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Transcriber's Office

Government, Military and Veterans Affairs Committee  
February 19, 2014

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[LB773 LB980 LB1013 CONFIRMATION]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, February 19, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB980, LB773, LB1013, and a gubernatorial appointment. Senators present: Bill Avery, Chairperson; John Murante, Vice Chairperson; Dave Bloomfield; Tommy Garrett; Russ Karpisek; Jim Scheer; and Norm Wallman. Senators absent: Scott Lautenbaugh.

SENATOR AVERY: (Recorder malfunction)...Affairs Committee. We are going to do four things today. First, we are going to take up a nomination of a new member to the Nebraska Accountability and Disclosure Commission. It is new, right? Then we'll move to the agenda of bills to be considered. They're posted outside the door. We'll take them up in the order of their posting: LB980, Senator Johnson; LB773, Senator Davis; LB1013, Senator Murante. Before we start, let me introduce the committee, whether they're here or not. We will...there are eight members of the committee and we usually have a quorum. Right now, we don't. But at least we do expect them to be coming in. Many of them are otherwise engaged in presenting bills at other committees. But soon to join us will be Senator Tommy Garrett from Bellevue on the very end down there. Next to him, is Senator Bloomfield. Dave is from Hoskins. Senator Scott Lautenbaugh is in...will, perhaps, be in the chair next to him. But that is his assigned seat. Senator John Murante, the Vice Chair of the committee, from Gretna, will soon join us. Next to me on my right is Christy Abraham. She is the counsel for the committee. She is from Lincoln. Bill Avery, that's me, I Chair the committee. I represent the district you're in right now, District 28. Soon to join us after presenting a bill he has in Health and Human Services, will be Russ Karpisek from Wilber. Next to him is Senator Norm Wallman from Cortland. And next to him is Senator Jim Scheer of Norfolk. On the very end is Sherry Shaffer. She is the committee clerk and she makes things run smoothly here. There are some forms we need you to be aware of. If you are planning to testify for or against any of these bills, we have a green form that we would like for you to fill out. They're available at each entrance to the room. Please print the requested information and hand it to Sherry when you arrive at the table to testify. And this is important because it helps us get the record straight. We keep a written record of everything that we do in these committees. If you do not plan to testify but you wish to record your support for or opposition to any of these bills, there is another form to fill out instead of the green. And they're available at each entrance also. We will be using the light system. The green light is a four-minute light, followed by an amber light which is a one-minute, for a total of five minutes. When the red light comes on, you've used up your five minutes and you should be terminating your comments. If you have any material that you would like for us to see, perhaps a transcript of your comments and testimony, we would like to have 12 copies of that to distribute to the committee. If you do not have 12 copies, give the original to Sherry, the clerk, and she will have our page get copies for us. And the page is Colton Wolinski from Lincoln. Now, we have a procedure we follow. We do not allow

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cell phones or any other electronic, noise-making devices. So please silence your equipment if you have any that make noise. We also do not allow demonstrations from the audience for or against any bills. And we follow a procedure whereby the introducer of the bill gets to go first, followed by proponents, who are followed by opponents, and then neutral testifiers. Closing remarks are reserved for the introducing senators only. So please listen carefully to the testimony so that you do not give repetitive testimony. We take these hearings very seriously. We require all of our bills to be given a public hearing. That is fairly unique among legislatures throughout the country. We're proud of that. And we do plan to stay here as long as you need in order to get your say in. And that includes J. L. Spray. All right. Now, we will start with the first bill listed, LB980. Senator...oh, Mr. Loudon. I just talked to you and I was about to forget. We have a nominee here for a position on the Nebraska Accountability and Disclosure Commission, Mr. Andrew Loudon. Welcome. Tell us a little bit about yourself, why you think you would be an outstanding member of the commission and some of the things that you think we might need to know. Thanks. [CONFIRMATION]

ANDREW LOUDON: (Exhibit 1) Mr. Chairman, members of the committee, Andrew Loudon, 1248 O Street, Suite 600. I'm an attorney here in Lincoln with the Baylor Evnen law firm where I specialize in trust and estates. I've been active in the political world for 25 years since I was 15 years old and put up yard signs with J.L. Spray. But I really enjoy the political process. And I have been involved in many campaigns and have been treasurer for at least four. So I understand, from that perspective, what the interactions that campaigns have with the Accountability and Disclosure Commission. I have resigned as treasure of all of those before I appeared before you so I'm no longer doing that. But I look forward to, hopefully, serving on this board to bring, maybe, a perspective of somebody who's been actively involved in the process in the past. [CONFIRMATION]

SENATOR AVERY: Thank you. Let me start by asking you what would be your approach to a procedure that's followed by the A and D Commission or a law that's on the books that you disagree with? How would you approach that on the commission? [CONFIRMATION]

ANDREW LOUDON: Well, the job of the commission is to enforce the law and not legislate from the bench, if you will, or from the commission. So I would...I have strong opinions about most everything so I might express publicly that I don't necessarily agree with the rule. But I would vote to enforce the law as this body has passed it and the Governor has signed it. So I might...if I...and it might happen. If I disagree with a rule of the commission, I probably might say so. But I wouldn't vote in opposition to how the...if the law is very clear, as to how it would read. And I would vote to enforce the law. [CONFIRMATION]

SENATOR AVERY: We passed a bill last year, LB79, my bill. And in that bill, we

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transferred the "fair fight" money from one fund over to a fund that the commission can use, and I believe is using, to digitalize the reporting process. What do you know about that? Where's the...what's the status of it and what's your attitude about using the money for that purpose? [CONFIRMATION]

ANDREW LOUDON: I feel very uninformed. It's important to say when you don't know something. And I don't know the current status of that but I know that somebody who does is sitting right behind me and I could ask him. So I apologize, Senator. I don't know. [CONFIRMATION]

SENATOR AVERY: You joined the board in July of '13? [CONFIRMATION]

ANDREW LOUDON: Yes, sir. [CONFIRMATION]

SENATOR AVERY: Have you had any meetings? [CONFIRMATION]

ANDREW LOUDON: We have had two, yes. [CONFIRMATION]

SENATOR AVERY: And this didn't come up, apparently? [CONFIRMATION]

ANDREW LOUDON: I think Frank and I have talked a little bit about it but, no. [CONFIRMATION]

SENATOR AVERY: Uh-huh. Okay. Questions? Senator Scheer. [CONFIRMATION]

SENATOR SCHEER: Thanks, Senator. Andrew, through your comments you made that you were active politically in one of the parties, I'm assuming. The Accountability and Disclosure is sort of a neutral position. Have you found it difficult to maintain some neutrality in your position rather than your personal druthers as you have looked at different cases in front of you? [CONFIRMATION]

ANDREW LOUDON: No, I have not found it difficult to remain objective. And I would point out, Senator, that two...under state statute, two of the members of the commission are to be, at least initially, nominated by the chairman of the two major political parties. And I am the one individual who was nominated by the current chairman of the Nebraska Republican Party. There is a Democrat who serves on the commission who was, likewise, nominated by the state chairman of the Democratic Party. So this is one of those exceptions to our nonpartisan nature in Nebraska is, this is at least one position on this board that is, if you will, a Republican designee. But having said that--and everybody knows which major party I'm involved with--but having said that, no, I have not found it difficult to be objective at all. [CONFIRMATION]

SENATOR SCHEER: So, in essence, you're just a counterbalance. [CONFIRMATION]

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ANDREW LOUDON: No. I am a objective member of the commission.  
[CONFIRMATION]

SENATOR SCHEER: Thank you. [CONFIRMATION]

SENATOR AVERY: Well, you know, we, in the Legislature, are officially nonpartisan. But your commission is bipartisan. And you're right, you do have some specifically identified partisan members. [CONFIRMATION]

ANDREW LOUDON: Uh-huh. [CONFIRMATION]

SENATOR AVERY: But that doesn't mean you have to be partisan. [CONFIRMATION]

ANDREW LOUDON: Correct. [CONFIRMATION]

SENATOR AVERY: Right. Senator Bloomfield. [CONFIRMATION]

SENATOR BLOOMFIELD: Thank you, Senator Avery. I want to follow up a little bit on Senator Avery's line of questioning. You said if you saw something you didn't like, you would possibly voice your opinion on that rule. Would you be tempted to get actively involved with a senator to change that rule? [CONFIRMATION]

ANDREW LOUDON: I don't have a lot of extra time on my hands, Senator. But, you know, I will be going directly from here to the Judiciary Committee where I'm going to testify on behalf of the bar association on a bill dealing with the probate code. So I have been involved, and will continue to be involved, in legislative matters. But I hadn't really given that any thought. [CONFIRMATION]

SENATOR BLOOMFIELD: Okay, thank you. [CONFIRMATION]

SENATOR AVERY: If you are involved in legislative matters, would it be your intent to stay away from deeply partisan issues? [CONFIRMATION]

ANDREW LOUDON: No. [CONFIRMATION]

SENATOR AVERY: No? [CONFIRMATION]

ANDREW LOUDON: You mean as a member of the commission... [CONFIRMATION]

SENATOR AVERY: Yes. [CONFIRMATION]

ANDREW LOUDON: ...or as an individual and citizen? [CONFIRMATION]

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SENATOR AVERY: No, I'm not talking about what you do in your private life.  
[CONFIRMATION]

ANDREW LOUDON: Okay. All right. [CONFIRMATION]

SENATOR AVERY: But, I mean, you can be partisan on the commission or you can be less partisan or nonpartisan. So my...I was really more interested in how you would conduct yourself as a member of the commission. [CONFIRMATION]

ANDREW LOUDON: Oh, okay. No, again, I can be objective and look at the laws as they are on the books and enforce them. And my experience, which is limited to date, is that it has not been a partisan experience at all or even a bipartisan. They've been really straightforward matters that have come before the commission so far.  
[CONFIRMATION]

SENATOR AVERY: Well, the commission works very closely with this committee. That's why you're getting so many questions. [CONFIRMATION]

ANDREW LOUDON: I can handle it. [CONFIRMATION]

SENATOR AVERY: Any other questions? Thank you, Mr. Loudon. [CONFIRMATION]

ANDREW LOUDON: Yes, sir. [CONFIRMATION]

SENATOR AVERY: Now we will accept anybody who wishes to comment on this nomination. Don't see any. For the record, we will be meeting in Executive Session later today to vote on your confirmation and you will hear from us soon. Thank you very much for appearing. Now we will move to our agenda starting with LB980. Senator Johnson, welcome to Government. [CONFIRMATION]

SENATOR JOHNSON: My first time. [LB980]

SENATOR AVERY: That is right. Your first time. [LB980]

SENATOR JOHNSON: I've been warned. [LB980]

SENATOR AVERY: You've been warned. It's a delightful experience. [LB980]

SENATOR JOHNSON: Okay. Thank you. Thank you, Senator Avery, Chairman, and members of the Government, Military and Veterans Affairs. My name is Jerry Johnson, J-e-r-r-y J-o-h-n-s-o-n. LB980 concerns the area of local government that is often misunderstood, if not completely unknown to many. It's the township form of

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government. Currently in Nebraska, only 26 counties operate under the township form of government which, essentially, divides a county into smaller political subdivisions. Each of these subdivisions or townships has a three-person board and has levy authority or has funds directly distributed to them by the county board. Historically, the purpose of the township was to carry out certain functions of counties that might be more readily accomplished by a smaller, more local form of government. State statute provides for townships to have cemeteries and libraries, construct wells, protect against fires, and perform other governmental functions. As time has evolved, most townships now limit their activities to roads. The townships employ people to operate road graders on roads within their boundaries. They spread gravel, remove snow, and perform other appropriate functions which might include signage. And some townships contract with the county to perform road functions. And others, having no township board, have become inactive and the responsibilities then fall on the county to continue to keep rural roads safe. It is these inactive townships that result in the introduction of LB980. Currently, if a township board has become active due to the lack of a significant number of board members and the county board has tried and been unable to fill the vacancy for six months or more, the county board of supervisors must hold a public hearing to determine if the township shall be declared inactive. It does not terminate the township, it just makes it inactive. Notice of the hearing must be published for two consecutive weeks. And then after the hearing, the board has up to six months to fill the positions and keep the township active. During this time, any tax distributions to the...will be held by the county in a separate township fund and disbursed only to pay current outstanding obligations of the township board. LB980 shortens the period of time from six months to 45 days before the two-week publication of notice. And public hearing will be held by the county and to 45 days after the public hearing before a resolution may be made to terminate the township board. Right now, it takes at least a year or a year and a half in order to accomplish this. Also, LB980 will allow the county board to continue to levy the township to pay for future obligations of the township until such time as the township board may be reactivated. My understanding, they can be reactivated when at least three members of that township come with a written document saying they wish to serve on the township board. Then that township board can be reactivated and then they would stand for election at the next election. It's a form of government that, I would say, probably most of the western counties in Nebraska have chosen not to utilize, as there's only 26 left. My home county is Phelps County. My home township is Prairie. My dad served as justice of the peace. I'm not sure what all he had to do. I don't think he married anybody. But he was the one that kind of called the meetings and handled disputes and things like that. So it's probably a form of government that at least a lot of counties have found not necessary. But for those 26, we need this vehicle because we're finding it's hard to get people to serve on some of those township boards, so. There's a representative from Saunders County, our county clerk, and representative of NACO that I think will follow me plus, maybe, others to answer some of the questions. But I will attempt to answer any you have. [LB980]

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SENATOR AVERY: Let me ask you first, this is a fairly common problem, isn't it?  
[LB980]

SENATOR JOHNSON: Yeah. I have letters from at least three counties that have this current situation. And it takes so long for them to be able to do anything now. And the roads need to be maintained and the county really doesn't have that authority. And they have to keep giving tax money to that entity. So it just shortens up that process. I believe, at least what I understand is, that the county would still, of course, levy the money but be able, then, to function and keep...make sure that they are providing the funds needed and providing the work to be done. And so they'll be able to quantify, here's the tax money and here's how it's been used. So I believe that can still be tracked. [LB980]

SENATOR AVERY: Why wouldn't we just eliminate all township forms of government?  
[LB980]

SENATOR JOHNSON: I'll go on record and say I think that's a good idea. I think it should be...I think it could be looked at down the road and I probably would be interested in looking at that. [LB980]

SENATOR AVERY: Yeah. You might find support on this committee. [LB980]

SENATOR JOHNSON: Okay. [LB980]

SENATOR AVERY: Senator Wallman. [LB980]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, welcome to this committee. I used to be a justice of the peace so I know it's a thankless job and it doesn't pay much either. But do you think this would encourage townships to merge or just help them out this way is getting...they put me on the thing. I wasn't...I didn't run for the job. Somebody put me on the ballot and I got so many votes and there I was, so. And I accepted it but then I didn't run again either. [LB980]

SENATOR JOHNSON: Well, I think what this does with the process, it still finds out, okay, can we get three new people or three people to run? [LB980]

SENATOR WALLMAN: Uh-huh. [LB980]

SENATOR JOHNSON: And if they don't, I think that's a signal that it's not a high-powered job, I guess put it that way, or a job that everybody is trying to seek. And I think it kind of sends a message that maybe we should look at changing that form of government. [LB980]

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SENATOR WALLMAN: Absolutely. Thank you. [LB980]

SENATOR AVERY: Senator Bloomfield. [LB980]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Johnson, you were just told that you might find support for doing away with that in this committee. Don't look for unanimous support. I think it's a local issue. The county should be able to decide that for themselves. [LB980]

SENATOR JOHNSON: I would agree. I guess what I would probably propose would be that those counties that still have a county form of government, that in a two-year span after it was introduced that the counties would put it on a ballot for the counties to decide. [LB980]

SENATOR BLOOMFIELD: If they wanted. Okay. [LB980]

SENATOR JOHNSON: Yeah. That would be my thought right now. [LB980]

SENATOR BLOOMFIELD: Thank you. [LB980]

SENATOR AVERY: I just received a note from the only expert on this committee, legal counsel, who informs me that twice we've had a constitutional amendment on the ballot--and twice it's been defeated--that would do exactly what you and I were just talking about. So it's in the constitution. [LB980]

SENATOR JOHNSON: Okay. [LB980]

SENATOR AVERY: So we'd have to change the constitution in order to eliminate them. Senator Scheer. [LB980]

SENATOR JOHNSON: For the state to do it. [LB980]

SENATOR AVERY: Yeah. [LB980]

SENATOR JOHNSON: Yeah. But individual counties can, yeah. [LB980]

SENATOR SCHEER: Thank you, Senator Avery. Senator Johnson, just out of curiosity--it's evidently somewhat of a problem in the counties that have these--do you know how many are sitting vacant right now that are just waiting for that time to expire? [LB980]

SENATOR JOHNSON: No, I don't. I think the representative from NACO might have that answer. I received letters from two counties. And I know Saunders County has that



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situation, has had it off and on. I think...now I know, at least the information I have, I think Buffalo County just voted to eliminate townships. And that's effective, I think, maybe in 2015. And there's a couple of others that are probably looking at it on their own. [LB980]

SENATOR SCHEER: Okay, thank you. [LB980]

SENATOR AVERY: Any other questions? Thank you, Senator Johnson. [LB980]

SENATOR JOHNSON: Thank you. [LB980]

SENATOR AVERY: Are you going to stay around to close? [LB980]

SENATOR JOHNSON: I'll stay around, yeah. [LB980]

SENATOR AVERY: Okay. [LB980]

SENATOR JOHNSON: Thank you. [LB980]

SENATOR AVERY: We will accept proponent testimony now to LB980. Welcome. [LB980]

PATTI LINDGREN: Thank you. Good afternoon. I'm Patti Lindgren, Patti, P-a-t-t-i, Lindgren, L-i-n-d-g-r-e-n. I am currently the Saunders County Clerk and have been county clerk for 22 years. So I've had lots of experience doing...with townships for...until the current legislation when or the lid level legislation went into effect. I used to actually help townships and fire districts with their budgets. And most of those small groups have issues with their budget. But to get back to this, about four years ago NACO introduced a bill that would help out counties if you had township boards that would have vacancies. You have an active township board if there's at least two members on it. So you can have one member gone or inactive. And those two members, then, have to find the third position. When there's only one position filled, then it is inactive. And then that becomes a county issue. When I...when legislation was put in by NACO about four years ago, I looked at the legislation and that had a wording "June and July" in it. And I kind of figured it out. And I contacted Mr. Dix from NACO and I said, Larry, I said, I see a perfect storm right here with this legislation that...and at that particular time, the townships were up for election. Okay? And the townships are up for election this year, so. And sure enough, right after the townships...the election was done, I had two townships that went inactive. And so to play that whole scenario over through the legislation that was in force back then, it was a year and a half before my board could get to the point of even considering a termination of those township boards under the current legislation at that time. But the one thing lacking was giving those...the board of supervisors or commissioners, depending...well, supervisors because you're a

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commissioner if you don't have township boards of government. But the board of supervisors, the levying authority within those townships to be able to draw taxes to pay for those roads within that township that were currently drawn by the township boards. So it was basically unfair to all the constituents of the county if you had these little pockets that the county was paying for the taxes on maintaining those roads but other counties...other townships were drawing taxes. So we sat, actually, almost three years before we could get those two boards filled. And we barely got it done prior to the budget time of last year. You have to have two members in place in order for a township to do a board or to do a budget, submit the resolution to the board of supervisors requesting a levying authority, and then go from there. Like I said, we had just barely got them in place last year. So we went three years without any taxes being collected. The board had all...everything in place to terminate those townships but they just didn't do it because of not having a levying authority. LB980 gives the county board levying authority that if a board goes dormant...to give them levying authority until another board can get in place or to terminate it or to put it to the vote of the people. And you're the legal counsel for the...she is correct. In 1998, the state did put up a question for township boards; it failed. Saunders County also, at that time, had the question to its voters to terminate the township form of government and it failed there too. So it's very hard...once it's in place, it's very hard to get the individuals of a community to understand, you know. And a lot of the times what's bad about these boards is, they have to meet such criteria anymore, like the Open Meetings Act. Most of these people are farmers, just...you know, and it's a rainy day, let's have a meeting. They don't understand they have to give five days' notice, you know, those kind of things. So anyway, I would encourage you to vote on this. I know this is not a priority bill but it is very vital, at least to Saunders County and to the other counties that are through there. And if you could somehow get it through this year, it would be very helpful because I look for another bad storm to happen after this election year because we won't have members to vote it. About half the people go on the ballot, half of them are write-ins. And it only takes one write-in and it doesn't have to declare themselves, all you just go look for them. Uh-huh. So any questions? [LB980]

SENATOR AVERY: Our elections aren't quite that easy. [LB980]

PATTI LINDGREN: No, they're not. [LB980]

SENATOR AVERY: Senator Wallman. [LB980]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, thanks for coming, Patti. [LB980]

PATTI LINDGREN: Uh-huh. [LB980]

SENATOR WALLMAN: And I've always wondered. When we got our so-called what,

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vouchers or something from the townships for money. [LB980]

PATTI LINDGREN: Uh-huh. [LB980]

SENATOR WALLMAN: And do you charge in Saunders County to collect that for the townships? [LB980]

PATTI LINDGREN: You mean does the treasurer collect a... [LB980]

SENATOR WALLMAN: Yep. [LB980]

PATTI LINDGREN: I do believe that they have a small fee that they collect, just like any other political subdivision, if I'm... [LB980]

SENATOR WALLMAN: I always hated to pay that, you know. [LB980]

PATTI LINDGREN: I know. [LB980]

SENATOR WALLMAN: Thank you. [LB980]

PATTI LINDGREN: Uh-huh. Any other questions? [LB980]

SENATOR AVERY: Any other questions? Don't see any, thank you. [LB980]

PATTI LINDGREN: Thank you. [LB980]

SENATOR AVERY: Any other proponents to LB980? Good afternoon. [LB980]

BETH BAZYN FERRELL: (Exhibit 1) Good afternoon, Chairman Avery and members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. We'd like to thank Senator Johnson for introducing this bill. As you've heard, the bill is really intended to streamline the process for when a county board can assume the financial responsibilities and get access to the funds and take care of the duties of the township board when they're unable to appoint enough board members or enough vacancies that they can't get those filled. I would be happy to try to answer questions. [LB980]

SENATOR AVERY: Thank you. Any questions from the committee? Senator Murante. [LB980]

SENATOR MURANTE: Thank you for coming down. Were you involved in the drafting of this bill at all? [LB980]

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BETH BAZYN FERRELL: Yes. [LB980]

SENATOR MURANTE: Okay. In the new language in lines 12 and 13, it appears that the bill is not only taking out the six-month requirement in terms of how long vacancies need to exist, but it's adding a trigger. So it's adding that two or more vacancies need to exist but it's adding the trigger that the county board has made...needs to make reasonable attempts but has been unable to fill the position. It looks to me like that was not previously in statute. And I'm wondering where that language came from. What constitutes a reasonable attempt? And what if there's disagreements as to just how hard the county board has been trying to fill the positions. [LB980]

BETH BAZYN FERRELL: There's not, necessarily, a statutory definition of that. [LB980]

SENATOR MURANTE: Uh-huh. [LB980]

BETH BAZYN FERRELL: But I think our intent was to make it clear that the board had made efforts, they had contacted people, they had tried to encourage someone to apply for the vacancies to, you know, to be able to appoint those. If there's another phrase or different kind of language, I know we'd certainly be open to that. [LB980]

SENATOR MURANTE: Well, it seems to me that usually in these types of laws, there are tangible things that need to be done before a trigger mechanism. They have to advertise for a certain period of time. I think that's actually in the language that's to be stricken. They've reinserted it in a different place. And things that can be quantified rather than just make a reasonable effort and who gets to determine what that is, is up in the air, I guess. [LB980]

BETH BAZYN FERRELL: And we do reference 32-567... [LB980]

SENATOR MURANTE: Uh-huh. [LB980]

BETH BAZYN FERRELL: ...which is the general appointment language. And that's the language that Senator Garrett's bill addressed last week. [LB980]

SENATOR MURANTE: Okay. Okay. [LB980]

BETH BAZYN FERRELL: So that does set out a 45-day window, so. [LB980]

SENATOR MURANTE: Okay, great. Thank you. [LB980]

SENATOR AVERY: And we just advanced that bill (inaudible). [LB980]

BETH BAZYN FERRELL: Right. [LB980]

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SENATOR AVERY: Any other questions? I don't see any. Thank you for your testimony. Additional proponent testimony on LB980? All right. Seeing none, we'll entertain opponent testimony. Is there any neutral testimony? Senator Johnson, you are welcome to close. [LB980]

SENATOR JOHNSON: My closing will be brief. Just a comment on your question. I know in Saunders County, they've had ads in the paper, the supervisor from that area making contact. So if there needs to be something in there, I'm sure that can be clarified a little bit. I think the other point that I would comment and the only other point, would be as Patti Lindgren commented, the timing is right for this to be because of the election year. And if there's a way that, through committee priority or consent, maybe, if there's not any other issues so that we're able to move this one forward, it would be appreciated if it can come out of committee. That's all I have. [LB980]

SENATOR AVERY: Thank you, Senator. [LB980]

SENATOR JOHNSON: Any questions? [LB980]

SENATOR AVERY: No questions. Thank you very much. [LB980]

SENATOR JOHNSON: Okay, thank you. [LB980]

SENATOR AVERY: That will end the hearing on LB980. We will now move to LB773 and invite Senator Al Davis to join us. Good afternoon, Senator. [LB980]

SENATOR DAVIS: (Exhibit 1) Good afternoon, Chairman Avery and members of the committee. I am Al Davis, A-I D-a-v-i-s, and I represent the 43rd Legislative District. Today I am introducing LB773. This bill would amend Nebraska's election law to allow voters who have not declared a party affiliation to vote on a partisan ballot at primary elections. Section 1 of the bill would change the information electors are given when they register so they would know that they can participate in this manner. Section 2 of the bill would change the procedures at primary elections to allow undeclared or Independent voters to vote on the partisan ballot of their choice. There are reasons to be concerned about the low number of voters who turn out for primary elections. These handout materials about state primary systems and unaffiliated voter data were prepared for my office by our excellent Legislative Research Office. The information that was collected, clearly illustrates the need for the changes proposed in LB773. Here are some statistics gathered by Legislative Research. While Independents have become a much larger segment of the electorate, their turnout in elections has not kept pace. Perhaps they feel excluded from voting in many primary races and choose to stay home rather than going to cast votes in a mere handful of races. In the 2012 primary, only 26 percent of all registered voters came to the polls. In the 2012 primary, only 35 percent of

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registered Republicans voted, only 23 percent of registered Democrats voted, and only 8 percent of Independents participated. LB773 would be an incremental step towards improving voter turnout and bringing more of our citizens into the electoral process. We should consider the fact that electors who register but do not declare a party affiliation are telling us two things. First, they want to be involved in the process, otherwise they would not bother to register. Second, they are, for some reason, not ready to declare themselves as members of either of the two main parties. We tell ourselves that the voting public speaks by way of the election ballot. Winners of elections frequently claim they have received a mandate from the voters to fulfill their campaign promises. But is that really true? Whose voices do we hear? The history of registration and voting patterns in our state may suggest some disaffection with the present election law setup. The turnout in 2012 may be evidence of that. We should also look at voting registration patterns. In 1980, about 5 percent of registered voters chose to be nonpartisan. Now, nearly 20 percent are nonpartisan. The proportion of Democratic Party registrations has fallen. The proportion of Republican Party registrations has stayed basically flat. Independent registration is the only category that has grown as a proportion of all registered voters. Since 1980, we have added a total of 316,000 people to the registration rolls. Of those, about 171,000 are now registered as Independent. Fifty-four percent of the voters added to the rolls since 1980 have chosen not to declare themselves as a member of either party. Our primary elections can call for votes on 36 selected offices and ballot items. Sixteen of those are on partisan ballots. This means that the undeclared Independent voters are shut out of almost half the ballot items. Their voice is not heard at primary election time. Nebraska is not alone in allowing the parties to have a say in who can vote in their primaries. We may have evidence to suggest that this is not working to bring people to the polls. LB773 would give voters who want to vote that are not interested in or ready to declare a party affiliation the opportunity to cast their vote on a partisan ballot and perhaps increase the turnout. And if these voters do turnout and vote, they may become more engaged in the process and more inclined to choose a party affiliation in the future. Whatever the case, increasing the dismal Independent turnout demonstrated in the 2012 election will strengthen the local election process. In many rural Nebraska counties, a minority of registered voters choose who will be elected the next fall. Even with nonpartisan electorates, since only 8 percent of Independent voters actually voted in 2012. I don't think this is what we want in the modern age. We need to stimulate interest in voting and elections to ensure that we have candidates who are elected with a broad swath of support. Thank you, Senator Avery. And I'll take any questions. [LB773]

SENATOR AVERY: Okay. Thank you, Senator. Did you consult with the two political parties on this legislation? [LB773]

SENATOR DAVIS: No, I did not. [LB773]

SENATOR AVERY: Would you like to explain why? [LB773]

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SENATOR DAVIS: I wasn't sure that there would be support for that. Now since the bill was introduced, we have seen the Democratic Party has moved to open the primary process. And I want to tell them what a good idea I think that is. I would encourage the Republican Party to do the same thing because I think it will strengthen both parties overall. [LB773]

SENATOR AVERY: I notice here in the Legislative Council or the Research Office prepared a report and a lot of states actually do this, both parties. [LB773]

SENATOR DAVIS: There are a lot of states that do it... [LB773]

SENATOR AVERY: Yeah. [LB773]

SENATOR DAVIS: ...in a lot of different ways, if you look through that. I think the information in that's really worth spending a little time with. I was kind of fascinated with how each state has sort of tweaked it to the way they want it to be done. Some are very open, some are totally closed. [LB773]

SENATOR AVERY: Uh-huh. Senator Scheer has a question. [LB773]

SENATOR SCHEER: Thank you, Senator. Senator Davis, so what you're really looking at is based on the report is a semiclosed? Or if you're affiliated, you do vote in that party and only the unaffiliated, then, would be able to choose one or the other. Is that... [LB773]

SENATOR DAVIS: That's right. That's right. That's what I'm looking at. [LB773]

SENATOR SCHEER: Okay. [LB773]

SENATOR AVERY: Any other questions? Senator Bloomfield. [LB773]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Davis, why do you feel that someone that is not willing to get involved in a party and do the work that is required within that party should, all of a sudden, have a right to vote for that party's candidate or against him? [LB773]

SENATOR DAVIS: Well, first of all, whoever is elected to any position is going to represent all the voters, not just the voters of that particular party because your duties...and we'll talk about nonpartisan races. [LB773]

SENATOR BLOOMFIELD: That's why we have a general election. [LB773]

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SENATOR DAVIS: That's true. But the candidates in rural Nebraska--and I think you probably know this--a lot of times are elected on the primary ballot because rural Nebraska is heavily Republican. So you'll have, maybe, two people running for a position. One moves forward. That person, then, might be elected by 50 percent of the electorate. We'll say they might be Republican. But of that 50 percent, if only 30 percent are turning out to vote, you end up with a very, very low percentage of people who really are endorsing that candidate. I think this will open the process and make the candidates be stronger. [LB773]

SENATOR BLOOMFIELD: It is already open to either party in the general election. I am hard pressed to understand why we would want someone who is supposedly a nonpartisan to come in and decide who the Republican candidate should be. [LB773]

SENATOR DAVIS: Well, I'm not sure that they're going to do that, Senator Bloomfield. But give them an opportunity to have a stake in the race. You'll stimulate more interest in the nonpartisan ballots also. [LB773]

SENATOR BLOOMFIELD: Okay, thank you. [LB773]

SENATOR AVERY: Any other questions? Oh, Senator Murante. [LB773]

SENATOR MURANTE: Thank you, Senator Avery. I've given this proposal a lot of thought and you and I have talked about it. And you used a phrase a couple of times that I tried to write down verbatim. But you talked about voters who aren't interested in or aren't ready to commit to a political party. And that's really the universe of people that you're talking about. So if a person is not interested in or ready to commit to a political party, why should that group of people have any say over what the political party that they aren't interested in or ready to commit to, what that party nominates or who that party nominates? [LB773]

SENATOR DAVIS: And I'll say again, I think it strengthens the process. A lot of times in different parties, you'll have what I will call true believers that are voting. [LB773]

SENATOR MURANTE: Uh-huh. [LB773]

SENATOR DAVIS: And so I think that ends up polarizing both the parties. I think you have very strong people on the left that want to vote only for people that believe what they think. Same thing on the right. [LB773]

SENATOR MURANTE: Uh-huh. [LB773]

SENATOR DAVIS: But most of the voters in this country are somewhere in the middle. So, essentially, they're not getting a real handle on being able to vote. And if you've got



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220,000 people that have decided that they're going to be Independent, I think that's sending a message to the parties. I think we'll help both parties if we put this through. [LB773]

SENATOR MURANTE: And as we've talked about in this committee a number of times, political parties are private organizations. They're not arms of the government, they're private organizations. And our state statute, at the moment, gives them the freedom to accept Independents in their primaries or not. It's up to them. Why...it is their party, it's their private organizations, the party belongs to them. If what we're really talking about doing, as you said, the Democratic Party just came along on board. So really, what we're talking about right now is forcing the Republican Party to do something against their will in their own party's primary. Is that something that we ought to be doing as a Legislature? [LB773]

SENATOR DAVIS: Well, first of all, we, as taxpayers, have to pay for that primary election. So we need to, you know, permit all the taxpayers to have a handle in it if they choose to do so. [LB773]

SENATOR MURANTE: So you would support Democrats being able to vote in Republican primaries and vice versa? [LB773]

SENATOR DAVIS: No. No, I wouldn't go that far. [LB773]

SENATOR MURANTE: Okay. [LB773]

SENATOR DAVIS: But, I mean, since the taxpayer has to pay for these elections, we're disenfranchising a large group of people--especially in rural Nebraska--where the Republican Party dominates so much. You know, those folks never really get a chance to express their vote because that decision already is made in the primary election. [LB773]

SENATOR MURANTE: And I don't disagree with you. But I do disagree with the notion that someone is being disenfranchised because they have chosen not to join a political party and, therefore, are not able to exercise an opinion in the political party that they chose not to be a part of. They can join it whenever they want to. [LB773]

SENATOR DAVIS: You know there...and Senator Murante, there are lot of good reasons why people decide not to do that. One of which might be, I don't want to get the postcards, I don't want to get the phone calls. [LB773]

SENATOR MURANTE: Uh-huh. [LB773]

SENATOR DAVIS: If I'm going to be an Independent, I'm not going to be bothered by

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that. And people don't like those things. And you know how often you get those cards in the mail... [LB773]

SENATOR MURANTE: Oh, yes. [LB773]

SENATOR DAVIS: ...and those phone calls. [LB773]

SENATOR MURANTE: And it seems...I think you have identified a problem; there's no doubt about it. And you identified a problem with the system that we have right now. I think my issue with your bill is, you're not really seeking to change the system. You're seeking to use the system that we have right now, where we say both parties get to nominate someone. It's just that who those parties...you don't have to be a member of the party to be part of the process by which those nominations are being made. And that is...the two things don't seem to go together to me. If we're going to say the political parties...the process should be the political parties make a nomination and that's how we determine who's on the ballot, then it should be up to the political parties to figure out how they're going to...it should be up to those political parties. [LB773]

SENATOR DAVIS: I understand your argument. I don't necessarily agree with it. [LB773]

SENATOR MURANTE: Okay. Thank you. [LB773]

SENATOR AVERY: Senator Bloomfield. [LB773]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Would this go on down to the county level? I'm thinking maybe delegates to the Republican or the Democrat state convention. Are the unregistered or the unaligned voters going to be able to come in and decide who is the delegate? [LB773]

SENATOR DAVIS: I'm not sure how delegates are selected in every county, Senator Bloomfield. In Cherry County, which is my county, the delegates are selected at the county convention. [LB773]

SENATOR BLOOMFIELD: Well, I believe if Mr. Spray comes up, he'll be able to answer that. But I believe they have to run in the county election to be a delegate to the county convention from whence they can move to the state convention. [LB773]

SENATOR DAVIS: In Cherry County, they send a notice to people that if you want--I think this is the way it's done--if you want to be a delegate, you need to let the county committee know by a certain date. Then they have their county convention and then they're elected at that county convention. [LB773]

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SENATOR BLOOMFIELD: Okay. [LB773]

SENATOR DAVIS: Of course, you're aware that county commissioners, clerks, treasurers, all those people are partisan elections. [LB773]

SENATOR BLOOMFIELD: Yes. I don't know, this notion would kind of appear to me that if I'm having something in my house, i.e., a party, political party, you don't choose to come but you're wanting to tell me what I can serve. [LB773]

SENATOR DAVIS: Well, I'm not permitted to come. [LB773]

SENATOR BLOOMFIELD: You can join the party at any time. [LB773]

SENATOR DAVIS: The only way I can come to your party is to declare that I want to support the candidates... [LB773]

SENATOR BLOOMFIELD: Absolutely. [LB773]

SENATOR DAVIS: ...that you're putting forward or that...your policies. [LB773]

SENATOR BLOOMFIELD: No, you can join the party without necessarily supporting the candidates. That's why we have primaries is, you get to pick and choose who the candidate is. You're wanting to pick and choose who they are without being a member. You're wanting to tell me what I can serve Senator Murante but you don't want to come to the party. [LB773]

SENATOR DAVIS: Well, I don't really see it quite like that. [LB773]

SENATOR BLOOMFIELD: Okay, thank you. That's one of those areas where we're going just have to disagree. [LB773]

SENATOR AVERY: Senator Scheer has a question. [LB773]

SENATOR SCHEER: Thank you, Senator. Senator Davis, are you at all concerned that it may impact the two-party system to the extent that there is no benefit, necessarily, to belong to a party? I mean, their activities but as far as voting because if you are an Independent or unaffiliated, I still would get to vote for Democrats or the Republicans, whichever I choose. But I don't have any obligation to that party at all. And (inaudible) concern would be that it is now available to, what I'm going to say, is a vote against a, perhaps, a stronger candidate because if there's two Republicans or two Democrats are running and one is substantially, say, a much stronger candidate, those Independents can come in and vote for the lesser of the two simply because they don't want that one to come out of the primary. And so, essentially, be able to defeat the person that is the

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(inaudible) party affiliation before it ever gets to the general election. And so (inaudible) you concerned that it has an impact on a political process? [LB773]

SENATOR DAVIS: The first thing I would say is, if we have seen Independent voters as a percentage of the electorate, go from 4 percent or 5 percent 30 years ago to 20 percent today, that already indicates that there's a problem with the party structure. It's not appealing to the mass people and probably to younger people, specifically. So I think that's the first thing. The second thing I would say is, every party relies on hard party workers. That's how things get done. It's people that work hard for the party. And candidates that work really hard are the ones that are probably going to be elected. The third thing I would say is, I don't really see the Independents as being an organized block, that there's going to be a big effort by an organized group of Independents to move in and undermine party candidates. I think what we're going to do is enfranchise people and make them more interested in the process, kick up participation at the primary level, which I think is a good thing. And, as I said, not just on partisan issues but on nonpartisan because if you're a Independent voter and you think, well, I'm not going to go and vote for the school board because I don't want to waste my time. If I could vote for Adrian Smith, I would do that. So if they went in to vote for Adrian Smith, they would probably go in and vote for the school board, which I think is a good thing. [LB773]

SENATOR SCHEER: Well, the only response I would have is, yes, indeed, the Independent voters have gone from roughly 6 percent to 19 percent. But based on the same information, the Republican Party is essentially flat or 1 percent higher. And the drift of reduction is all from the Democratic Party. And I'm just wondering, if we're trying to fix a problem that is inherent within a political party that they're losing the momentum of that party. And so we're trying to change a system, really, to reflect the wishes of disenfranchised voters of one political party but not the other. Because there hasn't...there has not been a loss from the Republican...based on the information you presented us, which I'm very interested in. Thank you. But the drop off has all been from the Democratic side so, I mean, essentially, the growth of Independents has been at the expense of the Democratic Party. And... [LB773]

SENATOR DAVIS: And the Republican Party. [LB773]

SENATOR SCHEER: Well, not really. The Republican Party... [LB773]

SENATOR DAVIS: Well, the Republican Party is holding steady. [LB773]

SENATOR SCHEER: Well, it's 1 percent above. So I mean, if you're at 50 percent, that's still 50 percent. A 13 percent change is exclusive to the Democratic Party. And I'm just wondering if we're trying to fix a problem that is a...from a political party standpoint rather than an election standpoint. [LB773]

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SENATOR DAVIS: I guess I don't quite see it that way, Senator Scheer. I think we've seen in this country over the last 30 years, a more polarizing electorate. And I think Nebraska is becoming more conservative and, therefore, more of a red state. You know, the blue states get bluer, the red states seem to be getting redder. So I think that's more what happened with the voter registration. Parties have to work hard to maintain their membership. And, frankly, I don't think the Democratic Party has done a very good job of doing that over the last 30 years. If you just...all you have to do is look at the offices that were held by the Democrats. At one time, they had a...you know, they had several...well, we had two senators recently, we had a Governor; this is back 15 years ago. Now today, it's all Republican. That indicates, to me, a growing conservative trend in this state. [LB773]

SENATOR SCHEER: Okay, thank you. [LB773]

SENATOR AVERY: There's another way to look at this. And that is, that Democrats are changing to Independent or, in fact, they sometimes change to Republican in order to have an influence on the primary because they know that they're not going to have much of an opportunity to influence the outcome in the general election. I know people who have done that. I don't know what the number is, but I suspect... [LB773]

SENATOR DAVIS: I know several people that have done that. [LB773]

SENATOR AVERY: Yeah. Any other questions? Thank you, Senator Davis. [LB773]

SENATOR DAVIS: Thank you. [LB773]

SENATOR AVERY: Are you going to stay for closing? [LB773]

SENATOR DAVIS: I will. [LB773]

SENATOR AVERY: Okay. We are on proponent testimony to LB773. Another senator. Welcome. [LB773]

SANDRA SCOFIELD: Thank you. Good afternoon. My name is Sandy Scofield, S-a-n-d-y S-c-o-f-i-e-l-d. I spend part of my time in Lincoln and part of my time in Chadron. And I am here today to support LB773. I found your questions very interesting because my history is, I was raised a Republican. I drifted in my 20s and became a Democrat. And somewhere over 15 years ago, I became an Independent and have stayed there. And so I think that this bill is really worth considering. I thought Senator Murante's comment about changing the system was worth also thinking about. My practice is I, frankly, go down to the election commissioner's office and change my registration when I want to vote in a primary. And I've done that now ever since I

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switched. Now that's kind of inconvenient but I'm one of the leisurely retired so I've got time to go do that. But particularly speaking from my experience in the rural part of the state where I'm from, I know a lot of people who are business people who are Independents. In a little community, it's just not a good idea to be politically aligned. Somebody will get offended and you'll lose your insurance policy or whatever kind of business you're in. So we have business people, very frankly, that are Independents. They're good, solid citizens. They're busy people. My guess would be, they don't have the time or the inclination to zip down and change their registration like I do. So there's an important bunch of solid citizens, in particular, out there that I think we're excluding from the process. And I would...there's no way to prove that, obviously, with the data we have. But from anecdotal evidence, I know that's the case. The turnout in the primaries in this state has fallen by some 30 percent since 1988, according to the data from the Research Office. I found these...the work of the Research Office to be really useful and very interesting. Senator Davis shared that with me. But I think that it's...there's really no good reason to deny these folks an opportunity to go down to vote. The main objection to the bill that I hear is, it will weaken the two-party system. Well, I think the two-party system is doing a pretty good job of doing that all by itself. So...and one of the things I discovered upon looking at some of the various ways that states handle this, I was interested in both Iowa and Wyoming lets you just, apparently, walk in on election day. You can register however you want to or you could even register if you're not registered and you can declare whatever you are, if I'm reading that correctly. Frankly, I'd like that system very much. That would suit me just fine. It would save me an extra trip now and then. But I think the thing that's really weakening parties right now is the public perception of parties. I've recently retired from the university so I came into contact with a lot of students. And it really concerned me how cynical college students are, in general, about the political process and how inclined they are just not to participate. And they're not at all friendly to the party process. I think that may explain some of the falloff, not all of the falloff in the participation and the process. But if these young people don't get busy and have an interest in our system, that really concerns me and I know it would concern you as well. I think as far as that trend of increases of people registering Independent, the 16 percent since the year 2000, I'm not too sure we won't continue to see that. Whenever I'm out chitchatting with people, you know...of course, I do hang out with people that are a little more politically involved than probably the average human being, but people are pretty fed up with the process. And that's an unhealthy thing. Regardless of what party we belong to, that's not a healthy thing. And so if this kind of a bill would encourage people to start to pay more attention and put us back on a path of where people take a genuine interest in the issues rather than, you know, who can one up the other side or come up with the meanest wedge issue or whatever the new angle is, I think that's healthy for the system. And so I would encourage you to, at a minimum, support this bill. And if you want to look further at a more radical restructuring of the process, I think there might be some things I'd support. With that, I'd be happy to respond to questions. [LB773]

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SENATOR AVERY: Thank you, Senator. Senator Bloomfield. [LB773]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Ms. Scofield, I tried to read between the lines here a little bit. I think I might have just heard you, between the lines, say that you would be fine with doing away with the political parties, doing it sort of like we do with the legislative body. Whoever moves forward... [LB773]

SANDRA SCOFIELD: Actually, I think in Nebraska, that has served us very well. I don't think that's a realistic thing in terms of the national. I mean, we're stuck with the parties regardless of whether we're happy or unhappy with them, so. But within the state... [LB773]

SENATOR BLOOMFIELD: But you...would you be in favor... [LB773]

SANDRA SCOFIELD: It's none of my business, really. If somebody wants to have a political party, more power to them. So no, I'm not advocating we do away with political parties. [LB773]

SENATOR BLOOMFIELD: Okay. For statewide election, you would not favor doing away with the party and just having whoever runs, so that top two move forward? [LB773]

SANDRA SCOFIELD: I think California has done that. It appears to be an interesting experiment. Might be worth considering. I'm a big supporter of the way we run the Unicameral, yeah. [LB773]

SENATOR BLOOMFIELD: Yeah, I don't think I got an answer to the question in there but that's all right. Thank you. [LB773]

SANDRA SCOFIELD: Well, ask it a different way. [LB773]

SENATOR AVERY: She used to be a politician, you know. [LB773]

SENATOR BLOOMFIELD: I think, perhaps, she still is. [LB773]

SANDRA SCOFIELD: Old habits die hard, Senator. [LB773]

SENATOR AVERY: Senator Wallman. [LB773]

SENATOR WALLMAN: Thank you, Chairman Avery. Yeah, and thanks for coming. Do you think part of this dilution with the national parties is because our primaries are in the wrong place? You know, when the primary election comes around a lot of it's decided by other states and... [LB773]

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SANDRA SCOFIELD: No. No, I think it's more people are...I think people are kind of turned off by the negative tone of politics, in general. I think there's a concern about how much money it costs. And there has to be a sense by all of us little folks that, you know, so I give \$100 to a candidate. So what? What difference does it make? I'm going to be outbid. So I think those are the kinds of things that are really hurting the process. [LB773]

SENATOR WALLMAN: I know we get upset with all the money. But I think if the candidate is good, we just ought to say, look at where the money is coming from. You know, transparency where the money is coming from. [LB773]

SANDRA SCOFIELD: Absolutely. [LB773]

SENATOR WALLMAN: And I don't care if it's millions of dollars. But we ought to have where it's coming from. Thank you, Senator. [LB773]

SANDRA SCOFIELD: Uh-huh. [LB773]

SENATOR AVERY: Thanks for your endorsement of my bill. Any other questions? Thank you. [LB773]

SANDRA SCOFIELD: Thank you. [LB773]

SENATOR AVERY: More proponent testimony? Another politician. Welcome, sir. [LB773]

JAMES JENKINS: (Exhibit 2) Thank you. My name is James Jenkins, J-a-m-e-s, Jenkins, J-e-n-k-i-n-s. And thank you for having me today, having this hearing. I want to thank Senator Al Davis for...and his cosponsors for putting this forward. I think it's the right to vote and access to the ballot box, I think we would all agree, in the right and the ability to participate in our political system is something that's fundamental toward democracy. And so I think this is a very important issue and I appreciate your consideration. I am a registered Independent. When I lived in Massachusetts and Illinois for a number of years, I felt compelled to be a Democrat. In Chicago, if you weren't a Democrat...all my business friends were a bit Democrats there because you did not have influence in the city of Chicago unless you were in the Democratic Party. Massachusetts, back in the 1980s, the same situation. You felt compelled to join the Democratic Party to have influence. Now I move to Nebraska, and the shoe is on the other foot. Interestingly, we have seen over the last 20 years, a huge surge in Independent voter registration not only in Nebraska but all across the country. Twenty-five percent of the American people or American voters are now registered as Independents. Two hundred thirty thousand people or nearly two hundred thirty



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thousand people here, in the state of Nebraska, are registered Independent. And that is despite the huge penalty that we all pay as Independents by not being able to participate in our local elections or in many of our local partisan elections or our statewide elections. Please understand, I'm not here to advocate that we get rid of parties. I think parties have every right to exist, need to exist. We need a counterbalance. We need a good debate and discussion. However, that is not the way the country started. Thomas Jefferson famously said in 1887, if I had to go to heaven as a party, I'd sooner not go at all. So it's not as though the constitution or our Founding Fathers decreed that parties should be able to come in and own the franchise to taxpayer-funded elections and exclude other people. You should be able to be a Democrat, a Libertarian, a Republican, or an Independent. I'm a taxpayer, I'm a business owner, I'm a family person, I've served on a number of statewide boards, I've been appointed by two Governors to a statewide commission. So I sort of take umbrage to the notion that, somehow or other, I choose not to be engaged in my community because I don't have the...because I choose not to join a Republican or Democratic Party. You know, I have a family member that does a lot of business over in China. And there, if you want to be involved in politics, you get to join--or are really, told--that you need to join one party. Here, it seems sort of ironic that in a nation that absolutely is built on freedom and choice and options and being able to do whatever we want, that we're somehow forced into a situation that says, if you don't become a Republican or a Democrat, you can't participate in government-sanctioned...and fully participate in government-sanctioned and taxpayer-funded elections. My problem is, I think we all ought to be treated equally, that every voter and citizen has the right to be in parties or not be in parties. But if we take the time and effort to register to vote and we take the time and effort to participate in the community--which I have and many Independents have--we certainly should have the right to participate in any government and taxpayer-funded election. Now, there's a way around. If the Republicans and Democrats wish to have caucuses or go meet at the Pinnacle sports center or do it over the Internet, they have every opportunity and freedom to choose their candidates. But I ask you, why should I be excluded from running for office in the primary simply because I will not join one of two parties? I don't understand how that's fair, especially given the fact that 230,000 Nebraska voters are also in that same category. Isn't it ironic that one-fifth of our population does not show up on any of the election rolls and never gets into office, except for, of course, here in our state Legislature? In this Legislature, we end up having...you have the opportunity to run exactly as I think our system--and Senator Murante, I think you kind of got at it earlier--the system should allow all of us to participate. And in the case of the legislative races, we've seen no harm. In fact, I would argue that this body operates better than any legislative body in the country. Senator Deb Fischer approached me yesterday at the Cattlemen's Classic and we had a discussion about this. I said, would you take Congress over the Nebraska Legislature or would you take any other state's legislature over it? And so I guess in concluding, I would just say that I think this is a matter of fairness. I think it's a matter of allowing everybody to participate and that parties should not trump, through their own desires,

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our agreement as citizens to bind together our society, young people and everybody, to come together and fully access the ballot box. So thank you and I think maybe I'm over time. That red light came on. I apologize I went over. So, thank you. [LB773]

SENATOR AVERY: Okay. You're forgiven. But you have to answer this question. What was the answer Senator Fischer gave you? [LB773]

JAMES JENKINS: Interestingly, when I have approached...when I approached the Governor about this and I...every...the only people in this state that tell me that I'm wrong about the notion that Independents are people that are in political parties and actively working. I was just out at the Kearney Cattlemen's Classic. I met all sorts of Republicans and some Democrats who said, Jim, I would be an Independent, but I can't vote in the primaries. And what should we be afraid of in allowing people the opportunity to go wherever they want to go? [LB773]

SENATOR AVERY: That's not the answer. What was her answer to your question? Can you not say? [LB773]

JAMES JENKINS: She was not supportive. [LB773]

SENATOR AVERY: Okay. Do I have any questions? [LB773]

JAMES JENKINS: I'm becoming too much of a politician. I'm sorry. [LB773]

SENATOR AVERY: Wait a minute. We might ask you a question here. Senator Scheer. [LB773]

SENATOR SCHEER: Well, you, as an Independent--and I probably should have asked the previous speaker as well--you talk about as Independents, being disenfranchised because you don't get to vote in the total system. But what this bill does is, still only lets you participate in half of the electoral process. And so, it's...from one vantage point, it's like, well, I don't want to be part of it but I want to be able to vote for something. So you let me decide which one of the two I get to participate fully in. It's not that...I mean, if that were the case, wouldn't the opportunity for Independents is, you can vote for anyone on either side. But you just get to vote...if you want to vote in the Democratic Presidential primary, that's fine. And then if you want to vote Republic Senate campaign, that's fine because that's truly the Independent. But what we're asking to do is become partisan only exclusively on a primary day. And so that's where I'm...why are we so enthralled with becoming partisan only for one day a year and only...the election cycle and only with one party because when you are opting, you are opting for a party, not a person, but for this side or that side. You're not wanting to vote for all the different ones, whichever one you think is perfect, but just either Republican or Democrat. And that has me a bit puzzled. [LB773]

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JAMES JENKINS: Well, I'm here to support the bill because I think it's a good first step. And if you read my handout, my document, I believe that the fairest way to approach our political system, given the big increase in Independent voters, is to open the system up in the primaries so everyone runs and the top two go forward, just as you folks were elected here. It hasn't...if we took the... [LB773]

SENATOR SCHEER: So...okay. But then what you've just told me is, then, because 20 percent of the population choose not to be affiliated with a party, that there should be no party affiliation at all in a primary. [LB773]

JAMES JENKINS: No. [LB773]

SENATOR SCHEER: Well, that's what you just said, the top two go. [LB773]

JAMES JENKINS: No, but top two go in your legislative races. [LB773]

SENATOR SCHEER: And it is nonpartisan. That's what I'm saying, that you changed... [LB773]

JAMES JENKINS: No, but you still are members of parties. State senators run frequently as Republicans or Democrats. Democrats and Republican money come in behind those senators. [LB773]

SENATOR SCHEER: As state legislators? [LB773]

JAMES JENKINS: As state senators. [LB773]

SENATOR SCHEER: I've never seen an R and a D on an election ballot in the state of Nebraska for a state legislator. [LB773]

JAMES JENKINS: No, but on the signage and all your campaigning, the parties are still supporting you as a Republican, as they should have the right to support you. So it's not as though the Republican or Democratic Parties don't have an interest in those races and aren't going to support you with money and organizational skills. I can tell you, there's race after race in Nebraska where the Republican Party and the Democratic Party have entered resources into those races. [LB773]

SENATOR SCHEER: Okay. Okay. But what you're proposing is not the bill. So I appreciate that and I'll look at your letter. But we're sort of getting off track of the bill, itself. And I don't think we're probably going to agree. We'll just have to agree to disagree, perhaps. [LB773]

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JAMES JENKINS: I think we...okay, we can do that. But I'm here to suggest that this bill is a significant improvement over the present situation which absolutely gives us no opportunity to go in and register and truly act as Independents. Why should I...there are some times when you have a list of... [LB773]

SENATOR SCHEER: But based on that comment, sir, you're still being forced to vote for all Republicans or all Democrats, regardless of which way you choose. And so when you're saying, well, I want to be a true Independent, that's not a true Independent. But yet on election day, you do not want...you want the opportunity to vote. I get that. But even at this premise, you are still going to vote, essentially, as a Republican or a Democrat. [LB773]

JAMES JENKINS: But at least I get to...in that initial election, I don't have to stand on the sidelines waiting for two designated, elite parties to pick their candidate. And then they can say, Mr. Jenkins, now we will let you back into the process. And once we've taken care of our business, we will let you into the process in the fall. Why should I have to step aside? Just simply because it's incumbent on me to either be in one party or another? I mean, that's not freedom and that's not what the Founding Fathers... [LB773]

SENATOR SCHEER: Well, actually, it is freedom because as the previous speaker said, you can certainly go change your party affiliation any time you wish. So, I mean, there is remedies for what you're talking about already in place. [LB773]

JAMES JENKINS: Freedom in America is being able to go to the ballot box. You know, down South, the Democratic Party down there excluded for 100 years, by using tactics similar to what we're talking about today, excluded a whole class of citizens from participating. And they came up with poll tax. They came up with questions on the constitution. So parties inherently want to exclude competition. I get that. I understand it. But the notion that you can devise the rules in such a way that you force me into one of two options, is a lessening of our freedom and a undermining of our democracy. I don't see how you can see it any other way. You say, Jim, you're a taxpayer but unless you get into one of two parties, we don't want you participating. And we won't let 20 percent of the other people. If we get to 40 percent or 50 percent registered Independents in this state, at what point do the parties finally agree that there is 400,000 or 500,000 people that would really like to participate in the primary and we're going to have to let them in? [LB773]

SENATOR SCHEER: I don't know. That's a good question. [LB773]

JAMES JENKINS: Well, is it 20 percent? Is that enough? Thirty percent? [LB773]

SENATOR SCHEER: I don't know, maybe... [LB773]

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JAMES JENKINS: From your perspective, what would it be? [LB773]

SENATOR SCHEER: Well, I'm not (inaudible)... [LB773]

JAMES JENKINS: Do we have to get to 40 percent? [LB773]

SENATOR AVERY: We ask the questions, I'm sorry. [LB773]

SENATOR SCHEER: My answer today would... [LB773]

JAMES JENKINS: Okay. I'm going downhill. I'm sorry, Senator Scheer. [LB773]

SENATOR SCHEER: Yes. Well, apology accepted. [LB773]

JAMES JENKINS: We're either going to have a discussion or... [LB773]

SENATOR SCHEER: No, we're not having a discussion. I'm supposed to be asking questions. You just weren't answering them. [LB773]

JAMES JENKINS: I'm sorry. I'm sorry. I am sorry. Obviously, I'm passionate about this. I've been an Independent just long enough to know it's not a good place to be, so. [LB773]

SENATOR AVERY: Let me ask you this. You really want an open process, don't you, an open primary? And this bill is not quite an open primary bill. [LB773]

JAMES JENKINS: Yeah. [LB773]

SENATOR AVERY: But you'll accept this over the current status quo? [LB773]

JAMES JENKINS: Right. [LB773]

SENATOR AVERY: How was that for a good summary? Senator Bloomfield. [LB773]

SENATOR BLOOMFIELD: First, I have to take a little exception to what you said on the party being the decisionmaker in our races. My opponent after the primary was a fellow Republican. So don't tell me that each side, the Democrat is helping the Democrat and the Republicans are helping the Democrat or the Republicans because there were five of us in the primary. The two Republicans emerged in a Democratic district. Now... [LB773]

JAMES JENKINS: That makes my point. [LB773]

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SENATOR BLOOMFIELD: No, it doesn't. [LB773]

JAMES JENKINS: No, it does. [LB773]

SENATOR BLOOMFIELD: How do you figure that makes your point? [LB773]

JAMES JENKINS: Because my suggestion is that we do it exactly the way you're doing it. And if we have two Republicans go forward, great. If we have a Democrat and a Republican, great. If we have an Independent and a Republican, great. But we do not try to frontload the process and, in effect, leave competent candidates over on the sideline. [LB773]

SENATOR BLOOMFIELD: I'm going to give you the opportunity to explain to me why--and I'm unabashedly Republican--why I go out and work my tail off to establish a Republican Party, bring it to life, keep it to life, in a county and the people that choose to sit on the sidelines and not be involved should be able to come in and select our candidate. [LB773]

JAMES JENKINS: You should be able to do whatever you want within your private party. [LB773]

SENATOR BLOOMFIELD: Bingo. Thank you. [LB773]

JAMES JENKINS: But you should not... [LB773]

SENATOR BLOOMFIELD: Thank you. [LB773]

JAMES JENKINS: But you should not... [LB773]

SENATOR BLOOMFIELD: Thank you. [LB773]

JAMES JENKINS: ...be able to exclude me. No, but you should not be able to exclude me. [LB773]

SENATOR BLOOMFIELD: You're not in the party. Why can I not exclude you? [LB773]

JAMES JENKINS: Okay, then let me run in your primary. Would you let me run in your primary? [LB773]

SENATOR BLOOMFIELD: If you become a Republican, absolutely. [LB773]

SENATOR AVERY: We ask the questions. That's the basic rule here. It's not a debate. It is an opportunity for this committee to get information from you... [LB773]

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JAMES JENKINS: Can I respond to the question? [LB773]

SENATOR AVERY: ...so we can better understand the issue. I don't see any more questions. Thank you, Mr. Jenkins. [LB773]

JAMES JENKINS: You bet. Thank you. [LB773]

SENATOR AVERY: It was lively. [LB773]

SHERRY MILLER: (Exhibit 3) You know, I thought, this being the second item on the agenda I would get out of here by 3:00. [LB773]

SENATOR AVERY: You still can. [LB773]

SHERRY MILLER: But it doesn't seem to work. I still got to get to Lincoln High pretty soon. Sorry. Would you like to take those over? [LB773]

SENATOR AVERY: Welcome to the committee. [LB773]

SHERRY MILLER: Thank you. Good afternoon, Chairman Avery and members of the committee. My name is Sherry Miller, S-h-e-r-r-y M-i-l-l-e-r, and I appear today on behalf of the League of Women Voters of Nebraska to speak in favor of LB773. In previous testimonies, I have outlined some of the League's history of encouraging and protecting voter participation and rights since 1920. Our statement of position is a succinct one: The League of Women Voters of the United States believes that voting is a fundamental citizen right that must be guaranteed. It's a simple statement adopted in 1982, covering a multitude of governmental legislative issues because we have 50 states that struggle with this kind of thing all the time. At this point of my testimony, I do wish to thank the Democratic Party for opening their primary to Independent voters. I understand that it was a very close vote and not easily arrived at. If, however, voter turnout in primaries improves due to this step, as Vince Powers has stated as one of the party goals, their decision will have been validated. There are two major exceptions on the ballot slates that, you know, nonpartisan people cannot vote on. And those are the top six state officials plus the county officials. Although both exceptions are important in governance, the actions of county officials, I would suggest, can have a greater impact on the daily lives of Nebraska residents than the actions of the top six officials at state level. Examples include: road maintenance, assessment of property values, health facilities, law enforcement, jails, and rural fire departments. All are especially important in counties without medium- to large-size municipalities. We've already talked about why voters mark nonpartisan. Many do it to show dissatisfaction with both major parties. But I'd like to interject here, that doesn't mean they don't want to be involved in the political process. They do. And maybe along the line, they'll choose something. If they have a

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chance to participate in a primary, for example, they'll think, wow, I really like the way this primary was handled by this party. Therefore, I will request that ballot and maybe, then, in September or November, I'll go ahead and maybe I'll just become a party member. I'm just interjecting right now. In Douglas County--I checked some figures--in Douglas County, the number of Independents stands at 23 percent; in Lancaster County, 21 percent. I checked with the county clerks in Grant, Richardson, and Keya Paha Counties, just kind of a random sample, and found the following percentages: Grant, 9 percent; Richardson, 15 percent; and Keya Paha, only 3 percent. However, the county clerk at the Keya Paha County courthouse said she thought the number probably would increase if they had an open primary system. So on behalf of current and future nonpartisan registered voters, many of whom reside in small-population counties, I urge advancement of LB773. [LB773]

SENATOR AVERY: Thank you, Ms. Miller. [LB773]

SHERRY MILLER: Thank you. [LB773]

SENATOR AVERY: Questions from the committee? [LB773]

SHERRY MILLER: Please don't ask me any hard questions. [LB773]

SENATOR AVERY: All right. I think you're going to get off completely free. [LB773]

SHERRY MILLER: Oh, thank you. [LB773]

SENATOR AVERY: Thank you. Any other proponent testimony? Welcome. [LB773]

PHYLLIS STACK: Hello. Good afternoon, Chairman Avery and members of the Government, Military and Veterans Affairs Committee. My name is Phyllis Stack, P-h-y-l-l-i-s S-t-a-c-k, and I am here to speak in support of LB773. This is not a perfect bill, as I believe that voting should be open to citizens, regardless of their political affiliation, at every juncture in the election process. The bill, if passed, would allow me, a registered nonpartisan, to vote in the primaries for local, county, and state offices. A good start, but not for a candidate in the primary for the office of President of the United States. At any rate, the bill is a first step in restoring what I believe is so fundamental a right. It lies fairly buried in the Ninth Amendment to the U.S. Constitution which says: The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. I hope you can bear with me as I make my case for this natural right, the right to vote. I have been a registered unaffiliated voter in Douglas County, Nebraska, for over ten years now, consciously choosing not to align myself with a party. To do so, at any point, would only be disingenuous. Indeed, when I read James Madison--who is considered the father of our constitution--when I had read Madison's Federalist 10, a treatise expressing the absolute indispensability of a



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generous suffrage in order to guard against abuses which can arise from concentration of interests, there was, for me, no turning back. Ultimately though, I have merely taken to heart the great thinking, the great truth of some of our forefathers that all men are created equal, thought it sensible that my only brand be "citizen," not Republican or Democrat or any other designation when it comes to electing our representatives. As a taxpaying citizen--and I am, indeed, taxed under Nebraska's Election Administration Fund--I should expect this fundamental right, the right to vote. The thrust for our nation was built largely upon the strength of this uppermost complaint. Taxation without representation cannot be tolerated by a free people. That current Nebraska law gives political parties power over all Nebraska citizens at the crucial primary juncture, makes those of us who are nonpartisans, not so very free. At the Constitutional Convention in 1787, James Wilson, a delegate from Pennsylvania, described the foundation of legitimate government. All power is derived from the people. And in proportion to their numbers, they ought to participate equally in the benefits and rights of government. Unaffiliated voters are people...are the people too and, therefore, ought to participate equally in the benefits and rights of government. In fact, Nebraska's very motto "Equality Before the Law" wholly supports this right. This motto came out of the struggle, not just for Nebraska statehood, but on the heels of the Civil War. It embodied the liberty and the equal protection of the laws that was due every man. Nebraska historian, Albert Watkins, has written that the motto most certainly came from the old legal maxim that "All men are equal before the natural law." And what is natural law? By definition, it is a body of unchanging moral principles regarded as a basis for all human conduct. Something quite irrefutable then. Nebraska's motto speaks not of laws that are subject to change the way statutory, regulatory, and common law are. But of principles fixed, like the right to vote, no matter a citizen's political designation. Please pass LB773. Thank you for allowing me to speak today. [LB773]

SENATOR AVERY: Thank you. Senator Wallman. [LB773]

SENATOR WALLMAN: Thank you, Chairman Avery. Yes, thank you for coming down here. This is your house, you know. And what...you became disillusioned with the political party system? [LB773]

PHYLLIS STACK: Yes. [LB773]

SENATOR WALLMAN: May I ask why? I don't want to know any party. [LB773]

PHYLLIS STACK: I think it really is a combination between that and being a student of American history--I have a history degree at UNO--and a particular love for American history. [LB773]

SENATOR WALLMAN: So do I. [LB773]

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PHYLLIS STACK: Just the freedoms that we have should bear out. And I believe that that is...that the right to vote is one of those freedoms. I don't think there should be any strings attached. Heavens knows there weren't parties when they were, you know, debating the great issues of the Federal Convention. There were no parties. [LB773]

SENATOR WALLMAN: Thank you. [LB773]

SENATOR AVERY: Any other questions? Thank you for your testimony. [LB773]

PHYLLIS STACK: Thank you. [LB773]

SENATOR AVERY: Additional proponent testimony? Welcome, sir. [LB773]

JIM OTTO: (Exhibit 4) Thank you. Senator Avery, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I am a registered lobbyist for a couple associations but I am not here in my capacity as a registered lobbyist. I am here on my own behalf and not on...representing either of those associations. The letter I passed out is from James W. Partington, who I have the pleasure of working with. And I would just point out that he is a retired Rear Admiral in the United States Navy, one of the people that I really have a lot of respect for, a very commonsense person. Just a little point: He grew up in Lincoln, graduated from Pius, got his commission in the Navy through ROTC at UNL, went on to become a fighter pilot in Vietnam, has approximately 1,200 aircraft carrier landings to his credit, so. Anyway, I'd just like to point that out about him. [LB773]

SENATOR AVERY: He has a bad back. [LB773]

JIM OTTO: Pardon? [LB773]

SENATOR AVERY: He must have a bad back. [LB773]

JIM OTTO: Anyway, I just want to...my point here is...I'll be very brief. I worked as a lobbyist with the Nebraska Unicameral for approximately 12 years now. And I just...when I go to see my peers in other states who do the same thing I do in other states, there is no question but this is the best system, in my opinion, in the United States. And that is, to me, very clear based on how you're elected and the top two people go on. I realize that that is not what this bill exactly does. I'm here to testify in favor of the bill simply because it is a, maybe, a first step in that process. And I think to emulate how the Nebraska Unicameral is elected, as far as we can, to me, I think that would just be a better situation. And it would not eliminate the parties. The parties can still...and it would basically open up everybody to be involved, not get any party...not allow an Independent to vote. I realize that's different than the exact language of this bill. But to me, that would be the ultimate solution. And then just to maybe end on a little lighter note, my father was elected to the Unicameral from Buffalo and Sherman

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Counties in 1954. And when he filed for the Unicameral, he didn't tell my mother. And the only way my mother found out was that the Kearney Daily Hub called and wanted a picture. And she said, why do you want a picture? He said, well, he just filed for the Legislature. She goes, he what? Anyway, my father was in the home construction business in Kearney. She went to the job site. Her first words were, now everybody's going to think we're crooks. So it hasn't changed a lot. Maybe it's gotten a lot worse. And if we did everything like we do the Unicameral, maybe we would improve that perception. Thank you. [LB773]

SENATOR AVERY: Thank you, Mr. Otto. I've heard that story before from you. [LB773]

JIM OTTO: Yeah. [LB773]

SENATOR AVERY: Any questions from the committee? Thank you. [LB773]

JIM OTTO: Thank you. [LB773]

SENATOR AVERY: Any other proponent testimony? We're on LB773. Do we have any opponent testimony? Good afternoon, sir. [LB773]

LARRY DIX: Good afternoon, Senator Avery and members of the committee. For the record, my name is Larry Dix, L-a-r-r-y D-i-x. I'm here representing the Nebraska Association of County Officials, appearing today in opposition to LB773. And I want to make sure that we're very, very clear. Our opposition is not based on the political decisions, the political debate. Our opposition is more based on the technical items within the bill. Senator Davis and I have had the conversation about this already. And even though I understand that when we talk about this it gets political pretty fast, I want to try to stay within the mode of what happens with our election commissioners and county clerks who are actually carrying out this process. One of the things that, regardless of political parties or anything like that, our folks want to make sure they run the most accurate, best elections that they possibly can run. And within this, when we start talking about the technical aspects, one of the areas that we get into if this bill were to pass is, if we were to have a county that had an all-mail precinct, they were having an all-mail election, ballot by mail. When that happens, our county clerks, of course, will go through the list of registered voters and they will mail a ballot to the voter based on their party designation. And so that's how the process works today. If this bill were to pass, they would not know at the point of mailing the ballot, which ballot to mail to the voter. Now this works well if you have a poll where somebody walks in and says, I want to declare. I want to see this party ballot. But if you have an all-mail precinct--which we do and we will in the primaries--this becomes a little bit more difficult, as you can tell, because the last thing we want to do is get two ballots in a voter's hands because when they come back there's no indication of which one you would count. So we've got to be cautious of that. The other component of it that we want to discuss, and I would tell you

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and I mentioned to Senator Davis, I'm not saying it's the end of the world but I am telling you, there is some additional cost because we, at this point in time, are unable to calculate the number of ballots that we need for any particular party if we go through the process of this bill and someone can select either party's ballots. Now, granted, we will have to print more ballots. It is a cost that some may see significant. I would tell you, when we talked to our clerks and election commissioners, that cost is somewhere in the area of 25 cents to 30 cents a ballot, okay, that we produce. So I believe you probably had letters from a couple of our county clerks saying, in my county here's how many ballots this would be and here would be what the cost of that were to be. Again, you can make the argument if that's significant or not. I think that somewhat becomes relative. As you get to the small counties, any amount of money does become significant to their budget process. So with that, those are the items that we want to bring up, that we want to bring forth to the committee. We have pledged to work with Senator Davis, with the committee. If the bill advances and there are some amendments needed to further define this, we're willing to work with that. Senator Davis and I had a conversation about well, we could ask the voter to send in a self-addressed, stamped envelope, which I understand that that sort of mitigates the cost. But, again, you're going to send in an envelope that is a little 5 by 8, almost a postcard with a stamp on it. There's no way we're going to be able to send the ballot back in that small of an envelope. We're going to end up having to send it back in another envelope. So there are some technical things that we want the committee to be aware of. And we wanted to express those concerns to the committee. But at the end of the day, we're certainly happy...whatever the public policy decision is, we're happy to work with the committee on those issues. [LB773]

SENATOR AVERY: Thank you. Let me ask you, the new language here on page 7. It requires the election commissioner to make a...to post a notice. The notice would inform registered voters that...a registered voter who is not affiliated with a party, that they may request such ballots. Does this mean a separate ballot for an Independent voter? [LB773]

LARRY DIX: We're not sure. You know, I'm not sure exactly, you know, how that would be interpreted where it says "ballots." You've added a step, in essence, to the process because in as, again, in the all-mail election, somewhere you've had to...the voter has to initiate a process to send back in order to get a specific ballot mailed. So you've added a step within that process. [LB773]

SENATOR AVERY: Questions from the committee? Senator Murante. [LB773]

SENATOR MURANTE: I have a question on the logistics of how many ballots the election commissioners are going to determine they have to print. And it's...if the proponents of this bill are correct and we see a massive influx of voter turnout in the primary and Independent voters have, really, the option of going, I believe at the

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moment, any of four ways they could vote. I believe we've got Libertarians still on the ballot, Republican, Democrat, or they could just not be a part of any of them and choose the strictly nonpartisan ballot. So how do you determine how many ballots to print when there are so many different options that they could choose to do on any given day? [LB773]

LARRY DIX: I think in front of you, you've got a letter from the Dixon County Clerk. And I think it explains it pretty well. But I'll read just the sentence. [LB773]

SENATOR MURANTE: Uh-huh. [LB773]

LARRY DIX: Of Dixon County's 3,679 registered voters, 606 are registered as nonpartisan. [LB773]

SENATOR MURANTE: Okay. [LB773]

LARRY DIX: If LB773 were to pass, I would need to print an additional 606 Democratic, 606 Republican, and 606 Libertarian ballots because it...now, you can argue, statistically, you know...but as I started and I said that one thing we, as county officials, want to do is, we want to make sure we run that election as accurately as possible. Now what we're saying is, we don't know that if 100 percent of them are going to request a specific ballot. The reality, probably not. But the worst thing that ever happens in the election process, if somebody comes up and they say, well, we just ran out of ballots. Okay? So that's what they would do. They would... [LB773]

SENATOR MURANTE: Well, that's fine if you're in a small county with 606 voters. [LB773]

LARRY DIX: Right. [LB773]

SENATOR MURANTE: But we've got 100,000 voters in Sarpy County so that's... [LB773]

LARRY DIX: So my assumption is, you would take the Sarpy County numbers--and they would be able to provide them to you--and that would be their response. [LB773]

SENATOR MURANTE: Okay, thank you. [LB773]

SENATOR AVERY: Any other questions? Senator Scheer. [LB773]

SENATOR SCHEER: Well, I mean, I just can't believe that from the vantage point, you don't print 100 percent of the ballots. If you have 50,000 registered Republicans in any given county and 30,000 Democrats or reverse it, you don't print 80,000 ballots. I mean,

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they determine some type of proportionate number that they're going to print. So for them to say there are 600 Independents so it would be...and we don't know which one of the three they may go, so we'll have to have 600 times 3. I mean, realistically, they probably would print some percentage that would be of the norm. So I mean, I don't know that I agree or disagree with the bill. But, you know, honestly, I don't...I mean, we don't print 100 percent of anyone that could possibly vote in either a general or a primary election. So for the county clerk to say, well, we'd have to print three times the total amount just to make sure we're covered, we don't do that. I mean... [LB773]

LARRY DIX: Yeah. And that's why I'm reading from the letter that you have here. [LB773]

SENATOR SCHEER: Yeah. [LB773]

LARRY DIX: I think each of the counties would make a determination. They'll make that determination based on voter turnout. When you get to some of the rural, very rural, small counties, that voter turnout becomes very high. [LB773]

SENATOR SCHEER: Uh-huh. [LB773]

LARRY DIX: So I think we do have some counties, quite honestly, that are very, very close to a 100 percent number. And I understand. We see the numbers in Lancaster, you see them in Madison. You see the voter turnout and things like that. When I go to the Grants, the Garfields, the Arthurs, those numbers are drastically different than what we see. So it'll vary. [LB773]

SENATOR SCHEER: Well, understand. And I would like to see a higher participation statewide as well. And you're absolutely correct, there are some states...some counties within the state... [LB773]

LARRY DIX: Yeah. [LB773]

SENATOR SCHEER: ...that do have awfully high participation, just not affecting the statewide numbers that much because of the smaller (inaudible). [LB773]

LARRY DIX: Sure. And I would agree with you. I would agree that, you know, I don't think there's 100 percent in every county. But that would be truly a request that an election commissioner probably could respond to. And I'll find out if I can get some information. [LB773]

SENATOR SCHEER: Thank you. Thank you, Senator. [LB773]

SENATOR AVERY: Thank you. Any other questions? Thank you, Mr. Dix. [LB773]

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LARRY DIX: Thank you. [LB773]

SENATOR AVERY: We're on opponent testimony to LB773. Any more opponent testimony? [LB773]

J.L. SPRAY: Afternoon. [LB773]

SENATOR AVERY: Good afternoon. Welcome to the Government Committee. [LB773]

J.L. SPRAY: It is a pleasure to be in front of your committee, Senator Avery, members. My name is J.L. Spray, S-p-r-a-y, first name J.L. I'm chairman of the Nebraska Republican Party and I'm a practicing attorney. I devote a portion of my professional time to issues that arise under Chapter 32. So I wouldn't say an encyclopedic knowledge but I'm familiar with how some of these things work. I'm also an old debater. And so one of the questions I had is, what really is the harm we're trying to cure here? Why does the status quo need to be changed? And I have a partner who tells me, never use analogies. But it's kind of like trying to get agnostics to church. Is that the problem and is that what we ought to be doing? If people don't want to participate in a party and they choose not to, that's fine, that's their choice. And I think they have every right to do that. But from my perspective, nothing needs to be fixed. The voter can choose to be a Republican, a Democrat, a Libertarian, form a new political party. They can choose to switch parties, as Senator Scofield mentioned. I'm proud to say, Kim Robak was a Republican for a couple of weeks in 2006 because she chose to join our party and to vote in our primary election. From the party's perspective, the Legislature has already provided us the choice. The Democrats exercised it last week. We may or may not at sometime in the future. And if the party chooses to change their mind and unelect to do that, they're free to do that. So the parties have a perfect choice here too. Kind of the irony, and I'll say this, is that we have six candidates for Governor in the Republican side so far, four for United States Senate, four for Attorney General, and the ballot that's going to be offered to those who choose to participate in the Democratic primary, is going to have one candidate on it. This won't cure that. What cures that is parties attracting people with ideas and candidates to join them. And that's what parties are about. You know, a closing thought or two. Parties have been around forever. The Greeks had parties, the Romans had parties, there have been parties developing in England since the Magna Carta. Contrary to some prior testimony, I'm pretty convinced that our Founding Fathers were forming political parties as they wrote the constitution. This is all an evolving process. As they wrote the constitution, they also intentionally disenfranchised women from voting in elections. We will evolve. The system is not perfect. Senator Murante is right, there are some problems. I just don't think this is it. People choose not to vote for a variety of reasons. I wish more people who are registered voters would vote. We encourage them to vote the best way we know how. But choosing not to vote is also a choice. And people choose to exercise that as they

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please, whether they forget or whether they just aren't enthused, or whether there's not a Presidential candidate on the ballot that attracts them. But every member of this committee has chosen to affiliate with one political party or the other. I like to think that it's done because of the ideas those parties have. The fact that they want to associate with that party, perhaps, is because of the brand. And the party brand matters because that brand, whether we like it or not, is code to a voter who is in a ballot box that just isn't familiar with who's running for county clerk. And that brand helps them make a decision that they can be comfortable with. So there's lots of reasons we do it this way. But I don't think any of them hurt anybody. And that's kind of the first inquiry is, what are we trying to fix and is there anything, really, to fix? So thank you, Senator, for allowing me to appear. And I'd be pleased to answer questions. [LB773]

SENATOR AVERY: Thank you. Do you see...I'll get to the rest of you. I don't have many prerogatives but that's one of them. [LB773]

J.L. SPRAY: Yeah. [LB773]

SENATOR AVERY: Does it...and since you're chairing a major party in the state, this is probably more of a hypothetical question than anything else. But do you think we could improve the election process if a party didn't write the election laws? And you do. [LB773]

J.L. SPRAY: I'm not sure I understand. [LB773]

SENATOR AVERY: I helped you do it. [LB773]

J.L. SPRAY: Right. Actually invited me and the Democratic Party... [LB773]

SENATOR AVERY: Yes. [LB773]

J.L. SPRAY: ...and some others to the table. I know you elected some folks from the...invited some folks from the executive branch to participate in that. Again, I love our legislative process. I respect how it works. It works well. I don't know if the drafting is nearly as important as what...like what we're doing today, vetting it and what you'll be doing on the floor debating it which, you know, I have nothing to do with. I really don't and I don't think the Democrats do either. We're interested in legislation that affects process but, frankly, this affects us pretty directly. So I felt compelled to come testify. [LB773]

SENATOR AVERY: Well, there is a reason why it's hard for third parties to get established... [LB773]

J.L. SPRAY: Uh-huh. [LB773]



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SENATOR AVERY: ...not just in Nebraska but all throughout the country. And a major reason for that is the Republicans and the Democrats helped write the laws and deliberately made it difficult for third parties. We passed a law a couple of years ago that has a provision in it--and I think it's unconstitutional--that prevents people like Jim Jenkins from petitioning onto the ballot. And we did that without ever establishing a compelling state interest which is unconstitutional. [LB773]

J.L. SPRAY: Uh-huh. [LB773]

SENATOR AVERY: But I don't know what you thought of that, particularly, but we haven't been able to get it changed. [LB773]

J.L. SPRAY: Yeah, I'll tread lightly on that. All of that said, there have been third parties in the state that have not only gained ballot access as a party but have maintained it for a number of years. The reason they fell off the ballot is because they failed to continue to attract people to join them. And at the end of the day, that's what the parties do. With their brand and with their candidates and with their ideas, they attract people to join them. And I don't think they've been denied access. Before I entertain any other questions, I just want to point out one other thing. And it came up, I think, Senator Bloomfield, you asked the question. One thing that's not in the bill is whether there's a record made at the voting place or on the absentee ballot about which ballot the Independent, nonparty-affiliated voter takes, where there's a record. So I know who votes in a Republican primary. I hope to know as much information as I can. And I'm not here to fix this. I'm here to say, really, it's not a good idea. But that is something that ought to be addressed too, so. [LB773]

SENATOR AVERY: Questions? I had several hands. What happened to them? Senator Wallman. [LB773]

SENATOR WALLMAN: Chairman Avery. Yeah, thanks for coming. [LB773]

J.L. SPRAY: Thank you, Senator. [LB773]

SENATOR WALLMAN: And I think if I was a Republican candidate, I'd want the Independent vote. You know? You'd have a wider base to draw from. And I'm sure some of the Independents would like to vote for some of these candidates. But now they have to switch parties. [LB773]

J.L. SPRAY: And we want them to switch. We welcome them. [LB773]

SENATOR WALLMAN: But what if they don't want to? [LB773]

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J.L. SPRAY: Well, that's their prerogative. [LB773]

SENATOR WALLMAN: I know. [LB773]

J.L. SPRAY: They have the choice. [LB773]

SENATOR WALLMAN: But, you know...and that's what my point is. Thanks. [LB773]

J.L. SPRAY: Thank you. [LB773]

SENATOR AVERY: Senator Murante. [LB773]

SENATOR MURANTE: Thanks, J.L., for coming down. I wanted to address a little bit the issue of freedom which I wasn't really anticipating hearing. And we've had one testifier compare a closed primary system to Jim Crow laws in the South, which I find to be a ridiculous comparison. And I suspect anyone who actually lived through Jim Crow laws would find that to be patently offensive. But from your perspective, as the chairman of the Republican Party, if someone wants to participate in a Republican primary, is there anything you can do to stop them from participating? [LB773]

J.L. SPRAY: Not that I would, but there's absolutely no impediment. [LB773]

SENATOR MURANTE: Right. [LB773]

J.L. SPRAY: They check that box when they... [LB773]

SENATOR MURANTE: You don't have any membership fees? [LB773]

J.L. SPRAY: None. [LB773]

SENATOR MURANTE: You don't have any membership...no requirements. If anyone wants to join your party and participate in the primary, they are free to do so. [LB773]

J.L. SPRAY: Absolutely. I flatter myself by thinking they're attracted to our ideas and our candidates. But whatever motivates them to do it, there's no impediment. [LB773]

SENATOR MURANTE: So the comparison I would have--tell me if you disagree with it--is, at this point, if someone wants to participate in a primary in a political party, the door is wide open to them. All they have to do is walk through it. Would you consider that to be a fairly decent analogy? [LB773]

J.L. SPRAY: I would. I would agree. [LB773]

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SENATOR MURANTE: Okay. Thank you. [LB773]

SENATOR AVERY: Senator Bloomfield. [LB773]

SENATOR BLOOMFIELD: Mr. Spray, I'm going to throw out an analogy here that's come to me. And this is so Senator Davis, in part, can respond to it when he comes back to close. This whole thing reminds me of the little red hen that planted the wheat, harvested the wheat, made the bread, baked the bread, and then when the bread was done everybody wanted a piece of it. And nobody else was willing to take part in the labor. [LB773]

J.L. SPRAY: And I appreciated all of your earlier comments because it is hard work to administrate a party in a fair and open way, to encourage candidates and help them understand how they can participate and what's involved to help...not to pick winners and losers, but to help motivate people to do what, in their heart, they want to do, is serve. And without that, without the parties having a little bit of leeway here, you might unintentionally discourage them from being as involved as they are. And we're involved at the Nebraska Republican Party all the way down to these county offices and lower--no offense to any county...former county commissioners or anything--but councils and mayors and things like that if they want our help, which is a little bit new. But I think it's great for the system because we're getting people involved because you all know when you get here, you do what's right. So it's just a matter of getting the right people here. [LB773]

SENATOR BLOOMFIELD: And I understand the Independents' thought pattern here. My brother, as well as myself, have been Republicans all of our lives. He is very, very tempted to become Independent because he's disgruntled with the Republicans on the national level. And I have told him repeatedly, go ahead and do that. Just don't plan to vote in the primary. Is there anything stopping all these Independents from forming a party and going their own way if they're all... [LB773]

J.L. SPRAY: No impediment at all. [LB773]

SENATOR BLOOMFIELD: Thank you. [LB773]

J.L. SPRAY: And just one other thought. You know, voter turnout is dramatically different in a Presidential election from a...you know, all these things matter. And so to say, just the fact that unregistered or Independent voters can't get a ballot is the cause of these numbers that were shared, there's lots of authors for that. And there's plenty of ways that people can make the choice, so. [LB773]

SENATOR AVERY: Well, I just would like to correct one thing. There are impediments to third parties. You can form a party but you can't get on the ballot until you meet

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certain requirements. That includes having gotten so much percent in the previous election and all kinds of things like that. [LB773]

J.L. SPRAY: Right. And I understand that. [LB773]

SENATOR AVERY: Yeah. [LB773]

J.L. SPRAY: There are impediments to voting in the fact you've got to go register. [LB773]

SENATOR AVERY: Yeah. [LB773]

J.L. SPRAY: So there are...I shouldn't say no impediments. That's probably not correct. Thank you, Senator. [LB773]

SENATOR AVERY: Senator Murante. [LB773]

SENATOR MURANTE: I did have one more question for you. In light of the comments previously about LB1048 which we've worked on in this committee, this committee has prioritized deals with a number of different statutes in the Election Act pertaining to political parties. In your experience with the Election Act...I know our mentality on that bill has been, if we are going to pass a piece of legislation that directly impacts the operations of the political parties, that we were going to go out and solicit the input of the political parties because they are private organizations, despite having ballot access in the state of Nebraska. And this bill, although it may not be targeted at the Republican Party directly, it certainly has applicability that only applies to the Republican Party. And you're here in opposition to it. In your experience and given the background we have on LB1048, can you think of an example where a public policy was sort of rammed down the throat of a political party that applies, sort of uniquely, to them against their will and when they already had, sort of, local control, so to speak, that we've already given you? [LB773]

J.L. SPRAY: Like the nuclear option in the Senator rules or something like that. [LB773]

SENATOR MURANTE: Uh-huh. [LB773]

J.L. SPRAY: I can't think of anything that dramatic. And, you know, I'm one person. But just for the benefit of the committee, Vince Powers and I and Vic Covalt, who's their guy on the rules, we talked about these together. We didn't talk about this bill together but there's a sense of collaboration. We don't want to come here and have a cat fight in front of you. That's dumb. You know, we want to come with ideas to improve the system that we can both agree on. That's kind of where I come from. And I think we've been successful at it on LB1048. And I assume we'll be successful if we need to do

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something else. [LB773]

SENATOR AVERY: I guess, in fairness to the other parties, we did not actually consult with the Libertarians. Maybe we should have. [LB773]

SENATOR MURANTE: Maybe we should. Yeah, there's still time. [LB773]

J.L. SPRAY: Uh-huh. That wouldn't offend me. I think it's great that there are other parties and they're welcome to participate and I think the law allows it. [LB773]

SENATOR AVERY: I don't see any more questions. Thank you for your testimony. [LB773]

J.L. SPRAY: Thank you. [LB773]

SENATOR AVERY: Any other opponent testimony to LB773? Any neutral testimony? Seeing none, Senator Davis, you have a lot of closing to do. [LB773]

SENATOR DAVIS: Well, let me say this. I think all this debate and discussion is worthwhile and interesting. And no matter what comes of this bill, I think the discussion has been good for the state of Nebraska and the party system and the help. Let's not hide behind any sort of belief that the parties are welcoming to other parties because both the parties have a vested interest in preserving their positions as the number one, number two parties. And that is, you know, our nation...you heard references to how the Founding Fathers believed in the days of the signing and, you know, what has evolved is a two-party system in this country that I think has worked pretty well. I'm not trying to shake the foundations of the party system in any way, shape, or form. What I'm trying to do is give unaffiliated voters, Independent voters, who now are an increasing percentage of the population in this state, the right to participate without going through a bunch of hoops. In my particular county, in Grant County, Nebraska, if you're an Independent voter this year, there will be no Presidential, you won't be able to vote for the Governor, the Lieutenant Governor, the Secretary of State, the Treasurer, the Auditor, or the Attorney General. There's no state legislative race this year. Molly O'Holleran I think is still in, so it's no State Board of Education. So you get down to maybe we're going to vote on constitutional issues, workers' compensation judges, and the nonpartisan races. Then you get to your county commissioners. Can't vote on those. Can't vote for the clerk, can't vote for the assessor or recorder of deeds, can't vote for the sheriff, can't vote for the treasurer, can't vote for the attorney, the public defender or the county engineer. So why even go vote? There's nothing to vote for. So that's why you've got a turnout of 8 percent. There's just no reason to go to the polls. Empower these people. Let them participate in the process. It'll be a good thing. It'll be a good thing for the parties, I guarantee you that. Other states are making this work. This isn't like an earth-shaking, shattering, destructive thing. I don't know if it was done

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legislatively or if the parties moved to do that. I do need to do some research on that. But it seems to be working in other states. So, you know, we're not going to be breaking new ground here. I'd like to speak for a few minutes to some of the issues that were raised by NACO. First one talks about balloting by mail. And for those of you who don't know how that works, I live in a precinct where the ballot is done by mail. I don't have to go to the polls. I don't have to call and say, send me a ballot. I just go to the mailbox and there it is. I open it up. It's stamped, there's a stamp on the envelope. I return it to the county. So that's how I vote. So in that particular area, we have very high turnout. And that's something that I think--and I've talked to Senator Avery about that--I think that's something that is a good thing. But it is also is something that can be concerning to a person who might be living in a district, like I did, where one county votes primarily by mail and some of the others don't. So in some of the other counties, turnout was extremely low. Not so in Cherry County. Just something to think about because everything that we do here has a result. But Larry talked about how much...how many ballots they were going to have to prepare. This is going to be a crisis for these counties. They're going to be bankrupt because of this. Well, I would like to remind the committee--and I think this is an interesting observation, you'll find this in your packet--that an Independent voter has the right to go in now and request a ballot for a congressional race. And I don't know how many of you knew that. I didn't know that until today. So, you know, I'm wondering if the counties are doing this already, if they're preparing--how many ballots was it--around 1,200 or 3,600 ballots because maybe they better be doing that. And if they're not, why aren't they? Those things are all solvable. If you need to do something, put an ad in the legal newspaper and say, if you want a ballot, want the Republican ballot, call us and let us know. We'll send it with the ballot or we'll sign you up for it. Then we're going to know how many ballots we need. So those are fixable. Mr. Jenkins talked about how...what he would like to see. That's not what I'm trying to do here. I'm just trying to enfranchise our Independent voters which I think is a very good thing. It's been a long time since I read The Little Red Hen, Senator Bloomfield. [LB773]

SENATOR BLOOMFIELD: Me too, but I remember the outcome. [LB773]

SENATOR DAVIS: You can't tell me it's not a good thing to let people participate in the process and give them a right and give them an opportunity to do so. We've gone from...we've seen the number of Independent voters increase by 450 percent, 500 percent since 1980. That's sending a message to both the parties that they're not...that they're losing touch. Democrats, apparently, have lost a lot more touch than the Republicans. But I don't think the Republicans are doing great either when you see that kind of an increase. So I think it's a good bill. I think I'd like to see you advance it so we can solve the problems if you give me the opportunity to do that. [LB773]

SENATOR AVERY: Do you see this getting a priority designation? [LB773]

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SENATOR DAVIS: It won't be from me. I prioritized a bill yesterday. [LB773]

SENATOR AVERY: Any more questions? Yes, Senator Murante. [LB773]

SENATOR MURANTE: I have more of a comment. I tend to agree with you, that there is a problem with the system. I don't support the solution you've come up with. But I do think, I agree with you, it has been a good, healthy discussion. And to the extent if this bill does not pass, it doesn't get a priority, I would like to have this conversation with you going forward through the interim about what steps can be made next year to reform the system rather than the solution that you came up. So I just wanted to throw that out there. [LB773]

SENATOR DAVIS: Thank you, Senator Murante. I want to commend you on your forward thinking on some of the things you've done this year with election law too, which I think is probably a good thing for our country. [LB773]

SENATOR MURANTE: Thank you. [LB773]

SENATOR AVERY: Any other questions? Thank you, Senator. [LB773]

SENATOR DAVIS: Thank you. [LB773]

SENATOR AVERY: Before I close the hearing on this bill, I have--I'm sorry to tell you, Senator--no letters of support. [LB773]

SENATOR DAVIS: We got all the good support here already. [LB773]

SENATOR AVERY: (Exhibits 5, 6, 7, 8, 9, 10) I have a letter of opposition from the Dixon County Clerk, Register of Deeds, and County Commissioner. I have another letter of opposition from Saline County Clerk; one letter of opposition from the Chase County Clerk--I have more; and another letter of opposition from the Boone County Clerk; and one from the county clerk in Jefferson County; and a letter of opposition from the Richardson County Clerk. [LB773]

SENATOR DAVIS: Thank you, Senator Avery. [LB773]

SENATOR AVERY: So you've managed to stir up a lot of opposition to this bill. Congratulations. [LB773]

SENATOR DAVIS: You know, if the opposition is from a fiscal perspective, I think that's solvable. My suspicion is, it's more about protecting their own self-interests which is the position that they're elected to. That's not appropriate. [LB773]

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SENATOR AVERY: Our experience on this committee is that you might be right, completely. [LB773]

SENATOR DAVIS: Thank you. [LB773]

SENATOR AVERY: Thank you. That ends the hearing on LB773. We'll now go to the last item on the agenda while Senator Murante clears the room... [LB773]

SENATOR MURANTE: We've got a couple of people here sticking around for it. [LB1013]

SENATOR AVERY: ...and that is LB1013. Senator Murante, welcome to the committee. [LB1013]

SENATOR MURANTE: Thank you, Chairman Avery. Members of the Government, Military and Veterans Affairs Committee, my name is John Murante, spelled J-o-h-n M-u-r-a-n-t-e. I represent the 49th District of the Nebraska State Legislature, which comprises Gretna, Chalco, portions of Papillion and La Vista, in Sarpy County. I'm here today to introduce LB1013. LB1013 was brought to me by my county commissioner, Jim Warren, in Sarpy County because of a series of problems that my constituents have been facing. My district, like all of yours, has approximately 37,000 people in it. Other than the 5,000 people who live in the city of Gretna, the remaining 32,000 all live in unincorporated SIDs outside of a municipality. And because of that, while cities are able to pass ordinances pertaining to door-to-door solicitors, people selling magazines and so forth, there is no current authorization in statute for counties to pass such ordinances. And as you might imagine, what happens in communities and counties like mine, is that the door-to-door solicitors skip the cities, don't bother with the cities and go to the unincorporated SIDs. And over the last few years, we have had door-to-door solicitors that have been extremely aggressive, wouldn't let the homeowners close their doors, wouldn't leave, were aggressive to the point where my constituents were calling the Sarpy County Sheriff to come out. And, of course, when the Sarpy County Sheriff came out, there was nothing that the Sheriff could do other than just watching the people who are going door to door and making sure that nothing illegal was happening. What we would like to do is to permit the counties to do that which the cities already do and to require a permit before these door-to-door sales people begin their activities. We know who they are and we know where to find them. I don't think this is earth shattering or groundbreaking in any way but it does address a problem that my constituents have brought to me over the course of the past year. So I'd be happy to answer any questions that you may have. [LB1013]

SENATOR AVERY: Thank you. Do you consider religious groups to be in this definition? [LB1013]



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SENATOR MURANTE: No. This is exclusively for commercial purposes, going door to door for commercial purposes in line 23. I wanted to make very clear we're not talking about religious or political speech or anything like that. [LB1013]

SENATOR AVERY: But magazine peddlers. [LB1013]

SENATOR MURANTE: Magazine sales. In the case of Sarpy County, the example was magazines. These people were going door to door trying to sell magazines. I actually had one constituent of mine call me and say that, out of morbid curiosity, these salesmen had come so often that they just bought one subscription to see if a magazine would even show up and it never did. So it was clearly just scam artists going door to door. [LB1013]

SENATOR AVERY: Senator Scheer. [LB1013]

SENATOR SCHEER: Thank you, Senator Avery. Senator Murante, this does not usurp the village or towns. So in other words, the permit that the county would issue would cover other areas than anyone else has already provided such. Is that a fair assessment? [LB1013]

SENATOR MURANTE: Correct. It is only within the jurisdiction of the county, not within a city jurisdiction or municipality's jurisdiction. [LB1013]

SENATOR SCHEER: Okay. [LB1013]

SENATOR AVERY: Are you at all worried that you might be limiting job prospects for term-limited senators? [LB1013]

SENATOR MURANTE: We can all go door to door for each other, I guess, Senator Avery. [LB1013]

SENATOR AVERY: Senator Bloomfield. [LB1013]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Senator Murante... [LB1013]

SENATOR MURANTE: Uh-huh. [LB1013]

SENATOR BLOOMFIELD: ...is my granddaughter going to have to get a permit to sell Girl Scout cookies? [LB1013]

SENATOR MURANTE: That is a good question. I'm not sure that...that was actually the exact explicit example that I questioned because my wife has a long history of working for the Girl Scouts. And that is not the sort of thing that I'm trying to cover with this.

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[LB1013]

SENATOR BLOOMFIELD: What about my grandson selling magazines for his school project? [LB1013]

SENATOR MURANTE: I think, in that instance, the answer is...I think if we want to structure this such that a commercial activity clearly doesn't involve people who are involving themselves in sort of 501(c)(3) nonprofit organizations and things like that, I don't have any problem with that. This is targeted...it is intended to be targeted to a very specific universe. And to the extent that language can be included which targets it at that universe, I'm happy to consider it. [LB1013]

SENATOR BLOOMFIELD: You will not be shocked to find that I probably will not be supportive of this because you are adding regulation upon regulation, but thank you. [LB1013]

SENATOR MURANTE: You are correct. I am not shocked, Senator Bloomfield. [LB1013]

SENATOR BLOOMFIELD: Good. I wouldn't want you to suffer a coronary or anything like that. [LB1013]

SENATOR MURANTE: You already voted for two of my bills today so I can't be greedy. [LB1013]

SENATOR BLOOMFIELD: That's more than I needed to. [LB1013]

SENATOR AVERY: Senator Scheer. [LB1013]

SENATOR SCHEER: Senator, would it...to take those exclusions into effect, maybe welcome an amendment that would allow the county, just like cities, to exempt or waive the fee for certain organizations? [LB1013]

SENATOR MURANTE: I'm fine with that. I'm also fine with what we had talked about as sort of a reciprocal agreement such that, if someone is permitted to do it in a city would count as the permit for the county if the county wanted to do that. I'm fine with that. [LB1013]

SENATOR AVERY: Any other questions? Don't see any. Thank you. [LB1013]

SENATOR MURANTE: Thank you. [LB1013]

SENATOR AVERY: Proponent testimony on LB1013? Welcome. [LB773]

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BONNIE MOORE: Hello. Good afternoon. My name is Bonnie Moore, B-o-n-n-i-e M-o-o-r-e, and I'm a Deputy Sarpy County Attorney. I am testifying on behalf of the Sarpy County Board of Commissioners. Thank you to the members of the Government, Military and Veterans Affairs Committee as well as Senator Murante for introducing this bill. Counties currently have limited ordinance authority under Nebraska Revised Statute 23-187. Sarpy County has enacted two ordinances under this authority, a snow emergency ordinance and a public nudity ordinance, which we haven't had very many violators lately because it's been so cold. This bill would add to the county's ordinance authority and, thus, permit counties to regulate hawkers, peddlers, solicitors, also known as door-to-door salespersons conducting business outside of city limits. This authority is needed, as Senator Murante pointed out, to protect residents who live outside of the city limits from fraudulent business practices and possible criminal activity. The county has no intention of interfering with political, religious, or other protected speech or requiring fees for nonprofit organizations like Girl Scouts, Boy Scouts, etcetera. In Sarpy County alone, there are approximately 60,000-plus residents who live outside of the city limits. The residents within the limits of the five cities of Sarpy County, as well as Omaha, are already protected by some form of a door-to-door sales license requirement. Finally, as drafted, the bill is permissive and general in nature. Therefore, the counties, like the cities, would have the ability to craft their own ordinances which could possibly include processing fees, background checks, etcetera, and would also give the county the option to have reciprocal agreements with the cities within the county. Thank you for your time. I urge you to advance LB1013 out of committee and welcome any questions. [LB1013]

SENATOR AVERY: Thank you, Ms. Moore. Senator Bloomfield. [LB1013]

SENATOR BLOOMFIELD: Thank you, Senator Avery. Ms. Moore, you said the counties would be able to level a fee. Are we not, in fact, just looking at another way for the county to raise money? [LB1013]

BONNIE MOORE: The fee would be to recoup the cost of processing the documents, not as a moneymaker for the county. [LB1013]

SENATOR BLOOMFIELD: Is there anything in the bill, to your knowledge, that would prevent it from...is there anything that sets a limit? [LB1013]

BONNIE MOORE: No. [LB1013]

SENATOR BLOOMFIELD: Okay, thank you. [LB1013]

SENATOR AVERY: Senator Scheer. [LB1013]

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SENATOR SCHEER: A follow-up on Senator Bloomfield. Would it not be the norm that when people file for these licenses, it's more of one for documentation so if there is a problem with, for example earlier as Senator Murante said, somebody orders something, didn't receive it, at least we have a record of where those people (inaudible) through? [LB1013]

BONNIE MOORE: Yes. That's one advantage of having this sort of a license. [LB1013]

SENATOR SCHEER: Thank you. [LB1013]

SENATOR AVERY: Senator Karpisek was next. [LB1013]

SENATOR KARPISEK: Thank you, Senator Avery. Sorry, Senator Wallman. I just show up and barge in. Thank you, Ms. Moore, and I'm...I thought why you didn't have any of those other nudity was because I haven't been up there playing golf or anything. [LB1013]

BONNIE MOORE: That was the other reason. [LB1013]

SENATOR KARPISEK: Yeah, because it is too cold for that too. So really what you're asking for is what cities do now, right... [LB1013]

BONNIE MOORE: Right. [LB1013]

SENATOR KARPISEK: ...because somebody comes in and they're trying to sell that stuff that they always spray on your shoe and it cleans it all up and because right now they can just go wherever in the county. And that's what you're trying to avoid. [LB1013]

BONNIE MOORE: Right. [LB1013]

SENATOR KARPISEK: Thank you. [LB1013]

SENATOR AVERY: Senator Wallman. [LB1013]

SENATOR WALLMAN: Thank you, Chairman Avery. Yes, thanks for coming. Now would you put signs on the roads going into the county then or...like cities have, villages, I mean? [LB1013]

BONNIE MOORE: That's one possible option. We haven't worked out every single detail because without... [LB1013]

SENATOR WALLMAN: Okay. [LB1013]

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BONNIE MOORE: ...the authority, we haven't put all the details into it yet. But, yes, that's a possibility. [LB1013]

SENATOR WALLMAN: Okay. Yeah, thank you. Thank you. [LB1013]

SENATOR AVERY: Senator Bloomfield. [LB773]

SENATOR BLOOMFIELD: Thank you. Are there penalties involved if you don't get a license? [LB1013]

BONNIE MOORE: I would assume that would be one of the things that we'd like to put in here into the ordinance. [LB1013]

SENATOR BLOOMFIELD: Okay, but those have not been arrived at yet? [LB1013]

BONNIE MOORE: No. That's correct. [LB1013]

SENATOR BLOOMFIELD: Okay. [LB1013]

BONNIE MOORE: It's a very general authority for the counties which would...so each county could mold the ordinance in the way that they see fit for the county. [LB1013]

SENATOR BLOOMFIELD: Okay. Thank you. [LB1013]

SENATOR AVERY: I think there are fines already in the law. I think. Yeah, in lines...parts...section... [LB1013]

BONNIE MOORE: Oh, the ability to have a fine. [LB1013]

SENATOR AVERY: Right. [LB1013]

BONNIE MOORE: Yeah, to impose a fine. But not... [LB1013]

SENATOR AVERY: Right. Right. A county may also authorize any measures of enforcement of ordinance as may be necessary and proper. A fine enacted pursuant to this section shall be...shall not exceed five hundred dollars. [LB1013]

BONNIE MOORE: Right, that the county has...right, the county can have a fine. [LB1013]

SENATOR AVERY: They have that authority. [LB1013]

BONNIE MOORE: But it's not necessarily in place just yet. [LB1013]

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SENATOR AVERY: Right. [LB1013]

BONNIE MOORE: Does that answer your question, Senator? [LB1013]

SENATOR BLOOMFIELD: Yeah. [LB1013]

SENATOR AVERY: Any other questions from the committee? Thank you, Ms. Moore... [LB1013]

BONNIE MOORE: Thank you. [LB1013]

SENATOR AVERY: ...for your coming down here to testify. Do we have any more proponent testimony? Welcome, sir. [LB1013]

SEAN KELLEY: Thank you. Good afternoon, Mr. Chairman and members of the Government, Military and Veterans Affairs Committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, appearing on behalf of the Douglas County Board of Commissioners in support of LB1013. We'd like to thank Senator Murante for introducing this legislation. Our reasons for support are similar to those of Sarpy County. Certainly, Douglas County doesn't have the same amount of geographic area that's impacted because the city of Omaha encompasses so much of Douglas County. But nonetheless, we have had similar complaints from peddlers that have been quite aggressive to residents and there hasn't been any recourse. So with that, I'd be happy to answer any questions. [LB1013]

SENATOR AVERY: Thank you. Senator Karpisek. [LB1013]

SENATOR KARPISEK: Thank you, Senator Avery. How...where would they go to get...would it have to be the courthouse? Would every city office have...? It would have to be the courthouse. [LB1013]

SEAN KELLEY: Well, I don't know if it necessarily has to be. I suppose they could do it at a county treasurer location or wherever they...whatever would be most convenient. But I would think that... [LB1013]

SENATOR KARPISEK: Right. I guess I'm thinking of a small town where everything is in the courthouse. Right. [LB1013]

SEAN KELLEY: Right. [LB1013]

SENATOR KARPISEK: Because no other...no city clerk would really be able to issue it and be a county official. [LB1013]

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SEAN KELLEY: Right. And it may be best, at least in Douglas County, for some reciprocity, as Senator Murante mentioned, to have it at one location. [LB1013]

SENATOR KARPISEK: Good luck with that. But...yeah, all right. Thanks, Sean. [LB1013]

SENATOR AVERY: Any other questions? Thank you, Mr. Kelley. [LB1013]

SEAN KELLEY: Thanks. [LB1013]

SENATOR AVERY: More proponent testimony? Welcome back. [LB1013]

BETH BAZYN FERRELL: Thank you. Chairman Avery and members of the committee, for the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials, appearing in support of the bill. I would just echo the comments that you've heard from Douglas and Sarpy Counties. This would be a tool for counties that would need to enforce it. So I'd be happy to try to answer questions. [LB1013]

SENATOR AVERY: Thank you. Questions from the committee? I don't see any. Thank you. Any more proponent testimony? Any opponent testimony? Sounds like a consent calendar. Any neutral testimony? Senator Murante. Senator Murante waives. That ends the hearing on LB1013 and that ends the hearings for today. Thank you all for coming. [LB1013]