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**CLEMENTS:** Good afternoon, good afternoon, ladies and gentlemen, thank you for coming. Welcome to the Rules Committee. My name is Rob Clements. I'm from Elmwood and I represent Legislative District 2 and I'm chair of this committee. We have our committee members with us today who will introduce themselves starting on my right.

**M. HANSEN:** Senator Matt Hansen, District 26 in northeast Lincoln.

**HILGERS:** Mike Hilgers, District 21, northwest Lincoln, Lancaster County.

**DeBOER:** Hi, my name is Wendy DeBoer. I represent District 10, which is all of the city of Bennington and parts of northwest Omaha.

**ERDMAN:** Steve Erdman, District 47, 10 counties in the Panhandle.

**J. CAVANAUGH:** John Cavanaugh, District 9, midtown Omaha.

**CLEMENTS:** Thank you. Furthest to my right is our committee clerk Mark Freeouf; to my immediate right is my legislative aide, Dan Wiles. Assisting the committee today are pages Ashton and Samuel. Thank you for being here. This committee will hear 21 rule proposals today. I have grouped the hearing order by subject to expedite the process. We ask for your assistance with the following procedures. Please silence your cell phones and electronic devices. If you wish to record your support or opposition to a rule but not testify in the hearing, you may add your name to the white sheet located on the table by the door. If you intend to testify, please fill out and complete a blue testifier sheet located on the table at the back of the room and hand it to a committee page or clerk. This applies to general public, not to senators presenting. If you'll be passing out materials to the committee, please give them to the committee page to distribute. Please provide ten copies of paper materials. If you need additional copies of exhibits, please ask the page to assist you. Please be seated in the front of the room when you're ready to testify and I'll call up the senator and then testifiers with proponents, opponents, and neutral. When you begin to testify, state and spell your name for the record. Please speak into the microphone clearly. We'll begin rules testimony with introducing the, the senator's opening statement followed by proponents, opponents, and those speaking in a neutral capacity, and finally closing remarks by the senator if they wish.

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We'll be using a five-minute light system. The light will turn yellow when one minute remains, and red to indicate there is no more time. If you do not stop when you're out of time, I may ask you to stop and thank you for abiding by those rules. With that, we'll proceed with the first rule with Senator Albrecht. You're welcome to present your information. And I'll just mention, this is proposal number 1 in the packet we sent out.

**ALBRECHT:** Thank you. Well, thank you. I am Senator Joni Albrecht, that's J-o-n-i, Albrecht, A-l-b-r-e-c-h-t. Good afternoon, Chairman Clements, the Rules Committee and members. My first rule, the first rule up, I should say, is Section 22, Opening Prayer and Pledge of Allegiance. The Clerk's Office shall arrange for prayer and recitation of the Pledge of Allegiance at the beginning of each day of the legislative session. Each senator shall be given at least one opportunity during each legislative session to enter-- to either-- excuse me, lead in the, the body in the Pledge of Allegiance, or to invite an active member or retired member of the armed forces to lead the pledge in the senator's stead. Certainly with COVID going on, I-- it will be up to the rules of, of the building, whether they come in or not. But as far back as each of us can remember our school days, we recited the pledge at the beginning of each school day. Although this practice is not specifically outlined in the Nebraska state statute 79-8,108, it may be concluded from reading the statute that the pledge would fall within the scope of instructing our children in Americanism, patriotism, and love of country. Many of us know that in the United States Constitution, the phrase separation of church and state has led many to consider their own personal interpretation. And many times it is not in keeping with instructing our children the role of a loyal American patriot. But we continue to move forward in seeing that our children are duly instructed in Americanism and patriotism. Our most visible form of instruction is the teaching and the reciting of the Pledge of Allegiance, and one that many youngsters just beginning their education journey are so proud to recite. One can see and hear the innocence with which our youngsters demonstrate their most familiar and understandable duty of an American citizenship. And we do not, do not-- do we not get goosebumps when we stand up and recite the pledge ourselves? It's not only right that the state legislators, too, should demonstrate the same familiar and understandable duty of American citizenship. Our duty as a state legislator is to represent the citizens of our great state. And this

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one act at the beginning of each legislative day speaks volumes on our personal pride of our American citizenship. I've been asked by Red Coats, veterans, law enforcement why we don't stand and say the Pledge of Allegiance at the State Capitol. They don't know that we do because it's not televised. Every day in our nation's capital, the House of Representatives, and the Senate start their day reciting the pledge. Every representative in this building loves our great country. Starting each day with the pledge is a way to show our love and respect and gratitude. District 17's legislator before me, Senator Dave Bloomfield, sought to uphold the honor of our country by initiating a resolution for the regular recitation of the Pledge of Allegiance. And as his successor, I feel the same way. I'd like to see our state legislators put the respect for our country as one of the first items of business as we start each day. I thank you for your time and I'd be happy to answer any questions that you might have.

**CLEMENTS:** Any questions from the committee? Yes.

**HILGERS:** Thank you, Mr. Chairman. Thank you, Senator Albrecht, for being here. Currently, we say the pledge daily, and that's because your office is arranging that, is that right?

**ALBRECHT:** Yes.

**HILGERS:** Can you just speak to some of the logistical work that goes into handling that?

**ALBRECHT:** OK, I did have-- Beverly Neel is my AA and she puts a note out to everyone to find out if they'd like to serve and, and stand and say the pledge for us on a daily basis. We have a calendar that we put out. I pretty much haven't had much pushback at all. I've had a couple of people say that it wouldn't work into their schedule or they just chose not to do so. But knowing that and certainly speaking with the Clerk's Office, it was agreed to that we could do that with Speaker Scheer. And I'm hoping that the same thing would continue. But, but the bigger thing is, you know, proper protocol is prayer first, pledge second, and then on to the day's business. And with us reciting our Pledge of Allegiance today on the floor as we do it, it's not something that the public even knows that we do. And so I feel like we are the example. We are the ones that should be able to let the citizens of the great state of Nebraska know that, that we do care. And it should be part of the roll every day.

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**HILGERS:** Thank you.

**CLEMENTS:** Any other questions? Thank you, Senator Albrecht.

**ALBRECHT:** Thank you.

**CLEMENTS:** Are there any proponents who would like to speak for this proposal? Are there any opponents regarding this proposal? Seeing none, are there any to testify in the neutral position? Seeing none, Senator Albrecht, do you wish to close?

**ALBRECHT:** I waive.

**CLEMENTS:** She waives closing. That concludes proposed rule change number 1. We'll go onto proposal number 2, which is Senator Brewer. Is Senator Brewer here or a representative of his? I'll make a comment that I did not require-- senators do not-- their presence is not required here. The committee will consider all of the rules proposals, whether or not testimony is given on those items. And I'll just read the description of Senator Brewer's proposal. It says to replace a secret ballot with a roll call vote. Since he's not here, is there a proponent for proposal number 2? Anybody-- seeing none, are there any here in opposition of this proposal? Welcome.

**SHERI St. CLAIR:** I am Sheri St. Clair, S-h-e-r-i S-t C-l-a-i-r. I'm here today representing the League of Women Voters of Nebraska. The League is opposed to proposal number 2 as submitted by Senator Brewer to replace the secret ballot with roll call voting. The use of the secret ballot for leadership elections is supported in order to maintain the nonpartisan nature of the Legislature. Secret ballot has been used since establishment of the Unicameral in 1937 and its use should be maintained.

**CLEMENTS:** Are there any questions from the committee?

**SHERI St. CLAIR:** Thank you.

**CLEMENTS:** Thank you, Ms. St. Clair. Thank you for coming. Are there any others in opposition to rule number 2?

**NATHAN LEACH:** Mr. Chairman, members of the Rules Committee, my name is Nathan Leach, N-a-t-h-a-n L-e-a-c-h. I am speaking in opposition to proposed rules change 2 offered by Senator Brewer. I'm speaking on

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behalf of Nonpartisan Nebraska, a new nonprofit organization dedicated to preserving the nonpartisan structure of the Nebraska Legislature. Nonpartisan Nebraska strongly opposes proposed changes to the Unicameral rules that would require a roll call vote instead of a secret ballot for leadership elections. Even more than its one-house structure, it is nonpartisanship that makes Nebraska's Legislature unique and effective. When they wrote the rules for the first session in the new Unicameral in 1937, the members realized that electing the body's leaders by ballot would preserve and support nonpartisanship by assuring that leaders would be elected on the basis of their expertise, knowledge and experience instead of on the basis of their party affiliation. Ever since, the Unicameral has operated by these same rules. While it is inevitable that some senators will campaign behind the scenes for themselves or others to be elected to a particular post, the actual written vote is up to the individual senator. Were the voting to be done in public or by voice or roll call vote, we are certain that the two major political parties would be watching and would reward or punish senators depending on how their vote aligns with their party's values or wishes. Over time, the party influence would be obvious and that the party with the majority of members in the Legislature would automatically elect members of their own party to all the leadership positions. The result would be a de facto partisan body, a far cry from Senator George Norris' model Legislature. Proponents of the rules change will cite transparency and openness as their goals. We applaud the Unicameral's dedication to transparency in committee and floor proceedings. But in this instance, a public vote for legislative leaders would cripple nonpartisanship and severely damage senators' independence. Its negative effects would far outweigh the increased openness. It seems most likely that doing away with the ballot vote would result in dealmaking and tradeoffs behind the scenes, how lawmakers vote, and whether they support their party would be used against them in determining which committee assignments they are given and whether they are supported by their partisan peers. This would be trading the ballot vote for the image, not the reality of transparency. In this instance, the balance must come down on the side of nonpartisanship, one of the two fundamental defining principles on which our one-house Legislature is built. Leadership should continue to be elected by a written ballot. And for that reason, we ask that you oppose this rules change both here in the committee and on the floor, and I would be happy to answer any questions.

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**CLEMENTS:** Any questions from the committee? Seeing none, thank you, Mr. Leach. Are there any other opponents to rule number 2? Seeing none, are-- is there anyone to testify in the neutral capacity? Seeing none, and seeing-- not seeing Senator Brewer here to close, we'll close the hearing on proposed rule change number 2 and go on to the one that is called proposed rule number 15 with Senator Halloran. Is Senator Halloran here or a representative? Not seeing him, I'm going to read a description as an opening. It says, replace the secret ballot with a roll call vote upon request. And the rule proposals says in accordance with Article III, Section 11 of the Nebraska Constitution: the yeas and nays of the members shall at the desire of any one of them be entered into the Journal. Are there-- seeing-- since senator is not here. Oh, Senator Brewer, I see that you've come in, but we just had finished on your proposal. Would you want to make some comments about it?

**BREWER:** Do you want me to sit in the chair?

**CLEMENTS:** Yes, please. Excuse me for this, but I--

**BREWER:** And I apologize. I guess I, I didn't realize that I needed to be here for this.

**CLEMENTS:** [INAUDIBLE] toward the top and I'm going to reopen proposed rule change number 2 since Senator Brewer did come. Would you-- go ahead.

**BREWER:** All right. Well, actually, they, they both essentially track together. And the idea is to have a transparent vote. And that's for both the Speaker and for the Chairs. And that's on Rule 1A, Section 1, and then Rule 3, Section 8. And then down below, that's simply two-thirds of those present and that's on the voting on the floor for cloture. And, you know, again, again, that you would have a vote of those present. And part of that was to make sure that, you know, that you had a, a accurate count of those who are going to weigh in and-- did I need to do the intro part, give my name and all that?

**CLEMENTS:** Well, you should.

**BREWER:** OK. Tom Brewer, T-o-m B-r-e-w-e-r, and I represent the 43rd District. OK, so I guess I would be open to any questions here.

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**CLEMENTS:** The-- excuse me, your-- you were talking about a two-thirds majority vote. That's going to be in another rule that's not what we're discussing at the moment.

**BREWER:** Oh, OK, so we're just working on--

**CLEMENTS:** I'll call you--

**BREWER:** --on 1A and--

**CLEMENTS:** Just talking about Rule 1A.

**BREWER:** All right. So I guess I'm, I'm open to take questions again.

**CLEMENTS:** All right, since it's-- we were talking about Senator Halloran had a similar proposal. Are there any questions from the committee?

**BREWER:** And again, part of this was just tracking with what I guess George Norris always thought is that, you know, we should have as much transparency as possible. And, and that's what kind of inspired me to come up with this. All right.

**CLEMENTS:** All right,--

**BREWER:** Am I, am I free--

**CLEMENTS:** --seeing no questions, thank you, but would you stay, you're going to be called up next, but we'll have some opponents or proponents possibly on this issue.

**BREWER:** Got you. Thank you.

**CLEMENTS:** All right. Well, I think what we'll do, because his item was basically the same rules section as Senator Halloran, it could be part of Senator Halloran's proposal. Anyway, we have-- now we'll go with proponents for proposed rule number 15 by Senator Halloran. Any proponents wish to speak? Seeing none, any opponents? Welcome.

**NATHAN LEACH:** Mr. Chairman, members of the Rules Committee, my name is Nathan Leach, N-a-t-h-a-n L-e-a-c-h. I'm speaking in opposition to proposed rule change 15 offered by Senator Halloran. I'm speaking on behalf of Nonpartisan Nebraska, a new nonprofit organization dedicated

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to preserving the nonpartisan structure at the Nebraska Legislature. Nonpartisanship is not just some political buzzword. It is a genuine call for fairness and consistency in our Legislature based on precedent set over 80 years ago. Legislative bodies like the Unicameral are designed to be forums filled with diverse ideas, passionate debates, and important decisions. Ultimately, they act as the epicenter of society's most pressing questions. A fair, productive, and healthy Legislature is one of the most beautiful aspects of republican government, but it is also the hardest to achieve and maintain. Former U.S. Senator George Norris understood this when he campaigned so passionately for the creation of our nonpartisan Unicameral system over 80 years ago. But the extraordinary nature of our legislative branch runs deeper than simply being a one-house body and deeper still than our nonpartisan elections. The most astonishing aspect of our Legislature lies in the process and culture that lawmakers use to deliberate on legislation. We use a nonpartisan process of lawmaking. Unlike any other state, we do not organize by political party. In Nebraska, a diverse group of lawmakers decide committee assignments, bills are referred by the Executive Board, not the Speaker, leadership is elected by ballot, members are given multiple mechanisms to challenge decisions, and the list continues. Again and again, the Nebraska Legislature stands out as an exception when it comes to the fairness and breadth of influence a single member can have. What's more, Nebraskans overwhelmingly support the intent and effect of these nonpartisan rules. A 2019 poll by Change Research showed that 72 percent of Nebraskans believe that the Nebraska Legislature should not be controlled by any political party. Ensuring the Chamber is controlled by the best ideas and leaders, not the strongest political engine is the goal. Unfortunately since the adoption of term limits 20 years ago, the institutional memory, civility, and norms of the Nebraska Legislature have begun to erode. Money in elections and increased partisan fervor in national politics have also added even more strain to the once clearly nonpartisan process. This strain was more than evident when, in 2017, lawmakers spent nearly a third of the session on a wasteful rules standoff. The past few years have shown the Legislature is close to a breaking point and once broken it will not be easy to put back together. The historic rules and processes of the Unicameral are designed to give individual senators, not parties, control over the process. That means that coalitions can be formed based on issues. Lawmakers from rural Nebraska can represent their interests independent of the

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establishment party and vice versa. A public vote for leadership positions would invite interference from the political parties and would limit senators' independent judgment. Using a ballot vote for leadership elections is a fundamental part of preserving independence and nonpartisanship in this body. We strongly urge this committee to oppose this rule change both here and on the floor, and I would be happy to answer any questions.

**CLEMENTS:** Are there any questions? Senator Erdman.

**ERDMAN:** Thank you, Chairman Clements. I appreciate that. Welcome back, Mr. Leach. Good to see you, been awhile.

**NATHAN LEACH:** You as well, Senator.

**ERDMAN:** So I don't know if you've seen the rule that Senator Halloran had submitted, but in the rule in the writing, he had submitted this. And I'll read this to you, in accordance with Article III, Section 11 of the Nebraska Constitution: the yeas and nays of the members shall at the desire of any one of them be entered into the Journal. So how does keeping a secret ballot meet that criteria of the constitution?

**NATHAN LEACH:** I am not a constitutional lawyer, but this is the theory that I've come up with in my mind, and I think it's relatively compelling. The first thing is, if it violates the constitution, then why isn't-- why haven't we had a lawsuit on the issue? And the reason is there's no standing. The Nebraska Legislature provides that the Legislature is granted the power to determine its own proceedings and elect its own officers. And so when the Legislature elects its officers, it's doing a completely different constitutional function than deciding a question like a bill or a resolution. And I think what's most telling is that under the argument that, you know, a lot of, a lot of legislatures, they will elect their leadership behind closed doors with-- you know, the party caucus gets together, they use the ballot vote, they elect their caucus, and then they say, OK, this is who you've elected. And those people automatically become the officers of the Legislature. The Legislature just accepts that vote, even though it wasn't an official proceeding as the vote. So I think it's somewhat problematic if, if we could decide our, our leaders outside of the floor proceedings and not have, you know, like we do now, where everyone stands up on the floor and we have an election,

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even if it is by ballot. I hope I wasn't rambling, but does that kind  
of make sense to you, Senator?

**ERDMAN:** What I asked was your opinion and that's what you shared.

**NATHAN LEACH:** Yep. Thank you.

**ERDMAN:** And I can appreciate that. I don't know that, that a secret  
vote qualifies under the constitution, but that's my opinion and you  
have yours. Thanks for coming.

**NATHAN LEACH:** Yep. Thank you.

**CLEMENTS:** Any other questions? Seeing none, thank you, Mr. Leach.

**NATHAN LEACH:** Thank you.

**CLEMENTS:** Are there any other testifiers in opposition of proposal  
number 15? Seeing none, is there anyone in the neutral capacity?  
Seeing none, that closes our hearing on number 15 and we will go to  
proposal number 3 by Senator Brewer on cloture.

**BREWER:** All right, on this, we're looking at Rule 7, Section 10, is  
that correct?

**CLEMENTS:** Yes.

**BREWER:** All right. And so what I'm going to do here, rather than go  
through this whole paragraph, is just the critical part that we're  
changing. Whenever a motion for cloture is offered, the presiding  
officer shall immediately recognize such introducer or chairperson and  
shall then order debate on the pending amendment or motion to cease  
the vote on the cloture motion shall be taken immediately by  
two-thirds majority of the-- and what we're changing, the original  
language here would have been two-thirds majority of the elected  
members and that would change to the members voting no fewer than 25.  
So it would be two-thirds of those present.

**CLEMENTS:** Would you state your name and [INAUDIBLE].

**BREWER:** This is seems like a deja vu. First name is Tom, last name  
Brewer, B-r-e-w-e-r, and I represent the 43rd Legislative District.

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**CLEMENTS:** Thank you. Were you, were you finished with your  
presentation?

**BREWER:** Well, I guess I'm, I'm open for questions now on that change--

**CLEMENTS:** All right.

**BREWER:** --since it's a couple words.

**CLEMENTS:** Does the committee have any questions? Senator Erdman.

**ERDMAN:** Thank you, Chairman Clements. Senator Brewer, so, so then I  
had not seen that before until you presented this. So you're saying  
that the majority of those voting, but it has to be at least 25?

**BREWER:** Correct.

**ERDMAN:** OK.

**BREWER:** And then those, those present. Yeah, a lot of good they do me  
now. Yeah, the idea was to be then to make sure that 25 is the minimum  
and that you're actually counting those present for the vote.

**ERDMAN:** OK. All right, thank you.

**CLEMENTS:** Thank you.

**BREWER:** Wow, that was a lot better.

**CLEMENTS:** Senator DeBoer.

**DeBOER:** I want to clarify, because what you read and what you said  
doesn't match up in my head.

**BREWER:** OK.

**DeBOER:** Two-thirds majority of the members voting not present, which  
could be different. Is that correct?

**BREWER:** Well, you are correct. You could be there and not voting, so,  
yeah, members voting.

**DeBOER:** Thank you.

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**BREWER:** No fewer than 25.

**CLEMENTS:** Any other questions? Seeing none, you'll have an opportunity to close if you wish. We'll go on with proponents.

**BREWER:** OK. Thank you.

**CLEMENTS:** Anyone would like to testify in favor of rule number 3? Seeing none, are there any opponents wishing to testify on rule number 3-- proposal number 3? Are there any in the neutral position? Seeing none, Senator Brewer, do you wish to close?

**BREWER:** Going to save that nicely [INAUDIBLE] chair. I'll waive.

**CLEMENTS:** All right, thank you. That concludes the testimony for rule number 3-- proposal number 3 which is actually Rule 7. Uh-oh, Siri is talking to me.

**ERDMAN:** That's a \$5 fine.

**CLEMENTS:** All right, the next proposal is number 5 by Senator Linehan, also regarding cloture. Senator Linehan. Please state your name and spell it.

**LINEHAN:** Good afternoon, Senator Clements and Rules Committee. My name is Lou Ann Linehan, L-o-u A-n-n L-i-n-e-h-a-n. I'm here today to the same-- I assume everybody has it in front of them, right? So halfway down the paragraph under Rule 7, Section 10, it's where the first word of the line is immediately and then it's the nays of one-third of the elected members shall be required for the cloture motion to fail. And it strikes a two-thirds majority of elected members shall be required for the cloture motion to be successful. I have come to greatly appreciate the cloture motion. I think it's really important to protect the interest of the minority, which sometimes the minority can be right, even in a democracy. So I think the cloture is very important. However, with the need to get to 33, I believe it is too easy to kill good legislation. I've seen it happen to progressive legislation and to people we would consider conservatives. I think we'd be far better served and the interests of the public would be better served, if you dislike something so much that it needs to die, you need to, you need to say so. You need to hit a red. Having 33 present-- members present when we could be going to 10:00 at night or midnight or-- I remember a good friend of mine in the Legislature who

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is-- does not share the same party label, saw a piece of legislation that she had worked incredibly hard fail because somebody had to go home and take care of the kids. So it is-- again, I defend cloture, but finding 17 people that are too busy or they can't be here, frankly, it's too easy for outside interests to find, find a reason for number 17 or number 31 or 32 or 33 not to be here. It's just too easy. And I don't think it serves the public interest when you can duck and it's not known why the bills die. And right now the way the system is, if you don't have to vote no and you're just not present, it's not-- I think it's anything but transparent. So that's it.

**CLEMENTS:** Are there any questions from the committee? Seeing none,--

**LINEHAN:** Thank you very much.

**CLEMENTS:** --you may stay for a close if you wish. Is there anyone who wants to testify? Go ahead and disinfect that and the microphone, please, too. Testifiers, you may remove your mask to testify [INAUDIBLE] the page to disinfect. It would make it easier to hear you if your voice is not too strong. So are there any proponents for proposal number 5 on cloture? Seeing none, is there anyone who wants to testify in opposition? Seeing none, is there anyone in the neutral position? Seeing none, Senator Linehan, do you wish to close? She waives closing. That concludes proposal number 5. The next one on the schedule is proposal number 21 by Senator Flood. He has withdrawn his proposal and we'll go on to rule-- proposal number 20 by Senator Flood with described as "words excepted to." Senator Flood.

**FLOOD:** Thank you, Chairman Clements and members of the committee. My name is Mike Flood, F-l-o-o-d. I represent the 19th Legislative District. This proposed change to Rule 2, Section 9 of our legislative rules is intended to promote respect and civility among our members. The Nebraska Legislature is an institution that other states look to for efficiency, transparency and the manner in which our members work together to solve the state's toughest issues and challenges. This rule change is not intended to become a new weapon in a divisive fight. It is for serious breaches of civility by a member, personal attacks from one member to another in the Chamber during debate and on the record. Each independently elected senator has been sent here to do important work on behalf of their constituents. Their right to vote in the Legislative Chamber is protected by our constitution. This rule, though, recognizes that a member's right to speak on the record

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during debate is a privilege that can be restricted if we, as a separate branch of government, decide that there is certain egregious conduct so detrimental to the institution of the Legislature and to any one member that is a victim of such scandalous verbal attacks during debate that that restriction on speaking privileges should be restricted for 30 days. As I campaigned for the Legislature, people would pull me aside and say that it is awful the way some senators treat each other and fight on the floor. We've all heard it. If someone with a full-time job raising kids running from place to place has an opinion like that, we have work to do. This rule doesn't change the day-to-day behavior, but it does draw a bright line for legislative words spoken on the record. There will be heated disagreements. There will be and always will be anger and loud voices in a legislative environment. That is part of the process. And that is not the kind of context that this rule change is working to impact. This rule change is not intended to have any impact on what happens every day in almost every legislature in the United States. This is for exceptionally bad conduct. This rule change is intended to stop what very rarely happens, a personal attack or a deliberate insinuation directed at a member of the Legislature by another. Negative comments about a member's alleged or actual sexual conduct, a member's family, private and personal matters, the disclosure of which is likely and could cause safety issues. There is no place in the Legislature for that type and kind of debate. As you will note, the decision as to whether to sanction a member requires a 33-vote majority. It is a serious matter. Members must be in their seats without electronics. One of the reasons that I proposed that in the rule is to communicate the seriousness of a situation. If a member is being-- if a debate is occurring as to whether or not someone should lose their speaking privileges, in my opinion, you should had-- have to sit in your seat without access to any computer or phone or any type of electronics. There should be absolutely no distractions because what we're talking about, restricting a member's right to communicate on the record, is a very, very, very serious matter that none of us would ever look forward to, enjoy, or want-- really want to be a part of. If this rule is ever invoked, it might be the worst day of your service here. It would be one of the worst days of mine. I don't want to go through this, but we must have to follow some process if we were ever to see somebody cross that line. And it's a process that, that is implicated if it not only offends the victim, but offends the Legislature as an institution. As you will note, the

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sanction I have proposed is very severe. The loss of speaking privileges for 30 calendar days is meant-- is meant to remove the legislator immediately and to send a strong, unmistakable message that what was said is not acceptable. I'm not married to the idea of 30 days and would be open to a term of fewer calendar days of restriction. Finally, I pledge to each of you that as a fellow senator, I will do everything in my power to treat each of you with respect each and every day. No one is perfect, nor am I. I highly doubt that we encounter this rule during my service, but I think it's important that the rule is there. More than anything, it will serve as an important reminder-- an important deterrent to bad behavior and will make members think twice before they say what they ought not to say. And I'll end with this, Senator Hughes was telling me that on a recent trip to a Nebraska courtroom, he peered over the wooden bench and there was a Post-it Note right in front of the judge and nobody else could see it. And it said: Don't say it. And I think that judge did something very simple to remind himself that in that courtroom, you may think it, but you can't say it. And I'm not saying that this rule is meant to apply to stuff like that. It's much more serious. But it is a reminder to us all that we have to watch what we say and that our words have very serious consequences. Thank you very much for entertaining my-- considering my rule change, and I'd be happy to take any questions.

**CLEMENTS:** Questions? Senator DeBoer.

**DeBOER:** Yes. I-- you, you mentioned that you were considering communications on the record, but I don't see that in the rule that it says on the record or in the, in the Chamber even. Did you intend for that?

**FLOOD:** I did intend for that. I worked with several folks to get the rule change prepared. And I'm hoping that you're looking at the right one. I'm sure you are.

**DeBOER:** Disorderly conduct occurs if a member of the body commits a personally disparaging remark, uses inappropriate language or comments in a way materially disrespecting the institution of the Legislature regarding another member of the body.

**FLOOD:** Well, I think the inclusion of the words on the record would assist us here because--

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**DeBOER:** I agree.

**FLOOD:** --it has to be something that is official or an official act. And there are, there are nonverbal things that happen and if things that happen under the balconies for a much different reason than something on the record. So I, I think that's a good change.

**DeBOER:** OK, and then because of the sort of extreme nature of the proposal that you're making in this procedure, I wonder why you chose three members would be the, the number necessary to submit to the presiding officer, and if you might consider more than three members as a threshold to, to make sure that it was only used in extreme cases?

**FLOOD:** Three was an arbitrary number. I think you could choose whatever number you want. I think at the end of the day, it has to be something more than one.

**DeBOER:** Agreed.

**FLOOD:** So I would be open to that. I don't think that if the burden is 33, it should be 10, but something greater than 3.

**DeBOER:** OK, thank you.

**FLOOD:** And, and I think to your point, and we spoke earlier, you don't want this used for debate purposes or winning an advantage. This-- if this is ever used inappropriately, it should come back on those senators that abuse the process. And hopefully the presiding officer at that time, and maybe that's something we need to talk about, could, could rule this out of order if, if this were, you know, not based on conduct that is intended.

**DeBOER:** Yeah, I'm wondering if maybe they're-- increasing that threshold from three to a higher number might, might be one of the, the measures that-- because you might be able to find three people to do something to kind of-- I don't know, you don't want something to happen on a [INAUDIBLE].

**FLOOD:** It's probably scary what you could find three people to do.

**DeBOER:** Yeah, right, but a number like five or seven might be a lot harder to do.

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**FLOOD:** Good.

**CLEMENTS:** Any other questions? Senator Erdman.

**ERDMAN:** Thank you, Senator Clements. Senator Flood, you made, made a comment about 30 days. In your handout, it says 30-day session-- 30 days of session. Were you saying that you were interested in calendar days? It says here, you-- not permitted to speak on the legislative floor for 30 session days. Is that what you meant?

**FLOOD:** My initial thought was calendar days to try and keep that to about 20 session days. But in all honesty, I put that in there because I wanted something that would get people's attention. And I think that something less than 30 days would be appropriate. I mean, that's-- it's a long time.

**ERDMAN:** Yeah, it's one-third of a 90-day session, half of a 60. That's significant.

**FLOOD:** I don't think it should be a day or two.

**ERDMAN:** No, I agree. Thank you.

**CLEMENTS:** Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Thank you, Senator Flood. I like the concept of having something in our rules to help provide some protection or a mechanism for the body to speak in those instances when, you know, our culture otherwise might break down. Did you pull this at all from-- or, or any concept from this from other states? Do other states have mechanisms like this that, that we could learn from?

**FLOOD:** Speaker Hilgers, I did look into the rules of the-- the rules in Kansas and Iowa and South Dakota, and I was surprised that I didn't see really anything in either their house or senate rules that really went after this type of conduct. They have something we don't have, which is an ethics committee, which I think would probably deal with some of these types of issues. I actually prefer our system where this would be dealt with by the whole body if, if it did occur. But I didn't have the opportunity to look through a lot of states. But I did look at the surrounding states: Iowa, South Dakota, and Kansas. And I didn't find anything that seemed to be on point. So one of my-- you know, I had two different proposals that I worked with the Clerk's

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Office to draft. So that's probably why I had a question on what  
Senator DeBoer had. But--

**HILGERS:** It sounded-- thank you, Senator Flood, it sounded as if maybe  
the, the purpose of this was maybe more directed towards floor debate.  
Would that-- or would it also include, since we're on the record in  
our committee hearings, maybe less likely to have a, a loss of decorum  
or disorderly conduct, but would it include committee hearings?

**FLOOD:** It isn't-- does not involve committee hearings. The idea I had  
there was the whole Legislature is present on the floor and it's the  
most widely watched proceeding by the public, whereas each committee  
hearing is occurring at the same time and not necessarily as viewed by  
the general public. I really wanted to keep it narrow. But obviously,  
if this committee sees any reason to-- I think it becomes difficult  
when you aren't there to see it yourself. And then all of a sudden you  
have issues of, well, what was the evidence or what was said or how  
was it said.

**CLEMENTS:** Any other questions? Seeing none, thank you, Senator Flood.

**FLOOD:** Thank you, Senator Clements.

**CLEMENTS:** Are there any proponents wishing to testify regarding  
proposal number 20? Seeing none, anyone wanting to testify in  
opposition to this proposal? Seeing none, anyone testifying in the  
neutral capacity? Seeing none, do you wish to close, Senator Flood? He  
waives closing. That concludes proposal number 20. Next, we'll have  
proposal number 4 by Senator Vargas. Is Senator Vargas or a  
representative here? Welcome, Senator.

**VARGAS:** Thank you for having me. Good afternoon, committee, Chairman  
Clements. My name is Senator Tony Vargas, T-o-n-y V-a-r-g-a-s, and I  
represent District 7 and the communities of downtown and south Omaha.  
For those of you who have previously served on this committee, you  
will be familiar with the subject matter of my rules proposal. And if  
you are new to the committee, I will take just a few minutes to brief  
you on what I believe is important to include in the legislative  
rules. What I'm proposing here is that we implement the practice of  
creating and preparing racial impact statements to accompany specific  
types of legislation. And what I'm handing out is an LR217 interim  
study report on the feasibility of preparation and consideration of

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racial impact statements that was prepared by Senator Sue Crawford, the former Rules Committee Chair. And we worked on this late last year. We've had a few hearings and discussions with this committee over the past few years about racial impact statements, most recently last month when the previous Chair, Senator Sue Crawford, convened a briefing for the Rules Committee as part of my interim study on this subject. I worked with Senator Crawford and Creighton University Social Science Data Lab over the interim to come up with a method for putting these reports together. They presented information to the previous committee at the briefing last month, which is included in this report, which includes actual racial impact statements for three legislative bills that were introduced this past year in this past session, and examples of what these could look like. I then worked with Senator Crawford to publish a report on LR217, which is in front of you, on the feasibility of institue-- instituting this practice in the future, which is what brings us here today. Simply put, racial impact statements are a tool that will give us important data to make informed decisions as we consider debate and enact public policy. Now in 2008, our neighbor to the east, Iowa, was the first state to require what they call minority impact statements as part of their fiscal notes for certain legislative bills. Their law was passed as a response to the growing concern that their Corrections and prison population was disproportionately full of African-Americans and Latinos. Nebraska also has this problem, and one way we can work on addressing it is by having nonpolitical information about how policies would or wouldn't affect minority policies. Since Iowa pioneered this concept, a handful of other states have also passed similar bills. Connecticut, Oregon, New Jersey have racial impact statements and bills have been introduced in Arkansas, Florida, Mississippi, and Wisconsin. Now, what I'm proposing here is the same as what was proposed in the Rules Committee report last month. The first change is in Rule 3. This would require a racial impact statement for any bill or resolution that significantly affects criminal or juvenile law. The second part of this change in Rule 3 allows the bill's introducer or the Chair of a committee where a bill is referenced to or request-- to request a racial impact statement, regardless of the bill's subject matter. The second rule change in Rule 5 directs the Legislative Research Office to create a racial impact statement, to create a racial impact statement for the legislation referred to them by the Referencing Committee. This rule change also outlines the information to be included in the racial impact statement and allows them to

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request the cooperation of any state agency or political subdivision as they prepare the statement. Now my hope is that the Legislative Research Office could work in collaboration with, example, Creighton Social Science Data Lab to create the racial impact statements. What I would submit to the committee now is a change to the second part of my rules proposal. Rather than tasking the Legislative Research Office, LRO, on creating racial impact statements, we could ask Creighton's University Social Science Data Lab. My thought process on the rules change is in general are the following: One, I don't think we want to trigger a racial impact statement on every single bill like a fiscal note is required for every bill, especially when the most significant and frequent impacts of this information will be in specific subject matters; namely, around criminal law offenses, sentencing, and others of the like. Two, we wanted to work within the longstanding framework of the Legislature's operations by respecting each senator's individual right to information and a public hearing on every bill, while also respecting the role of committee chairs. And three, Creighton's Social Science Data Lab is well-equipped to create these racial impact statements. They are a credible source for academic, well-researched, nonpartisan, nonpolitical information which is critical to the credibility of the racial impact statements and how this information is perceived by senators and the public. For those that know this, the Legislature already frequently works with academic institutions for information that informs policymaking and data. For example, the Legislature's Planning Committee, which I am the Chair of, contracts with the University of Nebraska Omaha College of Public Affairs and Research to compile nonpolitical, nonpartisan demographic data and research policy across the country. The University of Nebraska also frequently provides economic impact statements on a wide variety of bills and subject matter which helps us as senators to understand the long-lasting impact that legislation can have on our local and state economy. All that said, I want to finish up my remarks. I'd be happy to answer any questions of the committee. Just one thing that I wanted to make sure that's also really clear. This is something that's been introduced as a bill in the past. And then we got a lot of feedback that this would be something that is more suited for not a permanent change, but something that we would try to implement and make sure is operational in, in a, in a more substantive sense. So we brought it to the Rules Committee several years ago. The feedback we received was we don't know how to make this work. We're not entirely sure how to make sure this is feasible and operational

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immediately. What are the sort of procedures? How do we make sure that individuals have some say, committee chairs? The body of, of that information is in this report. The reason why we went down the route of, of putting of, of doing, like I say, a little bit of a pilot here because we wanted to see how long does it take to create a report? What do these reports look like? What information is really included in it and dispel some myths, which is also another thing that we got feedback on, which is are you telling us what we should be, what policies that we should be putting forth? This is not about policy recommendations. This is about data. This is about nonpartisan, nonpolitical data on a potential impact that a legislative change would have on a potential subpopulation, specifically an underrepresented race or ethnicity. And I think that information is really helpful in guiding our conversations and steering us away from, from potentially overly political conversations. We, we have seen through the Planning Committee's recent report and several other reports that there is disproportionate contact within our juvenile justice and Correction systems and our, and our system overall. And that disproportionate minority or racial impact that we're seeing is, is relevant to how we make decisions. But we don't have all that data in front of us. It's worthwhile to have it when we are making decisions. And we can choose to do whatever we want as senators and as a body. That is not impacted by this information. It's not telling us what to do, it's informing us so we can make better informed decisions. So with that, I'm happy to answer any questions.

**CLEMENTS:** Any questions from the committee? Senator Erdman.

**ERDMAN:** Thank you, Senator Clements. Thank you, Senator Vargas, for your information. If you have that study that you handed to us, could you turn to the racial impact statement for LB54? I think it's the first study that was in the back of the table. OK, in the top, it says, a racial impact statement, it goes adding the exemption to existing concealed carry laws that could lower the number of concealed carry arrests may have a disproportionate impact on black Nebraskans due to the overrepresentation of weapons-related arrests. And it goes on to talk about the black residents make up 5.2 percent of the population, but 28.9 percent of the weapons arrests. So if we get a racial impact statement and it says it's disproportionately more black people being arrested for concealed carry violations, can we make a separate law for black people and a separate law for white people and

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Hispanic people? If we have separate laws for all those people, how do we do that?

**VARGAS:** Senator Erdman, you were elected like I was. The question you're asking, and it's a very similar question we had, I think, last time, which I think this is worthwhile, is exactly the kind of conversations we need to have. This statement allows us to have a substantive conversation about what we do or don't do in regards to policy. This is not going to dictate what, you know, what you have to do. It's telling us that there may or may not be a disproportionate impact on a race or ethnicity. So it's going to depend on the dialogue and what committee and, and the content of the bill. And I think that's all going to depend. But according to LB54, this racial impact statement is due to the overrepresentation of weapons-related arrest, there may be a disproportionate impact on black Nebraskans, and I think that's worthwhile data for us to have as policymakers.

**ERDMAN:** So who-- who's going to do the racial impact statement for the state? Is the state going to do that? Are we going to pay for that? Who's going to pay for that?

**VARGAS:** Like we have done with some other past data reports or work, this can be done by LRO, LRO. But what I'm proposing here is that we can, you know, contract this out to an entity that is equipped with the data and the expertise to do it. And Creighton University Social Science Data Lab is a great example. They're the ones that put together these impact statements. And, you know, that's going to be left up to the Executive Board. It's going to be left up to the Legislature. But that's the proposal I'm bringing ahead of you.

**ERDMAN:** So if we introduce-- let's say we introduce 700 bills in a session, how many bills do you think will have a racial impact statement?

**VARGAS:** It depends on the number of bills. But given the number of bills that have offense changes, I can't really ballpark it here. But it's not going to be all 700 bills, Senator Erdman, because the majority of them-- these would be probably mainly Judiciary bills or at the discretion if a senator chooses to want to have a racial impact statement or if the committee Chair wants to, you know, I'd probably say ballpark less than 10 percent, maybe 50 to 70 bills if that.

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**ERDMAN:** OK. All right, thank you. The, the comment you made was several other states have done this. And we have a tendency here, and I heard this question earlier to Senator Flood, have you checked with other states to see if they do this? And we hear that all the time. And one thing I want to bring to your remembrance and everybody else in the room, we are a Unicameral. We are the only one Unicameral in the nation. And so we can, we can afford to be different. And so just because some other state does it doesn't have a lot of confidence or weight with me. I mean, it has to be right for us. And if there were other states that wanted to do a Unicameral, they sure would and evidently they've decided not to. So we're different in that regard and we can be different with not having a racial impact statement. So saying because another state has something, we have to have it, I don't, I don't buy into that.

**VARGAS:** Yeah, and that's not my statement. Not because other states have it means we have to have it. Other states have done it means there's merit into looking as to why. The way that we're proposing doing this when the rule changes, it's not a cookie-cutter approach to how other states have approached it. We're doing this in a way that has, I think, is measured, is aligned to not just putting it in state law and having it sitting, setting it and forgetting it. This is a feasible and operational way of implementing racial impact statements that is in accordance with, I think, the culture of the Nebraska Legislature.

**ERDMAN:** OK. That's all I have.

**CLEMENTS:** Are there other questions? Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Thank you, Senator Vargas. So just so I'm clear, are you proposing as an either/or option, the LRO as an option and then also the-- or the Creighton option? Or are you just focusing on a Creighton option?

**VARGAS:** I'm, I'm focusing right now-- I'm providing an option of the Creighton option because it's something that we've seen as, as, as working these examples or the examples they put together. But I'm open to what the committees would, would be open to. Like I said, we have other examples, the Planning Committee works with Center for Public Affairs Research and LR-- and it can also-- LR can be tasked with identifying a separate, you know, higher education entity that could

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be doing this as well. So it doesn't necessarily-- you don't have to name who that entity is, but Creighton did do a really fantastic job and I thought that was important to highlight that.

**HILGERS:** So I'm going to-- I'll just focus-- just a couple of questions, just focusing on the outside entity so assume for a second, understanding that you're not eliminating that as an option. If it's an outside entity, is there any other example in our Rule Book where our process has relied on a third party that's outside, that's a either private or, or public entity? It's not the Legislature, it may be relying on, you know, some agency information for a fiscal-- for fiscal notes?

**VARGAS:** Outside of-- I know there are examples of when-- like for, for example, fiscal notes, you know, Fiscal Analysts are doing, doing the engagement with the department heads or the appropriate, you know, entity at each agency. But sometimes we're talking about things that have to do with private funds. Chairman Clements knows this. So let's say like the Daugherty Water is at the University of Nebraska. So sometimes we're, we're doing some research and getting some information from outside public entities that are, are-- you know, so that's why we use the University of Nebraska system sometimes. But this is an example of an entity that is a subject matter specific and has the expertise that could be contracted out. One of the pieces of feedback we received two years ago was, is LRO equipped to do this in-house? And one of the reasons why we created this report and tried to figure out that answer was, well, can we contract this out? There's also a question of in the future, could this be an in-house individual that's doing it? And I think the answer is, yes, it could be.

**HILGERS:** Well, if-- so if we're contracting it out-- I mean, what happens if they just don't do it to our process? I mean, this, this is a, this is part of our bill introduction and reference to committee and hearing process. So what happens if they just don't do it?

**VARGAS:** Well, Senator Clements and I work on Appropriations, we subcontract out a lot of different work. Child welfare is a good example. We can create, you know, parameters to make sure that people would, would do it. And I would imagine that any of these entities, including Creighton or anybody else, if they said they were going to do the work, I don't have any questions or concerns that they would

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actually do it within the parameters of the time frame we put in a  
contract.

**HILGERS:** Well, and I, and I, I don't and I'm not-- this isn't specific  
to Creighton, just-- I mean, certainly I want to make clear to that.  
But I mean, when you look at our rules and how our process works,  
there are a few exceptions. Mostly really surrounding fiscal notes,  
the only one that I can really identify in our rules in which we would  
in any way rely, especially for-- rely on a third party to provide us  
information that is necessary for the bill to move across stages.  
Everything else, LRO, those are all within the Legislative Council  
purview and so it does give me pause. And I have-- since it just got  
into introduced sort of or discussed, the concept just got introduced  
at the-- just now, I haven't thought it through in depth, but it  
certainly does give me a lot of pause that we would inject that kind  
of contingency into our rules. But maybe you can react to that. And  
that's the only other question I have.

**VARGAS:** I am open to any manner with which we can have an expert--  
people with the background that could put together these racial impact  
statements. So if it is, you know, a separate, you know, FTE staff  
that is doing this work within LRO, I have no issues with that. I  
think that would work great. I wanted to provide an alternative. If  
there's some change to this potential rule, we can-- I'm open to doing  
that of course.

**HILGERS:** OK. Thank you for all the work you put into it, Senator  
Vargas. Thank you.

**VARGAS:** Yeah, thank you.

**CLEMENTS:** Any other questions? Thank you, Senator Vargas.

**VARGAS:** Thank you very much.

**CLEMENTS:** Are there any proponents that would like to testify  
regarding this proposal? Welcome.

**PIERCE GREENBERG:** Thank you. Can you hear me OK?

**CLEMENTS:** I can.

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**PIERCE GREENBERG:** Sorry, the beard means I have to actually wear two masks, so I'll try to speak loudly. Does that work?

**CLEMENTS:** Yes.

**PIERCE GREENBERG:** OK, thanks. So my name is Pierce Greenberg, P-i-e-r-c-e G-r-e-e-n-b-e-r-g, and I'm an assistant professor of sociology at Creighton University and lead the Social Science Data Lab at Creighton, speaking today for myself and not on behalf of my employer. I'm here today to testify in support of this rule change. As someone who studies society, very concerned about the racial disparities in our criminal justice system, not just in Nebraska but across the country. I'm also encouraged that this problem has become a bipartisan area of policy focused in recent years. The sources of racial disparities are very complex, but criminal justice research has found that state-level sentencing laws can play a role in racial disparities. The literature states that these laws aren't often intentionally passed to disproportionately penalize racial minorities. Instead, these are often unforeseen consequences. That is why states across the country have been experimenting with adding racial impact statements to proposed bills so that lawmakers can simply be aware of racial impacts when considering laws. Last year, I was approached by Senator Vargas' office to help in drafting versions of what these racial impact statements could look like here in Nebraska. My colleagues in the criminal-- the Creighton Criminal Justice Program and I developed an approach to this with three key considerations in mind. First, we knew the statements had to be short and readable as lawmakers are busy people and probably don't have time for our academic jargon. Second, we created them with publicly available data, mostly from the Nebraska Crime Commission, since it might be time consuming to wait for other data sources and information. And third and finally, we wrote these statements with the acknowledgment of time, staffing, and cost constraints. We aimed for the statements to be completed within a single working day by someone with the general knowledge of data. And as an example from one of our drafts-- I'll actually mention what a senator earlier spoke about. We wrote a racial impact statement for a bill that proposed to exempt properly stored guns in cars from concealed carry law. The racial impact statement shows that black Nebraskans make up just 5.2 percent of the state's population, but account for 28.9 percent of weapons-related arrests. Therefore, an effort to add exemptions to weapons violations could disproportionately lower the number of black Nebraskans arrested. So

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it's hard to predict the specific impact of any one bill, but the reminder of potential racial disparities and how they could be increased or decreased, this law was actually that we were referencing before was, the statement was saying it would actually potentially lower the number of black Nebraskans arrested. But that can help better inform lawmakers rather than ignoring the problem. In addition to four draft statements, we also include a roadmap as to how we put these together. And I can talk more about our involvement with this, but we would hope that this might be useful to whoever is in position to write the statements. And you all have a copy of the report that's included with the packet from Senator Vargas. So after undertaking this process, I'm confident that racial impact statements in Nebraska would be both feasible and useful. And I'm willing to help consult or answer any additional questions about our work. Thanks.

**CLEMENTS:** Thank you, Mr. Greenberg. Are there any questions from the committee? Seeing none, thank you for testifying.

**PIERCE GREENBERG:** Thank you.

**CLEMENTS:** Wait for the page. We'll take the next proponent. Welcome.

**SPIKE EICKHOLT:** Good afternoon, Chairman Clements and members of the Rules Committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of this proposed rule change. We want to thank Senator Vargas for introducing this or suggesting this rule change. I'm handing, I'm handing out or having be distributed a report that the ACLU did with respect to racial profiling and police stops in Nebraska. And I'm also distributing something that the University of Nebraska at Omaha published last November that showed a racially disparate impact on our criminal justice system. We support this rule change for the reasons that Senator Vargas explains that it's important to have a racial impact statement for bills that deal with criminal justice reform. When-- the materials I gave you clearly show that in our criminal justice system is demonstrably so, that there's a racial disparity impact. Everything from beginning to end of the criminal system, from the traffic stop when an officer stops someone all the way through the court process to sentencing. It flows one way against people of color. There's a disproportionate number of people who are going to be stopped by an officer, a disproportionate number who are going to be cited, a disproportionate number who are going to be arrested. Then

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that much more with a bond, more likely to get a jail or a prison sentence. When you look at bills dealing with any kind of subject, I think, and this is just my opinion, but I think senators look at a bill and basically ask themselves two things. First, what does this bill do? And maybe the next question you might ask is, well, what does it cost? Right? You look at the fiscal note. What this proposal suggests is that when you're looking at bills that deal with criminal laws, criminal justice, you ask a third question. And that is, what racial impact will this have? Will it exacerbate the racial problem? Will it ameliorate the racial problem? Will it have no effect, effect at all? In any event, to address this systemic problem, because I don't think is-- I would concede it's not always intentional. It's not always deliberate. If anything it's probably more likely unintentional, it's systemic. It just happens. And for whatever reason, it continues to happen where people of color are overrepresented in our criminal justice system. There's more people in jails and more people in prison than our regular-- than our, than our population of Nebraska represents. So we'd urge this committee to adopt this rule change and to recommend it for adoption to the floor. I think that you-- Senator Vargas already handed out the LR217 interim study report that showed that these racial impact statements can be done. Some of the examples that were made for bills that were done-- introduced last year, I think is readable. I think that the recommendations that, that the, the creators of the racial impact statements and the examples gave are accurate. And for all the reasons that Senator Vargas said before and the Professor from Creighton articulated, we would urge this committee to adopt this rule change. I'll answer any questions that you might have.

**CLEMENTS:** Any questions from the committee? Senator Erdman.

**ERDMAN:** Thank you, Senator Clements. Thank you for coming. I'm having, I'm having a difficult time getting my hands around some of the statements you made. For example, when you said disproportionate traffic stops for people of color. Are you indicating the police are prejudice or racist?

**SPIKE EICKHOLT:** I don't, I don't think it's that simple. For whatever reason, police are required under Nebraska law when they make a traffic stop to record the race and the ethnicity of the person they stopped. They make those numbers and they have to report those numbers to the Crime Commission. And every year about March, the Crime

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Commission releases a report. And it shows consistently, some jurisdictions more than others, but consistently that people of color are more likely to be stopped. They also have to indicate if there is a citation issued or if there's an arrest made. And for both those other factors, there's-- it trends that same way.

**ERDMAN:** Could it be possible they broke the law? Is that why they stopped them?

**SPIKE EICKHOLT:** Yes.

**ERDMAN:** And that's probably the indication why more people get stopped. So the handgun permit or conceal carry LB54 in the example, maybe you're familiar with that. So 28.9 percent of those people, people of color, were arrested for handgun conceal and carry violations. They must have broke the law or they wouldn't have been cited. So do we have-- we need to have a different law then for those people than we do for someone else? Everybody else figured it out, only 5.2 percent of the population is black, but 28.9 percent were arrested for breaking the hand-- handgun conceal and carry law.

**SPIKE EICKHOLT:** My answer might be--

**ERDMAN:** How, how does that work? I don't understand this.

**SPIKE EICKHOLT:** My answer might be a little bit circuitious-- might be a little bit long-winded, but LB54 was meant to reverse the Supreme Court decision that seemingly allowed somebody to be prosecuted for carrying a concealed weapon just for having it in their car, so that was kind of a narrow bill. But I think what that analysis touched on was that problem that for whatever reason, there is, again, a disproportionate number of people of color, black people who are arrested for weapons violations. Going back to what you said about the-- I thought of something else when you asked about the traffic citation and stops. One of the common offenses that people are stopped for in a traffic stop is driving under suspension, not having a license. And people can lose their license for a variety of reasons: not paying child support, not having insurance, that kind of thing. And those circumstances of people not having licenses, there's an overrepresentation of people of color. So a lot of this is systemic. The cops are not necessarily being racist. They're just doing their job. They're told to stop people that aren't driving with a license.

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I'm not saying that people should be able to drive without a license, but I think that we need to focus on that and look at it this way. One-- this is something that happened in the federal law. When Congress got tough sort of on drugs back in the '80s and '90s, they criminalized cocaine and cocaine was a big problem. And then crack cocaine kind of developed with poorer people and many times people of color. Congress then started increasing the penalties for possession of amounts of cocaine. And the way that they had earlier defined what cocaine was, it's not just the cocaine itself, but it's a substance that has a traceable or detectable amount of cocaine. When people are possessing crack, they have relatively little cocaine. But what they have weighs a lot. Right? So if you are an affluent Wall Street banker, a white guy, and you've got a little bit of powder cocaine, you're going to be subject to a lesser penalty than somebody who might have just a little bit of cocaine, but weighs a lot because it's sort of mixed with baking soda and crack. That just kind of developed systemically. That wasn't meant to target black people, at least not necessarily. But they have that impact. I don't know with hindsight, if we'd have people thinking about these issues when they passed the laws, that could have been avoided, but maybe it would have. Just like when you pass bills, even when you know they're going to have a fiscal note and may not make sense, people still do that. At least you know of it. At least you have that awareness. And that's the hope with this rule change to have something like that.

**ERDMAN:** OK, so then this racial impact statement, then, how would that handle the, the disparity that you-- I mean, I don't-- I'm not, I'm not making the connection here.

**SPIKE EICKHOLT:** One way that they did is the way Congress fixed it, and that is they just redefined what cocaine meant.

**ERDMAN:** Yeah, but in this case it's systemic. You said it's a systemic problem.

**SPIKE EICKHOLT:** Right.

**ERDMAN:** So having a racial impact, how does it solve that systemic problem?

**SPIKE EICKHOLT:** Well, at least in this way, then you consider what kind of, what kind of impact, what kind of consequence might this have

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for people of color or for people based on race? We know that this crime, we know that this circumstance now. The law is, is now if you don't change anything, it's going to continue. That's, that's likely to happen. Right? So if you consider any kind of change to that, is it going to make it worse? Is it going to make it better or is it going to have no effect at all? And that's the purpose of the statement.

**ERDMAN:** OK.

**CLEMENTS:** Any more questions? Senator DeBoer.

**DeBOER:** And maybe we're getting too far in the weeds here, but I'm trying to understand what you just said. Would a racial impact statement have brought out the fact that charging based on what, by weight?

**SPIKE EICKHOLT:** By weight.

**DeBOER:** Charging based on weight would have a disparate impact on a similarly situated group of lawbreakers based on their race or ethnicity?

**SPIKE EICKHOLT:** It might have. I mean, it's tough to go back in time to see, but if more people who are-- if more people are getting in trouble with possessing crack are people of color versus more people have powder cocaine, then I think that's easy. You need to change the definition of what the controlled substance is. And a number of states have done that. Incidentally, we have not. But for whatever it's worth, some states have and the federal government did.

**DeBOER:** How often do you think a racial impact statement would sort of elucidate that kind of infor-- because I-- you know, I have no concept of weights of drugs. That's just not in my world view at all. So when we're proposing these kinds of statements, how often do you think that that would find one of these pressure points, as it were, where you're going to see, OK, we can write it a different way, still get the same intent, but not have the impact?

**SPIKE EICKHOLT:** I think it could be very effective. For instance, if you look at the examples, LB739, the restrictive housing reform, that was easy to, that was easy to measure the number of people who are-- were in restrictive housing or in solitary confinement in our prisons. We could identify them, identify their race, and that's had a direct

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benefit or ameliorated that situation. So I think in some instances, the fix or the identifier is easy. Without the statement, then you have-- you can imagine doing something without a fiscal note. Right? You're on a floor debating a bill and somebody says it's going to cost \$1 million, somebody says it's going to cost \$100,000, and someone else is going to say it costs nothing. And that's just opinions. It's just arguments. And you may be able to scrape together some sort of argument in support of it. But with a fiscal note, you have that at least as a starting point. And sometimes fiscal notes aren't-- I don't say they're, they're not accurate, but sometimes they don't have-- it's unknown, for instance, what the fiscal impact is going to be in a fiscal note.

**DeBOER:** Writing a fiscal note is an art, not a science, I would,--

**SPIKE EICKHOLT:** Right.

**DeBOER:** --I would suggest. Similarly, these would probably be an art, not a science in the same-- by the same metaphor. So there would be information which would be provided to senators. I can't really think of a downside to providing that, that information, but there would be at least more information given to them so that they could make that part of their decision-making factor when they're thinking about these things and maybe they don't have all the information.

**SPIKE EICKHOLT:** That's right.

**DeBOER:** All right, thank you.

**CLEMENTS:** Any other questions from the committee? Senator Hansen.

**M. HANSEN:** Thank you, Chairman Clements. And thank you for being here, Mr. Eickholt. I guess to kind of put a fine point on the issue. So we know from research, and I want you to confirm if this is true to your knowledge, but we know from research that, for example, using drug charges as an example that kind of drug usage is often pretty stable and pretty level across kind of like racial groups. Is that correct?

**SPIKE EICKHOLT:** Generally speaking, yes.

**M. HANSEN:** And then you can see research that despite similar drug usage, that there is maybe more arrests and harsher outcomes for one racial group than another.

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**SPIKE EICKHOLT:** That's right.

**M. HANSEN:** And so racial impact statements will be examining that where kind of regardless of the amount of, say, in a criminal law, the amount of times the law is broken, one group is getting harsher punishments, longer punishments more likely to be caught, it would divvy out some of those details.

**SPIKE EICKHOLT:** That's right.

**M. HANSEN:** Thank you.

**CLEMENTS:** Any more questions? Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Good to see you, Mr. Eickholt. I couldn't let you go without a question.

**SPIKE EICKHOLT:** Thank you, Speaker.

**HILGERS:** Same question I asked Senator Vargas. Are you aware of anywhere in our rules in which we rely on a third party for part of our legislative process?

**SPIKE EICKHOLT:** I don't know. I don't know. Is there something that we get from the university regarding numbers? I don't know that there is. I have to admit that might be right. And I don't really-- I think what Senator Vargas was proposing to use the Creighton, University of Creighton or Creighton University was just because that was a-- an alternative, because the Legislative Research Office didn't think they had the capacity or at least the experience or for whatever reason, the ability to do it. I think it was a suggestion they had. And I don't-- if the, if the committee is uncomfortable with sort of outsourcing it, then I would suggest that we just-- that you direct Legislative Research to do it and they can do the best they can because it doesn't have to be perfect. Right? Other states have done this. I think it's just good to at least get this perspective on issues dealing with criminal law.

**HILGERS:** Thank you.

**CLEMENTS:** Any other ones? Any other questions? Thank you, Mr. Eickholt.

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**SPIKE EICKHOLT:** Thank you very much.

**CLEMENTS:** Are there other proponents for this proposal? Seeing none, is there anyone to testify in the opposition? Seeing none, would anyone here want to testify in the neutral position? Seeing none, Senator Vargas, you wish to close?

**VARGAS:** Thank you very much, members of the Rules Committee. Thank you, Chairman, for your time. The only thing I wanted to make sure to just clarify is the rule that's proposed does not specifically list Creighton University or a "subentity." It is directing Legislative Research Office to work with state agencies like they do with fiscal notes to then go through this process. I brought that up in my testimony because I wanted to make sure it's an option that's available to you. If the committee feels more comfortable making sure that there is no third party, that is-- I'm going to leave that up to the committee. At the end-- and as Senator DeBoer actually said, this, you know, very simply, and this is about having more information in a very specific sense and having our fiscal notes helps to inform the decisions we make. We may not always-- we may have disagreements on the content of a fiscal note sometimes. It sometimes helps us to corroborate a case for why there's a specific change that's needed. But I want you to imagine a world without fiscal notes. There's a lot of questions that would have been left up in terms of how much something would cost, its long-term, you know, economic impact. You know, how the agency-- what it would cost the agency. And in this instance, I think it's important for us to be able to look at some potential blind spots that we may see in regards to populations across our state that we have seen being overrepresented in different, in different areas. And specifically, we've seen them overrepresented in Corrections, we've seen them overrepresented in our justice system. And the decisions and what we do with that data are going to still be left up to us. But there shouldn't be an issue or a question as to more information. Better data is always more helpful to us as lawmakers. So thank you.

**CLEMENTS:** Any other questions? Senator Erdman.

**ERDMAN:** Thank you, Senator Clements. Senator Vargas, just a question then, your comments was that it's not specifically going to be not designated to Creighton. So could it be anyone? Can the senator choose who does the racial impact statement then?

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**VARGAS:** No, what we're proposing in this rule change is Legislative Research Office would work in tandem with any state agencies. That is not what I'm proposing in this rule change.

**CLEMENTS:** Anyone else? Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Senator Vargas, sorry, I thought-- when I focused on the-- I'll call it the Creighton proposal, not because we're trying to pick on Creighton, but coming back to the LRO proposal. The way that I at least read these, the part of the model impact statements from the report is that at least the data here cited from a whole different set of sources. It's not, you know, I see journals, the Journal of Political Economy. I see-- you know, I see obviously some arrest data. That's, that's something they use. But there's, there's, there's-- it's not one unlike maybe going to agencies. I mean, there's-- these, these are external sources. So how, how would LRO-- what kind of guidance could LRO have to make sure that they couldn't be-- open themselves up to charges of data, you know, cherry-picking?

**VARGAS:** Well, I'm sure LRO's ears are ringing right now. And I, I would imagine that if you asked LRO how they go about doing their own research for Fiscal-- let's say when you're studying a policy area and you're asking them for a set of research, they're looking through all available data public sets that are existing and are looking to other states for potential research in that-- in, in the arena of whatever that subject matter is. And I think this is the same thing. So what you saw and I think what you heard from Pierce is that this is all publicly available data. There is no one data set that carries all the information that's needed. And I think if you talk to our Fiscal Analysts, it's not that simple either. The Fiscal Analysts are contacting, you know, heads of departments and our answers are, are not always straight up and, and quantitative. I think some of us have been part of fiscal notes that say something's going to cost \$15 million. And that came from one person telling somebody else over the, you know, via communication that that's what it was going to cost. And there may not be data necessarily to support it. It's just the best estimate. That's why I think it's important that we use the best available public data we have. Nebraska Crime Commission is one data set and source. LRO, I think, has the capacity and wherewithal to figure out which data sets that they would include in their decision making for putting something together.

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**HILGERS:** Well, I guess, I guess-- thank you for that. I think it kind of-- I guess the problem I have is it seems to conflate two sets of projects, but I think they're distinct. So one is the idea of doing general research where LRO, as an example, would go find a number of different data, that's fair. The Planning Committee getting the public policy department at UNO to get data, more than fair. With something that I think is distinct, which is the fiscal note process, which is not a matter of going and getting a bunch of data sets around the world or, or searching on the Internet or finding data from a lot of different sources, it's going to the agency and something that is, is more defined and less susceptible, even though it probably is susceptible to some degree for any sort of data cherry-picking. So I'm not suggesting that LRO would, you know, would cherry-pick data, but I think it is two different processes. One that sort of has invited, and I think people like I would be comfortable with having lots of research from lots of sources. And another process, which is something that gets put into our-- you know, is akin to a fiscal note that is introduced as part of, you know, the hearing process, which I, I, I view those as two distinct things. How would you react to that?

**VARGAS:** Well, Senator Hilgers, I'd venture to say that we don't all know the processes within fiscal notes. We trust our Fiscal Analysts and we trust, we trust that process and who they're talking to when they're verifying the most up-to-date information until we have questions about fiscal notes we receive. I think the same thing operates with this. The interim study was to try to make sure we're looking at feasibility. What are some of the best pieces of information that we can then, you know, come-- that we can make sure that are inside a report, making it not overly cumbersome, making sure that turnaround time works, using publicly available data to the best of their ability. And again, this is not causal relationships. These, these are, you know, correlations and, and information that we can take. If there is-- if the question you're posing is we would like some more clarity on what sources they use, I'd, I'd be happy to amend the rules so that we can include that direction to LRO that they're using publicly available data sources that, that we normally use the Crime Commission. Crime Commission does have a lot of data sources, but it's not, it's not completely comprehensive of all data. There are some other data sources we typically use. I would be open to that amendment to make sure that this works. At the end of the day, more information and data, and not just statistics, more information and

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data that's giving us some-- something to work off of specific to  
bills in this arena the way I proposed it is the most important thing,  
so I'd be open to that.

**HILGERS:** Thank you.

**CLEMENTS:** Senator DeBoer.

**DeBOER:** I'm curious then since you've talked, Senator Vargas, about  
looking at other folks who have tried to do this in other places, it's  
not that I'm convinced by them, but I'd like to see what mistakes they  
made and maybe we can learn from them. So do they have provisions in  
their rules about peer-reviewed articles, for example, if they're  
doing those sorts of data? I mean, on the one hand, I understand  
Senator Hilgers' concerns. On the other, I think that, you know, we  
have professional researchers who understand some of these things. I  
wouldn't have necessarily a problem with spelling out some kind of  
model level of-- but honestly, like, you know, we don't tell Fiscal  
Office that they have to have-- I'm not sure that we tell Fiscal  
Office the, the way to do their job on this so, so I don't know. But,  
but certainly we could, we could look into, you know, looking at where  
their data sources were if we were concerned about corruption of data.  
But my question is more, because to be honest, probably I'd be reading  
these more than anyone else in this-- I'm on the Judiciary Committee.  
I think I'm the only one in here. So I want to know, you know, are  
these going to be single page? Is there going to be the possibility to  
talk to the analyst about further depth? Maybe I'm introducing a bill,  
I get a racial impact statement, it-- I question some of the results  
of it or the conclusions. If I got a fiscal note like that, I would go  
and I would talk to the Fiscal Office and say, here's why. In fact,  
this happened to me. And we read the bill in a different way. And the  
results of what they thought it was going to do and what I thought it  
was going to do were radically different.

**VARGAS:** Um-hum.

**DeBOER:** I could see a situation happening with a racial impact  
statement where I would need to talk to the analyst and say, no, that  
isn't what I'm intending with the bill, we find a place where the  
language can go one of two ways. I have to amend it. We can amend it,  
that sort of thing. So what sort of caveats would you have for sort  
of, you know, making sure that-- it's particularly if we, if we deal

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with an outside vendor, making sure that those analysts are available  
for the senator to have a discussion with?

**VARGAS:** I'm going to try to answer your question. So, one, I think you  
bring up a good point, there really is not in, in statute exactly how  
fiscal, you know, the fiscal notes are created. So I think what you  
described is a little bit of our inside baseball, you operate with our  
fiscal note, which is good because I think we've all done that to some  
extent. Or we publicly do it in committees where we question fiscal  
notes. I look at Senator Clements because we've had that happen so  
many times in Appropriations and we love our Fiscal Office. I think  
that is more left up to sort of individual senators and what they do.  
As to a little bit of your question about data, if there's a need to  
sort of delineate what types of data sets are utilized, I think that's  
worthwhile to put in this. If you look at all the racial impact  
statements, either at municipal or state levels across the country,  
they vary very widely. And I know there's-- Spike would, would attest  
to that. They, they vary widely on-- some are extremely general,  
create a racial impact statement, very short level number of bullet  
points on what that can include. And some are extremely prescriptive.  
I think we have struck a balance of setting a standard of what it  
would include, giving some examples. But just like our fiscal notes,  
some of them are short, say there's no fiscal impact. Some of them are  
a little bit elongated because of the content of the bill. And-- but  
we wanted to give some parameters. I think the last question that you  
posed, the main question, which is, you know, turnaround time, you  
know, given the ability to talk with somebody, it would be probably a  
little bit more difficult if we had a third-party vendor. That it  
would probably be a lot easier to then do it with, with somebody that  
is working with LRO or if you-- if we're working with the state  
agency, for example, the Crime Commission, we would be able to have a  
potentially quicker turnaround time. But I will leave that up to  
however the, the rule is drafted.

**CLEMENTS:** Any other questions? Seeing none, thank you, Senator Vargas.

**VARGAS:** Thank you very much.

**CLEMENTS:** And regarding this proposal, I had around 26 emails since  
last night. We cut them off at noon today. As of noon, about 26  
emails. I think all of them were in proponents. And I replied to those  
people telling them that we would make that part of our record as

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well. I know several of you people in emails said you'd be watching online. Just wanted to thank you for your comments. And we will print those emails and put it in our record. I know that there was a short timeline from the time this report of proposals went out to the time of this hearing. And so I wanted to make that accommodation. That concludes proposal number 4. Next, we have proposal number 6 from Senator Hughes on Executive Sessions.

**HUGHES:** Thank you, Chairman Clements, members of the Rules Committee. My name is Dan Hughes, D-a-n H-u-g-h-e-s. I represent the 44th Legislative District. There is a little confusion in your paperwork. There are two copies of Rule 3, Section 16 dealing with Executive Session and Closed Meetings. It is the first draft that is before you or the top draft is my proposal. I had the Clerk's Office look at it two different ways so, so I could compare them. But the first draft or the top draft is the one I would like to see adopted. This change is not-- it is-- this change is designed to provide better outcomes for our work here in the Legislature, especially for the committees dealing with sensitive material in Executive Sessions. When I first got to the Legislature after having served in private life, I served 12 years on a public school board, numerous association offices, board of directors, officer rotations. And I was shocked when I got here and found the press involved in Executive Sessions because I was well aware of the sensitive matters dealt with in Executive Session, and also sometimes the intense negotiations that go on in Executive Sessions. And it was imperative that the members of whatever body was having an Executive Session were able to speak freely and to try and make their point to their colleagues. At that point, I was told there was a gentleman's agreement here in the Legislature that the press would not quote you until they talked to you outside after the Executive Session and you gave your permission. So I went on that. I got caught on that. I was quoted in an Executive Session without being asked my permission. So ever since then, you know, you know, burn me once, shame on me; burn me twice, shame on you or vice versa. I'm sorry. I have whenever there's press in the room I have held back. I have not put forth my best arguments to craft the best possible legislation that we can in our process. And that's very unfortunate. I have not proposed this rule before. Last year, was visiting with then Speaker Scheer about this issue and he was in agreement. He said in his role as Speaker or leader of state legislatures, he did not know of another state that had that rule that allowed the press into their

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Executive Sessions. And thinking about that, I don't know that there's any other governing body in the state of Nebraska that allows the press into their Executive Sessions. I mentioned I was on a school board, you know, city councils, you name it. There are a lot of sensitive issues that are dealt with in Executive Sessions and this body is no different. And we need to be able to have the confidence of what we say to our colleagues, stays with our colleagues. You know, the old saying of don't say it, you know, don't be willing to say it unless you're willing to read it in the paper tomorrow. Well, that's fine in an open setting; but in a closed Executive Session, we have to have some security that our comments will not be taken out of context and reported. Our committee process is the people's house, we refer to our committee system as the people's house. That is where the people can come. That's what this room is all about, when the public can come and address us. It's important that we take that input and dissect it, fuse it, tear it apart, bring it back together to make the best outcome possible, because the work that we do in this building affects people's lives. And it is imperative for we as lawmakers to make sure that we get it right. And sometimes that process is not pretty. Sometimes that process can be heated. But that's the process we have and it is our duty to do the best job we can. We're not trying to hide anything. We're trying to provide a better outcome by allowing members the ability to speak freely in Executive Session. And I've talked to several of you, several of the members of the body who have been burned by this. And I think it's time that we put an end to it. And quite frankly, if you read what the existing session is or the existing rule is, Executive Sessions shall be open to members of the news media. Why aren't there TVs and radios in Executive Session? Is that something that we want, want? Is that something that will provide a better outcome for the people of the state of Nebraska? We have to have the ability to discuss openly and frankly as equals, as senators to provide the best outcomes we possibly can for our constituents. Thank you. I'll be happy to try and answer any questions.

**CLEMENTS:** Any questions? Senator Erdman.

**ERDMAN:** Thank you, Senator Clements. Thank you for bringing this rule change, Senator Hughes. On that-- in that same section right below the part where you're trying to strike the media will not be allowed in there's, there's an except rule there, and maybe you've seen that, in all other committees shall be public unless the committee by a majority vote of its member determines that a meeting, the meeting

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should not be open to the public, including members of the media. So we have that provision now that the committee has a majority, the majority of those voting can exempt them from being in there. And, and I, and I agree with you. So when-- next when I make my presentation, I'll have some comments to say about that. But, but I just-- have you seen that rule?

**HUGHES:** Yes, I have.

**ERDMAN:** Have you seen it ever used?

**HUGHES:** Once when I was Chairman of a committee, we removed the press and I was roasted pretty hard for that. So this just-- and quite frankly, with term limits and the turnover and the institutional knowledge and the knowledge of the rules that we have at our disposal, it's pretty hard to get up to speed quickly enough to make sure you understand what your rights are as a Chairman and a committee member. You know, there, there-- the learning curve, as Senator Cavanaugh is, is no doubt learning is pretty straight up to begin with. And these nuances, if you will, or opportunities are sometimes you have to learn the hard way. And I, I have learned that lesson. And I-- you know, it's not a vendetta. I-- you know, I get along good with the press, up until today probably, but, but, you know, never-- the old saying, never pick a fight with people who buy their barrel-- or their ink by the barrel. But, you know, this, this is something that has, has burnt several members of, of our body and it needs to be addressed.

**ERDMAN:** Thank you.

**CLEMENTS:** Senator DeBoer.

**DeBOER:** Senator Hughes, when you say it's burnt several members of the body, what are the greater risks to the body, not just to the individuals that you see coming from those instances of being burnt?

**HUGHES:** It's-- as, as we all know and, and as you know, you, you are running for reelection, you know, you're in before in two years, less than two years, you will be running for reelection. So if you're in, say, the Revenue Committee and you're having a discussion about raising taxes and you make a comment about raising taxes, whether you are a proponent or opponent and you get misquoted and all of the

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sudden it shows up in the paper that Senator DeBoer is in favor of  
raising taxes, you got burnt.

**DeBOER:** I would like to note for the record that Senator DeBoer did  
not say anything one way or another about raising taxes.

**HUGHES:** That was an example.

**DeBOER:** I know. I know. I, I think that's a really good example about  
how an individual senator could be heard. But I'm thinking about the  
culture of the body and the, the problems that we might run into  
because there isn't the freedom to have these kinds of questions or  
conversations within the Executive Committee. Maybe you could speak  
more to what you think is sort of the ideal way Executive Session  
might function in a committee.

**HUGHES:** Well, the-- it's, it's making-- it would make us more  
efficient if we didn't have to be concerned with the press being in  
the room. You and I have had some very frank discussions on the floor,  
you know, and not necessarily when we're talking about something in  
our committee. Well, yeah, we serve on the same committee. So probably  
we have been on the same committee and have those same frank  
discussions. It's much more-- it's much easier and more efficient if I  
could have that discussion with the entire committee than just  
one-on-one.

**DeBOER:** Yeah, I think what you're saying is, and let me understand  
this. What you're saying is instead of having each individual senator  
on a committee speak to each other individual senator on the side of  
the floor, not on the microphone, you think it would be more efficient  
to have them together in an Executive Session of their standing  
committee so that they could--

**HUGHES:** Absolutely.

**DeBOER:** --have that conversation.

**HUGHES:** You know, as, as you well know that when you're dealing with a  
tough issue and you begin the discussion and, you know, you say  
something, it brings something up to me, then that makes something pop  
up in Senator Hansen's mind and, you know, Senator Cavanaugh and back  
and forth. That's how we create better laws with that back and forth.  
And if you if in the back of your mind you're worrying about, oh, boy,

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you know, I, I don't know if I should really say that or not. That is  
the little problem that we have, in my opinion.

**DeBOER:** Yeah, I mean, sometimes I think the, the need to be able to  
say something just to test it against what your colleagues think about  
if not knowing if it's true or not might be important. So would you be  
opposed to going back to the situation where we get assurances from  
the press that they would uphold that previous, quote unquote,  
gentlemen's agreement to not quote specifically without talking and  
only characterize the, the general conversation?

**HUGHES:** Burn me once, shame on you; burn me twice, burn me twice,  
shame on me.

**DeBOER:** I think that means no. Is that correct?

**HUGHES:** That's a, that's a-- yes, that's a correct answer. And I, you  
know, and for the media of, of video media and audio media, you know,  
how, how do you do that? The print media is something different.

**DeBOER:** Sure.

**HUGHES:** I mean, those-- that has to be typed up and submitted and,  
and, you know, reviewed and to a certain extent, the other media as  
well. But I, I think having the TV cameras and the radio microphone in  
front of you when you are discussing a very sensitive topic that  
literally affects millions of people, that's a little intimidating and  
that's a, a impediment that I think we need to remove.

**DeBOER:** Thank you.

**CLEMENTS:** Other questions? Seeing none, thank you, Senator Hughes.

**HUGHES:** Thank you.

**CLEMENTS:** I will open this up for proponents. Any proponents for this  
proposal wanting to testify? Seeing none, anyone wanting to testify in  
the opposition? Welcome.

**DAVE BUNDY:** Thank you. Thank you, Chairman Clements and committee  
members. My name is Dave Bundy, D-a-v-e B-u-n-d-y. I'm the editor of  
the Lincoln Journal Star and I'm a member of the Board of Media of  
Nebraska, which represents the state's newspapers, broadcast media and

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the associated digital news outlets. And I'm testifying in opposition to this rule change. A wise man once wrote: Transparency means that the public has access to information necessary to hold elected officials accountable. The wise man was Speaker Hilgers, and he was answering our Journal Star candidate questionnaire in 2020. Not doing that to just suck up here. But in view of the events-- seriously, in view of the events in our nation's capital last week, I would say that transparency goes beyond holding government accountable. I would say that it's essential in holding our nation together. In the absence of real facts, bad information, distorted information, and even maliciously created false information fills the void. Access to Executive Sessions gives our journalists essential background and perspective on the actions of government. It ensures that our reporting is founded on what's really happening, not on secondhand accounts by folks who may have their own agenda or their own interpretation. Beyond our obvious concerns about informing the public, this rule change sends a message to your constituents. Adopting this rule strikes a blow at open government. As a member of the editorial board at the Journal Star, I've had the privilege of interviewing both Speaker Hilgers and Senator Hansen, and I would point out that in their last elections we endorsed both of them-- again, just not trying to win points, that both have supported principles of transparency in government. In fact, I've interviewed dozens of candidates for the Legislature, higher elected office up to Governor Ricketts. And I'm not sure I've ever encountered a prospective public servant who has said out loud for voters that they thought transparency was a bad thing or that government should be less transparent. This rule change says precisely that. You're all smart people and that's why you were elected. Let the people who put you in those seats understand what you're doing on their behalf and how you're doing it through fully informed news reporting. Conspiracy theories grow in the absence of facts and the absence of access. The last thing that this nation and the state needs right now is that. Don't tell your constituents that you want to conduct more of their business behind closed doors. You are people of integrity and we know that and you know that this is the last thing that our representative democracy needs right now. I'd be glad to answer any questions.

**CLEMENTS:** Any questions, committee? This is your chance.

**DAVE BUNDY:** Yeah, really, you can unload on me. I'm not going anywhere.

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**CLEMENTS:** Seeing none, thank you, Mr. Bundy.

**DAVE BUNDY:** All right, thank you.

**CLEMENTS:** Is there another testimony in opposition of this proposal?  
Welcome again.

**SPIKE EICKHOLT:** Thank you. Good afternoon, Chairman Clements and members of the Rules Committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in opposition to this proposed rule change. I meant to tell Senator Hughes beforehand, like I typically do if I'm going to oppose a proposal that a senator makes and I forgot to do so or neglected to do so. I would just like to echo Mr. Bundy's comments, and that is that transparency is critical. The public has a right to know what the Legislature does. I think that the accommodation that this rule provides as, as exists now to allow the press in there is a practical accommodation to the public's right to see what happens in Executive Session. In other words, opening up Executive Sessions to everybody, present public included, just would not be logistically possible. Sometimes you meet in Exec Sessions really quickly on the legislative floor. Sometimes they're just quick little meetings about a single bill or something like that and having the public notice, having NET sort of view it online is just not a reality that's going to work. But what you still accommodate and still allow for is the public's ability to see through the press what you're doing. I think what Senator Hughes said regarding some of the delicate and controversial and significant things being discussed in Executive Session is, is well taken. But the reality is all of those issues that are being discussed, everything is being proposed and everything is being decided on is done on behalf of the public. If it's difficult to talk about these things with one another as colleagues, it's difficult for the millions of people who are impacted by the legislation to, to deal with it. Senator DeBoer asked earlier, what is the sort of alternative or what's the consequence of doing it this way or something like that. That's not maybe what you asked, but something like that. One consequence is, is that the public is going to have this impression that you're doing things in secret, backroom deals. You amended this bill from the way it was introduced. I didn't know about it. You did it, public didn't know. I don't know. You have that and when-- you already have it now, frankly, with a transparent project that will exacerbate that impression. I think that people when you go back to

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your constituency, you go back to your district, you talk to constituents, I think many times people might say to you that they saw you on NET, they appreciated what you had to say. You get those things. I see on social media all the time and you have at least a some sort of accommodation, like I said before, of the Executive Session. And another consequence I think that would have to the body is that I, I have noticed that sometimes it serves you well to know what the press covers and reports on what happens in Executive Session. I know that you talk to one another, of course, but sometimes-- and I don't-- I can't give a specific example. I can but I don't want to. I, I have seen how the body reacts to things that you read about the press covering in some Executive Sessions when you're not there. And I think that helps this system work. Not only does it allow for the public to sort of know what you're doing and provide transparency and openness in government, but I think it works well as a practical matter for you. So I'd urge you to not adopt the rule change.

**CLEMENTS:** Senator DeBoer.

**DeBOER:** So what do you do about the problem of the chilling effect? Right. So what do you do about the problem of we're sitting in Executive Session, I look over and I see the press corps, so I'm not going to ask the question that maybe I have with my colleagues because I'm afraid that, that my merely raising the question will lead to a report about that. And then if I, if I do that, then instead maybe I go behind the scenes or I don't ever get to ask my question. We move forward. I vote without having all the information because I wasn't able to ask the question because I was concerned about, you know, is it a dumb question? I don't know if it's a dumb question. You know, where's that, that line so that we can, we can have that frank conversation?

**SPIKE EICKHOLT:** That might-- that's a legitimate point, because you don't-- I mean, when I testify on the record I'm always terrified, too, right, that I'm going to say something and people are watching. So I, I get that feeling that you can't take it back once you say it. And that's why I have a lot of respect for all of you, because what you're doing is you're living that. But the reality is what you're talking about, what you're deciding, what you're questioning doesn't impact you, not only you, it impacts the public, the people you were elected and the people you're serving in the state. These are, these

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are-- you're not meeting in Executive Session to talk about private  
personnel matters or your private life. But you're here as elected  
officials, you're talking about official state business, bills and  
ideas are going to impact the public.

**DeBOER:** But you've testified in front of us about the chilling effects  
of certain kinds of behaviors on speech. Certainly you understand  
you're familiar with the concept--

**SPIKE EICKHOLT:** Yeah.

**DeBOER:** --of the chilling effect on speech. It seems like there would  
be a chilling effect here based on that concern. So and maybe there's  
a middle ground here where the, the sort of freedom to speak openly so  
that we could, I mean, to get really down into the questions,  
sometimes we have to make some mistakes along the way.

**SPIKE EICKHOLT:** Right.

**DeBOER:** But if they're reported out of context, if the public doesn't  
understand that that was sort of a question that then, oh, I see the  
error of my way and now I've gone this way. In the process of  
learning, you know, then, then there could be some sort of like, well,  
I'm not going to, I'm not going to do that. I'm not going to try to  
have that full conversation. And we might chill some of the  
discernment process that the body ought really to go through when  
addressing questions and not rely just strictly on ideological  
positions, political party, that sort of thing, that some of this  
process needs to be open to us, to be human in our understanding and  
in our discussions with other folks. So what do we do about-- I mean,  
maybe you can, because you're an expert on, on some of the chilling  
effects of, of speech, so how do we, how do we combat the chilling  
effect of speech?

**SPIKE EICKHOLT:** I think the system that you have now generally works.  
I think the press is, for the most part, responsible. I think they are  
tactful. I think they exercise restraint. I don't know of any time  
that-- everyone's got phones, people can record stuff on phones all  
the time. I don't know that I've ever seen anyone from the press that  
has been in Executive Session ever record anything and, and release  
it. Similarly with video. So I think now for the most part, it works  
and it provides-- and that's why I said early on, it's a practical

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accommodation of the public's right to know. You can't have everyone in there and it can't just be like a free for all like it is on, on the floor, if you will, for during the Executive Session where everyone's watching it on NET is live, live broadcasting it. The alternative is you have no one there watching. And it may be great for debate. It may be awesome to banter off all kinds of ideas, but ultimately you're operating or acting on behalf of the people and the people have a right to see that.

**DeBOER:** So you would argue that the chilling effect on speech is offset by the transparency only for specific press to be allowed into these Executive Sessions and recognizing that that drives some of the conversations out of those Executive Sessions?

**SPIKE EICKHOLT:** Well, you-- that's a compound question. So it's tough for me to agree to everything that you say or disagree with everything you say. I understand what you're saying and that's why I think that the system as is-- is now has an accommodation. The rule, as Senator Erdman explained earlier in a question, does provide for the situation where if it is going to be, and I think it says the rare circumstance something that you do want to talk candidly, an effort can be made to exclude the press. And I don't know that it has ever really been done. I think Senator Hughes said it before, but I don't know if it's ever been done in the committees I regularly appear in front of and the Judiciary Committee, you know, that's some of the more controversial, delicate, personal things that you can discuss.

**DeBOER:** We're used to having the press there and, frankly, I haven't had a problem with it. I think it's actually been quite helpful to our deliberations, but I can understand how there could be a chilling effect.

**CLEMENTS:** Senator Erdman.

**ERDMAN:** Thank you, Senator Clements. Thank you for coming. The question then comes up with so the media is in there listening to what we have to say. When we vote on the issue, that is all recorded and the public knows exactly how we voted. So tell me how that's not transparent?

**SPIKE EICKHOLT:** Well, that part is transparent, right? The committee does see how you vote and see what the vote was. But, but, you know

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right-- the committee just doesn't vote up or down on a bill that's proposed. The committee may amend it. The committee may merge bills together. The committee may just discuss a bill and then not advance it. And there is no recorded vote. So there's lots of things the committee does.

**ERDMAN:** But if they amend it, it's also included. So they understand what we did. That's not-- the amendment is not done in secret. We don't send it to the floor with a secret amendment. Everybody knows what it is.

**SPIKE EICKHOLT:** Right.

**ERDMAN:** All of those votes and all-- on the amendment and whatever it is, is all recorded for the public to understand. So I didn't see any of you here in the media talking about open and transparent when we were voting-- when we were discussing the vote on this-- on the election of Chairmanship. I didn't hear any of that.

**SPIKE EICKHOLT:** Right.

**ERDMAN:** So if open and transparent is important, why weren't you here testifying about that?

**SPIKE EICKHOLT:** A couple of things. I don't represent the media. I represent the ACLU of Nebraska. Secondly, we don't take-- we're not taking any positions on these what I would call inter-- intra senator rules, how you choose your leadership.

**ERDMAN:** That's what this is. This is a rule for the senators.

**SPIKE EICKHOLT:** This is a rule for the senators, but this involves the public. This is a-- this restricts--

**ERDMAN:** [INAUDIBLE].

**SPIKE EICKHOLT:** --the public's right to know. This restricts the public's right to see and observe what the senators do in Executive Session in committees. Going back to what you said earlier. Yes, if the press is not there during Executive Session, there's a record vote on the amendment, there's a record vote and, and the public can see what the amendment is. But the discussion as to why or how or who proposed or why it wasn't done a certain other way, that's something

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the public is not going to have access to. The, the consequence of that, as I would argue, is that it's going to increase skepticism and hostility from the public to its elected officials that they have this. I introduced-- I thought this bill as introduced was great and then you supported it in a completely different way. I can see senators getting those responses from constituents and you can always explain it after the fact. But if they have a chance to review at least a summary of what happened in the Executive Session, as I said before, I think that works well for you now.

**CLEMENTS:** Other questions? Seeing none, thank you, Mr. Eickholt.

**SPIKE EICKHOLT:** Thank you, Mr. Chairman.

**CLEMENTS:** Are there others who wish to testify in opposition to this proposal? Welcome.

**JOANNE YOUNG:** Thank you. This is a first. Chairman Clements, members of the Rules Committee, my name is JoAnne Young, J-o-A-n-n-e Y-o-u-n-g. I'm a former statehouse reporter for the Journal Star, former for about eight days now. I was-- but I have 36 years of print journalism experience and I wanted to share with you why I feel it's important that reporters be allowed into Executive Sessions of committees. In 14 years of covering the Nebraska Legislature, I have been present in many Executive Sessions and found the discussions give valuable insights into why a bill advances to the full Legislature, is killed, or languishes in committee. Sometimes those insights give reporters good background and informs future stories. What comes to mind are the frequent Executive Sessions, and daily a lot of times, of the Appropriations Committee. Those discussions, as members wade through detailed items in the complex state budget, give reporters an invaluable background into state spending in such areas, important areas as Health and Human Services, the University of Nebraska, state colleges, and K-12 education, and more recently, emergency spending for flooding and COVID-19. The media can't be cut off from the appropriations process. Being able to listen to those discussions, help reporters write accurate stories and keep taxpayers and your constituents informed as to what their representatives are doing here in Lincoln. I also sat in on many sessions of the Judiciary Committee when members were discussing amendments to bills that would provide Corrections reform, relief for prison crowding, controversial gun legislation, and abortion-related bills. The details and the context

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of that discussion, those discussions was really important. I have attended briefings by the Health and Human Services Committee that were not open to the public, and those were also important to gaining insights into the department's operation and to-- and it's essential to the people of Nebraska. The Revenue Committee, there are bills with a lot of moving parts in the Revenue Committee, as you all know, and reporters who write on it and put a lot of information out to the public need to understand what the bill actually does. That comes in those discussions. We need context. We need to explain why senators take a certain approach. The essential task of redistricting will be done this year, and all aspects of that process are of interest to the public and government and elected officials. That includes what is said in Executive Sessions as to how it will proceed and what discussions and decisions made it happen that way. Senators ask each other important questions during those discussions and get answers that we can pass on to the people of Nebraska. Understanding inform-- informs our stories and improves and provides accuracy. And I know senators value accuracy. They frequently talk about the importance of transparency, not of selective transparency. The lawmaking process is more accountable to the electorate if it is open to public view in all phases of deliberation. In this case, reporters are there on behalf of the public and even are able to deliver important information to your colleagues via our stories who are not allowed into the Executive Sessions. Yes, it requires a certain amount of trust, and I believe the statehouse press corps has shown that it can be trusted. I respect their integrity. Thank you.

**CLEMENTS:** Thank you, Ms. Young. Are there any questions from the committee? Seeing none, thank you for testifying. Is there anyone else wishing to testify in opposition to this proposal? Welcome again.

**SHERI St. CLAIR:** Thank you. I'm still Sheri St. Clair, S-h-e-r-i S-t C-l-a-i-r, from the League of Women Voters of Nebraska and the League is also opposed to this proposal. We feel that the ability of those news media to be present and report on the Executive Sessions is key to maintaining trust of people in the legislative process. The background of perspective that they can provide is invaluable in helping voters understand why we got to where we are. You know, there's a lot of discussion and you just read a piece of legislation and sometimes it's just not clear the whys and wherefores and all the background that went into it. So I would have to echo at this time comments made previously that, in addition, transparency in the whole

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process is invaluable, especially under current circumstances where  
people try to understand life in 140 characters and it just doesn't  
work that way.

**CLEMENTS:** All right. Any questions?

**SHERI St. CLAIR:** Thank you.

**CLEMENTS:** Seeing none, thank you for coming. Anyone else wishing to  
testify in opposition? Seeing none, anyone in the neutral position?  
Seeing none, Senator Hughes, do you wish to close?

**HUGHES:** Thank you, Mr. Chairman. Members of the committee, I will be  
brief. Very interesting discussion we're having here. The process that  
we go through is very open. When bill introductions, they're read  
across, you know, the committee hearings are open. The questions we  
get to ask testifiers, as you have done, that's an open process. Once  
it gets through the committee, once the committee Execs on it, sends  
it to the floor, there's three rounds of debate that's televised. The  
press is allowed, cameras in the balcony, press is in the balcony.  
This is an open process. And we're not the ones that change the rules.  
You know, we aren't the ones that change the rules. But now, if we  
don't make this change, you know, the camera people are going to,  
going to be busy because they're going to be carrying a camera around  
following us around all the time because they're entitled to. It'll be  
like The Office, the TV show. It's great, great theater, I guess, but  
it doesn't permit the making of better outcomes for the citizens of  
the state of Nebraska. And that's why I'm here, is to make the best  
possible outcome for my constituents and all of your constituents  
because we have to get it right. And in order to get it right, we have  
to use all the tools available to us. And sometimes those are very  
frank discussions with our colleagues in Executive Session. So with  
that, I thank you for your time. Good luck.

**CLEMENTS:** Thank you, Senator Hughes. Are there any questions? Oh,  
excuse me, Senator Hansen.

**M. HANSEN:** Thank you, Senator Clements, and thank you, Senator Hughes.  
I guess just kind of approaching this kind of the fundamental question  
here or the issue you bring up is that the presence of TV cameras or  
the presence of the news media in general, I should say, put some fear  
or some caution into state senators to the point where they can't

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fully do their job. Is that kind of how-- is that a good summary of  
kind of what your, your concern is?

**HUGHES:** We, we are all individuals and some of us like the attention a  
lot more than others. I, I generally am not someone who seeks press at  
all. I've, I've done-- I've had more press today than I probably had  
in the last four years. And I'm not-- that was not my goal. I'm  
uncomfortable with that. But there are other members of, of our, of  
our colleagues who love the camera, love the press. So it's different  
for all of us, I think. But still, I think there is a very important  
fact in my mind that we need to be able to speak very frankly with  
each other and sometimes the openness that we are willing to share  
within a committee, you know, when, when-- and we have all learned  
when you serve on a committee with someone, you develop a  
relationship. And that's a very good thing. You know, I have a very,  
very good relationship with, with several of you because we have  
served on committees together, some I have not served on committees  
with. So as you develop those relationships on those committees, you  
create a bond where you can speak more freely and make your points  
more clearly, I believe. And for me, you know, having, having the  
press in the room does create that somewhat of a chilling effect. And  
I'm not, I'm not as effective as what I probably would be knowing that  
the conversation that I have with my friends on the committee stays in  
the committee.

**M. HANSEN:** OK, I appreciate you framing it that way, because we kind  
of kept coming to the chilling effect and kind of overall, you might  
be willing to sit there and take a vote, but you're not necessarily  
doing your full representation. I bring this up because I know it's  
probably no surprise to you, there's other things that kind of hit a  
lot of state senators in that same mindset. I mean, I could just tell  
you personally some of the COVID precautions and some of the lack of  
COVID precautions of some of my other colleagues has made me  
uncomfortable to the point that I didn't want to attend meetings or  
stay in rooms longer than possible. And so I'm just kind of trying to  
weigh that in here, as if there's some things that kind of seem off  
the table we can't have kind of based understandings of our colleagues  
in one, you know, but a chilling effect on one hand, how big of a  
chilling effect are we going to balance out the other? I just kind of  
want to give you that. I'm sure you'll talk to me under the balcony in  
the next few days. But that's something that face-- no, but, but in  
all seriousness, that is something I'm weighing where, you know, we've

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had some-- we've been told that, you know, there's some things we just simply can't do that, you know, make a lot of us more comfortable serving in our positions. And I kind of wanted to put that out there because in my mind, it's coming from the same place.

**HUGHES:** Yeah, I, I agree. That's a very good example. But bottom line, we wanted this job. We worked hard to get this job. We have a job to do and that is to provide the best outcomes we possibly can for our colleagues. And the, the COVID thing, it's, it's driving me nuts, but we're doing the best job we can and trying to make the best decisions, provide the best outcomes for our constituents.

**M. HANSEN:** Thank you.

**CLEMENTS:** Any other questions? Seeing none, thank you, Senator Hughes.

**HUGHES:** Thank you for your time.

**CLEMENTS:** And regarding this proposal, I had two emails that came to my office and both in opposition and we'll make those part of our record. We were, we're going to take a break, but we're still on the same topic. Does the committee want to take a break now or, or-- you need a break?

**ERDMAN:** You're the Chairman.

**CLEMENTS:** I was going to take a break at 3:30, and it's been past that. So we're going to take a 10-minute break and start back at 4:00.

[BREAK]

**CLEMENTS:** [RECORDER MALFUNCTION] proposal number 11 by Senator Erdman, Executive Sessions. Welcome, Senator.

**ERDMAN:** Thank you, Senator Clements. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent the 47th district, which is 10 counties in the Panhandle in Nebraska. I'm here today to speak to you about Rule 16-- Rule 3, Section 16 about Executive Session. You heard Senator Hughes just make a presentation on there should be no one in Executive Session. And he made a comment that on the boards that he served on before, school boards and other boards, that there was no one in Executive Session. And I found that to be the exact same thing. So when I came here, I was disappointed that we allowed media into the

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Executive Session. And so as I visited with several senators about Senator Rule-- Senator Hughes's rule to not allow anyone, several had said we need to have democracy and transparency. We need to be able to make sure that people understand what we're doing. And so as I thought about that and I talked to my staff, Joel, about it, we came to the conclusion, if you want to be really open and transparent, we should have Executive Sessions open to everyone. And I cannot figure out why the media should have privilege over those who voted for us and those who pay taxes. If the media is allowed into Executive Session, so should be the public. Now the question then begs, well, will that restrict those questions, Senator DeBoer, that we'll ask? Will we not ask those questions? I don't think it'll make a bit of difference. The media is there already. And so I believe if you're going to have one, you have all. And that is an opportunity for us to really show transparency, because you heard the news media come and say we need transparency, we need to be open and honest so people know what we're doing. What better way to do that than open it up to everyone? And I thought perhaps Mr. Leach might come and support this idea where his organization could come and sit in on Executive Session and anyone else that wanted to. So either you have it one way or the other, but I'm, I'm saying, let's open it up and let's everybody show up and they get their own impression. You have watched debates on TV, and when the debate is over, then they have two people come on and tell you what they said. You've all seen that. And you sat there and you think to yourself, I just watched it myself. I don't need someone to come on and tell me what I seen. Well, the news media people or the people in the media that come to the Executive Session put their spin on what happened there. And we're all guilty of that. No matter what, no matter how neutral you try to be, you're still influenced in your writing by what you believe and what your principles are. And so when the news media makes a presentation about what they've seen, it's slanted towards what they believe they've seen. And so consequently, if the public could be there, they could draw their own conclusions from what they've seen and heard. And that way it would be more transparent than what we've, than what we have seen going forward. So I believe it's either one or the other, but it's got to be everybody or nobody. And so this gives us an opportunity to decide which one of these two rules you like better. Now, not all committees are created equal in this body. Senator Clements and I serve on the Appropriations Committee and the media is allowed in the Appropriations Committee Executive Sessions and we vote in Executive Sessions on things. And

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it's never been made public to anybody what the vote was. The media talk about having open and fair discussion, and they also talk about making it transparent what we do. They're the only, they're the only group that gets to sit in on our Executive Session on Appropriations. And I will ask anyone, and I know I'm not supposed to ask questions, but have anybody-- has anyone ever seen a vote in Appropriations recorded and brought to the floor or printed in the newspaper? No. So if we have it open to the public, they can sit in there and watch how we vote on Appropriations and draw their own conclusions on who voted for what. And so, consequently, I think it should be open to everybody or nobody. So that's my presentation. Thank you.

**CLEMENTS:** Thank you. Questions?

**DeBOER:** OK, I've been instructed to keep this short by some of my friends outside of this room, but how would you deal with the concerns that Mr. Eickholt brought up about, you know, you want to have a quick Exec Session underneath the balcony, obviously, we can't do that with the public. There's no public notice of that, something like that. How would you deal with those logistical concerns? For the Appropriations Committee, there's clearly not enough room for everyone to be allowed in there. You couldn't-- I mean, you can barely have people that are testifying come in.

**ERDMAN:** Right. If you have an Executive Session, Senator DeBoer, under the balcony, the media is not there either.

**DeBOER:** Well, sometimes they-- I mean, in Judiciary, they are.

**ERDMAN:** Not now they're not.

**DeBOER:** Yeah, they are. They've come to ours. JoAnne is there.

**ERDMAN:** They're not allowed on the floor nowadays.

**DeBOER:** Well, not nowadays. Correct. But before that they were.

**ERDMAN:** Yeah, but they're not now. So, you know, I mean, open it to the public. We very seldom-- I seldom have an Executive Session under the balcony, maybe one or two.

**DeBOER:** How would you, how would you do that, though? How would you, how would you work around the, the tightness of the Appropriations

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room or the Judiciary room? I'm sure there would be a lot more people interested in our discussions than we have room for as well. How would you work around that? If, if anyone is invited, how would you find the places that would be big enough for those things?

**ERDMAN:** You know, I'm not, I'm not at all concerned about that. And one of the reasons, one of the reasons is if we're going to make it open and transparent, whatever we decide in Executive Session is printed in the Journal. People understand what it is, you have a chance to see it. And not every Executive Session is attended by the media either. So not every, every Executive Session--

**DeBOER:** Sure.

**ERDMAN:** --would be attended by the public. It just happens. I mean, it's logistics of the situation.

**DeBOER:** OK, I'm just trying to figure out how we would do it, but.

**CLEMENTS:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Senator Clements. Thank you, Senator Erdman. You just said that there would be recording available and yet you didn't change that section of the rule.

**ERDMAN:** Say that again.

**J. CAVANAUGH:** Well, the rule still specifies that there will not be electronic-- electronically recorded or transcribed.

**ERDMAN:** Right.

**J. CAVANAUGH:** So the Executive Session would still not be recorded and published.

**ERDMAN:** What I said the results of the Executive Session are recorded, the vote and what happened and was transpired in there and the amendments that were adopted or advanced and they're notified. People notified of what those are. But there's no-- the discussion is not, and it's not-- if you're in Appropriations, none of the information about what we do in there about talking about the bill or anything is made public to anybody. And so the media is there, but they never

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report on what the vote is. And so, you know, open and transparent is  
open and transparent for everybody and everything.

**J. CAVANAUGH:** I guess my question is, if the problem you want to solve  
is a recording issue, opening it to the public is not necessarily the  
way to do that. Correct?

**ERDMAN:** No, I'm not necessarily interested in the recording, but I'm  
interested in having people sit in and listen to what we're saying.  
And rather than have the media tell me this is what they did, have  
them sit in and draw their own conclusions from what we did.

**J. CAVANAUGH:** And-- but you're not concerned about the number of  
people who actually do that?

**ERDMAN:** No. No.

**J. CAVANAUGH:** Would you--

**ERDMAN:** If the general public knew, Senator Cavanaugh, if the general  
public knew these meetings, Executive Sessions were open and they  
wanted to attend, they could make the arrangements to be there. The  
media does.

**J. CAVANAUGH:** I understand that. But certainly-- you represent 10  
counties in the Panhandle.

**ERDMAN:** Correct.

**J. CAVANAUGH:** Do you think that your constituents would make the drive  
to Omaha to observe-- or to Lincoln, I'm sorry, to observe--

**ERDMAN:** No.

**J. CAVANAUGH:** --an Executive Session?

**ERDMAN:** No. You see where I live to come to Lincoln to testify, it's a  
two-day trip. It's 800 miles. We are forgotten out there. Nobody knows  
we're there except when we send our tax dollars in. So, no, they're  
not coming.

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**J. CAVANAUGH:** So do you think-- would you be interested in a, in a rule change that would broadcast the, the Executive Sessions or on the Internet or some other capacity?

**ERDMAN:** Open to the public.

**J. CAVANAUGH:** How about a testimony?

**ERDMAN:** Fine.

**J. CAVANAUGH:** You'd, you'd be open to--

**ERDMAN:** Open it up. If you-- if, if you're talking about open and transparent, that's what we want it to be, right? You can have one way or the other. You can't have it both ways.

**J. CAVANAUGH:** So I guess my question is, if, if you want to increase involvement of the general public in these capacities, isn't there a way to do that in addition to or aside from this one change?

**ERDMAN:** I'm not sure I understood what you said.

**J. CAVANAUGH:** Well, I guess my question, you're saying your constituents wouldn't actually benefit from this change?

**ERDMAN:** Probably not.

**J. CAVANAUGH:** So wouldn't a change that would actually benefit your constituents and make it easier for everyone in general would be one in which these Executive Sessions would be recorded and broadcast over the Internet, as well as perhaps opening up testimony to committees via some kind of electronic means?

**ERDMAN:** OK, fine.

**J. CAVANAUGH:** Thank you.

**ERDMAN:** Because we-- what we have out there is we have a two-day trip to come here for a five-minute testimony if you don't get any questions. So you took two days off work, you had an overnight stay in Lincoln, and you drove 800 miles to testify for five minutes. We need to make that available to them by some kind of technology so that they can testify and be heard. And if, in fact, that's the case, then make

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that same Executive Session open to them through some kind of media technology so they can watch it. I don't know that recording and broadcasting it later is important. I think if it is important enough for them to watch it, they'll, they'll tune in and watch it. But getting involved in government from where I live is impossible. It's absolutely impossible. And, and just so you know, the Omaha World-Herald or any other news media doesn't go past Grand Island. And so we get very little information. And so the TV out there, the TV news comes from Denver or South Dakota. And so we never hear what happens in Lincoln unless we happen to subscribe to Lincoln Journal Star or Omaha World-Herald or something like that, or we're on an Internet feed somewhere where we can get the information. So the general public in, in western Nebraska in my district is very uninformed about what happens here. Very much so.

**J. CAVANAUGH:** Thank you.

**CLEMENTS:** Any other questions?

**ERDMAN:** Thank you.

**CLEMENTS:** Seeing none, thank you, Senator Erdman. Are there-- is there anyone here wanting to testify as a proponent to this proposal? Anyone here in opposition to this proposal? Seeing none, is there anyone in the neutral capacity? Welcome.

**NATHAN LEACH:** Mr. Chairman, members of the Rules Committee, my name is Nathan Leach, N-a-t-h-a-n L-e-a-c-h. I am speaking in a neutral capacity on the rules amendment and speaking on behalf of Nonpartisan Nebraska. I didn't plan any testimony, but just because Senator Erdman mentioned me, I wanted to clarify that the reason that we didn't decide to take a stance on this rules amendment and many of the other amendments in the package was simply because we didn't have enough time to get our stakeholders together and do the proper research for it. So if the committee decides to pass this amendment on to the floor, I think by that time we can have a, a statement or a stance for you that better represents the organization. But at this time, we have not taken a stand on the amendment. We think it's important to focus on those key nonpartisan provisions in our rules. Thank you.

**CLEMENTS:** Are there any questions? Seeing none, thank you, Mr. Leach. Anyone else in the neutral position? Seeing none, Senator Erdman, do

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you care to close? He waives closing. That concludes proposal number 11. Next is proposal number 7, Senator Friesen on personal privilege. Welcome.

**FRIESEN:** Thank you, Chairman Clements, members of the committee. I'll try and keep this really short. So in the past, you know, this is my seventh session that I've been in. The point of personal privilege in the past, it's never probably followed any specific rules. I mean, there are some people that get up and announce they have a new grandchild or, you know, an anniversary or birthday and things like that. It's just kind of inconsequential kind of comments that someone wants to make. You use your point of personal privilege to stand up and make those kinds of announcements. But recently, it seems like people want to use our, our platform kind of to talk about other issues, national issues, and other things like that. And, and I, for one, if we all want to stand up and espouse our points of view on what's happening at the national level, and we each spend 10, 15 minutes or 5 minutes doing that, we're going to waste a lot of our day and it's going to be talking about things we have no control over. It's more posturing for TV and that's who they're talking to. So I guess this here, you know, we can probably approach this two different ways. We can either start to make it more of a personal point of privilege where you want to announce something. But again, it shouldn't take a long time to do. And either we can do it through kind of our rules, I guess, in how we're going to allow personal privilege. Or we can just shorten up the time frame to where, you know, to me, at most an announcement like that could happen in one minute or less. So I'm willing to go to two minutes. But open to the discussion, we need to keep it short, because, again, if we all want to stand up and, and talk to the TV cameras for five minutes each, I think it wastes a lot of our day.

**CLEMENTS:** Are there questions? Senator DeBoer.

**DeBOER:** Sorry. I'm wondering if you have an opinion, because I think all of the ways that we speak on the floor, which are not in technical floor debate, are points of personal privilege. I suspect the Speaker's announcements are also points of personal privilege, technically. They are not?

**FRIESEN:** No.

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**DeBOER:** OK, what about the-- at the end of the year, the sort of you did a good job, thanks for being a senator here, goodbye, old friends kind of speeches? Are those points of personal privilege?

**FRIESEN:** Don't think they rise to that level. I don't recall people having to stand up and say-- ask for a personal privilege.

**DeBOER:** OK, so these are just-- it's a distinct thing, because I, I thought that it had to be-- I mean, otherwise, I don't know what other way you can have those kinds of speeches, so. But that clarifies for me. Thank you.

**CLEMENTS:** Senator Erdman.

**ERDMAN:** Thank you, Senator Clements. Senator Friesen, you're making an adjustment to Rule 2, Section 11. I may share with you what that rule says. It says: Personal privilege shall be, first, those affecting the rights and dignity and integrity of the Legislature collectively; and second, the rights, reputation, and conduct of members individually. I think the rule says that those are the requirements for personal privilege, and we have gotten to the place that we allow anything to fall into that category of personal privilege. If, in fact, we adhere to the rule, Section 2-- Rule 2, Section 11, we wouldn't have those kind of comments because they don't pertain to those things that personal privilege is supposed be used for. Would you agree?

**FRIESEN:** Well, that, that could easily cover it. Like I said, we could either talk about it probably on, on the parameters of what you're allowed to speak on. But if, if that isn't the case, then again, most of the announcements that I feel would be personal privilege can be made in a very short amount of time.

**ERDMAN:** All right, thank you.

**CLEMENTS:** Other questions? Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Thank you, Senator Friesen. As always, good to see you. Thanks for your patience coming here. Just because we're having this conversation and I'll end it with a question, which will be, how do you react to that? But before my-- what I'll say before that is this is an issue that I've been looking at and I've thought about also for the last four years in my time in the body. And I've talked to the Clerk and I've had a lot of

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conversations and I've at least previewed this. And I think last week one of the things that my office is working on are some additional guidelines. I think Senator Erdman is right that, that personal privilege of late has been, has been used in an expanded way beyond what the text of the rule and I think the purpose of the rule is. I do think that it is properly considered and construed. A two-minute time limit actually might not be-- would be too restrictive, because if truly, if you read the rule, it goes to, you know, the rights of the individual or the body. And so two minutes may be too-- might be limited. That being said, I think what you're trying to solve is something I'm also trying to solve and I'm working on. So I will-- that's something I'd love to talk to you about off-line. So my question was, how would you react to that?

**FRIESEN:** I mean, I'm, I'm good with any way you want to address it. I'm, I'm, I'm open to different things. But again, I have never probably seen a personal privilege that I thought was proper take more than really one or two minutes. But again, I guess some examples may be if somebody-- you know, in my previous years, there were senators that stood up and, you know, they kind of what they're talking to is the state of Nebraska and they weren't really addressing issues. It was more-- you know, sometimes we get candid-- or senators that are running for higher office and suddenly they're pontificating about things that may further their career. I, I-- that's why I think a personal privilege needs to be reined in a little bit, tightened up. That's what I was after. Sometimes, you know, when you try to just tighten up too much about what the topic is, you get in trouble that way, too, so.

**HILGERS:** Well, I certainly have heard from a number of members, concerns about the-- getting away from the spirit of the rule. Thank you, Senator Friesen.

**FRIESEN:** Thank you. Any other--

**CLEMENTS:** Are there other questions? I, I had a question. In reading the rule, I don't see a limit. Does it say one time per day or any number of times you can ask for personal privilege in a session? Would you limit the number of times a person in one session could speak?

**FRIESEN:** That's one thing I've noticed about senators, is they find ways around rules any way they can. We're good at that. So what I did

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here is I have added that it is one time per day and you also can't  
pass your time to another senator. It is your point of personal  
privilege and you cannot pass that time on to loan anybody else.

**CLEMENTS:** Oh, I am sorry, I missed that. You do have one time per day  
as a proposal for each legislative day. OK. All right, any other  
questions? No. Seeing none, thank you. Is there anyone here testifying  
in-- as proponent of this proposal? Seeing none, anyone testifying in  
opposition? Seeing none, anyone in the neutral capacity? Seeing none,  
do you care to close? He waives closing. That concludes proposal  
number 7, Senator Friesen. Next, is proposal number 8, Senator  
McCollister, amendments to the rules. Is Senator McCollister or a  
representative here? So I don't see him. The description of this  
proposal says a seven-day notice would be required before a hearing on  
rules amendments would be convened. Are there any proponents for this  
proposal?

**NATHAN LEACH:** Mr. Chairman, members of the Rules Committee, my name is  
Nathan Leach, N-a-t-h-a-n L-e-a-c-h. I am speaking in support of  
proposed rule change 8 offered by Senator McCollister and I am  
speaking on behalf of Nonpartisan Nebraska. First of all, we'd like to  
thank Senator McCollister for offering this amendment today. This  
summer, a politically diverse group of Nebraskans came together to  
form what is now Nonpartisan Nebraska. We made this decision because  
we believe that nonpartisanship cannot survive without the help of the  
second house. We are a coalition made up of current and former  
lawmakers, political scientists, parliamentarians and everyday  
Nebraskans from all political perspectives who want to provide insight  
and ideas in how lawmakers can move forward fairly with the business  
of the people without unnecessarily damaging the integrity of the  
Unicameral process. To achieve this, Nebraskans need proper notice for  
rules amendments. Currently, the legislative rules require seven days'  
notice for public hearings on all bills, resolutions, and  
gubernatorial appointments. This requirement ought to apply to rules  
amendments as well. The rule touches-- the rules touch the very heart  
of what makes this institution nonpartisan because rules change--  
changes can fundamentally alter how the institution functions and can  
permanently alter how legislation progresses and how senators interact  
with each other. The public deserves a fair shot at participating in  
this process. However, with less than 20 hours' notice, as was  
provided today, informed public is nearly impossible. In addition, the  
proposed rules amendments are not available on the legislative

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website. Instead, citizens must request them directly. And if the Legislature requires that rules amendments be introduced as resolutions, those amendments can be printed in the Legislative Journal and published online, just like all other resolutions. This would allow the public more access and notice. The 21 rules changes proposed today are sweeping and could profoundly alter how business is conducted in this body. It is important to bear in mind that the rules process now only comes up every two years. And although there are logistical considerations that encourage swift action on potential rules changes, these considerations pale in comparison to the need for providing the public proper and sufficient notice. This is a good amendment which will not cause the Legislature undue hardship, will provide the public more time to consider what changes are being proposed, and will place these changes in the record, which will provide a historical record currently unavailable to a researcher. We hope the committee will advance the proposed amendment and support its adoption on the floor, and I'd be happy to answer any questions.

**CLEMENTS:** Any questions? Seeing none, thank you, Mr. Leach. Anyone else? Any other proponents? Anyone speaking in opposition? Anyone in the neutral capacity? Seeing none, that concludes proposition-- proposal number 8 from Senator McCollister. We have next proposal number 9, Senator Erdman, on motions to reconsider.

**ERDMAN:** Thank you, Senator Clements. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent the 47th District in the Nebraska Legislature. The rule change that we're going to discuss, that is Rule 7, Section 7, the addition to that rule, when a question has been decided, it shall be in order for any member, except the introducer of the question, voting with the prevailing side and not voting to move or consid-- and not voting to move the reconsideration thereof. And as I read that, that rule several times, I was trying to think when would the prevailing side want to move for a reconsideration? And I have an example that I came with is your bill's on General File. You get 24 votes, you were on the prevailing side, you got 24 votes, but you didn't get 25. And so you would want to have someone move the reconsider motion so that you could have a chance to try to accomplish the 25th vote. And so then it is a bill, it is a change to the rule that says the person who introduces the bill can't then do the reconsider motion. As we've seen in the past, it was dilatory and it drug out the session and so someone else beside the introducer will have to make that motion. And then the other addition I've included is

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a motion to reconsider shall be limited to motions which cannot be repeated. So you can't do the reconsider motion several times on the same bill. And then the last underlying part, a motion to reconsider is not in order when applied to procedural motions, things that we do regularly, the procedure of the Legislature. So those are the changes to Rule 7. And with that, I will, for the sake of time, I will stop there and ask if there's any questions.

**CLEMENTS:** Questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Senator Clements. Thank you, Senator Erdman. You're the only person I'm asking questions of today, apparently. Being the new guy, why do you want to except the introducer from this?

**ERDMAN:** I'm having trouble understanding.

**J. CAVANAUGH:** Sorry. Why do you want to except the introducer? What's the significance of excepting?

**ERDMAN:** Well, if one's running a filibuster and they're doing it on their own and no one is supporting them, they'll have a difficult time to do reconsider because they can't make that motion themselves.

**J. CAVANAUGH:** The introducer of the bill--

**ERDMAN:** --of the bill.

**J. CAVANAUGH:** --would not be able to-- I'm trying to follow you.

**ERDMAN:** In the past, we have had people use the reconsider motion several times on the same, on the same issue.

**J. CAVANAUGH:** But even without that change, the other change would prevent that.

**ERDMAN:** Um-hum. The other person could still-- someone else gets to make that motion.

**J. CAVANAUGH:** Thank you.

**CLEMENTS:** More questions anyone? Senator DeBoer.

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**DeBOER:** I just-- what's the reason for not applying to procedural motion to reconsider is not applied to procedural motions? What's the purpose for that?

**ERDMAN:** Well, the procedure motions are already in place and it needs to be a bill or amendment to a bill, not something we do as procedural.

**DeBOER:** What, like?

**ERDMAN:** Well, it would like it wouldn't be a reconsider motion. What would be a procedural motion would be maybe move it from Final to Select.

**DeBOER:** But-- but if-- but if we make a mistake, couldn't we reconsider it, whether it's procedural or substantive? Like somebody voted wrong, they realized it later, they want to do a motion to reconsider because they want to change their vote on a procedural matter, it seems more likely to happen that you want to reconsider a vote on a procedural.

**ERDMAN:** If somebody voted wrong, can't they change their vote?

**DeBOER:** Let's say it's afterwards they realized.

**ERDMAN:** Oh, after the-- after it's closed?

**DeBOER:** Yeah, I think it's more likely to happen in procedural. That's why I'm asking why you--

**ERDMAN:** I don't-- I'd have to think about that.

**DeBOER:** OK, well, we can talk about it later.

**ERDMAN:** Yeah, OK.

**CLEMENTS:** Any other questions? Seeing none, thank you, Senator Erdman.

**ERDMAN:** Thank you.

**CLEMENTS:** Are there any proponents who wish to testify? Seeing none, anyone in opposition to this proposal? Seeing none, anyone testifying in the neutral capacity?

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**NATHAN LEACH:** Let's---

**CLEMENTS:** Welcome again.

**NATHAN LEACH:** Yeah, Mr. Chairman and members of the Rules Committee, my name is Nathan Leach, N-a-t-h-a-n L-e-a-c-h. I am speaking in a neutral capacity on proposed rule change 9 offered by Senator Erdman. I'm from Kearney, Nebraska, but reside in District 26 and am speaking strictly on behalf of myself. This rules amendment is a version of a proposed change I drafted in 2019 and was introduced by Senator Hilkemann and McCollister that year. However, this version has some key differences that ought to be considered. This version restricts the introducer of a question from moving to reconsider, whereas my version would only restrict the introducer of the question if the question failed. This is an important distinction because there are times when the introducer of an amendment realizes that there is an issue with the amendment after adoption and they should retain a mechanism to reconsider. A perfect example is in 2017 when Senator Crawford moved to reconsider her previously adopted amendment to an amendment that had technical issues with the Fiscal Office. Another difference between these versions is that it attempts to clarify that motions can be-- that motions that can be renewed cannot be reconsidered. The language in this proposal says that motions cannot be "repeated" where it should say "renewed." The language then broadly states that motions, quote, cannot be applied to procedural motions. The issue here is that all motions are inherently procedural. And so this language is far too broad to be applied in the rules in a consistent manner. Both Mason's Manual of Legislative Procedure and Robert's Rules of Order Newly Revised provide that reconsideration is not an order on motions that cannot be properly renewed. However, it is my opinion that this rule should come through a ruling of the Chair rather than through directly providing it in the legislative rules in order to maximize flexibility. Lastly, I note that I canvassed the Legislative Journals from 2008 until 2020 and found that the motion to reconsider has been introduced 224 times over the past 13 years. Out of that, a whopping 147 motions were introduced by former Senator Ernie Chambers. Discounting the four years he was out of the Legislature, that's slightly over 70 percent or two thirds of all motions being introduced by one senator. Senator Chambers is no longer in the body, so I don't know if it is wise to adopt rules for one senator, especially if they are no longer a member here. Thank you for your time and I would be happy to answer any questions.

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**CLEMENTS:** Any questions? I had one. The period of time 224 times it's  
been used since when?

**NATHAN LEACH:** Since 2008.

**CLEMENTS:** 2008. And Senator Chambers was how many of those?

**NATHAN LEACH:** He was 147 times. If you discount the four years he was  
out of the Legislature, that's about 70 percent. If you include all of  
the years, it's about 66 so still two thirds.

**CLEMENTS:** [INAUDIBLE]

**NATHAN LEACH:** Yeah. So-- and the vast majority of those motions failed  
very overwhelmingly. So it's definitely one of the most abused motions  
in the Rule Book. And that's why I drafted it for Senator McCollister  
and Hilkemann last year. I, you know, just speaking personally, I  
don't think that this would harm the body. I think it would be helpful  
just because when a vote fails and then you immediately move to  
reconsider, your only, your only goal is really to waste time. You  
know, it's very, very rare that there's a genuine need to reconsider.  
And that, you know, Robert's Rules of Order in some of the texts that  
they've written on parliamentary law deal with the question of the  
motion to reconsider quite a bit. And it's very limited situations.  
Usually if new information comes about or if something in a situation  
changes so that the rule is typically very, very strictly applied. And  
here in the Unicameral, it is not so strictly applied. So--

**CLEMENTS:** Are you saying Mason's Manual is more restrictive than our  
rules currently?

**NATHAN LEACH:** Yes. Yeah. And that's why I think when it comes to the  
question about whether or not you should put into the rule that it  
only applies to motions that can be renewed, I would-- I think it  
would be just as wise for that to come out of the Speaker's office and  
say as the Speaker, you know, according to parliamentary law and  
Robert's or Mason's Manual, this is how I want this motion to be used  
in future and then make a ruling of the Chair to make that  
determination.

**CLEMENTS:** Thank you.

**NATHAN LEACH:** That would be the best way to do it.

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**CLEMENTS:** Anyone else with a question? Seeing none, thank you, Mr. Leach.

**NATHAN LEACH:** Thank you.

**CLEMENTS:** Anyone else in the neutral capacity? Seeing none, that concludes proposal number 9. Senator Erdman, did you want to close? He waives closing. And then we have proposal number 10 by Senator Erdman. I'll open up the hearing for that on a bill failing three times.

**ERDMAN:** Thank you, Senator Clements. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent the 47th District in the Legislature. Very simple, two quick, quick changes here. As I read through the rules, I began to see those things that popped up that we don't use anymore. And I bring your attention to the Rule 6 at the bottom-- 6(i) at the bottom of page 40. It says "Any bill failing to receive 25 votes to be advanced to Enrollment and Review Initial after three attempts shall be indefinitely postponed." We never in the last 25 years have allowed three attempts at a bill to move on or advance. And so if we don't do that, I think the rule should be stricken. And so that is the issue there on page 40. If you turn to page 52, a similar situation, Rule 7, 7(d) says: For a bill on General File, no motion to reconsider shall be in order until the bill has failed to advance three times; for a bill on Select File, no motion to be considered in order-- unless the order-- the bill has been until-- in order until the bill has been failed to advance two times; and Final Reading was three. We don't do any of those things and we haven't done that for a long time. And so those two items, I think, should be stricken from our rules, straightforward, simple.

**CLEMENTS:** Are there any questions? Seeing none, thank you, Senator Erdman.

**ERDMAN:** Thank you.

**CLEMENTS:** Is there anyone wanting to testify as a proponent to that proposal? Seeing none, anyone in opposition? Seeing none, anyone in the neutral capacity? Seeing none, do you care to close, Senator Erdman? He waives closing. That concludes proposal number 10. Proposal number 16, Senator Briese, he indicated to me that he was not able to attend, that he does intend to write up a written testimony provide to the committee members. That's what he told me, but he wasn't able to

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be here today. I'll just read the topic regarding withdrawal motions require five members to approve a motion upon request. And I'll just read what he has here: Any member may request that for any debatable motion or amendment to proceed, approval of the motion be demanded by five or more members. Is there anyone to speak in-- as a proponent? Seeing none, anyone in opposition? Seeing none, anyone in the neutral capacity? Seeing none, that concludes proposal number 16. Proposal number 12 by Senator Matt Hansen. Welcome, Senator.

**M. HANSEN:** Thank you. Good afternoon, Senator Clements, Chairman Clements and members of the Rules Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n. I represent District 26 in northeast Lincoln. For rules proposal number 12, I'll kind of walk you through my thought process here. First and foremost, let me say this is my intent to clarify and streamline this process and to kind of make it what everybody assumes it already is. So this is cleaning up the statutes related to appointments. For those of you who served in the past, you'll remember that at the end of 2019, the very tail end of session, we had an appointment come to Business and Labor on which the committee could not agree. We didn't necessarily have the votes to vote it out of committee and we didn't have the votes to reject it. In combing through this rule, we see that how appointments come to the floor in the current language have all sorts of different conditions and, and processes. So if you see the stricken language, for example, if a committee rejects a-- rejects an appointee, it still comes to the floor automatically. And it is then the duty of the supporters of the appointee to vote no to reject the rejection. Similarly, if a committee votes to not recommend an appointee, there's a specific requirement that it gets scheduled within five legislative days that doesn't apply to any other appointees. Last time that was fine. I let Speaker Scheer know what was happening. It's scheduled in the same ways. And so those were all things that we had to consider as we walked through the different options. What my rule change would say is that simple little [INAUDIBLE] what everybody expects is that the rule-- that the committee gets reference will make a report. They'll either approve or reject-- recommend approval or recommend rejection or make no recommendation. But regardless of how it comes out of committee, the supporters of the appointee have to get 25 yes votes. So there's no rejecting a rejection. There's no, no means yes. There's none of it. Similarly, we also clarified or my intent is to clarify, we see in subsection (v) below the stricken language. So (e) (v) it

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says that appointment letters received by the Clerk during the last ten calendar days aren't acted upon. I added language to clarify that the receipt before ten calendar days they should be acted upon because that was also a consideration we got because it was right at that time limit as well as it was one of the last hearings of the year and one of the last appointees of the year. And the question was, could we wait? And I think there might have been some argument that we could have had that discussion and let it serve as kind of an interim appointment for the following year. But this would clarify that if there's at least 10 calendar days you need to schedule the hearing and get it done. With that, be happy to take any questions.

**CLEMENTS:** Committee members, any questions? Senator Erdman.

**ERDMAN:** Senator Hansen, thank you. Thank you, Senator Clements. Did you say (e) under (v)? Is that what you said?

**M. HANSEN:** Yeah. Sorry, (v) under (e). Basically the-- I apologize. The rule change spreads over multiple pages, but the section I was referencing is the-- is the little subsection, subsection (v) immediately below the stricken language or (v).

**CLEMENTS:** Roman numeral (v) there.

**M. HANSEN:** Roman numeral (v).

**DeBOER:** Right here at the bottom of your page there.

**M. HANSEN:** Yeah, so you see that one says during the-- any, any received during the last ten days shall not be acted upon. There was not necessarily something saying the opposite, that what happens if it's before ten [INAUDIBLE]? It implies that you should. But it also kind of implies that the Chair has discretion to not schedule a hearing, which I didn't think was appropriate. So that's why I clarified in subsection (iv), Roman numeral iv above that you should. I know this is confusing and messy, but the intent is to make it simpler. But it was complex enough that deleting it required some work to also make it simpler. So this will hopefully be a headache we can solve that future Rules Committee won't have to think about.

**CLEMENTS:** Any questions? Thank you, Senator Hansen.

**M. HANSEN:** Thank you.

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**CLEMENTS:** Are there any proponents for this proposal? Seeing none, any opponents? Seeing none, anyone in a neutral capacity? Seeing none, do you wish to close? He waives closing. That concludes proposal number 12. We'll go on to proposal number 13. Senator Matt Hansen.

**M. HANSEN:** All right, thank you. So in contrast to the last one, which [INAUDIBLE] more time to discuss that was intended to clean up, this is a pretty substantive new section, as I'm sure you're all aware, which would implement an emergency distance voting protocol. Before I get into too far into my remarks, I would like to thank Senator Sue Crawford for all of her work as the past Chair of this committee. She had multiple meetings and briefings, including reaching out and having experts and clerks and staff from other states talk with us and the prior members of the Rules Committee. I would also like to thank Senator Pansing Brooks for her and her staff's research on this issue as well. So seeing that grand body of work and serving on the Rules Committee, I felt that it was kind of appropriate for us to have a discussion if some sort of emergency rules voting was something we wanted to look at and if it was something that was viable. And so I will say this is kind of my best attempt in my first shot. I don't necessarily have any pride of ownership. If this is an interest of people to move forward and there's a better way to do it, a better way to handle it, I'm happy to look at that and consider other language. This was kind of my first attempt to show that it was in theory possible. And it is modeled on the Minnesota state House of Representatives. It is not necessarily word for-- it is certainly not word for word from them, but it is functionally how it worked there and have rewritten and implemented for our rules. So what they had was a procedure where if you wanted to speak on a bill or a motion, you had to be present in the chamber. But if you were simply wanted to be present for roll call votes, you could call in and be on a conference call line and the clerk would verify who you were and call you on the roll. They had a specific provision in Minnesota where they viewed the city of St. Paul as their seat of government. So in addition, they had to have a majority of individuals within the city of St. Paul and confirmed they were there, which isn't a provision [INAUDIBLE] here, but it's something that they had to jump through in some of their local constitutional [INAUDIBLE]. So my proposed rule would set it up such that you would have a situation where it would require a majority vote of the Executive Board to allow for this proposal to happen. And my intent would be for times such as this, whether it's a pandemic or

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other health crisis. And I suppose maybe in another situation in which there is perhaps two years ago with the flooding, it might have been nice to allow some senators, you know, in the affected areas to be home for an extra week or so. But it would be kind of a high bar and high situation that would rarely be used. And similarly, if you chose to participate via distance, you would concede kind of your other rights and privileges for that day. So you couldn't necessarily be sitting on your couch and expect to give a floor speech, introduce a motion, introduce amendment. You are simply there for kind of the important votes. Under my rules proposal, that would be votes on Final Reading and the votes under call of the house if that call of the house was requested by a member who was present. My intent with that is to kind of eliminate and so we don't have to necessarily go through the whole procedure of looping in everybody on the conference call or Zoom or whatever we choose, say, on a Select File voice vote. We don't necessarily need to stop the voice vote, make it take longer, double-check with everybody who is on Zoom, so on and so forth. Similarly, if there's a day in which, you know, it's a committee amendment being adopted 35 to nothing, we don't have to stop our procedure, bring people on. But it would be for, you know, an introducer of a bill who knows they've got a close vote. They know somebody is in, you know, in this session maybe, you know, is quarantining at home and is a key vote for them, you know, they can make a point to ask for a call of the house and allow that person to vote. And then finally, we do have the consideration of our constitution has a strong kind of quorum requirement. My intent with this would also be that this is, again, for a select group of people who need it in a given moment. If somebody is like, again, during this session, you know, has been actively exposed, needs to quarantine their house, you know, in dire circumstances, somebody who's, you know, hospitalized but capable of, you know, transacting business, but is maybe, you know, needing more intensive medical care, they can still participate. It would still require a minimum of 25 members of us to be physically present in the Chamber. So, again, those are the kind of considerations I laid out, kind of inspired by best practices based on the research that Senator Pansing Brooks and Senator Crawford helped compile. I think it's something we as a body should consider. And again, I take kind of no pride of ownership or authorship in this. If there's a way to tweak this or there's a change we need, I'm all on board [INAUDIBLE]. And with that, I'd be happy to take any questions.

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**CLEMENTS:** Questions? Senator Erdman.

**ERDMAN:** Thank you, Senator Clements. Senator Hansen, isn't there a constitutional requirement that we have to vote in person?

**M. HANSEN:** It's my understanding that there was a, there was a rule requirement that we had to vote in person and then the question was a constitutional requirement on quorum and what that quorum met in person [INAUDIBLE] if that makes sense, which I would solve by making sure we have at least a quorum in person and then the people voting would be in addition to that. I might be a hundred percent wrong, but we can get Patrick to correct me. That's my understanding of [INAUDIBLE].

**ERDMAN:** Thank you.

**CLEMENTS:** Any other questions? I think it's pretty clear what you've proposed here. But it was-- just I guess I would just ask a clarifying question.

**M. HANSEN:** Sure.

**CLEMENTS:** This is only voting. You can't offer debate or amendments or motions remotely if this would be adopted, but your vote would be recorded.

**M. HANSEN:** That was-- that was my intent. And that was kind of a discussion we had. I'm sure you all know there was lots of discussion, including in our kind of short August session or resumption of session of what we should do and who should do what, how. And looking at it, seeing what other states have done short of trying to do this entirely virtually which a few states I know were kind of piloting, I didn't-- couldn't think of a feasible or accurate way to have somebody in another location trying to sign some sort of virtual motion pad or open an amendment from their kitchen table or what have you. This would be kind of that, you know, we've got a thin vote on Final Reading and three people got exposed and they're all at their house and they all want to be included and we can let them in.

**CLEMENTS:** All right, thank you, Senator Hansen. Are there any proponents? Seeing none, any opponents? Seeing none, anyone in a neutral capacity? Seeing none, that concludes proposal number 13. Proposal number 14, Senator Hansen, welcome.

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**M. HANSEN:** All right, thank you, Senator Clements and fellow members of the committee. I might have forgotten last time, but I'm still Matt Hansen, M-a-t-t H-a-n-s-e-n, representing District 26. So on proposed rule change 14, this is similar to a proposal that I had two years ago. I understand we've had pretty significant change over in the committee, so I'll go ahead and explain it again. Currently in our rules, and it's not the rules I changed, but it's elsewhere in the section that when you have a vacancy on either the Executive Board seats or the congressional, sorry, the Committee on Committees seats that are elected by our congressional district caucuses, when there's a vacancy, the rule is very clear that it's a majority vote of those members who will pick those seats. So in the First and Second Congressional District, it's a majority vote of the 16; in the Third Congressional District it's a majority vote of the 17. When we elect them the first time, the rule isn't as clear and I would understand-- it would be my interpretation that that's still required that, say, nobody can serve in the two Executive Board seats representing the 1st Congressional District without the support of a majority of the Congressional District caucus. But I think that's due to be put expressly in the Rule Book. So the language I've chosen to put in here is the language from filling the vacancies or a slight modification to make it work. But it's the intent to do that. As some of you may remember two years ago, I know Senator Hilgers, Senator Clements, and myself were in the 1st Congressional District caucus and we had several 8-8 votes in a row. And kind of the question was, well, what happens if we never resolve this? And it ultimately kind of at the time a senator withdrew their name and it resolved it because we only had two candidates. I think this would really clarify the process. Everybody would know what has to happen. It's, for many of us, what we assume is the process already, and this would just kind of clarify and codify in our rules. And so with that, I'd be happy to take any questions.

**CLEMENTS:** Senator Hilgers.

**HILGERS:** Thank you, Mr. Chairman. Thank you, Senator Hansen. I do remember that.

**M. HANSEN:** Yeah.

**HILGERS:** And I think that clarifies what we think we all or at least what I understood would occur, that the only thing that I would add or

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what it doesn't do, which is I think there was a sense there was ambiguity two years ago as to what would happen if there was a tie that could be unresolved.

**M. HANSEN:** Yeah.

**HILGERS:** Presumably and hopefully I should say, all ties would be resolved. But if they weren't, I think that there was a sense that there-- the body-- there would be some entity that could essentially break the tie if needed. Whether that's desirable or not, I think it begs the question here, which is what happens if they can't? There's no safety valve. The body won't ever-- this seems to close off the opportunity for the body to, to be able to come in if there is a tie for a caucus that has an even number of members. And so that might have-- that might be by design. But I guess I'd just ask you the policy question of whether you think having the body be able to weigh in where the caucus ties is something that you considered or would consider. What are your thoughts on that?

**M. HANSEN:** So I did consider that and two things about that. So one is that policy and that problem already exists for vacancies. The vacancy statutes, when there's vacancies on Exec Board and Committee on Committees are much more clear in how the bill-- the elections proceeded. And I can look them up in the book, but you'll see them when you fill in the vacancies, that that language is much more clear. In terms of a policy difference, it's somewhat by intent to not allow an outside group to be the tiebreaker. In some ways, when we think about it, the whole intent of these caucus systems is to make sure that we have distinct geographic representation. And allowing a group, allowing a group outside of that to decide doesn't seem like the correct policy. So in the sense of if you think about it, you know, we are very much electing our representatives, say, to the Exec Board the same way our constituents represent us. And if, you know, I had been running for my reelection and tied with an opponent, it would have been really weird to say, well, we'll let everybody in the state of Nebraska weigh in on who should win in LD26 because they don't live in my district. At the end of the day, if there truly needed to be a tiebreaker, I almost would be more comfortable with drawing names out of a hat or some of the provisions we have in our election statute than necessarily having it just go to a full vote of the body. Because at that point, especially when we have three congressional district caucus, you know, a congressional district could be entirely outvoted

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by the rest of the body because they would be outnumbered by two thirds no matter which caucus it was.

**HILGERS:** Now, I think that's fair. I mean, we do have an analogous context for whether we have the even- number committees, for instance. There are mechanisms where the body can weigh in and at least break it, in some circumstances, break a tie.

**M. HANSEN:** Um-hum.

**HILGERS:** I see your-- the perspective of having-- my point is more of having a mechanism,--

**M. HANSEN:** Sure.

**HILGERS:** --whether it's-- I can see the argument not to have the body do it. But my concern only would be here it really seems to close off the mechanism. So what happens if you have 150 votes like they had I think at the OPS School Board president a year, a couple of years ago. I mean, at some point you want to have some fail safe in case the system breaks down. And I could see not being the full body but.

**M. HANSEN:** Sure. And if I could respond to that.

**HILGERS:** Yeah, please.

**M. HANSEN:** I would say--

**HILGERS:** What do you think?

**M. HANSEN:** I would say-- no, no, I would say-- I would say I get that. And I don't think anybody-- I don't think, for example, to use the Omaha School Board was, was on my mind and I've thought of that before, is, you know, I don't think anybody necessarily involved in that enjoyed that or thought that was-- thought that was fun or enjoyable. But at the end of the day, the power was invested in the same group of people we expected it to be invested in, you know, the same I forget how many members the Omaha School Board is, must be an even number, but the same group of people were voting over and over and over again. It's, it's this removing it to a different body to have what is intended to be a smaller body or more specific group's decision. Kicking it to another place is the part that makes me uncomfortable.

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**HILGERS:** Yeah, that's fair. OK, thank you.

**M. HANSEN:** Yeah, of course.

**CLEMENTS:** Any other questions? Seeing none, thank you, Senator Hansen.

**M. HANSEN:** Thank you.

**CLEMENTS:** Are there any proponents of proposal 14? Any opponents?  
Seeing none, anyone in the neutral capacity? Seeing none, do you wish  
to close? He waives closing. That concludes proposal 14. Proposal  
number 17, Senator Ben Hansen. Welcome.

**B. HANSEN:** Thank you, Chairman Clements and members of the Rules  
Committee. I am the other Hansen, Senator Ben Hansen, District 16.

**CLEMENTS:** Would you spell that?

**B. HANSEN:** B-e-n H-a-n-s-e-n.

**CLEMENTS:** Thank you.

**B. HANSEN:** All right. So I'd like to explain just briefly, because I'm  
going to try to keep this short, because I know you guys have been  
here for a long time, the reasoning behind introducing a rules change  
such as this. You know, I like to think I've learned a lot in the last  
two, three years of being here at the State Legislature and the time  
and effort it takes to craft and contemplate and discuss and finalize  
a bill. And I like to think I'm pretty good on time management and  
multitasking. I like to think so anyway. Some people might say  
differently. And when I see some senators, not saying it's wrong by  
any means, introduce 20, 30, 40, 50-plus bills in a year, makes me  
think, are we sacrificing quality for quantity? Now, if you think of  
the rules change that I've introduced, each senator gets 12 bills  
times 49 senators, that's somewhere around almost 590 bills in a year,  
which is pretty close on average how many we introduce anyway, and  
that's not counting committee or Speaker priority bills. And it's not  
when you look at, historically speaking, in the state of Nebraska,  
that's not uncommon or it's not-- it's something we've done in the  
past. In 1972, we had 10 bills each senator can introduce in a year  
and that continued on even until 19-- in the mid 1970s when it was 17  
bills for a two-year period, until 1979 when they changed it to each  
senator can introduce an unlimited amount of bills. Even our

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surrounding states where I can find information on our surrounding states, but even just states in general, it's not uncommon to have a limited amount of bills in certain states. For instance, California, the Senate there limits 40 bills in a two-year regular session; in the Assembly it's 50, 50 every two years. Colorado, five bills in a regular session. Florida, six bills. What are some other ones? Indiana has ten bills and joint resolutions in a session. And in the House in Indiana, ten bills. North Dakota, eight bills in a legislative day-- legislative session. Oklahoma House, eight bills. Tennessee, 15. Virginia, 15. Wyoming, seven bills in a session; no, excuse me, five bills. So again, not unheard of in our surrounding states, but also states throughout the country. So this is nothing unheard of or unprecedented. I think some of the pros to a rule such as this is it will give us more time on the floor to discuss other bills. I would assume we would have less hearings, which then gives us more time to discuss bills that have possibly gone through committee that typically may not have time to get onto the floor. And I would assume the lobby and the senators would be a little more specific and thoughtful then about bill introduction. So I'd be-- and the idea of this rules change isn't to have a chilling effect or to stifle what senators are trying to do, what they want to do. We just want to see less statement bills and more substantive bills. So with that, I'll take any questions if I can.

**CLEMENTS:** Questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Senator Clements. Thank you, Senator Hansen. Just to clarify, this doesn't specify is this in a two-year period or is this per year?

**B. HANSEN:** I think it's a per year, per legislative session.

**J. CAVANAUGH:** That's-- at least that's the next sentence.

**B. HANSEN:** Or per year. I'm pretty sure I have that in there.

**J. CAVANAUGH:** And it is no more than 12 bills. The next sentence says, each committee shall be limited to eight bills each session.

**B. HANSEN:** That, that's, that's current with what's already happening.

**J. CAVANAUGH:** Right.

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**B. HANSEN:** Yeah.

**J. CAVANAUGH:** OK.

**B. HANSEN:** The idea was do 12 bill, bills per year.

**J. CAVANAUGH:** Per year. Thank you.

**B. HANSEN:** Good question. Thank you.

**CLEMENTS:** Other questions? Senator Erdman.

**ERDMAN:** Thank you, Senator Clements. Thank you, Senator Hansen. So, so if I can only do 12 bills, so I Christmas tree a few bills together, have you thought about how to limit that?

**B. HANSEN:** No, I wouldn't limit it. I would assume that we would be more thoughtful and conscientious about Christmas tree bills and what's in them like we should as senators, right? And if there's too much stuff in there, if there's stuff that maybe we don't agree with or think it's too complicated, and we vote it down.

**ERDMAN:** OK. Thank you.

**CLEMENTS:** Senator DeBoer.

**DeBOER:** This is totally new thought, so it's not going to come out fully formed. I tend to bring a lot of seriously cleanup bills, right? Change a date, fix something here or there. I know in Judiciary last year we had a comma that was missing in a bill that actually changed the bill not to have it. So it was really just a revision that they missed the year before in whoever does the, the revising. It seems like there might be a mechanism for doing those kind of what will end up being consent calendar bills separately. Would you be open to something where there's a mechanism for that? I don't know how that would look, but would you be open to something like that?

**B. HANSEN:** It could be, yeah, or we have to to be more thoughtful about what we introduce. I mean, how many cleanup bills do we want to take? What other kind of substantive bills are important to us?

**DeBOER:** Don't we want to clean up all the things, though?

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**B. HANSEN:** That depends. Some you can kind of wait until the next year. If it's just a comma, you know, this is having some kind of dire legal effect.

**DeBOER:** Well, the comma did have a very big effect.

**B. HANSEN:** It could, then that would be an important one, yes. Sometimes, you know, cleanup bills are cleanup bills and they can maybe wait till next year. But, yeah, that's an option is to kind of look at that and see if there's some way we can work cleanup bills into that. That might not be part of the 12 or do something else. Again, open to that.

**CLEMENTS:** Questions? Seeing none, thank you, Senator Hansen. Are there any proponents? Seeing none, any opponents? Seeing none, seeing almost no one, anybody in the neutral capacity? That-- do you wish to close, Senator Hansen? He waives closing. That concludes proposal number 17. We'll open on proposal number 18, Senator Hilgers. [INAUDIBLE] before introducing

**HILGERS:** Thank you, Mr. Chairman, members of the Rules Committee. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s. I represent District 21, which is northwest Lincoln, Lancaster County. I have two proposals, 18 and 19. I'll be brief on both. I think they're pretty straightforward. They're both meant to sort of be small process changes that I think might create a slightly larger but probably still relatively small culture changes. The first one of these is the one you have in front of you. So as you know, one of the priority motions that we have before us is a motion to IPP, indefinitely postpone a bill. Typically, that is filed after the bill has been read across on General File. When it is, it is treated just like any other priority motion. So usually what that means is the introducer of the-- of the bill has opened and someone has opened on any amendments if there are any. Debate has begun. The IPP is filed. Then the movant, the introducer of the motion, then opens on their motion. That's all fine. There is an, what I view is a slightly odd, generally harmless, but recently not so harmless provision, Rule 6, Section 3, which allows if the introducer of the motion on the IPP actually files the motion before the bill is read across General File, what that does is it allows the introducer of the motion to speak on the motion before the introducer of the bill. As I understand it, culturally, for years people wouldn't do that because it's sort of bad form. You want to allow the person who

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introduces the bill to speak first. If you want to kill the bill, you have every opportunity to kill the bill afterwards. So what this and in the last two years, this has been used, I think, with some more frequency where people have filed these IPP motions before the bill is read across. And I think it's led to a little bit more, I think a poor process and more tension between members that I think is unnecessary. So what this proposal would do would be to strike the language in Rule 6, Section 3. It would retain, I remember, would retain the ability to file the motion, an IPP motion. It just would eliminate the impact of them filing it before the bill is read. I'm happy to take any questions and ask for the Rules Committee to vote to include this as part of the permanent rules package.

**CLEMENTS:** Questions from the committee? I have a question. If we delete this, does that really mean we're prohibiting or do we have to add-- should we add language that says no motion may be made to indefinitely postpone? Or would the presiding officer just say that's out of order?

**HILGERS:** Well, you'd still have the, the motion after the-- after the bill is read. I mean, you wouldn't get rid of the motion. Is that your question? I'm sorry.

**CLEMENTS:** Well, what if somebody tries to, if this rule is adopted, then somebody tries to put in a IPP motion before the bill is read across, that motion just would not be accepted?

**HILGERS:** It would-- it wouldn't be read before the motion, before the bill was read across. In other words--

**CLEMENTS:** OK.

**HILGERS:** --you could file it, but it wouldn't have any effect until after the bill has been read. It would be next in line.

**CLEMENTS:** All right.

**HILGERS:** Just as if you could file an amendment, you know, a Select File amendment on General File, but that Select File amendment doesn't come up on the board until you actually have the bill on Select File.

**CLEMENTS:** Senator Cavanaugh.

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**J. CAVANAUGH:** Thank you, Senator Clements. Thank you, Senator Hilgers. Again, being the new guy, why does this rule exist currently?

**HILGERS:** That's a good question. I asked the Clerk that and I'm going to conflate the answer, Senator Cavanaugh, with an answer to a separate question and I try-- to answer your question is I don't remember. [LAUGHTER] I have lots of rules in my mind lately. I don't remember the answer to that one.

**J. CAVANAUGH:** You've got a lot on your plate. I understand. I guess my one thought is, is this intended as an opportunity for the introducer of the bill to get it postponed before it got read?

**HILGERS:** I think there was a-- so I thought now this is a friendly IPP I believe. Is that-- is that what it was [INAUDIBLE] OK. I don't remember, counsel. I don't remember. I do not recall.

**CLEMENTS:** I think we'll ask for help from the Clerk before we deliberate on this so we'll get some clarification. Any other questions? I would like to go to inviting proponents for this proposal. Seeing none, opponents? Seeing none, anyone in the neutral capacity? Did the Clerk want to?

**DeBOER:** It seems like maybe we ought to have close.

**CLEMENTS:** Seeing none in the neutral, would you waive closing?

**HILGERS:** Yes, sorry.

**CLEMENTS:** All right, that concludes proposal number 18. Open on proposal number 19, Senator Hilgers, roll call request.

**HILGERS:** Thank you, Mr. Chairman. Members of the Rules Committee, Mike Hilgers, M-i-k-e H-i-l-g-e-r-s, representing District 21. This is the second of two sort of good process bills. This relates to roll calls. For Senator Cavanagh's benefit, who I'm sure is very familiar with this, but is new to the body, the members have, under the rules, the right to determine the order of the roll call vote. If a roll call vote is requested, you can do a regular order, A to Z, or you can do a reverse order from Z to A. How this has historically, at least in my four years, is someone will yell out roll call, reverse order. And no matter who yells it out, that's what-- whoever the presiding officer hears calls reverse order or regular order and that's what it is.

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There's no appellate rights. There has been, I think, at least in my-- the four years I've been here, I can't speak before that-- there is maybe some perceived strategy to the order of the roll call. And, and so there has been I think at the end of last session, there was maybe what I would term a little bit of, I think, gamesmanship as to who would yell first, the introducer or someone who didn't like the bill. And whoever yelled first got their order and they got some strategic advantage. And it struck me both as a little bit of bad process and unnecessary and also an approach that could devolve a little bit further and, again, sort of erode and tear at relationships during the debate. So what I asked the Clerk about this and the Clerk helped me draft two options that would help resolve it, option one and option two that's before you. Option one, more or less, so let me-- let me-- I prefer option one. I'll describe them. Option two would say basically the, the introducer would have the final decision, which might then create a little bit more friction in the process because the presiding officer then might have to stop and say, OK, you know, introducer, do you want regular, do you want reverse, even if someone has yelled in advance. Option one sort of keeps our yelling process but allows, which is kind of efficient, but allows the introducer to kind of veto and object. So that would, I think, curtail any perceived advantage for someone who might oppose a bill from yelling first that they want regular order or a reverse order. They could still do that and the process would continue to move. But if the introducer would still have kind of veto rights. So two options in front of you. I, I like option one because it keeps kind of our current process and just allows a little bit of a veto to, to eliminate mischief. But in either case, whatever the Rules Committee decides, I would appreciate a green vote or that the-- that the committee adopt-- it's been a long, it's been a long day, colleagues on the Rules Committee, that you would adopt this as part of the rules package. And I will stop talking.

**CLEMENTS:** All right. Any questions? Senator Erdman.

**ERDMAN:** OK. Thank you, Senator Clements. So let's be clear. You would rather have us drop option one?

**HILGERS:** Option one, correct, yes, Senator Erdman.

**CLEMENTS:** Any other questions? I'm not really seeing the difference between the two. The result is the same, isn't it?

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**HILGERS:** Yeah.

**CLEMENTS:** Can you explain what would be-- how they are different in procedure?

**HILGERS:** So option two, I think the presiding officer, if I was the presiding officer reading that and you had a roll call, I think more likely than not, the presiding officer would want to call on the introducer, would you like regular or reverse? So that would add an additional step. Whereas option one, I do think the result ultimately is the same. It's a slightly different process, whereas option one, we can kind of keep the process that we currently have. It's less jarring to the body. Members can still ask for a roll call in regular order. The presiding officer doesn't have to guess who, who did I hear? Was that this person or that person? It just-- I think it allows for a more seamless process.

**CLEMENTS:** The presiding officer would not have to ask every time--

**HILGERS:** Every time.

**CLEMENTS:** --every time.

**HILGERS:** And it would be less, like I said, less jarring for current members who are used to just yelling.

**CLEMENTS:** All right.

**HILGERS:** They might still yell and the presiding officer would say, no, you can't yell. And let me talk to Senator so-and-so. Senator DeBoer, what do you, what would you like? Were you the one who yelled, Senator DeBoer? Probably wasn't Senator DeBoer, you're not really a yeller. Are-- maybe you are a roll call yeller. I don't know. But--

**CLEMENTS:** I see. All right. Thank you. That clarifies that for me. Senator Erdman.

**ERDMAN:** Senator Clements, you're making it more difficult. So basically what you're saying is you're putting the onus on the person who introduced it rather than on the presiding officer.

**HILGERS:** That's exactly, yes.

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**ERDMAN:** That's it.

**HILGERS:** Yeah, that's right.

**ERDMAN:** So you're making it easy for yourself.

**HILGERS:** Or whoever or you, Senator Erdman.

**ERDMAN:** Yeah.

**HILGERS:** Whoever that might be.

**ERDMAN:** OK. Thanks.

**DeBOER:** But we still get to yell. Maybe I'll start yelling.

**HILGERS:** You can still yell, that's right.

**DeBOER:** Maybe I'll start yelling.

**HILGERS:** It's easier and there's not any less yelling.

**CLEMENTS:** Any other questions? Are there any proponents to testify?  
Seeing none, anyone-- any opponents? Seeing none, anyone in the  
neutral capacity? Seeing none, do you wish to close? He waives  
closing. That concludes proposal number 19, and that concludes the  
hearing of the Rules Committee. Thank you, committee.