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Transcriber's Office

Executive Board Committee
January 30, 2017

[LB216 LR3]

The Executive Board of the Legislative Council met at 12:00 p.m. on Monday, January 30, 2017, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB216 and LR3. Senators present: Dan Watermeier, Chairperson; John Kuehn, Vice Chairperson; Kate Bolz; Ernie Chambers; Sue Crawford; Dan Hughes; John McCollister; Jim Scheer; and John Stinner. Senators absent: Tyson Larson.

SENATOR WATERMEIER: Welcome to the Executive Board committee hearing. My name is Dan Watermeier. I'm from Syracuse and represent the 1st Legislative District. The committee will take up bills in the order as posted. Our hearing today is the public part of the legislative process and our opportunity to express our position on proposed legislation before us today. The committee members may come and go during the hearing. We get called away for various reasons. It's not an indication we're not interested in the bill, just part of the process. To better facilitate today's proceedings, I ask you to abide by the following procedures. Silence or turn off your phones. The order of testimony will be introducer, proponents, opponents, neutral, and then closing. If you are testifying, please make sure you fill out a green sheet. When you come up to testify, please hand the green sheet to the page. Please state and spell your name for the record and then start on your testimony. If you will not be testifying but want to go on record having a position on a bill being heard today, there is a white sign-in sheet at the entrance where you can leave and the entrance is at the back of the hallway. Written materials may be distributed to committee members while testimony is being offered. Hand these to the page and please come with 12 copies. If you have written testimony but do not have 12 copies, we will be able to help you with that. Just raise your hand and the page will help you. To my immediate right is legal counsel, Janice Satra. To my left is committee clerk, Laura Olson. We'll go ahead and get started today with the members at my far left is Senator Hughes or excuse me, Speaker Scheer is not here yet.

SENATOR MCCOLLISTER: John McCollister, District 20, it's Omaha.

SENATOR BOLZ: Senator Kate Bolz, District 29, south-central Lincoln.

SENATOR KUEHN: John Kuehn, District 38.

SENATOR CRAWFORD: Senator Sue Crawford, District 45.

SENATOR STINNER: John Stinner, District 48, Scotts Bluff County.

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SENATOR WATERMEIER: Speaker Scheer.

SENATOR SCHEER: Jim Scheer, District 19.

SENATOR WATERMEIER: Our page today is Alex Brechbill from Aurora, Nebraska. Alex, is that spelled...pronounced correctly? I'll just say Alex. Thank you. The committee will take up the bills in order today starting with LB216. Is that correct? All right. You're here with the flag, aren't you?

SENATOR HARR: Both.

SENATOR WATERMEIER: Both of them, excuse me.

SENATOR HARR: It's Burke Harr day in Exec.

SENATOR WATERMEIER: Yes, it is. Joining us today is Senator Hughes from Venango. Welcome, Senator Hughes. Go ahead, Senator Harr.

SENATOR HARR: (Exhibit 1) Thank you, Mr. Chairman, members of the Executive Board. My name is Burke Harr, H-a-r-r, and I am a state senator from Legislative District 8. I am here today in front of you regarding LB216. The subject matter of this bill should be familiar to most, if not all, of you. We had a similar bill last year brought after much work and negotiation and consideration between Senators Murante and Mello. As many of you recall, the bill passed the Legislature and unfortunately was vetoed by the Governor with some concerns that he had. And I read his veto message and while I may not agree with everything he said, I took them into account and realized that it's probably pretty important this redistricting bill and the idea behind it. And so I reintroduced the bill taking into account the Governor's concerns. I know you will also hear on February 13 LB653 which is a similar bill brought by Senator Murante. My bill and his bill differ in three distinct but not really major ways. Number one is the Advisory Commission makeup. LB216, the bill in front of you today, contains six members--half Democrat, half Republican--and one chair serving as chair with no political party affiliation. LB653 had nine members, no more than five can be Republican or Democrat, and the chairperson or vice chairman must be affiliated with different political parties. Again, I'm more than willing to work and am working with Senator Murante on a compromise. The second is opinions from the Attorney General and Secretary of State. My bill removes the opinion of whether the districts are constitutional. LB653 requires the opinion of constitutionality to be sought out by both the Secretary of State and the Attorney General. This was one of the concerns regarding separation of powers that the Governor had where the legislative branch required the

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executive branch to provide opinions. While those opinions are nice, I'm not sure that they're necessary. And I agree with the Governor that it is questionable constitutional grounds. I'd hate to have this great idea that he has to be stricken merely because of some language that I don't think is necessary. Finally, the third difference is a time line and that time line is found in Section 31 of my bill. LB216, the Executive Board has two days after the plans are submitted to file a legislative bill for each plan. If bills embodied in a redistricting plan are not passed within five legislative days or are vetoed by the Governor, a new plan is to be delivered by the Advisory Commission no later than ten calendar days. If a new plan...if new plans are not passed or vetoed within additional five legislative days, the Executive Board shall prepare a plan and introduce legislation. For each LB that did not pass or was vetoed or the veto was overridden, (inaudible) and is placed on General File. So basically the time lines are a little different. And LB653, the Executive Board file a legislative bill, it's two days after plan submission. Again, mine, well, it's also two. However, the difference is if a bill is not passed within ten legislative days, mine is five, or is vetoed, then a new plan is looked at in ten days, again, mine has five. It gives them a little additional time. And I'm not sure that ten isn't the better day than five to be honest with you, regarding that. One other change that's made from the Governor's plan is that you get two strikes instead of three for the Planning Commission to meet. And if the Planning Commission...if the Legislature turns it down two times, then it goes to the way we currently do it. But instead of a third time because I think the first time you can look, maybe take some feedback from the Legislature and the Planning Commission that can decide maybe yes, maybe no and they submit another plan. But I think if we do it a third time we're just starting to waste our time. So those are the changes that I made in consideration to the Governor's statements and also what happened last year. I am more than happy to take any questions. And like I said, I will continue to work. I know Senator Bolz is also involved in this, and I haven't had much of a chance to talk to her, but I'd like to about this. I also have...this was created by our Legislative Research. It shows what redistricting commissions exist currently across the United States. And it gives an idea that this seems to be the trend and we seem to be seeing and more states recognizing the importance that our redistricting appear and actually be nonpartisan and look to the best interest of the citizenry other than just who are the parties in power. And so...and then all voices have a say. So with that, I guess I would finish my opening and entertain any questions you may have. [LB216]

SENATOR WATERMEIER: Thank you, Senator Harr. Questions from the committee? Senator Chambers. [LB216]

SENATOR CHAMBERS: Did you consult...did you talk to the Governor about your bill? [LB216]

SENATOR HARR: I did not. [LB216]

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SENATOR CHAMBERS: Okay. [LB216]

SENATOR WATERMEIER: Further questions for the senator? I'm assuming you'll stick around and close. [LB216]

SENATOR HARR: I will, thank you. [LB216]

SENATOR WATERMEIER: Very good. All right. I wanted a show of hands who is going to speak, either opponents or proponents, of the bill. Four of you, okay. We'll go ahead and let you have five minutes, will be no problem. We'll start with proponents of LB216. We'll be using the light system. Come on up. Welcome. [LB216]

GAVIN GEIS: Senator Watermeier, members of the Exec Board, my name is Gavin Geis, G-a-v-i-n G-e-i-s. I'm the executive director of Common Cause Nebraska, a government watchdog and just good government advocacy organization. I just want to take a little time, testify in support of LB216, and just go over some of the objections that were brought to last year's bill. Those were objections from the Governor, objections on the floor, just various sources of objections and talk through a little bit. First of all, the delegation of authority question, there was a question whether this was an undue delegation of authority, too much authority given to the commission. And frankly, the...this is a question of breadth of degree, how much authority is given. Courts have looked at a variety of matters and most often these sorts of delegations are struck down when an independent commission is given the authority to act by itself to create broad, impactful laws on their own. That is not the case with either of the versions of the redistricting bill that are in front of you. Both of the bills give the Legislature the very final say on what the map looks like. They can throw a map out, start over again, wash, rinse, and keep going so the final say doesn't rest with the commission. And so I think most courts would agree it's not too broad, it's not too much authority given away. The other point I want to make is we have to ask what the goal is in redistricting. Is the goal to create the most balanced, the most fair version of a district map that we can? In that sense, there are criteria in the bill, the criteria that the commission would follow, criteria that if this bill is passed hopefully the Legislature would want to follow as well. So if that is the situation, hopefully there's an ideal map out there close enough to one that benefits all Nebraskans in the same way. If on the other hand the goal is to create a map that's biased, that's slanted, then perhaps an independent commission would be viewed as too much authority. But I generally do not believe the members of this board view redistricting from that stance so it doesn't strike me in either way that it's an undue delegation. Next I want to just quickly, and this has already kind of been addressed by both bills, but talk about the constitutional authority, whether it's the Secretary of State, the Attorney General. My reading of the constitution is that both could have authority in this area. It's clear that, of course, the Attorney General has, you know, authority over our laws. Secretary of State knows a lot more about elections. So that is

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more a fine detail that I think you guys can hammer out. It shouldn't be, as I think both introducers of these bills would agree, a reason to get hung up. Another issue was that this is unelected body that would not be in any way...that would hold any accountability. They'd be unaccountable; they'd be unelected. Instead, I see they're actually getting two forms of review here, first of all, to the Legislature itself. Legislators will select the members of this commission so it will start here. The commission will start right here. And finally, as I said before, the maps that come out will be chosen by the Legislature. So right there all of you will bear some of the responsibility in the final version, whatever the commission does will fall to the Legislature. And second of all, this is a statute. This is law. This isn't some unassailable, unchangeable aspect that we'd be creating. So right there is another aspect of accountability. This can be thrown out if it doesn't work. This can be amended if it doesn't work. The very...you know, this is a ten-year basis every ten years so if it doesn't work in 2020, we toss it out, we start over again, we try again. There's accountability. Finally, I want to talk about the notion this would be more partisan in some way than the current system, that this would create more partisan fervor than the Legislature doing it. And I think that critique has a really low view of the Legislature itself. The argument here is that the Legislature couldn't help but put in place the most partisan hacks on this commission that they possibly could, that all of you would come together and agree that just the worst of the worst should sit on this commission to draw these maps. I don't see that being a reality either. And like I said, I think that's a low view of the work you do here that you couldn't help yourselves; and it reflects more back on the person making the criticism honestly than on all of you. So just finally I think the benefit to this is to wring as much self-interest out of the process as possible and both versions of the bill do that. Just to get as much potential bias out of it as possible, and it won't create a more partisan system. It couldn't. Because as I said before, you'll oversee it. This body will still be accountable for what it does. And that's all I've got to say. I think that summed it up pretty well so thank you. I'd be happy to answer any questions. [LB216]

SENATOR WATERMEIER: Very good, Mr. Geis. Questions? Senator McCollister. [LB216]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. What do you think of our current legislative map? [LB216]

GAVIN GEIS: The current legislative map? I think there are...personally, I wasn't around when it was drawn, but I've heard criticism. I've heard concerns and worries. And whether those are warranted or not, I don't know. I'd have to look at the numbers. But I think the fact that there are concerns out there that were concerns at the time of drawing the map, both from within the Legislature and outside the Legislature, tells us the system could use fine tuning. So more than anything the legislative map and the concerns around it should point us to this, not away from it. [LB216]

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SENATOR McCOLLISTER: Thank you very much. [LB216]

GAVIN GEIS: Yes. [LB216]

SENATOR WATERMEIER: Thank you, Senator McCollister. Further questions? Thank you, Mr. Geis. [LB216]

GAVIN GEIS: Thank you. [LB216]

SENATOR WATERMEIER: Further proponents of LB216. Welcome. [LB216]

BRI McLARTY HUPPERT: (Exhibit 2) Thank you. Good afternoon, members of the Executive Board. My name is Bri McLarty Huppert, that's B-r-i M-c-L-a-r-t-y H-u-p-p-e-r-t, and I'm here with Nebraskans for Civic Reform. I'm the director of voting rights with that organization. Nebraskans for Civic Reform is a nonpartisan, nonprofit advocacy organization. Typically our legislative policy actually is focused more on individual access for the voter to the democratic process. But we do feel that an independent redistricting committee would do a lot to improve access to our democracy for the individual voters, even though it's on a more higher level. Specifically in talking about what Gavin has already referred to with gerrymandering, we believe that an independent redistricting commission would address some of the voter competence issues that may come up with gerrymandering as well as we'd like to point to three specific parts of LB216 that we feel would help increase civic engagement in the redistricting process. The first is the transparency of the process and data with the on-line Web site that is required to be created under LB216, an addition to actually the information on the commissioners that would be appointed, both biographical and financial interest data. We also have access to the census data that would be used by the commission when looking at district maps as well as history of past redistricting. So allowing individuals to actually look at the maps that were drawn in 2010, comparing those to the one in 2020, and then so on in future redistricting applications. The second point is the point of access for individuals. Right now under the rules of the Legislature as opposed to specifically in statute, the Redistricting Committee is only required to have three public hearings, one in each Congressional District. Under LB216, this would be four committee hearings spread across, geographically across the state. So this would provide an additional opportunity for individuals to have their voice heard and to contribute to the process. And the final point is the creation of the principles to guide the commission. Right now the commission is only required to have equitable population under the constitution. This would provide a set of guiding principles established in statute but also created by this board. And one of the ones that we're particular interested in is the affirmative directive to comply with the Voting Rights Act of 1965. So those are the three reasons why NCR is kind of branching out a little bit from what we typically testify on in support of LB216. We understand that in LB653, Senator Murante's

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proposal, these three components are also included so we'll be coming back and testifying in support of that bill as well. And that's all I have to say. [LB216]

SENATOR WATERMEIER: All right. Thank you for your testimony, Ms. Huppert. [LB216]

BRI McLARTY HUPPERT: Thank you. [LB216]

SENATOR WATERMEIER: Questions from the board? Senator Bolz. [LB216]

SENATOR BOLZ: I don't know if you're familiar with the practices of other states. [LB216]

BRI McLARTY HUPPERT: Um-hum. [LB216]

SENATOR BOLZ: But it caught my attention that Iowa has a nonpartisan, has a process where nonpartisan staff draw the plan versus a citizens commission. And I just wondered if you had any thoughts about the pros and cons of a citizens commission versus a nonpartisan staff commission? [LB216]

BRI McLARTY HUPPERT: Yeah. That's not something that NCR has specifically taken a position on. But kind of off the top of my head, I think there's more accountability if it were an appointed commission of individuals as citizens as opposed to staff. I can see the benefits of staff given that there is a lot more institutional knowledge on how things are drawn. But how this is set up with the Web site I feel that the commissioners would have access to that past history as well as access to the Legislative Research Office. So I feel like there could be merit with that, but I think this would make the most sense given the fact that we don't have a two-house system and we always consider the citizens to be the second house. This would be more reflective of that than, say, (inaudible) nonpartisan staff doing it. [LB216]

SENATOR BOLZ: Great. Thank you. [LB216]

SENATOR WATERMEIER: Thank you, Senator Bolz. Further questions? Thank you for your testimony. [LB216]

BRI McLARTY HUPPERT: Thank you. [LB216]

SENATOR WATERMEIER: Further proponents. Welcome. [LB216]

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SHERRY MILLER: Thank you. I'm just getting my breath caught. I thought you started at 12:30, not 12:00. [LB216]

SENATOR WATERMEIER: I'm sorry. [LB216]

SHERRY MILLER: (Exhibit 3) My name is Sherry Miller, S-h-e-r-r-y, Miller, M-i-l-l-e-r, and I'm with the League of Women Voters of Nebraska. I am presenting testimony today that was written by John Else who is a director on the board of the League of Women Voters. He spent the month of January in Florida, but, you know, thanks to the Internet we can get this thing done. The League of Women Voters has been advocating for voters' rights for nearly a hundred years. We'll be 100 years old in 2020, that's a really landmark year for us. We want to make sure every person's vote counts, and that's why we feel this redistricting reform is just so important, so vital. Every vote will be counted. I'll just mention briefly what I...let me back up a moment. Two years ago we completed a study and adopted a position on redistricting reform. And you have in your papers that I'm handing out that we look at the reforms that were passed in Florida after a pretty good battle, in Arizona, in California, and in Iowa. And we chose to bring our information, base our position on Iowa's form of redistricting. It's a commission that's created every ten years to address the census results. It was passed in 1980. Districts are drawn by the nonpartisan Legislative Services Agency using all criteria, plus the disregard of incumbent addresses. The primary responsible, the Temporary Redistricting Commission, it consists of four citizens selected by four party leaders in the Senate and House so it is bipartisan rather than nonpartisan. And we would hope that Nebraska's could be bipartisan also. They then...the four citizens chosen by four party leaders then jointly select a fifth member as the chair. It doesn't draw the district maps. It schedules chairs and prepares a report on public hearings, just the way LB216 would do. And I'm pleased that LB216 would have actually four public hearings, giving more accessibility to citizens to come in and make their comments, their opinions known whether this is good or not. So I think because of what Iowa has done so successfully since 1980 and the League bases its position on the Iowa model, and we feel that LB216 rather closely matches the Iowa model, this is why we would urge you to consider the adoption of LB216 for our redistricting reform. I think the other people have spoken already have really adequately addressed the Governor's concerns from his veto last year. And I don't really think I need to say anything else except every citizen's vote should count or every voter's vote should count. And I feel that this would truly help support that effort. I don't know if I can answer any questions. If I can't, I'll refer them to John and let him answer them when he gets back from Florida. [LB216]

SENATOR WATERMEIER: Thank you for your testimony. [LB216]

SHERRY MILLER: You're very welcome. [LB216]

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SENATOR WATERMEIER: Questions from the committee? Senator McCollister. [LB216]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Were you involved with the League of Women Voters ten years ago when we went through this process? [LB216]

SHERRY MILLER: Ten years ago, yes, but not at the state level. [LB216]

SENATOR McCOLLISTER: Okay. [LB216]

SHERRY MILLER: And so I'm not sure I could answer... [LB216]

SENATOR McCOLLISTER: Do you care to make a judgment on our current legislative map? [LB216]

SHERRY MILLER: I was a little concerned about what happened in Sarpy County. And I think that's...another thing I'm concerned about really truly I was concerned that Nebraska might lose population in this next census. It doesn't appear that we're going to, do you think? I mean I'm hearing that it seems like we have net gain in population coming in to Nebraska. And I was sort of concerned that if we lost population what would that do? Would we lose representation, for example, in Congress? So I just, knowing that we're going to get population, probably net population coming in and the census will reflect that then let's just get this redistricting thing straightened out and everybody will be in a district where they'll have an equal voice in the election process. [LB216]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman. [LB216]

SENATOR WATERMEIER: Thank you, Senator McCollister. Further questions? Thank you, Ms. Miller. [LB216]

SHERRY MILLER: You're welcome. [LB216]

SENATOR WATERMEIER: Further proponents to LB216? No further proponents. Opponents for LB216. Welcome. [LB216]

STEVE GRASZ: (Exhibit 4) Thank you, Mr. Chairman and members of the Executive Board. My name is Steve Grasz, S-t-e-v-e G-r-a-s-z, and I'm testifying today on my own behalf in opposition to LB216. And I would say at the start that I have great respect for Senator Harr--in

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fact, I support his next bill--but this one does raise a number of concerns that I would like to address. A considerable part of my legal practice over the past 27 years has been in the area of state constitutional law, and I can tell you that LB216 raises more constitutional issues than a law professor on exam day. This bill appears to be a reintroduction of the provisions of LB580 from last session. You may recall that concerns regarding the constitutionality of that bill were raised during floor debate. And at least one of those has been addressed with the elimination of the provision regarding legal opinions by the Secretary of State. Many of those concerns were supposedly addressed by the addition of what is now Section 3 of the bill. However, this "fix" did not correct the defects in the bill. Section 3 is a Band-aid that does not cover the wound. For reasons I will explain, the operation of the bill would likely end up before a court, rather than the Legislature, to decide. More likely, it would be found unconstitutional. And I do agree with the first proponent today that when you're deciding whether there's an improper delegation of legislative authority it is a matter of degree. I do agree with that. Under standard rules of statutory construction, a court must interpret a bill so that it is constitutional if possible. However, these same rules provide that a court is not allowed to rewrite a bill or to construe it in a manner that results in superfluous, that is extra or unused, language. It would be a practical impossibility in my opinion for a court to harmonize Sections 31 and 3 of LB216 without rewriting the bill or without ending up with superfluous language. Section 31 puts the Legislature in a take-it-or-leave-it situation once the Advisory Commission presents the proposed redistricting maps. This violates several provisions of the Nebraska Constitution. Specifically, Section 31 of LB216 violates Article II, Section 1 which is the separation of powers; Article III, Section 1 which vests plenary legislative authority in the Legislature; and Article III, Section 5 which directs the Legislature to conduct legislative redistricting, and I believe it does this for the following reasons: First of all, Section 31 does not merely delegate details of redistricting to an administrative agency with the requisite standards and procedures. Rather, it improperly delegates actual aspects of redistricting authority to an Advisory Commission. Under Section 31, an Advisory Commission, rather than the state senators, drafts redistricting plans and they go directly to General File on the floor of the Legislature. The Nebraska Constitution requires the Legislature to do legislative redistricting, not anyone else. While there is no bar to the Legislature seeking input or advice, it cannot delegate this key legislative function to others any more than it could delegate appropriations or tax writing authority to an outside committee. For the same reasons, the bill violates Article III, Section 1 of the Nebraska Constitution which vests legislative authority in the Unicameral. The Legislature has plenary legislative authority except as limited by the state or federal constitutions. Section 31 would improperly restrict the ability of elected members of the Legislature to propose redistricting bills or offer amendments to redistricting bills. Under Section 31, the task of drafting redistricting bills is effectively delegated to a commission, and their work product is presented to the Legislature on a take-it-or-leave-it basis. Because this proposed procedure transfers legislative power to another body, it violates the separation of powers provision of the constitution. Section 31 does not just determine the rules of the proceedings which are

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permitted...that is permitted under Article III, Section 10. But rather, it takes authority away from members of the Legislature and delegates this legislative power elsewhere. Nebraska has a very strict separation of powers provision which prohibits such transfers of power. To the extent the redistricting commission is somehow treated as a committee function of the Legislature, LB216 would also violate the rights of the public under Article III, Section 11, which requires legislative committees to have open doors and take recorded votes of state senators acting on bills in committee. In fact, I believe under this bill the redistricting maps themselves are secret from the public until they're introduced on the floor. Although Section 3 of LB216 was added to supposedly fix the above problems, it simply does not do the job. Section 3 states that "Nothing in the Redistricting Act shall be construed...as altering the rules or procedures of the Legislature that apply after any bill, including a bill developed and introduced pursuant to the Redistricting Act, has been placed on General File." While this arguably does give senators the right to offer amendments, it does nothing to address the direct conflict with the procedures set out in Section 31 that require new redistricting bills to be submitted to the Legislature by the commission if the Legislature fails to approve its proposals. At best, a court would have to determine how the bill would operate any time an amendment is adopted to a map created by the commission. More likely, a court would find this necessarily entails rewriting portions of the bill, which it cannot do. To harmonize Sections 31 and 3, a court would have to read some language in Section 31 as superfluous or nonoperative, again something that a court cannot do. [LB216]

SENATOR WATERMEIER: I was just going to ask you if you could clean it up. Very good, Mr. Grasz. Questions for Mr. Grasz? Thank you for bringing a lot of points to our attention. Thank you. [LB216]

STEVE GRASZ: Thank you. [LB216]

SENATOR WATERMEIER: (Exhibit 5) Further opponents to LB216? Anyone in the neutral capacity? I do have a letter from Danielle Conrad of the American Civil Liberties Union from Nebraska in support of LB216, for the record. No other letters here. Senator Harr to close. [LB216]

SENATOR HARR: Thank you. Thank you, Mr. Chairman, members of the Exec Board. I want to thank you for your time and attentiveness today. I listened to all testimony, probably specifically Mr. Grasz, who you know who some of his other clients are. I know he's here in an individual capacity, but what we have to remember is we are a separate branch. We can limit ourselves, right, and we do all the time. I brought this originally into the Rules Committee because the constitution is very clear. We, the legislative branch, get to decide how to do "districting." Nothing in this bill gives that power away. We can limit ourselves and say, hey, we're only going to vote up or we're only going to vote down. We make that decision. We vote on

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this bill. We can do it in a rules and have it run through the Rules Committee, not as much public discourse as there is if I do it through the Exec Board, which is why we decided in Rules Committee to bring it here. I didn't fight it there. But we can limit ourselves. We can choose how to run ourselves. We can say it has two times. We can say that the commission can meet three times. We can say we can make our own amendments or we can accept them up or down. This is no different than what the U.S. Congress did when they went and did base closings, right? Because they knew it was a difficult decision and that senators and congressmen would be put in difficult position, when we went to close U.S. military bases, there was a panel that met. They made a recommendation and it was voted up or down. That's all we're doing here. And you'll look--I have a map that shows you other states that are doing exactly what we are proposing here today. So while I appreciate the concerns brought, I'm not sure they're valid. I didn't hear one court case cited that said we couldn't do what we're proposed to do that other states already are doing. So it was a good argument, but it was just that argument. The facts are different. And while my alternative facts may differ from his, I do appreciate but I think we are fine where we are. And with that, I would entertain any questions. [LB216]

SENATOR WATERMEIER: All right. Further questions for Senator Harr? Thank you. You can stay put right there if you'd like. That will close the hearing for LB216. We'll open up the hearing for LR3. Senator Harr. [LB216]

SENATOR HARR: (Exhibits 1, 2) Thank you, Chairman Watermeier, members of the Exec Board. I am here before you on LR3. And let me tell you this is not something I campaigned on, but it is something that I first thought about when I was in fourth grade. As you all know, our curriculum requires us to look at our flags in fourth grade or to study and learn more about our great state of Nebraska and we get to make a trip here. And Ms. Patterson...Mrs. Patterson, my fourth grade teacher, God bless her soul, God rest her soul, she has since passed away, I can still remember her talking about our flag. And she did not like our flag (laughter). And it's funny because it was brought up to me, there was a story on CBS This Morning about the study of flags and it reminded me of this. But if you look at our state flag which is really just our state banner that's put on a piece of cloth, take a look at it next time. Originally the idea was that the Missouri River is on the right, the eastern part of the state, and the mountains are on the western part of the state, right? But if you look at the seal, the mountains are up here. They're on the top. They're really on the north of the state so it doesn't make sense. And look at the smoke on the steamboat. The boat is going west. It's going against the way of the river. It's kind of an interesting...pay attention to it. Look at it. It's interesting. But it also represents a time and a place in our state's past, 150 years ago when the state seal was first adopted. And it's about at that time our forms of transportation which were trains and water, which is valid. It has a sheaf of wheat on it to represent our ag. And it has a hammer and anvil which don't really represent our current forms of industry and trade. And there's a log cabin as well which doesn't represent (inaudible). And that's fine for a state seal and I'm okay with that for our state seal. But a flag

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needs to be instantly identifiable. I have a handout here and it was written by the North American Vexillological Association which vexillology, v-e-x-i-l-l-o-l-o-g-i-c-a-l is the study of flags. And it's a great little book or pamphlet. And it should be instantly recognizable. I introduce this LR and unbeknownst to me, ten days, for ten days afterwards our state right out here flew our state flag upside down. Nobody noticed it. It took someone drawing it to my attention before it was changed, right? It's not instantly recognizable. It's too small. It's too hard to look at. We should be able to look at just like we do our great flag of the United States and say, oh, my gosh, there's a distress signal. Matter of fact, I believe it was in Senator Hughes's district that someone flew a flag upside down at their home as a political statement, but the police actually showed up because they thought it was a sign of distress at the home. It was instantly recognizable that there was something wrong. Here it's a little different. We...ten days it flew on our Capitol and nobody knew. And I don't want to...I have people coming in after me to talk more about what are good and bad flags who are much better than I. But I think this year is a good year. I don't know if you saw the World-Herald front page of the Living section had a bunch of kids who drew and some used...drew and some used construction paper. But they redesigned our flag and looked at different ways that are much more identifiable that make the state more marketable. I can't...I mean, I can look at a car that has a Colorado flag on it, instantly recognizable. City of Chicago, instantly recognizable, I know what they're trying to say. How many of you have ever seen a sticker on the back of a car with the state of Nebraska? I've seen Alaska, never seen the state of Nebraska. The Vexillological Society says we're a bottom five. We want to move up. We want to be something better. It's a great way for kids to talk about our state and there's a neat design and to really use this as part of our learning for this year. Now Speaker Scheer, along with legal counsel for Exec Board, has concerns on the way I formed this. And to a certain degree it goes on to what Mr. Grasz said as well in the last. So I have an amendment here which I will also hand out, AM73, which addresses those concerns as far as having laypeople on a legislative committee. I understand the concerns. I wanted it to be collaborative and not to be Legislature decides. But similar to the last bill, what I want is to have a collaborative and then we just vote one up or down because it could get too difficult if we allowed too many amendments. So I will pass out AM73 so you can look at that. With that, I would end my opening on LR3, good flags/bad flags, and entertain any questions you may have. [LR3]

SENATOR WATERMEIER: Thank you, Senator Harr. Are there questions? Senator Chambers. [LR3]

SENATOR CHAMBERS: Since Nebraskans believe in the death penalty so much, could Nebraska be a meat cleaver in the hand of an executioner on the flag? [LR3]

SENATOR HARR: Anything is possible, anything is possible, yes. [LR3]

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SENATOR CHAMBERS: Okay. [LR3]

SENATOR WATERMEIER: Thank you, Senator Chambers. Further questions for Senator Harr? Thank you, Senator Harr. I assume you'll stick around for just a minute here. [LR3]

SENATOR HARR: Yes. [LR3]

SENATOR WATERMEIER: All right. Can I get a show of hands of opponents, proponents on the resolution? Two. All right, we'll start with proponents to LR3. Come on up. Welcome. Just leave your green sheet up there for now. We'll pick it up when the page gets back. He's (inaudible). [LR3]

SUZANNE WISE: (Exhibit 2) I've also got some handouts. [LR3]

SENATOR WATERMEIER: Oh, can you just start them right there. Senator...we'll pass them around. Go ahead. Welcome. [LR3]

SUZANNE WISE: Hi. I'm Suzanne Wise, S-u-z-a-n-n-e W-i-s-e. Most of you know me as the director of the Nebraska Arts Council, a position I've held for the past 13 years. I'd like to establish my credentials for the purposes of today's testimony. I have a master's degree in art history from the University of Kansas. And before joining the Arts Council, I was curator at Northwestern University's Block gallery in Evanston, Illinois, and curator of education at Sheldon Art Museum. I've taught art history and visual literacy at UNL, UNO, and Creighton. And before becoming director of the Arts Council, I was the administrator of the One Percent for Art Program. And Senator Chambers may remember we worked together in commissioning the art that hangs in hearing rooms 1507 and 1510, many years ago. I'd like to lend my support in favor of a task force to explore the development of a new state flag design. I know that most people may see this as a project of insignificance, but I think it is because our current state flag is itself such an object of insignificance that it's like it doesn't exist at all. In the course of preparing my testimony, I did a lot of on-line research; and I came across an interesting Web site by Michael Green, a professional designer and self-described flag nerd. He pointed out that states with poorly designed flags flew them far less than states with well-designed flags. While I didn't see any evidence of scientific research to back that assertion up, I do think there is a wealth of anecdotal evidence that supports his observation. In the handout that you've got, that first page shows an illustration of how states with iconic flags, their professional sports teams incorporate the flag into their branding and that's just one example. I also like his summary of what is the point of a state flag anyway. He says, "Having a well designed flag gives residents a visual symbol to rally behind. It is a cheap unifying icon that represents large diverse groups of people. Great state flag designs are seen not just on the capitol building but on homes, walls, cars and

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license plates." Also included in the handout are pages from two other Web sites posted by designers where they've indeed redesigned state flags, including Nebraska's. I'm not suggesting, and I emphasize not suggesting, that either of those examples are good by any means. But the Web sites themselves are interesting. The concepts of putting up a problem to be solved I think is an interesting one and would be useful to a task force. Good design is one of those illusive things that does its job by not being obvious. People rarely think about being affected by good design, but the reality is if something is well designed, whether it be an object, a building, or a traffic pattern people gravitate toward it and use it, even though they're not aware that that's why they're doing it. As a Nebraskan, I'm proud of many things. I'm proud of our Unicameral; I'm proud of this great building in which we are currently in, to name a few. We pride ourselves on being unique in these ways and I believe it sets us apart. It's galling that our state flag doesn't embody that uniqueness. If we are going to change, I think our sesquicentennial year is an ideal time to do that. [LR3]

SENATOR WATERMEIER: Thank you. Questions for Ms. Wise? Thank you for coming today. [LR3]

SUZANNE WISE: Thank you. [LR3]

SENATOR WATERMEIER: Further proponents of LR3? Welcome. [LR3]

RON SACK: (Exhibit 4) Thank you. It's an honor to be here. My name is Ron Sack, R-o-n S-a-c-k, and I'm with design firm Bailey Lauerman in Omaha, Nebraska, and they're passing out the tree I guess going around. Sorry there's so many copies of the handouts. A little bit about me: I'm head of design and I'm an AIGA fellow for AIGA design group in the state of Nebraska. Our company was founded in 1970 with offices in Omaha and Lincoln and we know Nebraska. More specifically, I created a brand for Nebraska's sesquicentennial, the 150 that you're seeing with the corn. And in doing that I thought now is the time, too, to take a look at our state flag and what we can do with that. I know it's been brought up before, but in studying flags there are five basic principles of flag design from the North American Vexillological Association, which is the study and science of flags. And really what we want to emphasize is and some of the things that (inaudible) is doing is the fact that we need to keep it simple, the design. The flag should be so simple that a child can draw it from memory. Use meaningful symbolism. The flag's images, colors, or patterns should relate to what it symbolizes. Use two or three basic colors. Limit the number of colors on the flag to three which contrast well and come from the standard color set. No lettering or seals, and this is a mistake many states have made. Never use writing of any kind and never use the organization's seal. Be distinctive or be related. Avoid duplicating other flags that use similarities but show connections. So in looking at other state flags and a couple that I want to use just as examples of what they're doing well is one is Colorado's. And you'll see it in

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the handout there that I passed out. Just a few things that Colorado is doing so great: the white symbolizes the snow on the mountains; the gold acknowledges the abundant Colorado sunshine; red represents Colorado's red soil; and blue is a symbol to her clear blue skies. And Ohio again has great symbolism and imagery. And we wanted to look at city flags. Some of the city flags throughout the country that are actually in the process of redesigning theirs. Chicago does it so well and I just want to read you the symbolism about their flag. The three white stripes represent the north, west and south sides. The top blue stripe represents Lake Michigan and the north branch of the Chicago River. The bottom blue stripe represents the south branch of the river and the canal. The four six-pointed red stars represent major historical events in the city's history: Fort Dearborn, the Great Chicago Fire of 1871, the World's Columbian Exposition, and the Century of Progress Exposition. And another great flag is Washington, D.C. And yet another one, take a look at the city of Phoenix, again, use their mythical bird in the center. And you can't help but notice flags that are well designed throughout the country. You immediately pick up on the power of their symbolism and they don't say the country's name: Switzerland, Canada, and Sweden. So right now Nebraska is in a sea of sameness. We need to take a look and revamp and use what we're known for as what was brought up earlier. Twenty-five--and here are 6, for example--25 of the 50 state flags are surrounded in a field of blue. And in these six, you can barely notice which one is Nebraska unless you really know our state flag really well. So in summary, we recommend to form a task force. Now is the year to take a look at it. It's our sesquicentennial year; it's our 150th year. And in doing so and in doing all the research for that 150 event, there are so many other things that (inaudible) as a state and we thank you for your time. [LR3]

SENATOR WATERMEIER: Thank you. Questions from the committee? Senator Hughes. [LR3]

SENATOR HUGHES: Thank you for coming today. When did Colorado remake their flag? [LR3]

RON SACK: I don't know actually when their flag was designed. It's just one that's out there now that we highly recognize because it's so symbolic of any state and it's so different and it doesn't have the word Colorado on it. You notice it because of that C in the center. [LR3]

SENATOR HUGHES: I was just curious. [LR3]

RON SACK: Yeah. I don't know actually when they designed it though. [LR3]

SENATOR HUGHES: 1876 I believe. [LR3]

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RON SACK: It might be. [LR3]

SENATOR HUGHES: I'm assuming they had a different flag prior to this one. I'm just curious when it got changed. [LR3]

RON SACK: I couldn't tell you that. [LR3]

SENATOR HUGHES: Okay. Thank you. [LR3]

SENATOR WATERMEIER: Thank you, Senator Hughes. Further questions? Thank you...oh, I'm sorry. Senator Crawford, go ahead. [LR3]

SENATOR CRAWFORD: Thank you, Senator Watermeier, and thank you for being here. Just on that note, I don't know if in your research if you know if any other states have fairly recently revisited their flag design. [LR3]

RON SACK: We know that two other states are actually taking a look. I know one is Wisconsin and one might be Minnesota too. So it's something that's gaining some more momentum. And I know cities are aggressively looking at it, too, just because some of the lists that are coming out. We want to make sure that Nebraska is high on that list in terms of design. [LR3]

SENATOR CRAWFORD: Thank you. [LR3]

RON SACK: Thank you. [LR3]

SENATOR WATERMEIER: Thank you. Further questions? Thank you, Mr. Sack. [LR3]

RON SACK: Thank you for your time. [LR3]

SENATOR WATERMEIER: All right. Further proponents of LR3? All right, anybody in opposition to LR3? Senator Harr or, excuse me, is anybody neutral? Senator Harr, come on up to close. [LR3]

SENATOR HARR: Thank you. Thank you, Mr. Chairman, members of the Executive Board. I might have been a little too critical on our seal. And by the way, I'm not looking to change the seal. We can keep that the same of the state. Like I said, all we do is take our seal and put it on our flag and maybe we need to do something a little differently. This committee that we will

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form hopefully may or may not change our flag. It is to meet and look at our flag. When you look at the five...where you need to make the flag, the five parts, we only meet one which is limit ourselves to two to three colors. We miss everything else. Colorado redid their flag in 1964 to answer Senator Hughes's question. And so I guess the final thing I would say is Minnesota, Wisconsin, and Michigan are all looking to change their flags and update them. And if we want to remain competitive in the Big Ten, we better start thinking about this as well. So with that, I would entertain any questions. Oh, one last thing I have to get in there is that there have been a lot of editorials written about we got more important things to worry about than our state flag. And the answer is we do. I trust that Senator Stinner and members of the Appropriations Committee will solve that. But, you know, we can also do more than...we got to look. We can walk and chew gum at the same time. We can address our Appropriations issues. We can address our budget problems. We can address our Corrections issues. We got...we have bandwidth to address a lot of issues besides the three that I talk about: how to stimulate our economy, our prisons, and our budget. And I would look forward to, if you are so kind as to pass it out of committee, to work with other members of this body to form a committee and to pass this. I'm a citizen legislator. I would take some of my time away from my citizenry and my private sector job to help pass or at least look at what is in the best interest of this state. Thank you. [LR3]

SENATOR WATERMEIER: All right. Thank you, Senator Harr. Senator Bolz. [LR3]

SENATOR BOLZ: Briefly, as someone who has sat on her fair share of boards and commissions, the way I understand your proposal here is that whatever makeup of this task force looks like, it is to accept recommendations, review those recommendations, and move something forward, not to design the flag as a commission. Is that correct? [LR3]

SENATOR HARR: Well, it would be first to determine do we need to change it? And then second of all, to take input and then to decide based on that what we think it should look like. [LR3]

SENATOR BOLZ: All right. The only thing I'm trying to point out is I don't think we're directing a task force to design a flag on its own. [LR3]

SENATOR HARR: No. [LR3]

SENATOR BOLZ: Designing by committee is not the intention here. [LR3]

SENATOR HARR: That is correct. Thank you. [LR3]

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SENATOR BOLZ: My other comment here is that I see the symbolism on your binder there and I think I understand your end game, Mr. Harr. [LR3]

SENATOR HARR: (Laugh). [LR3]

SENATOR WATERMEIER: Thank you, Senator Bolz for being observant. Further questions for Senator Harr? All right, thank you, Senator Harr. [LR3]

SENATOR HARR: Thank you. [LR3]

SENATOR WATERMEIER: That concludes the hearing for LR3. That concludes the Executive Committee today. [LR3]