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Government, Military and Veterans Affairs Committee  
March 04, 2011

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[LB550 LB610 LR19CA LR45CA]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, March 4, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB550, LR19CA, LB610, and LR45CA. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Charlie Janssen; Russ Karpisek; Paul Schumacher; and Kate Sullivan. Senators absent: Rich Pahls.

SENATOR AVERY: (Recorder malfunction)...to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I am Chair of the committee and I represent District 28 here in Lincoln. We have four bills to consider today. But before we move to that, let me introduce the members of the committee. I'm going to be introducing it looks like a few empty chairs. But we'll start with Senator Pahls who is out of town. Senator Pahls is from Millard. He will be back with us next week. Next is Senator Lydia Brasch from Bancroft, a new member of our committee. And Senator Charlie Janssen who will be here soon I think or is he out today? He'll be here. He is from Fremont. And the next person is Senator Scott Price, the Vice Chair of the committee. He is from Bellevue. And then to my right is Christy Abraham who is legal counsel for the committee. And soon to arrive will be the ever late Senator Russ Karpisek from Wilber. I don't think he's been on time a single day, has he? (Laugh) Probably not relevant but still worth observing. Senator Kate Sullivan is...

SENATOR SULLIVAN: Always on time.

SENATOR AVERY: ...seated...always on time...from Cedar Rapids. And Senator Paul Schumacher, who is often early, from Columbus. And on the very end down there is Sherry Shaffer, the committee clerk. Our page today is Kyle Johnson from Sutton. Is that correct?

KYLE JOHNSON: That is correct.

SENATOR AVERY: Not Battle Creek. Okay. If you plan to testify for or against any of the bills that will be taken up today, we ask that you fill out this form. The form is available at the entrance to the room at each door, and it's a simple information sheet for the record. Please print clearly when you fill that out. If you are here and wish to record your support or opposition to any of these bills but do not wish to testify, there is another sheet of paper to record your information and we request that you do that. They're also available at each entrance. Before we start, I want to explain the light system. The light system is set at five minutes. The green light means four; you have four minutes then you should be winding up when the amber light comes on. When the red light comes on, you should be finished. We believe in free and open debate in this committee. And as I often remind everybody, we are the only Legislature in the country

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that requires that every bill have a fair public hearing. That is important to us in this committee and we take it seriously. We do use the light system, though, so that everybody gets an equal share of time and so that we can expedite the hearing of the bills. If you have a cell phone or computer, please turn them off or silence them so that they do not disturb anyone around you or the committee while we're in the midst of the hearings. And if you have any material you would like for us to see, you can distribute copies or give copies to the clerk and she will have them distributed by the page. You will need 12 copies. If you're short of 12 copies, let us know and we'll get some copies made for you. We will start with the order of business as it appears on the agenda outside. One change to the agenda is that for the last two bills that relate to the same subject we will hear those together, and the presenter is Senator Pirsch and we'll explain that to him when he gets here. Okay. We'll start with LB550 and invite Senator John Wightman to come forward and share his wisdom with us. Welcome, Senator.

SENATOR WIGHTMAN: Thank you, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. We have a fairly simple bill here today, at least I like to think so. They usually let me carry some of the simpler bills so (laugh) but this one was actually brought on behalf of a constituent. LB550 was introduced to clarify the deadline for filing for elective office by an incumbent. I was, as I said, made aware of this problem by a constituent who missed the filing deadline for incumbents. The ordinary definition of incumbent found in the dictionary is "currently holding a specified office." Nebraska election law defines incumbent differently. Under Nebraska law, an incumbent is a person who has been elected to any elected office even though the statute doesn't clearly say that, as far as if you go to the definition section it does. Upon further research, I found that this unique definition goes back to laws of 1879. What this definition means is that a person who has held an elective office is deemed to be an incumbent even though they have not been elected to the office that they are seeking. A problem with current law is that you must read the definition of incumbent in Section 32-111 to learn of this unique definition that it isn't necessarily for a particular office but any office. So if you're an incumbent of any office, then you're under the early filing deadline. And we believe that's inconsistent with the common definition of the term. What LB550 does is place in the filing deadline Section 32-606 the language "of any elective office" and just say an incumbent. This change will clarify the existing law. Good candidates for any other elective office shall have clear notice that they are expected to file for another office by the early date required for incumbents in that office or any office they may hold at the present time. Give you a little background on my constituent. He happened to be a graduate of the Air Force Academy so I think it would be indicated that it's a little confusing. He didn't understand it. Even to get into the Air Force Academy might be tougher than some of us could do, let alone graduate. So it just seems to me it would be much more clear if...and you can look at the bill, but all we're doing is adding a word: instead of an incumbent we'd say "an incumbent of any elective office." And you will hear, I think, from at least one person who will testify later that this is not the only time that that has happened that there's been confusion with this. So it

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doesn't take much to change it, and it seems to me it clarifies it. I've been warned that it's not going to clear everything up probably. There will still be people who perhaps fail to meet the deadline for one reason or another. But I do think it would clarify things. So with that, I'd be happy to answer any questions that you might have. [LB550]

SENATOR AVERY: Thank you. So as I understand it, you're not changing what we mean by...what the law means by "incumbent." You're simply clarifying it in another section of law so that the person reading this section, 32-606, that if that's all they look at... [LB550]

SENATOR WIGHTMAN: Right. [LB550]

SENATOR AVERY: ...it might be unclear. [LB550]

SENATOR WIGHTMAN: We thought maybe we would try to change it, but this has apparently had the meaning that it's had or at least held by the Secretary of State's Office to have that for about 100 years so they have interpreted it that way for many, many years. But I do think that there are people who intend to file that maybe hold another elective office at the time that look at the statute...and quite frankly, if I looked at the statute, I would think it meant for that particular office. [LB550]

SENATOR AVERY: Yeah. I recall that happening in a case that I know of where a person was in a different office and was considering running for the Legislature. And because he was an incumbent in another office, the deadline had passed and he was rather disappointed. [LB550]

SENATOR WIGHTMAN: And that's exactly what...he wasn't running for the Legislature, but he was running for another office that he wasn't holding at the present time so. [LB550]

SENATOR AVERY: Um-hum. Questions from the committee? Senator Schumacher. [LB550]

SENATOR SCHUMACHER: Thank you, Senator Avery. Senator Wightman, in your research and some of the history of this thing, is there...what's the rationale behind the law? I mean the commonsense definition as you said you would have interpreted it and I would have interpreted it without knowing a little of this history, is that...well, the rationale must be that if an office is going to open up you'd give it, you know, at least a couple of weeks' notice so anybody else who wants it can decide if they want to run and without taking on the incumbent. But why...is there any thought as to why we said, okay, if you're on a township board or an SID board and decide you want to file for the Legislature you got to do it, you know, two weeks before anybody else? Is there some philosophy here? [LB550]

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SENATOR WIGHTMAN: I don't know, but apparently they've been doing it since 1879 according to what the Secretary of State's Office saw. But I think in the meantime in that 140-some-year period or almost 140 there had to have been a number of people who have...and as the chairman said, have misread the statute, misinterpreted the statute, whatever it be. I suppose you could make the argument that maybe it should say "the elective office" if you were going to limit it. But I think "any" is also just as confusing or more confusing than "the elective office" because then I don't think it would be subject to the interpretation they gave it. [LB550]

SENATOR SCHUMACHER: Yeah. I mean philosophically should we be looking the other direction, say look it, this means that the office that you're going to be filing for so that you have other elected officers who may be officers but not running for that particular post being able to file up to their ordinary deadline? [LB550]

SENATOR WIGHTMAN: And I think that's a possibility. I understood that the Secretary of State's Office has interpreted it this way this long and I guess we didn't want to challenge that at this point. We just wanted to make it clear so that somebody doesn't fall into the same situation that my constituent did. [LB550]

SENATOR SCHUMACHER: Thank you, Senator Wightman. [LB550]

SENATOR AVERY: Any other questions? I don't see any. Are you going to stay to close? [LB550]

SENATOR WIGHTMAN: Oh, I'll stay a little bit. [LB550]

SENATOR AVERY: Okay. [LB550]

SENATOR WIGHTMAN: I'll waive if I leave early. [LB550]

SENATOR AVERY: Okay. You'll wave good-bye you mean. All right. Proponent testimony. [LB550]

NEAL ERICKSON: Senator Avery, members of the committee, 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 on behalf of Secretary of State to testify in support of LB550. I think Senator Wightman is exactly on. We have people that get hit with this every cycle. I think it's also correct that I don't think this will eliminate all the problems. We'll still have people that don't read any of the statutes and just file whenever they want to or just forget about it and miss the deadline, whatever. But I think Senator Wightman is right that somebody who is probably looking at this would probably look in the filing deadline. And all this bill really does is just take the definition of incumbent that's in 32-111 and places it basically in

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32-606. So with that, I'd answer any questions you might have. [LB550]

SENATOR AVERY: Thank you. Senator Sullivan. [LB550]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Mr. Erickson. Is the explanation of this filing deadline and who must meet it delineated anyplace for a candidate to go look at? [LB550]

NEAL ERICKSON: Well, and when we put out press releases, Senator, yeah, we make the distinction between the incumbent filing deadline and the nonincumbent filing deadline. You'd have to look at the actual definition. The way 606 reads it uses the word incumbent, but to actually understand that applies to any office, you have to look at the definition which is in 32-111. So by repeating it here, this is probably a more common place for people to look. [LB550]

SENATOR SULLIVAN: But I'm...I guess the point that I was...is there anyplace other than statute that explains this detail other than just giving the date? [LB550]

NEAL ERICKSON: Well, not...I guess not officially. If you look at when the local election officials or our office puts out information, you know, we generally--because we've seen this over the years--we generally try and emphasize that, that an incumbent applies to somebody who holds any elective office. [LB550]

SENATOR SULLIVAN: Okay, all right. I think that's important. [LB550]

SENATOR AVERY: Any other questions? Senator Schumacher. [LB550]

SENATOR SCHUMACHER: Thank you, Senator Avery. Asking maybe, Neal, the same question that I asked Senator Wightman and that is what's the philosophy? Wouldn't it make a lot more sense to say, look it, if you're going to run...you've got...if you're the incumbent, it applies to you? Anybody else it's open season. [LB550]

NEAL ERICKSON: Well, I think the difficulty you'd have is if you said it applied only to that office then I think it becomes a little constitutionally suspect about having a separate incumbent filing deadline. And the argument would be that, okay, if you have an incumbent filing deadline and the purpose for it is that people who have, for lack of a better term, more political acumen should have to file first so that the novice out there is able to see the field, this wouldn't be totally inclusive then because you could have, let's say, Governor Heineman decided to run for mayor of Fremont. If you say, well, it only applies to that incumbent's office, he could file by the nonincumbent deadline on March 1 for mayor of Fremont. Then your purpose, if that purpose is to allow novices or first-time people running the process to see the field prior as which incumbents are running, somebody who has a political acumen out there, they're not going to be able to

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see that. And so, yes, I think you could change it, but I'm not sure you could have separate filing deadlines then: one for incumbent and one for nonincumbent. [LB550]

SENATOR SCHUMACHER: And that you see is a constitutional issue? [LB550]

NEAL ERICKSON: Yeah. I think it would be an equal protection argument. [LB550]

SENATOR SCHUMACHER: But wouldn't the same equal protection argument apply to somebody on a township board running for Secretary of State? I mean why should he be treated differently than somebody not on a...that is an incumbent in some minor office? [LB550]

NEAL ERICKSON: Well, and I think the theory we hold is that is basically somebody who holds elective office is more used to the process already regardless of what the level of that office is. [LB550]

SENATOR SCHUMACHER: Okay. I don't have any further questions. [LB550]

SENATOR AVERY: Any other questions? Thank you. I don't see any more. [LB550]

NEAL ERICKSON: Thank you. [LB550]

SENATOR AVERY: Any other proponent testimony? [LB550]

JON EDWARDS: Good afternoon, Chairman Avery, members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I am here today representing Nebraska Association of County Officials. We are in support of LB550. There really is nothing more to add to the conversation other than from time to time it has been a point of confusion for some of our county elected officials. And so I think this would obviously bring some clarity to that issue and we'd support that change. [LB550]

SENATOR AVERY: Thank you, Mr. Edwards. Any questions? I don't see any. Thank you. [LB550]

JON EDWARDS: Thank you. [LB550]

SENATOR AVERY: Any other proponent testimony? Any opponent testimony? Any neutral? Senator. [LB550]

SENATOR WIGHTMAN: I'll waive now. [LB550]

SENATOR AVERY: You waive. Thank you for coming. That ends the hearing on LB550. We will now move to the next item on the agenda, LR19CA. I will turn over the chair to

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Senator Price. [LB550]

SENATOR PRICE: You know how to clear a room. Senator Avery, welcome, sir.  
[LR19CA]

SENATOR AVERY: Thank you, Mr. Vice Chair. My name is Bill Avery, B-i-l-l A-v-e-r-y, representing District 28 here in Lincoln. I am bringing to you LR19CA which is a resolution to amend the constitution under Article V, Section 5...Article IV, Section 5 of the constitution to expand when a civil officer will be liable for impeachment. Currently this section of the constitution provides that civil officers may be impeached for any misdemeanor while in office. LR19CA adds "any misdemeanor related to the election by which such officer was elected to the office." So it expands the impeachable period from the behavior in office to include behavior seeking the office. You may remember, some of you who have been here awhile, that in 2007 I had a similar resolution that was advanced to General File by the Judiciary Committee. Maybe this committee will be at least as sympathetic to this bill. And that bill got a very vigorous and extended debate, and a colleague of mine managed to succeed with a noxious amendment to that bill. So I asked the Speaker not to bring it back up. And I think that now is the time to reconsider this. It is brought about by a situation where Regent Hergert you recall was impeached in 2006 for misdemeanors committed while in office, and it included false reporting and obstructing government relations. There were also issues raised about potential misdemeanors while he was a candidate. In fact, much of the activity and most of the behavior occurred while he was a candidate, but he was able to avoid those charges on that behavior. But there was a technicality where he had signed his accountability and disclosure statement after he had been sworn in. Had he waited a couple of days to sign and submit those papers, then he would still...he would not have been held accountable for his actions because by signing the papers after he was sworn in it was behavior while in office. And he was convicted of intentionally manipulating and violating the campaign finance laws to prevent his opponent from receiving public campaign funds. The Legislature voted to impeach and the Supreme Court convicted him and he was removed. During these deliberations on the impeachment during the trial, there were questions raised about whether he had committed misdemeanors while in office. And it seemed that the current standard was not clear enough and that it prompted me to bring this amendment in 2007, and I am bringing it back for your consideration so that we add "any misdemeanor related to the election by which such officer was elected to the office" and include those behavior in that context also as an impeachable offense. With that, I would ask you to advance this to General File. [LR19CA]

SENATOR PRICE: Thank you, Senator Avery. Are there questions from the committee?  
Senator Sullivan. [LR19CA]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Senator Avery. So in essence this is just sort of a clawback to include that time period, doesn't change

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anything about the process. [LR19CA]

SENATOR AVERY: Uh-uh. The whole dispute in the floor debate came about the use of the word "misdemeanor." That is already in the constitution. And there is an abundance of case law that defines what misdemeanor means. And what happened is that the resolution got amended to include misdemeanors and behavior of a...included moral turpitude or something like that which if you look in Black's Law Dictionary, depending on which edition, you're going to get a different definition of what moral turpitude means. I looked at three or four different editions and each one there was a different definition. And the case law on what moral turpitude means was very, very vague and inconsistent. But the case law regarding misdemeanors was quite clear. But there was an attempt on the floor to, I think, to confuse a lot of senators by talking about misdemeanors can be anything. It can be a parking ticket. Well, not at all. I mean that was a frivolous charge, and I said so at the time. But there was enough confusion, I think, among people who...many of whom were not on the floor at the time that we were debating that but came back under a call of the house to vote. And they saw, oh, moral turpitude, yeah, that's right. We should do that and I thought was a noxious amendment and I didn't bring it back. But there is abundant case law to tell us or guide the courts in interpreting what misdemeanor means. [LR19CA]

SENATOR SULLIVAN: Thank you. [LR19CA]

SENATOR PRICE: Thank you, Senator Sullivan. I have a quick question for you. We look and see that there's a single case when we're trying to clarify this so we're going to make policy based on something that has happened, but an isolated event. The question I have that rises for me is how far back are we going? If you are someone who has held an office for 16 years, I mean, is there a statute of limitations is what I'm asking for misdemeanor charges? [LR19CA]

SENATOR AVERY: A statute of limitations relating to impeachment? [LR19CA]

SENATOR PRICE: No. Well, if you've been in office let's say for seven years and someone finds out that you did something in your election before that might have been a misdemeanor during the election. So in other words, there could be people now who are sitting--not here, not in our body--but somewhere in the state who are sitting in their office who this would be a way to clawback and get at them. You know what I mean? [LR19CA]

SENATOR AVERY: Well, if they were found guilty of committing a crime in the context of their campaign for that office, yes, because this was a case where the crime was committed, false statement, manipulating the campaign finance laws in order to get an unfair advantage over his opponent. And then signing a false statement and had he not already had been sworn in when he signed the false statement, then it wouldn't have



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counted...it couldn't have been considered by the Legislature and whether they could bring impeachment charges because he was not in office at the time. So this simply extends the period of time to include the pursuit of the office in addition to activity or behavior while in office. [LR19CA]

SENATOR PRICE: Right. Thank you very much. Senator Schumacher. [LR19CA]

SENATOR SCHUMACHER: Thank you, Senator Price. Senator Avery, the phrase "related to the election" kind of bothers me. Maybe you could clarify what the intention is there. I think in a situation where--I'll just make up something here--two candidates debating and they get really mad at each other in the debate before the election. And they engage in a fight by mutual consent; they duke it out. Okay, it's a misdemeanor. [LR19CA]

SENATOR AVERY: You mean physical. [LR19CA]

SENATOR SCHUMACHER: Physical duke it out. That's a misdemeanor to engage in a fight by mutual consent. Voters think it's all pretty funny and one of them gets elected. Okay. Is that related to the election? Does the fact that the voters vote on it then purge it or is this...are we talking about something else here? [LR19CA]

SENATOR AVERY: It would be up to the judgment of the Legislature. And my guess is the Legislature would not consider that an impeachable misdemeanor. [LR19CA]

SENATOR SCHUMACHER: So basically this opens the case up for the Legislature... [LR19CA]

SENATOR AVERY: Right. [LR19CA]

SENATOR SCHUMACHER: ...to look that... [LR19CA]

SENATOR AVERY: Right. [LR19CA]

SENATOR SCHUMACHER: ...and we probably shouldn't be worried about things like that (laugh). [LR19CA]

SENATOR AVERY: We should expect the Legislature would be circumspect and wise in its decisions (laugh). [LR19CA]

SENATOR SCHUMACHER: Okay. [LR19CA]

SENATOR PRICE: Thank you, Senator Schumacher. Senator Karpisek. [LR19CA]

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SENATOR KARPISEK: Thank you, Senator Price. Thank you, Senator Avery. I was following kind of the same thing because the language we have now, "shall be liable to impeachment for any misdemeanor in office or for any misdemeanor related to the election by which such officer was elected" so right now say if you and I duke it out and we both get a misdemeanor, we could be impeached? [LR19CA]

SENATOR AVERY: No. That's the same question that Senator Schumacher asked. [LR19CA]

SENATOR KARPISEK: Well, right now, though. We're already in... [LR19CA]

SENATOR AVERY: In office. [LR19CA]

SENATOR KARPISEK: ...okay, so...okay, so we could do that. [LR19CA]

SENATOR AVERY: Well, I'd bring charges against you (laughter). [LR19CA]

SENATOR KARPISEK: You'd have to get out of the hospital first (laugh). But then "related to the election" so I guess my question is, is related to the election. Does that mean that it would have to be an election law that they violate? [LR19CA]

SENATOR AVERY: In most cases that's what it would be. It would be behavior that occurs in the election. It could be fraud. I presume that it...I'm sure it would cover election fraud, certainly signing false statements. [LR19CA]

SENATOR KARPISEK: And I agree. I'm just wondering if it just limits it to the election fraud. I mean he gets in a fight with someone not elected and it doesn't matter. I'm just wondering if once you're in office if you're almost held to a higher standard. [LR19CA]

SENATOR AVERY: Here's what I'm trying to achieve. What I'm trying to achieve here is keeping available to the Legislature the ability to hold people accountable for how they behave in pursuit of the office, not just how they behave once they're elected. [LR19CA]

SENATOR KARPISEK: And I agree. And I'm with you. I'm just wondering if it should... [LR19CA]

SENATOR AVERY: If you're willfully and flagrantly violating election laws in pursuit of the office, you ought to be held accountable. [LR19CA]

SENATOR KARPISEK: I'm just wondering if it should say "or for any misdemeanor after filing for such office" rather than "any misdemeanor related to the election." [LR19CA]

SENATOR AVERY: Well, I don't know. We can discuss that with counsel... [LR19CA]

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SENATOR KARPISEK: Okay. [LR19CA]

SENATOR AVERY: ...in Exec Session... [LR19CA]

SENATOR KARPISEK: Yeah. [LR19CA]

SENATOR AVERY: ...as to whether that needs to be tweaked a bit. [LR19CA]

SENATOR KARPISEK: Since it's a short bill, I thought I could talk about it. [LR19CA]

SENATOR AVERY: I believe this is exactly the same wording that we had in '07.  
[LR19CA]

SENATOR KARPISEK: Okay. [LR19CA]

SENATOR AVERY: And I did pretty sure work with counsel on this at that time.  
[LR19CA]

SENATOR KARPISEK: Okay. Thank you, Senator Avery. Thank you, Senator Price.  
[LR19CA]

SENATOR PRICE: Thank you, Senator Karpisek. And the conversation does bring question to my mind is are we going to hold somebody that we can punish them for something that happened before they got elected? It's kind of like...I'm concerned about a cart and a horse relationship here. I'm not (inaudible) articulate it right now for some reason, it's not uncommon, but just the idea that we're going to...you're not elected yet but we're going to take an election away from you for something that happened before you got elected because you're not really in that office yet. So I didn't...I don't know...I'm sure in debate when we talk, get more people to get eyes on it, but I am a little concerned. [LR19CA]

SENATOR AVERY: It's the behavior in pursuit of the office. [LR19CA]

SENATOR PRICE: Right. [LR19CA]

SENATOR AVERY: It's not... [LR19CA]

SENATOR PRICE: I know. But it's also when you said... [LR19CA]

SENATOR AVERY: If you get a parking ticket, that's a misdemeanor. [LR19CA]

SENATOR PRICE: Okay. [LR19CA]

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SENATOR AVERY: There are a number of things that would...that one could engage in, behavior that you could engage in that might be a misdemeanor under the criminal code or civil code that would not rise to the level of an impeachable offense. But we're talking about the behavior in pursuit of the office where you might be engaged in, as in the case we were talking about, deliberately manipulating the law and signing false statements. And then there was the real possibility that that person would have gotten off scot-free because of the timing of the offense. [LR19CA]

SENATOR PRICE: And you don't think there will be a witch hunt or people looking and trying to drag things up, I mean by (inaudible) language. [LR19CA]

SENATOR AVERY: Well, it's still it's up to the Legislature to decide whether it rises to the level of impeachable offense. And that was quite a long debate in the Legislature in the Hergert case. [LR19CA]

SENATOR PRICE: Well, and I don't deny you that. I'm thinking about a bill we had before where we talked about recalls of elected officials and sometimes in smaller counties. Just the mere mention that you're doing a recall of someone has a way of tainting that person, even if they are able to clear. It tears towns apart we heard. So now I would say now we have someone say, hey, I found out someone had a misdemeanor while they were running for the office in that period. And all they have to do is drop the request and now we have a taint. Those are some of the concerns I just wanted to... [LR19CA]

SENATOR AVERY: Well, they can do that now. This wouldn't affect that. [LR19CA]

SENATOR PRICE: But they can't do it when they're not yet...they haven't been elected. This would... [LR19CA]

SENATOR AVERY: Sure you can. You can say my opponent in the campaign, you can raise all kinds of false claims against your opponent in the campaign. [LR19CA]

SENATOR PRICE: Okay. But I'm talking about right now a sitting official someone could say, oh, during your campaign before you were a candidate, before you held the office. [LR19CA]

SENATOR AVERY: It still has to pass muster in this Legislature... [LR19CA]

SENATOR PRICE: I understand. [LR19CA]

SENATOR AVERY: ...before it would ever rise to the level of an impeachable offense. [LR19CA]

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SENATOR PRICE: Thank you, Senator Avery. Are there any other questions? Senator Schumacher. [LR19CA]

SENATOR SCHUMACHER: Thank you, Senator Price. Senator Avery, you might have hit on better language in just your conversation here, and I want to just run it by and get it on the record so that I don't forget. Right now it says "or for any misdemeanor related to the election." What about "for any misdemeanor in pursuit of the office"? Because then, just happen to be driving home from a campaign engagement and happen to be picked up for drunk driving or something, that's...and the voters say, oh what the heck; he's always drunk anyway. And so, you know, you get elected anyway. Well, that wasn't behavior in pursuit of the office. But lying on a form or cheating or stealing or something, campaign contributions, that would be behavior in pursuit of...a misdemeanor in pursuit of the office. So maybe that limits it a little bit too. [LR19CA]

SENATOR AVERY: That's, yeah, we can talk about that. [LR19CA]

SENATOR SCHUMACHER: Yeah. [LR19CA]

SENATOR PRICE: Okay. Thank you, Senator Schumacher. Are there any other questions? Seeing none, thank you, Senator Avery. Are there any individuals here who would like to testify in support of LR19CA? Are there any who would like to testify in opposition? Anybody like to testify neutral? Senator Avery waives. That closes the hearing on LR19CA. And we will move on to LB610 and LR45CA being heard together. Senator Pirsch. [LR19CA]

SENATOR AVERY: Senator Pirsch, were you informed that we were going to hear these together?

SENATOR PIRSCH: Yes, I was and I had planned on asking for such if it...

SENATOR AVERY: Okay, all right.

SENATOR PRICE: And Senator Janssen has joined us.

SENATOR AVERY: Thank you. Welcome, Senator Janssen.

SENATOR JANSSEN: Did you have a good (inaudible) over there?

SENATOR PRICE: (Inaudible) immigration bill.

SENATOR AVERY: Welcome, Senator Pirsch. You want to proceed with both of these bills at the same time... you want to do them separately? It's up to you.

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SENATOR PIRSCH: I do.

SENATOR AVERY: You want to do them separately? It's up to you.

SENATOR PIRSCH: No. I think they're part and parcel the same concept, same brush stroke. So Chairman Avery, thank you. Members of the committee, I am State Senator Pete Pirsch. For the record, P-e-t-e P-i-r-s-c-h. I represent the Legislative 4th District. I am here today as both the sponsor of LR45CA, proposed constitutional amendment, as well as LB610, both measures really go both part of one thrust, and on that basis I'll address them. The LR45CA permits, well, provides constitutional authorization for the recall of state elective or appointed officers and LB610, its companion, gives the substantive provisions of the way in which the recall of state elective or appointed officers would work. Currently we do have recall provisions of elected officers allowed for and operative in the state of Nebraska, but only on the local level. And so what this bill is...the thrust is to bring about a uniformity. I don't know why we would exempt ourselves out of the same paradigm that we think is good for locally elected officials. And I think it's good for the purpose of accountability for the actions taken of all elected officials. Let me just quickly specify the additional elected officers who would now be covered by this recall capacity in the state of Nebraska would include members of a board or commission with one or more election districts of more than one county. Okay, so boards like the State Board of Education previously has not been covered. Under this it would. Members of the Legislature, myself, Attorney General, State Treasurer, Auditor of Public Accounts, Secretary of State, Lieutenant Governor, Governor so these would be added. Eighteen states, my understanding is, permits recalls of state officials at this point in time. If you had to put it concise, I'd just say I don't...I think the more the law permits the insulation of elected officials from the people they represent in the end the more dissatisfied the public will be, the people will be with their government, whether it's perceived or real. And so that's the basis of this thrust. And at this point in time, I'd open it up to any questions you may have. [LB610 LR45CA]

SENATOR AVERY: Thank you, Senator Pirsch. Do we have questions from the committee? Senator Karpisek. [LB610 LR45CA]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Pirsch, I agree with you as far as why are we held at a different standard. However, I'm concerned that we would constantly be under recall. There's nothing about malfeasance or misfeasance or anything in here, is there? [LB610 LR45CA]

SENATOR PIRSCH: No, no. It's, let me be very clear about that. There is no limiting factor. It is a recall provision that, well, and I take that back. In terms of demonstrated behavior or conviction, something of that sort, there's no limitation with respect to that. However, there is a limitation with respect to the magnitude. Obviously, we're all going

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to have...you can be the most popular guy in the world and you'll still have somebody angry with some action that you had. [LB610 LR45CA]

SENATOR KARPISEK: You and I know that better than anyone, right? [LB610 LR45CA]

SENATOR PIRSCH: Yeah, well, yeah, you bet. And so there is a trigger threshold level where it incorporates the way in which it's been operating with regards to the locally elected officials that recall process. There's a threshold, and I would posit a pretty high threshold level. So what it is, is you'd have to...and I call your attention in LB610 which gives out the process on page 7. It highlights the process in line 12, 32-1303, "A petition demanding that the question of removing an official be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for such office in the last general election." So it's that...it's not a small triggering threshold, 35 percent. Now has it gone on in...did it go on in Omaha? Yes, it did. And I think that when you look at the postelection analysis, recall election analysis that by and large what the commentators were saying, I quote the former chief of staff to the mayor said, people in Omaha in the end of the game were not reactionary. There wasn't the mentality, kind of a shark feed mentality. People were extremely thoughtful. And the paper...and that's...so that's what the former chief of staff, his own conclusion. He's a member of the same party as the mayor was and he said, people in Omaha were extremely thoughtful and long story short, the mayor was not recalled in that. And the paper, in analyzing what had happened during that election, went back and geographically mapped it. Individuals who had not voted to elect the mayor in the first place very thoughtfully, the paper concluded, said not enough time has been given to this mayor. And so it was individuals who did not vote for the mayor initially, but those individuals, a large propensity of them, said but we're not voting to recall. And so I don't think it's a mob mentality that we've experienced under this. And I don't think that they...what we've experienced happens, you know, in the larger picture, in the larger view of things with such frequency that it's debilitating. I think what it does is it just lets individuals who have sought elected to say I'm going to represent these people, and it is a noble public service that you have put yourself out and it's not fun. I can tell you, nothing about what we do is fun (laugh), I don't want to say all isn't fun because some things are fun. But it is a constant tension, a constant pressure. We live in a fish bowl is the first thing they told. But that's what I think you hold yourself up to, that high lofty standards, when you put yourself out. And I think to insulate ourselves from the people we represent again, rightly or wrongly, at the end of the day the people are going to be more dissatisfied. So we can shape a system around me and us or we can shape a system around the people, and I think that's ultimately what we should be doing. [LB610 LR45CA]

SENATOR KARPISEK: Okay. Thank you, Senator Pirsch. Thank you, Senator Avery. [LB610 LR45CA]

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SENATOR AVERY: Senator Sullivan has a question. [LB610 LR45CA]

SENATOR SULLIVAN: Thank you, Senator Avery. And Senator Pirsch, are we getting the cart ahead of the horse in this situation? Wouldn't the constitutional amendment have to be passed first and then come back and enact the legislation that then carries it forward? [LB610 LR45CA]

SENATOR PIRSCH: Well, that's a good...I think that we're at an initial phase of it and so what I'd ask, yeah, is that we...you're right. Well, my understanding is that the LR would have to. And so to that extent, the...that is the more critical of the two. But I think part and parcel, you know, we're in year one of the two-year cycle and so I would ask that the committee not piecemeal these out but to keep them together. And we would then...but, yes, it would...since it requires a vote of the people, I mean we can put it on the books. It would not become effective I don't believe until such time as the voters would pass the constitutional amendment. So it's going to require both. [LB610 LR45CA]

SENATOR AVERY: Any other questions? Senator Schumacher. [LB610 LR45CA]

SENATOR SCHUMACHER: Thank you, Senator Avery. Senator Pirsch, I can't help but feel I'm maybe committing the offense of thinking along the same lines as Senator Karpisek (laugh). But elections have to mean something and you have to have opportunity to govern. And in the ideal world I suspect that recall would just be another way of stopping the people's being involved. But we don't live in an ideal world. We have ways in which it's not our local people who are funding our elections. Election money can come in from anywhere, anyplace. And yet we have controversial and necessary issues that are proper for public discussion. So let's take a scenario where a senator feels very strongly about an issue, but it's a highly controversial issue, highly divisive. And that while we probably could work the issue out as Nebraskans as we hash through it and try to adjust our own resources, a group from the outside decides, hey, I don't like them talking about this. We don't want precedent on this issue set in Nebraska so, you know, that senator, let's teach him a lesson for bringing forward a controversial idea and let's start a recall drive on him, not because he did anything bad or nasty, but because we'll keep that guy on his toes and he'll never do this again because it's just too much grief. Now is that what we're opening ourselves up to, so that we all are constantly fighting instead of governing, we're fighting for defense of actions because we dare to raise controversial issues? [LB610 LR45CA]

SENATOR PIRSCH: Yeah, and that's a great question, and I appreciate you bringing that forward. The idea that elections mean something somehow this would, first of all, diminish perhaps the importance of elections; and secondly, could they be...could this measure be abused and used in a vindictive manner serving to harass a public official who is doing what he believes is right? And the question is a good one and it involves



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trade-offs. Right? I mean I think that I'm not going to say that there isn't a certain amount, I mean nothing is absolute on either end of the spectrum. But you...if the concern...I mean we can play the polar opposites and look at that. If we're really, really concerned about that, then we could just say somebody is elected once and they can serve for the rest of their life without another election. And we don't do that because what happens is we know that that's too long. So there's a certain balance, right, the way things are now. You don't want people to serve for life, right, with just one election. So we have reelections, right? That's one process to keep elected officials responsive and on their toes to the public. And so the question is, does this recall provision bring it out of kilter so far the other way that public officials don't dare act in what they perceive clearly to be the best interest? And I think...so it's a great question. It's all about balance. And I think if you look at what the actual experience has been on the local levels, although you will find from time to time some officials who are...who feel unfairly targeted on the whole, when you look at all the elections in all the towns and all of the, on the whole I think it has worked. And it is by far the exceptions that there is some sort of incident that has occurred. And in most cases I think it has worked to make elected officials be more responsive. And so that's the balance that I think I'm trying to bring. Nothing is absolute. [LB610 LR45CA]

SENATOR SCHUMACHER: Thank you, Senator Pirsch. [LB610 LR45CA]

SENATOR PIRSCH: Yeah. [LB610 LR45CA]

SENATOR AVERY: Any more questions? Senator Janssen. [LB610 LR45CA]

SENATOR JANSSEN: Thank you, Chairman Avery. Nice to see you back in the Government Committee. [LB610 LR45CA]

SENATOR PIRSCH: It's nice to be back, Senator. [LB610 LR45CA]

SENATOR JANSSEN: For a limited amount of time. Aren't you worried a little bit? I've seen in my district, North Bend kind of got a little bit of recall fever at one point once they realized it's a smaller community, once they realized that you can easily find people that disagree, sign a petition, oust the mayor, get a new mayor, new mayor, and that's gone on for a while, somewhat stabilized here just recently. That could be a concern. And I share Senator Schumacher's concern about bringing what some might consider controversial issues. I saw a rally outside the steps today that I think they could probably go out and get 35 percent registered voters in a district to do it. I certainly think I've brought some issues that there are organizations that could band together and go out and find people against me, and perhaps you have, too, and the other senators. And I'm asking several questions I guess. And then a third thought, is the 35 percent of registered voters? [LB610 LR45CA]

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SENATOR PIRSCH: Same paradigm as that which exists with the locally elected officials now, and I believe that to be it. [LB610 LR45CA]

SENATOR JANSSEN: Can you do 35 percent of those who actually voted? [LB610 LR45CA]

SENATOR PIRSCH: In the general election, yeah. [LB610 LR45CA]

SENATOR JANSSEN: Is that what it is, is actually voted? [LB610 LR45CA]

SENATOR PIRSCH: Yes, in an actual general election. [LB610 LR45CA]

SENATOR JANSSEN: Okay. I wanted to clarify that. But that's my concern with this, that we will be I guess less responsive to the bigger issues because of that type of fear. If there's a major organization out there or today's...I think it was the CIR, I mean unions or whatever side of that is might say, oh, well, let's go against Senator Pirsch because he brought this bill. We've got enough members in his district to do this. So next person elected to your position says, well, I'm not going after them because look what happened last time. Does that concern you or not or you think this, like you just said, evens the playing field? [LB610 LR45CA]

SENATOR PIRSCH: I think we just saw this happen in Omaha just a little while ago and this potential fear and concern that you share is one to consider. But I think you have to look at the actual results which is not what everybody expected which is people...I trust the people and they were thoughtful and they said, I didn't really vote for the guy. I didn't necessarily, you know, appreciate what he stands for. But I think that by and large they felt that at this early stage, I mean this is what the paper said in the analysis, that they were thoughtful and that they determined in their minds that it was...I mean (inaudible). They went geographical. I think it was, you know, square block by square block and graphed how these people who had voted not to put him in office overall, these voting districts had yet said we're not going to recall. And so, yeah, North Bend had recall fever; and when they discovered that there was an easy way that they had this power, right, I mean this is, hey, for the first time we're discovering we have this magical power to affect and then they started to use it. And they started to recognize maybe we're abusing it. And as you kind of alluded to, then the community started saying, well, exercising this power just because we have it may not be a good thing. And so things stabilize out in North Platte (sic). So I don't...so, yes, I mean for individual people and candidates there might be ups and downs but the basis of our politic body should be centered around the people. And, you know, in the long, they'll figure it out. And will they make mistakes perhaps, communities? Maybe. But in the long run it will be a more solid political reality that these communities have I think as a result. [LB610 LR45CA]

SENATOR JANSSEN: All right. Thank you, Senator Pirsch, (inaudible) misspoke. I

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didn't know what you meant, North Bend actually isn't all that stable just yet. So probably not a correct analogy. It's hopefully stabilizing out, I'll put it that way, and a great community. They voted for me 70 percent by the way. [LB610 LR45CA]

\_\_\_\_\_ : That means 30 percent didn't. [LB610 LR45CA]

SENATOR JANSSEN: Thirty percent didn't so it's a good point. Also we're in a...you know what? I'm not even going to ask you. Here's what worries me because I don't even need a response. It worries me that somebody can go out there, and I'll just use me for an example, we don't like Senator Janssen and... [LB610 LR45CA]

SENATOR PIRSCH: Right. [LB610 LR45CA]

SENATOR JANSSEN: ...we think we can get enough people to recall him. We don't think we can ultimately recall him, but that I think (inaudible) it's going to be stuck to me. It stuck to Mayor Suttle and this is just a comment. I'm not looking for...you already responded to it, Mayor Suttle. In fact, I see Commissioner Boyle come down here. The only thing I remember about that, I remember as a little guy he was impeached. I remember Bill Clinton...or recalled. Bill Clinton I remember was impeached. Those are things that I remember about certain politicians so that's just what scares me about it and that was just a comment. [LB610 LR45CA]

SENATOR PIRSCH: Well, if I could respond to... [LB610 LR45CA]

SENATOR AVERY: You want to respond to the comment? [LB610 LR45CA]

SENATOR PIRSCH: Just very briefly. [LB610 LR45CA]

SENATOR AVERY: Okay. [LB610 LR45CA]

SENATOR PIRSCH: There's costs that attach to these elections and they're going to be borne by the people who are deciding do I want that opportunity to make a decision or not? And it's at such a high threshold and it's geared towards people who had voted already in the general election. These are not kind of people who are...these are mainstream people who are concerned about the election process, and so they know they're going to have to bear those costs. And maybe, you know, it tempers that in the long run so. [LB610 LR45CA]

SENATOR AVERY: Senator Sullivan. [LB610 LR45CA]

SENATOR SULLIVAN: Thank you, Senator Avery. Well, then that begs the question what sort of cost does this put on local political subdivisions to handle these recall elections? [LB610 LR45CA]

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SENATOR PIRSCH: Well, the local political subdivisions already are bearing those costs and so only in those instances in which a recall procedure is undertaken. And as a matter of fact, one of the main defenses that a candidate uses is if you sign this petition you're going to be incurring these type of costs. So it was pretty plainly (inaudible) if you sign here you're going to be paying for it. And so...and I have to add this legislation is not in response to any local recall. This was something that I had been formulating, well, in the spring and actually this was a dropped bill I think before any of that which occurred in Omaha had occurred. But, yeah, I mean there are costs but that's again a trade-off that those people who sign the petition are aware of and yet willing to take on. [LB610 LR45CA]

SENATOR SULLIVAN: Thank you. [LB610 LR45CA]

SENATOR PRICE: I do have a question. [LB610 LR45CA]

SENATOR AVERY: Yes, Senator Price. [LB610 LR45CA]

SENATOR PRICE: And thank you, Senator Sullivan, for bringing that up because I wasn't real sure how to formulate. So who is the political subdivision of the Legislature if you're doing a recall of the Legislature, legislative candidate or member? That would be the Legislature, right? And the Legislature would have to bear the cost of that recall? [LB610 LR45CA]

SENATOR PIRSCH: Well, I think what we're talking about is the...in your general election last, 35 percent of that. [LB610 LR45CA]

SENATOR PRICE: No, I'm saying who is going to pay for this and you said the political subdivision. So if I say it's the political subdivision is Omaha, okay, it's Omaha (inaudible). [LB610 LR45CA]

SENATOR PIRSCH: Oh, you're saying is the state going to pay for it, yeah. [LB610 LR45CA]

SENATOR PRICE: But if it's a senator, who pays for...it's the legislative body that pays for it. [LB610 LR45CA]

SENATOR PIRSCH: Right. [LB610 LR45CA]

SENATOR PRICE: And is that in our budget or is it the Secretary of State and it's a million dollars because you're talking a statewide recall, you know. They don't have that in their budget so they're going to have to take this to the claims...I don't know the exact name of the entity, but you have to go to a claims board to get it signed. So it's not really

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going to go to that political subdivision. So I don't know if you walked those traps yet when you talk statewide trip. Would it be the Treasurer's Office has to pay? Then how does he budget for that? [LB610 LR45CA]

SENATOR PIRSCH: Well, it would come from state funds. There's no doubt about it. I think it's probably important, worth mentioning here, unlike a locality where there might be, you know, very few people and so relatively speaking 35 percent could be easily gained, on the statewide elected office, I can't...I think this would be extremely, extremely such a high barrier of 35 percent that unless you can imagine the most extreme justifications for utilizing this, which I would posit would be a crime, that it would not be invoked. But at the end of the day, it's state funds. [LB610 LR45CA]

SENATOR PRICE: All right. That's what I want to get at. It's not about whether they meet or not, Senator Pirsch. It's understanding what the mechanism and the process is for counting to pay for it. That's where I want to know if you'd run the traps on that, and I appreciate your answer. Thank you. [LB610 LR45CA]

SENATOR PIRSCH: Yeah. [LB610 LR45CA]

SENATOR AVERY: Any other questions? Senator Karpisek. [LB610 LR45CA]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Pirsch, then how about the expense to the candidate? Would that be able to...could you use your campaign funds do you see for that? [LB610 LR45CA]

SENATOR PIRSCH: Are you talking about with respect to if you are the subject of a recall effort? [LB610 LR45CA]

SENATOR KARPISEK: Yes. [LB610 LR45CA]

SENATOR PIRSCH: Could you use your candidate funds, your campaign funds? Yeah, yeah, in much the same way that locally elected officials are using theirs now. [LB610 LR45CA]

SENATOR KARPISEK: Not everyone maybe has the balance that you have in yours, Senator, (laugh). Some are owing probably to their campaigns. I just see that you could face one of these every year while you're here and not be able to afford it. [LB610 LR45CA]

SENATOR PIRSCH: Well, it could be. And if you as a committee feel, because that's not the main brunt of this bill, that substantive fairness is not served by such, you could construct a scheme or some sort there where you could use I suppose even fair fight, what they call fair fight funds that the NADC holds if that is your wish. Again, I don't

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have an opinion on that thought through, but that's kind of a secondary measure of the bill that I'd invite the committee to take a look at and act in whatever way that they feel is appropriate. [LB610 LR45CA]

SENATOR KARPISEK: Could I try to use my campaign funds to recall you? [LB610 LR45CA]

SENATOR PIRSCH: Well, I certainly would put an amendment on to the bill to disallow that, no. But I... [LB610 LR45CA]

SENATOR KARPISEK: Okay (laugh). [LB610 LR45CA]

SENATOR PIRSCH: ...you know, in all seriousness that funding thing...I mean it...you probably would want to mount a defense and so however you want to construct that. [LB610 LR45CA]

SENATOR KARPISEK: And I was jesting with you, of course, but I am concerned about political parties getting involved and trying to recall the other side because it's obvious how much they get involved in these races. And that would be a concern also. Thank you, Senator Pirsch. Thank you, Senator Avery. [LB610 LR45CA]

SENATOR AVERY: Senator Schumacher. [LB610 LR45CA]

SENATOR SCHUMACHER: Thank you, Senator Avery. Senator Pirsch, it almost in the simple little world that we have our legislative district, 30,000, 40,000 people, the problem with people, you can only raise so much money. I mean not many people, unless they're extremely well-heeled, are going to cut loose for thousands of dollars. So I mean you keep government local and you try to raise money and be responsive to your people. And it's bad enough what we've seen in many races where all types of extraneous factors from the outside come in trying to raise money and control the people that are elected. Now if we have this process like Senator Janssen raises, you introduce a bill to deal with the CIR problem. And all of a sudden you have New York labor unions launching a campaign to get signatures. They, you know, when that happens, well, what have you got to do? You can't just say, ah, they'll never get 30 percent of the vote and go to sleep at night and go back to reading your bills and preparing for hearings here. You got to go out and find somebody to pay for your side of the thing because you aren't going to get over and over from the little people in your community. And the thing is warring efforts from finance to modest, all which you kind of owe obligations to people who helped you. Isn't this just moving it away from the people? [LB610 LR45CA]

SENATOR PIRSCH: Well, I think you are correct in saying the larger you get up from a city level on more of a state level and whatnot, you may encounter more national groups

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outside Nebraska groups who would be interested and may have indeed large pockets. And that is why I don't have any opposition to exploring a concept of, you know, first of all, those would be disclosed, right, those contributions and, I mean, a requirement of disclosure. And if those outside funds, whatever threshold you feel would be justified, whether that be 1 percent or 99 percent of the recall efforts funding was triggered, again, you could utilize some sort of NADC dollars to say you cannot spend dollars to defeat this candidate. So that would be, I mean, outside dollars. I think you would want to temper outside interests in doing that. And so I see that as a justified concern. But again, we utilize the NADC dollars and that mechanism to make sure that as they call them fair fight funds, and I don't see why that couldn't be utilized in that way as well so you can't outspend a candidate and threaten them in that manner if you're an outside entity outside of Nebraska. But again, you would have to convince the people who voted in the last general election, which I assume to be a very educated, you know, these are generally people who vote are an educated lot and to a threshold level of 35 percent. Now I'm very, you know, if you think 35 percent is too low of a threshold and you want to set it at a higher 40 percent, 45 percent, you know, that still is I think the possibility of recall existing is more preeminent than the exact, you know, I'm not rigidly, slavishly shackled to a particular number. So that again could be a mitigating thing to help as far as your concerns. But I would say that if you're having, you know, at some point if you're having a response by all these local people such that, you know, 40 percent, 45 percent of your people who voted in the last election are saying, you know, this is a very concerning thing and I'm willing to spend the money to try to recall them, you know, then it's not a matter of outside forces primarily. It's you've got a problem with the people you represent. [LB610 LR45CA]

SENATOR SCHUMACHER: I don't have any further questions. [LB610 LR45CA]

SENATOR AVERY: Senator Brasch. [LB610 LR45CA]

SENATOR BRASCH: Thank you, Chairman. Thank you, Senator Pirsch. I'm listening intently. Everyone around the horseshoe here has had a what if scenario. [LB610 LR45CA]

SENATOR PIRSCH: Yeah. [LB610 LR45CA]

SENATOR BRASCH: I feel left out. [LB610 LR45CA]

SENATOR PIRSCH: (Laugh) Lay it on me. The love in the room already is... [LB610 LR45CA]

SENATOR BRASCH: But I'm just curious. There are so many what ifs. And on the other side one of the topics was an impeachment, the thought of impeachment versus a recall. Are there a list of rules of order for impeachment? And the impeachment was in

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LR19CA. And what constitutes impeachment, are those rules relatively similar to what would constitute a recall? Or can a recall be done on an attitude or a mood or are there specific actions that and do they cross over at all or are they related? [LB610 LR45CA]

SENATOR PIRSCH: Well, they're different. Impeachment is a legal process conceptually... [LB610 LR45CA]

SENATOR BRASCH: Legal. [LB610 LR45CA]

SENATOR PIRSCH: ...and not done by the people so. [LB610 LR45CA]

SENATOR BRASCH: And the people can recall because of just dissatisfaction. [LB610 LR45CA]

SENATOR PIRSCH: It's based upon, yeah, the people,... [LB610 LR45CA]

SENATOR BRASCH: Okay. [LB610 LR45CA]

SENATOR PIRSCH: ...the voters. That's the process really if you rely on the voters so. [LB610 LR45CA]

SENATOR BRASCH: So when the other senators expressed concerns of arbitrary recall, could those recall also have structure to it, I guess, or rules of recall established? [LB610 LR45CA]

SENATOR PIRSCH: Yeah. And I'm not...I don't hold myself out as an expert on impeachment. I believe that that is, and Senator Avery, Chairman Avery could probably speak to that a little bit more, but with respect to I believe an impeachment process that was done in the not too distant past, I believe, with a member of the Board of Regents, that was a process that was undertaken by the elected officials then here at the State Capitol and not a matter of involving the locally, I'm sorry, the people, the elect... [LB610 LR45CA]

SENATOR BRASCH: And I do understand it could be apples and oranges. However, I'm wondering is at any point can those two be aligned or very similar where one...when you're... [LB610 LR45CA]

SENATOR PIRSCH: Yeah. Well, I would say if you're worried about undue influence creating unfair recall opportunities, what I would say is just you should probably be more worried about the impeachment process because it's by...that process is started and conducted by a far, far, far fewer number of individuals who may have other interests, a lot more conflicting interests than...and can...and it's a lot easier to go I think that mechanism than to go to all the masses and try to herd cats. So as between the



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potential for abuse, I would say just in general conceptually that impeachment would be, to my mind, where you have to go just to a limited number of individuals to get them to remove the official who may have, you know, be motivated in particular ways as opposed to the general public that is called for under this bill so. [LB610 LR45CA]

SENATOR BRASCH: Thank you, Senator Pirsch. Thank you, Chairman Avery. [LB610 LR45CA]

SENATOR AVERY: Senator Schumacher. [LB610 LR45CA]

SENATOR SCHUMACHER: One thing leads to another. Thank you, Senator Avery. But an impeachment process, a bill of impeachment has got to be voted by the Legislature. [LB610 LR45CA]

SENATOR PIRSCH: Yes. [LB610 LR45CA]

SENATOR SCHUMACHER: And even if they didn't like you and they kept voting bills of impeachment, it goes to the Supreme Court for trial and there's some criteria. And the court can't just say, ah, gee, you know, we don't like this guy either and, I mean, you have protections there. But there's no protection in what's being proposed here from big money, big influence continually badgering an elected official who is attempting to do his or her job when an election is coming up anyway in two, three, four years. [LB610 LR45CA]

SENATOR PIRSCH: Well, and that would be the same with impeachment. There are certain acts that I think individuals can...first of all when I was making that analogy, I was talking about the concern that you have which is harassment and this trying to coerce an elected official. But with respect to, you know, to the potential harms, you may have crimes that have been committed, right? Person was elected and day one, maybe the public wasn't aware that the person was being investigated at that time or maybe something happened after the fact. And it could even be a criminal type of offense. I can tell you as a prosecutor criminal charges and criminal...just because you're charged with something doesn't mean you're convicted of that and those things can stretch out for a very, very long time. So the public may, you know, if it's a particularly heinous type of accusation, criminal charge, think up whatever horrible, the worst type of criminal charge you can think of and yet that person under our legal system has their day in court. So if you, you know, it can stretch on years and years even though in the public, the evidence in the mind of the public can be overwhelming and yet they have no mechanism other than to wait until the next election to remove that individual. So that's one scenario since we're just thinking about scenarios. [LB610 LR45CA]

SENATOR SCHUMACHER: Thank you, Senator Pirsch. [LB610 LR45CA]

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SENATOR AVERY: So as I understand it, what you want to do is change the system we now have. The system we now have is recalls are permitted for political subdivisions:... [LB610 LR45CA]

SENATOR PIRSCH: Yes. [LB610 LR45CA]

SENATOR AVERY: ...cities, villages. And you would want to extend that to constitutional officers. And that would include Public Service Commission, Board of Regents, State Board of Education, any board, commission, or office defined in the constitution. [LB610 LR45CA]

SENATOR PIRSCH: Yeah. Right now I think...and I think it's been focused on the city and I want to make sure I'm faithful to the language, but right now I believe that those who are subject to recall provisions are everyone except for right now constitutional officers, members of the Legislature, and a member of a board or commission with one or more election district of more than one county. So if it's in with one county and you're on that board of... [LB610 LR45CA]

SENATOR AVERY: Um-hum. So the process by which those people are removed is impeachment. [LB610 LR45CA]

SENATOR PIRSCH: Yeah, that's...solely. [LB610 LR45CA]

SENATOR AVERY: So now...so what would happen if this were adopted is that they could be subject to recall and petition and by impeachment. [LB610 LR45CA]

SENATOR PIRSCH: They would be subject of both, yes. [LB610 LR45CA]

SENATOR AVERY: Yeah. Okay. Any questions more? Thank you, Senator. We only have three or four people here so don't go anywhere. You might close in a second. Any proponent testimony for LR45CA? Any opposition testimony? Anybody wish to speak in a neutral position? You are free to close. [LB610 LR45CA]

SENATOR PIRSCH: This will only take a few hours here (laughter). You know, for as much as you people protest my going on, you keep asking me questions, don't you? Okay. [LB610 LR45CA]

SENATOR AVERY: It is our fault. [LB610 LR45CA]

SENATOR PIRSCH: Okay. I know it is. I'm just kidding. Well, thank you for your consideration and really I think we've explored the topic thoroughly and just be open to working with the committee if you had any additional questions. Thank you. [LB610

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LR45CA]

SENATOR AVERY: Thank you, Senator. Thank you very much. That closes the hearing on LR45CA and the hearings for today. [LB610 LR45CA]