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Government, Military and Veterans Affairs Committee
February 19, 2010

[LR273 LR292]

The Committee on Government, Military, and Veterans met at 1:30 p.m. on Friday, February 19, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR292 and LR273. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Bob Krist; and Kate Sullivan. Senators absent: Rich Pahls. []

SENATOR AVERY: Senator, we're going to have to wait till I get a quorum. Welcome to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I am Chair of this committee. I represent District 28 here in Lincoln. Before we talk about procedures, I want to introduce the members of the committee. I'm going to start on this side. Senator Pahls will not be with us; he is not well. Senator Janssen, who is from Fremont, will be here later; he probably has business elsewhere for a while. Senator Bob Giese from South Sioux City. Senator Scott Price from Bellevue is also Vice Chair of the committee. Sitting next to me on my right is Christy Abraham, the legal counsel. On my left here is Senator Russ Karpisek from Wilber. We'll be joined in a few minutes by Senator Kate Sullivan from Cedar Rapids. And seated next to her is Senator Bob Krist from Omaha. The committee clerk is Sherry Shaffer. When you come to testify, we'll ask that you fill out this form. And this form will provide information for the official record. Please print very clearly all information requested. Give this to the clerk, and she will put it in the official record. If you wish to be recorded for or against any of the issues taken up today but you do not wish to testify, you may fill out this form. These are available at each entrance to this room. Please print your name very clearly, indicate what bill it is that you are for or against and record that. Also, when you do come to testify, if you wish to testify, I'm going to ask you to state your name clearly, spell it so we'll have that in the record as well, and please pay attention to testimony that precedes you, so that you do not repeat unnecessarily things that have already been said. If you have any material that you would like to distribute to the committee, you will need to give that to the clerk. She will have the pages distribute that. The pages are Lisa Cook

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from Omaha; Lisa is not here today. It is Justin Trauernicht from Pickrell. And Mark Woodbury from Oswego, Illinois. We do not allow photographs to be taken during the proceedings. We do not allow any electronic devices that make noise, so if you have a cell phone please turn it off, silence it, or put it on vibrate. We do not allow taping; that, of course, does not include the media; media are allowed to tape--but no one else. So we're clear on that. Now how many people plan to testify today? Please raise your hand. Okay. I'm trying to decide whether we're going to use the light system. I think we are; we're going to use the light system, but I'll be generous. And the green light will give you five minutes to say what you want to say; the amber light will give you a few seconds, about 30 seconds to a minute to wind up what it is you're saying. When the red light comes on, we want you to be finished. I'm not going to be rude to you; I'm not going to stop you in mid-sentence when the red light comes on. But you can...the lights will be in front of you: Green light means you can speak, and when the amber light comes on start trying to end your comments, and when the red light comes on you should be finished. All right. The order of business today is LR292 and LR273. LR292 is first. These are posted outside the door, and that's the order we'll follow today. So we will begin with Senator Fulton, LR292. Welcome, Senator. []

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I bring to you today LR292. This is a legislative resolution for which I have some passion. When I first came to the Legislature, I--like many of you, I'm sure--began receiving e-mails from folks concerned about this issue or that. At the time I recall the issues most prevalent in my inbox had to do with No Child Left Behind and the Patriot Act. Lately my inbox has been filled with concerns about the health care bills that are in Congress. My initial reaction to all of this was that it isn't my purview; I am, after all, a state senator, not federal. But at the same time, I have come to learn and appreciate the unique authority we senators enjoy by the volition of our constituents, the people of the state of Nebraska. Something has been occurring in states all across this country which I believe is legitimate and proper to our responsibilities as state senators. States are standing up to assert their sovereignty.

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This summer, after having reviewed a number of e-mails and phone contacts from constituents, I decided to learn more about the Tenth Amendment. And in so doing, I decided to introduce this resolution. I've become educated--at least somewhat--I've been educated and renewed as a state senator to see the meticulous ways our forefathers have set up our way of government to ensure the people maintain a control of their government through a balanced federalism. We senators are a part of this great experiment in self-governance. I don't just say this to provide rhetoric or words that are sweet to the ear. It is true. How privileged are each of us to be numbered among the few leaders to have ever represented Nebraskans in this Legislature. Well, today I ask you to consider the words of LR292 and the rights and authority we exercise as state senators, connected to our federal government certainly but sovereign by the protections of the Tenth Amendment to our U.S. Constitution. You will hear testifiers to follow after me who share my passion. I thank you for your consideration of this simple resolution. I hope you'll see fit to advance LR292 to the floor. And I'm going to take a little bit of a privilege here, Mr. Chairman. I've worked to put together some testifiers, and I'm hopeful that these testifiers will be able to cover different areas that might be of concern to the committee. And we've talked, and we're going to try to limit that testifying to five minutes of time for each person. And I'd just ask that anyone that's here that's agreed to testify--we'd like those folks to go first, because there are people here who have traveled long distances to be able to testify. And in the interest of time and respect to you, the committee, we're going to try to accomplish that. So thank you, Mr. Chairman. [LR292]

SENATOR AVERY: Are you going to stay around for closing? [LR292]

SENATOR FULTON: I have to introduce another bill, but I will return, yes, to close.
[LR292]

SENATOR AVERY: All right. Any questions for Senator Fulton? Senator Sullivan.
[LR292]

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SENATOR SULLIVAN: Thank you, Senator Avery. What do you...how do you define "memorialize"? And I guess what I'm searching for is the substance of what this actually means. [LR292]

SENATOR FULTON: This is...as you know, Senator, resolutions don't have the binding power and authority of bills and statutes. Now I thought through this, and I would have liked to make a stronger statement, but I just didn't think it appropriate. I think that we can make a statement as a state, and that is all that we would be doing here in this resolution. There are other states who are taking different tacks, but I felt it appropriate and something that would be worthy of our consideration to move forward a resolution which shines light on the Ninth and Tenth Amendments to the U.S. Constitution. So to memorialize it is to put it into their memory banks and to make them aware that we've made this statement as a state. [LR292]

SENATOR SULLIVAN: Thank you. [LR292]

SENATOR AVERY: Senator, you indicate that this is a nonbinding resolution, which it is. What is your purpose here? [LR292]

SENATOR FULTON: Well, my purpose here was first, when I introduced this, I wanted to learn and to shine light on the Tenth Amendment. But what I have learned is that this is a concern that's shared by not just me, it's shared by people across the country, and it's shared by a lot of Nebraskans. Now I've gotten to realize this in my travels across the state--which you know I'm traveling around the state a lot now. The people have to have voice. And the way that they have voice in Nebraska is through us. The people represent the second house of our Legislature; we are the other part of it. They take voice through their elected representatives. And I'm convinced that this is something that the people of Nebraska would like to have done. And I don't...I could have made this...I worked very hard to make sure that this is not a controversial resolution. I wanted

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to shine light on the Ninth and Tenth Amendments to the U.S. Constitution. So by bringing this forward I want to give voice to my constituents and to the people that I've heard, who--I know this is across Nebraska, this same concern, the reach of the federal government and how it's encroached on our ability as state senators to govern in our state, to legislate in our state, to make policy that we as Nebraskans want. I see it in appropriations every day. We see it out on the floor. We are dealing with this in many different ways. If nothing else, we give voice to those who recognize the Ninth and Tenth Amendments to the U.S. Constitution. [LR292]

SENATOR AVERY: But people are coming from miles around and from out of state; don't you think they're expecting more than just a memorialization of something that's already in the Constitution? [LR292]

SENATOR FULTON: Perhaps, yes. But this is what I've chosen to introduce. We have...there's...there will be a gentleman to follow who some of you have met, a representative from Oklahoma, and they've taken their own tack at how to express the sovereignty of the state of Oklahoma, and I'm pleased that he was able to come. But at the end of the day, it's my resolution, and this is what I've decided. [LR292]

SENATOR AVERY: Is it fair to say that you're just making a political point? [LR292]

SENATOR FULTON: If...I suppose yeah; I suppose it would be fair to say that it's a political point, but it goes further than just a political point. This is something that even outside the realm of politics...I think that one who reads the Tenth Amendment to the Constitution and sees what's going on presently in our country--you have to ask the question: What exactly do those words mean? So it...I suppose that it is a political point to be scored, sure, but it's more than that. And if it were just a political point, I wouldn't introduce it. There's something here which speaks on behalf of Nebraskans, and that's why I brought it. [LR292]

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SENATOR AVERY: You and I have had conversations and... [LR292]

SENATOR FULTON: ...healthy conversations. [LR292]

SENATOR AVERY: Yes. They were interesting. If we were to take this to its logical conclusion, one could argue that the United States would never have been the great nation we are without federalism and without the ability of the nation-state to become strong and powerful, as it is. If you take the states' rights argument to its logical conclusion, you would not have a great nation-state. Would you agree with that? [LR292]

SENATOR FULTON: I would not. The states' rights argument is really based on...my argument anyway is based on existing language in the U.S. Constitution. Here's where we may have difference. There has to be a balanced federalism. I'm not here lurching to one side or the other. What I'm saying is that the Tenth Amendment exists, and it does mean something. And as a state senator, there are a lot of things that I do not have a choice about, because of the act or volition of somebody in Washington. So there is a tension that exists between the states and the federal government. That the tension exists is a good thing, but the people have to have voice when we believe that that tension or that the tension is being dominated by one aspect or the other. In my opinion--and we might differ on this--in my opinion, the federal government exercises too much authority over our lives as senators and then, indirectly then, over the lives of Nebraskans. And that's why I bring this forward. So I don't see this as the logical conclusion; I see this as a balanced federalism encapsulated in words in our Constitution. [LR292]

SENATOR AVERY: But words have meaning, and the...at some point you have to go beyond words to actions. And you are aware of the history of the states' rights movement. [LR292]

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SENATOR FULTON: We talked. Sure. [LR292]

SENATOR AVERY: Yeah. And, in fact, the history is mired in efforts by states not only to do things that you and I agree aren't very...they aren't things that we want to be associated with, like segregation and slavery. I mean, it was John C. Calhoun who did that in the 1830s--used the Tenth Amendment to argue for slavery. And I know that you're not making that argument, but I'm saying that words do have meaning and that if we're going to talk about the Constitution, we have to look at it in this practical application. As a practical matter, you and I both know what my position is, that we wouldn't be the great nation we are if the states' rights argument had won in 1830. We would never be where we are today. [LR292]

SENATOR FULTON: The only response I'd give to that, Mr. Chairman, is that indeed we have a Tenth Amendment to the Constitution, and I struggle to see how it is relevant or how it has meaning. I've watched what has happened in numerous administrations. Okay this isn't...so when I say that there is some political point to be made here, it goes beyond that, because it's not a...I don't see this as a political issue party-wise. I've seen slowly over some time the encroachment of the powers of the federal government over that of the states. And indeed if the Tenth Amendment means anything, we have to give it some voice. It seems to me that the Tenth Amendment...words mean things, and it seems as if the federal government does not recognize the Tenth Amendment. And so who is there to stand up for the rights of the states if not state senators? That's another personal compulsion which caused me to bring this forward as I have. [LR292]

SENATOR AVERY: Any...? Senator Krist. [LR292]

SENATOR KRIST: I want to commend you on bringing it forward, for bringing the issue up. I am not one of those people--given my history of service in the United States Air Force--that would carry a banner or even participate at this point in a tea party, but that's a personal choice. I've chosen this service, because I agree with you. It's time for

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us to make those statements. I think the Framers would be appalled at the interpretation of the Interstate Commerce Act and how many things have been put in the framework of the responsibility or the rights or the privilege of the federal government to mandate on the state. And I think that's probably one of the examples, just one of the examples, that when we say we memorialize the Tenth Amendment, we are saying: Take notice; your interpretation may not be ours, but we don't want chaos; we want government, and it is our interpretation. And the only other statement I will make is the same one I made on the floor the other day. And I'm tired of unfunded federal mandates as a citizen, as a senator. And the next time somebody tells me to do something, it should come with funding, and that funding should be commensurate with what needs to be done. I know that's not always possible. I know that sometimes we have to pitch in from the bottom up, as we do. But I thank you for bringing it forward. I look forward to hearing the rest of the testimony. And thank you, Tony. [LR292]

SENATOR AVERY: Senator Price. [LR292]

SENATOR PRICE: Thank you, Chairman Avery. Senator Fulton, it's a timely discussion, and thank you. I was wondering if you were familiar with the *Medellin v. Texas* Supreme Court case? [LR292]

SENATOR FULTON: I'm not. [LR292]

SENATOR PRICE: Great. The Harvard Journal of Law and Public Policy carried an article that does talk about this. And it...and the reason I bring it up--we asked about the time limits and what is the purpose of words. And this is a 2008 Supreme Court decision. And this decision went against the sitting president, George Bush. And I won't go into all the details of it, but the court agreed with the state of Texas on sovereignty. When the president tried to reach in and reopen decided cases and redirect decisions, the Supreme Court said: No, you can't do that. And one of the three points in the letter that Texas wrote, in a memorandum on the president, said the president's

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memorandum commandeered state judges and instructed them to reopen final cases to decide them differently and set aside any state law to the contrary. This directive conflicts with our constitutional structure, which preserves state sovereignty and secures the state's authority as sovereigns to order the processes of their governance. I would submit that, when you have the opportunity, to grab this and read up on this, so that you would see how the Supreme Court recently had to fight off the federal government's reaching into a state. And that's why I believe it is timely that we have this discussion. So, again, I offer that to you, Senator Fulton. Thank you. [LR292]

SENATOR AVERY: Senator Janssen. [LR292]

SENATOR JANSSEN: Thank you, Chairman Avery, Senator Fulton. Thank you for bringing this to us. And the idea of a political point came up--are you making a political point by doing this? And perhaps you are and said as much. But I also question the method in which you're bringing it, as a resolution form. And to that, I guess I would ask a little bit of a question and then follow up with some comments--is...is it...I have always followed the...you crawl before you walk--is this maybe a testing of the waters, where we're at with this per se? [LR292]

SENATOR FULTON: No. That's not my intention here. You know, again, I just...I pay attention to the correspondence that I get--the e-mails, the phone calls, the letters--and this was one that...it just...it struck me. And there are a few issues out there like this, where you'll get strong, passionate positions from Republicans and Democrats, from people who would be left or right or in between. And this was one that I noticed in my time here. It's been all of the above. And so that tells me that's something I need...I need to pay attention to this. The only way that people have voice is for senators to bring this. I mean, there could be, you know, petition efforts. There could be lots of other ways that people make their voice heard in Nebraska. But the ordinary way, the way that's, yeah, the most ordinary way is through their elected representatives. And so I'm trying to give voice to this argument. It's something that's being done in different ways

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across the country; yeah, I recognize that. This is the way that I've chosen to bring it forward. And it's a way that I hope I can find some collaboration among the committee. And, like I said, I tried to draft this in such a way as to be noncontroversial, encapsulating what exists in our Constitution now. I mean, that's really--that is my intention here. [LR292]

SENATOR JANSSEN: Like...I agree with you, and I agree with your approach to this topic. Like you, I always kind of cringe when I hear, when I sit in Transportation: Well, we have to do this, because we need to get the fed money. We have to...you know, we send our money there, then they tell us how we're going to get it back. So that also frustrates me, so we share that. And one thing, I also applaud the way you brought it--is...you know, I've heard that words mean something--words mean something, and that's true, but I would say it's the interpretation of those words that can get more dangerous than anything. So I applaud your efforts and look forward to hearing from your testifiers. Thank you, Chairman Avery. [LR292]

SENATOR AVERY: Any more questions? Senator Karpisek. [LR292]

SENATOR KARPISEK: Thank you, Chairman Avery. Senator Fulton, I've wanted to do something like this for a long time, being a small-town mayor. But do you know who I would have liked to have gone after with this type of legislation? [LR292]

SENATOR FULTON: Us? [LR292]

SENATOR KARPISEK: Exactly. The state. How do you feel about us passing unfunded mandates and telling people of the state what to do? We're complaining in this about the same thing that we're doing to people. [LR292]

SENATOR FULTON: Yeah. That's a fair question, and it's something I've been able to think through. So I've had some time to develop a response. The way that our society of

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governance is structured, the cities and counties of Nebraska are political subdivisions of the state of Nebraska. We, the state of Nebraska, however, are not a political subdivision of our federal government. We're a sovereign state. So there's a big difference between how the federal government...on its face--and this actually is something I had a debate with my wife on. On its face, certainly, you have the principle of subsidiarity. [LR292]

SENATOR KARPISEK: Did you win that debate? (Laughter) [LR292]

SENATOR FULTON: I never win those. [LR292]

SENATOR KARPISEK: I didn't think so. [LR292]

SENATOR FULTON: You know better than that, Senator. On its face, we have operating here this general principle of subsidiarity. That entity which is closest to the problem is most equipped to deal with that problem. And that is a general principle that I hold also. But it's a little bit different when we talk about it in the forms of the structure, in how we are structured in our governance. And that's an important distinction. The state of Nebraska has political subdivisions. So the city of Auburn, the city of Wilber, the city of Lincoln are political subdivisions of the state of Nebraska. We, however, are separate; we're sovereign. We're not a subdivision of Washington or of the federal government. [LR292]

SENATOR KARPISEK: And I agree, but I think we need to take a good hard look in the mirror when we're telling people they have to wear helmets, they can't smoke inside their own businesses. For God's sake, we couldn't even get a gambling bill off the floor to let the people vote on. So I'm sorry, Senator, but the "voice of the people" part, to me, doesn't ring true. Because if that did ring true, we'd let a lot more stuff out. But we know better; we're not even going to let them vote on these things, because, by God, they might pass it, and then what are we going to do? So I'm sorry; it's not directed at you.

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I'm really upset after yesterday, and I think just hearing this just makes me want to just scream, because it's exactly what we're doing, and I think we need to think about it. So, hopefully, I'm planning on supporting this, but I'm going to take it maybe the other direction. The only other thing is it does seem very political to me, not so much for you, but a lot of the people that are involved. I am a Democrat; I've been told I'm the worst Democrat in the body, and I'll take that as a compliment, I guess. However, I was not happy with the Bush administration; we went into a war; we did a lot of things; we did not have the people coming--and this sort of stuff coming up. So I want everybody to remember that. I'm on your side; I want them out of my business; I want government out of my business. They can see whatever they want about me; I'm pretty open, and we know that. But anyway, thank you for bringing it. Thank you for letting me vent a little bit. And I'm glad that you lost that with your wife; you are a smarter man than I thought, because I've never won an argument with you, I know that. Thank you, Senator Avery. [LR292]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you. [LR292]

SENATOR FULTON: Thank you. [LR292]

SENATOR AVERY: We will now move to proponent testimony. Remember, the light system means five minutes on green and about one minute on amber. People who are supporting this LR292. We have a guest from Oklahoma. [LR292]

CHARLES KEY: Good afternoon. My name is Charles Key, C-h-a-r-l-e-s K-e-y. I'm a state representative from Oklahoma. And Senator Avery and members of the committee, I appreciate you allowing me to come before you today and testify on this important subject and this bill that so many people are interested in all over this country, as Senator Fulton referred to. I hear a lot of people say that we've got a crisis, a constitutional crisis, in our country. And I have to say I agree with them. I think we are in

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a crisis. I think it's time that we need to look at the Constitution and this constitutional form of government that we have, maybe remember it, relearn it, and remember that the Constitution is the supreme law of the land. It's the most important document in our nation but not just because it's one of the founding documents but because it is the supreme law of the land. It is the law that's above all other laws. No other law is above or superior to the Constitution of the United States. No institution is above it or immune from it--not the president, not the Congress, and not even the Supreme Court. They all must follow the Constitution. And they are given no legal right to pass laws that are in violation of it. And if they do--and, of course, they have--those laws which violate the Constitution are not laws, because you cannot have a law that is in conflict or is in contradiction to the supreme law of the land. And this is a well established and understood principle that the Supreme Court has recognized many, many times over the course of our history of our country and many times throughout modern times. Of course, there are those who claim that the federal government can do anything that it wants to do. What I'd like to do is read to you a number of excerpts from a Supreme Court case somewhat recent, which is *Printz and Mack v. United States*. And in some of these selections from this case, I can't think of any better information to provide you to...and to give you why this particular bill, LR292, should be passed by the Nebraska Legislature. It mentions a number of other cases--the court references other cases that they had in the past in which they addressed this same issue. This is what the court has said in this brief: It is incontestable that the Constitution established a system of dual sovereignty. Although the states delegated many of their powers to the new federal government, they retained a residual and inviolable sovereignty. Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress of not all government powers but only discrete, enumerated ones in Article I, Section 8, which implication was rendered express by the Tenth Amendment's assertion that the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states, respectively, or to the people. Further, the court said the great innovation of this design was that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other, a

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legal system unprecedented in form and design establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it. The Constitution thus contemplates that a state's government will represent and remain accountable to its own citizens. This separation of the two spheres is one of the Constitution's structural protections of liberty. Just as the separation and independence of the coordinate branches of the federal government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the states and federal government will reduce the risk of tyranny and abuse from either front. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments and then the portion allotted to each subdivided among distinct and separate departments. Hence, a double security arises in the rights of the people. The different governments will control each other at the same time that each will be controlled by itself. Much of the Constitution is concerned with setting forth the form of our government, and the courts have traditionally invalidated measures deviating from that form. The result may appear formulaic in a given case to partisans of the measure at issue, because such measures are typically the product of the era's perceived necessity. But the Constitution protects us from our own best intentions. It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day. And finally, the court said: We held in *New York v. United States* that Congress cannot compel the states to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by constricting the states' officers directly. The federal government may neither issue directives requiring the states to address particular problems nor command the states' officers or those of their political subdivisions to administer or enforce a federal regulatory program. It matters not whether policymaking is involved. And no case-by-case weighing of the burdens or benefits is necessary. Such commands are fundamentally incompatible with our constitutional system of dual sovereignty. [LR292]

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SENATOR AVERY: Sir, your red light is on. [LR292]

CHARLES KEY: I'm sorry. [LR292]

SENATOR AVERY: I hate to do this to you; you're a guest from out of state, but you are out of time. [LR292]

CHARLES KEY: Thank you. [LR292]

SENATOR AVERY: Do you want to make a summary statement? [LR292]

CHARLES KEY: I was actually at the end. And again, I appreciate the opportunity to come and speak before you. This is a statement. It is a notice. It's a beginning. In our legal system and political system, it is very common for there to be contracts between people. And when one of those parties violates that contract or that agreement, there is initially a notice. And that's what this bill is like, a notice to the federal government to go back to the original intent of the constitution and follow its Article I, Section 8, delegated powers. [LR292]

SENATOR AVERY: All right. Questions from the committee? Senator Sullivan. [LR292]

SENATOR SULLIVAN: Thank you, Senator Avery. I assume--or do I assume correctly that Oklahoma is one of the six states that has adopted a similar resolution? [LR292]

CHARLES KEY: Yes. I think that might be a much higher number now. I think there are over 30 states that have either adopted the resolution or have it within their legislative process at this time. [LR292]

SENATOR SULLIVAN: And is Oklahoma similar to what we're--what is being proposed here? [LR292]

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CHARLES KEY: Yes, very similar. [LR292]

SENATOR SULLIVAN: I see. Thank you. [LR292]

SENATOR AVERY: Any...? Senator Price, question? [LR292]

SENATOR PRICE: Sir, I just wanted to follow up with that. So the Oklahoma approach wasn't an actual enactment of a law more than it was a resolution. [LR292]

CHARLES KEY: That's correct. It was a resolution like your bill before you today. Now what Oklahoma has done is it's followed up with other legislation to address issues that it thinks need to be addressed along the lines of this issue of separation of powers and state sovereignty, like many other states are doing today. [LR292]

SENATOR PRICE: All right. Thank you very much and thank you for your time and your effort and your travel. Thank you, sir. [LR292]

CHARLES KEY: Thank you very much. [LR292]

SENATOR AVERY: Any more questions? Senator Karpisek. [LR292]

SENATOR KARPISEK: Thank you, Senator Avery. Mr. Fox--Key, sorry. Fox--silver fox beside me. We get e-mails all the time about: We should be like Oklahoma; they've done this about illegals. And I would just love to sit down with you and see how much of that stuff is really true and how much is not. But can you...have you seen those e-mails? Maybe they're from...look what Nebraska did, and they go to Oklahoma. [LR292]

CHARLES KEY: It usually has to do with football when they say: We ought to be like Nebraska. (Laughter) [LR292]

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SENATOR KARPISEK: It just depends what year we're talking about. But have you seen any of those things that talk about what Oklahoma has done about illegal benefits and just on and on and on and...? [LR292]

CHARLES KEY: We have passed some legislation that's addressed issues dealing with illegal aliens, with REAL ID--we've opted out of the REAL ID Act, said we would not comply with it; of course, a lot of other states followed along and did the same thing; I don't know if Nebraska did that or not. And that caused the federal government to change that program, temporarily at least. So Oklahoma has gotten a lot of notoriety for legislation as you refer to. [LR292]

SENATOR KARPISEK: Maybe before you leave, I'll run to the office and print one off. My dad sends me them at least once a week, so I told him he could move there. (Laughter) Anyway, I appreciate you coming. It's great to hear how another state has gone about this. Thank you. [LR292]

CHARLES KEY: Thank you very much. I've enjoyed my time here. [LR292]

SENATOR AVERY: Any other questions? I have one for you. You spoke of serving notice. Usually when you serve notice, you are anticipating that there will be follow-up action. Would you like to go to that step and tell us what it is you have in mind, now that--if this is passed, you've served notice? [LR292]

CHARLES KEY: Well, I think that would be...yes, I will. And I think that would be up to each individual state to choose what action, if any, they take next. I would say first, I think the notice is important for every state to take if it truly believes in some level of separation of powers between the federal government and the state. The action that Oklahoma is taking is in the area of the healthcare legislation that is being anticipated at the federal government--the federal level; legislation having to do with privacy, with

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biometrics being used in identification cards, driver's license, and other types of ways in which that's used; Second Amendment rights. Oklahoma is trying to address those, and other states have other things that they're addressing. But I don't think it requires any state to take another step. And each state could choose what step it would take and how it would further address this issue if they felt like it needed to be addressed. But I think this first step is real important, because it reminds the federal government...and there's--in this particular Supreme Court case, they mention in the '70s when the EPA got really out of control and was going outside its constitutional and regulatory bounds by forcing certain regulations on states. And through some court cases it reined them in. It's important for us to make this notice to remind the federal government that they have a role, and a limited role, and that the states have its role to play also. [LR292]

SENATOR AVERY: Would you take the next step as far as nullification of federal law by states? [LR292]

CHARLES KEY: Well...and that's what I refer to in Oklahoma; there is legislation that is filed and going through our legislative process right now to propose to nullify universal health care or some type of a program like that at the federal level. It's authored by another member of our legislative body. A lot of other states have filed legislation like that; some have already passed--I think in two or three states. [LR292]

SENATOR AVERY: So is it fair to say this is more an anti-healthcare-reform move than it is an actual constitutional--legitimate constitutional issue? [LR292]

CHARLES KEY: In my opinion it's not. It is a...it is legitimate additional response to an issue--healthcare in this particular case--in which the federal government has gone beyond its Article I, Section 8, rights according to the Constitution. And I know there are different opinions about that. We just had a debate in our legislature this week on that issue as this bill works through the process. But it is, I think--a majority of the state of Oklahoma's legislative bodies--that it is an overreach by the federal government. Again,

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every state will make those determinations whether or not to even address any other issues. [LR292]

SENATOR AVERY: But isn't the Supreme Court the proper place to decide when the federal government has overreached? [LR292]

CHARLES KEY: You know, I've studied that a lot, and this is actually one of my favorite subjects--the one we're talking about today--in general. And on the subject of whether or not the Supreme Court is the final say on all matters constitutional, if we go back to what the founders and framers of the Constitution said in the convention and in all their writings in the beginning of this country and even in the first 100-150 years, I think it can be easily demonstrated that the Supreme Court was not intended to have the role to be the final say in regard to what is constitutional, that the states play an equal role in that and even as each one of us as citizens take a role in that, because if the Supreme Court, which is a division of the federal government, gets to decide for itself what is constitutional, that violates that separation of powers itself potentially. And I think as we've seen over time, in modern times especially, we've seen it go far outside the boundaries that it has historically ruled on what is constitutional, what is the original intent according to Article I, Section 8--the Supremacy Clause, the Commerce Clause, general welfare, implied powers. And that's why there's such a reaction in the times that we live in now. In the last several decades, there's been a great escalation of federal usurpation of power. [LR292]

SENATOR AVERY: You are articulating a doctrine here that is pretty unusual and...because you're saying that the Supreme Court does not have the final authority to decide the constitutionality of America's laws. You are familiar with Marbury v. Madison? [LR292]

CHARLES KEY: Yes, I am, very much so. [LR292]

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SENATOR AVERY: Do you reject that? [LR292]

CHARLES KEY: Well, if you look at what the court said in Marbury v. Madison, Justice Marshall said: Well, somebody's got to decide what the constitution says, so I guess we'll pick ourselves--to paraphrase. They also said in Marbury v. Madison some of the same things that the court today has said: that the federal government cannot commandeer the states, that there is a constitutional model that must be followed. So again, it begs the question that we all must face, and it's not a comfortable question that any of us want to face, whether we're elected officials or we're citizens: What do you do when your government goes so far outside the boundaries of the written law? How do we address that? Do we just allow them to do it and say: Well, it changes, it transforms the law into something very much or maybe even completely different than what it was at one time? Or do we stand up and try to address it? [LR292]

SENATOR AVERY: You wouldn't argue that states have the right to determine for themselves when they're acting in a constitutional manner, do you? [LR292]

CHARLES KEY: I'm not sure--well, I'd ask you to state that in a different way so I'd understand really what you're asking me, but... [LR292]

SENATOR AVERY: Well, you're saying essentially that the Supreme Court doesn't have that right. Somebody has to have the right to decide what is constitutional, and it seems to me you're suggesting that states ought to have that right. [LR292]

CHARLES KEY: Well, all I'm saying is they have a dual--like the court said--they have...there's a dual sovereignty. They have an equal right. It depends on, really, what the question is. For example, you know, I'll probably get myself in more trouble here, and we'll get bogged down and yet...in the issue even deeper. But let's say something that...I'm going to guess Nebraskans--I know Oklahomans feel very strongly about, and that is the Second Amendment, the right to keep and bear arms. Let's say that the

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Supreme Court ruled that citizens of the United States no longer have the right to keep and bear arms, and they must turn their weapons in to the local law enforcement offices. Well, I think most people would recognize that that's not in accordance with what the Second Amendment says, clearly. We're faced with a very difficult question if that were to ever occur, and I'm just using that as an example; I'm not suggesting I expect that to happen or I think it will happen. I'm just trying to make the point about the role of the states and the people. When something that is very clear occurs, it is up to each citizen and every person, whether they're an elected official or not, to decide what shall we do now about that. And so there is the role to play by citizens and states; that's the point. [LR292]

SENATOR AVERY: And we went through that, and states seceded, and we fought a civil war over that. Would you not say that was kind of an institutional clearing of the decks where we resolved those questions once and for all? Are you saying that it's still in question and that we didn't really settle all these matters in the Civil War? [LR292]

CHARLES KEY: I, you know, I've immersed myself with so much of the writings about that issue also. It's a...I guess I'm kind of a--one of the oddballs; I enjoy reading that kind of stuff. There is differences of opinions about that. But I don't think the issue is, are we going to have chaos and conflict, because the states and the people also play a role in deciding what the constitution means. For the most part--I mean, almost totally the Constitution is easy to understand; it's not difficult to understand. And for the most part, the things that go on in this country at the federal and state level are not issues of conflict. And the various states--having their own role to play in their own governments is not a bad thing; we don't all have to do everything the same. Matter of fact, the 50 states and the different peoples around this country and the different ways we do things, in my opinion, is what makes us strong. It's what's made us America and made what America is today, to a large degree. And so there's not a conflict in having dual sovereignty. [LR292]

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SENATOR AVERY: No, there isn't. What I was suggesting is that the Civil War actually resolved the whole issue of states' rights. And federalism won. And here we are today, 2010, and we're still arguing the same kinds of issues. And every great power has gone through a traumatic, violent institutional clearing of the decks. Ours happened to be the Civil War. In Britain it was the Peaceful Revolution, and in France it was a violent revolution. But what happens is that you resolve the question of what is the appropriate authority of the state, the government. And what I'm having trouble with here is understanding what we hope to achieve by passing LR292. I mean, you would not, for example, advocate seceding from the Union, would you... [LR292]

CHARLES KEY: No. [LR292]

SENATOR AVERY: ...as an action? [LR292]

CHARLES KEY: Never have. Never have. [LR292]

SENATOR AVERY: Good. [LR292]

CHARLES KEY: I guess the only thing else I could say to that is--and some members have expressed this today on this panel--wouldn't it be nice if the federal government would at least talk to us about the mandates? You know, can't we sit down with the federal government and talk about those mandates? But we're not treated that way anymore. At one time, the states were treated in that manner. The states and the federal government would sit down and talk and work things out together. Now the states are not treated that way. They are mandated and threatened. We had a bill that we passed last year in Oklahoma to put a vote before the people that will come up this November to make English the official language in Oklahoma. We got a letter from the U.S. attorney general that said if the people of Oklahoma pass that law, they may--and it's, we believe, strongly implied--we may lose millions of grant dollars--federal grant monies. That's the kind of thing that is causing people concern, and I think there are

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solutions to many of the issues and problems that we have. I think if we'd sit down and talk about it, we could probably solve them. [LR292]

SENATOR AVERY: Well, you're talking about differences on policy. This resolution really is about the fundamental legitimacy of institutions of our government and procedures of our government and documents like the Constitution. [LR292]

CHARLES KEY: Um-hum. [LR292]

SENATOR AVERY: So I'm trying to get us to agree that we're talking about something more fundamental than a policy like healthcare or the Second Amendment, you know, because this really is about what is the legitimate relationship between the federal government and states. And that's not--it's not a healthcare debate. Let me go to one other thing before I quit. You mentioned the Constitution and that this is really about law and the supremacy of law and the supremacy of the Constitution. And you mentioned Article I, I believe, Section 8. That is the Necessary and Proper Clause, right? [LR292]

CHARLES KEY: Yes. [LR292]

SENATOR AVERY: Do you have as much...do you have...you believe this is also a legitimate part of the Constitution? [LR292]

CHARLES KEY: The...you mean the Necessary and Proper Clause? [LR292]

SENATOR AVERY: Um-hum. [LR292]

CHARLES KEY: Well, it is a part of the Constitution. But if you mean the philosophy that the federal government could do anything that it wants to do that it thinks is necessary and proper, I don't agree with the interpretation. I agree with what the Supreme Court has said about the interpretation of Article I, Section 8. [LR292]

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SENATOR AVERY: But you do agree, though, that there are implied powers... [LR292]

CHARLES KEY: No. [LR292]

SENATOR AVERY: ...that the federal government has? [LR292]

CHARLES KEY: No, and I think the Supreme Court has addressed that issue too, that there are not implied powers. [LR292]

SENATOR AVERY: But the Necessary and Proper Clause does, and has been interpreted by the court to, give the government implied powers. [LR292]

CHARLES KEY: There have been some rulings that would indicate that, but there are so many rulings on which the Supreme Court--and this is one, and there are other sides there that I read to you in which they've said just the opposite, that the federal government, in their words, can't, quote, simply commandeer the states to do things that they want them to do. [LR292]

SENATOR AVERY: Any more questions from the committee? Thank you, sir, for coming... [LR292]

CHARLES KEY: Thank you very much. Appreciate it. [LR292]

SENATOR AVERY: ...a long distance to visit with us. Any more proponent testimony? One at a time, please. [LR292]

GREGORY BOYLE: (Exhibit 1) I do have some copies of my testimony. Good afternoon. My name is Gregory Boyle, G-r-e-g-o-r-y B-o-y-l-e. Mr. Chairman and members of the committee, my name is Gregory Boyle. I'm from Omaha. I am here

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representing the Constitutional Conservative Alliance. This is a nonprofit organization promoting the return of a government that adheres to the Constitution that all elected officials swear an oath to. For decades the elected officials at all levels have found it either politically or financially expedient to ignore or circumvent the limitations of the enumerated powers placed upon them by the Constitution in Article I, Section 8. Today we find ourselves in the unfortunate position of having the need to remind the people in Washington, D.C., that the United States of America is not the name of a monarchy or the title of a socialist union or even a democracy. We are a constitutional representative republic. This nation was founded by a small group of inspired individuals from various backgrounds. They represented the individual sovereign states of a small nation, created on a dream of individual freedom and liberty never before seen in the long history of mankind. This nation rose to prominence and greatness because its founders recognized the inherent value of the individual. Given the chance to strive for greatness, unfettered by government, we rise as far as our dreams and commitment will take us. History has shown, as soon as someone interferes to level the playing field, achievement suffers. The dangers of unrestricted government that our founders strove to protect us from casts its shadow over us today. The list of breaches of the Constitution are too numerous to list here today. We all assumed that these decisions were made in our best interest or for the common good, and they crossed party lines. Our own Governor has appeared on national television expressing his concerns over proposed federal mandates that will make it impossible for this state to adhere to our own constitutional law requiring a balanced budget. LR292 asks for nothing new. It changes no law; it does not require a single penny from the taxpayer. It simply reminds the federal government that we have a Constitution that they swore to uphold and my own brothers fought and bled to defend. The Constitution of the United States of America remains today the supreme law of the land. I realize that this is a nonbinding resolution and does not carry the force of law. But please consider this. Our nation is at a crossroads, and your vote on this resolution will determine whether or not history remembers us as a state that stood in defense of the rule of law and our Constitution. The people of Nebraska ask you to ensure that the power to determine what is best for

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this state rests in the hands of the people and leaders of Nebraska. Ensure that our children will continue to grow up in the country that fought a revolution against the mightiest power of the time to become a nation that has been the beacon for individuals all over the world striving for the dream of personal liberty, freedom, and opportunity.

[LR292]

SENATOR AVERY: Thank you, sir. [LR292]

GREGORY BOYLE: I've heard today among several people testifying and from the people of the committee that words have meaning. And the words were written down by the founders of this country, and that's the Constitution of the United States. I'm not a scholar; I'm a college graduate. And over the last year I've spent a lot of time reading the Constitution, listening to the people that have been at rallies, that have been at party functions, whether they were Democrat, Republican, Libertarian. And the same thing is ringing true among everyone: Where did we lose control that we had in the past over our government? And if we don't step up, where will it end? And I think that's all that Tony and LR292 is wanting to state. What is our role as a state? What powers do we have to control what happens here in our state? And that's all I have. Thank you.

[LR292]

SENATOR AVERY: Thank you. I thought you'd finished, because I was reading your testimony. Any questions? Senator Sullivan. [LR292]

SENATOR SULLIVAN: Thank you, Senator Avery. Could you tell me, sir, just a little bit about the Constitutional Conservative Alliance? [LR292]

GREGORY BOYLE: It's a small, grass-roots--actually it's myself and about a dozen other people. After the election, we were concerned about the way that the country was going. And it started actually quite a long time ago. A lot of conservatives--people that move in conservative circles--were very concerned when President Bush signed the

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Patriot Act and the things that were in that document and also No Child Left Behind and the mandates that were passed down to our own school districts, and were we going to be able to make decisions that we thought were best for our own neighborhood schools. And so it's gone across party lines. The things that have happened in the last year with all of the mandates--as I said, that even our own Governor has been on TV to express his concern whether or not our state would be able to maintain its own constitution. That's what the Constitutional Alliance was formed on, that increasing, almost snowball of concern of we seem to be losing, as citizens, our power to dictate what goes on in our own neighborhoods even. [LR292]

SENATOR SULLIVAN: Thank you. [LR292]

GREGORY BOYLE: You bet. [LR292]

SENATOR AVERY: Any other questions? Seeing none, thank you, Mr. Boyle. [LR292]

GREGORY BOYLE: Thank you. [LR292]

SENATOR AVERY: Next proponent. [LR292]

SHEILA HEIECK: (Exhibit 2) And I do have copies here too. Chairman Avery and members of the committee, my name is Sheila Heieck, S-h-e-i-l-a H-e-i-e-c-k. I'm here today to talk about the grass-roots background that brought the people here today in support of LR292. This is the first time that I have done this, and I am truly humbled. I am the director of the Omaha chapter of Americans for Prosperity. Our membership consists of Republicans, Democrats, and independents. Together we have spent the past year fighting the oppressive big-government policies of the federal government--policies that will leave Nebraskans with more unfunded mandates, higher taxes, increased job losses, and crippling regulation. We have even argued that many of the federal government proposals may be unconstitutional. Our fight has seemed

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hopeless most of the time, as the Congress and the White House have turned a deaf ear to our pleas. Our frustrations led us to the United States Constitution. For the past six months, AFP has been conducting seminars on the Constitution in many communities across Nebraska. In our studies we were reminded that as a state we are not powerless. On the contrary, Article I, Section 8, of the United States Constitution clearly enumerates those powers delegated to the federal government and those to the states. And the Tenth Amendment provides that those powers not expressly delegated to the federal government are reserved for the states or to the people. States are not subservient to the federal government, as many of us are led to believe. Nebraska is not a colony of the federal government. The White House is not a monarchy. And the United States Congress is not the ruling class. We are a sovereign state and a sovereign people. With the success of our seminars, Greg Boyle asked our group to help host the National State Sovereignty Symposium. We readily accepted the job and soon discovered that other states were also wrestling with their own state sovereignty identity. We spoke to representatives from Iowa, Washington, Alabama, Florida, Indiana, Missouri, Kansas, Minnesota, Wyoming, Alaska, Montana, Ohio, North Dakota, and South Dakota. Our mission was strictly a grass-roots effort, planned and executed by 12 dedicated volunteers who met in my kitchen every day for two months. No funding was provided by political parties, corporations, or special-interest groups. We opened the symposium on January 16 to an energized crowd of 500 who came to Omaha in the dead of winter to show their support for state sovereignty. Three state senators--Charles Key of Oklahoma, Susan Lynn of Tennessee, and Brandon Creighton of Texas--traveled to Omaha to participate in the event. Representatives from Arizona and Pennsylvania were unable to attend but sent video presentations. And Judge Andrew Napolitano, constitutional scholar and frequent guest of Fox News, was our keynote speaker. So here we are. We have laid the groundwork. Senator Fulton has proposed the Nebraska state sovereignty resolution, LR292. Senator Beau McCoy has co-sponsored it. But we can't go forward without your help. As one of many Nebraskans outraged over the unconstitutional overreach emanating from Washington, D.C., I urge you and all state senators to pass LR292, the Nebraska state sovereignty resolution.

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Although only a beginning, the Nebraska state sovereignty resolution will send a message to the federal government that Nebraska is a sovereign state with powers of its own that the federal government cannot erode. Thanks for your time. [LR292]

SENATOR AVERY: Thank you. How do you pronounce your name again? [LR292]

SHEILA HEIECK: Heieck. [LR292]

SENATOR AVERY: Heieck? [LR292]

SHEILA HEIECK: Like H-i-k-e. [LR292]

SENATOR AVERY: Yeah, Heieck. [LR292]

SHEILA HEIECK: Yeah. [LR292]

SENATOR AVERY: Thank you. Tell me a little bit about Americans for Prosperity. [LR292]

SHEILA HEIECK: Well, it's a new--relatively new organization in Nebraska, but it's a...nationally it has been in existence for about seven years. It's a conservative group of activists--nonpartisan. And we are really dedicated to limited government, and I guess we saw...we started to get concerned about this seven years ago. So we've been worried about the state of the federal government for quite a while. In Nebraska, we've only been here since July. We have a state director, and we have different local directors, and I'm the Omaha director for the group. And we get involved...for the first time...I never thought, at my age, I would be standing on street corners with signs; I've been doing that. I go to rallies. We write letters; we make phone calls. We're very concerned about the direction of our country. [LR292]

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SENATOR AVERY: And you say the organization has been around about seven years.
[LR292]

SHEILA HEIECK: Yes. [LR292]

SENATOR AVERY: And what prompted you to form your chapter in Omaha in July?
[LR292]

SHEILA HEIECK: Well, actually, I didn't form it. I was working with another group and was asked to direct an Omaha chapter. But I had done some work with AFP, and I really liked the direction that they got from Washington and the help that they got. And they seemed to be a solid group that was going to be around for a while and could do a lot of good. [LR292]

SENATOR AVERY: And if the organization nationally started seven years ago, I presume it had something to do with the overreach of government that existed during the Bush years? [LR292]

SHEILA HEIECK: Well, I guess you could say that, but I don't know that answer.
[LR292]

SENATOR AVERY: Hmm. [LR292]

SHEILA HEIECK: But that would make sense, wouldn't it? [LR292]

SENATOR AVERY: Any questions from the committee? I don't see any. Thank you for your testimony, Ms. Heieck. [LR292]

SHEILA HEIECK: Thanks. [LR292]

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SENATOR AVERY: Next proponent. You have (inaudible), sir. It's your turn. [LR292]

BRYAN VAN DEUN: (Exhibit 3) Senators and Mr. Avery, thank you for having me here. Bryan Van Deun, B-r-y-a-n V-a-n D-e-u-n. Senators, I am very much in favor of LR292, as shown in my document. Due to time, if it pleases the committee, I offer support that leads me to my position. The current tension between the federal government and the states clearly predates our final Constitution. As students of constitutional history know, the Federalists and the Antifederalists created the finest system of government yet conceived by humans through active argument and compromise, ever considering the needs of individuals and sovereign states and the natural rights of citizens. The Antifederalists warned us of the dangers of democratic nationalism and delegated constitutionalism; they did not want mob democracy. The Federalists sought a limited central government with enumerated powers. What they settled upon was a federal system. The framers did not believe that separating powers alone would be sufficient to guard against tyrannical government. They saw, for example, that the three branches of the national government could collude in an unconstitutional exercise of power. In order to protect against this possibility, the framers created a federal, not purely national--that is, not unitary--system of government. And federalism was to play a purpose similar to that of the separation of powers. As we heard from Mr. Key, James Madison wrote in "Federalist 51" about the double security arising to protect the rights of the people. The Ninth and Tenth amendments to the Constitution were intended to preserve and protect our federal system, to prevent it from devolving into the democratic nationalism both the Federalists and the Antifederalists so feared. Nationalism emphasizes collective identity: a people must be autonomous, united, and express a single national culture. To think that a Californian has the same interests, needs, or values as a Vermonter is to say that a Japanese is the same as a Venezuelan. For 50 years or more, nationalists have gained strength through our courts and civil institutions to openly subvert the Constitution and the sovereign rights of the people and their states, trying to make all people in all states subject to the same regulations. The founders warned against a national or unitary system. In 1787 Richard Henry Lee wrote in the "Letters from the

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Federal Farmer": Free elective government cannot be extended over large territories, and one government and general legislation alone never can extend equal benefits to all parts of the United States. Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded. Cultural integrity is better maintained by smaller political entities. Some indicate that the Tenth Amendment was put to rest with the Civil War and the issue of slavery. However, in *New York v. United States* 505 U.S. 144 in 1992, relative to nuclear waste, the Tenth Amendment was cited in overturning an attempt by Congress to force states to legislate according to Congress' scheme. As mentioned by Representative Key, in *Printz v. United States* in 1997, the Supreme Court found in favor of the state and against the federal government. It seems to this observer that we need to go back to the constitutional principles of dual sovereignty, a depth of debate, clear rights of citizens, and a system that is based on competition. National government must be limited and focused primarily on national defense and foreign relations, among its other enumerated powers. The states and the people can flourish when a largely unfettered marketplace operates in an environment of good values and clear rewards for hard work. State legislatures must be free to do the people's work. And may we retain the Tenth Amendment where we know that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people." Thank you for the opportunity to inform your deliberations. [LR292]

SENATOR AVERY: Thank you, Mr. Van Deun. Do I have questions? Senator Price. [LR292]

SENATOR PRICE: Chairman Avery. Mr. Van Deun, I just want to express my deepest gratitude for clear and concise testimony and in under four minutes. Thank you. (Laughter) [LR292]

BRYAN VAN DEUN: Yes, sir. My pleasure. [LR292]

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SENATOR AVERY: Any other questions or...thank you. Next testifier. We're still in the proponents. [LR292]

ANITA HOWELL: (Exhibit 4) Good afternoon. Chairman Avery and Senators, good afternoon to everyone here. I am Anita Howell, A-n-i-t-a H-o-w-e-l-l. I live in Papillion. My objective here is to provide a short perspective on the issue of state sovereignty. Because you don't know me, I'll give you just a small bit of my background. I'm a licensed professional counselor here in the state of Nebraska. I have lived here for 30 years. My husband is a retired U.S. Air Force colonel, and we moved here as part of his career. My undergraduate degree includes a minor in government, where I learned some details beyond the high school civics classes about the founding of the United States of America. This past year especially I've been doing some additional reading on our Constitution and our country. The principle most strongly emphasized during the Constitutional Convention was the need to limit the authority of the federal government. You will remember that one of the reasons many of the states would not adopt the original draft of the Constitution was that their representatives believed the federal government would encroach on the rights of the states and of the people. It took the addition of the first ten amendments to attain those states' agreement. Those amendments include the ancient rights of the Anglo-Saxon freemen to ensure the strictly limited authority the people were conferring on their central government. I want to repeat that. The people were conferring limited authority on their central government. The rights belong to the people as a result of being human, not because the government granted them. The Ninth and Tenth Amendments were worded quite carefully to delineate the powers of the federal government. I'm not going to repeat what others have said, but I do want to quote Alexander Hamilton: "This balance between the national and state governments ought to be dwelt on with peculiar attention, as it is of the utmost importance. It forms a double security to the people. If one encroaches on their rights, they will find a powerful protection in the other. Indeed they will both be prevented from...rivalship, which will ever subsist between them." Others I have talked with have expressed an intention to move away from Nebraska when they retire if the

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state does not take this issue seriously. As you know, some other states have no income tax, and that appeals to retirees. Combine that with the issue of state sovereignty, and Nebraska could potentially face a large outflow of taxpayers. I hope that is not the case. I have come to love this state. There are many advantages to living here, and Nebraska deserves to keep as many of its citizens as possible. I urge you to pass LR292 as an individual citizen. Thank you for your attention to this matter. [LR292]

SENATOR AVERY: Thank you, Ms. Howell. I noticed you quoted Hamilton. [LR292]

ANITA HOWELL: Yes, sir. [LR292]

SENATOR AVERY: You are aware that Hamilton was a leader of the Federalist movement, and he was opposed by Jefferson, who was the leader of the states' rights movement. So I was glad to see that you did quote Hamilton, the great Federalist. [LR292]

ANITA HOWELL: Yes, sir. [LR292]

SENATOR AVERY: Any questions from the committee? Thank you very much, ma'am. [LR292]

ANITA HOWELL: Thank you. [LR292]

SENATOR AVERY: Next testifier. [LR292]

ERNEST KUBR: (Exhibit 5) Good afternoon, Senator Avery, members of the committee, people of Nebraska here in attendance. My name is--given name is Ernest Kubr; that's E-r-n-e-s-t K-u-b-r, and I hope you'll take notes, because I don't have any prepared testimony. This is from my own personal study along with two legal study groups I'm a part of. What I have given you is an analysis of Supreme Court case law

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regarding the definition of "United States." Before you can get back home to where you want to be, which is...this resolution is the first step. Words without actions are meaningless; they're mere wind. You have to understand where you came from; you have to know where you are and how you got there. If you don't truly understand where you are and your relationship to others and how you got where you are, you can never get back. What I've given you today is an analysis of the definition of "United States"; there are three different definitions according to the U.S. Supreme Court; the federal government, which includes none of the 50 states; the whole nation as among the family of nations, which is the federal government and the 50 states; and the union of the 50 states, which does not include the federal government. So when the federal government passes a mandate that says it applies to the United States, you have to understand which United States they're talking about, and it must apply within the Constitution--okay, the 18 delineated powers in Article I, Section 8, that Congress has. If it's not within those 18 powers, it does not apply to the states. Okay. Examples: Representative Key was talking about Oklahoma and numerous other states fighting back against the mandate for REAL ID and biometric identification in ID cards like the driver's license. Okay. States pushed back through action; they didn't just say: We're not going to do this. They passed legislation saying: We're not going to do it, no matter what you say. The federal government backed off, because there was action. Arizona--back when they banned CFCs, Arizona said: We don't care what you say; commerce within the states is not regulated, because Congress has the power to regulate interstate commerce. We're going to manufacture R12 in Arizona, and as long as it's sold in Arizona there's nothing you can do or say. I don't know if that's changed yet, but for years Arizona manufactured R12. You could get it in big canisters or little cans, which you can't get anywhere else in the country, because the rest of the states acquiesced. Does the federal government have authority? Now, words have meanings; that's been said numerous times. Okay. Authority, according to Black's Law, sixth edition, page 133...the first word--or the first definition in any dictionary is the prime definition of a word; all the rest are secondary. Black's Law, page 133, "authority"--the first word, "permission." Does the federal government have authority? Yes. The states have given

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them permission by acquiescence, by not opposing them. You just lie down and say: Okay, I guess we have to do it. They give you mandates--funded or unfunded. What they've done, to put it in terms Nebraska people will understand: If you're a farmer and you have a hired hand that is contracted for a specific amount of money to do a specific job, which is what the federal government is to the states--the states created the job of the federal government; it's supposed to be the state's servant. Okay. The servant cannot become the master unless the master agrees. If you have a farm hand that you have manage your property and he does just what the federal government did and goes and takes out a mortgage on the property and says: You're going to make the payments, and I will give you some of the money to buy seed and stuff, but you're going to buy certain seed to plant every year, and I'll give you the money the first couple years, and after that you have to pay for it. And I'll continue to roll over the mortgage, and you're going to continue to make the payments. And you, as a landowner, say: Well, I guess I have to. You've just acquiesced. That is an offer of contract. Everything is contract law. It's commerce; it comes under the venue of the Uniform Commercial Code. Okay. Now, when somebody tells you something that goes against what you've been taught all your life, keep an open mind; they may not be a nut case. Okay. It's easier to disparage a messenger than believe a message that destroys what you've been taught all your life. The fact is that...I'll give you a reference to please write down: a Web site, usavsus.info. Not everything that he gets into in here...the title says "The Truth as I See It," but he has it very well annotated with public law, U.S. Code, executive orders, statutes, showing the difference--side-by-side comparison of what we had at the founding of this country, what we have today. And the fact is that our governments, whether at federal or state, are not operating as constitutional republics. Okay. They're operating as corporations--the United States, a corporation created by Congress in 1871. All the constitutions of the states in the Union at that time were rewritten after that. Nebraska's original constitution of 1867 has the boundaries in the constitution. The constitution of 1875 does not, because corporations do not have boundaries. Another example: In the Constitution: No state shall enter into any treaty, emit bills of credit, or make anything but gold and silver coin a tender in payment of

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debts. Nebraska has trade agreements with Japan on beef. Isn't that a federal job? Foreign agreements? "Emit bills of credit": Nebraska issues bonds. How do they get around the prohibition in the Constitution? "Make anything but gold and silver coin a tender in payment of debts": But that's ignored also, because we issue notes of debt, which...every Federal Reserve Note is a issuance of debt from a private corporation. Okay. You go to downtown Omaha and look at the fence; it says: No trespassing; private property. And it's listed in the business white pages. If any of you want more information on this, I would love to give you much more. Okay. It's...I've just barely scratched the tip of the iceberg. [LR292]

SENATOR AVERY: Thank you for your testimony. Kubr is your name? [LR292]

ERNEST KUBR: Kubr. [LR292]

SENATOR AVERY: Kubr. [LR292]

ERNEST KUBR: Kubr. I'm Czech. Mr. Karpisek is a blessed man; he's got all his vowels. (Laughter) [LR292]

SENATOR AVERY: Senator Sullivan has a question. [LR292]

SENATOR SULLIVAN: Thank you, Senator Avery. Could you just tell me again that Web site that you referred to. [LR292]

ERNEST KUBR: It's usavsus.info. [LR292]

SENATOR SULLIVAN: Thank you. [LR292]

ERNEST KUBR: Okay. That's Victor, Sam in the middle. [LR292]

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SENATOR SULLIVAN: Okay. Thank you. [LR292]

SENATOR AVERY: I'm going to reveal my ignorance. What is R12? [LR292]

ERNEST KUBR: R12 is the refrigerant that was originally used in automobile refrigeration systems. [LR292]

SENATOR AVERY: Okay. I know. [LR292]

ERNEST KUBR: And: Oh, they leak; we need to recharge them, and the CFCs are causing the ozone hole--which we all know was a hoax, because it grows every summer up here because there's no sunlight at the South Pole. And sunlight creates ozone in the upper atmosphere. [LR292]

SENATOR AVERY: So I was paying attention; I just didn't know what it means. [LR292]

ERNEST KUBR: Yeah. Okay. And, you know, how can the R12 from up here and all the CFCs get down there to make the hole? Why isn't the hole up here or at the North Pole, because the Northern Hemisphere produces more of it? I mean, climate-gate--all the memos and everything has come out; it's all a hoax to get you to submit to taxes. [LR292]

SENATOR AVERY: Oh, wait, wait, wait. We're not going to discuss that. (Laughter) [LR292]

ERNEST KUBR: Carbon taxes to control your life. [LR292]

SENATOR AVERY: All right. [LR292]

ERNEST KUBR: You have anything else for me? [LR292]

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SENATOR AVERY: Any other questions here from the committee? Seeing none, thank you, sir, for your testimony. [LR292]

ERNEST KUBR: Thank you. [LR292]

SENATOR AVERY: Any other proponent testimony? [LR292]

JOHN MAHAN: (Exhibit 6) My name is John Mahan, J-o-h-n M-a-h-a-n. I'd like to thank the committee, Senator Avery, and my fellow citizens for this opportunity. Senators, I appear before you today to strongly urge you to vote for Senator Tony Fulton's sovereignty legislation, LR292, forward. The Founding Fathers brought forth a constitution that has been and is the envy of the world. The United States Constitution has served us well for nearly 214 years. We are envied because of our freedom and prosperity. However, our beloved Constitution is under heavy assault from domestic enemies from within. Our Founding Fathers understood constant vigilance is the only way to protect our freedom from the lust for power and control, which has been the bane of mankind since the beginning of time. Unfortunately, prosperity and success have also been our toughest obstacle in maintaining our freedom. We have become lax in our diligence and oversight of our elected officials, particularly at the federal level. We have allowed the seemingly little, insignificant trespasses to occur, fearing to rock the boat of domestic tranquility rather than immediately taking a firm and resolute stand at the first signs of governmental abuse. For too long we have allowed the abusive policies of the federal government to cower us into submission. This is not the way our government is designed to behave. The majority of the people's power is to reside with the states; it is the federal government that is to be subservient to our authority in domestic matters. Federal usurpation of state power is not new. It has been allowed to progress for decades, slowly eroding our freedoms and nearly destroying our liberty. I now ask you as our closest and most accountable representatives to stand up and proclaim the sovereignty of Nebraska. The federal abuses did not happen overnight,

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and our struggle to regain our liberty will be long and a difficult one. I call upon you to act courageously, advance this resolution, and begin the process of regaining our usurped authority. If we are to regain our lost liberty and freedom, let us use the rule of law as our founders intended. Let us be courageous, and let us begin now. [LR292]

SENATOR AVERY: Thank you. How long have you been interested in this issue? [LR292]

JOHN MAHAN: I've been interested in this for quite some time over several years, but I've only become quite active in the last few months. [LR292]

SENATOR AVERY: And did you have an epiphany or something that...? [LR292]

JOHN MAHAN: No, I've been...since the time of my Air Force service over 30 years ago, I have been very much aware of the excesses of the federal government. And in my lifetime and my work histories I've had opportunity to serve both in local government--or as a police officer, to be more specific. And I've seen many council meetings--this is one of the very few times I've actually been to the state level--but I see that many times the best interests of the people are put aside for expediency, party loyalties, or just the greed for power and fame. [LR292]

SENATOR AVERY: Any questions from the committee? I don't see any. Thank you very much for your testimony. [LR292]

JOHN MAHAN: Thank you. [LR292]

SENATOR AVERY: Next proponent testimony. Welcome, sir. [LR292]

BUTCH HUGHES: Good afternoon, Senator Avery and committee. I'm Butch Hughes from Hastings, Nebraska, B-u-t-c-h H-u-g-h-e-s. I think you've probably heard enough

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law and heard enough dissertation of all the chapter and verses and articles. I think what...and Senator Avery asked the last presenter about, if they'd come across some kind of epiphany or whatever, and I think what's happened in the last couple of years--there's a lot more access to information than we had before. The Internet has provided a lot of people across this country with information they'd never laid eyes on before. And a lot of that has to do with the history of our country and what made it strong and where it started to have its problems. And I think the whole thing that in our state is we're proud of it; we're really--we're tickled to be Nebraskans. We're proud of things we stand for. We have a very wealthy state, a very wealthy nation, and we're tired of the federal government taking it away from us. And that's probably the essence of this LR292, is it's time to give them notice to pack their bags and get out of town. And it's time for us to reassume the responsibilities as a sovereign people that's called state of Nebraska. So I don't...along with this is going to come responsibility and consequences; they go together. But with that comes prosperity and jobs. Usually when I talk to a senator about an issue, one of the big objections of getting anything done is because of the federal law. We need to get back to where the federal law has no say. They're only supposed to be doing two things, and that's defending our country--securing our borders--and having lawful money. And so far they haven't done either one, in my recollection--not since I've been around. So it's time for the state of Nebraska to be proud of who it is and defend its wealth and let Nebraska thrive. And I think this is a good time to start. I mean, there's nothing magical about a resolution, but it certainly gets their attention. And what the...just so you know as a committee, the people in Nebraska are going to do their part and have a sovereignty--a ballot initiative that will back up what you folks do here. So we're going to be a team on this thing, so we pray that this committee will find it in their courage to get it out on the floor so the Unicameral can really debate about this. I can't see how there can be any debate, but nonetheless I think it needs to see the light of day. And without your encouragement, it won't. So we pray that this happens. Thank you. [LR292]

SENATOR AVERY: Thank you for your testimony. Question from Senator Price.

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[LR292]

SENATOR PRICE: Chairman Avery. Thank you, Mr. Hughes, for traveling, and I would say that to all the people out there who traveled a fairly inclement-weather day to come out and speak your piece and be representative in your government. And Chairman Avery and I were just now commenting about the most open government we have in the United States is right here in Nebraska. We have what could be the truest, clearest transparent government. And my question to you, Mr. Hughes, is, in hearing testimony, people said, where...was it an epiphany? Are we trying to peg it down to a certain date or the healthcare plan? And I'm mindful while, you know--I'm mindful of the 55 speed limit; you have to drive 55 and that the way the federal government made that happen was: If you don't do it, we'll take your money for your roads. So that brow-beating threatening. So I would say that, for me, it would go back as far as that. And would you agree or disagree with that perhaps being one of the more recent-history events that go back some time, I mean, in the last 30, 40 years--that really was a concrete example of the usurpation of the states' rights? [LR292]

BUTCH HUGHES: I think that's one of the first things. One of the more recent things that really got people's ire up, though, is the HIPAA rule, wherein Aunt Suzy goes in the hospital, and you didn't happen to know about it, and it's not in the paper. It's not in...you know, it's...they're telling us we can't let the public know when our neighbor has a problem. I mean, you know...and also our Department of Education--they're always saying, well, the federal law directs this. And our expense of education keeps going up, but we're certainly not putting out any smarter kids. And it's all about--more about indoctrination than it is about education. So...but the 55 probably is fixed in our mind and is one of the most clear reminders of when things don't make sense anymore. Yes. [LR292]

SENATOR PRICE: Well, thank you very much, sir. [LR292]

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SENATOR AVERY: Any more questions? Seeing none, thank you, sir. [LR292]

BUTCH HUGHES: You're welcome. [LR292]

SENATOR AVERY: Additional proponent testimony. [LR292]

MARY SUE CARTER: (Exhibit 7) I just have to run to get in this chair. I have a couple of things to hand out--this too. Thank you. Hello, Senators. My name is Mary, M-a-r-y, Sue, S-u-e, Carter, C-a-r-t-e-r, and I, too, have never spoken at a forum like this, so I'm a little overwhelmed as well, and I'm very, very honored that you would listen to me. I have a Ph.D. in economics from Texas A&M, and so I come to you today as somebody who spent 30 years of her life trying to teach college students about decision making in the form of economics. And that's why I'm here today, is because I think what has happened between the federal and the state governments has somewhat impaired decision making at both levels. And that's what I'd like to talk to you about today. The question in economics is: What do we do with scarce resources? You guys deal with this every day, so you know all about this. But what do we do specifically when the money runs out? Well, here in the state of Nebraska we have a balanced budget law, so we have to live within our means. But the federal government doesn't have that limitation. So when they run out of money, they either borrow it, they tax, or they pass the bill off to somebody else. Unfortunately, that somebody else all too often are state and local governments. This practice isn't new; many of the mandates that are in force today date back to the 1960s. But in the last few years--imagine, the last decade--this has become almost an epidemic for the federal government. Sometimes the Congress will pass a new statute or new law, as you know, and they will require the states to implement it without giving them any money for that implementation, monitoring, or enforcement of that statute. Other times, perhaps the federal government has provided money in the past but suddenly decide they can't provide that money anymore, but they still want you to meet that mandate. So you have to come up with the funds. Now, how are these unfunded mandates--how many of them are there? Well, nobody really knows, because

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they come in so many forms. But the best accounting we have is from the National Council of State Legislators, who in June of 2009 published this catalogue of cost shifts to the states. Now, I didn't make copies for everybody, because it's 46 pages long, and it covers 349 public laws currently in force that carry an unfunded mandate for the states. Now, this same group, the National Conference of State Legislatures, has estimated that these unfunded mandates have cost the states, just between 2004 and 2008, \$130 billion. In 2008 alone, which is the last record we have from the CBO, the Congress passed 40 bills containing unfunded mandates, in that year alone. Why should we care? You know. The thing I think--the reason we should care is because of decision making. You know, unfunded mandates impair the decision-making process at the federal level and at the state level. At the national level, decision makers hide the true cost of bills with unfunded mandates. And at the state level, the state legislatures lose control of their budgets. Citizens pay state taxes expecting those state taxes to be used to meet state priorities. But instead, a greater and greater portion of those state taxes are having to be used to meet federal priorities. As the federal government exhausts its sources of revenue, they will do this more and more. This is not the way it's supposed to work. We pay national taxes, and they should go for national priorities. But here in this state, in this building, people like you, Nebraskans, make decisions about how Nebraska taxes will be spent to meet Nebraska priorities. And that's the way it should be. The bill before you simply says to Washington: We're not asleep; we in Nebraska know what you're doing; we see your hands in our pockets and remind you that you derive your power from us. State budgets are in crisis; 41 states this year will have a budget gap. Much of that is due to the recession, but quite a lot of it is due to unfunded mandates. I ask you to use your authority that has been given to you as the voice of Nebraskans to make a statement to the federal government that we wish to retain our decision-making authority. Thank you very much. [LR292]

SENATOR AVERY: Thank you for your testimony. Any questions? Senator Krist has a question. [LR292]

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SENATOR KRIST: Is that document available on-line? [LR292]

MARY SUE CARTER: It is. It's from the National Council of State Legislatures, and I'd be glad to leave you this one if you'd like to have it. [LR292]

SENATOR KRIST: Oh, great. Thank you very much. [LR292]

MARY SUE CARTER: Yeah. [LR292]

SENATOR AVERY: I see no more questions. Thank you, Ms. Carter. [LR292]

MARY SUE CARTER: Thank you. [LR292]

SENATOR AVERY: Next testifier. [LR292]

SENATOR PRICE: Please. The floor is yours. [LR292]

JULIUS GOERTZEN: (Exhibit 8) Okay. Thank you, committee. My name is Julius Goertzen, spelled J-u-l-i-u-s, last name G-o-e-r-t-z-e-n. At the top of my handout, I give just a few pertinent facts about myself, why I'm here. I am a farmer from Hamilton County, District 34, 23 years of age. I recently obtained a bachelor of arts from Hillsdale College in Michigan, major in history and minor in classics and Latin. So let me begin. Why does a 23-year-old male with a degree in history come back to Nebraska to farm? Furthermore, why am I testifying before this committee on an issue of state sovereignty properly understood? This is my story. I find myself obligated to represent and defend a cause and conviction that has been championed by many great men throughout American history. These men, just as I, were farmers. If we look back to the debate over the ratification of the Constitution, it was the man writing under the pseudonym Federal Farmer that alerted the many states to covet their sovereignty. It was further defended by the small-"r" republican and landed Thomas Jefferson in his strict constructionist

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Kentucky Resolutions. Even later, Virginia planter Robert E. Lee, when asked by President Lincoln to lead the Union forces, refused the position out of duty to his home and state. These three men have in common the protection of our domestic liberties and family farms as well as a stubborn resistance to selling our sovereignty to the next level up in government. I am privileged to live with that inheritance and also privileged to have the chance to defend it here today. It is customary for farmers to gather over a pot of coffee at their local co-op before the day's work begins. As the conversational gossip routinely goes, one farmer will describe the doings of a neighbor as something unorthodox or untraditional to the area. A rebuttal to this observation that I have personally heard goes as follows: What works on one man's farm is not the same as what works on another man's farm. From my experience, this statement is absolutely true. Growing up, I have worked for a couple farmers, including my own father, and it is amazing to me the different strategies farmers employ in raising the same kernel of corn. But it is the local farmer that knows his own operation better than any other man in the world, and, particularly, he knows better than anyone the business practices that will raise the most food most efficiently. This is the core of my argument: That which governs the most efficiently and effectively is that which governs locally. Many of you are familiar with the Frenchman Alexis de Tocqueville, who toured America in the 1830s and observed the American democratic tendencies. Among his findings was this axiom he overheard in American townships, quote: Everyone is the best and sole judge of his own private interest. Just as a mother knows best the likes, dislikes, allergies, etcetera, of her own children, so a man knows best the means by which to provide for, secure, protect, and govern his own household. By extrapolating the implications of this rudimentary principle, one can best argue the case of a local as opposed to a federal means of governance. The more removed the government, the more inhibited it is to govern justly. I use the word "justly" here with absolute intention. Our founders understood that the only just government or the only just manner of having one man rule over another is by the consent of the one being governed. Where there is no consent, there is tyranny. Thus we were given a republican system of representation. Of the three levels Americans can elect their representation, the local is by far the most

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important. It is the level that Americans are most able to participate in the formation of the laws they consent to live under. So local government not only governs most efficiently and effectively but also most justly. If I am frustrated with how a commissioner is representing me, I can tell one of them at church the next morning. (Laughter) This is exactly my point: My consent can be most vocal only when the solution is local. The same applies to state representation. The sentiment that Nebraska knows best how to govern Nebraska is exactly the sentiment Alexis de Tocqueville found in America circa 1830. He observed of America that, quote: The government of the states is the rule, the federal government the exception. This is evidence that there used to be a time when our government adhered to a federal agenda as opposed to a national one and is evidence to the fact that our federal government once understood their enumerated rights as exceptions and left all other powers to the more efficient, effective, and just reins of state and local government. Lastly, I am in favor of this resolution because it memorializes our federal government that it is the words of the Constitution and nothing else that is the supreme law of the land. Thank you. I'd welcome any questions. [LR292]

SENATOR AVERY: Thank you very much for your testimony. Sorry I had to miss it... [LR292]

JULIUS GOERTZEN: Fine. Thank you, Chairman. [LR292]

SENATOR AVERY: ...but I do have the written copy. Please. No demonstrations--support or otherwise. We are still on proponent testimony. Anyone else wish to testify in support of LR292? [LR292]

THERESA COLEMAN: (Exhibit 9) Yes, but I'll just hand in written for the sake of time. [LR292]

SENATOR AVERY: Okay. You're just submitting written testimony. [LR292]

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THERESA COLEMAN: Yes. Thank you. [LR292]

SENATOR AVERY: Okay. Do you want to state your name for the record? [LR292]

THERESA COLEMAN: Theresa Coleman. T-h-... [LR292]

SENATOR AVERY: Coleman? [LR292]

THERESA COLEMAN: Coleman, C-o-l-e-m-a-n. [LR292]

SENATOR AVERY: Thank you. Anyone else wish to... [LR292]

JAMES MOUDRY: (Exhibit 10) And I'll just submit written testimony as well. [LR292]

SENATOR AVERY: ...submit written testimony? State your name for the record, please.
[LR292]

JAMES MOUDRY: My name is James Moudry; that's J-a-m-e-s M-o-u-d-r-y. [LR292]

SENATOR AVERY: Thank you, sir. [LR292]

JAMES MOUDRY: Thank you. [LR292]

SENATOR AVERY: This is proponent? [LR292]

WILLIAM MacARTHUR: (Exhibit 12) Yes. [LR292]

SENATOR AVERY: Okay. [LR292]

WILLIAM MacARTHUR: My name is William MacArthur; I'm representing the Nebraska

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Taxpayers for Freedom organization, the local Columbus unit, about 100 members.
[LR292]

SENATOR AVERY: Thank you, sir. Anyone else? Please state your name for the record. [LR292]

BERT McINTOSH: (Exhibit 11) Bert McIntosh, B-e-r-t M-c-l-n-t-o-s-h. And I'll just say I applaud you gentlemen and you ladies for bringing this forward for the people of the state of Nebraska to express their opinion. And I'll be quiet. [LR292]

SENATOR AVERY: Thank you. [LR292]

BERT McINTOSH: Thank you. [LR292]

SENATOR AVERY: All right. We're going to move now...any other proponent? All right, we're going to move to opponent testimony. Anyone wish to testify in opposition to LR292? Seeing none, anyone wish to testify in a neutral position? All right. Senator Fulton, you are recognized to close. [LR292]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. I just want to thank you for your time. We went a little bit over, but we--the control which we've exerted to bring forward our testimony is congruent to the amount of passion that I think citizens have for this resolution. I hope you'll look favorably upon it, and I thank you for your time today. [LR292]

SENATOR AVERY: Thank you, sir. Any questions for Senator Fulton? All right, thank you. That ends the hearing on LR292. We'll now move to LR273. Is Senator Howard in the room? Okay. Sherry, you can turn off the lights. [LR292]

SHERRY SHAFFER: What? [LR273]

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SENATOR AVERY: You can turn the lights off. [LR273]

SENATOR HOWARD: I'm going to stroll on up. It looks like you had quite a crowd. We couldn't get in. [LR273]

SENATOR AVERY: Yeah, we did. Well, you're up. And you're last. (Laugh) [LR273]

SENATOR HOWARD: Well, and it's Friday afternoon, so let's get rolling. [LR273]

SENATOR AVERY: All right. [LR273]

SENATOR HOWARD: I'm ready if you are. You all ready to go? [LR273]

SENATOR AVERY: We are ready. [LR273]

SENATOR HOWARD: All right. Good afternoon, Senator Avery and members of the committee. This issue is not about sovereignty (laugh). For the record, I am Senator Gwen Howard, and I represent District 9. I appreciate the opportunity to present LR273 for your consideration. LR273 was brought to me by constituents concerned with the treatment of the...and I'm going to try and say this correctly...Ecumenical Patriarchy by the government of Turkey. This resolution would urge President Obama and Secretary of State Clinton to encourage Turkey to recognize the Ecumenical Patriarchy and to afford them the rights other religious groups are given under Turkey's law. Twenty-four states have adopted similar resolutions of them. Six of them were adopted last year. Orthodox Christian communities have been a part of the state for over 100 years, and many of these maintain a direct Ecclesiastical connection to the Ecumenical Patriarchy. My own district is home to St. John the Baptist Greek Orthodox, a beautiful, Bisantyne style church that is the religious center for many members of our community. There are many religious, political, and historic issues surrounding this resolution, and other

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testifiers are far better able to explain to you than I am. I ask that you listen carefully to the information and to their concerns. And thank you for your time and attention, especially on a Friday afternoon. [LR273]

SENATOR AVERY: Thank you, Senator Howard. Any questions for Senator Howard? Are you going to stay for closing? [LR273]

SENATOR HOWARD: You know, I'm not going to do a closing, and I think these people are very versed on their issue and don't need me any further, so thank you. [LR273]

SENATOR AVERY: Okay. Thank you, Senator. All right, first proponent testimony. Welcome, sir. [LR273]

REV. PETER J. PAPPAS: Thank you. Mr. Chairman and members of the committee, my name is Reverend Peter J. Pappas, P-a-p-p-a-s. I'm the pastor of St. John the Baptist Greek Orthodox Church in Omaha, and I thank Senator Howard for her assistance with this issue and for all of you for the opportunity to come here today. I should begin by defining what is the Ecumenical Patriarchate. As an institution, it has existed in the ancient city of Constantinople from the very earliest times of the Bisantyne Empire in the third and fourth century. The current Ecumenical Patriarch Bartholomew is the 270th successor to the Apostle Andrew, and so this...the Orthodox Christian community is the second largest body of Christendom in the world. And in the state of Nebraska, we have communities in Omaha, Lincoln, Bayard, and Kearney. And so we bring this resolution to call on the...it's a campaign to adopt resolutions in all 50 states in order to express our desire for the government in Turkey to recognize the human and rights in religious freedom of the operations of the Ecumenical Patriarchate in Turkey. Now, the Ecumenical Patriarch is for Orthodox Christians, the leading, presiding bishop of the various Orthodox churches in the world. It is, in some sense, similar to the Pope in the Roman Catholic Church, although not having the same administrative authority over all the Orthodox in the world. He is viewed as a spokesman and as a

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representative. The first among equals is the title that we ascribe to him. And so the difficulty in existing in the (inaudible) state comes from the fact that he's operated for many centuries even before the Turkish state and the Ottoman Empire existed. And so after the fall of the city of Constantinople in 1453, there was the...the Patriarch was given both religious and civil authority over the Greek Orthodox minority in Turkey called the Rumii, the rumi let (phonetic), the Roman minority in the Ottoman Empire, and this...difficulties increase following the formation of the modern Turkish state under Mustafa Kemal Ataturk. And so today the main issues affecting the operation of the Patriarchate are the lack of recognition of the legal status of the institution of the Patriarchate, the inability to bring those to a system outside Turkey to assist with the operations and the ministry of the Patriarchate, and the confiscation of properties by the Turkish state. In one sense, it is a subtle form of ethnic cleansing that is occurring there with as many as 100,000 Greek Orthodox in the population in the early twentieth century, and today has dwindled to less than 5,000 in the modern city of Istanbul or the ancient city of Constantinople as it is known. So these are the main issues. The property rights...loss of property, lack of ability to bring those to work for the Patriarchate, and there are a number of examples of the confiscation of properties that are described in the resolution itself. And so because of the situation there of our...leader of our faith, this has a direct impact on our communities here in the state of Nebraska and in the other states throughout the United States. So I'd just simply like to conclude with something from a Life magazine. This happens to be the cover of Life magazine from March 26, 1965, and it shows the late Archbishop Iakovos who was the leader of our Greek Orthodox Archdiocese for over 30 years. It shows him marching with Dr. Martin Luther King, Jr. in Selma. And when he was asked why did he go to march with Dr. King, he replied, he said, growing up, he was born on the island of Imbros in Turkey, and so he said, when growing up I was a third-class citizen. And so he said, when I heard the call of Dr. King for the need to speak out for the rights of others, he said, I knew I had to respond. And so this issue cuts to the heart of the values that we hold dear as Americans and the values we uphold here in Nebraska, and so I would encourage you to support this resolution. [LR273]

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SENATOR AVERY: Thank you. This is interesting. I've traveled to Turkey a number of times, and I know that they are actively seeking membership in the European Union... [LR273]

REV. PETER J. PAPPAS: Correct. [LR273]

SENATOR AVERY: Is it...is this issue one of the issues that is preventing them from actually getting membership? [LR273]

REV. PETER J. PAPPAS: Correct. Among other issues, there has to be the European Union requires improvement on human rights, civil rights, and religious freedom, and this is certainly one of the issues that's affecting their...the conversation of dialogue regarding their ascension to the European Union. For the Patriarchate itself, it creates somewhat of a Catch-22 in that ascension to the European Union would mean greater freedom for them, but there needs to be these greater freedoms and expression of human rights and religious freedom on the part of the Turkish government in order to be considered for membership in the European Union. [LR273]

SENATOR AVERY: They also have another issue going on with the tension between the secular government that Ataturk put in place and the attempts on the Islamic republic types in the country to pull them into a direction similar to Iran perhaps. [LR273]

REV. PETER J. PAPPAS: Correct. Turkey has been officially a secular state since the time of Ataturk. They are very much...this is a prominent feature in the nation of Turkey, and I should add also, I spent ten months at the Patriarchate living there and so I am familiar...personally familiar with the experience of the Patriarchate there in the city of Istanbul and the...both the Turkish citizens and the government take much pride in the secular state, and that design to enable the life...additional freedom in their country as opposed to some of the other states which have a forced...stricken force of Islamic rule.

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And so, one of the results, though, that sometimes goes unnoticed is that the laws affecting the expression of...religious expression in Turkey has a disproportionate effect on religious minorities. In other words, if they make laws, for example, governing attire and educational institutions that address the Islamic community, since they are such a great part of the population--99 percent, it has a less effect as it does on religious minorities such as the Christian populations which include Greek Orthodox, Armenian Orthodox, smaller Catholic population, and so forth because being a minority, it's much more difficult for them to function. And so one of the issues there also is the opening of a theological school at Halki which was closed in 1970 by the Turkish authorities. It was designed to be a law that applied to...across the board to institutions of higher education in Turkey, but again, has a disproportionate effect on the life of religious minorities...for example, the Greek Orthodox and their need to train clergy at this seminary. And so the military has historically been the guarantor of a secular state in Turkey, but, again, there's also been, of course, upheaval over time with various military coups that occur when they feel the government is going too far outside their realm. [LR273]

SENATOR AVERY: Thank you. I see no more questions. Thank you very much for your testimony. Next proponent? [LR273]

REV. PETER J. PAPPAS: Thank you. [LR273]

CRAIG CLAWSON: (Exhibits 1, 2) Good afternoon. My name is Craig Clawson, C-r-a-i-g C-l-a-w-s-o-n. And I am the parish council president of St. John the Baptist Greek Orthodox Church in Omaha. I appear before you today, and I appreciate being allowed to speak, to discuss a couple of the issues. I may repeat Father Peter a couple of times because I was out of the room, so I apologize if I'm redundant at all. But this resolution is of great importance to us. I believe he mentioned...or would have mentioned the fact that it's already been adopted in similar form in 25 of the states, and we are hoping that with your help that Nebraska will be the 26th. The Ecumenical Patriarchate faces five core issues as mentioned by Father. The biggest...well, I don't

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know that there's one the biggest because they're all intertwined, but the nonrecognition of the state of Turkey of the status of the Ecumenical Patriarch is a reflection of their feelings towards the minorities, but as well, it gives us a difficult situation in having His All Holiness travel abroad. His actions and movements are restricted because he's treated as a leader of a local Orthodox church rather than as a...the status of the Ecumenical Patriarch and first among equals amongst the Orthodox bishops. In addition to that, another core issue, there's no legal identity in Turkey or bonified legal personality of the Patriarchate in Turkey. They're not allowed to own property even though some of the deeds precede the establishment of the republic. The workers such as when Father Peter visited a work that the Patriarchate foreign visitors and foreign workers that we have there at the Patriarchate, they have to leave the country every three months, once to obtain a tourist visa, so it's a very difficult procedure for us to have people help there. Property confiscations, another core issue...thousands of churches, schools, orphanages, family homes, other property has been confiscated because of our lack of recognized legal identity in Turkey. And the closure since the early seventies of the theological school in Halki...we can't train new priests. And, finally, in the five core issues, and I think it's, again, I emphasize the intertwinement of this is the government interference with the operation of the Patriarchate. Essentially, the Turkish government obtains a veto over the selection of our leader through the restriction that that person must be a Turkish citizen, and that only Turkish citizens that are on the Holy Synod may vote for the Patriarch. So we have a situation where, essentially, not only are we deprived of property, the right to practice our religion openly, the right to educate our priests, the recognition of our Patriarch, but also we're limited in the selection of our Patriarch instead of being able to select them from Eastern Orthodox bishops worldwide. So it's quite a situation, and again, as you mentioned, Mr. Chairman, the adoption of the admission to the European Union is one of these...this is one of the blocking points. Now, I'd just like to add just a few personal points. I've been privileged in my lifetime to be able to visit the Patriarchate three times. The first time was early in 1970 before the closure of the theological school. At that time, the Patriarch was His Holiness Athenagoras in a previous position in the church. He was the

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Archbishop of North and South America. When he was elected Patriarch, he was...President Truman sent them from New York, if you will, via the Air Force One. We were somewhat recognized by the Turks because of the support from President Truman. That was in 1948. Patriarch Athenagoras was still the Patriarch...when I was there in 1970. I had the privilege of meeting His All Holiness on the island of Halki on the school grounds. I had lunch there. There were bishops, priests, students, all active there. It was a beautiful situation, and one of the bright memories of my youth. Much later, 1993, 1994, I visited the Patriarchate again, and 1994, particularly, I was able to go to the island of Halki. The rooms were empty. The library was still kept intact. The rooms were ready for students. We aren't even allowed to send our youth over there for a summer program, and it's...it's very depressing. Anyway...so that's my personal experience with the situation. I've met His All Holiness Patriarch Bartholomew, and our church is blessed to have him as our leader. I wish he was accorded the rights that he's due and our church is due, and the future of our church is due. Just as a minor handout, and I only have 11, so I missed the notice over there. But anyway, I do have some transcripts from the CBS's 60 Minutes in December where the Plight of the Patriarchate was described, and His All Holiness was interviewed. I've checked a little spot there where you can actually, you know, it's still on the Internet, so you can actually see the interview yourselves. And I was asked that if you have the time...I know you're all very busy, particularly in this legislative session, but if you have a moment and want some more information about this situation and our situation in Turkey, I'd ask you to look at that. And also, I have only one copy in color here of...that I submit to you, Mr. Chairman, of the reason that we're going about the 50 Legislatures to do this. So thank you very much. [LR273]

SENATOR AVERY: Thank you, Mr. Clawson. Any questions from the committee? I don't see any. Thank you for your testimony. [LR273]

CRAIG CLAWSON: Thank you very much for your time. [LR273]

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SENATOR AVERY: Any other proponent testimony? [LR273]

GABRIEL NICHOLAS: My name is Father Gabriel Nicholas, G-a-b-r-i-e-l N-i-c-h-o-l-a-s. Thank you for letting me speak. I'm the pastor of Enunciation Greek Orthodox Church here in Lincoln. I'm speaking in favor of the resolution. I believe it is in the interests of all the citizens of Nebraska and particularly the interests of the Greek Orthodoxans of Nebraska that the United States in its relations with the Turkish government urged the Turkish government to cease its persecution of minority religions and their persons and their property, and especially in light of the Turkish government's desire to enter the European Union, begin a new era of upholding and safeguarding religious and human rights without compromise, specifically decreasing its discrimination of the Ecumenical Patriarchate which has been in existence for nearly 2,000 years and grant the Ecumenical Patriarch and the Patriarchate appropriate international recognition, the ecclesiastical succession, and the right to train its clergy of all nationalities and respect the human rights and property rights of the Ecumenical Patriarch and the Patriarchate and its approximately 300 million members worldwide and more than two million members in the United States. Thank you. [LR273]

SENATOR AVERY: Thank you very much. That was brief. [LR273]

GABRIEL NICHOLAS: Okay, thank you. I'm going to be brief (laughter). Very good. Thanks. [LR273]

SENATOR AVERY: You caught me off-guard (laugh). [LR273]

_____: What's your congregation again? [LR273]

GABRIEL NICHOLAS: It's Enunciation here in Lincoln. [LR273]

_____: If the sermons are that quick, I might have to... [LR273]

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SENATOR AVERY: They have wonderful food after church. I've been there a few times.
[LR273]

GABRIEL NICHOLAS: Good. Thank you. Come back. [LR273]

SENATOR AVERY: Thank you. Additional proponent testimony? Any opponent testimony? In a neutral? Senator Howard has waived her closing. That is the hearing on LR273, and that ends the hearings for today. Thank you very much, sir, for coming, all of you. [LR273]