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Government, Military and Veterans Affairs Committee
January 31, 2013

[LB160 LB167 LB183 LB188]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 31, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB167, LB160, LB183, and LB188. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Dave Bloomfield; Russ Karpisek; Scott Lautenbaugh; John Murante; Jim Scheer; and Norm Wallman. Senators absent: None.

SENATOR AVERY: Welcome to the Government, Military and Veterans Affairs Committee. We are ready to start. We will take up four bills today in the order posted on the agenda outside the room starting with LB167, followed by LB160, and then LB183, and LB188. Before we start, I want to introduce all of the members of the committee, starting on my right with Senator Murante from Gretna; seated next to him is Senator Dave Bloomfield from Hoskins. Senator Scott Lautenbaugh will be here later I suspect. He is from Omaha. And next to him is our Vice Chair Senator Scott Price, from Bellevue. Next to him is Christy Abraham, the legal counsel for the committee. I am Bill Avery from Lincoln and I chair this committee. Russ Karpisek will be here we think. Since he has two bills up today, I'm sure he will be here. Russ Karpisek is from Wilber. Next to him is Senator Norm Wallman from Cortland; and next to him is Senator Jim Scheer of Norfolk. The last person to introduce on the end here is Sherry Shaffer. She is the committee clerk. The way we will proceed is, as I indicated, take up each bill separately as listed on the agenda. And if you wish to testify for or against any of these bills, we ask you to fill out a green sheet, print the information requested. You can find these copies at each entrance to the room. And give that to the clerk when you take your seat at the table. If you are here and wish to record your support for or opposition to any of these bills but do not wish to testify, we ask you to sign in on this sheet and provide the requested information. And we ask you to print that as well. When you come forward to testify, please state your name clearly for the record and spell it, and that will help us keep an accurate record of our proceedings. I'm going to ask you also to turn off your cell phones and any electronics that make noise, and that will also help us proceed without disturbing the transcript. Everything is transcribed here, recorded for transcription, so any extraneous noise is picked up on the tape. And the transcribers will ask us later, what was that or who was that or what was said? The introducers will make the initial statements, followed by proponents, then opponents, then neutral testimony. Closing remarks are reserved for the presenters or the introducers. Now if you have exhibits that you would like for us to see, you will need 12 copies. If you do not have 12 copies, we have pages who will help you get them. The pages are Will Rahjes from Elwood, Nebraska, and Cicely Batie from Lexington, Nebraska. All right. We will be using the light system. The green light is on for four minutes. And when you see the amber light come on, that means you have one minute to finish your testimony. When the red light comes on, you should be finished. With that, we are happy to welcome back Senator Beau McCoy and he will introduce LB167. Welcome, Senator.

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SENATOR McCOY: (Exhibit 1) Thank you, Chairman Avery and members of the committee. For the record, I'm Beau McCoy, B-e-a-u M-c-C-o-y. I represent the 39th District, and I am here this afternoon to introduce LB167 to you, which comes from the Uniform Law Commission and was adjusted to fit within our current state statutes. LB167 seeks to ensure Nebraska's electors remain faithful when they cast their ballot for President and Vice President of the United States. When we vote in a general election for President and Vice President, we are actually voting for electors who represent us by formally casting their ballot through the Electoral College. Almost all electors vote for their party's candidate, but there has been the rare occasion in our nation's history, and in fact our state obviously has had a little bit of experience in this many, many years ago when a faithless elector has not. In fact, this past election in a neighboring state an elector was quoted in the press that they intended to not cast their ballot for their party's candidate. LB167 would ensure Nebraska's electors do remain faithful going forward in the future. As currently required by statute 32-713, Nebraska's presidential electors convene at 2:00 p.m. on the first Monday after the second Wednesday in December in the Governor's Office here at the State Capitol. LB167 would require each presidential elector to execute a pledge at that time where they agree to serve and mark their ballots for President and Vice President of the nominees of the party that selected them. In short, they promise to mark their ballot as the voters of Nebraska have chosen. Each presidential elector then presents their completed ballot to the Secretary of State who examines and accepts as cast if marked according to the elector's pledge. The amendment that was just handed out to you places this pledge in statute. And Mr. Ruth, who will testify behind me, I believe is going to address why this amendment that we added after the green copy of the bill, which you have before you, originally...after that was drafted, why that amendment would be more beneficial than the green copy of the bill. An elector who refuses to present a ballot, attempts to present an unmarked ballot, or who attempts to present a ballot marked in violation of his or her pledge, vacates the office of presidential elector. Nebraska Revised Statute 32-714 is then followed to fill the elector's vacancy. The intent of LB167 is to prevent the problem of faithless electors from occurring in the state of Nebraska. With that, I would conclude and take any questions if there are any. [LB167]

SENATOR AVERY: Thank you, Senator. Isn't there also another objective here and that is uniform law? I'm sure Mr. Ruth will probably address that since he's on the commission. [LB167]

SENATOR McCOY: That he is. Mr. Ruth is a member of the Uniform Law Commission, and he will address that in more detail; but that is correct, Chairman Avery. The idea here is to be as uniform as possible across statutes across the country in regards to this issue, yes. [LB167]

SENATOR AVERY: And we have had this on our minds for a couple of years, haven't

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we? [LB167]

SENATOR McCOY: That is true. Hopefully, though, we can divorce this bill from any others and talk about it just in and of itself, if that would be the committee's wishes, of course. [LB167]

SENATOR AVERY: Thank you. Questions from the committee? Didn't excite us very much. (Laugh) [LB167]

SENATOR McCOY: I'll stick around if I need to close. I may not, Chairman Avery. [LB167]

SENATOR AVERY: Okay. All right. Thank you, Senator. Proponent testimony. Welcome, Mr. Ruth. [LB167]

LARRY RUTH: (Exhibit 2) I have some testimony. Senator Avery and members of the committee, thank you very much. My name is Larry Ruth, L-a-r-r-y R-u-t-h, and I'm here in my role today as one of Nebraska's commissioners on uniform law. I appear in support of the bill on behalf of the Nebraska Uniform Law Commission. The Nebraska Uniform Law Commission was adopted by the state as part of state statute--we are a commission of the state--back in 1951. And we belong then to a national conference of such commissions, and all of the states have a commission similarly that we do. And the purpose of the commission is to work on laws which have some benefit if they were uniformly applied in all of the states, and also they're sort of laws that sometimes are very complicated. I bring to your attention the Uniform Commercial Code. Your legal counsel had probably a full year of studying the Uniform Commercial Code. It's about that thick in your Nebraska law books. That's something that we do. We typically work on business law, family law. In fact, I think this may be the first time I know of a bill that we've worked on that has come to this committee. We don't normally get involved with election law. It's kind of a political thicket as you sometimes have heard that term. However, in this particular case we're doing it because there's a relatively simple little fix that the states can make which is not pro Democrat, pro Republican, pro conservative, pro liberal. It's just to make a person vote when they vote as an elector the way that the state has voted for them. It's hard to believe but our electors are not compelled by the U.S. Constitution to support who the vote supported in their state. And that goes back historically. You recall 220 years ago when the constitution was adopted we were just moving from a very non and undemocratic type of system, monarchy and so on, to the very first forms of democracy. And the intermediate step that the constitution framers selected was this rather confusing, some would say now anachronistic, electoral college, giving the states the right to select their electors and then the electors would meet on a particular day and cast their vote for President. Since that time the states, all of them, have said the electors should follow how the vote went in the state for President. But there is no requirement that an elector do this. Now, in Nebraska law, we

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passed, as most states have passed, a requirement that we do it. But if somebody doesn't do it, what's the remedy? It's going to court and perhaps getting something there to require them to vote the way the state voters have voted. Or it's you may not even know when they didn't vote in accordance because sometimes...these are secret ballots and they go to the House of Representatives and may not be able to track down the ones who didn't vote faithfully. Our approach here is very simple and it's based on a Nebraska State Supreme Court case, very interesting. In 1912...just a little bit of Nebraska history. In 1912, the electors who were initially elected were pledged to Teddy Roosevelt. Later on that summer, the Republican convention came along, the national convention, and selected William Howard Taft. Now what happens? The Republican electors said we're going to continue to vote for Teddy Roosevelt. This went then to the Supreme Court. And because the state Republican Party didn't want that to happen and the Supreme Court, our Supreme Court said, when an elector has said that they're not going to follow the rule of the people, we will deem their office vacated. We will deem that they resigned their office. That is exactly what we're doing here. We're taking the electors, and on the day when they are to cast their electoral vote we're asking them to take a pledge that they will follow the vote of the state. Then as they vote, they give the ballot to the Secretary of State, who looks at it; it's not been cast yet. They've given it to the Secretary of State. The Secretary of State looks to see if it in fact is a faithful vote, if they followed the vote of the state. If it is, then he deems it cast and it goes to the House of Representatives. If the Secretary of State says, no, you didn't vote for the person who the state voters voted for, then he rejects it and they declare the office vacant and a new person is immediately appointed. That's what the bill is. Senator, I'm on an amber light now. Whoops, now I'm on red and I stand ready for any questions you might have. [LB167]

SENATOR AVERY: Have you heard anything about national popular vote? [LB167]

LARRY RUTH: I'm familiar with the movement, yes, uh-huh. [LB167]

SENATOR AVERY: Are you familiar enough with that to know whether it would interfere...let's say we passed this bill and we were to adopt national popular vote, would the two collide in some manner? [LB167]

LARRY RUTH: I'm glad you asked that question. That was something that we were concerned about as we were going along. One of the ways that we draft these laws, and it's done over a period of a couple of years, is to invite all the stakeholders in; and they were there. And we said...to my knowledge anyway, they were there. They at least knew what was happening. Will this interfere with what you're trying to accomplish or will it support it? It will have no effect is the (inaudible). Likewise, it will have no effect on whether you are on a winner take all or whether you are on an apportion basis like we are now. It would take some redrafting of it if you went to winner take all. But the concept is still good. It's good for whether it's winner take all or not, and it's good

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whether it's national popular vote or not. [LB167]

SENATOR AVERY: One of my objections to national popular vote is that it is conceivable that the electors of a state would all have to cast their votes contrary to the popular vote in their state, because they join a compact basically. And if the election goes a certain way, they have to agree, once you reach a critical mass, I think it's 270... [LB167]

LARRY RUTH: Uh-huh. [LB167]

SENATOR AVERY: ...electoral votes in that compact, you have to vote...cast your votes to agree with the national popular vote. [LB167]

LARRY RUTH: We have a letter, doesn't support it, but says it does not have an effect. If you go to national popular vote in Nebraska, you're going to have to do some tinkering around with several laws. [LB167]

SENATOR AVERY: Yeah. [LB167]

LARRY RUTH: And this may be one that you have to look at. But the basic concept of going forward and voting the way that the public expects you to vote is still okay. [LB167]

SENATOR AVERY: Yeah. It's an unfair question for me to ask you since you're not testifying on that bill; but knowing how bright you are and how much you know about government, I figured you could answer it (laugh). [LB167]

LARRY RUTH: Thank you very much. [LB167]

SENATOR AVERY: Questions from the committee? I don't see any. Thank you, Mr. Ruth. [LB167]

LARRY RUTH: Thank you very much. [LB167]

SENATOR AVERY: Any other proponent testimony? Welcome, sir. [LB167]

NEAL ERICKSON: (Exhibit 3) Senator Avery, members of the committee, for the record my name is Neal Erickson. I'm Deputy Secretary of State for Elections, here on behalf of Secretary of State John Gale, testifying in support of LB167. I think the pages are passing out a letter from Secretary Gale, and I won't read it for you or repeat Larry's...Mr. Ruth's testimony. I think he did a very good job explaining it. I think he did mention that via court cases or statute we already have a lot of these provisions in law. But one thing I think LB167 does do is fill a couple of gaps in terms of kind of

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enforcement of those policies that are already in place in the state. One is that it allows the Secretary of State to examine the ballots before they're officially cast so we make sure that that elector is following the vote totals from the state of Nebraska under the current process; and then, second, provides a procedure that if that person does not vote according to law, a procedure to fill that vacancy. And with that, I'd answer any questions you might have. [LB167]

SENATOR AVERY: Thank you. Senator Murante. [LB167]

SENATOR MURANTE: Thank you for coming to testify, Mr. Erickson. I'll preface this by saying I support LB167. I'm having a tough time coming up with a legitimate public policy reason why an elector should be able to unilaterally overthrow the will of the people as expressed in the general election. But I'd be willing to hear what the opponents have to say, if there are any here today. But a concern that I've had is beyond the scope of electing a President in a November general election, we are also one of the relatively few states in the country that permits the political parties when nominating a candidate for President to completely disregard the will of the people and as expressed in the primary elections, and basically nominate whoever they want to. I'm wondering if you support that policy, if you'd support changing that policy, or the principles of the two seem very consistent with this piece of legislation. [LB167]

NEAL ERICKSON: Right. And yeah, I do recognize there's a piece of legislation introduced to address that issue, and our office has not taken a position on that yet. And it is kind of a difference between different political parties have different rules in terms of how they allocate delegates for the national convention, based on the primary results or whether it's based on caucus results or in some cases not based on any results at all. And so, yeah, it is a little bit different situation than we have in the elector category. There we do have specific state laws that say how, you know, the elector that represents the Congressional district where one candidate receives the most votes is obligated to vote for that candidate. Similarly, for those that are elected to the at-large slots are under law supposed to vote that way. So, yeah, there is kind of a disconnect between the way the political parties handle their nominations for...or their delegate selection process for national convention than the way electors are. [LB167]

SENATOR MURANTE: Thank you. [LB167]

SENATOR AVERY: Any other questions? Thank you. [LB167]

NEAL ERICKSON: Thank you. [LB167]

SENATOR AVERY: Any other proponent testimony? Any opponent testimony? Neutral testifiers? Senator McCoy. Senator McCoy waives closing so that ends the hearing on LB167. And we will now move to LB160 and welcome Senator Paul Schumacher to the

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Government Committee. Welcome back. [LB167]

SENATOR SCHUMACHER: Thank you, Senator Avery. It's good to be back. This is actually a fun committee. I can get myself in all kinds of trouble in this committee. My name is Paul Schumacher, representing District 22, S-c-h-u-m-a-c-h-e-r. I'm here today to introduce LB160. LB160 is a virtual ditto of a bill that was introduced, I believe, two years ago. And as...in that particular bill which was heard on March 2, 2011, LB566, I'd incorporate by reference my comments from that introduction into this introduction. Those comments went into some detail as to the history of the petition process. And to the extent that is relevant and the committee is willing to entertain the advancement of this bill, that does have some information in it regarding some of the history items. Suffice it to say, I think that it would be proper for the Legislature to address the initiative petition issue for two reasons. One, for the value of the process. We need to make a determination at the high policy level whether or not it's a worthy process, whether or not it's worthy to keep functional, whether it's functional right now. And secondly, the introduction of the computer age to our election process. This may be very...well, a good thing to spearhead that type of introduction. No doubt a hundred years from now unless we blow ourselves away, computers will probably be an intimate part of the voting process, an intimate part of the registration process, same-day registration, an intimate part of the identification process. And those kind of things will be very important to society. This is a mechanism, without actually getting to the sanctity of the vote, in which that process could be introduced. Because, as you know, in a petition process it's not a vote. It's getting a number of signatures significant enough to put the thing on the ballot for an actual vote. The process today is broke. It's not broke for one group though. It's not broke for the big monied interests that probably are based out of state. HSUS, the animal people, it's not broke for them. It's \$750,000 to run a petition. If they wanted to come to Nebraska, they'd be here. That wouldn't be a deterrent. And there is some thought which I'll explain in a minute, why it probably would take two petitions for them to get done what they want to do. Likewise the Vegas casino interest, \$750,000.00. It's not broke for them. Should they decide there's any money in the Omaha market left after it's been milked by Iowa, they'd come in. Multiply that times two, that's \$1.5 million. They can handle that. Likewise the out-of-state tax groups that want to limit taxation. If they wanted to roll on Nebraska, no problem for them. It still exists for them. For the reasons we'll talk about today, it does not exist for the average Nebraskan. Over the last ten years--I guess maybe a little longer than that, about middle '90s--a lot of things have happened. And just to summarize them, the definition of "elector" was changed to "registered voters." Used to be you had to have a certain percentage of the electors. The electors were the number of people who voted for Governor in the previous election. That usually runs about half. When an amendment was passed, it was sought to be clarifying in nature. The word "elector" was changed to "registered voter" in the initiative laws. That functionally doubled the number of signatures so that per constitutional amendment now, you need 110,000-120,000 signatures. For a statute, you need 80,000-90,000 signatures. A two-subject rule was adopted. Sounded logical

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enough to the voters when they voted on it. You shouldn't be able to put into one petition something like property tax relief and motorcycle helmets. Don't have anything to do with each other. Well, there's court litigation that's been had since then that really confuses that. Can you put in a single petition imposition of a tax on cigarettes and the money go to Medicaid expansion? That one subject or two? We don't know. And as a result, if you were going to really seriously do it, you'd probably want to just to be safe. Because the last thing you want to do is have the Supreme Court throw it out after you won an election or after you put a large amount of money into a petition drive and have it pulled from the ballot. There's ambiguity in the law regarding what a petition sponsor is. It's not clear. Is that just a handful of people who sign onto the petition in the beginning or is that people who work behind the scenes feverishly for it? We don't know. And that makes it very difficult when you're going to get hit with a lawsuit if you're so unlucky as to get in a position where you've done the work and then are sued. Another provision was imposed that you need 5 percent of the votes coming from 38 different counties to make it wide-ranging so that just one area of the state couldn't change things. And then it was still doable. It would cost you on--well, I know from the 2002 drive I was involved in--costs about \$300,000 to put a one measure...get enough signatures for one measure. But all those were done by a thing called "pay by the signature." In other words, you hire a circulator to go out, you pay them a buck a pop, and they get...collect signatures. Go out in the streets in all the 38 counties and more, and collect their signatures. It'll work pretty good because it was easy accounting, you pay them a buck a signature, you have a way to scan through and figure out that they're bringing in good signatures rather than somebody is making up signatures, and they had incentive to bring the petitions in right away because they would get paid instead of leaving them laying around in a convenience store and break the law by not watching the signatures happen or ride around in your car and you didn't know if you were making headway in the 38 counties or not. In 2006 the Anti-Tax Forces came into the state and ran up against local governments. And local governments indirectly spent a lot of money on that and defeated it because there was a defect in the proposal. Local governments and others came into the Legislature and began to cry about the "pay by signature" because it an effective way of getting signatures. They also in that particular petition drive came up with a new technique. And the new technique was called blockers. And the blockers would go up to where somebody is circulating a petition on the street and began to create a commotion. That makes everything uncomfortable for everybody, the potential signer, the circulator, you have...it was not pretty. And as a result of that the Legislature said, okay, no more paying by the signature. Only way left is to hire, basically, an out-of-state circulating company who will charge you five bucks--give or take a shot--in order to go out and get the signatures. Done. You're not going to circulate a petition if you're the local guys. And effectively today, except for the groups that I mentioned in the beginning, the petition process is in existence. Since that law went into effect in 2008, nothing even close to successful on a petition drive. And what I think we're seeing is that reflected in the frustrations in the people. People need a way to feel that they can get by the system and get a vote on their things. It's a precious

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enough vote...right that in our constitution it's the first right of the people reserved, is to put something on the ballot with enough signatures. And if they feel that their only avenue for doing that is getting by a system they kind of don't understand in Lincoln--which maybe includes lobbyists, campaign contributions, committees--all they do is bellyache about their government, and worse yet become apathetic about the thing. Furthermore, by not being able to do that and get a vote on their particular issue, they don't know if they are in the majority or if they're a fringe group. They'll sit down and talk amongst themselves at the bar and the coffee shop. And by gosh, they're convinced that this is the way things are done, and the system is stacked against them. And if the people just knew, the majority of the people are with them when maybe about 20 percent of the people are with them. So it doesn't...the system can't cleanse itself. But those issues are policy issues that the committee has got to deal with that we should probably deal with. If it's...if we're satisfied the way it is now, and basically out-of-state money is--big out-of-state money--is the only way to run a petition, then we're satisfied. If we think this is the first right of the people reserved and has some functionality, then we got to figure out how we're going to deal with that situation. This particular bill deals with the situation, and I drafted it based upon my experience in two rather large petition drives. It's pretty simple. The other day I went on the...I got a notice in the mail saying my driver's license was about ready to expire. And went on-line, I entered my name and address, and clicked off a few questions of what my birthday was, and I think it asked me for my driver's license number, and gave my credit card number, and I didn't even have to take an eye test. I suppose the computer could even have given me an eye test, but I didn't have to take one because I wasn't 72. And so I got my license--simple, clean, easy. Why can't I register to vote that way? You know, why aren't we using that technology? We're using that technology for UCC filings, you can file a million-dollar lien over the Internet, we're using it for filing court cases. We're just using it for just about everything except the election process. The folks at the Department of Motor Vehicles say that they got a real sophisticated system and they really can do a great job on IDing people. We know in this state that most people have a driver's license card or a voter or some type of identification card. That's all a big, apparently very sophisticated, database with computers all paid for. So we got a mechanism. We know it works. We're going to be buying our health insurance using a similar mechanism where when you check into the health insurance exchange, you put your name and address in, it'll check against databases, and do virtually the same kind of things. So the technology is there, and what this proposes is that you would go on-line, you would go to a Web page, a secure Web page, you would enter your data--very similar to the driver's license application. And there would be various things that it could check against--driver's license number, you look at your card, you put it in, it checks against Motor Vehicle records, close enough if your birthday and everything else matches. Your...and the agency card that you happen to be working with that has an identifying number on it, tax ID number of some kind, any number of things that the bill specifies that it would check and double check to make it pretty sure that it's you. If you happen to lie and somehow beat the system, there's criminal provisions within the bill

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for anybody who tried to hack the system or anybody who tried to enter somebody else's information. To doubly, triply, and quadruply check, you send a postcard saying, hey, you signed this petition. If not, come on in and holler. There's been a criminal act complained. So there is a...the security on the system is at least as good as somebody on the street collecting signatures and asking somebody for their name and birthday. That was actually not bad either, but it was expensive to administer. The counties, I think Douglas County two years ago testified it was 80 cents to verify one of those signatures. They figure that was their cost when it came back into the Douglas County's office. This is certainly a lot cheaper, more efficient way of doing it. And it...what I would envision if something like this were adopted, you would file your petition on-line. And you would advertise, if you're interested in this particular cause, go to this Web site and click, click, click away. And we would then do petition circulation in that particular way. That's the policy level. There's a very simple question. If you say, yes, it's a worthwhile procedure, then this is a thing that I think can be advanced to the floor or refined if there's a need or some rough edges in it to refine it. If you say, look, we really don't want this petition process. It's, you know, we'll deal with the two or three potential petitions out there that might have big out-of-state money behind them, but we kind of like being king of the block and that every law that happens has got to come through this mechanism. And if we feel we aren't losing anything that way, that may be fine too. But the voters of the state generally have expressed strong support for the petition process. In fact, one of the last petitions that was approved by the voters was in 2004. And that petition said that if the voters pass a law--not a constitutional amendment but just an ordinary law--through the initiative process it needs, I believe, two-thirds of the Legislature will have to vote to repeal (inaudible) or it stays on the books. And that passed by 55 percent. The voters like this; must have liked it for an awful long time because it's been in the constitution for a long time. And that's something we probably should take into account. I don't know if you were going to go back to a manual system and say, now we want to fix the petition process but we want to do it manually, how you'd really go about doing it. Would you reduce the number of signatures? Well, you still have the problem with the blockers on the street, things of that nature. You still have the problem that, quite frankly, when you do have a petition signed on the street you don't really have a chance to read it. You might read the caption at the top or might be read the caption at the top. I think the law requires that, but that usually isn't very informative. So you do it on the run. This enables you to sit down, think about it. There's a provision in there where they can click to some links by either side, read the pro and con arguments for and against it, and sign it electronically. So I can tell you that there probably isn't a whole list of people that I know of that are even going to testify for this bill, but I'd be happy to take any questions to engage in this particular discussion and ask the committee to consider the situation. [LB160]

SENATOR AVERY: Thank you, Senator. I like the way you think. I do. You and I've had conversations about this. Do you...do you want to come in on the fiscal note? [LB160]

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SENATOR SCHUMACHER: Yeah. The fiscal note...you know, every time we see anything to do with a computer Web page we get this humongous number which...and I've been in the Internet business for 15 years and I can just about tell you that somebody's making a lot of money off that. But let's just take it at face value that we...that it's going to cost whatever it was, \$280,000 or so. Prorated over ten years, \$28,000 a year. Money saved on part of the counties in verifying these particular things offset against that, that doesn't enter into the fiscal note. And what is the price of democracy? What is the price of our system? You know, we're sitting on Revenue Committee and we just heard a bill over there that's \$100 million a year for somebody wants an exemption. Yesterday there was one for \$30 million, another one for \$80 million. When you're talking in the \$200,000, yeah, it's money, but this is democracy. We'll probably hear later on this year how it's too expensive even to have an inside envelope on a ballot because that's a few cents. Yeah, there is a price to democracy. There's also a price to having people out there bellyaching and convinced that the government is not responsive and they are powerless to do anything about it. And that price may be far more expensive than this minor fiscal note. [LB160]

SENATOR AVERY: Questions from the committee? Senator Price. [LB160]

SENATOR PRICE: Thank you, Chairman Avery, Senator Schumacher. A question just conceptually in dealing with folks who may be in assisted living. I mean, right now a person could show up there, go through the process, but would there need to be consideration put in the language to make sure that in an assisted living facility or somewhere where someone still has the right to vote and a petition, how do we ensure the sanctity of that? It's not a vote but, I mean, the write-in, okay? And then when we look at EULA, the end user license agreement, where people a lot of times they don't read their licenses or when they get software they check the box that I read it and they move on. Not that we have a (inaudible) place right now who guarantees someone actually read the petition language, but do you envision some type of solution set that would assist in that, making sure the best we can to ensure that they actually know what it is that they're signing up for? [LB160]

SENATOR SCHUMACHER: There's two questions I think there. The nursing home situation, to the extent the people there may not be able to run a computer, that the old sign-me-up sheets are still available and still part of the process. You can have a dual process. The nursing home situation, you know, that's a problem that we have to deal with in a bigger sense in the real elections because whether or not somebody is helping somebody vote or not. And that's a problem with that particular setting that is not unique to the petition process. As far as, yeah, we've all done it. We...I accept rather than read 46 pages. This is a better mechanism, I think, for a couple of reasons. First of all, even though there is a textual...the text would be displayed and you say, I accept, and you might blow it off. There in that same area are links to maybe an explanation--a video explanation--from either side; certainly more ability to get information about what you're

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signing than you have when somebody comes up on the street and says, you want to sign my petition against taxes? And so, I mean, I think this is superior to the existing system if you think the existing system is worth anything. [LB160]

SENATOR PRICE: Thank you. [LB160]

SENATOR AVERY: Any other questions? Are you going to stay for closing? [LB160]

SENATOR SCHUMACHER: I think I'll...depending on how much testimony we're...we need to get back to Revenue Committee at some point and give away some more money. So... [LB160]

SENATOR AVERY: Proponent testimony? Proponent testimony. You're lonely, Paul. [LB160]

SENATOR SCHUMACHER: Been here before. [LB160]

SENATOR AVERY: Opposition testimony. Welcome. [LB160]

JESSICA KOLTERMAN: Thanks. Senator Avery and members of the Government, Military and Veterans Affairs Committee, for the record, my name is Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. I serve as the director of state governmental relations for Nebraska Farm Bureau. Our position on this bill is one of opposition because our member policy reads: "We support tightening the signature collection requirements of Nebraska's initiative petition process." And, "We oppose the use of Internet or other electronic media to collect signatures." We certainly recognize what Senator Schumacher is trying to do and, you know, we understand where he's comes from when he's looking at this process. You know, there's a few questions that our members have raised which I think lead to the adoption of this policy. One of those is the question of the fraud and ballot rigging and those types of things. And I think that's just a fundamental thing. Any time you're talking about the Internet or usage, that's something that makes people nervous. The second thing is we hear a lot from our members about the digital divide, and we hear about lack of opportunities for broadband in the rural areas and the access to Internet. And so I think there's a feeling that they're at a disadvantage when it comes to using the Internet for these types of things. We also have a group of our membership, especially the older demographic, that in...feel that in addition to the broadband problem there's also a group of people who have a really hard time with it. Now I appreciated his comments that there would be, you know, paper available to continue the other process as well. But I think that's just something that they're concerned about. I think the shift to the Internet can move us away from the traditional collection of signatures resulting in underrepresentation of both the older demographic and the rural demographic. With rural Nebraska already at a disadvantage when you look at numbers, I think that's where they're coming from with their concerns.

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So we're certainly willing to work with the committee on this and be a partner at the table. So with that, I'll close and let you ask questions. [LB160]

SENATOR AVERY: Thank you. Questions? Thank you. [LB160]

JESSICA KOLTERMAN: Letting me off easy. [LB160]

SENATOR AVERY: Yes. [LB160]

JESSICA KOLTERMAN: Thanks. [LB160]

SENATOR AVERY: Any other opposition testimony? [LB160]

NEAL ERICKSON: Mr. Chairman and members of the committee, once again for the record, Neal Erickson, Deputy Secretary of State for Elections, here to testify on behalf of Secretary of State John Gale, in opposition to LB160 as it's drafted. As we went through LB160 we found a number of what we kind of put major problems, a few more minor problems. Probably the place to start is, the bill as drafted mixes three different kinds of petitions: recall, state initiative, and referendum. And all three of them have different rules. Well, two of them in particular have different rules. The recall, for example, requires a registered voter who is signing the petition to be registered at the time the petition was issued or checked out. The state initiative requires that the person be a registered voter by the time the petition is submitted; the deadline for submission. This causes some problems, for example, in Section 7 and Section 9. Those sections deal with a mailing. This is the verification process is done is everybody was signing on this electronic format would be sent a postcard and say, did you sign this, basically; and if you didn't, return it and, you know, we'd explore that. But it doesn't address what happens if that voter is not registered. If they sign a statewide initiative, for example, they can sign that petition without being a registered voter as long as they're registered by the deadline. So if this is an ongoing process during the petition drive period, we may be sending cards to people that are not registered voters, may have the intention of registering to vote by the deadline but then don't. Similarly, Section 9 talks about publishing a weekly list of how many people have signed this. Well, that creates a little bit of difficulty because if there are nonregistered voters in there, then is that a good signature or not? I assume from Section 9 that they want the number of good signatures as opposed to those that may not be good. Section 10 addresses rules and reg authority. In our opinion, it's a bit vague. And one thing that we've had problems in the past with adopting rules and regs is if it's outside the scope of legislative authority, we can't write a rule or reg about it. Section 10 provides a broad outline of what those rules and regs should encompass but doesn't have a whole lot of specifics in it. So we'd probably like to see some more specifics in there. Section 12 talks about the Web server for this process being under the direct control of the Secretary of State, and that might be interpreted to disallow a third-party vendor what even...or even the state CIO's

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office from hosting the site and monitoring for us. There is also a provision in there that any transaction on this Web site is presumed to occur in Nebraska. While I'm not absolutely certain of what the reason for this line is, I assume it might be because it's an attempt to establish criminal jurisdiction over somebody who might be violating the law using the system. Section 13 allows for a challenge of a petition but it limits it to prior to the election. I'm not certain exactly why the time limitation is presented there. We've...in addition, it doesn't provide any procedures as to how to challenge that petition. We've had at least one Court of Appeals case where they challenged a bond election where the Court of Appeals said because the Legislature did not put procedures in place as to how to challenge that provision, no such challenge existed even though there was a statute that said, you know, any election could be contested, because there were no procedures in place, no challenge was allowed or no contest was allowed. Section 13 also provides for a reporting requirement for those who contribute to a...the lawsuit if somebody is challenging the petition. It would actually seem to us more appropriate to place that with Accountability and Disclosure as opposed to the Secretary of State's Office. Section 16 creates a registered participant status, and that is for somebody who would contribute \$250. And they could have a link placed on the Web site to provide information about this--about a petition or whatever other information they want to provide. Historically, we've had a little bit of a problem with that in terms of providing links. And we've been very careful about it because once you provide that link, you lose control over what that message might be. And you may see things on those links that may fall into the category of propaganda or flat-out untruths, and we've actually seen this on petition drives in the past. The cost aspects of it--it does have a \$10,000 buy-in for a petition sponsor to...I'm sorry, my time's up. If you want me to continue... [LB160]

SENATOR AVERY: No, go ahead. [LB160]

NEAL ERICKSON: Okay. It does have a \$10,000 buy-in. From...on the fiscal note, we have no clue how many people would participate in this, so you don't see any numbers there for the buy-in amounts or for the registered participants, or even the mailing costs, because we just have no idea at this point in time. And according to the Fiscal Office our instructions are if we don't have ideas on that, we do not include that. So...but I would point out the \$10,000 buy-in--I make the assumption--is to help defray the cost either of the initial setup of this system or the ongoing costs of the mailing. But I point out the \$10,000, even if you're looking at, you know, 50 cents per piece of mail, is only going to cover about 20,000 signatures at that point. And so...we did notice there is...and there's also a provision in there both in the registered participants and the sponsors to waive that fee if they say they can't afford it which we think is fair certainly. We have that within the election process. But one thing about on the green copy of the bill, there is no standard as to what is your inability to pay. In the Election Act we do have a standard in there. It's a rather complicated one but there is a standard, at least, that they have to be basically eligible for public assistance to be able to do that. When you get to minor problems, these are more kind of wording kind of things. The "pauper"

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would be one of them. The bill also uses the phrase, in terms of verification, "reasonable match." And this may run a little bit contrary to a 1999 Supreme Court decision that defined "match" as an exact copy. So adding the word "reasonable" to that I think kind of muddies the water on it. This was a case where there was a big discussion about whether petition verification required an exact match or whether it was just a match. It was challenged on its face which meant you just look at the wording. The Supreme Court took, actually, a second definition in the dictionary and said that it had to be an exact match, in effect. It had to completely align. Within some of the things that standards, it uses the phrase "acceptable in commercial financial transactions," and there's no definition provided for that. And to be honest, we're not sure exactly what was intended by that. Both in the litigation reporting requirement and the "sponsor" definition, I think Senator Schumacher is exactly right here, there is no definition of "sponsor." And it is kind of a gray area at this point, in terms of any kind of petition, what a sponsor technically is. But it includes "materially involved" people, and that could be interpreted a wide number of ways as well. So I'm not sure we get the clarity maybe that we're looking for. So with that, I'd answer any questions you might have. [LB160]

SENATOR AVERY: Thank you, Mr. Erickson. Let me ask you just a basic question. [LB160]

NEAL ERICKSON: Uh-huh. [LB160]

SENATOR AVERY: Are the objections that you have to this bill fixable? [LB160]

NEAL ERICKSON: I think probably most of them are, but I think we should, you know...this is something that Secretary Gale mentioned specifically. There are a number of good ideas out there. On-line registration that Senator Schumacher mentioned is one as well. But what we're dealing with is a limited amount of resources to be able to accomplish these things. From Secretary Gale, I mean, I think on-line registration would probably be top on our list if we had the funds to be able to do that. Electronic pollbooks might be another example of something we'd put out there if the funds were available. But right now, and I think as the members of the committee that have been here for a number of years, you know, we're watching our federal funds decrease. And we have to try and maintain some of the equipment that's been purchased out there. We did find enough money in the Governor's budget this year which we were glad to see. But, you know, I'm not sure that that means the kitty is wide open in terms of spending money on a variety of other ideas that have been floating out there. [LB160]

SENATOR AVERY: Senator Schumacher made the point that democracy is worth the expenditure. What would be your reaction to that? [LB160]

NEAL ERICKSON: Well, certainly don't disagree with that. But sometimes when kind of the rubber hits the road and we start talking about asking the state to actually

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appropriate the funds for this, maybe the argument gets lost in the context. [LB160]

SENATOR AVERY: Senator Price has a question. [LB160]

SENATOR PRICE: Senator Avery, thank you very much. And thank you for coming and testifying. Obviously...and I appreciate Senator Avery's succinct question and your succinct answer. From what I heard, you can fix most of this and it's our responsibility to find the money. But one of the things that...or two things that stuck out in my mind. First of all, verifying signatures in a database--pretty quick. Electricity is fast. [LB160]

NEAL ERICKSON: Uh-huh. [LB160]

SENATOR PRICE: So I think we could validate and verify signatures or that (inaudible) so I think we have a cost savings there, I believe. But as I listened to the testimony I began to think about all of our Guardsmen who were deployed in the past years--the largest deployment since World War II--of the large number of our citizens who would not have been able to participate in a paper drive because of HAVA and different things, they could actually sign on. [LB160]

NEAL ERICKSON: Right. [LB160]

SENATOR PRICE: So I'm inclined to support and create an environment that these things would take care of, because as we heard in other testimony, the digital divide is not spoken to when people get their driver's license this way. So, again, I just thought I'd let you know that that was a observation I made from the testimony, that I would hope that all the parties would work together to bring some closure to these issues that you brought up that seem very legitimate. Thank you. [LB160]

SENATOR AVERY: Thank you. Any other questions? I don't see any. Thank you, Mr. Erickson. [LB160]

NEAL ERICKSON: Thank you. [LB160]

SENATOR AVERY: Any other opponent testimony? Neutral testimony? Welcome. [LB160]

JACK GOULD: Thank you. Senator Avery, members of the committee, my name is Jack Gould, that's G-o-u-l-d. And I'm here representing Common Cause Nebraska. And I just wanted...I would like to have supported the bill but I didn't feel I was electronically educated enough to sound intelligent so I kind of backed off. But I would very much like to reinforce what the Senator has said about the public's inability to really bring petition efforts to fruition, I suppose. We were one of the last organizations--I think a truly citizen's organization--to attempt a petition drive. And it was at that time that the

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numbers of signatures were increased and the percentages that you had to have by county were instituted. And we immediately dropped the effort because there was no hope, without hiring circulators, that we could ever meet the demand that was placed on us. And I think that that's pretty much where we are. There was a time when the petition process was regarded as the second house in Nebraska. But we've come to a point now where it's only a second house for those people who can afford it. And I think we...that the Legislature really does need to look at the process and keep it open, to make our state truly democratic and to give everyone the right to speak. Thank you. [LB160]

SENATOR AVERY: Well, one approach would be to change the law or is it in the constitution? The signature limits... [LB160]

JACK GOULD: I think it's in statute form. [LB160]

SENATOR AVERY: That's statute, I believe. Yeah. [LB160]

JACK GOULD: Yeah. [LB160]

SENATOR AVERY: One approach would be to go after that change rather than a whole new idea like this. What would you say to that? [LB160]

JACK GOULD: It would certainly...I think that would be a big help. I mean, I think that there would be a lot of, as I say, citizens' organizations which would step up and say, this would give us an opportunity to speak again. But if you place it in the...the way it is at this stage of the game...Senator Schumacher is absolutely right. Normal people can't come up with a million dollars to get something on the ballot. [LB160]

SENATOR AVERY: Questions? We're a quiet group today. [LB160]

JACK GOULD: No, no. That's okay. Thank you. [LB160]

SENATOR AVERY: (Exhibit 1) Any other neutral testimony? I do have a neutral letter from the League of Nebraska Municipalities expressing quasi support, or not opposition anyway, to LB160. Senator Schumacher, would you like to close? [LB160]

SENATOR SCHUMACHER: Thank you, Senator Avery and members of the committee. I'm actually a little relieved because the things that the Secretary of State's Office said are very fixable, very workable, some of which maybe the Secretary of State did not understand or maybe I didn't write clear enough. Incorporating other things in reference, the procedure to challenge, that's already in the statutes. We didn't need to rewrite a new one here. There's court times that you have got to file, and there's how you file, and that's already in the statute. Basically--the rough edges--if there is a will, there's a pretty

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easy way to fix those. The points raised by the Farm Bureau, the fraud ability under an electronic system I think is substantial as the fraud ability of somebody sitting in a motel room trying to fake signatures. The digital divide, it depends who you listen to. The phone companies are going to tell you that everything is wonderful because of the Nebraska Universal Service Fund, and they need more of it. But as a practical matter--I had to work that in, you didn't think I could. As a practical matter, if you don't have a computer you can still do it the other way. If you do want to do it, there's public libraries that have facilities available. We spent a lot of money on those particular things. Most computers either come with a broadband card or a modem card. A modem card, not hard to set up, so they could do dial-in because we're not doing fancy videos or anything like this over this system. So if you wanted to do it, you could access it. And probably you could access it over one of these. Exactly. So the digital divide is an issue. It's going to fix itself over time, with or without the Universal Service Fund. And so it's an issue, but no more an issue than we have under the existing system. And your point, Senator, about, you know, we aren't complaining about driver's licenses not being renewable by somebody on the other side of the divide. One thing that the constitution does say--and I think, Senator Avery, the number of signatures is in the constitution, it's not statutory, the 10 percent and 7 percent in order to get things on the ballot--that the Legislature has authority to facilitate the petition process. And I believe the word "facilitate" is in the constitution, not to hinder and make it more difficult because somebody is concerned that they don't want the petition process to work. So the job assigned to us as legislators by the constitution regarding this matter and recognizing that this procedure is competitive with us. Power usually likes to squeeze the other power out. But there's dual horses here that are riding. And our job, to the extent we have authority over the petition process, is to facilitate it. And I know that there's in the past been discussions but not enough money to bring the federal lawsuit, that some of this steps over the boundaries of what's been done in the past is not facilitating it. And where there are clear ways to facilitate, we may have an obligation to do that. So unless there's other questions, that's my two cents' worth. [LB160]

SENATOR AVERY: Could you find that in the constitution for us--facilitate? I'd like to see that. [LB160]

SENATOR SCHUMACHER: I'm pretty sure. I think I can. I'm just pretty sure my memory is correct on that. [LB160]

SENATOR AVERY: Senator Bloomfield has something. [LB160]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Schumacher, do you see any possibility at all, if we put this all electronic and make it a lot easier to do, of us being...having more of them than we can deal with? More petition drives than we could handle? Do they become frivolous, I guess is the... [LB160]

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SENATOR SCHUMACHER: No. Just remember something. If it's frivolous, it isn't going to go anywhere. If it's not frivolous, you'd better have a lot more money than just trying to get the petition signed. Because it is a real issue of public concern. Both sides are going to have to come up with campaign money, and you've just wasted your time and your effort if you're not prepared to go forward once your petition is signed. And you look real dumb if you drop it once...if it's signed and you can't follow through. I don't think we're going to have more than we can handle. Now there may be a few that's been cooking out there by some people that'll come forward that otherwise wouldn't come forward, but it's a heck of a good test of the validity of your ideas when you put one out there and nobody else shows up but you. And so, you know, this is part of the process. And, you know, at some point we may say, you know, this petition process that was so precious in our constitution is really a rotten idea. And maybe the people say, we're so sick of this we'll repeal it. But that's their decision not ours. [LB160]

SENATOR AVERY: Any other questions? All right. Thank you, sir. That ends the hearing on LB160, and now we will move to the third item on the agenda, LB183. And welcome, Senator Karpisek. [LB160]

SENATOR KARPISEK: Thank you, Senator Avery and members of the Government Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. I'm here today to introduce LB183 which would change how election commissioners in counties having a population of more than 100,000 inhabitants are appointed. With this bill, those election commissioners will be appointed by the county board after the expiration of the term of each election commissioner serving on the effective date of this act. Currently, election commissioners in counties having a population of more than 100,000 inhabitants are appointed by the Governor. I had a bill very similar--maybe exact--to this last year. This bill and why I bring it has nothing to do with personalities, people, anyone in these positions now. I feel that it isn't right that the state or the Governor appoint a county position. I don't understand that. If it's good for 90 counties to have a county board either appoint them or the clerk act as election commissioner, why the other three are different. Again, there has been a lot that has been said over this issue. Again, I am not trying to go there at all. I had this bill last year because, for me, it is just a process, a local control issue. And as Senator Lautenbaugh has said a couple of times lately, we all like local control until we don't. I agree with him. However, I try as hard as I can to side on local control. I know this brings up a lot of emotions and I apologize for that. I don't mean it to. I think that, again, to me it is not a partisan issue. I would even be willing to hold this bill off for--the implementation date--for two years until we have a new Governor. I don't think that it was right, whatever...whoever is in the Governor's Mansion. I think it should be up to the local county board to appoint. With that, I would be...I'll take questions. [LB183]

SENATOR AVERY: All right, I'll start. Do you have any idea how we got to the point

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where we are now with the appointment of election commissioners in just these three areas? [LB183]

SENATOR KARPISEK: Well, Senator Avery, I remember Senator Lautenbaugh did give us some history last year, and I wouldn't want to repeat it--I don't mean that--because I probably don't remember it right. But I remember something about some ballots being thrown in a river or something. But I don't know. [LB183]

SENATOR AVERY: Well, if election fraud was the issue, I'm really not sure how appointing commissioners can stop fraud. Do you have any ideas on that? [LB183]

SENATOR KARPISEK: How we could stop fraud? [LB183]

SENATOR AVERY: Yeah. [LB183]

SENATOR KARPISEK: Well, I've been told we don't have any fraud so I guess we don't worry about that. So my thought is, again, why is a governor appointing county officials? [LB183]

SENATOR AVERY: It's just a principle? [LB183]

SENATOR KARPISEK: Just a principle of mine. Maybe the counties should appoint some state officials. [LB183]

SENATOR AVERY: Questions from the committee? Senator Lautenbaugh. [LB183]

SENATOR LAUTENBAUGH: Thank you. Thank you, Senator Karpisek. So this would basically would just affect Douglas, Lancaster, and Sarpy? [LB183]

SENATOR KARPISEK: It would have them do the same thing that between the 20,000 and 100,000 does now. [LB183]

SENATOR LAUTENBAUGH: Okay, but you don't live in Douglas, Lancaster, or Sarpy, right? [LB183]

SENATOR KARPISEK: Not yet, no. [LB183]

SENATOR LAUTENBAUGH: So, okay. I just wanted to make sure we had the principle down of whether or not we're going to handle things in the Legislature that are unique to your own district or city, because we've had a disagreement about that. So this is different, then is what you're saying. [LB183]

SENATOR KARPISEK: No, I think I didn't say anything about that we shouldn't. I said I

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don't like to handle them. [LB183]

SENATOR AVERY: But you're comfortable going forward with this though? [LB183]

SENATOR KARPISEK: Oh, absolutely. [LB183]

SENATOR LAUTENBAUGH: Okay. [LB183]

SENATOR AVERY: Any other questions? You going to stick around? [LB183]

SENATOR KARPISEK: Well, yeah. [LB183]

SENATOR AVERY: Okay. [LB183]

SENATOR LAUTENBAUGH: He's on the committee. [LB183]

SENATOR KARPISEK: Well, I didn't want to walk up when Mr. Erickson was testifying. [LB183]

SENATOR AVERY: Yeah, okay. Proponent testimony. [LB183]

ABBIE KRETZ: Good afternoon, Senator Avery, members of the committee. My name is Abbie Kretz, A-b-b-i-e K-r-e-t-z. I guess you probably want this one. I'm from Omaha, representing the organization, Heartland Workers Center. So today we are here to support LB183 for three reasons. We feel that the position of the election commissioner, as a result of being appointed by the county commissioners, will have a lot more oversight because of that direct relationship. As a result of being appointed by the elected county commissioners, they will also be held accountable by the community. Kind of the trickle up effect perhaps, you could say, or the trickle down effect of accountability. And then we feel that as a result of this direct oversight as a result of being appointed by the county commissioners, we'll see a greater level of transparency and hopefully an increase in communication from the election commissioner to community members. This past year we did a "get out the vote" campaign encouraging voters to get, vote in both the primary and the general elections in south Omaha. And so when we actually did some canvassing and went door-to-door, we saw that there actually was some confusion that was caused by the closing of the polling places. For example, one woman who lives approximately around 16th and Monroe, in the primary she voted in Christie Heights which was her assigned place. However, prior to the general elections, she still thought she was supposed to vote in Christie Heights and she wasn't. She was supposed to vote in the Kroc Center. I guess what I'm trying to say with this is that as a result of the closing of the polling places, how that caused outrage within the community, obviously, because there wasn't that sense of communication, that sense of transparency that the current system isn't always allowing for. And so we

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feel that we need an election commissioner in these three larger counties that will show leadership, openness, representation, and communication with the community that they are actually representing. Thank you. [LB183]

SENATOR AVERY: Thank you. Any questions from the...Senator Lautenbaugh. [LB183]

SENATOR LAUTENBAUGH: Ma'am, I hadn't, I'll confess, heard of your organization prior to this. What do you do? [LB183]

ABBIE KRETZ: We're a nonprofit organization. We work on promoting civic engagement, worker rights, and leadership development within the south Omaha community. [LB183]

SENATOR LAUTENBAUGH: Now the woman whose polling place changed between the primary and the general, did anybody check to see why that would have happened? [LB183]

ABBIE KRETZ: I think it's just a lack of either...we've seen...I was also a poll worker. But I think it might be a lack of education that people don't perhaps understand the fact that at each election they're supposed to get new polling place cards. You know, you get your election card and you just kind of assume that that's your card for the whole election. So I don't know if she didn't get it, if it didn't arrive. She just didn't understand that that was her...that it changed. I know that there was stuff in the Omaha World-Herald, stuff in other local newspapers or in the communities. So I wouldn't...I don't know exactly why she didn't know that. [LB183]

SENATOR LAUTENBAUGH: So we don't know if she got two cards and just failed to read them. [LB183]

ABBIE KRETZ: Yes. I don't know. [LB183]

SENATOR LAUTENBAUGH: We don't know if she got 27 cards over the course of the process and failed to read all of them. [LB183]

ABBIE KRETZ: I don't know. I'm guessing she didn't... [LB183]

SENATOR LAUTENBAUGH: Okay. [LB183]

ABBIE KRETZ: ...see all of them, however. [LB183]

SENATOR LAUTENBAUGH: Okay. But we're trying to address a lack of transparency and communication on behalf of the election office allegedly. [LB183]

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ABBIE KRETZ: I think they could do a lot...I think it seemed as if there's this direct connection, direct...hopefully there would be more outreach, more communication, more education from that office. [LB183]

SENATOR LAUTENBAUGH: Wouldn't it have behooved you to maybe find out how much communication there actually was before you called for more, especially in the case of this particular voter, since we don't know if she got one card, two cards, seven cards, any cards? [LB183]

ABBIE KRETZ: Perhaps. [LB183]

SENATOR LAUTENBAUGH: Thank you. [LB183]

SENATOR AVERY: Senator Bloomfield. [LB183]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Lautenbaugh pretty well covered what I was going to ask. But, Ms. Kretz, are we basically looking at what Paul Newman called a failure to communicate? And if so, does having a board elected assure that that communication would necessarily be any better? [LB183]

ABBIE KRETZ: I think what I'd like to express perhaps is the fact that since you have...in Douglas County there are eight commissioners, correct? And so they're representing their different parts of the county. And so I think with that, they're going to select the best person for the job based on their own constituencies. And so I think they're going to bring those to the table, look for somebody, but also ensure that the interest of these different areas are going to be represented by that person and ensure that that communication is there. [LB183]

SENATOR BLOOMFIELD: So you...I'm coming at this, again, as...I'm kind of between these two fellas. I'm one of these people that's outside of Omaha, and I'm not sure we ought to be muddling there in this. But if you have eight members elected to that board that is going to make this appointment, what do you do in case of a 4-4 tie, which is pretty possible? [LB183]

SENATOR AVERY: It's seven members. It's seven members. [LB183]

ABBIE KRETZ: Is it seven? Oh, there's eight districts for voting. [LB183]

SENATOR LAUTENBAUGH: Right. Eight wards. Seven commissioners. [LB183]

ABBIE KRETZ: Got my numbers mixed up. [LB183]

SENATOR BLOOMFIELD: Okay. That takes care of that problem. [LB183]

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ABBIE KRETZ: Sorry. [LB183]

SENATOR BLOOMFIELD: No. Again, I'm from outside and I am not familiar enough with Omaha regulations, you know. [LB183]

ABBIE KRETZ: That makes more sense then. I got my wards and representatives mixed up. [LB183]

SENATOR BLOOMFIELD: Okay. Okay, thank you. [LB183]

SENATOR AVERY: Any other questions? Don't see any. Thank you very much for your testimony. [LB183]

ABBIE KRETZ: Thank you. [LB183]

SENATOR AVERY: Any other opponent testimony? [LB183]

_____ : Proponent you mean? [LB183]

SENATOR AVERY: Oh, we're on proponent? [LB183]

SENATOR LAUTENBAUGH: Still. Yeah. [LB183]

SENATOR AVERY: Okay. Proponent testimony, sorry. All right, opponent testimony. [LB183]

NEAL ERICKSON: (Exhibit 1) Sorry, I didn't want to jump the gun on you. Members of the committee, once again for the record, Neal Erickson, Deputy Secretary of State for Elections, here on behalf of Secretary of State John Gale in opposition to LB183. The pages are passing out a letter from Secretary Gale and I encourage you to read it. I'll just kind of hit a couple of high points on it and then maybe make a couple of additional comments. I think one of the overall points is if the goal of this bill is to make a local election official less subject to political influence, honestly we believe the opposite result is probably what's going to happen. Local officials are limited by statute. You know, I think the previous testifier talked about we want to increase direct oversight over these election officials. Actually the oversight for election officials is in the statute itself. The rules that the body makes, and those are the rules and that's what they have to follow. Our office does have the ability to review, audit, consult with, whatever you want to call it, a local election official that we don't believe is following the law or is doing it in a manner that is inappropriate. And we have done this in the past in a couple of cases. I think this also potentially creates a danger for a board to, if they have this "direct oversight" and have the ability to whether it be admonish, whatever, an election official,

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it changes the rules a bit. And we have seen this happen with county appointed election commissioners. We had a situation a couple of years ago where, in my opinion, the board acted without authority in suspending an election commissioner for ten days because of a typo on a ballot. Now certainly a typo is not a mistake that we like to see happen, but they do happen. But this election official was, because of some of the political influence of--actually not even board members--but those people outside the board were able to convince the board to suspend this election commissioner for ten days. And like I said, it was in the statute. I'm not sure it met the grounds for any type of oversight that is in statute currently. So those are some of the reasons that we oppose this bill. And I'd answer any questions you might have. [LB183]

SENATOR AVERY: Questions? Senator Murante. [LB183]

SENATOR MURANTE: Do you see any noticeable difference between the level of transparency right now in the election commissioners that are appointed by the Governor and the election commissioners that are selected by county boards? [LB183]

NEAL ERICKSON: Absolutely none. You know, I think almost without exception any local election official in this state, if somebody wants to come in and ask how the process works, take a look at it, they're more than welcome to do that. As a matter of fact, when...I know that the secrecy envelope bill was mentioned today. That is one thing that we will probably be suggesting to you as members of this committee, to actually go look at the process as opposed to making guesses about how it may actually occur. [LB183]

SENATOR AVERY: Any other? Senator Scheer. [LB183]

SENATOR SCHEER: Thank you, Senator Avery. Just from perhaps my own information, everyone else may know, but in those three counties it's a gubernatorial appointment. Who is the election commissioner then responsible to? [LB183]

NEAL ERICKSON: I think, arguably, they are responsible to the law, and their position is designed to follow the law as it is written. There may be some things in there that are not specifically specified, and they may have some discretion in terms of how those, you know, those procedures or whatever occur. You know, I'm not familiar with the total history as to how these election commissioners, you know, why some are gubernatorial appointed and why we came to 20,000 to 100,000. But one thing to keep in mind is between those three counties, you've got 45 percent of the vote in this state; 45 percent of the registered voters. So we're talking a very big chunk within these three counties alone. And should you have some influence being pushed on an election official in those counties, it can have a tremendous impact on election results. [LB183]

SENATOR SCHEER: I don't think you answered my question though. Who are they

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responsible to? Who is their boss? [LB183]

NEAL ERICKSON: They...technically I don't believe they have a boss. [LB183]

SENATOR SCHEER: So they are accountable to no one. [LB183]

NEAL ERICKSON: They're accountable to no one except the law, and the law says that they can be removed--and in the case of the Governor appointees, by the Governor. In the case of the county appointees, by the county or in the case of elected positions in terms of the county clerk, they can be removed according to law. There are some reasons in there as to why they can be removed, but those are specifically set out in statute. [LB183]

SENATOR SCHEER: Okay. Is there any difference as far as accountability to the election officials in the other counties other than these three? Are they essentially the same regardless if they are appointed or another county official that is taking that position? Is there any difference? [LB183]

NEAL ERICKSON: In our opinion, no. I mean, it's the same way. I think they all follow that same code which is, here are the various laws that impact elections and we're required to follow them. Our office works the same way. There are things that happen that we don't necessarily agree with, but it's the way the law is and that's the way the rules have to be interpreted to do that. And so, the law is the overriding policy there. Now should that policy be broken, yes, there are some mechanisms in terms of how--if a local official should break those--how that can be addressed, whether it be removed by the Governor in the case of a gubernatorial appointments, removal by the county board in the case of county board appointments, or through the recall or nonelection of those county clerks that are elected. [LB183]

SENATOR SCHEER: And so realistically, all the county election commissioners or clerk, whatever the case may be, essentially are not responsible to anyone other than the law but they do develop their own budget. But the budget has to be approved by the county commissioners. And that's the oversight from that perspective. [LB183]

NEAL ERICKSON: Correct, except to the limitation--we have seen this in the past not necessarily with local election officials--is even a county board cannot, say, completely defund the election office. [LB183]

SENATOR SCHEER: No, but it's still...the funding still goes through the county commissioners. [LB183]

NEAL ERICKSON: They have to have enough funding to be able to accomplish their job. Right. [LB183]

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SENATOR SCHEER: Correct. Okay, thank you. Thank you, Senator Avery. [LB183]

SENATOR AVERY: Thank you. Any other questions? Thank you, Mr. Erickson. I am going to allow an irregular procedure here because Senator Lautenbaugh has made a request to testify on this and I granted it. Proceed. [LB183]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. I represent District 18. I used to be an election commissioner in Douglas County. I know that's shocking news to all of you who follow the Legislature carefully. Here is what we have to understand here: There's a reason this was set up this way, and that is because for fraud to be effective it's best to do it on a large scale. And the place you could do it on a large scale most easily is in an urban area. I mean, history is replete with those examples. So the largest county back at the time when the "Honest Dodge" election law was passed, was riddled with corruption. And that was Douglas County. As Sarpy and Lancaster have grown in population, they have not become riddled with corruption but they have reached the threshold at which a separate gubernatorial election commissioner appointment takes place. The election commissioner then in those counties picks a chief deputy from the other party. So we talk about the issue of oversight with the county board, but the entity in these particular counties is not really, in some ways, a county official per se because the Governor appoints him or her. And as I functioned, yes, the county board approved my budget but they had to give me enough money to run the election. And that was kind of the end of it. As far as everything else that is set forth in the statute, when an election commissioner or a chief deputy can be removed, it is very important to note that an election commissioner cannot fire a chief deputy. The Governor must fire either the election commissioner or the chief deputy. That's important because the chief deputy is supposed to be, and does, keep a watch on the election commissioner, because in this office setting they are from two different parties. I felt compelled to testify on this because...and understand, Senator Karpisek and I just disagree on this. And he's had this opinion of this appointment issue for several years; more than one or two, let's say. I disagree. And I know the history of why this was done. What's frustrating to me about this is you heard one proponent of this come up and testify that, well, yeah, there was a lady in south Omaha who voted at a different place between the primary and the general, so we think there should be better communication. Well, what didn't you hear? Were there ten people like that? Do we know if she got one notice or 20 notices? This is what has happened over the last year with the alleged issues regarding the gubernatorially-appointed election commissioners, and the Douglas County election commissioner in particular. There was an article in Watchdog yesterday--not that..I shouldn't name the media source but I just did. Sorry about that, Watchdog people--talking about how scandalous it was apparently or an issue it was that there were two precincts out in western Douglas County which are predominantly Republican, and they have polling places that are right near each other, so that's obviously unfair.

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Now I'm hoping that we're all pondering the idiocy of that at this point because it doesn't matter where the polling place is within a precinct. They can be right next to each other and the people on the opposite ends of the precinct might each live four miles from their respective polling places. So how is that an advantage for those people that the polling places in two different precincts are near each other? [LB183]

SENATOR AVERY: I need to interrupt. If you could confine your comments to the history, that would be better. In Exec Session you'll get a chance to make the argument for and against. [LB183]

SENATOR LAUTENBAUGH: Understood. In a sense, this is history though, because there is a historical reason why we've set up this system with the largest counties having independent election commissioners, because the machines that used to operate in Douglas County were at the local level; so you did not want them appointing the election commissioner. And I don't think we've, you know, outlived the end of history at this point. We're seeing this bill and some of the support for it for something else that has now become part of our recent history, which is an unrelenting and unsubstantiated attack on one of the election commissioners. And I bristle at it. I'm frustrated by it. There was a historical reason to have things the way they are. And I obviously, passionately, and long-windedly believe that we should leave it in that way. And so I would have to rise vigorously in opposition of this bill. I will not rise vigorously in opposition to the companion one coming, but my feeling is the same. And I appreciate the opportunity. [LB183]

SENATOR AVERY: I appreciate the history because you do have unique perspectives that we don't have. Thank you. [LB183]

SENATOR LAUTENBAUGH: Thank you. Oh, question. [LB183]

SENATOR AVERY: Let's go back to the normal routine. You can do the questioning in Exec Session. Now, we are still on opponents. We're still on opponents. Any more opponents? Any neutral testimony? [LB183]

LARRY DIX: Senator Avery and members of the committee, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials, appearing today in...completely in a neutral point of view. And this is really informational as it relates to a question that Senator Scheer had. Currently, in the state, of course we know we have the 93 counties. We have the three that are appointed by the Governor, and then the other counties that have an appointed election commissioner are Hall, Cass, Buffalo and Platte. And then the other counties would have an elected clerk that acts as the election commissioner, as what happens in Madison...in your home county. So I just wanted to clarify, you know, for everyone, which counties have that set of circumstance, and would be happy to answer any questions if there are any. [LB183]

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SENATOR AVERY: Thank you, Mr. Dix. Any questions for...yes, Senator Scheer. [LB183]

SENATOR SCHEER: Thank you, Senator Avery. I'll just ask you. It wasn't a technical question of Senator Lautenbaugh. I'm just from curiosity perhaps you can answer this. The Secretary of State said that the election commissioners were not responsible to anyone, only unto themselves. Senator Lautenbaugh made the comment that the Governor could either fire both the assistant or the election commissioner. And honestly, I want to clarify which might be the case. And if they're both correct, that's fine too. I'm just trying to clear that in my own mind. So can you be of any help to me in resolving that? [LB183]

LARRY DIX: Yeah. I can probably muddy the water a little bit. [LB183]

SENATOR SCHEER: Okay. Close enough. [LB183]

LARRY DIX: I think--at least when I have a conversation with someone who is a county clerk that's acting as an election commissioner--certainly they are responsible for what the law provides them but typically they would say, as an elected official we believe we are responsible to the electorate because that is who votes us into the office. And certainly those appointed election commissioners are, I believe--in their mind, and I don't want to misspeak because I'm speaking what I think I know, not necessarily what they would say--but I believe they believe they somewhat answer to the county board because that is who appointed them. That's who approves their budget, adopts it. So but at the end of the day if we have appointed officials such as highway superintendents or we have an elected official such as county clerks, by the nature of county government we are all distinctly tied to the legislation that all of you pass. So at the end of the day we have to uphold that section of statute that applies to whatever circumstance comes up. [LB183]

SENATOR AVERY: Any additional questions? Senator Lautenbaugh. [LB183]

SENATOR LAUTENBAUGH: Thank you for coming, Mr. Dix. So what you're saying is there's three different tiers. There's basically the counties where the county clerk just serves as the election commissioner; then there's a middle tier of six or so? [LB183]

LARRY DIX: Four. [LB183]

SENATOR LAUTENBAUGH: Four where the county board appoints the election commissioner. [LB183]

LARRY DIX: Right. [LB183]

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SENATOR LAUTENBAUGH: And then there's the remaining three where they're gubernatorially appointed, if you will. [LB183]

LARRY DIX: Right. Right. [LB183]

SENATOR LAUTENBAUGH: Now is it your understanding that there's a statute that just specifies certain grounds for which an election commissioner can be dismissed? [LB183]

LARRY DIX: I believe that to be the case. [LB183]

SENATOR LAUTENBAUGH: And the Governor is the one who does that though? [LB183]

LARRY DIX: The Governor...I believe the Governor is the one that does that in the realm of the three appointed. Now as far as the county board appointed ones, I think the county boards have some authority there, but I could be wrong. I would absolutely have to look that up to make sure. [LB183]

SENATOR LAUTENBAUGH: So when Mr. Erickson said that they don't answer to anyone, what he was probably referring to is that the Governor doesn't supervise them day-to-day but there are those four or five statutory grounds under which they can be removed. [LB183]

LARRY DIX: I believe that is the case. [LB183]

SENATOR LAUTENBAUGH: Okay. [LB183]

SENATOR AVERY: I would just point out that if you look at the green copy of LB183 it does include Section 4(2) where reasons for removal are specified in current law. Any other questions? [LB183]

LARRY DIX: Yeah. Okay. [LB183]

SENATOR AVERY: Any other questions? Thank you, Mr. Dix. Any more neutral testimony? All right. Your turn, Senator Karpisek. [LB183]

SENATOR KARPISEK: Thank you, Senator Avery and members of the committee. Thank you, Senator Lautenbaugh, for testifying because if anyone knows it, you do; and I appreciate that. And I don't like to bring bills that Senator Lautenbaugh and I do not agree on because most of the time we think a little bit alike. [LB183]

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SENATOR LAUTENBAUGH: Not this morning. [LB183]

SENATOR KARPISEK: Well, I know. That might have been because I knew what was coming now. I do have to try to defend myself a little bit. Lancaster County is in my district... [LB183]

SENATOR AVERY: I knew that. [LB183]

SENATOR KARPISEK: ...thanks to redistricting, so that's how that one worked. Again, this was not about transparency to me. I, again, only brought up the other stuff because I figured it would come up. It's not...I don't even want to bring up what happened in Omaha here because that's, again, not what I think this is about. To me, it's local control. Do I think what happened would have, if it was county supervisor appointed, would it have turned out any different? No, probably not. So that's not my end game here. Mr. Erickson did say that this is a better way maybe to do it. Well, I just wonder why we haven't seen a bill to change the other counties to this form then. That may be something to consider. I won't support it, but maybe something to consider. And also 45 percent of the vote in this state is in these three counties. That's my exact reason for bringing this bill--not the other way around--that it's local control. Do I think even that many of the election commissioners, past, present, or future, might be different? I don't know. That, again, isn't my intention here. Like I said, in two years we'll have a different Governor, and who knows how that will go. Again, not my...not what I'm after. I think that's probably enough on that bill. But thank you for your diligence. [LB183]

SENATOR AVERY: (Exhibit 2, 3) Thank you. Before I close the hearing on LB183, I have a letter from the Omaha Branch of the National Association for the Advancement of Colored People expressing support for this; and then I have another letter from Governor Heineman expressing opposition, and I read those into the record. (Also see Exhibit 4) That ends the hearing on LB183, and we'll now move to LB188. [LB183]

SENATOR KARPISEK: Thank you, Senator Avery and members of the Government Committee. Again, for the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District which includes the counties of Saline, Thayer, Jefferson, Fillmore, and Lancaster Counties. LB188. You didn't like the last one, let's try this. LB188 would require that the election commissioners appointed by the Governor be approved by a majority of the members of the Legislature. Currently there is no legislative approval required and the Governor simply appoints. I would ask that we would have legislative approval. I find...and I'm sure that we will hear why we shouldn't do this but I have a hard time understanding that. We approve, as the Legislature, people for the Arts Council, the Beginning Farmer Board, Child Abuse Prevention Board, Climate Assessment Response Committee, Environmental Trust Board, Information Technology Commission, Investment Council--the list is long. And I feel that if it's not...if it is a state function for the election commissioners in these three counties

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to be appointed, then the Legislature should have a confirmation process for them. I'd be willing to take questions. [LB188]

SENATOR AVERY: Okay, thank you. Questions from the committee? Well, currently the constitution requires the Governor to "appoint with the approval of the majority of the Legislature all persons whose offices are established by the Constitution or which may be created by law and whose appointment or election is not otherwise by law or herein provided for." That's in Article IV, Section 10. Do you have any comments on how that might apply to your bill? [LB188]

SENATOR KARPISEK: I think it says or otherwise enacted by law and that's what I'm trying to do. [LB188]

SENATOR AVERY: Okay. No more questions. [LB188]

SENATOR KARPISEK: Thank you. [LB188]

SENATOR AVERY: All right. We'll move to proponent testimony. Welcome. [LB188]

JACK GOULD: Senator Avery, members of the committee, my name is Jack Gould. That's G-o-u-l-d, and I'm here representing Common Cause Nebraska. You know, Senator Karpisek's bill is a pretty simple bill. It simply says that it gives the Legislature an opportunity to confirm appointments by the Governor. We see that as a very fair issue to be brought here. It seems that because we have elected governors on the basis of their political parties and because the appointment of a election commissioner is extremely important--it's the basic, grass-roots element of our democracy that is affected--we think it's important that there be another body like the Legislature, which is a nonpartisan body, to approve. And I think that's in the best interest of any governor--this isn't directed at this governor or the next governor or any governor--would benefit by having a nonpartisan body stand up and say that it was a correct appointment. And I think that's all that Senator Karpisek is trying to do is just to give another level of scrutiny. Questions? [LB188]

SENATOR AVERY: Questions from the committee? No. [LB188]

JACK GOULD: Okay, thank you. [LB188]

SENATOR AVERY: Thank you. Proponent testimony, additional? Welcome, Mr. Morfeld. [LB188]

ADAM MORFELD: (Exhibit 1) Good afternoon, Chairman Avery, members of the Government, Military and Veterans Affairs Committee. My name is Adam Morfeld, that is A-d-a-m Mo-r-f-e-l-d. I am the executive director of Nebraskans for Civic Reform.

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Today NCR is testifying in support of LB188 because it would provide a level of accountability and increase checks and balances for election commissioners appointed by the Governor in our three largest counties. As has been discussed today, currently in counties with populations above 100,000, the commissioner is appointed by the Governor. Nebraska is in the minority of states nationwide that select local election officials by appointment. And the handout that I just handed out today was some research that we did. And actually our legal clerk researched it for about three hours and found out there was a list provided by the Governor's Office--so this is really just the list from the Governor's Office, so it saved her a little bit of time--but to give you an idea of the appointments that are currently appointed by the Governor both for bigger administrative offices and smaller ones. But back to my testimony, nationally 15 percent of localities have an appointed individual in charge of elections, as Nebraska does. Of these states that do appoint election officials, they generally have a more substantial system of checks and balances than Nebraska does. I'd be more than happy to provide the study this information came from. It was a comprehensive nationwide analysis of election administration conducted by a few political scientists. Currently Nebraska's statute requires that a deputy election commissioner of the opposite party be appointed in the largest three counties, as Senator Lautenbaugh noted. But, however, the statute provides really absolutely no statutory authority for these deputies other than to be there. That's better than nothing; but I think that checks and balances provided by the Legislature would be more sufficient. Further, these deputies obviously do not have any say over who the election commissioner is, whether they are reappointed, and as Senator Lautenbaugh noted, can be terminated at will by the Governor. One of the unique aspects of our system in Nebraska is that the election commissioner is a county official whose salary is paid by the county, office and staff are paid by the county, sets the budget required to be paid by the county to administer elections, and yet is not very accountable to the people in the county and the county board. The system does not particularly promote or encourage communication or transparency between the election commissioner and the people they serve. I passed around this list of appointments confirmed by the Legislature, and legislative confirmation is required for unpaid positions such as the Racing Commission, Rail Council, Power Review Board--Senator Karpisek already went through a few other ones--but not for individuals that run over half of our state's populations' elections; not just registered voters. LB188 would provide critical checks and balances in the administration of our counties' elections and provide the citizens of those counties a forum for redress every four years when the commissioner is appointed or reappointed. The people can either support their appointment or they can redress their grievances before this committee or the Legislature. I urge you to forward this legislation on to the full body for consideration, and I thank you for your time. I'd be more than happy to answer any questions. [LB188]

SENATOR AVERY: Thank you. Questions from the committee? Senator Price. [LB188]

SENATOR PRICE: Senator Avery, thank you. So, Mr. Morfeld, thank you for coming

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and testifying. Would I take it then that we would have your support to go away from a unicameral because we're the only one that has that? So we should go to what everybody else does and have a bicameral partisan, and go with a winner take all electoral college? [LB188]

ADAM MORFELD: I don't believe I said that in my testimony, sir. [LB188]

SENATOR PRICE: No. But, I mean, basically your testimony is we're one of only a few states or one of the few states that does it the way we do. [LB188]

ADAM MORFELD: Uh-huh. [LB188]

SENATOR PRICE: We're the one...our license plate should be the "One Of State." [LB188]

ADAM MORFELD: Uh-huh. [LB188]

SENATOR PRICE: We're one of five that doesn't accept veterans' retirement. We're the one of one that has a unicameral. So I just...I was challenged by that and I wanted to get your response to say if that...should that be our motivation? [LB188]

ADAM MORFELD: Well, Senator, to answer your question--which is a fair question--I think that whether or not we have a bicameral legislature or a unicameral legislature is an entirely different policy issue than whether or not the people who run the elections in our largest counties in the state have a system of checks and balances, and the way for citizens to redress any grievances they may have or show support for that commissioner every four years. So I think it's two different policy issues. And, you know, personally, no, I would not be in support of moving from a unicameral legislature. [LB188]

SENATOR PRICE: Thank you for your response. [LB188]

ADAM MORFELD: Yes, thank you, Senator. [LB188]

SENATOR AVERY: Senator Lautenbaugh. [LB188]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Mr. Morfeld. Now it's not really correct to say that these, either the deputy or the election commissioner, is fireable at will, is it? [LB188]

ADAM MORFELD: I would have to review the statute again, Senator. But I don't see anything about the deputy election commissioner. My understanding is that they would be able to be removed at will. [LB188]

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SENATOR LAUTENBAUGH: I would suggest to you that the same five or six criteria by which you remove an election commissioner also would apply to the deputy, I believe, as I read the statute as it exists. [LB188]

ADAM MORFELD: Senator, I would have to read the statute again. I've read it a few times; however, my understanding is that the statute is silent as to whether the Governor can remove or appoint...or not, excuse me, appoint but remove. [LB188]

SENATOR LAUTENBAUGH: So who do you think does remove the chief deputy? [LB188]

ADAM MORFELD: I believe it would be the Governor. [LB188]

SENATOR LAUTENBAUGH: What do you think would happen...I'll give you a hypothetical. [LB188]

ADAM MORFELD: Okay. [LB188]

SENATOR LAUTENBAUGH: If an election somewhere ran amuck and the deputy blew the whistle and the Governor fired her, what do you think would happen to that Governor in Nebraska? [LB188]

ADAM MORFELD: Well, I don't think depending on whether or not they can go up for reelection or whether they're term-limited that might be something that voters take into consideration. I probably will be...would be, but I can't speak for whether or not people in Scotts Bluff County would care about what happened in Douglas County in that regard. [LB188]

SENATOR LAUTENBAUGH: What do you suppose would happen...scratch that. Are you aware of any provision in the law that requires the deputy stand mute? [LB188]

ADAM MORFELD: No, there is not. [LB188]

SENATOR LAUTENBAUGH: No gag order of any kind? [LB188]

ADAM MORFELD: No, I don't believe. There's a whistle-blower statute that protects them, but there's nothing that gags them, of course. I've also talked to several former deputy election commissioners and I know that some of them, their desks weren't even in the office; they were outside in the hallway. I've reviewed e-mails that we have publicly requested and found that oftentimes deputy election commissioners are not the point people in the office as far as the administration of elections. So while I have not been a deputy election commissioner, I think that there is more room for accountability

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and more room for oversight by the Legislature or whatever body you deem fit. [LB188]

SENATOR LAUTENBAUGH: To be clear, if we have legislative confirmation, we would also have public hearings as well for these appointees? [LB188]

ADAM MORFELD: I don't know if that's specified in the bill, but that's generally how the confirmation process works. Somebody comes to this committee and presents to the committee and people can comment on that. [LB188]

SENATOR LAUTENBAUGH: Would you be concerned about--since this is a very political appointment--any abuse of that process by people if we had the public hearing? [LB188]

ADAM MORFELD: I don't really think that providing more accountability and transparency lends itself...should be halted because of the possibility of abuse of it. I think that you, as senators, are intelligent individuals and can determine whether or not that process is being abused. However, I think that we should always err on the side of more accountability. [LB188]

SENATOR LAUTENBAUGH: But I guess my concern is, say for instance, an entity were set up and the funding for which no one knows where that comes from... [LB188]

ADAM MORFELD: Uh-huh. [LB188]

SENATOR LAUTENBAUGH: ...and through a series of anecdotes and half truths, they continue to hound a certain individual. Well, should we be concerned about actually bringing that into a hearing room and letting that go on in the public forum for such a political appointment? [LB188]

ADAM MORFELD: Well, I think it's hard to determine whether or not it's half truths or whatever you may discern or characterize it as unless you actually listen to them and look at the evidence before you, and people have the opportunity to present the evidence to you. I think that's why it's important to have another level of checks and balances and accountability and why it's important to have legislative confirmation. [LB188]

SENATOR LAUTENBAUGH: Thank you. [LB188]

ADAM MORFELD: Thank you, Senator. [LB188]

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

ADAM MORFELD: Thank you. [LB188]

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SENATOR AVERY: Do we have any more testimony in support? All right. Any opposition testimony? Any neutral testimony? Senator Karpisek. [LB188]

SENATOR KARPISEK: Again, thank you, committee. And I should have probably just waived this off, but you know, I might as well use up a little more time, right? Again, it's a thought, something that I've had, something that really does bother me. Probably what really bothers me is the partisanship surrounding all of this; and I don't care. I mean, I know that I look partisan by bringing this. I don't mean to. That is not my intent at all. I wish we had no partisan politics and by doing all of this I'm trying to cut down on that, whether I'm living a unreal dream. Probably. But I guess like they always say, I don't care about changing the world; just my little corner of it. So I appreciate you listening. I think it's something to think over, and again, I appreciate your time. Thank you, Senator Avery. [LB188]

SENATOR AVERY: All right. Thank you. Another question. [LB188]

SENATOR LAUTENBAUGH: Thank you, Senator Avery, more of a clarification. I don't think you seem partisan in bringing this. I know you've believed this for several years. And while we may just disagree, I did not think that you seem partisan in bringing this issue another time. [LB188]

SENATOR KARPISEK: Well, thank you and I appreciate that, Senator. And I know that, to me, you don't either. I mean, it's just that we disagree. You've been in this situation and I understand that. And part of it may be that it is your background. And if somebody started trying to mess around with hotdog makers I would probably defend them also. So I don't know. Luckily, bill introduction is over. [LB188]

SENATOR AVERY: (Exhibit 2) Thank you, Senator Karpisek. Before closing the hearing, I have a letter of support from the NAACP Omaha Branch in support of LB188. That ends the hearing on LB188 and the hearings for today. Thank you all for coming. [LB188]