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Government, Military and Veterans Affairs Committee
February 25, 2009

[LB362 LB410 LB501 LB662]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 25, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB662, LB362, LB410, and LB501. 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 hearing of the Government, Military and Veterans Affairs Committee, February 25, 2009. My name is Bill Avery, and we will be proceeding today in the order of the agenda posted outside the door. We will be taking up LB662, LB362, LB410, and LB501. Before I start, I want to introduce the members of the committee. Senator Pahls from Omaha will be here in a few minutes. He is seated next to Senator Charlie Janssen from Fremont, who is seated next to Senator Bob Giese from South Sioux City. And next to him is Pete Pirsch from Omaha; he is Vice Chair of the committee. And to my right here is Christy Abraham, the legal counsel, and soon Senator Karpisek from Wilber will be joining us, Senator Scott Price from Bellevue and Senator Kate Sullivan from Cedar Rapids. Sherry Shaffer is the committee clerk. And we have two pages, Courtney Lyons from Plattsburgh and Nick Bussey from Lincoln. If you plan to testify, we'll ask you to fill out this form right here. Print your name very clearly and hand the form to the clerk, and we'll ask each of you to do that. If you do not plan to testify, but you wish to record your opposition or support for a particular bill, you can sign on this sheet here. You do not need to turn that in; we'll collect those after the hearing. They are available at each entrance, so you should be able to find an appropriate copy. A few items before we start: If you have cell phones, please turn them off or put them on silent or vibrate. The introducers will be allowed to make initial statements followed by proponents, opponents, and then people who are testifying in the neutral position. Closing remarks are reserved for the introducers only. I ask all of you to listen carefully, so as not to give repetitive testimony, and to limit your remarks to no more than five minutes. This is a committee that has subject matter that invites a lot of discussion, and we like that, so I'm not going to muzzle any of you unless you go too long. So, Don, we have to watch this, right? (Laughter) And if you have any copies that you want to...any material you want the committee to see, you'll need to have provided 12 copies and give that to the page for distribution. All right, now, with that having been done, we will begin with Senator Janssen's bill, LB662. [LB662]

SENATOR JANSSEN: Good afternoon, Senator Avery, members of the Government, Military and Veterans Affairs Committee. For the record, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent the 15th Legislative District in the Nebraska Unicameral. I appear before you to introduce LB662. This proposal is intended to clarify our nomination procedures when certain vacancies arise. And I am introducing this bill on behalf of the Secretary of State, I might add. LB662 is intended to discourage

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candidates from doing an end-around of our normal nomination processes for political office. A certain candidate for state office in the 2006 general election cycle received an unconventional nomination for office after being the unsuccessful nominee for a different state office as a different party nominee. Voters in both political parties were confused and disappointed by the apparent ability of this candidate with the consent of another political party to negotiate our election law and nomination processes in such an unconventional manner. LB662 would clarify that a political party should respect the primary election process and select candidates for the general election through the generally accepted practices when vacancies occur or when special elections are conducted. LB662 also modifies the replacement procedure when a candidate who has won the primary election declines a nomination and establishes such occurrences as a vacancy with replacements selected under vacancy procedures that are currently in place. It also makes some technical changes to our petition candidate law, permitting petition candidates to file their acceptance at the time the petitions are submitted. It also harmonizes language regarding political party committees by replacing references to executive committees and proper committees with the state central committee. I believe the Secretary of State's Office is here to answer the procedural and/or technical questions on this bill, and with that, I do intend to waive closing. But I will take any questions you have for me and probably will defer them to the Secretary of State's Office. [LB662]

SENATOR AVERY: Thank you, Senator Janssen. Questions from the committee? Senator Giese. [LB662]

SENATOR GIESE: Thank you, Chairman Avery. Senator Janssen, would you explain then...do you want to explain this or do you want somebody else to explain what happened? Would that be...? [LB662]

SENATOR JANSSEN: Yeah, I don't mind. [LB662]

SENATOR GIESE: Okay. [LB662]

SENATOR JANSSEN: And I get this wrong, you can clarify. I believe it was the State Auditor at the time, Kate Witek, ran for...as the Lieutenant Governor with Tom Osborne and was defeated in the primary, and then turned around and did not run for State Auditor again, did not seek reelection. Then turned around and changed parties, got with the Democratic Party afterwards, went to their convention and was appointed as their candidate through that process. And that's the way I remember it. They may clarify that a little bit, but I believe that's why this bill...that's why this bill is being brought. [LB662]

SENATOR GIESE: So...and that would address that, so this bill would just stop someone from doing that. [LB662]

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SENATOR JANSSEN: That is the intention of LB662. [LB662]

SENATOR GIESE: Again. Okay, thank you. [LB662]

SENATOR AVERY: Thank you, Senator Giese. Anyone else? Seeing none, thank you. [LB662]

SENATOR JANSSEN: Thanks. [LB662]

SENATOR AVERY: Proponent testimony. [LB662]

NEAL ERICKSON: Chairman Avery, members of the committee, for the record, my name is Neal Erickson. I'm Deputy Secretary of State for Elections, here on behalf of Secretary of State John Gale, who is out doing the birthday party circuit this week, so could not be here in support of LB662. And I'd like to thank Senator Janssen for carrying this. This is the most complex bill of the three that we were very interested in today. I'd probably start off by saying, the meat of this bill is in Section 5. It isn't a difficult bill if you just read it, and you're not going to get a real good grasp what's going on. But in Section 5, there's a section there, 32-710. And as Senator Janssen pointed out, what this bill addressed a situation that occurred in 2006, and you know, I'd emphasize it is not about a political party or a particular candidate. This is what happened in 2006 where one of the major parties did not nominate a candidate in the primary for state auditor. At that time, 32-710, Section 5, was read in conjunction with other provisions, 32-627 and 32-721. And the opinion of the Secretary of State's Office was yes, a political party convention had the ability to make a nomination in the cases of where there was a vacancy on the ballot or where a special election was required. So when the political party made a nomination for an office that did not, under current law, have a vacancy, our office refused that filing and refused that paperwork. We were subsequently sued in district court on a mandamus action, and the district court found that, no, you don't read 32-710 in conjunction with 627, 721. It stands on its own and does give the parties, in effect, unfettered ability to nominate at their conventions. You know, we did not appeal the order at that time for a couple of reasons. One was that we didn't want to upset the November '06 election. The candidate had made it on by a petition in addition to the nomination, so there was no...we didn't want that to impact the November election. In addition, we had anticipated a relatively quick legislative solution to the situation. Our fear from a public policy standpoint is based on that opinion, that 32-710 as it currently exists is...it stands on its own without limitation. There is a potential for not only partisan gamesmanship by discouraging filings, etcetera, but also the possibility of having a political party convention make a nomination that is contrary to primary election results. And there's nothing in this section that says they can't do that. Since the early 1900s, Nebraska has had a primary election system, and has taken away that...has had the political party nominees come from that process. To allow this section to stay the way it

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is kind of takes us a step backwards to the days where the convention had more power in determining how that nominee was selected. That's the bulk of the bill. As Senator Janssen mentioned, there are a couple of other things that we did in this bill. There were phrases in there as "proper committee of a political party." Well, that is commonly referred to as the central committee, so we made that change. In addition, there's a minor change when a candidate submits petitions, as a petition candidate, the law requires them to submit the petitions, have them verified, and then accept the nomination. Well, we do get into a time crunch. If those petitions are due September 1st, we have to have ballots certified by September 10th. They've got more than enough signatures, we know that, but if we're going to follow the strict reading of the law, we have to do the verification then wait for their acceptance. If this change is made in LB662, it would allow them to give that acceptance at the time they submit their petitions as well, which we don't think harms anybody. A candidate is submitting petitions, obviously wants the office, so there's no harm in taking that acceptance at that time. So with that, I'd try and answer any questions you might have. [LB662]

SENATOR AVERY: Questions from the committee? Senator Pirsch. [LB662]

SENATOR PIRSCH: Just in terms of factual background. So there was a candidate who won the primary on the Democratic side? [LB662]

NEAL ERICKSON: No, there was no candidate. [LB662]

SENATOR PIRSCH: Was no candidate. [LB662]

NEAL ERICKSON: And current law provides that failure to elect...or failure to nominate at a primary does not create a vacancy. [LB662]

SENATOR PIRSCH: Okay. So it shouldn't matter whether or not they...you're saying even if there had been a candidate, they could have...according to the court's decision, come in and said, Senator Giese won, or this individual won the election. Nonetheless, the party convention can decide to essentially nominate a different candidate. Right? [LB662]

NEAL ERICKSON: If you read 32-710 on its own, it gives the party convention the ability to nominate candidates and yeah, so theoretically, we think that could happen. [LB662]

SENATOR PIRSCH: You're saying, was that the court's position at least? [LB662]

NEAL ERICKSON: The court's position was that 32-710 stood by its own and was not impacted by 32-627, which is the vacancy statute or 32-721 which is a special elections statute. [LB662]

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SENATOR PIRSCH: So even if...but according to my example, then the court...you believe the court would have held...even if he was the only Democratic candidate on the primary ballot and had won 95 percent of the vote, that the court would have viewed the central committee as having...I'm sorry, the convention as having the power to install a different candidate then. Is that right? [LB662]

NEAL ERICKSON: I guess it is a possibility. If I, you know, was going to make my living predicting what black robes would do, I'd be very poor so it's at least certainly a possibility [LB662]

SENATOR PIRSCH: But it seemed to be...buttressed that possibility by the decision they had there. [LB662]

NEAL ERICKSON: Right. Exactly. [LB662]

SENATOR PIRSCH: Because that was just an example where there was no candidate. [LB662]

NEAL ERICKSON: Right. [LB662]

SENATOR PIRSCH: And you wouldn't have any reason to believe that they would distinguish between no candidate as opposed to a candidate who... [LB662]

NEAL ERICKSON: At least in that opinion, yes, there would have to...they'd have to come with some kind of distinction as to why, and I don't know what they would base that on within current law, at least. [LB662]

SENATOR PIRSCH: Thank you. [LB662]

SENATOR AVERY: Any more questions? Senator Price. [LB662]

SENATOR PRICE: Senator Avery, thank you. Yes, I have a question for you, Mr. Erickson. [LB662]

NEAL ERICKSON: Um-hum. [LB662]

SENATOR PRICE: That's not just the two major parties; it's all the parties, so the Green Party, any party could do this? [LB662]

NEAL ERICKSON: Yeah. Technically, we...in Nebraska statute, we don't distinguish between major and minor parties. You're either a state-recognized party or you're not, so it could have impact whether it be minor party...what we might consider minor parties

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or smaller parties, whatever. [LB662]

SENATOR PRICE: Thank you. [LB662]

SENATOR AVERY: I think Senator Giese, did you have...? [LB662]

SENATOR GIESE: No. [LB662]

SENATOR AVERY: Okay. Senator Pirsch. [LB662]

SENATOR PIRSCH: If you don't belong to a party, if you're an independent or whatnot, any effect difference? [LB662]

NEAL ERICKSON: Well, if you're a nonpartisan...well, that depends on what state you're looking at. The primary election in Nebraska for partisan offices is for the political parties to choose their nominees. So if you're a nonpartisan running for a partisan office, or interested in a partisan office, you don't participate in the primary. Your method of accessing the ballot is through the petition process. [LB662]

SENATOR PIRSCH: I see. Very good. Thank you. [LB662]

SENATOR AVERY: I have one question for you, Mr. Erickson. If this was a problem with the law, why didn't you come to get it changed before now? [LB662]

NEAL ERICKSON: We did. We brought it last year, or in 2007. [LB662]

SENATOR AVERY: Did you? [LB662]

NEAL ERICKSON: Yeah. I don't remember the bill number on it, but we brought it...like I said, the election occurred in 2006. We introduced it... [LB662]

SENATOR AVERY: No, my question is, why didn't you...if this was a problem, why didn't you bring it to the Legislature before '06? [LB662]

NEAL ERICKSON: Before 2006? [LB662]

SENATOR AVERY: Yes. [LB662]

NEAL ERICKSON: Because we felt, and this is what we argued in court is that 32-710 should be read in conjunction with the entire body of the Election Act which includes the vacancy provisions and the special election provisions. [LB662]

SENATOR AVERY: You do understand that it looks like that now that you lost in court,

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you're coming to the Legislature. Let's change the law because we didn't win. [LB662]

NEAL ERICKSON: Well, and certainly, that is the case. I mean, this is the reason we did not appeal it. But the reason we think it needs to be changed, we think there are strong public policy considerations as to why this should be this way, and give weight to the primary election results and not give the party conventions an unfettered ability to determine nominees outside of the primary process. [LB662]

SENATOR AVERY: And what is it about the primary process that you think is so important that parties shouldn't have the freedom to do this? [LB662]

NEAL ERICKSON: The history of it. I mean, the primary process exists in Nebraska since the early 1900s. It has, I think ostensibly, it was the primary process was designed to remove the nominees from the...oh, maybe uncharacteristic smoke-filled back rooms of conventions where the certain elements made the decisions about who the nominees were as opposed to the people through the primary process. [LB662]

SENATOR AVERY: Any other questions? Seeing none, thank you. Other proponent testimony? Any opponent testimony? Anyone opposed? Does anyone wish to testify in a neutral position? Seeing none, Senator Janssen, are you waiving closing? That hereby ends the hearing on LB662. We will now move to my own bill, LB362. Senator Pirsch. [LB662]

SENATOR PIRSCH: Very good. The sponsor of LB362 is Chairman Avery. Whenever you are ready, Chairman. []

SENATOR AVERY: Good afternoon. My name is Bill Avery, A-v-e-r-y. I represent District 28 in the Legislature. I'm bringing before you today LB362 which is a bill that I was requested to sponsor on behalf of the Secretary of State. It is a little bill, and (laugh) sometimes I think we need little bills (laughter). [LB362]

SENATOR PRICE: (Laugh) Is that a play on words? No pun intended. [LB362]

SENATOR AVERY: (Laugh) This will amend current statute to specify items that will appear on candidate filing forms including name, residence, mailing address if different from the residential address, telephone number, office sought, and party affiliation, if applicable. The current filing forms contain only those items that are necessary to determine eligibility for the office being sought. Additional contact information such as mailing address and phone number will be added in order to assist election officials should questions arise by contact information with the candidate if this should become necessary. In addition, the mailing address will allow candidates to provide an address other than their home for vendors. People who contact candidates, others who may wish to contact the candidate, would not necessarily have to have only their home

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address. It's a minor change, but one I think that probably is warranted. Candidates often receive requests from vendors at home which can, of course, be bothersome. If candidate filing form has a mailing address, then vendors can contact the candidate there. It could be a campaign office. I presume one would not put one's opponent's address there, but it could be any address of one's choosing. I will stop there and take any questions you have. [LB362]

SENATOR PIRSCH: Let's see. Are there any questions? Senator Price. [LB362]

SENATOR PRICE: Senator Pirsch, thank you very much. Senator Avery, we've heard bills earlier about residency and the question of residency when we were doing this. Would that other address have to be within the district for which the candidate is running? [LB362]

SENATOR AVERY: I don't think so. It simply has to be a mailing address where the candidate could be contacted. [LB362]

SENATOR PRICE: And would this also...this doesn't mandate vendors use that other address. They could still use your home address. [LB362]

SENATOR AVERY: No. Yeah, they could still do that. [LB362]

SENATOR PRICE: So, okay, thanks (laugh). [LB362]

SENATOR AVERY: But it gives them an alternative, and I think most vendors, if they're serious about getting your attention, probably would use the primary mailing address. [LB362]

SENATOR PIRSCH: Are there any other questions? Chairman, is somebody going to testify after you? [LB362]

SENATOR AVERY: There might be someone from the Secretary of State's Office. [LB362]

SENATOR PIRSCH: Okay, well, I'll reserve that question then for Mr. Erickson, presumably. Thank you. [LB362]

SENATOR AVERY: Okay. Thank you. [LB362]

SENATOR PIRSCH: We'll move on to a first proponent. [LB362]

NEAL ERICKSON: Senator Pirsch, members of the committee, once again for the record, Neal Erickson from the Secretary of State's Office, here on behalf of LB362.

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Thank you, Senator Avery, for introducing this. It is a very minor bill, but it addresses a complaint that we have had from a few candidates, and I'm not going to say it was an overwhelming number, but that they were being bombarded with vendor mail at their home address as opposed to their campaign address or whatever other address they would like. And our current filing form contains the items that are required for us to determine their eligibility which is name, address, residence address, political party if necessary, and office sought. What we put in this proposal is to add a mailing address and then a telephone number. The mailing address will, hopefully, solve some of those few complaints we've gotten about being bombarded with vendor mail, in particular. I think, Senator Price, you're correct that it's not going to guarantee certainly, but I think Senator Avery is probably on the right track. If they have a choice, they'll probably use it. And then the telephone number, we do get in situations where we need to contact these candidates sometimes fairly quickly, and the telephone number would make that possible. Otherwise, we have to dig for it and we've had situations where we've not been able to locate them. So that's the reason for us asking Senator Avery to introduce this bill, and I'd answer any questions you might have. [LB362]

SENATOR PIRSCH: Thank you for your testimony. Are there any questions? I guess I just had one. I can see on page 2, the underlying language being added to the statute. The requirement as it currently stands, what do you...do you have to relate your address on the...if you're a candidate? [LB362]

NEAL ERICKSON: The only things that we require on the candidate filing form now are the things that are necessary to determine eligibility and to produce the ballot: name, residence address, party affiliation if it's a partisan office, and office sought. [LB362]

SENATOR PIRSCH: Okay, so those are revealed, and are those then accessible to members of the public currently? [LB362]

NEAL ERICKSON: Yes, they are all public record, and, you know, we put them up on our Web site and with that residence address, that some vendors were just grabbing that off of our Web site and utilizing that. [LB362]

SENATOR PIRSCH: I see. So...and that...it doesn't give you an option currently to list other than a home address, right? [LB362]

NEAL ERICKSON: We actually do have the...we put two items on there that are optional: a telephone number and a business address. Both of those are probably used in less than 10 percent of the applications we...or filings we receive. [LB362]

SENATOR PIRSCH: I guess I'm trying to think back to my circumstances, having been a criminal prosecutor, having a lot of, you know, coming straight from that profession to a candidate, and, you know, not desiring necessarily that it be widely advertised, your

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home address. And so I'm trying to think of what would the...if they got a position like me, what would the substantive difference be? You know, obviously, that was something that would affect the whole family there so. [LB362]

NEAL ERICKSON: Right. And we have had situations, and I don't think he would mind this. But I think you're aware of the Attorney General had a stalker that was, you know, going to his home, etcetera. He was in the building a few weeks ago. I saw the paper. And we did have some requests after that, as a matter of fact, to not release the residence address. We considered that, but it is a public record, and we really did not have a way to deny it. In addition, there are...and I think it would be relatively few, but there are situations where somebody who might be considering an office will look at that list of candidates and, you know, where some of their potential opponents may live may impact whether they choose to run or not. And so not having that residence address there could have an impact, so. [LB362]

SENATOR PIRSCH: Yeah, in any case, from a historical perspective, it's not changing what had existed in the past in terms of listing of home residence address... [LB362]

NEAL ERICKSON: What it's doing is adding a few elements. [LB362]

SENATOR PIRSCH: It's just adding and... [LB362]

NEAL ERICKSON: Right. [LB362]

SENATOR PIRSCH: ...so in that way, would not add to an increased level of danger, but it just would address then you're thinking just those vendors who are looking for contacting, looking for... [LB362]

NEAL ERICKSON: Right, and then our ability to contact them via phone as well. [LB362]

SENATOR PIRSCH: Okay. Now would they...is that...it says a telephone number. Would that mean necessarily, must be a home address or a home number so to speak? [LB362]

NEAL ERICKSON: It can be any telephone number as long as it's a contact telephone number. [LB362]

SENATOR PIRSCH: Okay. Thank you for that. Appreciate it. Are there any other questions based on the question? Seeing none, we'll move on to any other proponents here today to testify? Seeing none, we'll move on. Are there any opponents to LB362. Well, you weren't kidding, Chairman Avery, about being short here. We'll ask if...well, first before I do that, let me just carry on. Is there anyone here to testify in a neutral

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capacity? Seeing none, then Chairman, do you want to waive? Chairman Avery waives, and we'll move on. I will cede the chair to Chairman Avery for LB410. That concludes the hearing on LB362. [LB362]

SENATOR AVERY: We'll now open the hearing on LB410, introduced by Senator Karpisek. [LB410]

SENATOR KARPISEK: Chairman Avery, members of the Government, Military and Veterans Affairs Committee, thank you. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. This bill was not brought to me by the Secretary of State's Office. (Laughter) Everyone else seems to have...thought I'd point that out in case you've missed that. LB410 has to do with manual recounts. This is my third time to bring a manual recount bill to this committee. We keep trying to narrow it, make it more easier to do for the parties involved. This one, and I've got testifiers behind me, but this was drafted off of the Minnesota recount. And I'm just going to read through a little bit of the underlying part. It says that any candidate who "failed to be nominated or elected may submit a certified written request for a manual recount at his or her own expense." Some of the e-mails we've got said it would be too costly for the result. That just said, at their expense. "The request shall be filed with the filing officer with whom the candidate filed for election not later than the tenth day after the county canvassing board or the Board of State Canvassers convenes. The recount shall be conducted manually by the county canvassing board. The requesting candidate may provide the filing officer with a discretionary list of up to ten election precincts to be recounted first and may waive the balance of the recount after these precincts have been recounted." Ten precincts, up to ten election precincts to be manually recounted. "Prior to conducting the recount for a county or for a listed precinct, the cost of the recount shall be determined for both the county and the listed precinct." It goes on to say we struck estimate determined, that can be redone however, but the wording also talked about determined later in the bill. I know you can't determine a cost prior, so it didn't go from estimated to determine, the verbiage in there. So what this bill really does is to try to, once again, give the citizens and the candidate a way to have a manual recount. We've talked about problems with the electronic voting machines. Could there be one? There could be. You'll hear about the way they test them, all sorts of different things on how they test them. I'm not here to say that manual counting is better than the machines. I'm here to ask why can't we, when we have paper ballots, be allowed to get at those paper ballots. The only way right now that we can do that in a recount is by a court order. Now recounts are fed through the same machine, and we usually get about the same answer. However, we don't always get the same answer. I did see this year in one of the recounts, we had about a one percent difference which I would like to ask now of the people coming up, why is that? That made me even more concerned. So I've heard before these are, I'm trying to come up with the right word, state-of-the-art, again, not saying that they're not right, but could they be manipulated? Possibly. I'm not saying that there is some sort of conspiracy theory here, but they could

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be wrong. Why can't we just look at those ballots and have a small sample here manually recounted at the expense of the candidate. If everything checks out fine, we're good. If not, hey, something's wrong. And as a person who has ran for office, I think there is too much that goes into it, the time, the money, the hassle, the being thrown under the bus, called names, every other thing that happens to us, for me, just to say the machine is right and not have a double check. So that's why I'm bringing it today, I think this is getting as narrow, almost as we can get and as least costly to the counties as we can get. And I'd be glad to take any questions. [LB410]

SENATOR PIRSCH: Super. Any questions? Senator Pahls. [LB410]

SENATOR PAHLS: Thank you. I've read all the articles and the concern for the conspiracy. And you have brought this forth how many times now? [LB410]

SENATOR KARPISEK: This is the third one. [LB410]

SENATOR PAHLS: Okay. And you keep narrowing it down. And I know I'm going to hear the same testimony as in the past and I don't know if that will change my mind or not, but we do know that human error is probably higher than one percent. Would you, I mean, that's our past testimony. [LB410]

SENATOR KARPISEK: Yeah, it could be. Probably, yeah, we've heard that. [LB410]

SENATOR PAHLS: I mean, it's the human error who actually, and I understand your concerns, throwing them through the same machine. If the same thing, quote, is wrong, it will repeat that. But I think past history has shown me that there's been very little, in most cases, changing like just two or three votes. But you still believe, and you don't believe there's a conspiracy. You just think that we should have this right because we worked hard. [LB410]

SENATOR KARPISEK: And we have a paper, we have a paper trail. Why have a paper trail if we're not going to use it unless we go to court. And there could be a conspiracy theory. I feel the machine could be manipulated. I'm not saying that it is, but I think it could be, and I think that we should have the right to be able to check. [LB410]

SENATOR PAHLS: Okay, thank you. [LB410]

SENATOR PIRSCH: Senator Price. [LB410]

SENATOR PRICE: Yes, thank you, Senator Pirsch. Senator Karpisek, in looking through here, one of the things I'm concerned about is when we talk about estimating the cost, at what point in time would the requesting agent determine the level or the breadth of the investigation. Would they wait until after the up to ten or would they have

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to delineate that at the onset? [LB410]

SENATOR KARPISEK: The way I read it, they would have to have that on the onset. [LB410]

SENATOR PRICE: So that way their cost projections could just go through those eight or nine or, and there would be no avenue for them to say, no, I really didn't mean just to say I wanted number nine and ten. [LB410]

SENATOR KARPISEK: Right, right. I think as I read it again, I would say it would have to be stated in the beginning and the estimate made and go on from there and not say, oh wait, yeah, one more. Again, how do I read it, my intent. [LB410]

SENATOR PIRSCH: Great. Any other questions? Just a few and I don't know if you're planning on having somebody testifying after you or if I should... [LB410]

SENATOR KARPISEK: Well, since I'm here, Senator, I know you like to ask me questions. [LB410]

SENATOR PIRSCH: Very good. And I appreciate you addressed the idea of a manual, is a manual recount more accurate than the standard process which is, I assume a (inaudible). [LB410]

SENATOR KARPISEK: I would say that it's been proven that it is not, especially if it's a long drawn-out one where everybody's tired and it gets old. [LB410]

SENATOR PIRSCH: Sure. And so that. So say that for whatever reason, you manually recount and the discrepancies, it's a close race and a discrepancy exists that is of the magnitude that it may call into question, or at least one candidate may say, don't believe this, believe the other method. What do you do then? [LB410]

SENATOR KARPISEK: That's where we ran into trouble last year, Senator. And it's still a problem. I guess what you have to do is you have to say we'll go with the manual recount. Now, there's nothing in here to say that you would have to do it more than once, but I would think that if that happened, you would do it more than one time to recheck yourself. But we've had, again, another e-mail to say that they did do it, and it came out exactly the same. That's great. You know what, if everybody to testify against this bill would do that, would just do one precinct to show that it's on, I'd be happy. [LB410]

SENATOR PIRSCH: Well, I guess that's what I'd be interested in knowing and there's, obviously, I can see this amendment but I don't know how other statutes read. If they definitively declare the winner the candidate who has, through the automated initial

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process, so I'd be interested. [LB410]

SENATOR KARPISEK: Well, right now, it's automated in the recount, so the recount is what goes. So the second one goes even if it's different than the first one. [LB410]

SENATOR PIRSCH: Okay. And that's the statute you're affecting then? [LB410]

SENATOR KARPISEK: Yes. [LB410]

SENATOR PIRSCH: You would say then that this change would make this recount, manual recount, trump and this would be who the election commissioner would have to certify by law as the winner. [LB410]

SENATOR KARPISEK: Yes. [LB410]

SENATOR PIRSCH: Okay. And how long might this, if it's by manual and you're talking about the, I don't know how, it says up to ten election precincts. Do election precincts differ by type of race such that if you're talking Governor's race one election precinct maybe a huge area. [LB410]

SENATOR KARPISEK: I think it's still a precinct where you vote. [LB410]

SENATOR PIRSCH: Okay, so those are uniform despite the race. And so you don't think with ten, that would create a prohibitively long period of time to manually recount those, right? [LB410]

SENATOR KARPISEK: I don't think it would be terrible. Would it be fun? No. [LB410]

SENATOR PIRSCH: Let me ask you this, too. If you're only checking ten, if you're doing a small sample, if you're doing ten precincts, if you're talking about a statewide office, you're talking about perhaps thousands of, I don't know thousands of precincts, correct? [LB410]

SENATOR KARPISEK: Yeah. [LB410]

SENATOR PIRSCH: You're saying by a sampling of those then, say it switches the results. Can then, at the time that the results switch, can the candidate who had originally come out on top, now on the bottom, can he go forward and pick ten more precincts and say I'd like you to look at these? [LB410]

SENATOR KARPISEK: You know, that's a good question, Senator. And I guess I'd have to read the whole statute better to give you a good... [LB410]

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SENATOR PIRSCH: Oh, I see. I think in line 3 on page 4, that answers my question. Any candidate who failed to be nominated or elected may submit a certified written request for a manual. But that may affect... [LB410]

SENATOR KARPISEK: But you bring up a good point. Maybe that changes that and then now the other person can get up. [LB410]

SENATOR PIRSCH: And then maybe if he prevails by his ten, then it may switch back to the original, and it might keep going back and forth. [LB410]

SENATOR KARPISEK: It may. It may. [LB410]

SENATOR PIRSCH: Something to think about. And then the only other thing is, well, I think you may have answered all my questions. [LB410]

SENATOR KARPISEK: Some of, I'm sure some of the people behind me will know these answers better than I. They've worked hard at it. [LB410]

SENATOR PIRSCH: Yeah. I appreciate that. Senator Price. [LB410]

SENATOR PRICE: Senator Pirsch, thank you. Senator Karpisek, please forgive me for not being able to articulate this better the first time. In line 11, on page 4 where you talk about: "the requesting candidate may provide the filing officer with a discretionary list of up to ten election precincts to be recounted first, and may waive the balance of the recount after these precincts have been recounted." So what we've effectively said was, it won't be all done up front for the office to estimate the cost. [LB410]

SENATOR KARPISEK: Well, I think they would estimate the cost for the entire, for the entire election, pick ten in the beginning, and then they can waive the rest. [LB410]

SENATOR PRICE: Okay, I just wondered because it says that the may came in after the recount. I just wanted to make sure because when you're building costs, as Senator Pirsch said, and it's a statewide race, just the action of building a cost analysis is costing them. So that's why I wanted to make sure we were able to be clear on that. [LB410]

SENATOR KARPISEK: And you know, they used to do it this way. I mean, before we had the machines. So they may know. Again, with a lot of this, I would, if we would get so far, I would work with the Secretary of State's Office to try to work some of these things out. Again, we're not after...we're not after the whole ball game here. We would just like to get at those ballots to make sure that they're being counted right. And I guess after, since this is my third time, when the Secretary of State's Office was so dead set against anyone getting at those ballots, it raised a red flag for me. The first time I carried this bill, yeah, I'd like to see them, but boy when they've been so dead set against it, I

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start to wonder why. What is the, what is the big deal? And, of course, I'm kind of big on transparency. I think that that stops it there. [LB410]

SENATOR AVERY: Any more questions? Senator Sullivan. [LB410]

SENATOR SULLIVAN: Thank you, Senator Avery. Senator Karpisek, did you say that this was modeled after legislation in Minnesota? [LB410]

SENATOR KARPISEK: Yes, ma'am. [LB410]

SENATOR SULLIVAN: Could you expand on that just a little bit? [LB410]

SENATOR KARPISEK: Well, Senator Eret will probably be able to talk about that more, but they passed it unanimously. Again, he'll be...I've read his testimony, and he goes into that a little bit more. [LB410]

SENATOR SULLIVAN: Okay, thank you. [LB410]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you, Senator Karpisek. [LB410]

SENATOR KARPISEK: Thank you. [LB410]

SENATOR AVERY: We'll now have proponent testimony. Welcome, former Senator Don Eret. [LB410]

DON ERET: (Exhibit 1) Senator Avery, it's good to see you back in action. And members of the committee, my name is Don Eret. That's spelled E-r-e-t. I reside in Dorchester. I support enactment of LB410. It amends statute 32-1121 that allows a candidate to request and pay for an election recount. The change is to require that the recount of ballots be conducted manually instead of electronically. The amendment has the statute specify its own procedure instead of referring to the procedure in the statute for an automatic recount. The two statutes have different objectives. An automatic recount checks a vote difference of less than one percent, whereas a recount requested by a losing candidate checks for an electronic vote count discrepancy of a magnitude intended to change the election outcome. The current procedure specified for both types of recounts can be viewed as license to manipulate the vote count. A dictionary definition of license is: permission granted by competent authority to engage in an activity otherwise unlawful. LB410 is patterned from a law enacted unanimously by the Minnesota Legislature in 2008. Up to ten precincts can be recounted first, and the remainder of the manual recount can then be waived by the requesting candidate or it will be continued. There is a series of factors that make the current electronic vote count and recount process in Nebraska nontrustworthy. (1) Ballots are stored for 22 months

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under federal law, but in Nebraska no one can look at them, not even in a recount. (2) Optical scan electronic vote counters are programmed for each election by the manufacturer using secret proprietary codes under protection of federal trade protection laws. (3) Not allowing a manual recount violates the Voting Rights Act of 1965 requirement that ballot tallying shall be open to visual inspection. (4) 1.2 million Nebraska voters have been subjected to a change from full transparency of counting ballots by bipartisan vote counting boards at the precinct to no transparency with electronic counting and recounting at the county election office. (5) A restriction against manual recounting of votes destroys the integrity of the entire election procedure. (6) Nebraska is nationally rated as "inadequate" for postelection audits. (7) Discrepancy in tallying an electronic vote count can remain undetectable under the current procedure. (8) The current restriction against manual recount violates Nebraska Constitution Article I, Section 22, that states there shall be no hindrance or impediment to the right of a qualified voter to exercise the elective franchise. (9) Claims that Nebraska has used optical scanners for many years and that no vote fraud has occurred are meaningless because there has been no way to detect and expose undetectable manipulation. (10) Nebraska's election contest statutes that can lead to a manual recount upon a court order are not a remedy for election verification because a judge would require proof of miscount before he or she would authorize a court contest. There is no proof possible where a vote count discrepancy is kept undetectable. The effects of all of the above ten negative factors are demeaning to Nebraska voters and can be diminished by the enactment of LB410 that would require a requested recount to be performed manually. [LB410]

SENATOR AVERY: Thank you, Senator. I have a couple of questions. You indicated that Nebraska nationally is considered "inadequate" in its postelection audits. Who did this evaluation? [LB410]

DON ERET: There was a study done jointly by three election reform advocacy groups, Brennan Santor which is part of a university, I think in New York, and Common Cause, and I think Verified Voting. And they lauded Nebraska for having the paper ballots, but they said that they were ranked "inadequate" for postelection auditability. And Thursday, I picked up on that, there was an editorial in the Lincoln Journal Star about that situation. [LB410]

SENATOR AVERY: You mentioned the Voting Rights Act of 1965 requiring that ballot tallying shall be open to visual inspection. [LB410]

DON ERET: Open to visual inspection. [LB410]

SENATOR AVERY: Yeah. Is that meant to imply that all ballots should be paper ballots? [LB410]

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DON ERET: Well, it would imply that. Yes. The advent of electronic vote counters seems to sort of covered, overridden that. But that was a requirement from the Voting Right Acts of 1965. [LB410]

SENATOR AVERY: I presume that somebody will be following you in opposition to this, that I can ask that question to as well. Any questions from the committee? Senator Sullivan. [LB410]

SENATOR SULLIVAN: Thank you, Senator Avery. Well, I just wanted to follow up on my question with Senator Karpisek and if you could elaborate a little bit more on the Minnesota. [LB410]

DON ERET: Well, I read...at home I have the copies of the statutes that they've passed and it indicated that both houses of their legislature unanimously passed...they called it a discretionary recount, where they get to select up to a certain number of precincts. And so I just, we were just discussing, and we just selected the number ten for our statute here. [LB410]

SENATOR SULLIVAN: I see. Okay. [LB410]

SENATOR AVERY: Any other questions? Seeing none, thank you. [LB410]

DON ERET: Thank you. [LB410]

SENATOR AVERY: Any other proponents? [LB410]

CHRISTINE REISER: (Exhibit 2) My name is Christine Reiser. I am from Omaha, Nebraska. I have lived in the state of Nebraska practically all of my life, and that's getting to be over a half a century now. [LB410]

SENATOR AVERY: Would you spell your name for us? [LB410]

CHRISTINE REISER: Christine, C-h-r-i-s-t-i-n-e, Reiser, R-e-i-s-e-r. [LB410]

SENATOR AVERY: R-E-I-S-E-R? [LB410]

CHRISTINE REISER: Yes. My credentials to come forward on this issue today is a citizen of Nebraska, a taxed to death citizen of Nebraska, a supporter of our system, and a person who is definitely...my life, my freedom, my opportunity, my lifestyle, my...you know, the pond in which we swim is our state. And I'd like to remind each one of you, every time you come into this building, we pass under a stone engraved message that says, "The salvation of our state is the watchfulness of our citizens." And I'm one of those citizens. And there are millions of citizens just like me, only I happen to

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be the body and the face here today. The reason I'm interested in this particular bill is because I've been reading about it in the popular press, in the academic journals, and I've been to a lot of conferences that deal with this issue. I think Mr. Eret mentioned that Nebraska was called, you know, a state that had a particular, pointed to, that our vote counting procedures were some of the most questionable in the nation. Well, I would like to introduce this book by Vickie Karp to every person here, and it's called, Hacked! and this is a very well-researched book about election abnormalities and questions throughout the nation. But there is a special chapter on Nebraska because, according to this author, and these authors, Nebraska stands out in the questionableness of the authenticity of our vote count. And what this book says, and this book has been out for five years, and it has never been questioned. There's nobody who has questioned the facts and the research that has been done in this book. This book points out that the majority of the votes in Nebraska are counted by a company named Election Systems and Software, as you well know. And the owners, the private owners of Election Systems and Software is not the state. It's not the people, it is not an unbiased group. It is actually three private companies that own all the vote counting in our state. And the McCarthy Group is one group of businessmen that own our vote counting privately. And then our local newspaper monopoly owns another part of it, and then a defense contractor owns the other part of Election Systems and Software. And the problem with that is these are private corporations and consortiums that we don't feel really represent the entire state, all of our voters and our Legislature. And our Nebraska Legislature at this time might find it to their advantage to redeem our reputation as a state after that child drop-off bill where anybody could abandon a child or a teenager legally in the state of Nebraska. And I know the entire nation had an outcry that Nebraska would do a thing like this. So we didn't look very good on the national scale. Now in terms of this bill, let me connect it back. I think we need to show that we're a state of the people, and that more interests besides these private companies are representative in the most important issue of electing our officials. And we feel that some kind of a citizen committee, state committee should have as a third step alternative in the vote counting, an opportunity to check on these private corporations. For-profit, by the way. Election Systems and Software is a for-profit private corporation. And our votes which our entire way of life rests on, our ability to elect our officials, rests on, is behind closed doors of a very, very few people who don't have, we don't have any checks and balances on it. So this particular bill isn't saying that we're going to actually remove these private corporations that are counting our votes for profit, but in the second or third round, that we have other options. So that's what we're asking here for in LB410 is we want to open up the options, we want to salvage our reputation as a state, and we want to keep electing the legislators and state representatives of our choice. And I'm just about finished, and to end my presence here today, I would like to say I'm only one person, and I'm a stay-at-home mom. And a person might say, well, this person is not important, they're not a person of power and what they say is not of importance. But Thomas Jefferson said: One man of courage is the majority. And we have single individuals and groups of individuals in our state of courage. And this is the third time we've come

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forward with the courage to ask something that actually should be a no-brainer. But my son, who is a junior in high school, in the Omaha school system wrote this paper for English. And it's called "One Man of Courage is Majority" and we're looking for the courage of each individual here to search your mind and to do the right thing for all the citizens of Nebraska, and give us some kind of option that's really not even equal to what the corporate vote counters have. But we want to be represented. And anyone who would like a copy of this paper that my 16-year-old son wrote about how important one citizen can be, I would like to give you a copy of it, because we are a state of, of one persons of courage and a lot of them are in this room today. And I thank you for your time, and I hope that you will do the right thing in terms of all the citizens of Nebraska. [LB410]

SENATOR AVERY: Thank you. Anyone wish to ask questions? [LB410]

CHRISTINE REISER: And I have some books that are well documented and researched, and I would like to share them with anyone who is interested. [LB410]

SENATOR AVERY: Thank you. Any questions from the committee? Seeing none, thank you for your testimony. [LB410]

CHRISTINE REISER: Thank you. [LB410]

SENATOR AVERY: We are still on the proponents. Any others? Come forward, sir. [LB410]

GEORGE BURROWS: My name is George Bill Burrows. I'm from District 30, the northeast corner of Gage County. [LB410]

SENATOR AVERY: Will you spell your last name for us? [LB410]

GEORGE BURROWS: B-u-r-r-o-w-s. [LB410]

SENATOR AVERY: Thank you. [LB410]

GEORGE BURROWS: What I'd like to testify today on this is I don't feel it's raising questions on the integrity of anyone here, but I think public confidence is the name of the bill. Because I think we've had enough happen in this country in the last year or two to really take it serious on the public confidence system of our voting rights. And as it is, I would read our present law to say that we actually in effective measure have no recount whatsoever. Because if you run it through the same machines and the machines will be accurate as to what they are doing with some exceptions. If there's a mistake made in the machine or if someone in the manufacture of that machine programs it to do otherwise. Now if we don't have a recount other than that machine, we

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have no recount, as I see it. And I think it leaves a huge gap in the confidence of the electorate if they actually look at what the situation is, and it comes up for an election. And I don't see it as a question of anyone's integrity here in the state, a question of that. But over the years, I've been treasurer and been involved in lots of fund-raisers and counting money. And when it left this day of the money count, I always liked to have someone count with me. Because there's total confidence if you've got a checked system. And I don't think I should trust anyone else or they me on the counting of money on fund-raisers or anything else and least of all, elections. I think this should come out of committee with a unanimous vote because the cost is going to the person that's complaining and the whole win, the winners are the people that are elected today. Because this puts more public confidence in them, and I think it's all about confidence. And there is always that possibility. When I go to Las Vegas, I do trust the machines. They're going to win. Real simple. And if you set a machine to win, it's going to win, and you have a confident person setting up that machine. And I can't see how someone can go to Las Vegas and watch and play maybe a few times, and think that, unless they're really naive, that machines are infallible. They're rather promoted on the basis of equity and some of them even tell how they work them at a 95 percent payoff or 90-95 percent payoff on this machine. And you don't see the people owning the machine losing money, even though they make some rather large payoffs at different times. I think machines have a lot of abilities, but someone's building the machine and you don't, the trust of that person is not necessarily what you have. If you have a check on it, if you have a check on it, that person that's programming the machine is going to think twice before they program it to shift an election by three or four percent. If you don't have a check on it, it's wide open. I really don't have anything else to say. I found the Legislature to be a pretty honest bunch of people. [LB410]

SENATOR AVERY: Well, it certainly was when you were here. [LB410]

GEORGE BURROWS: Well, thank you. [LB410]

SENATOR AVERY: I think we might be the only committee that has two senators testifying on the same bill today. I am going to hand off to the vice chair. I have a bill coming up in another committee. But are there questions from the committee? [LB410]

SENATOR SULLIVAN: Yes, Senator. I'm not familiar enough with how these machines could possibly be manipulated. Can you tell me? [LB410]

GEORGE BURROWS: Well, any machine, you've got a manufacturer and you've got people that are programming it. [LB410]

SENATOR SULLIVAN: Right. But I'm talking at the local level. [LB410]

GEORGE BURROWS: At the local level? I have, within the counties and so forth, I have

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no reason to suspect that there's a reasonable possibility of that. [LB410]

SENATOR SULLIVAN: Okay. [LB410]

GEORGE BURROWS: But even at that, it eliminates that possibility and it would, I wouldn't ever write it off when a machine goes out. We've got some very competent people that work in...with computers. I've got a daughter that's got her degree in...an engineering degree in computer science and I've got a grandson that works at the Med Center in Omaha fixing computers, troubleshooting them. And I, if somebody is capable of working with computers, I'm computer illiterate myself. But I get my grandson usually. He's the trouble shooter. [LB410]

SENATOR PAHLS: Any more? Seeing none, thank you for your testimony. [LB410]

GEORGE BURROWS: Thank you. [LB410]

SENATOR PAHLS: Next proponent. Good afternoon, Mr. Gould, whenever you're ready to begin. [LB410]

JACK GOULD: Senator Pirsch, members of the committee, my name is Jack Gould. That's G-o-u-l-d, and I'm here representing Common Cause. A lot of the arguments have been presented, so I'm going to be brief, I hope. I think Senator Avery brought up the question that Common Cause was critical of the state of Nebraska, our national organization. And I just want to make sure that you realize that we probably have the best scanners of any state. We have a very clean paper trail which everybody recognizes. And the only criticism that came down from the national organization was in this question of recount. And the recount question is simply this. And it's already been expressed, but if you are going to take ballots and run them back through the same machines, how valid is that? Are you going to get the same answer every time? And I know that this can kind of degenerate into an argument about man against machine. I mean who's more accurate, men who are, make mistakes and obviously are the same people who build the machines and also repair the machines, are they better equipped to deal with recounts than the machines themselves? I don't think we need to get into that argument, but it's a good argument. The real question is there needs to be some kind of a backup system. I mean, we can't keep public confidence by saying to the public, okay, this was a close election, let's run it back through the same machine. I mean, the public is going to say to you, well, you're going to get the same answer. And although there was a one percent difference, I think it was mentioned earlier, I don't know exactly where you go. This bill provides a backup system. It gives you some alternative other than a machine. It should not be a high cost way of backing up the election process, and it does nothing but build public confidence. People tend to trust people more than they trust machines. Any questions? [LB410]

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SENATOR PIRSCH: Very good. Thank you. Senator Price, you have a question.
[LB410]

SENATOR PRICE: Senator Pirsch, thank you. Mr. Gould, I have a question and I've waited for you to get up because I believe you have a good view nationally, that's why I'm asking. In my experience in dealing with classified documentation, which is the closest thing I can think of to a vote, you know, of how precious we want to have a chain of accountability. One of the precepts of that is the fewer people that handle it, who have no need to handle that classified information, the least chance...you've lowered the chance, the risk of losing accountability for that classified document. And with a manual recount and as I read this, some of this could be happening at the precinct itself. I guess where they have the machine that does the reading, too. But you could have, you could interject into the system many more people handling the ballots again and thereby inject a reasonable cause for a change of an outcome just because more people handle it, but not based on the errors that may or may not be in the ballot. And that's a grave concern to me, that chain of accountability for those votes. Does this not happen, have we not seen this? I mean, in recent history when we talked between a hanging chad and counting different ballots and the way we count ballots. When one person looks at it one way, and another person, then you have to go to court, and you see where that mark really isn't a mark inside or outside. So I mean, we are introducing an element of risk.
[LB410]

JACK GOULD: Well, I think that same element of risk exists with machines. I mean, the machines are going to discount a lot of ballots that people would like to have counted, and so you are always going to have a trade-off between man and machine. I think that...I know a lot of the people who are going to testify next are probably as honest people as there are. I wouldn't, I think we have to trust the people in the election process as being both honorable, trustworthy, and all of the good qualities. And at the same time, mechanical devices, I know my computer attacks me all the time and makes mistakes and I have a hard time following up. Now, I know these are simpler machines than a general computer, but at the same time, to put all our confidence in a machine is not in the best interest of the public. The human aspect of both the election and the counting process is only going to come into play if there's a question. And there's only going to be a very restricted number of elections that are going to be brought to this manual count. And with that in mind, I don't see that, you know, bringing in the people at the election office or whatever is going to threaten the election. I mean, I really believe those people will be fine. I'm more concerned about the malfunctioning machines, and we've had examples of that and not just in Nebraska, but I mean all over the country and most of the country is a lot worse than Nebraska. But at the same time, the possibilities of a mechanical fault is there, and if you want to restore, you want to make people confident in the election process, then you'll have another way of doing it. And I mean, if there's another way of coming up with a recount, we'd certainly look at it. But I mean, running it back through the same machine isn't something that builds confidence,

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and there needs to be another way. And I really appreciate the two senators, former senators for coming up here, and they've carried this issue because there's a lot of people who really are concerned about that, that don't necessarily trust the machine, and they want to have another way. And you know, I kind of lean in their direction. [LB410]

SENATOR PRICE: Okay, thank you. [LB410]

SENATOR PIRSCH: Great. Any other questions? Seeing none, I appreciate your coming down here today to testify. Is there another, anyone testifying in favor of this bill? Seeing no other proponents, okay, are there any opponents of LB410? Good afternoon. If you'd just like to lead off with your name and if you could spell it for the clerk. [LB410]

SANDRA STELLING: Good afternoon. I'm Sandra Stelling, S-a-n-d-r-a S-t-e-l-l-i-n-g. I'm Jefferson County Clerk, Register of Deeds and the Election Commissioner, and I'm also the cochair of our legislative committee. I'm here today to oppose LB410 for the manual recount. One reason is the federal, state, and county levels have spent all this money on our machines and to me, that would be just throwing that money out the door. And from what I understand the machines cost, I don't think that we want to do that. Another thing I don't quite agree with the clerks, the election commissioners having to estimate the cost of this because if you're only going to count a certain number of those precincts, our costs are going to be off, so therefore, we're going to have to go back and refigure the cost if they waive the additional cost and stuff for, you know, not to count the whole thing. I just think we need to look at this a little bit further, and wish you would oppose it. If you've got any questions, I'll try to answer them. [LB410]

SENATOR PIRSCH: Thank you very much. Senator Price, you look like you have a question. [LB410]

SENATOR PRICE: Senator Pirsch, thank you. Miss Stelling, if you had to, if you had to do a manual recount, how long would it take to recount every precinct under your jurisdiction? [LB410]

SANDRA STELLING: Well, that depends on what I'm counting. If I'm counting a statewide race, in this last election, I had probably 66 percent of my voters which was 3,700 ballots. If you're doing my canvassing board which is two people, it's going to take a long time. By the time you get them out of your vault, you bring them up, and then you have to certify all of them, and then you have to make sure that they're counted. [LB410]

SENATOR PRICE: Okay. And under the current guidelines, would there be a requirement for observers to be there to make sure your canvassing board was not, not, was following and making sure it was right? I mean, I have read before that sometimes

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there is a witness from both parties there. [LB410]

SANDRA STELLING: Yes. Yes, they have the opportunity to sit in. They can't obstruct what we're doing, but they have the opportunity to observe what is going on. [LB410]

SENATOR PRICE: So we're interjecting more people in the opportunity to see the ballots then. [LB410]

SANDRA STELLING: Yes, they could probably see them if they, you know, but they can't just sit there and say, hey, I want to see this one, this one, this one, this one, because that would be interrupting what we are doing. And they don't have the opportunity to interrupt us. [LB410]

SENATOR PRICE: Okay, thank you. [LB410]

SENATOR PIRSCH: Great. Any other questions? Seeing none, thank you very much. Are there any other opponents of LB410? Good afternoon, Mr. Phipps. [LB410]

DAVE PHIPPS: (Exhibit 3) Good afternoon, Mr. Chairman, members of the committee, my name is Dave Phipps, P-h-i-p-p-s. I am the Douglas County Election Commissioner, and I did not arrive via a black helicopter today. I'm sorry. I am in opposition to LB410, really for a number of reasons which I've outlined in my written testimony. But my basic concern with this bill has been and continues to be the idea that we just trust the machines to do it right. You know, we get the machines in and we just cross our fingers and hope, well, I hope they count them correctly. You know, the argument for this is that, you know, we want people counting the ballots which we've already kind of determined that it's the least accurate method of counting. But it is something that we essentially already do. When the election season rolls around and we're putting our ballots together and whether you're like my office that programs the machines themselves or a county that allows the vendor to program their machines and print their ballots, there's always balances and checks already applied there. They are required at the vendor level to perform checks against a manual count or a hand count test deck is what it's called. It's basically a sample of every single ballot that's going to go through these machines and you vote them; you vote them at random. You pick a number of different candidates that you're going to vote for for every race. Some you undervote, some you overvote, some you, you know, do write-ins, any number of different ways that you can come up with to make it a random test of the system. And you run them through the machines. Then you do a hand count to make sure that that matches what the machine's output was. So essentially we're doing exactly what you're asking to do. It's just that we do it before the election. The reason we do this is to save time and again, to make sure that the elections are being counted correctly. For an example, you asked, Senator Price, about how long it would take for us to do a hand recount if we did all of our precincts. In all honesty, I don't know. But in 2006, we had to do a recount, and

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that's kind of what I based this on. And it took about 150 man hours to do just a machine recount. And based on those numbers at the time and the work that we put in, I estimated it at about 1,500 man hours to do a manual count of all of the ballots that went through during that just legislative district race in a nonpresidential year. If you said, can we do a recount of the presidential race in 2008, I mean, it would be in the thousands of man hours to complete that if we were to do it. So, you know, there is obviously cost and you can say, well, the cost is being defrayed, the candidate is going to pay for it. That doesn't really do me any good and it doesn't, I don't think, does any county clerk good because yes, the money does go back to the county, but it comes out of my budget. So it's not like I get my money back after expending the time and the effort to go through that. So that is a problem for us. And then it's simply the time it takes. You know, you look at Minnesota and this is something that, you know, we're wondering if this is a good idea because Minnesota does it. I don't know if they've certified who is the next senator from Minnesota yet. So, you know, a lot of these things sound very good in theory, but in practice they're a lot more trouble than really they're worth. Just the idea of relying on people to do the counting, it just doesn't make sense when you have machines that you test for accuracy and entrust them to do these counts for you. You know, the law says that a person can't view the ballots, the candidate can't view the ballots after the election and you know there are certain reasons for that and I think Senator Price alluded to many of those. You know, and I understand that and I understand why that's frustrating for candidates. But you know, I test the system, my deputy tests the system, the vendor tests the system; there are multiple checks and multiple procedures that we go through to make sure that these elections run smoothly, that the machines are counting correctly. And at any point in time, we can retest those to make sure that the programming is correct, even if we wanted to do that right before we did our recount, we could make sure that the test deck was run again and the balances still met exactly what they were before. So I guess that's really my testimony on this. It just is, really, a less accurate way of doing what we do already. You know, we're taking a back, a step back in technology. You know, I'm sure there was a time where people thought, you know, I'm tired of seeing all these horseless carriages on the road. You know, I prefer the horse and buggy method. Well, you know, we're a little bit further along than that and these aren't the machines that you read about. And the idea that those machines out there are causing problems and people are having problems with it; when you get down to the very facts of what machine was it, what did it do specifically, what was the specific problem, those answers become a little less specific. You know, you've got to put a certain amount of trust in me as an election official. That's really just the nature of the game. I know that there's a lot more scrutiny these days. There's always, you know, the chance of the mispropriety but you know, really it's my job to ensure that this happens correctly. There's a check and balance in my office. There has to be someone of an opposite party, you know, in a management position in my office to make sure that, you know, we're keeping checks and balances on ourselves. So with that, I'd be happy to answer any questions you have. [LB410]

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SENATOR PIRSCH: Very good. Senator Price. [LB410]

SENATOR PRICE: Senator Pirsch, thank you. Mr. Phipps, thank you very much for bringing forward some information and to answer questions. But it did make me wonder, being a part-time woodworker, I often use a belt sander and you get that belt sander on there, if you're not pushing the wood on there just right that, the belt will drift on the spindles. And then you talk about here in the second page of your testimony that the ballots are scanned by the equipment and the machine results are compared to the hand results, and the machines are not certified ready until the results match, which indicates to me that there is some drift. Now, I'm not sure because I haven't seen the schematics of these counting machines, but when the ballot goes in, are there any belts or is it gear driven for the optical scanner? I take it, it's an optical scanner going over it, if there was a drift that you have to tune up with the control deck, I believe you referred to it, what and how do we know there's no drift during that election day, and is there any plus or minus adjustment on drift in those machines? [LB410]

DAVE PHIPPS: No. The tolerances of the machine are within, I mean, microns. They're, it's a very, very tight, and if it doesn't meet that, it doesn't read the ballot, and it stops counting. So you have to examine the ballot and see, is there something wrong with the printed ballot itself. You know, because when you send a piece of paper through a printer, you know, there's always a bit of skew. And we use very fine equipment to make sure that the printing process is as exact as possible. When I say that they don't always match, I'll tell you in every instance, it's not the machine that is misreading it; it was the hand count that was misread. Somebody, when going through and doing the hand count marked Price instead of write-in and so they, that's where the error goes, is always found. I mean, you go through and you make sure that, you know, you make sure that yes, you programmed the machine correctly, but after that, you know that now somebody just marked it wrong when they marked it on a piece of paper to do the hand count. That's always where the problem is. [LB410]

SENATOR PRICE: So am I to understand then that sometimes one is kicked out and someone inspects the ballot? [LB410]

DAVE PHIPPS: The machine operator does pull the ballot aside, sets it aside, runs it through again to see if the machine, you know, just kind of grabbed it wrong, if there is a drift, if it did and the machine runs through fine, it's right. If it didn't, then the machine, the ballot is printed at a skew, at an angle that the machine can't read because it is very sensitive to that fact. So what we do then, there's a procedure in Nebraska law that allows for a ballot to be reproduced. So a team of opposite political party workers get together, take a blank ballot of that same exact ballot type and one person reads off of the ballot that won't be read and marks the ballot, duplicating it exactly how they see the ballot as being marked. And they have to agree on...both of them have to agree that's what the mark reads or there's no vote in that race. [LB410]

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SENATOR PRICE: So, in effect, there is a form of a manual recount. I mean, there is a manual interjection there to ensure that the vote is accurately represented. [LB410]

DAVE PHIPPS: Right, the machine doesn't just guess on it, in other words. It makes sure that it is accurate and it is exactly how it's supposed to be. [LB410]

SENATOR PRICE: Okay, thank you. [LB410]

SENATOR PIRSCH: Very good. Any other questions? Senator Pahls. [LB410]

SENATOR PAHLS: Now you told me, you have the capability since you're from a larger county of doing a test drive? [LB410]

DAVE PHIPPS: Every county does it. [LB410]

SENATOR PAHLS: So every county? [LB410]

DAVE PHIPPS: Every county is required by law to do it. [LB410]

SENATOR PAHLS: But you can do it without the help of the vendor. [LB410]

DAVE PHIPPS: Of the vendor. Because we actually take the things that some of the vendors do, that the vendor does, we do that inside our office. But we still keep it separate that we have two people of opposite political parties programming the ballots, performing those test decks, and running them through, getting them manually recounted to make sure that those worked perfectly and then again, I do a test deck and my deputy who is an opposite political party, does a test deck and we run those through, manually count those and make sure that the machines are reading correctly. So the law requires that three people are essentially making sure that those machines are accurate. We do all three functions within our office. All other counties do it. All the other counties in Nebraska do it with the vendor doing one and then them doing the other two. [LB410]

SENATOR PAHLS: So with the other counties having the vendor involved, would I be more suspicious because the vendor is actually doing it, or are the other two people from, well, I'm assuming from two different parties, so if three of you are doing it, I shouldn't be any more suspicious because like in your county, they're not there? [LB410]

DAVE PHIPPS: Right. You know, I would imagine that, you know, suspicion is probably...there's an argument for suspicion on either side. You know, either the vendor is out to get you or somebody in my office is out to get you. So you know, I'm not sure

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exactly which is better. You know, it's just the way that it works out in Douglas County. [LB410]

SENATOR PAHLS: It seems like there are a lot of checks and balances here. [LB410]

DAVE PHIPPS: There is, in my view. I mean, I think there's plenty of checks and balances. And I mean, it's the thing that it's a lot harder to rig an election than you might think. You know, it's just one of those things where I tell this to candidates all the time and if you filed at my office, I might have given you this speech. I don't care whether you win or lose. You know, as you as a candidate, it makes no difference to me. [LB410]

SENATOR PAHLS: I felt that. [LB410]

DAVE PHIPPS: Exactly. You know, it's, did the voter get the opportunity to vote? Did they get the same opportunity as somebody in the other, the rest of the county? Is it fair and equitable for everybody? You know, the outcome doesn't matter to us. And I really speak, I think, for all 93 election officials. The outcome is irrelevant, it's the process that matters to us. So is the machine reading correctly? We want to make sure it is. Did the voters get the opportunity to vote in an equal manner? That's what we're concerned about. How the end result comes out really isn't a big deal to us. [LB410]

SENATOR PAHLS: Okay, and here's I think where there's been some confusion because you did mention something that happened in 2006 and I don't know if this is it, but Stothert was leading Lathrop by 14 votes. There was a recount of the provisionals? [LB410]

DAVE PHIPPS: The switch. It wasn't a recount of the provisional, it was actually the count of the provisionals. [LB410]

SENATOR PAHLS: Oh, okay. [LB410]

DAVE PHIPPS: So after the seven day period of approving or not approving each individual provisional ballot, when we then went to count those, those numbers switched the ultimate outcome. [LB410]

SENATOR PAHLS: Okay, so the voting was over here, the provisionals, that could cause a switch from being behind by 14 to winning by 11 with one of the candidates? [LB410]

DAVE PHIPPS: Right, it wasn't a recount that made it, but we did have, end up having to recount that race because it was in such a tight margin and then those numbers ultimately stayed the same. [LB410]

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SENATOR PAHLS: All right, yeah. Okay, thank you. [LB410]

SENATOR PIRSCH: So the numbers stayed the exact same from or? [LB410]

DAVE PHIPPS: In '06, I believe there might have been a difference of one vote on each side. So candidate A lost one vote and candidate B lost one vote. They didn't get any closer, as far as I recall. [LB410]

SENATOR PIRSCH: I see. [LB410]

DAVE PHIPPS: And you know, to say that a machine can't read something differently, I mean, there is always that possibility that one will read it differently than the other. That possibility is less than .00001 percent. So I mean it's, that was the other thing that I kept hearing this 1 percent in a recount this year, I don't remember any Nebraska race that had a 1 percent change. There was a one vote change, I know in a legislative race this year. But I don't believe there was a change of 1 percentage point. [LB410]

SENATOR PIRSCH: I see, okay. Thanks for clarifying that. You do a pretest and then you do the actual election canvassing and then you do, do you do a post-test, too? [LB410]

DAVE PHIPPS: We don't, simply because we don't, we keep our machines locked up in, you know, a secure area with, you know, magnetic cards and all those sorts of things. And there's, you would also have to change the programming manually on those machines so there's, unless you're going to do a recount, I've never really seen a reason to do it. [LB410]

SENATOR PIRSCH: And that's a good question. I was going to ask you about the nature of the machines themselves, which I have not seen personally. Are these machines interconnected or are they freestanding, not linked to, electronically to other...the outside world. [LB410]

DAVE PHIPPS: There's actually two options. And we're kind of talking, there's a little bit of difference between Douglas County and about half the other counties and Neal Erickson would know the numbers better than I, but it's about half the counties use a central scan system like we do. So all the ballots come to our office where they're counted. And then in the smaller counties where there's a smaller number of precincts, there are actually precinct scanners out in the precincts at the polling places and voters feed their ballots into this machine throughout the day, and it essentially does the counting and storage of the ballots throughout the day. We actually wait until the end of the day to bring the ballots to us and then do a count all at the office. But there's two different options for the central scan. You can get them, I think everybody in Nebraska right now has just individual nonnetworked computers or machines together. So each

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individual machine, you have to put a diskette in, pull the results off that machine, and then a computer will actually...you'll stick it in with some software, and it will collate the results into one set of results. [LB410]

SENATOR PIRSCH: Yeah. [LB410]

DAVE PHIPPS: So that's how, how it is I think everywhere. But there is a networking option where the machines can just, you hit a button and they all go to that computer and do it automatically without the diskettes. [LB410]

SENATOR PIRSCH: Right, well, it seems clear then that the system, any potential vulnerability wouldn't necessarily be, I guess the largest potential threat wouldn't necessarily be the manufacturers of the equipment. It would be computer glitches or hackers or viruses or just... [LB410]

DAVE PHIPPS: Exactly, and they are not, you know. [LB410]

SENATOR PIRSCH: ...something of that sort. [LB410]

DAVE PHIPPS: Yeah, and they're not connected to the Internet, they're not connected to outside. [LB410]

SENATOR PIRSCH: Okay. If, you know, if the problem is not of...vulnerability is not real, but rather just a perception or a misperception, are there other common sense, non..., you know, steps that can be taken that don't cost a whole lot that would give the general public the sense of assurance in the integrity of the ballots that they are being handled in the correct manner, other than this, I guess, approach. [LB410]

DAVE PHIPPS: You know, I think that there is something that every county is also required to do that since I've been in the election office since 2003, I've never had a member of the public actually come to, but there is a public test deck that should be performed prior to each election and is basically a verification, another set of verification of running those ballots through the machines and checking them against the manual count and to do that in a public setting so that the public can actually see the ballots go in and the machines count it. The comparison of what's outputted from that report from the machine based on, compared to what's, you know, counted or tabulated by hand and to make sure that those match. It would give, I think, voters a good idea that yes, the machines are counting the ballots correctly. And unfortunately, it's something that very, nobody seems to ever come and view, but we do invite the public or the media here to that event as well and in almost every instance, several members of the media do come and view the process. So you know, at least they can show the process during newscasts that, you know, hopefully people get some confidence in the system. [LB410]

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SENATOR PIRSCH: Okay, well, thank you. Are there any other questions? Senator Giese. [LB410]

SENATOR GIESE: Thank you, Senator Pirsch. Mr. Phipps, it sounds like, and you do a great job on what you do, but let me ask you this...a grand conspiracy theory. Is it possible to make like Senator Burrows, former Senator Burrows said to make the machines come out the way you want them to? [LB410]

DAVE PHIPPS: It would be possible, and I can only talk about how it is in my office. If you, I would say corrupted, I have a staff of 14, I would say you would probably have to, in some way, make at least, I would say at least five permanent staff, including myself and my chief deputy, you would have to make at least five complicit in this arrangement of somehow affecting the vote. [LB410]

SENATOR GIESE: Then how much, going with that theory then, how much, is there a particular software that's involved in this or how would all that then? [LB410]

DAVE PHIPPS: There is software involved with the, you know, obviously our vendor is Election Systems and Software from Omaha. They're the largest software vendor, election software vendor, or election provider in the world. There is software that programs the ballots themselves and, you know, it's very complicated just to try to explain, but basically you're setting up a number of databases. You know, here's all the candidates that are going to be on this election. Here's the offices that they're running for. Here are the precincts. Here are the ballots that those precincts represent, you know, the ballot numbers, you know, the offices. And then you have to decide what order they're in and you know, the software then magically gets them all worked together so that it produces a ballot face. You know, something that looks like something you can vote. And then so basically you're making sure that that printed ballot that this software helps you create will work inside the machines. And so then the software outputs a file that you put into the machine that basically sets up the definition for this election. So it knows that when you're looking at a ballot and it's, you know, an oval here and an oval here and an oval here, it knows, okay, I know where that oval is and I know what that represents. It's a representation of a vote for Dave Phipps. And this one's a vote for write-in. So you know, basically the software is there. Two people of, in my office, of opposite political parties work on that software. I then verify everything in there. My deputy is there with me to verify it. Then the ballots are printed, they're marked and then there's at least three sets of test decks that go into making sure that the software is doing what it's supposed to do. So there is software, but it's, you know, it's basically just a tool to create the ballots. You know, it's like can Microsoft Word be hacked? Well, in theory, I'm sure it could be, but. [LB410]

SENATOR GIESE: But if they were set up to say, Dave Phipps to win by 3 percent, no matter the ballots, in the... [LB410]

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DAVE PHIPPS: Yeah, in all honesty, I suppose if I sat down and thought about it long enough, I could probably come up with a way maybe to figure out a scheme that would make it so that I won. In all honesty, I... [LB410]

SENATOR GIESE: You're a pretty sharp guy, I think somebody else... [LB410]

DAVE PHIPPS: Well, you know, in all honesty, I'm a computer expert. You know, I am a computer geek by heart. I mean, it's one of those things that I kind of grew up with, and I honestly don't know how I would do it. Now, granted, I haven't given it a lot of thought, but knowing how the programs work. [LB410]

SENATOR GIESE: But there is a...on the broader scope, there is a, if Senator Pahls wanted to, if his name shows up on the ballot, and we want him to win by 4 percent? [LB410]

DAVE PHIPPS: You would somehow have to convince me, my deputy, the two people that program the ballots, my office manager to all be in on it. And I think you would probably find it pretty hard for any of us to be willing to go to jail just so Senator Pahls can win. I like Senator Pahls, but I don't know that I like him that much. (Laughter) [LB410]

SENATOR GIESE: Then how much software would be involved if that was... [LB410]

DAVE PHIPPS: You know, it's really just one piece of software sitting on a computer, you know, and you'd really have to have physical access to it and then you have to assume that, you know, somehow, you could hack that software somehow, that we wouldn't know it and then somehow that we wouldn't... [LB410]

SENATOR GIESE: Is it just a matter of putting in a disk? [LB410]

DAVE PHIPPS: No. I mean, you would really have to know the software. You'd have to somehow, you'd have to bypass, you'd have to bypass a million different things. Is it possible for someone to somehow get in and alter it? I'm sure it's possible. The odds, I would say, are extremely unlikely. [LB410]

SENATOR GIESE: But I think that goes back to the point where we started at, I mean, that's why we're here today is that there is that question. [LB410]

DAVE PHIPPS: Right, absolutely. And you know, it's possible that lots of things could happen, but you know, you can't prevent everything. [LB410]

SENATOR GIESE: Thank you. [LB410]

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DAVE PHIPPS: And we do do it, I mean, our last, our very last check happens in our office two hours before we start printing or before we start counting. So I mean, it would be a pretty tight window to... [LB410]

SENATOR GIESE: But I go back to this grand theory that even, even with that, you're checked two hours before, if you don't count them after and then there's this program that Senator Pahls is going to win, no matter what you do, he's going win. [LB410]

DAVE PHIPPS: Yeah. [LB410]

SENATOR GIESE: That's my... [LB410]

DAVE PHIPPS: I would just say that that would, could possibly...I would bet my life against it, so let's put it that way. [LB410]

SENATOR GIESE: Anyway, thank you. [LB410]

SENATOR AVERY: I apologize for missing out. It sounds like a good discussion. [LB410]

DAVE PHIPPS: We're having fun, Senator. [LB410]

SENATOR AVERY: Yeah, I had another bill in another committee. We were on opponent testimony? [LB410]

SENATOR PIRSCH: We are. [LB410]

SENATOR AVERY: Are there other questions from the committee? Are you going to defend yourself, Senator? Any more opponent testimony? [LB410]

DIANE OLMER: (Exhibit 4) Good afternoon, senators. My name is Diane Olmer, and I'm from Platte County. I'm the election commissioner in Columbus, Nebraska. And I'm also a cochair of the Election Law Committee for NACO. And most of my testimony was going to be about how more accurate the scanner is than manual counts, and I guess it's not an argument anymore, the way it sounds. So I'm not going to go into that. But after listening to the other testimony, it seems to me the proponents really aren't worried so much about that one race that this bill addresses, one loser, with money and no reason, asking for a manual recount. They're worried about the whole system. This doesn't address their real issue and so I guess I don't think this is a good bill. It doesn't say if we find an error in this one race that we're going to recount the whole county's races. And I just think it's a matter of mistrust in the system we're using right now. Secretary of State Gale took great effort into getting the best system we could. Why do

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we have a scanner? Because people are very impatient with time. We could go back to...we did have quite a few counties using paper ballots before 2006. And a lot of the media pressure on getting things done in a timely fashion and everything is one reason why we have a scanner. The other is that it is more accurate. I didn't always believe that until I actually did an election in Columbus manually when we could have that option, just to save a little money for Columbus, and saw how inaccurate the whole process was. And I testify to that in my handout to you. One thing that you have been talking about this grand scheme. You're looking at a person. We're still talking about people causing this tampering with software and how are we going to check that? We're going to check it with a manual count. Has anybody...it has been mentioned once, probably by Senator Price, there is always the chance of tampering with the manual count also. We, somebody asked why it isn't fair for the common citizen to be able to see the ballots, see the paper ballots, see what's happening. My job is...I've been taught that it's very important that you keep track of those ballots, that nobody touches them that isn't supposed to. So that there is nobody tampering with them. So that is why we guard the ballots, and they're not as available to you unless like a court says it or whatever--to prevent tampering. So we want to make sure what you marked at the polls is exactly on that piece of paper as you left it and somebody didn't maybe put another mark on there to make it an overvote or something to disallow your vote. The other thing that nobody has mentioned is that every county is required to have a canvass board. And the state also has a canvass board. That is your last check against every election. And in my county, we have a canvass board of myself--the election commissioner has to be on it--and then I have six other people. And they do have the right to touch the ballots. They can, if things don't look right, they compare books from the polls to the reports from the scanner, to this and that. They do have the right to actually go to the ballots. So it's like we're not trusting any of the safeguards we put in place. The canvass board does its duties and the results that, when the newspaper prints them the day after the election, and everybody takes them as gospel, there's nothing, you know, certain about that until after our canvass board gets through and then the state canvass board does their job. And that's what that canvass board's job is to check the election out. Is there everything that looks irregular or whatever. All facets, not just the machine. I've done several recounts by the machine, and they have come out just exactly the same. And you're saying well, what does that prove? There are humans that run the machines also. It does prove that those humans running that machine did okay. Every, every aspect of elections has humans in it. When you work at the polls, I tell my poll workers, don't do anything on your own. The first thing they do when they get the ballot box, open up the ballot box, and I tell this to them at every training session. Make sure two of you are there opening up the ballot box, talk to yourself, say the ballot box is empty so that when the judge asks you, you have somebody else. Every facet, we have a Republican and a Democrat clerk, Republican, Democrat judge; those checks and balances are written into our statutes just so that we don't have somebody alone doing things. And so we do have a lot of checks and balances, and I don't think this bill which allows one person who lost a race and has money and no reason--to recount one race is really

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going to satisfy all the questions that a lot of the people here have. They doubt the whole system. They don't just doubt that one race. So any questions? [LB410]

SENATOR AVERY: I do have one. [LB410]

DIANE OLMER: Okay, I knew you would. [LB410]

SENATOR AVERY: It's always been a curious matter to me when you have a recount with the automatic scanner that the recount will often produce a different total than the actual vote, the first report showed. The first report showed this, too close now, so you have an automatic recount. You run them back through the same scanners again, and you come up with a different number. That means that the machine is counting some votes differently than it did the previous time, right? [LB410]

DIANE OLMER: Well, there's, you know, I've done recounts and say, usually it's an NRD and it involves maybe seven or eight precincts, not maybe the whole precinct and so we rerun those ballots through. And we do it precinct by precinct, precinct one matches with three days ago, great. Precinct two, you know, on and on. And one will come up and maybe it doesn't match. Well, then it's our job to figure out why. And just as at the polls, you can have 200 people sign the register, and you can hand count those ballots and you have 201 ballots in there. Now why is that? It's after the fact. It's something that happened at the polls. It was either two ballots put together or it was a worker not having somebody sign in. But it's, it's something, you weren't there with a camera where you can tell. And with the scanner coming up with a different number, one explanation could be, Mr. Phipps was explaining how when the ballots go through, the machine will stop every so often. This ballot isn't reading right, so you put it aside. And then you put it in. And there's a little readout on the scanner saying this ballot has been counted, this one has not. Now we have two operators, at least we do. We have a Republican and a Democrat. We have one scanner running that scanner, so there's two people, two sets of eyes. So just like at the polls, we like to have two people there. Better chance of getting it right the first time. There is a chance that one of those ballots when they, and sometimes they get clogged. It grabs two or three of them at once. And it says jam and ballots not counted. And then you take them out. We have humans doing that job. That is probably just everywhere in the process, we have humans doing a job, and that would be my probable explanation for anything that came off where it was, you know, one ballot off or not. My first thing, if I had those two precincts not jiving, sometimes it will come out with an extra vote, I would tell my canvass board; take those ballots in that precinct, count the pieces of paper first. So that we know what we're working with. It is probably with the people who counted it, they're missing a vote? Or is it probably with the scanner? And here again, we are, as a canvass board, we are using people to back up what we're doing. So this bill that they're proposing with one person losing a race, wanting to have us go through all the motions, seems arbitrary, that we should have to go through, jump through those hoops, when we are doing our best to,

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you know, check and make sure that we have checks and balances on everything we do in the process. [LB410]

SENATOR AVERY: I have some experience with optical scanners. You know, I taught at the university for a long time and you get these large sections of a class and you're not going to give essay exams. So you do, you know, multiple choice testing and they do bubble sheets. And those go into a scanner. And I've seen that some students will partly mark a bubble and then you've got maybe a partial mark on another one. And sometimes it's necessary to physically inspect it, to eyeball it, to find out what was the intent. Is, does that sometimes happen in voting, too? [LB410]

DIANE OLMER: Well, and maybe you ought to ask this question of Mr. Erickson, as far as what we're supposed to do with voter intent. When you see...if a ballot comes out or when you hand count things like we always have to do in the general election when there's village races, and you don't have enough people file, so you have to count write-in votes. You have to physically hand count those. And so you see all kinds of things. You see the dot here and they marked two other ones, what does that mean? You know, it's, here we go, we're letting people decide later on. That's a tough thing to call. If you see an X here and they X'd something out and they put a circle here; does that mean they wanted the X or the circle? The proper way to do that would be if I'm recopying that ballot, fill them both in, it's an overvote. He didn't follow the instructions. If you make a mistake, ask for a new ballot. The machine, you know, doesn't think it's programmed, if you've got two marks, you've got an overvote. If it's a vote for one, it actually is the case of the voter not following instructions, and I mean, what can we do unless we...I don't know, we'd have to hand count every ballot and then you wouldn't get... [LB410]

SENATOR AVERY: Does the scanner kick these out when it comes across a ballot like that? [LB410]

DIANE OLMER: We do have the option to keep the blank button...there's a button that we can turn on for the scanner to kick out blanks. And we can also have a, turn on a button that it would kick out overvotes. We are not required by law to have either one on. Myself, I have been keeping the blank on, for the reason that usually a lot of times a blank ballot is a ballot that somebody got sent in the mail, they didn't use the proper marking. They used a red pen and it didn't count anything. So then if it kicks them out, we will recopy that. If we kept it on for overvotes, we would be stopping every five minutes. Some people get disgusted with the system and intentionally overvote. It is not always an accident. So you know, the process of using a scanner is to do things in a timely fashion. If we kept it on for overvotes, what we do before the election is though we check that it's counting an overvote as an overvote. When I do my test deck, I make sure I do a couple of overvotes to make sure if I put the button on, it will kick it out. So it's doing its job. It knows what an overvote really is and it's counting them. But if I kept

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that overvote button on at night, it would, it would definitely really slow up the process and I guess if the voter can't follow instructions, I don't feel too sympathetic for them. Maybe that's bad, but that's my opinion. [LB410]

SENATOR AVERY: Well, if the...if you don't have the over button on, overvote button on, then what happens? Does the machine not count it? [LB410]

DIANE OLMER: No, it just doesn't stop. At the end of the night, my reports will still show how many overvotes I had and how many blanks. Blanks are undervotes in a race, you know. The blank on the scanner is a whole blank ballot, meaning nothing got voted. And another reason I keep the blank button on is when I do send a pencil with my absentees or early ballots, but who knows what they're going to grab out of their pocket. I keep the blank button on for sure with the absentees, but when I'm at the polls and I'm actually handing them a pencil, I don't feel as obliged to keep the blank button on for them. If I hand them a pencil and they still grab the red pen out of their pocket, I guess maybe I'm, you know, I'm just not too sympathetic then. So. [LB410]

SENATOR AVERY: What if it's an elderly person that really doesn't always comprehend the instructions that well? Do you make that judgment? [LB410]

DIANE OLMER: Well, you know, we do give them verbal instructions, and I mean, if I go to one of my precincts and they're not giving them, it's a very important part of the instructions. Not just reading them, so you're verbally telling them. They have a chance, it's posted on the wall as they come in. It's on the booth that they're in. It's on every ballot that they get, and you verbally give them those instructions. I don't know what else. And if they want us to help them fill out a ballot, two workers will take them and do that, too. So if they're having trouble, they do have to ask us a question. We can't read their minds, so. [LB410]

SENATOR AVERY: Is it your opinion that there is no way that our current optical scan system could be hacked? [LB410]

DIANE OLMER: I'm not of the opinion it's not possible because, you know, that would just be like saying never to something. But the one thing somebody else brought up was who owns the company and everything. And said that it was a for-profit company. I think that's a great thing. Why would somebody in the company who you'd have to have, I'm sure there is not just one person that programs ballots for Platte County. You'd have to have how many people working together and these people, I don't know how much they're paid, but just like me, I want to do my job well so that I keep it. I think there's a lot of that when you look at a company. They service the whole world. I think they want to keep their customers. I think the for-profit thing is a good thing for us. It's a way for them to, just like Mr. Phipps said, he doesn't want to go to jail for Senator Pahls. They want to keep the customers. It's their livelihood. Why would they want to do that? So

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that would be my answer to that. [LB410]

SENATOR AVERY: But would you have any way of knowing if the codes had been tampered with? Because you don't actually have those codes yourself, do you? [LB410]

DIANE OLMER: No, un-uh. [LB410]

SENATOR AVERY: So it all resides with the vendor. ES&S, right? [LB410]

DIANE OLMER: ES&S. You know, we actually...I have a printer print my own ballots. Some counties have ES&S do it. I actually send those printed ballots to ES&S and then with another programmer in my office, I tell them or we enter the candidates, if they get rotated, how to spell the names, everything like that. And then they send me a proof of it. I'll print it out and everything. I check it over another time. And then they program the scanner. And then they send me a disk. That disk goes into the scanner which is a hard drive, and it programs the scanner for that election. And then like Mr. Phipps says, we have a test deck that comes from them which they took our ballots that we printed, marked them, counted them, hand counted them, and did reports. Made sure the...or they were accurate. Then we use that same test deck to make sure my machine does the same thing their machine did in Omaha. And then we are also required by law to create our own test decks. So I take my own ballots, mark the candidates, hand count that, put it through the scanner. I have to do it and my deputy has to do it. I don't actually have a deputy, I shouldn't say that, but myself and one person of another party. And that's as far as we can go for checking. And I'm not a computer whiz like Mr. Phipps. So that's all I can do. So I'm doing the best I can with what I have. [LB410]

SENATOR AVERY: Okay. I'm going to leave you alone for a while. [LB410]

DIANE OLMER: Okay. [LB410]

SENATOR AVERY: Any other questions? Senator Price. [LB410]

SENATOR PRICE: Senator Avery, thank you. Ma'am, let me ask a question. Are these machines, are they hooked up to the Internet at the time of elections? [LB410]

DIANE OLMER: No. [LB410]

SENATOR PRICE: Do they have an Internet IP connection? [LB410]

DIANE OLMER: No. [LB410]

SENATOR PRICE: Does your office have a WiFi connection? [LB410]

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DIANE OLMER: I don't think so. I don't know what that is. [LB410]

SENATOR PRICE: A wireless Internet. [LB410]

DIANE OLMER: I don't. No, I don't. Un-uh. [LB410]

SENATOR PRICE: Are they hooked up to a telephone line? [LB410]

DIANE OLMER: No. If they had some connections on the election night, maybe they could fix my machine when it's not working right, but no. [LB410]

SENATOR PRICE: Okay. Thank you. [LB410]

DIANE OLMER: Okay. [LB410]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you, Ms. Olmer. [LB410]

DIANE OLMER: Thank you. [LB410]

SENATOR AVERY: Additional opponents? Mr. Shively. Welcome. [LB410]

DAVID SHIVELY: (Exhibit 5) Senator Avery and members of the Government Committee, my name is David Shively. I am the Lancaster County Election Commissioner. My last name is spelled S-h-i-v-e-l-y. I'm not going to read my statement because most of the things that are in my statement have been mentioned here already, but I'd like to reiterate a couple of things that were said earlier. We do do testing of our machines. We test them using the vendor's test. We do a test of the machines on myself...myself as an election commissioner, I'm required to do that by law as well as my chief deputy election commissioner is of a different political party. My chief deputy and I both, on a statewide election, will test well over seven or eight different ballots per precinct to make sure that we're marking races on all the ballots and different candidates and on the ballots. So we test all that out. We run our tests more than once. We don't just run it once, we run it several times. We run our test again once right before we count ballots on election day. The vendors test, again, we do that one more time. We're constantly doing that testing to make sure that the machines are counting the way that they were intended to do when we received them so we continually do that. If, on my hand counts, I usually count my ballots before I send them to the machines. When they go through the machine, if there's a discrepancy, I go back and I find it. I've never once had an instance where the machine was wrong. It was always where I was wrong. I had miscounted, something was counted wrong on the hand count. The accuracy of the machines are very, very good, and I think that sometimes we forget in this process that we do do the testing before election day and that we are testing them.

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That that testing gets done. I won't reiterate a lot of other things, but if there are questions, I'd be happy to answer them. [LB410]

SENATOR AVERY: Thank you for your testimony. Any questions from the committee? Seeing none, thank you. [LB410]

DAVID SHIVELY: Thank you. [LB410]

SENATOR AVERY: More opponent testimony? [LB410]

NEAL ERICKSON: Chairman Avery, members of the committee, for the record, Neal Erickson, Deputy Secretary of State for Elections here on behalf of Secretary of State John Gale to testify in opposition to LB410. And I do that with an apology to Senator Karpisek who has brought this bill a number of times before in various versions. And while there are...I can go through a list of the problems we necessarily have with the bill, but I think after hearing the testimony today, what we seem to be getting caught up in is the difference between a recount which, I think as Senator Pirsch pointed out, has an outcome, makes a determination of who a winner and who a loser is as opposed to what might be called a postelection audit. And that is something that we've actually implemented for the first time this year. We started doing one last year. But the federal government dumped a bill in that we thought was going to pass, had different mandates for it, so we kind of left it alone. And we're actually in the middle of that postelection audit right now. You know, there's been a variety of questions raised, and I would probably start with Senator Giese as he talked about, well, you know, is it possible as they, as the local election officials explained to you, what they do in the beginning is called logic and accuracy testing. They produce test decks. They run through, make sure everything matches. Then we have the vote. And I think even as Mr. Gould mentioned, one weakness we did have, we didn't have anything on the back end. And we've started implementing that. Now, is it possible for something to occur, and this is something that has popped in, oh, at least we started reading the literature in probably the last three to four years, which would be in, and Senator Price might be familiar with this, a Trojan horse. And that's going to be a snippet of code in there that, you know, isn't detectable until something triggers it, and then it erases so it's not detectable. And that is why you started seeing some of the, oh, people interested in this process start advocating postelection audits is because if you have a Trojan horse in there that is going to change those results, it will be picked up in the postelection audit with an optical scan system. So you'll see the logic and accuracy testing that was okay, you see the vote total that was off, but that because that Trojan horse erased itself, it won't work again when you do the postelection audit. So that's why, you know, we have kind of looked at the process and said this is something we should adopt. I remember when Senator Avery was in Doane a number of years ago, we talked about postelection audits and you know, what was the proper number, whether it was 1 percent or 2 percent. This year we did a 1 percent audit. And we're in the middle of it right now.

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We've had 7 of the 17 precincts that were selected at random report back in with they accomplished or those precincts totaled 3,300 votes basically. The results so far indicate there have been three different changes. One goes to an issue that Senator Price mentioned. This was a change in Sarpy County. They came up one ballot less. They can't find the ballot. And that, I think, goes to the fewer people that are handling these ballots, the more secure the system you're going to have. One county managed to misplace one ballot. I mean, it could be in with another precinct, it could be in a provisional or spoiled sack, we don't know exactly at this point. We also had one county that had two changes. And the description from the local official, one was a vote; they're both a vote for president. One was a vote for Senator McCain that they said there was a visible X in the oval, and apparently, the machine did not pick it up. The second change was where they thought the person had attempted to erase a vote for Obama. And the machine picked it up, but in their judgment, they didn't count it. Now, under Nebraska law, that would not happen. Because under Nebraska law, the local election officials do not determine voter intent. They look for a discernible mark in that oval as to whether that is a valid ballot or not. When this system was set up, and this is different than Minnesota does, and this is part of the reason they had to look at so many ballots. If somebody wrote I want this candidate with an arrow to it, that could be counted a valid ballot. Under Nebraska law, it is not. It is whether you make a discernible mark in that oval. Now the machines are very, very good at picking those up. In fact, they, in this example, picked up an erasure. But you know, that is, that's part of the system we have. Oh, Senator Avery had talked about voter intent and that's kind of the status of where we, of the system we have now. We count the ballots. If someone thinks that the ballots were handled incorrectly, that somebody did something to impact the outcome, they have the ability to contest this in court. And we do not have local officials making determination of voter intent, that is something for the court to pursue. You know, there was some talk about, oh, the vendors; the vendor we use, Election Systems and Software. I think it was mentioned they are the largest in the world. I can go into more detail on their ownership and how that works if you are interested. I mean, I know it has generated some New York Times articles, for example, or New York Times editorials, but um, overall, I, you know, I think our system works very well, particularly when we add that last component in which is the postelection audit. You know, that's something that has been, with the advent of Trojan horses, etcetera, that's something that has been advised, and that's something we are implementing. I think that, and I don't know for certain with some of the proponents of this legislation, whether that's truly what they were looking for or if they were looking for the recount. If they were looking for the postelection audit, that's something we're implementing. If they're looking for a recount, and like I said, I make a distinction--a recount has an outcome. If they're just looking for a check on the equipment, I think we're...we've got something in place that may satisfy them. So with that, I'd try and answer any questions you might have. [LB410]

SENATOR AVERY: Let me start. I want to revisit the postelection audit because I didn't know you were doing those. Those are not required by statute, right? [LB410]

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NEAL ERICKSON: No. [LB410]

SENATOR AVERY: Would you mind describing a little bit more in detail how you go about these? I mean, how many precincts? You said 17 precincts? Is that statewide? [LB410]

NEAL ERICKSON: Yes. On this one, we used a 1 percent and what we did was use a random number generator to identify 17 precincts, the 1 percent. Now we did fudge a little bit on this because of the Omaha and Lincoln elections. And we did not burden Douglas or Lancaster County with more than one precinct within their jurisdiction. When we ran our original random number, Douglas County had three, so what we did was take the next two random numbers down and pulled those. [LB410]

SENATOR AVERY: So you set the criteria for selection by, first of all, you had a random digit selection process? [LB410]

NEAL ERICKSON: Right. [LB410]

SENATOR AVERY: You ran all the ones in the state that were within one percentage point? [LB410]

NEAL ERICKSON: No. We took all the precincts. We took all the precincts and of all the precincts, these were the 17 that popped up. [LB410]

SENATOR AVERY: Based upon what criteria? [LB410]

NEAL ERICKSON: A random number generator, right. [LB410]

SENATOR AVERY: Random number generator, okay. And then you did what with them? [LB410]

NEAL ERICKSON: And then we had them actually hand count that particular precinct with three races. We used President, Congress, and then a relatively local race. What we said was use the first that occurred: a community college or a Natural Resource District. So far, of the results we have, everybody has had a community college race in there, so it's always been on the community college. [LB410]

SENATOR AVERY: And the main recount then is then compared to the machine count? [LB410]

NEAL ERICKSON: I wouldn't call it a recount. It is an audit. It's, and then that is compared to the results that they reported to us in their abstracts. [LB410]

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SENATOR AVERY: Who does the manual count? [LB410]

NEAL ERICKSON: The election commissioner's office or a county clerk's office. [LB410]

SENATOR AVERY: And why did you decide to do this postelection? [LB410]

NEAL ERICKSON: Well, it is something that is...it's something that's been coming down the pike from even the federal level. With the, and for lack of a better term, the conspiracy theorists that have been out there talking about, you know, the advent of Trojan horses and their institution into this equipment. You know, a postelection audit is one way to eliminate that concept. [LB410]

SENATOR AVERY: Eliminate? [LB410]

NEAL ERICKSON: The concept of a Trojan horse being embedded within the programming of a machine. [LB410]

SENATOR AVERY: Yeah, okay. Senator Price, did you have a question? [LB410]

SENATOR PRICE: Yes. Mr. Erickson, I've got a...not too involved of a question, but you might want to have your pencil ready. If someone were to ask for a statewide presidential recount, so what I would like to do is take the worst case--what I would call the worst case scenario, okay? Where you'd have the greatest magnitude, and they wanted to do a manual recount. Okay. How would you cost that out based on whether you had a limited time frame so you would have to overhire and overtime versus the methodology that's in place right now for the people you have here and now. What would that cost be? [LB410]

NEAL ERICKSON: Well, today, the way it was...we've done this before actually. And I can tell you the way we've done it in the past. We did it in 2002 with the Charlie Matulka and Chuck Hagel race, where we went to the counties and asked for an estimate of the cost on that. The total came to just about \$40,000. [LB410]

SENATOR PRICE: So roughly \$40,000. Great. And then we've heard that the ballots all get gathered up and locked away. Are they locked away? Are you absolutely against a recount, a manual recount of votes? I mean, why is it that people can't see those ballots? Maybe that's the question. I mean, we've heard that if we just see the ballots, we'd be...and I would like you to articulate that for the rookie on the squad. [LB410]

NEAL ERICKSON: Right. Well, and I think the reason is, I think the point is not to do it as a whim. There is a way to see those ballots and that is to file the election contest if you believe something has gone wrong. But you know, we've never hit that. Certainly,

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the court can order those ballots opened and examined. But it is something, you know, I think you had mentioned earlier, these are things we're required to keep for 22 months pursuant, the reason it's 22 months is because that's the statute of limitation for a federal lawsuit on a contested election. And it's to have them sealed so they are not tampered with in-between, and we have it. You know, we...I think someone had talked about, well, what happens during this recount? When you go into it and you have observers, they're required to stay eight feet away from those ballots. They are not allowed to handle them. The law specifically says they have to be eight feet away from them. [LB410]

SENATOR PRICE: But don't you see a chicken and an egg issue there? How can I know there's a problem if I can't look at the ballots? I mean, I know, I can see if you had an election irregularity that someone could allege and show through video evidence, all that. Okay, we're good to go. But we're just talking about the numbers, I mean, it's a chicken and an egg type thing. I mean, how do we tell the people that that's not the case? [LB410]

NEAL ERICKSON: How do we tell them there's not a problem? Well, believe me, I've been dealing with people who see problems behind everything. You had asked about networking. Our system is not networked. It is not connected to a modem. But, and this was something I said, this was absolutely impossible. I said they're connected to a power source and that they are. And that you can have a packet transmitted via that power source. And I said you cannot, sure enough, in the early '90s, there was some...it didn't work very well. But there was some experimentation with sending data packets through the electrical lines. I have trouble addressing those types of issues. Now, if somebody actually has a legitimate concern, and they have even any kind of evidence at all that something occurred, file the election contest. That will allow you discovery. You will be able to go through and look at the ballots. You'll be able to do everything you want to with it. But what I see this bill doing is people are allowed to kind of play with the system and say, oh, I want to see these ten precincts. And I can stop after that if I want to. It's not conducive to the orderly election administration process. You know, if there...and there's no guarantee they're going to be satisfied with those first ten precincts. They could ask for ten more and ten more and ten more. You know, I don't know the answer. And then to have it be a recount and say that, okay, we're going to have an outcome based on this process is the reason we're opposing this legislation. [LB410]

SENATOR PRICE: Okay, thank you. [LB410]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you, Mr. Erickson. [LB410]

NEAL ERICKSON: Thank you. [LB410]

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SENATOR AVERY: Any other opponents of LB410? Anyone wish to testify in the neutral position on this bill? Seeing none, Senator Karpisek, you're recognized to close. [LB410]

SENATOR KARPISEK: Thank you, Chairman Avery and members of the committee. First of all, I do have to apologize, I did say 1 percent change in my opening. I was wrong. I meant to say one or two votes. I apologize to Mr. Phipps and anyone else who caught that. I was just bringing up that there are sometimes little changes, but I thought they addressed that pretty well. They said machines aren't perfect either, they're just more accurate than hand counts. I'm not arguing that. Senator Avery, I did not know about the postelection audit either. And I really have to give kudos to the Secretary of State for that. And maybe that would be the way to go about this to put that in state statute that they have to rather than the recount bill, I don't know. But if they're doing it, I thought your question, when you asked, what brought that about, was a very on point. Maybe these three bills that I have tried are a part of that reason. But some is coming from the federal. The other people that testified, I know they're doing as good as they can. I think our system is wonderful. I do. I'm not, again, I don't have the conspiracy theory, I don't have all these theories. I just wonder sometimes when we just can't even get at something, what are we hiding? It starts to smell a little bit. All of the election commissioners, I'm sure, do a great job. They know their stuff. When they come to testify, they know what they're talking about. It's their job, and they're passionate about it, and I don't blame them for getting maybe a little bit heated when we're trying to mess with their domain. However, it's also our job to try to make things as good as we can. So I don't want any animosity to develop there. We're just asking questions. So I understand that it could be a big undertaking. I will say they used to hand count everything. Are we past that? Yes. Fine. But to make it sound like it would be absolutely the worst thing that would happen in the world, it's part of...it's part of it, I guess. Again, the postelection audit, I guess has made me feel a lot better, to know that someone is looking at it. I would still like to be able to, even if I can't physically touch those ballots, I would like to be able to look at them...something. Again, I think that one thing around this building is transparency. I've heard it over and over and over. We try to be as open and transparent as we can. I guess maybe that's why this sticks in my craw the way it does, to think that it's just not as transparent as it could be. With that, I'd take any questions. [LB410]

SENATOR AVERY: Any questions from the committee? Seeing none, thank you, Senator. [LB410]

SENATOR KARPISEK: Thank you. [LB410]

SENATOR AVERY: That ends the hearing on LB410. (See also Exhibits 6, 7, and 8) And we'll now move on to LB501 presented by Senator Kate Sullivan. [LB410 LB501]

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SENATOR SULLIVAN: (Exhibit 1) Senator Avery and remaining members of the committee (laugh), I'm Senator Kate Sullivan, representing the 41st Legislative District. That's Kate, K-a-t-e Sullivan, S-u-l-l-i-v-a-n. LB501 was brought to me by the Secretary of State. It's quite, frankly, a bill about numbers. It changes election deadlines for certain types of elections, and it increases the county population threshold for by-mail-only balloting. The first change is in Section 1 of the bill and deals with the budget override deadline. Current statute provides that the budget override special election is to be held within 15 days after the receipt of a governing body resolution or legal voter petition. LB501 would change the time frame of the special election to 30 days after the receipt of a governing body resolution or legal voter petition. When levy and budget lids were originally proposed, both types of override elections were to be held 15 days after the notice. During legislative debate, the levy override provision was changed to 30 days. The 15-day requirement for budget override elections was somehow overlooked and not changed. Since budget override elections are most commonly held in conjunction with the levy override, the 30-day notice applies. However, budget override elections are occasionally held without a levy override election. LB501 sets the length of notice at 30 days for budget override elections and harmonizes the notice requirements for both types of overrides. The second feature of the bill expands the definition of by-mail-only precincts found in Section 2 of LB501. Current statute allows counties of 7,000 or less to apply to the Secretary of State for permission to conduct elections in small and remote precincts by mail only. There are 50 counties with a population of 7,000 or less, and I might add that my eight counties in my legislative district have less than 7,000 residents in each of them. LB501 would allow counties with less than 10,000 residents to apply to the Secretary of State for permission to conduct elections by mail only. Increasing the population threshold to less than 10,000 would add 18 more counties to the by-mail-only election option. And I passed out a sheet that shows which counties fall into those respective categories. The by-mail-only system was used successfully in the last election cycle. In 2008, 22 precincts were approved for by-mail-only elections. Two applications were rejected. And I might add also that in my...in Boone County where I reside, I think there were at least two precincts that had by-mail-only balloting, and it seemed to work just fine. The provision is optional for counties. County applications are approved or rejected by the Secretary of State's Office based on factors such as the size of the precinct, typical distances, and quality of roads to the polling site. The final changes in this legislation are in Sections 3, 4, and 5 of the bill, and have to do with notice deadlines for local option sales tax elections. LB501 requires notice of local option sales tax elections to be provided to election officials by March 1st before a primary election, and by September 1st before the general election. It would require subdivisions that place a local option sales tax question on the ballot to provide a resolution at least 50 days before a special election. The current time frame is 41 days which does not provide enough time to make military and overseas ballots available. These ballots must be made available 45 days prior to election. LB501 also requires qualified electors' petitions to a governing body requesting an election on a local option

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sales tax question to be submitted at least 75 days before the primary or general election. In short, LB501 contains primarily technical changes. The only policy change is in the population increase for mail-only balloting, and it's a minor change. As you know, Deputy Secretary of State for Elections, Neal Erickson, is here, and he'll be following me to answer any specific questions about the changes that his office has requested on this bill. So thank you for your time, consideration, and, of course, I will try to answer any questions, if you have any. [LB501]

SENATOR AVERY: Questions from the committee? You got off light. [LB501]

SENATOR SULLIVAN: Thank you (laugh). [LB501]

SENATOR AVERY: Proponent testimony? [LB501]

NEAL ERICKSON: Chairman Avery, members of the committee, once again, for the record, Neal Erickson, Deputy Secretary of State for Elections, here on behalf of Secretary of State John Gale, to testify in support of LB501. And after Senator Sullivan's introduction, I'm not sure I have a whole lot to add. She hit every high point on there (laugh), but I'd certainly be willing to answer any questions you might have. [LB501]

SENATOR AVERY: Are there any questions from the committee? I don't see any. Thank you. [LB501]

NEAL ERICKSON: Thank you. [LB501]

SENATOR AVERY: Any other proponents? [LB501]

SANDRA STELLING: Good afternoon, again. Your day is getting long. Senator Avery and committee, I'm Sandra Stelling, S-t-e-l-l-i-n-g, Jefferson County Clerk, Register of Deeds, Election Commissioner, and cochair of our legislative committee. I'm here today to ask for your support of LB410. It allows for the mail-in elections and gives us extra days that many times we definitely need. If you got any questions, I'll try to answer for you. [LB501]

SENATOR AVERY: Questions from the committee? Seeing none, thank you. [LB501]

SANDRA STELLING: Um-hum. [LB501]

SENATOR AVERY: Any other proponent testimony? All right, we'll move to opponent testimony. Anyone wish to testify in opposition to LB501? Seeing none. Neutral position? Senator Sullivan, do you wish to close? [LB501]

SENATOR SULLIVAN: Waive closing. [LB501]

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SENATOR AVERY: Waive closing? Then we...that ends the hearing on LB501, and ends the hearings for today. Thank you all for coming. Hope you had a good time. Mr. Burrows. [LB501]

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Disposition of Bills:

LB362 - Held in committee.

LB410 - Held in committee.

LB501 - Placed on General File with amendments.

LB662 - Held in committee.

Chairperson

Committee Clerk