

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

Government, Military and Veterans Affairs Committee
March 04, 2009

[LB574 LB626 LB635 LB638]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, March 4, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB574, LB626, LB635, and LB638. 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: Let me welcome you to the Government, Military and Veterans Affairs Committee. We'll be arriving, everybody will be here soon. We will be taking up the bills that are posted on the outside of the room: LB574, LB626, LB635, and LB638. They will be taken up in the order posted, beginning with LB574. Before we start, let me introduce the members of the committee. I'll start this time on my left with the committee clerk, Sherry Shaffer; and next to her is Senator Kate Sullivan from Cedar Rapids. She will be joined in a few minutes by Senator Price from Bellevue; Senator Karpisek who is in the Retirement Committee hearing and will be here shortly from Wilber. I am Bill Avery, Chair of the committee. Sitting next to me is Christy Abraham, the legal counsel; next to her is the Vice Chair of the committee, Senator Pete Pirsch from Omaha. And next to him is Senator Robert Giese from South Sioux City; and Charlie Janssen from Fremont next to him; and Senator Rich Pahls from...where are you from? Millard, which is close to Omaha. A few quick items. When you, just as you are testifying, we'd like to have you fill out before you testify, fill out one of these, print your name, give this to Sherry so that we have a clear record of who you are. If you are wanting to testify...or not wanting to testify but wish to be recorded for or against a particular bill, you need to sign this sheet indicating who you are and what bill you are opposing or supporting. These forms are available at each entrance. I would ask you to turn off your cell phones or mute them. And please understand that, while we don't have a light system in this committee, we do ask you to keep your comments brief and try not to repeat the previous testimony so that we...everybody gets a chance to have their say. We have two pages, Nick, where are you, Nick Bussey and Courtney Lyons. Nick is from Lincoln and Courtney is from Plattsmouth. If you have any handouts, please give them to Nick or to Courtney. Did I hear a cell phone? Please turn off your cell phones. And we will start with LB574, Senator Rogert. [LB574]

SENATOR ROBERT: Good afternoon, Chairman Avery and the members of the Government, Military and Veterans Affairs Committee. My name is Kent Rogert and I represent the 16th Legislative District. I'm here today to talk to you about LB574. I've been here before on one of these things. This bill would propose to change reporting requirements for businesses and corporations according to our Nebraska Accountability and Disclosure Act and our Campaign Finance Limitation Act. Currently, any check that a...or any contribution made by a business corporation type entity over the amount of \$250 needs to be reported by the recipient and the contributor. Those contributions

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

Government, Military and Veterans Affairs Committee
March 04, 2009

under \$250 only need to be reported by the recipient. And if those reportings are found to be not matching, large fines can be imposed upon one of the parties, either the contributor or the participant. And we'll have at least one example coming behind me of how that can be troublesome for some. It's no secret I have some issues with our Campaign Finance Limitation Act and our Accountability and Disclosure statutes, and I...this is just another attempt to seemingly do what seems a little more feasible for all those involved. It's odd to me how I could receive or any candidate or any committee could receive almost unlimited \$250 checks and never have to...none of those are reported except by the recipient and the only way you'd find out if those had not been reported one way or the other is if you had...you did an audit of the bank account and you could see where the...you would have discrepancies in how the bank account was run versus where the reported monies coming into it. So you know, it's odd that \$251 is where it needs to be reported, and \$250 it doesn't. My suggestion is you report them all, or don't report them on one side or the other. It's a double reporting type of situation. I think it's often where folks get into trouble and very oftentimes the fine is exceedingly more than the contribution was. And the question has been, well, why not just give the contribution back? It would be way better than paying a fine that was three times of whatever it was. But all these things bring to mind as I think about it is, well, what do the fines go to use? I don't...I'm not sure, I think it's for the operation of the Accountability and Disclosure Commission. And if those are the monies that they need for their operations, it's almost like they're encouraging fines to big business that can afford it. It seems odd. And we've got four bills today talking about the CFLA and the Accountability and Disclosure Act, and I think it's a pretty common thought in committees and candidates and in their heads that this law is cumbersome and maybe needs to be...well, one of the senators coming behind me is going to move to pull it, but just rewritten so that it's easier to navigate. And I'll entertain any questions, but it's pretty straightforward on what I'm looking to do today. Thank you. [LB574]

SENATOR AVERY: If you don't mind, I'll start. [LB574]

SENATOR ROBERT: No. No. [LB574]

SENATOR AVERY: What is the problem you're trying to fix with this? [LB574]

SENATOR ROBERT: Well, it's several things. One, I think that there are fines that are coming on...on maybe seemingly unknowing parties. If a contribution that is normally being made at \$250 to a company that makes these regularly, all of the sudden they decide to make a \$350 one, and they don't realize that they're supposed to be reporting it, and bang, they get a \$1,500 fine for that. That seems silly. I'm also trying to make things make sense, in my opinion. I still have trouble with the fact that I can receive as many of those \$250 checks from an individual or from an organization and they don't have to report them and then they have one...they have any that go one dollar over that, then that's where the reporting level is. And I think it should either be all or nothing on

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

Government, Military and Veterans Affairs Committee
March 04, 2009

that side. [LB574]

SENATOR AVERY: So you, I was not aware that the...only the recipient has to report a \$250 contribution. [LB574]

SENATOR ROBERT: Yeah. [LB574]

SENATOR AVERY: And the contributor does not have to report this? [LB574]

SENATOR ROBERT: Correct. That's my understanding. [LB574]

SENATOR AVERY: I know that I always reported \$250 and greater. And it seems to me that I remember looking up some of my contributors and would see the same contribution on their reports as well. [LB574]

SENATOR ROBERT: Maybe it's two...I don't know whether it says not more than or not than less than, maybe it's \$249. But anything under that effect would be not required to be reported on the contributor's side. [LB574]

SENATOR AVERY: You know, I think you're right that the number is \$250, that anything above that needs to be reported. I think a lot of people just report \$250 and above. I know I did. [LB574]

SENATOR ROBERT: Yeah. Well, and the recipient needs to report them all. [LB574]

SENATOR AVERY: Yeah, but what I'm questioning is whether the contributor has to report them already under the current law, which you said they don't. [LB574]

SENATOR ROBERT: That's what I understand by reading it. [LB574]

SENATOR AVERY: Well, you said that this would...your bill would make things a little bit more feasible. Would you elaborate on that a little bit? Do you find that the law is currently too cumbersome? [LB574]

SENATOR ROBERT: Yes. This is just one way. Senators and Senator Avery, I have been here before and talked about this. Ninety percent of treasurers that I have talked to have said that there is a major problem when every, almost everybody has an experience with getting in a little bit of hot water with their reporting. And that seems to me that that brings a point that there's something wrong, if nobody has a way to figure it out completely and there's constantly being troubles. They're not...people aren't trying to get into trouble, they're not trying to circumvent the system. It just ends up that way. And I...these are ways that I'm trying to make it easier. There's too many pitfalls involved, and it seems like it's a trap in many areas where folks can get in trouble, and I don't

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

Government, Military and Veterans Affairs Committee
March 04, 2009

think it's necessary. [LB574]

SENATOR AVERY: Do you see any value in reporting anything? [LB574]

SENATOR ROBERT: Absolutely. I think it should be fully disclosed, everything. [LB574]

SENATOR AVERY: All contributions, no matter how large or small? [LB574]

SENATOR ROBERT: Yes. [LB574]

SENATOR AVERY: Is that included in your bill? [LB574]

SENATOR ROBERT: Not in this one, no. There's one coming behind me, I think, that will. [LB574]

SENATOR AVERY: Okay. Any questions from the committee? Senator Pirsch. [LB574]

SENATOR PIRSCH: I'm just trying to understand, because I also had that impression that currently if it's over a donation from a business or a non-individual entity of an amount of \$250 or over, that both the donee, the senator, and the donor, the corporation or whatever labor entity, not individual entity, both had to report that, and that that was a feature of tracking, kind of keeping people honest. Is that, I mean, that does exist? [LB574]

SENATOR ROBERT: Yes. That is true, yes. [LB574]

SENATOR PIRSCH: Okay. [LB574]

SENATOR ROBERT: But the smaller ones do not, yeah. [LB574]

SENATOR PIRSCH: Okay. I'm sorry, I misunderstood what was... [LB574]

SENATOR ROBERT: Right. Okay. [LB574]

SENATOR PIRSCH: ...you're saying under \$250 then as... [LB574]

SENATOR ROBERT: You can sneak it right in there. [LB574]

SENATOR PIRSCH: ...neither has a duty to report. [LB574]

SENATOR ROBERT: No, the recipient still would. [LB574]

SENATOR PIRSCH: Has a duty to report a donation of, say, a dollar or two? [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR ROBERT: Yes. [LB574]

SENATOR PIRSCH: You mean, well, they have to maintain that at home, but they don't have to disclose that on a NADC filing. [LB574]

SENATOR ROBERT: That may be true. But you, you know, we report, I report every... [LB574]

SENATOR PIRSCH: Right, right. [LB574]

SENATOR ROBERT: Yeah. [LB574]

SENATOR PIRSCH: Okay. So, oh, I see. You say you disclose everything, even if it's a dollar donation. [LB574]

SENATOR ROBERT: Well, I try to. I mean, yeah, if it's a check, yeah. If it's a cash or money contribution, yeah. [LB574]

SENATOR PIRSCH: Okay, but I mean, as far as the law is concerned, the law right now sets it at \$250. If it's below, say, a \$220 donation and that's per year, right, cumulative or aggregate? In other words, you give... [LB574]

SENATOR ROBERT: No, each instance, each instance. The laws are different for every type of organization. You have a different law for a political action committee. You have a different law for a party. You have a different law for businesses that don't have a political action committee, and you have different laws for candidate committees. [LB574]

SENATOR PIRSCH: Hmm, I was kind of confused because... [LB574]

SENATOR ROBERT: And they're all, every...reporting is different for each and every one of them in several different ways. It's just odd to me. [LB574]

SENATOR PIRSCH: Yeah, I thought that they lumped it into two general categories: individual contributions and then anything other than nonindividuals. [LB574]

SENATOR ROBERT: They do when it's a candidate committee concerning contribution reception, but when you're talking about those that want to give and report, they are broken down into different categories. [LB574]

SENATOR PIRSCH: Okay. And is it true then with the candidate committees that anything below \$250, you have to have a record? You have to maintain records of any

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

Government, Military and Veterans Affairs Committee
March 04, 2009

donation in your personal, but as far as disclosure to the NADC, that that would require \$250 or above. [LB574]

SENATOR ROBERT: I actually don't know. This bill doesn't address that side of it. [LB574]

SENATOR PIRSCH: Okay. It doesn't address it. [LB574]

SENATOR ROBERT: This is only on the business contribution side. Yeah. [LB574]

SENATOR PIRSCH: Okay. Just kind of background, I thought I had heard that so...but I appreciate that. [LB574]

SENATOR ROBERT: Yeah, honestly Senator Pirsch, it confuses me so much that I'm lost all the time. [LB574]

SENATOR PIRSCH: So this bill seeks to remove the penalty and report requirements on contributions, expenditures, and personal services made by a corporation. What essentially would that do? How would that operate then if you remove the penalty and report requirements on contributions, of all sizes, right? Contributions of \$10, contributions of... [LB574]

SENATOR ROBERT: Uh-huh, from just businesses and organizations that are political action committees, candidate committees or parties. [LB574]

SENATOR PIRSCH: So you wouldn't have to report neither, neither the donee or the donor? [LB574]

SENATOR ROBERT: No, no. I think the receiver shall still report. [LB574]

SENATOR PIRSCH: Okay, thanks for helping me understand. You're saying the receiver does, but it just makes it...life easier for the donor then, the donor corporation, labor union... [LB574]

SENATOR ROBERT: Who may be totally unknowing of this law being as they may not reside in the state. [LB574]

SENATOR PIRSCH: Okay. Thanks for helping explain that. [LB574]

SENATOR ROBERT: Sure. [LB574]

SENATOR AVERY: Yes, Senator Sullivan. No, I can wait. [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR SULLIVAN: All right, thank you, Senator Avery. Senator Rogert, you mention you've talked to quite a few either candidates or treasurers for candidates. Can you highlight some of their concerns or? [LB574]

SENATOR ROBERT: Well, there are so many. [LB574]

SENATOR SULLIVAN: Well, some of the ones that have kind of... [LB574]

SENATOR ROBERT: I mean, I don't know that I can even say. It seems like so often, and I, Senator Avery and I discussed this during the last bill I was here. He said, it's confusing, it's hard for treasurers to get through it, and it...I don't even know if I can pinpoint what exactly it is. But oftentimes you hear about guys like treasurers or PAC committees or businesses or such, they're fined for doing something they had no idea they were supposed to be doing or not doing something they are supposed...thought they should have been doing. And it comes down to usually just in the reporting requirements. Quite often, sometimes you can end up with more money going one side or the other of a limit, of a dollar limit that's supposed to be capped, such as the...whatever the limit for the year or committee may be in terms of nonindividual acceptance, and all you've got to do when you get over that limit is you send them back and that's...that clears that up. But it seems to be in the reporting that that's where all the trouble gets to be. It's what do you report, what do you not report, when should you report, and what happens when you don't? And sometimes they give you a get-out-of-jail-free card, and sometimes they slap you with a monstrous fine. And when the fine is more by two or three times than the dollar amount you're looking at, I don't understand that. That seems silly to me, especially if you're looking at businesses where they say, well, this business, I'm not saying this has happened, but it seems to be that they look at a business that has no problem paying a fine, and they fine them, where they might not fine us, which is I'm not encouraging them to fine us any more, but that's the ones that seem to get the fines more often. [LB574]

SENATOR AVERY: Senator Price. [LB574]

SENATOR PRICE: Senator Avery, thank you. Senator Rogert, in your testimony here, you articulate that there's a lot...there seems to be a sizeable concern, and I'm just wondering, in the universe of number of races and number of fines, you know, as a percentage of every race that's reviewed, every campaign document that's reviewed of every problem, how many times...can you definitively articulate in the last election or the last couple of elections the percentage of campaigns that were fined or communicated with for an irregularity and/or had no finings and no communications. [LB574]

SENATOR ROBERT: I can't give you a number figure, but there are a large number of ones that I've talked to that have all said, oh yeah, we got in trouble for that, or oh yeah, we got in trouble for this, oh yeah, we got in trouble for something or other. [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR PRICE: What does trouble mean? Trouble, getting a letter to say that there was an event hosted and so there was an in-kind contribution that you were unaware of, and would you please, you know, disclose that, is that trouble? Or is trouble, you took a donation and a sizeable donation and obfuscated the donor and misreported? I mean, there's a world of difference between the two. [LB574]

SENATOR ROBERT: Totally. [LB574]

SENATOR PRICE: And I'm just trying to understand that we don't lump a letter of saying hey, can you clarify, a clarification letter as trouble. I don't view that as trouble. I view that as, you know, saving my bacon, you know, and I just want to make sure that we don't lump two disparate things together. [LB574]

SENATOR ROBERT: I think they are two separate things or at least maybe even three separate things, yes. And I think there's some of each. I really don't...I have, I'm sure it happens, but I have never run into anybody who's actually trying to obfuscate the system. I think there are times when things get lost, cross-fired, they find some issues and they send them a letter and say, here's where the problem is, we need you to fix these things within the next certain amount of time. It seems to me, however, that if everybody, not everybody, if many treasurers are continuing to get these letters that it's very hard to figure out what you're supposed to be doing. And if I got a flash engine light that comes on in my car every three days but goes out, pretty soon it's going to drive me crazy enough that I'm going to go get it fixed. And I think that's kind of what we're looking at, is the check engine light keeps coming on, and we need to figure out a way, why it's coming on all the time. [LB574]

SENATOR PRICE: So it's not trouble, it's complexity? [LB574]

SENATOR ROBERT: It does, but sometimes that complexity does lead to trouble that I don't think is necessary. [LB574]

SENATOR PRICE: Thank you. [LB574]

SENATOR ROBERT: Um-hum. [LB574]

SENATOR AVERY: Senator Pirsch. [LB574]

SENATOR PIRSCH: And I'll try to be brief. I'm just trying to frame the issue in my mind. So the decision we have to make is in weighing utilities on one side. Your point is that, first of all, individuals who donate to a senate, a state senate campaign over \$250 don't have a requirement to reveal that to the NADC, right? [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR ROBERT: That's correct. [LB574]

SENATOR PIRSCH: It's just the receiving senator who has the obligation, right? [LB574]

SENATOR ROBERT: Correct. [LB574]

SENATOR PIRSCH: And that's, so there's a parity argument you're arguing, saying make corporate donors the same as individual donors, right? [LB574]

SENATOR ROBERT: Correct. [LB574]

SENATOR PIRSCH: And the other part to it is you're saying, aside from the parity aspect, it's difficult for corporations who may not be...who may be new and not used to the political donating process and that it catches corporations unaware sometimes and perhaps discourages them from participating in the political system. Is that what you're saying? [LB574]

SENATOR ROBERT: I think it can. [LB574]

SENATOR PIRSCH: Okay. And so it's that on one side, weighted against the...what I would understand the basis for the existing law which does require corporations to, both corporation donors and senate donees, to report which would be the, I would assume, does that...and tell me if there's any other reasons, but would that be just mostly because of its match? With a matching requirement, it tends to keep both sides honest. If I'm a dishonest recipient and I'm looking at taking the money and maybe not reporting it, I'm more hesitant to do that knowing that the person who donated the money also has a duty to disclose that to the NADC and, therefore, maybe not engage in that. I mean, I'm trying to think of the rationale for the law. [LB574]

SENATOR ROBERT: Maybe. [LB574]

SENATOR PIRSCH: And perhaps it's easier for the NADC to enforce then, you know, keep both sides honest. [LB574]

SENATOR ROBERT: Or maybe it challenges me to say why don't you just write me nine \$200 checks instead of one \$2,000 check. [LB574]

SENATOR PIRSCH: Well, see, and that's the question I was going to follow up with. I thought it was my understanding that this \$250 threshold was an aggregate, yearly threshold. [LB574]

SENATOR ROBERT: No, I don't think so. It may be monthly but... [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR PIRSCH: Perhaps those can, who come after you, can kind of speak to that,... [LB574]

SENATOR ROBERT: Yeah. [LB574]

SENATOR PIRSCH: ...but I thought if you get three checks, each for \$100, that they are...or it's viewed as when the third check for \$100 comes in as surpassing the threshold and needed to be reported both by the corporation and the individual. [LB574]

SENATOR ROBERT: And, Senator Pirsch, I think, it's my understanding that that is true when you're concerning organized committees underneath this rule: a candidate committee, a PAC committee, or affiliated party. Those who have aggregation characteristics and this other group does not. And with what you mentioned before is that it also is concerning to me that if I make a contribution to a candidate for \$1,000, and I write it out on my business checkbook versus my personal checkbook... [LB574]

SENATOR PIRSCH: Right. [LB574]

SENATOR ROBERT: ...my reporting requirements are different. [LB574]

SENATOR PIRSCH: True. [LB574]

SENATOR ROBERT: And I don't quite, I mean, that's silly. [LB574]

SENATOR PIRSCH: Thank you. [LB574]

SENATOR ROBERT: Um-hum. [LB574]

SENATOR AVERY: Do you think there is any public purpose to the requirement that we report receipts then, that donors report the contributions? Is there a public purpose that is served by this requirement? [LB574]

SENATOR ROBERT: I don't know if I understand the framing of the question, I mean. [LB574]

SENATOR AVERY: Is there, you have, presumably we write laws that improve the political process,... [LB574]

SENATOR ROBERT: Um-hum. [LB574]

SENATOR AVERY ...make the process more transparent, more accountable to the people who sent us here. Do you see in the reporting requirement any public purpose?

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

Government, Military and Veterans Affairs Committee
March 04, 2009

[LB574]

SENATOR ROBERT: I think in reporting requirements, in general, there is a public purpose. That's why I advocate, not through this bill but through other avenues that I've taken, to report everything. I just don't like the fact that there are ifs and buts and maybes and this way and that way that encourage people to try and find these other loopholes to get around and not have to report. I mean, there's a reason why candidates get lots of \$250 checks instead of a bunch of \$500s. And I think that's obfuscating the system. [LB574]

SENATOR AVERY: All right. So you agree that there is a public purpose that is served by the reporting requirement? [LB574]

SENATOR ROBERT: Generally. [LB574]

SENATOR AVERY: Okay. [LB574]

SENATOR ROBERT: Not this one, generally. [LB574]

SENATOR AVERY: Okay. Now under this bill that you're proposing, isn't it true that corporations, labor organizations, and other associations would have no reporting requirements... [LB574]

SENATOR ROBERT: Yes. [LB574]

SENATOR AVERY: ...unless they establish or administer a PAC, a political action committee? [LB574]

SENATOR ROBERT: Yes. Right. [LB574]

SENATOR AVERY: All right. So let's say that I am a casino and that, therefore, I'm not an individual contributor. I am a corporation. I have no PAC. I do not administer a PAC. I can give you an unlimited amount of money, up to the half of the spending limit. That is current law. [LB574]

SENATOR ROBERT: Correct. Uh-huh. [LB574]

SENATOR AVERY: And I would not have to report it. [LB574]

SENATOR ROBERT: Yep. [LB574]

SENATOR AVERY: You would, as the recipient, have to report it. [LB574]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR ROBERT: Correct. [LB574]

SENATOR AVERY: And you'd have to report the source and the amount. [LB574]

SENATOR ROBERT: Correct. [LB574]

SENATOR AVERY: So let me then ask you, what public purpose does this bill serve? [LB574]

SENATOR ROBERT: I say to you that I can still get as many of those as I want underneath this limit, and they're not reportable. [LB574]

SENATOR AVERY: So what public purpose is served by this? [LB574]

SENATOR ROBERT: I think it encourages, it makes it...this is another attempt at making the system easier. I don't think pitfalls and fines are public... [LB574]

SENATOR AVERY: Easier to...easier for the contributors and the recipients. It that the purpose here then? [LB574]

SENATOR ROBERT: Yes. [LB574]

SENATOR AVERY: The purpose is to make reporting easier. [LB574]

SENATOR ROBERT: This one is for...this one is for making reporting easier for contributors. [LB574]

SENATOR AVERY: So that doesn't necessarily contribute to accountability and transparency but ease of reporting. [LB574]

SENATOR ROBERT: I would also say that the public is not served well by those active in the process being fined and getting in trouble. For not trying...not...and it's not that they're trying to do things on purpose to get in trouble; they just get in trouble because they're unaware of how the system works. And I say the public is not served well there either. [LB574]

SENATOR AVERY: My experience is that most treasurers that I have been in contact know, and I've known many of them, they know the law and they comply. They don't complain about it. They do it. It's very understandable. It's not difficult to understand. [LB574]

SENATOR ROBERT: We must know different treasurers. We must have a different group of friends. [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR AVERY: We probably do. Any other questions from the committee? Seeing none, thank you. Are you going to stay for closing? [LB574]

SENATOR ROBERT: I'll be around for a while, but I probably won't close. [LB574]

SENATOR AVERY: Okay. All right. Anyone wish to speak in support of this, LB574? [LB574]

LON LOWREY: (Exhibit 1) Chairman Avery, members of the committee, my name is Lon Lowrey, L-o-n L-o-w-r-e-y. I hail from Dunbar, Nebraska. How many on this committee know where Dunbar is? Nobody. It's by Nebraska City. [LB574]

SENATOR AVERY: Somebody in the audience does. [LB574]

LON LOWREY: I have achieved exactly what I wanted when I approached Senator Rogert with this issue. Basically what I want is a good, healthy discussion of the issue. I am all for, at the outset, accountability and disclosure. That's not my purpose here today. My purpose today is to challenge whether we, in fact, need the Form B-7 as I know it, which is the form that corporations and unions have to fill out in duplicate every time that they see the number. To my...the number, as far as I know, is \$251 or more you must file a duplicate report. So anything below \$250 is not, is not filed in the state of Nebraska. I am sending around also a copy of some research that I had did as far as state-by-state disclosure requirements. And there are some that require disclosure just like Nebraska does. There's about 15 that do not require disclosure. I come to you as a multiple state lobbyist. I have the states of Oklahoma, Missouri, Nebraska, and Kansas. Kansas is every bit as conservative as the state of Nebraska is, in my opinion, and there is no requirement for corporate filing of donations to a candidate in the state of Kansas. And that's the reason why I approached Senator Rogert. I'm going to tell you a story that happened to the corporation. And in defense of Mr. Daley, he does really try and work with the corporations, but the situation that happened to me was that the corporation, when I would request the funds, would send the check directly to me so I knew when I would deliver the check to the candidate. Without my knowledge, the corporation changed their policy and started sending it directly to the candidate. How would I know when the candidate received the check and deposited the check? And this happened to me on three separate occasions. The first occasion was a contribution to a state officeholder. The second two contributions occurred in 2008, one to the Nebraska Democratic Party, one to the Republican Party. Those checks were roughly \$1,250 to \$1,500. As I said, Mr. Daley tries to work with corporations, and he will allow you some flexibility. Since I had not reported the previous one...and I think the issue is if you have not had an issue within two years, they will give you some flexibility as far as leveling the fines. Since I had these three occasions, separate occasions occur, I was fined a total of \$1,400 for those two checks and I already told you they were roughly \$1,250 to

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

Government, Military and Veterans Affairs Committee
March 04, 2009

\$1,500. So the fine on each one was roughly half of the donation to the particular recipient. That's my concern and, as I said, as an outside, out-of-state lobbyist, I just don't see the value in it. I mean, I understand you're saying there's a public purpose, but the candidate has to file who they receive that fund from. So I think you have disclosure already. I just don't see the need for duplicate reporting. And that's why we, you know, as we said, I raised the issue with Senator Rogert. He was good enough to introduce LB574, and I would appreciate a healthy discussion. I am anticipating some very good questions because you gave those to Senator Rogert quite well. But the only thing that I would also say is if this bill will not pass, I would at least like you to think about the fine process. The commission seems to wait until the very end of the process, the very extreme length of time, and then they send you a letter that's kind of a gotcha letter that says you owe \$700 now. There should be a way if you...what I do...what I did was unintentional. I had no reason to defraud or to not report. I would have reported it had I known what the corporation's policy was. But there has to be a better way of notification rather than, so many months out, you owe us \$700. So if you don't even, you know, all I want is a discussion. That's all I want, you know, and hopefully the bill will move forward. I don't think it's necessary to have duplicate reporting. [LB574]

SENATOR AVERY: Is it your position that this is too inconvenient? [LB574]

LON LOWREY: No. No, but it's something like, as Senator Rogert said as well, you have to remember to do it, you know, and when you have multiple states, there's lots of reports that I have to file. And I'm okay with all the reports, but I don't see any benefit of a duplicate report. I just don't see it. The candidate already has to file in their filing where that report, you know, where that campaign contribution came from. [LB574]

SENATOR AVERY: So you'd be okay with a law that required you to report, but not the candidate, wouldn't you? [LB574]

LON LOWREY: No. No, that the candidate would have to report. [LB574]

SENATOR AVERY: I know, but you just said that your objection here is it's duplicate filing,... [LB574]

LON LOWREY: That's correct. [LB574]

SENATOR AVERY: ...and so if you had to file and the candidate didn't, you'd be okay with that. [LB574]

LON LOWREY: If I had to file and the candidate didn't? [LB574]

SENATOR AVERY: Yeah. [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

LON LOWREY: No, not at all. It's incumbent upon the candidate in the state of Kansas, state of Missouri. [LB574]

SENATOR AVERY: This is Nebraska. [LB574]

LON LOWREY: I understand that, sir. I understand that. [LB574]

SENATOR AVERY: So your position is that corporations and the labor unions and other committees should not have to file any reports on what they give candidates. [LB574]

LON LOWREY: That's correct. [LB574]

SENATOR AVERY: Okay. I just want that clear. Senator Sullivan. [LB574]

SENATOR SULLIVAN: Thank you, Senator Avery. I'm trying to sort out some of the lines of communication here. So there must have been a breakdown in communication between the business that you represent. [LB574]

LON LOWREY: Right. [LB574]

SENATOR SULLIVAN: And then also there was...and I'd like you to elaborate on that because they must have...there must not have been any established rule of procedure in terms of they stopped doing one thing and started doing something else and you weren't aware of that. And then apparently there was a breakdown in communication between you and Mr. Daley's office because apparently at times you did have communication and then you got a letter that said you were fined. So I'd like you just to kind of elaborate on those two things. [LB574]

LON LOWREY: Okay, I'll go back to that. The...what happened on the \$1,400 fines was the case of the two checks that had been sent in 2008 to the parties, as I had described earlier. And he waited until the maximum length of time to levy the fine of \$700 each. That's when I was aware that the checks have been received by the parties. All along the way, the corporation did not tell me that they had changed their own policies internally to just send the checks directly to the candidate. Now as a result, what I've done now and I think Mr. Daley has accepted this, is that in my case, if I'm going to have to continue to file the report, I now report the date that I request the funds and send the B-7 in. And when the candidate gets it, it won't jive up at all datewise, but I've filed my...I've done my reporting requirement. Does that answer your question? [LB574]

SENATOR SULLIVAN: Yeah. [LB574]

LON LOWREY: The communication between me and the commission was only that I had delayed filing in two instances. [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR AVERY: Any more questions from the committee? Senator Price. [LB574]

SENATOR PRICE: Senator Avery, thank you. Sir, so just again, we're all wrapping our minds around this,... [LB574]

LON LOWREY: Sure. [LB574]

SENATOR PRICE: ...the corporation took an action, they didn't inform you. [LB574]

LON LOWREY: Correct. [LB574]

SENATOR PRICE: Subsequent to that, then the B-7 not being filed by the company, or a report of a B-7 being made. [LB574]

LON LOWREY: And I'm technically responsible for filing that report. [LB574]

SENATOR PRICE: And as was covered, you know, the breakdown in communications. [LB574]

LON LOWREY: Right. [LB574]

SENATOR PRICE: One day a letter arrived on your doorstep with a fine. Now do you believe it was incumbent upon the commission to come to you and say, by the way, are you communicating with your company on these things? [LB574]

LON LOWREY: No. I don't believe that at all, sir. [LB574]

SENATOR PRICE: Okay. Good. [LB574]

LON LOWREY: What I believe though is that, I'm sorry, maybe I interrupted...did you some more questions? [LB574]

SENATOR PRICE: No, that's close enough because I just wanted to make sure we don't get...they're busy enough and if we told them that they had to communicate with everybody about everything, I mean, they're sitting there watching a world of activity going on and... [LB574]

LON LOWREY: It's going to get worse with term limits. [LB574]

SENATOR PRICE: ...and because there's a breakdown in your companies...your representative companies' communications is really not their problem. [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

LON LOWREY: That's right. That's correct. No question about it. But my point is, why do we wait until the very tail end and then assess the \$700 fine. Why do we do that? What aren't we notified 15 days, 30 days, whatever? [LB574]

SENATOR PRICE: A suspense, you're saying, suspense being for replying is what you're saying? [LB574]

LON LOWREY: Yeah, I mean, there should be some kind of notification to us that if we've missed it. I mean, it's accidental, I mean, it's not done to defraud or anything. It's just that, as I said, you know. [LB574]

SENATOR PRICE: Do you know whether or not the commission communicated the missed reporting to the corporation? [LB574]

LON LOWREY: I...only at the time when the \$700 fine was levied, to my knowledge. [LB574]

SENATOR PRICE: But...so again, again the corporation could have been told and they didn't tell you. [LB574]

LON LOWREY: Well, I think there were two letters in that case. I'm the registered, you know, lobbyist on behalf of the corporation, and I believe another letter went to the corporation inside. Unfortunately, it's a corporation so it kind of bounces around in there, but at least I was able to, you know, get at my mail and respond correctly. [LB574]

SENATOR PRICE: Well, then again, this is one activity, but your idea is, your position is, like you said in your handout, that corporations shouldn't have to report. All right. Thank you. [LB574]

SENATOR AVERY: Mr. Daley is here. I'm sure he will be testifying later. He can clear this up for us. [LB574]

LON LOWREY: Yes, he will, I'm sure. And like I said, I'm just trying to be, you know, fair to the commission as well. [LB574]

SENATOR AVERY: Senator Janssen. [LB574]

SENATOR JANSSEN: Thank you, Senator Avery, Mr. Lowrey. I do agree with the double reporting, I think that gets to be a little bit redundant for both of us if you were to give it to me or somebody else. I think that's, that does get a little redundant. I just wanted to clarify some things and maybe Director Daley would probably (inaudible) do this. I'm not sure. But first off I want to clarify, you gave \$1,500 to the GOP and then \$1,200 to the Democrats, just to make sure. Okay. (Laughter) [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

LON LOWREY: Yeah, I knew that was probably going to come back to haunt me. [LB574]

SENATOR JANSSEN: Okay, as long as we can get that clarified there. But I also own a company and we don't have a PAC so I'm not sure if we would be treated the same. I've given money to state or my company has given money to state elected officials, probably Chairman Avery, I can't recall who it went to, but. [LB574]

SENATOR AVERY: No, you didn't. (Laughter) [LB574]

LON LOWREY: Are you a corporation, sir? [LB574]

SENATOR JANSSEN: We are an S corporation. And I think we did, and I'm going on memory so I'm just kind of throwing this out there,... [LB574]

LON LOWREY: Sure. [LB574]

SENATOR JANSSEN: ...we did get a letter from the Accountability and Disclosure saying that, you know, I think it was \$750, it says you did not report this but the candidate did report this and it was...there was no fine attached to that. It was like, oh, and we reported it and that was it. So I'm not sure if you fall under the same things or if there was a letter and it didn't get replied to and then the gotcha letter came. So I would have a concern if there was no correspondence to my company, and then I got that, so maybe I'm just throwing that out there. And I don't know if there's a question or answer in there, but I'm just wondering if you did get something in between the gotcha letter. [LB574]

LON LOWREY: As I said, Mr. Daley was very good in working with us. You know, I did have a situation where I had the three checks, okay, and in that particular case, it did invoke the fine. But I don't remember any conversation or communication from Mr. Daley prior to the \$700 fine for each occurrence letter that I received. [LB574]

SENATOR JANSSEN: Okay, thank you. [LB574]

SENATOR AVERY: Any more questions? Senator Karpisek. [LB574]

SENATOR KARPISEK: Thank you, Senator Avery. Mr. Lowrey, I know that Dunbar is by Avoca. [LB574]

LON LOWREY: There you go. [LB574]

SENATOR KARPISEK: And I'd like to point out for Senator Janssen that \$1,500 and

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

Government, Military and Veterans Affairs Committee
March 04, 2009

\$1,200 but, per senator, that's more for the Ds, so just so we got that. Do you know, is there a level, is it a percentage fine? Is it over a certain amount, if it was over a thousand dollars or... [LB574]

LON LOWREY: It's so much per day. I don't remember the exact number. I'm sure Mr. Daley can tell you, it's maybe \$10 or \$15 a day and then it stretches out to whatever length of time. And then once that...they're tracking it somehow because they know when that deadline is and you get the fine. [LB574]

SENATOR KARPISEK: Right. That's...I just wondered if it was per day or percentage or how it was... [LB574]

LON LOWREY: It's per day. It's per day, but I don't remember the actual amount, Senator. [LB574]

SENATOR KARPISEK: Okay. I just wanted to get those smart-aleck remarks in really. So thank you, Senator Avery. [LB574]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you, Mr. Lowrey. [LB574]

LON LOWREY: I appreciate the committee's time. Thank you very much. [LB574]

SENATOR AVERY: Any more proponents of LB574? All right, we'll move to the opponents. [LB574]

JACK GOULD: Senator Avery, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I'm here representing Common Cause Nebraska. I know that Senator Rogert has mentioned the fact that he is concerned about disclosure. But this bill simply cuts off disclosure. It is vitally important for the public, for everyone to be completely up front with where money is coming from and how it's being spent in terms of campaigns. And there is huge amounts of money coming in on campaign contributions from corporations. It's vital that candidates, as well as the public, can watch the process and see it on-line. And at this point, everything over \$250 is on-line and visible. There was one question about what about the amounts of money under \$250, and currently, the treasurers of campaigns do have to keep a record of all of the contributions from \$50 to \$250. And that money is recorded by the treasurer, but not recorded on-line and not necessarily reported by the donors. That money is there because, should an audit take place, and they can be audited, then the money has to be accountable. And that's the way it needs to be. Anything under \$50 is fairly invisible. In other words, it's usually considered to be a cash contribution, and it's reported on your forms as cash contributions. That's where the amounts under \$50 show up. Now if it's in a check form, obviously, the person that donated the check gets the check back

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

Government, Military and Veterans Affairs Committee
March 04, 2009

and has his own receipt for it. But the invisibility of that money from \$50 to \$250 is...could be a real problem if we don't have accurate records of it. There's also been some things said about the penalties and the concern. I go to virtually, well, I wouldn't say every meeting of the Accountability and Disclosure Commission but most of them, and I watch the penalties being administered and, first of all, that commission is a very...it represents both parties extremely well, and they are extremely good people because you don't see the partisanship coming across in that committee. That committee sits in judgment of corporations, of candidates, and I'm always impressed by their willingness to bend over backwards to help people. They're not out to hurt candidates, and they're not out to hurt corporations. There are warning letters, there is an opportunity on the first mistake where the commission time and again waives any penalties that says this is the first time it's happened, we'll let it go. It's really when it's a repeat issue or there's been warnings sent and the candidates are not responding or the corporation is not responding that the penalties start to come out. And you have to understand, the penalties have to be severe. If they're not severe, then people will ignore it. People who donate hundreds of thousands of dollars to multiple campaigns are not going to be too upset by a \$1,000 fine. If the fine is heavy, they respond. And they usually are only fined once because, once that happens, they don't forget. And so it's important there to be a heavy penalty, and it's important that the public has confidence in that commission. And they should have confidence. The Secretary of State sits on that committee and Secretary of State Gale is an exceptionally good member of that commission and speaks on fairness every time out. So I would just want you to be aware of the fact that the penalties may seem harsh, but in many, in most cases, necessary and only given out after the commission has given it due thought and process. [LB574]

SENATOR AVERY: Thank you, Mr. Gould. There might be questions. Any questions for Mr. Gould? Senator Pirsch. [LB574]

SENATOR PIRSCH: Just to clarify, and maybe I should save this question for the NADC, but are you familiar with my question with regard to aggregation? Is the \$250 level an annual aggregation? If I give \$100 in January, \$100 in May, \$100 in December, that's over \$250 in the aggregate so that would trigger the requirement, is that correct, with the third donation? [LB574]

JACK GOULD: It would. It's...now Frank is by far the final word on this, but my understanding is the year-end report would reflect those kind of donations. If the final report there was another \$100 that brought you over the \$250 threshold, then it would appear on the...as an aggregate in the final report. It might not show up earlier though. [LB574]

SENATOR PIRSCH: Okay. Thank you. [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR AVERY: Senator Sullivan. [LB574]

SENATOR SULLIVAN: Yes, thank you, Senator Avery. And your attendance at the NADC meetings, have you actually seen where this problem has arisen and entities have been fined? [LB574]

JACK GOULD: I have many times. [LB574]

SENATOR SULLIVAN: Okay. [LB574]

SENATOR AVERY: Let me ask you this question. Why do you think there is so much confusion surrounding the reporting requirements in the state? I mean, are we requiring something so outlandish and so difficult that ordinary people with ordinary intelligence can't get it? [LB574]

JACK GOULD: You know, it's hard to comment on the degree of difficulty. From my perspective, I think it's very fair and necessary. I know this, and I have been in the Accountability and Disclosure office at times when people have come with the forms and said, I don't understand this. And I have seen Frank Daley and others sit down with those treasurers and almost fill out the report for them because they don't want them to make mistakes. I know that they get phone calls constantly about how do I do this? And I'm always amazed at how they are able to not get frustrated but to talk civilly to people on the phone. Even when I call and have some questions that are usually things they can answer very easily, they're extremely patient. They try to help. And when you look at the penalties, I think you raised the question about the penalties, I mean, that's something you should take a look at. If you're passing judgment on the system, I think it's important that you know how many times have people been penalized actually and particularly treasurers and candidates. I think, in those areas, there is always an effort to try to make sure that they know what's going on and what they're doing. Corporate cases, sometimes the corporations are quite a distance from Nebraska that are making contributions. But I think that the letters flow to the right people and hopefully they get to the lobbyist or to the person responsible. But I know that it is...everything is done by the book in the Accountability and Disclosure Commission. [LB574]

SENATOR AVERY: We heard discussions about gotcha letters. The gotcha implies to me that there is some setup involved where the Accountability and Disclosure Commission set up somebody for a trap. You know, we caught you, now you're going to get hit. Have you ever seen any of that? I mean, you're suggesting in your testimony that you've seen just the opposite. [LB574]

JACK GOULD: I would say I see just the opposite. Even in the most flagrant case of the CFLA was probably Regent Hergert's case. And I know that in the primary, you know, there were letters sent explaining what Regent Hergert had done wrong and they were

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

Government, Military and Veterans Affairs Committee
March 04, 2009

brought to evidence in the impeachment hearing. They were actually brought out to show that he had been warned, he had been told over and over again that he was violating the rules. And when, in the second, in the general election, he made the same mistakes and actually withheld a second report in order that the Accountability and Disclosure Commission wouldn't trigger public dollars. That's what happened, that's why he was fined. And really, he is the only major case of potential criminal action and impeachment that's ever been brought forward. But it was a conscious effort on the part of an individual to withhold records, and that's why he was punished. It wasn't that he made an honest mistake. It was an absolute. I was there when we filed the first complaint against Regent Hergert, and I waited for three days to see if his reports came in the mail. And they had been asked for by the Accountability and Disclosure Commission. The reports never came in and we filed the complaint. So I think that they, you know, do everything in their power to try to help candidates, to try to help treasurers, and to really try to help the corporations. All you have to do is ask and they will help. [LB574]

SENATOR AVERY: Any more? Senator Sullivan. [LB574]

SENATOR SULLIVAN: Why do you think it's important to have that dual disclosure on the part of both the recipient and the business or corporation? [LB574]

JACK GOULD: Because we all want to think of ourselves as being 100 percent honest, but it turns out that there are people who might not file, and one of the things that the auditors do in the Accountability and Disclosure Commission is cross-reference the contributions that come in. They have a list of who gave them, and they have the reports from the candidates showing that they've recorded it. And so they spend a great deal of their time checking back and forth to make sure that everything that's recorded is recorded twice and can be checked. If you take the one away, well, then suddenly there's an invisible entity out there. You don't know, did everybody file the proper information? Or is it just a case of...you know, even an honest mistake would be invisible if you don't cross-reference. [LB574]

SENATOR SULLIVAN: Thank you. [LB574]

SENATOR AVERY: Any more questions? Senator Janssen. [LB574]

SENATOR JANSSEN: Thank you, Chairman Avery. You kind of brought up a point right there at the end about cross-referencing. It is my understanding, only based on this debate today, that if I was to get \$200 checks, multiple \$200 checks, there is no cross-referencing. So is that, is that the way you understand it? [LB574]

JACK GOULD: Senator, if you brought a bill that would say we needed to lower that rate, to lower it from \$250 to \$200 or \$100 or even \$50, I'd be for your bill. [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR JANSSEN: Okay. Okay. [LB574]

JACK GOULD: But I mean, it's true that under \$250 we don't have the cross-referencing, but there is the threat of audit and they do audit. I don't know about the frequency or the regularity of the audit, but you have to keep those records so if they audit, they will check and see, did this person give? [LB574]

SENATOR JANSSEN: Sure. And if I got audited, I guess in this case if I got \$200 and it came from Common Cause, thank you for the contribution, and I got \$200 and \$200... [LB574]

JACK GOULD: That would be a big, a big event. [LB574]

SENATOR JANSSEN: Yeah, that would be huge. And then, but if I got \$300, I mean, I'm saying that I got it from Common Cause all the way through. I'm a candidate; I'm saying I got this from Common Cause, I got this from Common Cause all the way through, but you're not saying it because you don't have to because it's under \$250, but if it gets above that, you have to say it. [LB574]

JACK GOULD: Right. [LB574]

SENATOR JANSSEN: So I don't...and I get where you're coming from, but don't you think the argument on this kind of loses a little when you say, well, it's important to cross-reference but we're not going to cross-reference everybody, so it still could be happening? [LB574]

JACK GOULD: Well, it's going to happen in a lot smaller denominations at that level. [LB574]

SENATOR JANSSEN: That would be your call. [LB574]

JACK GOULD: And at the same time, you know, I would be in favor of, you know, full disclosure by everybody, all the way down the line. That would be the way to do it. I think you would have to also provide more auditors for the Accountability and Disclosure Commission and I think you would have to do...invest more money in the Accountability and Disclosure in order for them to do that complete job. But I would be in favor of it and I think you've pointed out, there could be a problem there. But it's a lot more serious if we're talking about \$1,000 contributions or \$2,000 contributions. [LB574]

SENATOR JANSSEN: Okay. Thank you and I'm not going to bring that bill, but.
(Laughter) [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

JACK GOULD: Okay. [LB574]

SENATOR AVERY: Before you leave... [LB574]

JACK GOULD: Common Cause doesn't make contributions, just so you know. [LB574]

SENATOR AVERY: Before you leave, he brought up something I think we need to clarify, and this is something Senator Pirsch was on earlier, and that is the cumulative reporting requirement. If you give me a \$200 check in November and you give me another one in December and another one in January, am I not required to report, once the cumulative amount of your contribution exceeds \$250, I am required to report that,... [LB574]

JACK GOULD: Yes, that's correct. [LB574]

SENATOR AVERY: ...even though there's more than one contribution. [LB574]

JACK GOULD: I believe that's correct. Yes. [LB574]

SENATOR AVERY: I know, that's how I did it when I ran. [LB574]

JACK GOULD: When we're checking, we often go, just go to the final report because you can miss things until you get the year-end report, but that doesn't help the candidate necessarily. [LB574]

SENATOR AVERY: So you're not concealing \$200 contributions... [LB574]

JACK GOULD: No. [LB574]

SENATOR AVERY: ...by making them in multiples of \$200 for... [LB574]

JACK GOULD: No. [LB574]

SENATOR AVERY: No, okay. Thank you. Any other, I think we're finished. Any other proponents? Oh, we are on opponents, I'm sorry. (Laughter) [LB574]

SENATOR JANSSEN: He was a terrible proponent. (Laughter) [LB574]

FRANK DALEY: Chairman Avery and members of the committee, good afternoon. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Accountability and Disclosure Commission and I'm here to express the Commission's opposition to LB574. LB574 essentially eliminates in its entirety the reporting requirement of corporations, unions, and certain types of associations. And I think what I'll do is I'll

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

Government, Military and Veterans Affairs Committee
March 04, 2009

depart a little bit from my planned script and maybe just tell you what the law is now and answer some of the questions that I've heard pop up. The current law is this. A corporation, union, or certain types of associations have to file one of these B-7 reports within 10 days after the end of a calendar month in which it makes a contribution of more than \$250. So \$250.01 is reportable. Now the reason for that level...the level has changed over the years, but frankly it harkens back to the pure paper days. And that is that a \$250 contribution 10 or 15 years ago was considered a good-sized contribution, and the idea was let's reduce the amount of paper and focus on the disclosure of the big contributions. Maybe in the electronic days, that's not quite as necessary and so if the committee or the Legislature thought that a smaller amount was appropriate, that would be okay. But that's not what this bill does today. Let me talk about how the late filing fees come about and how they're assessed. As Mr. Gould mentioned, we have a staff of auditors and every candidate or PAC filing or other campaign filing that comes in gets a review. And it also gets a cross-check, so if an auditor is looking at a candidate's statement and the candidate is reporting a contribution from the ABC corporation, they're also looking in our database to see...and it's, say, for more than \$250, they're also looking in our database to see if the ABC corporation has filed a B-7 report. Also as they're looking at a campaign statement, they will look to see what corporations have reported making a contribution to that candidate, and they will look to see that the candidate has reported those sorts of contributions. Now if we see, for example, that a candidate has reported a contribution but the corporation has not, we send a letter to the corporation or the union or the association saying, candidate X has reported receiving a contribution in the amount of blank on such-and-such a date; we note that you haven't reported it; please file a report if you made the contribution; if you didn't make the contribution contact us. Late filing fees are assessed at the rate of \$25 per day, not to exceed \$750. So what we will often find is we often find a variety of benign things, such as the corporation saying, well, no, we didn't make that contribution, and we go back to the candidate and he says, oh, it wasn't the ABC corporation, it was the ABD corporation, and we can see that one was reported. So what you end up with is more accurate filing. The candidate corrects his statement and there's good accurate information out there. Or it may be that we will see on a candidate's statement that a contribution is not reported, but a corporation is reporting receiving it. We'll ask the candidate, by way of letter: We note that corporation X has reported making a contribution to you and you haven't reported it; please amend your campaign statement or advise us that you haven't received that contribution. In some cases, we'll get a word back from the candidate that says something to the effect, gosh, yes, I did get it and I inadvertently didn't list it. They amend their campaign statement and they're done. We have more accurate reporting. Or the candidate may say, I never got such a campaign statement or I never got such a contribution from that corporation. We go back to the corporation and they come to discover, well, gee, yeah, we reported that contribution, we gave it to our agent to hand to the candidate, but we note the check has never been cashed and, contacting our agent, he's never delivered the check. So what we end up with is the corporation correcting its report so more accurate reporting. Let me tell you

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

Government, Military and Veterans Affairs Committee
March 04, 2009

how our late filing fees are assessed. Our late filing fees on a corporation, union, association, filing a B-7 are assessed at the rate of \$25 for each day the statement is not filed, not to exceed \$750 per statement. And that's a statutory late filing fee schedule. It's assessed by operation of law. If we note that there's not a filing, we send a letter saying we note there's not a filing, here's why we think you owe one; contact us if you don't think you owe a filing or make the filing. We do not, the late filing fee is not assessed until the filing is actually received. And then we send a letter saying here's the amount of the late filing fee and, by the way, here is the process by which you can request relief. Now understand that under our relief process, if the filing discloses less than \$5,000 in contributions, in other words, the corporation is showing a contribution of less than \$5,000, and they have been required to pay late filing fees for a two-year period, they get relief. The late filing fee is waived. It could be down to zero and typically is. If it happens again within a two-year period then we will typically reduce the late fee to one day's late fee, so down to \$25. Typically, you are only fined if it happens a third time within a two-year period. Then you're essentially out of luck. At that point, you're required to pay the late fees, or if your filing reflects more than \$5,000 in receipts or contributions or expenditures. So that's kind of how it works. I think the idea here is that dual filing promotes good filing and it promotes accurate filing. If I'm a candidate and I get a campaign contribution from a corporation and corporations don't have to report, I could be really nefarious and just say, you know, I'm going to stick this in my pocket. I'm not going to use it for my campaign. I'll use it for my personal purposes. Or the candidate can say, I'm not going to...I'm going to use it for campaign purposes, but I'm not going to report it because it might push me too close to the aggregate contribution limit under the CFLA. Now, I will tell you that typically is not what we find. We mostly find the rather benign things where someone has made an error or a check hasn't been delivered, but the fact is that through this process you end up with more accurate reporting and that information becomes available to the press and public. One thing I do want to point out, the late filing fees that are assessed we don't get to use. They are not in any way used for the operations of the commission. By law, they are put into the Campaign Finance Limitation Act Fund. The only thing they can be used for is to make awards of public funds to candidates for use in their campaigns. And in fact, there have been times over the years where the Legislature has suggested, rather than giving you all this money from the General Fund, maybe you should take part of that late fee money or that civil penalty money, and we've always resisted that because we don't like the way it looks. We can truly say at this stage that we don't particularly want a candidate's money or a corporation's money. What we want are the...is the good disclosure and that's really our focus. So we're opposed to LB574 because I think it results in not only less disclosure but less accurate disclosure. And thanks for the opportunity to talk with you. [LB574]

SENATOR AVERY: Thank you, Mr. Daley. Let me ask you, given what you just told us about how you assess late filing fees, how do we get to the conclusion that you're sending out gotcha letters? [LB574]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

FRANK DALEY: Well, I suppose that the gotcha letter is: dear candidate or dear corporation, we see this report which, you know, your report doesn't match; either file a report, amend the report, or tell us why you don't think you need to. And the late filing fee only comes in when someone files a report late. Now one of the things I heard is, well, gee, we run it out to the very last day. Not really, though it depends upon the cycle in which we discover this. Let us say that we're talking about a candidate in a nonelection year. As you probably know, at the end of a nonelection year, you file a campaign statement which covers all the transactions for the prior calendar year. So if you had received a contribution from a corporation in June of the prior calendar year, that shows up on your campaign statement that you file in January. Well, it's when our auditors go over those reports and see that contribution that you're reporting having received that we contact the corporation if they haven't filed a B-7. So, yeah, there may be circumstances in which the letter comes a long time after the filing was due, but it will probably be close to the time that we discover the filing may have been due. [LB574]

SENATOR AVERY: Any questions? Senator Price. [LB574]

SENATOR PRICE: Senator Avery, thank you. Mr. Daley, I just want to simplify it. What we're doing here is we're eliminating a single point of failure with the dual reporting. [LB574]

FRANK DALEY: Correct. [LB574]

SENATOR PRICE: That's really what it comes down to. We don't want a single point of failure for whatever reason, innocent or otherwise. Okay. [LB574]

FRANK DALEY: Correct. [LB574]

SENATOR PRICE: Thank you, sir. [LB574]

SENATOR AVERY: Senator Pirsch. [LB574]

SENATOR PIRSCH: And I'm trying to wrap my arms around a comment that was made earlier, perhaps I misinterpreted it. Is there a difference between corporation, I mean, are the two categories individual and then everything else but individual or I think there was some talk of a business having separate laws than a PAC, so if you were to... [LB574]

FRANK DALEY: Okay. Candidates have a set of reporting requirements. PACs have similar reporting requirements. And I will describe this as a continuous reporting requirement. In other words during...candidates report in the aggregate contributions they have received from different sources. PACs do the same thing. They show a

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

Government, Military and Veterans Affairs Committee
March 04, 2009

continuing cash balance because they are organizations that are formed for the purpose of receiving contributions and making expenditures. That is the purpose of the organization. Now, I suppose we could impose that same obligation on corporations and unions and other types of associations, but the fact is that those entities typically aren't set up for the purpose of making campaign contributions. It's a once in a while thing or a once every few years thing. And so the trade-off is, I guess, rather than requiring this continuous reporting and continually bringing up to date how much they've spent in aggregates and so forth, it's made as simple as possible, that is, one transaction over a certain amount, one report, due 10 days after the end of the calendar month in which the contribution is made. And I suppose it's important to make a comment here. On the federal level and in many states, corporations and unions and associations are absolutely prohibited from making campaign contributions and candidates are absolutely prohibited from accepting them. In Nebraska and in some states, our laws extended to those type of entities the privilege of participating in the financing of political campaigns. The trade-off is that we require a report of the transaction and it's probably not all that much, all that difficult to do. I will tell you that in the days when I was a treasurer for a candidate committee, what I did was if I got a contribution from an entity that I thought might have an obligation to file a B-7 report, I sent them one, because I wanted to be sure that nothing blew up in my contributor's face. That's just a good way of doing campaign business. Again, understand that if a corporation receives a late filing fee, it's typically because it's third shot at the situation within a two-year period or the amount in question was more than \$5,000. [LB574]

SENATOR AVERY: Any more questions? Seeing none, thank you, Mr. Daley. [LB574]

FRANK DALEY: Thank you very much, one and all. [LB574]

SENATOR AVERY: Any other opponent testimony? Anybody wish to testify in a neutral position? Seeing none, did Senator Rogert leave? All right. That ends the hearing on LB574. We'll now move to LB626. Senator Karpisek. [LB574]

SENATOR KARPISEK: (Exhibit 1) Chairman Avery, members of the Government Committee, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District, here today to introduce LB626. The purpose of the bill is to amend the Nebraska Political Accountability and Disclosure Act to expressly state certain permissible uses as well as prohibited uses of public resources, personnel or property by a public official or public employee. I am proposing an amendment that Nick has passed out. My staff brought it around to your offices last night. I know that the committee doesn't like to get an amendment at the hearing. LB626 was introduced in response to an August 8, 2008, decision of the Nebraska Accountability and Disclosure Commission. The decision relates to a complaint filed against a public official alleging the misuse of public resources. The complaint was filed in February of 2007. Before the August 8, 2008, decision of the commission, public officials and employees, as well as

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

Government, Military and Veterans Affairs Committee
March 04, 2009

the statewide organizations that represent them, had a relatively clear understanding of prohibited and permissible uses of public resources under the Nebraska Political Accountability and Disclosure Act. The Legislature needs to address the confusion caused by the August 8 decision of the commission to give clear direction to public officials and public employees, as well as the Nebraska Accountability and Disclosure Commission itself. When a complaint is filed against a public official or public employee alleging a violation, the public official or public employee that can afford to do so will likely retain legal counsel to defend themselves. This has to be at their own expense, and sometimes defending your reputation can run into tens of thousands of dollars even when the allegation involves a de minimis or incidental use of public resources. This was clearly the case in the August 8, 2008, decision of the commission involving Michael Nolan, who was the city administrator of Norfolk when the complaint was filed in February of 2007. With only a few exceptions, LB626 with the amendments will expressly codify certain uses of public resources by a public official or public employee that have been commonly accepted as permissible or prohibited by many attorneys for school districts, counties, municipalities, and other government agencies subject to the Nebraska Political Accountability and Disclosure Act. For example, with the amendment, Section 2(1) of LB626 would provide that any use of public resources by a public official or public employee which is incidental or de minimis shall not constitute a violation of Section 49-14,101.01 or 49-14,101.02. In addition, Section 2 would exempt from the Nebraska Political Accountability and Disclosure Act an employment contract, a collective bargaining agreement, or written agreement, or policy with provision regarding the use of personnel, resources, or property which is approved by a government body. It would also amend Section 49-14,101.01 by including provisions from Section 81-1120.27 to expressly provide that a public official or public employee may use a telephone, cell phone, electronic hand-held device, or a computer under the control of a government body to communicate unexpected schedule changes or essential personal business to a child, teacher, doctor, day-care center, babysitter, or family member. This communication must be kept to a minimum and not interfere with the conduct of public business. As provided in the amendment, a public official or public employee shall be responsible for payment or reimbursement of charges that directly result from such communication. This type of communication has been authorized for years for certain state employees in the section that I listed earlier. It would also amend 49-14,101.02 relating to the use of public resources when qualifying, supporting, or opposing ballot questions. With the amendment, a public official or public employee under the direct supervision of a public official is not prohibited from making use of public resources in expressing his or her opinion regarding a ballot question or form from communication of that opinion. However, the public official or public employee is not authorized to utilize mass mailings or other mass communications at public expense for the purpose of qualifying, supporting, or opposing a ballot question. Finally, the bill with the amendment would also amend Section 49-14,101.02 to expressly provide that this section does not prohibit a public official, public employee, or government body from making use of public resources and preparing, presenting, or disseminating

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

Government, Military and Veterans Affairs Committee
March 04, 2009

information demonstrating the consequences of the passage or defeat of a ballot question or resolution or an ordinance. A public official, public employee, or government body is not authorized by this section to utilize the mass mailings or other mass communications. In conclusion, I feel that this is important to provide clear and direct statute to our public officials and our public employees as well as the Accountability and Disclosure Commission. As I said, the August 8, 2008, situation with Michael Nolan is one part of this bill. That's what triggered it. Another part is the amendment 423, that we all remember that public funds were going to really get hit hard by the tax dollars by the initiative campaign that we had going on in the state. Another part is the...oh, boy, I'm going to forget the name of it right now. Anyway, sorry, I'm trying to go off-script now, Bill, you can tell, can't you? (Laughter) The problem is... [LB626]

SENATOR AVERY: Are you talking about the spending lid? [LB626]

SENATOR KARPISEK: I'm sorry? [LB626]

SENATOR AVERY: The spending lid. [LB626]

SENATOR KARPISEK: Spending lid on LB423, yes. The problem is that officials cannot right now talk toward any of these points without being in violation under the way we didn't think it was, but maybe it is...by asking how will this affect the university, how will this affect the city budget. So this would clear that up to say that they can talk about it, can tell voters what it would mean to them. I would like to say in the amendment, it doesn't say it, but I would like to limit it to what their...how it affects them, not to have the president of the university talking about a bill in the Legislature that has nothing to do with the university or a school board talking about how a sales tax might affect the city coffers. So that is not in the amendment, but I would like to clarify that, and I think maybe some of the people behind me may come with that. So anyway, what this essentially does is try to put into statute what a lot of people thought for a long time was permissible. But as we all know, and Mr. Daley does a fine job of trying to make it a level playing field and get everyone just to report and be up front, but sometimes some things happen. I think the Michael Nolan case is the gleaming error here, and, again, there are people behind me to solidify that position. So with that, I would take any questions that I can try to answer. [LB626]

SENATOR AVERY: Let me start by asking you this. Is it true under current law that, say, for example, the mayor of Lincoln, who right now can talk endlessly about the value of building a new arena in the west Haymarket, once that gets on the ballot, he has to shut up; he cannot any more speak on that, on behalf of that issue, to have...only provide information, but he cannot speak for it or against it? [LB626]

SENATOR KARPISEK: I think that is true, Senator. I'm not sure. I don't know that he can even provide information unless he would go to his house and run it off. I mean,

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

Government, Military and Veterans Affairs Committee
March 04, 2009

he...I don't think he would be able to have his staff print up any sort of data that would show the income or expense on it for... [LB626]

SENATOR AVERY: Once it's on the ballot, but right now they can. I mean, they obviously can take information to the city council and things like that. [LB626]

SENATOR KARPISEK: Well, I think that's where the...well, I think that's where a little bit of the rub is, Senator, where that all happens and how it shakes out. [LB626]

SENATOR AVERY: So what this bill would do would be to clarify that. [LB626]

SENATOR KARPISEK: Yes. [LB626]

SENATOR AVERY: What is permissible and what is not? [LB626]

SENATOR KARPISEK: Yes. [LB626]

SENATOR AVERY: And free up public officials from acting rationally in their jobs without violating the law? [LB626]

SENATOR KARPISEK: Correct, to give the public the answer. Affirmative action was the word I was looking for earlier. [LB626]

SENATOR AVERY: Oh. [LB626]

SENATOR KARPISEK: The university couldn't...felt they couldn't even talk about it to say how they felt, because they thought that they would be in violation. [LB626]

SENATOR AVERY: I think the way the law is written now, once the arena gets on the ballot, Tom Osborne will have to be...he'll have to quit speaking in support of the arena, because he'd then be in violation of current law. [LB626]

SENATOR KARPISEK: The way I understand it, you would know more about the arena than I would, Senator. [LB626]

SENATOR AVERY: (Laugh) But not more about LB626 (laughter). Any questions from the committee? Senator Pirsch. [LB626]

SENATOR PIRSCH: Would it...and thank you. This is kind of an issue of first impression with me. It would prevent somebody who is employed...say, take the mayor's case with regard to that, even in his own personal capacity or is it...I mean. [LB626]

SENATOR KARPISEK: This would let him do that rather than preventing him from. If it

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

Government, Military and Veterans Affairs Committee
March 04, 2009

was about...technically, the way I understand it, if it's about a sales tax initiative, the mayor would not be able to speak in his capacity of mayor or use his staff to do any of the tables and graphs. Now, that's the way I understand it, Senator Pirsch. [LB626]

SENATOR PIRSCH: I'd be interested, and does that...does this bill draw a distinction between those who are basically elected for policy type of decision-making responsibilities as separate and apart from those who are probably more administrative...more of a, say for instance, a secretarial job or something of that sort. [LB626]

SENATOR KARPISEK: I don't think it does, Senator, because that way the mayor can ask the secretary to draw that up. But again, there will be better testimony behind me to help that out. [LB626]

SENATOR PIRSCH: Very good. Thank you. [LB626]

SENATOR AVERY: I think that, just by way of clarification, the current law applies to members of the Legislature. [LB626]

SENATOR KARPISEK: You are correct, and this is kind of opening that up to other... [LB626]

SENATOR AVERY: Yeah, and now...and what you would do with this bill is you would change member of the Legislature to public official or public employee under the direct supervision of a public official,... [LB626]

SENATOR KARPISEK: Correct. [LB626]

SENATOR AVERY: ...which is to not focus exclusively on the Legislature but public officials more generally. Okay. [LB626]

SENATOR KARPISEK: Yes, thank you. [LB626]

SENATOR AVERY: Senator Price. [LB626]

SENATOR PRICE: Senator Avery, thank you. Senator Karpisek, thank you for bringing this forward. You know, obviously, you're opening up a can of worms, and that's always a good thing. I... [LB626]

SENATOR KARPISEK: I seem to do it well. [LB626]

SENATOR PRICE: Yes, you do. I envy you (laughter). I have a two-part question, and my first question is, this bill really seems to be about two things. I mean,... [LB626]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR KARPISEK: It does. [LB626]

SENATOR PRICE: ...with regards to we're talking about all employees and de minimis use. Thank you for putting that in my vocabulary (laughter), and public officials and the people that work for them and report to them. So I'm curious why we're attempting to lump the two together when they're kind of disparate. [LB626]

SENATOR KARPISEK: I suppose that it could be two different parts to say...I think it's because how the statute reads now. [LB626]

SENATOR PRICE: Okay, great. And the next part that gets to...that piques my curiosity is how does a supervisor of somebody else know de minimis from non-de minimis? [LB626]

SENATOR KARPISEK: (Laugh) I'm glad I'm not the only one that can't say it. Well, again, you would have to pay for it, number one. And I think that you can tell when...if you get a phone call from your kids on your state line to say, Dad, I'm sick, come pick me up, or you are calling your accountant. [LB626]

SENATOR PRICE: Okay. And I agree with you on that. But then I'm curious, if we got some CIOs in here and we were to poll de minimis use of the Internet at the work site, and charging off...I mean, I believe that can of worms is something awfully huge to break open and quantify and wrap your hands around that. And that's why I ask, because if we have two different things, if you see...if you're keeping one area very well defined and the other area is just every public employee. [LB626]

SENATOR KARPISEK: Understood, and they...I think that's why there's kind of two parts to the bill, because it's opening up to everyone, not only the Legislature, and saying this is what you can do. And, you know, I would be more than happy to say...put more definition in it. This is not a bill to let everybody get away with doing whatever they want; just to draw a line to say here's the line you can't cross and stay within that boundary, because, again, a lot of people thought that they were well within their...I don't want to say rights, but playing by the rules and maybe got smacked a little bit for it, so. [LB626]

SENATOR PRICE: All right, thank you. [LB626]

SENATOR KARPISEK: Thank you. [LB626]

SENATOR AVERY: Anyone else have questions on the committee? Thank you, Senator Karpisek. [LB626]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR KARPISEK: Thank you. [LB626]

SENATOR AVERY: Proponent testimony. [LB626]

LYNN REX: (Exhibits 2, 3) Senator Avery, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We appreciate your attention this afternoon on this very important issue. I am passing out the amendment showing the changes from LB626 as originally drafted, and then the amendment which does tighten up LB626. And as soon as the page is done circulating that, I will begin my presentation. I'm also passing out a copy of the decision relating to Mike Nolan which was...and I did give Senator Karpisek the wrong date. It was August 15 that the commission made its decision, and then sent that out by certified mail on August 18, 2008. And what I can share with you is that before that decision, municipalities, and I think counties, school districts, and others were pretty confident on what we were allowed to do and not allowed to do. And by we, I mean public officials and employees. So we felt that...that when this opinion was rendered, it really has had a tremendous effect in terms of how cities are operationally working at this time and also other jurisdictions, because it has...it reaches much farther than just the opinion itself. Indeed, I think now everyone has a copy of this. I would like you to look at the actual opinion itself, and I really wasn't going to approach this, Senator Price, until you raised the question. But for example, if you'll be kind enough to look on page 4 of the actual opinion that's handed out to you, and one of the things I think is important to emphasize, if you look...the second paragraph up, I'm on page 4 of the opinion, the second paragraph up. The commission concludes that there was a violation by Nolan of the Accountability and Disclosure Act in the transmission of Exhibit 2. The de minimis and incidental nature of the public resource use is not a matter to be considered in determining whether a violation occurred. Now, what I can share with you is that the language...and the reason why we have the language drafted in LB626 as we do, is because we believe even today that that exception is there. The Attorney General's Office has done training with our members, as his office has with numerous other statewide organizations. Certainly, Frank Daley has done training, too, over the years and does a phenomenal job, I might say, and he actually did training for us last week. But one of the things we think is very important to understand is that this does get to an issue as mundane as can your child call you if you are a state employee and say, I broke my leg, Dad, do you think you can take me to the hospital. In the same token, when you are a public official and you pick up a land line, and it happens to be someone saying, you know, we were talking about business first and then it transcends into something else--Can you go golfing this weekend? Now, should someone be able to use public resources for personal use? I will give you the example that Dale Comer has used with our training folks for many, many years, and that is this; that if you get a call on your telephone that says, from your spouse or significant other, bring home the milk, and you say, yes, I will or, no, I won't and hang up the phone, he said that is de minimis; that is incidental. If, on the other hand, you spend half the morning working on your

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

Government, Military and Veterans Affairs Committee
March 04, 2009

house plans on the phone, you have crossed the line. So there, in addition, I would like to focus on the fact that this handout that says "Proposed Changes to LB626 if AM576 is Adopted," the very last page of this is just definitional. Obviously, not part of the amendment itself, but the very last page of this handout is...includes the definitions of de minimis and incidental as well as government body and who's under this. Those definitions came from Black's Law Dictionary as well as the opinion itself in government body under Chapter 49, Article 14. What I would like to do is indicate that we do believe that because of this case, and working with all sorts of public sector bodies since this case was rendered on August 15 and then sent out to Mike Nolan on August 18, that it is important for the Legislature to address this, and here's why. Because there are very, very few public employees and officials that, once a complaint is filed, can really afford, I would submit to you, to pay tens of thousands of dollars to defend themselves. And what we see happening here is that we have ballot questions all the time going on in the local level and on the state level. This began just as a little bit of a backdrop and, by the way, his attorney is here and will be testifying in a neutral capacity. If you have any questions, you need to ask him those specific questions. But this began, actually, with a phone call that I made to Mike Nolan, and the backdrop was Initiative Measure 423, which would have had a severe impact on the state of Nebraska and your budgeting process. The League was 1 of 90 organizations opposing Initiative Measure 423. We're in a coalition. I called the...at that time, tried to get a hold of the president of the Nebraska City Management Association to see if they would help with the cause to contribute funds to oppose Initiative Measure 423. That phone call was made after 5:00 into his personal cell number. Secondly, I couldn't get a hold of him, so I called Mike Nolan, who was then city administrator of Norfolk, Nebraska, and I called him on his personal cell, which he owns, after 5:00 and asked him whether or not the NCMA would be willing, in essence, to help participate by contributing funds. From that, he made his contacts and did that after 5:00 and, in fact, the e-mail that's at question here, just so you can read this, and then, obviously, any questions relating to his case you need to ask his attorney, J.L. Spray. But if you turn to page 3 of the actual opinion, you will note that on number five, page 3 of the opinion, this was an e-mail sent on Monday, July 10, 2006, between 7:25 p.m. and 7:27 p.m. You'll also note then, going down to item number 9, it talks about the fact that this was sent on his personal computer. What I would like to underscore for you is that is not a personal computer owned by the city of Norfolk. That's a personal computer he owns himself. He sent this after hours on a computer he owns himself, and he did not send it from city hall. So this is the basis, a little bit of backdrop to this. And in addition to this, I just want to suggest to you that when this complaint was filed against him, because, indeed, that e-mail went over a city server and that was the basis of this decision because it went over a city server and did that constitute a violation. And those questions can be addressed to J.L.. But I do think it's so important to understand that it's so important now for you to codify what's permissible and what is not, because we will tell you to this day, there were city attorneys and others across the state that will tell you that you can pick up a phone call and suggest that if you have a crisis at home, your staff could inform you, Senator, of

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

Government, Military and Veterans Affairs Committee
March 04, 2009

that because they call you on your 471 number, and that that's not in violation of this; it's incidental. So we are concerned about that. We also indicate that one of the major parts of this bill is basically to codify what everyone has been doing. There is one exception to that, and I would like you to look now just to the proposed changes to LB626 if AM576 is adopted. You will look on page 1, Section 2, which is lines 8 to 10. This deals with the incidental and de minimis exception. You will note that the change made from the bill itself is that we delete "or unintentional." So we're limiting this to incidental or de minimis only. Secondly, if you look in (2) starting on line 11 on page 1, you will note that this is what is new. In the view of most of the public attorneys that we've worked with across the state on this issue and in developing this bill, this is what would be new. An employment contract, a collective bargaining agreement, or a written agreement or policy with a provision regarding the use of personnel, resources, or property which is approved by a government body shall be exempt from the Nebraska Political Accountability Disclosure Act. Let me give you examples of those three things. [LB626]

SENATOR AVERY: You need to bring this to a close. [LB626]

LYNN REX: Okay. First of all, an employment contract, we have city administrators across the state that are, indeed, using as a condition of their contract, they have a use of a public car. They actually pay income taxes on that. Another example is the use of a public car when you have a change of shifts of police officers across the state, one shift picking up another one. In terms of collective bargaining agreements, there are...the teacher organizations across the state have collective bargaining agreements which allow teachers to use classrooms after office hours for various purposes. So those are just some of the examples. Going on to Section 3, this is an amendment to 49-14,101.01, and I would just emphasize to you, looking on page 2, that this language starting with the new language on lines 8 through 21, that new language is essentially 81-1120.27 which is on page 6 of this bill. This is what state employees and the Legislature itself has been under for some time about how you can have incidental use, frankly, of telephones and so forth. And it basically underscores here that any such communication...I'm reading on page 2, lines 17 and 18, "Any such communication shall be kept to a minimum, and shall not interfere with the conduct of public business." And then we're updating that reimbursement. If you would look on page 3, we made a deletion of the word "intentional" from the original bill... [LB626]

SENATOR AVERY: Are you going through every page? [LB626]

LYNN REX: Pardon me? [LB626]

SENATOR AVERY: Are you going to go through every page? [LB626]

LYNN REX: No, I'm not. [LB626]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR AVERY: Okay. [LB626]

LYNN REX: No, I'm not. I'm just...I'm going to wrap it up here, Senator. And looking on page 4, I would just like to underscore that this is a change from LB626 as originally drafted. You'll look on lines 13 through 27, and we originally had put amendments into (6) which only allows the Legislature to do certain things. This amendment would say, we're leaving (6) completely alone, so what you now can do as a Legislature relative to candidates and ballot questions, you're still able to do. But the new (7) will limit ballot questions, and it will for all other public officials except for state senators, limit us just to ballot questions, not candidates. And after talking to Senator Karpisek this morning, also put in his verbiage which he suggested, and I think really helps this bill, too, affecting his or her government body. So in closing, what I would say to you is that this is a very important measure. It has broad-based support across the state. It is important because we do need to make sure that before the Legislature goes home, sine die, that we have a clarification of what we can and cannot do. With that, I'd be happy to respond to any questions and really appreciate your time this afternoon. [LB626]

SENATOR AVERY: Well, I appreciate you providing us with this detailed description of the amendment, because the amendment was pretty extensive, and that cuts down on our staff investment of time to analyze it. Thank you. [LB626]

LYNN REX: You're welcome. [LB626]

SENATOR AVERY: Any questions from the committee? Senator Price. [LB626]

SENATOR PRICE: Senator Avery, thank you. Ms. Rex, you know, in your comments, I was...a question came to mind. Do you know, do we have any cities out there that provide Wi-Fi for public consumption? [LB626]

LYNN REX: Well, for example, in...yes, I mean in Norfolk, Nebraska... [LB626]

SENATOR PRICE: Okay, great. [LB626]

LYNN REX: Okay. [LB626]

SENATOR PRICE: Because here's what I'm getting to. You know, you could be a public official using your iPod touch and send an e-mail. You hit off that Wi-Fi, the city pays for it. Boom, you popped it and unintentionally, you know. So I mean... [LB626]

LYNN REX: Yes. [LB626]

SENATOR PRICE: ...it brings...when technology comes up, we find you don't even know what you're doing. You're hitting the system, and if you don't see it and you're

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

Government, Military and Veterans Affairs Committee
March 04, 2009

doing something innocuous, and this happened. So I just want to, for the board and for the record, to say, we have cities with free Wi-Fi but you couldn't use it then, in case you would trip this. [LB626]

LYNN REX: That's right. [LB626]

SENATOR PRICE: Okay. Thank you. [LB626]

LYNN REX: Yes. Thank you for your question. [LB626]

SENATOR AVERY: Anyone else? Senator Pirsch. [LB626]

SENATOR PIRSCH: And thank you for your testimony here, and I haven't had a chance to digest all this; it's quite a bit. But just with respect to the last thing you pointed out that you said, and Senator Karpisek had utilized some language, page 5, line 5, the full sentence, "A public official or public employee under the direct supervision of a public official is not authorized by this section to utilize mass mailings or other mass communications at public expense for the purpose of qualifying, supporting, or opposing a ballot question affecting his or her government body," that just with ballot question. Can you do that with...is there other language that deals with candidate? [LB626]

LYNN REX: Well, no, only the Legislature. If you look on page 4, line 15, this is the section that deals with the Legislature itself. Only the Legislature can, in fact, deal with issues with candidates in terms of...for example, you, as a state senator, have the authority to issue a press release to say, I support Harry Jones or Sally Sue for something. Local officials would not have...or any other public officials would not have that authority. And on page 4, line 27, Senator Pirsch, everyone else except state senators will be limited only to ballot questions and only ballot questions affecting his or her government body. The reason why we do have the language in there dealing with, under the direct supervision of a public official, the reason why we have that is because when you have a local option sales tax question or a school bond issue or any type of bond issue, for example, there's a lot of work that goes on in terms of preparing information for the government body, making sure that people understand what it would do and what it would not do. And so you want to make sure your staff are also allowed to do that, and after the fact, once you've had the public hearing on what the proposed language may look like, then you want your staff to be able to continue doing research to figure out whether or not there need to be changes to that ballot question. So the staff needs to be protected in that regard as well. And that's why that language is there. [LB626]

SENATOR PIRSCH: Thank you. [LB626]

LYNN REX: You're welcome. Thank you very much. [LB626]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR AVERY: Any more questions? Senator Price. [LB626]

SENATOR PRICE: Just one more. Ms. Rex, page 2, line 17, where we talked about "Any such communication shall be kept to a minimum" and then the next one, "shall be responsible for payment"...I guess line 19... [LB626]

LYNN REX: Yes. [LB626]

SENATOR PRICE: ..."responsible for payment"...is that if someone asks you for payment, mandatory? How do we bill it? Just wanted to know. [LB626]

LYNN REX: Well, for example, right now the way that it occurs is that, for example, there are political subdivisions and others that have policies that basically say, on a monthly basis you'll reimburse the city of X for whatever individual calls you've made on a cell phone, for example, if that cell phone has an actual charge to it. This language is actually updated and, again, if you turn to page 6 you'll notice it is virtually identical to the language that's currently in 81-1120.27 for state employees as well as others, including the Legislature, I believe, and you'll note that the language used to be very similar to the lines on 21 and line 23 on page 6, Senator. "Essential personal long-distance calls shall either be collect, charged to a third party or a nonstate number, or charged to a personal credit card." That's the old language. We think this language updates it to make it clear that this is not optional. You will make that reimbursement. But many times folks are doing it, and there's no charge at all or there's a different system by which the public bodies actually ask their employees to reimburse them. [LB626]

SENATOR PRICE: Because I'm just not sure how you reimburse e-mails. [LB626]

LYNN REX: Well, I think that's the point. Some of it there would be no cost to it. [LB626]

SENATOR PRICE: Okay. [LB626]

LYNN REX: That's an excellent... [LB626]

SENATOR AVERY: Any more questions? [LB626]

LYNN REX: ...and it's a technology issue again, as you noted earlier. [LB626]

SENATOR AVERY: Seeing none, thank you, Ms. Rex. [LB626]

LYNN REX: Thank you very much. And I do want to underscore as well, Senator Avery, that these amendments...the only change from the bill itself are the ones that are

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

Government, Military and Veterans Affairs Committee
March 04, 2009

boldfaced there. Everything else is already in LB626, so thank you so very much for your courtesy this afternoon. I appreciate it. [LB626]

SENATOR AVERY: Thank you. Any other proponent testimony? Senator Landis. Welcome. [LB626]

DAVID LANDIS: Thank you. [LB626]

SENATOR AVERY: You've heard of it (laugh). [LB626]

DAVID LANDIS: David Landis, L-a-n-d-i-s, representing the City of Lincoln. I am the urban development director with the City of Lincoln. Sitting on your side of the desk, it's not uncommon to have local officials come in and advocate for or against bills. We lobby all the time. You get a chance to ask us questions. I hope you find it profitable; I hope you find it valuable, a chance to talk to local officials about how a bill impacts their district, and perhaps it's your district or another part of the state. It's a good exchange, and, in fact, when you've got that local official, you get a chance to put them on the spot, ask them tough questions, learn from them, and listen to their opinions. We can't do for the public what I hope you regard as valuable, which is to question, exchange information, get a local official's public opinion as they come here to lobby if we're in the context of a ballot question. The very conversation I hope that you find valuable with us we can't have with the public if it's a ballot question. And that's ironic, because you're entitled to do that as state senators, but we're not entitled to do that as public officials. You get to send out a press release, have the aide in your office type up a couple of pages, respond to a constituency like a neighborhood association that says, Senator, what's your opinion on the affirmative action bill that's on the ballot? You can type up a couple of pages, have your aide do it, put it in the mail, and send it to them. We can't. The information that you probably find valuable in this context, we can't share in another one, and when we're in that context, the only people who are in the public realm who get to do it are you and only you. We'd like to have a portion, but not all--a portion of that opportunity that you have for local officials, and I'll tell you why. There are relatively complex questions that we are the best source of information, and in giving that information, it is so easy to step across and make an evaluative statement. When at the end of our explanation to the public last year about Amendment 1--something that was on the constitutional ballot because of what Lincoln wanted to do--if the mayor said, this is good for Lincoln, it would have crossed the line, would have crossed the line from being totally factual to being opinion. Couldn't say, this will stretch tax dollars and support our local business. That's an opinion, would have violated the line; could be factual, but couldn't say those kinds of things that you and I say in a conversation every day with the limit and the line drawn where it is now. That line needs to be more flexible. It also needs to trust local officials, and it needs to trust the judgment of the public if public officials have gone too far. To go quickly back to this example that gives rise to Lincoln being here today to support this bill because of the particular provision that's in

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

Government, Military and Veterans Affairs Committee
March 04, 2009

it, ten years ago we sold a hospital. It was a public asset; we sold it, we got a bunch of money. We put it into a fund. The fund was to be used so that we could take the interest on the fund to support local health programs. The fund was created with certain limitations that were constitutional in nature that would not allow the corpus of the money to be invested in equity of any kind. That means that the kinds of things you can invest in is very narrow. It's not the kind of thing that you would do if you were a private citizen trying to maximize your return. You would look at all kinds of investment opportunities if you were looking to keep the corpus of your money together and generate income. We couldn't do that because of a constitutional provision. So we went with a relatively narrow amendment arising out of this circumstance to give us more opportunities for investment so that our return could be greater, so that we could do more business--not with tax dollars, but with the money from this health...this community health fund. That's not easy to explain. And we're the only people in town who have it, so when people come for information, who do they come to? They come to us. Now, we can come to the Legislature and explain why we wanted to do that. We can advocate; we can be a proponent. And as soon as we persuade you that that's the case, and you put it on the ballot, we then shut up. We can't say to the public the very things we said to you when we lobbied for the bill, because now we're transgressing these rules. We don't get to say, this is good for Lincoln. We don't get to say, this will help us provide more resources so that we can do more health for the people and not use tax dollars while we do it. That would be conjecture; can't promise that, but that's conjecture. It's not totally factual in its nature. The same rule of common sense that you live with which makes the ultimate disposition of whether you have overstepped the line or not between you and the public is, I think, appropriately extended in the narrow range in this bill to local officials as well. This is a variation on pot v. kettle, goose v. gander, samey-samey, so to speak. I'll be happy to answer any questions you might have.
[LB626]

SENATOR AVERY: You may remember those TV ads that were conducted on behalf of Amendment 1. I was deeply involved in that... [LB626]

DAVID LANDIS: Uh-huh. Sure, you were. And you're now doing this, the execution of that act, as a legislative act here... [LB626]

SENATOR AVERY: Right. [LB626]

DAVID LANDIS: ...which, by the way, we can come and say, what a great idea, let's do that. [LB626]

SENATOR AVERY: Yeah. And we were...our hands were tied. It was extremely difficult to do the ads and not cross that line, because you may remember Senator Nelson and Attorney General Bruning could only talk about the descriptive aspects of what Amendment 1 would do. They could not say, vote for it. [LB626]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

DAVID LANDIS: Um-hum. [LB626]

SENATOR AVERY: And if you look very carefully at those ads, they never once advocated voting for it. But it was put together in such a way that we got the message out (laugh) and it was successful. Any questions? Senator Giese. [LB626]

SENATOR GIESE: Thank you, Chairman Avery. So, Senator Landis, so what you're saying is that in today's society, mayors or city council people are breaking the law by saying this is good for our community. [LB626]

DAVID LANDIS: When the issue is on the ballot. The day before it's on the ballot, they get to say that. The day it's on the ballot, they have to stop saying that. And by the way, I don't understand that logic, do you? [LB626]

SENATOR GIESE: No, I don't either. Thank you. [LB626]

SENATOR AVERY: Senator Pirsch. [LB626]

SENATOR PIRSCH: And thank you for...this is kind of a new issue to me. Can the mayor, before it's on the ballot, make the comment, this is the greatest thing, we need to have an amendment passed that does this, our future derives on it? Makes that statement on day one; then it goes on the ballot, day two; day three, somebody else, not the mayor, says two days ago the mayor said that this is...I mean, can you use that in a way to essentially get the (inaudible)... [LB626]

DAVID LANDIS: A private entity could, a private entity could. [LB626]

SENATOR PIRSCH: Okay. [LB626]

DAVID LANDIS: The mayor couldn't repeat himself... [LB626]

SENATOR PIRSCH: Right. [LB626]

DAVID LANDIS: ...with a fresh...he couldn't have...she couldn't have her administrative aide type up the statement that she had made two days before it was on the ballot in answer to a question from a neighborhood association that says, tell us what you think is the most pressing question before the city. Now, you can send an e-mail back and answer a specific question. So, if a constituent said, what is your opinion on LB423, a public official, it looks like to me, could write back, I support it, I oppose it. But that's because it's a specific inquiry generated from the public to you. In other words, you get to answer a question. If it's not a specific question, then you've violated one of the terms of it, because it's supposed to be a specific inquiry. If they just say, tell us the most

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

Government, Military and Veterans Affairs Committee
March 04, 2009

pressing problem of the city, you're picking the topic; it's not specific now. And when you have your administrative aide draft those two pages to send back on a fax machine, and you say, here's the opinion and, by the way, this is the most pressing question and Lincoln needs to, you know, step into the twenty-first century and make sure that we have kiosks of public opinion gathering by computers on street corners, the mayor, he violated the law. You could say it two days before. You can't say it two days later. [LB626]

SENATOR PIRSCH: Just a...I guess, a little bit different question. Was it...and I was trying to follow the testimony earlier, but did somebody indicate that...or didn't Ms. Rex from the League indicate earlier that she believed a short time ago that...was this the particular part of the bill that she believed that you could utilize that this...because of some decision then, this is the part that is new, newly revealed, or was that some other provision? [LB626]

DAVID LANDIS: I actually think there are two or three ideas in the bill; there's more than one. I will tell you that the city of Lincoln was an advocate for this particular idea, because of our experience with Amendment 1, its complexity, and the fact that we were the sole source of objective data and we had a big stake in getting more resources for people in need. And it was just hard to do the facts and not say, and this will help us. You can't say, and this will help us, because that's an opinion. [LB626]

SENATOR PIRSCH: At the time, though, did Lincoln...I mean, was this the portion of the bill that everybody was operating under the belief that this was okay, and then there was some decision that came down? [LB626]

DAVID LANDIS: No. I think that's the de minimis standard that arose out of the Mike Nolan case. [LB626]

SENATOR PIRSCH: That was a different portion. Okay. Okay. Okay. Thank you. [LB626]

DAVID LANDIS: There's more than one idea in here. This one is not that situation. [LB626]

SENATOR PIRSCH: Okay. Thank you for clarifying that. The other thing that I wanted, is this...what was then the reason that...what is the harm against which this law currently was...it stands now? What was the harm that this law was created to address, or why was this law created? [LB626]

DAVID LANDIS: I'm going to guess that there was a fear of electioneering from people who have access to press coverage, news coverage, public resources, taking sides in political campaigns. Get it, makes...I understand that rationale. This is limited under the

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

Government, Military and Veterans Affairs Committee
March 04, 2009

language that's been offered to you in the amendment to ballot questions that affect the local jurisdiction and only that. Now, it's true that you get to have an opinion about any ballot question, and you get to do it about candidates. We're not asking for that. We're just asking for the portion of power that you have and authority that you have with respect to ballot questions affecting our jurisdictions. We'll leave the candidate questions...we don't need that, and we don't need it for ballot questions that are general, that don't have an impact on us. We just want to serve as a conduit and not only of information, but then not have to sit there as a self-censor, picking words out that have some qualitative element to them. Better, better is a qualitative word. It's not a factual word; it's a qualitative word. And...I don't want to then have to figure out whether or not I'm, you know, the one page that my (laugh)...my assistant is doing to, you know, to give that piece of information back to a neighborhood that wants that answer, and find myself in violation of state law. [LB626]

SENATOR PIRSCH: How hard to delineate between factual and opinion, at times. [LB626]

DAVID LANDIS: That's right. [LB626]

SENATOR PIRSCH: Yeah. Thank you. [LB626]

SENATOR AVERY: Thank you. Senator Price. [LB626]

SENATOR PRICE: Senator Avery, thank you. Senator Landis, thank you. I could see in my mind where the public may not be served if the current administration of a city wants to go forward with a project that has a large tax expenditure, and they're out there before the media and putting a lot of things out. Let's say an arena in Lincoln... [LB626]

DAVID LANDIS: Thank you. Fair enough, fair game. [LB626]

SENATOR PRICE: ...and they want to put it up, or a ball field in Sarpy County. That way we're simpatico, okay? [LB626]

DAVID LANDIS: Yes. [LB626]

SENATOR PRICE: And that they would have...they would have an uneven playing field with the general public, and I can see that's why this is there, because when the ballot is on a question, I mean that you get the opportunity. I mean, but I'm not being the sharpest tool in the shed, but I did a lot of stock photo and a lot of stock video. Then I won't have to worry about you saying it ahead of time; I'll just reshoot that, you know. Again, I could really actually see where in the public's interests, when dollars are being spent, you shouldn't be making comment qualifying a ballot issue. [LB626]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

DAVID LANDIS: Let me take...let me acknowledge the problem that you're aiming for and let me give you what I think is an alternative way of attacking...let us say what we both think is a wrong. Okay? John Milton in Areopagitica says that the whole purpose of free inquiry is to let the fight between the truth and falsehood occur without restriction, because that is the way in which truth finds favor; that falsehood stems from censorship from not being able to talk, from having limitations on inquiry. Milton's argument is that the absence of limitation on conversation and communication is the truth's best tool. What we've suggested is that we're going to not let this be in the arena of ideas. We won't let it be in the arena of the public campaign, in which there are plenty of parties with lots of resources, and that we're fighting each other; that has press coverage; that's watched by a public. We'll take it into the form of what you may say and what you may not say and put it into law. In the event, let's imagine, some public official were to act in a way that you and I might both regard as crossing the line, electioneering--for one thing, I don't think this, by the way, is a gateway to doing that, but let's imagine that it does--there is an alternative form, and that is, it becomes an issue itself. It winds up being in part of the campaign. It winds up being the next campaign that person does when he runs for public office. It becomes part of the conversation of the editorial page and the letters to the editor. What happens is, it's part of free political debate which, if you believe as Milton does, is the best way of getting at the truth, as opposed to saying we will let you say some things but not others, and the state will draw the line, and we will tell you what is permissible speech and what is impermissible speech, and you will look in a section like this to find out what that is and then wind up Mike Nolan at home, and different issue...I'm mixing issues now, but sitting at home after hours on his own computer, having crossed a line that he could not predict in state statute, that he'd said the wrong thing at the wrong time. That's the difficulty of using the law at trying to get at what is or is not permissible speech. I'd side with Milton. You know why? The public has to be respected, I think, for their ability to have a little radar here for when somebody steps over the line, somebody does something untoward, somebody abuses their office, and there is a free press ready to tell them, and there's usually an opposition that's very quick to claim foul when that happens. I think that's just as good or maybe even better of a technique than trying to delineate in state statute what you can say and what you can't say. My opinion. [LB626]

SENATOR PRICE: Thank you. [LB626]

SENATOR AVERY: Any more questions from the committee? Thank you. Any more proponents? It's the day for former senators. [LB626]

MICK MINES: (Exhibit 4) It is, Senator. Senator Avery, members of the committee. For the record, my name is Mick Mines, M-i-c-k M-i-n-e-s. I appear here today as a registered lobbyist for the League of Nebraska Municipalities. There are more coming behind me to speak, so I will be brief. My role here today is to show you another example of why this proposed legislation makes sense in clearly defining what the use

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

Government, Military and Veterans Affairs Committee
March 04, 2009

of public resources means. The example that I'll give you today is, Omaha City Councilman Jim Vokal in 2005 was running for reelection to the Omaha City Council. You may remember that was in the media. By the way, Councilman Vokal...I spoke to him yesterday. He wanted to be here, but he is in a different campaign mode today and cannot be with us. In this case, in 2005, City Councilman Vokal had a television commercial put together, 30-second spot, and part of that commercial was filmed in his city council office behind his desk with his hands on his keyboard. A complaint was filed with Nebraska Accountability and Disclosure by the director of the opposing political party, stating or saying simply that he has violated the act that prohibits public officials from using personnel, resources, property for their own purposes of getting reelected or for their position. The commission accepted that, had a hearing. Councilman Vokal was fined \$100. The contention was he used public resources for his campaign. Councilman Vokal appealed that ruling to district court, claiming that his use of public property was not use in that form. His office has no lock on it, and he didn't really use resources; he was simply there. The commission concluded that he had violated the act, fined him \$100. Councilman Vokal appealed that to district court, and that decision went in his favor, because he did not use resources for his own personal advancement. The commission then filed that...it went to Appellate Court. The Appellate Court simply said that in North Dakota there was a ruling that concluded that you must use...you must physically use those resources, and since he had not...and, oh, by the way, had he not been in a commercial, but been merely in the media responding to and answer a question in his office, it was virtually the same, the result was the same. So City Councilman Vokal won that decision as well, and you have that before you. There's been terrific testimony about the implications of campaigns and public dialogue. This is just another example why the League feels that this particular legislation needs to be crafted more clearly, so that public officials understand the barriers, and we as elected...or you as elected officials are able to respond to that. So, with that, I would end my testimony and urge passage of the legislation. [LB626]

SENATOR AVERY: Thank you. [LB626]

MICK MINES: Thank you. [LB626]

SENATOR AVERY: Any questions? Seeing none, thank you for your testimony. [LB626]

MICK MINES: Thank you, Senator. [LB626]

SENATOR AVERY: Next proponent. [LB626]

RON WITHEM: Senator Avery, members of the Government Committee, hopefully, I will be the last of the has-beens that come here today and testify on this bill (laughter). My name is Ron Withem, W-i-t-h-e-m. I'm representing the University of Nebraska. Senator Landis gave the philosophical basis of our argument, so I will not repeat that. I'll just say

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

Government, Military and Veterans Affairs Committee
March 04, 2009

ditto to that, and simply indicate that most of the discussion today so far has been in regard to the local subdivisions, cities, school districts, etcetera. This law also applies to the University of Nebraska, and when there are ballot initiatives that impact upon the university, previous to this, it has been our practice to prepare factual documentation on the impacts of passage or defeat of a particular ballot initiative on the university, and attempt to communicate that to the public. We do try to avoid stepping over the line and electioneering, campaigning, sending out mass mailings urging defeat or support. This last year, our legal counsel cautioned us as we were preparing a communication initiative to talk about the implications of passage of Initiative 424, the anti-affirmative action measure. And because we were cautioned not to engage in a full-blown communication strategy, I think the public was denied the benefit of hearing from one of the entities that would be most strongly impacted by that measure when we could not comment to the public and talk about what we saw as logical consequences. I think LB626 would remedy that situation. I do not see it putting us in a position of full-blown electioneering. That is not our role. It should not be our role. But unless you can hear from those individuals that are most directly impacted by a constitutional amendment, a ballot initiative, what the consequences of passage of that will be, I think the citizens are denied the opportunity for a full and fair debate. With that, if you have any questions, I would be happy to respond. [LB626]

SENATOR AVERY: Thank you. Any questions from the committee? Seeing none. [LB626]

RON WITHEM: Thank you. [LB626]

SENATOR AVERY: Any more proponents? All right, we'll move to opponents. Are you a proponent? [LB626]

CHRIS DIBBERN: Proponent. [LB626]

SENATOR AVERY: Okay, you got to move quickly. (Laugh) [LB626]

CHRIS DIBBERN: Yes, sir. Good afternoon. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n. I'm the general counsel for the Nebraska Municipal Power Pool. We have over 200 communities in seven states that belong to our organization. Our Nebraska members would fall under this bill, and we support LB626 because it's logical, it's simple, it's straightforward, and it guides governing bodies on what is required. Winston Churchill, it's two quotes today for you: "It's not enough to do our best. Sometimes we have to do what is required." So we'd like to know what is required under the act. The Nebraska political accountability department plays an important role in Nebraska, and its staff has been invaluable to our members. But LB626 directs the policy of the state. You as policymakers can tell us what that policy is, and I think the word "de minimis" needs to be defined now more carefully, and the use of communication systems looks

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

Government, Military and Veterans Affairs Committee
March 04, 2009

logical and straightforward. And lastly, we support the second part of the bill, too, the ballot issues. Questions...and I like how it's been narrowed, that it's questions affecting the governing body, that we should be able to comment on it. And, Senator Price, you asked a very good question. Should these two sections be together in this bill? I think logically, yes, because it's the same subject matter under the same statute of Chapter 49. You tend to look at things, what are germane to that chapter, and both of these are germane to the chapter. So I think it was logical they put them together, and we support them both. [LB626]

SENATOR AVERY: Thank you. Any questions from the committee? Additional proponent testimony? [LB626]

JOHN McCLURE: Good afternoon, Chairman Avery, members of the committee. My name is John McClure, J-o-h-n M-c-C-l-u-r-e. I'm vice president and general counsel for Nebraska Public Power District headquartered in Columbus, Nebraska. NPPD has approximately 2,200 employees around the state of Nebraska and places a high priority on ethical conduct. We have an ethics policy. We train all new employees on the key points of the Accountability Act. We even have an outside ethics line. If an employee thinks there's an ethical issue, and they don't feel comfortable approaching a supervisor, they can anonymously contact an outside 800 ethics line and provide information that's investigated by our internal audit group. So ethics and compliance with accountability we think is highly important. I would also point out that the staff of the Accountability Commission has always been very helpful and forthright with us in providing counsel as we've asked about various questions. However, when this decision came down last summer that was mentioned earlier involving Mr. Nolan, there were aspects of that that caused us some considerable concern. We're not here so much on the ballot side of this issue as simply what is appropriate for a public official or a public employee with respect to personnel, resources, property, or funds under their control. There's a very similar statute that applies--one to the ballot question issue and one just to general conduct of the governmental entity. My concern after reading that, because it was so pervasive and without any exception whatsoever, could I pick up the phone on my desk and call my wife and ask her to have lunch, or did I need to go down and use a pay phone, because there arguably was a 25- or 35-cent personal benefit...financial benefit to me by using the phone in my office. I think it's that kind of harsh outcome that is potentially there. We're told in that decision that this applies 24 hours a day, 7 days a week, and certainly our operation is a 7 by 24 operation. We have people that may incidentally use their computer to send a communication home. I think the point was made earlier by Senator Price, technology has moved in such a way that public policy probably has not kept up with it, and we think that LB626, as amended, is a very rational approach to be reasonable, to have common sense, to allow public employees and public officials to utilize personnel, resources, etcetera, in a manner that is...that makes sense and is reasonable, and is not going to subject you to some sort of a gotcha. A comment was made earlier that if someone was calling home about something minimal

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

Government, Military and Veterans Affairs Committee
March 04, 2009

as opposed to spending three hours on the phone talking about house plans, that was a good contrast on what was proper. That's not just public equipment. That's are they doing their job? No employee should be spending three hours at work doing personal business, and the fact of the matter is, with this technology, you certainly can check on that. We can monitor e-mail communications, cell phone usage, because you get documentation, and you have data that allows you to check on that. So I think the likelihood of abuses is small and, again, we believe that LB626 is a reasonable approach and should be advanced by this committee to the full Legislature. I'd be happy to try to answer any questions. [LB626]

SENATOR AVERY: Questions from the committee? I see none. Thank you, Mr. McClure. [LB626]

JOHN McCLURE: Thank you. [LB626]

SENATOR AVERY: Additional proponent testimony? Do we have any opponent testimony? Anybody wish to oppose this? [LB626]

FRANK DALEY: Chairman Avery and committee members, again, my name is Frank Daley, D-a-l-e-y. I'm the executive director of the Accountability and Disclosure Commission, and I'm feeling awfully lonely this afternoon (laughter), but I am here today to express the commission's opposition to LB626. Currently, the law, to paraphrase, is this: No public official and no public employee shall use or authorize the use of public resources for the purpose of campaigning for or against the election of a candidate or for or against the qualification or passage of a ballot question. Let me tell you what the current law does not do. It does not prohibit any public official or any public employee from saying anything they want. It does not prohibit any public official or any public employee from taking any position they would like on any ballot question or any candidate. This is a prohibition against the use of government resources for campaign purposes. That's the heart of it. And so I think in evaluating LB626, you have to first ask yourself this question: Is this prohibition against the use of public resources for campaigning a good public policy or a bad public policy? If you think that this is a bad public policy, well, you should not advance LB626. If you think it is a good public policy, you should still not advance LB626 for the reason that I think what you're going to find, rather than clarifying, it's going to create more confusion. And I know there's an amendment here, and the proponent has been kind enough to provide me with copies, so I'm kind of addressing both as I go along. Section 2 of both the bill and the amendment generally provides that a government body may adopt a policy exempting itself from the Accountability and Disclosure Act. It may either be in an employment contract or in some labor negotiation, but it also says it may just adopt a policy exempting themselves from the Accountability Act. So I guess what that means is that it could exempt itself from the prohibition against the use of public resources for campaign purposes. And how could that play out? We've got the school board that modifies the

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

Government, Military and Veterans Affairs Committee
March 04, 2009

employment contract of the school superintendent such that he is exempt from the prohibition against the use of public resources for campaign purposes. And he is instructed, by the way, your job is now to get that school bond issue passed, and so he can authorize or use school resources for the purpose of radio or TV or mass mailings, direct mail, whatever it happens to be, to convince the public that they ought to vote yes on the school bond issue. So what you've done is you've created a situation that rather than citizens of different points of view trying to convince each other what the best course of action is for their school district, you have the school district trying to tell them what they ought to do using their money to do it. Let me take another example of what would be possible under both the bill and the amendment. A city council member has either proposed an ordinance or voted against an ordinance, and it's angered a segment of the population such that a recall petition is taken out. Under this Section 2, there would be nothing that would stop the city council from closing ranks around its beleaguered colleague and enacting a policy that exempted its officials and employees of the city from using public resources to campaign. Now you have a situation in which the city is essentially using its resources to perpetuate one of its own in office. That is possible under both the green copy of the bill and under the amendments of the bill. I don't think that's really what we want. Now let me tell you that that really is the heart of it, not that public officials shouldn't have the opportunity to speak; they should. Not that public employees shouldn't have the opportunity to take positions on ballot questions. In fact, the statute is pretty clear that nothing in the statute prohibits them from taking any position that they want. The prohibition is against the use of public resources. These are trust funds, and the citizens that vote on candidates, the citizens that have to vote on ballot questions need to discuss that among themselves. There are things in this bill which I think are actually very good and very useful. By way of example, the provisions that deal with the use of the communication system and the amendment that's updated to include cell phones and computers and e-mail for what I'll call essential personal business. That is, contacting the babysitter to say you're going to be late getting home because of something going on in government or, you know, contacting that doctor or day-care center or things of that nature, things that are defined as, apparently in the bill, as essential personal business. The language there mirrors the state policy for use of state telephones, and there is a public policy that is served by that. Now, the policy was developed originally in the pre-cell phone days, and as would apply to someone in my office, if the secretary gets a call from the day-care center that the child is sick and someone has to pick up the child, well, the secretary can call her sister and have her pick up the child. Well, in the pre-cell phone days, that meant they had to go 11 floors down to where the pay phones were, make the call, and come back. So that was a significant interruption to our business day. On the other hand, the ability to make that call that was a local call, no charge to the state, kept that person at their work site and that serves a valuable government purpose. Guidance such as that is a good thing, and I really do like the updates that are contained in the amendment. That's a very good thing. Another good thing which I think the bill does is it clarifies the idea that regardless of any prohibitions, a public official or public employee can always identify themselves

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

Government, Military and Veterans Affairs Committee
March 04, 2009

by the position or office they hold. So that if Governor Dave Heineman is appearing at a campaign event or is supporting a ballot question, he can be introduced as Governor Dave Heineman without worrying about, gee, using the title, Governor, did I violate the Accountability and Disclosure Act? Is that a violation of law? I don't think it is now. However, it certainly doesn't hurt to clarify that if it cuts down on some of the concern that public officials and public employees would have. By and large, though, I think what LB626 and the amendments do is they, not clarify, but do just the opposite. It fragments the system, so what you have is a situation where you've got a general prohibition against the use of public resources for campaigning for ballot questions or candidates. And then there are multiple exceptions which are actually very, very broad. Section 2 can exempt anything. Section 4, I believe it is, which mirrors the exception for the Legislature also is very broad. So what we have is a situation where we set up an expectation by members of the public that there's this prohibition against my public officials trying to convince me with my money that I ought to vote a certain way on a ballot question. And when they bring it to the attention of the Accountability Commission or other authority for address, we're told, well, yeah, that's true, but here's an exception because they're talking about a ballot question that affects their community, and so it's not completely left to the citizens, they can use public resources to communicate; or, well, this is one of the communities that's exempted itself from the application of the Accountability and Disclosure Act in its entirety, and so, yeah, the prohibition is there, but there really isn't much we can do about it. Now, I understand that some of these areas can be awfully tricky, and to the extent that there's legislation that tends to clarify that in a uniform and logical way, I think that's probably a good idea, and certain portions of this bill do just that. But I don't think, as a whole, the bill does that. Now, one thing I'd really like to say, first of all, I want to acknowledge the motivations of the folks that came here as proponents, because I know their motivations were sincere. I recognize that I'm in a different situation than they are. When I deal with members of the public, it's often as a voice at the end of a telephone line or as a signature at the bottom of a letter, and that's a lot different than working for a city or a village or a school district or a natural resources district where you have to walk around on the street all day and look your constituents in the eye. Their job is a lot harder. However, I think it comes down to whether or not you think a fundamental policy is good policy or not good policy, and that is, should the resources provided by government for carrying out government business be used for things such as ballot questions and candidates. Thanks for the opportunity to talk with you today. [LB626]

SENATOR AVERY: Thank you. Senator Price. [LB626]

SENATOR PRICE: Senator Avery, thank you. Again, Mr. Daley, thank you very much. You brought up a good point. If we were to go forward with this, as your interpretation there of paragraph 2 on page 1, line 11, where they exempt themselves, well now, what about the \$5,000 threshold? Do they exempt them from that too because you could find...? [LB626]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
March 04, 2009

FRANK DALEY: Darned if I know. [LB626]

SENATOR PRICE: ...you could funnel millions of dollars through that, and they wouldn't ever have to report it, and they could campaign on any ballot initiative they wanted, and they'd be absolved of reporting procedures. [LB626]

FRANK DALEY: It says, "exempt themselves from the Nebraska Political Accountability and Disclosure Act." It mentions the act as a whole. That's correct, Senator. [LB626]

SENATOR PRICE: Thank you. [LB626]

SENATOR AVERY: Any more questions? Senator Giese. [LB626]

SENATOR GIESE: Thank you, Senator Avery. Mr. Daley, can you tell me in recent history, other than Councilman Vokal and then former City Administrator Nolan, how many individuals have been cited for violations of...like in these two cases that they refer to? [LB626]

FRANK DALEY: I would say...I've been with the commission for roughly 20 years, and I would say that we're talking about fewer than half a dozen others. And those situations involved in two cases using government fax machines to notify people of a campaign event that was coming up or use of government e-mail to notify people of a campaign event, things of that nature. [LB626]

SENATOR GIESE: Thank you. [LB626]

SENATOR AVERY: Under Section...I believe it's Section 4,... [LB626]

FRANK DALEY: And are we in the amendment or bill, Senator? [LB626]

SENATOR AVERY: Yeah, it's the amendment, yeah. The new language under Section 4(7), do you have any difficulty with that language? It deals with...it broadens the language of the original...the original law dealt with members of the Legislature. This allows public officials other than members of the Legislature to be involved in ballot issues. Do you have trouble with that section? [LB626]

FRANK DALEY: I do, but only because I think it's still rather broad. It seems to me that the only thing it prohibits is mass communication, and so if it were simply something by which...if it were simply something by which a public body could make a policy statement or something of that nature, I think that's probably okay. But there already is a section that essentially does that. And, for example, if you look up at Section 4, about three paragraphs before the paragraph you're looking at, this section does not prohibit a

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

Government, Military and Veterans Affairs Committee
March 04, 2009

governing body from discussing and voting upon a resolution supporting or opposing a ballot question. And then there's something that deals with public power districts which is a little bit different. So I mean, there is an area by which public bodies can act. They can hold a hearing. They can discuss whether this ballot question is a good thing for the city or a bad thing for the city, and they can adopt a resolution in support of or opposition to it. That's the opportunity to use public funds to provide some input as to how a particular ballot question will affect a particular political subdivision, and that strikes me as a good thing, because if it's a school bond issue, it's the school that has the information that people need. However, when you get into the realm of opening it farther than that, where public officials and public employees can use public resources to express their opinion on whether or not this is a good thing or a bad thing, I think you get into a dangerous area whereby you've got the citizen trying to gather his own resources on an issue competing with, in some cases, the unlimited resources of government to do the same thing. I mean, that certainly can have the...that can create a situation where a small group of people in control of a certain political subdivision have the opportunity to drown everyone out, and while, you know, gosh, if there are folks out in the private sector that can gather up the resources to speak widely and largely in all sorts of media, that's one thing. They've collected that money themselves, and they've made that effort themselves. But when you've got the government doing it with the money that the taxpayers have essentially put into the system involuntarily, and that's being used against them, that seems to be not a good thing. But I think that's the crux of the public policy that you have to decide, whether that's a good thing or a bad thing. [LB626]

SENATOR AVERY: Uh-huh. Yeah. Yeah. Thank you. Any more questions? Seeing none, thank you, Mr. Daley. [LB626]

FRANK DALEY: Thank you very much. [LB626]

SENATOR AVERY: Any more opponent testimony? Anyone wish to speak in a neutral position? Mr. Spray, welcome. [LB626]

J. L. SPRAY: Mr. Chairman Avery, members of the committee, I am J.L. Spray. I'm an attorney here in Lincoln, Nebraska. I have the pleasure of representing a gentleman named Michael Nolan. Just by way of background, I've done a couple stints as a member of the Accountability and Disclosure Commission, and I've also represented dozens of candidates, candidate committees, ballot question committees, individual candidates and contest recalls, etcetera, so I have some practical background in this. What I think maybe hasn't been said yet and goes to the question Senator Giese just asked, there are really two parallel universes out there. Now, I don't think anybody is sitting here kidding themselves that within the range of my voice there are hundreds of people who have their computer on MSN or e-mailing a friend or using their state resource for some personal use. That goes on every day, their PDA, it can't help but go

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

Government, Military and Veterans Affairs Committee
March 04, 2009

on. You receive information from people unsolicited; it happens. So what does the Auditor, who has concurrent jurisdiction over this, do? He excludes things that are de minimis and incidental so he can go audit an NRD or a cemetery board or a city, and if he finds that kind of activity going on, his policy is to ignore it and treat it as de minimis and incidental. Then we have the Accountability and Disclosure Commission, and when I appeal to them in the Nolan case I say, look, did it at home, his own computer, his own software, didn't know it was happening, used 1 of the 250 slots, Senator Price, the city owns, some of which they make available to the public to go to the library and use that I would argue didn't cost anything, but if it did cost something was a fraction of a penny, and he's fined \$1,000 for that one...one e-mail transmission. You know, that's not inconvenient; that's not fair. I mean, this is a fairness issue. We have to get these two things back on one track. And my concern is that the commission says to me when I plead with them, please, let this go, this is nothing, this is a waste of your time, I could file a thousand complaints tomorrow, I could send random public records requests and hit people's computers and create claims against every person who works in this state for a government institution, please just let this go, their answer is, we can't, we can't. And so, what I'm asking you to do, although I have to do it in a neutral position, because our case...this isn't special legislation and I'm not representing anybody, but what I'm suggesting you should do is put these two things back on track. Whatever policy it is you decide to do, tell these folks what they can and can't do, and give the commission, I think, some wiggle room in this. So that's what I wanted to add, Senator Avery, and I'll... [LB626]

SENATOR AVERY: So this will be the "wiggle bill" (laughter). [LB626]

J. L. SPRAY: The "wiggle bill" (laugh). Well, and I think several other people have acknowledged that. I don't know that I'm the first person to suggest that in some ways we're not giving some more discretion, but really, their hands were tied with us, or at least that's the position they took. [LB626]

SENATOR AVERY: Yeah. Any questions from the committee? Thank you. [LB626]

J. L. SPRAY: Thanks, Senator. [LB626]

SENATOR AVERY: Any more neutral testimony? [LB626]

SENATOR PIRSCH: Good afternoon. Whenever you're ready. [LB626]

BETH BAZYN FERRELL: Good afternoon. Okay, thanks. Senator Pirsch, members of the committee, for the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm an assistant legal counsel with the Nebraska Association of County Officials. The NACO board chose to take a neutral position on this bill for some of the same reasons that Mr. Spray just pointed out. Common sense really should prevail, according to what

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

Government, Military and Veterans Affairs Committee
March 04, 2009

our board talked about. Elected county officials have a duty to their constituents to run their offices responsibly, and that includes complying with the terms of the Accountability and Disclosure Act. Up until the decision this fall, we thought we had some of that wiggle room, and it was pretty clearly laid out what we could and couldn't do as far as regulating the conduct of employees related to the use of public resources within the office. We'd much rather work within a context of something like LB626 that gives us some wiggle room, that gives us some discretion and some guidance about what county officials can and can't do. So while our position really is officially neutral, it is with some strong concerns that we need something to show us what we can and cannot do. I'd be happy to try and answer questions. [LB626]

SENATOR PIRSCH: Very good. Are there any questions? Senator Price. [LB626]

SENATOR PRICE: Senator Pirsch and Ms. Bazyn, so in considering wiggle room and IT and technology, I'm thinking, defining off-duty and defining a personal device, terminal device so if you use your PDA or your iPod touch, whatever you do, and then you launch it and then it hits the servers, you know, is that the type of wiggle room you want to know? Is that a place where we could start for a line in the sand, as you would? Because, I mean, this is a tough thing to do, to provide wiggle room in law. And normally, I don't think they like to hear wiggle room. People make a lot of money on wiggle room. So I want to see how definitive we can be about this. [LB626]

BETH BAZYN FERRELL: And I think that would be a great place to start. I would just give you an example of a question that I was asked. After our county board workshop, we had a presentation about this, and a county board member came up to me and he said, okay, so when I am not able to...I'm on vacation or something, and I put up a note on my county e-mail that says I'm out of the office for such and such a time, if you need to get a hold of me this is how you do it, if it's a personal issue, here's my personal e-mail address to, you know, separate the county issues from the personal issues. He said, can I even do that? You know, there are things like that that really get very specific, and I think, you know, we don't have any ability to answer that, and that wiggle room might, you know, might give us some guidance. [LB626]

SENATOR PIRSCH: Any further questions? None? Seeing none, thank you very much for coming down this afternoon. Are there any other individuals here to testify in the neutral capacity? Seeing none, Senator Karpisek to close. [LB626]

SENATOR KARPISEK: Thank you, Senator Pirsch, members of the committee. Again, the two points of this was the de minimis use and what is it. I think we've heard that. We don't know. The point comes back up with Mike Nolan being fined \$1,000 to send two texts or two e-mails. One went through the right channel, and one went through the wrong one. He didn't know; he couldn't help it. Now, I think that just seems excessive; hence, the reason for the bill. The ballot issue, affirmative action, I heard many people

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

Government, Military and Veterans Affairs Committee
March 04, 2009

say, well, the university hasn't said anything about this. I guess they don't really care. Well, they didn't think they could say anything. Now we hear that maybe they could. Again, I don't know. I don't know who does know. How do we decide these things? I think that people just don't know. Again, what this would do would be to try to codify what is being done now. What people think is okay just to get it written down. I think it would help Mr. Daley, because I know that he doesn't want to hear Michael Nolan's name probably one more time (laugh), because I think that was a tough case for him; I'm sure it was. That is the whole question here. The opinion part, is it my opinion? I think it's things that we as state senators take for granted. We can say that. I don't know about Senator Giese, but I would say when I was mayor I probably stepped over that line and didn't know it. Giving my opinion on something on a ballot, a city sales tax, of course, I said, well, I think it's a good thing, we're going to use it for roads and bridges and streets. I mean, jeez, how else will people know what we're going to use it for if we can't talk about it? I guess until it gets on the ballot, well, how does it...when does it get on the ballot? Question for me: Is when the city council decides it's going to go on a ballot? Is it when the ballots are printed? I would say when it's going to go on the ballot. So, again, there's a lot of things to say, that arena bill, if things got changed, how things have gone through that whole process. Steel goes up. It gets...okay, it's going to the ballot. Steel flies up. They go to the mayor. Well, what's this new steel price going to do? Well, I can't tell you, because it's on the ballot now. Well, again, I think it just clears things up, helps out everyone to know where they're at. I don't think anybody is being...well, there might have been a couple gotchas, not on purpose by either side. So that's the whole gist of this. I think that something needs to become of this bill. We can hash it out--what's good, what's not good--but there is a problem. There's a lot of concern. If I could get the three past senators to vote on the committee (laughter) then we would have it. (Laugh) So anyway, if there are any further questions, I'd be happy to try. [LB626]

SENATOR AVERY: Senator Price. [LB626]

SENATOR PRICE: Senator Karpisek, again, thank you, Chairman Avery. Senator Karpisek, so let me understand this then. You're okay with public money being spent to campaign on a ballot initiative regardless of what it is or whatever, on, yeah, a ballot initiative. So if NPPD or anybody for or against something, if there's any type of ballot initiative out there at all, you're okay with the campaigning of public dollars with no restrictions. [LB626]

SENATOR KARPISEK: No, and I think that's one place that we could try to clean this up a little bit. [LB626]

SENATOR PRICE: Sweet. [LB626]

SENATOR KARPISEK: The thing is to give the public the numbers, give them the...what

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

Government, Military and Veterans Affairs Committee
March 04, 2009

I think about it as the mayor, as the senator as we do now. No, now, that is going to be a problem, Senator, how we're going to do that. Is it part of the job of your AA to make a spreadsheet? I think so. Is it the job of your AA to go get a big map drawn out, and do a bunch of public hearings and get on...schedule press conferences, make signs? No. So, no, I do not agree with that, but I think we have to let people know what we really are...what we're doing. [LB626]

SENATOR AVERY: Any more questions? [LB626]

SENATOR PIRSCH: Well, I was just going to see if Mr. Daley could answer the question with that admission, what's the statute of limitations to go against (inaudible) a former mayor? (Laughter) [LB626]

SENATOR KARPISEK: That was a long time ago, and we're not under oath, Senator Pirsch. I was just (laughter)...I was just using that as an example, yes, so I didn't drag Senator Giese into it. [LB626]

SENATOR GIESE: Thank you (laughter). [LB626]

SENATOR KARPISEK: Thank you. [LB626]

SENATOR AVERY: Thank you. Before we end this hearing on LB626, I need to read into the record two letters of support, one from city council member Jim Vokal, Omaha, and one from the Nebraska Association of Resource Districts. That does end the hearing on LB626. We'll now move to LB635. Senator Heath Mello. (See also Exhibits 5 and 6.) [LB626]

SENATOR MELLO: (Exhibits 1, 2 and 3) Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District. I introduced LB635, a bill that would equalize reporting requirements under the Nebraska Political Accountability and Disclosure Act for political committees that conduct independent expenditure activity. LB635 would require political party committees to abide by the same reporting requirements as independent committees. Currently, two types of political committees are allowed to make independent expenditures. Independent committees and political party committees. However, these two committees follow very different reporting requirements while conducting the same types of activities. Independent committees are required to follow a stringent reporting schedule that include more details in their reports than political party committees. I have handed out to the committee a copy of the two separate reports these committees are required to file: the NADC B-2 for political parties and the NADC B-4 for independent committees. As you can see, independent committees are required to provide much more detail than political party committees. Independent committees are required to give a general

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

Government, Military and Veterans Affairs Committee
March 04, 2009

financial summary of receipts and disbursements, including total amounts spent during a given election period, cash on hand amounts, amounts spent supporting or opposing state and federal candidates or ballot question committees, disbursements for administrative expenses, and other miscellaneous transactions. Independent committees are also required to file a report of late independent expenditure for independent expenditures made over \$1,000 during the 14 days leading up to an election. Political party committees, on the other hand, only report contributions and expenditures in direct support or opposition to a candidate or ballot question committee. They are not required to report cash on hand amounts, disbursements for administrative amounts or I'm sorry, administrative and miscellaneous transactions, nor are they required to file a report of late independent expenditure for independent expenditures made during the last 14 days leading up to an election. As some of you may recall from your last campaign, it is within these last 14 days that many of these independent expenditures are made whether on robocalls, direct mail, radio or television advertising. It does not make sense to require different reporting requirements for two committees undertaking the same type of activities. It is in the interest of transparency and fairness that I have introduced this legislation. All committees that undertake independent expenditures should be required to abide by the same reporting requirements and schedule. In conversations with Frank Daley, the executive director of the Nebraska Accountability and Disclosure Commission, I have discovered that if LB635 passes, there may need to be...there may need to be a clear up of some of the language in another section of the Nebraska Political Accountability and Disclosure Act. I'd be happy to work with the committee on any necessary amendments to clear up any potential confusion regarding the reporting requirements for political party committees. And actually I have a copy of a proposed amendment that would do exactly that. I urge the committee to advance this legislation to provide more transparency to our political campaign process, and would be happy to take any of the committee's questions. [LB635]

SENATOR AVERY: Let me ask you this. Does this mean that political parties would now have to file two campaign statements? [LB635]

SENATOR MELLO: No. They...political party committees file statements as it is. It just makes them follow the same reporting schedule and requirements that independent committees follow. [LB635]

SENATOR AVERY: So it wouldn't be an additional filing? [LB635]

SENATOR MELLO: No. [LB635]

SENATOR AVERY: Okay. Any questions from the committee? Seeing none, do you plan to stay around to close? [LB635]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR MELLO: I do. [LB635]

SENATOR AVERY: You can't possibly have anything else to do. Everybody else is finished. [LB635]

SENATOR MELLO: That's true. I'll wait around, but I'll probably waive. I'll just hang out here. [LB635]

SENATOR AVERY: Okay. Thank you. Anyone wish to testify in support of this LB635? Anybody wish to testify in opposition to LB635? Anybody wish to testify in a neutral position? Here comes Mr. Daley. [LB635]

FRANK DALEY: Chairman Avery and members of the committee, my name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Accountability and Disclosure Commission, and we are appearing in a neutral capacity as to LB635. The main thing I guess we want to convey to you, I believe that what the amendment does is that if the bill goes forward, it strikes the provisions of Section 49-1457 of the Accountability Act. Independent committees have one set of reporting requirements; political parties have a separate set of reporting requirements. There are a lot of similarities, but independent committees have a more comprehensive reporting requirement. I just want to be sure that there are not two places in the Accountability Act which state what a political party has to report because I think that would obviously lead to confusion. So if you like the concept of the bill and want to move it forward, you ought to amend the bill such that Section 49-1457, which applies only to political party committees now, is stricken from the Accountability and Disclosure Act. [LB635]

SENATOR AVERY: Is that your testimony? [LB635]

FRANK DALEY: That's my testimony, thank you. [LB635]

SENATOR AVERY: Can you perhaps provide some background on how we got to these two sections in the law? [LB635]

FRANK DALEY: And the answer is no. To be very honest with you, the provisions that apply to political party committees are part of the original Accountability and Disclosure Act. And the legislative...and the Accountability and Disclosure Act was part of a model law which was also part of a proposed ballot question, and when the Legislature took the matter up, it kind of focused on the big items but not the little items. And so there's no legislative history that indicates why the difference. Over the years, I've developed a line of speculation and it's this. Political party committees do lots of different things. And I think maybe it wasn't clear in everyone's mind what an expenditure was. So by way of example, money given directly to a candidate, everybody understood that's something that probably ought to be reported. On the other hand, get out the vote efforts, is that

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

Government, Military and Veterans Affairs Committee
March 04, 2009

something that needs to be reported? Contributions to federal candidates, is that something that needs to be reported? And I think the whole idea was that because parties do lots of different things, that maybe it doesn't work quite as well to have the same reporting requirements as candidates and independent committees and so forth. But I have to tell you that's pure speculation. [LB635]

SENATOR AVERY: Well, it's often been said that if you look at how we make laws, the outcome may not be nearly as bad as the process itself. Somebody I think compared it to making sausage. You might not mind eating the sausage, but you don't want to see how it's made. [LB635]

FRANK DALEY: Well, I don't know. Ask Senator Karpisek. [LB635]

SENATOR AVERY: Sometimes though we do add things to the law that relate to different aspects of existing law, and we don't always catch that and harmonize. [LB635]

FRANK DALEY: I understand. I understand. [LB635]

SENATOR AVERY: Senator Pirsch. [LB635]

SENATOR PIRSCH: Could you familiarize me a little bit, just briefly, about what independent committees...now these are so-called 529? [LB635]

FRANK DALEY: Not...527s I think you're referring to, and the answer is not necessarily. A 527 is a provision of the Internal Revenue Code and the code sometimes applies to political committees and sometimes does not. An independent committee is something we would typically refer to as a PAC. And PACs in Nebraska come in two varieties. There are the so-called committees that are standalone and they're sponsored by no one. And then there are the so-called separate segregated funds which are political action committees which are sponsored by another organization. And both of those fall under the heading of independent committee. By the way, the language there doesn't make much sense to me either. An independent committee includes one that's really independent and one that's sponsored. But go figure. [LB635]

SENATOR AVERY: Any other questions? Senator Sullivan. [LB635]

SENATOR SULLIVAN: Thank you, Senator Avery. Well, just looking, I'm not familiar with these two forms at all, but I would guess that this will be quite a task for the political parties to fit into this form. [LB635]

FRANK DALEY: In some cases, yes; and in some cases, not. There is some similarity as to what the two groups report. For example, both report receipts of contributions of more than \$250 by the name of the person, the address of the person, the amount and

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

Government, Military and Veterans Affairs Committee
March 04, 2009

so forth. And both report money that they give to candidates or committees and include name and address and so forth. Where I think the key difference lies is in two places. PACs kind of have--on page two of their reporting form--a running total of what they're taking in and what their cash balance is and what they're spending. Political parties do not. And so I think, in some cases, that might actually be problematic for political parties--where do we start if this applies? But it would provide more information as to what money, the total money being spent, the total money being brought in. That really is the key difference between the two. The other thing that's different is that independent committees are required to file these reports of late independent expenditures, so in other words, an expenditure for or against a candidate that's not given to a committee, but maybe it's directly paid to a newspaper to put out an ad. Political action committees or independent committees need to file a special report showing those if they come within the 14 days immediately prior to the election. Political parties do not. Those are the two significant differences which would be eliminated by LB635. [LB635]

SENATOR SULLIVAN: Okay. Thank you. [LB635]

SENATOR AVERY: Any more questions? Seeing none, thank you, Mr. Daley. [LB635]

FRANK DALEY: Thank you very much. [LB635]

SENATOR AVERY: Any more neutral testimony on LB635? Seeing none, Senator... [LB635]

SENATOR MELLO: I waive. [LB635]

SENATOR AVERY: Okay. That hereby ends the hearing on LB635. We'll now move to the last of the evening or the day, LB638. Senator Lautenbaugh. [LB635]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the Government, Military and Veterans Affairs Committee. I am Scott Lautenbaugh, the introducer of this particular bill. Let me give you some numbers. Nebraska Association of Trial Attorneys, \$7,000; Nebraska State Education Association PAC, \$35,000; Nebraska State Transportation and Political Education Committee or PAC--I'm assuming the proper name is--\$25,000. Those numbers, by my count, add up to approximately \$70,000, give or take. And that's the sole amount of the contributions received by this group, Campaign for Nebraska's Future or something to that effect. Here are some more numbers. This is the group set up by Ian Russell. The Brotherhood of Locomotive Engineers and Trainmen out of Cleveland, Ohio, \$10,000; the Carpenter's District Council of Kansas City and Vicinity, \$30,000; the International Brotherhood of Teamsters, \$5,000; the Nebraska Association of Trial Attorneys, again, \$15,000; the Trial Attorneys, again, \$25,000; the teachers' union, \$10,000; the teachers' union, \$15,000; the Sierra Club, \$1,500; Teamsters Joint Council, \$5,000; the UTU,

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

Government, Military and Veterans Affairs Committee
March 04, 2009

\$11,000; and \$11,000 again. That approximates \$100,000. Those are independent expenditure groups. There are others certainly. Those groups don't have limits to the contributions they can receive from PACs, from corporations. They can take as much as they want, they can spend as much as they want, they can call themselves whatever they want. Our campaign finance law, however, limited me and all of you, too, I think we had got to receive \$44,500 from nonindividuals in the last election cycle. The rest of it we had to raise from individuals, leaving aside the question of whether we abided or not. That illustrates why I am bringing this bill. Every time we try to limit speech, limit campaign donations, we end up shooting ourselves in the foot, in my opinion. And the law of unintended consequences applies with a vengeance in this area like no other. So now with the system we've set up, what we have is the candidates have their hands tied. It's very difficult late in the campaign to go out and raise individual money. I'm not sure why the Steamfitters of Ohio were so concerned about our local races, but they were to the tune of several thousand dollars. And that's fine. And that's legal. And if it's legal, it's also foolish, and that's the current state of the law. My bill repeals the Campaign Finance Act and replaces it with full and swift disclosure of campaign contributions so the public will be able to know on-line what we receive, who we receive it from, and in what amount. I think that is a much better, open, and more transparent system than what we have now under the Campaign Finance Act. I cannot, for the life of me, believe that the system we currently have is what was intended. And that anyone can argue with these independent expenditure groups running unregulated on both sides of the aisle and all sides of every issue that this is really what we wanted, and this is really good government, and this is really how a transparent campaigns should be operated. The current law is a sham, and it exists only...well, I can't say it was set up to disadvantage candidates, but that's certainly how it's worked out. And the best solution I can come up with is disclose everything to the public, let the public know what we're doing, let them know who's backing us, and let them make up their own minds and rightly so. I'd be happy to answer any questions you might have. There are no supporters speaking behind me, I don't believe. I'll stay to close. You're all probably weary by now, so I won't be sitting here very long, but I am happy to answer your questions. [LB638]

SENATOR AVERY: Let me start by asking you to clarify a little bit what you mean by a disadvantage to candidates, this current Campaign Finance Limitation Act. [LB638]

SENATOR LAUTENBAUGH: Well, in my race, for instance, I did abide. My opponent did not abide. But these expenditures were not by my opponent. So it's not like there was some fund I could tap to counter the activities of these groups. And I'm not saying that should be the case, but when you've got groups like this set up that can raise as much money as they want from PACs and businesses, nonindividuals, and spend as much as they want, but I have to raise half of my money from individuals, that puts me at a disadvantage. It's much harder to raise money from individuals. These are the entities that have the money and they're spending it without real restriction, in my mind.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
March 04, 2009

And I don't think you can restrict them effectively. I don't think it will happen, I don't think it will work. And I, philosophically, I don't like the idea of restricting speech. I like everyone knowing who's paying the bill, but that's what I mean by being at a disadvantage. The limits that apply to candidates do not apply to advocacy groups. I suppose you could argue, well, then we should limit the advocacy groups, these independent expenditure groups. I think that would fail. That's why I say we're at a disadvantage. [LB638]

SENATOR AVERY: Hasn't the U.S. Supreme Court ruled that money is not speech? [LB638]

SENATOR LAUTENBAUGH: Yes, I think they were mistaken. [LB638]

SENATOR AVERY: That's Buckley v. Valeo, right, 1973? [LB638]

SENATOR LAUTENBAUGH: I'll defer to you. [LB638]

SENATOR AVERY: It is. The...do you think that money can possibly corrupt the political process? [LB638]

SENATOR LAUTENBAUGH: Oh, absolutely. [LB638]

SENATOR AVERY: Is it also not true that independent expenditures by these committees that you are talking about, isn't that...aren't they regulated by federal law? [LB638]

SENATOR LAUTENBAUGH: If they are, I'm unaware of it. I'm not sure what limits applied in the last race here in Nebraska. And I can't imagine what those would have been. [LB638]

SENATOR AVERY: Yeah, I think that the truth is, and this, it frustrates me, too--I share some of your concerns--not that I would support repealing the Campaign Finance Limitation Act, but I think this is the kind of thing we tried to do here before; that is, to get some control over these independent expenditures, but the Supreme Court has basically tied the hands of states in doing that. [LB638]

SENATOR LAUTENBAUGH: I agree, so with the current situation, we can't change what the Supreme Court has said. So we now have a system where we limit our candidates, but not these groups. [LB638]

SENATOR AVERY: You...did you qualify for "fair fight money" under the CFLA in your campaign? [LB638]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR LAUTENBAUGH: I believe I would have. My opponent, my opponent did not exceed the spending limits, though, so I mean I was not... [LB638]

SENATOR AVERY: Uh-huh. [LB638]

SENATOR LAUTENBAUGH: I think I'd qualified, but I don't know if I would have accepted it if I had...if he had. But I did abide, so I suppose I could have gotten it. And I did go through the incredibly onerous process of disclosing all my contributions to the Accountability and Disclosure people back in April of 2008. So theoretically, if that's what you mean by qualified, I think I showed that I met the limit, the threshold, if you will. [LB638]

SENATOR AVERY: Well, you would have qualified if your opponent had exceeded the limit and exceeded the affidavit that he was required to file. [LB638]

SENATOR LAUTENBAUGH: Well, I think you also have to demonstrate that so much of your contributions come from individuals before you're deemed to, I can't remember how it works. It was news to me on the day before the filing deadline, so, as I recall it. So that was a good day here. But yeah. [LB638]

SENATOR AVERY: Questions from the committee? Senator Pirsch. [LB638]

SENATOR PIRSCH: You said that when the Chairman mentioned how about limiting independent expenditure committees and you said you didn't think it would work. And then some talk about the Supreme Court ties the hands of states. But the Supreme Court is obviously allowed from what we do at the NADC...holds that to be constitutional. You're saying there's a different paradigm the court lays out with respect to independent expenditure committees as with regards to all these other things, the entities, the NADC limits? [LB638]

SENATOR LAUTENBAUGH: I believe, and I'm deferring to actually what Senator Avery was just saying on this, is there are different rules that seem to apply. And so the problem we have here is we have the rules that we have applying to candidates, and I don't know--I was thinking out loud when I said we could regulate these other entities--I don't know if we can under the federal decisions. But that kind of underlines the point that then we're only regulating the campaigns and not these groups that seem to be doing more and more with each passing cycle. And if we can't regulate them, then that makes my bill really the only rational way to approach this, which is to say, stop limiting the candidates and let the gloves come off. Otherwise, we're fighting out of our weight at this point. Fighting above our weight, I should say, which is hard for me. (Laughter) [LB638]

SENATOR AVERY: Senator Janssen. [LB638]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR JANSSEN: Thank you, Chairman Avery. Senator Lautenbaugh, and I believe Senator Price and you could probably go toe-to-toe, so we have a committee member that could box you in your weight class, but. The gist of this, I think I've got it, so I kind of want to get back here, is you're saying that the CFLA, we're throwing that away. We're saying Janssen for Legislature, I can, if I had it, I could spend \$200,000 on the campaign. [LB638]

SENATOR LAUTENBAUGH: Actually, you can do that now. The point is... [LB638]

SENATOR JANSSEN: Well, that's true. Or I could take, I could take more money from one of the, anybody,... [LB638]

SENATOR LAUTENBAUGH: Yes. [LB638]

SENATOR JANSSEN: ...a corporation, whatever. They're going to give me...if the plumbers up in Cleveland are going to give me \$20,000 and I'm over \$40,000, I can still accept that and keep going? [LB638]

SENATOR LAUTENBAUGH: I think it was the Trainmen and Locomotive Engineers in Cleveland who were so concerned about our last election. And if they are so concerned about your next election under my bill, they could give you \$100,000. That would be disclosed to the voters. They would know that this union in Cleveland really loves Charlie Janssen and they could make their determination accordingly. But I think full disclosure is the best we can do. [LB638]

SENATOR AVERY: They cannot do that now. They cannot do that now because you can only raise half the spending limit. [LB638]

SENATOR LAUTENBAUGH: Yes. I thought you meant the full disclosure. [LB638]

SENATOR AVERY: Yeah. [LB638]

SENATOR LAUTENBAUGH: We can certainly do full disclosure now. The problem is we have less to disclose than the independent groups, as a total. [LB638]

SENATOR AVERY: Any more? Yes. [LB638]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Lautenbaugh, help me out here a little bit. We can do half with PAC money. Now these independents, are you saying that they could just give the money to a candidate or could they do something, campaigning, but not charge it toward the limit of the candidate? [LB638]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR LAUTENBAUGH: That's really what they do now. [LB638]

SENATOR KARPISEK: That's what I'm...is that what? [LB638]

SENATOR LAUTENBAUGH: Yeah. These groups exist. And once again, this is legal. No one is doing anything illegal here. These groups will set up, you know, Citizens for Motherhood and Apple Pie, and you have no idea who gives it to them until the disclosures are filled out. And they'll do independent expenditures. I have things show up in my mailbox during the election that said very nice things about me, and I did not write them. I had things show up that were otherwise, and I did not write them either. And they didn't come directly from my opponent, they didn't come directly from me. [LB638]

SENATOR KARPISEK: And that didn't have to--if it was nice about you--you didn't have to be charged toward your campaign. [LB638]

SENATOR LAUTENBAUGH: No, as long as I wasn't coordinating with these groups, as I understand it, they can do whatever the heck they want, and they do. [LB638]

SENATOR KARPISEK: Well, and I understand, I had a bad piece or two sent out about me, and people said, oh, I know the opponent, he wouldn't do that. I said yeah, right. Well, pretty soon a bad one came out about him that I knew nothing about, so all of the sudden, I had to retract some words. But I really agree that that isn't right. If it's about you, for you, it should fall under your campaign. So thank you for straightening me out on that. [LB638]

SENATOR LAUTENBAUGH: And really, to follow up on that, I don't even have a problem with these groups sending out mailings advocating for candidates. I do think that is free speech of a type. The problem I have is that we're conceding the field to them after a certain dollar amount. That I don't like and also the limits as they exist. You run a different race in Omaha than you do in Thedford. Media buys are cheaper in Thedford and the distance between the houses is a lot greater once you get outside of the metropolitan area of Thedford. So you can afford to do radio out there. You can't afford to do radio in Omaha. Well, you can if that's all you do. I think you have to rely on mailings on Omaha because the media market is different. So we have limits that apply regardless of where you are and what you're running for. And it is not the same race in an urban area as it is in Cherry County. So that is another problem with the current system we have, is that it doesn't make sense to apply it the same way across the board when you have to run different races in different places. [LB638]

SENATOR AVERY: Senator Sullivan. [LB638]

SENATOR SULLIVAN: Thank you. Senator Lautenbaugh, but even if this legislation

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

Government, Military and Veterans Affairs Committee
March 04, 2009

were to pass, that still is not going to contain the independent expenditures. [LB638]

SENATOR LAUTENBAUGH: You're right and we can't. So the only thing we can do is not disarm ourselves. [LB638]

SENATOR SULLIVAN: Can you think about the ramifications of this? I mean, rampant spending, that would be one thing. (Laugh) [LB638]

SENATOR LAUTENBAUGH: Well, honestly, I think it would lead towards more honesty. I mean, these groups exist because this is the way they have to do it in a lot of ways, too. I mean, some of them set up groups just to go negative. But I don't know if the teachers' union would go through the trouble of setting up some sham--not sham, that's the wrong word--some alter ego, to spend money on a campaign, independent of a campaign, if they could just give it to the campaign. We are forcing, by limiting what...the amount of support they can give, we're forcing them to spend it in these ways that we don't seem to like. And no one on this committee is saying, yes, I think the independent expenditures are great. At least that's not what I'm hearing. But by saying that the teachers' union, if they were of a mind to, could only give me \$44,500 in the last election and they wanted to spend \$60,000, this is their only other choice. They have to go this route. So I believe that if we repeal those limits and disclosed to everyone rapidly exactly what we receive from who, the funds would probably flow more towards the candidates, and this independent expenditure stuff might decline some. I don't know if that's...this isn't going to change the amount of money, I believe, overall. Because, you know, the teachers' union had what it had and they spent some of it independently, some of it they gave directly to the candidates; State Chamber is the same, Trial Attorneys the same. They all have a finite amount of money. By limiting what they can give to candidates, we're forcing them to go this route and no one is responsible. I'm not responsible for the things that were said about my opponent. My opponent wasn't responsible for the things that these other groups said about me. It's just Nebraskans for Common Decency or whatever this group was called. I mean, we've taken, we've put it in the shadows, I guess, is what we've done with our current regulatory system. We've created noncandidate based campaigns, and I don't think we will increase the amount of money if we go the route I'm suggesting. I think maybe the campaigns will actually go back to being run by the candidates themselves, which I think would be good, because at least you know who to hold responsible when you don't like what they're saying. [LB638]

SENATOR AVERY: But isn't that one of the reasons why you have the independent committees, is because the candidates don't want to be held responsible for the negative stuff? [LB638]

SENATOR LAUTENBAUGH: Possibly. I mean, I know that of the two groups I just discussed, the much smaller amount was the negative group and the much larger

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

Government, Military and Veterans Affairs Committee
March 04, 2009

amount did supportive pieces for candidates, as I understood it. I don't know. I mean, once again, we can't eliminate it, but what I'm saying is if these groups, these PACs and these business interests are free to give directly to candidates in the amount they want to, maybe that will bring some sort of accountability back and that the candidates will be running the bulk of the monetary show, so to speak. [LB638]

SENATOR AVERY: Or one could argue that special interests would be buying elections and candidates. [LB638]

SENATOR LAUTENBAUGH: And that really isn't different from what we have now. It's the same money, it's just now the candidate isn't responsible for what's done in his name. It's the same money from the same people. Now it's just run by shadowy groups. I mean, I have to admit, I like people to know what I stand for. I like people to know what my opponent stands for. I like the fact that I can be held accountable for what I say and what I do. One of the things that drives me wild about the Journal Star is that they allow anonymous comments on their articles. So people who should probably be institutionalized can get on there and say any crazy thing they want. I mean, sometimes it's so bad, I think it's the editorial writers who are doing the comments on the Journal Star. [LB638]

SENATOR AVERY: You have to not read that, Scott. [LB638]

SENATOR LAUTENBAUGH: I probably shouldn't read that. This is of a kind with that. We now have these anonymous groups spending tens and tens of thousands of dollars on their campaigns. It won't go away under my bill, but at least we aren't at their mercy anymore, which I think we largely are now. And I don't believe that's what you intended or whoever intended when this bill was passed originally. [LB638]

SENATOR AVERY: Senator Pirsch. [LB638]

SENATOR PIRSCH: This is kind of a technical question, but are there any regulations or limitations upon the content of that...of those mailings or communications the independent committees can put out? [LB638]

SENATOR LAUTENBAUGH: I don't believe so. [LB638]

SENATOR PIRSCH: They can say...anything that you can say or that your opponent can say, they can address. In other words, they can't just talk about the issues. They can specifically name names and urge people to vote for certain candidates. [LB638]

SENATOR LAUTENBAUGH: I don't believe there are any, and I think that content restrictions are probably the least favored kind of restrictions on speech. So I don't know that that's possible. I'm not sure, but I don't know, I don't believe so. I don't believe it's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
March 04, 2009

possible. I don't believe it's done either, but. [LB638]

SENATOR AVERY: Senator Karpisek. [LB638]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Lautenbaugh, is there any way to reel these people into the Campaign Finance Limitation rather than repealing, repealing it? [LB638]

SENATOR LAUTENBAUGH: I don't believe so. Based upon some of the federal decisions, I think we are stuck with them. The best we can do, I think, is give them other places to spend the money which would be directly on candidates so at least there's accountability, I would argue. [LB638]

SENATOR KARPISEK: I thought that's the way you would have went, but I just kind of wanted to... [LB638]

SENATOR LAUTENBAUGH: I don't think so. I mean, I don't know if I'd be in favor of further limiting what I think is speech anyway, but I don't think that's an option we have anyway. I think we're stuck with this. [LB638]

SENATOR KARPISEK: Okay, thank you. [LB638]

SENATOR AVERY: Any more questions from the committee? Seeing none, thank you. You're going to stick around to close? [LB638]

SENATOR LAUTENBAUGH: Yes. [LB638]

SENATOR AVERY: Are there are any proponents of LB638? Proponents? Seeing none, opponents? Anyone wish to testify in opposition? [LB638]

PEGGY ADAIR: (Exhibit 1) Even the pages went home. (Laughter) Senator Avery and members of the committee, for the record, my name is Peggy Adair, A-d-a-i-r. I represent The League of Women Voters of Nebraska. The League of Women Voters of Nebraska and other grass-roots organizations were instrumental in crafting the Campaign Finance Limitation Act some years ago in a collaborative effort to afford candidates a fair chance of vying for public office, based upon their qualifications, their philosophy, and their desire to provide ethical representation, rather than upon the size of their campaign war chest. The issue of rescinding the Campaign Finance Limitation Act comes up time and again in the Legislature. But it is never brought forth by the people. It is always introduced by a state legislator who, for whatever reason, wants to do away with the law this body instituted on behalf of citizens who want fair representation. The Campaign Finance Limitation Act of Nebraska has a proven history of promoting fairness and accountability in the elective process. We urge this committee

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

Government, Military and Veterans Affairs Committee
March 04, 2009

to continue that history of fairness and accountability by indefinitely postponing LB638. And I have attached to my testimony a summary explanation of the Campaign Finance Limitation Act, and I worked with Mr. Daley to assure that this summary explanation is accurate and factual and up to date. So I brought that along for your information. And I welcome any questions. [LB638]

SENATOR AVERY: Thank you for your testimony and for this summary actually. [LB638]

PEGGY ADAIR: You're welcome. I came up before Mr. Daley because he always just, you know, upstages everybody else, so. [LB638]

SENATOR AVERY: Any questions? Senator Pirsch. [LB638]

SENATOR PIRSCH: Peggy, just a question. Part of Senator Lautenbaugh's concern, that eventually as time goes on these independent expenditures, of which there is no regulation on, can spend whatever they want for whatever they want, would grow and grow to the extent that they would become maybe decisive in legislative or be key in legislative, I mean, races. Is there a possibility of that or your comment on the danger of that? And what if, if it is a danger in your estimation, what, if anything, can be done about that? [LB638]

PEGGY ADAIR: I think the Campaign Finance Limitation Act has been in effect since 1992. So I think it has a pretty good track record. There have only been a few instances where people abused the act, and those instances are well known. I think we have to give the public a little bit of credit of understanding and realizing where this information is coming from. If it is not coming from the candidate, if it is not coming from the candidate's campaign and they're not being forthright with where this information is coming from, then I think the public understands that. [LB638]

SENATOR PIRSCH: Thank you. [LB638]

PEGGY ADAIR: Uh-huh. [LB638]

SENATOR AVERY: Any more questions? Senator Sullivan. [LB638]

SENATOR SULLIVAN: Peggy, I would...I really wonder if the public understands that. Because I, you know, in the interest of accountability and disclosure, and then seeing what Senator Lautenbaugh is trying to accomplish, these independent expenditures really sometimes put the candidate in a very difficult situation of appearing to not be up front and open, because we, if our picture is on one of those flyers, then we're attached to it, even though we knew nothing about it. And I think so it's misleading at best, in some cases. [LB638]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

PEGGY ADAIR: It is misleading and I have to tell you, we actually had an instance in Omaha in the last election period where The League of Women Voters was cited as a source for some extremely misleading information. And people actually came to us and said what is going on here? So there could be certainly instances where a candidate is attacked unfairly, and people might not understand where that attack is coming from. But on the other hand, what happened in Omaha certainly restored our faith in the fact that people were questioning the validity of this very negative information. [LB638]

SENATOR SULLIVAN: Okay. [LB638]

SENATOR AVERY: I, frankly, I think that this bill identifies a really serious problem that we have with independent expenditures. The problem is that the Supreme Court has tied our hands. And while we would like to do something about it, I'm not sure that we have a lot of leeway, we have the freedom to do it. I mean, I was a victim also in my campaign of independent expenditures, vicious stuff. [LB638]

PEGGY ADAIR: And it is ugly, and you're right. I hope there is some way that we can find to deal with that. But on the other hand, should we throw out what is working for us... [LB638]

SENATOR AVERY: Yeah. [LB638]

PEGGY ADAIR: ...in order to fix something else? [LB638]

SENATOR AVERY: Yeah. [LB638]

PEGGY ADAIR: I don't think that's very valid. [LB638]

SENATOR AVERY: Yeah. Thank you. I appreciate that. Any other comments? Thank you for your testimony. [LB638]

PEGGY ADAIR: You're welcome. [LB638]

SENATOR AVERY: Any more opponents? [LB638]

JACK GOULD: (Exhibit 2) Senator Avery, members of the committee, my name is Jack Gould, G-o-u-l-d, and I am here representing Common Cause Nebraska. I'm passing out some testimony that I'm going to refer to in a minute, but I think that the independent committee issue is crucial, and the concern is that often these are attack ads and they are undocumented. No one knows where they're coming from. And we at Common Cause have talked about this, and one of the things that can be done that is not so far in any kind of legislation is simply to require, just as you do of the President of the United

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

Government, Military and Veterans Affairs Committee
March 04, 2009

States, that whoever is issuing these statements has their names at the bottom, in other words, not just the name of the organization but the name of the individuals. And in the last election, there were some prominent individuals from interested parties who had contributed openly to campaigns and had set up committees to do that. But then they went out independently and set up separate committees where they merely remained anonymous except in what they filed with Accountability and Disclosure. I think one of the keys is to make those people visible. If you're going to go out and throw stones at people, put your name on it. And that's one of the ways that this can be addressed without destroying the Campaign Finance Act. I think it's discouraging that every year we have people wanting to destroy the Campaign Finance Act for a variety of reasons, but, you know, in the end, the reasons aren't related to what we're talking about. This bill doesn't even mention independent committees and that is the problem, and I agree with Senator Lautenbaugh, we have to find ways to deal with it. But by destroying the Campaign Finance Act, we're not accomplishing the goal. I want to refer to my written testimony because there are some statistics that might be helpful, and I want to make sure I bring them out. I'm good at forgetting sometimes. The Campaign Finance Limitation Act, CFLA, has served Nebraska well. In the 20 years prior to the act, Nebraska saw a 376 percent increase in campaign spending for state offices. In the first two elections following the 1996 implementation of the CFLA, campaign spending dropped 22 percent. Since that time, most candidates have either accepted the spending limit or estimated at the spending limit. Indeed, out of the hundreds of elections for state offices since 1996, there have been only 11 races that have triggered "fair fight funds" and 5 of those races involved the University of Nebraska Regents' campaigns. It is important to recognize the sources of the "fair fight funds." Originally, the Legislature designated \$50,000 and established a state income tax checkoff. The checkoff produces between \$8,000 and \$12,000 per year in donations of one, two, or three dollars. This means that between 4,000 and 12,000 people who may not be here today support the CFLA with their hard-earned money. The majority of the funds come from the fine money generated by Accountability and Disclosure Commission. Currently, there is \$691,000 in the fund. The CFLA provides both a benchmark and hope for the average person considering a run for public office. The benchmark is the spending limit itself. When candidates decide to run for any state office, they have a target amount of funds they may have to raise. In terms of hope, the abiding candidates know that if their opponents choose not to abide by the limit, they will be entitled to "fair fight funds" amounting to the difference between the limit and the required estimate of spending filed by their opponent. Several key improvements to the CFLA came in 2006. "Fair fight funds" are now triggered when nonabiding candidates exceed the spending limit or when they exceed 40 percent of their estimate. The spending limits are also adjusted each year based on the cost of living. Over the years, some of those who oppose the CFLA have pointed to the First Amendment saying the spending limits infringe on an individual's right to freedom of speech. There has been one court case in Nebraska raising the argument, but the case was dropped when both parties recognized the voluntary features of the act. The First Amendment is crucial to the question of free

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

Government, Military and Veterans Affairs Committee
March 04, 2009

speech obviously, but also, when you put that into campaign money, it does raise the question, but it also raises a problem. Because if we say that people can spend whatever they want, I mean, unlimited amounts of money as long as we disclose it, it doesn't matter, it essentially means that rich people can speak louder than poor people. And ultimately, we know that those who can raise the money, if you look at the Regents' races, they are often those people who have the money and it can dwarf another person. So we...I don't think that the Founding Fathers had that in mind when they put the First Amendment in act because, you know, I don't think the idea was to favor one segment of the population over another. So I agree with Senator Lautenbaugh's point about the independent committees. I don't think it's necessarily relevant to the Campaign Finance Act, but I would certainly like to work with him in finding ways to control the independent committees and one way is what I mentioned earlier. [LB638]

SENATOR AVERY: Thank you. Senator Pirsch. [LB638]

SENATOR PIRSCH: Is the way you're saying is not...they can't just say Citizens for Apple Pie and Motherhood, but we can,... [LB638]

JACK GOULD: Yes. [LB638]

SENATOR PIRSCH: ...under the guidelines set forth by the Supreme Court, constitutionally require them to, I mean... [LB638]

JACK GOULD: Identify the organizers. You could, I think, put down whether it was...if the treasurer, the president, whoever the person that organizes this thing, has to put their name on it. I think that's a big step forward. If we could do that, if we could get legislation that would do that, they'd become more visible. [LB638]

SENATOR PIRSCH: So you could, you would say, well, do they have to file that now, I mean with the Commission? Can you get that information if you're... [LB638]

JACK GOULD: They do. That's how, you know, I mentioned there was...I'm not going to mention all of the organizations unless you would like me to. [LB638]

SENATOR PIRSCH: Oh, no, no. I'm just saying, but you can, right, your suggestion is the information is public now, but require them to put them on each piece, like Citizens for Apple Pie and Motherhood, John Smith, president or treasurer. [LB638]

JACK GOULD: Right, and I approve of this ad. You know, this is you would...I approve of this ad. Put their name on it. If you want to say something to the public, put your name on it. That's all I think has to be out there. [LB638]

SENATOR PIRSCH: Uh-huh. [LB638]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR AVERY: That just shows you the independent committee that's sponsoring the ad. It doesn't tell you who's behind it. You have to go to A&D and get the filings... [LB638]

JACK GOULD: True. [LB638]

SENATOR AVERY: ...before you can find out who is actually financing it. Just as Senator Lautenbaugh pointed out, these were large contributions from outside the state,... [LB638]

JACK GOULD: Right. [LB638]

SENATOR AVERY: ...from various sources and they went to a very innocuous-sounding organization, but who's behind this? You don't get... [LB638]

JACK GOULD: What was interesting to me was the fact though that suddenly some of these names of people who were rather prominent figures in the open contribution from the group, who had gone out to set up the independent group and didn't have their names associated with it, show up at the end. There they are. They're the ones that are providing the money. They work it at both ends and doing what Senator Lautenbaugh was saying. They are ultimately trying to work their way around the system to hurt people and they often end up in attack ads. I think that the emphasis of dealing with this has to be in making these organizations more visible, making them more accountable so that their speech is associated with them, not with...the way it is now, an independent committee can go out and infer that one opponent is saying this. Obviously, they aren't. And the case Senator Lautenbaugh said there was stuff going on, on both sides of the party, both individuals were unaware of what was being said about them. And you know, I think the main thing is to try to make it more visible. Just make the independent committees step up, make them out there, to put their names on what they're putting out there, and if it's ugly then they should be labeled with the ugliness. [LB638]

SENATOR AVERY: But the candidate that benefits from that is not responsible for it; he shouldn't be. If they are, they are violating the law. [LB638]

JACK GOULD: Right. [LB638]

SENATOR AVERY: And you're not asking that the candidate be associated with it, are you? [LB638]

JACK GOULD: No. [LB638]

SENATOR AVERY: Okay. [LB638]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
March 04, 2009

JACK GOULD: I don't think that should be part of it at all. [LB638]

SENATOR AVERY: Yeah. [LB638]

SENATOR PIRSCH: Right now, is...and I'm not familiar with this, but is there...do they have to put paid for by Citizens for Apple Pie and Motherhood? They don't have to put anything. All you see is the campaign rhetoric and that's it on the... [LB638]

JACK GOULD: Well, it may say, you know, Citizens for a Better America, I mean it may say that, but it doesn't have a name. [LB638]

SENATOR PIRSCH: Is that required though? [LB638]

JACK GOULD: I, that...Frank will have to answer that. [LB638]

SENATOR PIRSCH: Okay. [LB638]

JACK GOULD: I'm not sure whether that's true, but I'm saying that they need to do more than that. [LB638]

SENATOR PIRSCH: You're saying maybe to, by law, require the top five donors to start listing... [LB638]

JACK GOULD: The treasurer, the officers, you know, somebody, so that there's people we can associate. [LB638]

SENATOR PIRSCH: Yeah. Yeah. Um...and thank you, I appreciate that. [LB638]

SENATOR AVERY: Any more questions? Thank you, Mr. Gould. [LB638]

JACK GOULD: Thank you. [LB638]

SENATOR AVERY: Any more opponent testimony? Any neutral testimony? [LB638]

FRANK DALEY: Senator Avery and members of the committee, again, my name is Frank Daley, D-a-l-e-y, executive director of the Accountability and Disclosure Commission, and we're appearing in a neutral capacity for three reasons, first of all, to explain that we are neutral here because the main concept here is the repeal of the Campaign Finance Limitation Act. The commission has never taken a position on the CFLA. It considers it a pure public policy issue which should be left to the Legislature. In past cases when we've appeared on CFLA bills, it's been for the purpose of improving it so it was more workable, and so that there were no loopholes. But the concept itself,

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

Government, Military and Veterans Affairs Committee
March 04, 2009

we've never taken a position on. The second thing is that the other part of the bill deals with different types of campaign disclosure with an emphasis on electronic filing. I've got to tell you, we love the idea of electronic filing. We think it's more efficient. We think it's quicker. We think it gets the information to the press and public on a more timely basis. I will also tell you we shiver in utter fear at the tight time line in setting that up if this bill were to go forward in the current form. And we know, unfortunately, that to set up the extensive electronic filing comes with a significant price tag. And we based our fiscal note on the experiences we've had so far with electronic filing for certain types of entities. I guess the other reason I'm here, the third reason, is just to answer any questions you have. You have stepped into the murky area that involves the First Amendment to the Constitution and campaign financing. And I'll give you a very short primer on what the state of the law is. Senator Avery correctly mentioned Buckley v. Valeo. It is a U.S. Supreme Court dating back to 1976 and it is still the key case in the area of campaign finance. At its heart, what it says is that government can regulate contributions to candidates, it can limit contributions from any single source to candidates. The idea is that it's a way to avoid corruption of the system. On the other hand, the Supreme Court has said, you cannot limit expenditures by candidates. So if the candidate wants to put in his own money and spend anything he wants, he can. Any money he can raise within limits, that's okay. So it's within that framework that a lot of the public financing laws exist. Government can't tell candidates that they can't spend as much money as they want, just as the CFLA doesn't do that. What it does, instead of using a stick, it holds out a carrot and says, if you voluntarily agree to abide by spending limits, you may become eligible for public funds for use in your campaign. So that's kind of the area that's regulated. With regard to the independent expenditures, there has been a lot of litigation over the years with regard to these independent groups. There hasn't been anything which has been upheld that has limited their ability to spend money. The only thing that really has come out of the litigation is the ability to require different forms of disclosure as to what's being spent. So that's the framework in which a lot of the discussion occurred today. Thanks for the opportunity to testify today.
[LB638]

SENATOR AVERY: Thank you for that little primer. Senator Pirsch. [LB638]

SENATOR PIRSCH: Are there are any limitations with these independent expenditures? Can my sister start one up? I mean, I'm not...I don't have her start one up, but say my sister decides to start one up, and it just so happens that the content of it, because of her familiarity with me and the issues in the race, I mean is that...that's perfectly fine as long as we don't collaborate under the independent expenditure?
[LB638]

FRANK DALEY: Correct. An independent expenditure by definition is one which is not coordinated with you or your committee or one of your agents and is not requested by you. So theoretically, until it comes out, you have no knowledge of it. And that is

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

Government, Military and Veterans Affairs Committee
March 04, 2009

perfectly legal. It's not attributable to you, either under your CFLA limit or anything else. [LB638]

SENATOR PIRSCH: Are there any limitations to what is...can be put on the communications by independent expenditures? In other words, you can't address particular races, just issues, like I think that's on the federal level.. [LB638]

FRANK DALEY: And you're exactly right. What you're talking about is the concept of issue ads in place of, for example, on the federal level where there are limitations on how much candidates can accept from any source, requirements to form committees, if you're going to be involved in supporting or opposing candidates. There was a trend for a number of years of creating issue ads. They would say something like, you know, Senator Ben Nelson does X-Y-Z. Call Senator Ben Nelson and tell him that's terrible. And here's the telephone number. Well, and it might be followed by an ad with the same footage, but it said vote against Senator Nelson or vote for his opponent. Those are issue ads, and there was an attempt to regulate those under the Bipartisan Campaign Reform Act. That has gone through some Supreme Court cases as well. What the act did was it said within so many days of the election, issue ads are considered campaign ads. They may still be independent, but they may trigger an obligation to report or form a committee or something of that nature. But that's been under attack and some parts of that particular section have been found unconstitutional. Again, a very, very murky constitutional area. [LB638]

SENATOR PIRSCH: So really there isn't, so as far as we know, there is no way to get at the...I mean, regulate independent expenditures constitutionally and so. [LB638]

FRANK DALEY: Well, there is no way constitutionally, thus far, to regulate how much they spend and what they put in their ads, the content of their campaign information. About the best you can do is regulate, require some form of disclosure and obviously even that can be problematic. Because certainly if the out-of-state entity, all we know about it is it's Citizens for Good Government, Post Office Box 3570, Falls Church, Virginia, you know, there's a limited ability to have any regulatory effect on a group like that. [LB638]

SENATOR PIRSCH: But as Senator Lautenbaugh has mentioned, obviously it can be regulated. They must disclose to the NADC who are the primary funders, the underlying...the Ohio, what was it, the workers in Ohio or Pennsylvania or whatever it was. So I'm assuming they didn't voluntarily give that up, they were compelled to, correct? [LB638]

FRANK DALEY: Well, yeah, there is something called a major out-of-state contributor in the Accountability and Disclosure Act. That's an out-of-state entity that spends more than \$10,000 in Nebraska. Once they hit that \$10,000 level, they're required to file a

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

Government, Military and Veterans Affairs Committee
March 04, 2009

report within ten days of the following month showing what they spent, who they gave it to, and who their contributors are over a certain amount. And then any month in which they make a further contribution, it triggers another report. [LB638]

SENATOR PIRSCH: Could you lower, I mean, constitutionally, lower the amount from \$10,000 and then have some sort of requirement...well, tell me about this, and I'm just kind of musing here. Is it constitutional to say for any independent expenditure piece, not only must you turn that in to the commission, but you must list, say, the five largest donors to that on any communication which you send out, in addition to whatever you want? [LB638]

FRANK DALEY: I suppose that's potentially possible. [LB638]

SENATOR PIRSCH: And the amounts? [LB638]

FRANK DALEY: Yes, though as a practical manner, at that point, you know, again, if you're talking about out-of-state entities, you can say you have to do it, but if they have no other connection with Nebraska, it might be awfully hard to enforce. It's kind of like the robocalls, that there are these regulations that they have to follow, but if you don't know who they are or where they're from, there may not be a lot you can do. [LB638]

SENATOR PIRSCH: But at least it would give an attacked candidate the ability to say these are my...those who oppose me are committing illegal acts under Nebraska law. [LB638]

FRANK DALEY: Correct. Correct. And certainly it's something else which is potentially possible. On the federal level, there's a requirement that if it's an independent ad, it's not by the candidate, part of the tag line is "not authorized by any candidate," so that at least the public can see, well, this may be an attack ad against candidate B, but the piece is saying this wasn't authorized by candidate A. It's saying it wasn't authorized by any candidate. It might provide some small comfort. [LB638]

SENATOR AVERY: Any more questions? Nice seminar. Considering all the contributions you've made throughout the day, it's been kind of a seminar in campaign finance. Thank you. [LB638]

FRANK DALEY: Well, I'm glad you all enjoyed it. It's always nice to talk about your own work. Thank you. [LB638]

SENATOR AVERY: Yeah. Senator Lautenbaugh, do you wish to close? [LB638]

SENATOR LAUTENBAUGH: Yes, I do, Mr. Chairman. And thank you for this opportunity to be here today. I know you had to let me come, so I don't know why I say

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

Government, Military and Veterans Affairs Committee
March 04, 2009

that, but there you go. Yacht building, I wonder how much the committee knows about yacht building. Back in the '80s we passed a luxury tax on yachts because, by gosh, we were going to make the wealthy pay their fair share. And so the wealthy bought their yachts abroad and all the blue collar men on the East Coast and women that made yachts lost their jobs. We really got them with that one. Now we're hearing the wealthy are more influential because they have more money to spend and so this act has been a success because we've put these limits in place. The group that had \$175,000, the one that I read the most contributors off for, Dick Holland gave them \$50,000. Let's not roll out the mission accomplished banner just yet on limiting the influence of the wealthy of these elections. We heard from the League, we heard from Common Cause. I hope you noticed that they did not have solutions to the point I'm raising here. The League was enamored with this Campaign Finance Act because they were here at the inception, and I'm sure Common Cause was, too. But that doesn't pass for a solution. And what no one has addressed here and no one has rebutted is the fact that these committees, whether it's funded by a wealthy person or funded by a wealthy union or funded by a wealthy business lobby, can do whatever they want. And we don't stop them and probably can't. And to require the little disclaimers at the bottom doesn't do the trick. And I don't think constitutionally we can require them to list all of their donors on the mailing, and by the way, they wouldn't necessarily have all their donors by the time they did the mailing so they wouldn't know who to list. One of these groups, I had to find out, by checking with Accountability and Disclosure, that it was set up by Ken Winston, the lobbyist for the Sierra Club and the library group, the one that did all the negative ads in my races and several others. I had to go check that out. His name wasn't on the mailing anywhere. No contributor was listed on the mailing, and I don't think when you have a hundred contributors we can require them to be listed or that's the whole mailing, in essence, and that would impinge upon free speech. This is a problem here, and I can't overstate it. We have...I won't say disarmed candidates, because we can still raise money certainly, but we cannot compete with the independent expenditure groups. We just don't have the tools. They can raise money in ways we cannot do. And it's all well and good for the League to come in here and say, we don't like candidates thinking about lining their war chest or whatever the phrase was. That's not really the issue. Right now, we have a bunch of faceless groups that are controlling ever more of our election process. And if the League and Common Cause think that's a good idea...well, then we've got the system for them currently. I'm here to tell you it's not a good idea. And since we can't regulate those groups, the only other choice is to unshackle the candidates, and that's what my bill does. Disclose it and let everyone know who we are, where we come from, and who wants us elected and move on. [LB638]

SENATOR AVERY: One question here, Senator. The Campaign Finance Limitation Act has a very important feature and that's voluntary compliance. So why does that shackle a candidate? You're not compelled to comply with the limitations? [LB638]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

SENATOR LAUTENBAUGH: You certainly are, to the extent that you cannot accept money from businesses and PACs beyond a certain dollar amount. You don't...I don't have a choice about that. These groups don't, aren't faced with that choice and that's where their money comes from. [LB638]

SENATOR AVERY: But you can raise unlimited amounts from individuals. [LB638]

SENATOR LAUTENBAUGH: Certainly could. Certainly could. [LB638]

SENATOR AVERY: Yeah. Okay. Senator Sullivan. [LB638]

SENATOR SULLIVAN: Thank you. Senator Lautenbaugh, I can't disagree with anything you've said today. How serious are you in looking at different alternatives? When I hear someone say, we can't do this, it just raises a red flag. Because I think there's always choices to be made. So are you willing to, if this weren't to get out of committee or go forward, are you willing to explore and work with somebody to try to come to grips and terms with this? [LB638]

SENATOR LAUTENBAUGH: Absolutely, although I think our tools are limited because of the lay of the land constitutionally. But I'm certainly open to ideas. I just don't know what they are beyond this, at this point. [LB638]

SENATOR SULLIVAN: Okay. [LB638]

SENATOR AVERY: Any more questions? Seeing none, thank you, Senator. [LB638]

SENATOR LAUTENBAUGH: Thank you, all. [LB638]

SENATOR AVERY: That ends the hearing on LB638, and the hearings for today. Thank you all for coming. Hope you had a good time. [LB638]

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

Government, Military and Veterans Affairs Committee
March 04, 2009

Disposition of Bills:

LB574 - Held in committee.

LB626 - Placed on General File with amendments.

LB635 - Placed on General File with amendments.

LB638 - Placed on General File.

Chairperson

Committee Clerk