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Government, Military and Veterans Affairs Committee
February 18, 2009

[LB125 LB349 LB382]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 18, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB125, LB382, and LB349. Senators present: Bill Avery, Chairperson; Pete Pirsch, Vice Chairperson; Robert Giese; Charlie Janssen; Russ Karpisek; Rich Pahls; Scott Price; and Kate Sullivan. Senators absent: None. []

SENATOR AVERY: Welcome to the Committee on Government, Military and Veterans Affairs. My name is Bill Avery. I represent District 28 here in Lincoln. I'm going to introduce the other committee members and staff, and then just a few comments on the way we run the hearing and then we'll start. We have, on my extreme right over here, Senator Rich Pahls from Omaha; and seated next to him is Senator Charlie Janssen from Fremont; and he is seated next to Senator Robert Giese from South Sioux City; Senator Pete Pirsch, the Vice Chair of this committee, from Omaha; committee legal counsel, Christy Abraham here; and soon to join us is Senator Karpisek from Wilber. He is in another committee now with a bill of his. He may not actually get back because it's a pretty controversial bill and the room is packed and they have an overflow room, so we may not see Senator Karpisek today. Seated next to him is Senator Scott Price from Bellevue, and Senator Kate Sullivan from Cedar Rapids. And then we have our committee clerk, Sherry Shaffer, and she is the person who will collect your sign-in sheet when you get up to testify. Our interns, or I should say our pages, are Nick Bussey from Lincoln and Courtney Lyons from Plattsmouth. A few points about decorum and how the committee will be conducted. The bills will be taken up in the order posted outside the door except that since we have two bills that address the same subject, Senator Rogert and I will present at the same time, and that's the only deviation from the posted listing. Sign-in sheets are available at both entrances. We ask that you sign in only if you're going to testify, and give that to the committee clerk, Sherry, here on my left. Please print clearly so that she can read that and have it for the record. If you're not going to testify but you would like to be recorded for or against a bill that we're discussing, you can fill out another sheet. And I have a copy of that; it looks like this. Just add your name to that and the bill number and whether you support or oppose. Again, please print clearly. Introducers of bills will be given an opportunity to make initial statements, followed by proponents, opponents, and then those who wish to testify in the neutral position. Closing remarks are reserved for the introducers only. We do ask you to be as brief as possible. Try to keep your comments to no more than five minutes so that we can expedite the process and get through all the bills and make sure that everyone who wishes to be heard is heard. If you have a prepared statement or exhibits, we will need to have 12 copies in order to have enough for all the committee and the staff. If you have a cell phone, as I suspect most of you do, please turn it off or put it on vibrate so as not to disrupt the course of our discussions. I see that Senator Rogert has arrived so we will now proceed with the hearings on LB125 and LB382. So,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

Senator, I am going to join you. Pete, it's yours. [LB125 LB382]

SENATOR PIRSCH: Very good. And due to the similar nature of the bills--LB125, introduced by Senator Avery, and LB382, Senator Rogert--we will hear them at the same time. So Senator... [LB125 LB382]

SENATOR AVERY: I've asked Senator Rogert to go first. [LB125 LB382]

SENATOR PIRSCH: Very good. [LB125 LB382]

SENATOR ROBERT: (Exhibit 1) Okay. Well, Vice Chairman Pirsch, members of the Government, Military and Veterans Affairs Committee, my name is Kent Rogert. I represent Legislative District 16. I am here today to introduce to you LB382. It provides a limited form of election day registration. This measure retains the essential character of election day registration in that it provides some Nebraskans with an opportunity to register to vote on election day, but it accommodates the concerns of county election officials by effectively limiting those able to take advantage of election day registration to new registrants. In addition, LB382 provides that all new election day registrations must take place at the county election office. These characteristics serve to distinguish between my bill, LB382, and Senator Avery's LB125. Under LB382, only new registrants will be allowed to register to vote on election day. A new registrant can be defined as any Nebraska registrant who is not current registered to vote or who is not registered in the county in which they currently reside. For example, in Lancaster County, a new registrant might include an 18-year-old high school student wishing to cast their first ballot, or a new registrant might include a 50-year-old factory worker who has recently relocated to Lincoln from Scottsbluff. People who have changed residences within the county and whose names do not appear on their precinct rolls will not be allowed to register to vote on election day. As per current law, they will be allowed to cast a provisional ballot which is only counted after verification of registration in that county. This provisional process is not affected by LB382. This limited form of EDR, as I'll refer to it, is designed to accommodate concerns that election offices will be swamped on election day with Nebraskans seeking to register to vote. LB382 drastically cuts the volume of new registrants by limiting the process to new registrants and requiring that election day registration take place at the county election office; thus, it provides an avenue to registration only for those truly willing to make the effort. It is important to note that LB382 actually increases the security of Nebraska's elections. In fact, those people who do not take advantage of EDR will be subject to more scrutiny than those who register through the normal process. With the amendment to LB382, which I will provide you--it's just a one-word change--new registrants are required to present proof of identification and proof of residence, and must register in person before the trained election official. This is much more stringent than typical mail-in voter registration. LB382 represents a measure that is proven to increase access to the polls while simultaneously increasing ballot security. Nine states, including Iowa, Minnesota, North

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

Dakota, Montana, allow some form of election day registration; 24 other states are considering it this year. Our neighboring states recognize that election day registration encourages young voters, assists voters who tend to be more mobile, and enfranchises those whose names have accidentally been purged from the rolls. I firmly believe that Nebraska has the capability to implement this limited form of election day registration. This bill provides an opportunity for us to respond to the needs of Nebraska citizens and our county officials by marginally widening the path to civic participation in a limited and responsible manner. And I have a one-page amendment that we've offered for the consideration of the committee. It changes an "or" to an "and" on page 13, line 15. With that, I'll yield. [LB125 LB382]

SENATOR AVERY: Thank you, Senator Rogert. So we can defer questions, I guess, until after we've both presented. This bill, LB125, along with Senator Rogert's bill, LB382, addressed the same concern, and that concern is that voting ought to be made as easy as possible for all Nebraskans and that we should remove all unnecessary barriers to voting. Voting is such an important part of democracy, it seems to me that we should be looking for opportunities to make the ballot more accessible to more people. In reviewing these two bills, the only significant difference you will find is whether an elector should be allowed to vote at his or her polling booth. My bill allows an elector to vote either at the polling site or at the election commissioner or county clerk's office. LB382 only allows election day registration and voting at the election commissioner's or the county clerk's office. We already have knowledge that statistics show that states with election day registration experience voter turnout considerably greater than those states that do not have it. There will probably be some testimony given later about the experience in Iowa that will confirm this. EDR states, that is election day registration states, on average achieve about a 10 percent greater turnout over states that do not have this type of law. The experience in other states has been an increase in turnout among young adults which is a group that historically has had low turnout rates. We know that young people, young adults, working adults, move quite frequently. We know that students, college students, often wind up at the university and they've forgotten to change their registration. Election day comes; they find themselves faced with a situation where they've got to go home--maybe they can't get there--if they want to vote. This would make it possible for them to vote without having to worry about going back to their home district or precinct. It's a convenience issue and it's also an accessibility issue. Research has shown that allowing young people to register to vote on election day can increase youth turnout in presidential elections by as much as 14 percent. Nebraska already has a high percentage of citizens who are registered to vote, but I believe if there is another tool that can increase those numbers then we ought to look into it very seriously. Without election day registration, hundreds, perhaps thousands of Nebraskans might have been excluded from exercising the most basic fundamental right of democracy, and that is the right to vote. I believe that it should be the goal of government to encourage as many citizens as possible to participate in the electoral process. This is one way to do that. I am committed to seeing that this Legislature gets

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

an opportunity to debate a bill like this sometime before I leave. I'd be happy to work with the committee if you want to talk about which of the two versions we ought to advance. I know that many of you have received e-mail communications. Probably you have been inundated, Senator Price; I see that smile on your face. We have--and I will make note of this later or Senator Pirsch will--we have received a number of official communications from people who wish to be entered into the record. I just would say to you that I have...and by the way, those are mostly in opposition to these bills. I have received, in my office, 47 e-mails in support of election day registration. I don't know what your experience has been, but it might have been similar. Not all of those have asked to be entered into the official record, but I wanted you to know that what you may be hearing in the official record is not perhaps an accurate reflection of the total span of support or opposition to this legislation in the public. So with that, I will stop and defer all questions to Senator Rogert. (Laugh) [LB125 LB382]

SENATOR PIRSCH: Does anybody have a question for the Chair or Senator Rogert? Senator Pahls. [LB125 LB382]

SENATOR PAHLS: Yes, I have, senators. Here's a...and I understand when you said we ought to make things easy or easier. That's one stand to take. But you also could take the stand that we ought to keep voting maybe rigorous so people will understand the value of it, instead of this need for immediate gratification, which we've all...you know, we've sort of fallen into in our society. I mean, we want it right now, and that's probably one reason why you see some issues that are happening, even at the federal level, side-barring a little bit how we've treated finances; how we have...everybody wants to go to that credit card because of that immediate gratification. And maybe I take the opposite view, which would be contrary probably to the majority of the people sitting here, is we ought to make it tough instead of easy. I'll let you respond to that. [LB125 LB382]

SENATOR AVERY: Well, historically, Senator, we have made it tough. In fact, you used to have to own property; you used to have to pass a test; you used to have to pay a poll tax. I mean there are all kinds of examples throughout history where we've made it very difficult for people to vote. I think that, given the busy lives that many of us have today, making it more difficult is not the way to go, and I don't think you're advocating that at all. [LB125 LB382]

SENATOR PAHLS: No, no. [LB125 LB382]

SENATOR AVERY: But the right to vote is not an earned right. Rights are given to you because of being a citizen of this country, and I don't think that we ought to put impediments in the way of people to exercise that right, the fundamental right to vote. In fact, I go to the...I differ with you on this. I think we ought to make it easier. Just one other thing. The people who show up on election day to register and vote on the same

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

day, they're not bad people. They're probably busy people. They're young people whose lives are packed with the kind of things that distract them, and perhaps they've let a deadline pass for getting registered that if they weren't so busy perhaps they would have been able to get it done. Students, in particular, are affected by this, because...you may remember when you were a student, that you were usually dashing from one class to another, hoping in the meantime you might actually grab a sandwich for your lunch, or you're dashing to class, not even quite sure if you know which class you're going to because you're so confused with the everyday bustle and busyness that goes with being a college student. I think that really what we're aiming at are those people who are really deeply concerned and care enough about voting that they do show up on election day. The fact that they weren't thinking about that ten days before, I don't think should be held against them. I don't think we should punish them by saying, well, you didn't jump through that hoop and you didn't jump through the other hoop and you didn't jump through three hoops before that, so, therefore, you're not going to get to vote. What we ought to do is say, you're a citizen of this country; you have a right to vote, and I'm going to make it possible for you to vote and I'm going to try to make it as easy as possible. That's where we ought to be going and that's what this legislation tries to do. [LB125 LB382]

SENATOR PAHLS: Okay. [LB125 LB382]

SENATOR PIRSCH: Did you want to add anything to that Senator Rogert, or shall I move the...? [LB125 LB382]

SENATOR ROBERT: I'll just reiterate a point that Senator Avery did make. I think, more often than not, these folks did go to the polling place and were just turned away because they were not registered. I think they tried...they made a conscious effort to show up, and the process that they failed to complete disallowed them from voting. And if they still feel that they want to vote at that point, just a quick drive downtown to the county election commissioner's office, or if you're out in Burt County, across the county for a little ways just to be able to vote. I think they'll do it. If they showed up to vote, they'll go vote. [LB125 LB382]

SENATOR PIRSCH: Thank you. Senator Price. [LB125 LB382]

SENATOR PRICE: I'll try either one of you, just real short. Do you know how big the voter universe was that voted absentee ballot in the last few elections? [LB125 LB382]

SENATOR AVERY: In Nebraska? [LB125 LB382]

SENATOR PRICE: Yes. [LB125 LB382]

SENATOR AVERY: Secretary Gale is here. I don't know if he plans to testify on this,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

but... [LB125 LB382]

SENATOR PRICE: I just didn't know if you all knew that number. Give or take... [LB125 LB382]

SENATOR AVERY: I'm going to stab at it, just a ballpark. I think it's somewhere around 14 to 20 percent. [LB125 LB382]

SENATOR ROBERT: I was going to say 10 to 15. [LB125 LB382]

SENATOR PRICE: Fourteen to 20 percent? [LB125 LB382]

SENATOR ROBERT: Somewhere in there. Yeah. [LB125 LB382]

SENATOR PRICE: So we'll call it 15 to 20. [LB125 LB382]

SENATOR AVERY: I don't think it goes above 20. [LB125 LB382]

SENATOR PRICE: Okay. [LB125 LB382]

SENATOR AVERY: But it has been on the rise. [LB125 LB382]

SENATOR PIRSCH: Any other questions? I appreciate your introducing these bills here today and we'll move on then to the proponents. If I could have the first proponent of LB125 and LB382, either/or. If you draw a distinction in your mind as a testifier and are in favor of one but not in favor of the other, if you could make sure that you kind of address that in your remarks here at the outset. And if you could just start with name and spell your name for the record. [LB125 LB382]

ADAM MORFELD: (Exhibits 2 and 3) Thank you. The pages are handing out some handouts that we have here. The folders have a lot of information, but we also handed out my testimony as well. Good afternoon. My name is Adam Morfeld. That's Adam Morfeld, M-o-r-f-e-l-d, and I'm the executive director of Nebraskans for Civic Reform. Nebraskans for Civic Reform is an organization that advocates on election and civic education reform. We are comprised solely of undergraduate and law students dedicated to improving our civic institutions in Nebraska. I would like to thank Senators Avery and Rogert for introducing this legislation and taking the first step in ensuring that eligible electors in Nebraska are not disenfranchised by arbitrary registration deadlines. Our interest in election day registration became two years ago when it became clear that college students and young Nebraskans are disproportionately affected by registration deadlines. As a resident assistant during the 2006 midterm election, I saw no fewer than eight potential first-time voters who were unable to vote because they had missed the Nebraska registration deadline. Half were already registered in their home

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

counties; the other half were not registered at all and did not understand the voter registration process in Nebraska. They were all new and informed voters who wanted and deserved their right to exercise their constitutional right to vote. Over the past nine months, Nebraskans for Civic Reform has hosted two election day registration fact-finding trips to Luverne, Minnesota, and Des Moines, Iowa. A total of ten Nebraska election officials attended these trips and directly observed election day registration in action. One thing that consistently resonated for me and many others on those trips is that EDR is feasible in some form in Nebraska. Most clerks felt as though it would be feasible if the registration and voting were conducted at the main election office on election day. Just as a note, as a former page I used to sit right over there, and I know that, when it comes to testimony, usually less is often more. However, this afternoon you will undoubtedly hear several arguments against EDR, and I will close my testimony by countering these arguments. First, there are those that will say election day registration is not possible in Nebraska. This is not true. Election day registration is not a foreign concept. It is currently conducted in a total of eight states: Maine; Minnesota; Wisconsin, who adopted EDR in the 1970s; and then more recently, Idaho; New Hampshire; Montana; Wyoming; and Iowa. It should also be noted that North Dakota requires no registration whatsoever. In all these states, EDR has operated smoothly and enfranchised over one million voters during the last election. It is true that Nebraska has an unusual amount of political subdivisions and, thus, different ballot faces or splits; thus, complicating the process in which the right ballot is given to the right voter. However, this problem can easily be mitigated by providing election workers with more training and resources at the precinct level, or by allowing EDR at the main election office only. Election officials in Nebraska have the tools available to ensure that each voter receives the correct ballot with EDR. One of the many benefits to the statewide voter system is that the street file and the ability of the system to accurately and automatically assign voters to the correct precinct. The system also identifies ballot style. This could easily be printed off and given to the respective precincts. Precinct workers across Nebraska currently work with a large number of ballot splits and regularly make determinations on which ballot style the voters should receive. This is an important part of their job. Despite the record turnout of voters during the 2008 General Election, there were no major problems with Nebraska poll workers, and they demonstrated their ability to process the high number of ballot styles. Our election officials have proven to be a particularly adept group. Election day registration presents a very manageable dimension to their skill set. Second, last year the Secretary of State testified that approximately 90 percent of eligible Nebraska voters were already registered. This unfortunately has little bearing on what EDR is trying to accomplish. For instance, during the 2008 General Election, 50 percent of Iowa voters that utilized EDR were already registered in the state of Iowa, but had moved from one county to the next. Many voters who utilize EDR are already registered, but recently moved and do not realize that they need to reregister. I think it is also interesting to note that before Iowa implemented EDR, they had a ten-day deadline just like Nebraska. Last year, Secretary Gale also noted in his testimony that he believed EDR addressed a registration problem

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

which didn't exist, and thus, EDR would have no real effect on turnout. Instead, Secretary Gale indicated that candidates and issues drive turnout. Secretary Gale is partially right. Candidates can drive turnout. However, the statistics don't lie. EDR does contribute to greater turnout on election day by removing registration barriers. Yet the most important issue that I believe for you as lawmakers is not what motivates people to vote, but rather your concern should lie with ensuring that Nebraska's election law makes it as easy as possible for every Nebraskan to exercise their right to vote in a secure and accessible manner. Third--and this is one of my last points, I promise--last year, the Lancaster County Election Commissioner testified against EDR by noting that Nebraska allows provisional ballots which ensures an eligible voter gets the proper ballot. This is not a counter argument to EDR. The provisional ballot method is fraught with uncertainty and proves a recurring headache to election officials. During the November 2008 General Election, 60 percent of provisional ballots in Lancaster County were thrown out for voters who were not registered. That is 425 ballots out of 714. During the November 2006 General Election, 82 percent of provisional ballots were thrown out in Lancaster County for the same reason. Election day registration diminishes the number of provisional ballots cast, but retains the mechanism for certain warranted situations. Better to properly register a voter than to have their ballot thrown out on a technicality. EDR solves this problem in a way provisional ballots cannot. Finally, election day registration is a more secure system of registration than Nebraska's normal system. Some will argue that it increases the risk of fraud. This argument is empirically and emphatically untrue. In fact, election day registration requires individuals--with the amendment in LB382--to register in front of an election official, with proof of residency and a photo ID, with the amendment. More information is currently required by mail-in registration. In 2004, Attorneys General in two EDR states conducted studies on voter fraud and found that no fraud was attributable to EDR in those states. Those states were New Hampshire and Wisconsin. States with election day registration have no higher instances of voter fraud than states without EDR, and some of these states have had EDR since the 1970s. In conclusion, election day registration minimizes eligible voters from being disenfranchised by arbitrary registration deadlines in an accessible and secure manner. Nebraska has the necessary resources and tools available to administer EDR, and all we require now is the political will. Will election day registration require more effort on the part of the election officials and the Secretary of State's Office? Yes. But if it means involving more eligible voters in our democracy, particularly young voters, is it worth it? Absolutely. I urge you to move either LB125 or LB382 as amended to General File for full consideration. I thank you for your time and patience and would be willing to answer any questions. [LB125 LB382]

SENATOR PIRSCH: Thank you very much for your testimony. Senator Price, you look like you have a question. [LB125 LB382]

SENATOR PRICE: Senator Pirsch, thank you very much, sir. And Mr. Morfeld, as a student at law school... [LB125 LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

ADAM MORFELD: No. I'm going to be in law school next year but I'm a senior undergraduate right now. [LB125 LB382]

SENATOR PRICE: Oh good, that's even better. Is there a deadline for applying for that school? [LB125 LB382]

ADAM MORFELD: Yes, there is. [LB125 LB382]

SENATOR PRICE: Thank you. [LB125 LB382]

SENATOR PIRSCH: Any other questions now? Very good. Well, I appreciate your testimony here, and we'll move on to the next proponent. Just to get an idea of time requirements, could you raise your hand if you plan on speaking in favor of this bill? One, two, three, four. If you're going to plan to speak as an opponent of this bill, could you raise your hand? About six or so. Any neutral testimony on these bills? Just one. Okay. Thank you very much. I appreciate it and very good. Ms. Adair. [LB125 LB382]

PEGGY ADAIR: (Exhibit 4) Senator Pirsch and members of the committee, for the record, my name is Peggy Adair, A-d-a-i-r. I represent the League of Women Voters of Nebraska. The League of Women Voters of Nebraska believes that every citizen should be protected in the right to vote. Women were denied their right to vote for 144 years after the birth of this nation. We and our foremothers understand what it is like to be disenfranchised, and the League has worked in a sustained effort to expand the right to vote for other people who are underrepresented in the voting process. People who may not be active in the political process or who miss the registration deadline are sometimes labeled lazy, apathetic, disinterested, or even too ignorant to cast a vote. But if you go out and actually talk to people, like the League does, you will find that there are valid reasons why they have not registered or voted or have missed deadlines. During the last election season, I was talking to a woman who runs a nonprofit that works with adults who have mild developmental disabilities. She was touting her organization's efforts to include these adults in the community, in the mainstream. They live in their own apartments, they have jobs, they take public transportation, they gather for social events. So I asked her if she made sure they were registered to vote. And she looked at me, stunned. It never occurred to her that voting is a part of community participation. The deadline to register had already passed, so these adult citizens who live in Nebraska and work and pay taxes could not exercise their right to vote on election day. Election day registration would have provided them with the power and the dignity of the vote. I took a call last year from a woman in Otoe County. She was an ex-felon and wanted desperately to vote in this election. After I asked her some questions, I told her that she was indeed eligible to vote, but that day was the deadline to register and she had to get to the county clerk's office by 5 o'clock to register. She was a bit deflated, but then I told her that she could also vote at the same time that she

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

registered. Same-day registration and voting provided her with the power and the dignity of the vote. She was ecstatic. She thanked me profusely, and then she went into a five-minute dialogue about how "I just can't stand that Obama," and I am relating this story because there is sometimes a covert resistance to helping certain groups of people to gain access to voting because there is an assumption that they will vote either against the needs of the local community or the prevailing political party. Our experience in talking to real disenfranchised people is that they run the political gamut and one cannot judge them or their voting preference by their presence in a particular group. Election day registration is a safe, simple, and proven way to assure underrepresented citizens can secure their right to vote. We urge this committee to send these bills to the floor for full debate. And I welcome any questions. [LB125 LB382]

SENATOR PIRSCH: Thank you very much. Any questions for Ms. Adair? Seeing none, I thank you very much for coming down and testifying. [LB125 LB382]

PEGGY ADAIR: You're welcome. [LB125 LB382]

SENATOR PIRSCH: Could we have the next proponent. [LB125 LB382]

BETH BAZYN FERRELL: Good afternoon, Senator Pirsch and members of the committee. For the record, my name is Beth Bazyn, B-a-y-z-n, Ferrell, F-e-r-r-e-l-l. I'm an assistant legal counsel with the Nebraska Association of County Officials. The NACO board took a position in conditional support of LB382. It was a split vote. The board voted to oppose LB125 because the scope was much broader. Some of our discussion that day, when we took the positions, focused on some of the issues that you've heard so far. It focused on existing opportunities to register; what's going on at the federal level; procedural aspects, like the number of splits in Nebraska compared to the number of splits in other states; provisional ballots, and so on. Our conditional support really came down to issues like if EDR could be used in a special election and votes could be cast at the courthouse, essentially taking baby steps toward the process, something like was done for all-male elections. It was very narrow in scope to begin with. Historically, Nebraska counties have done an excellent job in conducting elections. The last thing that we want to do is to jump into a new policy too boldly and impact voters negatively with that. We want to make sure that elections are run properly, that votes are accurate, and that the right people vote in those elections. The NACO board supports the policy of encouraging voters and doesn't want to appear to be a hindrance to getting those people...getting residents an opportunity to vote. Nebraska's policies are already generous, but we don't want to impede the opportunity for people to vote. I'd be happy to try and answer questions. [LB125 LB382]

SENATOR PIRSCH: Thank you. Any questions? Senator Sullivan. [LB125 LB382]

SENATOR SULLIVAN: Thank you, Senator Pirsch. Do you have any idea or does your

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

association discuss what sort of fiscal impact it will have and logistical impact it will have on poll workers and county clerks? [LB125 LB382]

BETH BAZYN FERRELL: Yes, we did, and that is part of why our support was conditional and more directed at the narrower bill. You'll hear a testimony in opposition from some of our election commissioners about the specifics of that. Really a lot of it boils down to the number of splits and the difficulty for poll workers at the polling places being able to determine how many, or which ballot faces, out of so many different ones, that each voter should receive. [LB125 LB382]

SENATOR PIRSCH: So are you saying there's a difference in what you...you conditionally support one and oppose the other. Is that based upon what you...that's based upon the cost as you perceive it, and that having it at the election office would make the costs go down, is that what I hear? [LB125 LB382]

BETH BAZYN FERRELL: Not necessarily the cost, Senator. It's more the process. For example, in some polling places there might not be Internet access that's readily available to be able to, if a voter wanted to come there and register immediately, they might not be able to call up the right information to get the right ballot faces. Whereas if they went to the election commissioner's office, they would be able to do that on the spot, pull up that information and get them assigned to the right precinct, and so on. So that's really the distinction, voting at the polling place...or registering at the polling place versus registering in the election commissioner's office. [LB125 LB382]

SENATOR PIRSCH: Okay. And you think though, the cost would be minimal if it was at the election officers? Or you're not sure? [LB125 LB382]

BETH BAZYN FERRELL: We didn't really discuss that, Senator. [LB125 LB382]

SENATOR PIRSCH: Okay. And maybe I'll ask this...I guess when you're looking at the possibilities of unintended consequences, is there...first of all, let me ask this question. This bill would apply simply to people who have not registered thus far, right? If you're registered already in a different location, can you avail yourself of this then? [LB125 LB382]

BETH BAZYN FERRELL: As I understood the testimony this morning, I believe--or this afternoon--I believe that it would allow someone to change their registration on site. But that may be something... [LB125 LB382]

SENATOR PIRSCH: Okay. I'll hold off on the question on that then. What about...and I don't know if you feel you would be the one to speak about this, the possibility...would this enable more, or the same, or less voter fraud? And I guess that would hinge upon the...what would you have to show on the spot to enable yourself to vote in the election?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

[LB125 LB382]

BETH BAZYN FERRELL: Okay, that would depend on which version of the bill and the amendments you're talking about. In general, you'd have to provide some kind of identification, something that shows where you live, but it depends on the version of the bill. [LB125 LB382]

SENATOR PIRSCH: Do you, offhand, know what the different versions, I mean, are they driver's license or state ID's or? [LB125 LB382]

BETH BAZYN FERRELL: It depends. There is an ID or it could be something like a utility bill. Again it just depends on which version of the bill. [LB125 LB382]

SENATOR PIRSCH: Okay. And maybe somebody will come and speak on that a little bit more. Okay, thank you very much for answering that question. Senator Pahls. [LB125 LB382]

SENATOR PAHLS: Yes. Just I was listening to your arguments, so you know I'm having a hard time with these bills. But when I'm listening to you, I probably...let's put ourselves back before women had the right to work. It would be the same statements that you're making now that would have been said. Or with poll taxes. It's going to cause us to have to do different things. I mean, your arguments, to me, or from your association, aren't very strong. That's why there's this mix, because...? [LB125 LB382]

BETH BAZYN FERRELL: In part, that was why we had a split vote. Our vote, for our 17-member board, it was 11-6. There were arguments supporting being able to allow more people to potentially vote. That was countered by an argument: But shouldn't people already know what the deadlines are? So we really did have a mixed vote. That's why our support is conditional. [LB125 LB382]

SENATOR PAHLS: Okay, thank you. [LB125 LB382]

SENATOR PIRSCH: Thank you. That's all the questions we have, so thank you for coming down and testifying. Are there any other proponents speaking in favor? Thank you very much. [LB125 LB382]

SARAH FECH: Good afternoon, Senator Pirsch, committee members. My name is Sarah Fech. Fech, F-e-c-h. And I am here today in my capacity as the chairwoman for the Government Liaison Committee of the Association of Students at the University of Nebraska-Lincoln. My committee works in two ways. First, we serve our student body by educating our peers on issues of political importance, and second, we speak to elected officials on the local, state, and national levels to ensure that a student voice is heard and considered in decisions that affect us. And election day registration is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

certainly one such issue. ASUN has a history of advocating for students, and this encompasses a wide range of topics, but voter registration and education has always been on our radar. Recently, redistricting made the Nebraska Union a polling location, and on election day this year, hundreds of students waited in line for several hours to exercise their civic duty. ASUN also helped sponsor a Rock the Vote events, organized watch parties for the debates, and hosted a mock presidential debate. In addition, ASUN annually holds numerous voter registration drives in an effort to get young voters registered. However, the small number of students snagged at voter registration drives pales in comparison to the number of unregistered student voters. My first point is to touch on the mobility and inexperience of student voters. For many students, their first experience voting is while they are in college. A student from an EDR state may not be aware of a new registration deadline in Nebraska. Moving to other towns and states for jobs and graduate schools, or even just off campus, requires a need for an updated voter registration information. Using an absentee ballot, while ideal for election commissioners, takes extensive forethought. And these obstacles apply to the general public, but hit the young population especially hard because we change residences more frequently than the general public, and we have limited experience with voting, in the first place. I would next like to point out that there is a large body of students that are informed but unregistered. The media outlets through which one can find information on candidates and issues are numerous. It is almost impossible to be uniformed about political candidates and to be a student, because we are such a media-driven population, but CNN coverage of a debate does not include a message about registration deadlines or absentee ballots. While this would be extremely convenient, it's nearly impossible because of the assortment of arbitrary deadlines that litter the country. According to a U.S. Census Bureau report entitled, "Voting and Registration in the Election of November 2006," of the 40 million unregistered voters, 14 percent reported that they did not meet registration deadlines, and another 6 percent did not know how or where to register. And it is for similar reasons that voters, especially young voters, may be turned away from the polls without election day registration. These obstacles do not prevent a citizen from becoming informed; just voting. And just a quick remark on the two different bills. My Association of Students at the University of Nebraska-Lincoln supports both. We would be inclined to support LB125 more. Because of the limited mobility of students, it would allow an increased access there. So, in closing, students would benefit greatly from being allowed to register to vote on election day, and as a civically active student, speaking on behalf of other students, I ask you to give full consideration of this bill. Thank you. [LB125 LB382]

SENATOR PIRSCH: Thank you very much, Ms. Fech. And are there any questions? Thank you very much for coming down...oh, did you have one, Senator Sullivan? [LB125 LB382]

SENATOR SULLIVAN: Thank you, Senator Pirsch. I assume you're registered to vote? [LB125 LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

SARAH FECH: I am, yes. [LB125 LB382]

SENATOR SULLIVAN: And what process did you use and at what point when you became of age? [LB125 LB382]

SARAH FECH: I registered under the motor voter at 18. [LB125 LB382]

SENATOR PIRSCH: Super. Any other questions? Senator Pahls. [LB125 LB382]

SENATOR PAHLS: A huge question I have now is I'm assuming your generation is really into computers, technology. [LB125 LB382]

SARAH FECH: I think that's a fair assumption. [LB125 LB382]

SENATOR PAHLS: Okay. Because I happen to have a son who is 19 and my daughter is 21, so I understand. I mean, there are texting and all this kind of stuff. Now can you not go to a Web site and pull down a registration? I know you have to take the material somewhere, but can you not just go get the form you need to fill out, right now? [LB125 LB382]

SARAH FECH: You can. You can access the form online and then you can print it out and send it in, yes. [LB125 LB382]

SENATOR PAHLS: You see, I think we have some of those things available. That's why...I see the argument that we need to make things easier, but I also think that we need to work with some things. But to me, you just it pull down and you can mail it in or take it in. [LB125 LB382]

SARAH FECH: Sure. Sure. I would agree with you that I think the availability of the registration information on-line is wonderful. I don't...I would just go back to the fact that especially speaking on behalf on students who are constantly changing residences, and especially out of different states, it's very difficult to kind of know the differences, because every state has a very different registration deadline. And...I'm sorry, I can't remember exactly how you phrased it, but I think you said something along the lines of it's already easy enough? I don't want to misquote you. I'm sorry. [LB125 LB382]

SENATOR PAHLS: Well, go ahead. [LB125 LB382]

SARAH FECH: But I would just echo Senator Avery's point that, why not make it as easy as possible. That's...I'm of that opinion. [LB125 LB382]

SENATOR PAHLS: Okay. [LB125 LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

SENATOR PIRSCH: Thank you. Senator Price. [LB125 LB382]

SENATOR PRICE: Senator Pirsch, thank you. Ms. Fech, thank you for showing up. Thank you for all you're doing in the outreaching to students. That's a great thing. And I really appreciate hearing the words "civic duties." Civic duties are what come along when you have a right; you have a duty. And oftentimes we forget rights and duties. But I was caught off guard with the frequent, by testifiers, of the use of the word "arbitrary," and I would argue that these deadlines are not arbitrary. These are not things people said one day, if they had hair and were drying it, just threw it out there. You know, there's reasons why they do what they do. So I would, I would engender, if we could, that we don't throw out that term "arbitrary" because somebody did a lot of work for many years in the state, and that doesn't characterize it correctly. But again, great...good on you for doing what you do. And on a Facebook...it's all over Facebook. Even I, an old guy like me, I'm on Facebook, so...and Twitter. It's everywhere. You can find...and you can pull down on a handheld BlackBerry, you know. So I would say it's pretty doggone easy to get a registration, but it's a civic duty to fill it out and get it in on time. [LB125 LB382]

SARAH FECH: Um-hum. And since that wasn't a question, can I respond? [LB125 LB382]

SENATOR PRICE: You can respond if you'd like. Please. [LB125 LB382]

SARAH FECH: Okay, and I would just say that you're right, it is pretty doggone easy, but we still are not...there is still a population that is still disenfranchised, and even as easy as it is. And I would just...I would like to see that population have an even easier ability to vote. Thank you. [LB125 LB382]

SENATOR PRICE: All right. Thank you. [LB125 LB382]

SENATOR PIRSCH: Oh. Well, just a second, Ms. Fech. It looks like it's a full house here. Senator Giese (inaudible) question. [LB125 LB382]

SENATOR GIESE: Just another additional comment on Senator Price's comments about would it not be then your civic duty, up until the last possible minute that you could register? You know, we talked about time frames and the dates, but if I didn't or you didn't or somebody else decided that, you know, all of the sudden I woke up on election day and I wanted to vote, wouldn't that still be my civic duty then to have that option to vote on that day? [LB125 LB382]

SARAH FECH: Oh certainly. Yes, it is your civic duty to vote, not to register to vote X number of days before and then vote. That's my opinion. [LB125 LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

SENATOR GIESE: So it just takes some people longer to figure that out, but no matter what the time frame is, then it's... [LB125 LB382]

SARAH FECH: I think so. But that doesn't preclude them from having that right and duty to vote. [LB125 LB382]

SENATOR GIESE: No, and I agree. But civic duty is civic duty, no matter what the time frame. [LB125 LB382]

SARAH FECH: Exactly. [LB125 LB382]

SENATOR GIESE: Thank you. [LB125 LB382]

SARAH FECH: Yes. [LB125 LB382]

SENATOR PIRSCH: Thank you very much. [LB125 LB382]

SENATOR PAHLS: Oh, I had one more thing. Because it does seem like...and I neglected to say this. I am thoroughly impressed with Adam's presentation and yours to this group. You know, we're asking you questions, but, I mean, your knowledge and your background and the research that has been done is...I mean, it's top drawer and I appreciate your efforts here. Thank you. [LB125 LB382]

SARAH FECH: Thank you. [LB125 LB382]

SENATOR PIRSCH: Okay, any other questions? Seeing none, thank you very much, Ms. Fech. Whenever you're ready, Ms. Miller. Good to see you. [LB125 LB382]

AMY MILLER: (Exhibit 5) Good afternoon, Senators. My name is Amy Miller. It's A-m-y M-i-l-l-e-r. I'm legal director with ACLU-Nebraska, the nonprofit organization that works on only civil liberties' constitutional rights. It is difficult to follow a hard act like Sarah Fech. She is a good woman who is going off to law school and hopefully will do good work for civil liberties as well. You've heard statistics and you've heard policy arguments. I'm here solely to bring home the fact that the right to vote is a constitutional right. And we have talked about civic duty. I would agree it is also a civic duty to participate for people who can. But the difference between the right to vote and the right of other aspects such as applying to law school and deadlines that one might have to meet for other government affairs is, this is a fundamental right enshrined in the Bill of Rights. It is, in fact, the most discussed topic within the Bill of Rights. It is about the 15th Amendment, the 19th Amendment, the 23rd Amendment, the 24th Amendment, and the 26th Amendment; all are about the right to vote. So it's not a casual passing mentioned in the Constitution or a right, once granted by the founders, sort of left for the rest of us

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

to figure out. It has been an arc of development of voting rights in this country's history, especially with constitutional amendments, and that arc has tended toward expansion of the right to vote and ensuring that the maximum number of people can vote. I am not suggesting that same-day voter registration is constitutionally required. I am suggesting that if you look at the spirit of the Constitution, it certainly meets the ideas and the ideals that our founders suggested. I think that I also want to address a sort of common-sense question. My contact with lay people is they're very used to the idea of, not instant gratification, but they are used to the idea that the government is there to serve them at the time when they appear and ask for those services. I did not call ahead to make an appointment to appear before this committee today, because I have a constitutional right, with my free speech rights, and my right to attend an open meeting of a government body, to come and do so. If I leave here and decide that I now wish to become a proud gun-toting person, I can go to the sheriff's office and apply today for a gun, to carry a permit under the 2nd Amendment. Again, this is not to suggest that it's required, but it is to suggest that the common-sense and the common-day experience of the average person in Nebraska is, when I need my government and I want to participate in a government service and I want to exercise my constitutional rights, I will be able to walk in and start to exercise that right. The concept of deadlines is a bit foreign to many lay people when it comes to government services and when it comes to constitutional rights. With that, if you have any questions I'm happy to answer them. [LB125 LB382]

SENATOR PIRSCH: Very good. Senator Sullivan. [LB125 LB382]

SENATOR SULLIVAN: Thank you, Senator Pirsch. I thought your comment about the concealed weapons statute was interesting because there...I'd like you, I guess, to draw a differentiation between that and what you're proposing or promoting in this proposed legislation. Because with the concealed carry law, you have to...there's some lag time. You have to apply for the permit. [LB125 LB382]

AMY MILLER: This is true. [LB125 LB382]

SENATOR SULLIVAN: So make the differentiation between these. [LB125 LB382]

AMY MILLER: My ability to access the right and apply for that permit, in the same way for other less controversial issues perhaps, my right to appear and ask the government for permission to protest on the sidewalk of O Street in downtown Lincoln. All of those things, I can decide today. Be moved by something I read about in the paper, be moved by a personal experience and decide that I want to begin exercising that right today. It is true that I won't walk out of the building and immediately go to a store and purchase a gun, but I can begin that process immediately. And I'm not, again, suggesting that that means the Constitution requires same-day voter registration. I'm suggesting that the average person's experiences: I'm ready to start thinking about voting; I want to go do

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

that today. So the distinction is that the immediacy of what motivates you to begin to access government services. [LB125 LB382]

SENATOR PIRSCH: Very good. Senator Price. [LB125 LB382]

SENATOR PRICE: Just on a whim, ma'am. Don't we have a time frame for our right to vote? [LB125 LB382]

AMY MILLER: A time frame in the sense of when you apply right now to register? [LB125 LB382]

SENATOR PRICE: No. I mean, you have to be 18, I guess, to vote, so you have 18 years you're waiting there for a right, correct? [LB125 LB382]

AMY MILLER: That's correct. [LB125 LB382]

SENATOR PRICE: Okay. [LB125 LB382]

SENATOR PIRSCH: Thank you. Are there any other questions? I guess I just would ask you, are you familiar with--and I have asked this question before--the type of, on these election day registration, the type of identification that you would be required to show them, the two bills? I understood that there was a distinction dependent upon which bill. Are you familiar enough with the two bills to know what the differences are? [LB125 LB382]

AMY MILLER: Alas, I am not. Adam Morfeld would have been your best bet. It is probable that some of the opponents would also have that information. I admit my ignorance, Senator. [LB125 LB382]

SENATOR PIRSCH: Okay. And it's hard to...the way that these committee hearings are structured is that you hear the proponents, first, and then opponents, and so as you talk with the proponent, sometimes anticipating, you know, what may be concerns on their mind so that you have the opportunity to discuss those with proponents, can kind of be a tricky task. [LB125 LB382]

AMY MILLER: I can hear BlackBerrys buzzing behind me as the opponents continue to look these things up. [LB125 LB382]

SENATOR PIRSCH: Yeah. Well, I appreciate your testimony, and with that we'll move, unless there's any other questions, to the next testifier, the next proponent. [LB125 LB382]

AMY MILLER: Thank you. [LB125 LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

JACK GOULD: (Exhibit 6) Senator Pirsch, members of the committee, my name is Jack Gould. That's G-o-u-l-d, and I am here representing Common Cause Nebraska. I have passed out my testimony and I hope that you'll read it. It's somewhat redundant, so I'm going to just talk a little bit off the cuff here. You know, I can hear, from the committee, a real concern about the time span and everybody having to meet certain schedules, and therefore we should have a system that demands that of our people. But I have to remind you, too, that this is a nation that thrives on diversity, and we have a lot of different cultures and a lot of different kinds of families in this state. I can speak from my own experience that my wife has been late for every event that I think we have ever been involved in. And she's not here today, so I can say that. But I mean, a lot of it has to do with the way you view time, the way you've grown up, the kind of family that you've been in. It isn't that we can take a strict pattern and enforce it on a bunch of people and say, you know, we all must follow the specific rules. I think every time we have come up with a new way of registering people, whether it's by computer, as you pointed out, or whether it's by motor voter, whatever we call it, we have increased the number of people who are registered and the number of people who are voting. And the last election was a great turnout of people. And I just would...I just don't want you to impose the standards of what we experience here at the Capitol and the time span and all of those things, and say we have to impose that on all the people all the time. There are many different reasons why people don't get registered and many different reasons why they don't vote, and so I just hope that you'll keep an open mind on that issue. [LB125 LB382]

SENATOR PIRSCH: Thank you very much, Mr. Gould. Any questions? Senator Pahls. [LB125 LB382]

JACK GOULD: Yes, sir. [LB125 LB382]

SENATOR PAHLS: Let me ask you this question then. And I understand we have a mixing of cultures and all that and we're constantly changing. To me, though, you still seem to have to...you need some standards, you know, and I don't see these as being so rigorous that a person cannot meet those. I don't see them as so rigorous and maybe I'm missing a point. [LB125 LB382]

JACK GOULD: Well, personally, you know, I think most, maybe the majority of the people would agree with you, that these are, these time lines are not necessarily rigorous. But it's not true of all the people. And, you know, we are the government for all the people, and so it's important that we make this right we have to vote, that we make it available to everybody, and that we don't discriminate against any person because of their family habits or their cultural background. They're all important and they all should vote, and we want to make it as easy as possible for everyone to vote. [LB125 LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

SENATOR PAHLS: Well, then do you believe we should hold, for the most part, since the majority of the people have to go through public schools, we should hold them more accountable of making sure that this information, not just on voting, but just the general premise of our country, that hold them more accountable than what apparently we are doing now then? [LB125 LB382]

JACK GOULD: Well, I was a teacher, a social studies teacher for 16 years. And when I left that I went back and I actually started registering students in the schools, and I went around to the five schools in my area and met with the social studies teachers. In part of their government program, we actually, I would come in and register those people. And I think that a lot of the schools are now doing that. I haven't kept track of it, but they make it part of their social studies curriculum and I think that's the best place. I mean, you have an opportunity to educate as well as actually having them participate in the democratic process. [LB125 LB382]

SENATOR PAHLS: So this might be a wake-up call just for us as a nation... [LB125 LB382]

JACK GOULD: You bet. [LB125 LB382]

SENATOR PAHLS: ...on the voting, other than just time lines. Maybe we are in serious problems, not just the ability to vote but to understand. [LB125 LB382]

JACK GOULD: Well, I mean, my experience in school teaching was that not everybody was on time either. We had trouble with our own teachers being on time. But, you know, I don't think that the time limit is something that should determine how we decide this issue, you know. [LB125 LB382]

SENATOR PAHLS: Okay. Thank you. [LB125 LB382]

SENATOR PIRSCH: Very good. Senator Price. [LB125 LB382]

SENATOR PRICE: Senator Pirsch, thank you. Mr. Gould, I just want to clarify, and you helped with this discussion of time lines as we've had here. It's not that I'm in opposition to voting or the concept before us. It's that I have a concern for the excuses. You know, I think you can separate; I think you can differentiate. One is an excuse and one is a concept: the same-day voter registration. And by marrying the two together and saying one begets the other, they should stand apart. We shouldn't have excuses for everything we do. We had a standard, as Senator Pahls said, so I just wanted to say that we can find a lot of reasons for why we do things and don't do things. But is it the concept, is it the principle, the underlying principle is what's important here, and I believe that we had testimony earlier from the ACLU representative, Ms. Miller, that talked to that very same thing. It's the principles, the underpinning that's important here,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

not the excuses. Please. [LB125 LB382]

JACK GOULD: Can I ask...? [LB125 LB382]

SENATOR PRICE: Please. [LB125 LB382]

JACK GOULD ...let me ask you a question. Do you think there is such a thing as a valid excuse for not being registered? [LB125 LB382]

SENATOR PRICE: I think you can get caught up in the word things and lexicon issues there. Again, there are excuses. But we all have an opportunity. Some people are deployed in foreign countries under fire fights, even at this moment, who have been able to find the wherewithal to execute the privilege of voting. So I find that...there are foreigners who have passed their citizenship tests, who still maybe don't have a complete grasp of our entire culture, who have seemed to find the way. So again, I...excuses are just one thing. My point is I wanted to bring out is we should focus on this. [LB125 LB382]

JACK GOULD: In the last election, I know that Peggy was very much involved with this, and we were, to a certain extent, trying to find out if our veterans were getting the opportunity to register to vote. And there was quite a bit of controversy over that question. And in the end, there were letters back and forth, but I don't think anyone was allowed in to get those veterans in the hospitals registered. So I mean, that's a pretty valid excuse. I mean, if you're a soldier and you're wounded and you don't get registered, then there's a problem. [LB125 LB382]

SENATOR PRICE: Absolutely. [LB125 LB382]

JACK GOULD: And I think that, you know, we need still to look at the registration problem. And I think there are valid excuses when people move from place to place. I know when I moved from Pennsylvania to Nebraska, I got registered. I don't know whether my wife did, but I got registered. But it isn't always easy and you have to be conscious, you have so many things going on, to be conscious of the date that I have to be registered, all of those things. And again, I think it comes back to the fact that we're here as a government for the people to try to make life and voting, that right of voting, as easy as we possibly can so that we don't need any excuses. [LB125 LB382]

SENATOR PRICE: Exactly. [LB125 LB382]

SENATOR PIRSCH: Good. Any other questions? Seeing none, thank you very much, Mr. Gould. [LB125 LB382]

JACK GOULD: Thank you. [LB125 LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

SENATOR PIRSCH: We will ask for any other proponents speaking in favor of either of the bills. Mr. Boyle. [LB125 LB382]

MIKE BOYLE: Good afternoon. Mr. Chairman and members of the committee, my name is Mike Boyle, B-o-y-l-e. I am an attorney in Omaha. My address is 1106 Howard Street in Omaha. I am also a member of the Douglas County Board of Commissioners, and I'm here as a private citizen. I have kind of, I think, unique perspective on this issue. I was appointed Douglas County Election Commissioner when I was 26 and served with Monte Taylor, a Republican, who is a very good friend of mine. And we served during that period of time when radical ideas came up like letting 18-year-olds vote. And I remember so well that the opposition and the outcry of "the sky is falling" that now we've got these rough and tumble kids showing up at the polls, and what do they know about government and politics. We survived it and I think we're a lot better off on account of the contribution and the activity of our 18-year-olds registering and voting. We received a great deal of criticism when we took our voter registration directly into high schools and registered 17-year-olds who could then vote when they were 18. We were criticized soundly for doing that, because it was just frightening to some people, the change. Let me mention something else that probably will sound so ridiculous that you won't believe it occurred, but it did. There was a push to make polling places accessible to the handicapped, and it was an idea, too, that received a great deal of criticism. Then-Secretary of State Allen Beermann issued a statement that it was going to cost a million dollars to make polling places accessible. And when you think of that, first of all, if it did cost a million, should it be done or should it not be done? That's the issue of the policy decision. It didn't cost a million and it was done and it made polling places accessible to people, not only in wheelchairs but people who you would not suspect had any kind of physical limitations. It went through and those polling places were made accessible. We did have to move some, but it was not the calamity that we were told it was going to be and it didn't cost really anything to do that. And finally I want to mention another change in election law that was pretty radical. A man called me who was blind and wanted assistance. He wanted his young daughter who was 16 to go into the booth with him and help him vote. He trusted her. At the time, he could have had an election official do it, but he wanted his daughter. The Legislature changed the law and allowed that at that time. That too was something that was seen as pretty radical. And finally I'll mention to you that, as election commissioner, I helped people vote, register and vote after the deadline to register had passed, and it was all legal. And what I used to do which maybe piqued my interest in becoming a lawyer, I found a loophole, naturally, so I was interested, but I found a loophole in the state law that said that if you're outside of the county you can request not only a ballot but registration forms after all the deadlines had passed. And so I would tell people to go over to the Holiday Inn in Council Bluffs, and we would mail a ballot to them in care of the Holiday Inn, and people did that, Republicans and Democrats alike, because they were that interested in registering to vote. They had moved here recently and they were interested in being able to vote.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

They took their right to vote very seriously. Something had happened where they missed the deadline and that's how they were able to cast a ballot. In summing up, I think in my view, I was driving down thinking about this, and so many people have died for us to have the right to vote, including my brother in the Armed Forces, and I think we need to honor their memory by making this right as accessible as we possibly can. I personally favor Senator Avery's bill, registration at the polling places. I think it would make more sense, but compromises are compromises. So I would certainly support the bill that does call for registering to vote at the election office. And finally, I want to say that Nebraska is really fortunate in having the election officials we do. Mr. Gale is a standout. I think you all know that. I've dealt with him on a number of different levels and he is a tremendous public servant. And in Omaha and Douglas County, we are very fortunate to have Dave Phipps as election commissioner, and now we just need to get the county board to step up to the plate and get them adequate space. So thank you for the privilege of testifying to you, and I will try to answer any questions you might have. [LB125 LB382]

SENATOR PIRSCH: Very good. Senator Giese. [LB125 LB382]

SENATOR GIESE: Thank you, Senator Pirsch. Mr. Boyle, then, so under Senator Avery's bill, so you think this is a doable bill that Senator Avery is presenting today, with your field of expertise? [LB125 LB382]

MIKE BOYLE: I do. I think it's...the concept, there might have to be some finessing of the language and the procedures, but I do think it's doable because...and frankly, it may be even better than registering at the office, because it would be right at the polling place and be able to get that ballot. Election laws have changed so that, you know, now people can vote in federal elections where they weren't able to before, for president and for federal offices. And that's relatively new, too, in the last probably seven or eight years. That's something new. Or maybe even longer than that. So I do think it would work at the polling place. It would not be...frankly, it probably would be easier at the polling place than it would be at the election office. [LB125 LB382]

SENATOR GIESE: And then one question, and I don't have the answer, is the time frame. What's the proposed time then? Are we going up until 8 o'clock to vote or register to vote? Obviously, you can't register at 8:05, but is there a time? [LB125 LB382]

MIKE BOYLE: Well, I would think it would have to be that you would have to be in line, just as you do...anything that would qualify you to vote would qualify you to register to vote, in my view. So if a person was in line at 8 o'clock and they were going to be allowed to vote, then they should...if they're not registered, they should be allowed to register and then vote, I believe. [LB125 LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

SENATOR GIESE: Thank you. [LB125 LB382]

MIKE BOYLE: Thank you. [LB125 LB382]

SENATOR PIRSCH: Thank you. Any other questions? Senator Sullivan. [LB125 LB382]

SENATOR SULLIVAN: Thank you, Senator Pirsch. Mr. Boyle, do you think that this, assuming they could register at the polling place, would significantly cause a lot of time lag when official election results are announced? [LB125 LB382]

MIKE BOYLE: You know, I don't, personally. I know that Mr. Gale may be glaring at me right now, because I believe in collecting the ballots a little earlier and getting a count. Under the auspices of the election commissioner, I trust that process. We did it years ago when I was in the election office, so that votes can be released at 8 o'clock, and I don't think it would significantly slow down those returns. I know that everybody wants to know immediately. That's the kind of society we are, but I don't think...my personal feeling is that it would not significantly slow those returns down. One of the things that we could do, and this is not before you today, but sometime we need to come to grips with some of the old election laws that we have that require, for example, rotation of names. Mr. Phipps has the number, but I think it's several thousand ballot faces that we have in Douglas County at a huge cost to prepare each of those ballots that's different from the precinct next door. And that's a terrible cost. Rotation of names was put in years ago so that...to prevent fraud, because they were sending people in and saying--who were illiterate--saying vote for the second name, and so they started rotating them. Well, that's gone. That's something that someone needs to take a look at. [LB125 LB382]

SENATOR PIRSCH: Very good. Any other questions? Could you just answer this? Do you know if, in the bill, does this just apply to people who had not registered before who would have the ability to come in and register and vote then, or would this be people that have previously registered in a different district and (inaudible)? [LB125 LB382]

MIKE BOYLE: Well, it would be my opinion that it should be anyone who needs to register for whatever reason, whether they had moved and had been registered before, or whether they're new to the community; a woman who's using her husband's name, has recently married, that sort of thing, whatever it is. I think any reason you need to reregister to vote should qualify under that, under both of these laws. [LB125 LB382]

SENATOR PIRSCH: Very good. Thank you very much. Any other questions? Seeing none, thank you. [LB125 LB382]

MIKE BOYLE: Thank you very much for the privilege of testifying. Thank you. [LB125 LB382]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

SENATOR PIRSCH: You bet. Thank you. Are there any other proponents here to speak in favor? Okay, then we will move to opponents. Are there any opponents of either LB125 or LB382? Yes, Secretary, if you would come forward. And I just ask opponents to, if they are neutral on one or in favor of one and opposed to another, to kind of at the outset kind of state their opposition or support. [LB125 LB382]

JOHN GALE: (Exhibit 7) Senator Pirsch and members of the committee, and Senator Avery, we're really pleased to have you back and looking so good and back at work, and we're deeply pleased everything went well for you and to have you back in our midst. I'm John Gale, G-a-l-e, Secretary of State for the State of Nebraska, and Chief Election Officer for the State of Nebraska. I am here to testify in opposition to LB125 and LB382. I have distributed my testimony. I had originally thought that probably I would be able to get through my testimony, but I did have some preliminary remarks and that may impinge on my ability to complete my written testimony, so you do have a copy of it in case the Chairman gavels me for a time limitation. In terms of general comments, I wanted to say, first of all, I have the greatest admiration for the sincerity and the intelligence and the interest of our students at the university. They come with a deep conviction and a deep commitment to their cause. When they testified last year, Adam Morfeld and Dave Solheim, so impressed me that even though we were on opposite sides of the issue, I met with them afterward, and I said, well, why don't we work together and find some goals that we can accomplish together. And so I created a college student advisory committee and Adam Morfeld is the chairman of that committee. We met regularly all throughout the year, last year, and we committed some of our resources, our funds from our office, our HAVA funds, involved...to get them very involved in voter education, which I think a big issue here is voter education. And as a result of that, we were able to get the engagement of our athletic director, Tom Osborne, who cut radio ads for us; Zach Potter; Rachel Schwartz cut radio ads for us. We put ads in the student newspapers at UNO, UNK, and UNL. The students were very involved with Facebook and Twitter and all the different ways that they could message each other and encourage each other to register to vote. We got the universities involved. The universities have e-mail systems. They were just flooding these blast mails out to the students, encouraging them to get involved. And as a result of that kind of grassroots engagement, we saw an incredible increase in student registration and voting. The same thing was true in Omaha, where the Obama campaign sent 16 professional poll workers to Omaha to do grassroots campaigning, very, very effectively, and it resulted in a huge increase in voter registration and voter turnout. So, to me, that is the key to true engagement in a democracy and that's creating a community awareness, shared goals, shared dedication, and also informed citizens who know what it is that is driving them to be a voter. It's not an issue of convenience. Now Mike Boyle talked about how we have evolved in a democracy, and I sure agree with him 100 percent in terms of the ADA bill helping handicapped and visually impaired be able to have access in order to vote, and status issues such as gender and race and other

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

issues that have indeed obstructed the ability of all citizens to qualify to be a voter and to engage in voting. But that's a status issue. If you're a woman or if you're a minority or if you're handicapped, that's a status issue because you're already a citizen, you already have the residency issue, you're already the right age, but there's some status issue that's in your way, and we've addressed those as a society and we'll continue to address them. But honestly, when I hear our students address this, I think, with amazement, when they're saying that really their concern is that the college students are too busy and they don't have time to remember to register and remember to vote until the last day, I think, well, the 27 percent of our society who are privileged to go to college and get a college education are those who are going to lead industry and they're going to lead government, and they are going to be people who are going to establish standards for our society and our democracy. And for them to say that they have time for sororities or fraternities, or time for student government or time for other kinds of campus organizations but they don't have time to remember to register in order to vote before election day, seems a little disingenuous to me. I think it's a matter...we all live with deadlines. I don't like April 15. I don't like to have to file my income tax by that date, but I have to. If my license to drive is going to expire on October 23, that's my deadline. It may not be a convenient day, but if I do it ahead of time I can get my driver's license renewed. We live with deadlines. We live with those kinds of obligations as citizens, and they're learning that. Now for them to say that they don't know anything about election or anything about casting a ballot, our student vote program engages over 100,000 students every year, K-12, every two years, to learn how to cast a ballot. We had close to 100,000 students across our state involved in that program, learning how to cast a ballot. Their parents and their county election officials helped them get registered when they were in high school, when they were seniors in high school. We have an enormous effort statewide to engage our young people to get them registered to vote. Now if they said to me, are there any issues where we really could accomplish some things in common, I would say there are a number of them. I would like to see us involved much more in finding ways that we can accommodate our military and civilian overseas citizens to vote, to have the capability of getting a ballot and getting it returned in a timely fashion nationwide. It's an enormous issue and we address it in all of our states. The Legislature has been very helpful to me in addressing that issue. We haven't accomplished much nationwide. Now these are military, these are foreign service, these are missionary. These are people who are out there around the world working for us, and we're not able to accommodate them in getting them ballots (inaudible). That's an issue I'd like to see them involved in. Voter ID--another issue I'd like to see them involved in. In terms of voter turnout, if you look what happened at Douglas County and people who wanted to vote early, be early voters, those lines were blocks long, people who wanted to get in and vote early. We have a law you passed, allowing satellite voting. We tried to implement that in Lancaster County with the help of the two political parties, and they came into dispute and we weren't able to do that. We were going to set up satellite early voting stations in six of our public libraries in Lancaster County. Because of the party bickering, it didn't happen. But there are states like Ohio that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

mandate every county have one satellite voting station where people can vote early, in addition to the county election office. Some states have multiple such sites. We probably aren't going to get off the ground unless you as a Legislature mandate that that happen. And then you're not going to have two- or three-hour waits at the Douglas County Election Office, because right now that's the only place you can vote early unless you have an absentee ballot. Now in terms of students, you know many of them register in their home county or their hometown, and that's where their parents are probably going to help them get an absentee ballot, you hope. But the students, rather than talking about early or election day voting in Lancaster County, many of them are still registered in their hometown and that's where they're going to cast their ballot. They need to help address the issue of how do they get those absentee ballots in a timely fashion to vote in their hometown, their home community. It's an issue that results in the serious neglect on the part of students being able to vote because they, come election day, if they haven't cast an absentee ballot, they are out of luck because they're not registered in Lancaster County. So I would say that there are a number of things that we can probably work on together with the students, but on this issue I would say that in terms of my testimony I am saying to you, this is not a national issue. The six states that originally were EDR states, were EDR states for list maintenance issues--not for convenience issues--to maintain the hundreds of thousands of people who do move. They move into the state, they move around the state, they reach the age of 18. NVRA was passed in 1983 by the Congress to ensure that people could register in other places besides their election office. They can...in Nebraska...the 44 states that have election...are subject to the NVRA. You can register and change your registration every time you go in to change your driver's license...or you go in for public assistance, you can get your voter registration updated. We upgrade our voter registrations, 350,000 every year, through those offices. Now those six states that are exempt from the NVRA are the states that had EDR already for list maintenance purposes. So they talk about, well, we had hundreds of thousands of people vote in Minnesota and Wisconsin and some of the other states with EDR. Most of those were list maintenance people. They were just upgrading their registration. They weren't all brand-new voters. We do our list maintenance during the year when people go and change their driver's license. So it's an entirely different issue for those states than it is for us because they don't do list maintenance, they're not required to do it, and so it happens on election day. In addition, other than those six states, you've got North Dakota which has no registration. Now if you really wanted to make this easy, if you really wanted to go for convenience, eliminate registration and just take your chances. Is that what we want in our democracy, though? Do we want to elect people where we don't really have any certainty whether the people voting in a close election are really qualified to be voting in that race? I don't think we probably do in Nebraska. But if you want absolute convenience, eliminate registration. Now, North Carolina is considered to be an EDR state but, honestly, they're not. They're like Nebraska because we allow people to register in person up until ten days before an election. Why ten days? Because it allows the county officials to vet those registrations to ensure that they meet all the standards

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

and qualifications before those people walk in and vote on election day. North Carolina gets that done in three days. It's not election day registration and voting. It's a three-day requirement. Could we change from ten days to three days? Maybe. But I think you would find a considerable number of our county officials who would say, that really puts us to a test because we're getting ready for our elections on election day, and you drive that registration date up to that point, we may not have the staffing, the capability of ensuring that those registrations get vetted in time for the election. Why does that matter? It matters in very close elections. You look at what's happening in Minnesota right now. You would like to know that every one of those ballots that's being counted in that Senate race is a legitimate ballot with properly registered people who are engaged in that election. So it does count in a close election whether or not you have people who do meet all of the requirements of being eligible to vote. So since 1993, when the National Voter Registration Act was passed by Congress, those original six states are in existence; you have North Dakota which has no registration; and you have two other states. That is not a national trend. That is not a hot topic, a hot subject, nationally amongst the election officials. Because all of the other states have national, we call it the motor voter law, the ability for people to change their registration at any time when they go into a motor vehicles office or a public assistance office. So we don't need this. We accommodate people in so many ways these other EDR states do not. For example, they have...several of them have a 30-day residency requirement. So people who have moved into, say, Minnesota, 29 days before that 30-day deadline, are ineligible to register to vote because they have a 30-day cutoff. We don't have any residence requirement in the state of Nebraska. You declare that you are a citizen of Nebraska in your application to register to vote. That's sufficient. You don't have to meet a residency requirement of 30 days, so we don't have that problem. They solve it with EDR. They also have requirements of 30-day registration. It cuts off 30 days or 20 days before. We don't cutoff until 10 days before. So we accommodate, as was discussed between yourself, Senator Pahls and Senator Avery. We really accommodate in a very significant way the ability of people to get registered to vote. And we see that in our voter turnout. Honestly, I have heard no complaints in eight years as Secretary of State from anybody across the state. Farmers and ranchers who have to drive 10 or 15 miles on gravel roads to go register or to vote, no problem. We hear no complaints from citizens of Nebraska. Now the students are the only group, and it's from the activists. These students who were testifying here today are people who are truly going to be national leaders and state leaders, because they are registered and they do vote, and the people they work with and the people they know, they are registered and they do vote. So I don't know what segment of the student population even we're really worried about, but are we going to let the tail wag the dog? If it's just a few people, are we going to cast this burden on our election officials that is unnecessary because we accommodate our citizens in so many ways already? And if it's an inconvenience, it's an inconvenience. If you get called for jury duty, you've got to show up or you're going to be held in contempt of court. Well, you can tell the judge it's an inconvenience. He isn't going to care because you as a citizen have been called to do your duty to serve on that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

jury. And so when we ask citizens to register to vote, it's the very same thing. It's a privilege. It's not an absolute, unconditional right. It's something you qualify for. And we do that with most all of our constitutional rights. There are things that we qualify for in order to exercise them. So the rest of my testimony is in my prepared testimony and I hope you have a chance to review it. But thank you. [LB125 LB382]

SENATOR PIRSCH: Well, thank you very much, Secretary. Are there any questions in light of his testimony? Senator Price. [LB125 LB382]

SENATOR PRICE: Senator Pirsch, thank you. Secretary Gale, I have a question for you. In reading through the bill, on page 15, line 15...I know you don't have it in front of you, but I'm sure you're well versed with this question I'm about ready to ask or not versed, but you'll be able to work through it. It says, if the elector is registering for the state for the first time and has not previously voted within the state, elector shall present an application. And then it gives a list of qualifiers, and one of the qualifiers is a copy of a utility bill. Would a utility bill provide you adequate information to verify that that is an individual who has met the qualifications to be a registered voter? [LB125 LB382]

JOHN GALE: Senator Price, I have to agree with you, except that that was part of the compromise that was reached in the United States Congress when they passed the Help America Vote Act in 2002. I would certainly rather have a higher level of identification for first-time voters who have registered by mail because they're the ones that have this requirement, but this is part of the federal legislation and I am as uncomfortable with that as you are, but that is what's allowed under that federal legislation, that you can have a copy of a utility bill; it doesn't have to be a driver's license. That's why I say voter ID is really one of the hotter issues across the country right now in terms of identifying you as the right person who is coming in to vote. But those are the kinds of issues. You can imagine some of the paperwork they're talking about is pretty iffy in terms of the privilege of voting. [LB125 LB382]

SENATOR PRICE: Thank you. [LB125 LB382]

SENATOR PIRSCH: Senator Sullivan. [LB125 LB382]

SENATOR SULLIVAN: Thank you, Senator Pirsch. Secretary Gale, you mentioned that this might potentially create an undue burden for election commissioners and poll workers. Can you elaborate on that a little bit? [LB125 LB382]

JOHN GALE: Well, I can, Senator. Thank you for asking that question. I am concerned equally with Senator Avery's bill and Senator Rogert's bill in that respect. One talks about you can do this at the polling site; the other says you can only do it at the election commissioner's office. In my prepared testimony, I'll just refer to one particular paragraph. In Douglas County, on a comparative basis with Iowa which has EDR, Iowa

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

had 46,000 people use EDR in the November General Election in 2008. On a comparative basis, that would translate to about 27,000 Nebraskans using EDR at their county election offices. In Douglas County, you would have 7,600 people using EDR. In Lancaster County, you would have 4,200 people using EDR. And there's no way those election officials can handle that volume of people on election day when they already have the responsibility to be counting their ballots. They start counting their early ballots on the day of the election, and so they're busy counting ballots. They have early pickups so they have more ballots coming in during the day that they're counting. If you have 7,600 people lining up in front of the Douglas County Election Office on election day who want to register and vote at the same time, in addition to their other election duties you are asking for a considerable amount of administrative trouble and very great potential of problems, creating election problems; errors being committed by the staff because of the pressure and their ability to maintain all these tables full of ballots and registration forms. [LB125 LB382]

SENATOR PIRSCH: Very good. Any other questions? Seeing none, thank you very much, Secretary. [LB125 LB382]

JOHN GALE: Thank you, Senator. Thank you. [LB125 LB382]

SENATOR PIRSCH: And we will move to our next opponent. Good afternoon. [LB125 LB382]

DAVID SHIVELY: (Exhibits 8, 9, and 10) Good afternoon. Good afternoon, Senator Pirsch and members of the Government Committee. I have some handouts going there. I had prepared statements on both bills so I'll try to combine mine. I also had a handout that I will refer to at some point. My name is David Shively. It's S-h-i-v-e-l-y, and I am the Lancaster County Election Commissioner. I am here today in opposition to LB125 and LB382, which would require voter registration at the polls or at the election office on election day. Under LB125 and LB382, election officials would no longer know who is registered or who is eligible to vote until after the ballots are cast and the election is certified. This defeats the purpose of a voter registration system and impedes the public's confidence in our elections. Providing reasonable time lines for voter registration and leaving enough time for election officials to adequately process registrations are necessary to ensure a fair voting process. At least four out of five voting-age Nebraskans are registered to vote. Registration numbers are so high here because registering to vote in Nebraska is a very easy and convenient process. Citizens may register to vote when obtaining or renewing their driver's license. Mail-in registration forms are available on-line, in telephone books, and at many other locations such as village and city offices, banks, post offices, and libraries. Here in Lancaster County, we set up voter registration drives prior to each election in grocery stores, malls, and libraries. We also provide voter registration drives at all of our high schools and on all four of our college campuses. Citizens are reminded frequently about the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

deadlines prior to each election. Election commissioners and county clerk's offices are open late, until 6 p.m. on the final day of registration for those that must wait until the last minute to register to vote. With the exception of the statewide general elections, my office rarely registers many citizens to vote on that final day. Nebraska law allows voters to register to vote up to ten days prior to an election. This is one of the latest deadlines in the country. In many states, deadlines are anywhere from three to four weeks prior to an election. LB125 removes any incentive for voters to register to vote prior to an election. While initially we may not see many voters registering to vote on election day, I fear that once voters realize they don't have to meet any deadlines, many will actually wait until election day. Election day is hectic enough for poll workers in processing voters who have taken the time to register to vote in a timely manner, without also requiring them to accept and verify voter registration application. Is it really fair to make those conscientious voters wait in line while poll workers process those procrastinators who wait to register to vote on election day. Nebraska's ballots are extremely complex. Nebraska has so many special districts and levels of government, and most of these entities are on the ballot in a statewide election. For the November 2008 General Election here in Lancaster County, we had 223 voting precincts, with 305 ballot styles or ballot faces. And I kind of showed you that by looking at the handouts here that I have provided you. In a primary election, you can multiply that number by the number of political parties that are recognized in the state at that time. In my handout, you will note that there were 35 precincts in Lancaster County that had more than one ballot face for the November 2008 General Election. I have also indicated the number of ballot faces for each precinct. In addition, I have given you examples of two of our rural precincts of what races were actually on each ballot face, so you can see why we had different ballot styles. With election day registration, if a poll worker makes an error in allowing a voter to vote in the wrong precinct or issues the wrong ballot face to a voter, there is no way to correct that error once that ballot has been dropped into the ballot box. In a close race, would that be fair to the candidates running for office? I am also amazed that most of the supporters of election day registration have never worked in an election office or as a poll worker on election day, so they have no clue of what actually goes on at either location. Election day is hectic enough in my office, from answering questions from poll workers, responding to voters' phone calls, calls from the media, and preparing the counting room for the counting of ballots. I would expect that in a major election like November 2008, my office would have to open a satellite office location and hire additional staff to process voters waiting to register to vote, as would be required in LB382. State and federal law allows voters who have moved to a new address within the county and did not reregister to vote prior to the deadline, to cast a provisional ballot on election day. We currently have a method in place to process those voters. However, we have seen those numbers continue to grow in recent years simply because voters now know that they are able to do that. I realize that there are those that believe that we need changes to make it easier to vote. However, increasing voter turnout shouldn't be a consideration more important than ensuring that elections are conducted honestly, fairly, and orderly. Election day registration is a solution looking for a problem that just

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

really doesn't exist. I urge you not to advance LB125 and LB382 to General File. Thank you. [LB125 LB382]

SENATOR PIRSCH: Thank you very much. Are there any questions? Seeing no questions, we'll thank you for coming down and testifying today, and move on to our next opponent. Good afternoon. [LB125 LB382]

MARY EICKHOFF: (Exhibits 11 and 12) Good afternoon. It's a race to get up here. My name is Mary L. Eickhoff. It's M-a-r-y, middle initial L, E-i-c-k-h-o-f-f, and I appear at this hearing today to voice my opposition to LB125 and LB382, as cochair of the legislative committee of the Nebraska Association of County Clerks, Register of Deeds, and Election Commissioners, and as the Richardson County Clerk. So I have two handouts for you and basically they're the same. But anyway, the story goes in Richardson County, as was told by an elderly prominent attorney years ago until he left us just a few years ago, that an election was held sometime in the late 1800s or early 1900s in Richardson County as to the location of the county seat. At that time, a strong rivalry was taking place between the western end and the eastern end of the county. The question on the ballot was, shall the Richardson County seat be located in Humboldt or Falls City? The stories of the fights, arguments, and violence, which included some gunfights, follow with this story. But the point I want to share with you today is that the story also contains the fact that even though the citizens of the western end of the county were using names off of grave markers and headstones to come up with more votes, the election was determined with the majority of the voters saying, yes, to the placement of the county seat at Falls City in the eastern end of the county. Well, how did that happen, when the settlers of the western end of the county were counting the names and numbers of voters to make certain that they would have the most votes? The eastern end of the county was doing the same thing, except they had more cemeteries with more grave markers and headstones. That's a funny story that we tell around Richardson County. So I thought you might enjoy that. But my point today with telling you this story is that election fraud started at the beginning of our democracy, but with time, we have been able to curtail the fraudulent activity with strict laws governing our elections, which includes, today, the law that voters must be registered before a deadline of ten days prior to any election. This law assists those officials charged with conducting the election, time to process the registration, to determine fraudulent addresses, names, and to notify the county and/or state of their previous voter registration address that they have now registered in another county and/or state and that they should cancel their prior registration. I have been serving as the Richardson County Clerk for 22, going on 23 years, and I want to inform you that Nebraska elections have been and are currently conducted to maintain the integrity of the electoral process. I can remember my first election. I was 25. Never worked as a poll worker, never worked in the office of the county clerk or with elections before, asking for much assistance from the staff of Allen Beermann at that time, which happened to be superb, just like the assistance we continue to receive today from the Office of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

Secretary of State. I knew that as an elected official, elected by the citizens of Richardson County, that it was part of my oath that I swore to when beginning my duties that the elections in Richardson County were to be conducted according to law, so as not to jeopardize the integrity or to compromise the validity of the election of any candidate. Voter registration today is easier than ever, thanks to the Clinton-era Motor Voter Act that allows for voter registration at almost any government agency that provides a service, such as driver's license exams, the application process for health and human services, etcetera. Voter registration drives are also done at many sites by different civic organizations. Even college campus groups conduct voter registration drives before upcoming elections. Nebraska law currently, and has since I can remember, has also allowed for voter registration by mail. This mail-in voter registration form is available on-line and most county officials make it available at all their local post offices and certain other locations. The excuses and reasoning as to why election day registration should be allowed can go on and on to include that it would be easier for young professionals and students, who relocate often, to join in the election process. Being a young professional or a student in the United States of America is a privilege of its own, but being allowed to have a voice in the government by voting is a protected right which must be kept protected by strict and valid recordkeeping to maintain the current excellent reputation of elections conducted with integrity that Nebraska is now known for across the nation. This reputation must also be maintained for the future generations to follow. A hand count taken this past week of the 93 election officials, has indicated that 46, which is also the total number that responded, oppose LB125. Election day voter registration, briefly saying now, is nonsense, and I now respectfully request on behalf of the Nebraska Association of County Clerks, Register of Deeds, and Election Commissioners, that the committee kill this bill. Okay, and then on LB382, of the 46 officials that responded in opposition to LB125, 41 had stated that they would support LB382, even though they were basically opposed to same-day voter registration. That if it must be a fact, that it should happen at the office of the election commissioner and not at the polling places, and that those registering to vote on election day must vote provisional. I would also like to add at this time that there will be also added costs to allowing election day voter registration and voting, as it will create the need to print an unknown additional amount of ballots, which costs have increased dramatically over the past years. Thank you, and I would answer any questions if you had any. [LB125 LB382]

SENATOR PAHLS: Do we have any questions? Seeing none, thank you for your testimony. Next opponent. [LB125 LB382]

DAVE PHIPPS: (Exhibit 13) Mr. Chairman, members of the committee, thank you for having me. My name is Dave Phipps. That's P-h-i-p-p-s. I'm the Douglas County Election Commissioner. A number of points have been gone over by Secretary of State Gale and others. I would like to thank Secretary of State Gale for his arguments. I think they're well-thought-out and cover most of the points that my written testimony, which is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

being passed out, addresses as well. Senator Price did bring up a good point when he asked that we not refer to some of these rules as arbitrary, and I really do feel that's appropriate in this case, because, you know, the deadlines are there for a reason. And you know, if you've never been an election commissioner, you've never worked in an election office, you really don't understand all the things that go into making an election work. You know, I've been involved in government and politics basically all my adult life, but you know, I never really gave voting a second thought. You show up on election day, there's some poll workers there, they give you a ballot, you vote, that's all you have to do. But now having worked in an office that takes care of that, I can show you, you know, a list of, you know, 700 or 800 tasks that have to occur just for those people to show up on time and give you the right ballot. So it's a complicated process. And you know, election officials in Nebraska do their very best to make sure that those things happen in an accurate manner. Voters get the chance to vote equally. And so they do a very good job of that, I think. And you know, frankly, this is just a burden that, you know, we really just can't afford to have. If you wanted to make it more easy and more convenient for voters, why not have each election official knock on everybody's door, and say, here, I'd like to register you, I'd like to hand you a ballot, I'd like to wait here until you're done voting. That would be incredibly convenient. I mean, granted it would take tens of thousands of people working for me to do that in Douglas County, but we could probably get it done. So I mean, it's always a matter of what's the most we can do in the most reasonable manner possible. And unfortunately, I just don't think this is reasonable. If you look at the numbers that Secretary Gale brought up, if you compare Iowa to Nebraska and those 7,600 people that would be coming in to the election office on election day to register to vote, to put it into perspective, if you saw the news coverage of my office on the last day to register to vote, the ten-day deadline, we had hundreds of people in line. Those people waited three hours in order to register and/or vote that day. We were open from 8:30 a.m. to the public to about 9:15 p.m. that night. So most of those folks had waited, you know, anywhere between three, three and a half, 3 hours 45 minutes, just in order to register to vote. Now to give you a perspective, that was about anywhere from 1,300 to 1,500 people. Now we're talking 7,600 people. Just the sheer number of it, I mean, I have no idea how we would accomplish this. I mean, we would have people waiting in line for days in order to register to vote. So I mean, there's a practicality in everything we're talking about. We can make everything extremely easy. We can make everything, you know, the easiest we could on voters, but you know, there is some responsibility in this as well. Deadlines are not unreasonable, and to hear the college students say that they're too busy to register to vote, I think is a little disingenuous. I remember being in college. I remember going to a bar or two, or seeing a movie or two. I think I found time for those things, and I suspect that things haven't changed that much since I was there. Maybe they have. But the ease of going to the Internet, downloading a form, dropping it in the mail--it's pretty simple. And I think we make that as easy as we possibly can. I'm always open to making things easier when it's reasonable, but I just don't think this is the case in these two bills. So I am here to ask that you do not pass LB125 and LB382, and would be happy to answer

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

any questions you may have. [LB125 LB382]

SENATOR PAHLS: Do we have any questions? I have one, Mr. Phipps. This is for a point of clarification I want to get in the record. Did I hear Commissioner Boyle say that he's going to get you more space? [LB125 LB382]

DAVE PHIPPS: I would certainly hope so, because you know, as we saw, you know, a three and a half hour or a 3 hour 45 minute wait for any citizen to register, in my view, is a little bit ridiculous. And so as a county board member, I think he's in a unique position to try and help me on that. (Laugh) In all honesty, Commissioner Boyle and I are very good friends, and he has helped me, greatly, trying to get the space I need, but we are working on it, so hopefully that will happen. [LB125 LB382]

SENATOR PAHLS: But just so...I mean, I voted early, and I stood in line for...I mean, which is okay with me, because I did get to know a lot of individuals. It's interesting how we all sort of exchanged stories, so it was a fun (inaudible). [LB125 LB382]

DAVE PHIPPS: I thought people had a pretty good attitude though. You know, there weren't the complainers that you kind of maybe suspected. Somebody standing in line for an hour, you think they're going to be pretty upset, but most people I think were excited about the process. So it was nice. [LB125 LB382]

SENATOR PAHLS: Right. And just to let you know, I stood in line more than an hour, but that's okay. Very good. I was just hoping the commissioner, we could hold him to his... [LB125 LB382]

DAVE PHIPPS: (Laugh) I hope you do. [LB125 LB382]

SENATOR PAHLS: Okay, thank you. Any more questions? Thank you. Oh, I'm sorry. Senator Giese. [LB125 LB382]

SENATOR GIESE: Thank you. Mr. Phipps, now that we've established that the college students like to potentially maybe go to bars and they kind of lose track of time and cannot show up to vote or register on voting day, beside that pertinent fact that you pointed out, take me through then your typical day on a voting day. [LB125 LB382]

DAVE PHIPPS: On election day in our office, my staff shows up at 5:30 a.m. The polls open at 8:00 a.m. Our first set of poll workers that will work in our office show up at 6:30 a.m. to start answering phones. We'll have anywhere between 30 and 40 people sitting at desks, answering phones for a phone bank that will start at 7:00 a.m. That's when the poll workers begin to arrive at the polls. So we're answering questions of: I don't remember the lock combination; I don't know where...; I can't find the pencils; I don't know where the voting booths are, those sorts of questions from poll workers. And so

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

those poll workers are answering those questions. At the same time, we bring in anywhere between 100 and 150 extra poll workers into our office, so that if a poll worker calls in and says, well, my Republican clerk didn't show up in precinct 534, we can send out a replacement worker for them. So we have about 100-150 people waiting around, just waiting to be shown to another precinct so they can fill in for someone. The polls open at 8:00 a.m. The people that are there as extra board members, is what we call them, are there until usually between 9:00 and 10:00 a.m. we'll start to release them, because we figure by that time everybody has called in that needs a replacement worker. At about 11:30 a.m., 12 o'clock, some of our roving inspectors, the people that go out in the field and make sure that the polling places are running properly, those folks come back to report to us and give us a sense and a feel for what's going on out in the field. You know, oh, we had lines out at Millard West, and oh, we had a couple of problems at this nursing home that we use as a polling place, but we got it all straightened out. So you get kind of a feel from the field of what's happening on election day. Because you know, we have over 352 precincts in Douglas County; 277 individual polling locations. So it's a little difficult sometimes to get a good feel of what's going on out there. [LB125 LB382]

SENATOR GIESE: And if I could interrupt you, how many poll workers at each? [LB125 LB382]

DAVE PHIPPS: Each polling place has a minimum of five. In the '08 General Election, we had an extra poll worker at every precinct simply because of the volume we were expecting. So you know, all total, Douglas County has, on a normal election, about 2,200 poll workers. In the '08 General, we had about 2,500 poll workers. [LB125 LB382]

SENATOR GIESE: And how busy are they throughout the day? Are there certain times obviously, obviously from 8:00 a.m. to 9:00 a.m. or 10:00 a.m., and 4:00 p.m. to 8:00 p.m. [LB125 LB382]

DAVE PHIPPS: Yeah, and that's something that we've taken some time to analyze and it is just kind of what you think it would be. It's busy right away in the morning. It's busy over the lunch hour, and then it's busy at the end of the day, all the way up until the closing of the polls. So you know, when people ask me what's the best time to go vote, I say it's kind of those slow times: mid-morning, mid-afternoon. And that's typically the case with most elections and then it's just a matter of volume. So for a primary election, unfortunately people aren't as interested. It's more the people that are, you know, very politically interested and very interested in electing a certain person. So we get anywhere from 15 to 20 to 25 percent turnout. So you know, people are not extremely busy all day long. For a general election, especially a presidential general election, you're busy all day long. You're really, really busy at those peak times. So it really depends on the type of election it is, you know, just the number of sheer voters that are coming through. For a normal election, like a gubernatorial general election, turnout is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

between 50 and 55 percent, on average, just depending on how big of a race it is and if there's a Senate race involved. For a presidential election, it's usually in that 65 percent range, but for this last election we had a record turnout of over 73 percent of all registered voters in Douglas County. [LB125 LB382]

SENATOR GIESE: And then, so just quickly then, if I showed up to register, how long would that take me then, if I had what I needed? [LB125 LB382]

DAVE PHIPPS: The difficult part is if it's at the election commission, sure, we can find out where you live and process you and get you voting. You know, that process would probably take on average, oh, I would say 5 to 10 minutes to get you registered in the correct spot, and that's if you're a normal person that is in an area that is not a new subdivision that maybe we haven't mapped out in our street index, and we know exactly where you're supposed to belong. And then getting the proper paper ballot for you and letting you vote that and getting all the paperwork that's required, it would be a 5-10 minute process for each voter. Some voters take a little less, some take a little more, but I would say it would fall within that range. [LB125 LB382]

SENATOR GIESE: Thank you. [LB125 LB382]

SENATOR PAHLS: Seeing no more questions, thank you. [LB125 LB382]

DAVE PHIPPS: Thank you, senators. [LB125 LB382]

PERRE NEILAN: Thank you, Senator, members of the committee, my name is Perre Neilan, P-e-r-r-e, last name N-e-i-l-a-n. I appear before you today on behalf of the Nebraska Republican Party in opposition to LB125 and LB382. And I don't want to be repetitive of what the other opponents have just stated. You've had a great discussion here and heard great things from them. And let me say for the record, the party definitely supports higher voter turnout and wants to do things and very proud of the steps that have been taken by the election commissioners across the state to make sure that happens, and very proud of the young people that have come forward and want to push for higher turnout and make sure that the younger population takes part in the process. That's fantastic. What I'm shocked and confused about is their suggestion that young people are not capable of planning ahead or thinking ahead. We know that's not true. We know they don't just show up at the University of Nebraska-Lincoln on August 24, the first day of school, and say here I am, and without some preplanning to register for classes, financial aid, housing, making those sorts of arrangements. So I think those types of arguments that they can't plan ahead just kind of fall flat. It just seems that we're fixing a problem that doesn't exist, and we'll hope you seriously take to heart what you have heard from the election commissioners, Secretary Gale, and the top election commissioners and those that have spoken on behalf of the statewide group. They absolutely have, at the heart of their job, the integrity of the process, and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

that's what we would endorse from this point. That's all I have, Senator. [LB125 LB382]

SENATOR PAHLS: Any questions? Senator Giese. [LB125 LB382]

SENATOR GIESE: Thank you. Mr. Neilan. And so then if I'm a college student and I show up on August 24, I think you said was the day, or something, would then the university turn me away? [LB125 LB382]

PERRE NEILAN: You would have to ask the university that, but I don't think you can just walk in and start taking classes. [LB125 LB382]

SENATOR GIESE: Thank you. [LB125 LB382]

SENATOR PAHLS: Seeing no more questions, thank you. Next opponent. [LB125 LB382]

DIANE OLMER: (Exhibits 14 and 15) Good afternoon, Senators. My name is Diane Olmer, O-l-m-e-r. I am the election commissioner in Platte County, Nebraska; Columbus, Nebraska. I am also a cochair of the election law committee for the NACO County Clerks, Election Commissioners and Register of Deeds, and I am here to opposed both LB125 and LB382. I've heard a lot of testimony for and against, and I'm going to try not to repeat a lot. I did take that fact-finding trip to Iowa with Nebraskans for Civic Reform on February 10, to see how Iowa handled election day registration. And February 10 was a special election day for them and it was a school bond, or I shouldn't say a school bond, a school issue that was being voted on. And so just as when we have a special election with one issue, there wasn't much activity and there was only one issue on the ballot, and there were no determinations on which ballot anybody should get. But we talked to the Secretary of State's Office in Iowa and quizzed them on their process in November. Then we also went to a polling place and just saw how they handled their paperwork and everything. And it really ran smooth. And I was thinking, well, you know, if Iowa can do it, why can't we? And the more questions we asked, then after I got home and thought about things, there are quite a few differences in Iowa and Nebraska that make it more difficult. I'm not saying it isn't possible. But the one thing that struck me most about Iowa in their November election was the Secretary of State's Office told us that they hold their school elections on a different date, so, of course, they don't have the school splits we do. In Nebraska, the school districts cause a lot of the ballot faces, the splits or the ballot faces that we have. And so most, unless I'm wrong, and I think there is somebody here to testify in a neutral position from Iowa, most of their precincts only had one ballot, even in November. Well, if we had that, it wouldn't be that hard either. But the way it is now in Nebraska, I have a little precinct that only has 112 people in it and there are nine splits every November for those people. So it's almost like every other person walking in, you have to make sure you've got the right ballot for them. And that also happens to be in an area of Platte County that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

doesn't have very good cell phone reception, so when somebody walks in, new, that maybe moved from one end of Platte County to another and they want to, even just provisional vote, change their address, it does require communication between the polling place and the election office. And that is, you know, what we ask our poll workers to do, and if it ends up they can't get through, like with the general election in November 2008 it was very busy, the lines were busy, or maybe the cell phone reception isn't good, then it is the call of the precinct inspector. But one thing about that is their ballot goes into an envelope and the envelope goes into the ballot box. Both of the bills that are introduced here today have the ballot going straight into the ballot box. There's no chance to hold it back or reject it or accept it or whatever. So you know, we talked about Iowa. The other thing about Iowa too is when they go to the polls and you come into that polling place and your name isn't on the list, then you are required to fill out a voter registration, sign an oath saying I haven't voted in this election and I will not vote in this election in another place, or anything, and then you're given your ballot to vote, and then the ballot goes into the box just like ours does. Now that takes care of all their voters that need to make changes on election day. Neither of these bills do. In Nebraska, these bills only address the people that are new to Platte County or another county or to the state. So the way the bills set up our elections in Nebraska, if either one goes into effect, they really complicate the whole issue. We create a new class of voters which have more rights than the residents that are just moving from one end to the other. So if either of these bills would go into effect, right now we have the people voting--and I'm just going to give instances--we'd have maybe somebody moving in from Wisconsin, or we could have somebody moving in from Platte County...to Platte County from Scottsbluff, or we could have somebody in Platte County moving from one end of the county to the other. And these people would come to the polling place, usually they show up there first--and they wouldn't be on the list. Okay, now, with either of these bills in place, the poll worker has to decide, which kind of voter do I have? Is this a provisional voter? Do we have him fill out provisional papers because he moved from one end of the county to the other, his ballot goes in an envelope, and the ballot goes in the box? Or is he one of those new voters that moved in from Wisconsin and, oh, he has to go to the election office? Or is he one that can vote here or at the election office? There's also a statement in both of the new bills saying that ID is required if a person is not on the Nebraska list of voters. Now who knows that? Only the election official; not the poll worker. They only have a list of the people in their precinct. So there is another instance where there needs to be communication from the polls to the election office. You very much complicated this issue and made it hard on the poll worker, not just determining what ballot they get--they're kind of used to that. Call us and see if we can figure it out. But now they have to figure what kind of voter they have. Is it somebody that I have to send to the election office? Is it somebody I need ID from? Is it the same old process, this guy his ballot goes in the box in the envelope? And the other, there's a couple of privileges that both of these bills give the brand-new voter that the provisional voter moving from one end of the state or county to the other get. In Senator Avery's bill, the new, brand-new voter who's not on the list in the county, he can

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

decide: Do I want to go to the election office; do I want to vote at the polls? No other voter gets that option. That also leaves the area where that guy, if he wanted to pull a fast one, with ID, could vote legally in the election office, ballot in the box; go to the polls with the same ID, ballot in the box. He voted twice--easily. Now you've got the voter with the provisional; his ballot is kept in that envelope. What we're doing here is trusting the guy that moved in from Wisconsin, totally. Ballot in the box; you're counting your ballot. He could be prosecuted later for voting twice, because his name would end up on two lists. But the guy that we've known forever, moved from Humphrey to Columbus in Platte County, we don't trust him. His ballot goes into an envelope so later we can decide. So we've given that new voter two privileges: where do I want to vote, in Senator Avery's bill; and the other big privilege is we trust his ballot to go straight in there and be automatically accepted. So if we ever get EDR in Nebraska, I think we need to revamp the whole election system. Neither one of these bills are workable at all. I'm not saying EDR will never be a part of Nebraska voting and that we couldn't handle it, but neither one of these bills work very well at all and would definitely complicate the whole issue. Nobody at any of these testimonies has kind of suggested or got to the point of why do you register to vote. There is a reason for registering to vote. It's not just to put a little crimp in your daily, you know, whatever. It is to allow us to make voting easier for you and to guarantee that you get the right ballot. So when you come to vote on election day and you show up at your right polling place, you're on the list, they know what ballot you get. You zip through in a timely fashion. That is one of the reasons for registering to vote: to make voting easier and less time consuming. The other is to assure that you do get the right ballot. We talked about all these splits. Splits, even in the office aren't always easy to determine. A lot of them require a trip to the assessor's office, hope they're open, or this and that, and determine which ballot they get. And what's the big deal if somebody gets the wrong school district ballot? Well, if you lived in Platte County and you lived in my school district, Lakeview School District, there wouldn't be one patron that would want anybody voting that isn't supposed to, because there's a discussion on who should build what or how we should handle the growing population, and it's a hot, hot area of the state for school issues. So it is important that every voter gets the right ballot and nobody votes in a subdivision that they shouldn't be voting in. And as an election official, I take that duty very seriously. We try our best to make sure everybody gets the right ballot. I've been the election commissioner for just about 13 years, and I don't think there's an election commissioner or a clerk in the state of Nebraska that doesn't take that duty very seriously. So when we take it kind of lightly, with this, and let those new people come in and let them register to vote and plop that ballot right in the box, it just doesn't seem fair, even to the people who have to put their ballot in an envelope. We've created two classes of voters; some we trust, some we don't. And so I would ask you not to advance either one of the bills. [LB125 LB382]

SENATOR PAHLS: Do we have any questions? Senator Price. [LB125 LB382]

SENATOR PRICE: Senator Pahls, thank you. Ms. Olmer, I'd like to ask if you could

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

venture a guess on how long it takes to register a voter? [LB125 LB382]

DIANE OLMER: Registering a voter, like in the office, I always say it's a five-minute process. Fill out the form. But of course, we would have to educate our workers and make sure they don't forget anything or this or that. But no, registering itself is a short process. [LB125 LB382]

SENATOR PRICE: And for election days, presidential election cycle, let's say, do you base your manpower needs on the number of people you suspect will be visiting your office? Is that how you figure out how many poll workers? We heard from Mr. Phipps where they have 100 to 150 in reserve; you have 40 people answering phones; you have a lot of different people on site there. And I suspect that what Mr. Phipps and every commissioner does is predicated on numbers of how long it takes to do an action so they know what their needs were going to be. [LB125 LB382]

DIANE OLMER: Right. And you look at the election. The presidential election 2008, you just knew it was going to be busy, so we did kind of the same thing that Mr. Phipps did. We did have, where we usually have five people at each polling place, we had six in the city of Columbus, and then some of the rural areas we still only had five. We had extra workers in the office, trying to make sure that we could man all the phones, that there wouldn't be one ringing when we couldn't get to it. We started counting our ballots earlier in the day so that by 8 o'clock we could be ready; have the early ballots counted so that we'd be ready for the next action which is receiving in the ballots from the polls. We tried to look ahead so that we wouldn't be causing anybody to wait unnecessarily. One thing that was said earlier about, I forget who it was, about a list that we have. We have a street file in the state of Nebraska which can be sent to a polling place, but it does not go from street file address to the ballot type. Somebody mentioned that and I thought, well, that would be awful fine and dandy, but we do not have that. Mr. Boyle also was asked a question on this EDR: Does it take care of anybody that has to register to vote? And it doesn't. These two bills only takes care of the people that aren't on the list at all. It doesn't take care of the ones that are moving. In Iowa, you treat them all the same. They all show ID, they all register to vote, they all signed the oath. Then it's no decision for the poll worker: What kind of voter is this; is he the one that needs ID; is he the one...? Dut-dut-dut-dut, you know. So Iowa has definitely an easier process than us just by the fact their schools aren't on the November election. They eliminated so many ballot faces or splits, so that part of it makes EDR perfect for their state. I don't know that we'll ever get that done here, but if we somehow got splits lessened in the state of Nebraska I don't think it would be quite as big an imposition on election officials. But right now, it's not workable. [LB125 LB382]

SENATOR PRICE: Thank you. [LB125 LB382]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. Any more

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

opponents? Just by a show of hands, how many more opponents do we have? [LB125 LB382]

NEAL ERICKSON: Senator Pahls and members of the committee, my name is...for the record, my name is Neal Erickson. I am Deputy Secretary of State for Elections, here in opposition to LB125 and LB382. I thought it would be kind of interesting, we've got into talking about registration, because actually at least one aspect of my job, what this is about is election integrity. I think Commissioner Olmer kind of explained to you about the split aspect. But I want to give you a real good picture of what we're talking about. Let's take a look at the ballot in Council Bluffs in 2008, November. They had president. Everybody in the town gets to vote for that, everybody in the county gets to vote for that. They had congressmen. Everybody in the county gets to vote for that. They had legislature, they had judicial retention, and they had townships. That was it. No cities; they're held separately. No schools; they're held separately. Right across the river in Douglas County, in addition, you had ESUs, learning community, NRDs, community colleges, school districts, cities, all those races combined to create a wide variety of variations. And we're trying to get the proper ballot to the proper voter--that election integrity issue. This concept has been introduced in the past. I think last year it was, well, let's go to the polling place and have, you know, and have that ballot issue there. The difficulty is, is those poll workers have to be able to determine what ballot split is given to that voter. And in response to that, you know, the opponents said, we can't really have those poll workers doing that. You know, we're going to end up with mistakes. We're going to end up impacting the integrity of that election. And the sponsors or the proponents of that came back this year with an idea, well, let's go to the commissioner's office where we can make that determination as to what split, what ballot face they're supposed to get, and preserve the integrity of that election. Well, actually I'm kind of glad Iowa adopted EDR. They've got that simple ballot if they can make it work there. But one thing it did was give us some idea of the kinds of numbers we're going to be looking at. As Secretary Gale mentioned, with 46,000 people using EDR in Iowa, corresponding to our population and our registration it would be about 27,000. When you look at how our vote is split across our counties, that means 7,500 in Douglas County; that means 800 in Hall County. These are kinds of numbers that would disrupt the process on election day in those offices and impact the integrity of the election. And that's part of the reason I'm opposed to this. Now, hopefully you've got a clear picture of what those ballot faces and why we're different than some of these other states. Secretary Gale mentioned some of the other deadlines, etcetera, and those are all factors. But our comparison with Iowa is a real apt one. Neighboring states, oh, probably the same work ethic, same...maybe the same measure of civic duty, etcetera, that goes on there. So I would encourage you to give some good, hard thought to that about what we're doing here. And like I said, I don't view it as necessarily a registration issue, but more an integrity of the election issue. The last thing I'd mention is that in going through these bills, and I will say this is not the fault of the sponsors, but I think there needs to be a lot of work on the technical language in here. To give you some

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

examples, one thing--and I think this was actually the result of bill drafting--they replaced the word "registered voter" with "elector" practically in every spot in the election code. There are some places, if you were to adopt these, that it might be appropriate. There are other places that it's not. For example, they talked about an elector getting a ballot. Well, we give registered voters ballots, and if somebody is coming in to use EDR, when they register then they're a registered voter and then we give them a ballot. On the other hand, there's sections in there that talk about voters can bring whatever material in terms of memoranda they want to into the polling place. That's appropriate for electors. So there's a lot of changes in here, in I guess what I would call technical verbiage, that need to be gone through with a fine-tooth comb, to be honest. You know, I noticed, for example, Senator Price, you had asked about some of the ID requirements. And I'll be honest with you, in looking at those ID requirements, I'm not certain if they were intended as a fraud prevention method or whether it was just trying to comply with some of the HAVA requirements on new registrants by mail. Well, those ID requirements under HAVA would not apply necessarily in this situation anyway. So you know, I certainly, I know Secretary Gale would offer our services, if necessary, to help you in terms of maybe correcting some of these technical aspects if you decide to pursue one of these. And with that, I'd close and answer any questions you might have. [LB125 LB382]

SENATOR PAHLS: Any questions? Senator Janssen. [LB125 LB382]

SENATOR JANSSEN: Thank you, Chairman Pahls. I'm glad you got up because I had a question earlier, and it may have been more for the Secretary of State. I have many reservations with both of these bills, and...but one of them has been brought up, in opposition, is the I'd get worried about the down-ballot issues and candidates. I think all of us, having been a candidate, we don't want all of our work basically thrown to the wind in hopes that the right person goes to the right place and pulls people out to go vote that day. That is one of my many concerns with both of these bills. But one thing that did come up is, you know, the different ballots, the different faces. Would you be more supportive toward measures like this, despite the technical difficulties that are in these bills, if there were something to say--and is this even possible--if you showed up, day of, your ballot would only be for federal and statewide ballot issues only? [LB125 LB382]

NEAL ERICKSON: Well, and to comment first on your down ballot, and when I talk about integrity, believe me, candidates who have their elections screwed up, it doesn't make any difference how far down the ballot are they. All scream just as loud. We actually have a concept similar to that in statute already which is called the new and former resident ballots. In Nebraska, if you would move into, say, Colorado, that had a registration deadline 30 days prior to election, so you moved to Colorado on October 15. You're not eligible to register to vote there and you're not going to be able to get a ballot. You can actually apply to your previous county in Nebraska and say, I moved to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

Colorado that had a...I've already passed their deadline; I'm entitled to vote for President only. Similarly, with new voters, if you move into a county, either from another county or another state after our registration deadline, you were allowed to in effect file an affidavit saying I'm a new resident, and you're entitled to vote for President in that situation. It does only encompass President. It doesn't necessarily encompass the federal offices, but at least there's that little bit of a connection there. [LB125 LB382]

SENATOR JANSSEN: So if it were...so if we could say we're going to scrap that, those bills; we're going to say, day of, now. We want the person to be able to show up, day of...I'm an UNL student--I'll say Wayne State because that's where I went. I'm up there, excited, you know, I want to vote for President; I caught Barack-omania--which I did not--but...(laughter)...and I want to go vote. So I want to show up at the party tonight with an "I Voted" sticker on and that's really what I care about, and also I could vote for the Johanns ticket; I could vote for the...if the Governor were on the ballot or the Secretary of State. [LB125 LB382]

NEAL ERICKSON: Without commenting on the policy aspect of it, from a logistics standpoint that would be much simpler. [LB125 LB382]

SENATOR JANSSEN: Okay, thank you. [LB125 LB382]

SENATOR PAHLS: Senator Price. [LB125 LB382]

SENATOR PRICE: Senator Pahls, thank you. Yes, sir, Mr. Erickson. I've got a question for you. When you brought up down ballot, it brought up memories. How much--if you can characterize, and you don't have to--how much human judgment is used, a judgment call is made on the proper ballot that someone should have without absolute definitive understanding of whether the person getting that ballot is receiving the absolute correct ballot? [LB125 LB382]

NEAL ERICKSON: From somebody who is properly registered? [LB125 LB382]

SENATOR PRICE: In any one of the categories. [LB125 LB382]

NEAL ERICKSON: Okay. From somebody who's properly registered, whose name is on the poll book, it is with a very high degree of certainty, because actually what happens on there, is on your poll book you will have them coded as to what ballot they're going to receive. Now, you do have, you know, some aspects of human error where you can say this person is entitled to ballot stock number or ballot code number 34-006 and if for some reason that poll worker gives them 34-005, now we actually...well, I should say a lot of the election officials will try even to take that into account--we see this in the primary a lot with wrong party ballots--they will use different colored ink so it's a much more visual type thing to make sure they're giving the right one. We will see...but we do

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

have, you're exactly right, you have a human being issuing a ballot. Now the coding is there as to what ballot they should get. That translation through that human being sometimes is always not perfect. [LB125 LB382]

SENATOR PRICE: And then would you venture, if you had to do a provisional ballot on that day, I mean how much more accurate is that then...I mean, because the point I'm trying to establish, you know, I know then in my primary and general election there were people who lived in the district who weren't getting the district ballot, because the way the line is drawn, the GIS, sometimes a house falls out on the other side of the street. It happens. And I was told that, well, for those that end up on the outside of the district there's an equal number that are inside the district. A (inaudible)...we're only talking four or five maybe; you know, it wasn't a big number or a whole district. And that gave me rise to concern that if that's the existing situation now, when we put in and interject a whole new flow of 27,000 potential ones, with up to 5,000, 6,000 in a district, that number is going to grow pretty rapidly. And we have people who lose races by three...well, in the primary, by three votes; 11 in the general election. [LB125 LB382]

NEAL ERICKSON: Yeah, right. At least when we would talk about new subdivisions in terms of getting them into the street file, etcetera, yeah, it is very important that an election official be very careful, because you see things happen where the GIS is not perfect in some of those cases and the street file is not perfect, and you're constantly trying to make those correct. We've also had situations where, in all honesty, sometimes the legislation isn't even correct. We had a situation actually in Sarpy County during the '90s where there was actually a hole that was between the districts and it was not identified as either district. And yeah, technology I think is probably better than a human sometimes, but it too does make mistakes, you're correct. [LB125 LB382]

SENATOR PRICE: Okay. Thank you. [LB125 LB382]

SENATOR PAHLS: Seeing no more questions, we thank you for your testimony. I think that's all of the opponents. I think we have neutral. One neutral? Okay. [LB125 LB382]

JACK BEESON: (Exhibit 16) Good afternoon, Senators. My name is Jack Beeson. The last name is spelled B-e-e-s-o-n, and I work in the elections division of the Iowa Secretary of State's Office. I first would just like to say that it's a privilege to be here in Nebraska. This is actually my first visit to your state even though I was born and raised in neighboring Iowa, but I'm from the eastern end so I never made it quite this far west before. It's also an honor for me to be here representing the Iowa Secretary of State's Office. And I feel that, you know, my testimony here as a neutral position, because it would not be appropriate certainly for somebody from another state to take a stance on a policy that impacts Nebraskans only, is I would be happy to answer your questions about how the process worked in Iowa, and I also would like to offer some, I guess, general recommendations that our office would recommend to any state exploring

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

election day registration. I've heard lots of commentary, you know, up until now, and it's been a real honor to meet with the Nebraska delegation that came to our office, listening to their concerns, listening to the unique situations that affect Nebraska, that may, in some cases, not affect Iowa. So I guess, first, I would like maybe to clarify a couple of things that I heard earlier. One was the issue of comparing our states, which I agree, demographically, you know, probably very similar. We also have had, prior to implementing election day registration, a very high total number of eligible registrants who were registered to vote. I believe it was, you know, hovering at over 90 percent of those who were eligible to vote were already registered to vote. And so, you know, you could probably expect a similar proportion of residents in this state would vote using election day registration if it were available. However, there is one difference when you're comparing these numbers, and that is that, you know--and I have not delved into these bills from Nebraska--but it appears to me that the two bills that are up for consideration would allow election day registration only on election day; that once the deadline closed, you know, 10 days before, nothing could happen until election day. Again, I'm not certain if that's exactly true, but that's what it sounded like. In Iowa, once the deadline has passed, which in Iowa it was the same as in Nebraska: 10 days before the election. Once that deadline has passed, anyone who shows up at a county commissioner's office or at a satellite voting station--which we had a very wide use of satellite voting in Iowa--once that happens, they can register and cast a ballot at the same time, any time in that 10-day window before election day. So when you look at some of these big counties, you know...and we had a similar number. I could get you the exact number here in Polk County which is where Des Moines is located. You know, they had a total of 6,255 election day registrants. Now that doesn't mean that all those people showed up on election day to their polling places. And in Iowa, the way it works is, once election day hits, there is no voting at a commissioner's office because Iowa law specifically prohibits voting from taking place at any other place besides the voter's precinct on election day. So like I say, I guess in Iowa we would not have the concern that I heard raised earlier between having voting take place at a commissioner's office and at the polling places on the same day. So that does not happen in Iowa. It's at your precinct on election day or, prior to election day, at a satellite voting station or at the county commissioner's office. So I guess that's one thing I just would like to clarify is that we did not have, you know, the number 45,929, those people weren't all on November 4. Those were scattered between that 10-day window prior to election day and including election day. So that's one thing I just wanted to clarify. And then, let's see, so many comments came to me today when I was listening, and it was very nice to hear some of the comparisons between Iowa and Nebraska. And so I guess basically I would like to turn over to your questions. I do have lots of information here to address your specific concerns. I would like to say maybe as an overall general opinion from the state of Iowa is that we had...there were many valid concerns. Prior to working with the Secretary of State's Office, I worked for two years at the Johnson County Auditor's Office which is where the University of Iowa is located. So I'm well aware of all the issues that students especially encounter with the election process and all of that and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

how that works. So I guess what I would like to say with that is that we have found that the concerns that people had, have now, in great part, been alleviated through the way that this worked. We had a real trial by fire in this last November election, and the results so far have been mostly positive. You know, there is always, of course, room for improvement in any kind of an election system, and we're certainly taking any complaints or any issues that people have brought up, we're taking those very seriously, and you know, we do have a number of proposals that we'll be working through, going forward. But in general, I think a lot of us had concerns in Iowa about how this was going to work, and most of our concerns were alleviated once it was in place. Another thing that I heard, you know, I agree with the testimony that I've heard earlier that no one who doesn't work in elections really understands how crazy it can be sometimes, for lack of a better word. However, we didn't find that implementing election day registration made our jobs any more crazy than they already were. I mean, you know, explaining to somebody why they can't vote, in many cases takes just as long as explaining how they can vote. Explaining to somebody how to fill out a provisional ballot actually, in most cases, takes much longer than explaining, okay, I need to see some identity, I need to see proof of your identity, I need to see proof of your residence. Once you've established that, I need you to fill out these forms; now we can proceed. We didn't see the time, taken, you know, spent explaining those processes were any more cumbersome than what procedures and provisions we already had to comply with because of our law. So I suppose with those kind of general comments that I've made, I would now like to turn it over and ask for your specific questions about Iowa's experiences and election processes. [LB125 LB382]

SENATOR PIRSCH: Very good. Thanks for your testimony. Are there any questions? Seeing none, I appreciate your coming down here today and all your testimony, and we'll ask if there are any other individuals in the audience here to testify in a neutral capacity. [LB125 LB382]

JACK BEESON: Is it possible for me to continue testifying...I had. No? Okay, I'm sorry. I had a couple of things. [LB125 LB382]

SENATOR PIRSCH: Well...and certainly, yeah, if you want to...and we can talk afterwards if you want to distribute...is it something you wanted to distribute, is that what you're saying, or? [LB125 LB382]

JACK BEESON: No, I guess I just wanted to say that, you know, our office is more than happy to collaborate with anyone interested in election day registration issues and, you know, talking to us about our specific experiences. I just wanted to kind of extend that resource to all of you here and to anyone else from Nebraska. [LB125 LB382]

SENATOR PIRSCH: (Exhibits 17, 18, and 19) Well, thank you very much. I appreciate that. Okay, any other neutral testimony? Seeing none, then I'll just ask the sponsors to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

come up. Actually I'm going to, before we wrap up with the sponsors, I'm going to read into the record a number of contacts we've had. Letters in support of LB125 and LB382 are Miles Rapoport, Kyle Jackson, Katie Kidwell, and Katherine Speicher, and also read into the record letters we've received in opposition to LB125 and LB382 from Dale Baker, Glenda DeBrie, Vera Dulaney, Joann Fischer, Kay Forslund, Nancy Josoff, Deb Karnatz, Chris Lewis, Diane Mohr, Vicki Morris, Jan Ream, and Sandra Stelling, and a neutral letter on LB382 by Nancy Josoff. Very good. And now we'll close with the sponsors. [LB125 LB382]

SENATOR AVERY: Well, since I let him go first before, he's going to let me go first in closing. Mail-in ballots, early voting, motor voter--that is being able to register to vote when you renew your license or you get your driver's license for the first time, restoring citizen rights and voting rights to ex-felons, these are all a part of Nebraska law. These are changes that didn't come easy. And I remember the arguments then for not doing it: This is going to be a lot of work; it's going to require us to change the way we do things. This actually is a threat to the integrity of the process--that's the one argument you hear the most. Let me ask you this: What do you think the arguments were for doing those things? What do you think the arguments were for mail-in ballots and early balloting and motor voter and allowing ex-felons to get their voting rights restored? The arguments were similar to the arguments you're hearing today for doing this, because the thing is that change is not easy. Change is not easy. We're not asking here that no requirements be placed on voting. That's not the issue at all. The issue is, what are reasonable restrictions on voting, and how far should we go in making voting more accessible to more people? And I suggest to you that if we're going to make a mistake, let's make a mistake on the side of making the process more accessible to more people. When we got mail-in ballots and we got early voting and motor voter and ex-felon rights to vote, the integrity of the process was not destroyed. We didn't see massive fraud. And in fact, maybe some extra work was required, but that's our job; that's our responsibility, our duty, as election commissioners. So what I am suggesting to you is that what we're asking you to do here is not radical. It's not crazy off-the-wall stuff. It's the same sort of changes that we have made in the past that actually provoke the same kind of arguments against and the same kind of arguments for it. And we survived it in the past. We made the process--as was said many times here--in Nebraska we have an easy process for voting and for getting registered. That is true. That is true. And we had to fight for every one of those steps. Every one of those changes, we had to fight for them and the fight was worth it. But did it destroy the process? No. Did it undermine the integrity? No, it did not. Did it require a little more work. Maybe it did. But the arguments for doing it are the same as the arguments we're making for this, and those arguments today are just as valid. So I would ask you to keep that in mind when you decide how you're going to vote. [LB125 LB382]

SENATOR ROBERT: And Senator Avery and I are on the same page, which should scare all of you, (laughter) but I agree wholeheartedly with everything he just said, with

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

a few additions. The fact that voting is not a privilege, it is an absolute right guaranteed us by the Constitution of the States and our state, and we should be given every opportunity to exercise that right that we absolutely can. I've heard folks say in arguments, not necessarily in here today but in conversations about this idea, that what kind of people are we encouraging to vote that may be so unprepared that they did not make the process of registering, they didn't get that done right. And I say we are encouraging everyone to vote. There were a couple of comments earlier today, the fact that students are busy...that they're not that busy. And I say, well, college is expensive and, yeah, some of them aren't that busy, some of them are sitting on their duffs, going downtown, hanging out in their fraternity. But a lot of them are working two jobs and taking a full load of classes, and we shouldn't take away their right to vote just because they're doing that. Somebody who just moved here, working a 12-hour job, to a new city, hasn't got their computer set up to download the form, hasn't had the time during business hours to make it down to the election commission office, shouldn't be taken...shouldn't their vote...their right to vote should not be taken away just because of that. And I want to commend the guys who came here today to testify before you on either side, and I want you to seriously consider one of these bills. Thanks. [LB125 LB382]

SENATOR PIRSCH: Thank you very much for your closings. Are there any questions for either Chairman Avery or Senator Rogert? Very good. Seeing none, we'll close the hearing then on LB125 and LB382, and proceed on to LB349. And I will turn the Chair back over to Chairman Avery. [LB125 LB382]

SENATOR AVERY: Okay, we will continue with the hearing schedule set out today. We have one more bill to hear: LB349 by Senator Scott Lautenbaugh. Welcome, Senator. [LB349]

SENATOR LAUTENBAUGH: Thank you, Chairman Avery, members of the committee. I am pleased to be here today on LB349. Let me state at the outset that I am a very passionate advocate of the right to recall elected officials. I am probably as much in favor of the right to recall as I am to same-day voter registration...opposed to same-day voter registration. So if that gives you an idea, Chairman Avery, of how passionately I feel about this. [LB349]

SENATOR AVERY: Big surprise. [LB349]

SENATOR LAUTENBAUGH: Yes. You may recall this bill. This is Senator Engel's bill from last year. And what this bill essentially does is it provides--and you'll be hearing from Senator Engel, as well--what this bill basically does is it provides...it puts some, I believe, reasonable limits on the recall process. Specifically--and we have encountered this in my past as an election commissioner--people would come in and check out petitions. One gentleman wanted to recall the mayor because he didn't feel he was

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

doing what a person should be doing. That was the stated reason. I have no idea what that meant. No one did. The recall didn't go anywhere, but still under the prior law we are obligated to print up the petitions, crank up the process. And there was cost, there was time. You'll hear testimony on down the line about how some more serious attempts have taken place that took a lot more involvement from the elected official in trying to rebut them for reasons that really had nothing to do with the job the recall was sought. So this bill would provide that, when you're asking for a recall, you must file an affidavit which provides allegations, which, if true, would provide one of four grounds for recall: malfeasance in office, misfeasance in office, nonfeasance in office, or a criminal conviction involving dishonesty or a false statement. Now what this does is it basically limits recall to reasons that have something to do with the person's performance or failure to perform in the job to which he was elected. You're going to hear stories of small towns in Nebraska that have basically been torn apart by rival factions that constantly want to recall the major for one reason or another, or some other county attorney or something like that, for reasons that really don't go to the performance in the office, I would argue. As the process exists, I believe currently, an elected official is allowed to respond to the allegation. This bill has a provision--and I'm not a passionate advocate of this provision--that would allow review by a district court judge, wherein the judge determines, assuming the facts are as stated, does it actually state that there has been malfeasance, misfeasance, or nonfeasance or some action involving dishonesty. Not that the allegations are true; just that if assumed true, do they meet this test. If so, the recall then goes forward. And I believe this bill was brought with the best of intentions. You'll be hearing from the League of Municipalities, and again Senator Engel, based upon some unhappy history we've had in Nebraska with sort of a more unfettered right to recall. And I do believe that it is proper and prudent to limit recall to issues dealing with the performance of the job if you're going to try to overturn the will of the voters. I'd be happy to answer any questions you might have. I know the coming witnesses will, too, so I don't know if you want to ask me or them. I'll be here to close, too, so you'll be able to ask me then too if you'd like. [LB349]

SENATOR AVERY: Thank you, Senator. Any questions from the committee? Senator Price. [LB349]

SENATOR PRICE: Mr. Chairman, thank you very much. And I wanted to touch on the four criterion you spoke to and then you spoke to the performance of the job. There we go. Page 3 of the green copy, I guess line 17, a "conviction of a crime involving the act of dishonesty or false statement." But only in the...would that apply only in the execution of their duties? I mean, you could have a false statement made in some civil proceeding, I suppose--I'm not an attorney--but completely, yeah, if you are getting a divorce. Let's just pick an easy one. You're getting a divorce and there was a false statement or something dishonest happened there that has nothing to do with your performance of your elected job, would that be grounds for someone to bring it? Because it has to be only in the performance of the job that you are convicted of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

dishonesty. I don't know how you convict dishonesty, but go ahead. [LB349]

SENATOR LAUTENBAUGH: Well, I would argue the reason for that is that, you know, the conviction for a crime involving dishonesty really doesn't have to necessarily be tied to the performance of the job, in my understanding and formulation of this. And the reason for that is, you're convicted of something involving dishonesty that's not necessarily directly related to the job, but it certainly touches on the other aspects that we talked about and public confidence in the ability to perform the actual job at hand. [LB349]

SENATOR PRICE: So this would be all-encompassing? [LB349]

SENATOR LAUTENBAUGH: Yes. [LB349]

SENATOR PRICE: Okay. [LB125 LB382]

SENATOR LAUTENBAUGH: But once again, a conviction; not an allegation. [LB125 LB382]

SENATOR AVERY: Any other questions from the committee? Senator Pirsch. [LB349]

SENATOR PIRSCH: Yeah, if you could, just kind of a follow-up, touch upon the differentiation between malfeasance, misfeasance. Nonfeasance, I think is clear. You're not doing something that's related to the job. [LB349]

SENATOR LAUTENBAUGH: Yes. [LB349]

SENATOR PIRSCH: Malfeasance, misfeasance. Can you just touch upon the differentiation? [LB349]

SENATOR LAUTENBAUGH: Absolutely. Malfeasance in office--and there's a definition provided in the bill--means the knowing and intentional commission by a public official of an unlawful or wrongful act in the performance of the duties of such public official. Misfeasance in office means a negligent performance by a public official of the duties of such public official or the negligent failure by public official to perform a specific act which is required. [LB349]

SENATOR PIRSCH: Okay. So again, these are...which has to infringe...I'm sorry...has to be done within the scope of performance of the duties of the public office, correct? [LB349]

SENATOR LAUTENBAUGH: Yes. [LB349]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

SENATOR PIRSCH: Okay. Just so we're clear. And non...even nonfeasance, you're not doing things which you should be doing within the scope of the public office, correct? [LB349]

SENATOR LAUTENBAUGH: Yes. [LB349]

SENATOR PIRSCH: And then you also have on a prohibition...or a conviction, you have to actually be convicted, correct? [LB349]

SENATOR LAUTENBAUGH: Yes. [LB349]

SENATOR PIRSCH: Of a crime involving an act of dishonesty or false statement, correct? [LB349]

SENATOR LAUTENBAUGH: Yes. [LB349]

SENATOR PIRSCH: But with no other crimes, is that correct? [LB349]

SENATOR LAUTENBAUGH: That's correct. [LB349]

SENATOR PIRSCH: So if you are charged with, you know, rape, bank robbery, pedophilia, statutory rape, prostitution, even if convicted of that, that wouldn't form the basis...you still could not...under this law, you couldn't begin a recall then, correct? [LB349]

SENATOR LAUTENBAUGH: That's correct. [LB349]

SENATOR PIRSCH: Okay. And even if you were charged with an act of dishonesty or a false statement, you couldn't begin that recall until such point in time as an actual conviction was handed down by a judge or jury, correct? [LB349]

SENATOR LAUTENBAUGH: That is correct. [LB349]

SENATOR PIRSCH: And in many of these type of cases, those type of cases stretch on for years, perhaps, right? From the time of the allegation date to the time that the actual jury hears the case and comes down with the finding or...? [LB349]

SENATOR LAUTENBAUGH: Yes. [LB349]

SENATOR PIRSCH: Okay. I just wanted to be clear about that. Thanks a lot. [LB349]

SENATOR LAUTENBAUGH: And if I may, just by way of a response, we ran out of time on this bill last year and it was a work in progress. I did tell Senator Engel I would throw

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

it back in the hopper this year and I did do that. People of goodwill can differ, obviously, on this regarding whether or not those crimes...the convictions you pointed out don't deal with dishonesty, but may be the basis for a recall in someone's opinion--your opinion, perhaps. So I'm not going to sit here and defend that distinction because I understand we can just differ about that. And your opinion is as valid as mine on that point. I may not even differ with your opinion, to be honest, on that point. [LB349]

SENATOR PIRSCH: Well, I haven't formed an opinion as to your (inaudible) bill. I'm just pointing...I just want to help clarify the reach of the bill and what the significance then of the words on the paper would be. [LB349]

SENATOR LAUTENBAUGH: Absolutely. [LB349]

SENATOR AVERY: Any other questions from the committee? Senator, I have one. As I remember, last year there was considerable discussion about the role of the courts in this. And I believe the concern was that the way it was written, the courts would be, in a sense, making a judgment prior to any recall procedure. How would you respond to that? I mean, there is some kind of judgment being made by the judicial, right? [LB349]

SENATOR LAUTENBAUGH: Yes. And that did cause me some heartburn, as well, in that once again it is not the judge deciding that the allegations are true that there has been misfeasance, nonfeasance, or malfeasance; just that the allegation meets the standard of the statute. There would not be some sort of lengthy trial and evidence taken regarding whether or not the allegations are true or false. It would just be whether or not it fits the bill for a possible grounds for recall. That would still be up to the voters to decide. I was given some additional thoughts here that should have occurred to me sooner. Criminal dishonesty comes into this because it's the language used in the federal rules of evidence, and it's just providing a universal standard that we also put into this recall arena as well. And the other convictions for rape and whatnot, those would be felonies, and I believe you'd be disqualified. So the recall would not be necessary as a practical manner, I believe. [LB349]

SENATOR AVERY: In a sense what you're saying is this is a screening. Having the judge make some ruling is a real screening process so you don't have frivolous recalls. [LB349]

SENATOR LAUTENBAUGH: Yes, that would be a good way to put it. And once again, I'll concede there's a part of me that isn't comfortable with screening the right to recall. But, that said, this I believe is a very minimal screening. I don't...it's hard for me to conceive of a serious allegation that would not come under the heading of malfeasance, misfeasance, or nonfeasance as a reason for recalling an elected official that wouldn't be a criminal conviction that would already disqualify them anyway. So I guess it's almost like saying you show your work, I guess, as giving a reason for the recall.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

[LB349]

SENATOR AVERY: Senator Pirsch. [LB349]

SENATOR PIRSCH: Just kind of a follow-up on that. Again though, when you're talking about the qualifications not including felonies, I mean that doesn't apply to misdemeanors in which certain types of sexual assault and whatnot comply. But even with regards to the felonies, which would make you ineligible ultimately, that would require a conviction, correct? [LB349]

SENATOR LAUTENBAUGH: Yes. [LB349]

SENATOR PIRSCH: Kind of...you know, the governor of Illinois is kind of...we find ourselves in that...would we find ourselves potentially in that quagmire where, you know, he still hasn't been convicted though he has been impeached by the Illinois House and removed from office. I mean, that might be...I mean, at least the possibility of that existence would still exist under this statutory schemework, right? This would allow for that, right? [LB349]

SENATOR LAUTENBAUGH: Well, I think the allegations against the governor of Illinois might fall under misfeasance and malfeasance, too, regarding his public function, so I think it might be covered anyway. [LB349]

SENATOR PIRSCH: Sure. Yeah. Well, those would be covered...but, yeah, for that reason, but if it didn't happen to fall within the scope of his office. One other follow-up with you. With regards to then the allegations where you have to then allege in your kind of petition or complaint here, that one of those three things--malfeasance, misfeasance, or nonfeasance--does exist, wouldn't it be but all you have to do is merely allege that in some manner. Wouldn't...and would you...with what degree of specificity would you have to? Would I just have to say, Senator Smith has acted in a manner in which he knowingly and intentionally--well, let's say misfeasance--neglected a public duty and failed to perform a specific act which was a necessary act within his scope. Is that...does that get me by it? Or do I need to give specificity, and say because he forgot to sign a very important document that cost the city millions of dollars or so? [LB349]

SENATOR LAUTENBAUGH: If it's not clear, it would be my intent that you would have to actually say what it is. You know, what was the malfeasance that--your example, he forgot to sign something--or misfeasance in that case, maybe he just forgot. You know, that kind of thing. [LB349]

SENATOR PIRSCH: Because without such specificity, it would take nearly nothing for people to just..I mean, if people would adjust to the law, correct, and just say he acted with misfeasance. [LB349]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

SENATOR LAUTENBAUGH: Without specificity this would be utterly pointless; you're correct. [LB349]

SENATOR PIRSCH: Okay. Would there be a problem, even if you provided...well...even if we amended this to include and say you must give examples of such or specifics of...you know, an outline of that misfeasance. Is that easy to create that type of language that would...I mean, it cost the city...the city would be doing a whole lot better and would be millions of dollars ahead of the game had he not been acting the way he did act. [LB349]

SENATOR LAUTENBAUGH: Well, this may get you to it. I mean, Section 4, the statement, you have to allege facts which, if true, establish malfeasance, misfeasance, or nonfeasance, or the conviction of the crime. So you can't just say malfeasance...he did malfeasance, misfeasance, or nonfeasance, or is guilty of those things; you have to allege facts which, if true, would be one of those things, so. [LB349]

SENATOR PIRSCH: Okay. Thanks. [LB349]

SENATOR LAUTENBAUGH: Hopefully that would lend some more specificity to it. And I'll try to stop hitting the microphone with my paper. I apologize. [LB349]

SENATOR AVERY: Any more questions from the committee? Seeing none, are you going to stay for closing? [LB349]

SENATOR LAUTENBAUGH: Yes, sir. [LB349]

SENATOR AVERY: Okay. All right, we'll go to proponents. Welcome. [LB349]

LYNN REX: Thank you. Senator Avery, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And first I'd like to thank Senator Lautenbaugh for introducing this important measure. The issue of recall is an extremely important measure, not just for local officials, but I would submit to you at some juncture it may be for you as state senators, too. We've attended some meetings over the last year where individuals were talking about the fact that state senators ought to be subjected to recall. I think that would be a horrific idea and I hope that never comes to pass;; but notwithstanding, there are folks that in the state of Nebraska can institute initiative ballots and initiative measures to do that sort of thing. And we are very concerned about that because, quite frankly, if you put yourself in the position of having to be subjected to recall, which I hope never happens, and the League certainly would do everything we could do to oppose that effort, think about issues that you deal with. Whether you're for the death penalty or against the death penalty, it doesn't matter. You're going to offend a lot of people and certainly enough

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

that they could get enough signatures to subject you to recall. The same thing, whether you're pro-choice or pro-life. On a local level when you're dealing with municipalities, you're dealing with issues such as zoning. How did you zone my property? Are you going to enforce a junk car ordinance against me? Those sorts of things. Fluoridation deemed to be extremely controversial in municipalities. So with that, Senator Lautenbaugh has talked about what this bill does. I would like to underscore there's another very important part other than just having the major substance of it, which is to have the four reasons for which one could be subjected to recall, and those four reasons he's already stated, which are on page 2 and 3 of the bill. But when you get past that, if you look on pages 6, 12, and 13, you're going to see that there's an important notification requirement. And that notification is on page 6, that if you take out the petition papers, once those are issued you would have...the filing clerk has to indicate this to the Secretary of State. On page 12, it states that, in fact, once the process is underway and it's going to be put forward to an election, you have to indicate that to the Secretary of State. And then on page 13, you indicate to them what the outcome is on the election results. The reason for that is very important, because over the years I cannot tell you the number of times that state senators and your predecessors, as well as certainly our office has been asked, well, how many recalls were in the November 2008 election? Well, we don't know. I mean, we don't know unless the World-Herald has called every county. Right now, you'd have to call every county in order to do that. That's an important piece of this. I deeply regret the two individuals that I really wanted to be here today could not be here with you to tell their story. They've been here in the past to talk about this important issue, as this bill has been in my 30 years of working with the Legislature on this issue, I think bill eight, of dealing with this important measure. The two mayors--I think you may know, Senator--former Mayor Sheryl Lindau, the mayor of Wayne, Nebraska; and also Mayor Jo Dee Adelung, the mayor of Nebraska City. And I know you've had a very long day today so I just want to briefly tell you their story, and they have testified before this committee before. Mayor Lindau, when she was the mayor of Wayne, Nebraska, was subjected to the first electronic e-mail. That involves basically...this was at a time when folks were just getting used to the computers, and indeed there was a very controversial parking issue in Wayne, Nebraska, and that parking issue was on the ballot. The voters decided how they wanted the city to resolve that parking issue. The city was in the process of following what the voters had said to do, whether to have the parking in a certain area of town or not to have the parking in a certain area of town. Well, there were folks still very, very upset about that whole issue. So there happened to be a professor at Wayne that decided, you know, this is an issue that would be a great civic lesson for students. Wouldn't this be great? And so they decided what they would do is start the recall for the mayor of Wayne and several city council members, and the recall for the other city council members actually occurred when they came out supporting the mayor, saying, no, we are simply implementing what the voters just decided; that's what we're doing. But nevertheless, these individuals were very successful in getting their signatures to have a petition put forth; to not only get the petition, but to circulate the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

petition and to get the adequate number of names. And this does not even begin to touch the emotional issues that go into play, because as Senator Lautenbaugh says, this splits communities for a very, very long time. And what occurred is that one of the city council members decided, once the signatures were submitted, to go down and look at who signed it, because the only time you ever see these recall petitions is actually when they're filed, to say we've got enough signatures here and now verify them. Otherwise I can say, you know, I'm going to recall the mayor or a city council member or the school board member, any local elected official for any reason, and I can get those papers and I can begin that process, and then at any point within 30 days I can stop that process and say, you know what, I've got enough signatures but I'm not going to file the papers; I've decided now maybe they've learned their lesson and I'm not going to file those papers. So nobody ever knows. Whatever happened? Did they have the signatures or didn't they, it doesn't matter. But in the case in Wayne, they had the signatures. Well, imagine the surprise of the city council member who looked over the list of people that signed to recall him and found out there were family members, friends, some of his buddies that he watched games with, that sort of thing. So he called up, certainly, his family members first. I believe it was his brother was one of them. And he said, why would you want to recall me? All we are doing is implementing what the voters just voted on last year. And the answer was, oh, we're not...oh, I didn't sign anything to recall you. All I did was sign something to put the parking issue back on the ballot. Well, even though the law...and when you read this--it's actually incorporated in this bill and we're not changing it--it says that when you sign, that you're supposed to state...if I'm going to have you sign something, Senator, to recall a local elected official, I'm supposed to say to you the stated reason for the recall; if that person has filed a defense statement, read to you what that defense statement is; indicate that I'm a proper circulator; and there are four other elements that they have to actually say to you. Well, the reality is, it's very hard to prove that. But in Wayne, Nebraska, they tried to do that, and in fact, this council member got 38 affidavits from various people saying nobody ever read those things to him and that this is not a valid petition; stop the election. The judge basically ruled in that case, you know what? People have the right to basically do dumb things. So things moved forward. Now those folks were not recalled. But at the end of the day, it was incredibly divisive in that community as you can imagine. And it's not just an academic exercise to recall someone, and so basically what I'm suggesting to you is what this does is state very clearly: Look, it's malfeasance, it's misfeasance, it's nonfeasance; it's because you've done something that is of a caliber of being dishonest, if you will. And I think that it's important to have some kind of measure. Right now, let me give you some of the examples, other examples with the mayor of Nebraska City, who was here last year, and Senator Avery, as a member of this committee you may remember her testimony. Very emotional. In fact, she chose not to run again. I would submit to you she was probably one of the best mayors we've ever had in this state. Amazing individual. And also one of our past presidents. And she chose not to run again. Her family was devastated by what happened, even though they never, by the time it was done, never got enough signatures to actually file the papers.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

But the reason that she was being subjected to recall was because she hired a city administrator, and the allegation was violating the rights of employees. Well, in fact, that wasn't the case. In her defense statement, she prepared an indication of the fact that they followed the laws, that due process was accorded these employees. In fact, one of the employees that was terminated wrote a letter of support of her even though she terminated him, saying, no, she had really good reason why she terminated me and I should have been fired, and I'm going to vote for her to retain her if in fact this recall moves forward. But at the end of the day, people can say anything they want to say, and there is no group, not a court, no one that can say, gee, is that true or isn't it? Right now, you've got a right. If I want to file, again, a petition to recall a local elected official, that local elected official in 60 words or less can have a concise defense statement. What this bill does is something very important. What this bill does is it says, look, you've got these reasons for recall. And I can choose to file a defense statement if that recall is against me or, in the alternative, I can take it to a court to say, if you assume the allegations are true then is this even a proper subject for recall? And then the court can decide yes or no. And let's say the court says, yes, an allegation is made that the mayor or a city council member or a school board member used public resources improperly, and basically they shouldn't be using public resources and it's misfeasance in office. If that's the case and that is what is being alleged, a court would look at that. A court would say that rises to the level of misfeasance in office, at which point that petition can proceed. Now, if I'm the local elected official that's being subjected to this recall, I have a defense statement and I can say these allegations--which underscores what Senator Pirsch said and I think that this is very important to clarify in the bill then--that it's got to be actual allegations. I just can't say misfeasance, malfeasance, nonfeasance, or one of those reasons. So basically I can say, no, I never used any public equipment inappropriately; check with the city attorney; I've got 60 words in which I can defend myself, but at least I have a reason and a way to defend myself. So we would really appreciate you advancing this bill. This bill, LB349, is essentially LB878 with the standing committee amendments advanced from this committee last year. It's a very important bill, and as Senator Lautenbaugh said, due to lack of time for consideration on General File it just didn't move much further, because there was discussion, and as Senator Avery very properly said, discussion about should there be a court review or not. And that court review issue was a compromise from efforts in past years to look at the issue of, do you actually...because some states actually require you have to be convicted of misfeasance, malfeasance, nonfeasance, or one of these acts. Not just the allegation; convicted. And one of the concerns that the committee has had in the past is if you require the conviction, you could have several years that would pass. Well, then their term of office is up and so what's the point. So in any event, this was a compromise over the years from the committee to look at this and try to come up with something that would be workable. And again, I would just suggest to you that we've had, in one case, an entire village board recalled over an issue that they were required to do in order to get a CDBG grant, an accounting issue requiring metering of utility meters so that they could actually get the grant to get the water system rebuilt.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

And the citizens thought that was socialistic, and they were recalled, the entire village board. We've had people recalled over fluoridation. We've had people recalled because they tried to enforce the city ordinance when it applied, for example, for cleaning up your property. So in closing, this is an incredibly important bill and it's always a wake-up call to me when I go out to various parts of the state and listen to others make the presentation and suggest that state senators be subjected to it, because, believe me, it is a nightmare for local elected officials. All states do not allow it. Those west of the Mississippi do; those east of the Mississippi predominantly do not, at last count. So, in essence, you know, inasmuch as someday hopefully you will not be, but if you were ever subjected to recall of state senators you ought to make sure there's a process in place. And my guess is what these folks were talking about doing is taking current state law and just putting in the word "state senator." Terrible idea. But please think about the implications for you as an institution as well. And anything you can do to tighten up recall would be most appreciated by us. Thank you very much, and I'd be happy to respond to any questions. [LB349]

SENATOR AVERY: Thank you. Any questions? Senator Pirsch. [LB349]

SENATOR PIRSCH: I just wanted to clarify in taking a look...the 60 or fewer words language that's on top of page...or bottom of page 6, top of page 7. I'm trying to figure out what is the...if you're apparently within 20 days after the official receives a copy of an affidavit he or she may submit a typewritten defense. Is the defense statement to be used on the recall petition? Does that mean...is the purpose of that 60-word defense statement to appear on the ballot and say here's the allegation and asking for a recall, and here it's being submitted to you, the voter, and here's the defense statement by the elected official, so now you have both statements when you decide whether to recall or not? Or is this instead the 60-word defense, is that to go to the district court for them to look at the allegation of the person bringing forward the allegation of misfeasance, nonfeasance, or malfeasance, and to have the benefit of that 60-word statement in determining if that does meet one of those three criteria? [LB349]

LYNN REX: Actually that's a great question. Actually neither. The intent of previous Legislatures has been to basically say this defense statement is intended so that if I take a petition to you and say we're going to recall a council member, that that council member then has a defense statement, and in fact, the person that's asking you to sign that, I would have to read to you that defense statement. And the defense statement is printed on the actual petition, Senator. And there are two times that the defense statements kick in. One is if once I've been given notice as a local elected official that there is a recall that I will be subjected to, I then have within 20 days to go ahead and file a defense statement. Or I can then go to court, and if I go to court to say that the judge can then make the determination of if the allegations themselves rise to a level of any of these four reasons. Then after the court makes its determination, then I'm allowed to make a defense statement there. So... [LB349]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

SENATOR PIRSCH: So the 60...and tell me if I'm understanding this or I still don't understand it. So the 60-word statement then would be, say he's trying to impeach me as a senator and he has brought...is that to be read to people who he solicits to sign the petition? [LB349]

LYNN REX: Yes. If you turn to page 10...and this is current law; we're not changing this part. Page 10, lines 17-25, and on to page 11. It says, "No one circulating the petition paper in an attempt to gather signatures shall allow a person to sign the petition until the circulator has stated to the person (i) the object of the petition is printed on the petition," i.e., we think you've used public resources improperly and it's misfeasance in office. That would be a stated reason, for example. "(ii) the name and office of the individual sought to be recalled, (iii) the allegations filed pursuant to section 4 of this, (iv) the defense statement..." In other words, as mayor of Nebraska City, we always follow due process rights; please contact our city attorney and he can verify this for you. At least I have 60...at least I can defend myself. And then, of course, it goes on to say "(v) the name of the principal circulator..." and so forth. [LB349]

SENATOR PIRSCH: Are these subject to criminal penalties, this...I mean, is this, the ones you read, you must do this, this, and this, the petition circulator? If they don't follow that, aren't they subject to...? Are they subject to a penalty, a criminal penalty? [LB349]

LYNN REX: My recollection is there is a penalty provided. The problem, of course, is you would have to follow them around and do this. In fact, in Nebraska City, there were some folks that supported the mayor, that signed the petition and then got their name withdrawn. They supported the mayor, but they signed the petition for her recall just to see if the circulator would read those elements, and they did not. [LB349]

SENATOR PIRSCH: I see. [LB349]

LYNN REX: Because if they would have had enough signatures, she would have used that as an effort to stop the recall. And in closure, because I know you've had a long afternoon here, one thing too that I think is very important is that when a recall is underway, business stops in a city. I'm sure it would in a school, too. Everything pretty much stops because you're really not advancing economic development efforts. No business really wants to sit and talk to you about do you want to come to South Sioux City, because if you're subjected to recall they're thinking, well, you may not be there anyway. So everything pretty much comes to a halt and that becomes the subject matter of the entire community. And in one particular instance, an individual was recalled. He was the mayor of a very small city that had voted to take over their gas system, which they're allowed to do. They've voted to take it over; he was implementing that decision. The gas company came in from another state, put a boatload of money into advertising, ran front-page ads on this particular individual, and he happened to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

a minister. The mayor was a minister and he lost half his congregation over it. There are people still that don't even talk to each other over that. So, very divisive; very important. Anything you can do to tighten this up would be appreciated. We appreciate Senator Lautenbaugh introducing LB349. We appreciated Senator Engel, who will follow me, and we're very pleased that he's here today, who introduced LB878 in 2008, which advanced from this committee. And again, this bill addresses this plus your standing committee amendments of last year. [LB349]

SENATOR AVERY: Thank you. [LB349]

LYNN REX: Thank you very much. [LB349]

SENATOR AVERY: Next testifier. Welcome, Senator Engel. [LB349]

PAT ENGEL: Senator Avery, I am so glad you're back. [LB349]

SENATOR AVERY: Well, we're glad you're back. [LB349]

PAT ENGEL: One thing I'd like to tell you about Senator Avery and I: We can both prove we have hearts because we both had them out. Mine was 29 years ago and, what, yours was two weeks ago? [LB349]

SENATOR AVERY: Two weeks. [LB349]

PAT ENGEL: Yeah, so congratulations on having a heart. But anyhow, Chairman Avery and members of the committee, I know it's been a long day, so I'll make this very short. My name is Pat Engel. It's spelled P-a-t E-n-g-e-l. It's a pleasure for me to be here today to testify in support of LB349. And I want to thank Senator Lautenbaugh for presenting this again this year, because last year, as he mentioned, if we would have had more time we would have been able to get it through. But because of time restraints and filibustering and so forth, there was more important stuff that we had to get through so we put it off until this year. So thank you again for that. And he's explained the contents of the bill, etcetera, and Lynn Rex has very eloquently talked about the shortcomings and the need for change, so I won't dwell on that because I've sat on that side many, many times, and I realize it's time to probably to go home. But, and she alluded to the mayor of Nebraska City. She testified last year and it was very, very...her testimony just kind of really drilled this right into you why we need something done, because of recall efforts there because of something that she had nothing to do with, and it was a defamation of her family and her friends and so forth. And actually a year after that, after the recall which failed, she was elected legislator of the year in her area. So that's the problem here, but she's got to go through all these things first. Another thing happened in my county. Our county attorney was recalled. And he was one of the...first of all, he was appointed and then he was elected unopposed, and Senator Giese knows

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

him quite well. He was one of the best county attorneys we ever had. He was the fairest and he enforced the law in a fair and equitable way and very well-thought-of in his community. But there was a disgruntled person who didn't like a decision he made because he did what he was supposed to do. That was what his job commanded him to do. And she got this petition going, and actually she never did turn it in, and like Lynn said, we don't know if she had enough signatures or not, but she decided to withdraw it. But the damage was already done. And he decided that I don't have to put up with this. There's more...you know, I can make a better living doing something else without putting up with and going through this kind of harassment, etcetera. So he resigned and we lost a really good man up there. And another thing with recall, as easy it is right now it's getting more difficult to find people that will run, because when they see the recalls happening in their areas and their communities and so forth, and they think the same thing could happen to them if they run. They're very qualified people, but why do I want to put myself and my family through that? So I think that's why this bill is so important, to at least they have to have a reason for a recall, not just because they don't like you or don't like the decision you made because you're carrying out the duties of your office. So I will just read you this last part, because the first part I scribbled down and I can't read it myself. So this is typed. But I believe it should only be used for legitimate purposes, and the intent of the recall was to rid public offices of corruption and misconduct. Therefore, we must tie the recall process to unsatisfactory service in office. And the current recall process, as we know, is abused across the state and probably across the country. But there have been recall efforts for personality conflicts and those who don't get their way. Some recalls are becoming grudge matches, as alluded to. And no elected official will please everyone all the time, and if you're doing your duty--and we know it's a sacrifice being in public office, and if you don't know it yet, you will the longer you serve. But it is a public service and you shouldn't have to worry about being ousted from office for just doing your job. And you know, like last year and part of the process in the Legislature there was one person said, well, at least, normally they were successful, these recalls. And I said, well, that's not the point, whether it's successful or not. The damage has already been done. And then it's just like running another election. You know, they have to defend themselves and they have to go out and just like running another election and that costs them a lot of money, too. So it's not only, it's not only your defamation and so forth, but the cost and so forth, if you want to defend yourself. And most people will defend their good name. But people remember the allegations but they don't remember the rebuttals, as you know and as we all know here. So with that, I would hope that you would advance LB349 to General File, and then I hope when this gets to General File I hope you'll all support it and I hope it carries on through Final Reading and that it is voted into law. So if there aren't any questions? [LB349]

SENATOR AVERY: Thank you, Senator. Senator Pirsch. [LB349]

SENATOR PIRSCH: I'm glad this bill was introduced so you came down here today and I got a chance to see again. I'll tell you, this may not...I may have blown it, I may not. I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

should have probably asked, probably Senator Lautenbaugh at the initial, and maybe I can ask him on close, about the costs. He said that when a lot of these even trivial-type of recall petitions are turned in, then a certain amount of cost...that you had to print up these. And so I'd be interested in knowing what type of costs have to be incurred and what are the threshold numbers? So I'll just kind of, before I forget, put that out there. [LB349]

PAT ENGEL: Well, first of all, that was in the original bill, and that was taken out by an amendment to committee amendment. I think you were here Senator Avery. Because they felt that by putting cost in there, that might keep people from even pursuing it, even under legitimate purposes for a recall. So that's been totally taken out of the bill. [LB349]

SENATOR PIRSCH: But as it stands right now, there are no...if you're bringing forward a recall petition, you're never responsible for costs, right? [LB349]

PAT ENGEL: Well, as far as I know you're not. You're not there. And then of course your personal cost is what I was alluding to, is what it's cost you personally to defend yourself. [LB349]

SENATOR PIRSCH: And are they...so I'll just have...I'll have Senator Lautenbaugh, because he was an election commissioner, maybe he can comment on the extent of the costs. But you had mentioned the county attorney incident and that they didn't like the decision of the county attorney, and also you mentioned Nebraska City deal. And just very briefly if you could say what was the decision, the nature of the decision, just very briefly in the county attorney deal up in South Sioux, and then the Nebraska City deal. Where did that stem (inaudible)? You know, the... [LB349]

PAT ENGEL: Well, I think what it was, is this person was convicted of aiding and abetting, I think, a drug situation. And she...in fact, it wasn't herself. I think it was her sister. And she thought they were picking on this particular person because of her race. And that wasn't it, at all. But I think he can add to it. [LB349]

SENATOR GIESE: There was another issue also on the report from the jail that the Attorney General weighed in with an opinion on, that said that there was no criminal...you know, nothing criminal came out of that. And a particular person wanted to be able to read the report into the record. The county attorney said, no, we don't want to do that and here's why, and that was part of it. [LB349]

PAT ENGEL: (Inaudible) everything was in the purview of the law there. [LB349]

SENATOR PIRSCH: I see. Okay. And what was the nature of the Nebraska City, if you can just very briefly? [LB349]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

PAT ENGEL: The other one, the other situation in Nebraska City was they had had an election--I think Lynn Rex talked about it here--three years prior to this recall effort as far as hiring a city administrator, and it was unanimous vote of the city council to do this. And then someone, three years later, decided that they didn't like that, so they went after the mayor. And she went through a lot of turmoil, she really did. But she won, of course, and then she was still...like I say, she got the legislator of the year award a year later after the recall effort failed. But they had to go through all of this for several months as far as defending themselves. [LB349]

SENATOR PIRSCH: I see. Well, thank you very much, and it was good seeing your face. [LB349]

PAT ENGEL: Yes, it's nice seeing you guys. And Senator Lautenbaugh asked me to come down and I'm glad he did, so it's nice seeing you folks, too, and I hope you're having as much fun as I had. (Laughter) [LB349]

SENATOR AVERY: Any other proponents? Thank you, Senator. Any opponents? One opponent. [LB349]

GREG LYONS: (Exhibit 1) Okay, I am Greg Lyons from Omaha. That's L-y-o-n-s. There are four reasons why LB349 needs to be killed in committee. Oh, first this is my prepared statement. There have been a couple of comments made that I'd like to address also that I didn't anticipate so I'd like to do that later, that maybe that will clarify a few of these things. Okay, so there are four reasons why LB349 needs to be killed in committee. 1) it establishes an unfair process to prevent citizens from recalling public officials; 2) that process is executed in complete secrecy and without any public scrutiny; 3) society's standards, values, and mores change more quickly than laws do, and requiring a reason to recall an official that's based solely on existing law will prevent the recall of officials who commit acts that the people find abhorrent even though they're technically not illegal; and 4) the current law works and simply doesn't need to be changed. First, this bill establishes an inherently unfair procedure to determine whether to allow, or not, an attempt to recall a public official. The person seeking to recall an official--the "principal circulator"--is limited to only 60 words to state his case for recalling that official--the 60-word "statement of allegation" which is submitted to the filing clerk. After the filing clerk notifies the official of the proposed recall, that official may challenge the sufficiency of that 60-word statement by submitting the question to a court. Now, according to the way the bill is written, the only information that court will have representing the principal circulator will be that 60-word statement of allegation. That's it. There's nothing in this bill which limits the amount of information or arguments the official may submit to that court, so the official could submit literally dozens or even hundreds of pages of legal arguments, precedents, and other supporting material. In fact, the way the bill is written, the official could even have his attorney make his case in person to the court in addition to any documentation they submit. All this from the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

official, and the only thing that's allowed from the principal circulator is a single 60-word statement. So this bill does seek to establish an inherently unfair process that's completely in favor of the official and prejudiced against the citizen seeking to do a recall petition drive. Second, this bill establishes an entirely secret judicial process. There is no provision in the bill for the principal circulator to ever be able to find out what arguments or materials were presented to the court by the official. In fact, the principal circulator won't even be told that a court is reviewing the question until after the decision has been rendered. The secrecy and unfairness incorporated into this bill are completely counter to what we, as a free people, have come to expect from the protections afforded us by the Constitution. Perhaps this procedure was intended to save money because it does specifically state that this court process will be done at no cost to either party. But I would submit to you that it does not matter that the process is free, if it's not fair. These first two reasons for rejecting this bill are somewhat technical and could theoretically be fixed by changing the wording of the bill. But there's another issue that's of a more philosophical nature. Should we be limiting recall actions to only narrowly defined legal reasons, at all? This question goes straight to the core purpose of this bill and cannot be changed by changing its wording. It's inherent in the intent and nature of the bill. I'll give you an example. In a high school in Madison, Wisconsin, in 1976, a 16-year-old student was raped by three male students. She was wearing blue jeans, a turtleneck sweater, and sneakers. In his statements as he was sentencing one of the convicted rapists, the judge--one Archie Simonson--said the rapists were and I quote: reacting normally to prevalent sexual permissiveness and to women's provocative clothing. Should we punish a 15- or 16-year-old boy who reacts normally to it? Unquote. Now did these statements constitute malfeasance, misfeasance, nonfeasance, or a crime involving dishonesty? No, they did not. That judge had done nothing illegal, but his comments incensed the public's sensibilities. They recalled that judge the following year after a successful petition campaign and a recall election. If a law like LB349 had been in effect back in 1976 in Wisconsin, they would not have been able to remove that judge from the bench for his comments. They wouldn't even have been able to conduct a petition campaign, because it would have been nipped right in the bud. This illustrates what I believe is the most important reason LB349 should be killed. A society's values and mores--its ethics, if you will--change or evolve over time. And the laws that societies make to govern themselves always lag behind those changes in society's values. And there are some acts that may never be covered by a specific law at all. So this is the most telling argument against LB349. It blocks society from ridding itself of officials who walk the fine line of legality but behave unethically or do things that outrage the electorate. The final comment I'll make is that the current laws that govern recalls of public officials in Nebraska work fine just the way they are right now. There is no need for change. A year ago today, February 18, 2008, I published recall-fahey.com to the Internet and I initiated a recall effort against Mayor Mike Fahey in Omaha. I can speak from experience when I say that successfully pulling off or even unsuccessfully pulling off a recall petition drive is not trivial and it's not a cakewalk. People will not sign recall petitions if they don't think at some level that the official's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

behavior warrants it. The system already automatically limits recall petition drives, and only the ones deemed worthy by the people will ever make it to an election. So the system is already self-limiting and it works. Do not send us down the road to a police state with secret and unfair court proceedings, and don't take away Nebraska citizens' right to attempt to rid themselves of bad public officials. The proper and just fate for LB349 is for it to be killed right here in this committee and never even see the light of day on the legislative floor. Now, I appreciate some of the comments that were made about people's lives being ruined in small towns because of allegations, and the petition drive officially starting and then there really being no closure to it, and I think those are legitimate issues that maybe should be addressed. They're also...my experience was with Omaha, which, of course, logistically it's a totally different animal than it would be in a small town, and so I appreciate that there are differences. But I think the way this bill is trying to rectify things is completely wrong. In my opinion, if you want to...well, when we were doing the recall...when we were attempting the recall in Omaha, we were told by the election commissioner that the state law trumped local law because Omaha does have an ordinance that allows a recall. Perhaps the state could make it so that the localities could change their own laws on this and have them be maybe as strict or stricter than the state law. Or they could do something like that. But the idea of having somebody in secret look at this 60-word statement--that's all that you've got. If you're the petitioner, that's all that you've got that's representing you, and not knowing what the defendant can come back with and not being able to rebut any of it. And believe me, it's tricky putting anything of meaning into 60 words. We, our committee haggled over it. We did some serious work on that. And it's difficult. It sounds easy. Just list off a specific statement, you know, a specific act, but you've only got 60 words and it's really tough to do that in 60 words once you start naming specific acts. And I guess with that, I'm open for questions. [LB349]

SENATOR AVERY: Thank you for your testimony. Any questions from the committee?
Senator Giese. [LB349]

SENATOR GIESE: Just a comment. Thank you, Senator Avery. Mr. Lyons, then, so...but I think the intent of this bill that we're talking about is actually what we discussed before about the county attorney and that situation in Dakota County. How do we get by that where it's...he wasn't doing anything that fit any of the criteria but could not stop a lawsuit..or I'm sorry, a recall effort by somebody. Do you see that area that we're talking about? [LB349]

GREG LYONS: I do and I appreciate that that's a problem. The question is, how do you legislate something that would address that problem without limiting somebody later on that has perhaps a legitimate right, and then the system can block them behind the scenes. I think there should be, in our case, we only came up...we came up with about a third of the signatures we needed in the 30 days. We turned those in because we felt that was the right thing to do and so that it would be done. You know, so that people

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

could look at it and know that it was legit; that what we did at least was legit. I think it's...I didn't realize there were people out there that start petition drives and then just quit midstream and never turn anything in. That's wrong. That is a bad way to do, so something...things like that need to be addressed. But I can't think off the top of my head how you could, you know, just real quickly here, how you would address that kind of an issue in a proactive manner. [LB349]

SENATOR GIESE: Well, I think that's what we're trying to figure out with this bill... [LB349]

GREG LYONS: Yeah, yeah. [LB349]

SENATOR GIESE: ...and if we can get that accomplished. I just wanted to know that you would understand where we're coming from and I totally understand where you're coming from, too. [LB349]

GREG LYONS: Exactly. [LB349]

SENATOR GIESE: So thank you. [LB349]

SENATOR AVERY: Any other questions. Seeing none, thank you for your testimony. [LB349]

GREG LYONS: Thank you. [LB349]

SENATOR AVERY: Any other opponents? Anyone wishing to speak in the neutral position on this? Seeing none, Senator Lautenbaugh, you are recognized to close. [LB349]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman, members of the committee. This is probably an unwise observation, but there's a part of me that thinks at the outset that maybe we should organize tour groups to visit police states every now and then so we understand what a real police state is and how it really differs from this recall bill, in a lot of important ways. I don't see this as a step towards a police state or, chances are, I wouldn't have introduced the bill, I would promise you. There is nothing here that involves secrecy. The public official's rebuttal is not seen by the court. There's only the allegation that the judge reviews--the 60 words. It is astonishing to me that no one could say in 60 words what someone has supposedly done that constituted malfeasance, misfeasance, nonfeasance, etcetera. As I indicated at the outset, there may be other grounds that you feel are appropriate for recall. It may be sufficient to say the mayor is a drunk. It may be sufficient to say the mayor is running around on his wife. I don't know the answer to that. But we are in a...we're sort of at extremes here. And this bill is meant to address some of those gray areas, if you will, and provide some sort of structure to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

this. The court review is not a proceeding. It's as simple as a judge reviewing the 60-word allegation. There's no secrecy. There's no attorney there making an opposing argument, in my mind, and as the bill is written I don't believe that's what would transpire. That just isn't what we intended here and I don't believe that's what this bill provides for. I'd be happy to take any of your questions, again, still. [LB349]

SENATOR AVERY: Thank you, Senator. Senator Price. [LB349]

SENATOR PRICE: Thank you, Mr. Chairman. Two quick questions for you, Senator Lautenbaugh. One, just out of curiosity, when a judge issues a warrant, when you want to apply for a warrant for arrest, does the person who had that warrant served on them get to see the evidence supplied to why that warrant would be served on them? [LB349]

SENATOR LAUTENBAUGH: I don't do criminal law. I mean, to be honest, I don't know the answer. [LB349]

SENATOR PRICE: Okay, the idea being is I think we have some precedent where things happen and people go to the judge and the judge review something and makes a decision and actions are taken and not every party is privileged to seeing all the information brought before the judge. [LB349]

SENATOR LAUTENBAUGH: I suppose that would happen. I think, there... [LB349]

SENATOR PRICE: In general. [LB349]

SENATOR LAUTENBAUGH: Once again, not my area of expertise. But I do believe warrants are issued without the participation of the target of the warrant. That's a dramatically different process than this, I would hope, but. [LB349]

SENATOR PRICE: Absolutely. But I just want to say...okay, the other part is, you mentioned earlier that there was some compromise that came about, an earlier iteration of the bill which came to the part with the judge reviewing this? [LB349]

SENATOR LAUTENBAUGH: Actually, I indicated that I had a level of discomfort with that provision. I didn't recall there being a compromise regarding that. I do know that there was a question about costs from the committee. And a prior version of this bill provided that the recall must have an estimate of cost attached to it, too, as part of the...I think it had to be on the petition. And again, as I pointed out, I'm a fan of recall and I used to sit with all of you and I think I was the one last year on this committee who said, I thought that was an impermissible and unnecessary burden on a recall, and I think I moved the amendment to take that off. So the cost estimate, which in a city the size of Omaha an election can be \$100,000; in a city the size of Broken Bow, less than \$100,000. I don't know what that would be, but that was a requirement that was

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
February 18, 2009

originally in the bill and was taken off last year. But I don't remember the compromise regarding the court issues, so I'm sorry. [LB349]

SENATOR PRICE: Okay, I just wasn't sure how long that part had been in the bills that had been circulating for years. [LB349]

SENATOR LAUTENBAUGH: If memory serves, it was in the bill that came out of the committee last year. [LB349]

SENATOR PRICE: Okay, thank you. [LB349]

SENATOR AVERY: Any more questions? Senator Pirsch. [LB349]

SENATOR PIRSCH: Just with respect to a recall in the city of Omaha, \$100,000. How many signatures do you need if, say for instance, the mayor...to put a recall...put it into...a recall petition into play on the ballot? [LB349]

SENATOR LAUTENBAUGH: I don't remember, Senator. I think Mr. Lyons would know that, having been up against it, but I don't recall. It's a percentage, I believe, of the vote cast...oh, here it is in the existing law: 25 percent of the total number of registered voters residing in the district on the date the recall petitions are first checked out. [LB349]

SENATOR PIRSCH: Okay, I see. Thanks. That helps give me some context. And then just briefly with respect to something you had mentioned to kind of talk and thought about, but nothing that would reach the level of a felony and nothing directly. But if it came to light that I, as a state senator, was addicted to pain killers, you know, prescription drugs, or was an alcoholic, that...in your opinion, does that touch upon...I mean, does that meet one of the four categories or is that not necessarily one of the four categories? [LB349]

SENATOR LAUTENBAUGH: I don't know that it would meet one of the four categories, absent a conviction of...and even then it wouldn't meet one of the four categories. If it was a felony, it would be, you know, a different matter. And again, it's a distinct possibility that you may decide that a proper amendment would be to include something like that. I am sympathetic with what the opponent said here, is that there are reasons that people may want to recall a person that specifically don't have to do with job performance. Our job is to decide if we want to enumerate those reasons, if it shouldn't stay as it is, or if we want to limit it to the actual job performance. Reasonable minds can certainly disagree on that, and do. [LB349]

SENATOR AVERY: (Exhibit 2) Any more questions from the committee? Seeing none, thank you Senator Lautenbaugh. With that, I have one item left and that is to read into

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

the record a letter of support for LB349 from Joann Fischer, Knox County Clerk. And with that, that hereby ends the hearing on LB349 and it concludes our business for today. Thank you for coming. [LB349]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
February 18, 2009

Disposition of Bills:

LB125 - Held in committee.

LB349 - Held in committee.

LB382 - Held in committee.

Chairperson

Committee Clerk