

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**HILGERS:** All right. Good afternoon, everyone. We'll begin the public hearing of the Executive Board of the Legislative Council. My name is Mike Hilgers. I am the Chair of the board. I represent District 21, northwest Lincoln and Lancaster County. I apologize for not starting. We were on the floor here past the noon hour, so I apologize for a little bit of a late start. We will begin with member introductions, starting with Senator Stinner.

**STINNER:** John Stinner, District 48, all of Scotts Bluff County.

**VARGAS:** Senator Tony Vargas, downtown and south Omaha, District 7.

**KOLTERMAN:** Senator Mark Kolterman, District 24, York, Seward, and Polk Counties.

**HILGERS:** Senator Vargas is the Vice Chair of the committee. We'll have other members be coming-- coming down. We just recessed upstairs or adjourned upstairs and so I expect more members to come here in the coming minutes. We-- to my right is Janice Satra. She's legal's-- legal counsel to the committee. To my far left is Paige Edwards, who is the committee clerk. John has been our page all year. We have two items on our agenda today. We will proceed in the order that is listed on the public agenda, beginning with LR282 and then LR297. We'll begin with opening statements from the proposing senator. We'll then go to proponents, then opponents, then neutral testifiers, then we'll read any letters into the record. We-- for those of you who are wishing to publicly testify-- by a show of hands, how many are intending to testify today? OK. Thank you very much. We have this-- this board meets over the noonhour. We have a little bit less time than standing committees for their hearings and so we have a three-minute running clock. And the two rules we have when you testify-- ah, well, there's five more rules. But the two rules we enforce consistently are: please state and spell your name; but also on the three-minute running clock-- when it hits red, you'll get a one-minute warning, but when it hits red, I will politely-- hopefully you'll have your testimony wrapped up, but if you don't, I'll politely interrupt you to-- to wrap up your testimony. At that time, members can ask you any questions that they may have. With that, please, the last thing I'll say is please have your cell phones in silent mode. And if you are testifying, please leave green sheet for the page or the clerk. With

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

that, we will begin with our first item on the agenda, LR282. Senator Erdman, welcome.

**ERDMAN:** Thank you, Senator Hilgers. Executive Committee, thanks for letting me come today. Once in a while, one has to introduce a piece of legislation that is heartfelt and-- and encouraging to do. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent District 47, which is mostly rural and frontier in nature. Today I bring you a resolution about the Tin Roof Sundae that was invented in Potter, Nebraska. And I have some statements I would like to read there, but I'm passing out to you a document that was presented on the Food Network, that Potter-- the Sundry in Potter and the Tin Roof Sundae was designated the best dessert in the country. So let me begin with that and then I'll open up for questions. And following me will be Pinky Thayer's daughter, and her granddaughter is here as well. Plus, the people who now currently manage and operate the Sundry are here to testify today. So back in the early 1930s, Harold Dean Thayer, the son of a pharmacist, James Earl Thayer, began working at a soda joint in the Potter Sundry in the village of Potter in Cheyenne County, Nebraska. Back in those days, Harold was affectionately known as "Pinky" due to his bright red hair-- bright red, wavy hair, and vibrant personality. Pinker Thayer-- Pinky Thayer enjoyed concocting spectacular ice cream sundaes and creating new recipes. According to his brother James, Pinky would create a new sundae every other day. Besides the Tin Roof Sundae, Pinky created the Blizzard-- the Blitzler, the Zombie. But at the young age of 14, Pinky created the first ever Tin Roof Sundae. It was a sundae that would stick. The Tin Roof Sundae won the hearts of the palates of many of the Sundry's ice cream connoisseurs. The Tin Roof Sundae is original-- is the original ice cream sundae, which was designated to be served in a soda glass. The recipe calls for a heaping scoop of vanilla ice cream topped with a generous amount of chocolate syrup, then scoops of chocolate ice cream covered with marshmallow sauce and topped with whole roasted, skin-on, Spanish peanuts. So how did the Tin Roof-- how did it get its name? Well, this began as a source of controversy. Most people believe Pinky named the sundae after the tin roof of the Potter Sundry. However, his brother James once told a different story. According to Dr. James E. Thayer, Pinky's younger brother, the Tin Roof Sundae was named after the tin roof on the livery stable located across the street from the Potter Sundry. However, James also confessed that Pinky liked to pull the leg of his little brother quite often. The Tin Roof Sundae has received national recognition for the beat-- for being a distinctly Nebra--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

Nebraska tradition. In December 1988, Gordon Ter-- Tustin, writer of the Sidney Telegraph, suggested that the Potter Sundry, along with the Tin Roof Sundae, may have ascended to the ranks of being a Nebraska institution. But in 2018, it was the Food Network that finally recognized the Tin Roof Sundae as an ironic [SIC] Nebraska dessert. Besides including the Tin Roof Sundae in the list of their best desserts in the country, the Food Network declared that the Potter Sundry is actually the drugstore soda fountain where the Tin Roof Sundae was created. The Potter Sundry continues to make the original Tin Roof Sundae today. The Sundry is located at 324 Chestnut Street in Potter, Nebraska. If you have never tried the original Tin Roof Sundae, then I must ask you to answer this question: what are you waiting for [LAUGHTER]? As the Nebraska Legislature moves to declare the Tin Roof Sundae as Nebraska's official sundae in LR282, now is a great time to make your way to the village of Potter and try Nebraska's soon-to-be official sundae. And how you get there? You get on the big road on the north side of town and you drive to Exit 38. Take a right and it's about a mile into Potter and you'll find the Tin Roof Sundae. So I thank you for the opportunity to present this today. It's an opportunity for us to recognize a community for what they contributed to that area at that time. And I appreciate the fact that it's still in business today and they're still serving Tin Roof Sundaes. Any questions?

**HILGERS:** Thank you, Senator Erdman. Are there questions? Senator Lowe.

**LOWE:** Thank you, Chairman Hilgers and Senator Erdman, for bringing this. It being lunchtime and almost dessert, did you bring enough for all of us? [LAUGHTER]

**ERDMAN:** I don't believe they had that we-- we presented a certificate to the Governor this morning for a free Tin Roof Sundae if he comes there and he asked where it was. And we said we thought it might melt by the time we got here. But it's 363 miles from this location to-- to Potter. And the last time I looked, the road was open. But Senator Stinner says it's now snowing, so he may have to wait until the snow blows away. But it's an opportunity for us to recognize what someone accomplished there back in the '30s. It kind of helps solidify some of those things that western Nebraska contributed to Nebraska. So I-- I appreciate your consideration. The-- the article that I passed out, the one that talks about the Food Network declaring it the best dessert in Nebraska, and then the other two documents that I said are just a-- a-- an example of those ice cream people that followed and

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

called their ice cream Tin Roof Sundae. So those are for your review. They made a scrapbook for me and I thought I had to return this. But they informed me today that I get to keep this, so this will be in my office. So if you'd like to see some of those articles that were written about Pinky back in the 1930s and then later on as-- as he progressed with his concoctions, I would sure let you look at that. But I'll have it in my office if you'd like to see it.

**HILGERS:** Thank you, Senator. Senator McCollister.

**McCOLLISTER:** Yeah, thank you, Chairman Hilgers. Did they trademark the name or their composition of the sundae?

**ERDMAN:** You know, I don't know the answer to that. Maybe the people behind me could answer that for you.

**McCOLLISTER:** OK.

**ERDMAN:** That's a good question, though. I never thought about that.

**HILGERS:** Thank you, Senator McCollister. Other questions?

**CHAMBERS:** Just for the sake of the record--

**HILGERS:** Senator Chambers.

**CHAMBERS:** --there were school kids who were encouraged to bring to the Legislature different animals, birds, bees, rocks, and other things to be named. And I got tired of it, so I said, and we got it in statute, the Governor will name all such things, something by extra-- extrapolation. This is something that the Governor should do instead of the Legislature. And I'm just putting it out there--

**ERDMAN:** OK.

**CHAMBERS:** --so we're not catching anybody by surprise.

**ERDMAN:** Appreciate it.

**CHAMBERS:** OK.

**ERDMAN:** Thank you so much.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**HILGERS:** Thank you, Senator Chambers. Other questions? Seeing none, thank you, Senator Erdman. Are you going to stick around for closing?

**ERDMAN:** Yeah.

**HILGERS:** OK. Great. We'll go to proponents of LR282. Come on down. Welcome.

**KENDRA MITCHELL:** Thank you. Good afternoon, my name is Kendra Mitchell, K-e-n-d-r-a M-i-t-c-h-e-l-l, and I'm the current proprietor of the Potter Sundry in Potter, Nebraska. I'd like to thank you for the opportunity to talk to you about LR282 today. As the current proprietor of the Potter Sundry, the home of the Tin Roof Sundae, I'm in favor of LR282 to recognize the Tin Roof Sundae as Nebraska's official ice cream sundae and resolve that it was invented by Harold Dean "Pinky" Thayer at the Potter Sundry. Since becoming the proprietor of the Potter Sundry almost a year and a half ago, I've diligently researched the origins of the Tin Roof Sundae and the Potter Sundry. Last fall, I sent Senator Erdman that scrapbook that he referred to, with a collection of all the articles I found about the Tin Roof Sundae and the Potter Sundry. The Potter Sundry was officially opened as the Potter Drug Company in 1914 and it served as the community soda fountain. And under pharmacist James Earl Thayer, his son Pinky worked behind the soda fountain and was known for developing all those crazy concoctions that Senator Erdman was talking about. The Tin Roof Sundae was the one that became the town favorite. And the most prominent story that we find about the origin of the name is based on the tin ceiling in the Sundry. Pinky's daughter, Kathy Jo Thayer Heine, is here today and will tell you more about her father's invention. The Tin Roof Sundae starts with vanilla ice cream topped almost to the top of an old-fashioned soda glass. And then we fill it with chocolate syrup over the top; and then we top it with scoops of chocolate ice cream, cover it in marshmallow sauce and sprinkle it with peanuts. So it's quite the dessert. Tin Roof-flavored ice creams have been developed by almost every national ice cream brand. And you can see on those sheets that Senator Erdman sent out, it's just-- the past few decades, this salty-sweet combination has been very popular so it's spread from Nebraska to almost every corner of the United States. So approving resolution LR282 is important to Nebraska tourism efforts. Potter is a town of less than 350 people and we are always welcoming tourists that want to get off 80 or 30 to try the original

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

Tin Roof Sundae. Thank you. If you have any questions, I can answer those.

**HILGERS:** Thank you, Ms. Mitchell. Are there questions? Senator Lowe.

**LOWE:** Thank you, Chairman. Thank you for being here today. And what a wonderful treat this is, and-- that your dessert is. Do you still make your own sodas?

**KENDRA MITCHELL:** We-- actually just when I took over, we added a phosphate soda back to our offerings. And the soda fountain does not operate yet. We're hoping to raise the funds to get that rebuilt. The pulls need to be adjusted. And all the plumbing in the Sundry is pretty old, but we want to get that rebuilt. So we have a seltzer maker and we have phosphoric acid drops that we can put in there and syrups to add. So we have six flavors of phosphate sodas we can serve.

**LOWE:** And how many of these sundaes do you make a day?

**KENDRA MITCHELL:** A day? It-- we're a small town, so it really changes throughout the year. One day last summer, I looked at the count in our register and we had made 105 that day. And most of them came in a two-hour period because we had a huge tourist group coming through. Most average days, it's usually five to a dozen. But those are people in the community that just love them so much and eat them all the time.

**LOWE:** Thank you for being an entrepreneur.

**HILGERS:** Thank you, Senator Lowe. Other questions? seeing none, thanks for coming down.

**KENDRA MITCHELL:** Thank you so much.

**HILGERS:** Other proponents for LR282. Welcome.

**KATHY JO THAYER HEINE:** Thank you. I'm very honored to be here. My name is Kathy Jo Thayer Heine. And I'm going to get emotional. I didn't think I would, but I'm going to. I am in favor of this proposition. My da-- I'm going to give you more of a personal thing about my dad, rather than the-- about the soda itself-- the sundae. Dad was born in Ruskin in 1916. He lived in Potter with his mother, Iva Alta Binning and his father, James Earl Thayer-- he went by Earl-- his older sister, Floy, and his younger brother, James Earl. While in high

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

school, dad worked at my grandfather's apothecary at the soda fountain. He loved sweets and would create unique sundaes. One such sundae was his Tin Roof Sundae. His name because-- he named this because of the tin roof and he told us that. So I know it wasn't because of the tin across the street. Omaha World-Herald writers Matthew Hansen and Sarah Baker Hansen included the story of "Under a Tin Roof, a Classic was Created" in the 2017 book "The Better Half: Nebraska's Hidden Treasures." My personal story: when my grandfather Earl died from pneumonia after a sinus surgery, my dad quit college-- he was a music major-- to come home and help my grandmother. At some point-- dad didn't talk about this, so I don't know-- he married Olivia and was in the war. My mom thought he married her on furlough, but we were never sure because dad never talked about her. Grandma, Grandpa, and Olivia are all buried in the Sidney cemetery. Dad served in Ireland and England during World War II. My Uncle Jim Thayer-- he was a doctor in Sidney, and now his son Jim Thayer is also a doctor in Sidney. He was with General Patton. Sometime during the war my grandmother Iva developed some type of-- some type of ailment that required her to go to a sanatorium for chronic illness in Denver. I'm not sure if Olivia, who was a nurse, went with her or was already working in Denver. Dad received a letter while overseas saying that his wife Olivia had passed away and that his mother, Iva, had also passed away. Dad said he got drunk when he received the news. I guess what do you do when you're in a war overseas and your wife and your-- and your mother are buried already?

**HILGERS:** [LAUGH] That was fast. [INAUDIBLE]

**KATHY JO THAYER HEINE:** What? I see that. Uncle Jim married Lois Hagemester and they-- they settled in Lincoln. My aunt had married and moved to Colorado, and so my dad went home to Potter. And my aunt had sold the drugstore, and he was devastated. He went to Iowa to see a buddy. Now my mom ended up in Nebraska. Dad decided he wanted to re-enlist in the army and so he was stationed in the Philippines. It was the first time after the war that dependents were allowed to go. They thought it would help morale. Other assignments were Fort Des Moines, Iowa. That's where I was born. Oh, anyway, Dad's--

**HILGERS:** Well, I'll stop you.

**KATHY JO THAYER HEINE:** OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**HILGERS:** I do it for everyone, so I have to--

**KATHY JO THAYER HEINE:** No, that's OK. It's all written on that sheet.

**HILGERS:** We have your written testimony--

**KATHY JO THAYER HEINE:** So--

**HILGERS:** --and this will be part of the record.

**KATHY JO THAYER HEINE:** OK.

**HILGERS:** But-- but if there are any questions from the committee, certainly they may ask you.

**KATHY JO THAYER HEINE:** Are there any questions?

**HILGERS:** Any [INAUDIBLE] Mr. Speaker?

**SCHEER:** In a very short period of time, is there anything you wanted to finish and add [INAUDIBLE] along?

**KATHY JO THAYER HEINE:** I was just-- the biggest thing was, dad was really loved Nebraska. He really loved western Nebraska. He would have settled there and done something with the-- with the Sundry, but didn't have a chance. I just wanted to show you this, and I didn't make copies, but this is a picture of my dad at the stairs going up to where they lived. And these are two of my grandchildren. We went out there this summer and so I made them a book. And they are going to, I understand, redo the apartment up above. So sorry. That was such a long answer. Any other questions?

**SCHEER:** Thank you for that.

**HILGERS:** Thank you, Mr. Speaker. And it looks here like he met-- he got to meet Bob Devaney [INAUDIBLE]

**KATHY JO THAYER HEINE:** Yes, I have a picture. I can hold that up real quick. Bob Devaney. [LAUGHTER]

**HILGERS:** Thank you. Did you-- did you say-- did you spell your name at the beginning? I think you did. But maybe--

**KATHY JO THAYER HEINE:** Oh, maybe I didn't.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**HILGERS:** Would you mind spelling your name?

**KATHY JO THAYER HEINE:** OK. Kathy, K-a-t-h-y; Jo, J-o; Heine, H-- well, Thayer, T-h-a-y-e-r, and Heine, H-e-i-n-e.

**HILGERS:** Thank you. Thank you for driving down and thank you for your testimony.

**KATHY JO THAYER HEINE:** Oh, well, I live in York so it wasn't that far [LAUGHTER].

**HILGERS:** Thank you.

**KATHY JO THAYER HEINE:** Thank you.

**HILGERS:** Other proponents for LR282. Seeing none, anyone wishing to testify in opposition to LR282? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, Senator Erdman, would you like to close?

**ERDMAN:** I'll be very brief, Senator Hilgers. Thank you for the opportunity to be here to testify today and share that with you, and it'll mean a lot to the community if you can advance this to the floor. And I appreciate it-- appreciate your time. Thank you.

**HILGERS:** Thank you, Senator Erdman. Any other questions for Senator Erdman? Seeing none, thank you for coming.

**ERDMAN:** Thank you very much.

**HILGERS:** Thank you, everyone, for driving down today.

**ERDMAN:** Thank you.

**HILGERS:** We have seven letters of support, all of which, except for one are from Potter, Nebraska. Last one's from Scottsbluff. So that'll close our hearing on LR282. And we will move to our second item on the agenda, LR297. Senator Hilkemann. Welcome.

**HILKEMANN:** Thank you. I know you're all hungry. I have to say that I-- I actually-- my very best friend in college was Steve Davis, and he was very instrumental in-- in that Tin Roof Sundae and is from Potter, so I'm one of those who's actually eaten one of those Tin Roof Sundaes, so. Good afternoon. My name is Senator Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n, representing District 4, here to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

introduce LR297. This resolution accomplishes two distinct actions. First, it repeals the nine existing Nebraska applications calling for a constitutional convention under Article V of the Constitution of the United States if a convention is not called on or before Jan 1, 2021. The first of these applications was passed in 1893 and the most recent one in 1979. Second, the resolution requires any future Article V applications coming from this body to be automatically rescinded if the convention is not called on or before the seventh anniversary of the date the last legislative vote was taken. This ensures that there is a finite time limit on any application and we won't have one of-- on the books for another 127 years. It also will keep such application in the forefront of the body's mind, requiring the Legislature to periodically reduce such applications and ensure they are still the will of the body. This resolution is not about the Article V process itself and the merits of fixing some of our problems at the federal level. I am sure you will hear proponents and opponents testify as to why the Article V convention needs to happen or would be utter disaster for the country. I brought this resolution because I believe it-- this is good government practice. After Senator Chambers leaves this body next year, not a sitting senator will have voted on any of these applications. This resolution allows us to hit the reset button and make sure what is on record is actually meant for a 21st century legislature. We would not be the first state to take such action. In fact, since 2005, 12 states have rescinded their previous Article V applications. Included in that is South Dakota, Texas, Montana, Oklahoma, and Wyoming. Since the resentions-- rescissions, many of these states have adopted new applications calling for an Article V convention for various reasons. I envision us doing something similar in a more responsible way going forward. And with that I would take any questions that you may have, Senator.

**HILGERS:** Thank you for your opening, Senator Hilkemann. Are there questions? Senator Lowe.

**LOWE:** Thank you, Chairman. Thank you, Senator Hilkemann, for bringing this. Will this also apply to convention of states? Because--

**HILKEMANN:** Continue to contin-- this will not-- this only rescinds the actions that have been taken by the Legislature. It has nothing to do with the convention of states.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**LOWE:** OK. Because LR7, which Senator Halloran brought last year or the year before, was a convention of states.

**HILKEMANN:** Right.

**LOWE:** Would that apply to this?

**HILKEMANN:** He can continue to bring that legislation, that-- that-- and-- but anything that would happen from that would be the new Legislature dealing with it, not-- but-- these-- these are all old things.

**LOWE:** Yeah.

**HILKEMANN:** We're just cleaning house.

**LOWE:** This calls for a constitutional convention, not a convention of states. I'm-- I'm just saying--

**HILKEMANN:** OK.

**LOWE:** --for clarification.

**HILKEMANN:** Or maybe people behind me that can help clarify that better for you--

**LOWE:** All right.

**HILKEMANN:** --Senator.

**LOWE:** Thank you.

**HILGERS:** But Senator Sul-- Senator Hilkemann, I'm sorry. Page 3 of the green copy, paragraph 2, says, so there is an od-- so paragraph 1 deals with automatic rescission of current--

**LOWE:** Right.

**HILGERS:** --resolutions, but paragraph 2 deals with future resolutions and that says, any application-- I'm skipping for-- calling of a convention in Article V that is submitted to the Legislature during or after this session shall automatically-- shall be automatically rescinded if the convention is not called on or before the seventh anniversary of the date the las-- the last legislative vote is taken on the application. So to Senator Lowe's hypothetical, if LR7 were to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

pass this year, it would have a seven-year running clock. Is that right?

**HILKEMANN:** That's correct.

**HILGERS:** OK. Thank you. Senator-- Mr. Speaker.

**SCHEER:** I don't think that's what Senator Lowe is referring to. There's, I think, a misprint in the Legislative Resolution that talks about--

**LOWE:** It--

**SCHEER:** --Conference of the Constitution or something like that.

**LOWE:** No, it does-- it says a constitutional convention where LR7 is a convention of states.

**HILGERS:** Right. [INAUDIBLE]

**LOWE:** [INAUDIBLE] would apply to--

**HILGERS:** I think paragraph 2 does talk about calling of a convention under Article V, which I think is-- convention of states is Article V, if I recall. In any event--

**LOWE:** OK.

**HILGERS:** I may have confused the issue further. Is there-- are there questions? Any other questions? Seeing none, thank you, Senator Hilkemann. Will you stick around for closing?

**HILKEMANN:** Yes, I am.

**HILGERS:** Proponents for LR297. Welcome.

**LARRY STORER:** Thank you. Ladies and gentlemen, Larry Storer, 5015 Lafayette Avenue, Omaha 68132. I'm a proponent for this--

**HILGERS:** Spell your name, please. Could you spell your name?

**LARRY STORER:** S-t-o-r-e-r.

**HILGERS:** Thank you. Go ahead.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**LARRY STORER:** I'm a proponent for this for the main reason that it needs to get discussed and it needs to be severely amended or stricken because of the language in it. If I have time, I'll explain those comments. I'm going to run through why. I have the Federalist and Anti-Federalist Papers with me. I've read a lot out of those and other sources. What's never debated and never got to be debated in these chambers was what Article V really is. Article V gives-- Congress already has the power to make amendments. Article V plainly says the state can make amendments. What it doesn't real clear they get explained is that convention of the states, the word "states" means people. Convention of Legislatures means legislature, an application for convert-- Article V Convention by the state is separate from an application by citizens. It's not clearly stated, but citizens do have the right also to make an application. They have to put it through this chamber, yes. Your only duties then are to transmit it for us. Whether or not you make a resolution to do that, I guess, is your business. I don't think it's necessary. But if you read outside of the founding fathers and into some of the other things, it's clear. First of all, the language in-- in this resolution. It was not a constitutional convention. It never was intended to be. If you read the founding fathers, they're very clear. We don't intend another convention, a second convention. They weren't meeting, talking about the Articles of Confederation, which at the time was our Constitution. Because it wasn't working, particularly in the event of war and making treaties, they had to change it, amend it. They didn't know before they went that that's what was going to happen. But this legislation, as written, implies that. It calls it a constitutional convention when it's not. It also implies that we were discarding the Articles of Confederation, which we were not. At that time, it was our Constitution of the colonies. In the Federal-- Anti-Federalist Papers, a footnote at the bottom of one page says the committee--

**HILGERS:** Mr. Storer, Mr. Storer, we have to stop you there.

**LARRY STORER:** I'm sorry. I'm going to give this to you. But let me just point this out, real quick. The committee for that purpose met July-- June 11 of 1776. They agreed to have the discussion November 15 of 1777. What does that tell you? We're in the middle of a war, right?

**HILGERS:** All right, Mr. Storer, I will-- I will--

**LARRY STORER:** So there are constitutional government and our--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**HILGERS:** Hold on a second in case there are any questions for you-- are there any questions?

**LARRY STORER:** I just have one more statement.

**HILGERS:** Hold on one second, hold on one second, Mr. Storer.

**LARRY STORER:** It wasn't ratified--

**HILGERS:** I got to treat you like everyone else.

**LARRY STORER:** It wasn't ratified until 1771--

**BOLZ:** Senator. Senator Hilgers.

**LARRY STORER:** --1787.

**HILGERS:** Hold on one second. Let's get to questions. Go ahead, Senator Bolz.

**BOLZ:** Please, please go ahead and make your final comment. Sounded like you had-- had one more thing you wanted to share with us.

**LARRY STORER:** I'm sorry?

**BOLZ:** It sounded like you had one more thing you wanted to share with us. Just following procedure, I was giving you the opportunity to do that.

**LARRY STORER:** I don't understand you.

**BOLZ:** I was giving you an opportunity to finish your thought, sir.

**LARRY STORER:** OK.

**BOLZ:** To briefly finish your thought, sir [LAUGH].

**LARRY STORER:** We were still operating under the articles mostly throughout the war, because we had to have a government to do that. So whether [INAUDIBLE], it was our constitution. They did not foresee what was going to happen before they went to that convention. They wanted secrecy, so they didn't tell everybody what might happen. Not all of them knew it. Once they got there, they realized what was in face to us. Then, yes, they had to make some changes. What they referred to were the existences of the moment, of the time. This

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

doesn't say that. I'm going to give this to you guys and make a copy for me, but I made notes on it. I didn't have time to type it up, but I lined through what is incorrect, what should be dissolved. Mainly because if you study the founding fathers and beyond, even [INAUDIBLE] this constitution really is embarrassing--

**BOLZ:** --that-- that's helpful, sir--

**LARRY STORER:** --to Nebraska.

**BOLZ:** --and I'll-- I'll have the page--

**LARRY STORER:** So-- OK.

**BOLZ:** --hop up and grab a copy for us, so we can see it before the hearing is over.

**LARRY STORER:** Please, please add these to the record because--

**BOLZ:** Very good. Thank you, sir.

**LARRY STORER:** --it needs to be completely changed.

**HILGERS:** Thank you, Senator-- Senator Bolz. Thank you, Mr. Storer, for coming down.

**LARRY STORER:** And this is my copy.

**HILGERS:** Next proponent for LR297. Welcome, Mr. Cartier.

**JOHN CARTIER:** Early afternoon, Senators, members of the Executive Committee. For the record, my name is John Cartier, spelled J-o-h-n C-a-r-t-i-e-r. I'm the director of Voting Rights for Civic Nebraska. We're a nonpartisan organization and our mission is to protect the voting rights for all Nebraskans. My testimony today is going to focus on the-- whether rescissions of prior resolutions calling for an Article V Constitutional Convention meets constitutional muster. Before I continue, Senator Lowe, when I say constitutional convention, I mean under the Article V procedure, which can be called a convention of states, depending on who you're talking to. It is our-- and it-- it is in our opinion that such rescissions of prior calls is constitutional. And as a side note, as mentioned before, about a dozen states have already rescinded prior calls. My reasoning today is on the constitutionality is based on three points. Number one, in the absence of a textual or logical limitation on a state legislature's

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

right to withdraw its assent for a proposed amendment, I think we should give great deference to the Legislature's right to prescribe its own rules. Pursuant to Amendment Ten of the U.S. Constitution, it is clear that on issues where the Constitution lays silent, the powers not delegated to the federal government nor prohibited explicitly to the states are then powers reserved to the states themselves or to the people. In this instance, there is an absence of rules in the U.S. Constitution, so logically this would imply that the states themselves can prescribe their own rules. Second, we should consider the framers' thoughts about the amendment process itself. In Federalist Number 85, Hamilton argued that the amendment process was designed to ensure that the will of the requisite number should prevail. Furthermore, members of the original constitutional convention believe that the amendment process must be procured by broad consensus and they were generally fearful of frequent amendments. We believe that any ambiguity in the rules governing amending the U.S. Constitution ought to be resolved in favor of the interpretation which makes it more difficult to amend and which would necessarily prevent an unwanted change that lacks a sufficiently broad consensus. Now, in other words, today we're discussing prior calls that wanted a convention to go over issues such as polygamy and direct representation in the Senates, and these issues are all arguably moot at this point. So I think it'd be a stretch to imagine that the framers thought it would be a good idea for the states to sign up for a convention over a hundred years in the future, which lack consensus by the current generation and who themselves actively sought to rescind these prior calls in order to make a better decision in the present about how to move forward with an Article V Convention. My third point, if I got time-- and I wanted to point this out to throw in for good measure, because I think it is worth point-- thinking about-- is even if this issue finds itself litigated-- and to me it's not really clear who would be a good plaintiff for staying in a case like this-- the U.S. Supreme Court might consider this issue a political question, meaning they would let the legislature figure out how best to proceed. A great example of this is the political question doctrine [INAUDIBLE]-- can I finish this last paragraph here?

**HILGERS:** Well, I'll stop you--

**JOHN CARTIER:** All right.

**HILGERS:** --and then I'll ask you to finish your last paragraph, if you wouldn't mind. Go ahead.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**SCHEER:** Did you have something very brief to finish?

**JOHN CARTIER:** I did. Yes, sir. Absolutely. The-- the example I was going to say was the court in *Rucho v. Common Cause* last year, they ruled that the issue of redistricting was a political question and declined to reach the issues based on the merits and dismissed it. Similarly, I think the Supreme Court might take a look at this and not even want to touch it. So in summary, we support this resolution as a responsible way for both opponents and proponents of Article V process to-- to place adequate guide rails to the awesome process of amending our founding document. Thank you for your time today. I'll take any more questions.

**HILGERS:** Thank you, Mr. Cartier. Are there questions? One question I have is--

**JOHN CARTIER:** Sure.

**HILGERS:** --would that, the idea of the-- on your last point in terms of the political question, would that even ap-- that could also apply if you rescinded Article-- a call for a convention? I mean, look at the-- I mean, what happened, like with the-- the lawsuit related to the ERA. Right?

**JOHN CARTIER:** Uh-huh.

**HILGERS:** --I mean that's being litigated right now. Could a court just say, well, that's a political question? I'm not going to-- I'm not going to-- I'm not going to rule whether or not the call was-- the rescind-- the rescission of the call was valid.

**JOHN CARTIER:** Yeah. That's a fair point. And if we're going to com-- also compare those two processes-- so there's two parts to the Article V on either side. One is proposing the amendments and ratification. In that instance, the amendment's already been proposed to the states. In this instance, we haven't even got to that point yet. There's still disagreement about what the amendments are, how many states have signed up to it. So, you know, the issue is different. But I-- I do think there's a good argument. Political question would apply to both of them.

**HILGERS:** Very interesting point that you've made. Do you-- have you got any sense, at least with the current court, with some of the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

comments surrounding the ERA, how they would view their-- how active they might-- I don't want you to use that. That's a loaded term--

**JOHN CARTIER:** Sure.

**HILGERS:** --whether or not they would engage on that, or whether or not they would shy away as a political question?

**JOHN CARTIER:** I think last year was a great indication they would probably shy away from ruling either way and-- and find any reason to not have to. And political question would be the most logical one to me.

**HILGERS:** OK. Thank you. Other questions? Seeing none, thank you for coming down.

**JOHN CARTIER:** Thank you.

**HILGERS:** Other proponents for LR297. Welcome.

**JANINE HANSEN:** Good afternoon, Mr. Chairman and members of the committee. My name is Janine Hansen. I'm the state-- the national constitutional issues chairman for Eagle Forum, which is a pro-family, pro-life, pro-constitution limited government organization. You may remember Phyllis Schlafly, our longtime president. We oppose an Article V constitutional convention. And as I was talking to Senator Hilgers yesterday, I did a little more research last night and I'd like to share with you my concern. My greatest concern-- although we believe in balancing the budget-- my greatest concern is that that they are now aggregating the-- the different amendments. And in your state, which I've handed out the information, there-- there are six studies covering aggregation of different constitutional conventions and those are all the same as a convention of states. And in your state, the ones that have been included in these six studies include apportionment in 1965, a general convention called in 1907, and the balanced budget in 1979. What this means in the different-- the different aggregation studies is that instead of a single issue like the balanced budget being brought forth, which currently has 28 states that have supported it, it means that they can add all kinds of different calls in order to do that. For instance, in this aggregation done by the American Constitution Foundation, which I've handed out to you, their objective is to achieve an aggregated convention that is totally general-- that's what they say in their white paper-- so that they-- that the people that go to the convention can have any kind of

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

amendments that they want, so it's totally unlimited. We have contended for a long time that Article V calls a convention for the purpose of proposing amendments in the plural and that it cannot be limited, just as Chief Justice Warren Burger said many-- a long time ago. And in fact, when you look at some of these that are from this particular organization, they have 37. We know we need 34 in order to call a convention. This has 37, including polygamy. The general one from your state in Nebraska, it includes convention of states resolutions and many others. You can see that there. So our concern is, is that there is no way to limit an Article V constitutional convention. And these old ones like yours in Nebraska from 1907, calling for a general convention that will have no limitation on it, are of considerable concern because they aren't the opinion of the current legislature. They aren't the opinion of the people in your state. They don't even know about them. And things like polygamy added into these to say that we ought-- we have-- that Congress should have the authority to call a general open convention at this time, so these six studies that I provided for you indicate that. We also oppose a balanced budget, not because we oppose a balanced budget, but we oppose an Article V constitutional convention. And in that way, we are very concerned that in order to balance a budget, you have to raise taxes.

**HILGERS:** Great point to end on. Are there questions? Thank you for your testimony. Are there any questions?

**JANINE HANSEN:** I will hand out my testimony that was specifically on the balanced budget issue for the committee. Thank you very much. And I am from Nevada and it's wonderful to be back here again. I was here two years ago with Kathy Wilmot, your constituent, Senator. Thank you.

**HILGERS:** Thank you for coming. I appreciate the dialogue you had with me on this issue. Thank you very much. Other proponents for LR297. Welcome.

**GAVIN GEIS:** Senator Hilgers, members of the committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s, and I'm here on behalf of Common Cause Nebraska. I will try to be quick. All I will say to this is, in my mind this represents the ideal sense of a good government bill. Yes, we may make this about an Article V convention, are you for or against it? But what this is really about is whether or not the state has control over these conventions and what they've said. This is as much about whether or not people can rely on the actions of their

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

legislature as it is about a constitutional convention. At the end of the day, I think both opponents and proponents can say there should be something in place that guarantees we don't have a hundred years that passes between the calling of a convention and then the eventual having of the convention. So in my mind, this is just simply good government. This isn't about making sure we don't have a balanced budget amendment or we don't have a runaway convention. But it's making sure that Nebraskans can rely on what's been passed in our Legislature and that you as a body can rely on not having a ticking time bomb from a hundred years ago that's now used against us to say, well, you called for it, you called for this, it's your own fault. So that's all I'll say. It's just good government. Thank you.

**HILGERS:** Thank you, Mr. Geis. Are there questions? Seeing none, thank you for your testimony.

**GAVIN GEIS:** Thank you.

**HILGERS:** Other proponents for LR297. Welcome.

**RENEE FRY:** Thank you. Good afternoon, Chairman Hilgers and members of the Executive Board. My name is Renee Fry, R-e-n-e-e F-r-y. I'm the executive director of OpenSky Policy Institute and we're here in support of LR297. As you've heard, Nebraska has several pending applications for a constitutional convention. The majority of these pertain to outdated topics such as requesting a constitutional amendment for outlawing polygamy, as you heard. So not only are many of these applications obsolete, but they date back to the 1800s, and the most recent application we have on the books is actually more than 40 years old. We don't have any sunset or expiration date for any of our current applications. And so as you've heard, we do believe that this is an opportunity to do some cleanup and make sure that we have a system in place for regular review of these applications so that they are reflecting the current will and wishes of the legislature. As you know, and as I have talked before, we do also have a concern about the bill-- balanced budget amendment so I'll just speak to that briefly. And we do have a concern about that because there's quite a bit of research and work that's been done by economists who suggest that it would worsen economic downturns and reduce-- and reduce federal funding at a time when we really need it in terms of coming out of recession. So we do have a concern about the impact a balanced budget would have on our economy. We also believe that a possible pandemic, I think, further makes the point that a balanced budget amendment could

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

have unintended consequences if it restricts our ability to prepare or respond to a pandemic. And-- but again, the main point of this legislation, obviously, is to do some cleanup, put some systems in place so that we are regularly reviewing these and cleaning them off the books. Also, as you heard, Nebraska would not be alone in rescinding prior Article V convention applications. And so I would ask the Legislature to join those other states in removing outdated applications for the record. And I'd be happy to answer any questions.

**HILGERS:** Thank you, Director Fry. Are there questions? Seeing none, thank you for coming.

**RENEE FRY:** Thank you so much.

**HILGERS:** Other proponents for LR297. Welcome.

**ALAN KAISER:** Thank you, Senator Hilgers. I am Alan Kaiser, A-l-a-n K-a-i-s-e-r. I live in Lincoln, was born in York, went to high school in Imperial, been around the state. I'm speaking for myself and I believe I represent the views of many of my peers. I'm opposed to the Article V convention. So many things unknown there. You have one representative from the state. How-- who is going to select that representative? And what's going to happen there? We have a constitution that if it were obeyed and we-- our problems would mainly disappear overnight. Our constitution is regularly violated by our representatives in Washington, D.C. I'm just going to read some quotes from some people about the constitutional convention. And I believe this bill goes a long way to limiting what happens. I may-- might misunderstand all this, but during April 1788, our first U.S. Supreme Court Chief Justice, John Jay, wrote: Another convention would run an extravagant risk. In Federalist Number 49, James Madison said: A convention is neither proper nor effective to restrain government when it encroaches. In his November 2, 1788, letter to Tuberville, Madison said he trembled at the prospect of a second convention, and if there were an Article V convention, the most violent partisans and individuals of insidious views would strive to be delegates and would have a dangerous opportunity of sapping the very foundations of the fabric of our country. In Federalist number 85, last paragraph, Hamilton said he dreads the consequences of another convention because the enemies of the Constitution want to get rid of it. Justice Arthur Goldberg said in his 1986 editorial in Miami Herald that it cannot be denied that the Philadelphia Convention of 1787 broke every restraint intended to limit its power and agenda, and any attempt at limiting

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

the agenda in an Article V convention would almost certainly be unenforceable. Chief Justice Warren Burger said in his June 1988 letter to Phyllis Schlafly, there is no effective way to limit or muzzle the actions of a constitutional convention. After convention is convened, it will be too late to stop the convention if we don't like its agenda. A new convention would plunge our nation into constitutional confusion and confrontation at every turn. Justice Scalia said in April 17, 2014, I certainly would not want a constitutional convention. I mean, whoa, who knows what would come out of that? Other eminent legal scholars have said the same. Neither the states nor Congress can control the delegates.

**HILGERS:** Sir, I'll pause there. Maybe you have-- do you have one more quote you'd like to share?

**ALAN KAISER:** No, that's-- probably good place to stop.

**HILGERS:** Do you-- if you'd like, we can have a page kee-- take a copy or make a copy--

**ALAN KAISER:** Yeah. Yeah.

**HILGERS:** -- of the quotes so we can make that part of the record.

**ALAN KAISER:** Yeah. I finally-- I didn't realize, I would have brought a dozen. I just had a couple.

**HILGERS:** That's all right, we'll take care of that for you.

**ALAN KAISER:** Sure.

**HILGERS:** Any questions? Seeing none, we'll get some copies and get the original back to you, so--

**ALAN KAISER:** Oh, that's fine. Thank you for your time.

**HILGERS:** OK. Thank you. Thank you for coming. Other proponents for LR297. Anyone wishing to testing-- seeing none, anyone wishing to testify in opposition? Seeing none, anyone wishing to testify in a neutral capacity? Neutral or opponent?

**HALLORAN:** If I could do opponent, but whatever.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**HILGERS:** You can-- no, we will-- opponents were open. Senator Halloran, we're going-- you're going to have to be on a light system.

**HALLORAN:** OK, thank you.

**HILGERS:** [INAUDIBLE]

**HALLORAN:** I appreciate that. No, I did not intend to-- to testify today and consequently I've got to fill this out before I leave. But time and time again, I've heard several references to--

**HILGERS:** Senator Halloran, would you-- would you mind introducing yourself.

**HALLORAN:** I beg your pardon, Senator Steve Halloran, S-t-e-v-e H-a-l-l-o-r-a-n.

**HILGERS:** Thank you.

**HALLORAN:** It's a pleasure to be here. Throughout the testimony today, I've heard-- in-- in the LR itself, it's-- it very clearly misstates what Article V is. Article V is-- is-- allows for two-- two methods for proposing amendments to the Constitution. It does not anywhere in Article V allow for or call for or allow for the calling for a constitutional convention. I would be opposed to a call for a constitutional convention. Throughout the testimony today, I've heard people reference that it's written in the LR that that's what-- what Article V does. So it misrepresents what Article V is. So when I hear people reference the Founding Fathers, Supreme Court Justice Scalia, in each one of those quotes, they too were referring to concerns or anxieties about a call for a constitutional convention. Let me clarify. Constitutional convention is a convention for the sole purpose of rewriting the whole constitution. It's not what Article V is. Article V explicitly says it's for proposing amendments to the Constitution. And with that, I will let that rest. You've heard enough on the-- on the floor on this. But I will yield to any questions if you have them.

**HILGERS:** Thank you, Senator Halloran. One question I have and there is a automat-- so for LR7, which is your LR, correct?

**HALLORAN:** Correct. Correct.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

**HILGERS:** That is an Article V. That's-- that's a proposed Article V call--

**HALLORAN:** It's an Article V for--

**HILGERS:** --a specific amendment.

**HALLORAN:** Exactly. And you know, and in reference to the past-- resolutions of the past-- that passed by past legislatures, they all could have put a time certain on them themselves. They could have put a sunset on it themselves. In-- in the event any one of those should come too close to getting enough states to-- to call for convention, namely 34 states, the Legislature would clearly have the opportunity to-- to pull back and say, look at this, and see whether or not they're still onboard with it. But in the meantime, there's no-- I think there's no reason to rescind past Legislatures.

**HILGERS:** What do you think about this automatic seven-year-- for future Article V calls? It had-- automatic-- seven years after the Legislature votes on it, so LR7--

**HALLORAN:** Well, I--

**HILGERS:** --seven years later, what do you think about that?

**HALLORAN:** In general terms, I-- I-- I wouldn't be opposed to them. But you've got to consider how long the process takes, how long the process takes to get 34 states to agree to do anything, let alone call for a convention of states. And so I'm not sure seven years-- seven years seems like a long time, but a lot of those took at least that long just to get to the number of 34, which is the goal we have to reach. And so if we-- if we put a seven-year cap on it, timewise, sunset on them, well, then we may fall off and be just, you know, be one less short of the 34 necessary. And so I-- I would hesitate on putting that kind of a timeframe on it.

**HILGERS:** Thank you, Senator Halloran. Other questions? Seeing none, thank you for your testimony. Other-- other opponents for LR297? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, Senator Hilkemann? Senator Hilkemann waives closing. We have four letters of support from Ron and Lynnette Nash of Lincoln, Keith Kube of Crofton, Kathy Wilmot of Beaver City, and Bruce-- Des-- [Desautels] Bruce from Stratton. The record will reflect the last

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Executive Board February 27, 2020

name. And that will close our hearing for LR297 and our public hearing for today. Thanks.