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Transcriber's Office

Government, Military and Veterans Affairs Committee
February 02, 2011

[LB173 LB368 LB399 LB499]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 2, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB499, LB368, LB399 and LB173. 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: Welcome to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I am Chair of this committee and I represent District 28 here in the heart of Lincoln. Before we start, I'm going to introduce all the members of the committee and staff who are here at the table, starting on my right here with: Senator Rich Pahls from Millard, he is seated next to Senator Lydia Brasch from Bancroft; Senator Charlie Janssen from Fremont will be with us in a few minutes; the Vice Chair of the committee is Senator Scott Price from Bellevue, the little guy sitting right here; and next to him is the committee legal counsel Christy Abraham; Senator Karpisek will be here shortly, he is from Wilber; next to him is Kate Sullivan from Cedar Rapids, and then next to her is Senator Paul Schumacher from Columbus. Our committee clerk is Sherry Shaffer and she will be processing the paperwork as it comes in, and that paperwork is this: If you plan to testify, there is a form we want you to fill out, and they are available at each door. And we ask you to please print clearly so that we can read it and give that to her when you come to the table to testify. If you wish to be recorded for or against one of the bills we are hearing today but do not wish to testify, there is another form you can fill out that asks for your name, address, and the bill number, and whether you support or oppose the particular bill. The procedures we will follow are this: We will...the agenda is posted outside the door to the room, I think both doors, and we will start with LB499 with Senator Price, followed by LB368 and LB399 and LB173. The manner in which we'll run the hearings today will be as we have been doing it all this session. We'll be using the lights. You have five minutes to give your testimony. The green light is to indicate that you have...when the green light comes on, four minutes start. When that goes off, you get the amber light for one more minute. So when you see the light change, even if you're color blind you see the light change, it means that you need to be winding up your testimony. The red light means that you should be finished. If you have any materials that you want to share with the committee, any exhibits, we need 12 copies of those, and you can give them to the clerk and she will have the pages distribute them. Our pages are: Danielle Henery from Battle Creek and Kyle Johnson from Sutton. One thing more, please pay attention to testimony that takes place prior to your coming forward and make sure that you try not to be repetitive. Also, if you have any electronics with you, particularly telephones, we ask that you silence those or turn them off so that as not to disturb the proceedings. With that, we are happy to welcome Senator Schumacher and Senator Karpisek to the room, and we'll start with LB499. Senator Price.

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SENATOR PRICE: Thank you very much, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Scott Price, S-c-o-t-t P-r-i-c-e, and I represent the 3rd Legislative District, and I'm here today as a primary introducer to LB499. LB499, which was brought to me by the Secretary of State's Office, makes minor changes to the Election Act to address the issues that have arisen in the past couple of election cycles. LB499 does not have a fiscal impact on the state. And Section 1 probably contains the most complex issue of the bill. It prohibits a practice that has sometimes been termed "logrolling". This situation almost always occurs in small political subdivisions, villages, or small school districts that elect at large and prohibits an elected official running for the same office while they're in the middle of a term for that same office. And others behind me have an ability to explain this much better than I do. In Section 2, it requires a candidate petitioning to be on the ballot to file a sample copy of the petition with the filing officer prior to circulating. By doing this, it would allow filing officers to suggest corrections to blatant errors that might occur prior to circulation efforts. Under current law, the sample candidate petitions are not required, and a candidate may go to a substantial effort collecting signatures only to discover an error that may invalidate the petition. Section 3 requires petition signatures on a page to be from the same county. While most petitions require this already, i.e., the initiative or referendum petitions, there are a few that do not specify that requirement. An example is the unaffiliated presidential petitions. When these petitions have signatures from mixed counties, they become very difficult to verify within a short time frame. And Section 4, it requires petitions to be submitted as one document. The Secretary of State's Office occasionally has requests from petitioners to submit a portion of their petitions with the remainder submitted at a later time. Filing officers should not bear the responsibility or liability of warehousing those petitions. In Section 5, it requires affidavit to remove a person's name from a petition to be submitted by the time the petition is submitted for verification. Filing officers generally would encourage petitioners to be...petitions to be submitted early if possible. Current law, which allows affidavit to be filed at petition deadline, discourages early filing because it allows opponents to remove signatures after the petition has been filed. Section 6 also makes a change to the military and overseas citizens voting process. The change brings military personnel that are stationed domestically but outside the state into the same program as overseas military voters. As you know, many times our Guard are called up to do things around the state, to do other things, or they may be in a prolonged training scenario in another state, and so they're not here and then we'd just want to bring that into compliance. Section 7 harmonizes a deadline regarding registration at early voting between two statute sections. Two more sections here. Section 8 clarifies that a voter who is present in the county on election day must vote at their assigned polling site. There have been attempts from voters to vote at the county clerk or election commissioner's office on election day. With the various activities that occur within these offices on election day, it is not desirable to have voters use the offices as an alternative polling site. And Section 9 repeals original sections. Now I would be happy to try to answer some of these

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questions you may have concerning LB499, but I would note that there is representation from the Secretary of State's Office who are much more capable to answer these questions and, therefore, I thank you for your time and your consideration. [LB499]

SENATOR AVERY: You're still going to get questions. (Laugh) [LB499]

SENATOR PRICE: Absolutely. I appreciate that. [LB499]

SENATOR AVERY: This bill has a lot of stuff in it. [LB499]

SENATOR PRICE: Um-hum. [LB499]

SENATOR AVERY: I would like to go, if you don't mind, to the fifth point you made about requiring affidavits to remove a person's name from a petition to be submitted by the time the petition is submitted for verification. What is the procedure now for removing one's name? [LB499]

SENATOR PRICE: Well, I will go with what I testified with. It says, the current law allows affidavits to be filed at the petition deadline instead of prior to that. Okay. So...and discourages an early filing of that affidavit and allows opponents to remove signatures after the petition has been filed. I think that gums up the works. So, again, I would beg your indulgence, Senator Avery, that they came to me to ask me to carry this clean-up bill, and I agreed to do that and will work to ensure we understand all the moving parts and make sure it has a full and complete understanding by the committee before we move it anywhere. [LB499]

SENATOR AVERY: I suspect that the Secretary of State will be testifying after you. [LB499]

SENATOR PRICE: I believe that Mr. Erickson will be up to handle all the nuts and bolts, but I do see the Secretary is here and I would not challenge him to come up or not. [LB499]

SENATOR AVERY: Okay. All right. Questions from the committee? It worked except on me. [LB499]

SENATOR PRICE: My ignorance proves us all. (Laughter) [LB499]

SENATOR AVERY: Welcome, Mr. Erickson. [LB499]

NEAL ERICKSON: Thank you, Mr. Chairman, members of the committee. For the record, my name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n. I'm Deputy Secretary of State for Elections, here on behalf of Secretary of State Gale to testify in support of LB499.

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And you're correct. This does have a lot of little things in it. We affectionately call it kind of the "kitchen sink" bill because it has a lot of a variety of things in there. And I think Senator Price did an excellent job of describing what's all in the bill and so I can...what I'll do is fill in any gaps that you think might be there, and I'll start with your question you had, Senator Avery. The current law says that you can challenge, you can file an affidavit to withdraw your name up until the filing deadline. And the example we have from this last cycle was a candidate petition that is due technically on September 1. Well, the candidate turned his in, in early August, and it happened to be for the county attorney's office. And the county attorney called me and said: Well, I can turn in these withdrawals afterwards, so as long as I can get enough withdrawals to get him below that threshold, I can keep him off the ballot. And I said, technically you're right, you can do that. And he did make an attempt to do that. Didn't get enough signatures or enough affidavits but he did strike some of those signatures after that. This would kind of close that loophole. And we like to see those candidate petitions in particular filed early so we can get them verified and make sure they're on the ballot, allow for any challenges there might be, etcetera, and this current provision in there kind of serves a deterrent to that. If you wanted to be safe, you would hold onto those petitions so that your opponent may not know who has signed it and can't go around and try to collect those affidavits of withdrawal from the petition itself. [LB499]

SENATOR AVERY: Now that makes good sense. Let me back you up to 3, requiring signatures on a petition to be from one county. What's the reason behind that? [LB499]

NEAL ERICKSON: As Senator Price mentioned, most petitions that have a form written into statute have this in there, they say: we the undersigned voters of blank county. One in particular that does not is presidential petitions for unaffiliated candidates. These are people that...for example, a gentleman named Calero petitioned on in 2008. And these petitions are not due until September 1 under current law. We generally have to certify that ballot around September 8, 10, somewhere, it's 50 days prior to the election. In 2004, we had a candidate where the signatures were all messed up. They had...you know, they'd have five or six different counties on there. Under our current processes, the county is the one that verifies those signatures. We didn't have time to be able to move those from one county to another to collect all those. So if we could just have the ability through this statute to say, yes, all these petitions have to be one particular county, then we can send that off to that county and have them verify, get those returns back, and determine whether they've been on...would make it onto the ballot or not. In this particular case in 2004, we had to certify the ballot on a particular Friday. We did not know whether a presidential candidate had enough signatures until noon that day, whether he was going to make it on the ballot or not. This would help alleviate that problem by requiring, as with other petitions, that all the signatures come from one county. [LB499]

SENATOR AVERY: Thank you. Questions from the committee? Senator Kate Sullivan.

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[LB499]

SENATOR SULLIVAN: Thank you, Senator Avery, and thank you, Neal. Regarding the first one, any questions about the constitutionality of that? [LB499]

NEAL ERICKSON: No. This is...no, I don't think there's any question about the constitutionality of that. And once you understand it, this is probably the most complex concept in there. And every cycle we get a couple of people that think they found a loophole. And to describe the situation that usually occurs most often is going to be a village because there you have a relatively small subdivision. They're elected at large. Occasionally a small school board maybe. But what you have is somebody that, let's say, got elected in 2008. In 2010, he says: well, there are three village board seats up, I'm going to run for one of those too. And the advantage to it is usually with a small subdivision there isn't a whole lot of effort, you know, expended to get elected in those situations. What he would then do is resign his...the one he was in midterm on. He's got four years because he got elected, resigns that one, and then he gets to help make a determination who fills that vacancy as well. And we get these calls and we have never allowed a filing like that. But we get: well, what do you mean I can't do that? You know, show me in statute where it says you can't. And there is nothing in statute currently at this point. So that's why I put this provision in. If you'll notice, there's also a second sentence to it that talks about it doesn't apply if it's a different district, so it's only going to really apply in those at-large situations. It's not going to stop somebody from running for a different district slot, and part of the reason we put that in there was cognizant of the fact that you guys are redistricting this year. In 2012, we will have the odd numbered legislative districts, and if it happened that a senator happened to be in an even numbered district and got redistricted into an odd numbered district, they would be able to run for that office. [LB499]

SENATOR SULLIVAN: I see. Okay. Very good. [LB499]

SENATOR AVERY: Senator Schumacher. [LB499]

SENATOR SCHUMACHER: Yup. A couple of questions. Thank you, Senator Avery. The idea that only signatures from a single county should appear on a petition form, and I take it this would apply to all petitions. [LB499]

NEAL ERICKSON: Generally most petitions have that already in their form that is laid out in statute. The one in particular that does not is the presidential petitions. [LB499]

SENATOR SCHUMACHER: Okay. So this change is only to presidential petitions. [LB499]

NEAL ERICKSON: Oh, there might be a couple of others. Oh, you know, for example,

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grand jury petitions, generally those will be county-only anyway. Remonstrative petitions, generally those will probably be county-only anyway, but they don't specify that it's all one county. [LB499]

SENATOR SCHUMACHER: Well, particularly in the larger counties where someone may not realize on their first signing up whether or not they're in Sarpy County or Douglas County, and they're at a press center event or a large event, and the petition circulator is gathering very legitimate signatures and may even have a mix-up in the forms of what county they're to sign or maybe won't have a form for Frontier County or someplace. And you have a legitimate signature that in the process of going through the petition and running them on your database, querying against the database, you see that, hey, this one's on the Douglas County form but the birthday matches, the date matches, the name matches. This is probably a legitimate signature but it's...you know, is across the line into Sarpy County. Up to this point, have you guys just been rejecting those signatures? [LB499]

NEAL ERICKSON: Well, yes, they reject them. And second of all, our verification process doesn't work that way. When you're doing the verification on our computer system, it is not a statewide search; it is a countywide search. [LB499]

SENATOR SCHUMACHER: Well, I mean, that's a minor thing to change. [LB499]

NEAL ERICKSON: Well, no because...actually, more of a major thing because what it does is it impacts the speeds the system will work at. [LB499]

SENATOR SCHUMACHER: Well, good thing it'll probably... [LB499]

NEAL ERICKSON: And the system was designed...when we have situations like we did in 2004 where we have 700,000 signatures on an initiative petition, the speed becomes very essential, and the system was designed to hit certain benchmarks on speed. [LB499]

SENATOR SCHUMACHER: So this is basically you're saying that your computer system cannot crosscheck with others. [LB499]

NEAL ERICKSON: It can, we can, but it would be outside the verification system. [LB499]

SENATOR SCHUMACHER: All right. Basically those people then who happen to sign the wrong form would basically have their signatures not counted because the circulator form got messed up or got confused or the wind blew the paper over. Even though you have the capacity inhouse to check that, and... [LB499]

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NEAL ERICKSON: But on petitions that have that county, that sole county on there, the beginning of the petition says: we the undersigned voters of blank county. [LB499]

SENATOR SCHUMACHER: But you have a legitimate signature on everything else except the technicality of a county. [LB499]

NEAL ERICKSON: That's possible, yes. [LB499]

SENATOR SCHUMACHER: Okay. Secondly then, in the situation where somebody in polling...and this goes to the last one in the group, in the situation where somebody...polling places change. A few years ago, they did away with schools and everybody went to alternate locations and a fair amount of confusion. Okay. And you show up at the wrong place, and you might be an elderly person or handicapped or just plain pushing your luck getting home from work and hitting it right before 8:00, and you show up at the wrong polling place. Would this prevent you from voting a provisional ballot at the wrong polling place? [LB499]

NEAL ERICKSON: Well, you couldn't vote a provisional ballot under current law at the wrong polling place. You have to when you actually vote a provisional ballot, you swear that you're a registered voter in that precinct. [LB499]

SENATOR SCHUMACHER: I'm not sure if it's applied that way all over. So in the interest of taking care of that issue, should we be looking at allowing people to vote a provisional ballot in the wrong spot? [LB499]

NEAL ERICKSON: Well, the problem you're going to have is that depending on what precinct you go to, it's quite possible that the races won't be the same on each ballot if you go to the wrong polling place. The offices that you're entitled to vote to...vote for could be different at a different polling place. [LB499]

SENATOR SCHUMACHER: Right, but on the ballots like for the statewide issues, constitutional amendments, governors, senator. [LB499]

NEAL ERICKSON: Right. For the statewide issues they should all be the same. Judges, they should be relatively the same. But when you get into school districts, NRDs, ESUs, townships, things like that, they'll vary. [LB499]

SENATOR SCHUMACHER: So the polling people there wouldn't be able to say, oh, you know, it's five till eight and you're in the wrong spot. [LB499]

NEAL ERICKSON: Yeah, and you're going to have difficulty at that point being able to probably get to a place to be able to vote at that point in time. [LB499]

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SENATOR SCHUMACHER: In the interest of protecting the right to vote, should while we're addressing these little technicalities we say: look, for those issues that you may be entitled to vote, you can vote? [LB499]

NEAL ERICKSON: Well, I suppose that's theoretically possible. I suppose you could change the law to accomplish that. [LB499]

SENATOR SCHUMACHER: Okay. I have no further questions. [LB499]

SENATOR AVERY: Senator Janssen. [LB499]

SENATOR JANSSEN: Thank you, Chairman Avery. Mr. Erickson, this will be much quicker. I guess cheat sheet number one, page 2, kind of dealing with lines 15 through 21 of the bill. [LB499]

NEAL ERICKSON: What page? I'm sorry. [LB499]

SENATOR JANSSEN: 2. [LB499]

NEAL ERICKSON: Okay. [LB499]

SENATOR JANSSEN: Page 2, 15 through 21. And this really kind of explain like the logrolling thing, I think is that...? [LB499]

NEAL ERICKSON: Right. [LB499]

SENATOR JANSSEN: ...what it's commonly referred to. And just looking at this, which I don't disagree with is one perhaps loophole that's not covered in here, and maybe it's somewhere else and for my benefit maybe it could be added as an amendment or whatnot as...a situation came up in Fremont where we have...not unlike this, we have eight people on the city council, two of us per... [LB499]

NEAL ERICKSON: Per wards. [LB499]

SENATOR JANSSEN: ...for wards and one on each. [LB499]

NEAL ERICKSON: Right. [LB499]

SENATOR JANSSEN: And we had a situation arise where there was a vacancy, and the other council person from this particular ward, whether his vacancy was kind of like and was almost in serious discussions with actually getting appointed to the other position because only wanted to stay for two more years, didn't want to run again for four more years. Is that covered in here or could we add, or appointed to serve in the

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same capacity? [LB499]

NEAL ERICKSON: That would not be covered in here but, you know, I have heard of that situation. Well, I don't know if I've ever heard it coming to fruition. But that certainly is a possibility. Could it be amended? Probably not in this section, but there's probably another spot you could address that. [LB499]

SENATOR JANSSEN: It just seemed kind of simple and it probably hasn't happened but it almost did happen in three months, so. [LB499]

NEAL ERICKSON: Well, yeah, and, you know, every time we get a call on one of these, they...you know, they think they've found a great loophole. Yeah, I can get another four years fairly easily, plus I'm one of four people that's going to determine our replacement. It's a nice little thing there. And we haven't allowed them up until this point, but we haven't had good statutory authority to say no. Similarly in your situation I haven't heard that as frequently, but I could see that being a possibility and we could probably address that as well. [LB499]

SENATOR JANSSEN: And this was just simply a situation of a person that...whose term was coming up, didn't want to run for four more years... [LB499]

NEAL ERICKSON: Right. [LB499]

SENATOR JANSSEN: ...but was more than happy to make the two-year commitment, so it's a little bit...I don't know if you want to call it altruistic. It wasn't quite as deviant as maybe some of the other things we're talking about. [LB499]

NEAL ERICKSON: (Laugh) Right. [LB499]

SENATOR JANSSEN: So thank you. [LB499]

SENATOR AVERY: Any more questions from the committee? Don't see any. Thank you, Mr. Erickson. [LB499]

NEAL ERICKSON: Thank you. [LB499]

SENATOR AVERY: Any other proponent testimony? Anyone wish to testify in support of LB499? Anyone wish to testify in opposition? Any neutral testimony? Senator Price, do you wish to close? Senator Price waives closing. That ends the hearing on LB499. We'll now move to the next item on the agenda, LB368. Senator Brasch, first time appearing before your own committee. Welcome. [LB499]

SENATOR BRASCH: Thank you. Good afternoon, Senator Avery and members of the

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Government, Military and Veterans Affairs Committee. My name is Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I'm the senator elected to represent District 16. I am before you today as the introducer of LB368. I introduced LB368 to clarify that the ability of established political party conventions to nominate candidates is limited to situations where a vacancy on the ballot has occurred or in the case of a special election. Brought to me by Secretary of State Gale, this legislation is considered necessary so political parties do not have unlimited authority to bypass the primary election process and nominate candidates at its convention for the general election when no party candidate was even listed on the ballot for the primaries. As you may recall a few years ago in the year 2006 a particular instance in which a post-primary convention secured a late nomination for the general election sustained the need for these limitations established in LB368. In this situation, arguments were raised that Section 32-710, which I am seeking to amend, allows parties to nominate through the convention process regardless of whether there was a vacancy on the ballot. A district court found that such a process was allowed. The Attorney General's Office did not appeal the ruling in order to facilitate an orderly November election process as well as because it was anticipated that legislation would be introduced to clarify the candidates must be nominated at the post-primary convention, granting exceptions only to special elections or establishment of new political parties. Without adoption of LB368, the primary process can be undermined, as history has shown, with back-room deals that were once thought to have been done away with through our primary nomination system that has been utilized in our state for more than a century. I believe that the primaries are vital to our political process, and LB368 will offer protection and regard for this process so the primaries serve as a fundamental part of the people's choice for a candidate and ultimately an elected official. Thank you. [LB368]

SENATOR AVERY: Thank you. Questions from the committee? Senator Janssen. [LB368]

SENATOR JANSSEN: Thank you, Chairman Avery. This will be quick and I'd feel bad if we didn't ask you a question your first time up here. (Laughter) Is this the...oh, I think I had this bill before. I think it died in committee or we just didn't move it, not because it was lack of interest. This is the "Kate Witek bill", if you will, is that the...? [LB368]

SENATOR BRASCH: That's correct. [LB368]

SENATOR JANSSEN: I was just trying to jog my memory. Okay. Thank you. [LB368]

SENATOR AVERY: I believe that took place in your hometown. [LB368]

SENATOR JANSSEN: Was that Fremont? Yeah, I think you're right. [LB368]

SENATOR AVERY: Yeah, it was Fremont. Yeah. [LB368]

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SENATOR JANSSEN: I think they had their commission. [LB368]

SENATOR AVERY: Any more questions from the committee? Let me ask you one. This does not change the ability of parties to fill vacancies if, say, someone dies who was nominated, right? [LB368]

SENATOR BRASCH: Right. That's correct. And I believe it states in there that unless by a special...granting exceptions to only special elections or establishment of new political parties,... [LB368]

SENATOR AVERY: Yeah. [LB368]

SENATOR BRASCH: ...and that would be a special election or an exception. [LB368]

SENATOR AVERY: Yeah. Okay. I don't see any more questions. Thank you. [LB368]

SENATOR BRASCH: Thank you. [LB368]

SENATOR AVERY: Proponent testimony. Welcome, Mr. Secretary. [LB368]

JOHN GALE: (Exhibit 1) Mr. Chairperson, members of the committee, John Gale, J-o-h-n G-a-l-e, Secretary of State Chief Election Officer for the state of Nebraska, and I appear here in support of Senator Brasch's bill, LB368. As Senator Janssen pointed out, this bill addresses a real situation that came up in 2006. We had one understanding of the law, and the understanding of the law was that the...a state political party, state convention, cannot nominate for a position unless there is a vacancy, and the law we also understood to say that the failure of the political party to have a candidate nominated in a primary did not amount to a vacancy. So we thought the law was clear on this point. In that particular year, and I won't use names, but in that particular year, a constitutional candidate was not nominated by one political party. In the summer, a person appeared before that party's state convention and said, I would like to be your nominee. And the state convention for that party nominated that person to become a candidate, and the papers were attempted to be filed with our office. Based upon our understanding and it was a long understanding of the clarity of the law on that issue, I refused to allow the papers to be filed based upon the fact that there was no vacancy as we understood the law. The political party went to a court and the district court ruled in August as we were approaching, of course, the deadline for certifying a ballot, and the district court ruled that we were wrong, that there was indeed a vacancy even if the political party had not nominated in the primary and, therefore, it was okay and that we should put that person on the ballot. Our office and the Attorney General's Office were in agreement that the matter should be appealed, but realistically the time deadline was so tight there was no way to get an appeal court to rule on the issue before the ballot

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had to be prepared. At the very same time, however, the candidate smartly had proceeded to gather signatures to be a petition candidate, which would be by petition not by party, and gathered enough signatures. So at that point it was a little bit moot. The candidate was going to be on the ballot one way or the other, and so we complied with the court order thinking that it could be a two- or four-year process to get a Supreme Court ruling and let's address it legislatively. And that's why this bill, I think, is so significantly important. And Senator Janssen is right, with the press of other issues, the bill didn't get advanced. It wasn't due to significant opposition as I remember, but it really comes down to what is our fundamental belief in primary. We've had the primary system since 1907, over 100 years, in Nebraska with the idea that it is the will of the people. Let the people express their will as to the choice of their candidate for the general election and not allow it to go back into the closed back room, smoke-filled rooms the way it has existed for many, many decades in early American history. In this situation, a political party left under the interpretation of that district court means that you could have a political party who would say: Well, the other party has a number of candidates on the primary. Let's wait and see who they nominate, and then we'll nominate the best person we can find to match up against that, and we'll do it by convention so we get to pick who our candidate is after we see who the other party's candidate is. That would be one option. The other would be, no one files, everybody is discouraged from filing because they simply want to do it in kind of the back room of the state convention. Or, thirdly, you could have somebody nominated and the party fathers would say: we don't really like that candidate; we don't think they're very strong; we don't think they can win, so let's nominate another one at our party convention and that's who we'll back. So it brings a lot of confusion to who represents a party, and we think that candidate should be chosen in the primary. And one of the biggest jobs of a political party is get out there and recruit, get out there and find the good candidates, get them into the primary system, choose the best one, and move on. Let the people decide, but let the parties recruit for the primary and not recruit for convention back-room choices. [LB368]

SENATOR AVERY: Thank you, sir. [LB368]

JOHN GALE: Thank you, Senator. [LB368]

SENATOR AVERY: Is this in the category of best practices that you sometimes talk about? [LB368]

JOHN GALE: I would consider it very definitely in the category of best practices. It's totally consistent with the way the law has been interpreted by our office for many, many, many years and has never been in any way contested or challenged until 2006, and we still thought we were correct. So what we're really doing is clarifying, make it a practice that was a best practice clearer under the law so no one can do an end run around it or create havoc of the primary system. [LB368]

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SENATOR AVERY: Let's go to this specific case that Senator Janssen mentioned. There would be...this would not end the ability to petition onto the ballot, right? [LB368]

JOHN GALE: No, it would not address that. That still is an open opportunity because a petition candidate is not a party candidate. [LB368]

SENATOR AVERY: And when you have a vacancy on the ballot, as happened in the gubernatorial race, then the party can in fact nominate someone to fill that vacancy as we saw happen. [LB368]

JOHN GALE: That's correct. That is absolutely a vacancy if someone declines or for one reason or another...yeah. [LB368]

SENATOR AVERY: Or drops out. Right. Questions from the committee? Senator Janssen. [LB368]

SENATOR JANSSEN: Thank you, Chairman Avery. Mr. Secretary. [LB368]

JOHN GALE: Senator. [LB368]

SENATOR JANSSEN: I just wanted to clarify one thing. And when I brought this, I think it was two years ago, it wasn't a personal affront at the individual that ran for this, and that you gave some very...I think some ideas that people could have like maybe with malice or whatnot that want to circumvent the election process. And I certainly don't think...I think it was a very unique set of circumstances that led to this happening. So I just wanted to clarify that I wasn't, like, coming after former Auditor Witek in any way. But I think in her case it was...I think she ran for lieutenant governor and wanted to get her old job back essentially and didn't clarify...didn't she switch political parties and then it really wouldn't have mattered anyway because she petitioned on either way? [LB368]

JOHN GALE: Correct. Even without that court decision, she would have gone on as a petition candidate but not as a party candidate. So she did the petition process. She was...I would say she definitely took the high road through the whole process and recognized that the party nominating her might well be wrong, and that's why she decided to gather the petition signatures. So we understood why she was doing what she was doing, but we felt that the court ruling was absolutely wrong and totally contrary to tradition and understanding of the law, and this would clarify that, close that door. [LB368]

SENATOR JANSSEN: So what we'd be doing is really getting rid of the path of least resistance, if you will, because this was the easy way to do it, almost by just going to the party. That's where that... [LB368]

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JOHN GALE: Correct. There would be considerable more expense involved in going all the way up to the Supreme Court and then once you got a ruling, you'd have to come back probably and clarify something with the Legislature. But it was not in any way personal to Kate Witek. It's a loophole that surprised us when the court ruled the way it did. [LB368]

SENATOR JANSSEN: Thank you. I just wanted to clarify that. Thank you. [LB368]

JOHN GALE: Correct. Thank you, Senator. [LB368]

SENATOR JANSSEN: Thank you, Chairman Avery. [LB368]

SENATOR AVERY: Any more questions? Senator Schumacher. [LB368]

SENATOR SCHUMACHER: Thank you, Senator Avery. Just one question, Secretary Gale. As I read your letter, are you saying that, let's say a Republican won the primary for X office, that the party then of its convention would run another Republican, and both of them would be on the ballot if they didn't like the guy who won the primary? Is that possible under the way this goes? [LB368]

JOHN GALE: I don't know how that would be resolved. The party would probably claim that they had the higher priority in selecting the candidate because the law allowed them that right and, therefore, they were the last word, and they would probably seek a court order to enjoin the primary candidate from being on the ballot. As I say, it would create some chaos and havoc in the system when you get into, then you have the kind of classic confrontation between the primary system, the will of the people, and the will of the party fathers over here saying we like our guy better than you picked as the public. It's a gray area. We don't know how it would be resolved, but we know that the party may well have the power and the money to prevail. [LB368]

SENATOR SCHUMACHER: So is that what you were addressing in your sentence in your letter that says, "Even worse, a political party that didn't like its primary candidate who wins the primary against a party favorite, the party could then use a convention to make a nomination contrary to primary results"? Is that the situation? [LB368]

JOHN GALE: Correct. That's what I was addressing. [LB368]

SENATOR SCHUMACHER: Okay. I have no further questions. [LB368]

SENATOR AVERY: Any more questions? Thank you, Mr. Secretary. [LB368]

JOHN GALE: Thank you, Senator Avery. Thank you. [LB368]

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SENATOR AVERY: Additional proponent testimony to LB368. Any opponent testimony? Does anyone wish to speak in a neutral position on LB368? Do you wish to close, Senator? You waive closing. All right. That ends the hearing on LB368. And now I will...oh, I have one...before I end the hearing, let me read into the record a letter of support from Election Commissioner David Shively here in Lancaster County. (Exhibit 2) Now that ends the hearing on LB368, and we'll move to LB399. I will turn the chair over to the Vice Chair, Senator Price. [LB368]

SENATOR PRICE: Thank you very much, Chairman Avery. I will now open up that hearing on LB399 with Chairman Avery. [LB399]

SENATOR AVERY: Thank you, Senator Price, members of the committee. My name is Bill Avery, spelled B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I am bringing this bill to you on behalf of Secretary of State John Gale, and we had a conversation about this early in January. What LB399 does is change the signature requirements for nomination by petition certain offices for the general election. Under current law, there is a distribution requirement to obtain a certain number of signatures from each county when a candidate for nonpartisan office wants to place his/her name on the general election ballot. LB399 eliminates the distribution requirement. With the elimination, the standard becomes collecting signatures from at least 10 percent of the registered voters voting for governor or president in the last election not to exceed 2,000 signatures. The distribution requirement for the Board of Regents is also eliminated under this bill. Similarly for statewide partisan candidates who want to place their name on the general election ballot, there is a current distribution requirement that signatures be obtained from one-third of the counties in the state. With this bill, the standard for partisan statewide office is at least 4,000 signatures and at least 750 signatures will be obtained in each congressional district. As you may be aware, the state of Nebraska is currently involved in a lawsuit challenging the distribution requirement of current law. We are being challenged on the basis of violating equal protection. This bill eliminates those provisions being challenged. The Secretary is here and Neal Erickson and they are able to speak more cogently on the lawsuit than I can. But it's my understanding that if this remains in law, we are likely to lose the case and then be liable for attorney fees. And if we take this out, then our chances are better prevailing in the lawsuit and avoiding paying those fees. Now I may not have that exactly right and I'm sure that Mr. Erickson or Secretary Gale will be happy to correct me if I didn't get it right. But that is where we are. This is not a greatly difficult bill but one that needs to be seriously considered by this committee. Thank you. [LB399]

SENATOR PRICE: Thank you, Senator Avery. (Laughter) I apologize. Are there any questions from the members of the committee? I almost thought you were dismissing me with your statement of saying that there's no great questions. (Laughter) Seeing no questions, thank you, Senator Avery. Would the first proponent...Mr. Erickson. [LB399]

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NEAL ERICKSON: Senator Price, members of the committee, once again for the record, my name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n, Deputy Secretary of State for Elections, here testifying in support of LB399 on behalf of the Secretary of State. I think...and thank you, Senator Avery, for introducing this, and I think I was remiss earlier in thanking you for introducing LB499, Senator Price. But I think Senator Avery did a good synopsis of it. In particular he had mentioned the lawsuit. One thing we're being sued on is actually subsection (2) in this bill. Well, it's in Section 1 but it's subsection (2) where we had established a distribution requirement for statewide candidates of at least 50 signatures in each of 30 counties. Well, because counties vary from one size to another, that ends up creating equal protection problem. And when this lawsuit was filed based on recent court decisions, there really wasn't a whole real good defense on this one. We didn't have a real good argument to make on this. With all the other issues in the lawsuit, we did have good arguments and I think in a lot of those cases we will probably prevail. But this one was not going to be probably successful. And so what we did with this was change it from a distribution requirement based on counties to a distribution requirement based on congressional districts because often congressional districts are by definition substantially equal in size. You don't have that equal protection problem. So in drafting the bill, we kept the current law has it 50 signatures from at least 30 counties, that's going to require about 1,500 signatures from outside your home county. We left it the same way. At least 750 from each congressional district, that means you'd have to get about 1,500 signatures outside your home area. As we were drafting this bill, we opened up Section 32-618. We also struck some language, and these are found on page 2 where there were some actual flat numbers in there. One of them was for nonpartisan offices. If it ran across county lines, you had to have at least 25 signatures from each county. That's created some problems in the past because you'll have school districts, some other types of smaller, possibly an NRD that runs into another county, and there may or may not be 25 people there or there may be 30 people and you've got to get 25 of the 30 signatures. We haven't really had that pop up this decade, but we did have some in the nineties where people were trying to petition on and technically they could not because there weren't enough people in that other county to be able to do it. So while we had this section open, we removed that language as well, so. [LB399]

SENATOR PRICE: Thank you, Mr. Erickson. Are there any questions from the committee? Senator Schumacher. [LB399]

SENATOR SCHUMACHER: Thank you, Senator Price. Mr. Erickson, does this defect also apply to our requirement of a certain percentage of signatures needed to be gathered from a certain number of counties in initiative petitions? [LB399]

NEAL ERICKSON: Theoretically it could, yes. [LB399]

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SENATOR SCHUMACHER: Is that something we should be looking at? [LB399]

NEAL ERICKSON: I think that's your prerogative to look at it if you'd like to. [LB399]

SENATOR SCHUMACHER: But whatever the theory... [LB399]

NEAL ERICKSON: But that's in constitution, that's not in statute. [LB399]

SENATOR SCHUMACHER: Right. But both the constitution and the statute are subject to if there is this overlording, one-vote federal requirement. [LB399]

NEAL ERICKSON: Theoretically, yes, that's possible. I suppose theoretically a court could also look at it as a constitutional change instead of a candidacy petition. That's possible as well. I do not know how a challenge on our initiative distribution would result. [LB399]

SENATOR SCHUMACHER: No further questions. [LB399]

SENATOR PRICE: Thank you, Senator Schumacher. Senator Janssen. [LB399]

SENATOR JANSSEN: Thank you, Vice Chair Price. Mr. Erickson, one thing that came up, I have no opposition to this bill which is amazing for an Avery bill, but (laughter) the...he had mentioned the legal cost. Is there any legal cost in this challenge which I'm not aware of outside of what's currently appropriated to the Attorney General's Office? I assume he's handling this. Is there...? [LB399]

NEAL ERICKSON: Yes. Well, what happens is when you challenge a statute based on the...and you challenge in federal court on the constitutionality of a particular piece of legislation or a particular statute, the court has the ability to assess opposing attorney's fees, so we could end up paying the opponent's fees as well. In this particular situation, I think one thing we'd definitely like to avoid that if we won on all the other issues that are presented in that case but lost on this one, we theoretically could be charged attorney's fees as well. And, yes, are those things that are outside the current AG's budget, yes, usually they are. When we get assessed those, those usually end up resulting in a claim to the state and it goes to the Claims Board and depending on the amount, it's either paid by the Claims Board or goes to the Legislature for approval. [LB399]

SENATOR JANSSEN: All right. So it's a potential if we lose the case outside attorney fees. [LB399]

NEAL ERICKSON: Possibly yes. Right. [LB399]

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SENATOR JANSSEN: Okay. Thank you. [LB399]

SENATOR PRICE: Thank you, Senator Janssen. Senator Sullivan. [LB399]

SENATOR SULLIVAN: Thank you, Senator Price. So, Neal, regarding the lawsuit depending upon the outcome of this legislation if it were to pass, then what status will the lawsuit be? [LB399]

NEAL ERICKSON: Well, you know, our feeling is if this legislation were to pass, the issue becomes moot and, you know, therefore they would not prevail on that because it's a moot issue. [LB399]

SENATOR SULLIVAN: Okay. [LB399]

SENATOR PRICE: Are there any further questions? Seeing none, thank you very much for your testimony. [LB399]

NEAL ERICKSON: Thank you. [LB399]

SENATOR PRICE: Do we have any other proponents? Proponents? Opponents? Neutral? Senator Avery, you would like to waive your closing. Thank you, and that will end the hearing on LB399. We now move, Senator Avery, to LB173. [LB399]

SENATOR AVERY: Thank you, Senator Price. For the record, my name is Bill Avery, B-i-l A-v-e-r-y. I am here to introduce LB173. This bill builds upon something that we did last year. It adds natural resources districts to the definition of high elective office. Current law provides that no person serving in a high elective office shall simultaneously serve in any other high elective office. So under this bill, members of a natural resources district board would not be allowed to serve in any other high elective office at the same time. Last year, we added to this section of law community colleges, and community colleges then became classified as high elective office. That bill was passed and signed by the Governor, so it is now law. The reasons I introduced that bill last year are the same as the reasons I am introducing LB173. I believe that holding two high offices simultaneously, such as being on an NRD board and being a member of, say, a county board, can lead to conflicts of interest. There are often issues that come before those public bodies that overlap, and it seems to me that one ought not to be involved in situations where potential conflicts of interest can occur. Moreover, I think it's important that public officials avoid even the appearance of conflicts of interest even though they may not be real because in the minds of the public, perceptions are reality to them and to many of us. And most of us tend to view reality as our perceptions being accurate when in fact our perceptions could be faulty, could be based on incomplete information. But I think this is one of those areas where we want to remove any doubt about that. I want to make clear that this bill is not about any particular individual. I, at the time I

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introduced this bill, did not even know who would be affected. I just knew that there were some double office holding involving NRDs. I did not know who they were. So I don't care who they are. It doesn't matter. I've learned that there are some instances where this has occurred and is occurring now, but this bill is not intended to single out any individual person. Like the community college bill last year, I'm introducing this because I believe it's good policy. LB173 also provides that any person holding more than one high elective office on the effective date of this bill will be entitled to serve the remainder of all terms for which he or she was elected or appointed. In other words, if there are individuals who will be affected by the bill, they will be allowed to serve out the remainder of their current terms in both offices, and then thereafter would have to choose one or the other. Now there is an issue that is not included in LB173 that I want to discuss, and that has to do with people who hold positions on irrigation districts are in...they are selected by the membership of those irrigation district boards or by the property owner, excuse me, in the irrigation districts. They are elected to a board. I was wanting to ask the committee to consider an amendment to include irrigation districts in the current election law that we would be amending. I am told, however, that irrigation district board members are not covered by the election law. So why am I mentioning it at all? Because if we find a way to prevent members of irrigation district boards from serving also on NRD boards, I want there to be a public record established and I want there to be an opportunity for anyone in the room today to express their view on this. I don't want us to find a way to close this loophole and then be accused later of saying, ah, but you didn't have a public hearing on that. So I bring that to you on the chance that we might be able to find a way to do what I had hoped we'd be able to do with an amendment. The problem of irrigation district boards and NRDs was brought to me after this bill was drafted. So with that, I will end my comments and ask you for any questions you might have. [LB173]

SENATOR PRICE: Thank you very much, Senator Avery. And I'll start off with a question. When you were referencing within the green sheet talking about Article IV and VII and the different sections which I guess address the definition of a high office, could you enumerate for us and the record here what constitutes a high office versus any other office? [LB173]

SENATOR AVERY: Almost everything but the office we hold. (Laugh) I mean that facetiously. Virtually any office that puts you on a ballot and requires a majority vote for you to hold that office that has a set of specific duties that may involve taxing authority in particular but not limited to that wherein you serve for a specific term at the pleasure of your electorate would be considered a high elective office. [LB173]

SENATOR PRICE: All right. Thank you very much, Senator Avery. Any other questions? Senator Sullivan. [LB173]

SENATOR SULLIVAN: Thank you very much. Senator Avery, do you know of instances

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where there has been a perceived conflict of interest with people holding two elective offices? [LB173]

SENATOR AVERY: I could probably get you some of those instances, but I'm reluctant to talk about them in public hearing because it might reveal the names of people involved. But I can tell you that in general if you are on an irrigation board, a district board for example, and also on the NRD, the irrigation district boards deal with I believe surface water issues, and the NRDs deal with groundwater issues, and you know that there is a great deal of different perspectives and issues involved in those different sources of irrigation water. And sometimes what may be good policy in surface water may not be good policy in groundwater, and if you're serving on both, then you get an opportunity to have influence on both sides of the issue. [LB173]

SENATOR SULLIVAN: And yet we say that there is a connection between the two... [LB173]

SENATOR AVERY: There is. [LB173]

SENATOR SULLIVAN: ...and perhaps this...you make a presumption that there is a conflict of interest, however, is it safe to say that some people may view that completely opposite, that they view themselves as a stakeholder and then have every right to be involved in the process? [LB173]

SENATOR AVERY: And they are, they can be involved in the process. They can be involved in the integrated management plans. [LB173]

SENATOR SULLIVAN: Is this all about irrigation districts and NRDs? Is this why you're introducing this bill? [LB173]

SENATOR AVERY: No, no, it is not. [LB173]

SENATOR SULLIVAN: Okay. Well, you keep bringing it up. That's why I just... [LB173]

SENATOR AVERY: Well, it's because that's the easy answer because it's much more obvious there than it is in, say, NRDs and community college boards. But we...if you serve on two boards, you serve in two offices at the same time, and you come...and issues come before one or the other of those offices and you have an opportunity to act on them in two different venues, that's an unfair advantage. [LB173]

SENATOR SULLIVAN: Again, I would say that perhaps is a matter of presumption, not necessarily fact. [LB173]

SENATOR AVERY: Well, let's take it higher. You would not...I presume you would not

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want to give state senators the opportunity to serve as state senators and, say, serve on the Board of Regents because we deal with the same kind of issues. [LB173]

SENATOR SULLIVAN: Are those restrictions identified in...specifically as it relates to the particular office, i.e., Board of Regents? Does it limit...? [LB173]

SENATOR AVERY: I'm pretty sure that the law is clear on who can...pretty clear on barring people from serving in two high elective offices at the same time, and it is to avoid the reality of conflicts but also the perception of conflicts. [LB173]

SENATOR SULLIVAN: Do you see that this might be an issue, though, in rural areas where there...first and foremost, there's difficulty of getting people to run for an office, any office, and that perhaps this kind of restricts the ability of the positions to be filled? [LB173]

SENATOR AVERY: Well, I don't know of any circumstances where that would apply. It might. But the question then becomes, for example, would you want to see someone serve on a village board and on the county board when the village board and county board are dealing with similar issues where you get to vote on the village board on the same issue, then you get to cast another vote on the same issue or similar issue on the county board? [LB173]

SENATOR SULLIVAN: To a certain extent that decision could be made by the electorate. [LB173]

SENATOR AVERY: Yeah, but our job is to structure election law to reflect best practices, as the Secretary said, but also to advance good policy, and good policy it seems to me is to eliminate opportunities for conflicts of interest. [LB173]

SENATOR SULLIVAN: Thank you. [LB173]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other...Senator Janssen. [LB173]

SENATOR JANSSEN: Thank you, Vice Chair Price. Senator Avery, kind of a quick question, hopefully a quick answer, and then a comment. The school boards, are they considered higher elective office? [LB173]

SENATOR AVERY: Yes. [LB173]

SENATOR JANSSEN: Okay. And then Senator Sullivan brought up a good point right at the end of her deal when she was talking about to a certain extent does the electorate have an opportunity to do this themselves, and I was just very interested in that

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exchange. But getting back to the point. I had a bill I think it was last year in Natural Resources, one that just got kicked out again this year, but dealing with how we elect natural resources board members. And a person opposed it. And the person, I think they were maybe Upper Blue or something, was on one of the NRDs, and this person also was on the county board. And I remember leaving that hearing just wondering how...because these natural resources districts encompass several counties and affect several counties, and yet this person has a duty and obligation to one county sitting on there as a commissioner or a supervisor. And so at that time I thought maybe there was, I don't know, some impropriety or at least it would lead to that. And you get paid more for being a county supervisor, I believe significantly more. I don't even know NR...I don't think NRD members get paid. I think they might get a per diem which is not a very good gig, by the way. But I just...that was just a comment because I do have a particular... [LB173]

SENATOR AVERY: Yeah, but I think you raise...I think that's a good illustration of why this bill is necessary. [LB173]

SENATOR JANSSEN: But I don't...I don't also...I'm playing the middle ground here. I don't disagree with Senator Sullivan. The electorate also could say, hey, this is an impropriety. But in some cases--I'm arguing with myself here--as a voter of Dodge County I could say, well, I want this guy because he's on the NRD, so I want to vote for this guy since we're going to get a better deal when the NRD comes out, so. [LB173]

SENATOR AVERY: Um-hum. Yeah. You made the point better than I did. [LB173]

SENATOR JANSSEN: Well, that's why I figure I'd help you out. (Laughter) [LB173]

SENATOR PRICE: Thank you, Senator Janssen. Are there any further comments, questions, or queries? Seeing none, thank you, Senator Avery. Will the first proponent for LB173 come on down. [LB173]

MICK MINES: Good afternoon, Senator, and thank you, Senators, for hearing this bill. For the record, my name is Mick Mines, that's M-i-c-k M-i-n-e-s. I'm a registered lobbyist today representing the Papio Valley Preservation Association. We'd like to thank Senator Avery for introducing the bill because there's a clear conflict of interest that exists between natural resources districts, counties, municipalities, school districts, and community colleges in regard to granting them the powers that this Legislature has--the power of eminent domain and taxing authority. LB173 would eliminate any real or perceived conflicts for elected members of natural resources districts. The Legislature has recognized that elected members of cities, counties, school boards, learning community coordinating council, and the community college boards have conflicting authority, and elected officials are defined by holding higher elected office, and that only allows them to serve on one board at a time, as you know. Natural resources board

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members are not yet held to that same standard. From an eminent-domain perspective, we all know that condemnation is infrequently used, yet the implication of eminent domain is an effective negotiating tool. An elected official of both, let's say, a natural resources district and any other higher office that's involved in a case of eminent domain is conflicted between the two public policies of both governing boards. Even if the member recluses himself or herself from voting, they're privileged to information that may be detrimental to the other governing body or even the property owner. Elevating natural resources district board members to high elective office would eliminate this conflict. From a tax perspective, natural resources districts have the same budget demands as other local government bodies. The disadvantage or rather the conflict is created whenever these local bodies begin their budget process. Full input into the budget of two taxing authorities places a multiple officeholder in a position to disclose the fiscal and, more importantly, the legal positions that could be advantageous or detrimental to either entity. Elevating natural resources district board members to high elective office would eliminate this conflict as well. Senator Sullivan had addressed the issue of in rural populations where there may not be enough people or good people to run for these offices. I don't know that that's true. Maybe it's just hard to fill the seats of up...in many or several NRD boards, there are 21 members. That may be an issue. But I would rather like to believe that people don't run against long-time officeholders, but when open seats are available we see people fill them. Natural resources districts are increasingly powerful governing bodies with valuations growing every year. In fact, one NRD has reached a \$50 billion in total valuation. This is a significant taxing body. Elevating natural resources district members to high elective office eliminates potential conflicts of interest and ensures the integrity of their board members who work hard on behalf of their constituents. Thank you, again, to Senator Avery for introducing legislation and I'd be glad to answer any questions. [LB173]

SENATOR PRICE: Thank you, Mr. Mines. Are there any questions? Senator Karpisek. [LB173]

SENATOR KARPISEK: Thank you, Senator Price. Senator Mines, good to see you. [LB173]

MICK MINES: Senator. [LB173]

SENATOR KARPISEK: Okay. Do you...are there any of these situations that exist now? [LB173]

MICK MINES: I did a little research and I did not get as far as looking at conflicts between natural resources...as multiple officeholders being a natural resources district director and I didn't get as far as doing cities or community colleges. I did get through counties. We have multiple officeholders in Hall County. A member of the Hall County board is also a member of the Central Platte Natural Resources District. A member of

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the Cass County Commissioners is also a member of the Lower Platte South NRD. And then when I did look into a board member of the Papio-Missouri NRD is also a member of the Metro Community College Board of Directors. And a member of the Papio-Missouri NRD is also a member...actually the chair of both organizations, the Papio-Missouri NRD and he chairs the learning community coordinating council. So those are the ones I've designated so far, and if the committee would like me to look further into municipalities, I'd be glad to that as well. [LB173]

SENATOR KARPISEK: I think that would be interesting. And really those were not the rural counties, Papio and Hall, and so I think that we do see that there is... [LB173]

MICK MINES: Cass. [LB173]

SENATOR KARPISEK: Cass...that there is at least a...there are some people out there. We're not just talking about something that doesn't exist. [LB173]

MICK MINES: Oh, I'd be glad to do the research and to get that information to the committee. [LB173]

SENATOR KARPISEK: Thank you. Thank you, Senator Price. [LB173]

SENATOR PRICE: Thank you, Senator Karpisek. Are there any...Senator Sullivan. [LB173]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Mick. Are there any irrigation districts in the NRD that you represent? [LB173]

MICK MINES: There are. [LB173]

SENATOR SULLIVAN: And so how do you feel about Senator Avery's comment about potential or the presumed conflict...? [LB173]

MICK MINES: That's really the first time that I'd heard it, and I think the discussion is relevant. I think any time that there's a perception by the public that there is a conflict of interest, especially with taxes and especially with rights of condemnation, I think then that public debate has to happen. I assume irrigation districts have power of eminent domain. I don't know that. I'm sorry. Thank you. [LB173]

SENATOR PRICE: Are there any other questions, comments, queries? Seeing none, thank you very much, Senator Mines. [LB173]

MICK MINES: Thank you, Senator. [LB173]

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SENATOR PRICE: Will the next proponent for LB173 come on down? [LB173]

LARRY DIX: Good afternoon, Vice Chairman Price and members of the committee. For the record, my name is Larry Dix, spelled L-a-r-r-y D-i-x. I'm executive director of the Nebraska Association of County Officials appearing today in support of LB173. Certainly Mr. Mines covered I think the taxing authority. And when our board met, one of the concerns that they had was that you do have somebody who sets on two boards that do have taxing authority, and so that's a little problematic. But let me give you more of an example to get...sort of cut to the chase. And this has happened in county government, and the person of course who represented both of them just had make a decision to step away from one or I think, in the end, excuse himself from both discussions. But there was a dam being proposed that would close county roads. And so now you've got this person really on both sides of the issue of, do I support the dam, do I support the closing of the county roads. So there was a very true conflict in that instance. Mr. Mines pointed out a number of county boards that have that. And I think with the latest election, prior to that, there were two more. I think there was one in York which puts it a little more rural and then one...I can't remember if it was Phelps or Franklin County, I think, that we had that scenario where someone served on the NRD and the county board. So with that, I'd be happy to answer any questions that anybody has. [LB173]

SENATOR PRICE: Thank you, Mr. Dix. Are there any questions? Senator Sullivan. [LB173]

SENATOR SULLIVAN: Thank you. Well, just to follow up with my concern earlier. In your experience particularly with the smaller, rural, low-population counties, do you think this limitation will be a problem for them? [LB173]

LARRY DIX: You know, Senator Sullivan, and I know I've set here at times and talked about the need to have people run, and I think those conversations were more in the area of townships where those small boards...but I can't remember in my ten years of being here that we ever had someone...where we ever had a ballot for county board where nobody ran. At the county board level, we have typically had plenty of candidates running. Now I certainly can't speak for the NRD because I don't know about that, but from the county board side, historically we've always had candidates interested in that position. And I can only speak to the county side of it. [LB173]

SENATOR SULLIVAN: Okay. Thank you. [LB173]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other questions? Seeing none, thank you, Mr. Dix, for your testimony. Are there any other proponents? And are there opponents now for LB173? [LB173]

JIM THOMPSON: (Exhibit 1) Mr. Chairman, members of the committee, my name is Jim

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Thompson, J-i-m T-h-o-m-p-s-o-n. I'm testifying today in opposition to LB173. This bill would redefine high elective office to include directors of natural resources districts and, thereby, prohibit NRD directors from serving in a number of other elected offices, including on school boards, the learning community, and in county offices. Current Nebraska state law provides that, "no person shall be precluded from being elected or appointed to or hold an elective office for the reason that he or she has been elected or appointed to or holds another elective office," Nebraska Revised Statute 32-604(1). There are two statutory exceptions to this general rule. First one provides that members of the Legislature and those serving in constitutionally created offices may not serve simultaneously in any other elective office, Nebraska Revised Statute 32-604(4). Second exception provides that, "no person serving in a high elective office shall simultaneously serve in any other high elective office," Nebraska Revised Statute 32-604(4). High elective office is defined as including members of the Legislature, state constitutional officers, the State Board of Education, the Board of Regents, elected county officials, elected city officials, and elected community college, learning community, and school board members, 32-604(6). In my view, LB173 is a solution in search of a problem. First of all, in many parts of Nebraska, finding qualified individuals who are willing to take the time and make a personal sacrifice to serve in public office is, at times, a challenge. This bill would prohibit a rural county commissioner in western Nebraska, for example, from serving on a NRD board. While this may present less of a problem in urban areas, the qualifications for NRD directors should be uniform statewide. Public service should be encouraged, not discouraged. Secondly, NRD directors are not paid salaries and the position is not a full-time job. NRD races are generally low key and nonpartisan. In fact, NRD board of directors are responsible for less than 2 percent of the overall property taxes collected by the state of Nebraska. To designate the position as a high elective office would clearly appear to be inconsistent with the ordinary meaning of the term. In addition, this bill unnecessarily impedes the ability to the voters to freely choose, in a democratic process, who they want to represent their interest. A bit of history, this bill was introduced last year. Attempts were made to get this on board. And the last election cycle, four of the five NRD positions in the Papio NRD...and by the way, I'm on the board of Papio NRD, four of the five ran contested, and that helps me out when I don't have to buy signs and so on and so forth. But what that does say is that even in a highly urban district like Omaha, Douglas, Sarpy County area, four of the five races were unchallenged. LB173 appears to manipulate, in my opinion, the democratic process and it's surely unnecessary. It appears targeted...and originally though two individuals I've learned from previous testimony, there are apparently four individuals that this bill appears to be targeted for. In my personal opinion, we shouldn't be attempting to make state law in such a narrow scope. I currently serve with two of those that have been labeled as potential conflict of interest. One of them is here to testify, the other one can't make it, so: One is on learning community; one is on Metro Community College. In my multiple terms on the NRD, there's zero situations where there was a conflict of interest as the gentlemen served their other duties. Yes, we have taxing authority. Yes, we have eminent domain

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authority, but community colleges, they build colleges. We build lakes. We build streams. We build dams. Rarely, rarely are the two intertwined. And learning community, I guess the closest thing we come, we put out educational pamphlets that we budget with our own budget. So the conflict of interest is...it's a curve coming at you and I hope you evaluate that tremendously. Two years from now, I personally could consider going to a high elective office. There are a couple of key vacancies that...in my district that I could consider should I have to resign from the NRD if this state law were passed, yeah. Where would the electorate be because they voted me in three times now to serve them in this capacity? [LB173]

SENATOR PRICE: And the red light is on. [LB173]

JIM THOMPSON: Pardon? [LB173]

SENATOR PRICE: And the red light is on. [LB173]

JIM THOMPSON: Okay. For these reasons, I would respectfully urge the committee to indefinitely postpone LB173. I'd be happy to respond to any questions. [LB173]

SENATOR PRICE: Thank you very much, Mr. Thompson, and for helping us keep on schedule there. The one question I would have, and we had heard an earlier testimony about an evaluation, I believe, of the Papiro, a couple of billion dollars... [LB173]

SENATOR AVERY: \$50,000,000,000. [LB173]

SENATOR PRICE: Pardon me? [LB173]

SENATOR AVERY: \$50,000,000,000. [LB173]

SENATOR PRICE: ...\$50,000,000,000 or whatever the number is, and you said 2 percent of the state tax, and you are on the Papiro board. Can you tell me what the general taxing ability, what that value is in the Papiro? How much does that generate, the 2 percent? [LB173]

JIM THOMPSON: We cover six-and-a-half counties from Dakota on south through Sarpy. I'd have to ask for assistance on that. [LB173]

SENATOR PRICE: For a dollar number... [LB173]

JIM THOMPSON: It could be...the mention was \$4 billion I believe was mentioned. [LB173]

SENATOR PRICE: Okay, but how much did that actually raised in taxes once you

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get...for a budget on your taxes, is the question? [LB173]

JIM THOMPSON: Pardon? [LB173]

SENATOR PRICE: How much do you get in your budget as a result of that? [LB173]

JIM THOMPSON: We get \$16 million in our budget. [LB173]

SENATOR PRICE: Okay. Just trying to size it up. That's all. All right. [LB173]

JIM THOMPSON: Yeah, \$16 million. And then we're the largest NRD of course, and that's probably more than most NRDs have in their entire budget, but that's what we collect in property, \$16.7 million I believe. [LB173]

SENATOR PRICE: All right. Thank you very much. Other questions? Senator Sullivan. [LB173]

SENATOR SULLIVAN: Thank you. Thank you for your comments. [LB173]

JIM THOMPSON: You bet. [LB173]

SENATOR SULLIVAN: Do you...so you have irrigation districts in your NRD. [LB173]

JIM THOMPSON: We do. [LB173]

SENATOR SULLIVAN: Do you have any members of those districts on your board? [LB173]

JIM THOMPSON: No. [LB173]

SENATOR SULLIVAN: And how would you feel about that? Would that...do you...would you perceive that if you did for that to be a conflict of interest? [LB173]

JIM THOMPSON: I would not because we consistently partner with folks like the irrigation districts. When the Papio was formed a number of years ago and it was revised--and I don't know the dates, excuse me--we absorbed a drainage district, irrigation districts. And there's current five within our purview that we have. We're currently negotiating with one of them on a significant project to...that affects erosion up in the northern part of our district. That partnership that we have is essential to get both missions accomplished. If a person were on our board representing that district and on the irrigation, and a potential conflict would arise, such as you put in this much money we'll put in this much money, it's certainly up to that individual as a sworn elected official to identify that conflict of interest and abstain on one vote or another. When we take the

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oath of office, that's part of the deal. And those conflicts rarely would arise in that situation. I would hope those people put that person in office would have the faith that they voted for that person to make those judgments. [LB173]

SENATOR SULLIVAN: Thank you. [LB173]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other questions from the committee? Senator Pahls. [LB173]

SENATOR PAHLS: Thank you, Senator. The question I have because I notice you said several...this could affect several people who already sit on the board. Has your board taken any position on this bill? [LB173]

JIM THOMPSON: We supported the NARD position to oppose this bill. And at the legislative conference last week, yeah, we supported that decision to oppose it, and it was voted I believe unanimously for the NARD, Nebraska Association of Resources Districts, to oppose this bill. [LB173]

SENATOR PAHLS: Okay. Thank you. [LB173]

SENATOR PRICE: Thank you, Senator Pahls. Questions? Seeing no further questions, thank you for your testimony, Mr. Thompson. [LB173]

JIM THOMPSON: Thank you. [LB173]

SENATOR PRICE: You "betcha." Can we have the next opponent testimony please? Good afternoon, sir. [LB173]

FRED CONLEY: Good afternoon, Chairman and the members of the committee. My name is Fred Conley, C-o-n-l-e-y. I'm here to testify in opposition to LB173. I'm here on behalf of both the Papio NRD and the NARD in terms of my opposition. I had a prepared statement, but my colleague, Jim Thompson, basically I think represented my viewpoint in total with regards to the opposition. But since I serve on two boards, I serve on both the Metropolitan Community College Board and both the Papio NRD. And I heard testimony from the proponents indicating conflict of interest on eminent domain, and there's never been...I've been on the Papio NRD Board 12 years and the metro board I think 6-and-a-half years, there's never been a conflict of interest with regards to what the college was doing and the NRD was doing. I don't even foresee that there ever would be a conflict. As Commissioner Thompson said, if in fact we have situations where we're in need of some land, we basically partner and negotiate with the other entity with regards to acquisition of the land. If, in fact, there is a conflict, I think I've been in elected office long enough to know that there are conflicts that potentially come up, and what you do is you look at the situation and you basically reclude yourself if you

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think you have a conflict. Typically, that's how most elected officials do it. The other one had to do with taxes. On the Metropolitan Community College Board, we do have a budget and we do determine whether we're going to raise taxes every year. But basically I think my concern always is whether it's justified that we raise taxes to support the college; it has nothing to do with anything doing with the NRD to be quite honest with you. And if I'm looking at the NRD budget, I'm looking at whether we're justified or I can support raising NRD taxes; it has nothing to do with Metropolitan Community College. So I think it's a real stretch to say there's a potential conflict there. But, typically, you deal with the situation...your board or situation based on what board you're serving on. You don't try to propagate that to some other board. So I don't think there's either an eminent domain issue, and I've never had that occur at the college or the NRD. And the taxing thing, really it's the first time I ever heard that theory before sitting here a few minutes ago. I've never really ever considered that to ever be a proposition. With that, I'll just close and say that I think the electorate is smarter than we think sometimes, and if they thought there was a conflict of interest based on what came before the board, I think they'd have the wherewithal to determine whether that person should stay in office or not. With that, I'll close and I'll answer any questions that you might have. [LB173]

SENATOR PRICE: Thank you very much, Mr. Conley. Are there questions from the committee? Seeing none...yeah, Senator Pahls. [LB173]

SENATOR PAHLS: I'll just bring this up. Thank you for your testimony. So it looks like there are two of you on the board that we're indirectly talking to being on this board that it would affect, and others. I mean, you see this as somebody trying to attack you guys, is that...? [LB173]

FRED CONLEY: Well, I think there's one entity. I heard the mention of the Papiro Preservation Association. Some years ago when I served on this board, I know there was quite a controversy with regards to proposal of some dams, and that organization was very active in opposition to it. So I think there may be some feeling left over from that association with regards to people who serve on the board. That's the only thing I can gather from... [LB173]

SENATOR PAHLS: Okay. Well, let me just ask you one more question. Do you know a number of the other people who serve on the NRD board throughout the state? [LB173]

FRED CONLEY: I go to the conference. I was down here for the NARD conference. I don't know of anyone from outstate who served both on the NRD and a county board, so to speak. I don't know any of those individuals personally. [LB173]

SENATOR PAHLS: Okay. So in your experience this is not a big issue. [LB173]

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FRED CONLEY: No, no. We simply have two people. And as I said, I've served on the Metro board 6-and-a-half years and I've served on the NRD 12. And I think the...Rick Kolowski is the other person that they're talking about serves both on the NRD, and I think he may have been on six-and-a-half years or something to that effect, and I think just recently got elected to the learning community, but I don't know if that's been any longer than two to three years. But it wasn't anything that...since I've served on the NRD board, it wasn't something that by sitting on the NRD board I thought there was some connection between the Metropolitan Community College Board. It's just simply because I was interested, I've always been interested in colleges. So I think it's a real stretch to put the NRDs in with the other high elective office. I think we ought to leave as much to the electorate to decide rather than trying to position things so that other people don't have an opportunity to serve in various capacities. [LB173]

SENATOR PAHLS: Thank you. [LB173]

FRED CONLEY: Um-hum. [LB173]

SENATOR PRICE: Thank you, Senator Pahls. Mr. Conley, I might have a question for you. [LB173]

FRED CONLEY: Sure. [LB173]

SENATOR PRICE: And I'll say it and then feel free to answer or not answer, either way. [LB173]

FRED CONLEY: Sure, sure. [LB173]

FRED CONLEY: If we were to divorce the multiple board part and just look at the NRD position,... [LB173]

FRED CONLEY: Okay. [LB173]

SENATOR PRICE: ...and we look at the definition of high elective office,... [LB173]

FRED CONLEY: Um-hum. [LB173]

SENATOR PRICE: ...am I to understand that you're saying that the NRD elected office shouldn't be considered high elective regardless of anything else, the duties, responsibilities, and everything that goes about being an NRD director, board member does not rise to the level of high elective office? [LB173]

FRED CONLEY: I don't believe it does. I was listening to the definition of high elective office, and I guess I'm still not quite clear. Other than what was said was it's the

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perception of a conflict of interest, and I guess you could have that almost with any board depending on what the issue might be in terms of their job. Sometimes people have perceptions of conflict of interest of who they work for to be quite honest with you, that they sit on a board that maybe has a contract with a corporation that they work for, and their vote on that issue may appear to be a conflict of interest. But in a sense, they may be doing something in the corporation totally unrelated to the issue before the board that they sit on. So there may not be a conflict of interest. I'm saying that I don't really know what the definition quite frankly of what a high elective office is other than you have various offices in that definition, and maybe that's clarified somewhere in state statute, I don't know. [LB173]

SENATOR PRICE: Well, I appreciate your saying so because that's where I was trying to get to in my first earlier question was if you would define the article of the constitution. We banter out the articles of the constitution and then we say anything else that got lumped into it, but we still don't have a definition of it. And I'm sure we'll get to that point one way or another, but that's great. Are there any other questions? Seeing none, thank you for your testimony, sir. [LB173]

FRED CONLEY: Thank you very much. [LB173]

SENATOR PRICE: Do we have any other opposition testimony today for LB173? Any testimony in the neutral? Mr. Erickson. [LB173]

NEAL ERICKSON: Senator Price, members of the committee, once again for the record, Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n, Deputy Secretary of State for Elections. And we were not planning to testify on this bill at all, but when the issue of potentially an amendment regarding irrigation districts came up, we thought we might want to provide some information, and I think Senator Avery is trying to establish some kind of record on that. And I think it would be...the message would be I'd urge some caution on how that would be drafted. You need to understand that irrigation districts are a different animal from NRDs. They elect their members at annual meetings. The voting rights are based on property ownership as opposed to being a registered voter. And irrigation districts aren't even mentioned in the Election Act at all, so just shoving them into, say, a high office in the Election Act probably is not the best way to handle that. It would probably take an amendment within the irrigation district statutes itself to deal with that. And that was the only message we wanted to convey, unless you wanted to hear history of the high and low office because I went through those wars and where that came from. But with that, I'd answer any questions you might have. [LB173]

SENATOR PRICE: Thank you very much, Mr. Erickson. I'm sure Senator Sullivan would like to say something. [LB173]

SENATOR SULLIVAN: Well, I guess that's the point. How do you define high elective

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office? [LB173]

NEAL ERICKSON: High and low offices are...could have been substituted Group A and Group B. Where this came from was a difference in public policy views in the early nineties about whether a person should be able to hold one elective or they should be able to hold multiple offices. Those that were on the side of, we should only have one elective office had their views because there would be potential conflict of interest. We've seen that raised. On the other side of it, and this was particularly led by the public power districts was, no, and particularly in rural areas where we have people that are involved in this process and we want to be able to tap into them as well, you know, whether they're on another office or not. And what came about, and I want to say it was in '93 or '94, was a division of the offices. Here, the high elective office...and we could have called them...I mean, it could have been like a Chinese restaurant menu: take one from Group A and two from Group B, we could have called them different things. But the constitutional offices, you had some other restrictions in there, so they were naturally in one group, and was added city, county, and school district offices. Everything else was the low office. And the statute basically read that you can hold one high office and you can hold as many low offices as you want to, you just could not file for or hold two high offices. Over time, those categories have changed. We've seen community colleges move into the high office class. We've seen learning community that was created after that point in time to be put in the high elective office class either. But I wouldn't focus too much on the high versus low. They were just labels that were attached to it. It wasn't...I don't believe it was intended to refer to the job they did or what qualifications they had or anything like that. They were just labels that were attached for the purposes of the statute. [LB173]

SENATOR SULLIVAN: Thank you. [LB173]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any comments? Senator Pahls. [LB173]

SENATOR PAHLS: Yes. Sometimes I think when we create these bills that it's a game of chess, of...or happened earlier on the floor. I'm going to ask you this so that it's very clear to me. You are recommending or in your opinion that we should not be dealing with the area of irrigation. [LB173]

NEAL ERICKSON: I am neither. That is your choice. But if you choose to deal with irrigation districts, I would recommend not putting it into the Election Act because they are a different type of political subdivision. Everybody...all the offices that are listed in the Election Act, they are elected as statewide generals and primaries. They are voted on by registered voters. The candidates have to meet certain qualifications. Irrigation districts are a little bit different animal. The people that are eligible to vote in irrigation districts are based on property ownership, similar to SIDs. Their elections are held at

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annual meetings. So it doesn't fit real well into the Election Act, Chapter 32, and just shoving it into a high or low office. Irrigation districts, if you just said irrigation districts are going to be a high office, they don't even meet the definition of elective office in that chapter. [LB173]

SENATOR PAHLS: Okay. It seems to me you would be more of an opponent to that idea. [LB173]

NEAL ERICKSON: No, because we don't...how...what this bill is about is holding multiple offices... [LB173]

SENATOR PAHLS: Okay. [LB173]

NEAL ERICKSON: ...and that is the policy for the Legislature to decide. Well, we would be a little concerned about is if you just took irrigation districts and put it into a high office. We have no way of enforcing that. They don't file with us. They don't...they actually don't do filings. They do an annual meeting and elect these things. And it might be more appropriate to take a look at...and I'm not going to tell, you know, counsel or this committee how to draft this, but take a look at the irrigation districts themselves and maybe put the prohibition there rather than putting it...or put it in both places so you can't, you know...or even the NRD statutes, you can't hold an NRD office and be an irrigation board member, however you do it. But this irrigation district, like SIDs, doesn't fit into the Election Act and that high-level office structure that's established in there. [LB173]

SENATOR PAHLS: Okay. Thank you. [LB173]

SENATOR PRICE: Thank you very much, Senator Pahls. Any other comments? Seeing none, thank you for your testimony, Mr. Erickson. [LB173]

NEAL ERICKSON: Thank you. [LB173]

SENATOR PRICE: Anybody else who'd like to testify in the neutral? Seeing none, Senator Avery, you're free and clear to close. [LB173]

SENATOR AVERY: Thank you, Senator Price. Let me just make a comment here quickly about high elective office. I think any elective office that has taxing authority and the authority to spend tax money ought to be in any definition a high elective office because you're talking about taxpayers' dollars--how you get them and how you spend them. That, to me, ought to include NRDs because they both have taxing authority and they spend tax money, plus they have the authority of eminent domain. Let me also address a comment that was made by one of the testifiers. This is not targeted toward any individual despite what the testifier charged. As I stated in my introductory

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comments, at the time this bill was drafted, I didn't even know who would be affected. I knew what offices would be affected but not who. And I still don't know the full extent to which it will affect individuals. Finally, let me remind you that we are charged as state senators with the task of making good public policy, policy that serves important public purposes. It is, in my opinion, an important public service or public purpose for us to promote good government practices by eliminating potential conflicts of interest among officer holders and removing opportunities for and perceptions of conflicts of interest. And that's what this bill tries to do. Thank you. [LB173]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions from the committee? Seeing none, that will close the hearing on LB173, and does conclude our business for today in the Government, Military and Veterans Affairs. Thank you for participating in your government. [LB173]