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Government, Military and Veterans Affairs Committee
January 28, 2011

[LB187 LB188 LB224 LB228]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, January 28, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB228, LB187, LB188, and LB224. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Charlie Janssen; Russ Karpisek; Rich Pahls; Paul Schumacher; and Kate Sullivan. Senators absent: None.

SENATOR AVERY: Good afternoon to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I represent District 28 here in Lincoln, and I'm Chair of this committee. I'm going to go ahead and start now because I have to go to Revenue to introduce another bill in just about two minutes. So I'm going to get started and then I'm going to pass the gavel, so to speak, to Senator Pahls, who has vast experience in this area. But before that, let me introduce the members of the committee. Senator Pahls, at the end down here, from Millard. He is seated next to Senator Lydia Brasch from Bancroft. Senator Charlie Janssen from Fremont will be joining us soon. And Senator Scott Price from Bellevue is going to be a little bit late today; he had another commitment elsewhere. He is Vice Chair of the committee. Seated next to me is Christy Abraham, the legal counsel for the committee. And on my left is...soon will be Senator Russ Karpisek from Wilber. And next to him, who is also running a little bit late today, is Senator Kate Sullivan from Cedar Rapids. Senator Paul Schumacher is the last one over there, who is from Columbus. He is--along with Senator Brasch--new members of the committee and the Legislature. And we have, on the very end, Sherry Shaffer who is the committee clerk. If you are planning to testify, there is a form we want you to fill out. You can find this at either door; there is a table at each door. This form provides information for the clerk so that we know who you are, how to spell your name, what your address is, and whether you are for or against the bill that you are testifying on. If you wish to be recorded for or against any of these bills that we will take up today but do not wish to testify, there is a sheet of paper here you can sign indicating your preference for or against any bill. Now if you have any electronic devices, please turn them off so that you do not disturb the proceedings. We do not allow videotaping, so even if you can do it unobtrusively with a cell phone, it is not permitted, and the Red Coats will catch you if you do. Now when you come to the table, we'll have the light system working. The light on the left is green. That stays on for four minutes, Senator Mello. You have four minutes. Then the amber light will come on and you will have one more minute to wind up your comments. The red light means stop. And if you are color-blind, just work left to right and when the lights change you know that you're getting close to the end of your five minutes. The clerks...not the clerks...we have--I meant to introduce the clerk. We have pages: Danielle Henery from Battle Creek and Kyle Johnson from Sutton. They will...if you have any handouts that you'd like to share with the committee, they will take them and distribute them for you. We welcome your input. We are respectful of your presence here and we appreciate you coming today. We hope that you will be

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

Government, Military and Veterans Affairs Committee
January 28, 2011

respectful of others as well. Please do not repeat previous testimony and try to keep your remarks as brief as you can. All right. We will follow the order of the agenda posted outside the door, and that means we will start with LB228. Senator Mello, I apologize. I have to go to Revenue, but Senator Pahls will take over.

SENATOR PAHLS: Senator Mello, when you are ready.

SENATOR MELLO: (Exhibit 1) Good afternoon, Senator Pahls and members of the Government, Military and Veterans Affairs Committee. My name is Heath Mello, M-e-l-l-o, and I represent the 5th Legislative District which includes south Omaha and Bellevue. The Task Force for Building Renewal, commonly referred to as the LB309 Task Force, is one of the hidden gems in our state government. The task force, which is a division of the Department of Administrative Services, was nationally recognized in Governing magazine in 2008, and recommended as a best practice in building maintenance to the National Governors Association in 2009. The role of the task force is to allocate funds for the highest priority upgrades and improvements necessary to maintain our state buildings and utility systems. All state agencies, with the exception of the Department of Roads, are eligible for funding through the LB309 Task Force. Currently, there are four types of eligible projects under the Deferred Building Renewal Act: 1) deferred maintenance, 2) fire and safety upgrades, 3) upgrades to comply with the Americans with Disabilities Act, and 4) projects to correct a waste of energy, which generally covers energy conservation. LB228 would add an additional type of eligible project, clarifying that stand-alone energy audits may be performed as part of the LB309 Task Force process. Based on conversations between my office and DAS, the LB309 Task Force typically conducts between 20 and 25 energy audits per year as part of larger deferred maintenance projects. While nothing in the current statutory language prevents them from conducting these audits, LB228 would clarify that even in the absence of a broader maintenance project, the task force would be able to conduct energy audits on state buildings. These audits may, in turn, identify smaller maintenance projects that might otherwise go unnoticed, improving the energy efficiency of our state buildings. In order to enhance legislative oversight of the LB309 Task Force process, LB228 would also require that copies of energy audits performed by the task force be sent to the agency operating that particular building as well as the Legislature's Building and Maintenance Committee. As a newly appointed member of the Building and Maintenance Committee, I look forward to learning more about the LB309 Task Force and how we can assist them in ensuring that our state buildings are well maintained. I believe that encouraging energy audits through the existing task force process, while our state government can lead by example in the area of energy efficiency. With the costs of utilities on the rise, just a handful of energy audits could ultimately save significant taxpayer dollars. Thank you for your time and I'd be happy to answer any questions you may have. [LB228]

SENATOR PAHLS: Any questions for the good Senator? Senator Schumacher. [LB228]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

SENATOR SCHUMACHER: Thank you, Senator Pahls. The term "energy audit" which is what I guess we're authorizing in this act, what is...is there a meaning for that? I mean is it waste of energy? If the energy can be produced better with solar than with coal, is that an energy audit? What is the definition, I guess, of energy audit? [LB228]

SENATOR MELLO: Well, the definition, as is utilized I think by the LB309 Task Force, is to do essentially almost a commissioning, so to speak, of that building in regards to its current utility usage, looking at the existing infrastructure of that building--whether it's HVAC systems, cooling/heating system--and determining where there is potential energy savings with potential modifications of that building. That in its purest sense I would say is an energy audit. The language itself, more than anything else, just clarifies that they can do this as a separate project. The LB309 Task Force has expressed to us that they do these already to some extent through bigger projects that they have. So if they're going to replace...for an example, if they're going to replace an HVAC system in a state building, they will do an energy audit regarding that project. What we want to be able to do is allow them not just to do an energy audit of that project, so to speak, but if an agency wants to allow them to do just an energy audit of the entire building, that itself classifies as a separate category to apply for funding, not just I want to replace an HVAC system so I get an energy audit of the HVAC system itself or the components that would be associated with that. [LB228]

SENATOR SCHUMACHER: Does the type of fuel used...is that within the scope of such audits, or is...? [LB228]

SENATOR MELLO: Without defining...ultimately, without defining professionally, because the LB309 Task Force they utilized consulting services to do energy audits, I would prefer to allow the LB309 Task Force and DAS to determine what they want to see in the energy audit itself. Because they currently already do these, I didn't feel it was necessary for us to define the energy audit, I guess, further than where it's currently at, knowing that they currently already utilize this service. It's more just clarifying language, I would say, in regards to setting it as a separate category beyond energy conservation projects, which are usually replacement of HVAC systems, replacement of windows, things along those lines. [LB228]

SENATOR SCHUMACHER: I have no further questions. Thank you, Senator. [LB228]

SENATOR PAHLS: Seeing no more, thank you. [LB228]

SENATOR MELLO: Thank you. [LB228]

SENATOR PAHLS: Proponents? Opponents? In the neutral? Closing. The closing has been waived. Thank you. That closes the hearing on LB228. And now we are ready for

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

Government, Military and Veterans Affairs Committee
January 28, 2011

LB187, Senator Council. [LB228]

SENATOR COUNCIL: Senator Pahls, members of the committee, my name is Brenda Council. I represent the 2nd Legislative District out of Omaha. My last name is spelled C-o-u-n-c-i-l, and I appreciate the opportunity to introduce LB187. And allow me to put in context the reason that I introduced LB187. And I had hoped that the committee would consider the bills before them in the order that was printed today, or unless I missed if Senator Avery has already introduced his bill, I had expected to follow him, because it is for the very reason that Senator Avery has introduced his bill that I introduced mine. I want to preface my statements by saying that I respect and do not seek to harm the recall process. I think it's a very important process. And because I think it's such an important process, I think that this body needs to do all that it can to preserve the integrity and fairness of that process. As you know, under current Nebraska statute, no grounds are required in order to effect a petition recall initiative. There...unlike many states, there is no requirement that in order to initiate a petition recall effort, that there has to be evidence of misfeasance or malfeasance on the part of the official being sought to have recall. And when I introduced LB187, I wasn't aware of Senator Avery's bill, and LB187 was my attempt at trying to preserve the integrity and fairness of the recall process. If there's not going to be any specified grounds upon which petition recall efforts can be initiated, then under our current statute in many instances we have a built-in level of unfairness. And we have that built-in level of unfairness in part due to the unfortunate fact that citizens in the state of Nebraska--and I'll be specific: Douglas County and the city of Omaha--do not exercise their right to vote in the numbers that I think all of us would like to see them vote. And looking at recent mayoral elections...and I'll be candid. The recent Omaha recall election caused me to focus more directly on this issue. In 2009, only 31 percent of the registered voters in the city of Omaha voted in that election. Under existing statute, in order to initiate a recall without any grounds being required to be established, under current law it only takes 35 percent of the registered voters in Omaha to sign a petition for that recall. Based on a 31 percent voter turnout, and unfortunately, with the exception of presidential elections, that's been the voter turnout rate. I think statewide it's somewhere between 32 and 37 percent. Applying the 35 percent requirement that currently exists in statutes, with the number of registered voters in the city of Omaha, less than 10 percent of the registered voters in Omaha could effect a recall. And what my concern is, if there are no stated grounds that have to be established in order for an elected official to be subject to a recall, it opens up the opportunity for individuals who really don't have a stake in the issues affecting that particular political subdivision, or on the other hand, individuals with vast resources who are able to pay petition circulators to obtain the requisite number of signatures, and that requisite number of signatures still only represents 10 percent or a little less than 10 percent of the registered voters. Quite frankly, if Senator Avery's bill is advanced, it removes some of the reason why I introduced LB187. If there are grounds, I think the 35 percent of registered voters should be the threshold. But without grounds, I think--excuse me--35 percent of the people who cast ballots in the last election, that 35

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

Government, Military and Veterans Affairs Committee
January 28, 2011

percent of the voters who cast in the last election is an appropriate threshold, with grounds. Without grounds, I think it should be a higher threshold and I think it should be the 30 percent of registered voters residing in the district that is the subject of the recall election. And I don't know...it's up to Senator Avery. I also have LB188 which I introduce as an alternative. And if Senator Avery would like, I can open on LB188 as well. [LB187]

SENATOR AVERY: Well, why don't we go ahead with this one and then just stick around and we'll get to it quickly. [LB187]

SENATOR COUNCIL: Okay. Thank you. [LB187]

SENATOR AVERY: Proponent testimony on LB187. [LB187]

LYNN REX: Senator Avery, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. We're here today in support of this measure. And I do appreciate Senator Council's comments relative to your bill, Senator Avery, because I do think that there are some...there's a need to have grounds for recall. And it's not sufficient just to have any reason, which is what we have right now, which means people can say that I don't like the person, I don't like the tie he is wearing. In the case of some of the recalls, of which you may be aware that we've had before this committee in the past, for example, Mayor Jo Dee Adelung in Nebraska City faced a recall because she hired a city administrator. There are others that have faced a recall because they, in fact, implemented a requirement for a CDBG grant that there be metering of water wells. We've had entire village boards recalled over compliance with state and federal laws. So this is time. I think we've had enough examples of abuse in the state to deal with this. And again, I think Senator Council has provided us a couple of options here in the event that the committee does not decide to proceed with Senator Avery's bill. But we do have a concern about Senator Avery's bill that I will raise during the hearing on that measure. But I do think that recalling elected officials for malfeasance, nonfeasance, misfeasance, or dishonesty is the way that this committee needs to approach it. That model was based on Minnesota. It works in other states. Some states don't even allow recall of local elected officials. But we have seen a lot of abuse in this state. And I think that recall was intended, and we...the League of Nebraska Municipalities was involved in the first recall legislation, and that was intended to address issues dealing with malfeasance, misfeasance, and nonfeasance. It was not intended to address issues because somebody doesn't attend...doesn't decide to attend a meeting. I mean we've had an individual that was tried to be recalled simply because he missed a meeting. Now there are other instances where you have a lot of individuals that may miss meetings. And there is a recall going on right now in one of our municipalities, and apparently an individual leaves every time that there's a vote, so they don't have a quorum. That's a different deal. That's a different deal for a different day. But in any event, we do think that Senator Council has provided some options here and I'll save most of my testimony for Senator Avery's bill. But to say that we do think

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

Government, Military and Veterans Affairs Committee
January 28, 2011

that her comments indicating that there needs to be a higher threshold of signatures, if the committee decides not to advance Senator Avery's bill. And we do hope that you will strike the provision in your bill, Senator Avery, that was put into Engel's bill and Lautenbaugh's bill, as well, that basically says that in the event that someone makes an allegation of misfeasance, nonfeasance, or malfeasance, or dishonesty in office, then they would have a right...the elected official subject to that would have a right then to go to a court and ask the court to say, does this allegation rise to the level of misfeasance, nonfeasance, malfeasance, or dishonesty in office? Well, the reality is, folks are smart enough, if they're vindictive enough to basically come up with something that would rise to that level. And our elected officials have studied that. We had quite a debate for about two hours with municipal officials from across the state on this issue. And frankly, they don't think they can get past, if a judge says, yes, there's an allegation raised that Mayor So-and-so did X, and it does rise to that level, even though the mayor didn't do it. But in order to rise to that level to get the recall on the ballot, that's what's going to be stated. And they don't think in the short time frame there's enough time to basically undo that, because people will think, gee, the judge said this is subject to recall, and that would be the main ad going out by the proponents of the recall, saying see, even the judge agrees with us, when in fact the judge wasn't agreeing with them. The judge was just saying, yes, that rises to this level. And as you know, the same concept of prima facie case, I mean. So that's one thing when you're dealing with lawyers. But we're not dealing with lawyers here. We're dealing with citizens who need to make the distinction between whether or not a judge is saying that a certain issue rises to that level or does not. So in Minnesota and in other states what they do is they simply allow individuals to go through the court process, and we think that that's what should happen here. And it is time. We've had enough abuses and it costs money. It divides communities for a very, very long time. With that, I'd be happy to respond to any questions that you might have. [LB187]

SENATOR AVERY: Thank you, Ms. Rex. Questions from the committee? Senator Janssen. [LB187]

SENATOR JANSSEN: Thank you. And that probably would apply to all of the bills that are before us today. Could have probably put them together. (Inaudible) they...and I was going to ask Senator Council this, and perhaps she can answer it on her closing or her opening on the next bill, either way. But I've watched from not too distant, just the recent recall. And malfeasance, misfeasance, which are two words I learned when I got to the Legislature through past bills, don't you think...well, I think--and I guess I want to see what you have to say--is the process didn't look all that simple for this group to go out and get these signatures. And I've seen smaller towns, too, where it's not always that easy. I know...but with this current threshold I think it was still fairly close and right down to the end of getting that. It was pretty close. And then they got the signatures, went through some wrangling. There were some court hearings. But then there was an election, and we're...if we're going to try to get rid of voter apathy, it's just not going to

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

Government, Military and Veterans Affairs Committee
January 28, 2011

happen, in my opinion. But then the mayor was not recalled. And the process worked. Whether...what side you were on or not--and, of course, I don't vote on it--the process worked. And now it's done with. So I guess I'm...I'm going to sit here all afternoon and hear why it's broke, but I'm going to be looking for the question of...the answer for me, I don't think it's broke right now. And we just saw it work. I mean the people that pushed for it didn't get what they wanted, but maybe they did because they just wanted to hold the, in this case, Mayor Suttle, accountable. I think they did. And he prevailed and now he'll move on. So some thoughts. I don't know how you would respond to that. I just...and I'm not trying to be hostile by any means toward you or Senator Council.
[LB187]

LYNN REX: No, I understand that, Senator. [LB187]

SENATOR JANSSEN: I just... [LB187]

LYNN REX: No, I think those are all legitimate questions and let me just try to respond to them. I think the process is broke. I think the process is broke when a minority--and I think this is the point that Senator Council brings to you today--a relatively small number of people can undo what the majority did at the last election. And so I think that is fundamentally a problem. And so, yes, Mayor Suttle prevailed, Senator Janssen. But at the end of the day, the amount of time and effort that he was spending--in fact, I saw a clip of him on the news saying that basically he was working almost nonstop trying to preserve his job, and said he should have been working to do things for the city of Omaha. So it would be fundamentally different...and I want to put this in a different perspective because there was a petition taken out to apply recall to state senators, statewide petition taken out to do that. So as you're considering this, especially those of you that are going to be term-limited out, please ponder what this would mean for you. In other words, pick a side. You're pro life; you're pro choice. You're pro death penalty; you're anti death penalty. Pick one. It won't matter which one you pick because there are going to be folks on the other side, and enough of them upset that if recall applied to state senators it would simply be unworkable. We're here to tell you it is unworkable for local governments. And it's unworkable when you have folks being recalled because what? They hired a city administrator, and somebody didn't like that? And a community was split for quite some time doing that. In O'Neill, Nebraska--it's either O'Neill or Neligh and I always get those confused, regrettably, because they're both great communities--but the mayor was simply implementing the decision of a prior election for those citizens to take over a gas system. So citywide election, take over the gas system. The mayor starts implementing that. And then the gas company came in, started taking out full-page ads about why Mayor So-and-so needed to be recalled, and he was subject to a recall election which, to this day--he's a minister in that city--there are folks that don't speak to each other, don't go to the same grocery stores, won't bank in certain areas. These divide communities for a long time. It's not just about the process works because somebody didn't get recalled--and I know that's not what you're

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

Government, Military and Veterans Affairs Committee
January 28, 2011

saying--or the process works because somebody did get recalled. And we've had, as I said, village boards recalled because they were following a state mandate or a federal mandate on metering. And so we're just here to tell you that there are certain things here that we think really require the Legislature to look at this and look at it seriously. And also just a bigger picture in the event that you're ever subject to a recall, those folks that might think that state senators should be subject to recall, and we wholly do not think that that is the case. We think that we'd be very opposed to that. But for those people that think that would be a grand idea, I can also tell you that my guess is they would take something very similar to what you're applying to local officials and apply it to you. [LB187]

SENATOR JANSSEN: I could say...I could agree with a lot of your points if you were speaking to LB224 right now, that...and I'm putting these all together because I'm... [LB187]

LYNN REX: Yes. [LB187]

SENATOR JANSSEN: This, to me, is a package deal. [LB187]

LYNN REX: Yes. Okay. [LB187]

SENATOR JANSSEN: So, and... [LB187]

LYNN REX: Okay. And see...yes. And our point--you're point is well taken. Our point is I agree with Senator Council and I think this is what she was saying--she's still here--that her bills... [LB187]

SENATOR JANSSEN: She'll tell us. [LB187]

LYNN REX: Yes. That her bills, as I understood her opening, that her bills were introduced before Senator Avery's. She did not realize Senator Avery was putting in this bill. And that she does not think that her bills...those bills are options that really need to be considered in the event that the committee does not look at Senator Avery's bill seriously. [LB187]

SENATOR JANSSEN: Thank you. [LB187]

LYNN REX: So I think that's what we're saying. [LB187]

SENATOR JANSSEN: Yes, that's... [LB187]

SENATOR AVERY: Any more questions? Senator Schumacher. [LB187]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

SENATOR SCHUMACHER: Thank you, Senator Avery. I'm not sure if you know the numbers off the top of your head on these figures. But just for factual numbers, how many registered voters are there in Omaha? [LB187]

LYNN REX: You know, I don't have those numbers. I don't know. We can get those numbers for you though. [LB187]

SENATOR COUNCIL: I have it: 241,000. [LB187]

SENATOR SCHUMACHER: Okay. And how many signatures were in this last recall? [LB187]

SENATOR COUNCIL: Twenty-eight. [LB187]

SENATOR SCHUMACHER: Twenty-eight. [LB187]

_____: Twenty-six thousand (inaudible). [LB187]

SENATOR PAHLS: We cannot be having from the audience. [LB187]

_____: Let's wait till (inaudible). [LB187]

SENATOR JANSSEN: There will be...there's other witnesses that probably can answer that question. [LB187]

SENATOR AVERY: There will be an opportunity for that. [LB187]

LYNN REX: Perhaps when Senator Council...there were questions about the numbers, and perhaps when Senator Council comes up she could give you those numbers and then we could all have them on the record. That would be great. [LB187]

SENATOR AVERY: Yes. [LB187]

SENATOR KARPISEK: Thank you, Senator Avery. Ms. Rex, thank you. And again, I'm looking at this as a package deal too. Do you know, roughly, what percentage of the recalls are successful? [LB187]

LYNN REX: Very, very few. Matter of fact, one of the issues that we had addressed and worked with this committee on, on a recall before, is to require a filing so that--with the Secretary of State's Office--so we actually would know. I mean that's a question we're asked. And there are...I'll go through a little bit of history when I get up on LB224. But we don't really know the exact number. You'd have to go to every county, every year, and find that out. But I can tell you from the municipal side--I can't tell you from the

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

Government, Military and Veterans Affairs Committee
January 28, 2011

county side--from the municipal side, very, very few. But I can tell you, unequivocally, it is so divisive in communities. [LB187]

SENATOR KARPISEK: Do you...hum, now I lost it. (Laugh) [LB187]

SENATOR JANSSEN: You have more bills. You'll (inaudible). [LB187]

SENATOR KARPISEK: Do I? Okay. (Laughter) [LB187]

SENATOR AVERY: You'll have another opportunity. [LB187]

SENATOR KARPISEK: Fine. Thank you, Ms. Rex. [LB187]

SENATOR AVERY: I don't see any more questions. Thank you. [LB187]

LYNN REX: Thank you very much for your time. [LB187]

SENATOR AVERY: Any other proponent testimony? [LB187]

JON EDWARDS: Good afternoon, Senator Avery and members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing the Nebraska Association of County Officials. We are here today in support of LB187. You know, as our board discussed it and looked at this particular bill individually, given the gravity of such an action that we're looking at here, they just felt like it makes some sense to base this process on all the registered voters as opposed to, as it's limited to right now, just the percentage of those that voted. So just based on that as a policy, in general, our board decided to take a position to support this bill. And I might also just note that I think in your package there you have a letter from Richardson County Clerk, and she has submitted a letter in support of this bill as well, so I just thought I'd get that on the record. And with that I'll conclude my testimony. [LB187]

SENATOR AVERY: Thank you for your testimony. Questions from the committee? I don't see any. [LB187]

JON EDWARDS: Thank you. [LB187]

SENATOR AVERY: (Exhibit 1) Since you brought it up, I am going to read into the record now a letter of support from Mary Eickhoff, County Clerk/Register of Deeds in Richardson County, a letter on behalf of the Nebraska Association of County Clerks, Register of Deeds and Election Commissioners. Any other proponent testimony? Any opponent testimony? Welcome. [LB187]

KENT BERNBECK: (Exhibit 2) Good afternoon, Chairman, members of the committee.

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

Government, Military and Veterans Affairs Committee
January 28, 2011

My name is Kent Bernbeck, B-e-r-n-b-e-c-k, a resident of Elkhorn, Nebraska. I was asked to help manage the signature collection for the Suttle recall. I was sitting at home, getting my house ready for winter, and I got a call asking if I would help because of the difficulties that the Legislature has put forward the last number of years concerning residency, requirements for circulators, and the ban on paper signature. What I found when I got there was a great team of volunteers, but like most efforts, most petition efforts that go on, there's simply not a large enough pool of volunteers. And so the decision was made by the committee to hire circulators. What I find interesting is the Government Committee, and the Legislature for that matter, sometimes appears kind of hypocritical. The last time we tied signature thresholds to registered voters, we doubled signature thresholds. That was in the statewide initiative and referendums. That was in 1994 by the Nebraska Supreme Court. And since that time we've had very...very few initiative efforts. We've had almost no volunteer efforts. And yet, members of the committee and members of the Legislature rail against the paid...the high-dollar efforts that go on. And I do find that interesting because the higher the thresholds, the more reliance on paid efforts--paid circulators, paid managers, etcetera. So, you know, one would think that maybe the answer to this is to lower the signature thresholds of all initiatives, referendums, and recall to allow volunteers to participate. I know that we're going to have testimony on other bills, which I will offer, but I did want to make that comment. And as for Senator Council's question about the integrity of recall, I mean I was involved very closely and I didn't see anything that questioned the integrity of the process. During prior, and even afterwards, everybody was very respectful. And the process did work. I mean the people on the recall side didn't actually recall but the point was made, and I think that will...that's good for government is when there's that political discourse out there where people have to look at it. The people of Omaha didn't have to look at these spending issues or the tax issues, any of that, but we gave them that opportunity to examine that and determine for themselves: Hey, was this guy doing a good job or not? So, you know, I think we need to step back for a second, and before we do what is commonly referred to--what I'm hearing out there--is knee-jerk reaction, is to look and say, you know, hey, the process, maybe it did work. And I'll reserve the rest of my comments for the other bills. [LB187]

SENATOR AVERY: Thank you. Any questions for Mr. Bernbeck? Senator Schumacher. [LB187]

SENATOR SCHUMACHER: Thank you, Senator Avery. I have just one question. The financing of this last petition drive and recall effort, what percentage came out from outside the city of Omaha? [LB187]

KENT BERNBECK: I guess I'm not...I wasn't involved in the raising of the money or...I mean I obviously was involved in the spending of the money, but that you could probably find through the Accountability and Disclosure. I believe most of it was from Omaha. I mean what I saw through the NADC is almost all of it was Omaha residents.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 28, 2011

[LB187]

SENATOR SCHUMACHER: I don't have anything further. [LB187]

SENATOR AVERY: Senator Karpisek. [LB187]

SENATOR KARPISEK: Thank you, Senator Avery. Mr. Bernbeck, welcome back. I don't want to put words in your mouth, but you would probably like to see the threshold lowered rather than raised. [LB187]

KENT BERNBECK: On all initiative, referendum, and recall. That way maybe we can get volunteers to think...to think that maybe they can participate. Right now, volunteers, they know they can't do it. I mean they try. I mean there was a great group there that did incredible things. They gave up their time. I haven't seen volunteers like that in a long time. There was passion there. But there simply wasn't a large enough pool of them and I think we all know that from our own lives. I mean we just don't have time to give to those efforts that maybe we'd like to. [LB187]

SENATOR KARPISEK: And so...I'll have other questions on the other bills. Again, they're all kind of muddled together in my head. But you talked about tying it to the voter registration would increase it significantly. [LB187]

KENT BERNBECK: Right. [LB187]

SENATOR KARPISEK: So you think that it should stay the way it is now. [LB187]

KENT BERNBECK: You know, I guess whether it should be lowered or not, I guess I generally lean towards lowering them. The threshold that was there was tough. And one of the reasons why it's tough is in Nebraska, and thank goodness for this, we have private landowner rights. Private landowners can deny people freedom of speech activity on their property. And thank goodness for that. I own property. I don't want somebody out there screaming about something that I don't agree with. So that, and the fact that there's a small time frame. In recall elections, what I've experienced is that they're tougher to do because, you know, people...they don't want to take a side sometimes or, like they're either all for it or they just...they stay away from it. And therefore, that led business owners to fear retaliation from the other side; whereas, a lot of issues, you don't see that, so therefore, they grant access. It was incredibly difficult getting the circulators out there. We found ourselves standing on sidewalks, and that's all the closer we can get to the public. And we were very effective with that, but. [LB187]

SENATOR KARPISEK: Okay. Very good. Thank you. Thank you, Senator Avery. [LB187]

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 28, 2011

KENT BERNBECK: Thank you. [LB187]

SENATOR AVERY: Any other questions? I don't see any. Thank you, Mr. Bernbeck. Any other opponent testimony? [LB187]

JEREMY ASPEN: Hello. My name is Jeremy Aspen. I'm the primary circulator for the last recall petition drive that we had in Omaha. The last name is spelled A-s-p-e-n. I live at 662 South 84th Street, Omaha, Nebraska. I want to actually start off, a moment ago you had heard somebody ask--and I apologize, I don't remember the name--had asked you to ponder what could happen to you if recall is brought upon the senate...the Nebraska Legislature. And I want to ask you to do exactly the opposite, because this is a tool that we have, as citizens, and it is the only tool that we have available to us during the tenure or during the term of a candidate's...or representative's, rather...term. So I think it's exactly the opposition and I think if you're going to be honest to your constituents, I think you need to at least leave one course of action for the citizens that put you in office. And I think this is an interesting point, in Omaha, as the good senator had brought up, apathy is the rule. It's something I think we have to live with, that people of Nebraska, at a rate of 31 percent, voted in the mayoral election that put Mr. Suttle in office. But it was a legitimate election because it was an election of the participating citizens in our process. It is kind of unfortunate that the remainder of the citizens of Omaha will be governed by people who made decisions...by a minority that made the decisions. Nonetheless, it is the case that the voters in Omaha...and I don't know if it's relatively...if that's normal or not, but 31 percent voted. And you know what? They're the ones that we have to listen to because they participate in this process. And that is my argument. The number of people that participate in the process are the ones I think that the percentage needs to be based on. It has to be based on the percentage because everybody else is apathetic. We can't count on the other...the apathetic group or the apathetic registered voters to participate much because, frankly, there's a history of it. They don't participate. If there's going to be a threshold set, I think it needs to be set on the number of participating citizens in any given election. I think that's a very important case, and to do so otherwise would make it absolutely impossible for our, or any, I think, campaign of this sort to move forward. Very dangerous. And it would be, in essence, to effect...to put this bill into effect would make the recall process impossible and take away our right as citizens to, frankly, go after people that we do not think...that are not doing a good enough job. And that's the threshold. The people that put you there made the right decision when they put you there, and if they're going to take you away from that position, then I think they're probably right in doing so. We put our trust in the citizens. And I think that's all I've got on this bill. If you have any questions. And I apologize if I wasn't...if I didn't follow the routine formally enough. This is my first time in front of a committee. [LB187]

SENATOR AVERY: It's okay, Mr. Aspen. Thank you for your testimony. Questions from the committee? Senator Schumacher. [LB187]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

SENATOR SCHUMACHER: Thank you, Senator Avery. If I did the rough math right, based upon the comments before, 241,000 registered voters in Omaha. Thirty percent of them would be 72,000 signatures. [LB187]

JEREMY ASPEN: That's right. Yeah, 72,510 I think is the number that we came up with. [LB187]

SENATOR SCHUMACHER: From? [LB187]

JEREMY ASPEN: Three times. [LB187]

SENATOR SCHUMACHER: How many circulators did you have raising signatures in this last recall? [LB187]

JEREMY ASPEN: I think volunteers, we had anywhere, on any given...in totality, up to about 300. [LB187]

SENATOR SCHUMACHER: And paid? [LB187]

JEREMY ASPEN: I would say somewhere in the neighborhood of 40 to 80, or something. I don't know that answer for sure. [LB187]

SENATOR SCHUMACHER: And roughly, what percentage of the signatures were raised by the paid people? [LB187]

JEREMY ASPEN: Forty/sixty, volunteer/paid, respectively. [LB187]

SENATOR SCHUMACHER: Sixty percent by paid. [LB187]

JEREMY ASPEN: Right. [LB187]

SENATOR SCHUMACHER: And you raised about 28,000 signatures? [LB187]

JEREMY ASPEN: Yes. [LB187]

SENATOR SCHUMACHER: Okay. [LB187]

JEREMY ASPEN: 28,720. [LB187]

SENATOR SCHUMACHER: Based upon that experience, is there any way humanly possible you could raise 72,000 signatures? [LB187]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

JEREMY ASPEN: There is absolutely no way. And effectively, it would destroy the process. And I think it would be more honest to actually take away the recall process than it would be to implement this bill or any of the other bills. It would be more honest to the citizens and also other states that might look at us as a point of reference. [LB187]

SENATOR SCHUMACHER: I have no further questions. [LB187]

SENATOR AVERY: Senator Pahls. [LB187]

SENATOR PAHLS: Thank you, Chairman. I respect your desire for a recall. I have no questions against that. The part that upsets me a little bit is we keep automatically assuming apathy is okay--and I know you're not endorsing apathy. [LB187]

JEREMY ASPEN: Right. Right. [LB187]

SENATOR PAHLS: I wish somehow the people who were your volunteers and who were...and the paid people who were paid by some people with significant dollars--I mean it was in the paper. What I would hope that same energy would be utilized to improve on apathy. Not to accept it, but for somehow this group, aside from the recall efforts, which were--I commend them for all the efforts that they did make in following the process. I'm just asking somehow...and don't just say the schools ought to be doing a better job, because it's larger than that. So somehow, in your...as you continue this--I'm assuming you are, not necessarily the recall, but your efforts... [LB187]

JEREMY ASPEN: Right. Yeah, that would be fruitless. [LB187]

SENATOR PAHLS: ...for your efforts, that you come up with some ideas. And for those people on both sides who threw a lot of money into this recall effort, on both sides, could somehow turn that into even a better idea of improving on apathy other than just saying schools should be doing a better job. I'll let you respond. [LB187]

JEREMY ASPEN: I would say...I would say that, in fact, we did participate in that process and we did get the community talking about issues, and not just one issue, not just whether or not Mayor Suttle should be recalled from office. But...and I don't know where the 31st District is, I apologize, but any...so I don't know what you had heard, but any of the issues that are going on in the city were open game. They were topics of discussion on talk radio. They were topics of discussion at the TV stations. And I agree with you, apathy is not something that we should just allow to happen or...but we can certainly participate ourselves and we can ask other people to participate. We did that. I think actually it was part of our process to get out the vote was the most important thing. I'd also mention that it was a complete, pure process of engagement of the citizenry, and I would highlight it, because in that first initial stage we didn't spend one penny on

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

Government, Military and Veterans Affairs Committee
January 28, 2011

telling people why they should recall Mayor Suttle; we told them where they could go. [LB187]

SENATOR PAHLS: Yes. And I understand and I happen to represent District 31, which is Millard of Omaha. But what...the point I am...okay, we're beyond that. That's done with. Now I'm asking for the next step. I agree you did bring up very important ideas for discussion. I listened to them, I read them and heard on the radio. That I commend you for. I'm looking for...not for you to could say, gee, we're going have another recall on something else... [LB187]

JEREMY ASPEN: No. Right. (Laugh) [LB187]

SENATOR PAHLS: No. And I'm serious. Somehow I want to use that energy that you have brought up, because it was honest. I thought it was an honest attempt to make a change. I'm saying is let's...okay, let's go to the next higher level now of let's find a way to help those people. I mean I know I may be asking...not for on your shoulders, but we had a lot of people who were throwing money on both sides. I'm saying let's use that same concept to promote that. [LB187]

JEREMY ASPEN: I'd love it. [LB187]

SENATOR PAHLS: Okay. And I'm not...I don't...I'm not asking for a response. I'm just saying...because we could have this dialogue all day and I don't...that's not my intent. My intent is let's go to the next level now. Let's get the apathy appraised. [LB187]

JEREMY ASPEN: (Laugh) I get that. I would only respond in that I, for one, am a proponent of local government because of the accessibility to our leaders, and I am a proponent of engaging people. I wish that it weren't the case that more people went and voted for our president than they did our mayor because of the fact that our local government is more malleable and more accessible. And I will end up participating in things like this. I will say I have a full-time job and I will be out of the picture for a long time. (Laugh) [LB187]

SENATOR PAHLS: Yeah. And I'm not going to keep going with this dialogue, but I understand people have full-time jobs. I'm just using this as sort of a...okay. [LB187]

JEREMY ASPEN: I think it would be fantastic and I wish people would be engaged as well. I really do. [LB187]

SENATOR PAHLS: Okay, thank you. Thank you. [LB187]

SENATOR AVERY: I don't see any more questions. Thank you, Mr. Aspen. [LB187]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

JEREMY ASPEN: Okay. Thank you very much. [LB187]

SENATOR AVERY: Any other opponent testimony? Sir, is that a prop or exhibit there? [LB187]

GREG LYONS: (Exhibit 3) Yes. [LB187]

SENATOR AVERY: You can't use that. If you want us to see something... [LB187]

GREG LYONS: She's handing... [LB187]

SENATOR AVERY: Okay. Well, just leave that there. [LB187]

GREG LYONS: Okay. Okay, this was basically just a reproduction of that so I could point to parts of it... [LB187]

SENATOR AVERY: Okay. All right. Yeah, just refer to what we have. [LB187]

GREG LYONS: ...but I'll try to do it by words here. Okay. LB187 is a numbers game. [LB187]

SENATOR AVERY: Sir, would you please read your name...spell your name into the record. [LB187]

GREG LYONS: Yeah. I'm Greg Lyons from Omaha. That's L-y-o-n-s. Okay. So LB187 is simply a numbers game, and so I'm going to talk about numbers here. You're getting a graph. This takes an imaginary district with 100 voters, 100 registered voters, and it shows what LB187 will do to the required signatures based on voter participation. Basically, if you have...okay, the line that goes diagonally from corner to corner is the number of votes cast for the office. The line across the top represents 100 voters. The vertical axis is numbers of things. It can be...it's...depending on the line that we're talking about, it's either number of voters, number of votes, or the number of signatures. So this diagonal line that goes from corner to corner is the number of votes cast for the office. The horizontal line that goes straight across with the triangles on it, that is the number of signatures that would be required in a district with 100 voters if LB187 is adopted. The line with the colored-in squares that goes from 0 and then it crosses across the 30 line there is the number of signatures required with the current law the way it is. Now the line...the X axis across the bottom is the percent of voters who voted for the office. So from left to right represents, as you go across this graph, shows higher voter participation in that office election. What we see here is that about 85 percent...with approximately 85 percent of the voters voting for the office the results are the same. The current law versus LB187 are the same. But anything below that, and LB187, as it has been pointed out before raises the number dramatically. If you're

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

Government, Military and Veterans Affairs Committee
January 28, 2011

talking even a 60 percent voter participation, currently you'd have to get, in a 100 member district, in a 100 voter district, you'd have to get 21 signatures. With LB187, you would now have to get 30. That is a 42.8 percent increase--almost half again. And notice that as the percentage of voter participation decreases--now it was around 30 or so percent in Omaha this last election--as that number decreases, the requirement for the number of signatures increases dramatically. When you get down to...let's see, when you get down to around 40 percent voter participation, current numbers would be 14. You would have to get 30 signatures. You're more than doubling it. Now this is an imaginary district with 100 people, but it's all based on multiplication. It's scalable so that you could take these numbers, and if you've got 1,000 people in the district, just multiply it by 10. The shape of the graph is going to be exactly the same. So what this bill is doing is it will make...it will actually discriminate against offices...it'll discriminate against petitioners who are going against a candidate or a person who had a lower...where they had lower turnouts because they're going to be the ones that are going to have to get a lot more signatures. So I would urge you to...this bill needs to be killed right here in the committee. It should never see the light of day on the legislative floor. [LB187]

SENATOR AVERY: Thank you, sir. Questions from the committee? I don't see any. Thank you for your testimony. [LB187]

GREG LYONS: Okay. Thank you. [LB187]

SENATOR AVERY: Any other opponent testimony? Anyone wish to testify in a neutral position? Senator Council, you are recognized to close on LB187. [LB187]

SENATOR COUNCIL: Thank you, Senator Avery. And I appreciate the time and attention of the committee, and I first want to respond to the question as well as the observation made by Senator Schumacher. Senator Schumacher, you're absolutely correct that under LB187, based on 2009 mayoral votes cast and the number of registered voters, my bill would require about 72,000 signatures. And that's why I prefaced the introduction of LB187 is that it's because we don't have grounds, stated statutory grounds of misfeasance or malfeasance for recall elections. And because of that, and it kind of gets to a point Senator Janssen was making. I submit to you that had there been misfeasance or malfeasance, the petition circulators would have had no problem achieving the number of signatures required. But because we have no statutory stated grounds of misfeasance or malfeasance, yes, I would submit to you, Senator Janssen, that in the minds of a lot of people this wasn't worth their time, because there was no accusations of misfeasance or malfeasance. There were differences of opinion on policy decisions, and in the minds of many Omaha registered voters, it didn't rise to the level of taking their time. Senator Pahls, I agree with you and I will state on my opening I think that Mr. Aspen basically made my argument on LB188, and I will present that during that opening. But without misfeasance or malfeasance, I think that we, as a body, do something that was never intended when the recall statutes

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

Government, Military and Veterans Affairs Committee
January 28, 2011

were enacted. And what was never intended was that a super, super, super minority be permitted to effect a recall election. And that's exactly what is occurring under the current operation of our statutes without misfeasance or malfeasance being grounds. A super, super, super minority taking the numbers...Senator Schumacher, it only took 10 percent of the registered voters to force the other 90 percent to make a decision whether they wanted to vote. And you say, yes, that happened, but at what costs to the taxpayers? That 10 percent could force an election regardless of what the outcome was, but around 10 percent could force that action to be taken. That's the concern I'm addressing. And when I talked about the integrity of the process...and I will submit to you we cannot compare initiative and referendum to recall. They're totally separate and distinct principles. They're totally separate and distinct in terms of their design. And I will repeat this when I offer LB188 and that recall suggests you're taking something back. Now I submit to you if you didn't have anything in, you can't take anything back. My friend and opponent on the Omaha mayoral recall suggested an analogy during a debate. He said to me: Senator Council, it's like, you know, you ought to have a right. When you go to buy a car and you get there and you pay all the money for the car, and you get back home and you go to start the car and you find out the car is a lemon, you should be allowed to take that car back. And I said to my friend: You're absolutely right. But if you took the car without having paid for it, you would have no right not only to possess it but to take it back. And that's why when we go to LB188, you'll see the rationale, and I think Mr. Aspen alluded to the rationale underlying LB188. Senator Schumacher, I couldn't agree with you more. If we don't have misfeasance and malfeasance, my bill would make it very difficult for someone to ever effect a recall. But if we have misfeasance and malfeasance, I would submit to you the opposite would hold true. I would submit to you that if misfeasance and malfeasance had been the basis of the Omaha mayoral recall, they wouldn't have had difficulty getting signatures. They wouldn't have had to pay as many circulators as they had to pay because misfeasance and malfeasance gets the attention of even the apathetic voter. So I would urge the committee's consideration of LB187 if the committee does not advance Senator Avery's bill that provides misfeasance or malfeasance. If Senator Avery's bill advances, then the current state of the law on the number of signatures required would be an appropriate measure. And I would submit to you LB188 would be equally appropriate. [LB187]

SENATOR AVERY: Thank you. Any more questions for Senator Council? You have one more question from Senator Schumacher. [LB187]

SENATOR SCHUMACHER: Thank you, Senator Avery. The Omaha mayoral position is quite a political prize. People that held the position have gone on to higher office. And therefore, there's an inclination, I would guess, for outside influence and outside money to try to have an impact on that office. Did you see, in this last recall election, much evidence of outside influence or outside money playing a role, or was this basically totally a local thing? [LB187]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

SENATOR COUNCIL: You know, Senator Schumacher, I can't answer that question. I don't know. I do know that there...at least it was reported, based upon filings with the Nebraska Accountability and Disclosure Commission, that a substantial amount of the money that was raised in opposition to the recall came from within the state of Nebraska, came from Omaha. Now where that money came from I don't know. (Laugh) So I can't tell you. And if I may as an aside, the last person to go on to great heights from an Omaha mayoral position was Senator Zorinsky (inaudible). (Laughter) [LB187]

SENATOR AVERY: Okay. That ends the hearing on LB187 and now we will move to LB188. Senator Council, you are recognized to introduce LB188. [LB187]

SENATOR COUNCIL: Thank you again, Chairman Avery, members of the committee. I appear before you now to introduce LB188. And LB188 is an alternative measure for this committee's consideration in the absence of statutory grounds of misfeasance and malfeasance for a recall. And this takes into account the concerns expressed by increasing the percentage to the percentage of registered voters that's reflected in LB187 and gets to the issue that Mr. Aspen kind of alluded to and Senator Pahls has referenced. Under LB188, the thresholds remain the same. It's 35 percent of the people who voted in the last election affecting the office that is the subject of the recall. However, in order for your signature to be valid on that petition, you must have voted in that last election. Now, Senator Pahls, I had a constituent contact me about LB188 and said, Senator Council, your LB188 discourages voting. I said, absolutely not. It should encourage voting, because if people want to retain the right to recall, they would have had to have voted. So it could have the effect of increasing voter participation in order to protect your right in the event that you did have a recall. You have protected...you have participated in the process by voting and you've protected your right to participate in a recall. Now if you look at the Omaha mayoral recall--and I will submit to you that what occurred in that recall is very much at the core of why I introduced this--241,000 registered voters, 76,000 of whom voted in the last election. Under existing statute, that required 28,000-ish signatures. But of that 28,000 signatures, only 45 percent of them had voted in the last election, in the last mayoral election. So that brings you down to about 13,000 people who effected a recall election. That percentage is 5 percent. So 5 percent of the 241,000 registered voters in Omaha had the ability to put the city of Omaha to the time and expense of having a recall election, and 55 percent of the signers of the petition didn't even bother to vote in the 2009 mayoral election. Again, I refer to having a stake in it. Mr. Aspen referred to it. You know, voters have a stake in it, you know, in what goes on in the city. I couldn't agree with him more, and that's why I believe LB188 is necessary. Because if you didn't have a stake in it by voting, then you shouldn't have a stake in determining whether someone else's vote is potentially unraveled. And that's what could have occurred in Omaha. Five percent of registered voters could have negated my vote in 2009 when I went out and exercised my civic responsibility to vote. Five percent could have changed that, ultimately changed that

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

Government, Military and Veterans Affairs Committee
January 28, 2011

entire election. That's what I view to be problematic. I see LB188 encouraging people to vote if they want to retain their option to recall someone. Again, all of this is in the context that we don't require that recall elections be based on misfeasance or malfeasance. So in that context you ought to have something in the game. And the definition of recall is to take something back. If you didn't vote in the first instance, what are you taking back? But you have the ability to take back someone else's vote by signing a recall petition because you are a registered voter. I firmly believe that if we retain the current statutory framework that it's a percentage of the those who voted in the last election, that in order for your signature to be valid on a recall petition you must have voted in the last election. And I know I've spoken to representatives of the County Attorney's Association and they have indicated a concern, and I suspect that they'll come up and testify in opposition to the bill, and I will venture to say not in principle but in application because of the potential additional cost associated with verifying petition signatures. I would only advise the committee...I think it was less than 24 hours after the Douglas County Election Commissioner verified that a sufficient number of signatures had been presented that they also gave the percentage breakdown of how many of those signers had and had not voted in the last election. And I know what holds true for Douglas County doesn't hold true for all counties. But within a day, if not the same day, not only were we told that they had submitted the requisite number of signatures, but we were also aware of the percentage of those signers who had not voted in the last election. And with that I'll answer any questions the committee may have. [LB188]

SENATOR AVERY: Thank you, Senator. Questions from the committee? I think we got all the questions in on your other bill. [LB188]

SENATOR COUNCIL: Thank you. [LB188]

SENATOR AVERY: Will you stay around to close on this one? [LB188]

SENATOR COUNCIL: Yes. [LB188]

SENATOR AVERY: Okay. Proponent testimony. Anyone wish to testify in support? [LB188]

LYNN REX: Senator Avery, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. That's L-y-n-n R-e-x. And again, as Senator Council noted, if the committee is so inclined to advance Senator Avery's bill with some changes that we hope to recommend on taking out some language relative to the court proceeding, we think that her bill, LB187 and LB188, neither of these bills would be necessary. And essentially that's what she is telling you as well. Because I do think that the recall process was intended to address those issues that deal with malfeasance, misfeasance, nonfeasance in office. Senator Lathrop, when one of the prior bills was advanced out of this committee that had been introduced by Senator Mick

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

Government, Military and Veterans Affairs Committee
January 28, 2011

Mines, at that time had attached an amendment, and the Lathrop amendment was to apply dishonesty for dishonest acts. And so you have those four reasons. I think Senator Council has gone through very well some of the reasons why she has looked at the numbers issue on LB188 and the application of that. In the interim since our last...since LB187, I did contact my office just to verify that the gas, natural gas example was in Neligh, Nebraska. And that example, again, was when the voters of Neligh had passed it by a vote, overwhelming vote to take over their gas system. And, of course, the gas company didn't like it. So the gas company came, took out full-page ads, lots of money. And, of course, the city, as you know, once there is a ballot question, the city can't spend money on it. All they can do is educate voters. The city is not allowed to take a position on it once it's a ballot question. So essentially what occurred in Neligh is that that mayor was recalled for simply implementing the prior decision of the voters, and that had happened within a relatively short period of time, like almost six months from the date of the election. And I know some of you were not here with my prior testimony, but some of the other examples we talked about was the mayor of Nebraska City being subjected to recall because of the fact that she hired a city administrator. Some of you may remember, Senator Price and others, as we've come forward with other bills dealing with recall. In Wayne, Nebraska, there was an issue dealing with parking facilities and where to park in downtown parking. And that...regardless of how that vote went, there was an election and the voters made that decision. There was a professor at the college, at Wayne College, that decided this would be a great civic exercise for the kids, so let's see if we can undo that. So they started the recall of the mayor. Two of the councilmembers supported the mayor's decision and said, well, you just voted; we're just implementing again what you just decided to do. And that notwithstanding, they had some young people there that were of appropriate age. They went out, they gathered signatures, and this was the first really electronic recall, is what we've called it, that occurred in the state of Nebraska. They used Web sites, they used everything to say how terrible this mayor was because of the parking issue. And, in fact, as it all turned out, when voters...when one of the councilmembers looked at the names of the folks that had signed the petition to recall him, he noted that some of his friends and family happened to be on that list of suspects. So imagine if you're the elected official, local government official, and you look and you say, wow, you know, my brother signed this and my dad signed it and, you know, what's this about? So he gave them a call and said: You know, what were you told? And, of course, the recall petition itself had the appropriate language which was recalling over the parking issue, but in essence, that's not what they were told. They were told that there had been some pretty bad things happening in Wayne, which did not occur, but that's what they were told. They said this is a chance to address that issue. So people were signing things not even knowing what they were signing. There were over 35 affidavits that were submitted to a judge in Wayne to say, stop this recall because this should not proceed. And the judge said, you know, citizens need to be smarter than this; if they signed it, they signed it. Now nobody ended up being recalled in that effort, but again split the community for a very long period of time. And again that was simply an academic

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

Government, Military and Veterans Affairs Committee
January 28, 2011

exercise by some students and a professor that thought this would be a great way to engage the students in how the process works. In my view probably not a very good use of time by anyone involved and a lot of grief caused by a lot of people. Another example...and I know that I don't...I have limits here, so I'm going to talk to you a little bit about another example that we've talked in some of the prior legislation that this committee has reviewed, and that involved the Blair airport. There was an individual that got elected to the Blair airport. He was upset with the fact that some other members of the Blair airport thought there needed to be a runway, another runway, or an expansion of a runway in Blair. That's the home of Cargill as you may know. And so he decided that he would start a recall, and he thought the only way that he could really be effective in this recall is to get rid of the folks that were the majority vote. And in order to do that, he floated a recall on himself and on the rest of the board members. So this has been...the whole process of recall has been used for gamesmanship on the local level. It has been meanspirited on the local level. We had a mayor in Cozad, Nebraska, that was subjected to recall because the citizens came forward demanding that she address the issue of junk cars, and she did that and was subjected to a recall. With that, I'd be happy to... [LB188]

SENATOR AVERY: Thank you, Ms. Rex. [LB188]

LYNN REX: ...respond to any questions you might have. [LB188]

SENATOR AVERY: Questions from the committee? Senator Karpisek. [LB188]

SENATOR KARPISEK: Thank you, Senator Avery. I remembered my last one. I wrote it down. (Laugh) How many times can a person be recalled, or is there a waiting...is there a window or...? [LB188]

LYNN REX: There are limits. For example, I think you have to serve in office for at least one year and then once you've been subjected to recall--and that doesn't mean just the signatures. In other words, once you've been...if the signatures are actually...because this has happened many times too, where there will be a recall petition circulated. And let's assume you're still the mayor of Wilber, Nebraska. So I take out a recall on you and then I'll run around and I'll say, you know, I had the number of signatures but I just didn't turn it in; I'm just not going to turn it in. But I can go the next week and take out another round of signatures and start the whole thing up again. That can go on ad nauseam. But if I actually submit the signatures, then...and that results in an election, then there's a limitation that you cannot be subjected to that again for, I believe, a year. But I'll verify that. And committee counsel may know too. But once you've been subjected to recall, there's another year before you can be subjected to that again is my recollection. [LB188]

SENATOR KARPISEK: So in a four-year period you could go through it three or four

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 28, 2011

times. [LB188]

LYNN REX: At least twice. [LB188]

SENATOR KARPISEK: And I'm surprised that never happened to me. Thank you.
(Laughter) [LB188]

SENATOR AVERY: So am I. (Laugh) Senator Price, you have...any other? Senator Schumacher. [LB188]

SENATOR SCHUMACHER: Thank you, Senator Avery. In...during the recall process in the towns that have been affected, what type of disruption is there of the act of government? [LB188]

LYNN REX: Well, there's tremendous disruption. That's a great question. There's tremendous disruption. Because basically for the elected official that is subject to the recall, you want to spend the focus of your time trying to basically keep yourself in office and do what you were elected to do by the majority of the people. And so that's one of the reasons why I think that you find so many folks that decided that...and this has happened. I don't know what Mayor Suttle is going to decide to do, but there are very few people that once they've been subject to recall--and most of them are unsuccessful. But I can give the list of four or fives names right off the top of my head of mayors that said: I'm not running again; you know, I succeeded...they did not...they were not successful in recalling me or in getting the signatures, but I will not put my family through this again. And especially those people with kids. The harassment that those kids get at the local level is profound. So it is extremely divisive and the city councils themselves or the village boards go through a great deal of grief trying to figure out what they do to move forward, especially when you have an entire village board recall over...whether it's a fluoride. There are some people that believe that fluoride is a communist, socialist effort. They use those words. If you are in the Health Committee, you would know that they have used those actual words. And we've had folks that have been recalled over that--so very, very divisive. And kids that would go to school and there would be signs up saying: Councilmember or Village Boardmember So-and-So--I'm going to say Jones--is a communist. You're a fifth-grader; you even know that that's not a good day at the ranch. [LB188]

SENATOR SCHUMACHER: One follow-up question. On the flip side of it, if somebody is caught with their hand in the cookie jar, what has been the historic experience? Normally, do they resign without recall? [LB188]

LYNN REX: To my knowledge--and again this is just what I know, Senator Schumacher--there have not been any elected officials where that has been the case. There have been numerous, unfortunately, local officials...and numerous--I'm saying

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

Government, Military and Veterans Affairs Committee
January 28, 2011

less than 1 percent, I'm sure a great deal less than 1 percent of all elected officials in this...pardon me, appointed officials in the state. But there have been municipal clerks. There have been county clerks. There have been school folks. And there have been others that...and periodically, you read in the paper where someone is being charged with embezzlement and so forth. I mean those are appointed officials. And the county clerk, of course, would be an exception. I guess that would be the exception. I think there's been an allegation against a sheriff. Perhaps Jon Edwards would know when he comes up here. But that is a reason, obviously. That's embezzlement. That's malfeasance in office. It rises to the level of a crime and those people should be removed immediately. And I will tell you that for, on the municipal side, from the appointed officials, they resign immediately. [LB188]

SENATOR SCHUMACHER: No further questions. [LB188]

LYNN REX: And quite frankly, they have no choice. [LB188]

SENATOR AVERY: Thank you, Ms. Rex. [LB188]

LYNN REX: Thank you for your time. [LB188]

SENATOR AVERY: Any more proponent testimony? Anyone wish to testify in opposition? Mr. Edwards. [LB188]

JON EDWARDS: Good afternoon again, Chairman Avery, members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here representing the Nebraska Association of County Officials. We are here in opposition to LB188 today. And I will tell you I did have a few minutes to speak with Senator Council about this issue and I thank her for her input, and certainly we are aware of her concerns and we can appreciate her arguments in favor of this proposal. There's just a couple of quick things that I'll touch on that brought us to a position of opposition. And as Senator Council mentioned, our election commissioners did express some concerns with creating another layer in the signature verification process. And as you all are aware, that can be kind of a tedious process, as it currently is. While certainly the mechanics are there to do it, there is a bit of a question regarding the time involved and staff time and the costs associated with that. Albeit, sort of limited, they are real concerns as we work through all of our budget concerns going forward right now. And also you have the litigation concerns. It certainly brings another piece into the puzzle that creates another avenue through which you could possibly bring some legal actions on these issues. Moving on more to the more broad policy arguments, our board certainly took some time to discuss this issue and this idea overall, and certainly going back to Senator Council's arguments, valid, brought up, were discussed. In the end we came down in an opposition position based essentially on the idea that within this idea, only speaking to LB188, there is some exclusion there. And we've had, you know, election commissioners brought it to our

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

Government, Military and Veterans Affairs Committee
January 28, 2011

attention, individuals that move into the area after the initial election, they're restricted from participating in this process that brings forward the recall election. And again, you have to draw lines about folks that maybe didn't vote for whatever their reason might be. Granted, apathy is a big part of it typically. But certainly there are legitimate reasons why that may have happened in any given circumstance. They're excluded from participating at the initial point of process here. And again, you're talking about a very significant issue that we're talking about here. We talked many times in this committee about, how do we get more participation; how do we broaden that scope? Certainly I think when you look at LB188 in and of itself, it limits that participation scope. So there are just things that we examined, our board examined. Had a discussion. Ultimately, we ended up in a position of opposition to this bill. And again I thank Senator Council for her time and listening to our concerns. And again I would just add that I believe the election commissioner clerk from Richardson County had submitted a letter to you folks expressing their association's opposition to this bill as well. So with that I'll conclude my testimony. [LB188]

SENATOR AVERY: Thank you, Mr. Edwards. Questions? Senator Schumacher. [LB188]

SENATOR SCHUMACHER: Thank you, Senator Avery. Just a quick question. What's the cost of verifying a signature, on average, in a... [LB188]

JON EDWARDS: Senator, I couldn't give you that figure per...to break it down that way. We could get you an estimate of that, but. [LB188]

SENATOR SCHUMACHER: Could you do that, please? [LB188]

JON EDWARDS: Certainly we could do that. Then again, the cost-to-cost factor when you add this in there, probably not a significant factor in and of itself at the initial point. When you start talking about litigation, then that's...that creates a few more problems. But we can... [LB188]

SENATOR SCHUMACHER: If you could give a guesstimate of that. [LB188]

JON EDWARDS: We'll try to get you some numbers to answer that question. And I appreciate your comment about Omaha mayors moving on to higher offices, because we currently have two former Omaha mayors on the Douglas County board, so. [LB188]

SENATOR SCHUMACHER: See. I knew they moved on to higher office. [LB188]

JON EDWARDS: There you go. (Laugh) [LB188]

SENATOR AVERY: Senator Pahls. [LB188]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

SENATOR PAHLS: Thank you, Senator. You know, I'm really basically not as concerned about the money issue. To me, that's...and I know we do need...it's nice to know that information because it does factor in. And not that I'm saying supporting what the good senator is going for. In fact, I had a question, too, I was going to ask her, but I'll do it on the side. I mean democracy is a little messy. [LB188]

JON EDWARDS: It can be. That's right. [LB188]

SENATOR PAHLS: And this is just part of it. I think we just have to make sure we have the right...we're going in the right direction. And are you going to respond to Senator Avery's bill or will you be around? [LB188]

JON EDWARDS: I had not planned to at this point in time. [LB188]

SENATOR PAHLS: Okay. Okay, so thank you. Thank you. [LB188]

JON EDWARDS: But I appreciate your comments, because it is...it's...the gravity of the situation is pretty significant when you think about it. [LB188]

SENATOR AVERY: Senator Price, do you have a question? [LB188]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Mr. Edwards, for your testimony, because as I was thinking about this, in my community we have a lot of military members who move in, and they would move in after the fact. They would pay their taxes. They would be good members of the community. And it may be one year after the election or two years and they would be denied their right to exercise a vote. [LB188]

JON EDWARDS: Sure. [LB188]

SENATOR PRICE: And I think if I can see that in my neck of the woods and in my pond, I could see that happening statewide. And I don't know...and maybe you could help me, is there any other place that we put this type of litmus test on your ability to participate in democracy? [LB188]

JON EDWARDS: Off the top of my head, thinking quickly about it, nothing comes to mind. And you're right. And you point out...those are great examples with your concern in terms of being able to actually participate, coming in after the fact. Granted, it's going to be a pretty limited number of people in the overall scope of things. However, you're still telling those people they can't participate based on some arbitrary rule that you put in place. And I would clarify just one comment you made. They would be able to vote; they would not be able to sign, that initiates the process to get the vote back in place.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 28, 2011

[LB188]

SENATOR PRICE: Thank you. [LB188]

JON EDWARDS: So just to clarify that point. [LB188]

SENATOR PRICE: Well, thank you very much. [LB188]

JON EDWARDS: Sure. [LB188]

SENATOR AVERY: Thank you. Any more questions? I don't see any. Thank you, Mr. Edwards. [LB188]

JON EDWARDS: Thank you. [LB188]

SENATOR AVERY: Any more opponent testimony? Mr. Bernbeck. [LB188]

KENT BERNBECK: I included this bill number on my sheet already. [LB188]

SENATOR AVERY: Okay. [LB188]

KENT BERNBECK: My name is Kent Bernbeck, B-e-r-n-b-e-c-k. One of the things I really miss about the very talented Senator Chambers is he used to rail against unconstitutional legislation. And I don't know if Senator Council has researched this particular bill, but it was found unconstitutional by the U.S. Supreme Court, which does rule Nebraska, back in 1970. Forty-one years ago this very issue was taken up by the High Court, so. And I know from personal experience that sometimes the committee and the Legislature kind of defers the costs of challenging these laws to the citizens, like myself. But I think that we know this up-front that...I mean we can go to the page and find that, in fact, that it is unconstitutional. So with that I won't take up much more of your time on this particular issue. [LB188]

SENATOR AVERY: (Exhibits 1 and 2) I would note that, since you mentioned the constitutionality of this, that the ACLU has submitted a letter in which they raise the constitutional issue in opposition to this bill. There is another letter for the record from Mary Eickhoff, representing the Association of County Clerks, Register of Deeds, and Election Commissioners, also opposing. Questions for Mr. Bernbeck? Senator Schumacher. [LB188]

SENATOR SCHUMACHER: Thank you, Senator Avery. Just one question. In the earlier petition drives preceding 2002, there were (inaudible) circulators that were on the streets and they were gathering signatures. But in 2006, if my memory serves me correct, things changed with the introduction of paid blockers. Did you experience any

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 28, 2011

paid blockers, and could you define for the committee what a blocker is in this race?
[LB188]

KENT BERNBECK: We anticipated that, I mean with knowledge of previous campaigns. I don't know how organized...and I don't know if it was paid. What we did see was an awful lot of it down at the UNO campus and we do think that it was certain groups that were doing it, which may or may not have been volunteers or paid. But no, widespread, we didn't see a lot of it. Some of that was by the fact that the circulators were relegated to sidewalks and areas that weren't necessarily high person traffic. I mean they were high auto traffic, but we didn't...it was a different kind of campaign that way, where we weren't able to stand in front of, let's say, a supermarket where the blocker then could also stand there and do their thing. [LB188]

SENATOR SCHUMACHER: Thank you. [LB188]

SENATOR AVERY: Senator Pahls. [LB188]

SENATOR PAHLS: Thank you, Senator. And Senator Council is not here because she has other duties, but I'm wondering, do you think by listening to your testimony, she's just probably trying to get those of us sitting around this table to think of what is possibly the ramifications of some of our decisions when she is proposing this particular bill?
[LB188]

KENT BERNBECK: I don't know her motives, but I would hope that any senator that's bringing legislation forward would at least check to see if it's constitutional or if it's been outright found unconstitutional before they bring it forward. Because ultimately citizens have to deal with this, and it's very costly. [LB188]

SENATOR PAHLS: Right. I understand that. But I also commend her for bringing it forward, even though it may be unconstitutional in your eyes. I do commend the senator for bringing something forward for us to think about, not saying we're necessarily going to approve it. But in the whole big picture that's what we ought to do, take a look at what everything is out there. And I'm sure somebody on our staff would say, no, you know, this has a constitutional problem. [LB188]

KENT BERNBECK: Well it's great for floor debate, but. And these aren't my eyes; these are the High Court's eyes. [LB188]

SENATOR PAHLS: Right. It's just like we are allowing you to come in front of us...
[LB188]

KENT BERNBECK: And I appreciate that. [LB188]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

SENATOR PAHLS: ...to do that. So that's what this is all about. Thank you. [LB188]

KENT BERNBECK: Thank you. [LB188]

SENATOR AVERY: I don't see any more questions. Thank you, Mr. Bernbeck. Any more opponent testimony? [LB188]

JEREMY ASPEN: All right, Mr. Chair and members of the committee, thanks for having me. My name is Jeremy Aspen, last name A-s-p-e-n, and I'm from Omaha. Primary circulator of 28,720 petition signers, again. This...I won't belabor the point, but just to highlight some of the issues I think that at least pertain to the unconstitutionality, or I would actually appeal to just common decency. We cannot make it so that people who want to begin participating in a process are not allowed. It's an important process. We've talked about apathy. That issue has been brought up. We can't make it so that 17-year-olds can't sign a petition. At the time of the election, they were 17 and now they're 18. That's unfair. People coming back from war, which I think was a good point. Recently arrived citizens to a city, brought up. Anybody who has had a medical emergency, I don't think they should be limited from voting...a medical emergency during the election. And new citizens of the United States, I think they should also be allowed. I bring those up just because I think they're obvious, and if you take away one person's right to vote that fall into those categories with this bill, you've done a disservice to democracy, and our representative democracy specifically. Just because...and not to belabor the point again, but if you do not allow somebody to vote, it's just not the case that because somebody doesn't vote that they are any less a citizen and they should have every single right that all the rest of the citizens in the community have. I also...because it was brought up, minor violations. And it kind of came off as unimportant. But the example of junk cars. I don't know the case. But it's in Cozad, Nebraska, or wherever. Decatur, Nebraska, let's say, since that's where my family is from, if you have a car that's a junk car in your front yard and there's enough junk cars in your front yard and the government official is not doing anything to get rid of the junk cars in your front yard, you know what? The mayor of Decatur should be removed for somebody that will make the community a better place to live. So I think highlighting those what were presented as silly arguments...or rather, silly examples of why a recall should not be...or why it should be more difficult to recall, I think that's not for you, it's not for me, it's not for anybody to decide except for the community that put that elected official in office. Recalls are rarely, rarely, rarely effective in actually removing a person from office. It should certainly not be made impossible. And at the end of the day, even in our case in Omaha, I think we have a better government because of it. I think Mayor Suttle will be, as put to me by his good...a very good friend of his, Mayor Suttle will be a better leader because of the recall. Thank you. [LB188]

SENATOR AVERY: Thank you, Mr. Aspen. [LB188]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

JEREMY ASPEN: And I can answer questions if you'd like. [LB188]

SENATOR AVERY: Do we have any questions from the committee? I don't see any. Any more opponent testimony? In one wish, yes. [LB188]

GREG LYONS: Okay, I'm Greg Lyons from Omaha, Nebraska. That's L-y-o-n-s; first name is Greg, G-r-e-g. I think we're having some problems with semantics here. We keep hearing...I'm hearing, frequently, the senator discuss taking back a vote and a small minority undoing what the majority has done. And to do a recall petition drive doesn't undo anything. All you're doing is you're asking the electorate to reevaluate this person's performance in office on the basis of what they've done since they were elected. That's all you're doing. The decision to keep or remove is still going to be made by the majority of the voters that come to the polls. So this talk of a minority undoing anything is misleading. Another...now they've, the previous speakers have mentioned a number of instances where disallowing someone to sign a petition that hadn't voted in the previous election. I won't go over all of those, but there was another one that's completely...that would be completely out of, say, for example, my control. If I stay living in the same apartment or house that I'm in, and my district gets reapportioned, I have no control over that. It's done by the government to me. They moved me into a neighboring district because of the reapportionment. At that point I would be unable...I would be barred from signing a recall petition against an official whose district I now reside in because I had not obviously voted in their election before. I think the...it's been commented and I think we need to emphasize if we're going to limit...if we're going to restrict recall petitions to the extent that these two bills that LB188 and LB187 will do, we should just man up and we should honestly tell the people we are going to ban petitions, period. To do it by constantly raising the bar to impossible levels is an inherently dishonest way to do it. It's misleading. If you want to ban the petitions, say we're going to ban it and call it the "recall petition ban act." But to do it the way that these two bills are trying to do it, by raising the numbers to impossible levels, is patently dishonest. And that's all I have for this one. [LB188]

SENATOR AVERY: Thank you, Mr. Lyons. Questions from the committee? I do not see any. Thank you for your testimony. Any other opponent testimony? Anyone wish to testify in a neutral position? Good afternoon, sir. Please state your name. [LB188]

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. I feel that the... [LB188]

SENATOR AVERY: Would you spell your last name? [LB188]

RICHARD HEDRICK: H-e-d-r-i-c-k. As a taxpayer, I do not like these political recalls. They lead to the tail wagging the dog. Mad Tea Party types using my tax money to call frivolous elections take my money. Actually the fault lies with the voters. The voters should turn these people out, but they don't come down and vote. That's the big

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

Government, Military and Veterans Affairs Committee
January 28, 2011

problem. They get away with wagging the dog. Thank you. [LB188]

SENATOR AVERY: Thank you, Mr. Hedrick. Any questions from the committee? Don't see any. Thank you. Any more neutral testimony? Seeing none, that will close the hearing on LB188. Senator Council had to be called back to her own committee. We'll now move to LB224 and I'll pass the Chair to Senator Price. [LB188]

SENATOR PRICE: Welcome, Senator Avery, and please open. [LB224]

SENATOR AVERY: Thank you, Senator Price. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in central Lincoln. I feel like that my bill has already been discussed...(laugh)...so I'm going to be brief. I would like to put this in some historical context. We have dealt with this issue several times in the past. Last year, Senator Lautenbaugh--or two years ago I guess it was--introduced a bill very similar to what I have here in LB224. It did not advance from committee. In 2006, former Senator Mines, and in 2008, former Senator Engel introduced similar bills, and they were advanced to General File. But as I recall, we never really got to discuss them because they were not prioritized. This bill I want to state right up front is not a reaction to what has just happened in Omaha. This bill has been introduced before; I supported it in the past. Since those two individuals are not here, and I checked with Senator Lautenbaugh and he did not wish to bring the bill back this year, I decided to do it. It is clear to me that voters have adequate opportunity in the ballot box to determine who their elected officials should be. Recall should be reserved for those situations in which the elected official in the course of his or her official duties has done something egregious, something that clearly breaks the public trust. I don't believe that elected officials should be recalled simply because they make an unpopular decision. Currently, recall efforts do not need to be based on any specific reason. It can be some collection of things like, I don't like the way this has been going, and you can package it into a recallable argument. What we are trying to do with LB224 is limit the reasons for recall to malfeasance in office, misfeasance, or nonfeasance in office, or the conviction of a crime involving an act of dishonesty or a false statement. Malfeasance is defined as a knowing and intentional commission of an unlawful or wrongful act. Misfeasance is defined as the negligent performance of an elected official's public duties. Nonfeasance is defined as the knowing and intentional failure on the part of a public official to perform a specific act which is a required part of his or her duties. In order to recall an official in this bill, the principal circulator must submit a statement alleging facts which, if true, establish the grounds of malfeasance, misfeasance, nonfeasance in office, or conviction of a crime involving an act of dishonesty or a false statement. Under the bill, the elected official who is subject to the recall has the option to file suit in the district court to challenge the sufficiency of the allegations in the statement. The court would determine, without cost or a hearing, whether the allegations in the statement establish the existence of malfeasance, misfeasance, nonfeasance, or a conviction of a crime involving an act of dishonesty or a false statement. If the allegations are found to be

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

Government, Military and Veterans Affairs Committee
January 28, 2011

sufficient, the recall will be moved forward. If the allegations are not found to be sufficient, then the filing clerk will not issue petition papers. Finally, the bill requires the filing clerk to notify the Secretary of State when initial petition papers are issued. When the recall petition is found to be sufficient and an election will be held, the results of recall elections will be reported to the Secretary of State, and the Secretary of State compiles all of these records. In the past, there have been questions about how many recalls there are every year in Nebraska. I think some of those questions may have come up today. With this provision, the Secretary of State will have this information. It was suggested by Ms. Rex that they might wish to have some of the language in this latter portion of the bill relating to the role of the courts in defining whether there are sufficient evidence to bring about a recall or to file the petition papers, they might want to change that. I think what we're trying to say in the bill here is that the court does not decide whether or not the person should be recalled. The court simply decides whether or not there is sufficient evidence for the filing of petition papers and letting the recall go forward. And I do understand the concern that Ms. Rex expressed about the presumption of guilt. Actually, if you read the bill, it specifically states that the courts will err on the side of the petitioners. If there's any doubt, the petitioners get the benefit of that doubt. With that, I would quit and ask for questions if you have any. [LB224]

SENATOR PRICE: Thank you, Senator Avery. I'll ask you, right off the bat, how much further down the road did you get? Because you're saying that you have to have someone else say they think there might be enough to be something, there may be some fire behind the smoke, and then you can go ahead. Did you get any further down the road on this? Because you haven't established any facts, you haven't done anything, so you basically...it seems that you just add a little time. You put a court in there. I don't know what appeals there are going to be. We've seen, in a lot of elections recently, even if you go back to the 2000 presidential election, there's a lot of ways for people to exercise their rights in the courts. And it takes time. But really, how much further have you gotten down the road if you say...I just want a judge to say that there might maybe be some smoke and fire here. [LB224]

SENATOR AVERY: Yeah. I understand your question. We're trying here to avoid a situation where people who might wish to have a recall could manufacture a case--in quotes--in which they say this constitutes malfeasance or misfeasance or nonfeasance, and succeed in getting a petition circulated for recall. We wanted to have some way for the allegations to pass a threshold to verify if there is some reason to believe that malfeasance, misfeasance, and nonfeasance might be true. The courts will not be saying, this is true but there is sufficient reason to believe it might be true, that we are going to say...that we're going to approve the filing of the petition papers. [LB224]

SENATOR PRICE: And I understand that. So to follow on that is, but then you've said to the court, but err on the side of the petitioner. So, you know, if the petitioner says, I think something may have happened, and the court says, well, we can't disprove that it didn't

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

Government, Military and Veterans Affairs Committee
January 28, 2011

happen and you told me to err on the side of the petitioners, I've got to let them go forward because we haven't proven anything. So I've erred, so I just caution that we've made a really slim thing almost go to nothing because you've told the court in the bill, err on the side of the petitioners. So, I mean I...and you don't really have to respond. I just wanted you to... [LB224]

SENATOR AVERY: The committee might want to take that out of the bill. I'm not...I'm sure that this, Ms. Rex would like to see it come out and maybe some others would too. But then you've got the problem of how do you deal with the possibility of a frivolous charge of malfeasance? [LB224]

SENATOR PRICE: Absolutely. Thank you. Are there any other questions from the committee? Senator Schumacher. [LB224]

SENATOR SCHUMACHER: Thank you, Senator Price. Just a couple. On one of the elements for being able to do a recall, according to this act, is conviction of a crime involving an act of dishonesty or a false statement. Are there other provisions of law which would stop someone from holding an office if they were a felon? Or I mean...and suppose you were guilty of a delivery of dope or something? [LB224]

SENATOR AVERY: I think there are laws that prevent that. The law, right now, as it reads with respect to voting rights--you are familiar with that--we've restored voting rights for ex-felons after two years...two years after they've served their sentence. So they're not completely disenfranchised. But holding a public office I think is a different matter. I'd have to check to be sure. I bet legal counsel knows though. [LB224]

SENATOR SCHUMACHER: Well, she's not testifying right now so I won't talk about that one. The other thing is involving an act of dishonesty, conviction of a crime. There are some pretty tiny crimes and infractions that might involve that in city code books around. Should there be any minimum level of that, a Class III misdemeanor or something? [LB224]

SENATOR AVERY: Possibly. Yeah. [LB224]

SENATOR SCHUMACHER: Possibly. Okay. I don't have anything further. [LB224]

SENATOR AVERY: We'll have an opportunity in Exec Session to go into that kind of stuff. [LB224]

SENATOR PRICE: Thank you, Senator Schumacher. Are there any further questions? Senator Janssen. [LB224]

SENATOR JANSSEN: Thank you, Vice Chair. Senator Avery, I'm glad I finally get to the

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

Government, Military and Veterans Affairs Committee
January 28, 2011

bill that we were all here for today it seems like. And before we get all the testimony over again that we already heard on all the other bills, I wanted to ask you some questions on what the feascance we're talking about here in certain areas, because this is always...and this is, I think, the third year I've been...third time I think I've heard some variation of this. Would a false statement--and we could go down this road for a long, long time, and I'm not going to do that--false statement, though. I'm campaigning, lower taxes; I come in and I raise taxes. And I've never raised taxes, for the record. (Laughter) [LB224]

SENATOR AVERY: I would think that would not qualify. A false statement would be where you deliberately lie. [LB224]

SENATOR JANSSEN: I could make that...but I could make that summation. I mean if I'm standing there with a "lower property tax" sign on my campaign sign, and I get into office and one of the first things I do is raise property taxes, I've misled the public a little bit. [LB224]

SENATOR AVERY: I think the intent here is to deal with those cases of false sworn statements. [LB224]

SENATOR JANSSEN: Okay. I just...I go back to where I'm at in the beginning... [LB224]

SENATOR AVERY: And I don't know. And your campaigns are your sworn statements? (Laughter) [LB224]

SENATOR JANSSEN: I don't know if they're sworn or not, but I've stuck by every single one of them, I can tell you that. Not always popular too. I just don't want to get down into...I started out in this hearing saying I don't really think it's broken, and I still think that. And I even talked to you earlier today, and I thought if any bill had a chance it was LB224. But even I...and looking at this one and now rekindling why I believe Senator Lautenbaugh didn't want to bring it back, is just we're going to end up in court over all these things. It's...whereas, I wouldn't go as far as saying it's, as one of the testifiers said, an arrogant bill, because I know all the senators that have put it forward in the past. But I just don't...I don't know if we're just having an...and this is open democracy today, I guess, and we're all throwing around ideas. I think it works, the way it happens now. Did I agree with the reasons for the recall in Omaha? I'm not a citizen there. I'm not an apathetic voter but I probably wouldn't have went and voted in that because I didn't really...either way. I don't know. I'm just looking for, like, some reasons. Can you...you can...can you at least see that there's, in the three levels of feascances, even what Senator Schumacher was saying, you know, what could be the level? And I didn't actually clear out my fire hydrant last week because of the snow, and that's a city ordinance. I knew I was supposed to do it. Was it dishonest that I didn't do it? Probably. But I was watching the Steelers game. I mean, you know...that's...I think it's ridiculous

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

Government, Military and Veterans Affairs Committee
January 28, 2011

when I say it. But how ridiculous can some people get? We know we've got this threshold out there. It was a very difficult threshold to reach. More and more I'm here, I think what we have works. It may not be perfect but I don't see anything a whole lot better in front of us. [LB224]

SENATOR AVERY: You know, my motivation here is to try to do something to suppress frivolous recalls. And kind of, you know, in a haphazard manner, some of these recalls in smaller communities--Omaha happened to get a lot of attention because it's a big city with a large population and a lot of voters and--but there are other instances. And I think the one that I find most egregious is someone who has been...who is being recalled because they are actually doing what the law has required them to do. But somebody didn't like that law. Recalls the public official, or recalling a public official for hiring a city manager. You know, I'm thinking, give me break. I mean these are frivolous and unnecessary and I think a misuse of the current recall law. [LB224]

SENATOR JANSSEN: Yeah. And one of your feasancess, it was actually if you didn't do something--I think that Ms. Rex talked about--if you didn't do something that you were told to do, you could get booted from office. [LB224]

SENATOR AVERY: Yeah. [LB224]

SENATOR JANSSEN: So it cuts both ways. And I'm probably not going to be here for the rest of this hearing so I'll just say, if there was that Wayne hearing thing, that Wayne recall, being a student of Wayne State College and living under their very heavy-handed parking laws, I probably would have signed that thing four or five different times. (Laughter) So I just wanted to go on record for that. [LB224]

SENATOR AVERY: Which might itself have been a felony. (Laugh) [LB224]

SENATOR JANSSEN: I was on...I would have been on-board with that. Thank you, Senator Avery. [LB224]

SENATOR PRICE: Are there any...? Senator Sullivan. [LB224]

SENATOR SULLIVAN: Thank you, Senator Price. Senator Avery, you alluded to smaller communities. Have you...so you've seen some examples where maybe the recall legislation has maybe been exploited? [LB224]

SENATOR AVERY: I have read about them and I've talked with Lynn Rex about them. I believe also Larry Dix has some pretty scary stories to tell about how the law has been misused. [LB224]

SENATOR SULLIVAN: You know, its timing is everything. And we have focused so

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

Government, Military and Veterans Affairs Committee
January 28, 2011

much on the recent recall situation in Omaha, but these recall situations play out perhaps all too frequently in small communities in rural Nebraska. And, first of all, you know, in smaller communities you don't see voter apathy quite to the extent that you do. You have a pretty engaged citizenry. But you could also have a very, very, very vocal, very, very, very small minority that can be very disruptive and it can literally split communities apart. And as you indicated, sometimes the issue is for the very thing that the local elected officials are trying to do in carrying out their responsibilities. It's just that they rubbed somebody the wrong way. So it can be pretty problematic in some situations. [LB224]

SENATOR AVERY: And we have some difficulty in small communities recruiting people to run for office. And when they see this kind of use of existing law, it can be a real damper on their enthusiasm for running. [LB224]

SENATOR SULLIVAN: Exactly. [LB224]

SENATOR AVERY: And I know of some instances where village boards are having difficulty getting people to run--schools boards and various other political subdivisions. Now, it's...I personally think that the recall that occurred in Omaha was in that category, probably, of a frivolous recall. It did not...there was no wrongdoing. Unpopular? Yes. Was Mayor Suttle politically nimble? No. Was he breaking the law? No, there's no evidence of that. Was there misfeasance? There is no evidence of that. No evidence of nonfeasance; no evidence of false statements. Politically unpopular? Yes. Will he be turned out when he is up for reelection? Who knows. That's the proper place to express that view by the electorate. Unless you have some really serious wrongdoing, then there should not be recalls. That's how I feel about it and that's the purpose behind this proposal. [LB224]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any further comments from the committee? Seeing none, thank you for your testimony, Senator Avery. First proponent, please. [LB224]

LYNN REX: Senator Price, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. Let me first address Senator Janssen's issue relating to conviction of a crime. We are in strong support of LB224, but we do think that the provisions on pages 6 and 7, relating to the court issue, should be removed and I'll discuss that in a moment. But if you look on page 3 of the bill, line 16--page 3, line 16--it talks about elected...I'll start on line 14 actually. "Elected officials,"--again, I'm on page 3, line 14--"Elected officials may be recalled only for malfeasance in office, misfeasance in office, nonfeasance in office, or conviction of a crime involving an act of dishonesty or a false statement." So this is not about did you run for public office and you're going to lower property taxes, and something comes up and you vote to raise property taxes. This is about conviction of a crime. And I think, Senator Schumacher, you've got an

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

Government, Military and Veterans Affairs Committee
January 28, 2011

excellent idea, which is tied into whatever misdemeanor offense or whatever it is. There's already something precluding someone from holding office if they are a felon. We do appreciate Senator Avery bringing this bill. And again I can't speak as to why Senator Lautenbaugh did not necessarily reintroduce LB349 that he introduced in 2009 other than to say that we had contacted his office in the fall to let them know that we had lengthy discussions about the language on pages 6 and 7 relating to the court proceeding, and told him at that point we could no longer support that element of the bill and that we would not be asking him to reintroduce the bill at that point. However, we appreciate Senator Avery bringing this bill forward. And I would like to refer, if you would be so kind as to look on pages 6 and 7, because we do support this bill but only with the condition that this language would be deleted. You will note that on page 6, line 25, basically after the petition has been submitted, looking on line 25, page 6, the very last part of that line: "or he or she may file an action in the district court having jurisdiction over the county" in order--looking at line 2, on page 7, "to challenge the sufficiency of the allegations of the statement." Line 4: "The court shall presume the allegations in the statement are true and construe them in the light most favorable to the principal circulator...without hearing and without cost." Here's our concern, and this is the concern of the elected officials who basically...and we really spent a significant amount of time discussing this and could not come up with a better idea, but rather though, this itself was something they could not live with, because basically anyone could challenge it. Let me just tell you...let me just say that it's "Mayor Price," now, of "Jonesville," Nebraska. And I say: Well, you know, Mayor Price, I know what the law says, so in order for me to get a successful recall I'm going to say he embezzled. Now he didn't but I'm going to say that. Why? Because if he challenges it with the court, he doesn't get a chance, because on line 6 it's "without hearing and without cost." He doesn't get a chance to say, "I didn't embezzle." So the court is going to look at that and the court is going to say, absolutely, that rises to the level of malfeasance in office--so also a felony--but nevertheless, rises to malfeasance in office. So at that point, then the judge makes the ruling. Under the way this operates, yes, it rises to the level...because you're assuming the allegations are true. And as Paul would know, and others with a legal background, it's like a prima facie case. Yes, you've made these allegations. We're going to assume those allegations are true. Does that result in a case? And so that's basically what we're saying here. So the elected official then has got to go back, and in a relatively short period of time try to educate the voters on, "No, I didn't embezzle." Now the judge said that they could proceed. But if you're for the recall, you can say, "Well, see, the judge agreed with us; the judge said." Mayor Price from Jonesville--I'm just indicating as an example. (Laughter) You'd never do that, obviously. Let me say "Mayor Jones" from "Priceville." How about that? So at the end of the day, that's our concern: How can the elected officials overcome a court ruling when someone is going to knowingly go out there and, frankly--not that anyone behind me would do this; I'm not suggesting that--but someone could make something up just to rise to the allegation of misfeasance, nonfeasance, or malfeasance in office, and then how do you defend that? So, essentially...and by the way, I did want to mention that Jeremy Aspen made the

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

Government, Military and Veterans Affairs Committee
January 28, 2011

comment that if there is a mayor that has not been dealing with junk car issues and you have somebody that has junk cars all over, which was the case in Cozad, that that mayor should have been removed because that's her job, in that case, to take care of it. Let me just suggest she was doing her job. That's why she was subjected to a recall, because under their ordinances it was in violation, and basically she was going out to enforce that. The administration under her was going out to enforce this. And so that's what happened. The recall occurred because she was doing her job, following the law. That's the concern. And I really appreciate Senator Sullivan, what you said, because it really is true. You don't have a lack of civic engagement in small communities--at all. And as many of you know, there is no lack of civic engagement. And so that's one of the reasons why we strongly support the rest of this bill. And I, frankly, could have testified opposing the bill, saying "but we strongly support the front end," or "but we support the bill and strongly need to have the language out on lines 6 and 7." And so basically my thought today is to come forward and say we really do support and appreciate Senator Avery bringing this bill forward. In short, LB349 was introduced in 2009 by Lautenbaugh. I think he probably didn't reintroduce it because we suggested to him that we had to come up with a better language that's on page 6 and 7. We told him that in the fall. LB787 was introduced in 2008 by Engel. That was advanced to General File. The language that you have on page 3 of the bill...on page 3, lines 16 and 17, relate to conviction of a crime...and again, not just what Senator Janssen talked about, about a false statement: conviction of a "crime" involving an act of dishonesty or false statement. That is the Lathrop amendment to LB787. LB18 was introduced by Senator Mines in 2007, and Senator Mines also introduced LB786 in 2006. We truly appreciate your time today. This is a serious, serious issue on the local level. And I'd be happy to respond to any questions that you might have. [LB224]

SENATOR PRICE: Thank you very much, Ms. Rex. And I would echo again a comment I made earlier. If that language were struck that you're talking about, don't we end up putting a situation, perhaps, in place, where there will be a charge; you have to have a hearing; you have to go through all...I guess the right term would be the due process? There could be appeals all the way up, and you couldn't move forward on a recall until someone, finally, at the highest court that wanted to deal with it, said yea or nay. [LB224]

LYNN REX: You could have the Supreme Court, Senator, take direct jurisdiction. This was after the Minnesota model. It obviously has worked in Minnesota for many, many, many years. So I think that this is a proven system just dealing with malfeasance, nonfeasance, misfeasance in office. And we don't have a problem with the Lathrop amendment either, dealing with dishonest and false statements...conviction of a crime for dishonest or false statements. [LB224]

SENATOR PRICE: In that model do you know what the threshold is for signatures? [LB224]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

LYNN REX: I do not, but it would be interesting to find that out. But I do think that these issues that Senator Avery has raised in this bill are more important than the threshold of signatures. This gets to the issue of why should you be recalled at all. Because again, the majority of those voting put you in office. And in our view, unless you've done something that rises to the level of malfeasance, nonfeasance, or misfeasance in office, or basically the conviction of a crime for dishonesty or false statement, you really don't...the citizens don't...really shouldn't be put in a position to have a divided community, because this is what results over this. [LB224]

SENATOR PRICE: All right. Thank you. Are there any other questions? Senator Schumacher. [LB224]

SENATOR SCHUMACHER: Thank you, Senator Price. After some experience as city attorney in small towns, there is no hotter topic than junk cars. You can get recalled or not recalled for...pretty easy. Couple questions. Is there a requirement...I'm scanning the document--maybe you know--for the allegations made by the principal circulator to be in the form of an affidavit under penalty of perjury. So you couldn't just make... [LB224]

LYNN REX: No. [LB224]

SENATOR SCHUMACHER: Would that start to address the issue? [LB224]

LYNN REX: It might. That may be something to look at. You'll note that the way that this operates is if you look on page 4 of the bill--page 4 of the bill which is Section 4, starting on line 16--but I'm going to be looking at lines 18 to tell you about "sixty words or less." So basically it was because of a bill that we put in many years ago that you actually had to put a reason on there, knowing that people would make up the reason. They're not going to say, "I really hate Harry or Sally because she divorced my spouse." They're not going to say that but they might say they don't attend meetings or they don't do this or they don't do that. But at least there would be a reason in a way in which someone could respond. So you'll note that there is language in here which reflects that basically you make the allegation in 60 words or less. You'll note that there's also...and this is also in current law, but it's on page 6, looking at line 14, but it's also striking lines that are current law in lines 17-21 on page 6. And I'm going to read you what is stricken by this bill, but there's still a reservation for a defense statement: "If the official chooses, he or she may submit a defense statement in typewritten form in concise language of sixty words or less..." outlining why basically they should be retained in office or "That's not true, I didn't embezzle the money," or "I didn't do X, Y, or Z that's being alleged." So essentially...and in the case of Mayor Adelung in Nebraska City, she said, "Yes, I hired the city administrator, and no, he is not violating anyone's due process rights." So, I mean, those are the sorts of things that occur. And in any event, we do think that

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

Government, Military and Veterans Affairs Committee
January 28, 2011

looking at the Minnesota model is something that maybe this committee could explore. What we had intended to do is explore it more ourselves and come back to you with some recommendations. But we do really appreciate Senator Avery putting this bill in. And it is a nonpartisan issue. You'll notice that all the other senators that introduced this were Republicans; Senator Avery is a Democrat. I respectfully am an Independent because I think both parties deserve each other. (Laugh) Love you all though, so. (Laugh) So with that, I'd be happy to respond to any questions you have. [LB224]

SENATOR PRICE: Senator Schumacher. [LB224]

SENATOR SCHUMACHER: One follow-up question. So you're suggesting that in Minnesota their Supreme Court takes original jurisdiction of these things. [LB224]

LYNN REX: That I don't know. [LB224]

SENATOR SCHUMACHER: Okay. [LB224]

LYNN REX: But that's one thing we are looking at. We are just beginning our research on this at this time to see...and I know that the Research Division has an individual that actually worked on LB18, Senator Mick Mines' bill, and she's a former staff member for Senator Mines, and I'm sure that she could also pick up where she left off and look at that. But you've got an outstanding committee counsel who could do that too. So I do encourage this committee to look at that. [LB224]

SENATOR SCHUMACHER: In criminal cases, before the issuance of a search warrant or before the issuance of an arrest warrant, an affidavit or some evidence is presented to some judicial authority. And the judicial authority, before he allows it to go forward, must make a finding of reasonable grounds or probable cause. Would something like that also address some of your concerns? [LB224]

LYNN REX: Sure. I mean I think that there are a number of ways to look at this, but we did think that...I mean the Minnesota statute is simply the language that you have here without the language of the court proceeding on line 6 and 7. [LB224]

SENATOR SCHUMACHER: I have nothing further. [LB224]

SENATOR PRICE: Thank you, Senator Schumacher. Senator Karpisek. [LB224]

SENATOR KARPISEK: Thank you, Senator Price. Ms. Rex, we've talked about dividing communities. We did touch a little on the other bills about cost of these recalls. I don't know, is there any...can you say how much a recall costs? I know you can't. [LB224]

LYNN REX: Well, it depends. It depends on the size of the municipality. And at one

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

Government, Military and Veterans Affairs Committee
January 28, 2011

point one of the bills, and I believe it was one of--LB18--that we actually had language in there requiring the election commissioner to indicate how much it would cost so that people would know, when you sign the petition you're going to be paying some money for this thing to move forward. And NACO opposed it, and they said--and I do understand their perspective, which was, "Gosh, that's tough to figure out. What if we're wrong? Are we going to get sued?" You have all those issues that come into play too. I do think another very, very important part of this bill that Senator Avery already pointed out in his opening is having the information communicated to the election...Secretary of State's Office. So you know, in answer to the question that I was asked earlier, "How many recall efforts have been out in the last year? How many have been successful?", it would be important to have that information. But right now, we don't have that. [LB224]

SENATOR KARPISEK: Thank you. [LB224]

LYNN REX: You're welcome. [LB224]

SENATOR KARPISEK: Thank you, Senator Price. [LB224]

SENATOR PRICE: Thank you, Senator. Are there any further comments, questions, or queries? Seeing none, thank you for your testimony. [LB224]

LYNN REX: Thank you very much. Really appreciate your hard work on this effort, and thanks to Senator Avery. [LB224]

SENATOR PRICE: Are there any other proponents for LB224? Are there any opponents? [LB224]

JEREMY ASPEN: Sorry, if you're sick of me, but it is an important issue, especially after having been six months into this. I wanted to...sorry. Mr. Chairman and members of the committee, thank you for having me. My name is Jeremy Aspen. That's J-e-r-e-m-y A-s-p-e-n. I am from Omaha. Primary circulator of 28,720 petition signers for the Mayor Suttle recall petition. All right. The malfeasance--I think this is kind of the bill that everybody is talking about. This is the one that everyone thinks has some legs. And with all due respect, Senator, I obviously think it's wrong. It's ill-placed because the bar is too low. I know for a fact that none of you ran around during your campaign, saying "Vote for me; I'm not a criminal." It's kind of implied. You can't build a case on something (1) that's already explicit in other law, and (2) that is as implied as that. If you're representing the citizens of your municipality or whatever it might be, your notifying them that you are not a criminal is not that important. It is so low that it's not even mentioned. And while you're campaigning, you're telling people what you will do or what your philosophy is...or promises to lower property taxes--to bring in kind of a subtle ad hominem attack. But it is the case that you're setting an agenda and it is the case that you're making promises, and it is your responsibility to follow through with those

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

Government, Military and Veterans Affairs Committee
January 28, 2011

promises or with that philosophy. If you fail to do that, to the extreme where, let's say, in your office as senator or mayor you do absolutely nothing--you sit there and you show up and you don't answer the phone taking it to the extreme--there has got to be recourse for inactivity, lies, or an inability to run the city as per your promises or the way you presented yourself to the citizens that you represent. And if that is the case then you have to make recall available. And malfeasance is implied and covered in other areas of the law. If a group of citizens...enough, and in this case 35 percent of the registered voters decide that by signing--formally decide by signing--that they want to have a recall election, that number is exactly at the threshold of impossible. We almost cannot do it the way it is right now in Omaha. If it's not that way in small towns, I can't be certain. But in Omaha, I guarantee you with a 78 percent disapproval rating, we had a very hard time of getting the number of signatures. And it wasn't because they weren't forthcoming. I'll remind you that we spent several hundred thousand dollars telling people where they could sign, not why they should sign. And that's important. The process that we have right now works remarkably well--and that's coming from somebody who just failed at an enormous endeavor. And I have to concede that because the citizens of Omaha decided that they did not want to recall the mayor, they are right. I think that's something we have to default to. If the citizens vote for something or against something--that's right. And if it's brought up in the middle of a term, it doesn't matter. It's the citizens' right to petition their government and hold their officials accountable. And I don't mean to be accusatory at all, so I'll try to say this nicely, but it's not about necessarily what you, the elected officials think. It is only about what the people that you are serving want. That is the bottom line with recall. It is the ultimate recourse and it is the only recourse. We as a city will survive indubitably, whether it is this individual in office or another individual in office. I see my time is running. So I think to sum it up: The bottom line is, this is a solution looking for a problem. The way that the law is written right now is perfect and I would just remind you, having lost this election, it also served to help our community come together and will serve to help our democracy as a whole. Thank you. [LB224]

SENATOR PRICE: Thank you, Mr. Aspen. Are there any questions? Senator Schumacher. [LB224]

SENATOR SCHUMACHER: Thank you, Senator Price. As I understand it, recall is a creature of statute; whereas, initiative and referendum are a creature of our constitution. Is that your understanding? [LB224]

JEREMY ASPEN: No--actually I don't know. I think they're all statute. Are they? Okay. No, you're probably right. [LB224]

SENATOR SCHUMACHER: So we're dealing with nothing...when we're dealing with recall, we're not dealing with something that the people who wrote our state constitution considered on the level of initiative and referendum. We're living in a real difficult time

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

Government, Military and Veterans Affairs Committee
January 28, 2011

as we're going through a paradigm change. Our whole society is changing. (Inaudible) national level over the course of the last 30 years, both political parties, all different flavors, ran into a big problem--a big problem that isn't, you know, changed overnight. In our state government, we're participating in that big problem. Maybe we were too lenient with the money when times were good, and now we've got to trim back. And that makes people mad. [LB224]

JEREMY ASPEN: Um-hum. [LB224]

SENATOR SCHUMACHER: Because you feed the cats at the back door, they expect you to have food there. And so we build up problems that are a long time. Now let's say we're at that point, and there's two very legitimate ways to approach an attempt at solving the problem. One is this side and one is that side, and they're philosophically very different. And neither side wants to see the other side's solution implemented. But an election, unless it's really an odd situation, there's probably one vote difference, and somebody is elected. Okay? And begins a long, painful, arduous process of trying to right the ship of state. Okay? The other side doesn't like that process because they are sure they are the right ones. [LB224]

JEREMY ASPEN: Right. [LB224]

SENATOR SCHUMACHER: And so as a matter of tactical politics, philosophically you begin to make sure the process can't be implemented by the side that was elected. You don't like the idea that elections have consequences. And so you do a recall effort. And as a result, the one side who is in office is crippled. And you can do that one or two or I think we've heard the possibility of three times. So you basically have denied that election of the people the ability to effectively try the theory and the people's right to effectively make a decision. Is there any way, in that world of those contentious issues, the recall process makes any sense other than to put some standard of deliberate deceit or malfeasance on the process, or you're continually in the soup? [LB224]

JEREMY ASPEN: Yeah. But you are in the soup of the people that put you there, I believe. I mean...certainly. The ultimate say is you guys put everybody, an elected official in office, is what the people wanted. And I think what you're getting at with the question, is there another...is there a way to protect from the absurdities that might come up? Is that...? [LB224]

SENATOR SCHUMACHER: Not necessarily absurdities. I mean one side may see the other's position as absurd, but a decision was made on a very tough question. [LB224]

JEREMY ASPEN: Yeah. [LB224]

SENATOR SCHUMACHER: But the one side that lost the election by one vote didn't go

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

Government, Military and Veterans Affairs Committee
January 28, 2011

to sleep, one that (inaudible) second election. [LB224]

JEREMY ASPEN: Right. Well... [LB224]

SENATOR SCHUMACHER: Well, at least to maim whoever is in power until they get a next election. [LB224]

JEREMY ASPEN: Yeah. Politics is weird. I've learned that here. And in our case, it might be a little different, just because...and I think when the results are out next week you'll see that a lot of...when you're saying sides--Republicans and Democrats, let's just say. Whatever. [LB224]

SENATOR SCHUMACHER: Whatever. Conservatives, Liberals, whatever. [LB224]

JEREMY ASPEN: Conservative. Liberal. In our case, I think we will have enjoyed a large percentage of Democrats in this, so it is hard to say...like 20,000 more Democrats voted in this election than did Republicans. So by only having won by 1,000 votes--some, it is automatically the case that a lot of Democrats voted for the recall, as did a lot of Republicans vote against it. So it's not a partisan issue--in the case of Omaha. The danger that I think you're bringing up is whether or not to maim and make it a part of a political process. I suppose if you're involved in politics, you could try to do that. In our case, it was a grass-roots effort and it was a citizens' movement. And I'll stand by that. And you've heard all the accusations maybe, but it is simply the case. And if it is a citizens' movement and the citizens of Omaha want to have a recall, and the citizens of election vote, that vote determines the way that the community moves forward. It is not because the recall process exists does not mean that it will be employed. And I can demonstrate that even when it is employed on that rare occasion, it is almost never the case that a person is recalled. [LB224]

SENATOR SCHUMACHER: I don't have anything further. [LB224]

SENATOR PRICE: Thank you, Senator Schumacher. Are there any further questions from the committee? Seeing none, thank you for your testimony, sir. [LB224]

JEREMY ASPEN: Thank you. [LB224]

SENATOR PRICE: Next opponent, please, for LB224. [LB224]

KENT BERNBECK: My name is Kent Bernbeck and I have handed in my sheet already. K-e-n-t B-e-r-n-b-e-c-k. I would like to follow up just very briefly on Senator Schumacher's question. People become wary of too many issues going to a ballot, or in this case, too many recalls. I've known people from small towns where there are that very small minority of people who are the most vocal. Don't you think that the rest of the

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

Government, Military and Veterans Affairs Committee
January 28, 2011

community, after maybe just a couple efforts, becomes wary of them and their efforts? I mean there is kind of a self-regulating thing that we have here in democracy. We tend to just back away from it if we see it too much or if we don't like the results of it. So, you know, I think we're pretty self-regulating in that sense. But one thing that I...and a final comment I guess on this particular bill. I've been coming down here for nearly 20 years now, testifying on matters such as this, and nothing much has changed on that. What has changed is the citizens are changing. I've seen, in 20 years, citizens become a little more involved, a little more wary of what's coming out of the Capitol or whether the legislation is affecting what they thought were their rights. Now, is there a big groundswell? No. Look behind me. What's changed? Nothing. But what I am seeing out there are people are becoming tired of having the Legislature second-guess their rights, their decisions, and their feelings--I mean what they think. And I think this bill--and I said arrogant in my written testimony here. It is. It is arrogant to say, "Well, citizens, I don't think you really know what you're doing here so we're going to step in and make sure you know what you're doing." People resent that. So I mean those are the people I'm hearing from. Maybe I don't get out in big enough circles or not, but those are the people I hear from. And with that, that's my testimony on that bill. [LB224]

SENATOR PRICE: Thank you, Mr. Bernbeck. Are there any...? Senator Sullivan. [LB224]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you for your testimony. So citizens are more wary. Do you think they're more informed? [LB224]

KENT BERNBECK: No. [LB224]

SENATOR SULLIVAN: So...and if they're more wary and they're more frustrated, is there--and they're not as informed or not any better informed--is there actually more opportunity to present frivolous reasons to promote a recall? [LB224]

KENT BERNBECK: Maybe the only way I can answer this--are we seeing a rash of frivolous recalls? Have...I mean is there any documentation...and I certainly think Ms. Rex would have provided some if there was ample evidence. But everything I've heard there...now, we do have individual communities, and I'm aware of some of these who do have a vocal minority and they do bring recalls up on different members of school boards and city councilmembers. And, quite frankly, I don't think there's anything we can do about that because that is their free speech. Now if we try to regulate that, how far should we regulate it? Should we regulate it to where the bar is this high, or this high? I mean, you know, it's our democracy, and I think we forget that, sitting around the table here when everybody else isn't here, that it is their democracy and they are able to make mistakes. [LB224]

SENATOR SULLIVAN: But shouldn't there also be a little bit of an accountability in the

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

Government, Military and Veterans Affairs Committee
January 28, 2011

whole process? [LB224]

KENT BERNBECK: Oh, I wish the citizens were accountable. I mean going back to Senator Chambers again, who I wish he was here, you know, Nebraskans really are a mile wide and an inch deep, kind of like the Platte River. I mean that's my experience with the voters of this state. I mean some of them pay attention, obviously, but not the overwhelming majority of them--and that's sad. Obviously, if they did, this room would be full today. [LB224]

SENATOR PRICE: Thank you, Senator Sullivan. Senator Schumacher. [LB224]

SENATOR SCHUMACHER: Thank you, Senator Price. Aren't we being a little naive in saying, well, if the one side of the two equally divided philosophical forces loses and the people won't rise up. Both of these political forces, today, have got massive ability to generate polls, to generate and understand the psyche of the voter, to pour money in it to make believe there is a grass-roots effort behind them. And if their side happened to lose by that one vote and thinks they've got a shot at winning by one vote either in the recall or the next election, that they're just, out of the goodness of their heart, going to be frustrated? That they will refrain from using those corporate or those union resources to frustrate the other guy till they get another shot? [LB224]

KENT BERNBECK: I don't know. I mean the direction the U.S. Supreme Court took was Citizens United. I don't think that we can even discuss that because it's going to be allowed. Now should it be? Or, you know, the consequences...how negative are the consequences of that? I don't know, I mean. But until the citizens step forward and participate in all issues--not just election issues that I do, but all the issues--the lobbyists upstairs and elsewhere, they're going to have their say on this. And the same thing with high-dollar people who care deeply about an issue or they're persuaded to care deeply about an issue, yeah, there's nothing stopping them from pouring money in. [LB224]

SENATOR SCHUMACHER: They may have their say in it. But is it our obligation to structure a governmental system that will allow government and the winner of an election to function for the term of the proposed office? [LB224]

KENT BERNBECK: And that's where I do get back to what I started out with. I think the citizens are self-regulating. Even though there's not a wide majority of them out there saying so or participating, I think the ones who do pay attention, the ones who do go to every election, they are self-regulating. They will be the ones who the next time there's a recall in a town of 10,000 people--everybody shaking their head, going like I can't believe there's another recall--they'll walk away from it. And then they vote no on the recall, just because, just like they do with too many initiatives. If there's too many initiatives on the ballot, people won't sign them. People walk away from it or they won't vote on them, which means they'll fail. So, you know, we've got to give a little bit of

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

Government, Military and Veterans Affairs Committee
January 28, 2011

credit with the people who we should be allowing to make these mistakes, because they're going to make mistakes. [LB224]

SENATOR SCHUMACHER: Those same people are targeted by various media. They're targeted by various polls. They figure out what...the political consultants figure out what they're going to respond to and what they're going to think is redundant. I mean we have to...some way have to govern between elections. [LB224]

KENT BERNBECK: Look what the young gentleman from Clarks, Nebraska, that invented the tweeter...which, I'm sorry, I don't tweet. Look what he's doing in Egypt right now. Look what Twitter is doing in Egypt right now. I mean I think we need to look that we can't contain the modern innovations of election or communication about political ideas. I don't think that we can contain that nor should we contain that. [LB224]

SENATOR SCHUMACHER: Should we just have an election every year then? Shorten the terms of all offices to a year, and that way we've got continual input and we...you know, if somebody changes (inaudible). [LB224]

KENT BERNBECK: I think the political discourse that I heard in Omaha was pretty healthy, I really do. I mean that. [LB224]

SENATOR SCHUMACHER: So should we shorten terms of office to a year? [LB224]

KENT BERNBECK: I think that's another bill or another testimony. [LB224]

SENATOR SCHUMACHER: Well, but it brings...lets the voters come in, you know, frequently, to say whether or not they're liking you today. [LB224]

KENT BERNBECK: I think the 70,000-some people that showed up to vote on Tuesday truly were engaged in the process. The discourse they had amongst family members, friends, is great for our society. Was it divisive? I don't think so. [LB224]

SENATOR SCHUMACHER: I don't have anything further. [LB224]

SENATOR PRICE: Thank you, Senator Schumacher. Senator Karpisek. [LB224]

SENATOR KARPISEK: Thank you, Senator Price. Mr. Bernbeck, I always...I love your tenacity on this stuff. And a lot of the times I agree with you, but on this one I just can't. And I think it's very divisive and I think that if we just look at the national media and the talking heads and the hate that they're spewing and what's happening because of it, is a huge problem. And I think that that's why we see people that are so riled up because they listen to one spin station or the other. And I'll put them, both sides, in the same category. I wish they would all stop and tell the truth. But they won't. I think that it goes

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

Government, Military and Veterans Affairs Committee
January 28, 2011

through...you go through a lot of expense. You said, you know, if there's...they'll just quit going or they're going to go and vote no. But it's still an expense, and we're looking at expense a lot in this state. But what I'm getting at is we're still people. Anybody that runs for office is still a person. And man, that's tough to get recalled. It's tough to run and then it's tough to get recalled and hear all these things said about you. So I think...I don't...I think recall should be there too, somehow, some way. But just because you don't like what I'm going to say now, you could start a recall on me. I mean I think that's a little bit unfair. [LB224]

KENT BERNBECK: But have we seen this epidemic? I mean I'm not aware of it. And I don't follow the recall as closely as I do initiative or referendum. I haven't seen an epidemic in the 20 years I've been paying attention. [LB224]

SENATOR KARPISEK: I guess, to me, one time is an epidemic, when it... [LB224]

KENT BERNBECK: When it's you. (Laughter) [LB224]

SENATOR KARPISEK: Right. [LB224]

KENT BERNBECK: Well. [LB224]

SENATOR KARPISEK: Exactly. (Laughter) [LB224]

KENT BERNBECK: I mean...and what you said about the talking heads out there, don't you think that they're just playing to a market who wants to hear that? Which one came first, the talking heads or the people who want to hear it? [LB224]

SENATOR KARPISEK: Well, the people that want to hear it. But if they weren't there, they wouldn't be able to hear it. But you're right. And it is, it's all marketing. It's a free market. I agree, and I don't know if it's an epidemic or not, and again, I think that one thing I really like about you is we can agree to disagree, and go on. Usually we agree. As far as sitting in here and it's easy for us to forget about everyone out there when there's nobody in here. We all leave and go home too, and we...I had bowling last night and then stopped at the local bar. [LB224]

KENT BERNBECK: Did you talk about initiative, referendum, and recall? [LB224]

SENATOR KARPISEK: Not on...no, not that one. But that...everything else. I mean... [LB224]

KENT BERNBECK: Okay, good. I'm glad to hear that. [LB224]

SENATOR KARPISEK: From immigration to the death penalty and on and on and on.

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

Government, Military and Veterans Affairs Committee
January 28, 2011

So we do get out and...you always hear, oh, all you idiots ought to be kicked out of there. Hear that quite often, you know. So we do get out and about. I mean it isn't like we don't hear things. And, you know, I'm always the one...I just blew up on the mike two days ago about the Legislature trying to tell Omaha that they can't have the wheel tax. You know, I stay out of their business. So again, I'm usually the one saying let them have their rights; let them do what they want to do. But I think this attacks an individual that's just trying to do their job, sometimes unnecessarily. So again I applaud you. And on a lot of this stuff, it's a tough situation. It's a tough vote for me on this, what to do. But man, it can get... [LB224]

KENT BERNBECK: Go back to the bowling alley and ask them what you should do. [LB224]

SENATOR KARPISEK: Oh, don't worry. They tell me. I don't have to... [LB224]

KENT BERNBECK: I mean on recall specifically. [LB224]

SENATOR KARPISEK: But they don't... [LB224]

KENT BERNBECK: Understand? [LB224]

SENATOR KARPISEK: Right. [LB224]

KENT BERNBECK: Gee. [LB224]

SENATOR KARPISEK: Yeah. [LB224]

KENT BERNBECK: No, really. I say that with a certain amount of sarcasm. [LB224]

SENATOR KARPISEK: Yeah. [LB224]

KENT BERNBECK: Yeah, they don't. And where are they? [LB224]

SENATOR KARPISEK: I know. And I understand that too. And it's easy? "Then, well, why don't you run for something in Omaha?" "Well, I wouldn't do that." Well...you know? So anyway, I'm sorry I'm making more of a point than a question. But thank you for being here and bringing up good fodder. [LB224]

SENATOR PRICE: Thank you, Senator Karpisek. Are there any further comments, questions, or queries? Seeing none, thank you for your testimony today, sir. [LB224]

KENT BERNBECK: Thank you. [LB224]

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

Government, Military and Veterans Affairs Committee
January 28, 2011

SENATOR PRICE: Do we have any other opposition to LB224? [LB224]

GREG LYONS: I'm Greg Lyons, G-r-e-g L-y-o-n-s, again from Omaha. There are four reasons why LB224 needs to be killed in the committee. First, the bill establishes an inherently unfair procedure to determine whether or not to allow an attempt to recall a public official. The person seeking to recall an official is limited to only 60 words to state his case for recalling that official--the 60-word statement of allegation which is submitted to the filing clerk. After the filing clerk notifies the official of the proposed recall, that official may challenge the legal sufficiency of that 60-word statement by submitting the question to a court. Now the only information that court will have representing the principal circulator is that circulator's 60-word statement. That's it. There is nothing in the bill to prevent the official from presenting volumes more of information. They could present tens, hundreds of pages. There's nothing at all to limit what the official could submit to the court. Okay, so this creates basically a process where it's biased, potentially biased very much toward the official and against the circulator. Second, this bill establishes an entirely secret judicial process. There is no provision in this bill for the principal circulator to ever be able to find out what arguments or materials were presented to the court by the official. In fact, the principal circulator won't even be told that a court is reviewing the question until after the decision has been rendered. The secrecy and unfairness inherent in this bill are completely counter to what we as a free people have a right to expect from our government. Now there's...those are kind of technical issues that you could probably fix with the wording. But I think we've got a question here. We're dancing around the issue of why people are allowed to do a recall. If you put...if you try to put into a...codify reasons for people to put...why people can do a recall, you're going to limit yourselves. The society's values and morays--its sense of ethics, if you will--change and evolve over time. And those are always going to change quicker than our laws do. If you require a statutory reason, a specific statutory reason for doing a recall, you're going to close people out from being able to remove an official that offends the newly developed values and morays and ethics that have developed since...yeah. Anyway. An example of that: There was a judge in Wisconsin back in '76 that in sentencing one of three 16-year-old teenage rapists, made a comment. Quote, reacting normally...or no. He said the rapists were, quote, reacting normally to prevalent sexual permissiveness and to women's provocative clothing. Should we punish a 15- or 16-year-old boy who reacts normally to it? Unquote. These statements are not...don't constitute malfeasance, misfeasance, or nonfeasance, but they incensed people. This was back in '76. A year later they recalled that guy. Now if a law like LB224 were in effect then in Wisconsin, they would not have been able to remove that guy. Now we hear...but we've heard about...I think we need to understand that the way the law is now, it's...getting the numbers are very different in a small town versus in a big city. I think it's true that in a big city like Omaha or Lincoln, it's pretty much close to impossible to do a successful recall, whereas in...it's probably possible to do it in a small town. If we're going to reform the recall process, we need to be more imaginative and we need to do something besides just trying to put legal reasons for why...limiting people's

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

Government, Military and Veterans Affairs Committee
January 28, 2011

reasons why they can do a recall. And I think with that I will end. [LB224]

SENATOR PRICE: Thank you very much for your testimony, Mr. Lyons. Are there any comments or questions from the committee? Seeing none, thank you for your testimony, sir. Do we have any further opposition? Is there anybody who would like to testify in the neutral? Seeing none, Senator Avery, you are cleared to close. [LB224]

SENATOR AVERY: Thank you, Mr. Vice Chair. This bill was referred to as an arrogant proposal. I respectfully reject that characterization. Our job as elected officials is to take our responsibilities seriously. We have a solemn obligation to craft policy to improve our political procedures as best we can. To do otherwise would shirk our responsibilities as elected officials. This proposal is based upon a belief that the recall procedure that we have in law right now is not a good procedure. It leads to and promotes frivolous recalls. Our job is to fix things like that. Frivolous recalls are divisive. They create divisions in societies, divisions among families. They degrade our political process. They promote cynicism and apathy and put civic participation in a deep freeze where we have communities where you can't recruit sufficient numbers of people to run for office. You have before you three bills that seek to improve the process. I would submit that not one of those is perfect, but you have enough elements in those three bills that will enable this committee to put together a bill to improve the recall process. And it does need change. Thank you. [LB224]

SENATOR PRICE: Thank you, Senator Avery. Are there any comments or questions from the committee? Yes, Senator Brasch. [LB224]

SENATOR BRASCH: Thank you, Senator Price. Thank you, Senator Avery. I've been listening very intensely this afternoon, and it's almost like one of our classes 20 years ago. I fully understand that we're trying to prevent harm and frivolous recalls, and at the same time I fully understand some of the testimony here. And it is a hearing, so we're here to hear. And I do know that people, we the people, need to have a voice and need to know that if we are not happy, satisfied, concerned, alarmed, that we have recourse to go forward, that this person that we voted in a sincere effort, you know, is not meeting our expectations. At the same time, we need to have policy to protect someone who is doing everything possible to deliver all the policies that are protecting our citizens, whether, you know, the health, the education, and every item. So I'm not sure, you know, what the happy medium is here in between to let citizens know they do have a voice, what they say is important, and your elected officials are trying to follow the criteria there. And just looking at the faces of the people sitting in the hearing today, you know, they should have confidence. You know, that is our role and responsibility sitting in these chairs listening to them today. But I'm not sure, you know, what municipalities...you know, of course, you can't have a classroom project and experiment on "let's do a recall today, students." And run out there and unseat someone who has spent day and night. So I don't know. Senator Schumacher had some very good

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

Government, Military and Veterans Affairs Committee
January 28, 2011

suggestions. You know, I think we're close and perhaps, you know, just it's right around the corner. But, you know, I do want to, you know, thank you and everyone testifying. We do have a need here, a gap that we need to fill. So thank you for bringing this back and that's just, you know, to commend you and everyone here today. [LB224]

SENATOR AVERY: Thank you for those comments because it allows me to say something that I like to say about this Legislature. We are the only Legislature in the entire country that requires that every bill get a public hearing. We go the extra mile to make sure the public knows what we are doing and they get an opportunity to have a say in it. That is special and you saw it in action today. Thank you. [LB224]

SENATOR BRASCH: Um-hum. Very Good. [LB224]

SENATOR PRICE: (Exhibit 1) Thank you, Senator Brasch. And while we are sitting here, I would read that we have correspondence from a Mr. Martin Hoer in opposition to LB224. With that, we will close the hearing on LB224 and we'll call it a day. Thank you for participating in your government. [LB224]