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The Nebraska Unicameral and Its Lasting Benefits

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The Nebraska Unicameral and Its Lasting Benefits

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I. INTRODUCTION

The word Nebraska conjures up images of college football and the Unicameral. Each is a notable institution with an almost mystical

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quality. That each has been successful for so long is remarkable. It is easy to explain the Huskers' accomplishments—great coaching and recruiting. But, the reasons for the Unicameral's prosperity are less apparent. Now sixty years old, Nebraskans seem to have accepted the Unicameral, but its one house and nonpartisan features remain unique among legislatures in the United States.

This Article will not discuss the success of Nebraska football, but it will address the baffling nature of the nonpartisan Nebraska Unicameral, how it came to be, why and how it works, why it is superior to partisan bicameral legislatures, and why it will remain the sole nonpartisan unicameral in the nation.¹ Much scholarship has addressed the Nebraska Unicameral from the perspective of those who helped to create it,² were part of its process,³ and have studied it.⁴ Yet, little has been written about the benefits of a nonpartisan system in a one-house legislature. This Article attempts to fill that void and explain why the nonpartisan unicameral system is preferable.

Throughout its relatively short history, attempts have been made to return the Unicameral to a partisan organization. This is true in recent years.⁵ On these occasions, the political parties heat up the rhetoric, urging that committee chairpersons be elected by partisan

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1. Nebraska is the only state unicameral. Many countries have unicameral legislatures, but all are partisan: Aruba, Benin, Costa Rica, Denmark, Estonia, Republic of Ghana, Guam, Guyana, Moldova, Hungary, Indonesia, Korea, State of Latvia, Lebanon, Liberia, Lithuania, Macedonia, Malta, Marshall Islands, Montenegro, Micronesia, Netherlands, New Zealand, Norway, Nova Scotia, Panama, Singapore, Suriname, Turkey, Turkish Republic of Northern Cyprus, and Zaire. Minnesota had a statutory nonpartisan bicameral legislature for nearly fifty years, but in the early 1970s, the legislature switched to a partisan system. ROBERT SITTIG, *THE NEBRASKA UNICAMERAL AFTER FIFTY YEARS* 31 (1986).
 2. John P. Senning, former Professor of Political Science, University of Nebraska, wrote *The One-House Legislature* in 1936, two years after the new system was adopted. Senning was instrumental in drafting the language of the ballot initiative. Included is a foreword by Senator George W. Norris. JOHN P. SENNING, *THE ONE-HOUSE LEGISLATURE* (1937).
 3. Hugo F. Srb, *The Unicameral Legislature—a Successful Innovation*, 40 NEB. L. REV. 626 (1961). Srb was a member of the Legislature from 1931 to 1933. He also served as the first Clerk of the Nebraska Unicameral, holding that position for 32 years.
 4. See, e.g., SITTIG, *supra* note 1; *NONPARTISANSHIP IN THE LEGISLATIVE PROCESS* (John C. Comer & James B. Johnson eds., 1978).
 5. SITTIG, *supra* note 1. One such attempt was made this year. See Bill Hord, *Senator Witek Playing Down Party Ties in Speaker Race*, OMAHA WORLD HERALD, Jan. 8, 1997, at 6; Bill Hord et al., *Speaker Post Goes Again to Withem*, OMAHA WORLD HERALD, Jan. 8, 1997, at 8; Bill Hord, *Speaker Race Could Test GOP Clout*, OMAHA WORLD HERALD, Jan. 4, 1997, at 11; Bill Hord, *State Senators Criticize GOP Pressure: Three Say Party Went Too Far in Support of Senator Witek's Bid for Speaker's Post Committee Chairman*, OMAHA WORLD HERALD, Jan. 9, 1997, at 3; *A Victory for Independence*, OMAHA WORLD HERALD, Jan. 10, 1997, at 1. See also Patrick J. O'Donnell, *A Unicameral Legislature*, J. AM. SOC'Y LEGIS. CLERKS & SECRETARIES 3 (Spring 1996).

coalitions, that the Speaker be determined by the majority party,⁶ or that the entire operation be changed in the Nebraska Constitution to a partisan process.⁷ Despite these efforts, the members of the Unicameral, as they have done for the past sixty years, ignore these pleas and elect the member they believe will best serve the body as a leader—often a Democrat, despite a Republican majority.⁸ While many senators join the Legislature with strong partisan ties and the belief that a nonpartisan system is foolish, within a short time they become true believers in the one-house, nonpartisan process. Ask any senator why they keep the system and you will hear the same answer—it works.

II. BACKGROUND

United States Senator George Norris is credited with creating the Nebraska Unicameral. After five terms in the United States House of Representatives and five terms in the United States Senate as both a Republican and an Independent, Norris was passionate that a nonpartisan unicameral was the only way to ensure that government was accountable to the people.

While a unicameral form of government was his passion, it was not originally Norris' idea. Unicameralism was often advocated at the turn of the nineteenth century.⁹ An initiative effort and a constitutional convention to eliminate one of two then-existing houses were each attempted in Nebraska in reaction to nonresponsive legislatures. Each effort failed.¹⁰ While there was much interest in Norris' idea,

6. See *infra* section III.C.

7. The Nebraska Constitution provides that members shall be elected on a nonpartisan basis. NEB. CONST. art. III, § 7.

8. As it has done so many times over the years, history has repeated itself. In the first session of the Unicameral, the members selected a Republican, Charles Warner, as Speaker, despite a Democratic majority. *Nebraska: Only 43 Lawmakers Meet in Norris' Single House*, NEWSWEEK, Jan. 16, 1937, at 10 [hereinafter *Norris' Single House*]. In 1997, the Unicameral, with a Republican majority, elected Ron Withem, a Democrat, as Speaker.

9. George Norris did not invent the Unicameral. Three of the original thirteen states, Pennsylvania, Vermont, and Georgia, created one-house legislatures in their first constitutions adopted during the American Revolution. Each was coupled with a council or board of censors that acted more or less as a separate house and generally complicated politics. Georgia kept the arrangement for 12 years, Pennsylvania for 14 years, and Vermont until 1836. *Nebraska R.F.D. to F.D.R.*, TIME MAG., Jan. 11, 1937, at 16. By the early 1900s, the concept of unicameralism started percolating in several states. The Governors of Arizona, California, Kansas, Minnesota, Washington, and South Dakota recommended the idea. The concept was placed on the ballot, but was defeated in Arizona, Oklahoma, and Oregon. In 1915, a joint legislative committee in Nebraska recommended the idea. It died for lack of interest. Jim McKee, *Reasons Behind Unicameral Legislature Appear to Stand*, LINCOLN J. STAR, June 5, 1995, at 7. See also *Norris' Single House*, *supra* note 3, at 10.

10. SIRTIG, *supra* note 1, at 3-5.

there was little or no support for it. Spurred by these losses, Norris became actively involved in the debate in 1923 when he published his famous expose in the *New York Times*, "A Model State Legislature."¹¹ Norris advocated more than just a one-house legislature. He firmly believed partisan politics were detrimental to the democratic process and was vocal in promoting his view of partisan politics.¹²

Often using his experiences to explain his convictions, Norris would tell a story from his first term as a Congressman from Nebraska. He had been assigned by the Republican Speaker of the House to the House Committee on Public Grounds and Buildings. At the initial meeting of the committee, discussions ensued about a public building bill. It appeared obvious to everyone, except Norris, that the Speaker would make the decision as to whether or not a bill would be introduced. A motion to seek a conference with the Speaker to obtain his permission to introduce the bill passed unanimously. Norris was flabbergasted. The Speaker was not a member of the committee and was not informed of the issues at stake. He could not understand why the Speaker should play a role in the matter, much less determine the final decision. It soon became crystal clear to Norris that the Speaker's power was tied to his partisan power to appoint committee members and to bestow favors on his friends.¹³ Norris later stated,

I believe the light dawned upon me and I began to see for the first time that the Republican Party was subject to influences similar to those that I believed controlled the Democratic Party; and soon I learned there was no difference between the parties. . . . Both of them were machine-controlled.¹⁴

Norris discovered that blind partisanship was the way of life in Congress as well. He was asked to follow congressional leadership when his conscience told him otherwise, which led to illogical positions.¹⁵ Yet, the system worked because it often resulted in legislative favors and appointments. To get along, you had to go along; and Norris could not stomach a system that played such games hidden from public view. He held his ground and frequently ignored party leadership.¹⁶ As a result, he was not recognized with congressional appointments or pork. He soon became famous, however, for his radical departure from the norm.¹⁷

11. George W. Norris, *A Model State Legislature*, reprinted in *One Branch Legislature For States Would Improve Results*, N.Y. TIMES, Jan. 28, 1923, at 12 [hereinafter Norris, *One Branch Legislature*].

12. GEORGE W. NORRIS, FIGHTING LIBERAL 92-93 (1945).

13. *Id.* at 95-96.

14. *Id.* at 96. The bill from the committee was approved by the Speaker and passed easily with virtually no debate. It was full of pork for those who supported it, and all who were faithful were rewarded. *Id.* at 96-97.

15. *Id.*

16. *Id.* at 97.

17. *Id.* Norris lost any standing he had with party powers when he bucked the caucus system in the House. It was the rule of the day that when the party cau-

In 1934, Colonel John G. Maher, a Lincoln insurance man and a friend and supporter of Norris, called a meeting to discuss an initiative effort to create a unicameral legislature. Norris attended, as did 800 others, including a political science professor, John P. Senning, and former Congressman John Norton.¹⁸ It was from this meeting that Norris embarked on what he later described as a journey to create a legacy that would benefit Nebraskans and their children long after he was dead.¹⁹ Teams were formed to garner signatures and support. Still, the idea did not seem to take hold. Circulators were so hard to find that the group ended up paying people to gather signatures—a nickel per name.²⁰

The issue was considered all but dead when Norris arrived back in the state only weeks before the election.²¹ Without hesitation, he headed out across the state, paying his own way, to sell the idea.²² His arguments were threefold: (1) the fundamental principle of two houses was no longer valid; (2) the Conference Committee in essence created a third house that was secretive and antidemocratic; and (3) a nonpartisan legislature would be more open and less prone to special interests, and less expensive.²³

First, Norris argued the fundamental principle of a two-house system was not valid for state government. The legacy of two houses originated in England, where the House of Lords was created to protect the rich aristocracy from the commoners in the House of Com-

cused, the members of that party absolutely and automatically would follow the decision of the caucus. Norris announced at one such caucus that he would not be bound by any decision that did not "agree with my conscientious convictions." During his five terms in the House of Representatives, he created such a backlash to the caucus that it eventually was abolished. *Id.*

In 1910, Republican Speaker of the House, Joe Cannon, was a powerful partisan. Waiting for the opportune moment in a debate, Norris pulled a tattered piece of paper from his pocket that contained a resolution that effectively would destroy the Speaker's power. When the Speaker declared the resolution out of order, Norris appealed to the House. He rallied dissident Republicans and members of the opposing party. Norris waged debate on the resolution for 36 solid hours without sleep. When the smoke cleared and the votes were counted, Norris had won. This effort made George Norris a household name in political circles. *Nebraska R.F.D. to F.D.R., supra note 9, at 16-18.*

18. NORRIS, *supra* note 12, at 345.

19. *Id.*

20. *Id.* at 348.

21. RICHARD L. NEUBERGER & STEPHEN B. KAHN, INTEGRITY: THE LIFE OF GEORGE W. NORRIS 284 (1937).

22. *Id.*

23. See *Both Sides of One-House Plan are Discussed*, NORFOLK DAILY NEWS, Oct. 15, 1934, at 2; *One House Amendment Debated at Federation*, FAIRBURY J., Oct. 11, 1934, at 7; *Partisanship Evil is Flayed by Norris in Talk Friday Evening*, SIDNEY TEL., Oct. 23, 1934, at 1 [hereinafter *Partisanship Evil*].

mons.²⁴ Likewise, the American federal system, based on the English version, was constructed as a check and balance. The Senate originally was elected by the state legislatures²⁵ to represent the states or property. The House of Representatives was elected by the people to represent the individual and was the only opportunity at the time for a direct vote by the people.²⁶ When the states drafted their constitutions, they simply followed the federal model. Interestingly, most major cities also followed the federal model and designed two council systems.²⁷

Norris had no reverence for the time-entrenched system that originally was premised on a caste system. "Assuming two such classes exist and that their interests conflict, there is some reason for a two-house legislature, but in this country we have no such classes and the constitutions of our various States are built upon the idea that there is but one class."²⁸ He wanted the state to be run like a business, and no business would have two boards of directors—one simply to check on the work of the other. Two houses simply served to obscure the process from the public.²⁹ At the time, the Supreme Court had not yet ruled that the "one man, one vote" doctrine applied to state legislatures.³⁰ It was believed, however, that in most states the house and senate generally were of the same composition. "Each is composed of men elected in the same way having the same jurisdiction."³¹

Second, Norris contended that the Conference Committee was secretive, antidemocratic, and the greatest obstacle to public understanding and input.³² The Conference Committee is the body that is

24. NEUBERGER & KAHN, *supra* note 21, at 277-78. See also JOURNAL OF THE NEBRASKA CONSTITUTIONAL CONVENTION 2126-27 (Clyde H. Bernard ed., 1921).

25. U.S. CONST. art. I, § 3; NEUBERGER & KAHN, *supra* note 21, at 277-78. But see U.S. CONST. art. XVII.

26. Originally, the President was not elected directly by popular vote of the people, but instead by the electoral college. U.S. CONST. art. II, § 1. Senator Norris advocated eliminating the electoral college. NEUBERGER & KAHN, *supra* note 21, at 185.

27. ALVIN WALTER JOHNSON, THE UNICAMERAL LEGISLATURE 93-94 (1938); Saul Levmore, *Bicameralism: When Are Two Decisions Better Than One?*, 12 INT'L REV. L. & ECON. 145, 161 n.43 (1992). See also *Partisanship Evil*, *supra* note 23. By 1911, most large cities recognized that two councils were unwieldy and unnecessary and thus changed to a one council system. *Unicameral System Praised by Speaker*, NEB. CITY NEWS, Oct. 12, 1934, at 1.

28. NEUBERGER & KAHN, *supra* note 21, at 278.

29. Levmore, *supra* note 27, at 161 n.43.

30. *Grey v. Sanders*, 372 U.S. 367 (1963).

31. NEUBERGER & KAHN, *supra* note 21, at 278.

32. Norris, *One Branch Legislature*, *supra* note 11, at 12. When a bill is first passed by each House, differences are inevitable. When that occurs, the bills are reported to the Conference Committee. At that time, the Conference Committee consisted of six men, three from the House and three from the Senate. The committee could amend the bill in any manner it wished, change it completely, add pork, or simply reconcile provisions. It was in the Conference Committee that

necessary to ensure the two houses can reach agreement. As all votes in conference were secret, Norris maintained that Conference Committee members frequently used the Conference Committee to hide from their constituents. As a result, other legislators could avoid accountability as well. The Conference Committee wielded great power because anything voted out of conference could not be amended in either house. The representative could vote *for* a measure before conference, but vote *against* it after conference, explaining it simply was not the same bill. Or, he could hope the bill would die in conference and explain to his constituents that although he favored the measure, he simply was unable to vote for it.³³ Responsibility shifted to the unaccountable "third" house—the Conference Committee. The bill would be voted up or down in whatever format the conference determined. Because any number of games could be and often were played in conference, Norris believed that a unicameral would eliminate the evil and pranks of conference.

Third, Norris argued that a nonpartisan, single-house legislature would be more accountable to the public and would be less expensive. The decrease in cost is obvious. If the Unicameral was comprised of twenty to thirty members, as Norris wanted,³⁴ there would be operational and administrative savings. There was debate, however, about how small the new Unicameral should be. The final language of the initiative was a compromise tied to members' salaries. A total salary of \$37,500 would be divided by the total number of senators, which could not be fewer than thirty and not more than fifty members. This result created an incentive to maintain a small body of legislators.³⁵

The openness and accountability of a single house was difficult to explain. Norris contended that a small nonpartisan body actually would represent the public better than two larger bodies.³⁶ The idea seemed counterintuitive. By avoiding ties to party bosses and caucuses through a party structure, elected officials would be accountable only to their constituents. With one body and the consequent elimination of the Conference Committee, the public could follow the

Norris believed "jokers" often were placed in bills and where lobbyists wielded the most power. As only two votes could prevent a bill from emerging out of conference, a lobbyist needed to control only two men. The special interests work behind the scenes and keep the public in the dark. NEUBERGER & KAHN, *supra* note 21, at 278-79.

33. This process actually happened with a municipal power bill before the Nebraska Legislature three times before the bill finally was adopted by a voter initiative. See NORRIS, *supra* note 12, at 352-53.

34. NEUBERGER & KAHN, *supra* note 21, at 280.

35. Nebraska had 133 members in 1934. By eliminating one house, Nebraskans saved the salary and expense of nearly 100 members, the cost of two records, two sets of legislation and records, not to mention the savings from eliminating each of the elections. *Partisanship Evil*, *supra* note 23, at 1.

36. JOHNSON, *supra* note 27, at 133.

process and see exactly how a senator voted on a matter. Senators would be unable to hide their actions in a maze of procedure because they could not use committees to obscure their true intentions. In addition, Norris believed special interests generally supported the banner of partisanship. While the nonpartisan process would simplify lobbyists' efforts, if a senator followed a special interest, his action would be visible to the public.

If party politics were eliminated, Norris argued, the public could elect members according to their qualifications without being blinded by political party issues.³⁷ The voter ought to be able to elect a senator based on the individual's qualifications and not based on a party's position on a question of national importance.³⁸ Most importantly, members elected in a nonpartisan system would have no incentive to follow the dictates of party "bosses." Because the power would belong equally to each senator without regard to party discipline or seniority, senators no longer would be constrained to follow secret decisions, to fall in line to receive favors, or to have their bills introduced.

Nonpartisan elections were not entirely new to Nebraska. Elections of judges, school boards members, municipal officials, and university regents were all nonpartisan.³⁹ The reason Nebraska had so many nonpartisan offices was to secure independence from a governor who at times could exert "an undesirable extent of control."⁴⁰

37. *Partisanship Evil*, *supra* note 23.

38. The nonpartisan feature of Nebraska's unicameral initiative was unique to Norris. No other state's effort contained the provision, nor did anyone quite understand Norris' strong abhorrence to partisanism. Shortly after proposing the concept, he attempted to explain it to his friend William Jennings Bryan. Norris contended that while he and Bryan were from different political aisles, they nevertheless often agreed on issues. "Do you remember," Norris asked Bryan, "the campaign for State Railway Commissioner when the Democratic candidate did not agree with your views at all, while the Republican candidate did?" "Yes, Mr. Senator, I do," Bryan replied. "I do not think partisan politics should apply to that particular office. But, if they do, I will stand by my fellow Democrat in the campaign, and will feel free to denounce him unmercifully once he is elected." NEUBERGER & KAHN, *supra* note 21, at 283.

Norris later stated,

Mr Bryan's greatest weakness was his intense partisanship. From a party standpoint, this may be considered one of his best attributes, but upon a high, patriotic ground, the plane on which to judge him, it was a weakness that could hardly be imagined to exist within the heart and soul of a man who was so intensely patriotic and courageous in fighting for what he believed to be right. In this respect he had the attributes of many of the leaders in the political parties—a loyalty to party that often conflicts with the higher duty to country.

Id.

39. NEB. REV. STAT. § 32-525 (Reissue 1996); JOHNSON, *supra* note 27, at 134.

40. JOHNSON, *supra* note 27, at 134.

Many arguments were leveled against the plan.⁴¹ The agricultural community feared it would lose its representation if the number of members was small. A one-house legislature would simplify and facilitate the passage of more legislation due to a lack of check and balance. The nonpartisan nature would allow special interests to dominate because parties would not be readily available to keep them clean. Additionally, it was argued that the measure would increase taxes.⁴²

A group calling themselves the Nebraska Representative Government Defense Organization banded together to oppose Norris.⁴³ It feared that without the check and balance of the two-party system, corruption, poorly reasoned legislation, and indifference would result. It was simply "un-American."⁴⁴ The body would "be composed in all probability, mostly of lawyers."⁴⁵ Most of all, the group argued, there was no reason to do it. No other state had done it. The old system worked just fine.⁴⁶

Despite the strong opposition and the poorly organized campaign, Norris' efforts carried the day. When the ballots were cast and counted, the unicameral initiative won overwhelmingly. The measure was "rejected in only 9 out of 93 counties, and in only 73 out of 2,029 precincts."⁴⁷

III. WHY AND HOW THE UNICAMERAL WORKS

While states initially expressed a flurry of interest in the idea of a one-house legislature, the idea has not taken hold beyond Nebraska.⁴⁸ Nevertheless, curiosity about the lone unicameral continues today. When the topic of Nebraska's unicameral legislature comes up in conversation with office holders in other states, they cannot comprehend how the system can work. The following questions are most commonly asked: Is it truly nonpartisan? How is the leadership elected? Who

41. With the exception of the *Lincoln Star*, the *Hastings Tribune*, and a "half of dozen weeklies," almost all 440 newspapers in the state opposed the initiative. NORRIS, *supra* note 12, at 348-49. See also SENNING, *supra* note 2, at 59. The *Omaha World Herald* ran nine, full-length editorials opposing the effort in the last seven weeks of the campaign. NORRIS, *supra* note 12, at 348-49.

42. SENNING, *supra* note 2, at 58. No explanation was given for the belief that taxes would increase.

43. *Id.*

44. *Id.*

45. *The Risk Is Too Great*, OMAHA WORLD HERALD, Sept. 26, 1934, at 8.

46. *Id.*

47. SENNING, *supra* note 2, at 60. The final vote count was 286,086 for and 193,152 against. It has been argued that two other ballot measures affected the outcome, including measures to repeal prohibition and to allow pari-mutuel gaming. The pari-mutuel proposition prevailed by a vote of 251,111 to 187,455. Prohibition was repealed by a vote of 328,074 to 318,107. SENNING, *supra* note 2, at 60-61.

48. See *infra* Part V.

introduces bills? How is leadership determined? What about the lobby? In short, outsiders simply disbelieve that a one-house legislature can function with any success. What follows is an analysis of the process of the Nebraska Unicameral.

A. Organization

The Nebraska Unicameral is organized much like the senate of a two-house system. The Lieutenant Governor presides over the Legislature as the President of the Legislature. The Speaker serves as President in the Lieutenant Governor's absence.⁴⁹ The Speaker, who is elected by secret ballot of all the members, sets the daily agenda, determines the order of debate on bills, and generally keeps the business of the Legislature moving.⁵⁰ While external influences tend to push toward a partisan influence in the selection of the Speaker,⁵¹ the body tends to ignore such influence and selects the person who is most likely to move the agenda and build coalitions.⁵²

In a nonpartisan system in which the leadership is elected by secret ballot and the Speaker cannot curry favors by granting leadership opportunities or distributing "pork,"⁵³ the Speaker cannot demand blind following. While the Speaker has the power to "encourage" senators to vote with him, his power to reward or return favors by granting leadership positions or special favors is vastly reduced. Instead, the Speaker must synchronize "the efforts of nearly fifty unaffiliated senators who tend to pursue individualistic goals."⁵⁴ Rather than wielding partisan influence, the Speaker builds consensus through the power of persuasion and logic and the use of the calendar. As Norris wanted, power "does not rest in the hands of one man or several men, but in the power of reason and common sense."⁵⁵

The Executive Board is an administrative subcommittee of the entire legislature. This committee is composed of a chairperson, a vice-chairperson, the Speaker, and two members from each of the three current congressional districts.⁵⁶ In addition to handling administrative matters of the legislative staff, the Board is responsible for auditing the books of the Legislature and also operates as the reference

49. NEB. CONST. art. III, § 10; Neb. Unicam. Rule 1, § 5 (1997). While the Lieutenant Governor holds the title of President, most if not all of the authority lies with the Speaker. The Lieutenant Governor can vote only in the case of a tie. NEB. CONST. art. III, § 14.

50. NEB. CONST. art. III, § 1.

51. See sources *supra* note 5.

52. See *supra* note 8. See also 86 CONG. REC. app. at 330 (1940).

53. 86 CONG. REC. 4 (1940).

54. SITTING, *supra* note 1, at 19.

55. 86 CONG. REC. app. at 330 (1940).

56. NEB. REV. STAT. § 50-401.01 (Cum. Supp. 1996). The chairperson of the Appropriations Committee also serves as an ex officio member.

committee for all bills that come before the Legislature.⁵⁷ The power of determining where bills are placed is therefore distributed geographically across the state, and no one person or interest group can singlehandedly manipulate the placement of a bill to a favorable committee.

The Committee on Committees consists of the chairperson and twelve members, three selected from each of the original four congressional districts that were in existence in 1937.⁵⁸ Its job is to assign members to committees.⁵⁹ By requiring even distribution of the committee membership from across the state, the power of less populated areas is expanded, and the authority of the body is more evenly apportioned. The process decreases party influence and favoritism in committee organization. While members may lobby for specific assignments, the procedure decreases the possibility of patronage due to the wide distribution of the decisionmaking authority across the entire geographical boundaries of the state.

Fourteen Standing Committees, which are relatively small in size, include seven to nine members per committee.⁶⁰ The seats of each committee are allocated on the same basis as the Committee on Committees, with two seats coming from each of the four original congressional districts.⁶¹ Senators serve on one to three committees depending on how often the committee convenes.⁶² This distribution, in effect, "substitutes geography for partisanship."⁶³

57. *Id.* See also Neb. Unicam. Rule 3, § 4(e)(i) (1997).

58. Neb. Unicam. Rule 3, § 2(b) (1997). The committee chairperson is selected by the entire membership by secret ballot. *Id.* Rule 1, § 1. While it is not a rule, it is the practice of the Legislature to allocate seats to the Standing Committees on the basis of the four original congressional districts.

59. *Id.* Rule 3, § 2(b). The single exception is the Appropriations Committee, for which members are selected by the Executive Committee. *Id.* § 2(c).

60. Standing Committees include the following: Agriculture, Appropriations, Banking, Commerce and Insurance, Business and Labor, Education, General Affairs, Government, Military and Veterans Affairs, Health and Human Services, Judiciary, Natural Resources, Nebraska Retirement Systems, Revenue, Transportation, and Urban Affairs. The Select Committees include the following: Committee on Committees, Enrollment and Review, Reference, and Rules. Special Committees include the following: Building Maintenance, Education Commission of the States, Executive Board of the Legislative Council, Intergovernmental Cooperation, and Legislative Program Evaluation. *Id.* §§ 3-5. A comparison of committees across the country indicates that Nebraska has an average number of committees compared to other states. NATIONAL CONFERENCE OF STATE LEGISLATURES, INSIDE THE LEGISLATIVE PROCESS 62 (1991).

61. Neb. Unicam. Rule 3, § 2(a) (1997).

62. See *SIRYK*, *supra* note 1, at 21. The exception to this rule is the Appropriation Committee. Its members serve on only one committee because the Appropriations Committee meets five days a week. *Id.*

63. *Id.* at 22.

The chairperson of each Standing Committee is elected by the entire body, again by secret ballot, at the beginning of each biennial legislature.⁶⁴ Any member may be nominated without regard to seniority or party affiliation, thus allowing members to elect the best person for the job. In this process, individuals who have served for only a short time or who happen to belong to the minority party are not excluded from serving in a leadership position.

B. Process

Any senator may introduce legislation.⁶⁵ Approval from the party in power or from the leadership is not required. Legislation often is introduced at the request of constituents or the Governor, or as a result of legislative studies.⁶⁶ While nothing precludes a party from introducing legislation, political parties are not formally recognized. "[T]he rules of the legislature require that all bills receive a public hearing, and that the hearing be preceded by media announcement as to date, time, room, etc."⁶⁷ After the public hearing, the committee holds an executive session to process the legislation. A bill must receive a majority vote of the members of the committee before it is advanced to the floor for consideration.⁶⁸ While executive sessions are closed to the public at large, the media are allowed full access and may report what transpires.⁶⁹ The final committee vote is public.⁷⁰ By allowing media access to the committee deliberations and requiring that the Clerk of the Legislature receive a record of the roll call vote of the final committee action,⁷¹ an open and public process is created.

Once a bill reaches the floor of the Legislature, it must be read four times before passage.⁷² A minimum of three votes must approve the bill before it may be sent to the Governor for enactment into law.⁷³ In the first stage of debate, General File, committee amendments, if any, are considered.⁷⁴ The bill may be amended further by any member

64. Neb. Unicam. Rule 3, § 7 (1997).

65. *Id.* Rule 5, § 4.

66. *Id.* Rule 4, § 3.

67. *Id.* Rule 3, § 13; *STIGG*, *supra* note 1, at 22-23.

68. Neb. Unicam. Rule 3, § 16 (1997). If the Legislature votes to postpone action indefinitely or fails to act on the bill, the Legislature as a whole may vote to "pull" the bill from committee. *Id.* §§ 17, 19.

69. *Id.* § 15(a). *But see* Kim M. Robak, Comment, *Nebraska Unicameral Rule 3, Section 15: To Whom Must the Door Be Open?*, 64 NEB. L. REV. 282 (1985).

70. Neb. Unicam. Rule 3, § 18 (1997).

71. *Id.*

72. O'Donnell, *supra* note 5, at 4.

73. *See generally* Neb. Unicam. Rule 6 (1997). The Governor may either sign the bill into law, allow the bill to become law without his or her signature, or veto the bill. NEB. CONST. art. IV, § 15.

74. Neb. Unicam. Rule 6, § 3 (1997).

garnering a majority of votes.⁷⁵ After the first round of debate, the bill is referred to the Enrollment and Review Committee for "recommendations relative to arrangement, phraseology, and correlation."⁷⁶

The next round of consideration, Select File, allows for a second thorough deliberation of the merits of the bill.⁷⁷ Any enrollment and review amendments are considered and approved or rejected.⁷⁸ Any member again may attempt to amend the bill.⁷⁹ After two opportunities for thorough debate, the bill should be in its final form. It is then advanced to the Enrollment and Review Committee for engrossing.⁸⁰

The last stage of debate, Final Reading, requires the bill to be read in its entirety unless the body votes by a three-fifths majority not to do so.⁸¹ On Final Reading, the bill may not be changed. If amendments are desired, the bill must be returned to Select File for specific amendment.⁸² One legislative day must pass after a bill's reference to Final Reading before members may vote for final passage.⁸³

The potential for hasty or rapid consideration of legislation is reduced by the Nebraska Constitution and the rules of the body. Various checks prevent legislation from advancing too rapidly without consideration by the body. The Constitution requires that a minimum of five days elapse from initial floor consideration (introduction) to Final Reading.⁸⁴ The legislative rules mandate that one legislative day must pass after the bill is referenced from Select File to Final Reading.⁸⁵ A printed copy of the bill in its final form must be available to all members for at least one legislative day prior to a final vote.⁸⁶

With only one house, a Conference Committee is unnecessary. None exists. The entire legislative body, in open deliberation, must vote on any amendments to legislation, which is done in full view of the public. While roll call votes are not required for all amendments, any senator may request a record vote at any time, thus ensuring a complete public record.⁸⁷ The record vote requirement prevents legislators from hiding their votes from the public or forming allegiances to a special interest or the lobby.

75. *Id.*

76. *Id.* § 4.

77. *Id.* § 5.

78. *Id.* § 5(a).

79. *Id.* § 5(b).

80. *Id.* Rule 6.

81. NEB. CONST. art. III, § 14; Neb. Unicam. Rule 6, § 8 (1997).

82. Neb. Unicam. Rule 6, § 8 (1997).

83. *Id.* § 7(b). This one day delay is required pursuant the Nebraska Constitution. NEB. CONST. art. III, § 14.

84. See NEB. CONST. art. III, § 14.

85. Neb. Unicam. Rule 6, § 7(b) (1997).

86. *Id.* § 7(c).

87. NEB. CONST. art. III, § 11. See also Neb. Unicam. Rule 7, § 2 (1997).

C. Partisanship

Committee membership is distributed evenly across the geographical boundaries of the state. Thus, analysis and consideration of legislation in committees is not necessarily or automatically weighted toward a particular party or ideology. Likewise, as committee leadership is elected at large by secret ballot, the power of the chairmanship often is divided between liberal and conservative factions.

The formal organization of the Unicameral does not include party discipline, caucus meetings,⁸⁸ or seniority privileges. Party affiliation, while not listed on the ballot, still is maintained, and legislators participate in party functions, but parties do not control the selection of leadership or the day-to-day operations of the body. The result is a nonpartisan system in which members build coalitions around the issues and attract other members from similar ideological positions. Often, but not always, a split occurs between rural and urban interests.⁸⁹

D. The Lobby

Lobbyists must register their affiliation with the Legislature and a list of all registered lobbyists is recorded in the Legislative Journal.⁹⁰ Lobbyists are as active in Nebraska as they are in every other state.⁹¹ Senators rely on lobbyists for information since the system lacks a formal party structure to share positions and rationale.⁹² Without formal partisan coalitions, the lobby cannot rely on leadership to carry favorable votes. Instead, the lobby must appeal to each senator individually and obtain agreement from a minimum of twenty-five senators to secure the advancement, passage, or defeat of legislation. While no empirical data conclusively proves that lobby power is re-

88. Formal party caucuses are not held. Informal caucuses frequently are called by senators wishing to build coalitions. These caucuses may be partisan, but generally cross party lines, to some degree, to gain a sufficient voting majority.

89. The only empirical study this Author found on the subject validates the point that party affiliation is the most important reference point in partisan legislatures, while it appears to have little impact on Nebraska's nonpartisan Unicameral. *NONPARTISANSHIP IN THE LEGISLATIVE PROCESS*, *supra* note 4, at 110. This Author has seen relatively few partisan coalition efforts in her personal experience as presiding officer of five sessions of the Legislature. Most efforts focus on personal ideologies and constituent preferences. Coalitions almost always cross party lines.

90. *NEB. REV. STAT.* § 49-148 (Reissue 1993). *See also* Neb. Unicam. Rule 1, § 18(h) (1997). Lobbyists may not enter the legislative chamber. *Id.* Rule 2, § 3(c).

91. This fact is evidenced by the existence of the Nebraska Political Accountability and Disclosure Act. *NEB. REV. STAT.* §§ 49-1480 to -1492 (Reissue 1993 & Cum. Supp. 1996).

92. *NONPARTISANSHIP IN THE LEGISLATIVE PROCESS*, *supra* note 4, at 93.

duced in a nonpartisan or one-house system, the openness of the process allows full disclosure to the public of lobby influence.⁹³

IV. WHY A NONPARTISAN UNICAMERAL IS SUPERIOR TO A BICAMERAL SYSTEM

When the Seventy-fifth Congress of the United States assembled in 1937, it was the first time the President and Congress took the oath of office in January. The lame-duck amendment, as it was called, was adopted in 1932 and required that the President and members of Congress take office immediately after the first of the year rather than waiting three months.⁹⁴ Noticeably absent from the assembly was the amendment's champion, Nebraska Senator George Norris. Instead of celebrating his success with his colleagues, Norris was in Lincoln for the opening day of the Nebraska Unicameral—the first session of the nation's only one-house nonpartisan legislature.

On January 6, 1937, Norris challenged the senators at the opening session:

I congratulate you . . . Every professional lobbyist, every professional politician and every representative of greed and monopoly is hoping and praying that your work will be a failure. . . . Your constituents do not expect perfection. They know that it is human to err, but they do expect and have a right to expect absolute honesty, unlimited courage, and a reasonable degree of efficiency and wisdom. . . . From now on Nebraska has a right to expect a business administration.⁹⁵

When the session was adjourned, State Senator John Norton mentioned that although the system was not perfect, it was unique and perhaps offered a new and better way of doing business. "[I believe] the faults of the unicameral are the faults which marked the bicameral, but the virtues of the unicameral are the virtues of the one-house system alone."⁹⁶ While the operation of the Unicameral has its flaws, these flaws appear in every system and often can be corrected by changes in the rules. A nonpartisan unicameral, however, has features due to the very nature of its structure and its process that make it preferable to the bicameral system.

A. Duplication

Understanding the diversity of this great nation, the founding fathers had great vision. They agreed upon a compromise when creat-

93. Every legislative bill lobbied by principal or lobbyist must be disclosed to the Nebraska Political Accountability and Disclosure Commission. NEB. REV. STAT. § 49-1484 (Cum. Supp. 1996).

94. U.S. CONST. amend. XX.

95. *Nebraska R.F.D. to F.D.R.*, *supra* note 9, at 17.

96. *Nebraska: Unicameral Body Legislates Alone and Likes It*, NEWSWEEK, May 22, 1937, at 12 (comment made by Senator John Norton after the first session of the Unicameral).

ing the two-house federal legislature.⁹⁷ Small states feared that larger states would exert undue influence and power if population was the sole basis of representation. Thus, the drafters drew the separate and individual states together under one federal government and secured equal representation to ensure the continuation of their distinct sovereignty. No state would be deprived of its equal status in the Senate.⁹⁸ On the other hand, House representation would be based on election by the people and would be "apportioned among the several states . . . according to their respective numbers."⁹⁹ Each state elected at least one member of Congress and some states elected more, depending on state population. This ensured popular representation in one body, while giving preference to the interests of the entity—the state—in the other. The power struggle between population and geographical distribution was balanced.¹⁰⁰

The federal system was built with intentional parity between the sovereign states and the people. When states designed their governments, the federal biennial model was imitated. If the system worked on a federal level, why not at the state level?¹⁰¹ While such a balance was unnecessary at a state or local level for the same reasons, many states set up legislatures in which the senate was represented at least partially by geography, and the house of representatives was based on population.

That system began to crumble in the early 1960s with a series of court decisions challenging the apportionment of state and local governments.¹⁰² It soon became clear that the "only weighting of votes sanctioned by the Constitution concerns matters of representation, such as the allocation of Senators irrespective of population and the

97. *Wesberry v. Sanders*, 376 U.S. 1, 8-17 (1964). See also NORRIS, *supra* note 12, at 355. When the federal legislative system was created, it was designed to emulate the English organizational model. *Id.* at 277-78.

98. U.S. CONST. art. I, § 3.

99. *Id.* § 2.

100. See generally *Wesberry v. Sanders*, 376 U.S. 1, 1-17 (1964); THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (Max Ferrand & David Maydole Matteson eds., 1937). This Article does not attempt to define or elaborate on the history of the creation of our federal system of government or its rationale. The cursory explanation provided was used most often during the debate over the creation of the Nebraska Unicameral.

101. JOHNSON, *supra* note 27, at 93; Levmore, *supra* note 27, at 161 n.43. See Norris' *Single House*, *supra* note 8, at 10; *Unicameral System Praised by Speaker*, NEB. CITY NEWS PRESS, at 1. In fact, many cities also followed suit creating duplicate councils, each to serve as a check and balance on the other.

102. See *Avery v. Midland County*, 390 U.S. 474 (1968) (extending the one person one vote requirement to local governments); *Reynolds v. Sims*, 377 U.S. 533 (1964) (holding that the seats of both houses of a bicameral legislature must be apportioned on a population basis); *Gray v. Sanders*, 372 U.S. 368 (1963) (one man, one vote); *Baker v. Carr*, 369 U.S. 186 (1962) (holding that unequal state legislative apportionment is justiciable under the Fourteenth Amendment).

use of the electoral college in the choice of a President. . . . [O]nce the class of voters is chosen and their qualifications specified," the result must be "one person, one vote."¹⁰³

Bicameralism lost its main purpose after *Reynolds v. Sims*,¹⁰⁴ in which the doctrine of representation based on geography was challenged. In *Reynolds*, voters from Alabama sued state election officials on the grounds that despite a constitutional requirement for apportionment based on population, election districts failed to represent the population base. Geographical representation created a system in which approximately one quarter of the total population lived in districts represented by a majority of the members in the Senate and the House. The district court ordered temporary reapportionment for the 1962 general election and enjoined the officials from holding future elections under the invalid plans.¹⁰⁵

The Supreme Court affirmed the lower court's decision, determining that there was no justifiable basis to depart from the basic tenet of equality among voters when apportioning seats in state legislatures.

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.¹⁰⁶

The Supreme Court held that the goal of legislative apportionment was fair representation of all,¹⁰⁷ and the dilution of votes under the Alabama plan violated the Equal Protection Clause.

The Court obviously recognized it had fired a blow to nearly every biennial legislature in the country because it volunteered that bicameralism would not be rendered "anachronistic and meaningless" under a system that required both houses to be organized on the basis of population.¹⁰⁸ "A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitative action on, proposed legislative measures."¹⁰⁹ What the Court failed to consider was that "mature and deliberate consideration" could take place without duplicating two houses of identical or near identical representation. City councils and county and school boards give such consideration without the need for a second council or board to balance the deliberation. Two governors are not essential

103. *Gray v. Sanders*, 372 U.S. 368, 380-81 (1964).

104. 377 U.S. 533 (1964).

105. *Id.* at 542, 552.

106. *Id.* at 562.

107. *Id.* at 568.

108. *Id.* at 576-77. The court provides a lengthy commentary on the value of bicameral legislatures and how they will continue to serve useful purposes.

109. *Id.* at 576.

for proper and reasonable executive decisions; likewise, two trial judges, two mayors, or two courts of appeals are unnecessary.

Legislative rules can allow for sufficient debate and require specific time before final action is taken. Gubernatorial review acts as a check and balance. After *Reynolds*, no matter how seats are allocated in a bicameral state legislature, the voters will be represented twice. While distribution may not be identical, the result will be the same. Allocating votes to rural and urban areas cannot be diluted or expanded when the requirement of one person one vote is followed. Adding legislators cannot change that allocation. A second house simply is a redundant and unnecessary duplication. After *Reynolds v. Sims*, two houses simply are unnecessary.

It is argued that eliminating one house reduces the number of checks and thus is a dangerous removal of protections built into the two-house process. If each house represents two separate and distinct entities, as in the federal system, this argument may have merit. After the Court's ruling in *Reynolds v. Sims*, however, there can be no such separate classes represented. No matter how the different distribution is made between the house and the senate, each house *must* be identical in jurisdiction and representation. The check and balance in a bicameral state system by its nature will be a redundancy that slows the process and allows members to conceal their own actions and to shift responsibility to the other house.¹¹⁰

The Supreme Court's analysis that bicameralism after *Reynolds* still allows diversity in representation by establishing staggered terms, different sizes of each house, and varying apportionment to provide and encourage "differing complexions and collective attitudes in the two bodies"¹¹¹ can be realized without the complexity and duplication of two houses. The Nebraska Unicameral accomplishes the same end by ensuring that each committee has representation from the various geographical regions of the state. Moreover, membership on the Committee on Committees, which determines the referencing of bills, and the Executive Board, which governs the Legislature as a whole, is allocated on the basis of congressional districts, thus guaranteeing representation by geography without destroying the concept of equal representation. The final outcome is a simpler and more practical method of legislating.

110. Norris, *One Branch Legislature*, *supra* note 11, at 12. Of course, legislators in a unicameral system can shift responsibility and attempt to hide their actions, but the process makes it more difficult, particularly when the rules demand open proceedings.

111. *Reynolds v. Sims*, 377 U.S. 533, 577 (1964).

B. Representative and Open Process

A nonpartisan unicameral is a more efficient, open, and representative method of legislating. In the Nebraska Unicameral, the process of passing laws is simple. The passage of legislation entails introduction of a bill, reference to a committee, deliberation by the committee and the body as a whole, passage, and final action by the governor. Each step is distinct and final. Time spent trying to reconcile differences or create compromises between two houses is eliminated. The assembly on the whole is relatively small in size, which promotes full and thorough debate by each member of all measures before the Legislature. With only one house, committees are fewer in number and smaller in membership, encouraging open debate by each member.

As Norris stated, the conference committee in most states can operate as a secretive, nonrepresentative separate legislature. By eliminating the conference committee to resolve differences between the houses, each senator is held responsible at every stage of the debate. Senators cannot blame a conference committee or the other house. Full responsibility for every action rests with only one body. Members cannot pass the buck or shift responsibility to another body.¹¹² No system is more directly representative of the people than a unicameral.

Because each vote is final—that is, it cannot be reversed by a second house or conference committee—the entire process is open to the scrutiny of the media and the public at large. This is true especially when the rules require that committee votes be recorded by roll and when any member can request a record vote at any stage of the proceeding.¹¹³ The responsibility for action or inaction is placed squarely where it belongs—on the elected representative. While the responsibility of action or inaction also is placed on the elected official in a bicameral system, the public has more difficulty holding the official accountable because a member can shift responsibility. The process simply is less visible to the public in a bicameral system.

If state legislative bodies are to be “a substitute for a meeting of the citizens in person,”¹¹⁴ the best and simplest method of ensuring that the citizenry is truly and openly represented is via a unicameral system. A single house eliminates the ability of conferees to secretly resolve compromises to suit themselves, special interests, or their

112. All senators' votes are public record, which results in complete accountability. Of course, procedural games still can be played whereby a committee fails to advance a bill or legislation never reaches the floor for debate. In these instances, the responsibility clearly is evident by a review of the record. NEB. CONST. art. III, § 11.

113. Neb. Unicam. Rule 7, § 2(b) (1997).

114. James S. Wrona & L. Francis Cissna, *Switching Sides: Is Party Affiliation a Tie that Binds?*, 28 ARIZ. ST. L.J. 735, 753 (1996)(citation omitted).

party leadership. All decisions and votes are made in full public view. Every senator has full opportunity to publicly support, oppose, or suggest changes to legislation. The possibility that special interests can control or manipulate the results behind the scenes is reduced when the entire process is open to public scrutiny. A vigilant and watchful electorate or media can expose individual or special interest manipulation of voting and results. The small size of the body allows the public to follow the actions of their representatives closely and to pass a fair judgement on the results.

C. Nonpartisanship

The most innovative feature of the Nebraska Unicameral is its nonpartisan nature. Senators are elected on a local ballot without regard to party affiliation.¹¹⁵ The top two candidates in the primary election proceed to the general election. The candidate with the most votes in the general election is seated. "The election of members of the legislature on a nonpartisan ticket has attracted many candidates with envious records of public service who had not sought office on a partisan ticket."¹¹⁶ The elimination of partisan organization was the brainchild and passion of Senator Norris. It also was the one feature to which he would not compromise.¹¹⁷ He insisted that the problems of the biennial system largely were due to partisan game playing. He saw how elected officials were forced to represent the party rather than their constituents. He hated the system that granted favors to those who were loyal to their party's leadership through rewards of "good" committee assignments, opportunities to introduce or pass legislation, and opportunities to guarantee reelection or defeat.

Norris thought state government was detached from national party platforms. Why should a national party, which takes positions on issues of tariffs and foreign trade or war and peace, control the policy positions of local elections? Instead, local government should be run like a business.¹¹⁸ No business would organize with two boards of

115. NEB. CONST. art. III, § 7.

116. Srb, *supra* note 3, at 632.

117. NEUBERGER & KAHN, *supra* note 21, at 282. Both political parties opposed the passage of the initiative. *Id.*

118. Norris advocated running the state like a corporation.

The state would be similar to a gigantic corporation and the members of the legislature would be members of the board of directors. . . .

Without being handicapped on account of any partisanship matters, they would be able to give the best that was in them for the welfare of the state.

George W. Norris, *Small, One-Chamber Legislature Ideal for State Like Nebraska*, SAYS NORRIS, LINCOLN J. STAR, Feb. 12, 1933.

See also Norris, *One Branch Legislature*, *supra* note 11, at 13; Norris Would Reduce Burden on Voters, LINCOLN J. STAR, Feb. 23, 1934, at 13; *Seven Hundred*

directors. The business of the state needs statesmen, not politicians. Voters should judge candidates based on their records and positions, not on the positions taken by candidates for federal offices. State officials are in a better position to represent their districts than a party leader who may be far removed from the local issues and may not understand the benefit or detriment of a given position.

In practice, the nonpartisan feature requires the senators to maintain contact with their constituent base, and not simply with party platforms. There must be constant communication with the voters. Senators rarely determine how to vote based only on which party introduced the legislation. As the amount of legislation increases and issues become more complex, the representative from both the unicameral and bicameral legislature must devote time and effort to understanding the nuances of the issues. Legislators in a nonpartisan system, however, will understand the effect of the legislation on their constituency because that constituency is the primary, if not the sole factor and motivation for legislative action. The possibility that party leadership will "dictate" a position or a vote is virtually eliminated. Support in the nonpartisan system for minority or opposing party ideas and legislation is not only allowed, but is commonplace.

When chairpersons are elected based on personality and leadership skills, party platforms lose their importance. The Speaker is not elected solely because he or she belongs to the majority or has served the longest. As a result, the Speaker does not owe the political party loyalty; rather, the Speaker owes allegiance to the members as a whole. While the Speaker has the power to set the agenda according to a party platform, it is this Author's experience that the Speaker instead determines the most critical issues requiring debate and sets the calendar accordingly. In the past several years, attempts have been made to strengthen the Speaker's power to expedite issues, speedup debate, and determine priorities.¹¹⁹ While these efforts have been successful, the true power of the Speaker lies in the ability to gain the confidence of the other members and to build consensus when issues become deadlocked. The leadership becomes personal rather than party-based. When confidence and credibility are established, the Speaker can be and is a dynamic and effective force.

Both the Speaker and majority party are powerless to give favors of committee leadership. As the system is nonpartisan, the chairmanship of committees is selected by the entire membership. Because *any* member can run for a leadership position, senators with specific expertise often are elected to chairmanships. Turnover of committee leadership is reduced because positions are unaffected when party

Hear the "One-House" Debate, GRAND ISLAND DAILY INDEP., Oct. 15, 1934, reprinted in 78 Cong. Rec. 3278 (1934).

119. Neb. Unicam. Rule 1, §§ 7, 17.

power changes. The continuity of governance leads to a greater consistency in the understanding of issues and positions. As every member is an equal member in the Unicameral, the most important consideration is the effect legislation will have on a member's constituency.

Even so, members can face consequences for refusing to cooperate or build a consensus. As in any organization, the failure to work with others may result in "punishment." "Games" are still played, but they are different. Coalitions can mete out favors and punishment for not "following" the coalition. The difference is they are based on personality or ideology rather than party lines. While "games" occur in both systems, in the Unicameral they are not based *solely* on partisan political lines. In a partisan system, an opportunity to introduce legislation depends *entirely* on the majority party's favor; leadership assignments are given *only* to the majority party and even then only to loyal members. The opposition's ideas are disparaged simply *because* they are minority party positions. The nonpartisan structure does not automatically eliminate blind loyalty or encourage dissent. Rather, it creates the opportunity for coalition-building. This opportunity for cooperation and consensus-building often crosses party lines. The outcome is the potential for results based on constituency need and less chance of partisan bickering and gridlock.

D. Leadership

One criticism often leveled at the nonpartisan legislature is that it is devoid of leadership. When everyone is equal, everyone is in charge, and thus no one is in charge. Critics have challenged this system since the beginning of the Unicameral,¹²⁰ and these arguments have some merit. Legislation may languish because the system lacks structure and legislators lack the power to push it through to completion. Coalitions may break down because party discipline cannot demand members to stay together. A majority of votes may be difficult to obtain because there are literally forty-nine different opinions on the issue. Plainly, passing legislation involves more work when the leadership is diffused and everyone has a say in the outcome. Without a party structure to advance legislation, the process actually may take longer, which is directly opposite to the theory that unicameralism leads to faster legislation.

Yet, broad-based leadership can be positive. That senators and interest groups must build consensus to reach agreement potentially leads to better reasoned and more thoroughly debated legislation. Leadership in a nonpartisan one-house legislature is based on the power of the individual, rather than on the power of the party. In any

120. 86 CONG. REC. app. at 330 (1940).

given year, leadership may be lacking in the Unicameral just as it would be in a bicameral legislature. When individual leadership in the bicameral is weak, the party is substituted. When individual leadership in the nonpartisan Unicameral is weak, no immediate substitute emerges. That is why a lack of leadership is more evident in a nonpartisan system. When individual leadership is lacking in a unicameral, other forces often come to bear—the governor, coalitions of urban, rural, or ideological viewpoints, or public sentiment. While the delay that often occurs may be frustrating, the end result may be worth the wait.

Without a partisan base to push legislation and to hold senators accountable, the irrational games based on which party is in power and the possibility of gridlock due to partisan bickering are reduced. A common complaint from the public about the federal system is that office holders worry more about whether the other party will succeed than they worry about the public at large. Name-calling and finger-pointing often occur to discredit and disparage the other party. Negativity escalates. Procedural shenanigans tie up the process. In the end, the public becomes disenchanted, disengaged, and cynical.

Rarely is there an organized display of partisan bickering or finger-pointing in the Nebraska Unicameral. Procedure is used to slow down legislation or to gain an advantage, but it seldom is used for the purpose of publicly discrediting the other party or its leaders. Gridlock as a result of partisanship, so common in Washington and many state partisan systems, is almost nonexistent.

The possibility does exist in a nonpartisan system for senators in the minority to exert undue influence over the process. In practice, there are times when one or more senators can slow down the procedure and prevent legislation from advancing. Filibusters and deadlocks occur in every session, but the practice of using the rules to slow down or prevent legislation is not unique to the nonpartisan or unicameral process. The difference is that in a partisan system the purpose is often solely to disparage or embarrass the other party.¹²¹

Finally, it is this Author's belief that there is fundamentally little difference between the ideologies of the two major parties on a local level. Conservative and liberal philosophies do not necessarily line up neatly with Republican and Democratic labels. Party platform often is ignored locally when it does not square with the candidate's personal views. There is not the striking contrast between philosophies today that has historically inspired impassioned party loyalty.¹²² It is in-

121. While partisan debates often are based on ideological positions, the gridlock often occurs because of parliamentary games intended to prevent the minority party from securing legislation or favorable media attention.

122. The position of voters on issues that create zealous support or opposition, such as abortion, term limits, or gun control, often cross party lines. Polls of the public

cumbent for the voting public to know the candidate or office holder and their personal views and beliefs; it is not enough to know simply that the individual is a Democrat or a Republican. Such labels do not provide enough information as to a candidate's philosophy or convictions.¹²³

If the thesis is true that voters look at individual positions and viewpoints rather than party affiliation, a nonpartisan system should provide as much, if not more, information for choosing local candidates because voters cannot rely on stereotypical party labels to make decisions.

E. Lobby

There was tremendous fear that by eliminating one house, the lobby and special interests would gain in power and influence and control the Legislature. This fear simply has not materialized. While it is difficult to gauge the power that any special interest group has on any representative body, the process would suggest that it is more, not

indicate that just as many Democrats as Republicans support abortion rights and gun control. During the 1996 Democratic and Republican conventions, it was reported that the Republicans sounded like Democrats by featuring pro-choice speakers such as Congresswoman Susan Molinari, and the Democrats imitated Republicans by talking about tax cuts. Kim Cobb, *Democrats Firm on Platform: Blueprint Similar to GOP's but Acknowledge Disagreements*, HOUSTON CHRON., Aug. 28, 1996, at 8; David Lightman, *Democratic Shift on Issues Blurs Lines Between Parties*, HARTFORD COURANT, Sept. 7, 1996, at 1; *Platform Vague, Like Party Itself*, ARIZ. REPUBLIC/PHOENIX GAZETTE, Aug. 29, 1996, at 5; *All Things Considered: Liberals Hope Clinton's Words Hiding Liberal Beliefs* (NPR radio broadcast, Aug. 30, 1996).

123. Nationally, it has become the trend for voters to give more weight to candidates' positions rather than their party label. "[I]ndividuals now tend to cast their votes for candidates, not political parties." Wrona & Cissna, *supra* note 114, at 740. According to Wrona and Cissna, the vast majority of voters vote for the person, not the party:

In 1956, 74% of respondents to a Gallup poll agreed with the belief that one should vote for the candidate not the party. By 1968, that figure had risen to 84%. . . . In 1986, 92% of those surveyed agreed with the statement: "I always vote for the person who I think is best, regardless of what party they belong to."

Id. at 772 n.23. See also MARTIN P. WATTENBERG, *THE RISE OF CANDIDATE-CENTERED POLITICS: PRESIDENTIAL ELECTIONS OF THE 1980s* (1991).

Interestingly, there was much debate about whether or not political parties should be permanently established by our founding fathers. George Washington warned against the creation of the party structure. Wrona & Cissna, *supra* note 114, at 735. The current party structure evolved from the early Federalist and Democratic Republican parties, with the parties eventually forming around the competing philosophies of Alexander Hamilton and Thomas Jefferson. *Id.* at 735. See also WILFRED E. BINKLEY, *AMERICAN POLITICAL PARTIES: THEIR NATURAL HISTORY* (4th ed. 1962). The point is that party philosophy originally was based on clear differences of opinion. Those differences of opinion often are blurred at a local level.

less, difficult to influence legislation in the Unicameral. In a bicameral system, the conference committee wields tremendous power. It can completely change, alter, or eliminate legislation. When the resultant legislation is returned to each house for decision, no changes can be made. The conference committee is a lobbyist's dream. Lobbies need to persuade or influence only a small number of legislators to enable or prevent passage of legislation. Lobbying legislation outside the conference is simpler in a partisan system as the lobby often needs only to convince leadership to secure passage. Leadership, with its partisan power over members, can secure a sufficient number of legislators who vote the "right" way. Those who do not join jeopardize future favors and opportunities.

In Nebraska, without a partisan structure, the lobbyist's job is more difficult. Just as the Speaker must synchronize "the efforts of nearly fifty unaffiliated senators," so must the lobby.¹²⁴ Each senator is an individual who must be considered separately. The lobbyist cannot depend on the power of the majority or minority leaders. The lobbyist must know the constituency of each senator to know how to approach him or her. Contacts must be made with a minimum of twenty-five senators, not simply with the leaders, to determine whether there is the requisite support on a particular bill or issue. As all proceedings are open and all votes are potentially public, the potential that a senator can be controlled by a special interest is limited. All action is available for the media to report or for an opponent to exploit during the next election.

F. Balance by the Executive

The most frequently offered reason for maintaining two houses is that each house acts as a check and balance on the other. No legislation can be passed without agreement from both houses. This argument makes sense when potentially competing interests or the sovereign interest of the state is different than the individual's. As indicated earlier, it is impossible under the United States Constitution to allow geographical representation under the proposition that each person is entitled to equal representation. In reality, therefore, no *real* check or balance results; it is simply a duplicative process.

In Nebraska, once legislation has passed through the requisite four readings and has received a majority of votes on Final Reading, only one final step remains in the legislative process before the legislation becomes law. The Governor must sign or veto the bill.¹²⁵ The Governor acts as a representative of the State as a whole. It is the Gover-

124. SIRTIG, *supra* note 1, at 19.

125. If the Governor declines to sign a bill within five days, the bill automatically will become law without his or her signature. NEB. CONST. art. IV, § 15.

nor's duty to ensure the popular view is taken and parochial interests do not control. As a statewide officeholder, the Governor is the true check and balance. To reach the most acceptable result, he or she can review legislation, refuse its passage if it is detrimental or inappropriate, and negotiate a compromise before a bill is passed. The second house is unnecessary as a check when the executive already serves that function. The Governor can act as the check and balance in a more efficient, cost-effective manner than a second house.

G. Summary of Strengths

As Senator Norton stated at the end of the first Unicameral session, the problems of the Unicameral were the same as those in the bicameral, but the benefits belong to the unicameral alone. Other legislatures have problems with lobbyists, lack of leadership, gridlock, and partisan games. The Unicameral has its defects as well. But, the most important features of the Nebraska system, the lack of partisanship and the elimination of one house, provide benefits that partisan bicameral systems cannot provide.

Eliminating the need for conference committees reduces the likelihood that secret negotiations and the lobby will influence legislation. Reducing the system to one house creates a more efficient system without sacrificing the opportunity to pass well-reasoned legislation. A simple, open system places responsibility on legislators to answer their constituencies while giving the public sufficient information to judge the performance of its elected officials. Public hearings and three separate votes by the entire legislature provide opportunity for public and senatorial input and reasoned deliberation. Leadership elected by secret ballot without regard to party affiliation allows the best person to be considered for positions of authority in the body. Elimination of party bosses who allocate pork and secure loyalty and votes for party positions allows each member the opportunity to play an equal part in the process and creates debate focused less on party lines and more on ideology. Finally, the Governor and the public act as checks and balances by reviewing legislation and offering potential changes.

V. THE NEBRASKA LEGISLATURE WILL REMAIN THE SOLE UNICAMERAL

Immediately following the passage of the unicameral initiative, delegations of legislators from other states flooded Nebraska. The Political Science Department of the University of Nebraska received more than 4000 inquiries about the new process. "Within 3 months bills for one-house Legislatures were pending in 18 states. More than half the states . . . had such measures introduced and New York and

New Jersey [had] special commissions studying the subject."¹²⁶ Despite the interest, no other state followed suit.

Interest in Nebraska's Unicameral continues. Senators, political scientists, and others who are simply intrigued regularly travel to Lincoln to study the virtues of Nebraska's one house, nonpartisan system. Montana, North Dakota, and California studied the idea in the 1970s. Mississippi, Florida, and Minnesota all contemplated unicameralism more recently.¹²⁷ Again, no state made the leap. Nebraska remains unique as the only nonpartisan and unicameral legislature. "It's sort of a lost cause,"¹²⁸ according to Dale Olsen, a unicameral enthusiast and Chairman of the Department of Political Science at the University of Minnesota at Duluth. "It's just not catching on because, if you're a state legislator, switching from a bicameral system can mean voting yourself out of a job."¹²⁹

As other states' efforts to review the unicameral process continue, efforts to dismantle it from within take place. While the one-house feature seems well-established and stable,¹³⁰ the nonpartisan aspect regularly comes under fire.¹³¹ As early as 1939, formal attempts were made in the Legislature to return to a partisan system. Beginning in 1954 for the Republicans and 1956 for the Democrats, and continuing through the early 1970s, both party platforms expressed dissatisfaction with the nonpartisan system.¹³² As of a decade ago, more than a dozen attempts had been made to reestablish partisanship.¹³³ These efforts have ranged from legislative attempts to initiative petitions. All have failed. The Legislature and the public appear to support the nonpartisan feature.

In the final analysis, change is difficult. To truly achieve change, there must be an advocate—someone who is willing to fight for the cause and secure the victory. George Norris was that champion. His passion and zealous interest in the issue caught fire. Due to his argu-

126. *Nebraska R.F.D. to F.D.R.*, *supra* note 9, at 17.

127. Rick Atkinson, *Nebraska Still Alone on 1-House System*, OMAHA WORLD HERALD, Apr. 10, 1990, at 7.

128. *Id.*

129. *Id.*

130. NONPARTISANSHIP IN THE LEGISLATIVE PROCESS, *supra* note 4, at 19. *See also* SITTING, *supra* note 1.

131. NONPARTISANSHIP IN THE LEGISLATIVE PROCESS, *supra* note 4, at 19-20.

132. *Id.* at 20-21. Beginning with the 1954 Nebraska Republican Party platform, a return to a partisan legislature was advocated. "We favor amendment of the Constitution of Nebraska to provide for members of the legislature of this state on a partisan basis. . . ." *Id.* In one form or another, a similar proposal was continued in the Republican Party platforms of 1954, 1956, 1960 and 1962. Democratic party platforms paralleled Republican advocacy for a partisan legislature.

133. SITTING, *supra* note 1, at 29. *But see* O'Donnell, *supra* note 5, at 6. This Author's view is that there have been no serious threats to the Legislature's nonpartisan system.

ments and fervor, the public was willing to take the chance to transform their legislative form of government from the tried and true model into one that had never been ventured. It was the unique combination of Senator Norris' zeal and the public's overwhelming support and respect for the forty-year veteran of Congress that the unicameral initiative succeeded in Nebraska.

The common explanation for why Nebraska is the lone nonpartisan legislature is that senators will not vote themselves out of existence. The answer is more complicated. Norris was right when he said that the public is leery of governmental innovation. Norris understood that changes in government are met with much skepticism.

New inventions and simplified methods are always given hearty support in all lines of human endeavor having to do with the improvement of the conditions which control and govern the activities of man. This has not always been so in government but the tendency has been to stay in the rut in which our forefathers toiled and any proposed change is looked upon by many of our people with distrust and suspicion.¹³⁴

Unless another Norris is found who can champion the cause and garner the esteem of the voters, any attempt at change most likely will be in vain. While change is met more easily in business and personal lives, it is not so for the respected and time-tested institution of government. There is no need to change the process that appears adequate and is understood.

As an observer and a participant in the Nebraska system, this Author believes our process is far superior to partisan two-house systems. This Article has been my attempt to persuade the reader that the system is worth consideration and that it has features that can lead to advantageous results. It is efficient, open, and effective, but unless one can experience the process and see the benefits first hand, it is unlikely that there will be any effort to trade a process that is comfortable for one that is unfamiliar. Although change is difficult, it can lead to great results if one is willing to make the effort.

In this 60th anniversary year of the Nebraska Unicameral, we celebrate George Norris' dream, its continuation, its correctness, and the results of the unicameral experiment.

134. George W. Norris, *Foreword to SENNING*, *supra* note 2, at xi.