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Transcriber's Office

Government, Military and Veterans Affairs Committee  
March 11, 2015

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[LB576 LR73]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, March 11, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR73 and LB576. Senators present: John Murante, Chairperson; Tommy Garrett, Vice Chairperson; Dave Bloomfield; Mike Groene; and Matt Hansen. Senators absent: Joni Craighead; Tyson Larson; and Beau McCoy.

SENATOR MURANTE: Welcome to the Government, Military and Veterans Affairs Committee. My name is John Murante. I'm the Chairman of the committee and state senator for District 49, which includes Gretna, Chalco, and northwest Sarpy County. We're here today to hear one resolution and one bill. The items will be taken up on the order on which they appear on the agenda which is listed outside of this room. If you are here to testify on either of the proposals before us, I would suggest...ask that you fill out one of these green pieces of paper indicating your support, opposition, or neutrality on any of the bills before us. If you are here to testify, or if you are here and do not wish to testify but would like to register your opinion on a bill, we have a sign-in sheet that's located on either side of the room. When you testify, we ask that you begin by stating and spelling your name for the record. It's very important for our transcribers. The order of business with which we will proceed is that the introducers of a bill will make introductory remarks. We will then proceed to proponents, followed by opponents, then neutral testifiers, and closing remarks will be offered to the state senator who introduced the bill. We ask that you listen very carefully and try not to be repetitive. In the Government Committee we do use the light system. Every testifier is limited to four minutes of testimony. When the yellow light comes on that means you have one minute remaining, and we ask that you begin wrapping up your testimony. When the red light comes on, we will ask that you conclude your testimony and we will open up the committee for questions that they may have. At this time I'd ask for everyone in the audience to turn off or silence any cell phones or other electronic devices and remind you that if you have a prepared statement, an exhibit, or anything to distribute to the committee, that you provide the page with 12 copies and he will distribute it to us. If you don't have 12 copies, again please give it to the page and he'll make copies for you. Our page today is Seth Thompson from Ogallala, Nebraska, and with that I will proceed with the introduction of the members of the committee. To my immediate left, state Senator Matt Hansen will be here shortly, he represents Lincoln, Nebraska; to his left, state Senator Beau McCoy of Omaha, he is traveling and will not be with us today; Senator McCoy's left, state Senator Joni Craighead, also from Omaha is ill and will not be with us today; to my far left, Sherry Shaffer is our committee clerk; to my immediate right is Charles Isom, the committee's research analyst; to his right, state Senator Tommy Garrett, is the Vice Chairman of the committee and state senator from Bellevue; to his right, state Senator Dave Bloomfield of Hoskins, Nebraska; to his right, state Senator Tyson Larson from O'Neill; to his right and to the far right, state Senator Mike Groene of North Platte, Nebraska.

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SENATOR GROENE: Far right.

SENATOR MURANTE: To the far right. (Laughter) Aptly placed on the committee.

SENATOR BLOOMFIELD: Senator Campbell used to call it the extreme right.

SENATOR MURANTE: The extreme...the extremist on the committee to the far right, state Senator Mike Groene. So, with that we'll proceed to the first item on the agenda, LR73. Senator Ebke, you're recognized.

SENATOR EBKE: (Exhibit 1) Thank you very much, Chairman Murante and members of the Government Committee. I'm Senator Laura Ebke. That's E-b-k-e. I am from Crete. I represent the 32nd Legislative District which is the home of four counties, Saline, Fillmore, Jefferson, and Thayer County, and a small portion of Lancaster County. Thank you for the hearing today on LR73 dealing with the allocation of presidential electors. One of the rare times, perhaps, when I get to come before a committee that is probably more friendly to some of my ideas and I'm presenting to people who may not be so happy with my ideas today. (Laughter) So, on that note, that's why I think this is kind of an interesting subject. What people across the political spectrum in Nebraska feel that our proportional system of electors is the best way to do this. I know that there are also people on both sides of the aisle who disagree. It's unfortunate, I think, that in honest disagreement, partisan issues can muddy the water so much and take away from a good discussion. And I hope that we can have a good and honest discussion about this today. I would note that over the course of the last two days, I've received a number of phone calls, e-mails, Facebook messages, and a significant number of them have been both from my district and from the 2nd Congressional District and with the exception of, I think, one, maybe two, they have all been in favor of the current system...our current system of allocating in a sense of fairness. The purpose of LR73 is to urge other states to adopt a proportional method of allocating presidential electors used by Nebraska and Maine. If adopted by the other 48 states, uniformity in the electoral process would be achieved. Now, obviously, you know, we can't force other states to do anything. We can just urge, but it seems an appropriate thing to do especially in light of the fact that there are actually a number of states out there who have considered that in recent years. Michigan is one that I've seen recently. Pennsylvania is considering it. There are a few others that are considering moving to some sort of proportional representation system. I passed a copy...at sort of the risk of appearing to, you know, possess a significant amount of hubris, I went ahead and passed out the notes that I spoke from the other day on the floor. I know that many of you heard at least some portion of what I talked about, but I wanted to make sure that you had sort of the full flow of things. I'm not going to belabor this point a lot. We've had a lot of discussion this past week related to this bill, and it's interesting that they both came up at the same time before we actually finished discussion on LB10. But what I said in the statement

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during the floor debate applies very much to my reasoning for LR73. So, if you have any questions, I would be happy to entertain them, otherwise we can perhaps get done early. [LR73]

SENATOR MURANTE: Thank you, Senator Ebke. I do have a couple of questions for you. First of all, I appreciate very much your thoughtful approach much like my conversations with Senator Avery, and my predecessor who is a political scientist by nature, so it was very...always very interesting and informative to have sort of philosophical discussions about issues like this. But...so, I have a couple of questions. First, your resolution in...on page 1, on the final whereas, says that in the interest of fairness, all states should have the same method for allocating electors. Why is it your opinion that it is important for all states to have the same method of allocating electors? [LR73]

SENATOR EBKE: Well, I don't think that...I think it's from a democratic fairness standpoint, I think that would be the fair thing to do. Now, I don't...I don't presume to tell all states what they must do, and it's a constitutional responsibility for each state to determine the appropriate method. So, I, you know, but I think that in the interest of fairness it would be nice if all states did because then it wouldn't put us in a position or any other state in the position of, you know, kind of being the lone wolf out there. [LR73]

SENATOR MURANTE: So, whether or not...so would you agree with the statement that irrespective of what system for electing a president you or I may think is best, and I suspect if Senator Larson was here he'd advocate for his national popular vote again, and we'd all have maybe slightly different variations on how to elect a president. [LR73]

SENATOR EBKE: I don't favor that, by the way. [LR73]

SENATOR MURANTE: I'm profoundly shocked, Senator Ebke. (Laughter) But it seems that in your resolution you are articulating that there is a state interest in making sure that all states in the union, as a matter of fairness, use the same method. [LR73]

SENATOR EBKE: It is certainly advantageous, I guess, if all of the states use a similar method. But again, I would never presume to tell all states that they need to. I mean that is the constitutional role of each...of each legislature. You know, I don't think that when it gets right down to it, that states ought to be in the business of telling others what to do. We can make the case. We make the argument that it would be fairer if you did this. [LR73]

SENATOR MURANTE: Right. [LR73]

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SENATOR EBKE: But when it comes right down to it, we don't have the right to tell, you know, Iowa how to do things and Illinois doesn't have the right to tell us how to do things. And so, we could say it would be fair, it would be more fair if everybody had a one-house nonpartisan legislature, but that doesn't mean that they're going to do it, so. [LR73]

SENATOR MURANTE: Right, but if we say as a matter of public policy that it's in the best interest for every state to do it the same way, and we understand we can't control what the other 49 states in the nation, how they allocate the electoral votes, we can only control us,... [LR73]

SENATOR EBKE: Right. [LR73]

SENATOR MURANTE: ...then why would we choose to be the anomaly when we have stated as a matter of public policy that it's important that there not be anomalies? [LR73]

SENATOR EBKE: Well, maybe we need to look at the...I don't think that was...that wasn't the intent that we were trying to get to with that language. Obviously, the intent we were trying to get to with that language was that it would be more fair for everybody to move in our direction. [LR73]

SENATOR MURANTE: But that's not what it says. It says all states should have the same method for allocating presidential electors. Forty-eight states are doing it one way. [LR73]

SENATOR EBKE: Sure. Fair enough. [LR73]

SENATOR MURANTE: So, why are we choosing to be the anomaly? [LR73]

SENATOR EBKE: Then we're going to make Maine the anomaly. [LR73]

SENATOR MURANTE: Well, you know, like you said, we can't bind other legislatures, we could just...we could choose to be... [LR73]

SENATOR EBKE: Yeah. We're actually not an anomaly, though, because Maine is doing it as well. [LR73]

SENATOR MURANTE: So, we are the extreme exception to the rule, so the logic...I agree with your logic that there may be better ways of electing the President of the United States other than a state popular vote where the winner...but until we all...it's one reason why Senator Larson's

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proposal, you may not...you and I may not like the merits of it, but it does sort of say, if we're going as a nation take a leap, we're going to take a leap together and states have to opt in. [LR73]

SENATOR EBKE: Right. [LR73]

SENATOR MURANTE: So, why don't we do that in Nebraska? We say we created...say, we'll do what everybody else does unless everybody else decides to change, and then if everyone else decides to change, then we're on board with that too. [LR73]

SENATOR EBKE: Well, but somebody has to be first. You know, somebody has to be first if you're going to have any kind of change, and I realize that, you know, the ideas back in the late '80s, early '90s when this was switched when we went away from the winner take all was, you know, was kind of...this notion that we were all going to...everybody was going to move in that direction and it didn't happen, obviously. But by the same token, I don't know how much of an impetus there was, or how much effort there was to move everybody in that direction. You know, the fact that after the last election, the RNC, the Republican National Committee chair suggested that this ought to be the case in some states, the fact that there were a number of...there are a number of states that are currently considering it suggests to me that we may just be, you know, in front of the way there. [LR73]

SENATOR MURANTE: Well, it seems to me that if we're going to employ the logic that LR73 would have us...and I agree with the sentence, but if we're going to employ the logic and be consistent, we ought to say something along...we ought to pass a bill somewhere along the lines of, we're going to do it the way everybody else does and if everyone else switches and we can convince them that our way is the right way, and we pass LR73 and other states come on board, then when they...we can have a trigger mechanism. When they come on board, we'll jump in with them. [LR73]

SENATOR EBKE: And I believe that there was an amendment to LR10 that suggested that. The problem with that, that I see, is that I'm not sure that we can bind future legislators to moving down in that path...down that path, so...because they would still have to change the law. I don't think that you can have an automatic trigger that says, okay, when we get to this number, when there's 15 states or 10 states, or whatever the magic number is, I'm not sure that we could say, well, automatically the laws are going to change. [LR73]

SENATOR MURANTE: It doesn't change a law. It's a trigger. It's just like when a county crosses the 100,000 people, it's no longer...it's just a trigger. It's a new class of counties. We have trigger mechanisms all over the law. Once you meet a certain threshold or do a certain thing, there's a trigger. [LR73]

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SENATOR EBKE: But this is a constitutional responsibility and I'm not sure that absent...we can talk to legal counsel, I guess, but I'm not sure that absent in an explicit statute changing our method of selection, that we can do that, that we can trigger an automatic change. If ten states decide to adopt it, that we will go back if we were at winner take all, that we would go back to this automatically... [LR73]

SENATOR MURANTE: I would say if the bill were framed that if 15 states do it, then a state senator going forward will have to introduce a bill and that would certainly be... [LR73]

SENATOR EBKE: Precisely, which means it becomes a new subject of contention. [LR73]

SENATOR MURANTE: But that's not what, as I understand the amendment, that's not what the amendment does. It's just, we're just going to use one system unless a group of other states change it, and if a sufficient number change it, then we will too. That doesn't require a new bill. It doesn't require any future Legislature to do anything. It's just a trigger. [LR73]

SENATOR EBKE: Okay. Well, I mean, you know the bill election system better than I do, obviously, but we should talk to legal counsel before we get to that point. [LR73]

SENATOR MURANTE: Okay. Well, we can certainly do that, definitely. And in your testimony on the floor you had stated repeatedly, and you had stated to me off the microphone that it was your...it's your belief that the system that Nebraska uses is closest to the founding fathers' intent. If it's closest to the founding fathers' intent, then why did it take almost 200 years for any state to employ the system that Nebraska has right now? [LR73]

SENATOR EBKE: Well, but if you read my time line, there were a number of states who split their electoral votes up until 1932. I mean, I think it was the assumption of the founders that that's the way it was going to be. And in 1932, that's kind of a trigger day from a political science standpoint when the Jacksonians and the Democrats in the United States became...and the Whigs, the other party at the time, became dominant, you know, dominant players nationwide and within the state. So, we moved from a two-party system in Congress to a two-party system in the rest of the country at about that time. And so, I think that in reality, I think that it was a power play that the states moved to a winner-take-all system because that was their constitutional authority. They had the constitutional authority to do so. [LR73]

SENATOR MURANTE: Well, in those days there were no states that were using the system that Nebraska is using now. It was largely state legislatures would elect electors and those people

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would vote for whoever they wanted to largely, and in many cases, there wasn't even a popular vote to be conducted. [LR73]

SENATOR EBKE: In some states there were popular votes, but the fact that they split based on congressional districts still points to the fact that the founders decided that's the way it would happen because... [LR73]

SENATOR MURANTE: But there was no binding...there was no binding of electors in those days that the electors who met at the electoral college would vote on the basis of how fair the voters in their congressional, they didn't even pay any attention to the...there was no binding... [LR73]

SENATOR EBKE: But there was no assumption that the legislatures could bind electors to voting for all one person either. [LR73]

SENATOR MURANTE: Well, I'm not advocating for that system. I'm saying that back then... [LR73]

SENATOR EBKE: Yeah, essentially that...essentially that's what winner take all is. It's binding all electors to vote for whoever wins the popular vote in the state. [LR73]

SENATOR MURANTE: Well, I agree with you, but that's...the discussion right now is whether the founding fathers intended presidents to be elected using the system that Nebraska does right now and not the...the way they elected a president was fundamentally different from the way that we did. It doesn't have any comparison to each other. [LR73]

SENATOR EBKE: Well, we're going to disagree on that. [LR73]

SENATOR MURANTE: Senator Ebke, is it your position that prior to 1900 that there was a single state in the Union that conducted a popular vote election where an elector was bound by the popular vote from within a congressional district? [LR73]

SENATOR EBKE: Prior to 1900? [LR73]

SENATOR MURANTE: Yes. [LR73]

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SENATOR EBKE: Well, there have been countless...I'm trying to think through all the elections and see if I can come up with a good example for you. No, my position is that the electors are...were selected on the basis of the total number of senators and the total number of representatives... [LR73]

SENATOR MURANTE: Okay. [LR73]

SENATOR EBKE: ...as they are now, and that the founders intended, or at least expected, that they would split their votes in whatever manner they did. Winner take all demands that they all stay in line and vote the same way regardless of what their constituents would...you know, intend. So, there you go. [LR73]

SENATOR MURANTE: Okay. So you would agree that the constitutional provision that you're discussing which allows state legislatures to allocate their electors on a plenary basis, we have authority to allocate them however we want to? [LR73]

SENATOR EBKE: Sure. [LR73]

SENATOR MURANTE: It's your statement that that was...I mean, they put that in there, it seems to me. I'm sure you've read the Federalist Papers. I've read them too. That was a consensus building because they couldn't figure it out. They didn't...there was not a consensus for how to elect the President of the United States... [LR73]

SENATOR EBKE: Right. [LR73]

SENATOR MURANTE: ...so they said, legislatures, you figure it out, and... [LR73]

SENATOR EBKE: But I think that there is a...I think, and maybe it's too much of a logical leap, but the fact that they chose not one per state or not five per state, but that they chose to allocate per state based on the number of representatives in Congress suggest that if you have two U.S. senators who are supposed to be statewide and three congressional members who are representing the district that they would have at least expected that this could happen. [LR73]

SENATOR MURANTE: But they didn't do it this way. [LR73]

SENATOR EBKE: They didn't define it that way because they gave the power to the legislatures. [LR73]



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SENATOR MURANTE: But they could have. [LR73]

SENATOR EBKE: They could have. [LR73]

SENATOR MURANTE: And they didn't. [LR73]

SENATOR EBKE: No, because the states were the...because the states were the creators of the republic and the states...they assumed that the states would figure it out. [LR73]

SENATOR MURANTE: And you have in your resolution...kind of interesting language I wanted to ask you about because when I think of the word "proportional," I don't think of Nebraska's system. I think of a system in which you take a popular vote and you apportion the electors based on what percentage of the vote they receive. So, is it your assertion that...you say in a couple of instances that Nebraska...that each state adopt or continue the proportional method for allocating presidential electors. Are you saying specifically... [LR73]

SENATOR EBKE: That probably should be the congressional district method of allocating electors. [LR73]

SENATOR MURANTE: So it's not so much...I would concede that certainly in the 1800's and 19th century and before, and even after, there were states where the electors from the state disagreed and voted for different people. Unquestionably that happened. I'm not...I don't see any evidence that they voted on a proportional system, but is it your belief that proportional systems in general are preferable, or that the system that Nebraska has is the way to go? [LR73]

SENATOR EBKE: I think the congressional district system is probably the preferred system. I don't...I don't...I would not argue for proportional allocation. [LR73]

SENATOR MURANTE: Okay. Then if we're sticking with congressional districts, I'm going to ask you the same question that I asked Senator Schimek when she was sitting in that chair and testified on LB10. [LR73]

SENATOR EBKE: Okay. [LR73]

SENATOR MURANTE: When we go by congressional districts, we go by arbitrary lines that are drawn by politicians in... [LR73]

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SENATOR EBKE: You have a bill that addresses that, right? [LR73]

SENATOR MURANTE: It does, but even if we pass an independent redistricting commission, they're still drawn by people with biases and they're going to be imperfect, and reasonable people are going to disagree with them, so even in the ideal case, there's no such thing as perfection, but in the worst case scenario, we have states like Illinois and Florida and God-awful congressional districts that I think any reasonable person would look at them and say they're fundamentally unfair. Why would we elect a president...why would we choose to voluntarily elect a president of the United States based on a system that would...is so rampantly fraught with, it's to the extreme corruption, but certainly politics. [LR73]

SENATOR EBKE: We elect Congress that way. [LR73]

SENATOR MURANTE: We don't have a choice. The alternative there is we can elect at-large members, but that's, I think, nobody would think that...I'd think we'd go back to the 3rd Congressional District and nobody would think that that's fair. We don't really have a choice to make sure that everyone has a seat at the table. We have a choice to take politics out of the method by which a president is elected and we're...LB10 gets that partisanship with that level of politics. I mean, if every state does this, we're going to put gerrymandering at a premium and it's going to be more rampant than ever before. [LR73]

SENATOR EBKE: Well, but you have safeguards on gerrymandering. I mean, if it's so bad, you know, the Supreme Court weighs in and... [LR73]

SENATOR MURANTE: The Supreme Court has never thrown out a map based on partisan gerrymandering and ratio gerrymandering is one thing, lots of history on that, but the Supreme Court has ruled time and again that redistricting is a political process where partisan games are played and it's...it's never been done before. Florida had a map thrown out because of a state constitutional provision, but without those...there's nothing in the federal constitution that says the redistricting process can't be gained for one partisan advantage or another. And that's an extreme concern of mine. [LR73]

SENATOR EBKE: Well, you know, I guess...I guess if that was the concern and the lines could be drawn even, you know, more for the favor...more in favor of one side or the other. Really what we're talking about here in Nebraska is one district, one congressional district and the way those lines are drawn, right? [LR73]

SENATOR MURANTE: Well, it depends on how those lines are drawn. [LR73]

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SENATOR EBKE: I mean, it...well, but I mean if...you know, if you look at the numbers when Republicans have 60 percent of the vote most of the time in most presidential elections, sometimes more, if that was really the concern as part of the redistricting effort, it wouldn't be that tough to draw the lines...if we're really worried about gerrymandering, it wouldn't be that tough to redraw the lines to have even more of an advantage for one party. [LR73]

SENATOR MURANTE: But why would we want that? [LR73]

SENATOR EBKE: I don't, but why do we want to... [LR73]

SENATOR MURANTE: Why don't we take it out of the equation? [LR73]

SENATOR EBKE: Why do we want to have people who are...you know, if one particular party wants to come in and work very hard in one particular district, isn't that a good thing for democracy? [LR73]

SENATOR MURANTE: I don't think so. I don't think the system we have right now where if we had 20 congressional districts that are competitive in the entire country, and candidates go and spend a billion dollars on 20 congressional districts and those 20 get to determine who the President of the United States is, no, I don't think that's a fair system. [LR73]

SENATOR EBKE: We're probably going to disagree. [LR73]

SENATOR MURANTE: Okay. (Laugh) I mean, the 3rd District, you might as well...the days of John Kennedy coming or Robert Kennedy coming to the 3rd District are...long be over. There would be no point. Right? [LR73]

SENATOR EBKE: Yeah, I agree. [LR73]

SENATOR MURANTE: Okay. Are there any additional questions? Senator Groene. [LR73]

SENATOR GROENE: I said this on the floor, but I don't...you know me, Laura, I don't go the partisan route. I go the historic route and the states, I believe, elect the president. Jefferson called in an executive...chief executive even when call a president or anything else. The states were hiring an individual to do their work. We do not. Our ballots, congressional districts have a congressman. That's the only thing different with the ballots statewide is the congressmen. Our ballot statewide, we're voting for the President of the United States. We're doing a statewide vote.

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We're not doing a congressional vote on the President of the United States. If I read...so your ideal that it's supposed to be a...tied this electorate to a popular vote, that's absolutely...the popular vote was totally rejected by the founding fathers. They thought of that doing the presidential and they settled on the electoral college. And if we want to go back to the founding fathers, they want to define the most intelligent person, the most well-learned by the five people in the state of Nebraska that were knowledgeable about the candidates and the Unicameral was supposed to select those five. That's how you were supposed to select your five electoral colleges. Should we go back to that? [LR73]

SENATOR EBKE: Who were the last five...the last electors in the last campaign? See...as I understand the way... [LR73]

SENATOR GROENE: But you say you want to go back to what the founding fathers said and that's what they said. [LR73]

SENATOR EBKE: Well, so you want to get rid of the popular vote? [LR73]

SENATOR GROENE: No, but that's what they said. You want to go back to what we did 200 years ago and that's what they said we should do. [LR73]

SENATOR EBKE: They said it was the state's responsibility to figure out all this. [LR73]

SENATOR GROENE: And they said they should pick the five most...the original idea was for the most knowledgeable and informed individuals from each state to select the president based solely on the merit and without regard to the state origin and political party. [LR73]

SENATOR EBKE: Well, but where are you reading that from? [LR73]

SENATOR GROENE: Well, from the history of the... [LR73]

SENATOR EBKE: Yeah. Well, here's the...you know, here would be my response to that. First of all, if you look at the constitution and what it said, it rests with the legislatures of the states to choose the electors and the manner in which they see fit. It's not verbatim, but close enough. Okay. So that being the case, it rests with each state. Would we say that states should just find the five wisest people, whoever they are, and not have a popular vote? [LR73]

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SENATOR GROENE: The intent. I'm going from what the debate happened with the Federalist Papers and stuff, why they eliminated the popular vote, why they eliminated some other. And the other thing, you want to go back 200 years, we've evolved. I mean, should women not vote? Should blacks not vote? Back then in 1832, those folks weren't voting. Should we just...I mean, we've evolved in those issues and we've evolved in the 1900s or so to the system we have now where the states elect...pick the electoral college by popular vote. [LR73]

SENATOR EBKE: Sure, and I agree with you, Senator Groene. We have evolved which is why we ought to be willing to consider the way that we're doing it now as a legitimate way of promoting democracy. [LR73]

SENATOR GROENE: Question for you. A candidate wins 60 percent of the vote in Nebraska. [LR73]

SENATOR EBKE: Which happens frequently. [LR73]

SENATOR GROENE: All right. And one district goes towards the other candidate. National, nationwide, that electoral college vote which it came...they were talking about it in '04... [LR73]

SENATOR EBKE: Eight. [LR73]

SENATOR GROENE: Eight, eight, yeah, we're in the second term...that that one electoral vote in Nebraska might make the difference. So, now that vote makes the difference and the majority of Nebraskans didn't want that candidate as president, but one wild-card elector made the decision for the majority of Nebraskans to select that other candidate. Now, do you think that's right? [LR73]

SENATOR EBKE: Well, I could give you the academic argument which would say, if you look at history, the chances of...in a state that has 60 percent of the population going in one direction, there's one congressional district, it goes in the other way, that it's probably the fact that that one candidate has won in that district and is going to make a difference, that that one electoral vote will make a difference in the outcome is extremely unlikely. That it's...you know, as in 2008, it was part of...you know, everybody said, oh, Nebraska might make the difference, but I think Barack Obama had something like 320 electoral votes or something approaching that. [LR73]

SENATOR GROENE: But it's possible. They said it's possible. It's possible to win the lottery too. [LR73]

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SENATOR EBKE: Anything is possible. Anything is possible. [LR73]

SENATOR GROENE: And the other thing is, you have another LB35 where you want to have a constitutional convention. Why don't we solve it there? [LR73]

SENATOR EBKE: It's not a constitutional convention. It's a convention of the states. [LR73]

SENATOR MURANTE: Article V, Convention. (Laughter) [LR73]

SENATOR GROENE: Why don't we solve this there? Don't you believe we should...we elect the president...we elect all of our officials nationwide the same way, county commissioners, no matter where you go. [LR73]

SENATOR EBKE: We elect all the county commissioners and others by popular vote, and the state legislators. If we want to go to a pure popular vote of the president, I mean, that's certainly something that we could do through constitutional amendment, but the electoral college is still part of the constitution. [LR73]

SENATOR GROENE: Well, why don't we statewide elect our electoral college by popular vote and the 60 percent of the people... [LR73]

SENATOR EBKE: We could do that, if we wanted to. [LR73]

SENATOR GROENE: If 60 percent of the people want... [LR73]

SENATOR EBKE: I think you could do that. I think that if the Legislature decided that that's the direction that they wanted to do, you have people apply, you know, file to be...to run for elector and you have an election as part of the primary system or whatever. Right now, it's done primarily by the parties, I believe. [LR73]

SENATOR GROENE: Would you agree that right now, the way we're...that we're at a disadvantage in Nebraska because let's say California...and I don't know how many they have. What do they have, 40-some electorate? [LR73]

SENATOR EBKE: Fifty...three, I think. [LR73]

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SENATOR GROENE: Yeah, 50. That there's 15 or 16 districts that vote for the opposite candidate in that area, Orange County, and a lot of them...the northern part of California, they vote for the candidate that loses. [LR73]

SENATOR EBKE: Right. [LR73]

SENATOR GROENE: But their electoral college vote goes to the...to the... [LR73]

SENATOR EBKE: Which is why I would argue that everybody ought to do it the way we do it. [LR73]

SENATOR GROENE: Ought's, and if's, and maybe's ain't happening. We're dealing in reality here that right now, Nebraska is at a disadvantage. [LR73]

SENATOR EBKE: Well, I don't agree. [LR73]

SENATOR GROENE: Don't you think we ought to do what's best for the state at this point in time? [LR73]

SENATOR EBKE: Well, you know, I'd be interested to hear how it's best for the state. [LR73]

SENATOR GROENE: Why not...why not...let's switch and do what everybody else is doing and then you pass your resolution and then we send it out there and everybody changes it, and then we say, oh, let's change ours back to theirs and then everybody is on the same playing field. Right now, we're not on the same playing field, Senator Ebke, are we? [LR73]

SENATOR EBKE: I would just say, well, I think we've risen above the crowd, for sure. I would say that the way we do it is still the right way to do it, the most intellectually honest and most republican, little "r" republican, and it appreciates the role that the people play in the election process and it appreciates the intention of the founders to look at, you know, congressional districts and the at-large votes as part of the electoral college. But we're going to disagree. I get it. [LR73]

SENATOR GROENE: All right. We got to get along. We're in the same office. (Laughter) [LR73]

SENATOR EBKE: We can try it down in the office. [LR73]

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SENATOR GROENE: But anyway, the other thing is, the way we do it, we've done it since, what, 1990? Very short period of our time in our history. [LR73]

SENATOR EBKE: Yeah, I think '92 might have been first time. [LR73]

SENATOR GROENE: Yeah, so very short time. [LR73]

SENATOR EBKE: And we've had one time when its been an issue and that was part of a larger national movement, I would argue. [LR73]

SENATOR GROENE: Okay. [LR73]

SENATOR MURANTE: Thank you, Senator Groene. Any additional questions? Seeing none. [LR73]

SENATOR EBKE: Okay. [LR73]

SENATOR MURANTE: Senator, I know we have hash and disagreements on this point. I do very much respect your thoughtful... [LR73]

SENATOR GROENE: Courage. [LR73]

SENATOR MURANTE: ...consideration and your courage on this one. [LR73]

SENATOR EBKE: Foolishness or whatever. (Laughter) [LR73]

SENATOR MURANTE: You seemed to be well-received last night. You're not taking too much of a beating on it as you predicted. [LR73]

SENATOR GROENE: I thought they were trying to soft touch you and would be changeable, but (laughter)... [LR73]

SENATOR EBKE: I've got this dislocated shoulder thing going on, you know, from being twisted so much. [LR73]



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SENATOR GROENE: I thought you were going to say four-fifths of the nation under God instead of one nation under God (laughter)... [LR73]

SENATOR EBKE: Okay. (Laughter) [LR73]

SENATOR GROENE: ...when you said the pledge. [LR73]

SENATOR EBKE: Yeah, I know what you mean. [LR73]

SENATOR MURANTE: Thank you, Senator Ebke. Are there proponents to LR73? Are there opponents to LR73? Are there any neutral testifiers to LR73? Senator Ebke, would you like to close. (Laughter) [LR73]

SENATOR EBKE: I'll just make one comment. What we need to think in all of this is, you know, what's good for everyone and ask yourself this question: Is the majority always right? And if the majority isn't always right and if we don't, you know, if we shouldn't listen occasionally to the minority, and that's really what this is about, you know, should 30 to 40 percent of the Nebraskans if they...if they choose not to vote for the person who ultimately wins Nebraska, should they have no voice in the system at all? And I don't think it's...I understand all of the political arguments, but I still think that at some level we need to take a stand for principle and for doing the right thing. [LR73]

SENATOR MURANTE: You invited another question, Senator. I apologize, but... [LR73]

SENATOR EBKE: Oh, no. I shouldn't have asked. [LR73]

SENATOR GROENE: I got one too. [LR73]

SENATOR MURANTE: But when you say, we've dealt with this on other issues as well, when you say 30 to 40 percent of the people vote for someone, that person loses so they get no voice and we have this congressional district system where politicians draw maps and if you happen to live in this politically drawn map where it's drawn sufficiently that one vote can go one way, then apparently you have more of a voice than you otherwise would have, but what happens if that 30-70 split happens, which it will if a presidential candidate wins a state with 70 percent of the vote? They're not going to win a single congressional district, just mathematically. [LR73]

SENATOR EBKE: Right. [LR73]

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SENATOR MURANTE: Do they still not get a voice? How do you remedy it if that is your stated purpose to give a voice for the 30 percent? [LR73]

SENATOR EBKE: Well, but if they don't...if they don't want a congressional district, then that's a totally different story. They haven't done the work in that district. You know, I would argue that from a democratic...little "d," democratic standpoint, that if a candidate of a weaker party wants to come in and the party as a whole wants to work like crazy in one congressional district, then we ought to encourage that, you know. I mean, the same holds for both...for both parties around the country. I recognize we're the only ones, you know, except for Maine, doing this right now, but if...find a good state, if...let's say Oregon wants to do this. There are undoubtedly some districts in Oregon where there are, you know, where there's a majority of Republicans, you know, and why should...if that party decides to go in and work really hard, why should they not...why should they not be rewarded in some way if they're able to overcome the status quo, you know, overcome the norm. I get it. I get it. I understand that...I understand the partisan predispositions. I just want the case to be made that this is truly in the best interest of the state and truly in the best interest of the intention of the founders and, you know, that we're contemplating this carefully before we proceed down what is perceived by many to be very partisan. If I pulled up my computer, I could read you the e-mails that I've gotten from people who have said that they've always believed that this...you know, the winner take all, the movement towards back to winner take all was just an effort by a particular party to, you know, flex its muscle, so. [LR73]

SENATOR MURANTE: Senator Bloomfield. [LR73]

SENATOR BLOOMFIELD: Thank you. Senator Ebke, I said on the floor and I will state here again now, the Republican Party has never approached me on this subject. Have they said anything to you about, why are you doing this, or why did you change your position? Have they contacted you about this since you introduced this resolution? [LR73]

SENATOR EBKE: I've heard...they haven't made...well, we were all at an event last night and I heard about it from a few people, but the party isn't...the Republican Party has never told me vote this way or else. [LR73]

SENATOR BLOOMFIELD: Yeah, and that's what the people that seem to oppose the winner take all keep telling us on the floor is, this is all Republican Party, and they have not approached me ever on a vote. And I guess I reject the notion that this is a party pushed issue. Granted, the Republican Party, I'm sure, would like to see this, but they've never contacted me and told me you need to vote or support. [LR73]

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SENATOR EBKE: Yeah, no, I think that that's fair. I don't think that they are...I haven't been strong on by anybody in the party. [LR73]

SENATOR BLOOMFIELD: Okay. Thank you. [LR73]

SENATOR MURANTE: Senator Groene. [LR73]

SENATOR GROENE: Senator Ebke, I keep hearing this partisan thing. I know two registered Republicans voted against cloture and now we got two more that might vote against cloture. How many Democrats voted for cloture? [LR73]

SENATOR EBKE: Well, I think all of them. (Laughter) [LR73]

SENATOR GROENE: So, why do I keep hearing this word "Republican," not "Democrat,"... [LR73]

SENATOR EBKE: Well, I think when you get... [LR73]

SENATOR GROENE: ...when we hear the word "partisan"? [LR73]

SENATOR EBKE: Yeah. [LR73]

SENATOR GROENE: So, who is partisan? [LR73]

SENATOR EBKE: Well, you know, it's the...I think...I'm not going to go there. We can talk about that in the office, but... [LR73]

SENATOR GROENE: Well, I wish the argument wouldn't be... [LR73]

SENATOR EBKE: I think the fear is that there's a certain tyranny of the majority and that when you've got 35 people who are...I think it's 35, right, who are registered Republicans, that it overwhelms the... [LR73]

SENATOR GROENE: Well, there's the candidate I beat for office that thinks there's a tyranny of majority, too, when I ran for the Legislature. I think that's what Senator Murante...what about the 30 percent in my...in the 1st Congressional District or the 2nd Congressional District that...or I

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mean, the 3rd Congressional District that consistently get outvoted for the president and for congressmen year in and year out, or is that the tyranny of the majority? And those folks never get a chance to have an electoral college vote. What's the difference if it's congressional district if it's statewide? [LR73]

SENATOR EBKE: Okay, you lost me. [LR73]

SENATOR GROENE: There's a tyranny of the majority. The people who don't...aren't in the majority don't get a vote and they don't get heard. I mean, that argument can be used in every political race that a loser lost and those folks aren't...don't have a voice. That argument don't hold water, I guess, is the best way I... [LR73]

SENATOR EBKE: Well, I mean, I think you're making my case because you have...in the 2nd District you have a place where there are people who are...it's a little more competitive from a partisan standpoint. And even if they win in their district, there is the fear, I think, of tyranny of the majority, if you will, that the rest of the state gets rid of their vote. [LR73]

SENATOR GROENE: What about the question you said? You know, one candidate comes into one district and just spends a lot of time there in case he can win. Now that candidate don't look at Nebraska as three congressional districts, he looks at it as one. So now we've got government contracts. Who does he reward? Does he reward the state of Nebraska? Does he reward certain congressional districts? Or does he look at Nebraska as Nebraska, does he look at it as a congressional district? That isn't good for the state either, is it? [LR73]

SENATOR EBKE: Well, I know how you feel about government contracts, (laughter) so it's just kind of a moot question. [LR73]

SENATOR GROENE: You know, it's a can of worms, but anyway. So, I won't have to debate you on the floor. [LR73]

SENATOR MURANTE: I think Senator Groene brings up a reasonable point. If the standard by what you termed the tyranny of the majority is one candidate for office runs, or two candidates for office run, one wins and one loses, and the people who vote for the candidate who lost are subjected to the tyranny of the majority, what remedy do we have for that? I mean, as he said, in the 3rd Congressional District you're going to have Democrats who go to the polls and vote for a Democratic candidate for president. That's all well and good, but they're not getting any electoral votes because, if their congressional district isn't going to vote, is that the tyranny of the majority in your view? [LR73]

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SENATOR EBKE: Well, it's interesting because I live in the 3rd District and a number of my 3rd District constituents, you know, some of whom are Independent, some of whom are Democrats, and some of whom are Republicans, but I've heard from a number of the Democrats actually in the last couple of days who said, thank you, we at least feel like some of our voice is being heard in Omaha now. So, they like the fact that there is some representation for their voice in another district. They recognize that they are way outnumbered in the Third Congressional District. [LR73]

SENATOR MURANTE: Okay. Senator Bloomfield. [LR73]

SENATOR BLOOMFIELD: Thank you, again. I'm going to take this just a notch further and I really didn't want to go here. [LR73]

SENATOR EBKE: That's okay. You guys are protecting me from the eminent domain today in your sharing. (Laughter) [LR73]

SENATOR BLOOMFIELD: If you'd take this out another step we would maybe consider splitting the vote within the district by county to decide how that district vote should go. And then once we do that by county, maybe we should take it down to the precinct level so whoever won the most precincts in that county would get that district's vote. There's no end to how far we could take this down... [LR73]

SENATOR EBKE: My house, your house. [LR73]

SENATOR BLOOMFIELD: ...until we get...yeah, until we get back to the individual vote which is where we're trying to get with winner take all statewide, the individual vote. [LR73]

SENATOR EBKE: Well, I mean, I think the point is that the structure as it's created is based on congressional districts in the state as a whole, and that there has been some...you know, there has been some determination that that's an appropriate level, an appropriate place for us to divide things. And I could certainly...we could certainly argue that, you know, whoever our member of Congress is doesn't represent us, and it doesn't represent the people in our county or in our precinct or whatever, but that...you know, then you get to the point...you know, here's a little piece of trivia for you. If...if...back in the day when in 1789 when you had the first Congress, one member of Congress represented 33,000 people. Yeah, that's roughly the size of the Nebraska...you know, legislate representation. I mean, if we were going to take it to that point of, you know, being as close to pure representation as you could have, we'd have something like 6,000, you know, members of Congress which makes it, you know, impossible. Yes, at some

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point you have to draw the lines, but I would just argue that with the electoral vote that, you know, we've drawn the lines according to congressional district, and I believe and I won't swear to this because I may be wrong with the process, but I believe that currently what we do is we assign...we assign...we elect electors at the party level based on congressional district and then to at-large. You know, that's not inconsistent with the way Congress is set up. [LR73]

SENATOR BLOOMFIELD: Thank you. [LR73]

SENATOR MURANTE: They do it that way because that's what state law... [LR73]

SENATOR EBKE: Because it requires us to do, sure. [LR73]

SENATOR MURANTE: Any additional questions? Seeing none, thank you, Senator Ebke. Enjoy eminent domain in the Judiciary Committee. [LR73]

SENATOR EBKE: Thank you. [LR73]

SENATOR MURANTE: And that closes the hearing on LR73 and we'll proceed to the next item on the agenda. It will be LB576. [LR73]

SENATOR GARRETT: Welcome, Senator Murante, to your Government, Military and Veterans Affairs Committee. [LB576]

SENATOR MURANTE: Thank you, Senator Garrett and members. For the record, my name is John Murante, J-o-h-n M-u-r-a-n-t-e. I represent District 49 of the Nebraska State Legislature. I'm here to introduce LB576 and this should be a fairly brief opening as the opponents will undoubtedly tell you that the bill, as it is currently drafted, is unconstitutional, violating one person, one vote, and...but I do intend to keep this alive as the potential for a vehicle if the Government Committee wishes to choose it on some other piece of legislation. But state law requires us to have public hearing, so here we are even though I don't wish to proceed with it. So, I will ask kindly that you hold this bill and not take any immediate action on it. [LB576]

SENATOR GARRETT: Thank you, Senator Murante. Are there any questions from the committee? Seeing none, we'll move to proponent testimony. Nobody testifying as a proponent. Opponent testimony? Welcome to the Government, Military and Veterans Affairs Committee. [LB576]

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TED STILWILL: (Exhibit 1) Thank you, Senator Garrett. Members of the committee, I'm Ted Stilwill, T-e-d S-t-i-l-w-i-l-l. I'm the CEO for the Learning Community of Douglas and Sarpy County. And as Senator Murante alluded to, the opponents of this legislation would be quick to point out that this was, in fact, entirely unnecessary because I've heard you for the last few minutes discussing the importance of proportion of representation, so this bill clearly does not that...do that. So, the paper that you have in front of you lays out the reasons which I now understand you're fully aware of why this bill would not be constitutional and would be subject to legal challenge. However, since Senator Murante also pointed out that he asked you to hold on to this bill because there might be some other purpose when the bill would actually go to the floor, and I would just use the remainder of my time to point out that I would ask you that when you take action on that bill, or should a bill emerge on the floor, that it be constructed in such a way as to not to do harm to what the Learning Community is doing and accomplishing right now. We're...we have an elementary levy that allows us to fund about \$5 million worth of programs that go across a number of school districts and really be...the work of the Learning Community, my work on a day-to-day basis, the work of the Coordinating Council is really about finding better educational solutions for children in poverty. Poverty is a growing issue in Nebraska. It's a growing educational challenge. We have a track record of not being as successful as we would like. I'm an educator myself. In terms of kids who come from families in poverty, we are being successful in finding some better solutions that are not in common use and so the programs that we fund, the elementary learning centers that we started in south Omaha and north Omaha are established in good track record. And districts report they're learning from that and particularly now when the 11 districts have come together with the Buffett Early Childhood Institute and are collaborating on a superintendent's plan for early childhood development, that's now a great part of the work of the Learning Community and the Buffett Institute and the 11 superintendents and supported by their boards and school districts. I would not want that work to be disturbed or set back and any substantial change in governance or in the operation of the Learning Community might do just that. And I wanted to make you aware that that would be a deep concern on the part of the council. Thank you. [LB576]

SENATOR GARRETT: Thank you for your testimony, Mr. Stilwill. Are there any questions from the committee? Senator Groene. [LB576]

SENATOR GROENE: What authority or effect on the Learning Community can the 11 superintendents have on you? They have...do they have any control over you at all? [LB576]

TED STILWILL: I think, practically speaking, they have a great deal of control. They have a great deal of influence, which is probably more accurate, because the members of the Coordinating Council are elected officials and... [LB576]

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SENATOR GROENE: Just like the school board of each district. [LB576]

TED STILWILL: Just like the school board of each district, just like the members of the Unicameral, so any particular body of administrators may have, you know, may not have direct control but they would certainly have the influence. They represent 11 boards of education. There are six of those boards of education that are voting members on the Learning Community Coordinating Council and one currently a nonvoting member. There are places for others. I'll tell you that also in the current law is something called the Superintendent's Advisory Committee where the superintendents of the 11 districts can meet with us. You can convene them; they can provide advice. The statute really outlines their specific responsibilities, so they have a statutory influence. I wouldn't call it a control, but I think, practically speaking, the Learning Community Coordinating Council at least at this moment in time and since my association with them the last three or four years, gets a great deal of attention what the superintendents have to say. [LB576]

SENATOR GROENE: So, how many elected actual board members are there? Eighteen? [LB576]

TED STILWILL: There are 18 members on the governing body of the Learning Community Coordinating Council. [LB576]

SENATOR GROENE: How many are elected just to the governing body of the... [LB576]

TED STILWILL: Twelve of them are elected by...through six very proportionately determined subcouncils and from each of those subcouncils is an additional member who is chosen by a caucus of the school board members in that subcouncil. [LB576]

SENATOR GROENE: If a portion of the Learning Community where it's shared levies...I can't think of the right term for common levy. That has absolutely no effect on you, does it? [LB576]

TED STILWILL: The common levy itself in terms of my day to day life or existence aside from having to explain it to people, which I'm happy to do, sometimes regretfully, but, no, it really doesn't affect the operation of our programs. We don't receive dollar one, as you know. [LB576]

SENATOR GROENE: You have your own mill levy? [LB576]

TED STILWILL: Yep, we have the 1-cent levy, not the 95-cent levies, so. [LB576]



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SENATOR GROENE: So, if the common levy went away, it wouldn't affect you at all? [LB576]

TED STILWILL: No. [LB576]

SENATOR GROENE: And your working relationship with the school districts could still function because you have to have permission from the school district if you pinpoint an area you want to go into and work with the children that you are chosen to work with, or can you override their...or do you have to have permission to do that from that school district? [LB576]

TED STILWILL: Every program that we fund or support, is supported by the Learning Community Coordinating Council, those 18 elected representatives. They don't all vote for every single project, but most of the time, certainly every time the majority is there, so. [LB576]

SENATOR GROENE: If you wanted to go in the Westside, if you thought there was a need there and you had a program you wanted to do on Westside, could you do that over and above any rejection or opposition from the Westside School District? [LB576]

TED STILWILL: No. We don't...we cannot force ourselves into a district. The district must agree to do it. Westside, for example, has agreed to receive funding for an instructional coaching program, which we're happy to support. [LB576]

SENATOR GROENE: But the common levy doesn't affect you at all. [LB576]

TED STILWILL: Aside from frequent opportunities of trying to explain how it works, yes. [LB576]

SENATOR GROENE: People might get along better without it... [LB576]

TED STILWILL: I'm just being facetious about that. [LB576]

SENATOR GROENE: ...on your board. All right. Thank you. [LB576]

SENATOR GARRETT: Thank you, Senator Groene. Any other questions from the committee? Thank you, Mr. Stilwill. [LB576]

TED STILWILL: Thank you. [LB576]

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SENATOR GARRETT: Additional opponent testimony. Welcome to the Government, Military and Veterans Affairs Committee. [LB576]

JOHN LINDSAY: Thank you. Senator Garrett and members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of Omaha Public Schools. We are strongly opposed to LB576. As Senator Murante mentioned, it violates the one person, one vote principle that the United States Supreme Court has said must be in...in an entity like this. We would also urge that if the committee is going to use this as a vehicle, that it be used in an area that does not...is not connected with the Learning Community. There are, I believe, five bills in Education Committee now that make various approaches to changing the Learning Community. The eleven superintendents have worked...are working more closely together now than probably ever in making changes that cannot be worked out like through the Education Committee now is...would be very disruptive to that. And so we would urge that LB576, if used as a vehicle, address another subject. Be happy to answer any questions. [LB576]

SENATOR GARRETT: Thank you, Mr. Lindsay. Are there any questions? Senator Bloomfield. [LB576]

SENATOR BLOOMFIELD: Not so much a question as a statement. This begins to remind me of a bill I had in Agriculture that I made the motion to IPP in my opening statement. Opposition testimony went on for an hour and 20 minutes. (Laughter) Thank you. [LB576]

JOHN LINDSAY: I was admonished by Senator Murante to keep it short. (Laughter) [LB576]

SENATOR GARRETT: Thank you, Senator Bloomfield. Any other questions? Thank you, Mr. Lindsay. Any additional opponent testimony? Anybody testifying in a neutral capacity? And we have no letters? And Senator Murante waives closing. This ends today's public hearing for the Government, Military and Veterans Affairs Committee. Thank you, everyone, for coming. [LB576]