

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Government, Military and Veterans Affairs Committee January 29, 2020

**BREWER:** Good afternoon, ladies and gentlemen. Welcome to the Government, Military and Veterans Affairs Committee. My name is Tom Brewer. I am representing the 43rd Legislative District, which is 13 counties in western Nebraska. And I'm the chair of this committee. We have our committee members present here today, with the exception of Senator Hansen, who is presenting and we may, well, I think the rest, hopefully, will be able to stay through. We'll start on my right with Senator Blood for introductions.

**BLOOD:** Good afternoon. My name is Senator Carol Blood and I represent western Bellevue and southeastern Papillion, Nebraska.

**LOWE:** John Lowe, District 37, southeast Buffalo County.

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

**La GRONE:** Andrew La Grone, District 49, Gretna and northwest Sarpy County.

**KOLOWSKI:** Rick Kolowski, District 31, southwest Omaha.

**HUNT:** I'm Megan Hunt and I represent District 8 in midtown Omaha.

**BREWER:** On my right is Dick Clark, the legal counsel. On my left is Julie Condon, the committee clerk and she'll be who you give your green sheets to. And our page day is Michaela, correct?

**MICHAELA McBRIDE:** Yes.

**BREWER:** All right, good to go. All right. Today we have just LR283CA. To facilitate the proceedings and maintain an accurate record, we are asking for your assistance with the following procedures: first off, to silence your cell phone or any electronic devices. Please keep in mind that the committee members will be working on their computers or possibly their cell phones if they're getting messages on things that they need to depart the room for. If you wish to record your presence, there is a white sheet on the table back there. If you wish to testify, we'd ask that you'd fill out one of the green sheets and be ready to present it when you come forward to Julie. If you do have materials to pass out, we're asking that you provide 12 copies of the materials. If you don't have the total copies, please give it to the page and we'll have copies made. Again, remember that letters need to be submitted to the committee by at least 5 p.m. the day prior to the

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hearing. Each letter must include your name, address, bill number, your position either for, against, or neutral. Any-- let's see, no mass mailings will be included in this. We'll ask that those are-- that plan to testify move to the front of the room. When you come up to testify, we'd ask that you would state your name, spell your name, and please speak clearly and into the microphone so that we have an accurate record. We'll begin with the testimony from the introducing senator, followed by proponents, opponents, and those in the neutral position. And then lastly, having the, the senator close on the bill. We'll have the light system in effect today. We'll be using a five-minute system, so you'll get the green light for four, the amber for one, and then the red will come on. My trusty assistant here has an alarm built into his computer that will assist you in knowing when that five minutes comes up in case you're not watching the light. With that said, I am going to hand the gavel over to the Vice Chair, Senator La Grone, and I will present.

**La GRONE:** We'll now open our hearing on LR283CA. Senator Brewer, you are welcome to open.

**BREWER:** Thank you, Vice Chair La Grone. Good afternoon, fellow members of the Government Committee. Again, Tom Brewer, T-o-m B-r-e-w-e-r. I am here to introduce LR283CA and I'm introducing this resolution on behalf of myself. Article VI of the Nebraska Constitution is where we find our constitutional right to vote. Section 1 lists the qualifications of electorates or voters. Section 2 lists the reasons for disqualifying anyone from voting. Let's run through them real quick. Section 1, it already says that the, that the voter qualifications include: first, a United States citizen; second, age 18 or older by Election Day; and three, resident of the place where they are voting. This may be the simplest proposed constitutional amendment this session. It is only one page and actually only a few words and it changes just one part of one word of the Constitution. Line 7 of the green copy of the legislation contains that. Article VI, Section 1, currently it starts with the word "every." This legislation changes that to the word "only" a person who is a citizen, who is old enough, and who lives where they're going to vote. Our current election laws prohibit noncitizens, children, and nonresidents from voting. Look, take a look at Section [SIC] 32-110 as a reference. We shall-- we have all assumed for a long time that Article VI, Section 1 of our state Constitution contains that standard as well. However, in some parts of the United States, similar wording in their constitutions has been interpreted in different ways. For example, California, New York,

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Vermont, Illinois, and Maryland have identical language, subsequently similar language. In those constitutions, they have begun to interpret the word "every," in this constitutional language, as not disqualifying noncitizens from voting in some elections. And there have been proposals to let people under age 18 to vote. This proposed constitutional amendment does not change anything that we are doing right now in Nebraska. This proposal simply protects and maintains the status quo. This change would strengthen our constitution. This change would make sure that when the Constitution says something is a disqualification or qualification of voting in Nebraska, that it has legal effect. I will-- this will help prevent what is happening in other states from happening here in Nebraska. I would be happy to answer any questions. Thank you, Mr. Chairman.

**La GRONE:** Thank you, Chairman Brewer. Are there any questions? Senator Blood.

**BLOOD:** Thank you, Senator La Grone. Thank you for bringing this forward, Senator Brewer. I'm glad you referred to 32-110 because that was the first place that I went to because I was trying to figure out what problem you were trying to solve. And I have a few questions based on what you've talked about. I'm hoping you'd clarify for me. So you were talking in reference to the legal effect that it would have. How does it change the legal effect when it's clearly defined in state statute as opposed to the Constitution?

**BREWER:** You can change statute. Once it was in the Constitution, you wouldn't be able to change it.

**BLOOD:** And what would we change in the statute? I'm confused on that.

**BREWER:** Well, you could change the current verbiage, however you want it.

**BLOOD:** So I, I'm still confused. I'm not being a smart aleck. I'm trying to figure out what you're trying to tell me here. So I'm looking at 32-110. Do you have that in front of you?

**BREWER:** No, but I can. Go ahead, I'm listening.

**BLOOD:** OK, Thank you. I'm just trying to be courteous here. Um, so I think it clearly defines all the concerns that you've expressed and then it also refers to various things that went to court and they further defined what an elector-- who the elector is and, and what you

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have to be to be qualified to be an elector. So I'm, I'm a little confused how changing one word would, would be more descriptive than what we already have in statute and what is already defined in the Constitution.

**BREWER:** OK, but I think the, the key part of this is that we're taking it from statute to where it is a part of the Constitution. So one can be changed depending on the mood of whatever body is here, where the other, the vote of the people would permanently put that into our Constitution.

**BLOOD:** All right. I'm sure-- I'm still kind of fuzzy and we can probably talk outside of the room on that. So you talked about other states and how it was creating issues in other states. Can you give me specific examples of incidents that have happened because of that?

**BREWER:** Well, I think what they've done-- I mean, there's, they can take and reshape statutes to allow people who would not normally fit into this category to be able to vote depending on the whims of that particular state. So that's why, again, I'd like to see it put into the Constitution, not as a statute.

**BLOOD:** But the statute specifically refers to the Constitution and the various things that went to court, that says that these are the people who can vote and these people who can't vote, right?

**BREWER:** I would agree to a degree to that. Yes, OK.

**BLOOD:** OK, so I, I, I believe I hear what you're trying to do. And I, I'm not sure I see that, that there is a problem that you're trying to solve, but the concern that I have is "elector" is most definitely described well in state statute. And I am not an attorney. I'm sure the attorneys will have something to say about that, but it looks like it has gone to court multiple times for multiple reasons. And in every case, it's quite clear what an elector is and that's never really changed. So that I find a bit confusing.

**BREWER:** OK, but have they not changed in some states, and I think California and Maryland are examples, where noncitizens can vote?

**BLOOD:** You know, I live in Nebraska and we are definitely not California. So that wouldn't be something that I would be aware of, nor would I support. I think, I'm-- and I guess you and I have talked about this before on other bills, you know, what does it mean for

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Nebraska? We did have the Secretary of State tell us that there is no voter fraud. And that is fraud, the people that you're referring to, that would be fraud. So I'm just a little confused about where we're going with this, but I'll listen to the, to the other questions and your closing and maybe things will become clearer. So I appreciate your answers. Thank you, Senator.

**BREWER:** And I, and I think part of it is that we're trying to prevent that from happening. So that's part of the thought process that went into it.

**La GRONE:** Thank you, Senator Blood. Are there any additional questions? Senator Kolowski.

**KOLOWSKI:** Thank you, Mr. Chairman. One of the, one of the aspects of being a government major in college, as I was, was the way we viewed the Constitution and how we honor that and knew that when you start messing with that, you could be in very serious difficulties. I, I, I haven't lost that from my major happenings back in-- many years ago, but it was one thing that stood out as far as the importance of that. I'm also having difficulty trying to see what the loss of, of one word is doing to this compared to what it was before this. And we're not Illinois and we're not any of those other states, for whatever reason. And the bottom line of all this is a voter at the end of the line walking into a booth and marking a, a sheet of paper, however it's done, mechanically or by the pencil or whatever else. So I'm-- it's very serious. This is very serious stuff. And you cannot ignore the possibilities of this, but I'm trying to figure out, as Senator Blood mentioned, what's the impact? Where is it coming to and what are we, what are we doing to this? No matter what any other state is doing, is it clear to us and are we doing this for the positive reasons, whatever they might be? Or is there something else in a negative vein of restricting people from getting to vote? That worries me. And I don't--

**BREWER:** No, not, not with the word--

**KOLOWSKI:** --think it is--

**BREWER:** --we're changing.

**KOLOWSKI:** I'm sorry, sir.

**BREWER:** I said no, the word we're changing here, I mean this-- again--

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**KOLOWSKI:** I see that.

**BREWER:** --we're going from statute to a part of our Constitution so that it's, it's fixed. So I mean, I really just think it comes down to whether this is supported, what we're doing. Whether it be in statute or whether it becomes this more permanent verbiage that's in the Constitution, are those things-- those three things something that we want to continue to see in Nebraska?

**KOLOWSKI:** Well, I'm seeking clarity is all. I'll just stop there. I've had my say on it and where, where I'm coming from. It's just-- I'll listen intently with the rest of the people that-- whatever they have.

**La GRONE:** Thank you, Senator Kolowski. Are there any additional questions? I've got a couple. So those other states that you had mentioned, they have-- started allowing noncitizens to vote in some elections, correct?

**BREWER:** Some states have, yes.

**La GRONE:** And so as I see it, what you're trying to do here is, without changing the qualifications, which is set by statute--

**BREWER:** Correct.

**La GRONE:** --clear up what is seen as an ambiguity in the Constitution that has been interpreted to allow noncitizens to vote in other states. Is that correct?

**BREWER:** Right. And that's the, the one-word change we're making there is so that it, it's clear. It's defined.

**La GRONE:** OK. So really, it's-- you're trying to make sure we don't have a, a problem that the Legislature allows noncitizens to vote without the people being able to have their say in it. Is that correct?

**BREWER:** That is exactly correct.

**La GRONE:** OK, that just clears it up. Senator Hilgers.

**HILGERS:** One, one thought. Thank you and thank you, Chairman Brewer. I want to be clear, since we are making a record that could be used in a court case at some point in the future, there's a reference maybe to the ambiguous nature of the current Constitution. I just want to be

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clear. It didn't sound like it from your earlier testimony, but you don't think that the current language is ambiguous?

**BREWER:** No, I think it-- this is just, I guess, razor-sharp clarifying, you know, what we're trying to do with those requirements.

**HILGERS:** And, and I see your point as to the other cases out there that might be-- try to inject some ambiguity. And I agree with you. I don't think it's ambiguous, but I see why you're doing what it is that you're doing. So I just-- but I did want to make clear that no one would cite to your testimony sometime in the future and say Colonel Brewer thought this was ambiguous.

**BREWER:** Well--

**La GRONE:** Thank you, Senator Hilgers, for that--

**BREWER:** That's the lawyer--

**La GRONE:** --to be clear.

**BREWER:** --lawyer part there. So I appreciate you helping with that.

**La GRONE:** [LAUGHTER] I did not mean to imply that in any sense. Senator Blood.

**BLOOD:** Thank you, Senator La Grone. Senator Brewer, are-- so the, the other states that you referenced, are those presidential elections, state elections, or local elections?

**BREWER:** I think most of them would be at a lower level than presidential. And many of them have changed the requirements in order to get documents that would allow you to vote and consequently, that's how someone who is a noncitizen could have the ability to vote.

**BLOOD:** So-- and I'm guessing the reasoning is, since it's municipal, they're all residents as opposed to citizens?

**BREWER:** There are states-- I mean, I'm sure they--

**BLOOD:** They're very different from Nebraska?

**BREWER:** --have a justification. I don't know what it would be.

**BLOOD:** All right. Thank you.

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**La GRONE:** Any additional questions? Seeing none, I'm assuming you'll be staying to close?

**BREWER:** I will be.

**La GRONE:** Thank you, Senator Brewer. We'll now move to proponent testimony. Will the first proponent--

**ADRIANA CARUAJAL:** Thank you.

**La GRONE:** Welcome to the Government Committee.

**ADRIANA CARVAJAL:** Good afternoon. My name is Adriana Carvajal, A-d-r-i-a-n-a, last name, C-a-r-v-a-j-a-l. First of all, thank you very much for allowing me to speak today. And as a concerned citizen, I want to come to let you know that I support the legislative resolution of LR283CA, which states that "only" a citizen might vote. I have called United States my home for 30 years. However, I became a U.S. citizen only ten years ago. So the time I have spent to become a U.S. citizen has been extremely long and costly. Therefore, I value the privileges and the responsibilities of being a U.S. citizen. In order to become a U.S. citizen, you need to meet certain requirements that not all the green card holders can pass. I-- so I'm going to mention some of these requirements in case you are not familiar with them. There are six. So one of them is continually, physically be-- live in the United States for a number of years. You cannot take trips outside the United States that last more than six months or longer during the three to five years that you are required to have a green card. Then you need to have proof that you have been in the country legally and pass an extensive background check, be proficient in basic spoken and written English. You have to pass a two-part naturalization test and demonstrate knowledge of U.S. history and government and register for military service, if a male of a certain age and be willing to perform civil service, if required. Last but not least, swear allegiance to the United States. Based on all of this, I think it's only fair that U.S. citizens have the privilege to vote. Why? Because, you know, the United States is my home. It's my country and I have proven my moral character. I am invested because becoming a U.S. citizen was not easy and I value it. Noncitizens who do not go through all of this process legally, they are not invested. They might be interested only in theirselves-- wellbeing instead of the country as a whole. Allowing this-- those to vote who have not proven their integrity could cause issues and waste due to their votes being influenced by their self-interest, rather than the interests as a

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whole. Therefore, I urge you to support LR283CA. Thank you very much for allowing me to say my concerns, and I'll just-- ending my speech with a quote from Harry Truman that says a vote is the best way of getting the kind of country and the kind of world you want. Thank you very much.

**La GRONE:** Thank you so much for your testimony and thank you for being here. Are there any questions? Senator Blood.

**BLOOD:** Thank you, Senator La Grone and thank you, is it Adriana?

**ADRIANA CARVAJAL:** Yes.

**BLOOD:** Adriana. And where are you from originally, Adriana?

**ADRIANA CARVAJAL:** I am from Mexico.

**BLOOD:** From Mexico.

**ADRIANA CARVAJAL:** Yes.

**BLOOD:** Well, welcome. That was a very eloquent testimony you gave. Thank you so much. So I listened to your concerns and obviously many people have the exact same concerns. They want to make sure whoever votes in Nebraska elections, which is what we're talking about, is truly a citizen of Nebraska. And so if, if I were to say to you right now we have absolutely no incidence of voter fraud and the only people that are allowed right now to vote in Nebraska are indeed people who are citizens, how do you think that this bill would change that, knowing that there's really no problem that points otherwise, nothing that shows us otherwise?

**ADRIANA CARVAJAL:** OK. Well, you obviously-- you are talking about the past, but I think we want to know that in the future, only people that are U.S. citizens can vote. I mean, I'm glad to hear that in the past, there has not been fraud. But I think what we want is, with this bill, is to make sure that it will not happen in the future.

**BLOOD:** And I don't disagree with you, but I would love to share some statute with you before you leave today that you can take home and read in your leisure. I think a lot of people share your concerns, but sometimes we try and solve problems that don't exist. And I have been told myself, why are you trying to solve a problem that doesn't exist for the future when we don't know what the future will be? So we want to all be consistent with everything that we do here in Nebraska. And

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my concern, based on your testimony, is that we are already addressing all of your issues, which are definitely issues of concern, in current statute and in the current Constitution. So hopefully, you and I can chat later, but I do appreciate your testimony. You were very eloquent and well done.

**ADRIANA CARVAJAL:** Thank you.

**La GRONE:** Thank you, Senator Blood. Any additional questions? Seeing none, thank you so much for coming down.

**ADRIANA CARUAJAL:** Thank you.

**La GRONE:** May I take the next proponent? Welcome to the Government Committee.

**MASON HOFFMAN:** Thank you. My name is Mason Hoffman. First name is M-a-s-o-n, last name is H-o-f-f-m-a-n. Thank you for allowing me to speak today. I'm a farmer with a wife and kids. The reason I am testifying in support of this resolution, LR283CA-- voting is the bedrock of any democratic institution. If you start to erode that, you disenfranchise the voters. Given the questions raised nationally about voter integrity or our elections, you have to do what you can to try and safeguard that. As a farmer, locally, you know, there's a bond issue we had in my school district that raised my cash rent on land I rent \$10,000. Rubbing salt in the wound would be to find out people that casted votes for a new school either didn't reside in that area or they're not even a legal U.S. citizen. So it's very important you make sure that people should be voting on what they should be voting on. I think that's very important.

**La GRONE:** Thank you for that testimony. Are there any questions? Senator Blood.

**BLOOD:** Thank you, Senator La Grone. I'm sorry, what was your name again?

**MASON HOFFMAN:** Mason Hoffman.

**BLOOD:** Mason. And what county do you live in?

**MASON HOFFMAN:** Adams.

**BLOOD:** Adams? Like, around Hastings?

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**MASON HOFFMAN:** Yes.

**BLOOD:** Or--

**MASON HOFFMAN:** Um-hum.

**BLOOD:** Where do you live, north, south, east, or west of Hastings?

**MASON HOFFMAN:** West of Hastings--

**BLOOD:** OK, if--

**MASON HOFFMAN:** --around Adams Central.

**BLOOD:** Yeah, I was going to say do your kids go-- I went to Adams Central.

**MASON HOFFMAN:** Okay.

**BLOOD:** I wasn't pumping you for information, I was just curious.

**MASON HOFFMAN:** Well, that's fine. I don't care.

**BLOOD:** Where I grew up, that's on a farm.

**MASON HOFFMAN:** OK.

**BLOOD:** Um, so what, what documentation do you have that shows that there are people that were undocumented immigrants that voted?

**MASON HOFFMAN:** I have no documentation. But, you know, you-- sometimes you need to protect before you have an instance to justify protecting.

**BLOOD:** Oh, I'm sorry. I, I misunderstood you then. Didn't you just tell us that in that bond election there were people that were not--

**MASON HOFFMAN:** No.

**BLOOD:** --citizens?

**MASON HOFFMAN:** I said you could only imagine, on top of having my cash rent raised \$10,000, which I can't pass that on as a farmer. If it were to happen that I found out that there were people that resided outside of my school district, option-in parents, they were able to cast votes to raise, to raise my taxes, that would be rubbing salt in the wound. Or if--

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**BLOOD:** Oh, you're not saying that it happened. You're saying--

**MASON HOFFMAN:** No.

**BLOOD:** --if it be that--

**MASON HOFFMAN:** No. I did not say that, no.

**BLOOD:** OK.

**MASON HOFFMAN:** I said, you know, if that were to happen or if there were residents in the district and uh, but they were not legitimate citizens, that would be the same thing, you know.

**BLOOD:** So I'm not sure how to ask this right. I just have to ask you, ask you, where is your farm at? Are you close to Juniata or--

**MASON HOFFMAN:** Yes.

**BLOOD:** OK.

**MASON HOFFMAN:** Um-hum.

**BLOOD:** On the south side?

**MASON HOFFMAN:** When you turn to go north of Juniata off Highway 6, the white house on the left, on the hill.

**BLOOD:** Okay.

**MASON HOFFMAN:** That's where I grew up.

**BLOOD:** Highway 6 and--

**MASON HOFFMAN:** Um-hum.

**BLOOD:** --main drag to get to Hastings, right?

**MASON HOFFMAN:** Yes, it is.

**BLOOD:** All right.

**MASON HOFFMAN:** So--

**BLOOD:** Thank you so much.

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**MASON HOFFMAN:** Um-hum.

**La GRONE:** Thank you, Senator Blood. Are there any additional questions? Senator Hunt.

**HUNT:** Thank you, Senator La Grone. Thank you for being here, Mr. Hoffman.

**MASON HOFFMAN:** Um-hum.

**HUNT:** I have a hypothetical question.

**MASON HOFFMAN:** Sure.

**HUNT:** So you were talking about a bond for, for a school. What if there were people who voted in that election for the bond and they were sending their kids to the school? And they were volunteering at the school. And they were paying taxes that went to the school and other things in your community, but they were noncitizens. Would that be taxation without representation?

**MASON HOFFMAN:** If they couldn't vote?

**HUNT:** But they were paying taxes and contributing like everybody else--

**MASON HOFFMAN:** Well, I'm not trying--

**HUNT:** --thereby lessening the burden on citizens in the community?

**MASON HOFFMAN:** Well, I'm not trying to be hostile. But that already is happening because I own farm ground in other school districts. I don't get to vote on whether or not they build a school or something, but I get to pay the tax increase.

**HUNT:** Does that upset you?

**MASON HOFFMAN:** It does. Because actually, I don't reside in that school district, Adams Central, most of my farm ground does. So I can't even vote on that bond issue, but I get to pay the increase in taxes on it.

**HUNT:** Um-hum. So to me, just to share for the record, it's not-- I, I have no, like, goal. I'm not seeking to allow noncitizens to vote. That's not something that I see--

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**MASON HOFFMAN:** Um-hum.

**HUNT:** --in the near future in Nebraska, if ever. But it's not so outlandish to me, given what you've said and given that we know noncitizens pay taxes and contribute to our communities, but they don't get a vote in what happens. And the rallying cry of the American Revolution was no taxation without representation so--

**MASON HOFFMAN:** Um-hum.

**HUNT:** --I can imagine again, hypothetically, that maybe it's a good conversation to have. And it's good to kind of challenge, in yourself, why is it you think that this isn't right or fair? And again, this is all hypothetical. And I don't seek, in any real way, to change the law around this, but something for maybe all us to think about. Thank you.

**MASON HOFFMAN:** If I could, I feel like I've kind of took us off in the ditch because I brought that up. But really, you're just changing a couple words. You're just trying to make it clear who should be voting. And I just gave that as an instance because that's something that really affects me, is, you know, that situation but--

**HUNT:** Thank you for sharing your experience.

**MASON HOFFMAN:** Yeah.

**La GRONE:** Thank you, Senator Hunt. Any additional questions? Seeing none, thank you so much for being here, Mr. Hoffman. Any additional proponents? Seeing none, any opposition testimony? Mr. Eickholt, welcome back to the Government, Military and Veterans Affairs Committee.

**SPIKE EICKHOLT:** Thank you, Vice Chair La Grone and members of the 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 as their registered lobbyist in opposition to the proposed constitutional amendment. I did visit with Mr.-- or with Senator Brewer earlier this morning, letting him know of our opposition. I didn't have time. I was late in giving him notice to explain why, but I think our-- the reasons why-- I know the reasons why we're opposed-- it really describes-- for the reasons that Senator Brewer urges the committee to consider the proposed amendment. And that is it would maintain the status quo in our Constitution. If you look at Article VI, Section 1 as written now, it is a guarantee. It is a floor. Is it an assurance that every citizen

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who is a resident of Nebraska and is 18 years old has a right to vote. By just changing a couple words, it would provide that it was-- flip that-- almost as a ceiling or as a box or whatever metaphor I'm trying to, to describe, in which only a citizen who is over 18 and a resident of Nebraska can vote. And there have been other jurisdictions around the country where states have provided with, with non-U.S. citizens, a statutory right to vote. It's been almost exclusively for local elections and many of them for those same reasons that Senator Hunt just mentioned. And that is you have-- for instance, you know, I got a ballot just the other day where I was asked to decide whether I wanted to pay for that school bond thing. Only, only a registered voter can vote on that, right? I'm not electing somebody to office, I'm just sort of committing myself as a taxpayer to pay on whatever I'm going to pay on the bond. And I think that you can make a pretty good argument. And perhaps in the future, the Legislature might want to consider that as a policy choice to give to people who are paying a sales tax at the local level or paying for increased property tax or bond issues. They might want to let everyone who has property or who sort of works and pays taxes, whether they're citizens or not, that sort of opportunity to have something to say, beyond simply the privilege of paying for it after the election is done. So in other states, I've seen it that way and that's why I liken to states like Maryland and Illinois and California. You have had laws passed that provide for local elections for those kinds of things. And I don't know if the Legislature is going to do that. I don't know if anyone's ever seriously considered that. Another thing that no one's talked about is that this sort of limits the right to vote to someone who's 18 or older. And I think that Senator Wishart either had an interim study or maybe even a bill that would consider providing for someone who's less than 18 the right to vote. And other jurisdictions have considered that in local elections. The Legislature can't do anything with respect to federal election law or amend the federal Constitution. This is really just sort of limiting our constitutional assurance of a right to vote. And we would urge the committee not to do that for the reasons that I said, because it freezes us into this sort of policy now. And perhaps in the future, the Legislature might want to do something different. And it is an assurance of your right to participate in your democratic society. And we should do what we can to keep that as robust and as protected as possible. So I urge the committee to not consider the amendment or not advance the amendment.

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**La GRONE:** Thank you, Mr. Eickholt. Are there any questions? Senator Hilgers.

**HILGERS:** Thank you, Senator La Grone. Thank you, Mr. Eickholt. Good to see you, as always. I wanted to talk a little bit about the floor and ceiling concept you just described. And that, as I understand it, just tell me if this is accurate, your argument is, as it currently stands, the Legislature, I assume, could--

**SPIKE EICKHOLT:** Um-hum.

**HILGERS:** --expand voting rights beyond the individuals that would be listed within this particular constitutional provision. Is that right?

**SPIKE EICKHOLT:** I think you can make that argument by looking at it as written now because it-- every citizen who's 18 has a right to vote.

**HILGERS:** Um-hum.

**SPIKE EICKHOLT:** It doesn't say, it doesn't say-- limit only a citizen--

**HILGERS:** Right.

**SPIKE EICKHOLT:** --it doesn't have a limitation. It is a-- and most of the time, it's-- I think it's an enshrinement of a person's right in the Constitution.

**HILGERS:** So that-- so then in that instance-- so if it-- I, I hear that point that you're making. So to expand beyond-- so it guarantees someone who is 18 within the voting district, who is a citizen, et cetera. But if the-- so who would be able to make the decision to expand it later? Would it have to be in the Constitution or do you think within a statute?

**SPIKE EICKHOLT:** I think it could be done by statute. If you look at 32-110, as Senator Blood mentioned earlier, the language is almost identical in 32-110 to what is in Article VI, Section 1. So I think that the Legislature could-- and again, I don't know if anyone is seriously trying to do it. I have not pitched the bill idea to anybody, I can tell you. And I've never seen anyone propose it. But I suppose the Legislature could provide either in 32-110 or maybe in some of those other statutes that deal with, like, cities and metropolitan classes. So along with their bonding authority for elections and that kind of thing, they, they could do some kind of

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statutory provision that provides for that, maybe under current constitutional provision.

**HILGERS:** Gotcha, so if the Legislature wanted to allow 10-year-olds to vote, the Legislature, through statute, potentially could do that.

**SPIKE EICKHOLT:** Could-- I mean, you have to get 25 votes and then maybe more--

**HILGERS:** [LAUGHTER]

**SPIKE EICKHOLT:** --depending on what you receive from the executive branch--

**KOLOWSKI:** 33.

**SPIKE EICKHOLT:** --or 33, who knows?

**HILGERS:** OK. Thank you.

**SPIKE EICKHOLT:** And you know, and we talked about-- well, I won't-- you're not done asking me questions.

**HILGERS:** No, go ahead. Go ahead. What, what would you like to say next?

[LAUGHTER]

**SPIKE EICKHOLT:** There's no other policy at this time-- not just the taxpayer, right, but I'm thinking there's other things that you can participate and other ways, you know. You can serve in the U.S. military and fight and die for the country without being a citizen.

**HILGERS:** Um-hum.

**SPIKE EICKHOLT:** And that might be something-- probably something that would have to be done at the federal level, probably. But that might be a reason why, as a matter of policy, a future Legislature or maybe even this one, next year, who knows, might want to provide a statutory affirmative right to vote. And passing the constitutional amendment, I think, would just eliminate that option.

**HILGERS:** But at least when it comes to citizenship, do you think-- I mean, I understand your point as well, maybe a 17-year-old, maybe you could expand it. I'm not saying I agree with that--

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**SPIKE EICKHOLT:** Right.

**HILGERS:** --principle, but the Legislature-- but at some point, the Legislature could expand it so far that it is in direct conflict, right?

**SPIKE EICKHOLT:** Yes.

**HILGERS:** So for instance, do you think the Legislature could pass a law that would allow noncitizens to vote and would be consistent with that provision in the Constitution?

**SPIKE EICKHOLT:** Oh, I don't think so, not at all. I think that would be inconsistent with the constitutional provision and it would probably be invalidated.

**HILGERS:** Although, although under the logic that you've articulated--

**SPIKE EICKHOLT:** Well, I said-- and I'll actually--

**HILGERS:** And I actually don't see the distinction--

**SPIKE EICKHOLT:** Well, I should have clarified. In what kind of-- like, in federal elections?

**HILGERS:** No, no, no--

**SPIKE EICKHOLT:** Oh, OK.

**HILGERS:** --in a state election. So--

**SPIKE EICKHOLT:** Oh. Yeah, I suppose the Legislature could provide, for a statewide election, some sort of affirmative statutory ability to vote.

**HILGERS:** For noncitizens?

**SPIKE EICKHOLT:** For noncitizens. And that doesn't mean people illegally-- I mean, it could be for people who are in the country--

**HILGERS:** Um-hum.

**SPIKE EICKHOLT:** --legally, but not U.S. citizens.

**HILGERS:** Thank you.

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**La GRONE:** Thank you, Senator Hilgers. Senator Lowe.

**LOWE:** Thank you, Vice Chair. And thank you, Mr. Eickholt, for being here. You said that when you were talking about the states that have changed some of the issues, that almost exclusively for, for local elections.

**SPIKE EICKHOLT:** Right.

**LOWE:** Are there some that have changed it for state elections?

**SPIKE EICKHOLT:** I think somebody who might testify might know more about what other states are doing around the country. But I know that California at least had a proposal to allow for noncitizens to vote, but I don't know if that was ever adopted by the legislature. I know they've at least proposed that, but it has not actually been adopted or signed by the governor. I know that in Chicago, they've got local-- noncitizens can vote in local elections, school board elections, school bond questions. And about a half dozen jurisdictions in the state of Maryland have a similar position. I don't know, I can't tell you if other states-- if somebody has actually just sort of introduced a bill or an idea or something--

**LOWE:** Um-hum.

**SPIKE EICKHOLT:** --that it's been introduced. That may have happened somewhere around the country. I know California is probably about the most-- made the most meaningful--

**LOWE:** Uh-huh.

**SPIKE EICKHOLT:** --effort.

**LOWE:** All right, thank you very much.

**La GRONE:** Thank you, Senator Lowe. Any additional questions? I just have one, Mr. Eickholt, just to clarify. So this kind of dovetails off of your conversation with Senator Hilgers. So your position, your understanding, not position, sorry. Your understanding of the provision is that if you were in Senator Brewer's shoes and wanted to prevent the Legislature from having the authority to allow noncitizens to vote, that this would do that?

**SPIKE EICKHOLT:** I think so.

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**La GRONE:** OK.

**SPIKE EICKHOLT:** Well, at least it would strip the Legislature's ability to do anything to the Constitution.

**La GRONE:** I got you. Well, thank you so much for coming down.

**SPIKE EICKHOLT:** Thank you.

**La GRONE:** We'll take the next opponent. Welcome back to the Government Committee.

**WESTIN MILLER:** Thank you, Senator. Vice Chair La Grone, members of the committee, my name is Westin Miller, W-e-s-t-i-n M-i-l-l-e-r. I'm the director of public policy at Civic Nebraska. We're a nonpartisan, nonprofit organization. We're committed to creating a more modern and robust democracy for all Nebraskans. I'm testifying today in opposition to LR283CA and I want to be brief because I'm here to talk about the mechanics of this constitutional amendment, Spike touched on a couple of them, and just to caution against maybe one or two unintended consequences. So first, I want to make sure that the committee knows that changing the word "every" to "only" in Article VI, Section 1 would affect a lot more than just the question of citizenship when voting. And this has been touched on briefly, this would prevent, definitively I think, any locality from ever expanding the franchise in any way. So if, as I think a very reasonable example, a city or town wanted to allow 17-year-olds to vote only in school board elections, that would now just be absolutely unconstitutional. The Legislature or any locality would have no ability to control that. To me, that seems like, I think, a really unnecessary restriction on just the local control of election administration, which this committee has talked about a lot. Secondly, I have concerns about what this amendment does to the spirit of Article VI, Section 1. So the current language "every citizen of the United States who has attained the age of eighteen years" et cetera, shall be an elector. Like Spike said, it is written as a baseline protection, which to me, means we are not allowed to restrict the definition of elector any further than this. Changing "every" to "only" does change this from a baseline protection to a maximum ceiling cap. And I want to state the obvious, which is that baseline protections and maximum caps are opposites. And I state that because if members of this committee are at all concerned about framers' intent or what the authors of this Constitution meant to do, it's important to note that this amendment does change Article VI, Section 1 to do the opposite of what it was written to do, which I

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think is worth noting. Finally, and I think most importantly, getting rid of the word "every" will inherently cause some problems in this section. Article I, Section 4 of the U.S. Constitution does give states responsibility to oversee federal elections, which includes defining electors or defining voters. So the U.S. Constitution obviously says you can't deny the right to vote based on race, color, sex, you can't charge poll taxes, and you can't lower the age below or above 18, excuse me, you can't raise it above 18 for federal elections. But I think it's worth stating that that is not the same thing as the state constitution having a sweeping protection, which it guarantees that every 18-year-old citizen gets to vote. Without the word "every," Nebraska's state constitution has no other protection against a piece of legislation that would bar a certain person or groups of people from voting. We would still have the piecemeal protections from amendments to the U.S. Constitution, but again, it's not the same. And it would also, I think, notably mark the first time ever that this committee has expressed a preference for simply relying on the federal government rather than making good policy ourselves. So in summary, we oppose this bill because it's an unnecessary restriction on local control of election administration. It changes the spirit of Article VI, Section 1 from a baseline protection to a maximum cap. And it eliminates what I think is an essential state protection of voting, which would otherwise make us dependent on the federal government for protections of one of our most fundamental rights. So with that, thank you for your time and I'd be happy to answer any questions.

**La GRONE:** Thank you for your testimony. Questions? Senator Hilgers.

**HILGERS:** Thank you, Vice Chair La Grone. Mr. Miller, good to see you. Thanks for coming down today. I want to unpack this local control concept.

**WESTIN MILLER:** Yeah.

**HILGERS:** Is there any example-- I've actually-- had not considered this. I just want to dialog with you. Is there any example of a city or a municipality, village in Nebraska actually attempting to change the voting age for voting in their local election?

**WESTIN MILLER:** Not in Nebraska.

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**HILGERS:** I mean it-- would there be any-- in fact, is there any-- as Senator Blood and I have talked about--

**WESTIN MILLER:** Um-hum.

**HILGERS:** --on the floor before, we're a Dillon's Rule state. And so the fact of the villages, cities, towns, they only have the authority that the state gives them. Do they have--

**WESTIN MILLER:** Right.

**HILGERS:** Is there actually any statutory authority for those local municipalities to do that?

**WESTIN MILLER:** So I've done some, some investigating into this on the kind of the question of the voting age. There's a reference that-- Senator Wishart has, has asked some really interesting questions about that in the past. My best understanding, so far, is that I think Omaha and Lincoln, I think, have the jurisdiction to expand beyond this for city elections only. That's my understanding, because of their charters that they have. I don't know that other towns in Nebraska would be able to do that without a similar charter, but I'm not positive.

**HILGERS:** If you have any reference to that if you wouldn't mind--

**WESTIN MILLER:** Yeah.

**HILGERS:** --sending it to the committee? I'd appreciate it.

**WESTIN MILLER:** Yeah, absolutely.

**HILGERS:** Seeing what Lincoln and Omaha can do-- it seems like from a public policy matter, having a-- I mean, it seems like having some uniform rules as to who can be an eligible elector across the state would be a good thing. Would you agree?

**WESTIN MILLER:** Yeah. I think on the one hand, I definitely value the concept of consistency. On the other hand, I think we see that sometimes some really meaningful, but for whatever reason, like, frightening ideas, like letting-- I can't find a good reason why 17-year-olds shouldn't be able to vote in the school board elections, like, I just-- I don't really understand the rationale there. And so I think that allowing cities to kind of incubate those, like, positive

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democratic ideas has some value without having to, like, get the whole state to just go for it all at once. I think that's worth considering.

**HILGERS:** Thank you.

**WESTIN MILLER:** Yeah.

**La GRONE:** Thank you, Senator Hilgers. Any additional questions? I just have one just to clarify--

**WESTIN MILLER:** Sure.

**La GRONE:** --your position. So let's hypothetically say that the bill were amended to a limited-- just to citizenship--

**WESTIN MILLER:** Um-hum.

**La GRONE:** --and to still include the word "every," but also limit it to only U.S. citizens--

**WESTIN MILLER:** Um-hum.

**La GRONE:** --in the Constitution. Would that change your position?

**WESTIN MILLER:** So you're saying take out the, sorry, take out the age part? Is that what you're saying?

**La GRONE:** Correct. So limit the, the requirement to say just to the effect, only a U.S. citizen can vote--

**WESTIN MILLER:** Um-hum.

**La GRONE:** --but every U.S. citizen and then continue from there as it currently is.

**WESTIN MILLER:** So I think that when it comes to Article VI, Section 1 specifically, I, I don't think I could ever find a good rationale for messing with that word "every," specifically because I really do believe that. And I think it's worth noting, I don't, I don't have, like, a list--

**La GRONE:** Um-hum.

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**WESTIN MILLER:** --of, like, future restrictive bills that would happen as soon as we did this. But I think it's, I think it's bad policy just to assume that that would never happen.

**La GRONE:** Um-hum.

**WESTIN MILLER:** And so I just don't see a pressing reason to remove that sweeping protection and rely only on the, you know, the Fifteenth, Nineteenth, Twenty-fourth Amendment.

**La GRONE:** Yeah. And so just to be clear--

**WESTIN MILLER:** Yeah.

**La GRONE:** --my question basically, is if that is left in there--

**WESTIN MILLER:** Um-hum.

**La GRONE:** --and then it's added in that in addition to every U.S. citizen being able to vote, only a U.S. citizen can vote-- it doesn't affect the "every" wording and it doesn't affect the other age positions in there. Would that change your position?

**WESTIN MILLER:** We'd have to-- I guess we'd have to talk more about the, the actual language itself because if we precede the "every" with the "only"-- and then now we've got a whole other, like, muddled situation. So I think it would really depend on the actual language.

**La GRONE:** Thank you.

**WESTIN MILLER:** Thank you.

**La GRONE:** Senator Hilgers.

**HILGERS:** Just a thought-- thank you, Vice Chair La Grone. Just to follow up on that, I think Article VI, Section 2 has the exclusion to Article 6, Section 1.

**WESTIN MILLER:** Sure.

**HILGERS:** What if you added it-- to Senator La Grone's point, what if you added it to that section?

**WESTIN MILLER:** Yeah. So as an organization, Civic Nebraska has never even talked about noncitizen voting, to be honest with you. So I, I do think just mechanically, like, if the goal is to make sure absolutely,

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noncitizens can't vote, I think you add a bullet point to Section 2. And that would be less messy. I, again as an organization, have no thoughts on that.

**HILGERS:** That's fair. One last question I've got while I'm thinking, while you're here, how do you-- so I understand you, I understand the point you and Mr. Eickholt are making that maybe you want to have some flexibility to be able to expand. And you don't want to have it be a ceiling, you want to have it be a floor. How do you respond, though, to Chairman Brewer's point, which is that in these other states, there's authority-- there is now-- maybe it's not binding authority--

**WESTIN MILLER:** Um-hum.

**HILGERS:** --but there's case law, as I understood it at least, from I think I counted six states--

**WESTIN MILLER:** Um-hum.

**HILGERS:** --with interpreting identical language and the concern that a court could find that to be persuasive--

**WESTIN MILLER:** Um-hum.

**HILGERS:** --sometime in the future, here in Nebraska. So in other words, as I took it, the argument is, look, we're not trying to, we're not trying to change anything. So substantively, we're just trying to ensure that down the road, no one finds that our Constitution is ambiguous and interprets in a way that we think is inconsistent with the will of people. How would you--

**WESTIN MILLER:** Sure.

**HILGERS:** How would you, how would you effectuate his-- solving the problem he's articulated, while still navigating the landmines you've articulated?

**WESTIN MILLER:** Sure. No, thanks for the question. A couple of things: one, I think that I do want to clarify on the ambiguity point. The current lack of ambiguity is why I'm taking the position that I'm taking, because I think right now the Constitution is crystal clear that we are protecting every 18-year-old citizen. They can vote, period. I don't want to make that more ambiguous than it is currently. As far as states with similar constitutional language, so I am-- the situations I'm familiar with are San Francisco, which allows parents

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who have children in schools to vote in school board elections, regardless of citizenship status. And more with that, I am aware of, I think, ten cities in Maryland who let noncitizens vote in local elections. Their constitutions-- the state constitutions are super similar, I don't know that they're identical. And I want to speak, I guess mostly to Maryland because I'm more familiar with that, because they do some cool stuff with voting age too. They have-- in their constitution, it is written that every city except for Baltimore, for some reason it is explicitly excluded, every city except for Baltimore can set essentially any city rule for elections that doesn't directly conflict with state statute. So they have, like, exceedingly generous provisions for what the city is allowed to do. So I don't know that they are identical. We certainly don't have that, like, huge grant of power that the state of Maryland gives to their cities.

**HILGERS:** At I-- what-- so thank you and that's interesting that Baltimore--

**WESTIN MILLER:** Yeah, don't know what it is.

**HILGERS:** They babysit Baltimore a little bit differently. One point you raised that-- I asked this to Mr. Eickholt so I want to make sure, because it does seem a little bit-- there is some inconsistency to say that the current provision is a floor--

**WESTIN MILLER:** Um-hum.

**HILGERS:** --right, that would allow the state to, to expand it and then also add a list of people to that expansion.

**WESTIN MILLER:** Yeah.

**HILGERS:** And so the question I had of Mr. Eickholt was, well, if the Legislature tomorrow said we want to permit noncitizens, as an example, to vote--

**WESTIN MILLER:** Um-hum.

**HILGERS:** --would that be-- would that conflict with the provision?

**WESTIN MILLER:** Got it.

**HILGERS:** He said yes, as I interpreted it. If I'm wrong, he can correct me.

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**WESTIN MILLER:** Sure.

**HILGERS:** How would you answer that?

**WESTIN MILLER:** Yeah. I think that-- my understanding is that, like, if you're-- if you're asking, like, how a court should rule on that question? Yes, I think they should see it as a city would have the authority to do that. I just don't want-- I don't-- it's just not as clear as it is in Maryland. Like, Maryland, for sure, like, unless you're Baltimore, like, cities can do whatever they want as long as they don't conflict with state statute. I understand our constitutional provision to be a similar baseline, but I know that in reality, it's not nearly as simple as that. So yeah, I, I do-- like, if I got to just magically make the interpretation, I think that Article VI, Section 1 says that you can't restrict any further than an 18-year-old citizen. But if you want to let 17-year-olds vote in school board elections, go for it.

**HILGERS:** So you-- oh. So, OK. So maybe I'm-- so you would say that if a city or maybe the state, putting us out of the Dillon's Rule question--

**WESTIN MILLER:** Sure.

**HILGERS:** --said noncitizen 10-year-olds could vote, you don't think that would conflict with the--

**WESTIN MILLER:** I mean, I, I always caution against, like, extreme direction examples like that--

**HILGERS:** Well, I'm just trying--

**WESTIN MILLER:** --because I think a lot of other stuff would come into it--

**HILGERS:** But what's the limiting principle, I guess? If it's a floor then--

**WESTIN MILLER:** Um-hum.

**HILGERS:** --it's all it is. It is a floor. You can expand it. Where's, where's the current implied ceiling? How do you get there logically?

**WESTIN MILLER:** Yeah, good question. I mean, I think--

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**HILGERS:** Maybe there isn't one.

**WESTIN MILLER:** No, I-- in statute, like, we've never-- I don't know of any court case that has ever addressed whether or not, like, toddlers should be able to vote. Um, I, I think there's just a-- there's, like, a certain level of which-- who knows? Maybe-- I think some folks in this room would agree, like, we can only rely on common sense for so long. But I just, I think we haven't gotten there, to that question yet. So I just think there's literally, there's, there's nothing. I'm extremely confident that if not Baltimore, Maryland, decided to let 9-year-olds vote, I'm confident there'd be a court case and I'm confident it wouldn't stand. I mean, I think that's kind of, like, the evolution of, like, just of our laws in general. Um, I, I also do think it's worth pointing out, though, since you're talking about similarities or differences between our political climate and other states, I don't have a ton of money, but I would bet absolutely all of it that if someone introduced a bill tomorrow to let noncitizens vote in statewide elections, it would get destroyed. And I think that our political climate-- this is just not even close to, like, a real possibility, at this point, which I do think is worth considering as we talk about weighing that versus other possible complications, as a result of this amendment.

**HILGERS:** Thank you.

**WESTIN MILLER:** Thank you.

**La GRONE:** Thank you, Senator Hilgers. And Mr. Miller, I'd just point out that games of chance are illegal in the state of Nebraska.

**WESTIN MILLER:** Absolutely.

[LAUGHTER]

**La GRONE:** Are there any additional questions? Seeing none, thank you for your testimony.

**WESTIN MILLER:** Thank you.

**LA GRONE:** And we'll take the next opponent. Welcome back to the Government Committee.

**GAVIN GEIS:** Vice Chair La Grone and members of the committee, my name is Gavin Geis, G-a-v-i-n G-e-i-s, and I'm here on behalf of Common Cause Nebraska. We are also, of course, in opposition to this CA. I

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don't have much more to add than what's already been said here today. I think our top priority here is that we don't get rid of that really strong protection of the right to vote. If we're going to talk about this, let's talk about it somewhere else. Let's not undo what many, you know, speaking with my national colleagues, view as a good protection that some states don't have, right? Federal government said make up your own rules for how you protect this right. We did a good job. We hit it on the head and said "every" citizen. So if we're going to look at this, this is the wrong place to look at it. I think the discussion of whether or not we need to limit noncitizens at all, that's a whole other policy discussion, right? We're having two discussions here. It's one, how strong do we protect every citizen's right to vote and then, should we even ever consider noncitizens voting in city elections? They're two very distant discussions. And I think we can all agree that every Nebraskan should have the right to vote. We should protect that, but there's other policy discussion. It doesn't really need to leach into taking away that right that is so strong in Nebraska. So that's, that's really all I have to say. Thank you.

**La GRONE:** Thank you for your testimony. Are there any questions? Seeing none, thanks for coming down.

**GAVIN GEIS:** Thank you.

**La GRONE:** Are there any additional opponents? Seeing none, we will now move to neutral testimony. Professor Lenich, welcome to the Government Committee.

**JOHN LENICH:** Thank you, Senator La Grone. My name is John Lenich, J-o-h-n L-e-n-i-c-h. I served as a law professor at the University of Nebraska for 35 years before retiring last August. I'm testifying today as a private citizen and the views that I express are my own. Furthermore, I'm testifying in a neutral capacity because I thought it might be helpful to the committee if I explored the effect, if any, of changing the words "every citizen" to "only a citizen." So how might a court interpret those words? Well, over the years, the courts have developed what they are-- what they call canons of statutory construction. The canons are principles that govern how a court should interpret the words of a statute or in this case, the words of the Constitution. Now the canons sometimes lead to very clear answers, but sometimes they don't because one canon points in one direction and the other canon points in a different direction. And that's the case here. The canon of negative implication says that the expression of one

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thing implies the exclusion of others. So if we apply that to Section 1, it would seem as though by stating that every citizen shall be an elector, Section 1 is stating, by implication, that every noncitizen shall not be an elector. And I think that's a fairly strong argument. But the canon of the omitted case says that a matter that is not covered in the text of a statute or constitutional provision is not covered. As currently written, Section 1 covers the voting rights of citizens, but it doesn't say anything about the voting rights of noncitizens. So one could argue that because it doesn't-- the voting rights of noncitizens are not covered by Section 1, that Section 1 does not preclude the Legislature or a local government from granting noncitizens the right to vote. Now it may seem a little odd to read the statute that-- or the provision that way, but it really isn't. Let's assume a sign at the airport said anyone with a current driver's license may enter this TSA screening area. What about people with passports or a different kind of government issued I.D. or no I.D. at all? The sign doesn't say that they can enter, but it doesn't say that they can't enter. It's unclear. It would be clear, however, if the sign was changed to read only those with a current driver's license may enter. And likewise, it's, it would be clear that noncitizens cannot vote if Section 1 was changed to read that "only" a citizen shall be an elector. Without that change, however, a court could rule that Section 1 precludes the Legislature from giving noncitizens the right to vote, but it could also rule the other way. So in conclusion, the proposed change matters because it affects the meaning of the Constitution, rather than simply the wording. Now whether this would be a good change or not, on that, I don't have an opinion. But I do think that, again, this is not simply a change in words, it's actually a change in meaning. If the committee-- I've concluded my remarks. I'd be happy to answer any questions.

**La GRONE:** Thank you, Professor Lenich. Are there any questions?  
Senator Blood.

**BLOOD:** Thank you, Senator La Grone and thank you, Professor. Will we be getting college credits for this?

**JOHN LENICH:** Uh, no.

**BLOOD:** Um. If your degree--

**JOHN LENICH:** You might get continuing legal education credit.

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[LAUGHTER]

**BLOOD:** There's way too many lawyers already, so.

**JOHN LENICH:** I'm retired now.

**BLOOD:** I, I always tell the joke you can't throw a rock in the Capitol without hitting at least one attorney. In this room, it would be a lot more than one. Anyway, so and I'm-- I mean this sincerely, I'm not trying to be a smart aleck, so help me understand why we have it defined in statute because you heard us talk-- were you in here when we talked about statute 32-110? And it clearly defines who an elector is. And it also refers to many court cases where people tried to question whether they could or could not vote, whether they were actually considered residents of Nebraska, whether they were considered people who are citizens or not. And they even went as far as-- there's some court cases in reference to indigenous Nebraskans. And I was kind of surprised that some of it actually-- what happened in the court on some of these. If we have it clear and defined in state statute, why, why would we want to tweak the Constitution? That's where I'm confused.

**JOHN LENICH:** Because, Senator, the statutes can always be changed. You know, they may be restricted--

**BLOOD:** Well, as the Constitution can be too, though.

**JOHN LENICH:** It can be through constitutional amendment, but if the Constitution is amended and it says "only" citizens may vote, then any statute in conflict with that would be unconstitutional. And the Legislature could not constitutionally pass legislation and the local government couldn't either. That would give noncitizens the right to vote because the Constitution is the supreme law of the state of Nebraska and it supersedes any statutes and limits the Legislature's authority. So that's why even though it may be in statutes, those can be changed. You're right, the Constitution can be changed, but if the Constitution says X, then you can't change the statutes to say Ys.

**BLOOD:** But right now they're paired correctly.

**JOHN LENICH:** I'm sorry?

**BLOOD:** Right now they're paired correctly.

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**JOHN LENICH:** Well, I'm, I-- on-- as it's-- the Constitution, I think, could be interpreted either way. It could be interpreted as saying that you cannot, that "only" citizens can vote. That's a-- I can't give you-- there's a Latin phrase that goes with that canon, but I think that's a pretty strong argument. But you have other principles. So all I think I'm saying, Senator, is a court could decide this either way.

**BLOOD:** Right.

**JOHN LENICH:** And if you want--

**BLOOD:** I agree.

**JOHN LENICH:** Yeah. If you want to prevent that from happening, then I think the amendment is the, is the way to go. If you don't want that to happen, then I think you certainly wouldn't want the amendment.

**BLOOD:** But-- and I'm not-- I don't pretend to be a lawyer, so these questions are very sincere when I ask these. So isn't it frequently, though, a good thing when it goes to court because then it's basically settled, whether it means this or it means that?

**JOHN LENICH:** Then-- and, you know-- and that's true once we get a case settled. And then if the court were to rule that, let's say, only citizens can vote and folks didn't like that, then we could seek to have an amendment to the Constitution to override the Supreme Court's decision. Because, yes, the Supreme Court is the final arbiter of Nebraska law, but, in a, in a sense, it's really the people who are because they can always change the Constitution. And just as sometimes the courts make rulings, Senator, on statutes and you say, why did they do that? And then the next day you say, well, we'll take care of this. We're going to get a bill in because they just didn't understand the language. So, you know, if the Supreme Court were to rule on a statute interpreted in a way you disagreed with or this, this Legislature, you can, you can then respond with legislation. And that happens often. It just-- once you amend the-- when you have the Constitution, it just gets-- it's a lot harder to amend that than to amend the statute.

**BLOOD:** Well, and it should be difficult to--

**JOHN LENICH:** Right.

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**BLOOD:** --amend the Constitution--

**JOHN LENICH:** Sure.

**BLOOD:** --right? We've, we've purposely made it that way, although it's, we've changed over what, 200 times, I think?

**JOHN LENICH:** You said that-- uh, that, that I couldn't tell you, Senator.

**BLOOD:** I, I like to research things. Um, so-- but doesn't it already say that-- I mean, aren't "only" citizens all citizens, right? We're not talking about residents, we're talking about citizens. So why-- doesn't it already say what we're saying we want to say?

**JOHN LENICH:** Well, again, I think, you know, you can read that constitutional provision as simply acknowledging that citizens have the right to vote. Leaving it silent on whether noncitizens have the right to vote, that's a matter for the Legislature to determine. So I think that's the way you could read it. And I assume, from what I've heard, that Senator Brewer is trying to avoid. But I, I think the-- if you were to say which is the better or the one they should rule? I'd say probably that granting or saying that every citizen could vote means noncitizens can't. But I can sure see how you could build a strong argument that all the Constitution is saying is Legislature, don't touch the right of citizens to vote--

**BLOOD:** Right.

**JOHN LENICH:** --but you can decide whether noncitizens can vote.

**BLOOD:** I mean--

**JOHN LENICH:** And it's a good-- a strong argument too.

**BLOOD:** For, for me, my nonlawyer brain says there is a difference between a resident and a citizen. So that's-- to me, I guess I simplify things probably more than an attorney would, so-- but that was very clear. Thank you for sharing that with me.

**JOHN LENICH:** OK.

**BLOOD:** I appreciate your help.

**JOHN LENICH:** You're welcome.

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**La GRONE:** Thank you, Senator Blood. Are there any additional questions? I do have one, Professor Lenich, since I can't let statutory interpretation go without commenting on canons of interpretation, as it's my favorite subject. But um--

**JOHN LENICH:** I hope-- do you know the Latin terms? Because I--

**La GRONE:** I don't, actually.

**JOHN LENICH:** I didn't bring them with me.

**La GRONE:** I'm actually--

**JOHN LENICH:** I was afraid you were going to quiz me.

**La GRONE:** --rather rusty, um, on, on the Latin. But the canon that talks about something mentioning one thing and then being silent on another and therefore--

**JOHN LENICH:** Well, yep it, it addresses one manner that's to the exclusion of--

**La GRONE:** The other one, actually.

**JOHN LENICH:** Right.

**La GRONE:** The other canon--

**JOHN LENICH:** The canon, uh, it's all-- sometimes called the canon of the omitted case.

**La GRONE:** Thank you.

**JOHN LENICH:** And then the omitted matter, the idea being that you can't add to what's already there.

**La GRONE:** Apparently, our legal counsel is telling us the Latin is studium generis, so now we have that.

**JOHN LENICH:** [LAUGHTER]

**La GRONE:** But my question is-- that reminds me of another section of election law that, while not in court, the Nebraska Accountability and Disclosure Commission has interpreted that says for-- in the instance of financial disclosures, any contributions over \$250 must be reported. Now the commission has determined that contributions of \$250

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do not have to be reported. So, for as I understand it, that would be the exact same canon and logic that Senator Brewer is trying to avoid being used here. Would that be correct?

**JOHN LENICH:** Yes.

**La GRONE:** Thank you for that. Are there any additional questions? Seeing none, thank you so much for coming down.

**JOHN LENICH:** OK, thank you.

**La GRONE:** Is there any additional neutral testimony? Seeing none, Senator Brewer, you are welcome to close.

**BREWER:** I must say that I never dreamed that I would be listening to lawyers geek out on something I did but--

[LAUGHTER]

**KOLOWSKI:** There's always a first.

**BREWER:** --there's always a first. Thank you, Vice Chair La Grone. Qualifications for voters are already in Nebraska's Constitution and already states U.S. citizenship, the age of 18 or older by Election Day, residency in the place where you're voting. I didn't think this was that complicated of a proposal, but after the last few minutes here, I decided that it may be a little more complicated than I gave it credit for in the beginning. It just simply shores up the standard that is already in the books. LR283CA addresses the real threat on the horizon. More than a dozen states have seen proposals to change the law to let noncitizens vote or to let children vote. This proposal-- proposed constitutional amendment does not deprive any Nebraska-- person in Nebraska of their legal right to vote. This change would make sure the Constitution does what it always was intended to do: protect our elections from foreign interference, make sure elections are decided by adults, make sure that people who vote here actually live here. I think the people of Nebraska expect us to protect these elections. This is simply letting the people of Nebraska have a say with this amendment. Thank you and I'll be glad to answer any questions.

**HILGERS:** Thank you, Senator Brewer. Senator La Grone had to go to introduce a bill, so I've got the gavel. Are there any last questions? Seeing none, we have some letters. We received four from proponents: Vicki Hahn from Omaha, Judy Zabel from Lincoln, Marie Zilli from

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Bellevue, and Karin Menghini from Omaha; one letter from an opponent, the League of Women Voters of Lincoln-Lancaster County; and one neutral letter from Mikayla Findlay from Lincoln, Nebraska. And that it-- that is it. That closes our hearing on LRCA283 [SIC] and our hearing for the day.