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Government, Military and Veterans Affairs Committee
February 21, 2014

[LR393CA LR395 LR411CA]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, February 21, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR395, LR393CA, and LR411CA. Senators present: Bill Avery, Chairperson; John Murante, Vice Chairperson; Tommy Garrett; Russ Karpisek; Scott Lautenbaugh; and Norm Wallman. Senators absent: Dave Bloomfield; and Jim Scheer.

SENATOR AVERY: Good afternoon, folks. Welcome to the Government, Military and Veterans Affairs Committee. We are short of a few people here today but I think I'm going to open and proceed anyway. I'm sure that some of them will be coming in as we get things underway. We have three bills before us. They are posted outside the room. The agenda is in this order. We will follow the order as presented on the agenda outside: LR395, Senator Brasch's bill; LR393CA by Senator Murante; and LR411CA by Senator Karpisek. Before we begin, I want to introduce the members of the committee. Senator Tommy Garrett on the right over here, from Bellevue. Senator Bloomfield is normally here but he has to be out of town today. He is from Hoskins. Senator Scott Lautenbaugh probably will be out, as well, today. Present today is Senator John Murante from Gretna, he is the Vice Chair of the committee. Seated next to me on my right is Christy Abraham, the legal counsel for the committee. And Senator Russ Karpisek from Wilber will be here soon. I think he might have a bill in another committee. Senator Norm Wallman just arrived, from Cortland. I hope you drove. And next to him is the seat for Senator Jim Scheer, he had to be out of town today as well. Sherry Shaffer is our committee clerk. She is sitting on the far left there and she will be transcribing all of what we do. We keep a written record of all of our transactions in these hearings. If you wish to testify for or against any of these bills, we have a green form available at each entrance to the room. We ask that you print clearly the requested information. Give this to the clerk and she will make sure that this is entered into the record. If you wish to record your opposition to or support for any of these bills but do not plan to testify, we have this form and it is available at each entrance of the room as well. Please fill that out. Now, the bills will be taken up in the order as they are presented on the agenda. And we will follow the usual practice which is the introducers make the initial statements, followed by proponents, who are then followed by opponents and neutral testifiers. Closing remarks are reserved for the introducing senator. We ask that you listen carefully to the testimony preceding yours so that you are not repetitive. We also are going to be using the light system. That is the box in front of the testifier. The green light is a four-minute light, followed by an amber light for one minute. And then that is followed by a red light which means your five minutes are up and we ask that you be finished by then. If you have a cell phone, please turn it off or put it on silent or vibrate so it does not make noise that disturbs us. And that includes our page who is, by the way, Colton Wolinski. If you have any...I just outed you and gave them your name and everything. If you have any material you would like for us to

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see, he will be the one who will distribute them. If you don't have 12 copies, we will make them for you and he will be responsible for that. Okay? We're ready. Senator Brasch has LR395. Welcome to the committee. [LR395]

SENATOR BRASCH: (Exhibit 1) And thank you, Chairman Avery; and good afternoon, members of the Government, Military and Veterans Affairs Committee. My name is Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. LR395 commemorates the addition of the phrase "under God" in the United States Pledge of Allegiance. On February 7 in 1954, President Dwight Eisenhower attended a church service at New York Avenue Presbyterian Church in Washington, D.C., in honor of President Lincoln's birthday, February 12. Each year, the President traditionally attends a special service at the church known as Lincoln Sunday that takes place on the Sunday closest to Lincoln's birthday. Sitting in Lincoln's pew, President Eisenhower listened to Pastor George MacPherson Docherty deliver a sermon called "A New Birth of Freedom." In this sermon, which discussed the Gettysburg Address, Docherty stated: To omit the words "under God" in the Pledge of Allegiance is to omit the definitive factor in the American way of life. Docherty was referencing the Gettysburg Address in which Lincoln said: This nation, under God, shall have a new birth of freedom. As the Cold War was in its infancy, the threat of communism to the United States was growing. Without a reference to God, Reverend Docherty said the Pledge could have been applied to the Soviet Union, remarking, I could hear the little Muscovites recite a similar pledge to their hammer and cycle flag with equal solemnity. The sermon motivated President Eisenhower to include the phrase "under God" in our Pledge of Allegiance. The next day, Michigan representative, Charles Oakman, introduced the House version of the bill that included the phrase in the Pledge. On February 10, Michigan Senator Homer Ferguson introduced a similar Pledge in the Senate to recognize the 5th anniversary of the imprisonment of Hungarian Cardinal Jozsef Mindszenty by the communist regime that controlled Hungary at that time. Cardinal Mindszenty was imprisoned and tortured because of his sermons that exposed the goal of communists to eradicate all religion. President Eisenhower signed the legislation into law on Flag Day, June 14, 1954, and amended the Pledge that was recited on the very same day. I introduced LR395 at the request of an advocate from Mississippi who has successfully gotten lawmakers in 39 states to introduce similar legislation recognizing this important phrase. Clearly, there are many who support commemoration of this important event in our nation's history. I wanted to close my opening with a small personal story. Several of you may know that my parents came here as immigrants in 1950. I was their first child born in America in 1954, '53. [LR395]

SENATOR AVERY: Cheating. [LR395]

SENATOR BRASCH: Excuse me, I'm trying to get younger here, but in 1953. And my mother, when she was alive, would tell the story about how in the Ukraine, they had to pray with a secret Bible and a secret candle in the closet, in fear of communism and

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torture as I described here. We are so privileged in so many ways, that our Founding Fathers who came here believed it was important and critical that we do recognize that this is one nation and we are under God. I urge you to please support LR395 in this commemoration of this LR. Thank you. [LR395]

SENATOR AVERY: Thank you, Senator. Do I have any questions from the committee, comments? I don't see any. Thank you. Are you going to stay for closing? [LR395]

SENATOR BRASCH: Just in case there's questions. [LR395]

SENATOR AVERY: Okay. [LR395]

SENATOR BRASCH: Thank you. [LR395]

SENATOR AVERY: All right, we will entertain proponent testimony. Anyone wish to testify in support? Welcome, sir. [LR395]

DAVE BYDALEK: Chairperson Avery, members of the committee, my name is Dave Bydalek, for the record. That's spelled B-y-d-a-l-e-k. And I'm the policy and legal director for the Nebraska Family Alliance. I'm here to offer our support for LR395. NFA believes that the recognition of the 60th anniversary of the addition of the words "under God" to the Pledge of Allegiance and the significant role of the Pledge in our history serves an important public purpose. The Supreme Court has unequivocally recognized that the Pledge of Allegiance evolved as a common public acknowledgment of the ideals that our flag symbolizes. It is a recitation of patriotic exercise designed to foster national unity and pride in those principles. As the Ninth Circuit Court of Appeals noted in upholding the constitutionality of the Pledge, the Pledge of Allegiance serves to unite our vast nation through the proud recitation of some of the ideals upon which our republic was founded and for which we continue to strive; one nation under God. The Founding Fathers believed that the people of this nation are endowed by their Creator with certain inalienable rights. Indivisible: Although we have individual states, they are united in one republic. With liberty: The government cannot take away the people's inalienable rights. And justice for all: Everyone in America is entitled to equal justice under the law, as is inscribed above the main entrance to our Supreme Court. The words of the Pledge echo the conviction held by the founders of this nation that our freedoms come from God. Congress inserted the phrase "one nation under God" in the Pledge of Allegiance for the express purpose of reaffirming America's unique understanding of this truth and to distinguish America from atheistic nations who recognize no higher authority than the state. The Pledge is a constitutionally permissible and important reference to this nation's rich religious heritage. And NFA would, therefore, respectfully request that the committee support this resolution. Thank you. [LR395]

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SENATOR AVERY: (Exhibit 2) Thank you, sir. Questions from the committee? I don't see any. Thank you. Any other proponent testimony? We're on LR395. Okay, seeing none, any opponent testimony? Any neutral testimony? Senator? Don't see any. Senator...oh, I have one or two letters here. This is to be read into the record a letter of support for LR395 from Perry Gauthier, the state director of Capitol Ministries Nebraska. And that is all. Now that ends the hearing because Senator Brasch waives her closing. That ends the hearing on LR395. We'll now move to LR393CA. Senator Murante. Good day, sir. [LR395]

SENATOR MURANTE: And a good day to you, Senator Avery. For the record, my name is John Murante, spelled J-o-h-n M-u-r-a-n-t-e. I am the state senator for Legislative District 49, which represents Sarpy County, Gretna, Chalco, portions of Papillion and La Vista. And I am here today to introduce LR393CA. As we've talked about in this committee for at least the past year, the petition initiative process is something that is a passion of mine. It's something that I have worked for and on for a considerable period of time. In researching this legislation, my legislative aide actually dug up the legislative history of the last time this proposal was before the Legislature, which was introduced by Senator Nelson. And I have the legislative history right here. And, of course, I worked for Senator Nelson as his legislative aide, as you well know, and so I have to say, I wrote some pretty good introductions back in the day. I won't read the one that I wrote back then. But this was an issue that Senator Nelson worked on for a considerable period of time and it's something with which I'm very passionate, as we've talked about. I think there are a number of ways of making the petition initiative process more accessible to the people of Nebraska. We've talked about those this year, on-line signatures, allowing people to print off, essentially, a registration form and submit a petition to the Secretary of State through just printing it off on their own. But a quick and direct way of doing it is to lower the signature thresholds. It's important to note that the people of Nebraska went to the polls, adopted a constitution, and set signature thresholds. And they are not the signature thresholds that we have today. The signature thresholds that we have today were established by a Supreme Court ruling which was used as justification to throw out one of the first term-limit laws passed by the people of Nebraska. And even though a justice on the Supreme Court lost his job because the people of Nebraska voted him out because of that ruling or largely because of that ruling, the signature thresholds have remained double of what they were when the people of Nebraska went and voted them in. This would functionally cut those signature thresholds in half and come very close to what the people had intended when they passed their laws and adopted the constitution. I've said it before and I'll say it again. The people established as their first right reserved to them was the petition initiative process. And in the past ten years, this Legislature has created obstacles and barriers to prevent the people of Nebraska from having access to that first right reserved. And that's not something we ought to have been doing. And I think in some ways, what I've heard by members of the Legislature is that we've gone too far. This is a way of taking a step back because, right now, the only people for whom our petition initiative process is

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available are wealthy billionaires or casinos. Those are the only issues that make it on the ballot. Grass-roots efforts, which is what the petition initiative process was intended to be--that's how we got the Unicameral in the first place--those days are gone. If we had the standards we have today, we never could have had a Unicameral system. It never would have made the ballot. It's just too difficult for a grass-roots campaign to have any success. So I think for the past year, I've been making this point. I won't continue to beat the dead horse. In this committee, I think you know where I stand on it. This is a proposal which would return to the people, the standards that they set for themselves. And I encourage you to support it. Thank you, Mr. Chairman. [LR393CA]

SENATOR AVERY: Thank you. Are you...do you have any sense of the history of how often the constitution has been changed prior to the Duggan case in '94? [LR393CA]

SENATOR MURANTE: Yes, I have done a lot of study on the various constitutional amendments. The short answer is, it is not done very often. And the majority of the time that the people have an opportunity to vote to amend their constitution, they choose not to. More often than not, constitutional amendments that are on the ballot fail. And I think that's an important thing to remember because what we're talking about here is not the process of amending the constitution. The constitution cannot be amended by petition. Even if all 1.8 million Nebraskans went out and signed a petition, the constitution would remain the same. The question is, how difficult should we make it for people to even be able to vote on changing their constitution? At what point do we give them a say? And how high must that bar be? And right now, the bar is so high that no one can get over it. And that...if we're going to make it as difficult as we are, we might as well just take it out because it, at this point, is functionally useless. [LR393CA]

SENATOR AVERY: So you're proposing to raise the bar or lower the bar for constitutional amendments to 10 percent? [LR393CA]

SENATOR MURANTE: From 10 percent to 5 percent is, I believe, is what I have. Yep. [LR393CA]

SENATOR AVERY: From 10 percent to 5 percent? [LR393CA]

SENATOR MURANTE: Uh-huh. [LR393CA]

SENATOR AVERY: Okay. And the petition for referenda laws and all of that would be lowered from 7 percent to 3 percent. [LR393CA]

SENATOR MURANTE: Correct. [LR393CA]

SENATOR AVERY: Okay. I do have an interest in this. And this was the first...a similar bill like this was the first bill I debated on the floor of the Legislature in '07 when I was

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first elected. [LR393CA]

SENATOR MURANTE: I vividly remember that debate. That was an interesting discussion. [LR393CA]

SENATOR AVERY: And I was interviewed the other day and they said, what was your most disappointing defeat? And I named that one because it was. I thought I had that in the bag. And that was even before Senator Lautenbaugh got here. [LR393CA]

SENATOR MURANTE: Cherish the moment, Senator Avery. [LR393CA]

SENATOR AVERY: But what I was trying to do--you may not recall this--but I was trying to lower the referendum part to about the same place, I believe, where you are--maybe it was at 5 percent--and raise the bar for constitutional amendments on the argument that you want to protect the constitution and you shouldn't make it very easy to change the constitution. But perhaps a trade-off to raising the bar there would be to lower the other part. [LR393CA]

SENATOR MURANTE: I vividly remember that. And you may recall that an amendment was offered by Senator Nelson to lower both. [LR393CA]

SENATOR AVERY: Oh, yes. [LR393CA]

SENATOR MURANTE: And on your constitutional amendment... [LR393CA]

SENATOR AVERY: That's right, you were here. [LR393CA]

SENATOR MURANTE: I believe the phrase that we would use in 2014 is hijack your bill. I think that was the attempt, although it was not successful. [LR393CA]

SENATOR AVERY: I think I did say that you were hijacking. [LR393CA]

SENATOR MURANTE: It wasn't me, it was Senator Nelson. I had nothing to do with it. [LR393CA]

SENATOR AVERY: Ah, yeah. Any questions from the committee? All right. Thank you, Senator. [LR393CA]

SENATOR MURANTE: Thank you. [LR393CA]

SENATOR AVERY: Proponent testimony to LR393CA? Okay. Good afternoon, sir, welcome. [LR393CA]

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FRANK SHOEMAKER: Good afternoon, Senator Avery and members of the committee. I'm Frank Shoemaker, my name is...or spell that F-r-a-n-k S-h-o-e-m-a-k-e-r, and I'm from Holbrook which is a ways from here. The 43rd District is larger than 11 states in our Union. And if we have to get signatures in two-fifths of our counties to do an initiative, that's a lot of gas, that's a lot of work, it's a lot of effort. What brings us here today is...I wrote my testimony today and it was pretty confrontational. We started this in 1988 with a senator saying that if he could, he would abolish initiative and referendums, Article III. And I really think that that attitude of confrontation or the senate or the Legislature making it more difficult to do the initiative and referendum process is shortsighted in the sense that we have the only Unicameral in our nation. And I think Senator Norris, when he, in his civic theory, he thought that Article III was a restriction on that second house. It's a restriction on our house. It took that place of the conference--I'm not saying this very good--it took the place of the conference committee. It made it more difficult for the Legislature to act as it has in the initiative and referendum process. If we look at the law today, we can't just have the number of signatures. There are all sorts of things that have happened in our constitution that make it difficult to circulate a petition. And so what I really would urge the committee to do, and the Legislature in general, is think about that attitude of towards the initiative and referendum. Is it...do we really...you know, do we want to abolish it? If you want to abolish it, then, you know, do your two-thirds and get rid of it. But if it's in our constitution and if it is an integral part of how we do business in our state, then what we need to do is support it and we need to make it...I don't want to say easier because there are, you know, administrative expenses, there are detection of fraudulent voting, there are reasons why we really need to focus on this. I think we need to help citizens write legislation in some ways. If they want to be involved in the initiative and referendum, I think we need to maybe give the Revisor a little more power, something like that. I have...we have the Nebraska Cannabis Initiative. And we started...the first time that we started campaigning that, it became clear to us that Nebraskans are like the rest of the country, that over half of us believe that cannabis...there should be cannabis reform in our state legislatures. And yet we can't get anything done here. There's a lot of...somebody says there's 600 lobbyists and they all have agendas. There's 49 senators, you have business to do. It's a difficult place to present something as controversial as cannabis reform and yet it's something that the citizens seem to be ahead of the legislatures. Now, again, I'm not arguing anything. I just think that if we want citizen participation in our government, we have representative government but as technology advances, we are moving to where we can more...the citizens can participate more directly in government. And I think we have the ability, with our Unicameral system, to support that. And I rise in support of this bill. Thank you. [LR393CA]

SENATOR AVERY: Thank you, Mr. Shoemaker. Questions from the committee? Don't see any. Thank you for coming. Additional proponent testimony? Good afternoon, sir. Welcome. [LR393CA]

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LEN SCHROPFER: Good afternoon, Chairman Avery, members of the Government Affairs Committee. My name is Len Schropfer, L-e-n S-c-h-r-o-p-f-e-r, I'm a farmer in Fillmore County. I have a quick, prepared statement. I'm just going to read it. It kind of corroborates what already has been said. The ability of the people to make law and to amend the Nebraska Constitution, independent of the Legislature and the Governor, is one of our most precious rights. It's guaranteed in our constitution. Not all states have this. Between 1975, when the required number of signatures to get on the ballot was based on the number of votes in the previous Governor election, and now, when the requirement is based on the number...the total number of registered voters when the petition is turned in, there appears to have been some convoluted tampering with the signature requirement by the Legislature and the courts. This is a layman's reading, I don't know if I'm ready to testify in court but from...Neal Erickson was very gracious and helpful to us. It has substantially diminished our original right. The requirement is...the requirement in LR393CA is certainly enough to discourage frivolous actions. The signature gathering is, after all, just a preliminary part of the process. The real test is the vote of the people. Thank you very much. Thank you. [LR393CA]

SENATOR AVERY: Thank you, Mr. Schrupfer (phonetically)? [LR393CA]

LEN SCHROPFER: Schropfer. Schropfer. [LR393CA]

SENATOR AVERY: Yes. I was trying to get it right. Questions from the committee? Thank you, sir, for your testimony. [LR393CA]

LEN SCHROPFER: Thanks so much. [LR393CA]

SENATOR AVERY: Any other proponent testimony? We're on LR393CA. All right, we'll now go to opponent testimony. Welcome. [LR393CA]

LYNN REX: Welcome. Senator Avery, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today in opposition to this measure because we do believe that initiative measures and referendums should be an extraordinary act in contrast to representative government, which is the fundamental way in which laws and policies should be made in the state of Nebraska and in other states as well. Not all states allow citizens to have an initiative or referendum. We think it's valuable that Nebraska does. We just think that it needs to be something that is a very serious effort. It should be time intensive. I think there is an issue if only folks that have lots of money can get it accomplished. I think that is a legitimate concern. But we do come to you to say that we do think that it is the thoughtful consideration by the legislative body is how...and your deliberations, where you can listen to folks on both sides and you can thoroughly analyze legislation before it becomes law and, also, before you have a constitutional amendment to change the

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constitution. You consider the debates that you've had upstairs, even this year--and Senator Garrett is a new senator--the debates on various proposals which you've had. And my guess is that each one of you learn something that, perhaps, you didn't know otherwise from listening to your colleagues. And that happens when you have deliberate debate and discussion on issues. That cannot happen when I sit in my home and draft up an amendment and decide I'm going to amend the constitution and do certain things. And I have the ability to go out and get a bunch of people to go out and circulate signatures and do whatever needs to be done to get that to happen and then have it placed on the ballot. We just think that, as an organization, representative government should really matter. We believe that direct democracy does have an important role. But direct democracy should be the exception and it should be in an extraordinary circumstance when citizens of Nebraska believe the Legislature has not done the right thing through an act of legislating or, in fact, an omission to legislate. So, in essence, we just think that this is a very serious process. We know that some states...I can remember several years ago when I attended a meeting of the National League of Cities. And I believe it was Oregon. And I believe I'm correct and it was well over 30 to 40 different constitutional amendments that their electorate would be voting on. Can you imagine going to a ballot and voting on 30 to 40 constitutional amendments? And I think there is a concern if you make it so easy that just anybody can get something on the ballot for consideration without having the kind of deliberation, the give and take that happens when you, as state senators who are elected by citizens of this state, are able to discuss issues and make decisions on behalf of all citizens of this state. With that, I'd be happy to respond to any questions that you might have. [LR393CA]

SENATOR AVERY: Thank you, Ms. Rex. Questions? Senator Lautenbaugh. [LR393CA]

SENATOR LAUTENBAUGH: Thank you, Chairman Avery. And thank you for coming today, Ms. Rex. Yeah, you mentioned some of our debates we've had earlier this year. I haven't been thrilled with some of the debates we've had earlier this year, myself, on the floor. And I don't share the concern, I guess, about people in their homes deciding maybe we should do something like this and trying to get their neighbors involved. Considering still, the number of people it would take to do something, even if this passed, do you really worry that that's going to happen a lot? [LR393CA]

LYNN REX: Well, I think, certainly, the bigger concern is that, right now, with some interest groups there may be an opportunity to sit down and start putting together language that might have a real detrimental effect on your ability to legislate, as state senators. And our organization stands for the proposition of local control but we also stand for the proposition of representative government. And we believe that, fundamentally, that is how the framers of our constitution intended our system to operate. And that the constitution is really supposed to be...you take it very seriously before you decided to change it. For example, a bill that you will not see, a legislative proposal to amend the constitution that you will not see this year, is one that we had

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introduced. We were very pleased that Senator...Speaker Adams introduced LR29CA to address tax and financing in the state of Nebraska. And that's an issue that will not come up again this session. But our organization spent over four years developing that bill. And there was a lot of give and take and the committee, itself, decided that, in fact, going from 15 to 20 years on a payback was too much. So the Urban Affairs Committee struck that provision and moved forward and they had some legitimate concerns. We think we were...we think we also had some legitimate concerns in that. But at the end of the day, those ideas are serious ideas to be vetted and thoroughly discussed as opposed to making an initiative which, by the way, some state leagues have done. Where it's so simple in their states, they just...they don't go through the legislative process. If it was something of the magnitude of the importance of LR29CA is to us and if we were in one of those other states, we wouldn't have gone to the Legislature. So I just think that...I think that it's very important that the process...not that it be so difficult that no one can do it or that only the very wealthy can do it. I think that is a concern. But I also think this should be something that is an extraordinary situation, not that we go to the ballot and we've got 10 or 12 constitutional amendments to vote on. [LR393CA]

SENATOR LAUTENBAUGH: Well, I look at this proposed amendment as more of a restorative of the prior threshold that we had. Would you agree that's the intent, as I understand or as described? That this was taking us back to... [LR393CA]

LYNN REX: I think that's what the intent is. That's what my understanding is. [LR393CA]

SENATOR LAUTENBAUGH: Well then, looking back to the way it used to be before the threshold was raised, I don't remember any years where we had 30 or 40 things on the ballot. I mean... [LR393CA]

LYNN REX: No. We did not, no. [LR393CA]

SENATOR LAUTENBAUGH: Do you think we're really facing that risk if we go back to the way it used to be? [LR393CA]

LYNN REX: Well, I also think that this is fundamentally a different situation when you look at what's now happened--and again, it's not directly related to this but somewhat--with the Citizens United case. I think that there are some issues now with groups with large amounts of money that can already influence elections and do influence elections already. And if they decide that, you know, this process is so much easier, instead of just going to the Legislature because we have an idea, no need to go there and debate it and have 49 individuals that are elected by the citizens of this state debate it. Why do that? Let's just go ahead and get the money, put it out, and go forth and get a constitutional amendment to get it done. And I think right now it is very difficult even for people with money to get this done. [LR393CA]

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SENATOR LAUTENBAUGH: So you're thinking the interplay of Citizens United might have some effect and bringing more things to the ballot, even though what we're doing here is restoring the threshold to what we used to have back in the day? [LR393CA]

LYNN REX: I do think so. I think so. I could be wrong but I believe so, yes. [LR393CA]

SENATOR LAUTENBAUGH: Because, I mean, I read the outrage of Citizens United as, well, this is a problem because now it's not just the unions, it's everybody who has a lot of money in politics so we have got to do something. But there was a lot of money before, it was just different people. So you're saying that there's different money now so there might be an issue. [LR393CA]

LYNN REX: Well, I think that it would be...one would be hard pressed to say that things haven't changed after that court decision. I think it was a huge court decision and the implications are longstanding for this state and for other states too. With that being said, to this issue, we just think that this ought to be a process that is difficult, that the process, fundamentally, ought to be one of legislating whether it's a constitutional amendment that you decide to place on the ballot or a state statute, that that needs to happen after you've had people give and take. And I know, I've been involved in dealing with these sorts of issues for over 30-some years and my involvement with the League of Nebraska Municipalities. And I can assure you that this committee and other committees, too, have looked at a variety of ways to make corrections because there have been some measures that have been...that basically, where they are circulating petitions. And, frankly, tons of problems with those petition drives. Lots of problems with those petition drives. And then the issue was, okay, well, do we have the Revisor of Statutes? Do we have an opportunity for the Revisor of Statutes to clean it up so that we don't have circulated a petition and having people believe it's one thing and not another? There have just been...it's been one situation after another. And we certainly appreciate the fact...when the Legislature and others looked at the issue so that you cannot pay on a per signature basis because, literally, we were involved in trying to oppose a constitutional amendment where the proponents of that constitutional amendment were literally chasing folks down in parking lots. And the one video I will not get out of my head is one that Channel 7 ran of an individual running up to a lady. And she's trying to put her child in a car. She has her hand on the handle of her car and he has his hand over hers. So when it's on a...you know, so there are things that this Legislature has done, Senator Lautenbaugh and other members of this committee, to tighten up what people can and cannot do when they're circulating petitions. And I think that was all very appropriate. [LR393CA]

SENATOR LAUTENBAUGH: On a bill yesterday or the day before, I think it was, I suggested to Senator Avery that I think Senator Norris used paid circulators when he got the Unicameral on the ballot. Was I incorrect on that, or? [LR393CA]

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LYNN REX: I don't know. [LR393CA]

SENATOR LAUTENBAUGH: Yeah, he didn't either. Okay, well. [LR393CA]

LYNN REX: I'm sorry, I don't know. I wish I knew but I don't. [LR393CA]

SENATOR LAUTENBAUGH: I may be wrong but I don't have any more questions. [LR393CA]

SENATOR AVERY: Usually I know the answer but that time I didn't. [LR393CA]

SENATOR LAUTENBAUGH: You usually do. [LR393CA]

LYNN REX: Thanks for your time today. [LR393CA]

SENATOR AVERY: Thank you. Any other opponent testimony? Welcome. [LR393CA]

TERRI CRAWFORD: Thank you so much. Good afternoon, committee members. My name is Terri Crawford, it's T-e-r-r-i, last name, C-r-a-w-f-o-r-d. I am a member of Delta Sigma Theta Sorority, Inc. There are other members that are present here today. We are a sisterhood of 250,000-plus college-educated women who are registered voters. We are here in opposition of LR393CA. One of the collateral consequences that we've talked about in great detail is in all of our collective memory, I think all of us remember in 2008 when outsiders came into Nebraska with an initiative and I won't, necessarily, call out exactly what the numbers were. But we all have in our collective memory what that was where there were the type of petitions that were just described where people were, literally, run down to sign this petition. And it was lots of money outside of Nebraska that was involved in that. In fact, there was an organization, an institute, that actually held itself out to be a civil rights institute. And some of that had some arbitrary and deceitful language in the actual initiative that went forward here in Nebraska. So what we are saying is that there was arbitrary, confusing, and deceitful language in that particular initiative. It made it easy for outsiders to come into Nebraska and get those signatures and get it on the ballot. So to lower our percentages for a constitutional amendment from 10 percent of the registered voters to 5 percent, would certainly have the collateral consequence of having outsiders coming in and having a much easier time to get those signatures. To also do the same thing for a referendum from 7 percent to 3 percent could also have that same effect. So it is our position that this would not be good for Nebraska, for the citizens or its voters. And we, as registered voters ourselves, women who are educators, who are doctors, lawyers, Ph.D.s, educators, work in the school system here in Nebraska and outside of Nebraska, do not feel that this would be good for the people of Nebraska. And we would ask you to give some consideration to not moving this forward. Thank you. [LR393CA]

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SENATOR AVERY: Thank you. I was wondering if you guys were Delta Sigma Delta. [LR393CA]

TERRI CRAWFORD: We are Delta Sigma Theta Sorority, Inc. [LR393CA]

SENATOR AVERY: You've been here before. [LR393CA]

TERRI CRAWFORD: We have, every year. [LR393CA]

SENATOR AVERY: Well, welcome. [LR393CA]

TERRI CRAWFORD: Thank you. [LR393CA]

SENATOR AVERY: Let me see if there are any questions. [LR393CA]

SENATOR AVERY: Any questions from the committee? None? Thank you very much. [LR393CA]

TERRI CRAWFORD: Thank you. [LR393CA]

SENATOR AVERY: Any other opponent testimony? [LR393CA]

JEANNETTE JONES-VAZANSKY: Good afternoon, Senators, Senator Avery. [LR393CA]

SENATOR AVERY: Good afternoon. [LR393CA]

JEANNETTE JONES-VAZANSKY: It's good to see you again. My name is Jeannette Eileen Jones-Vazansky, V-a-z-a-n-s-k-y, and I'm here to represent the Lincoln Alumnae Chapter of Delta Sigma Theta Sorority, Inc. to oppose LR393CA. I'm just going to keep my comments a bit short because a lot of people have said what I was going to say. But as a historian who's taught my students about referendum, recall initiative, the populous and the progressives, of course, I think we all agree that it started as something to give more power to the people so that big money wasn't taking over politics, particularly in the Gilded Age, Progressive Era. But since that time, initiatives and referendum and recall have a double-edged sword, right? And throughout our history, those initiatives have been used to introduce what I would call specious legislation that's easier to put on the ballot instead of having issues, particularly, issues dealing with equal rights, civil rights debated in the Legislature. And oftentimes, as Miss Crawford said, Dr. Crawford said, there's a lot of lack of clarity on the petitions. And this was the case--and I will say the number--LB424, where various people were approached. The law was explained to them but then, subsequently or in hindsight, they realized that they did not know exactly what was going on. And it was the pitch. And I think, you know, that is a risk that we all

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have to take. But to lower the threshold from 10 percent to 5 percent leaves us vulnerable to more of those types of petitions with coded language being introduced into our state. And there's just a lack of transparency. So I'll just end by saying that, even though I believe in participatory democracy and I think that--I grew up in a state where we don't do that--but referendum and recall initiative has its place in our body politics that sometimes the laws that are introduced by those measures serve to disenfranchise and disempower our most vulnerable citizens. Thank you. [LR393CA]

SENATOR AVERY: Thank you. Questions from the committee? I don't see any. Thank you for coming. [LR393CA]

JEANNETTE JONES-VAZANSKY: Thank you. [LR393CA]

SENATOR AVERY: Any other opponent testimony? We're on LR393CA. All right, any neutral testimony? I haven't seen you, Mr. Gould, for a while. You've been working Mr. Geis too hard. [LR393CA]

JACK GOULD: Mr. Geis is picking up some of the load, I think. Senator Avery, my name is Jack Gould, that's J-a-c-k G-o-u-l-d, and I'm here representing Common Cause Nebraska. We kind of have mixed emotions here and that's why I'm in a neutral capacity because when Senator Avery was promoting the bill that would lower the statute numbers, we supported that. And we also supported the idea that the constitution is somewhat sacred and, therefore, should not be as vulnerable to public changes outside of this body. Our concern is that the numbers for statutes should be lower. And Senator Murante is absolutely right, it's taken the public out of what once was considered the second house of the Nebraska Legislature. And what we have done is put that second house in the hands of those who can afford to run petition drives. The concern now is, though, the constitution itself. And as you know, the federal constitution is something that is not changed easily. And I think that the Nebraska Constitution should be protected in the same manner. I'm not sure of what the number should be. I know that we have, whether it's 13 percent or whether it's...I think 5 percent is too low. I think that you would have to get together and decide what's reasonable as far as the upper number for a constitutional change. But it's something that should be taken a great deal more seriously and the number should be very carefully selected in order to protect that...it's the constitution, itself. Thank you. [LR393CA]

SENATOR AVERY: Thank you. I feel like deja vu. We had this debate in '07. Senator Garrett. [LR393CA]

SENATOR GARRETT: Thank you, Senator Avery. I appreciate you coming today and your testimony. Do you...Senator Murante has a number of different initiatives along these lines. And one of them is an on-line...being able to do on-line petitions. Do you think that would mitigate these reduced numbers? I mean, if we kept the numbers

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where they were, the mere fact that we could do it on-line, do you feel that would mitigate those numbers? I mean, I think you'd get a lot more people participating, obviously, if they could do this on-line. [LR393CA]

JACK GOULD: You know, I think that's probably the wave of the future. I think the big problem with a lot of the on-line efforts that are being made are questions of security and can they be verified. And in the case of...right now, I think you folks have already passed on General File, a bill that would make voter registration on-line. And I think, along with the Secretary of State and most of you, it appears that that is a secure system now, something that everybody feels comfortable with. I'm not sure about the petition process yet. But there will come a time when it's found to be secure and then I think it's something that will be done. As far as how that would affect the numbers, not sure. It definitely will give people easy access to the petition process. I think we have to sort of face that as we get closer to the time and as we're sure that the petition process is secure. [LR393CA]

SENATOR GARRETT: Thank you. [LR393CA]

SENATOR AVERY: Thank you, Senator Garrett. Anyone else? Thank you, Mr. Gould. [LR393CA]

JACK GOULD: Thank you. [LR393CA]

SENATOR AVERY: Any other neutral testimony? Welcome and good afternoon. [LR393CA]

KENT BERNBECK: (Exhibit 1) Good afternoon. My name is Kent Bernbeck, B-e-r-n-b-e-c-k from Lemoyne, Nebraska. And I come here to testify in a neutral capacity because it is my understanding this bill has no legs, no priority, so it's not going to go anywhere. So I'm not going to get up about it. But I did want to come here to make sure it didn't get hijacked, to make sure that there was some response to some of the, you know, some of the opposition testimony. But I'm not even going to go there. What I'd like to do is, since I do know that these committee hearings are read by courts ten years from now, I'm going to tell a short story which will be very, very relevant. On May 13, 1994, I was working night shift at the local mental hospital. And I was working night shift so I could stay home and baby-sit my two-year-old daughter and put my wife through nursing school. But during that time, I was also leading a statewide initiative petition. And the petition was to make sure the Legislature never overturned a successful petition. It was the result of the seat belt law being reinstated. And we had popular support, we were well on our way to being on the ballot. And then on that morning of May 13, I got a call from Allen Beermann--and I think I might have been napping and baby-sitting my daughter--and he called and said, Kent, the Supreme Court doubled the signature thresholds. What are you going to do? And he asked that in

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a very, very friendly context. And we became...I mean, Allen and I had been friends before that, we still are friends. And, you know, I didn't know what to do. I had never been faced with anything quite as large as this. You know, when we..."Cap" Dierks took on the role of calling a special session and I think we fell a member short on that. And I remember talking to Ed Jaksha and he...I said, Ed, you know, I'm a 29-year-old zealous petitioner. And I said, Ed, you know, we're going to get this done. We're going to get this done through the Legislature or whatever it takes. He goes, no, Kent, this is going to take ten years. This could take you a lifetime to do. And it's 20 years later and we're still here. And I guess the way I see it is, the people failed miserably. I mean, obviously, the Nebraska Supreme Court was corrupt on that day and they failed. The people are so shallow in this state, politically, that they failed. This room should be full of people and it's not. And...but most importantly, the Legislature has failed. It's failed. And what that's led to--and I've given you my testimony--is the consequences of that failure of the Legislature to act after all of these years. Initially it was just a Supreme Court judge that was removed. That was a big deal. We thought that would get everybody's attention. And then 20 years later, we find that what we said was true, that only one issue has ever been placed on the ballot using volunteers in 20 years. So I think the evidence shows that we've shut the process down. So in addition to that, I wanted to...I basically...it's like I told Jerry Warner once, Senator Warner. You know, after the seat belt thing, I said, you know, Senator Warner, didn't you think about the people had voted on that issue? And he sat back and he said, you know what? I think we might have talked about it. And I told him, I said, you created me. Well, the Supreme Court created me. And so what I've done, I've just spent 20 years costing the state of Nebraska millions of dollars in federal and state lawsuits. And I'm not done. The lawsuit that I have going right now will throw out the distribution...signature distribution measure in our constitution. And I did that to pay for the lawyer because it was guaranteed that that's going to win. But that's another consequence of your inaction. And I'm not looking at you individually, I'm looking at you as a group. So, I mean, so right now, I mean, a year and a half ago, two years ago, I was in federal court and I won the right, as well as every other Nebraskan or people from other states, to circulate a petition in any small town they want if they so chose to. That's another consequence of your inaction because as long as these signature thresholds are too high for me to be involved, I'm going to keep at it. And I'm going to cost this state millions of dollars by doing so. But along the way, I'm going to whittle away at every law that I can challenge. So I apologize for being so confrontational but that 20 years ago was a long time ago. And with that, I guess I see the light's on, so I'll wrap up my testimony. [LR393CA]

SENATOR AVERY: Thank you. [LR393CA]

KENT BERNBECK: And by the way, Senator Norris did use paid circulators. And I think it was on his third attempt. That's how hard it was back then, so. But anyway, if anybody has any questions, I'll answer them. If not... [LR393CA]

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SENATOR AVERY: Do you have any idea where the money came from? Was it his personal funds? [LR393CA]

KENT BERNBECK: Oh, I have no idea. [LR393CA]

SENATOR AVERY: Yeah. [LR393CA]

KENT BERNBECK: I didn't take the time to do that research. I should have, but. [LR393CA]

SENATOR AVERY: What is the status of your current lawsuit about the two-fifths, two out of five counties? [LR393CA]

KENT BERNBECK: That...it was ruled on Tuesday to move forward. Dave Domina is handling the case so I anticipate that we're going to win. The Supreme Court has already ruled on this issue, the Ninth Circuit has already ruled on this issue. So it's going to leave the state without a distribution requirement, which isn't necessary. And, quite frankly, I don't even care about the distribution requirement because it's not that hard to go to 35 different counties in this state. I've done all 93. I used it to pay my attorney which you guys will have to write the check for next year just like you did on the circulator...okay, I'm done. Yeah, okay. [LR393CA]

SENATOR AVERY: No, no, no, you have plenty of time. [LR393CA]

KENT BERNBACK: I appreciate your time. I'll come back next year. [LR393CA]

SENATOR AVERY: The light system doesn't cover questions. [LR393CA]

KENT BERNBECK: Okay. [LR393CA]

SENATOR AVERY: Senator Garrett. [LR393CA]

SENATOR GARRETT: Thank you, Senator Avery. I'm curious. What was your initial petition that led to this? [LR393CA]

SENATOR AVERY: It would have...a constitutional amendment that would have stopped the Legislature from overturning or substantially changing a successful petition. [LR393CA]

SENATOR GARRETT: Okay. Thank you. [LR393CA]

SENATOR AVERY: Any other questions? [LR393CA]

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KENT BERNBECK: We missed you, Senator. [LR393CA]

SENATOR KARPISEK: I just got here, sorry. [LR393CA]

KENT BERNBECK: That's fine. Thank you. [LR393CA]

SENATOR AVERY: Thank you for your testimony. [LR393CA]

KENT BERNBECK: You bet. [LR393CA]

SENATOR AVERY: Any other neutral testimony? [LR393CA]

AMBER ALLARD: My name is Amber Allard, and I am neutral in this regard. [LR393CA]

SENATOR AVERY: Spell you name, please. [LR393CA]

AMBER ALLARD: A-I-I-a-r-d. I have the utmost respect for those that get the bills passed and stuff. But I do believe that it is very difficult to obtain the amount of signatures on a petition due to the vast population in Nebraska that are in, you know, rural areas. I have worked with people who have worked the petitions. I agree that their candor is not always appreciated. But lowering the ability or lowering the number that is required might give the petitioners a better chance to explain themselves and giving them more purpose. Thank you. [LR393CA]

SENATOR AVERY: Thank you. Questions? Senator Wallman. [LR393CA]

SENATOR WALLMAN: Thank you, Chairman Avery. Yes, have you ever carried a petition yourself? [LR393CA]

AMBER ALLARD: Not yet. [LR393CA]

SENATOR WALLMAN: Okay. It's an interesting experience. [LR393CA]

AMBER ALLARD: That's what I hear. [LR393CA]

SENATOR WALLMAN: Thank you. [LR393CA]

SENATOR AVERY: Anybody else? Thank you, Ms. Allard. [LR393CA]

AMBER ALLARD: Thank you. [LR393CA]

SENATOR AVERY: (Exhibit 2) Any other neutral testimony? All right, I do have one letter of opposition from the Nebraska Farm Bureau Federation from the Director of

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State Government Relations, Jessica Kolterman. Senator Murante. [LR393CA]

SENATOR MURANTE: Thank you, Chairman Avery. I'll respond briefly to a couple of the points, especially one, because we've got the ghosts of 2008 were kind of stirred up again in what was a controversial petition initiative process. In the aftermath of that, there were clearly problems and downsides to having paid circulators from out of the state of Nebraska come in; clearly problematic. I don't think anybody thought that was a good process. But I would submit that we didn't really ask ourselves why they were coming in. What was the motivation for Nebraskans, largely, who were starting a petition initiative process to go out and hire out-of-state circulators--companies that specialize in this sort of thing--to come to the state of Nebraska? And the reason is because the only way they can get anything on the ballot is to pay out-of-state circulators by the signature. That's why we had out-of-state circulators who were getting paid by the signature. We created the demand for it because the bar is so high that no grass-roots organization can get anything on the ballot. So if you want to put those out-of-state circulators out of business--which we've already done statutorily--lower the threshold. Don't create the demand, they won't come. I mean, this isn't so much a philosophical issue anymore as it is an economic issue. If there is no demand for it, they won't come here. And if we allow a citizens' group--and we had people behind me who are here today watching this hearing from disparate backgrounds. We have people here who want to legalize marijuana and people who want to see various changes. They may, themselves, disagree on public policy. But they don't have access to the system because unless they can come up with \$1 million to pay the circulators, they can't get their issue on the ballot. So if you don't like it, if you think that's a bad way of doing business, then I've got...this is the constitutional amendment for you. And if you hate it, if you hate the...if that's the issue, it's the circulators are the problem, then let's let the people of Nebraska sign a petition without having to communicate with the circulator. We don't do that with voter registration. We don't say you have to stumble upon a circulator in order to get registered to vote. But that's how we do it with the petition process. There are things we can do to do away with out-of-state petition circulators. But if you want to keep them in business, then let's maintain the status quo because the only way that anything is going to get on the ballot right now is if people pay a lot of money to hire other people to circulate petitions. It was suggested that statutes and constitutional changes...that through the initiative process...I think it was the exact quote was, it should only be done in extraordinary circumstances, that we, as state senators can introduce 1,000 bills a year and that's no problem. But only in extraordinary circumstances and when there's been time and a labor-intensive process, should it be done by petition initiative. There's just one problem. That's not written anywhere in the constitution. The constitution outlines two ways of enacting laws in the state of Nebraska, by petition and by the Legislature. Nowhere in the constitution does it say the Legislature...all you have to do is come up with 25 people and you've got yourself a state law. And the petition initiative process is supposed to be like crossing a mountain range. That was not the system that was set up. Nobody came up with that idea. We

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may think that should be the right process but that is not the process that is outlined in our constitution. Right now, we have a process that eliminates the average Nebraskan from the petition initiative process and we ought to fix it. Thank you. [LR393CA]

SENATOR AVERY: Thank you. Do you think that might have been the intent of the Legislature... [LR393CA]

SENATOR MURANTE: Oh, yes. [LR393CA]

SENATOR AVERY: ...jealously protecting and guarding its prerogatives to make laws? [LR393CA]

SENATOR MURANTE: I don't think there's any doubt about it. [LR393CA]

SENATOR AVERY: If you were the petition czar for the state of Nebraska... [LR393CA]

SENATOR MURANTE: Uh-huh. [LR393CA]

SENATOR AVERY: ...how would you structure it? How would you structure, including the bill you have before us... [LR393CA]

SENATOR MURANTE: Uh-huh. [LR393CA]

SENATOR AVERY: ...how would you set it up and what process would you use? [LR393CA]

SENATOR MURANTE: Okay. I would say first of all, the top...for me, the top priority isn't so much a matter of the circulators or the people who want...who are organizing the law change. To me, the top priority is the average Nebraskan who are in their home who want to sign a petition. And if we can address that problem and let them sign the petition without stumbling...needing to stumble across a circulator, we've made an important first step. If we can just say you can go to your county election commission, you can go to the Secretary of State's Office, you can go on-line and you can choose to sign a petition if you want to. That is an important first step. Lowering the signatures, I think is...it's important insofar as we will be reinstating the constitution as it was when the people voted on it. And we will be, essentially, overthrowing a Supreme Court decision. Right now, our thresholds are set by a Supreme Court decision, not by a vote of the people. And I think that's wrong. And I think if we can get those two things done...the bar is so high--55,000 signatures, even if this passes--that bar is so high, you're not going to see 30 issues on the ballot. That is a significant number of Nebraskans who have to agree on any given issue. And there's just no evidence of it. We've been there before. It's not a hypothetical conversation that that downside doesn't exist, we've done it. So that's where I'd like to see it and that's where I'd like to go with it. [LR393CA]

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SENATOR AVERY: Are these exactly the percentages in the constitution of 1875?
[LR393CA]

SENATOR MURANTE: No. There...as it was originally drafted, it was based on the number of people voting in the previous gubernatorial election. I drafted it this way because these numbers are almost identical to those numbers in terms of how many signatures would be needed, the actual raw signatures. But it seems to me like this...if we put this on the ballot and I'd have to go out and campaign or I'd get to go out campaigning for this constitutional amendment, it's going to be a lot easier to explain we're cutting the signatures in half than it is to explain the distinction between registered voters and votes cast in the last election and have to explain how we got to this point, it seems. This seems like a way that is easier. [LR393CA]

SENATOR AVERY: This is more stable. [LR393CA]

SENATOR MURANTE: Yes, uh-huh. [LR393CA]

SENATOR AVERY: I knew that would be your answer. [LR393CA]

SENATOR MURANTE: Great minds think alike, Senator Avery. [LR393CA]

SENATOR AVERY: Well, that's a rational response. Any other comments or questions?
Senator Garrett. [LR393CA]

SENATOR GARRETT: Thank you, Senator Avery. Senator Murante, I admire your passion for all things voting. I mean, I truly do. I'll pose the same question to you. Your initiative to make, you know, automated on-line balloting a possibility, do you think that would mitigate the reduction in numbers? I mean... [LR393CA]

SENATOR MURANTE: It would be an enormous step in the right direction. I think that, absolutely, there's no doubt about it that it would. I don't see...to sign a petition, you don't even put your Social Security number attached. And if we can do it with voter registration, we can do it with signatures. You need a driver's license, any sort of verifiable information. It's not confidential. You can't have your bank accounts hacked. You don't need any of that information to be included to sign a petition on-line. I think it would be an important step in the right direction. And if we can concede that we have the technology to do it with voter registration, we can have...we have the technology to do it. It's just a matter of do we have the will to do it. [LR393CA]

SENATOR GARRETT: Yeah. Thank you. [LR393CA]

SENATOR AVERY: Senator Lautenbaugh. [LR393CA]

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SENATOR LAUTENBAUGH: I second the admiration for your passion. You could be an election commissioner some day if you play your cards right. We'll see. [LR393CA]

SENATOR MURANTE: Thank you. Was that a question? [LR393CA]

SENATOR AVERY: He may not want to be condemned to that. [LR393CA]

SENATOR MURANTE: I'll let Commissioner Bena know. [LR393CA]

SENATOR AVERY: Senator Karpisek. [LR393CA]

SENATOR KARPISEK: Thank you, Senator Avery. And Senator Murante, I agree. I was on something here, believe it or not, I was involved in the State Fair move and there was a petition that was going around. And it is hard to get all those signatures and it didn't work because there were other games being played. But I worry about going on-line and being able to do that. Right now, you're supposed to read what it is to the person signing. How would you do that on-line to make sure that they really know what they're doing because, unless you're much different than me... [LR393CA]

SENATOR MURANTE: Uh-huh, right. [LR393CA]

SENATOR KARPISEK: ...someone reads something about your bill and sends out a crazy e-mail and you get 1,000 e-mails that have nothing to do with your bill but they're going to shoot you anyway. So now, what...I got one of those. So what...how do you avoid that from just a bunch of people who don't even know what they're signing? [LR393CA]

SENATOR MURANTE: Well, if we have an on-line site, it requires an act of volition, right? Somebody has to consciously make an effort to go on the Secretary of State's Web site. It's not like the current circulator where you can have somebody, you know, come up to you and say, sign this petition, it'll lower your property taxes and that's the extent of what you know. [LR393CA]

SENATOR KARPISEK: Well, they're supposed to read it. [LR393CA]

SENATOR MURANTE: They're supposed to. Admittedly, that doesn't always happen and I have to concede that is the case and there are problems with what we have right now. But there is an extent to which we have to trust the voters. They have a right to make uninformed decisions. They go to the polls and vote for us. They don't necessarily know everything...I mean, clearly, they have good judgment since we're all here. But...there may be some exceptions to that rule but they have that right. And if somebody wants to go on-line, I'll be honest with you, if...whenever a third party

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attempts to get on the ballot, whatever they are, whatever they believe, I always sign it. I will sign any party so that anyone has an opportunity to get on a ballot. And there may be some people who say, you know what? I'll sign everything. That's their right. They can sign a petition for any reason or no reason or stupid reasons. It doesn't matter, it's their right. [LR393CA]

SENATOR KARPISEK: And I agree and I figured you would make that argument also. I just think now, with the Internet, where anyone can send something out that has absolutely nothing true in it... [LR393CA]

SENATOR MURANTE: Uh-huh. [LR393CA]

SENATOR KARPISEK: ...would say go to this Web site because...I mean, they say send him a e-mail because he's trying to take your guns away. [LR393CA]

SENATOR MURANTE: Uh-huh. [LR393CA]

SENATOR KARPISEK: And so you get 1,000 nasty e-mails. [LR393CA]

SENATOR MURANTE: Uh-huh. [LR393CA]

SENATOR KARPISEK: It's kind of the same thing. And I agree, we can't help if they're not involved and they do vote anyway. But, wow, you can really get yourself into some trouble. [LR393CA]

SENATOR MURANTE: Well, if you'd like a terms and conditions page on the Secretary of State's Web site that says read everything, I would be happy to put that in the bill if we get done. [LR393CA]

SENATOR KARPISEK: Sure. It's just like when I get on Amazon or something. Make sure you read all the terms. Yeah, right. [LR393CA]

SENATOR MURANTE: We'll get that done for you, Senator Karpisek. [LR393CA]

SENATOR KARPISEK: That is my fear but I do know that it's very hard to get on. Heck, I can't even get anything on the ballot, being a senator. [LR393CA]

SENATOR MURANTE: It's tough, isn't it? [LR393CA]

SENATOR KARPISEK: Yeah. [LR393CA]

SENATOR AVERY: You have to get 25 votes. [LR393CA]

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SENATOR KARPISEK: I know. [LR393CA]

SENATOR MURANTE: Yeah. [LR393CA]

SENATOR AVERY: Any other questions? Thank you, Senator. [LR393CA]

SENATOR MURANTE: Thank you for your consideration of this issue. [LR393CA]

SENATOR AVERY: We now have...we will...that ends the hearing on LR393CA. We'll go to LR411CA. Senator Karpisek. [LR393CA]

SENATOR KARPISEK: I was saying I'm going to start my casino petition tomorrow. [LR411CA]

SENATOR WALLMAN: Would that be a committee? [LR411CA]

SENATOR KARPISEK: Not tonight. [LR411CA]

SENATOR AVERY: Welcome, Senator Karpisek, to the Government Committee. [LR411CA]

SENATOR KARPISEK: Thank you, Senator Avery. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. I introduced LR411CA to restart the discussion of how much authority the state should give to local governments to manage their own affairs. This CA proposes a constitutional amendment to grant authority to municipalities and counties, the power to determine their own local affairs if those decisions are consistent with the laws of this state. The Legislature would determine which matters are those of statewide concern. The amendment provides that the Legislature may, by the law, delegate its power to...its power so that matters of local concern are handled by municipalities and counties without the necessity of further action by the Legislature. This amendment would allow the Legislature, rather than the courts, to determine which matters are of statewide concern and would allow the Legislature to regulate matters of local concern to municipalities and counties. In Nebraska, two cities, Omaha and Lincoln, are home rule cities. Because of court decisions limiting local authority, other cities have chosen not to have home rule charters. Under current law, a city or county can only do those things that are authorized by the Legislature. Because of this, the Legislature has to enact laws every year to modify local authority on what appear to be minor matters. The issue is whether some of these decisions should be left to the local elected officials. I don't expect this proposal to pass this year, but I do think it's important to examine this issue. It may be subject for further discussion through an interim study. I'd be glad to try to answer any questions but representatives from the League are behind me that could answer them much better. [LR411CA]

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SENATOR AVERY: Thank you, Senator. Questions from the committee? You have a question, sir. Senator Wallman. [LR411CA]

SENATOR WALLMAN: Senator Karpisek, is Wilber and Crete and Beatrice interested in this, you think? Do you know? [LR411CA]

SENATOR KARPISEK: No. This is just Lincoln and Omaha. Well, again, you better ask members from the League. [LR411CA]

SENATOR WALLMAN: Sure. [LR411CA]

SENATOR KARPISEK: Right now, I guess there may be more if we would do this. [LR411CA]

SENATOR WALLMAN: Uh-huh. Thank you. [LR411CA]

SENATOR AVERY: Why do you think that we restrict the independence of smaller communities, counties, smaller cities? [LR411CA]

SENATOR KARPISEK: Why do we? I think because otherwise there would be such a patchwork across the state of different rules, different ways that they go about things, different laws. The way we have it now, at least we have a lot of things that are the same. However, if we think about so many bills that are brought, probably especially to Urban Affairs, are a lot dealing with Omaha and/or Lincoln and we have to change what seem to be very minor things. [LR411CA]

SENATOR AVERY: Well, under home rule, cities like Lincoln and Omaha still have to conform to the same laws of the state as other communities, same rules. [LR411CA]

SENATOR KARPISEK: They do. I think by this CA, the Legislature would be able to say what we're going to still control but maybe some of the more minor things that they could control on their own without having to come to us to change. [LR411CA]

SENATOR AVERY: Does that mean they're going to raise my property taxes if we were to pass this? [LR411CA]

SENATOR KARPISEK: I don't think that that would be one of them but I'm sure they would like that to be. [LR411CA]

SENATOR AVERY: Yeah, I think so. Any other questions? Thank you. [LR411CA]

SENATOR KARPISEK: Thank you. [LR411CA]

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SENATOR AVERY: Proponent testimony on LR411CA? Welcome, sir. [LR411CA]

GARY KRUMLAND: (Exhibit 1) Senator Avery and members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LR411CA. This is a home rule charter amendment. It's very similar to the law in Iowa and it was pretty much the same proposal that was introduced in 2011 and before this committee by Senator David Landis and then, I think, in 2004 by Senator Adrian Smith. And it raises a question of how much authority does the local government have versus what the state allows. And I'll just give you a little background. The Nebraska Constitution does say that any city with a population of 5,000 can have a charter for its own government. And those that have a population of over 100,000, can have a home rule charter. It doesn't kind of define the difference between the two. And as Senator Karpisek said, only Lincoln and Omaha are those that actually do have the home rule charter now. The city of Grand Island had a charter in the--I can't tell you the exact dates but it's in the mid twentieth century--and got rid of it because they were finding that because of court decisions, it didn't give them any extra authority. It just meant that they had to amend the charter whenever they wanted to do something in addition to going to the Legislature and getting things done. Part of this is because of court decisions over the years. I mean, going back to the 1920s, the court has looked at issues of home rule and said we need to look at things at a statewide interest, which the Legislature controls, and the things of local interest, which the local government can control. And pretty much everything they've gone before them, they've determined was a statewide interest, including parking garages that they said that's a state interest and the state needs to get involved with that. So for most cities, because of the court cases, there really isn't a home rule option in Nebraska. And every few years, because of different things that happen, we get asked to bring this before the Legislature again to look at it to see if it's something that we need to look at. I think last year what triggered it is, there was a bill before the Urban Affairs that got passed, Senator Davis' bill, LB643, which was a bill that adjusted the height of weeds at which a city could order a property owner to cut their weeds. And the height was in the statute and in order to lower it, we had to get a bill passed by the Legislature. And that did happen, but then people...some of the city officials start thinking, is that something that the Legislature really needs to do or is that something that local officials should be able to make a decision on? And so that is kind of the general issues of what we're looking at. I know that, I mean, it was not intended that this would pass this year, but we do think it's something that should be discussed and maybe over the next few years, looked at and see if there's changes that should be made. The handout I gave is what's called Dillon's Rule. It kind of...Dillon is a judge from Iowa in the mid 1800s who laid down the rule--and it's in italics in the middle there--basically says: A municipal corporation possesses only those powers that are granted by the Legislature or those that are implied in that grant or those that are essential to fulfill its purpose of the corporation. So the rule kind of is--we get asked a lot

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from city officials of--where does it say I can't do this? In Nebraska, the rule is you have to find where it says you can do it. Otherwise, you can't do it. And there may be some reason to look at this and see if there should be a change. Other states are varied. Some states do have a true home rule where they have a charter and they make decisions on matters of local interest. And then the Legislature gets involved and say, on these issues, these are statewide interests. And these, you will do it this way. And so, I guess, that's what we're looking at in this bill, so. [LR411CA]

SENATOR AVERY: Thank you, Mr. Krumland. [LR411CA]

GARY KRUMLAND: Yeah. [LR411CA]

SENATOR AVERY: Why couldn't the Legislature do this without a constitutional amendment? [LR411CA]

GARY KRUMLAND: I suppose you could. And maybe the weed bill last year is an example. They said instead of lowering it from 12 inches to 8 inches, the Legislature said, we'll let the city council and the village board determine how high the weeds have to get before we ask the property owner to mow them. So there's some things that you could do. But I'm not sure how far the Legislature could go. [LR411CA]

SENATOR AVERY: You're not sure how far the Legislature should get into the weeds? [LR411CA]

GARY KRUMLAND: They would go, put it that way. Uh-huh, yes. [LR411CA]

SENATOR AVERY: Questions from the committee? Thank you. [LR411CA]

GARY KRUMLAND: Uh-huh. [LR411CA]

SENATOR AVERY: Any other proponent testimony? [LR411CA]

LYNN REX: Senator Avery and members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And just very quickly, a couple of points. In response to your question about couldn't this be done by statute, the Nebraska Supreme Court has repeatedly held in case after case that Nebraska is deemed to be a grant of powers state. And so, therefore, as Gary outlined to you, we only have the powers the Legislature grants, expressly implied or necessary to effectuate our corporate powers which is, in essence, a (inaudible) of Dillon's Rule. With the draft that you have before you, this bill would actually reverse Dillon's Rule. We, obviously, would like to work with the Legislature at some point to try to determine those types of those areas that truly should be a pure, local concern. The League has asked on a repeated basis, you know, why does the League have so many bills

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introduced? We have two legislative committees, one committee representing all cities of the first class, Lincoln and Omaha, another committee representing about 40 representatives of second-class cities and villages. And even our own members will say, well, why do we have to go to the Legislature with that? That seems like such a dinky thing, you know. We've got...I would say on an annual basis, we have anywhere from five to ten major, major issues. And then we have lots of them and, of course, a lot of our work is trying to prevent legislation from passing that takes power away from cities. But by the same token, we put in probably 20...senators are kind enough to put in 20 to 30 bills for us a year that deal with, as Gary noted before, just the grass of...you know, the height of grass. And last year the Urban Affairs Committee was kind enough to say...actually, Senator Bob Krist said, can't we...if we can't trust local governments in deciding what the height of grass ought to be, you know, we ought to reconsider what we're doing here. And frankly, that really kind of created a genesis to reconsider LR20CA which was introduced by Senator Dave Landis in 2001, which is essentially what you have before you here today to say, are there really some things that are purely of local concern that the Legislature feels should be dealt with on a local basis and can be dealt with on a local basis effectively? We're not talking about having a different criminal code. We're not talking about the kinds of things that, clearly, you need to have a statewide impact on. So...and we do think, quite frankly, with term limits and just the time constraints that you have as state senators, that there probably are a lot--sadly, some of our bills--that maybe don't need to be introduced if we had more power on the local level and cities actually had some powers--and villages--on the local level. And again, those are subject to initiative referendum. Those are challenged on a much more frequent basis, by the way, than what happens on a state level. And that's okay because on a local level, those are...there's a lot of discussion about what happens. We recently went through the Fremont issue. And basically, everyone...I think that there's a lot of concern, there's a lot of discussion, a lot of debate on that. And people probably wish...some people wish it would have turned out differently and others are very pleased with the way it did turn out. So in any event, we do believe that it would be important, at some point, for the Legislature to consider those types of issues that really can be of local concern. I'd be happy to respond to any questions you might have. [LR411CA]

SENATOR AVERY: Thank you, Ms. Rex. [LR411CA]

LYNN REX: And just one closing thought, Senator, if I may. And that is this, that in addition, you may note, at least, at least once or twice a year, in the World-Herald or the Lincoln Journal Star, someone will say, why do senators put in so many bills? We ought to limit senators on the number of bills they can have. In fact, there was one effort several years ago where there was a discussion of having an initiative effort to limit each senator to having only so many bills. And we told our own members, you know, that's not a good idea for you because for you, as municipal leaders, you are limited to what the Legislature allows you to do. So you can imagine if there are senators, for

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example, Senator Garrett...as you're working through your process and as other senators already know, that, you know, there will be some huge issues back in your district that you have to address whereas maybe your cities got two or three minor things. But it's important to them just in terms of their ability to deal with infrastructure or other issues. So we just think that maybe the time has come for the Legislature to have a serious discussion about this. [LR411CA]

SENATOR AVERY: I think my staff would support such an initiative to limit bills. [LR411CA]

LYNN REX: Thanks for your time today. [LR411CA]

SENATOR AVERY: Thank you. [LR411CA]

LYNN REX: And thanks, Senator Karpisek. [LR411CA]

SENATOR AVERY: All right, do we have any more proponent testimony? I don't see any. Opponent testimony? Neutral testimony? Are you neutral, Senator? All right, that ends the hearing on LR411CA and the hearings for today. Thank you all for coming. I think it's all the hearings for this session. [LR411CA]