

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 27, 2018

[LB1115 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Tuesday, February 27, 2018, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1115 and gubernatorial appointments. Senators present: John Murante, Chairperson; Tom Brewer, Vice Chairperson; Carol Blood; Mike Hilgers; John Lowe; and Theresa Thibodeau. Senators absent: Tom Briese and Justin Wayne.

SENATOR MURANTE: (Recorder malfunction)...as our members continue to work their way down to the committee, let's begin with some formalities. To begin, my name is John Murante. I'm the State Senator for District 49 which includes Gretna and western Sarpy County. And I'm the Chairman of this committee. We'll be taking...we're here today for the purposes of conducting several public hearings. We'll be taking those matters up in the order on which they appear on the agenda outside of this room. If you wish to testify, we ask that you begin...excuse me, we ask that you fill out one of these green sheets of paper that are located on either side of the room. If you are here and wish to express your support or opposition for any of the matters before us but you do not wish to testify, we ask that you sign in on one of the sign-in sheets that are, again, located on either side of the room. If you do testify, we ask that you begin by stating and spelling your name for the record, which is very important for our Transcribers Office. The order of proceedings is that the introducer will be given an opportunity to open. Then we'll listen to proponent testimony, followed by opponent testimony, then neutral testimony, and then the introducer will be given an opportunity to close. We ask that you listen very carefully and to try not to be repetitive. We do use the light system in the Government Committee; each testifier is allotted three minutes to testify. When your yellow light comes on, you have one minute remaining and we ask that you begin concluding your remarks. When the red light comes on your time has expired and we'll be opening the committee up to any questions they may have of you. At this time I'd like to encourage everyone to turn off or silence any cell phones or electronic devices or anything else that makes noise. If you have a prepared statement, an exhibit, or anything you would like distributed to the committee, we ask that you provide 12 copies to our page who will distribute what you have to us. If you don't have 12 copies, provide what you have to our page and he will make copies for you. And our page for the day is Joe Gruber from Omaha. We'll now begin with introduction of members; Senator Lowe.

SENATOR LOWE: John Lowe, District 37--which is crane country U.S.A this time of year; south half of Buffalo County.

SENATOR HILGERS: Mike Hilgers, District 21; northwest Lincoln and Lancaster County.

SENATOR BREWER: Tom Brewer, District 43; 13 counties of western Nebraska.

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SENATOR THIBODEAU: Theresa Thibodeau, District 6; west-central Omaha.

SENATOR MURANTE: Senator Blood, Senator Wayne have bills in other committees and will be with us as quickly as they can. So with that, we will move to our first item on the agenda; Roger Dixon's appointment to the Nebraska Tourism Commission. Welcome.
[CONFIRMATION]

ROGER DIXON: (Exhibit 1) Good afternoon. Roger Dixon, R-o-g-e-r D-i-x-o-n. I'm the Governor's appointment for District 1 of Nebraska Tourism Commission. My other job is I'm the president and CEO of the Metropolitan Entertainment and Convention Authority in Omaha, CenturyLink Center, TD Ameritrade Park. I think we add a few things to drawing people in to our state and to our city and hope to continue doing that. Be happy to answer any questions.
[CONFIRMATION]

SENATOR MURANTE: All right, thank you for your opening. Are there questions? I see none. Thank you very much. [CONFIRMATION]

ROGER DIXON: Thanks. [CONFIRMATION]

SENATOR MURANTE: And we'll proceed to proponent testimony to Roger Dixon's appointment to the Tourism Commission. Is there any opposition testimony? Is there any neutral testimony? Seeing none, that closes the hearing on Roger Dixon. We will proceed to Matthew DiVito's appointment to the SERC board. Welcome. [CONFIRMATION]

MATTHEW DiVITO: (Exhibit 1) Good afternoon. Matthew DiVito, M-a-t-t-h-e-w D-i-V-i-t-o. I was appointed to the trucking industry opening on the SERC board. My background is I was an army officer for about eight years, then joined Crete Carrier. Currently the director of safety at DOT Compliance. And I look forward to getting involved with SERC and filling the role as the trucking industry rep, pending any questions you guys have for me. [CONFIRMATION]

SENATOR MURANTE: All right. Thank you very much for your testimony and for your interest in the SERC board. Are there questions? Senator Brewer. [CONFIRMATION]

SENATOR BREWER: Thank you, Mr. Chairman. Just out of curiosity, you were what branch as an officer; infantry, armor, transportation... [CONFIRMATION]

MATTHEW DiVITO: Logistics. [CONFIRMATION]

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SENATOR BREWER: What's that again? [CONFIRMATION]

MATTHEW DiVITO: Logistics. [CONFIRMATION]

SENATOR BREWER: Ah, which would make a perfect fit for why you work for the trucking job now. [CONFIRMATION]

MATTHEW DiVITO: Yes. [CONFIRMATION]

SENATOR BREWER: Thank you. [CONFIRMATION]

SENATOR MURANTE: Thank you. I see no additional questions. [CONFIRMATION]

MATTHEW DiVITO: All right, thanks. [CONFIRMATION]

SENATOR MURANTE: Thank you, very much. And we'll proceed to proponent testimony to Matthew DiVito's appointment to the SERC board. Are there any proponents? Are there any opponents? Is there any neutral testimony? Seeing none, that closes the hearing on Matthew DiVito's appointment to the SERC board. And we'll proceed to LB1115. [CONFIRMATION]

SENATOR BREWER: All right; LB1115, Senator Murante. Welcome to your committee on Government, Military and Veterans Affairs. [LB1115]

SENATOR MURANTE: (Exhibit 1) Thank you, Vice Chairman Brewer, members of the Government, Military and Veterans Affairs Committee. For the record my name is John Murante, J-o-h-n M-u-r-a-n-t-e. I'm the state senator for District 49, which includes Gretna and western Sarpy County. And I'm here today to introduce LB1115. LB1115 is introduced for the purposes of effectuating a provision in the Nebraska State Constitution. I believe I have distributed to the committee the relevant portions of our State Constitution. And I will read it because it is a one-sentence line; "the basis of apportionment shall be the population excluding aliens, as shown by the next preceding federal census." In analysis, the term "aliens" as it was used in 1919 and 1920 when our current...when the constitution as it currently exists was drafted meant non-citizens. And for an extended period of time this provision was carried out in the state of Nebraska by using the non-citizen population that was aggregated by the United States Census Bureau. But in the 1960s the Census Bureau stopped asking the question on the census form about citizenship. And so, since that time we have simply ignored this provision in our State Constitution. In my view that is not a serious policy consideration. I believe that we cannot simply take a provision of our constitution and ignore it. And today we have the means to effectuate this provision. And

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the means is what is offered in LB1115, and that is to use the non-citizen population estimate as provided by the United States Census Bureau and to subtract those numbers out from the Census Bureau's data that they deliver to the Legislature following their census every ten years. In my view, this is the best and most appropriate way...and to be clear, this bill applies to the state Legislature, it applies to judiciary districts, it applies to political subdivisions for a simple reason. While the Legislature does have the authority to redistrict Board of Regents, Public Service Commission, State Board of Education, the operative lines...the operative words "excluding aliens" do not appear in the sections of the constitution that deal with those offices. They only appear here with the judiciary, and we are including this for political subdivisions. In my view, we cannot simply ignore our State Constitution, and our State Constitution cannot be clearer as to how we...how the people of Nebraska have determined how the Legislature needs to draw their maps. I've actually taken the opportunity to go all the way back and read the transcripts from the constitutional conventions of 1919...the Constitutional Convention of 1919 and 1920, and observed and took note of the floor discussion back then as it related to this matter. And it was striking to me how the more things change, the more they stay the same; that it was very much a discussion of rural versus urban back then. A discussion of the relative powers of Omaha versus the rest of the state and the legislative districts that were contained there. Many of the discussions that happened in that constitutional convention we still have in this state today. But they made it very clear and their intent was simple; they felt that drawing districts based on citizens and excluding non-citizens--or "excluding aliens" as they put it--number one, it encouraged those people coming to the state of Nebraska to become citizens. But it also directed the districts to be drawn for the people of Nebraska. So that was their goal in 1919 and 1920. And I think that that reasoning still stands today. So, this is a relatively simple bill. Its impacts could be significant, but I think it is something that, at the end of the day, we can't simply ignore what our constitution has to say. And I think this is a bill that is worthwhile and I would encourage your support. [LB1115]

SENATOR BREWER: All right. Thank you for your opening, Chairman Murante. Questions? Hilgers. [LB1115]

SENATOR HILGERS: Thank you, Vice Chairman Brewer. Thank you, Chairman Murante, for bringing the bill. Two quick questions for you. One is, my understanding is your bill does not deal with the apportionment of districts for house...federal House members, is that correct? [LB1115]

SENATOR MURANTE: That's correct. [LB1115]

SENATOR HILGERS: Okay. It is my understanding, looking at the case law relating to apportionment of districts, that states have more discretion in deciding how they would like to

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apportion districts for intrastate districts such as legislature or judicial districts and the like. Is that your understanding as well? [LB1115]

SENATOR MURANTE: Absolutely, and there are a number of different ways that that, what you said, manifests itself. A good example is when it comes to drawing Congressional district maps, population deviation cannot exceed a single person, right? So if there's 1.8 million Nebraskans, each district has to have exactly 600,000 people in it. Whereas when you look at legislative districts, that deviation can be plus or minus 5 percent of the ideal population. So the standards are very, very different. And the operative case that came out of Texas where the litigants actually argued that using total population was unconstitutional because it created districts with dramatically different numbers of registered voters in them. And we certainly see that in Nebraska. I think if you compared Senator Geist's District, for example, with Senator Morfeld's district the number of registered voters vary widely. But what the Supreme Court essentially held was that Texas was permitted to use total population because states have a degree of discretion as to how they will apportion their maps. [LB1115]

SENATOR HILGERS: Thank you. [LB1115]

SENATOR BREWER: All right, additional questions? Additional questions? Seeing none, thank you again for your testimony. [LB1115]

SENATOR MURANTE: Thank you. [LB1115]

SENATOR BREWER: This time we will transition to those proponents. Come on up. Welcome. [LB1115]

SCOTT LAUTENBAUGH: Mr. Vice Chairman and members of the committee, my name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. I am here representing myself on this and not any particular lobbying client at all. I really struggled to prepare comments on this because it is basically a bill that says our constitution says we should do this, and so we should. Even I can't figure out how to elaborate on that very much. The court cases are clear that states are given discretion to determine the population they consider. And what this bill, again, would require us to do we're supposed to already be doing under our constitution. So, I know I said I'm struggling to find ways to elaborate, and it sounds like now I'm just drawing it out because I have nothing more to add (laughter) and that's what the constitution says, so. So, I came in favor of the bill. I'd be happy...I was intimately involved in redistricting last time, I would be happy to answer any questions you might have. [LB1115]

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SENATOR BREWER: All right, well, thank you for your testimony. Questions? Senator Hilgers. [LB1115]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you, Senator Lautenbaugh for being here. I agree with you; when I read the constitution it's as plain as day. I have not served during a redistricting, you have. Can you speak to your experience as to why this hasn't happened before? [LB1115]

SCOTT LAUTENBAUGH: Honestly, I don't know. I don't remember this issue coming up in 2011. I'm kind of embarrassed that it didn't because, again, it was in the constitution then, too, so we should have dealt with it then. [LB1115]

SENATOR HILGERS: Thank you. [LB1115]

SENATOR BREWER: All right, additional questions? All right. Thank you, Senator, for your testimony. All right, additional proponents? Proponents? Seeing none, those in opposition? Opponents? Come on up. Welcome. [LB1115]

RA'DANIEL ARVIE: Good afternoon. My name is Ra'Daniel Arvie, R-a-'-D-a-n-i-e-l A-r-v-i-e. I'm from Omaha, Nebraska. I'm currently a senior at Omaha Central High School. And I am an opponent of LB1115. Well, there's a couple of things that I noticed that I didn't quite agree with. As Senator Murante said, it is in our constitution to...not to include those who aren't citizens. But the constitution was last, I'd say, overlooked (sic--looked over) in 1919. And given American history, we know kind of the ideology that was rampant in 1919: racism, isolation, only wanting to include what the majority--the white majority--of the country wanted. And that obviously was to not include those who weren't citizens, and those who weren't citizens at the time were immigrants. I think that is not right because according to the constitution those, even if they aren't citizens, once they come upon our shores they do have the basic rights given to man and one of those is the right to representation. And also I do not quite agree with the...if there's anything that we want to change in the constitution I do not quite agree with the term used to describe those citizens, "aliens." It's inhumane, and we're in 2018. We know what and what not to do, and that is something we simply should not be okay with and sit around and use. And, yeah. [LB1115]

SENATOR BREWER: All right, does that conclude your testimony? [LB1115]

RA'DANIEL ARVIE: That concludes my testimony. [LB1115]

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SENATOR BREWER: All righty, thank you. Questions? Senator Hilgers. [LB1115]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thanks for coming down. Is this the first time you've testified? [LB1115]

RA'DANIEL ARVIE: Yes, sir. [LB1115]

SENATOR HILGERS: Well, you did great. I appreciate you taking time to come down to your Legislature. We appreciate hearing from you today. So, thank you. [LB1115]

RA'DANIEL ARVIE: You're welcome. [LB1115]

SENATOR BREWER: All right, additional questions? Seeing none, thank you for your testimony. [LB1115]

RA'DANIEL ARVIE: You're welcome. [LB1115]

SENATOR BREWER: All right, additional opponents? Welcome back to your Committee on Government, Military and Veterans Affairs. [LB1115]

GAVIS GEIS: Vice Chair Brewer, members of the Government Committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s. And I'm the executive director of Common Cause Nebraska. We are in opposition to LB1115, and there's a couple things that I wanted to point out. Specifically in regards to the controlling Supreme Court decision on this, and that's Evenwel v. Abbott that was decided I do believe just a couple...was it last year or the year prior? There was an amicus brief filed in that case from previous census directors. And in that amicus brief, those census directors pointed to that data gathered on alienage and basically what they said, in gathering that alienage data it isn't done at the time of the normal census, it's done on a rolling basis. It is done every three to five years. And at the time that we gather the census data, it can be up to 80 percent out of date. So, and this is, like I said, I'm pulling this directly from their amicus brief. This is the data they provided in filing it. And that's something I think we should take into account when we're looking at using that data to draw our own maps in this regard. That's something that could be troubling if we're going to base our own maps on what could be possibly 80 percent out-of-date data that could be used in possible challenges to our own maps. If our maps would go up to a court challenge, an out-of-date map could be challenged on partisanship, which is an ongoing discussion at the federal level, could be challenged on gerrymandering, racial bias, not even if it is intended out-of-date data. Just leaves and allows room for challenges, expensive challenges. So, it's something we need to look at. We need to consider the fact that this is not gathered at the

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census block level. It's not gathered at the census block level concurrently, it's at a rolling basis every three to five years. Like I said, this is coming from former census directors. The second thing that I wanted to point out is that even if these are non-citizens, do we want to say that every non-citizen doesn't deserve representation? There are a lot of non-citizens that maybe in the past we would have said they don't...our past Nebraskans would have said, no, we don't want to give them representation. But there are a lot of non-citizens that we actually value today. Let's look at international university students. Would we say that international university students who go to university, we value their contributions, they pay property...not property taxes, sales taxes. They contribute to their local property taxes, they contribute to their local community. Would we say that they don't deserve some sort of representation? Some sort of somebody to speak out for them? There may have been a time when life was simpler, when we didn't have the multiple levels of alienage that we would have said, nah, representation, who cares about that? But our alienage today is different, it's more complex. And there needs to be room for those diverse types of alienage to have representation in today's society. Thank you. [LB1115]

SENATOR BREWER: Thank you, Mr. Geis. All right, questions? Go ahead, Senator Hilgers. [LB1115]

SENATOR HILGERS: Thank you, Mr. Vice Chairman. Good to see you, Mr. Geis. Thank you for your testimony today. So, I read the same decision, I just want to make sure you and I are on the same page as to... [LB1115]

GAVIN GEIS: Please. [LB1115]

SENATOR HILGERS: ...the nature of your objection. I don't hear you arguing, necessarily... [LB1115]

GAVIN GEIS: Yes. [LB1115]

SENATOR HILGERS: ...although I don't want to put words in your mouth, that you believe the Nebraska constitutional scheme and the scheme that would be embodied in LB1115 is unconstitutional. [LB1115]

GAVIN GEIS: No... [LB1115]

SENATOR HILGERS: Okay. [LB1115]

GAVIN GEIS: ...not at all. [LB1115]

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SENATOR HILGERS: But the concern that you are articulating is that potentially the data may not be good enough to... [LB1115]

GAVIN GEIS: May not be usable. [LB1115]

SENATOR HILGERS: May not be usable, and if we were to use it... [LB1115]

GAVIN GEIS: Could create... [LB1115]

SENATOR HILGERS: ...could ultimately through a court challenge down the road, those maps could be invalidated. [LB1115]

GAVIN GEIS: Exactly. [LB1115]

SENATOR HILGERS: So, in other words, it's a caution for us if LB1115 were to pass--or even if not because I do think the constitution is clear--that we should be paying careful attention to the data we use. Correct? [LB1115]

GAVIN GEIS: Exactly, yes. [LB1115]

SENATOR HILGERS: And then the second argument is just a policy argument as to...since Nebraska, I believe, does have the ability to decide between amongst...not for House seats, but for intrastate seats we can pick and choose how we would like to apportion so long as they have a rational basis. You're making a policy argument for choosing one versus the other, is that right? [LB1115]

GAVIN GEIS: Right, two separate arguments there... [LB1115]

SENATOR HILGERS: Okay... [LB1115]

GAVIN GEIS: ...you'd be correct, yes. [LB1115]

SENATOR HILGERS: ...perfect. Thank you, Mr. Geis. I appreciate it. [LB1115]

GAVIN GEIS: Of course. [LB1115]

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SENATOR BREWER: Yes, Senator Lowe. [LB1115]

SENATOR LOWE: Thank you, Vice Chairman. And thank you, Mr. Geis, for being here. [LB1115]

GAVIN GEIS: Of course. [LB1115]

SENATOR LOWE: What data do you think we should use since this data doesn't seem to be quite up to date? [LB1115]

GAVIN GEIS: The argument that they seem to be making is that states would have to do their own censuses to have usable data that would be unchallengeable at any level. So, states would basically have to create their own census data to have something that would be beyond the scope of challenge. [LB1115]

SENATOR LOWE: Okay. Where do we get that money from to do that (laughter)? [LB1115]

GAVIN GEIS: I'm sorry, I don't have that answer. [LB1115]

SENATOR LOWE: I mean, our state right now is not well off financially. As the universities have shown us, and we would probably have to take more money from the university to do that. Are you... [LB1115]

GAVIN GEIS: I don't like that idea. [LB1115]

SENATOR LOWE: I didn't think you probably would. [LB1115]

GAVIN GEIS: I'm not supporting that. All I know is that they said it was not good data at the federal level and that states would have to find that data themselves to be beyond challenge. [LB1115]

SENATOR LOWE: Okay, thank you. And, you know, I own property in Colorado. And so I travel and I visit to Colorado. And so if I should have representation in Colorado when I'm there, I should be able to tell their state what to do as an alien to Colorado? [LB1115]

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GAVIN GEIS: I'm not arguing that you should have the right to vote, I'm not arguing that international students should have the right to vote. But I do think someone should be looking out for their interests. [LB1115]

SENATOR LOWE: Well, I believe that they are. And they're being well taken care of here, as far as the students and the university and things like that. [LB1115]

GAVIN GEIS: Right, today they are. And I do...and my main worry is that if we cut them out by cutting their population out that they might lose some of that. [LB1115]

SENATOR LOWE: I don't believe that right now we are. [LB1115]

GAVIN GEIS: Right, exactly. Right now, where we are right now today we're not. I agree. [LB1115]

SENATOR LOWE: Thank you for your testimony. [LB1115]

SENATOR BREWER: All right, thanks for your questions. Senator Hilgers. [LB1115]

SENATOR HILGERS: Thank you, Mr. Vice Chair. Just to follow up on that conversation just to make...since we are making a record here. I do want to make clear that I believe, and tell me if you disagree with this... [LB1115]

GAVIN GEIS: Okay. [LB1115]

SENATOR HILGERS: ...that the Supreme Court...that the applicable Supreme Court case law as to the data that we're talking about... [LB1115]

GAVIN GEIS: Right. [LB1115]

SENATOR HILGERS: ...when we're not talking about U.S. House seats--because I do believe that Senator Murante's correct. When we're talking about U.S. House seats, if you're one, just one person off... [LB1115]

GAVIN GEIS: Yes. [LB1115]

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SENATOR HILGERS: ...the Protection Clause says that's not sufficient... [LB1115]

GAVIN GEIS: Right. [LB1115]

SENATOR HILGERS: ...but when we're talking about intrastate districts you are presumptively valid, I believe, if it's within a 10 percent deviation. [LB1115]

GAVIN GEIS: Yes. [LB1115]

SENATOR HILGERS: So, not to suggest that we...well, is that correct to your understanding? [LB1115]

GAVIN GEIS: Within a 10 percent deviation up to...yes, yes. As long as you're not over 10 percent you are presumptively...you have to be careful, it's not...for now, we'll say that. [LB1115]

SENATOR HILGERS: (Laughing) Well, and I don't want to...the cases say... [LB1115]

GAVIN GEIS: (Laughing) Let's be careful with that. [LB1115]

SENATOR HILGERS: The cases say what they say, I'm not trying to... [LB1115]

GAVIN GEIS: Yes, yes. [LB1115]

SENATOR HILGERS: Just my understanding, just because if someone reads this committee transcript down the road I want to make sure... [LB1115]

GAVIN GEIS: Ah. [LB1115]

SENATOR HILGERS: ...my understanding is that the courts would have a presumption--the presumption of course could always through a trial you could overcome that presumption--but I guess my point is; of course I think we want to have as good of data as we possibly can. [LB1115]

GAVIN GEIS: Right. [LB1115]

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SENATOR HILGERS: But I'm not...I want to make sure that the standards we're articulating at this hearing... [LB1115]

GAVIN GEIS: Right. [LB1115]

SENATOR HILGERS: ...are not...they're not the same standard as for a federal House seat, is all. [LB1115]

GAVIN GEIS: Understood, and they can only...as far as I understand, you can only vary that significantly in population up to that 10 percent, if we're going to go up there. You can only vary that significantly in population if it's in service to some other known redistricting traditional value. And alienage, I would say, it's arguable that that's a traditional redistricting value. [LB1115]

SENATOR HILGERS: So, and I would agree with your statement in the sense that you have to satisfy two conditions. One is it has to be within that 10 percent. But then secondly, to your point, which I wouldn't disagree with to a part way, which is it has to be to a rational basis. And there are a lot of things that have been recognized by the court. I don't know of any case that has actually directly determined whether or not not-citizenship is a value that would be a rational basis or not. And your argument, I guess, is that it wouldn't be. But it hasn't been decided. But at least insofar as the data piece, I think you and I are on the same page that up to 10 percent of presumption for intrastate redistricting... [LB1115]

GAVIN GEIS: Right, and that's for at the federal level. At the state level I think it would be a different discussion since we've never...as a state we've never used that large of a margin. So there might be a discussion to be had in terms of what we consider...we've only...I've only ever seen a 5 percent margin that we've used within intrastate districts. So... [LB1115]

SENATOR HILGERS: Oh. [LB1115]

GAVIN GEIS: ...in terms of what we consider an appropriate margin of error for the satisfying the state presumption of as close of a margin as possible. I don't know...that's I think is another discussion for another day. [LB1115]

SENATOR HILGERS: Well, Mr. Geis, is that...and I guess I heard Senator Murante mention that. Is that, and I don't know the answer, is that a...do you have a state (inaudible)? [LB1115]

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GAVIN GEIS: Yes, we have...the State Constitution says as nearly as equal in population as may be, is what the State Constitution requires. It doesn't define...and each time we do redistricting, we basically redefine what that requirement is. And in 2011 we used 5 percent, and in previous years we've actually used less. And we kind of redefine it each time. We've never, you know, written it down in statute per se. [LB1115]

SENATOR HILGERS: And there is no case? [LB1115]

GAVIN GEIS: There's no case. [LB1115]

SENATOR HILGERS: Okay. [LB1115]

GAVIN GEIS: But we've always been less than 10 percent traditionally, always. So I think there's some argument to be made that within Nebraska, less than 10 percent is definitely something that we would have to hold to. [LB1115]

SENATOR HILGERS: I got you, so the record is clear, I guess, what you're saying is from a federal U.S. Equal Protection under the federal constitution equal protection challenge 10 percent may be enough. But your point is it might be 5 percent when we apply state standards. [LB1115]

GAVIN GEIS: Right. [LB1115]

SENATOR HILGERS: Okay, I understand. Thank you, very much. [LB1115]

GAVIN GEIS: Of course. [LB1115]

SENATOR HILGERS: Thank you, Mr. Chairman...Vice Chairman. [LB1115]

SENATOR BREWER: Sure. Okay, additional questions. If not, I want to jump in here and run one by you here because... [LB1115]

GAVIN GEIS: I'll try. [LB1115]

SENATOR BREWER: ...just out of curiosity, if we're 80 percent out of date...and we're doing these census you said on a three to five year cycle? [LB1115]

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GAVIN GEIS: Yes, on a rolling basis. [LB1115]

SENATOR BREWER: Why are we that far off? I mean, what do you think we can attribute that to? [LB1115]

GAVIN GEIS: It's because it's just a program within the Census Bureau. As far as they reported it, it's not the census...it's a program they do within the Census Bureau within individual communities that they do on a rolling basis. Basically they don't do it concurrently with the census. I don't...it's the federal government. That's what I attribute it to. (Laughter) [LB1115]

SENATOR BREWER: Well, that sounds...that's a good answer right there. Now, as far as resetting and looking at numbers, we do that in a ten-year cycle, is that right? [LB1115]

GAVIN GEIS: Yes. [LB1115]

SENATOR BREWER: Okay. All right, and one more time; any additional questions? None, thank you, Mr. Geis, for your testimony. [LB1115]

GAVIN GEIS: Thank you. [LB1115]

SENATOR BREWER: All right, additional opponents? Come on up. Welcome to the Government, Military and Veterans Affairs Committee. You can go ahead and begin. [LB1115]

JONATHAN RENTERIA: (Exhibits 2 and 3) Thank you. Hello, Senator Murante, Vice Chair, members of the Government, Military and Veterans Affairs Committee. My name is Jonathan Renteria, that's J-o-n-a-t-h-a-n R-e-n-t-e-r-i-a. I am a community organizer with the Heartland Workers Center. I am here to testify on behalf of the organization in strong opposition to LB1115. As a nonpartisan organization that works with marginalized and underrepresented people across the state, we felt it our duty to speak strongly against this discriminatory bill. It is baffling to see so many of these, and I put that in parentheses (sic--quotations), types of policies come out of this legislature at a time when we are trying to grow our state economy, attract new business, and retain the talent that is currently keeping Nebraska growing. Non-citizens are already restricted from voting as it stands because it is quite literally illegal for them to do so. So when a prospective transplant looking to work at Amazon's new headquarters here in our great state decides to look into the politics of our state, what will they see? We want you to come here and start businesses and pay tax money and grow on our economy. But when it comes to representation, depending on what part of the state you're in and where you fall in our model, you may or may not count. Or will companies look at these policies before even thinking of

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opening an office, and scoff when they receive a proposal from Nebraska cities looking to replace the lost tax revenue of companies moving their headquarters. Will passing bills like LB1115 make it easier to balance our budget? And again, this is a discriminatory policy because we do not have a problem with marginalized and underrepresented people being overrepresented in our government. In fact, quite the opposite is true, otherwise I would be out of a job. Because I am a visual person and I want to make sure that others understand this as well as the people who will be implementing this policy do, I have brought today a visual representation of one state senator. It's kind of what you guys are holding here. On the left side here is one current state senator that has been allocated to one of the top cities in the state in terms of population of non-citizens. On the right there is a blank state senator. I brought this to the committee today because you guys have been granted the authority to implement the model of how likely someone is to be a U.S. citizen in the state of Nebraska across those cities with the largest number of non-citizens. And you will be attempting to allocate those senators accordingly. Would any of the senators on this committee be willing to go before the citizens of those cities and say; due to modeling errors we cut out two-fifths of your population and incorrectly allocated you only three-fifths of a senator. Does that not open the state up to a constitutional challenge? Did the state of Nebraska not just pay millions of dollars in fines for discriminatory actions? One last time, we do not have a problem with marginalized and underrepresented people being overrepresented in this state. Good policy comes from constituents demanding real change and progress to better the lives of all Nebraskans. And LB1115, along with the other bills recently introduced by this body, do nothing to achieve this goal. As a state if we trying to be "Nebraska Nice," does that mean that we will say; show me your papers, please, but with a smile? We do not need this bill, and to vote for it is to say that you want to play a part in allocating representation in a way that this bill does not make clear. Thank you. [LB1115]

SENATOR BREWER: Thank you for your testimony. All right, questions? All right, seeing none, thank you for your testimony. All right, additional opponents? Welcome to the Government, Military and Veterans Affairs Committee. [LB1115]

GABRIELA PEDROZA: (Exhibits 4 and 5) Thank you. Hello, my name is Gabriela Pedroza, that's G-a-b-r-i-e-l-a P-e-d-r-o-z-a. Dear Senator Murante and members of the Government, Military and Veterans Affairs Committee, my name is Gabriela Pedroza and I am testifying on behalf of Heartland Workers Center. As an organization, we oppose LB1115. This bill would exclude anyone who is not a citizen, including people who are legal permanent residents or have work permits, as well as people who do not have permanent status. Based on estimates as stated in a January 18 Lincoln Journal Star article--which is also attached to my testimony--this bill would essentially exclude portions of the population, many of which are larger than some communities in the state. Using portions of the population...oh no, sorry. Using the 2010 Decennial Census approximately 12,800 non-citizens or 4 percent of the total population in Lancaster County, or 34,500 or 6.4 percent in Douglas County, and in Colfax County--which has

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a large immigrant population--approximately 20 percent or 2,000 people would be excluded. Now I'm not sure about you, but it seems to me as if this bill discriminates against a certain group of people. People who have come to this country to seek a better life; who are paying taxes, buying homes and cars, opening businesses and working. All with the goal of making a better life for themselves and their families while strengthening the communities where they live. Just because they cannot vote does not mean that people should be excluded from representation. When I heard this bill, I was shocked because I myself am currently a permanent resident and in the process of becoming a naturalized citizen. With this bill, would I be excluded from representation, and why? I work, I pay taxes, I send my daughter to school. What is the purpose of excluding people like me and how would it benefit Nebraska? Again, I ask you to please vote no on LB1115. Thank you. [LB1115]

SENATOR BREWER: All right, thank you for your testimony. Questions? Questions? All right, seeing none, thank you again for your testimony. All right, additional opponents to LB1115? Welcome. [LB1115]

DAWAUNE HAYES: Hello, my name is Dawaune Hayes, that is D-a-w-a-u-n-e H-a-y-e-s. I am from Legislative District 11, represented by Ernie Chambers in north Omaha, Nebraska. I'm here as an opponent against LB1115 because I come from a community where there's one of the largest concentrations of resettled refugees and new immigrants in the state of Nebraska. We have people from Tehran, Myanmar--formerly known as Burma, an (inaudible) population, and folks from all over Africa and the Middle East. One of the biggest contributors to our economy and to our culture is because of the immigrant population that we have. This bill directly impacts communities of color with higher concentrations of immigrants and non-citizen populations and would significantly impact representation of people who contribute to our current and future economies of our state and our country. For example, DACA recipients who are taxpaying, law-abiding, working persons would be specifically excluded from representation. And we're constantly debating their legitimacy of participating in society when they already do. Omaha and Lincoln are home to the largest concentrations of resettled refugees and immigrants who make valuable economic and cultural contributions to our society. And many of these populations are fleeing persecution, government corruption, and/or environmental issues. As such, they are establishing roots in Nebraska, often enrolling children in public school and participating in local economies. Again, these are people who wish to participate, and although they may not be able to vote because of their citizen status they should definitely be represented. And as the case was made earlier, we're not overrepresented in our current legislative body. So, we're not in 1919 or 1920. And our diversity is going to...of our country and our state, is going to continue to increase with people from all over the country. So, if we start drawing district lines based off of non-citizenry it would disproportionately misrepresent our growing populations. So, if you could please not vote for LB1115, that would be phenomenal. [LB1115]

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SENATOR BREWER: All right, thank you, Mr. Hayes, for your testimony. Questions? Senator Lowe. [LB1115]

SENATOR LOWE: Thank you, Chairman. And thank you for testifying. Why? [LB1115]

DAWAUNE HAYES: Why? It should always be asked. It needs to be in the back of our minds at all times. And when you ask why more than five times you begin to scratch at maybe the surface of the truth. [LB1115]

SENATOR LOWE: All right. Thank you. [LB1115]

SENATOR BREWER: Any additional questions? Seeing none, thank you for your testimony. All right, additional opponents of LB1115? Welcome to the Government, Military and Veterans Affairs. [LB1115]

NATE DOBBS: (Exhibit 6) Thank you. Thank you, Senators. Good afternoon, committee members. My name is Nate Dobbs, and that's N-a-t-e D-o-b-b-s. And I am the staff attorney for the Immigrants and Communities Program with Nebraska Appleseed; which we are a nonpartisan, nonprofit organization dedicated to justice and opportunity for all Nebraskans. And I am here today to testify in opposition to LB1115. I don't want to duplicate what other speakers have said, but I do think it's worth noting for the record that when we're talking about this provision of the constitution we're talking about the number of people who will be counted when the state population is used to determine the number of legislative districts and when we get to the population equality and the boundary equality we're talking about the drawing of those districts. So this is the number that this body will use to draw the maps. And so, our concern is that what's happening is that there will be a significant number of hardworking, taxpaying Nebraskans who are left out of the count of the population. So, what will happen is the districts will be drawn based on a lower-number population minus the non-citizen population. Which, when it comes down to it, the undocumented population alone pays about \$40 million in taxes, state and local taxes, per year. And without representation, that creates a situation where there's some taxation without representation at the state level. And that being said, there's also a thought that comes to my mind is when we talk about the number of people in the state; we're talking about the number of persons. We're talking about the people who are protected under equal protection who have certain, and I will say this, the word "alien" comes up in the constitution another time when we're talking about inalienable rights and protection under the law. These people will be based...the number will be based on an estimate. And I'm not sure what that number will be right now. The census says it's about 82,000 or so, 86,000, I'm not quite sure exactly the number. But, whatever that number will be it means that that number will be excluded from the population. So, we need to really take a step back and think about the

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dangerous precedent this is setting because we can't entertain the idea that there are certain groups of people in our state that should not be counted as people, as residents. So, we've been there before. And if this bill is to go in to law, then this body has to stand behind that notion and codify that notion in statute that there are people who are not worthy of being counted in this state. I think that concludes my testimony. If you have any questions, I'd be happy to answer at this time. [LB1115]

SENATOR BREWER: All right. Thank you for your testimony. Senator Hilgers. [LB1115]

SENATOR HILGERS: Mr. Vice Chairman, thank you very much. Mr. Dobbs, thanks for being here. I have a couple questions, but I just want to touch on the last one which is, I do think that there's a difference...and I think it's important for the transcript and for the record to be clear. That I do think there's a difference in saying that...I don't think it follows when you say that someone might be excluded from the apportionment, that therefore they don't count as people. For instance, Hawaii--of all states, which is a fairly progressive state--itself uses a scheme that is not based on total population. They actually restrict all of their apportionment...their base apportionment population is registered voters. And so I don't think it's fair to say, at least in this instance that...may be some circumstances that could be the case, but I think states have wide latitude on not using total population. [LB1115]

NATE DOBBS: Well, and I agree with that to some degree. I will say that Hawaii, I believe they removed the...they don't use the military population because there's a large number of military that are very, you know, mobile. And so a count that includes a military population in the state would probably be...well, greater than their population. Here we're talking about non-citizens who are here making meaningful contributions to the economy and to our society who have been here for maybe 2, 3, 4, 10, 50 years who will then not be included in that number of the population. So, and the reason I say person is because that is the extent to which, and that's the kind of people who have these inherent rights. And that's what the Federal Constitution recognizes when it comes to counting people in the state. Not people minus certain qualifications... [LB1115]

SENATOR HILGERS: I appreciate that very much. I guess I would just follow and say I...you're probably right that what motivated Hawaii's scheme was probably both military as well as probably tourism. But in practical effect, it does exclude non-citizens. So, I just...I guess my point, I think this has been confirmed by the Supreme Court precedent interpreting these types of provisions, is that look, as long as there's a reasonable, rational, nondiscriminatory basis for making that kind of decision: okay. And I don't think it follows, necessarily, from making that kind of decision that it is there for discriminatory...but, I don't know if you would disagree with that statement. [LB1115]

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NATE DOBBS: Well, I do because the...because I don't think that there...first, I don't think it would be rational basis. I think we're talking about representation, and in Evenwell, Justice Ginsburg did write that representation is what is at--essentially paraphrasing--at the core of the government and what then leads to voting and drawing legislative districts. So, that by itself I think since that's a concept that's implicit in ordered liberty I believe that that wouldn't be rational basis. I think actually it would elevate to strict scrutiny if it were challenged. But that's...I mean, we could disagree about that, but that's kind of...and secondly; when it comes to counting population the only other historical time I can think of when this question was put to bear was when we were talking about what to do with slaves, and then the Three-Fifths Compromise...so, when we start down this road, that's inevitably what we'll wind up with. [LB1115]

SENATOR HILGERS: So I think Justice Ginsburg...I appreciate that, I'm glad you read the Evenwel decision too. I did as well, and I think Justice Ginsburg even though wasn't at issue in the case I'm certain she discussed Hawaii's regime and I don't think discussed it in a context of a strict scrutiny standard. At least, that's my recollection. But I appreciate that back-and-forth. It really kind of goes to the policy argument to some degree, at least in my view. But I guess the problem I have is from a policy perspective, we can have disagreement and there's been opponents who have disagreed with from a policy perspective. But in some ways, and maybe in the most material way possible, the policy decision, has it not already been made because this is already in the Nebraska Constitution? [LB1115]

NATE DOBBS: When I reviewed the record, I did look back at the 1920 convention. And first, it was introduced as a compromise on a provision that dealt with allocating cities and the county at large separately for redistricting purposes so the conflict between rural and urban was present in the conversation, but this provision was introduced as a compromise that everyone could get behind. From what I read it actually didn't pass, so I'm not quite sure where the language inevitably came from when it was written into the constitution. But that being said, with the fact that it's in the constitution now, there had been times where this has come up. In fact, just recently in the discussion of LB580, which was the redistricting commission bill a couple of sessions ago, where on the floor it was said that it forwards constitutional...like, for being constitutional and the question of excluding aliens came up. So I think there's already been a significant amount of work in determining the constitutionality of it. And the fact that it's there doesn't mean that it's worthy of selective enforcement, kind of cherry-picking provisions of the constitution to enforce. I kind of got off on a little bit there... [LB1115]

SENATOR HILGERS: No, no, no... [LB1115]

NATE DOBBS: Does that answer your question? [LB1115]

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SENATOR HILGERS: ...I appreciate that. And I think you and I agree; I don't think we can selectively enforce anything in the constitution. In fact, I think because it's there we need to enforce it. And so it seems to me because it is there it seems like the only...really the only mechanism for those who believe that it shouldn't be there...in other words, those who believe that as a policy matter in the state of Nebraska should not exclude non-citizens it seems like there's one of two routes, and tell me if you disagree or have a third route...and neither of which, by the way is opposing is LB1115. It is either you propose a constitutional amendment that excises the language in the constitution, that's one. Or secondly, you apply the constitution through a vehicle such as LB1115 to actually draw redistricting maps. And in that case, if you believe that there's an equal protection challenge...I'm sorry, equal protection violation or Nebraska Constitution, as my conversation with Mr. Geis earlier, then you file a lawsuit and you challenge it. In which case either the bill, but more importantly the constitution, will either stand or fall. [LB1115]

NATE DOBBS: Right. [LB1115]

SENATOR HILGERS: It either will be constitutional or not. It seems to me that although I understand the opposition to the underlying policy here, the vehicle is not opposing LB1115; it is either modifying the constitution or challenging the constitutional provision. Do you see another route? [LB1115]

NATE DOBBS: Not particularly. I mean, I agree because it's in the constitution. So what...is it LB1115 that's the problem or is it the fact that, you know, the constitution is...it may be unconstitutional in the federal sense. [LB1115]

SENATOR HILGERS: Yeah, right. [LB1115]

NATE DOBBS: So, and I think that those are the two routes. A third is kind of the same, eventually it would be up the Supreme Court, I think, to determine, either the state or the federal, to determine whether or not, you know, it...I think the Supreme Court would...I mean, I think it would fail constitutionally, it's my opinion. But I think that you're right, there are one of two routes. Another would be to ask for an injunction if implemented or if later on it's getting closer to the time in which the count is actually going to occur. So...but, yes. It's the constitutional provision here that is the issue. LB1115 gives us a chance to talk about this, which I appreciate that opportunity to discuss. But I would agree with you with that. [LB1115]

SENATOR HILGERS: Yeah, well I really appreciate your thoughts because I think at the end of the day...I mean, you're an attorney. I mean, this is that sort of a basic foundation of our first-year education in law school. It's you may not like the law, especially one in the constitution, but

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you've got to apply it. But if it's unconstitutional there are routes to challenge it. So I think you and I probably agree on that point and also that maybe we shouldn't be selectively enforcing things. But I do appreciate the back-and-forth. And I appreciate you reading the 2016 Ginsburg Opinion. It was a good primer for us. [LB1115]

NATE DOBBS: It was a good opinion, yeah. And actually, I had it printed off but I didn't bring it up here so I could quote from it, so. [LB1115]

SENATOR HILGERS: Well, I appreciate it very much, Mr. Dobbs, thank you. [LB1115]

NATE DOBBS: Thank you. [LB1115]

SENATOR BREWER: All right, thank you for your question. All right, real quick one here for you. So, we're going to put this on the record. Let's back track a little bit here and talk about the \$40 million in taxes. How do you come up with that? How do you get that number? [LB1115]

NATE DOBBS: I'm sorry, can you repeat that? [LB1115]

SENATOR BREWER: When you were talking about the contribution in taxes, the \$40 million, how did you get that number? [LB1115]

NATE DOBBS: I can get you a copy. That is from the...there was a report in 2017 put out by the...and I cited it in my written testimony, it's itep.org. It's a group that studies tax contributions by immigrant populations. And their assessment in 2017 was that it was \$40 million in the state and local taxes per year. [LB1115]

SENATOR BREWER: State and local? [LB1115]

NATE DOBBS: Um-hum. [LB1115]

SENATOR BREWER: Okay, and then you mentioned a figure of 82,000. Is that just kind of a best estimate, or is there hard numbers on that? [LB1115]

NATE DOBBS: That was from a 2016 census population estimate where they estimated the number of non-citizens in the state. And...that's on the census website and I think...oh, okay it's...in my written testimony, there. But that's kind of the basis... [LB1115]

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SENATOR BREWER: Okay, I'll reference back to that again. Anyway, additional questions? Oh, yes, Senator Blood, welcome...welcome. [LB1115]

SENATOR BLOOD: Welcome back. And I apologize if I've missed your testimony, so if I'm redundant, I just scanned over your letter. And you're with Nebraska Appleseed? [LB1115]

NATE DOBBS: Yes. [LB1115]

SENATOR BLOOD: Okay. So, one of the concerns I have, and I wondered if you had addressed it, is do you know what the population count in this bill includes people who are too young to vote? Wouldn't that affect...being that I might be 16 or 17 now, but I'll be able to vote in two years. Do you see what I'm saying with the population count? Is that something that the...that was the first thing that came to mind when I read that bill, was my biggest concern. [LB1115]

NATE DOBBS: Well, I think that the...within the census would allocate...and I'm not entirely certain, but when it comes to the population of the state that's going to be a straight count of everybody...and then... [LB1115]

SENATOR BLOOD: So, nonvoters that are not immigrants or people who are not citizens, they'll still be counted in this then? So it's not an issue. [LB1115]

NATE DOBBS: Well the... [LB1115]

SENATOR BLOOD: And maybe Senator Murante would be a better person to ask that question of. [LB1115]

NATE DOBBS: I know the census puts out the citizens of voting age population, which is kind of like the number of eligible people who are of the age to vote but may or may not be registered to vote. But when it comes to determining the population of the state, which is...and then...well, LB1115 would remove the number of non-citizens from that count. Then I believe, and I have to look further at the census, but that's all people in the state. [LB1115]

SENATOR BLOOD: Okay, so regardless of age? [LB1115]

NATE DOBBS: Um-hum. [LB1115]

SENATOR BLOOD: It's not just the people who are of voting age? [LB1115]

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NATE DOBBS: No, because...and I think that that was one of the methods in the Evenwel decision that the plaintiffs wanted to support, was using a citizens of voting age population to draw districts and not the population total. [LB1115]

SENATOR BLOOD: Well, I just want to make sure we're not harkening back to when slaves were two-third of a person, or...you know, that would just be a horrible direction to be going in, so. I appreciate...and again, I jumped in at the end. I apologize and that's probably...I should clarify that with Senator Murante. [LB1115]

NATE DOBBS: Okay. Well, and I'd be happy to follow up with any other questions that you have, too, anytime. [LB1115]

SENATOR BREWER: All right, additional questions for Mr. Dobbs? I understand that we're running out of literally hours and minutes in Government Committee here and we like to grill lawyers, and you just happened to be in the right place at the right time (laughter). [LB1115]

NATE DOBBS: I was waiting for my time at the chair here to get the grilling. I appreciate that. [LB1115]

SENATOR BREWER: Anyway, thank you for your testimony... [LB1115]

NATE DOBBS: Thank you, very much. [LB1115]

SENATOR BREWER: ...and being a good sport. [LB1115]

NATE DOBBS: Thank you. [LB1115]

SENATOR BREWER: All right, additional opponents? Come on up. Welcome to the Government, Military and Veterans Affairs Committee. [LB1115]

ANNA HERNANDEZ-VALENCIA: Thank you, sir. Honorable Senators, it's a pleasure being here. My name is Anna Hernandez-Valencia. I am a private citizen here to propose (sic-oppose) LB1115. I'm a proud...I'm sorry... [LB1115]

SENATOR BREWER: Could you spell that? [LB1115]

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ANNA HERNANDEZ-VALENCIA: Sure; A-n-n-a, last name is Hernandez, H-e-r-n-a-n-d-e-z, hyphen, Valencia, V-a-l-e-n-c-i-a. [LB1115]

SENATOR BREWER: Thank you. [LB1115]

ANNA HERNANDEZ-VALENCIA: Okay. I'm a proud taxpaying American citizen, born and raised in south Omaha. I know a lot of people who are currently residents of the United States who pay taxes. I even know people who are undocumented who are paying taxes on their ITIN number. I truly believe that this boils down to taxation without representation in its, you know, in its simplest form. You know, there's approximately, from the last report that I read from the State Department, about 65,000 serving in the military who are residents of the United States, legal residents, and who pay taxes. You know, where would they, you know, stand in this particular situation? And I clearly believe that is un-American. Also...I also, you know, think that the term "alien," you know, in the context in the 1920s is very different from what it is currently in 2018. You know, there was a time when women were considered property of their husbands. So things change. And, you know, that should be up for discussion as well. So, with that, I would like to ask you to vote against LB1115 and thank you for your time. [LB1115]

SENATOR BREWER: All right, thank you for your testimony. Questions? Senator Blood. [LB1115]

SENATOR BLOOD: Thank you, Senator Brewer. And I only have one question. First, I want to say very eloquent. Good job, by the way. [LB1115]

ANNA HERNANDEZ-VALENCIA: Thank you. [LB1115]

SENATOR BLOOD: So, I was very interested in your comment about the military; what did you say, there was 65... [LB1115]

ANNA HERNANDEZ-VALENCIA: Yes, in a report from the State Department. Now, it was, I believe, it was 2009. So, obviously, I'm sure those numbers have increased. But my question is where do these U.S. military members, what would their...you know, where would they stand because I know, personally, many have settled in Omaha... [LB1115]

SENATOR BLOOD: Right. [LB1115]

ANNA HERNANDEZ-VALENCIA: ...and they're U.S. residents, they're not U.S. citizens but U.S. residents. So, that is one of my concerns. [LB1115]

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SENATOR BLOOD: And they're willing to put their lives on the line for us every day and their families also serve, and so we pay them back by taking away their voice, is what I hear you saying. [LB1115]

ANNA HERNANDEZ-VALENCIA: Yes, ma'am. [LB1115]

SENATOR BLOOD: Thank you. [LB1115]

ANNA HERNANDEZ-VALENCIA: Thank you. [LB1115]

SENATOR BREWER: Just a...just a kind of a note, here, before you run away, which I don't blame you for wanting to run away (laughter). The way we normally do it is we have a voting officer assigned to the unit. The unit voting officer, normally what they'll do is go off your military I.D. and drivers license and that determines your residency as far as what state. And that's kind of the process because the problem is because you are moved enough that sometimes it is a challenge to figure out what your home of record is. So, the combination of those two documents and your voting officer, who normally monitors those issues because most military personnel vote absentee because of the difficulty of being somewhere near a polling booth to be able to do it. But, anyway, I thought I'd just throw that out there so you kind of understood how sometime we are in that position... [LB1115]

ANNA HERNANDEZ-VALENCIA: Oh, I was referring to a legal U.S. residents, not...I mean who are in the military, serving in the military not U.S. citizens. I'm sorry, did I...was there... [LB1115]

SENATOR BREWER: Okay, I'm with you on that. Normally, as soon as they are in, we start a process immediately to try to make them U.S. citizens... [LB1115]

ANNA HERNANDEZ-VALENCIA: Okay. [LB1115]

SENATOR BREWER: ...that's part of the bonus, I guess, of both serving and that process to make them citizens. So, if they're doing it right they should be in that process of being citizens as soon as they're raising their hand to, you know, be a part of the military because... [LB1115]

ANNA HERNANDEZ-VALENCIA: Really? When did...just out of...because I know that there were some soldiers who had been deported to Mexico even though they have served in the military. So how does...I mean, were they not, like, automatically... [LB1115]

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SENATOR BREWER: Well, they have to go through a process. I mean, it's not like it's a magical thing. You have to begin that process once you're a part of the armed forces and have met your requirements for your initial entry portion, your basic and AIT, or advanced individualized training. But at that point, if they wish to, then that starts the process for them to be citizens. But again, that is voluntary. You don't...it's not a mandatory thing. But anyway, if you wanted to, later, I'd be glad to kind of fill you in on that. [LB1115]

ANNA HERNANDEZ-VALENCIA: Yeah, definitely. [LB1115]

SENATOR BREWER: And anyway, thank you again for your testimony. [LB1115]

ANNA HERNANDEZ-VALENCIA: Thank you. [LB1115]

SENATOR BREWER: Okay, additional opponents? A familiar face. One of my favorite people (laughter), because he keeps his word every time. [LB1115]

JOHN CARTIER: Yes, sir, that's right. [LB1115]

SENATOR BREWER: Welcome. [LB1115]

JOHN CARTIER: Thank you. Good afternoon, Senators. For the record my name is John Cartier, spelled J-o-h-n C-a-r-t-i-e-r. I'm coming before you today to testify in my official capacity as director of voting rights for Civic Nebraska, a nonpartisan, nonprofit organization dedicated to voting rights and protecting the rights of fellow Nebraskans. Before I begin on just my one small point I wanted to make, I just want to extend a thank you to all of you for making my first year in the Unicameral a good one. You've been relatively kind to me, Senator Brewer, so I appreciate it (laughter). Regarding LB1115, the one point I would like to make is that I don't think we should viewing this bill as simply just a means of effectuating what's in our constitution because if you read the bill it actually goes above and beyond what is in our constitution. It says that you cannot draw apportionment boundaries for legislative districts, it doesn't mention the Supreme Court, it doesn't mention election subdivisions at all. So, this at the very best is an expansion of that practice in the constitution. It's not merely just effectuating what's in there. And with that, that's really all I had to say. I believe the testimony behind me had excellent points. [LB1115]

SENATOR BREWER: Senator Hilgers. [LB1115]

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SENATOR HILGERS: Thank you, Mr. Vice Chairman. Thank you, Mr. Cartier, for being here. I have very much appreciated in the Government Committee this year. So if we were to strike, in the green copy of the bill, all the references to the other political subdivisions and Supreme Court and the like, would you support the bill? [LB1115]

JOHN CARTIER: I cannot speak on behalf of the organization without discussing it further. But I think the prior concerns listed mainly the method of how you apportion it or calculate the representation in a computer program that's up to 10 percent wrong, I think that it causes a lot of concern. Especially if we want to preserve representation out in the rural districts, which I think is important. [LB1115]

SENATOR HILGERS: Well, you were here, I think I saw you, with my conversation with Mr. Dobbs earlier. [LB1115]

JOHN CARTIER: Um-hum. [LB1115]

SENATOR HILGERS: You would agree with me, wouldn't you that the way that if you didn't agree with the policy preference that is in Article 3, that the way to do that is not to necessarily to oppose LB1115, although you could, I suppose. It's actually to either revise the constitution or have it implemented and then challenge it in court. [LB1115]

JOHN CARTIER: I think it is still a good idea to come down here if you really don't support the idea that's in the constitution, at least put it on the record... [LB1115]

SENATOR HILGERS: No disagreement there, and I don't mean to suggest that anyone opposing it should not. That's certainly not my suggestion whatsoever. But I am...if the argument is don't pass LB1115 because of the policy preference, we don't...and if we don't like the policy preference and we don't want it applied. The way to do that is not...is to address the constitutional provision, not the statute. [LB1115]

JOHN CARTIER: Or you could just leave it as-is, because as Senator Lowe has mentioned, the students now currently enjoy great representation and that's because of what we have in place right now is...I don't want to say we're ignoring the constitution, we just don't have a reliable means of effectuating what's in there without spending, you know, probably millions of dollars going door to door checking on the non-citizen population. [LB1115]

SENATOR HILGERS: That is a very fine lawyering (laughter), but we are...that is exactly what we are doing. We are ignoring the constitution. I mean, if we're not applying it we're ignoring it.

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I mean, that there's no if shall be practicable, it says "shall," I mean "it shall." And so, if we're not doing it, we're ignoring it. I mean, I understand...I understand what you're saying, but I don't...at the end of the day, that's exactly what we're doing. But...and I know you might disagree with me. But let me just go back to the initial point you did make. If the policy preference for legislative districts--and I agree with you, it's one of the questions that I had when I looked at this--because the constitution doesn't reference the Supreme Court, although I think Senator Murante did mention the judiciary, so there might be another provision there, I haven't seen it. [LB1115]

JOHN CARTIER: Um-hum, yeah. [LB1115]

SENATOR HILGERS: I just...I agree with you, insofar it does not perfectly match the contours of Article 3. So I'm with you there. But at the same time, if it does seem...it seems that it's rational to have one system of apportionment. And if the Nebraska Constitution says for legislative districts this is how it should go, it does seem rational that we would apply that same system...and not having another, conflicting system for other districts, for other elected offices. So, we wanted to get your comment on that. [LB1115]

JOHN CARTIER: Yeah, I'll respond to that, Senator Hilgers. If that is in the constitution right now, there is nothing stopping you guys right now from going forward with making sure the population reflects what's, you know, provided for in the constitution. I'm not sure if we require additional legislation that expands the criteria to other elections, and that's kind of where we're coming from. We don't want to expand what's currently in place and we think it's kind of...may be insulting to some members of the communities that are represented in this bill to, you know, try and codify language that says we're not going to represent them. So, there's that additional ailment. Is it a required bill to be able to implement what's in the constitution right now? I don't think so. [LB1115]

SENATOR HILGERS: And I guess...so, I don't disagree with you that there are many people here who have testified in opposition because they don't agree with the policy preference. I get that. I guess...and I'm not asking you to agree with the policy preference. But I guess my point is...or my question is more narrow; is it rational? You may not agree with it, but is it rational for the state of Nebraska to say if we have one form of apportionment for legislative districts mandated to us by the constitution it's rational for us to have that same form of apportionment, whatever that form might be, for our other intrastate political offices. Putting aside the fact I know you disagree with the policy preference, but is it rational for the state to say we just want to have one system for all offices? [LB1115]

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JOHN CARTIER: Perhaps, but I would also respond that it's only rational if the underlying provision of the constitution itself is rational, if that makes sense. [LB1115]

SENATOR HILGERS: And the only way for us to find that out is to have a court challenge and have a court rule on it, right? [LB1115]

JOHN CARTIER: (Laughing) Oh, well, you know, that would cost time and money, but... [LB1115]

SENATOR HILGERS: Well, but that's why we got courts, you know, that's why we have all these decisions. [LB1115]

JOHN CARTIER: That's right. That's right. [LB1115]

SENATOR HILGERS: That's what keeps us in business, right? [LB1115]

JOHN CARTIER: (Laughing) Yeah. [LB1115]

SENATOR HILGERS: Well, I appreciate the back-and-forth. I don't know if we'll get a chance...we'll see what you say to other questions, I might jump in again, but... [LB1115]

JOHN CARTIER: Yeah. [LB1115]

SENATOR HILGERS: ...I do appreciate your insight throughout the year and for you coming down on this bill today. [LB1115]

JOHN CARTIER: Thank you, Senator. [LB1115]

SENATOR BREWER: All right, thank you. Additional questions? You do know that potentially you could be the last attorney to be before us here (laughter)... [LB1115]

JOHN CARTIER: I could be. [LB1115]

SENATOR BREWER: ...so there are those who are itching to... [LB1115]

JOHN CARTIER: Oh no, I might have done it (laughter). [LB1115]

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SENATOR BREWER: Really? There might be a few more (inaudible)... [LB1115]

JOHN CARTIER: Was it by design? I don't know. [LB1115]

SENATOR BREWER: We'll save the hard questions for later then. Any additional questions? Seeing none, thank you, sir. [LB1115]

JOHN CARTIER: Thank you. [LB1115]

SENATOR BREWER: Okay, additional opponents...before I lose my voice. Opponents? Those in the neutral capacity? Seeing none, we will have a slight delay for Senator Murante to return. [LB1115]

SENATOR HILGERS: Where did he go? [LB1115]

SENATOR BREWER: We'll have to assume somewhere important (laughter). Just throwing that out there. [LB1115]

SENATOR THIBODEAU: I think he waives closing. [LB1115]

SENATOR BLOOD: I think so. [LB1115]

SENATOR BREWER: Did he? [LB1115]

SENATOR THIBODEAU: I'm joking (laughter). [LB1115]

SENATOR BREWER: (Laughing) Oh, he did? Wow am I gullible. (Recorder malfunction) [LB1115]

SENATOR THIBODEAU: You didn't just waive did you (laughter)? Closing? [LB1115]

SENATOR MURANTE: Yes. [LB1115]

SENATOR THIBODEAU: I was right, see? [LB1115]

SENATOR BLOOD: I thought he was waving hello. [LB1115]

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SENATOR MURANTE: I was waiving closing. [LB1115]

SENATOR BREWER: All right, thank you. (Laughing) That concludes LB1115. Thank you for coming. [LB1115]

SENATOR BLOOD: Are we Execing? [LB1115]

SHERRY SHAFFER: Read the letters. [LB1115]

SENATOR THIBODEAU: Oh, read the letters. [LB1115]

SENATOR BREWER: (Exhibits 7 and 8) I didn't mean to...oh, I do have to read the letters in. I have them right here. Reading in to the official record, letters to be read are...opponents: Rose Godinez, ACLU Nebraska; Sarah Hanify, National Association of Social Workers Nebraska Chapter. That concludes LB1115. [LB1115]