thanks to the
Internet, we're able to do that to see if there's any charges pending

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

against them or complaints. Why do you want to take that ability away from people like me that often work 15-, 16-hour days, have small windows of times to do that research?

GROENE: I look up something. I do agree with you. I, myself, because of some local elections, asked the county clerk for a sample ballot. That sample ballot was-- wasn't available within a week, I don't believe, of when they mailed it out. I would agree with you. We need to probably have a sample ballot mailed out to people earlier than what they do so they can do exactly what you do, do the research. You don't need the actual ballot in front of you to do your research, how are you going to vote.

BLOOD: Why would we need a-- no-- but I need the ability to-- what I'm saying is I need the ability to utilize that window of time to do my research so I can vote. And in the small window, I have time to do so when I vote by mail. So--

GROENE: Well, if you got a sample ballot sooner, you could do that without having the actual ballot laying on your kitchen table.

BLOOD: You wouldn't really need a sample ballot because it's all online. Like, you can go to every county's website and find out who's running.

GROENE: Well, it's hard now-- it's hard to get-- if you got something-- looking at somebody on the weed district or, or the cemetery board, it's pretty hard to find out who's running unless you have that sample ballot in front of you.

BLOOD: Fair enough. A couple more questions, so I don't take up too much time. You talked about radical groups and, and who are those radical groups that you're referring to? I didn't-- that wasn't clear in your opening.

GROENE: Well, the one-sided groups who have a political agenda-- ACORN nationally. If you remember that, they went out into certain states and certain communities and did exactly what I said in a couple of elections.

BLOOD: They, they came into Nebraska, ACORN did?

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

GROENE: And that was the 2012 was it-- '16 election they did it in Ohio and stuff. Locally, we have a group called Civic Nebraska that has that mission and they're funded with seven hundred and some twenty thousand dollars from a, a, a billionaire Harris who has political agenda. And they go out and, and try to encourage voter registration and then try to encourage certain political philosophies. If you look, if you look into the background--

BLOOD: So, so wouldn't you say there's also conservative groups that--

GROENE: Oh, yes, there are.

BLOOD: --do the same thing?

GROENE: The NRA could do it. And I don't know if they do, but I'm sure they try to get members, encourage them how to vote so they have it in front of them. There's all sorts of groups. And, and the-- politics is big. This is not going-- this trend will spread and it's going to spread to political parties.

BLOOD: But--

GROENE: Political parties are going to be out there with, with hired volunteers going around and trying to help people vote. And that should never, ever happen in America.

BLOOD: OK, I'm going to go back to that because that's one of my questions. So I don't know if you watched the Government Committee yesterday at all, but we had Electoral College and voter ID. And yesterday I said-- I did a lot of research on the states who had put their foot in the door with those issues and that I anticipated not knowing today's agenda, that the next thing we would hear would be shortened early voting periods, limits on same day voter registration, polling places with, with not enough voting machines, etcetera, and so on. And sure enough, today, we have shortened early voting periods. So based on the responses that I get and I'm asking for your response on this, is that a lot of people see this constant tweaking and reducing of accessibility for voters as a type of racial microaggression, and that it really does illuminate a deeper problem when it comes to voting and voting rights.

GROENE: Right.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BLOOD: So what would be your response to the fact that it just seems like, again, it's dominos? Yesterday we had that, today we have this. What's your response to that?

GROENE: My response is I'm probably the least racist people-- one of the first people you ever find. I have complete confidence, no matter what a person's color is, their makeup, their sex, they have the same intellectual abilities I do to show up at a ballot-- at a, at a precinct and vote. I am not going to label them that they have-- they are incompetent and they don't have the ability to know when Election Day is and show up and vote.

BLOOD: But that's not the issue.

GROENE: But that's what we are doing when we say this has something to do with race or poverty. Money has nothing to do with your ability to know and to be a citizen and to take part in your government, neither does race.

BLOOD: But that's not the question.

GROENE: Yeah, you said it, it's race--

BLOOD: No, I'm going to clarify it better.

GROENE: --you asked me if I thought this was for racial and economic reasons for voter suppression. No, it is not. It's to protect their vote. That when they vote, their vote is their vote, not influenced by somebody who comes around and knocks on the door.

BLOOD: So let me reframe this. So-- and better clarify the question. So say that I'm a working mom making minimum wage and I have to work two jobs and I have kids who may very well now be doing distance learning because of the pandemic. I may rely on public transportation because I can't afford insurance for my car. Because I've had to pay for extra child care now that my children are at home, I have a small window of time that I'm allowed to vote. Why do we want to take that window of time away from her?

GROENE: That window of time back in the days when you had to ride a horse to the, to the, to the precinct didn't exist. This is, this is not-- it has not been created to, to encourage more people to vote. It's been-- this exists to, to allow people who want to influence the

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

vote more time to do so. That is why this was, was created. That-- if you want to bring a bill, which I always thought that says that first Tuesday in November is a national holiday, I'm with you. I'm getting used to these as a government employee with 13 or 15 days off.

BLOOD: I have to agree on that one. But--

GROENE: If you bring a bill with that next year and I will support you because I do think that's voter suppression that, that that lady is in a cafe waiting on a table and can't get down to the ballot box because we have not made one of the most important days in this country a national holiday.

BLOOD: Which is why she needs the more time to vote by mail.

GROENE: Well, but she--

BLOOD: And we're going to have to disagree on that point.

GROENE: --it doesn't take 35 days to do that.

BLOOD: So you specifically said that voting is a right. So this is something I keep hearing from people bringing these types of bills forward. If voting is a right, why do we want to make it harder and not easier? And I know you say this is making it easier, but you and I are seeing the logic differently on this one. So the question is, why are we making it harder? And you're saying because of-- if I have this correct, help me out if I'm wrong, your concerned about ballot harvesting, people helping folks fill out their ballots, and you believe that if they're helping, that they're telling them how to vote. Would that be correct?

GROENE: Yes.

BLOOD: Not just how the, how the mechanics of it work?

GROENE: There's a lot of people don't pay attention to government. That's why historically we have low voter turnout. But if you have a social worker in there and says-- and the person is worried about their heat turning off. And they ask, which one of these candidates do you believe would make sure my heat doesn't get turned off? Guess what-- how they will be influenced?

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BLOOD: Well, but that's an assumption. You're based on assumption that nobody is trustworthy and nobody is there for the right reason, which would be how to explain how to-- how the ballot works, how to sign it on the outside.

GROENE: The point is, if they're not there at all, we don't have to worry about it do we.

BLOOD: So--

GROENE: And that person is in--

BLOOD: --people shouldn't--

GROENE: --is voting in there in the precinct in the canvas little booth, we don't have to worry about that.

BLOOD: So it's your view that people shouldn't have assistants, especially if they're a person with a disability or a senior citizen, and they have questions on the ballot that if they can't get the help they need to explain how the ballot works, then tough?

GROENE: I mean--

BLOOD: I mean, that's what I'm hearing, that's why I'm, I'm trying to clarify. I'm not being a smart aleck.

GROENE: No, that ain't what we're saying at all. If you have no use of your hands, in statute, you can have an agent help you fill out your ballot.

BLOOD: Right, and aren't those usually like some-- the people that, that help them with their other HHS issues because--

GROENE: It should not be sitting at the kitchen table because we have strong political vision-- views, Americans do, and it is hard not to convey that to somebody sitting in front of you.

BLOOD: Gosh, I, I must live in a different world because I, I have worked with so many senior citizens and people with disabilities and I know folks that come and help them and they're not helping them to tell them how to vote, they're helping them to show them this is what

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

you need to do in order for your ballot to, to be valid. So we can
talk about that another time. I think I've asked all my questions.

GROENE: Well, thank you, Senator Blood, you always have good
questions.

BLOOD: Thank you, Senator Groene.

BREWER: All right, additional questions for Senator Groene on LB590?
Sir, will you-- oh, Senator Lowe.

LOWE: Thank you, Chairman Brewer. Good to have you back. And Senator
Groene, good to see you today. Can a mother who is having to work and
have her-- and having her children at daycare now, can't she fill out
an absentee ballot?

GROENE: Yes. We have always had that for a long time.

LOWE: And, and vote that way--

GROENE: I shouldn't say always, but.

LOWE: --if she's, if she's worried about time or something like that?

GROENE: You can go-- you can-- but you've got to be-- personal
responsibility comes with freedom and you shouldn't have to-- at least
make the effort to ask for an absentee ballot. And you can do that--

LOWE: All right.

GROENE: --in Nebraska.

LOWE: Thank you.

BREWER: All right, any other questions for Senator Groene at this
time?

HALLORAN: Mr. Chairman.

BREWER: Yes, sir.

HALLORAN: Along the same lines as Senator Lowe's comments, I've used
an absentee ballot for years, primarily because I'm either here or
home or not in, in my address at home quite frequently. And, and I've

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

used it, and I've helped my mother with that by getting the absentee ballot for her. She could have done it on her own, but I helped her with getting the ballot. But do we have any kind of handle on how many people use absentee ballots? I don't know that you're the person to ask that question, but.

GROENE: Well, of course, this year was distorted because we actually sent postcards out that-- and people could request them. I believe that's how Nebraska did it. Counsel Clark could probably straighten you out. But, but normally it isn't that many, it's military. In my instance because I travel for a living, and then down here, I always went to the courthouse when I was in town. And, you know, I, I think it originally was like a week and then it went to 15 days or whatever it is now, but-- or 30 days and, and 20 days. And we-- I voted there because I was in town, but I don't believe I ever did absentee. I've always done the-- go to the courthouse. And I don't have any qualms with that. It's still a canvas booth that your private. And in fact, I made sure I got-- had at least a two, two vote margin on my election because I wasn't sure how my wife was going to vote, but-- because I don't know and I shouldn't know. But, yeah, you-- there's always an-- it's, it's personal responsibility. Do you show up at work on time? Do you go to a grocery store when you're out of food? Do you have the ability to go and vote when you need to vote? It's a free country, you do not need to have your hand held for voting. It, it takes some personal responsibility.

HALLORAN: It does seem odd that as mobile, as much more mobile that we are as a society and, and the access to, to online information about not only the candidates but the sample ballot, for example, that in, in spite of that, we have over time extended that window. I would, I would think it would more naturally contract, and that's what you're trying to do here.

GROENE: That's a good point. With modern technology and communications, we don't need to wait three weeks for the Pony Express to bring our mail. We got email. So why did we expand this and not create a shorter period?

HALLORAN: Yeah, thank you, Senator Groene.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

GROENE: Because there's a lot of knowledge out there. There's a lot of information out there that early voters are, are making a decision on before Election Day.

HALLORAN: Thank you.

BREWER: All right. Senator McCollister.

McCOLLISTER: Yeah, yeah, thank you, Chairman Brewer. It's nice to see you back. Senator Groene, the amount of time prior to an election for absentee ballots to be sent out, is that under the volition of the Secretary of State, or is that in statute?

GROENE: That's statute. I sat on this committee when John Gale came in and wanted to expand it. I think we didn't once. I don't believe I voted it out of committee. But, but yeah, he requested it. And, and I can't remember who brought the bill, but somebody brought it. He testified in favor of it, put it that way. I can't remember who brought the bill.

McCOLLISTER: And the committee voted, voted that proposition out and it passed on the floor?

GROENE: But we don't have the information we have now about what, what can happen when you do that and a lot of evidence that-- a lot of bad comes with what we thought was the good.

McCOLLISTER: So it's in statute is what you're saying?

GROENE: Yeah, that's what I'm doing. My statute changes it from 35 to 20.

McCOLLISTER: Thank you.

BREWER: All right, any additional questions?

GROENE: And if you want me to, I can find out what it was prior to 35?

BREWER: Any additional questions on LB590 for Senator Groene? Will you be sticking around for closing?

GROENE: If my other bill in Revenue isn't up yet.

BREWER: OK. If not, then we're, we're good to go with waiving?

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

GROENE: If you see me leave the room, Chairman Brewer, I will not be closing.

BREWER: Good copy, thanks. All right, we'll start with proponents of LB590 as soon as Jonathan is done. All right, first proponent for LB590. All right, well, moving right along. So we will go from proponents to opponents. First opponent to LB590. All right, we have a taker. Welcome to the Government Committee.

DAVID SHIVELY: Thank you, Senator Brewer, members of the government committee, my name is David Shively, D-a-v-i-d S-h-i-v-e-l-y. I'm the Lancaster County Election Commissioner. Originally, Douglas County Election Commissioner was to represent our association. The county clerk's election commissioner is [INAUDIBLE], but he's unable to do that on, on this bill. So I know he did send in a statement. And I would just be happy that you would read his stats that he has for Douglas County. But our association is concerned about this bill. And I, I became election commissioner in August of 1999 and in the 1999 legislative session, that's when the Legislature determined to change Nebraska law to allow anyone to request an absentee ballot. Prior to that, you had to have an excuse to request an absentee ballot. And since that time, we have seen a drastic increase in early voting. In Lancaster County in 1996, I think we had 5,000 people that voted early, whether it was by mail or in person. And the November election, we had over 90,000 requests for early voting in Lancaster County. We do mail ballots out the first date according to state law that absentee ballots need to be prepared for voters is 35 days out. People can request an absentee ballot beginning 120 days prior to an election. And so we will start getting requests starting at 120 days out. We can't mail those ballots out until at least 35 days. Voters can come into the office and vote in person 20 days prior to the elect-- or excuse me, 30 days prior to the election. We are concerned as an association on-- as the number has grown, we usually try to get as many of those ballots out the first day as we possibly can. It allows us to manage our, our workflow better. We get those out the first day. We get as many out as we possibly can that we've seen requests. Certainly voters have up until 8:00 on Election Day to return those ballots. So, I mean, they don't have to vote it the day they get it and many do. Many have already made their minds up. They can return those right away. But we also get many returned in our drop boxes and in person on Election Day as well. So people, people will wait several days after they get those ballots to do that. We just

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

think the, the flow, if we're going to continue with the no excuse
early voting that we have and the numbers that have grown over the
years, we just feel very passionate that, you know, the keeping the 35
days for by mail, 30 days in person, special elections have a little
different standard for that. But these are the statewide elections
that we, that we deal with. And with that, I'd be happy to answer any
questions.

BREWER: All right, thank you, sir. All right, questions? All right,
looks like you're going to get an easy one.

DAVID SHIVELY: Thank you.

BREWER: Thank you for coming in and testifying. All right, looking for
any other opponents to LB590. Welcome to the Government Committee.

BETH BAZYN FERRELL: Thank you. Good morning, Chairman Brewer, members
of the committee. For the record, my name is Beth, B-e-t-h, Bazyn,
B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association
of County Officials and I'm appearing in opposition to LB590. I would
just echo Commissioner Shively's comments about shortening the time
frame. That compressed time frame would be a little more challenging
to manage the workflow of receiving ballots and processing those
ballots. So that is our opposition to this bill. I would be happy to
answer questions.

BREWER: All right. Well, I guess I'm going to go ahead and start with
one just because I never fully understood how it works. When the
counties get in the absentee ballots or early ballot, they go into a
holding box container, whatever, but they're not actually counted
until the day of the election, is all right?

BETH BAZYN FERRELL: Right. And I, I would probably defer the details
to an election commissioner who can address them specifically. But as
I understand it, they come in there, they're logged in. There's a
barcode on the envelope so that it's, it's logged in, that, that vote
or that ballot has been returned. But they're not counted until after
the election.

BREWER: And if I remember right from the comments from the Secretary
of State that the process is monitored and that when it's mailed, when
it's received, when it's filled out, and then when it's counted,

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

there's like a number of different points that the barcode part of it
accounts for that process. Does that sound right?

BETH BAZYN FERRELL: Yeah, that's right.

BREWER: OK. Any questions on LB590? All right, thank you for your
testimony. All right, we'll give Jonathan a chance to get things
cleaned up here. All right, looking for any additional opponents to
LB590. Yeah, you guys can just keep shifting forward if you want, that
way we kind of got you on an assembly line. All right, welcome to the
Government Committee.

DAVID WELLSANDT: Hello.

BREWER: Good morning.

DAVID WELLSANDT: I am David Wellsandt, D-a-v-i-d W-e-l-l-s-a-n-d-t. I
reside in District 4, and I'm here to oppose LB590. Some comments I
kind of want to share is that I appreciate that this bill's intent is
to enhance voter integrity and push to a Tuesday in November voting.
But I think there are certain limitations of that that aren't really
addressed in this bill. So, for example, the number of days that, that
early balloting is available wouldn't really change the, the
likelihood of any sort of fraud or illegitimate activity that would be
available in any, any sort of time frame if it's out there. There's
been a lot of conspiracy theories and none, none really come forward
to show any widespread miss voting. Second, voting in person on
Tuesday is not always practical. My wife is a teacher. She just can't
get to the polls during the day. And if there's anything going on in
personal life with kids or such in the evening, it's just not
practical for her to vote in person. So we have kind of had a family
routine or tradition now of kind of voting about the weekend before
and kind of show our child the, the process of how we selected, how we
kind of talk through who we-- we're supporting and why, and then going
and delivering the ballot and getting some cookies. So another concern
I have about this, it came from Senator Groene's comments about the
coaching. I think there's already so much coaching out there with the
commercials and the endorsements, and in the news that you read. I
think the more that we discuss with each other the issues that are in
play and talk to people, we kind of help develop our own opinions
better. So I don't know that that's really a concern out of that bill.
He also commented about the potential of, you know, if a candidate

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

falls out at the last minute, how do you readjust your ballot for that? As you stay tuned, I think there is going to be another bill here later today, LB125. It addresses ranked-choice voting. And I think that will put into some play some mechanisms that would really address that much better than shortening the, the time frame for the absentee voting. And Tuesday, one Tuesday in November is probably not sufficient for the, the voting capacity. We had record turnouts this year. If we had pushed everybody to meet up at a polling place this Tuesday, they would have been going for, you know, several days in a row as opposed to letting some of that, that burden come in at, at off peak hours to mail in ballots, mail in boxes, and such like that. So those are my general comments. I appreciate your time, and just ask that we oppose LB590 for the time being.

BREWER: All right, thank you for your testimony. And just for your situational awareness, when we finish this bill, we have LB635 and then after that we have LB125. All right, questions? Senator Halloran.

HALLORAN: Thank you, Mr. Chairman, and welcome back. So I probably missed it, Mr. Wellsandt, do you-- you're, you're speaking privately on this?

DAVID WELLSANDT: Yes, I'm just a private citizen.

HALLORAN: OK. Are you an advocate for any interest group?

DAVID WELLSANDT: I, I am a loose affiliate right now with the Rank the Vote. They kind of let me participate lately in the last couple Zooms. And I think, I think rank choice voting is something that I will be supporting. I think it gives voters a better voice, which is why I oppose this bill right now.

HALLORAN: OK, a right to vote, you say your--

DAVID WELLSANDT: Rank the Vote.

HALLORAN: Right the Vote.

DAVID WELLSANDT: Rank.

HALLORAN: OK.

DAVID WELLSANDT: R-a-n-k.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

HALLORAN: Oh, OK. Rank the Vote, got it. OK. All right, thanks.

BREWER: OK, any-- Senator Blood.

BLOOD: Thank you, Chair Brewer. How are you today?

DAVID WELLSANDT: Doing all right.

BLOOD: It's so quiet in here today. It's kind of nice. So District 4
is Senator--

DAVID WELLSANDT: Hilkemann.

BLOOD: --Hilkemann. He parks next to me, that's the only reason I know
that. So, so you didn't originally come to testify on this bill it
sounds like. Would that be accurate, that you originally came to talk
on the bill later today?

DAVID WELLSANDT: Correct. My, my primary focus or initial involvement
was the LB125. And as I have been following things closer and saw that
both of these were, were scheduled this morning, I kind of thought
this is another place I, I should share my voice.

BLOOD: If your condense-- if you were to condense your one concern
that motivated you to leave that chair to come and testify on this
bill, what would that be?

DAVID WELLSANDT: I feel like it limits voter expression without any
other offsetting factor. I don't-- there's a lot of talk of fraud, but
there has not been a lot of proven fraud on, on any significant basis.
And so efforts to restrict voting in the face of that, that argument I
don't think holds.

BLOOD: Thank you.

BREWER: All right, any additional questions? Seeing none, thank you--

DAVID WELLSANDT: Thank you.

BREWER: --for testifying and good job shifting fire from one to the
other there. All right, next-- oh, we, we always have the delay here.
The times we're living in.

DAVID WELLSANDT: Yep, just have to adapt.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BREWER: All right, come on up and welcome to the Government Committee.

SHERI ST. CLAIR: Thank you. Good morning. I think you should label that chair the on-deck circle. Next one always moves up. I'm Sheri St. Clair, S-h-e-r-i S-t C-l-a-i-r, and I am speaking on behalf of the League of Women Voters in opposition to LB590. In brief, the League has worked for a long time to promote election reform, including expansion of early voting. This bill serves to contract that. It decreases accessibility to the electoral process and will hinder the right of some citizens to vote. This is an unnecessary limitation to the time allotted, in our opinion. There's been a lot of theoretical issues raised. There's been a lot of talk of voter fraud. And certainly in this past election, there certainly has been a deep search for fraud that hasn't materialized. And so the question in our minds is, you know, what is this bill going to do other than decrease accessibility to the whole process.

BREWER: All right.

SHERI ST. CLAIR: Happy to answer questions.

BREWER: You bet, we'll have some for you. Senator Blood.

BLOOD: Thank you, Chairman Brewer. And it's nice to see you over and over again. I have to say, I give you credit for being so determined to protect voters' rights. So-- and I know you do that as a volunteer, by the way. So are you one of those radical groups telling people how to vote?

SHERI ST. CLAIR: We are not one of those radical groups telling people how to vote. We want people to vote. It is still disappointing that even with all the attention to the past elections and November 2020, voter turnout still didn't crack, you know, 80 percent levels.

BLOOD: I think it did in Sarpy, I think.

SHERI ST. CLAIR: In some, in some areas.

BLOOD: Yeah.

SHERI ST. CLAIR: But, you know, overall, it's kind of disappointing. You can't make people vote. They have the right. You can try to make it as accessible for them as possible, but you can't force it.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BLOOD: I have one more quick question.

SHERI ST. CLAIR: Um-hum.

BLOOD: So if I'm a senior citizen and I, I call the League and I say I don't understand how to use my ballot, can you help me? Can you offer mechanical help to somebody with a ballot and do you?

SHERI ST. CLAIR: That is a question I can't answer.

BLOOD: OK.

SHERI ST. CLAIR: The only person I help with a ballot is my mother. And as I mentioned yesterday, she's in her 90's and has voted absentee for quite some time and, yes, I help or do I always agree with how she votes, no, but, you know.

BLOOD: Are you aware of any radical groups that are doing that?

SHERI ST. CLAIR: I am not.

BLOOD: All right, thank you very much.

BREWER: All right, any other questions? All right, well, thank you for coming in, and thank you for your testimony.

SHERI ST. CLAIR: Thank you.

BREWER: All right, we are still on opponents of LB590. Come on up. Have a seat, sit down, relax. Welcome to the Government Committee.

JOSHUA MUELLER: Thank you.

BREWER: Whenever you're ready.

JOSHUA MUELLER: Good morning, Senators. My name is Joshua Mueller, J-o-s-h-u-a M-u-e-l-l-e-r. I similarly didn't come here initially to give testimony about this bill, but I happened to be here and I thought that I had some relevant experience that would maybe be beneficial. I'm currently a student pursuing a PhD at the University of Nebraska. I was born and raised in Bellevue and I now live in Lincoln. I consider myself a long time resident of Nebraska, but during part of my PhD, I actually had the opportunity to study with a different university in California because they had some relevant

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

expertise to the area that I was studying in. And that required me to live in California for just shy of a year. But while I was there, I still considered myself a resident of Nebraska and I was able to vote in both the primary and the general local elections for Lincoln because of the ability to use an absentee ballot. However, the mail system doesn't always work perfectly. It does take time for ballots to come and go between Nebraska and California. And so it's very beneficial to have that wide window. We saw in this last year that there was a time frame where our mail system worked incredibly sluggishly and mail was taking weeks longer than it should have. If something like that were to occur around an election day and you had a short period for absentee ballots to be sent and received, it's quite possible that someone in my situation would not have been able to vote in the local election. My vote just wouldn't have counted. That goes the same for my wife because we both voted absentee. And if there wasn't enough time for that, we just wouldn't be heard and counted.

BREWER: All right, well, it's refreshing to see you come up without a lot of pages because you have no choice but to speak from the heart. So thank you for that. And, and I thought you gave a great example there. All right, questions? All right, again, thank you for your testimony. All right, we will get the next opponent headed up. All right, then we'll-- oh, we got one. Welcome to the Government Committee.

JUDY KING: Nice to see you, Senator Brewer. Thank you. My name is Judy King and I-- it's spelled J-u-d-y K-i-n-g, and I was just going to bring my testimony in from yesterday and just scratch it out and say, say the same thing again, you know, because it's fitting on these three voter suppression bills that you put through. And especially it's good to see Senator Groene putting it through. It's-- he's fallen right in line. Trump lost the election, but before he left, he initiated others to take over our Capitol. And his-- it was all over a big lie. The-- we had an election, he lost 60 courts, over 60 courts said that he didn't win the election and that there was no voter fraud. So I'm, I'm deeply concerned that we continue this voter fraud and voter suppression during a pandemic where we need voter-- we need mail voter ballots mailed out. And to do it by mail because it is-- there's half the population that believes that we're in a pandemic and wears masks and protects themselves and stays six feet apart, wears their masks and wash their hands. And to shorten that time for the election offices here is, is, is not going to work and shorten it for

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

the voters is not going to work. You have several count-- you have a county here in Nebraska that does all vote by mail. Are you going to tell your Republican voters out in the rural area to, you know, you're, you're cutting their process down? You want them to come in to vote in the office and-- let's see-- you do, you-- do you want to increase your turnout for your Republican Party or the GOP Party? Or are you trying to stop it, too? Are you stopping it for all of us or are you just stopping it for Democrats? And I'm not sure, and I'm not sure who your radical, you know, people are that you're talking about, we're just voters, we would like to vote. We want, want to do it as reasonable as we can during a pandemic. My, my thing is maybe we need to have coffee some day or talk to each other because your ideas are so far out of whack with what's going on out in the real world that, you know, maybe if we talked and instead of done this, we could get some stuff done and be fair to people that can't vote. Anyway, that's all I have to say.

***SPIKE EICKHOLT:** Thank you, Chairperson Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Spike Eickholt and I am a Lobbyist for the ACLU of Nebraska. The ACLU thanks the committee for their time and enters our opposition to LB590. Voting is the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest. The ACLU works to protect and expand American's freedom to vote. We should be working together to remove barriers to participate for eligible voters and expand voting rights and opportunities not erect barriers and restrict opportunities for exercising fundamental rights and participating in our democracy. LB590 would arbitrarily and needlessly restrict and lessen opportunities for vote by mail and in-person early voting. These methods of voting are growing in popularity each election cycle for many eligible voters and, more importantly, these methods also specifically facilitate voting rights for many of our most vulnerable neighbors including Nebraskans who are differently abled, those who lack transportation, those unable to take time off on Election Day, students, the elderly, voters of color, and for this recent election, voters rightly concerned about a deadly pandemic. No voter should have to choose between their health and their vote. Our current system works well and with integrity. Thanks to the diligent efforts of our poll workers and local election officials along with the fact that Nebraska voters take their civic duty seriously and with honor, the Governor and Secretary of State in Nebraska have confirmed there was

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

no voter fraud in Nebraska in the 2020 election despite record turnout. Finally, it undermines our democracy when leaders perpetuate myths about voter fraud and election integrity, our elections are virtually free of fraud and our elections are conducted with integrity. These are key aspects of a functioning democracy. Perpetuating myths about voter fraud are wrong and especially shocking in the recent aftermath of the US Capitol insurrection which has fueled by these same myths and misinformation. Enough is enough. We must speak truth and we must protect all Americans and all Nebraskans fundamental rights. We all want elections to be safe and free and fair and current security measures and significant penalties for fraud work well to ensure such-it is unclear how arbitrarily closing on window of opportunity for vote by mail or in person early voting would accomplish the stated intent. As such, we pledge to work with you and all stakeholders to protect our democracy and the sacred voting rights of all eligible Nebraska voters. We urge the committee to indefinitely postpone this bill.

BREWER: All right, questions? Thank you for your testimony. All right, there is Jonathan. All right, we are continuing on opponents to LB590 and seeing none, we will go to those are in neutral testimony. All right, Senator Groene, would you like to come up and close? Oh, oh, OK, well, hang on here, I'm getting coached. So we had no written proponents, opponent was Spike Eickholt from ACLU Nebraska, and none in the neutral. Senator Groene, come on up.

GROENE: Thank you, Chairman Brewer and the committee. Not to disparage anybody, but one of the testifiers sat here and said we sit around as a family with the ballots and we decide who we are going to vote for. It isn't how it's done. It's how I am going to vote. A strong personality in a family can dictate. There's been one voter fraud case in Nebraska for sure, where a grandmother had the family bring all of their ballots in from grandkids on and she told them how to vote. And one of the kids turned her in. There is no we in voting, it's I. We are individual citizens. That is why I brought this bill. We need more I and less we. We do things together. Yes, we do. We defend the country. We do commerce. But when we vote, it's I. Also, Senator Blood, if you look at the transcripts, I complimented the League of Women Voters in my, in my opening. Remember that? I said they have been doing voter registration for a long time and I have no qualms with that. But there are groups out there and it's going to get worse. Party is going to do this. They have no choice. They're going to go

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

door to door and they are going to help people register and they are going to come back and help them vote. And then the I is gone in America. Totalitarian countries have 80 percent voter turnout or better. Did you know that? Russia has well over 80 percent turnout. Is that what we want, a we in individual freedoms in our rights? I don't think so. So I am trying to bring integrity back. I said I didn't believe there was fraud. Did I? I said there was some unethical behavior that's being done out there. I did get a copy of the statutes, Senator Blood, and 32-918: If a registered voter declares to the judge of, of election that he or she cannot read or that he or she suffers blindness or other physical disabilities or handicap such that the registered voter requires assistance in the making of his or her ballot-- marking of his or her, the registered voter may be assisted in marking his or her ballot by a relative or friend of his or her selection, or (b) one judge of election and one clerk of election or different political parties-- of different political parties may take the ballot or ballots from the polling place to a convenient place within the building or to a registered voter's automobile if the automobile is within one block of the polling place. Everybody has an opportunity to vote with existing statutes. So integrity of voting, I don't care if 80 percent vote. I don't care if 60 percent vote. But if 5 percent of those votes are done by the individual and they are canceled out by 5 percent that were unethical votes because somebody filled the ballot out for somebody else. That's not right. Or 1 percent or a half percent. Elections are-- presidential elections are decided by 3,000 votes. Obama won his second time by 3,000 votes in Ohio, where ACORN was very, very active. That's all I got to say. It's an ideal. It-- bring some integrity back, take away the doubts of citizens. And as far as Rank, it wouldn't help voting. Do you really think somebody who voted for Trump would have put Biden as number two or vice versa as your second choice? I don't think so. It helps in primaries, Rank voting would, but it does not help in general elections. [INAUDIBLE].

BREWER: OK, let's go through questions real quick. Senator Blood.

BLOOD: Thank you, Chair Brewer. Senator Groene, every time you close, I end up with more questions and I apologize.

GROENE: Invoke thought is my--

BLOOD: Pardon?

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

GROENE: I'm trying to invoke thought.

BLOOD: And you did well.

GROENE: Thank you.

BLOOD: So you referred to the testifier and the word we and I. And it's funny because this happened yesterday, too, where we see a situation and the person that's sitting there and the person that's sitting here sees two totally different things in that situation. So when you-- if I heard you correctly, when you heard we, you heard, oh, here's somebody helping somebody else fill out a ballot. Did I, did I-- yes or no, is that correct?

GROENE: I think I didn't quote him directly, but he said we sit around a table and we decide, discuss who we are going to support.

BLOOD: Right. So are you married?

GROENE: Yes.

BLOOD: All right. So you and your wife never discuss candidates on a ballot ever?

GROENE: Yes, yes we do.

BLOOD: Oh, you do. Well, but where's the I in that?

GROENE: The we becomes when you're ballot-- my wife's ballot is laying here and my ballot is sitting here at the table and we're talking about it and I look over and see if she voted the way I wanted her to vote. We discuss it--

BLOOD: But that would make you a bad person not a--

GROENE: --we discuss it, and then we go to the ballot place and she votes the way she wants. And I have no idea how that lady votes. Like I said, I made sure when I ran, I had an extra vote to make sure in case she didn't because she wasn't real enthused about going to Lincoln.

BLOOD: So if I'm hearing you correctly, is part of this bill based on general distrust of people to do the right thing?

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

GROENE: We build prisons because of that purpose. We have laws because of that purpose. We are here with the laws because not everybody can be trusted. This isn't the Garden of Eden.

BLOOD: We're not talking about criminals. We're talking about people's right to vote.

GROENE: People cheat on their taxes. So we change tax laws to make sure we catch them. People cheat on, on their resumes. People cheat on their votes. It happens. It's human nature. It's who humans are. And we try as a society, civilized society to restrict those people who don't like to follow rules.

BLOOD: But do we do that with government overreach?

GROENE: I don't think there's a lot of government overreach.

BLOOD: All right.

GROENE: All right.

BLOOD: Fair enough. Thank you.

BREWER: Any additional questions? Yes, Senator Hunt.

HUNT: Thank you, Chairman Brewer. Hi, Senator Groene.

GROENE: How you doing, Senator Hunt?

HUNT: I'm all right. Would you-- I was listening to your introduction and your close. I was here. Would you support abolishing vote by mail?

GROENE: No, because you need absentee ballots. We always do. There's military individuals. There's that student.

HUNT: So you understand vote by mail and absentee is the same thing.

GROENE: Yes, but absentee means-- I, I want to shorten the dates up. I'm not-- I'm-- this-- my bill does not change absentee voting or early voting. It just shortens the dates up to try to get integrity back into it. And I believe-- Counsel Clark, can straighten me out if I'm wrong, as long as it's postmarked at the right-- the date, I think the vote counts. It doesn't. All right, see I'm wrong. I know there

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

was some, some states who have changed that, that postmark counted or
tried to.

HUNT: Would you support making it-- would you support prohibiting
spouses from talking to each other about, about--

GROENE: No, they just have a conversation--

HUNT: --who they fill in the bubble for?

GROENE: No, no.

HUNT: You just don't trust women to think independently?

GROENE: Let me tell-- you heard the story about my mother, didn't you?

HUNT: Yeah, that was too bad.

GROENE: Yeah, that happens all the time. That happens all the time. I
don't know who the stronger personality is in the relationship between
the individual that testified earlier, but there's always a stronger
personality.

HUNT: OK.

GROENE: Always in any relationship.

HUNT: Love to just hear you talk about this. I would keep provoking
you to say more [INAUDIBLE].

GROENE: Well, I'm telling you, my wife might be the strongest
personality, which I happen to believe is in my relationship, so.

HUNT: So do you vote how she votes?

GROENE: I have no idea, because we--

HUNT: Oh, yeah, because you all go the polls.

GROENE: --because it's secret.

HUNT: That's right.

GROENE: I vote in a, I vote in a little canvas place.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

HUNT: All right.

GROENE: Not at the kitchen table.

BREWER: OK. Senator McCollister.

McCOLLISTER: Yeah, I just want to put on the record and you can confirm this, Senator Groene, that if a election commissioner were to receive a ballot with a postmark before the election, but we actually delivered after the election, that doesn't count.

GROENE: That's what we were just told. I stand corrected. He nodded at me, no. So I just knew there was talk about doing it. I don't-- I didn't follow it that close at what states it-- Election Day is Election Day.

McCOLLISTER: Got you.

BREWER: OK, any additional questions for Senator Groene on LB590? All right, thank you for your close.

GROENE: Thank you for your questions.

BREWER: OK, we'll take a brief pause here to reset and-- oh, and I have letters to read in, letters in support, we have 15 proponents, 15 opponents, and 1 in the neutral. And I, I don't seem distracted but, Senator Cavanaugh, if you'll give me a moment, at 9:14, my daughter gave birth to a boy, Boone Thomas, weighed seven pounds and five ounces. So that was my distraction, John.

McCOLLISTER: She's the paratrooper?

BREWER: She is the paratrooper. Yes, she is.

HALLORAN: Mr. Chairman, I'm glad to see you didn't gavel down the clapping as a [INAUDIBLE].

BREWER: Good morning, Senator, and welcome to the Government Committee.

J. CAVANAUGH: Thank you, Chairman Brewer. And congratulations on your new grandchild. And thank you, members of the Government, Military and Veterans Affairs Committee. My name is John Cavanaugh, J-o-h-n

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here today to introduce LB605 [SIC--LB635], which would provide for nonpartisan primary elections in state and congressional elections. Nebraska has a proud tradition of nonpartisanship, most notably in our Unicameral Legislature. Local municipal elections for mayor and city council are also elected by nonpartisan ballot. More than 274,000 Nebraskans are registered nonpartisan at a time when many are frustrated with both parties and many politicians seem to view their party is not-- and not their state or district as their main constituent. It's time to give voice to the hundreds of thousands of Nebraskans who currently have little or no say in who their elected leaders are. Direct primary elections were a progressive reform that swept the nation in the early 20th century. The goal was to take the nominating process out of the back rooms and conventions and place it directly in the hands of the voters. In that, they were mostly successful. But they also institutionalized the two-party system, and many places made it so only members of one political party could meaningfully participate in election process. More people were able to participate than ever, but many more were shut out. And many elected officials, particularly in districts where they held large partisan advantage, were much more concerned about responding to their party leaders than their own constituents' needs. This was a major driving force behind the desire to make Nebraska's Unicameral nonpartisan. Polarization and made-- is a major problem in political system and one of the major reasons for it to incentivize that drives our candidates and elected officials. A candidate can emerge from a crowded primary as a nominee of his party, his or her party, with barely more than a quarter of the vote. But because the party enjoys a wide voter registration advantage, will win the general election quite comfortably. And with an incumbency advantage, may never face serious challenge within the party again as long as it doesn't stray from the party line. Other states have different solutions to this problem. California has gone to a top two primary system with parties on the ballot. Maine and several other states and localities have gone to ranked-choice voting, which I believe Senator McCollister is proposing here later today in LB135 [SIC--LB125]. In our current system, the state is serving the function of, of the political parties, providing a system to political parties to choose their nominees. Additionally, political parties get to decide whether or not to allow nonpartisan voters to vote in their primary. Again, this is a state serving the function of the political parties by

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

excluding participants of-- the participation of some voters at the direction of the political parties. This bill represents a sort of hybrid approach between the two parties-- the, the two systems. Party affiliation would be listed on the primary ballot-- would not be listed on the primary ballot. All candidates would be on the ballot-- on one ballot and the top two vote getters would advance to the general election. On the general election ballot, party affiliation would be listed. Nothing would prevent parties from supporting or endorsing candidates, as they do in nonpartisan races for Legislature and other offices. What this would do is allow voters to have a voice in picking the representation. We should be working to maximize participation in elections and not creating artificial hurdles to voting. We should be seeking a system that reflects the will of all voters, regardless of political party, and we certainly should not be using state resources to help political parties pick their nominees. I brought this bill because nonpartisan elections are a good idea for our state. If it's good enough for our Legislature, then it's good enough for state and federal elections as well. I thank the committee for their consideration and I'd be happy to answer any questions.

BREWER: All right, thank you, Senator Cavanaugh, for that opening. Let's go through questions. Senator Blood.

BLOOD: Thank you, Chairman Brewer. How are you, Senator Cavanaugh?

J. CAVANAUGH: I'm doing well, Senator Blood.

BLOOD: So I'm looking through the letters of opposition. And one of the questions that keeps coming up that I'm hoping you can address and I didn't hear in your opening. And I got to say, I'm going to say this before I ask the question. So people always say, what party are you in? And I always kind of feel like I'm on the island of lost toys because I don't really agree with either party. I just happen to have a party number or letter after my name. And I think that we need to get away from that, that division where it's either us or them. So I, I actually like your bill, but a lot of people apparently don't. And the question I would have is, and I'm just going to read this directly to you. When a candidate affiliates with a political party, the voter will understand the candidate's general philosophy. What would be your response to that?

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

J. CAVANAUGH: I think that's true. I don't think it's a function of the government to facilitate the, the winnowing of the field based off party. So one of the things-- the, the bill does leave party ID on the ballot in the general elections. I wouldn't be opposed to keeping it on the primary election either. I don't think that that's necessarily important. I think when it comes to that sort of-- the, the identification to that person's point is a shorthand for philosophy. Religion could be considered a shorthand for philosophy. A number of other organizational affiliations could also be a shorthand for philosophy. And those-- that information is available in places like the League of Women Voters' guide, which I'm a big fan of. And so that-- the distinction here is, we need to get away from the state serving a function of a private entity. And that's fundamentally what political parties are. They are, they are a private entity. And in the interest of democratization, opening things up and making our process work better 150 years ago, we institutionalized political primaries and that solved one problem, but created another, which is that the-- now the state is serving that function of allowing the Democratic Party of Nebraska or the Republican Party of Nebraska, and there are smaller parties as well that have primaries, but those are the big ones, to use a state-run political primary to determine how they're going to spend their resources in the fall general election. And I just don't think that that should be a function the state is serving for them.

BLOOD: So is part of your ultimate concern to make it more about the people and not the, the party?

J. CAVANAUGH: Well, yes, of course. I, I think that elections should be an opportunity for the voters to weigh in regardless of what their political party is. And that is another problem I, I think I addressed in my opening is that the-- we do allow for nonpartisans to vote in partisan primaries for state and local elections at the discretion of the political parties, which means that they get to choose, they get to pick their voters, which is not a good way to run an election.

BLOOD: All right. Thank you very much.

BREWER: All right, additional questions on LB635? Senator Halloran.

HALLORAN: Thank you, Chairman Brewer. Along the same lines-- welcome, Senator Cavanaugh. Along the same lines of the letter that Senator

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

Blood referred to concerned about, to me this raises a question of whether or not we're-- we, we are-- how would you say, not allowing the voters at the moment of choice for a decision on who to vote for with a list of names that they may or may not be studious about having, you know, access, League of Women Voters'-- Voters' guide, or any other voter guide, for that matter. Or they may have, but they-- but having the R or the D in front of it or an I gives them an indication of the general philosophy of that candidate. Right? I mean, I always say when I walked up the steps my first day here at the Capitol, I walked up the steps as a Republican, but I became a Republican long before the Republican-- before I became a Repub-- member of the Republican Party. In other words, my philosophy was formed over the years, political philosophy was formed over the years. And it's just lucky that the Republican Party happens to coincide with my philosophy. OK. I mean, there's times I disagree with the party, probably agree with them more than I don't. But for a-- for information purposes, my question is, aren't we limiting the ability for the voter to know the general philosophy of that candidate by having a designation of the party?

J. CAVANAUGH: Well, I would say yes. If you took the party title off of the ballot, that would eliminate that particular piece of information that's the shorthand there. My objective is not to do that. My objective is to eliminate the partisan primary where you would have three Republicans running against each other. They would all be Republicans, and so you would know that they all are members of that party. My objective is to make every election like our legislative elections, which is that they're nonpartisan at the primary level. And then you would just winnow the field from however many people enter that election down to the two for the general election. And party could be-- this bill is written in a way that doesn't include party in the primary. I don't oppose making that amendment to add party, you know, on the, the ballot next to people's names. That's not the thing that I'm trying to accomplish here, is to take party ID off of it. The, the party ID is included in the general election ballot so that information would be there. But the-- what I'm trying to accomplish with this bill is to take the state out of the role of choosing who the Republican nominee is and who the Democratic nominee is. I think if they want to line up behind somebody, they can do that in their own way or they can sit on the sidelines and support everybody, which is they've done in lots of elections. We have an

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

ongoing election in the city of Omaha with probably six Democrats running right now. And as far as I know, the Democratic Party is not involved in that race because of that. And that election's nonpartisan. It will get winnowed down to two people on April 6. And all of those people will appear on the ballot. And I believe that in the city election in Omaha, that the party title would be next to the name on the ballot. But I don't know that for certain.

HALLORAN: OK. Thank you, Senator.

BREWER: Any other questions? I got one for you real quick. If you watch the process they use over in Iowa, would you support a caucus as opposed to a primary?

J. CAVANAUGH: Well, I think the party-- so the Iowa caucus, my understanding of it is, is that that is a party function where it's put on by the Democrat and Republican parties and everybody gets together. I think-- and that's how they choose their delegates at the national convention. I'm not opposed to that, I just don't want the state to be involved in it. I think that the, the parties can choose whatever methodology they want to decide how they're going to line up behind a particular candidate or not. I just don't think that that's a rule of the state of Nebraska.

BREWER: All right. Any other questions? You'll be sticking around for close?

J. CAVANAUGH: I will.

BREWER: All right, thank you. All right, as usual, we will start with proponents to LB635. All right, first proponent. All right, we will transition to opponents to LB635. Anybody here in the neutral position for LB635? Come on up. Welcome to the Government Committee. Have a seat, sit down, make yourself at home.

LARRY BRADLEY: Thank you all very much. I'm just going to make some [INAUDIBLE] his comments. Congratulations, Senator Brewer.

BREWER: Thank you.

LARRY BRADLEY: Thank you, committee. I'm Larry, L-a-r-r-y, Bradley, B-r-a-d-l-e-y, middle initial R to distinguish myself from the other Larry Bradley that's prominent in Omaha. OK. If you were to pursue

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

this bill, one of my thoughts is-- and again, I'm, I'm here with the, the ranked-choice voting thing. If you were to do this and try to make it as on a nonpartisan basis, use ranked-choice voting and have three people come out of the primary election to go to the general election, because there's always people who will show up for the primary election. If their person doesn't make it, then they say the heck with it, and don't show up in November. And by the same token, there are people who don't vote in the primary election. They wait for the first fight to be over and then they, they show up for the general election. So ranked-choice voting to determine the top three candidates to go forward into the general election and then general election with three candidates, again with ranked-choice voting so that somebody wins with a majority of the vote of those three candidates. OK? Ranked-choice voting guarantees you a majority winner. You can work majority-- ranked choice two ways. One is to determine like a top three or a top four, and the second way would be to have it-- then once you get down to your final candidates, to make it a final candidate and, and a, and a, and a majority winner. OK? So that's just kind of the point I wanted to make, it's not, not for or against, but this is-- might be another way to, to amend it or even to blend it with LB125 that you-- you're going to have here in a second.

BREWER: Yep. Thank you for your testimony. Questions? Questions for Larry? All right. Well, thank you for coming up. We left off at those in a neutral position for LB635. Are there any other neutral? All right, we'll let the cleanup finish up here and we will have Senator Cavanaugh back up. OK, please sit down. We have zero proponent letters, seven opponent letters, zero in the neutral or position letters on LB635. Senator, please close whenever you're ready.

J. CAVANAUGH: Thank you, Chairman Brewer, and thanks again to the committee for your time. Just to clarify, I was told that the city elections in Omaha do not have the party label on the ballot. But like I, I said, my intention is not to take the party label off the ballot, it's to just take the partisan primary and make them an open primary for everybody. I-- just to clarify, this is not, you know, it's not a partisan issue. This is not a thing. This is just you could have people of-- two people of the same party run against each other and ultimately in a general election as a result of this, which I think is probably some of people's hesitation about doing this, I personally don't see that as a flaw in the system to have potentially two people of the same party make it out of a primary. I, I think that may

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

potentially more accurately reflect the will of the people. And I think that's one of the objectives. So I appreciate your time and I would ask you to vote this bill out of committee. Any other questions?

BREWER: All right. Questions for Senator Cavanaugh? Senator Hunt.

HUNT: Is this not basically exactly how we do it for the Legislature, except in the general election, it would have the partisan marker on the ballot, whereas in the Legislature races we don't?

J. CAVANAUGH: That is correct. And to be clear, the Legislature, that's a matter of the constitution that they're excluded. So that's not something we could change without amending the constitution.

HUNT: Right.

J. CAVANAUGH: But, yes, it's-- you are exactly correct.

HUNT: Why are people so confused about how it would work, given that we elect our Legislature this way in Nebraska?

J. CAVANAUGH: Well, I don't know if people are confused. I think people are afraid of what will happen if we change.

HUNT: Yeah, I guess, not confused, opposed or something. I don't know.

J. CAVANAUGH: I-- my impression of the people I've talked to and there are people that I agree with fundamentally, philosophically, I'm a Democrat and I think there are Democrats who are concerned about how this would play out at a statewide level.

HUNT: Or we'd never get elected anymore.

J. CAVANAUGH: But I-- I'm of the belief that this is-- that, that our objective here is to do the right-- what's right and the right way to govern is to not institutionalize political parties. And so that's why I'm moving forward on this bill.

HUNT: So many opponents have said that this removes accountability to voters, but everybody knows what party members of the Legislature are and candidates for Legislature in the primaries are certainly backed by parties and do you envision campaigns in races if this bill passes playing out the same way?

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

J. CAVANAUGH: Well, I think it'll, you know, if we did this, it would play out in any number of ways based off of how the races work. But I do think that there will be-- I mean, we've got good evidence recently of political parties coming in and being involved in races that are-- both candidates were members of their party. We have good evidence of races where parties sit them out. And I don't think that's for us to decide whether that happens or not or really how that plays out. What's for us to decide is whether the state of Nebraska is playing a role in how these parties choose their nominees. And that is not a function of the state of Nebraska to do. And that's what I'm trying to accomplish.

HUNT: Also, we talk so much about accountability for vote-- for voters, you know, and saying this is your right to vote, but there's personal responsibility. You have to do your due diligence. You have to fill out your ballot yourself. You have to figure out how to cast your vote. And we're asking people to take a lot of self agency here. So why is it that opponents to the bill think that voters wouldn't have the agency and wherewithal to research these candidates to find their political party if that's what they're so opposed to?

J. CAVANAUGH: I, I guess I don't know the answer to that question. My assumption would be that not everybody reads the League of Women Voters' guide cover to cover like I do. And so you have to consider how everyone is going to interact with the law. And I think that's a fair consideration is to say how is this going to affect different types of people? I do think that there-- that whether or not somebody knows who the political affiliation of a candidate, if that's important to them, then that would probably be incumbent upon them to seek out that information. I think as it stands right now, where you have partisan primaries, if you have multiple people of the same party, that you have the same problem where you can look and see that all three of the people running are Democrats, and then you have to go and do your research to determine which one of them is the type of Democrat you agree with. And so I don't think that it's necessarily-- the only time it really comes up is if you have a head-to-head election of two people of two different parties. And ideally, if we take partisan primaries off the election, we'll have fewer and fewer of those instances where it's just two people of, of one from each party, because I think it would expand the pool of people who are willing to run for things if they think that they, as a moderate Democrat or a moderate Republican, actually have a chance to advance.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

The way the system is right now, you have-- you are becoming a smaller and smaller group of people determine a larger and larger share of the outcome. And that, that-- I think you eliminate that by creating we have to appeal to everyone. And I think that's part of what the ranked-choice voting is also getting out is trying to get a more accurate representation of what people think and giving people an opportunity to express that. And this is another way to do that.

HUNT: Thank you.

BREWER: OK. Senator Lowe.

LOWE: Thank you, Grandpa. And thank you, Senator Cavanaugh, for being here today. In some of our smaller communities where the elections are held and they, they don't do fundraisers, they may go out and buy a-- or they probably have a couple of T-Posts and, and a sheet of plywood. They'll go by a sheet of plywood because they can know they can side something with it later on. And, and so they don't go out and buy signs or they don't do things like that. Would this make them maybe do fundraisers? Because people really don't know who they are and, you know, they don't set up websites so they can find out who they are. But I'm not talking about a small community where everybody knows everybody but say something the size of Kearney. We still have people putting up plywood signs for a local election. There's nothing really with that saying kind of who they are or where they can go find out who they are unless you call the, the person up saying, hey, what are your views?

J. CAVANAUGH: So I guess your question is, how, how will this affect the smaller elections?

LOWE: The smaller elections, and that the people that don't do fundraisers or, or a way for people to find out who they are, if they don't have an R or a D or an I behind their name.

J. CAVANAUGH: So, well, to be clear, this bill only addresses a higher level of the statewide elections and, and the congressional elections. But I don't think-- I mean, it's not unheard of for people to put their party affiliation on signs when they do make those signs. And so if that's an important thing for the individual running to make sure people know, then I think that they would do that. I mean, when it comes to campaigning, as all of us know, you move heaven and earth to

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

try to connect with people to make sure that you have an opportunity to connect either in person or last year or last election, I think, in more remote fashions. But again, this is not a question of how people are going to interact with how the candidates are going to interact with elections or how people are really going to access information. This is a question of what is the role of the state in all of that? And we have gotten to a point where we have institutionalized political parties and, and we kind of particularly in this nonpartisan Legislature, we get the benefit of that, having taken that out of there. And we see that we're a model for everybody else and every other level and how well it works and how much it takes that partisan rancor out of things. And so I think that this is an opportunity for us to say we've got 100 years of proof of concept. Let's take it to the next step. And it works well for us in these offices for those sitting here. Why, why doesn't it work well for other offices as well?

LOWE: Thank you.

BREWER: All right, any additional questions for Senator Cavanaugh? All right. Thank you.

J. CAVANAUGH: Thank you, Chairman.

BREWER: And we'll take a short break here while we swap out and prepare for LB125. Senator McCollister, welcome to your Government Committee.

McCOLLISTER: Thank you, Chairman Brewer. And again, congratulations.

BREWER: Thank you.

McCOLLISTER: Members of the committee, I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and today I am introducing LB125. LB125 would substantially change the voting process in Nebraska to allow for ranked-choice voting when three or more candidates have declared their intent to pursue office. Ranked-choice voting is a process that will increase voter satisfaction, efficiency, and fairness in future state elections. In our current single-vote system, a voter may feel that there is more than one candidate who would represent them well, but the voter is required to choose the single best option. In ranked-choice voting, voter is allowed to rank their candidates in order of preference. As mentioned, ranked-choice voting

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

allows voters the option to rank their candidates in order of preference: one, two, three, and so forth. In races where voters select one winner, if a candidate receives more than half of the choices, that candidate wins just like any other election. However, if there is no majority winner after counting the first choices, the race is decided by a instant runoff. Candidate with the fewest voters is eliminated and the voters who pick the candidate as number one will have their votes count for their next choice. This process continues until there is a majority winner where a candidate who won with more than half of the votes. Ranked-choice voting, as outlined in LB125, provides some key benefits as follows: Majority support. Many times low-voter turnout is due to a lack of confidence with the candidates offered. Many voters believe that their vote does not count in some areas that the implemented RCV have seen a slight increase in voter turnout due to this new process. Reduces voters' concern about wasted votes. A 2020 Knight Foundation study found that 38 percent of the nonvoters are not confident elections truly represent the will of the people. RCV gets rid of the vote splitting when a candidate is able to win with very little support. A good example of this occurrence was the 2014 Republican primary for Governor, where the winner won with only 26.5 percent of the vote. Encourages collaboration and civility. With our current system, negative campaigning does not truly help inform voters, it simply increases polarization problem. Since candidates must not only hope to receive the first preference, but the second preference vote as-- votes as well, this discourages negative campaigning. It encourages collaboration and civility. A 2016 study from the University of Iowa Public Center showed that the voters in cities that use RCV reported less negative campaigning and higher satisfaction in those cities that used plurality voting. Eliminate strategic voting. This is voting to prevent an undesired outcome and ranked-choice voting would reduce this method of insincere voting. Less expense and more efficient. Avoid runoffs by obtaining results with just one ballot. This is especially important when our deployed military overseas need to vote. Issuing and getting a second ballot sent internationally is very costly. LB125 is a good start for an effective ranked-choice system that would increase fairness in Nebraska's elections and ensure greater trust in our election processes. At the end of the day, the main hurdle for ranked-choice voting is educating voters. With a strong educational campaign, I know that people will see the benefits of ranked-choice voting system. I truly think this is a win-win for Nebraska and all of our

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

constituents. I'd like to mention that I included an attachment on your desk when we came in this morning, and secondly, that the folks that may know more about this particular process will follow me in the-- for testimony. Thank you, Mr. Chairman.

BREWER: Thank you, Senator McCollister. All right. Questions for Senator McCollister? I guess just a quick-- John, how many other states do this?

McCOLLISTER: Just a few. But the folks that follow me can probably give you a better answer. I think only Maine right now is the state that, that, that conducts a ranked-choice voting election.

BREWER: OK. All right. Thank you, and you'll stick around for close? I'll take that as a yes. OK, proponents to-- well, I'll tell you, let's do a head count here so we don't run through the lunch hour. How many are here to speak on LB125? All right, we'll go three minutes or else nobody will get lunch. All right, first proponent to LB125. Come on up. Welcome to the Government Committee.

TOM ROBINSON: My name is Tom Robinson, T-o-m R-o-b-i-n-s-o-n. I represent the Nebraska Green Party. Good morning. I'm here today to urge this committee to support Senator McCollister's LB125, ranked-choice voting bill. Please allow it to receive consideration before the full Unicameral in this legislative session. After studying ranked-choice voting, I believe that it is a substantial improvement to the way we currently vote. Ranked-choice voting is used in the state of Maine. It's recently been adopted in the state of Alaska. Many cities across the nation use it, including New York City. It's an increasingly popular form of voting and for many reasons. And I'm going to touch on a few here. First, this system of voting guarantees that the winner is a majority winner, not a plurality winner, 50 percent of the vote plus one. The winning candidate has a consensus mandate from the voters. And I think that's vitally important in a, in a democracy. Second, ranked-choice voting ends strategic voting. Ranked-choice voting allows voters to vote for the candidate they feel is best for that position without facing pressure or fear to vote for a candidate that they really dislike because they might be wasting their vote. With ranked-choice voting, the voter knows that his or her preferred candidate, if they lose in the first round, that their voice is still going to be heard in the second or third round or maybe even fourth of, of that race. And I think that's important as well. Perhaps

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

the most important advantage of ranked-choice voting in these highly partisan times is how ranked-choice voting improves the way candidates run elections. With ranked-choice voting, candidates know they must win over a majority of voters. And to do this, they need to take a more moderate and civil approach to electioneering. With ranked-choice voting, it behooves all voters-- or all candidates, I'm sorry, to appeal to a wide range of voters, voters who might make them their second choice or third choice, if not their top choice. Therefore, the vitriol and mean spiritedness that so often characterizes recent elections will be reduced. In a ranked-choice voting contest, denigrating one's opponent is counterproductive to electoral success, whereas in our current first-past-the-post system, it could be effective unfortunately. Other benefits of ranked-choice voting include candidates of a broader spectrum running, more women candidates, more minority candidates, third-party activity is enhanced.

BREWER: OK, well, we, we might be able to get to more of your points here as we go into questions. Any questions? All right. Oh, yes, go ahead, Senator Hansen.

M. HANSEN: Yes, thank you, Chairman. And thank you for testifying. So you're representing the Nebraska Green Party.

TOM ROBINSON: Yes.

M. HANSEN: What's your role with the-- with that party?

TOM ROBINSON: I'm just a member of the, the party. No, no official position.

M. HANSEN: Sure. No, I just wanted to, I just wanted to, to check. So can you talk about kind of your experience or what it's like to be a voter or be a supporter of a what we would call a third party, a smaller party?

TOM ROBINSON: Yeah, I, I think that the, the part about wasting a, a vote is, is really-- I, I get-- I, as a voter, if I talk politics with, with other people, I'm-- if I talk politics with Democrats, I'm usually pressured. You're wasting, you're wasting your vote if you vote for the Green Party candidate and you're, you're just helping the other side, the other side they'll tell, they'll tell me. And of-- I

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

don't, you know, we-- we're, we're, we're more, we're more alike than
we are different for perhaps. And so that's very frustrating.

M. HANSEN: All right, thank you very much.

BREWER: OK. Any other questions? All right, thank you for your
testimony. All right, come on up. Welcome to the Government Committee.
Whenever you're ready.

CINDY MAXWELL-OSTDIEK: OK, thanks. My name is-- I should say good
morning.

BREWER: Good morning.

CINDY MAXWELL-OSTDIEK: And congratulations,--

BREWER: Thanks.

CINDY MAXWELL-OSTDIEK: --Senator Brewer. And good morning to the other
members of the Government, Military and Veterans Affairs Committee. My
name is Cindy Maxwell-Ostdiek, and that's spelled C-i-n-d-y
M-a-x-w-e-l-l hyphen O-s-t-d-i-e-k, and I live in Omaha in Legislative
District 4. And I'm here today-- I'm nervous, sorry. I'm here today as
a voter and as a volunteer member and president of the Rank the Vote
Nebraska, we're a nonpartisan group of Nebraska voters working to
bring ranked-choice voting to the Cornhusker state. And we do thank
Senator McCollister for bringing-- in introducing LB125. And we all
ask you as the committee, please, to advance LB125 to the floor and
for your yes vote to pass the legislation. Rank Vote-- Rank the Vote
Nebraska members are volunteers from across the state. We live in
rural Nebraska in farms on small-- in small towns. We live in the
mid-sized cities as well as in the suburbs and even urban areas in our
metro Lincoln and Omaha. And our members come from all age groups,
ranging from young adults, parents, retirees, we're students,
employees, we're small business owners, military service members, and
veterans. And we're registered voters from all the political parties
here in Nebraska. And many of us, including me, are registered
Independent. And we come together around this single issue because we
want better choices, better candidates. We want better ideas for our
communities and families, and ranked-choice voting methods will
strengthen our elections and improve our representation. And we do
think that this very simple change will produce majority winners as

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

opposed to simple plurality winners. I see that I have a yellow light, and so I apologize. I'll just skip ahead with what I have written. I would say that it is important to our organization that we support political parties. That we support the process and not necessarily the political parties. And we believe that the ability to rank our choices, rank our voting, will increase the number of women and people of color running, running for office as well. And that's very important aspect of it. The candidates must appeal beyond their base of supporters. And as the elections have shown these last few cycles, we think it's very important that we have broader representation, broader support, and more reflective of the voters.

BREWER: Well, again, you, you built your testimony around five minutes and I, I kind of pulled the rug out from underneath you, short inning. So thank you for your understanding on that. But I guess, so you have a chance to kind of wrap up your last thoughts there, just as we move forward on the topic, anything else you want to throw in there so we're, we're thinking about that?

CINDY MAXWELL-OSTDIEK: The bipartisan support for this method of voting can't be stressed enough. We do have members from all parties, including-- as we, you know, heard just earlier from the Green Party. I know that there's support from members of the Libertarian as well. And it is something that I think would be best for Nebraska, would be best for our representation.

BREWER: OK, thank you, Cindy. OK, any questions for Cindy? Oh, yes, Senator Lowe.

LOWE: Well, thank you, Mr. Chairman. And thank you for coming today and testifying. Let's say there are six candidates on the, on the ballot, what happens if you only mark down two and leave four blank? Does that spoil the ballot? Does that-- is that counted then as just only two, so it gives those two more of a priority over the, the other four?

CINDY MAXWELL-OSTDIEK: Right. Your, your vote is counted when you make your first choice. When you rank your vote for your priority candidate, your vote is counted. And if that particular candidate is not the majority winner or is in fact the candidate that has the least amount of votes at the end of that round, then that candidate would drop out of the race. And so your second priority candidate then would

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

be reflected in your vote. So if you choose not to fill all of the ranking, your vote still counts as if you had voted normally. Right now, we only have the ability to vote for our first choice of candidate. So, yeah, your vote still counts.

LOWE: So if, if there are those same six candidates in there and we go through the election process and nobody gets a majority vote, do we have to go back through and vote again so that there is a majority?

CINDY MAXWELL-OSTDIEK: OK, so-- and, yes, you're talking about-- I understand the question that you have and we have a gentleman here who will be speaking in just a few moments can answer that best.

LOWE: OK. Thank you.

CINDY MAXWELL-OSTDIEK: Yes, I know exactly what you're talking about. And I would definitely have you speak to him.

BREWER: All right, Senator Blood.

BLOOD: Thank you, Chairman Brewer. And it's nice to see you again. I, I think the first time you ever testified was in this committee, wasn't it? I remember you saying that.

CINDY MAXWELL-OSTDIEK: Yes, I feel very strongly about voting, it's something that I just wish everyone did, and I think that this form of voting would actually increase participation, people would feel-- especially like young voters, I think I found out from some of the work I did over this last election cycle, talking with voters across Nebraska, especially a lot of young voters, their concerns about strategizing their vote or being concerned about splitting their vote was something that-- it discouraged, it discouraged some voters, so.

BLOOD: So I have two, two questions and they're questions of clarification. And by the way, don't be nervous, we're all friends here and you're doing fine. So that was a huge platform issue for Andrew Yang when he ran for president. Was, was this type of voting. So if I were to put this into a nutshell, would you say that the, the two important things we should remember from today is adopt a voting system that, that combat-- combats partisanship? Yes. OK. And adopts a voting system that better captures, captures the will of the majority of voters. Would you say that those would be the two takeaways that we should have today?

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

CINDY MAXWELL-OSTDIEK: Um-hum.

BLOOD: All right.

CINDY MAXWELL-OSTDIEK: And in fact, it doesn't necessarily-- the only thing I would say about partisanship is that the parties, you know, the partisans, would still, of course, present their platform, but it would not be the outsized factor, and it, it promotes more collaboration between the different candidates. Whether they're from the same party or not.

BLOOD: So ultimately, some of the really horrible campaigning and aggressive and mean-- meanness action-- aggressive and mean actions we see in unfortunately many campaigns might actually not necessarily will ever be eliminated, but maybe reduced.

CINDY MAXWELL-OSTDIEK: Right. Because it in many-- when you look at voting in other places where they've instituted ranked-choice voting, it's not as successful to do it that way. It turns off voters to not consider that person as their second candidate so they would not have that majority support.

BLOOD: And so if I hear you correctly and all the people that have come before you, we might actually-- actually, if this were to be implemented, see a more moderate America.

CINDY MAXWELL-OSTDIEK: Um-hum.

BLOOD: All right, thank you.

CINDY MAXWELL-OSTDIEK: Yes, definitely.

BREWER: All right, any more questions? Thank you for your testimony.

CINDY MAXWELL-OSTDIEK: Thank you.

KIMBERLY JONES: Morning.

BREWER: Sorry, I was reading your testimony.

KIMBERLY JONES: Oh, that's fine.

BREWER: Welcome to the Government Committee.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

KIMBERLY JONES: Thank you.

BREWER: Whenever you're ready.

KIMBERLY JONES: OK. My name is Kimberly Jones. That's K-i-m-b-e-r-l-y J-o-n-e-s. I live in Senator Sanders' district, District 45. And I'm here as a citizen and also as the treasurer for Rank the Vote Nebraska. I'm here to show my support for LB125 on ranked-choice voting. It is my firm belief that ranked-choice voting is the most democratic form of voting. It strengthens our democracy, ensuring that the winner or winners of any given election have a support of the majority, 50 percent plus one or better of the electorate. Therefore, they have the most support leading to higher voter satisfaction in the outcome. Voters should be able to vote for candidates they support, not just vote against candidates they oppose. In elections without ranked-choice voting, voters may feel they need to vote for the lesser of two evils because their favorite candidate is less likely to win. With ranked-choice voting, voters can vote their conscience and rank candidates in order of preference and alignment with their values. Voters know that if their first choice does not win, their vote automatically counts for their next choice instead. This frees voters from worrying about how others will vote, which candidates are more or less likely to win, or about their first-choice vote pulling support from another candidate whom they would prefer to win over a third. This is referred to as the spoiler effect, which I myself have experienced. In one election, I was not excited by either major party candidate and voiced my intention to vote third party. My friends insisted I vote for a certain candidate to prevent the other candidate from winning. My family implored me to do the same, but for the opposite result. Both sides cited the spoiler effect as reasoning in trying to sway my vote. While I did slightly prefer one of the major candidates over the other, I still preferred to vote third party. With ranked-choice voting, my vote is my own and I am able to vote for the candidate I truly prefer while also laying out my preferences for candidates for second, third, and so on. A couple of famous examples of the spoiler effect in action, the 2000 election where there were arguments made for Ralph Nader pulling from Al Gore's voting pool, resulting in the election of George W. Bush. Another example, when George H.W. Bush lost to Bill Clinton in 1992 reportedly due to Ross Perot pulling votes from Bush. The fact that voting for a conservative candidate would make it more likely for the liberal candidate to win or that voting for a liberal candidate would make it more likely that

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

a conservative candidate would win simply makes no sense. Ranked-choice voting ensures that voters are able to vote according to their values and for the candidates most in line with those values. As a result, the highest number of voters have the highest possible satisfaction level with the outcome of elections. It is my belief that implementing ranked-choice voting here in Nebraska will lead to better elections with better candidates and outcomes that reflect the values of the true majority of Nebraskans. Eliminating the spoiler effect, leaving voters with peace of mind to vote their true preference instead of strategically voting against a particular candidate, thus resulting in a healthier democracy and better representation for us all. Thank you for your time.

BREWER: Thank you. You're perfect on time. All right, questions? All right, well, thank you for your testimony.

KIMBERLY JONES: Thank you.

BREWER: OK, there's Jonathan. All right, welcome back to the Government Committee.

DAVID WELLSANDT: Hello.

BREWER: Whenever you're ready.

DAVID WELLSANDT: Go ahead? All right. I am David Wellsandt. I reside in District 4 and I support ranked-choice voting and implore you to support the passage as well. My name is David, D-a-v-i-d, last name, Wellsandt, W-e-l-l-s-a-n-d-t. Sorry, felt like old hat, I was on a roll. I passed out notes. I'm going to deviate just a little bit for time purposes here and highlight on a couple of points. The current system we have for voting has some obvious flaws. We've talked about a few of those about having to strategize your vote and, and kind of pushing third-party candidates off just for the sake that they may not have enough support and some people feel the risk of throwing away their votes. Another, another major flaw we have with the current system is that it, it really supports negative campaigning. When your whole point is to, to remove votes from other people and try to just capture a plurality, there's a strong motivation there to disparage other candidates in the election rather than trying to draw support from some of their electors through the process. So ranked-choice voting is a great system for empowering voters for selecting leaders.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

They can actually choose their preferred candidates. And through the system of, of eliminating candidates as they don't reach a majority, it really expresses a better voice for the electorate so that they don't have to throw away a vote and really be heard. It also ensures that the elected official that does win best represents a majority of the electorate rather than just a, a simple segment of it. Ranked-choice voting eliminates the spoiler candidates who pull votes away from other candidates, as was mentioned by the previous testimony. It also encourages broader perspective so reduces the negative campaigns. And one way that that would work is that currently with the two-party landscape, the whole point is to say I'm not that person and, and draw lines. When you have a ranked-choice voting, you're going to have to draw better bridges between the other candidates so that as they get eliminated, maybe you can attract some of their additional voters that were-- had you as a second or third or possibly fourth choice selection. Those are kind of the highlights of this. And so I'd open up for any questions you might have.

BREWER: All right, very good. Questions? All right, thank you for your testimony and thanks for coming here.

DAVID WELLSANDT: Thank you.

JUDY KING: Hello again, my name is Judy King and my name is spelled J-u-d-y K-i-n-g and I am in support of this bill. Please make it a part of the record. I've worked on both sides and-- or I've worked on both of the-- I worked on the sides of both of the parties. I worked for Republicans. I've gone door to door for them. I've gone door to door for Democrats and I voted. And then mostly an Independent, but sometimes I have to pick a side so that I can make a vote count. And this was basically, I don't-- you know, I've switched parties from time to time just so I can vote, and that's why I like ranked voting. I'm not encouraged to stay home. I can still vote for my underdog candidate and feel like I haven't lost my vote. I'm, as you probably know, I'm not a Trump fan, but I do have friends of all areas, all parties, and I live in a neighborhood where the former GOP, Nebraska GOP head lives in. And I always have a sign out to who I want to vote for. And this time it was Biden and someone in my neighborhood asked me if they could get a Biden sign and I knew they were Republican. And so I told him, sure, you know, I'll get you-- so I had a bunch of Biden-- Republicans for Biden signs made up and I gave them out and had other-- several other people ask me for them. And I kind of just

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

started a little group of Republicans for Biden. They're still Republicans, they still vote up and down the ballot, they just didn't like Trump. And so I put that on my car and drove around with that sign on my car and I stopped at Fischer's office one day to talk to her and-- Senator Fischer, and there was a young kid walked by and he pointed to my sign and he said, that's me because I'm a Republican that voted for Biden. And I said, well, gosh, that's great. I said, do you want to, do you want to make a little video? So I have a video of this young man who just happened to be walking down the street that just didn't like Biden. And so I think what this-- and I maybe I have the-- maybe I don't understand this ranked voting enough, but they wouldn't lose their vote. You know, they'd still be Republicans. They'd vote for Biden and they just wouldn't lose their vote, especially in the state where Republicans have the majority in a lot of cases. So that's why I'm for it. Like I said, I've been working for both parties and I-- I'm radical on both sides, Republican and Democrat, Democrat, if it comes to that point. So, anyway, that's my story.

BREWER: All right, thank you.

JUDY KING: Yep.

BREWER: Questions for Judy? All right, Joshua, you're next up. All right. And welcome back to the Government Committee.

JOSHUA MUELLER: Thank you. Good morning, everyone. As I mentioned before, my name is Joshua Mueller, J-o-s-h-u-a M-u-e-l-l-e-r. I'm a native Nebraska, born and raised in Bellevue and now living in Lincoln while I pursue a Ph.D. at the university. So for me, growing up, I was always aware of the fact that Nebraska has a unique government in a few different aspects. We're one of just two states along with Maine that's capable of splitting its electoral votes. And we're also the only state that has a Unicameral Legislature. These were things that I was taught in school that I didn't really fully appreciate until I was significantly older and in college. And it's often those things that we take for granted that we don't really think about whether they're any better or worse than other alternatives that we have. I hope all of you realize the benefits of having a Unicameral Legislature. The change occurred in 1934. But even since then, no other state has had the political willpower to make such a drastic change, even though it saves the taxpayers money, makes you all more accountable, but it also

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

gives you significantly more responsibility. I'm proud to live in the only state that was able to improve our government for making that change. For a similar reason, I'm here advocating for LB125 in order to change the way we vote to use a ranked ballot. In my eyes, ranked voting is a more modern way of voting. While traditional ballots do work, that doesn't mean that they can't be improved. Traditional first-past-the-post voting was likely chosen initially due to its simplicity. At a time when everything had to be hand counted, anything more complicated than a single marking per voter would have significantly increased the amount of time it took to tabulate votes. With the usage of modern ballot counters and tabulators, it is no longer necessary to restrict voters from expressing their full opinions. From my research, I believe that Nebraska even already uses tabulators that have been shown to be capable of tabulating ranked ballots by elections in Maine. One of the reasons that we have likely use the same voting method is because we've never had a good opportunity to change things. America is the oldest continuous democracy. While that's an amazing accomplishment, it also means that we were the guinea pig for a new system. Since the U.S.'s founding, 100-- since the U.S.'s founding, hundreds of other democracies have been founded, many with the aid of the U.S. And these new democracies have had the benefit of being able to see what worked well and how to improve things, as well. Other countries, such as Australia began using a ranked ballot in 1918. Ireland began doing so in 1937. And more recently, Fiji and Papua New Guinea began using ranked ballots in 1999 and 2007, respectively. It's for a reason that these countries saw that there was a better way of voting. Using a more modern ballot lets voters better express their preferences. This gives them more confidence in their vote counting and actually having an impact. I'm fairly young and the first opportunity I had to vote for a President was actually the 2016 election. I actually skipped the primary because Donald Trump was already the de facto winner by the time Nebraska's primary came around and I ended up writing in Evan McMullen for the general election. I was only willing to write in a candidate because the outcome of Nebraska's presidential votes are fairly predictable, excluding the second district. But if I lived anywhere more competitive, I would have been terrified of the spoiler effect and I wouldn't have had that freedom. If we had used a ranked ballot at the time though, I could have still written in Evan McMullen as my first choice no matter where I lived and had the peace of mind that my vote would still count.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BREWER: All right, well, thank you for your testimony. You were, you were just wrapping up there. I'll give you a chance to do that.

JOSHUA MUELLER: I mean, I think that's the majority of it. The other main point that I wanted to get to was that ranked ballots also inform the elected officials of where their support is coming from. If you see that a significant portion of your vote comes from people that had put a Libertarian candidate first or someone that supported expansion of Medicaid or gun rights, that might affect the way that you see who's voting for you as well.

BREWER: All right. Well, thank you for your testimony. Let's see if we got any questions for you. Any questions? All right. Thanks again for coming both times.

JOSHUA MUELLER: Thank you.

BREWER: All right, we are continuing on LB125 proponents. We pride ourselves on having the cleanest chair of all the committees.

WESLEY DODGE: Thank you, appreciate it.

BREWER: Welcome to the Government Committee.

WESLEY DODGE: Thank you for having me. I am Wesley Dodge, W-e-s-l-e-y, Dodge, D-o-d-g-e. Chairperson and Grandfather Brewer, members of the committee, thanks for having me to speak. Our preamble of our constitution tasks us to strive for a more perfect union. And I think this ranked-choice voting does that. We've always been a process. We're trying to get better. And doing this allows us to get to that point where we're, we're a better, we're a better union. Ranked choice-- the, the way things are going right now, we've had a lot of failure, we've had a lot of acrimony against each other. It's I hate you. You hate me. You voted for Trump. You voted for Biden. We don't get along. Ranked choice allows us to look more at issues than at people and Senator Blood asked a question of Cindy, which I'm going to deviate from my text a little bit here. But you are asking about things about party. And I think what we-- we get pigeonholed into something called bundling. If I'm, if I'm a Republican, I have to be, you know, conservative, pro-life, that kind of thing. I can't be like a Ben Nelson candidate where I'm, where I'm pro-life. But I also have social values that are different. I can't be an Eisenhower that

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

believes in, you know, I'm a social liberal, but I'm a fiscal conservative. And, and these are things that I think are kind of natural to Nebraska's [INAUDIBLE], you know. And again, I've gotten way of text and I'm used to staying on my text. But ranked choice allows us to get into these kinds of decisions where we, we, we aren't pigeonholed into these categories. We can have, we can have five good Republican candidates. If we're a Republican state and, and you are a Republican and you think Republicans are the best, let's have something with five, six, seven candidates and five of them are Republicans. And two or three of them get through the process. And then, and then you get to pick the, you get to pick the best Republican, you get to pick the person that's closer to what you believe in. The other thing it does is it makes us all think more about people as individuals and what we can do for them, which is what I hope you all were tasked with in your heart when you decided to come here and take this job. And if I can do the most I can for the most people, I'm going to probably attract the most voters in the ranked-choice process because I'm going to hit on those various things. I see my yellow light is already on. And I had a-- another thing I wanted to hit on is younger voters do like this. It's 60 to 70 percent of younger voters like this, it seems to be the wave of the future. Alaska, Maine, and 26 other jurisdictions within the United States, cities and, and, and smaller levels of government are using this right now, and they're using it effectively. It brings in more minority success. It brings in-- and my red light's on so I'll wrap up quick. It brings up more of a minority success and more women are getting elected now as a result of it, too. So just in conclusion, I would say if a majority of the electorate cannot elect a majority of the elected, that's a failure of our democracy. Ranked choice is a more democratic means of getting to that point. And for that reason, I would ask you to push this out of committee.

BREWER: All right, thank you, Wesley. OK, questions? Senator Lowe.

LOWE: Thank you, Senator Brewer. And thank you for being here today, Wesley. I had asked this question earlier that if you have six candidates on the ballot and you only vote for two, what does that do to the--

WESLEY DODGE: And, and I'm thrilled you asked that question again, because I wanted to address that during my time, too, and I was trying to decide which you or Senator Blood I should address. You're no worse

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

off than you are right now. If you adopt ranked choice, if you, if you have the system we have now and you vote and you don't vote for the person who wins, your vote's gone. Right? But if you do it under a ranked-choice system, you can vote for the, the person you want to win and maybe that one loses and maybe your pick is a third one and maybe that third place vote is the one that pushes that person over the 50 percent threshold. Your vote counted. Over 50 percent of the people who vote, votes will count. That means the people that are out here that you're serving are going to say, I voted for you. You might not have been my first choice, but I voted for you. And you'll think about that when you're serving us to, you know, what can I do to help the most people? And, and I, I think that's-- I-- I've got a political science degree. I've, I've taught civics. I forgot to tell you, I'm in a couple of boards so I represent Common Cause, and, and Rank the Vote Nebraska. But I didn't want to take away from my time. So I think that's what builds better government. And Nebraska's got a great history of that with George Norris and and, you know, splitting our electoral votes. I hope we keep doing those things and I, and I hope we can be in front instead of behind.

LOWE: OK, and what happens if nobody gets 50 percent of the vote first time around?

WESLEY DODGE: Well, that would be a very quirky circumstance because we-- you keep cutting off the bottom vote getter and you apply their votes. So you would have to get to the point where you had an exact 50/50 split. And, and I think that's a minute possibility. When I read the bill, it does have-- I mean, it gets us right to where we are right now. You get to a coin flip, but you still have 50 percent of the vote. And right now we have a system where 25, 30 percent gets you into a position on occasion.

LOWE: So let's say the bottom vote getter got 25 votes or something and so you just discount those votes off the, the total then?

WESLEY DODGE: If, if the bottom vote getter got 25 votes for their first choice, those 25 voters probably picked a second choice. Their second choice votes go into the pool to vote for the people that haven't been eliminated yet. And it gets distributed there.

LOWE: All right.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

WESLEY DODGE: Does that make sense?

LOWE: Yeah.

WESLEY DODGE: OK.

LOWE: Thank you. What, what happens when you're marking the ballot on, you know, first, second, third or fourth and you get down the-- this guy is better at fourth than he is at sixth. How do, how do you re-mark that ballot? I mean, because right now you're marking down one choice.

WESLEY DODGE: I think-- again, this is probably election procedure. I'd probably have to go out and say, hey, can I have another ballot? I, I messed this one up. Or if it's a pencil one, you can erase it. I assume you erase it. But the ones all I-- the ones I've seen are columned ballots that say one, two, three, four, five, six. It's got the names of the candidates. This is number one. This is number two. You just color in the dots. Kind of like some tests, I'm sure you-- you know, the ACT test or something like that, A, B, C and D, you know.

LOWE: Mine was in stone back then. Thank you.

WESLEY DODGE: Thank you.

BREWER: All right, any more questions? Thank you for your testimony.

WESLEY DODGE: Thank you.

BREWER: Still on proponents of LB125. Welcome back to the Government Committee, Larry.

LARRY BRADLEY: Thank you, Senator Brewer. Again, I'm Larry R. Bradley. Larry, L-a-r-r-y, R middle initial, Bradley, B-r-a-d-l-e-y. Given that I have three minutes, I'm going to-- I had two points that I was going to cover, so I'm only going to cover the second point. Ranked-choice voting is the path to political peace for all of us. That's because when an election, when an election is over, a majority of the voters are going to be able to say one of two things. So-and-so won and he was my first-- he or she was my first choice and I'm satisfied or so-and-so is the winner and they weren't my first choice, but I can live with him. And when the majority of voters are saying that, then

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

everybody's going to feel content with the results of our elections. So what I'm going to do is I'm going to go through this thing with you here regarding your question. Let's talk about majority winners with RCV and exhausted ballots, we often hear opponents of RCV try to cast doubt by alleging that the results of the RCV process do not provide a true majority winner. Such is not the case. RCV provides a majority winner through each round of voting. To demonstrate this, I provided you an example with the results of a 2018 San Francisco, California mayoral election, which used ranked-choice voting. Referring to the chart you have in front of you, you will see that there are eight candidates in the race. In the initial round of voting, there were 251,032 first-choice votes cast. In the first rounds of voting, there were no exhausted or inactive ballots. In those first four rounds, the top four candidates with 231,830 votes defeated the bottom four candidates with 19,202 votes. As you can see, the majority defeated the minority. In the fifth round, the top three candidates with-- defeated the fourth place candidate with only 21,981 votes. And in the sixth round, the top two remaining candidates with 171,474 votes defeated the third place candidate with 66,043 votes. The majority once again defeated the minority. But no one candidate has a majority of the vote on their own. This sets up a final round of voting. Now we have, as you see there in the very bottom line on the chart, you see a line that says inactive. So inactive or exhausted ballots. In other words, that's the number of voters who in that round of voters did not vote for one of the remaining active competitive candidates. OK? That is known in the, in the trade as an exhausted ballot. OK? This is a-- so in the seventh round, London Breed defeats Mark Leno with 50.6 percent of the vote, 115,977 to 113,431; 21,624 voters did not choose either Breed or Leno. So again, we've had the majority defeat the minority. Breed led throughout where RCV gave her a majority mandate for governing. Data suggests that this is the case in about 75 percent of the elections using RCV. So there we go. I'm out of time.

BREWER: Pretty good timing there. All right. This chart's helpful, but so that everybody's on the same understanding of things, so would there be separate time and days that you come in as you go from round one through five?

LARRY BRADLEY: Excellent question. You mark your ballot once.

BREWER: OK.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

LARRY BRADLEY: You come in just like you do today. But instead of only being able to vote for one candidate, you have a list of names and you're used to right now having one row of ovals.

BREWER: Right.

LARRY BRADLEY: Now you'll have probably three or four row of ovals depending on the capabilities of the software. So you mark your first choice on the left hand column, your second choice in, in the column next to that, third, third choice in the column next to that, so on, so forth. You had the question about what if I miss mark a ballot? Ask for a new ballot if you, if you didn't mark it right. And so then that's the only time you vote. The votes get consolidated. We get-- we go through an algorithm process after the consolidation. And all of these calculations are done electronically. OK? And so actually, too, it makes it-- this is one of the points I was going to make. Actually, what will happen then while we're bringing all the votes in and calculating them, on the 10:00 news, they'll show the first round results and then everybody's going to be sitting there talking about, wow, I wonder how, I wonder how the [INAUDIBLE] going to go. Are these voters now going to vote for so-and-so because they don't have enough votes? They're-- you know, it's going to, to really spark interest in elections and in results. I said that here at the bottom. Let me just go ahead and say this. I think the elected officials who provide this system of voters are going to be looked upon very favorable as forward thinking and innovative. OK? We implore you therefore to advance LB125. Senator Brewer, did I answer your question?

BREWER: You did. Thank you very much. All right, questions? Senator Lowe.

LOWE: Thank you very much. And I have-- if I have to leave, I have another committee I have to go to. But let-- let's say, all right, for these are state and federal elections, correct? So there's multiple categories, and if I miss mark a ballot on the first one, I go back and get the other one, fill it out correctly and come down and miss mark that one, well, then I have to go back out and get another ballot. It, it seems like it's a struggle or, or maybe my ballot will be spoiled if my eraser doesn't erase enough. Does that limit the ballots then?

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

LARRY BRADLEY: I really don't think so. I have not, I have not heard that complaint. But you are expressing a common objection that we hear to ranked-choice voting. And that is the first is that it's too complicated and that voters won't like it. I can tell you from personal experience, I've done exit polling with voters coming out of the polls, explained the difference between the ballot we use in ranked-choice voting and ask them two questions. Do you like the system? Do you think it's under-- it's easy to understand? And 85, 90 percent of the people we survey, we poll say they think it's easy and they like it. And this last time I asked a third question is knowing what you know now going forward, would you rather be able to vote using ranked-choice voting? And again, I had about 85 percent of the people who I surveyed who told me they, yes, they would rather vote using ranked-choice voting.

LOWE: What about electioneer staff or the, the local election commissioners? Do they like it?

LARRY BRADLEY: OK.

LOWE: It sounds like a little more work for them--

LARRY BRADLEY: Actually, no.

LOWE: --on a very busy day.

LARRY BRADLEY: Actually, I would, I would not, I would not think it would be that, that much more because the computer, like so many other things today in American life, the, the computing power makes it possible. The voting machines make it possible. They just-- and, you know, there's not going to be a lot more printing to go with these because all we're doing is adding two, three rows of ovals to the right of the name. So we already had top to bottom on the same list we had today. And with the one roll of ovals now we're just expanding the row of ovals over to the right. So are our printers going to charge us a little bit more to print those additional ovals? Maybe. OK? But maybe not, too. I'm not sure that I'm-- I'm getting distracted, I'm not sure I'm answering your question. Is-- was that--

LOWE: I was just concerned, that's the busiest day of the year for election commissioners.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

LARRY BRADLEY: Yeah, yeah, well, they-- all they do is run the election system. People come in, they mark their ballot just like they do today. OK? Then when it's over and done with, they prepare an electronic file, which they forward to the Secretary of State's office. Secretary of State then assembles the ballots and does the final vote. Excellent question, Senator Lowe. Thank you.

BREWER: All right, any additional questions? Yes, Senator Hansen.

M. HANSEN: Thank you. Thank you, Chairman Brewer. And thanks for being here. So one of the questions I had thinking about ranked-choice voting, and one of the criticisms I've heard is for candidates. So I'm going to make sure phrase this right, for voters who end up using their first-choice vote on the candidate who ends up finishing second. That means they don't-- so in your scenario that you passed out, for example, in the San Francisco mayor primary, people who picked Leno as their first choice. So at the end of the day, they don't get their preferred candidate and that they also don't get to influence any of the runoffs. I mean, of the instant runoffs because their first candidate's in the race the whole time.

LARRY BRADLEY: OK, so long as, for example, you're talking about Leno, so, so long as Leno is in the race, OK, your vote counts.

M. HANSEN: I guess I'm not saying that the vote doesn't count, but for example, they don't get to-- I'm asking for treating voters differently because they both don't get their candidate to win because they pick the second-choice candidate with their first rank. At the same time, they also don't get to influence any of the instant runoffs. I know this is more of a statement than a question, but this something I'm trying to walk through in my head.

LARRY BRADLEY: OK, yeah, it's a, it's a good question. I, I get it before. So in other words, Leno is your second-- Leno is your first choice.

M. HANSEN: Correct.

LARRY BRADLEY: OK, which is fine. Which is the same as any other race that you have now. You cast your bread upon the waters. Here's five, six candidates. Leno's your first one. With a ballots you have now, Leno comes in second. You have no recourse. OK? But what about Kim

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

down all through Bravo under this old system, they voted for those and then they have no recourse. At least we have a process now that we finally focus, we, we boil it down to the final two and somebody wins with 50 percent plus one or better. And that yields, as I said before, greater voter satisfaction, you feel like, you know, hey, he was in it to the end, but, but he just didn't have the oomph to get over the top and, and be the eventual winner, if that makes sense to you. I want to go back. Senator Lowe had asked several times, if you only mark, if there's six candidates and you only mark two candidates, does your vote count? And the answer is absolutely yes. OK? And your vote continues to count so long as the two candidates you mark as your choices continue to be in the hunt. OK? When, when your candidate is defeated, it goes away, then you are no longer in the hunt. But you have depending on the software capabilities, at least three opportunities to say, here's my first choice. And if they don't make it, here's my second choice. And if they don't make it, here's my third and possibly a fourth, depending on the capability of the software. All the Secretary of State's note says, and my information is, too, that all of the voting machines in Nebraska are capable of ranked-choice voting and that the vendor will only charge \$11,000 per election cycle to use ranked-choice voting. They're charging Maine \$22,500. OK? So on the grand scale of things, that's, that's a modest investment in order to guarantee the-- a majority winner and to shore up the legitimacy of our elections, in my opinion.

M. HANSEN: Thank you.

BREWER: All right, additional questions? All right, thank you for your testimony.

LARRY BRADLEY: Thank you very much.

***SHERI ST. CLAIR:** Dear Senator Brewer and Members of the Committee: For the record, the League of Women Voters of Nebraska supports LB125 to provide for ranked choice voting for certain elections. The LWVUS promotes an open governmental system that is representative, accountable and responsive. Whether for single or multiple winner contests, the League supports electoral methods that: Encourage voter participation and voter engagement; Encourage those with minority opinions to participate; Maximize effective votes / minimize wasted votes; Promote sincere voting over strategic voting; Implement alternatives to plurality voting. Ranked-choice voting (RCV) is a

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

proven voting method that has been used for major elections in the U.S. and other countries for over a century. As of 2020, one state (Maine) had implemented RCV at the state level, eight states contained jurisdictions that had implemented RCV at some level, and another five states contained jurisdictions that had adopted but not yet implemented RCV in local elections. In November 2020, Alaska approved a ballot initiative to establish ranked-choice voting and top-four primaries. There are a number of reasons to implement RCV in Nebraska, including, importantly, that it will guarantee a majority in every election and that the winner, by virtue of their majority victory, will have a mandate to govern. In addition, we see how beneficial ReV will be for voters who can express themselves much more fully at election time by ranking their candidate choices. The LWVNE believes Nebraska voters will be more willing to vote when they know that their top choices and bottom choices will be noted, tabulated and used to choose an election winner. We urge you to advance LB125 to General File for full debate.

***SPIKE EICKHOLT:** Thank you, Chairperson Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Spike Eickholt and I am a Lobbyist for the ACLU of Nebraska. The ACLU offers its support of LB125 and we would like to extend our gratitude to Senator McCollister for introducing this legislation. Voting is the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest. The ACLU works to protect and expand American's freedom to vote. LB125 would replace our current election system with a system in which voters would rank their candidate choices for the offices of Representatives in Congress, United States Senator, members of the Legislature, and Governor--creating an instant runoff when no candidate receives the majority of the votes. This ranked choice voting system ensures that the winning candidate of an election best reflects the views of the majority of voters. It can additionally encourage more people of color and women to run for office. This bill additionally represents another opportunity for the state to strengthen our elections and encourage citizen participation similar to what could be done by eliminating the two-year waiting period for Nebraskans with a felony conviction, implementing election-day registration and permanently mailing early voting ballots. Lastly, in order to prevent suppressed voter turnout, the committee could consider a clarifying amendment to require the Secretary of State to publish voter education materials on ranked

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

choice voting to ensure increased voter participation and understanding of this new election voting system process. We thank Senator McCollister for introducing LB125 and urge the committee to advance the bill to General File.

BREWER: All right, you guys kind of pick up on what's going on is the Exec Board is meeting from 12:00 to 1:00. And there are a number of members of the committee here that are also on the Exec Board so that is why you're seeing them depart. So it's nothing against you guys. They just got duties elsewhere that are mandatory, so. All right, we are still on proponents for LB125. OK, on the written testimony of proponents, we have Spike Eickholt from ACLU, and we've got Sheri St. Clair from the League of Women Voters Nebraska. So we will now transition to opponents to LB125. Welcome back to the Government Committee.

DAVID SHIVELY: Thank you, Chairman Brewer and members of the Government Committee. My name is David Shively, D-a-v-i-d S-h-i-v-e-l-y. I'm the Lancaster County Election Commissioner. And I also serve as the cochair of the Election Law Committee of the Nebraska Association of Clerks, Register of Deeds and Election Commissioners. And I'm here today in opposition to LB125. Our association has concerns regarding this election and I'd like to share those concerns with you. First, as is noted in the fiscal note, there is a cost on education and other things that will take place to implement this initially. I believe it's about \$560,000. That would be in the first budget year and there will be some ongoing costs after that. The fiscal note also states that counties can expect ballot printing cost to double with this bill. That estimate came from our vendor who currently prints our ballots. Third, we feel there would be some confusion to the voters, mainly because it pertains to certain offices while other offices would maintain the current system. Fourth, the need to educate and/or train election officials, voters, candidates, and the media, of course. This is addressed above in the, in the fiscal note, as I talked about on the cost. But there would need to be a substantial education requirement for all players in the electoral process. It would require some additional time on election commissioners on testing the ballots. We spend an enormous amount of time testing the ballots to go through the machines to making sure all ovals are, are counted and accurately counted and tabulated. So it would give us some additional time with that. From our understanding, and I'm, I'm not an expert on ranked-choice voting, but I guess

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

there's a question on our, our, our, our, our, our association on when the final results would be tabulated with this. We move from a, a-- when do we send the final results to the Secretary of State's office? On, on election night, do they tabulate that or do we wait till we've finished our certification and our canvassing in each county before that would go to the Secretary of State's office? Then there is software, I think, that Mr. Bradley talked about that would run the algorithm. The software would run the algorithms on that. So these are our concerns at this point. That's-- and we chose to oppose this legislation.

BREWER: All right, thank you. Questions? Yes, Senator Hansen.

M. HANSEN: Thank you. Thank you, Chairman Brewer. Just to follow up with some of the earlier testifier said, can you talk about if you make an error on your ballot, what you're supposed to do and what you're supposed to not do?

DAVID SHIVELY: There are, there are two methods, whether you have an early vote ballot or if you're voting on Election Day. If you, if you make an error on an early vote ballot, you can request to have a replacement ballot. There are, there are some forms to fill out. They can come to the election office. There's different things that we'll have to do. So that would be, be one. On Election Day, if you make an error on a ballot, it's called a spoiled ballot, and there's procedures and state law outlined on a spoiled ballot. The voter would go back up to the election board and say, I made an error on my ballot. I'd like a new one. And they, they would write spoiled or void on the ballot. I can't remember, there's one of those words that they're supposed to use. It goes into a spoiled ballot envelope, will be issued a new ballot. State law does limit the number of times you can make an error on a ballot is four times. So you could only do it four times at the polling site. But, but, but there are procedures to do that.

M. HANSEN: Correct. Perfect, thank you.

BREWER: All right, good question. All right, any other questions? All right, thank you, server.

DAVID SHIVELY: Thank you.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BREWER: All right, we're looking at LB125 opponents. Beth, come on up. Welcome back to the Government Committee.

BETH BAZYN FERRELL: Congratulations, Senator Brewer, by the way. Good morning, Chairman Brewer, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm appearing in opposition to LB125. Again, I'll just echo Election Commissioner Shively's comments about our concerns about this bill, the possible increased cost, the possible confusion to voters in the election process, both for voters and for election officials. And then the concerns we have about the timing of testing equipment and when the final results would be submitted, I would be happy to answer questions.

BREWER: All right, thank you. Questions? All right, thanks for putting it on the record. All right, additional opponents? All right, are there any here in the neutral? All right, well, Senator McCollister let me know that he was going to waive closure because he would be in the Exec Board meeting or committee meeting. And so with that, let me read in, we have got no written testimonies in opposition or neutral. And letters, position letters, we have 16 proponents, 10 opponents, and none in the neutral. With that, we will close our morning hearings.

[BREAK]

BREWER: Good afternoon, and welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer from Gordon, Nebraska, representing the 43rd Legislative District, and I serve as Chair of this committee. For the safety of our committee members, staff, pages and the public, we ask those attending our hearing abide by the following rules. Due to the social distancing requirements, seating in the hearing room is limited. Should not be a problem today. We ask that you would-- we'll just skip all that. We don't want people to worry about it. We request that everyone utilize the identified entrance and exit doors to the hearing room. We request that you wear face coverings while in the hearing room. Testifiers may remove face coverings during their testimony to assist committee members and transcribers in clearly hearing and understanding their testimony. Committee members, we'll leave it up to you on discretion of wearing a mask because of adequate plexiglas dividers and social distancing

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

spaces. I'll-- let's see-- do the Reader's Digest version here. Please allow that pages will sanitize the table between testifiers, public hearings for which attendance reaches the max capacity, which won't be a problem today. The Legislature doesn't have overflow, but shouldn't be an issue today. If you have handouts, we ask that you limit them. The committee will take the bills as posted on the agenda for today and outside the room. The hearing today is your public part of the legislative process. This is your opportunity to express your opinion on the legislation before us here today. The committee members may come and go as needed to attend other hearings. This is just part of the process of introducing bills into committee. Be aware that senators will be on their computers, cell phones, checking on information and coordinating other places they need to be. I ask that you abide by the following procedures to better facilitate today's procedures. Silence or turn off your cell phones or any electronic devices. No food or drinks in the hearing room. Please move to the reserved chairs designated for those that are going to be testifying. The two chairs on the right are designated for the presenter. Introductions will be made-- let's see. Introducers will be making their initial statements followed by proponents, opponents and those in the neutral testimony. Closing remarks will be reserved for the introducing senator. If you're planning to testify, please pick up a green sheet that is on the table in the rear of the room. Fill it out. Be sure that you print and complete the entire form. If you have handouts, we require 12 handouts and letters need to be posted prior to 1200 hour, 12:00 noon, Central Standard Time, the day before. Each letter must identify the bill number, proponent, opponent or neutral, no mass mailings. When you come in to testify, please speak clearly into the microphone. Tell us your name and please spell your first and last name to ensure an accurate record. We will be using a light system for testifiers. You will have five minutes to make your remarks. The yellow light will come on with one minute remaining and when the red light comes on, your time has expired and there will be an audible alarm also. No displays of support or opposition to bills, vocal or otherwise, will be allowed. Committee members here with us today, will introduce themselves starting on my right.

BLOOD: Good afternoon. I'm Senator Carol Blood and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 18, 2021

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

SANDERS: Good afternoon. Rita Sanders representing District 45, the
Bellevue/Offutt community.

M. HANSEN: Matt Hansen, District 26, northeast Lincoln.

LOWE: John Lowe, District 37.

HALLORAN: Steve Halloran, District 33, which is Adams and parts of
Hall County.

HUNT: Megan Hunt, District 8 in midtown Omaha.

BREWER: Got Dick Clark, our legal counsel for Government, and the
Government Committee Clerk, Julie Condon. And behind us over here,
Caroline Hilgert as a page and she is a junior from UNL and Peyton
Larson back in the corner. And she is a sophomore from UNL. With that
said, Senator Wishart, welcome to the Government Committee.

WISHART: Thank you, Chairman Brewer, and members of the Government
Committee, I'm assuming I'm starting on LB475.

BREWER: OK.

WISHART: OK. Or do you have the other one?

BREWER: Nope, we had 24 first.

WISHART: OK, great.

BREWER: Is that OK?

WISHART: Yes, that's absolutely fine. This actually works better.
Well, thank you all so much for having me here today. Actually been
quite a long journey that has brought me before for you today with
these changes. First of all, my name is Anna Wishart, A-n-n-a
W-i-s-h-a-r-t. I represent the 27th Legislative District in west
Lincoln and I am here today to introduce LR24CA. So, as many of you
know, I have worked on medical cannabis legislation for four years. I
had the baton passed to me from Senator Tommy Garrett, who worked on
that issue for, I believe, at least three years prior to me being
elected. In fact, he was the closest to getting it passed within two
votes. So that's a total of about seven years that Nebraskans have
been working on this issue. And when I say Nebraskans, I'm talking

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

about a-- mainly a group of moms and dads who have kids with epilepsy and people who have MS, cancer patients, veterans, Nebraskans, who are dealing with medical conditions through which they see a benefit in other states where people have access. So fast forward, unable to get it through the Legislature, we filed a petition initiative to change the Constitution and we went through all of the steps that you would need to go through to qualify and come in front of the voters. We were reviewed by the Revisor of Statutes, reviewed by the Secretary of State. We collected 190,000 signatures, 123,000 of those we collected in one month, in 2020 in June during a pandemic. And I personally probably visited every single one of your districts myself collecting signatures. In fact, I was up in Rock County in Chairman Brewer's district, pleasantly surprised that people up there golf in jeans. [LAUGHTER] And to give you, you know, a lot of ballot initiatives, what you see is oftentimes you will raise money and then you will hire paid professionals to go out and collect and these are people who are very familiar with collecting signatures. In fact, they travel around the country doing that. In our case because of the pandemic, but also because of the popularity of this issue, this issue polls that over 75 percent across the state of support, we had 300 volunteers in Nebraskans working on this issue, working, collecting signatures, qualifying their own counties themselves. And so when we got across the finish line and we were approved by and certified by the Secretary of State, I even have that letter still on my refrigerator when we got that. That we were approved, we were going to be put on the ballot, we had followed all of the rules to get there, and then at 4 o'clock on a Friday, we hear that there is a challenge and we end up in the Supreme Court and we get kicked off of the ballot by a 2-5 vote, two people dissenting, five supporting us being removed from the ballot. At that same time, we had been collaborating with the gambling initiative. It's something I support as well, and some of our collectors supported that issue so obviously they would collect the gambling petitions as well. And so I was invested and we were invested in seeing how that shaped up. And as you know, it did go before the people for a vote and was approved. But it was a narrow margin of Supreme Court justices on a 4-3 split vote, four supporting it going in front of the people, and three requesting that it be removed from the ballot. That got it to where it is today. I've probably never been more devastated in my life in what happened. This was a lot of hard work of real people, and in figuring out what to do, I read an article from former Attorney General and former Treasurer, Don Stenberg. He had the courage to

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

write an opinion piece that showed up in the Omaha paper that basically spelled out the problems that we are facing because of court decisions last year and people's constitutional right to petition their government. And that made me think, I'm going to bring legislation to try and address this. And so before you, I have brought LR24CA. It's a constitutional amendment, so it would have to go before the people to be voted on if we get enough votes in the Legislature to do that. The goal of this is not to get rid of the single subject. It's not to get rid of the-- the intent, which is important of an issue having germaneness in terms of everything that's included in it. My intent with changing this language is to clarify what it means for an issue to be talking about one subject and one general subject. So if you'll turn to your language here, I'll just read certain portions of it. First of all, the first power in our Constitution is reserved for the people and the initiative process. This is a constitutional right that must be zealously protected, in the words of Secretary, Bob Evnen. The goal, if you turn to the other side with changing this constitutional language, is pretty simple. It's one sentence change. It would say initiative measures. It's on line 5, shall contain only one general subject, which may include provisions that have a connection to the general subject of the measure. And I am not a legal scholar. You guys have a fine one working with your committee and so, obviously, I-- I'm open to whether there needs to be some changes to this language to maybe address any concerns that you'll hear if there is any opposition concerns. But I do want to read a little bit from a legal scholar who I do think has a lot of experience in this, which is Don Stenberg, and he wrote a letter to-- I believe that he submitted to all of you. But I want to bring some of that to your attention as I close out my opening. He writes, I'm writing in support of LR24CA, which retains the one subject requirement for initiative petitions, but eliminates the judicially created requirement there be a natural and necessary connection between all parts of the proposed measure. The natural and necessary test has proved to be unworkable for the courts and unfair to citizens attempting to use the initiative process. The problem is that every case-- in every case, a creative lawyer using the natural and necessary test can make a good argument that an initiative composed of as little as one sentence contains more than one subject, while another creative lawyer using the same test can make a good argument that the same one sentence only contains one subject. Don't believe it? Consider the casino gaming amendment to the Nebraska Constitution, which was on the ballot last year. The proposed

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

constitutional amendment was just one sentence long. The Secretary of State, a good lawyer, said that one sentence contained more than one subject. Three distinguished members of the Supreme Court also said that one sentence contained more than one subject, but four distinguished members of the Nebraska Supreme Court said that the amendment had only one subject. The fact is, even the best lawyers cannot write an initiative that they are completely confident will be held to contain only one subject based on the natural and necessary connection. And it is all but certain that an initiative petition that gathers enough signatures to be on the ballot will be challenged as violating the natural and necessary rule. LR24CA solved this problem by simply requiring that all of the provisions of the initiative have a connection to the general subject to measure. This is in essence a germaneness touch-- test, which is the test the Legislature operates under. He says, this is not a partisan issue. At various times in Nebraska history, the initiative petition process has been used to promote both conservative ideas and liberal ideas. This is a fairness issue. This is about protecting the right of Nebraskans to legislate for themselves. LR24CA puts legislation by the people on equal footing with the Legislature, and I would be happy to take any questions.

BREWER: Thank you, Senator Wishart, for that opening. All right. Questions for Senator Wishart on LR24CA. Oh, Senator Blood.

BLOOD: Thank you, Chairman Brewer. How are you today, Senator Wishart?

WISHART: I'm doing well.

BLOOD: I have a really quick question. One of the nice things and one of the few nice things of the pandemic is the amount of information we now have in our computers. So I'm going to ask the question by reading you one-- a small section of the letter of opposition. And I'd like to hear your response. So since progressives had some initiatives kicked off the ballot in 2020, because there were multiple subjects, they now want to make it easier to push things such as marijuana legalization out for a vote of the people. This constitutional amendment would allow for multiple subject initiatives, which you just covered, that are connected in some way. So ignore the last sentence because you've already addressed that and address the first part of the sentence for me.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

WISHART: I think our former Attorney General said it well, that the initiative petition has been utilized by both political parties, not parties-- excuse me, because it's not. And I will push back and say medical cannabis is an issue that is supported by conservatives as well in terms of Nebraskans. But I have the polling. I've been out there on boots on the ground dealing with this issue. But this is an issue that has-- the ballot initiative has been used for conservative ideas and-- and liberal ideas. We have other senators here who care deeply about certain tax policy issues that they're looking in terms of ballot initiatives. The concern I have is that when we filed another ballot initiative, which was one sentence about medical cannabis legalization, we were told by the Revisor of Statutes that because of the decisions made last year by the courts, they could not guarantee that even a one sentence initiative would meet the single subject test.

BLOOD: That makes no sense.

WISHART: That is a huge problem when we're spending this much of people's time and energy and on this effort and again, this is the-- one of the first rights in our Constitution for people.

BLOOD: So one small section missing, how do you address the fact that there are people that believe this is some kind of ruse to legalize marijuana, not medical cannabis, but to legalize marijuana?

WISHART: Well, every single issue, first of all, has to get 10 percent of the population.

BLOOD: Right.

WISHART: And 5 percent of 38 counties signed on. That is no small feat to do that. And on top of that, this isn't about-- not once you collect the signatures, it's not like then it officially becomes law.

BLOOD: Right.

WISHART: People get-- Nebraskans get to vote on this so Nebraskans can vote no. They can say we don't want this to happen. And-- and then we-- then we move on. And what's great about that is once Nebraskans vote no, if they do, then this issue cannot be brought back up for a certain amount of time and it's kind of put to rest. So really, all of this is, is if there is enough effort in this state for people to

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

petition their government and bring something before their fellow
people to vote on, that's what we're looking for. And-- and that's the
goal of this legislation.

BLOOD: So if I hear you correctly, it's about giving people the
opportunity to vote on issues that others have worked very hard on--

WISHART: Yes.

BLOOD: --to bring to the forefront.

WISHART: Yes.

BLOOD: All right. Thank you.

WISHART: Thank you.

BREWER: So if we were to take out the medical cannabis and put
property tax, all this is, is a conduit to be able to have that
effort, at least have a chance of succeeding, because right now
because of the way it's set up, your ability to be successful, if it's
challenged, is very limited.

WISHART: And it is completely right now, unknown whether what you
write in terms of the language that you spend and all this time
collecting signatures on, and you pay constitutional lawyers to-- to
look at and even the Secretary of State says it's constitutionally
sound. There is, like former Attorney General Don Stenberg said, you
can have very brilliant lawyers at this point arguing articulately on
either side of this issue. And that's a problem, because when people
go out to start collecting signatures, they should have some level of
understanding that the language they're asking people to sign their
names to is constitutionally correct. And right now, it's so muddled
in terms of the single subject's language in our Constitution that no
one can have assurances that's the case.

BREWER: OK, thank you. All right. Additional questions? I'm assuming
you're going to stick around for closing since you're next up.

WISHART: I will, yes.

***BOB EVNEN:** Mr. Chairman, members of the committee, good afternoon. My
name is Bob Evnen. I have the honor and privilege of serving as the

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

Nebraska Secretary of State. I am here today in opposition to LR24CA. Adding the adjective "general" will do very little to clarify or set an understandable, easily applicable parameter to the "one subject" limitation found in the Nebraska Constitution. Similarly, including provisions that "have a connection to the general subject" serves only to magnify the confusion. I appreciate Senator Wishart for her effort to bring to the fore the single-subject conundrum we all grapple with. I have had my turn at this. I was reversed twice in one day by the Nebraska Supreme Court on the single-subject question. The issue is difficult. In an effort to gain a deeper understanding of possible approaches to take on the issue, I have asked the UNL College of Law to devote some attention to this problem. The law college has agreed, and in the fall, will devote an entire issue of the University of Nebraska Law Review to substantive and procedural matters related to the evaluation of initiative petitions. In addition, a symposium is planned to coincide with the publication of that law review issue. I think that the articles published in that issue and the symposium will provide us all with invaluable insight and will set us thinking productively about resolving these issues. For that reason, I encourage the committee to postpone consideration of LR24CA pending the work on this issue which we anticipate from the law school. Thank you for your consideration.

BREWER: All right, thank you. All right. We will start with proponents to LR24CA as we clean up the table. OK, first proponent. All right, we will go from-- well, let's see. We got to do letters and for-- no written, so, all right. So we go ahead and go to opponents to LR24CA. All right, then those in the neutral, come on up. Welcome to the Government Committee.

ANTHONY SCHUTZ: Hello, Senator Brewer, members of the committee. My name is Anthony Schutz, A-n-t-h-o-n-y S-c-h-u-t-z. I'm an associate dean and assistant professor at the University of Nebraska College of Law. I focus on state constitutional law. I also do water, agricultural law, that kind of thing. I came down to testify on this matter because I've studied the single subject rule for-- for years. I've got a book on the Nebraska State Constitution with Peter Longo out in Kearney and a guy named Robert Meewald, who was with the University of Nebraska and passed away some years ago. So we've watched the single subject rule as it's evolved. And Peter Longo was actually on the 1997 Constitutional Revision Commission that suggested the amendment to the Constitution. All of us were surprised, by the

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

way, in which it was interpreted by the court. The 1997 Commission did not intend for this to dramatically rework the balance of power between the people in the Legislature. All they really wanted to do was make sure that when people presented constitutional-- or when initiative provisions, presented constitutional amendments to the people, that they complied with the same single subject rule that applies to initiated laws, as well as the separate presentment provision that applies to constitutional amendments that come from the Legislature. In fact, the Legislature operates under its own single subject rule that we could also use, but the-- the parameters of that are a little bit more difficult to pin down. So I came down to testify in part because we were surprised about that, right. The other thing that I think is very important for the committee to consider is that nothing that happened last fall looks good from the letter writing campaign to the Secretary of State's Office, to the responses that went to the lawyers and not the people that were represented by counsel to what I think reasonably appears as the strategic enlistment of the Attorney General's Office in defending the state's position to a two-week briefing schedule from the time with the Secretary of State's decision to a published opinion by the Nebraska Supreme Court. I'm not going to throw stones at anybody who was involved because they're all advocates. They're all members of the bench. They're members of the bar. Some of them are my former students. But appearances matter, and this does not look good at all. Casinos, marijuana come with a lot of baggage, right, and the process at least a reasonable view of it, and I don't know if it was, but a reasonable view of the process is that it was bent to achieve some Machiavellian ends. And that's something that we have to look at and try to figure out what happened and how a better process can be built. Insofar as the single subject rule is concerned, I think the court got it wrong and they were operating on a two-week briefing schedule. I think Justice Papik was right in his dissent in Wagner, but none of that matters now. The court is right because the court is last and now we have a rule that is in play that is dangerous. And I'll explain why I think that's dangerous in just a-- and see if I can explain why I think it's dangerous. So what we have now being circulated is an initiative petition for a very broad marijuana amendment, an amendment that would enshrine on the Constitution a right that really sort of has no parameters associated with it as of yet. And the reason that's being circulated is because people think that that will satisfy the standard that the court has set. Whether it does or not is really an

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

open question. I have no idea. In fact, I ran a moot court activity at the-- at the law school this last fall and I had students arguing all over the board on that. Nobody knows really what to do with the standard that the court has given us. They rejected standards that we had in the past. It's unclear what their reasoning is. We just know that there's this inquiry that we have to make about a single subject and in fact, that very broad amendment is going to raise a ton of issues, right. So does that violate the state constitutional amendment-- or the single subject rule? We're not entirely sure. Assuming it does pass, though-- well, first step. Once that gets enough signatures to get on the ballot, which it will, it'll go to the Nebraska Supreme Court and the Nebraska Supreme Court will decide whether the people get the chance to vote on it or not. Assuming they do, which is a big assumption, assuming they do, that'll be enshrined in the state Constitution. The next step will be implementation. Implementation will occur in this body. And we know what those fights are going to look like. There are going to be fights over tax. There are going to be fights over-- over growing. There are going to be fights over who should do the inspections. There are going to be a million issues that are associated with it. Every one of those issues is going to involve a political loser who's going to be upset about the choice that was made by the Legislature. And now, they're going to challenge that legislation in the Nebraska Supreme Court. And the Nebraska Supreme Court will be deeply embedded in deciding every piece of legislation associated with the legalization of marijuana in the state. Why? Because it's own doctrine required the presence of an amorphous constitutional amendment that provides for the right. This was a serious misstep, I think, by the court, and it injects it into the political process in a very deep way. And so that's the thing that needs fixed. What we're doing at the law school this fall is having a symposium where we're bringing in people from all across the country to talk about this issue. One of the confirmed speakers is a gentleman named Richard Briffault from the University of Columbia Law School. He's written an article on the single subject rule. He's probably thought more about it than anybody in the country. I'm going to be a part of it because I'm an expert in the state-- in our state Constitution. John Marshfield, who's on our faculty at the law school, is also going to be a part of it, who he also spends a ton of time with state constitutions, and we're inviting people from all across the country. May I continue, Senator.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BREWER: Please.

ANTHONY SCHUTZ: So this symposium is going to involve those folks. We're going to have experts in, you know, elected Attorneys General, elected Secretaries of State from all across the country to try to look at this and see what the values are that are at stake when we're talking about a single subject rule and what the process ought to be for its administration. Maybe one of the things that needs to happen is we need to rethink the initiative, maybe it's something we need to present to the people for a constitutional amendment, say, you know, this was a great idea in 1875 and in 1920, but now times have changed and this isn't the best way of making policy, or maybe not. But those are the sorts of questions that really do need to be engaged in this sort of a situation. To follow up on a couple of questions that were answered just before I proceeded. Senator Blood, I believe, from-- anti-affirmative action would not pass muster under this provision. I don't think that marriage amendment would pass muster under this single subject rule. Those are two examples off the top of my head that were initiated and adopted that would not pass muster. Those are not progressive causes, I don't believe. Corporate farming law, which maybe was a progressive clause-- or a progressive cause, hard to say at 300, that definitely wouldn't pass muster under the rules that they've created. They've dealt with about 50 different subjects under the standard that the court utilized. So, yeah, I think there's a lot of-- of a --I think there's a lot to be said for what Mr. Stenberg says about the single subject rule and how it is very A-political. So with that, Senator Brewer, to take your example of the property tax provision, if I were trying to run an initiative on the property tax, I'd be concerned about agricultural land owners. I'd be concerned about commercial property owners, and I'd be concerned about residential property owners. And like our state constitution does now, I'd probably be concerned about differentiating among those folks, maybe achieving some level of equality among those folks, even though they need to be treated differently. Proportional assessment for agricultural land might be something I continue, maybe not, but the question of property tax relief involves multiple pieces. That multiple piece aspect of it probably makes it something that would be challenged under the single subject rule. Whether it passed muster or not, again, I don't-- I don't have any-- any strong opinion on that because it's just unclear at this point. The court said growing marijuana and using marijuana are different subjects. OK. Is taxing

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

agricultural land and taxing residential real estate, are those different subjects? Man, it seems like it, but they have a lot in common and they're both dealing with the property tax, and then what do we do if like our property tax initiative, we're going to need some revenue? That's the thing that's been the basic like hold up on property tax relief, so that initiative is probably going to involve something. You're going to have to need to-- you're going to need to think about sales tax, maybe inheritance tax. Those sorts of-- are those different subjects? Probably, but they're related to the same effort, right. The thing that clearly violates the single subject rule would be, for example, on the last ballot, having casinos and marijuana wrapped together in one provision. You can't legalize marijuana unless you also legalize casinos. That's arm twisting. That's duress. That's logrolling, right? But having trade offs about the minutia of how we're going to fund and how we're going to manage the growth distribution licensure of marijuana, those are all within the same category of things that we need to talk about, right? Now, the court didn't agree with that. And that's the law of the land at this point. And the question is how to change that. The worry I have with-- and the reason I didn't testify in support of this particular proposed constitutional amendment is, I don't know if it gets it done. The language is not necessarily going to change the court's approach, and if it does change the court's approach, I don't know how it's going to change the court's approach. So we've got to-- we need-- I think we need further study on whether or not it would get the job done and if there's other ways of doing it. And then, of course, there's also other ways of enacting law from the people. We could do initiated legislation as well, which has a different single subject rule. Maybe we want to rethink having constitutional amendments initiated. Maybe we want to propose that as a constitutional amendment. So lots of different things to think about, lots of need for further study and I just wanted to bring that down to the committee and let you know that the University is working on it. And also a broader point, and I know I've taken way more time than I was entitled to, but one broader point and one plug that I want to make for the University is that resource that you have four blocks away from here is a tremendous resource for law and policy. I mean, it's-- it's-- it's really something, I think, to treasure in the state. I think it has been treasured by the state. But I-- I always when I come down here, I want to remind folks that we're here at the university to help facilitate law and policy, and we love being involved with the

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

Legislature. So with that, be happy to answer any questions. Thanks
for your time and indulgence.

BREWER: Well, understand that I gave you more time just because your
wealth of knowledge and I mean, I think everybody-- we're-- we're
forced to think deeper on the subject and look at what right looks
like and, you know, it's rare that we have someone that has that depth
of knowledge come in here. So thank you for that. And I'm probably
speaking out of turn for Senator Wishart here, but I think she's
probably flexible enough to be willing to look at amendments to where
we-- we get it right so that we don't, you know, chase our tail doing
things that really aren't going to give us what we want to end. But I
think the fact that so many people with the historical knowledge of
where we're at and the challenges see the problem. We've got to figure
out some way of doing it better, but what that looks like we might
have to sort out here. But anyway, questions? Yes, Senator Hunt.

HUNT: Thank you, Chairman Brewer. Thanks for being here today. One
thing I really liked, it was a point that Don Stenberg made was that
ballot initiatives are kind of the people acting in a legislative
capacity. And so the analog for the people doing a ballot initiative
and them having the freedom to act in the same way the Legislature
does, is kind of what we call our germaneness rule in the Legislature,
like what the single subject rule or whatever would be for-- for
ballot initiatives. And, you know, we know sometimes in the
Legislature we have challenges on germaneness and sometimes the
outcome of the germaneness ruling comes down to who's in the chair.
And so with-- with the analog for the ballot initiatives be who's in
the Supreme Court is sometimes more of a political question. You know,
to my nonattorney brain, I read the language in LR24CA and I don't
know if it solves the problem of political motivations for the
germaneness ruling or the single subject ruling, whatever it would be,
but I do feel like it gets us a little bit closer. What would you
suggest? How would you suggest changing the language to-- to solve the
problem?

ANTHONY SCHUTZ: It's an excellent question. So the problem I see
arising has a lot to do with with process. So there are ways of
implementing the Constitution that don't involve the Supreme Court
acting in a mandamus action to be the final arbiter of the
constitutional language. We could create a structure that allows for
some sort of administration, perhaps by the Secretary of State or more

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

likely through the application of some other administrative process. Maybe it involves the Attorney General's Office and I think you've got a couple of bills before you. So I think there are ways of structuring a process where the decision is made and reviewed by a Supreme Court. And that review may involve a modicum of deference, right. It just would depend on how we structure the inquiry. So I think there are some ways that we could structure it in order to provide a process, but I think you're exactly right in thinking of it as germaneness. In fact, the germaneness standard is driven by the state constitutional language that requires every bill in the Legislature to only have a single subject.

HUNT: Um-hum.

ANTHONY SCHUTZ: And the test that the Legislature adopted is one of germaneness. And the courts have said it's up to the Legislature to choose that test. That's why I kind of differentiated it from the state or from the constitutional amendment provisions, because in the Legislature there's an institutional body with an apparatus in decision making capacity, right.

HUNT: Um-hum.

ANTHONY SCHUTZ: The Legislature does that all the time. They make their own rules and the court says, those are your rules. You guys do that, right. Separation of powers, principles say that. When we have the people acting directly, though, it's a much different apparatus because there's no institution there. It's a-- it's an initiative and it's you know, it's a petition that's brought to the people and it's distributed across a number of different counties. But those seem to be the only parameters for it and who protects that process? And so far, it's been the Nebraska Supreme Court. We could come up with different ways of doing that. And the question then is like, do you want to do that? Is--are seven members of the Nebraska Supreme Court, is that-- is that good enough? And when it's got to be a supermajority to declare something-- well, the supermajority clause actually doesn't apply to these. But are four members of the Nebraska Supreme Court enough? Would we rather have a political actor making that choice? And Speaker of the Legislature is elected, they make the choice in the Legislature. Would we rather have political actors making that choice or would we rather have, you know, actors that are a little bit further removed from politics making that choice? I mean, they do

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

stand for retention elections. That's another thing, too, right? I mean, that the-- well, Justice Lanphier was the justice who got turned out of office after some litigation on the casino provisions way back-- way back when. So it puts pressure on the Nebraska Supreme Court that maybe we don't want the Nebraska Supreme Court to have to-- to deal with. But that's-- that's the-- the box you open up when you start talking about constitutional amendments, right. What you're proposing is an amendment to the fundamental law. What we would be proposing through the LR is an amendment to the fundamental law, which opens up the ability to come up with governmental structures that you think are more suitable to the task at hand. Just changing a few words on the single subject rule, it might not be all of-- all of the stuff you want to do. For example, the other thing that is in that initiative provision that is worth reconsidering because it's probably unconstitutional under the federal constitution, is the distribution of petition signatures across the state. There's a provision in the federal constitutional doctrine associated with the 14th Amendment called one person, one vote. You can't enhance the voting power of any person. Well, the distribution-- the requirement that you go collect signatures from people in the rural parts of the state in order to amend the Constitution, gives the people in the rural part of the state political power that the people in the urban parts of the state don't have. It gives them relatively more political power. That's actually been litigated and Judge Battalion struck it down under the 14th Amendment, but when it was appealed, the 8th Circuit didn't reach the question. So that's something that maybe we should think about, right. And that's a very contentious issue as well. So a lot of different issues that come up with the initiative provision. And I strayed a little bit off topic, but that's what professors do sometimes.

HUNT: Thank you.

ANTHONY SCHUTZ: The analog is correct. Think of the Nebraska Supreme Court as the Speaker of the Legislature, making a choice about not germaneness in the eyes of this court, but something else that nobody can really anticipate, but not a political actor making the choice, something else.

BREWER: All right. Additional questions? Senator Lowe.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

LOWE: Thank you, Chairman, and thank you, Mr. Schutz, being here today. You said the symposium is in the fall.

ANTHONY SCHUTZ: Yeah.

LOWE: Correct? And that people are coming in from all across the country.

ANTHONY SCHUTZ: That's the-- we're still-- you know it's February and there's a pandemic. So we're still worried about if we can have it in person-- if it'll be electronic, we can actually get probably more participation than we would otherwise, but, yes, that's the plan.

LOWE: Should we put a hold on this for now until after the symposium so we can get this correct and right the way it should be?

ANTHONY SCHUTZ: Well--

LOWE: Because you also mentioned there were several of the bills we could work with.

ANTHONY SCHUTZ: Sure. That's up to you, of course. I think having that collection of people get together and think about the issues associated with this, it might not result in a-- in the language, but it would result in, I think, a better understanding of what are the moving parts here. Right? From the Attorney General to the Secretary of State, to the Nebraska Supreme Court, to the initiative process and the-- and then the initiative process. You can make a lot of these decisions before you start collecting signatures, right. So if there's a decision made before you start collecting signatures, maybe we could appeal that. But there's limitations on the ability to appeal things. And you've got to have standing in order to appeal. You got to have some sort of an injury in order to appeal. So there's just a lot of moving parts that have to be considered. So I think at the very least, the symposium would give us a better idea of what those moving parts are and what the values are at stake with each one of them, so that when you make choices, you know what you're working with. It's-- it's not the most complicated machine that's out there, but it's a-- it's a fairly complicated machine when you move one thing in one place, sometimes it has effects in other places that can be undesirable.

LOWE: You wouldn't want to move the symposium up to next week, would you--

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

ANTHONY SCHUTZ: Well--

LOWE: --so we could work on this.

ANTHONY SCHUTZ: I-- I-- well, I wouldn't-- I wanted to have it this semester, but we were hoping that in the fall it would be a little better. And having it in the session is a little bit difficult too. We wanted to have senators involved in and Secretary Evnen and those folks.

BREWER: All right. The symposium, hopefully when it comes up, you might offer, even though we're-- well, some of us are lawyers, but it is kind of fascinating to listen to this and-- and think through so many times when we make decisions here in a kind of a rush without realizing the impact down the road. This makes you at least step back for a second and think about it, because, I mean, I can't imagine how frustrating it was, whether-- whatever the subject is, if you look in the case of Senator Wishart, you know, if you go to all work to find literally millions of dollars and hundreds of people and months of time to-- to take something and-- and work it to the point where you're successful or you think you're successful and then to be crushed and to not see a way to do it so that you won't have that happen again. You know, it can break your spirit to where you no longer believe in the system.

ANTHONY SCHUTZ: Yeah.

BREWER: So having us more knowledgeable on how this works will only benefit, I think, everybody down the road.

ANTHONY SCHUTZ: Well, there's a-- there's a political elephant in the room too. Not literally, but figuratively, but almost literally. Why couldn't the Legislature have done what they had to take to the people? That's the thing that's so frustrating about this. I300 was that way. You know, there were a lot of-- there's a lot of pieces of policy that we've had in the state that the Legislature just doesn't align with what the people want as revealed by the subsequent campaign. So, there's deep questions involved, but thank you for your time and it was a pleasure.

BREWER: Thank you. This has been very enlightening. OK, so do we have any additional in the neutral position? All right. Let's see, I need

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

to read in some things here before we get too far along. All right, so
as far as opponents, we had Secretary of State, Bob Evnen-- Bob Evnen.
No one in the neutral. As far as position letters, we had three
proponents, four opponents, and none in the neutral. With that, we
will do a quick reset for the next bill. LB475, which will be Senator
Wishart back-- or-- welcome to the Government Committee.

ELIZABETH SEACREST: I apologize, Senator Wishart had to leave for
Appropriations Committee. My name is Elizabeth Seacrest,
E-l-i-z-a-b-e-t-h S-e-a-c-r-e-s-t. Senator Wishart asked that I open
on this bill for her. She recognizes that this bill does have issues
and wanted this to serve as a starting point for our Legislature and
other stakeholders, including the Secretary of State, Attorney General
and the courts, to determine a way in which the constitutionality of
language can be ascertained before signatures are collected and
Nebraskans vote. LB475 states that when initiative or referendum
petition language is submitted to the Secretary of State to begin the
process of collecting signatures, the Secretary of State shall send
the proposed language to the Attorney General for a legal opinion in
writing as to the initiative or referendum petition language meets the
Constitution's single subject requirement. Currently, the Secretary of
State sends the proposed petition language to the Revisor of Statutes
who has 10 days to review the proposed-- proposal and suggest changes
in form and draftsmanship. The sponsor of the petition language then
can accept or deny the Advisors suggested changes. LB475 would have
the Attorney General go through a similar process as the Revisor of
Statutes already does. If it is the opinion of the Attorney General
that the initiative or referendum language does not meet the single
subject rule, the Attorney General will issue a written opinion
suggesting changes to divide such proposed language. This would also
be done prior to collecting signatures along the same timeline as the
Revisor of Statutes does their review. Sponsors of the language will
then have the opportunity to decide whether or not to accept or reject
the Attorney General's suggested changes prior to collecting
signatures. The idea that Senator Wishart had with this bill was to
save Nebraskans potentially hundreds of thousands of dollars who are
trying to petition their government and the fact that there is no
fiscal impact estimated by the Attorney General's Office also speaks
to that fact-- that fact as well. So with that--

BREWER: All right. Thank you for that opening. And we have a tradition
that we won't bother you with any questions.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

ELIZABETH SEACREST: Thank you.

BREWER: So with that, thanks. All right. Let's see, I need to read in some things here as far as LB475, letters of testimony. OK, well, position letters, we've got one proponent, none in opposition and one in the neutral and on the written testimony, we have one opponent, which is Bob Evnen from Secretary of State. And oh, and you're-- you're the first proponent?

SPIKE EICKHOLT: Yes.

BREWER: All right. Come on up.

SPIKE EICKHOLT: Good afternoon, members of the Government Committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t appearing on behalf of the ACLU of Nebraska in support of LB475. I actually own-- where I actually bought Professor Schutz book. So I'm kind of glad- he doesn't see me sort of blunder his summary of the law. But what I think he did a very good overview that relates to what this bill is to-- is to address Article III, Section 2 is the section of our statute-- or our Constitution that provides for the people's right to petition to pass a law. They did it with minimum wage years ago. They did it with Medicaid expansion. They did it with gambling this last fall. And as Professor Schutz explained before, that provision has a single subject rule, or single subject provision. It's just seven words in the Constitution, but it basically says that each initiative effort shall contain only one subject. And the idea that-- and Professor Schutz reference logrolling is that unlike the Legislature germaneness rule, where it's kind of interactive, you can strike certain language, you can change, you can debate, you can propose amendments to a bill and twist and modify it in such a way, but it still has to have one general subject. For the voters voting on something it's an up or down option. It's yes or it's no. And to prohibit the voters to be put in that really unfair situation of having to vote yes for something that contains something else in that question that they don't really like, that's why we have the single subject rule. For instance, if you don't want to have like Professor Schutz example that he gave, you don't have a property tax reduction initiative include marijuana legalization in there or, you know, people may not like both of those ideas. Those are two different subjects. It's not fair to force that issue. In doing so, sort of dilutes the people's power to pass laws themselves, because that's

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

what's meant by the Second House. That's the people's initiative and Senator Wishart has a constitutional amendment to maybe modify the single subject rule, as interpreted by the Supreme Court as Professor Schutz indicated before. Maybe that's not easily done by constitutional amendment. But what Senator Wishart has done here is also equally important and maybe a better step towards-- towards a solution into addressing how to tackle or how to address a single subject dilemma that we have. And what this would provide for is that when somebody submits a petition, they have to submit it to the Sup-- to the Secretary of State. The Secretary of State already sends it to the Revisor's office, which after 10 days will submit proposed revisions to the language they want to do. And those are innocuous things, having the word "shall" instead of "must" or having the word "shall" instead of "may" or different phraseology to make it proper, grammatical sentence or whatever it may be. The people who are behind the petition don't need to accept that, but they can if they want. That's meant to fulfill that right for them. And what LB75 does is go one step further, and that is to get a legal opinion from our Attorney General early on in the process that says this has a single subject problem as we see it and here's why. And here's a proposed solution that you might want to change before you go out there and get all these signatures. And then find out two or three weeks before the general election that the Supreme Court agrees with us, here's a proposal where you can do that. And that really is the fulfillment of the right that's in Article III, Section 2, the right of the people to petition for change themselves and not rely on the Legislature to do it themselves. And I think that's an important bill. We think that's an important idea and we would urge the committee to at least consider that. I know that some of the opponents have problems with some of the language, that presumption. It's on page 3, lines 5-8. At least, I haven't read the opposition letter, but I have sort of heard from hall talk what their concern might be. And that is if the AG gives an opinion or if the Attorney General gives an opinion, there's ever any legal challenge, the Attorney General's opinion is presumed to be valid. I understand that situation and maybe striking that wouldn't really do anything to the bill. At least you would have this step early on in the process where you get an Attorney General opinion or opinion from somebody at no cost to them as to the legality of it. Not everyone can afford to hire a law firm to look at this. Not everyone can afford to hire a fleet of attorneys in Lincoln or Omaha to research this. And if you really want to have something that is

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

meaningful to the people, I think having their lawyer, the Attorney
General, look at it early on is important.

BREWER: All right, thank you. Questions-- questions? All right, thank
you. Oh, hold it. Senator McCollister.

McCOLLISTER: And maybe you've covered this, Spike. In the case of the
marijuana situation, that-- that suit was brought by the district
attorney rather than the AG, correct?

SPIKE EICKHOLT: Well, the suit that the marijuana case was state-- was
Wagner versus State, as in State ex rel Evnen, the challenge to the
question-- the marijuana ballot question being put on the ballot that
was challenged by Sheriff Terry Wagner in his personal capacity here
in Lancaster County. He brought that claim as any voter has an
interest in objecting to the single subject issue in that ballot
question. So that was brought by-- and I don't know that the bill
necessarily is meant to address that. But the bill, I think, as to
address is, if you have a group of citizens that want to get a law
passed, before they go through all this effort that Senator Wishart,
you weren't here when she strived that, but Senator Wishart testified
that she did in her work on medical marijuana question. Which is
really quite amazing when you think about it. During a pandemic, they
got 10 percent of the people in the state, not percent-- 10 percent of
the voters, but of the people in the state. You don't have farmers
markets. You don't have Husker games. You don't have those events that
you can go out with-- with people circulating a petition and get a
bunch of signatures, it was genuinely grassroots. You have all those
people that say we want this on the ballot and then because of our
Supreme Court's understanding of the single subject rule is they've
kind of created it. It's not-- there's no language that says the
definition that they talk about the natural and necessary connection.
That's something they've created that they've interpreted with the
single subject rule means. The court decides on a narrow majority,
four to three, they agree with Terry Wagner and they keep it off the
ballot-- weeks before the election. And I think what this bill is
trying to do is to-- if there's going to be a legal issue and it's
clearly flawed or clearly, or at least more likely or something that's
got problems, a single subject, you know going in. You try to fix it
before you start circulating petitions, you try to address it. And I
don't know if it can be done, right, because, as Professor Schutz
explained earlier, it is kind of a circular reasoning that the court

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

has on this test. It is, as Don Stenberg has pointed out in his letter, you can argue really any issue both ways, but at least this provides for a means that somebody can find out beforehand if there's an issue.

McCOLLISTER: But-- but there's a presumption then it's legal if the EAG rules in that fashion.

SPIKE EICKHOLT: That's right. That's right. In the bill as proposed.

***BOB EVNEN:** Mr. Chair, members of the Committee, good afternoon. My name is Bob Evnen. I have the honor and privilege of serving as Nebraska's Secretary of State. I appear before you today in opposition to LB475. As I stated in my testimony opposing LR24CA, I appreciate that Senator Wishart has illuminated the current difficulties. In my determination letter dated August 27, 2020, regarding the Medical Cannabis Initiative, I noted the very short period of time for making a decision, and I wrote the following: Quote - I have done my best here to follow the law and issue a decision within that highly challenging time frame. In the near future, I intend to review the processes that result in such a compressed and unsuitable time frame for consideration of issues of this magnitude. End quote. I have done that. I have contacted the University of Nebraska College of Law and discussed these matters. I am pleased to say that, as a result of those discussions, the University of Nebraska Law Review will devote an entire issue this fall to the substantive and procedural issues involved in consideration of initiative petitions. In addition, the law school is planning a symposium in conjunction with the law review issue at which these topics will be discussed. My thought is that the legislature should wait until we receive whatever insights result from the work on this law review issue and symposium. For that reason, I ask the Committee to postpone consideration of LB475.

BREWER: All right. Any additional questions? Thanks, Spike. OK, we're still on proponents of LB475. We'll go to opponents and those in the neutral. Well, since I've already read the letters through, I'll do that again, I guess. Position letters, one proponent, no opposition and one in the neutral. And then Secretary of State Evnen's testimony. With that said, we will close on LB475 and set up for LB477. Senator Bostar, welcome to the Government Committee.

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

BOSTAR: Thank you, sir. It's good to be back. Good afternoon, Chairman Brewer, and members of the Government, Military and Veterans Affairs Committee. I'm Senator Eliot Bostar. E-l-i-o-t B-o-s-t-a-r and I represent Legislative District 29. I'm here today to introduce LB477, a bill that requires the Secretary of State to provide an advisory opinion regarding the legality of the object statement and text of a proposed initiative or referendum measure. The initiative and referendum process in Nebraska has a long and rich history, with the power to create, amend and repeal Nebraska statutes and constitutional provisions. The power of the citizen to use ballot measures is established within our state constitution. It has been said that the people of Nebraska comprise our state's second legislative house, and I believe that our petition process, combined with our legislative hearings, are essential elements of the realization of that grand ideal. Ensuring that citizens have informed and transparent access to the ballot when pursuing the initiative and referendum process is the fundamental intent of LB477. By requiring the Secretary of State to provide an advisory opinion after reviewing the object, statement and text of the proposed measure allows the sponsors of an initiative or referendum to correct errors or omissions prior to undertaking the laborious task of collecting signatures for a petition measure. The advisory opinion would be legally non-binding and be maintained by the Secretary of State as part of the official record of the initiative to ensure transparency in this process. The initiative and referendum process is a vital part of Nebraska's unique system of government. The process must be seen as fair and transparent to give greater confidence to citizen-led ballot questions. I would encourage you to advance LB477 and I'd be happy to answer any questions you might have.

BREWER: Thank you, Senator Bostar for that opening. Let's run through and see if we have any questions. Questions on LB477? All right. You're going to stick around for close?

BOSTAR: Yes, sir.

BREWER: Good. OK, we'll start with proponents to LB477. Welcome back.

SPIKE EICKHOLT: Thank you. Members of the Government, Military and Veterans Affairs Committee, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB477. This is a similar bill in concept, at least as the bill you just heard before, LB475. LB475 is a bit more narrow in the

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

sense that it directs the Attorney General to give advisory opinion as far as whether whatever proposed ballot was submitted to the Secretary of State is consistent with the single subject rule under Article III, Section 2 of the Constitution. This bill does that and perhaps a little bit more. And in some respects, this bill is maybe even-- I don't want to compare the two, but in some respects, this is maybe a little more general, more fulfilling approach to it in the sense that it directs the Secretary of State to give an advisory opinion to the sponsors of the petition as to the general legality of it. And that would include Article III, Section 2, single subject and maybe any other legal issues the Secretary of State identifies. Now, I don't know if the Secretary of State-- we have one that's an attorney now that was able to give some advisory opinions to the ballot, questions that were on the last general election ballot, and perhaps it's implicit here on the Secretary of State's authority that he, or it's now a he, can communicate with the Attorney General in reaching this legal opinion, but maybe that could be something that the committee could consider adding to this language, that he could also use the Attorney General to assist in providing that legal opinion. But for the reasons I said before on LB475, this is an important bill for that very reason. And that is, it's a fulfillment, it's a protection. It's a-- it's an enhancement of the people's right to petition for law change themselves. So they're not for it at the last minute, so they don't start out with some legal flaw. And if you want to make it-- make it available to all people, they shouldn't have to come down to Lincoln and hire some fancy law firm over in the-- one of these big buildings to sort of give them an opinion and write up for them. People ought to be able to do it themselves and they should have at least the means of their government to help them do it right. And with that, I would encourage the committee to consider this bill and answer any questions you might have.

BREWER: All right. First question is, in your opinion, which one do you like better, LB475 or LB477? As a brilliant lawyer.

SPIKE EICKHOLT: Well, LB475 is more narrow and it's much more responsive to this whole single subject thing, but LB477 is better in the sense that there might be another issue besides single subject that the courts develop when it comes to petition process. And maybe LB477 provides for a means to help people identify all potential legal issues. Would it be single subject, maybe be some defect in the sponsor statement. The sponsors are the people behind the petition

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

need to file a sworn statement listing all the sponsors, their street addresses and so on. There's been other cases before that's been done incorrectly. A post office box has been listed or not all the people who are actually sponsoring the bill or the petition were listed as sponsors. That might be something that this bill would provide so that people aren't trapped in these unwary sort of spots, these traps by the unwary.

BREWER: That's a-- that's a great way to explain it. So just the regular person can understand it, so thank you.

SPIKE EICKHOLT: Right.

BREWER: Senator McCollister.

McCOLLISTER: Maybe I can get you off the hook, Spike. Would it be possible to write a composite bill that included the best features of both these bills that we could bring-- bring to the floor?

SPIKE EICKHOLT: I think so. By the committee, it's got a competent staff here, and I mean, you've dealt with these issues, you see the issue. I think you could easily merge the two. They were introduced probably just one bill apart. So I'm guessing they maybe didn't realize that both senators were respectively working on it together. I can't speak for either of them, of course. But yeah, that would make some sense.

McCOLLISTER: We have a very, very good legal counsel, so I'm sure you two could work it out.

BREWER: It's like somebody just got some work. All right. So, questions? All right. Thanks, Spike.

SPIKE EICKHOLT: Thanks.

***SHERI ST. CLAIR:** Dear Senator Brewer and Members of the Committee; For the record, the League of Women Voters of Nebraska supports LB477 which would require the Secretary of State to provide an advisory opinion on the object statement and text of a proposed initiative or referendum measure. Currently, text of a referendum measure is reviewed for form and draftsmanship by the Reviser of Statutes. LB477 would also include a review by the Secretary of State and provide an advisory opinion as to the legality of the object statement and

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

proposed measure to the sponsor. The League works to promote broad public participation on government. Considerable time, effort and expense may be incurred in gathering the necessary signatures for initiative or referendum measures. This proposal would help the petitioners focus resources, thus avoiding unnecessary effort. Please advance LB477 to General File for full floor debate.

***BOB EVNEN:** Mr. Chair, members of the Committee, good afternoon. My name is Bob Evnen. I have the honor and privilege of serving as Nebraska's Secretary of State. I appear before you today in opposition to LB477. I appreciate that Senator Bostar has illuminated the current difficulties. In my determination letter dated August 27, 2020, regarding the Medical Cannabis Initiative, I noted the very short period of time for making a decision, and I wrote the following: Quote - I have done my best here to follow the law and issue a decision within that highly challenging time frame. In the near future, I intend to review the processes that result in such a compressed and unsuitable time frame for consideration of issues of this magnitude. End quote. I have done that. I have contacted the University of Nebraska College of Law and discussed these matters. I am pleased to say that, as a result of those discussions, the University of Nebraska Law Review will devote an entire issue this fall to the substantive law and procedural process for consideration of initiative petitions. In addition, the law school is planning a symposium in conjunction with the law review issue at which these topics will be discussed. My thought is that the legislature should wait until we receive whatever insights result from the work on this law review issue and symposium. I would note that, in any event, the issuance of an advisory opinion at the early stage called for by this bill invites an endless round of filings. Also, it is not well advised to issue an opinion on the petition in advance of the revisor comments. Often the sponsor of the petition will make significant language changes to the petition after receiving those comments. For those reasons, I ask the Committee to postpone consideration of LB477.

BREWER: All right. We will now go to additional proponents. All right. I got to do is get ready to read a few things in. Things are going to happen pretty quick here. No more opponents, no proponents and nobody in a neutral. Let me read written testimony on LB477. We've got Sheri St. Clair from the League of Women Voters. Opponents, we have Bob Evnen, Secretary of State, and position letters we've got one

*Indicates written testimony submitted prior to the public hearing per
our COVID-19 response protocol

proponent, no opponents and none in the neutral. With that, Senator
Bostar, you may close.

BOSTAR: Thank you, Chairman Brewer, and members of the Government,
Military and Veterans Affairs Committee. I would just like to
emphasize the important role that initiative and referendum measures
play in Nebraska. Requiring the Secretary of State to provide an
advisory opinion as to the legality of a proposed measure will ensure
that citizens have informed and transparent access to the ballot. And
I'll just add in, Senator Wishart and I actually weren't aware of each
other's bills until they were both drafted. And we-- I think they're
both terrific and-- and obviously I would be willing to work with
Senator Wishart and certainly this committee to-- to-- to help produce
a final product that the committee felt best represented the interest
of the body. And so with that, I would encourage you to advance LB477.
Thank you very much for your time.

BREWER: All right. Let's see if we have questions for you. Questions?
All right. Well, thank you, and we will go ahead and wrap up LB477.
Since I read everything in, that will close our hearing on LB477 and
our hearings for the day.

BOSTAR: Thank you.