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Government, Military and Veterans Affairs Committee
February 10, 2017

HUNTER SHELLHASE: Oh, perfect. Perfect. Now bear with me. Hello. Thank you for the floor, Senator Murante and fellow Senators. My name is Hunter Shellhase, H-u-n-t-e-r S-h-e-l-l-h-a-s-e. This is my first time testifying for a committee at any level, however, I felt compelled to come here today. I'm a concerned citizen of northeast Lincoln. I'm a husband and a father. With my wife, Kren, we have two beautiful little girls, Presley (phonetic), who is seven or almost eight, as she would tell you, and Deveni (phonetic), who is three. And they are everything to me. They are the reason I wake up in the morning. They are the reason I go to bed exhausted and my motivation for every second in between. Excuse me. Their health and safety are my most important responsibility. But as state lawmakers, their health and safety are in your part...are, in part, your responsibility as well. And that's why I'm here today. I want to work with you to keep my children safe. I want to take a look at LB68. For the life of me, I cannot figure out how this makes any sense. Why were you trying to strip a layer of safety and security away from my children? That is the only result of LB68. It does not protect my family. In fact, it stifles the ability of myself and my local lawmakers to protect my family. It silences the democratic process at the city level and it removes all current local ordinances, laws voted and approved by your fellow Nebraskans. Please don't silence democracy. Please help me keep Presley and Deveni safe and vote no to LB68. Thank you for your time. [LB68]

SENATOR MURANTE: And thank you for your testimony. Are there any questions? Seeing none, thank you very much for coming down today. Welcome back. [LB68]

LYNN REX: (Exhibits 8 and 9) Thank you. Senator Murante, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities, L-y-n-n R-e-x. What's being passed out to you is a letter from the mayor of Lincoln, Nebraska, in opposition to this measure. In addition, a letter from the Police Chiefs Association of Nebraska, referred to as PCAN. I'm not here today to testify on behalf of Mayor Beutler specifically or PCAN, but I do want to refer some of the information in their letters for your review. First and foremost, I do want to say we, too, think that it's possible to work out amendments to accommodate most of our critically important issues here today, and we appreciate Senator Hilgers' willingness to meet with us to do so. With that, I would like to say first and foremost in response to you, Senator, there is a federal requirement in terms of interstate travel, from state to state, and one of the amendments that we think needs to apply here that needs to happen in Nebraska law is to apply

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that same standard for intrastate travel. That being said, one does need to have exceptions for retired law enforcement officers, law enforcement officers, concealed carry permitholders, so they don't have to take the bullets out in between places, if you will. In addition, I do want to emphasize a few things, as soon as I know the letters...you are all in receipt of those letters, to emphasize the unprecedented nature of some of the provisions of this measure and why we strongly oppose it in its current form. With that, I think you now all have these letters and I want to just, first of all, have you reference the letter from Mayor Beutler. Again, I'm not representing the city of Lincoln but I do want you to have this letter. I'm just going to highlight some of the areas. Local control: If you look at this element, constituents in different areas of the state may believe that additional ordinances are appropriate and necessary to address the issues faced by their community. I think that the testifier before me representing the Omaha Police Officers Association underscores that what happens in Omaha, Nebraska, is fundamentally different, in terms of gang violence and everything else, than what may happen in whether it is Gering or Hemingford, Nebraska, or any other place in the state of Nebraska, maybe not Lincoln. The scope of this appears to prevent municipalities from prohibiting guns in places like city hall, city agency buildings, courthouses, or city parks, while state agencies could prohibit the possession of firearms in the State Capitol, state buildings, state parks, and other similar locations. Again, what applies to local governments would not apply to you. We think it's important to protect those citizens when they are in municipal facilities as well. Law enforcement: Clearly would impact the ability of local police to enforce state gun laws and/or crimes involving guns. We have some real significant concerns about that. And this language has been looked at from city attorneys all across the state of Nebraska that do have these same kinds of concerns. It's not just related to Mayor Beutler and his concerns. And then I think, too, the potential litigation, absolutely unprecedented to set a new course of litigation against municipalities outside the Political Subdivision Tort Claims Act. Again, it would not apply to counties, it would not even apply to the state of Nebraska, but unprecedented in terms of allowing to have this kind of litigation. If you look on page 15 of this bill, it talks about who could actually sue. Page 15, line 18, "A person adversely affected by an ordinance." And I'm just going to paraphrase. Line 18, "A person adversely affected by an ordinance," line 20, "may file an action." Then let's talk about who's adversely affected. Line 26, "The person is an individual who may legally possess a firearm...and the individual is or was subject to the ordinance." Going down to lines 30-31, "was physically present within the boundaries of the city or village for any reason." And then my

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personal favorite is on page 16, line 3, "The person is a membership organization." What's that constitute? Two people. So the "Senator John Murante and Lynn Rex Organization for Gun Owners," we could sue anybody in the state of Nebraska, any municipality in the state of Nebraska, whether we've ever been there or not, wouldn't matter. And then look at what is at stake on lines 11, 12, and 13: actual damages, including consequential damages, court costs, reasonable attorney fees. In addition, I just want to underscore the letter from Chief Bill Mizner. He is the president of the Police Chiefs Association of Nebraska. He wished he could be here today, wasn't able to do so. And I will just quickly read you his one-sentence letter: The Police Chiefs Association of Nebraska wishes to respectfully oppose LB68. While we respect the Second Amendment, we recognize that communities need to have the ability to identify local problems and develop local responses to those problems. We also disagree with the establishment of a standard for individuals and organizations to have standing to sue municipalities, and my parenthesis is, in such an unprecedented way from counties or even the state of Nebraska itself. As you know, there's a State Political Subdivision Tort Claims Act, there is a Political Subdivision Tort Claims Act. This isolates municipalities for the purposes of lawsuits and lawsuits and more lawsuits. So with that, I just first of all again want to go back and say we appreciate Senator Hilgers being willing to meet with us and talk about some of these issues. I appreciate that when Senator...or, pardon me, Sheriff, Sheriff Wagner--I wouldn't want to give him a demotion in pay (laugh)--when Sheriff Wagner testified in support of this bill he did note, and I'm going to quote this, "LB68 may prohibit cities and counties from enacting an ordinance or rule that would prohibit someone from bringing an open carry firearm into any government building." That obviously is a concern of ours as well. I'd be happy to respond to any questions you might have and again appreciate the willingness to testify today. [LB68]

SENATOR MURANTE: Thank you very much for your testimony. Senator Brewer. [LB68]

SENATOR BREWER: Thank you, Chairman. All right, let's back up a little. Understand that the concerns I'm getting are if you're from Valentine, Nebraska, and you come to Lincoln, Nebraska, and you establish laws that are going to be more restrictive, you could easily commit either a misdemeanor or a felony and never know that that restriction is there. So by having this patchwork, how do you keep from committing a crime without knowing it because of each town deciding whatever combination of laws that they want to establish? [LB68]

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LYNN REX: Well, Senator, I do want to differentiate between traveling from place to place, which relates to what Senator Blood's question is, which is making sure that the same laws that apply interstate would apply intrastate. So there's absolutely no problem if you would look at that kind of an amendment, which is very similar to AM1915 that Senator Morfeld offered to Senator Ebke's bill, LB289, last year with some amendments needed for law enforcement/retired, and concealed carry permitholders. That being said, quite frankly, I think it gets to the issue that the individual from the Omaha Police Officers Association noted, which is that police officers exercise a great deal of discretion and common sense, in my view. And indeed I will tell you that I don't think that they're out trying to find individuals to do that. So I don't believe that this, quote, patchwork has any negative implications for individuals. And it gets to the issue as well that Senator Blood noted which is where are these individuals that have been unduly prosecuted? Where are those individuals, because we don't see them? We see them in Omaha with gang members where if they don't register--and of course they're not going to register--that that is one way in which Omaha police officers were able to hold individuals that, in fact, have not registered as a way to get them off the streets and maybe prevent some repeat offenses that very night, so things of that nature. But we do think that there are ways to address the very issue you're raising through some amendments, and we're prepared to look at those and work with Senator Hilgers. [LB68]

SENATOR BREWER: And did I hear you right that you wanted to change the rules for intrastate to be the same as interstate? [LB68]

LYNN REX: Right now when you go from state to state, you're able to do that and there are certain rules that apply to concealed carry permitholders, certain rules that apply to others as well. For example, retired law enforcement officers and law enforcement officers are allowed to do that. What I'm suggesting to you is an amendment that would say the interstate, from city to city to city, would...the same thing would apply. So when you're passing through Sarpy County and passing from Gretna, Papillion, La Vista, and you blink your eyes and you're in one city or another, that you don't have to worry about whether or not by passing through or transporting or you're going to go hunting, you leave Lincoln, Nebraska, to go up to Scottsbluff or the Panhandle, you don't have to worry when you're doing that, passing through one jurisdiction to

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another. With certain exceptions, the AM1915 to LB289 last year would accommodate that.
[LB68]

SENATOR BREWER: Okay. Thank you. [LB68]

LYNN REX: You're welcome. [LB68]

SENATOR MURANTE: Thank you, Senator Brewer. Any additional questions? Senator Briese.
[LB68]

SENATOR BRIESE: Thank you, Senator. Thank you for being here. [LB68]

LYNN REX: You're welcome. [LB68]

SENATOR BRIESE: I, too, noticed on line 3 standing given to a membership organization to sue, line 3 of (page) 16. But the two people you mentioned there, they have to be adversely affected by the statute though or by the ordinance also, correct,... [LB68]

LYNN REX: Well, but adversely affected, that's... [LB68]

SENATOR BRIESE: ...as per (2)(b)(i) (inaudible). [LB68]

LYNN REX: Yes, Senator, that's the issue. Because if you look on page 15, line 18, who is an person adversely affected? Line 18: A person adversely affected by file an action, that's on line 20. And then let's see who is adversely affected. Line 24, a person is adversely affected for purposes of this act if, and there's a (i) and there's a (ii). So let's look at the small (i) on line 26. The person is an individual who may legally possess a firearm, and I'm just picking out some of the words here, and the individual is or was subject to the ordinance, measure, enactment, rule, or policy of the city or village. Then you go on and continue and it says if the...line 30, if the individual is or was physically present within the boundaries of the city or village for any reason. But then go to the next page and this is the one that is absolutely open-ended, page 16, lines 3 through 7. The person is a membership organization that includes two or more people. This is a

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person adversely affected. That's why you could have someone from Texas suing any city in the state of Nebraska, whether or not they've ever been in Nebraska, whether or not they ever intend to come to Nebraska. This gives them standing to sue. They would be, quote, defined by statute, Senator, as being, quote, adversely affected--two individuals who say, according to line 4 and 5, basically the person is a membership organization that includes two or more individuals dedicated in whole or in part to protecting the rights of persons to possess, own or use firearms for competitive, sporting, defensive, or other lawful purposes. And again, two individuals, and that means anyplace in this country. [LB68]

SENATOR BRIESE: It has, per lines 28 through 30 on page 35 (sic), they had to have been physically present in the boundaries of the city or village... [LB68]

LYNN REX: No, that... [LB68]

SENATOR BRIESE: ...in which the ordinance was applied to that (inaudible). [LB68]

LYNN REX: No, because what...the way that you read that is that everything under the small (i) relates to that person. There's two categories of adversely affected. One is the person who's actually there and then you go to the next page, the (ii) that starts on line 3, and there you have a membership organization. So "persons" would be defined as either an individual or a membership organization, a membership organization of two or more people. And that is why there were cities in Pennsylvania, I think the previous testifier noted, that were being...or cities, I'm sorry, in Pennsylvania that were being sued by individuals in Texas. The same thing could happen here. This sets up an unprecedented level of standing for individuals to sue, and more...and even as important, outside of the Political Subdivision Tort Claims Act, outside of the...and outside of the State Political Subdivision Tort Claims Act. So counties, state of Nebraska, you would not be subject to the same types of litigation to which you would subject municipalities. And I would say, on its face, LB68 voids 11 municipal ordinances just in the city of Lincoln. [LB68]

SENATOR BRIESE: Okay. [LB68]

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LYNN REX: Thanks for your question. [LB68]

SENATOR BRIESE: A follow-up question. How many ordinances in Omaha would be voided by it? [LB68]

LYNN REX: I know the registration ordinance and I would have to verify. And I will do that and get back to you on their number of ordinances, Senator. [LB68]

SENATOR BRIESE: Okay. Thank you. [LB68]

LYNN REX: You're welcome. Thank you for the questions. [LB68]

SENATOR MURANTE: Thank you. Any additional questions? Seeing none, thanks for your testimony. [LB68]

LYNN REX: Thanks for your consideration and, again, thanks for Senator Hilgers being willing to meet with us. Thank you. [LB68]

SENATOR MURANTE: Thank you. Welcome. [LB68]

CHELSEA LEMBURG: (Exhibit 10) Hi there. My name is Chelsea Lemburg. I'm a student at UNL. My name is spelled C-h-e-l-s-e-a L-e-m-b-u-r-g. I'd like to start out by saying that I am not a member of the NRA. The NRA does not represent me and my city councilmembers do. Now this bill originated in the Judiciary Committee on January 5. The Judiciary Committee specifically handles those bills which deal with civil procedure, civil law, handgun permits, and the possession and use of guns. In my view, LB68 very clearly belongs in the Judiciary Committee due to its subject matter involving firearms. It was there before. Instead, it was purposefully routed to the Government, Military and Veterans Affairs Committee four days after its introduction in an attempt to hurry it through faster and easier than in previous attempts with firearm preemption bills. The movement of this bill from one committee which would be critical of it to...largely critical, to another which would not be is a movement made for glaringly obvious reasons. It is worth noting that preemption bills themselves, as a general rule, sometimes