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Government, Military and Veterans Affairs Committee
January 28, 2016

[LB787 LB874 LB879]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 28, 2016, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB787, LB874, and LB879. Senators present: John Murante, Chairperson; Tommy Garrett, Vice Chairperson; Dave Bloomfield; Mike Groene; Matt Hansen; and Beau McCoy. Senators absent: Joni Craighead; and Tyson Larson.

SENATOR MURANTE: (Recorder malfunction)...Affairs Committee. My name is John Murante, I'm the state senator for District 49, which includes Gretna and northwest Sarpy County and I'm also the Chairman of the committee. We are here today for the purposes of discussing three bills before us and conducting public hearings on them. We'll be taking up the bills in the order in which they appear on the agenda outside of this room. If you wish to testify on any of the matters before us, we ask that you fill out one of these green forms which are located on either side of the room. If you'd like to state your opinion on these bills but do not want to testify, we have a sign-in sheet where you can register your opinion on any matter before us and it will be taken into consideration by this committee. If you testify we ask that you begin by stating and spelling your name for the record, which is very important for our Transcribers Office. The order of business will be for all of the legislative bills, the introducer of the bills will be permitted an opening statement. We will then proceed to proponent testimony, followed by opponent testimony, neutral testifiers, and we'll conclude with closing remarks by the introducer. We ask that you listen carefully and to try to not be repetitive. We do use the light system in the Government Committee. Each testifier is permitted four minutes. When the yellow light comes on you have one minute and we ask that you begin wrapping up your remarks. When the red light comes on we ask that you stop and we will open up the committee for any questions that they may have of you. At this point, I'd ask everyone to turn off and silence your cell phones or any electronic device that makes noise. If you have a prepared statement, an exhibit, or any handouts to give to the committee, we ask that you present 12 copies to our pages who will distribute them to the committee. If you don't have 12 copies, again, give them to the page and we will make copies for you. So that is the business before us and we will now proceed to the introduction of members. To my far left is Sherry Shaffer who is the Government Committee's committee clerk. Next to Sherry Shaffer is Joni Craighead, state senator from Omaha. Senator Craighead has bills in another committee today, so she may be late and not be here at all, depending on how long those hearings take. Senator Beau McCoy from Omaha, Nebraska. To my immediate left, State Senator Matt Hansen from Lincoln, Nebraska. To my immediate right is Andrew La Grone, the committee's research analyst. To his right, State Senator Tommy Garrett from Bellevue, Nebraska. Senator Garrett is the Vice Chair of this committee. To his right, State Senator Dave Bloomfield from Hoskins, Nebraska. To his right, Senator Tyson Larson who I don't think will be here today...God only knows. To his right, State Senator Mike Groene who we can always count on being here from North Platte, Nebraska.

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SENATOR GROENE: He told me to vote for him.

SENATOR MURANTE: Okay, there's not unit voting in the Government Committee, Senator Groene. There ought to be maybe. I'm not sure Senator Hansen would approve of that, though. So we will....

SENATOR McCOY: Ever heard of the one man, one vote?

SENATOR MURANTE: Okay. So we will proceed to the first item on the agenda, LB787. Senator Morfeld, welcome back to your Committee on the Government, Military and Veterans Affairs. [LB787]

SENATOR MORFELD: Thank you, Chairman. And per my request, I'm going to take a quick... [LB787]

SENATOR MURANTE: Do that side. For the record, selfies are permitted (inaudible). [LB787]

SENATOR MORFELD: My phone is now...well, my phone is off. In any case, Senator Murante, members of the Government Committee, my name is Adam Morfeld, for the record spelled A-d-a-m M-o-r-f-e-l-d, representing the "Fighting 46th" Legislative District, here to introduce LB787. LB787, the "ballot selfie bill," will make constitutional a portion of our statute and allow a voter to take a photo of themselves and their ballot. It does, however, retain the prohibition on the solicitation of a voter to take a photo of their marked ballot for the purpose of voter coercion or vote selling. It keeps that part in. The subject matter of this legislation may seem comical, but the purpose is serious. We should provide protections to those exercising constitutional rights of freedom of expression provided by the First Amendment of the U.S. Constitution. Such provisions not only protect the fundamental right to express oneself, but also encourages and promotes often younger--but not always just younger--Nebraskans' excitement about the civic process and encourage others to take part as well. The current Nebraska law is aimed at preventing vote selling and voter coercion. Nebraska statute 32-1527 constructs specific procedures to ensure the integrity of the election, including specifying that only an election judge may distribute a ballot and receive the marked ballot; prohibit a voter from marking their ballot where it can be identified later; and photographing and sharing of a marked ballot or soliciting someone to do so. LB787 retains the tools needed to deter and punish voter coercion and solicitation while allowing for ballot selfies. The language in LB787 does not alter the language that prohibits an individual from soliciting a voter to photograph their ballot and share content. It only adds a narrow exemption for those voters who voluntarily choose to photograph themselves and their ballot and share on social media if they so choose. LB787 follows what other states are doing. Many states have similar statute to protect and deter photos as they relate to the evidence

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of vote selling and voter coercion. But instead of prosecuting tech savvy, excited voters, these states have carved out specific exemptions in statute for ballot selfies. Further, and perhaps more importantly, the Secretary of State's interpretation and any subsequent enforcement of 32-1527 for taking a ballot selfie is a violation of a voter's freedom of speech rights. While current Nebraska law is aimed at preventing vote buying and voter coercion, Secretary Gale's interpretation as reported in the paper to include ballot selfies is too broad and does not meet a strict scrutiny test for constitutionality. It's important to know that when states restrict a constitutional right, the restriction must be narrowly tailored for a compelling state interest and purpose. A blanket ban on photographing a marked ballot is not narrowly tailored to further a compelling governmental interest. In the recent Rideout v. Gardner decision in a federal district court in New Hampshire, they found that a ban on ballot selfies to be a broad, content-based restriction on an individual's First Amendment freedom of speech right. The restriction was not narrowly tailored to prevent voter coercion. LB787 is a solution the federal district court in New Hampshire suggested. The court in Rideout said, it would have upheld the law if the prohibition included exemption for free speech, like a ballot selfie. Clarifying the language now will not only ensure other statutes are constitutional, but also sidestep a constitutional challenge later. The Secretary of State enforces the law and LB787 clarifies language and provides guidance. No one wants to fine an excited voter \$100 for exercising their First Amendment right. LB787 clarifies the language and provides guidance to the Secretary of State so he can continue conducting elections in a fair way, while respecting voters' constitutional rights. There is currently no statute expressly forbidding cameras or cell phones in polling locations. Many states have explicit bans on some items, but in Nebraska only conduct in a--and I quote--noisy, riotous, or tumultuous manner is prohibited in the polling place. LB787 balances privacy of other voters and freedom of speech of voters as well. The language in LB787 is very clear that the exemption only applies to a picture taken of the voter's own ballot. Other voters in the polling place and the content of their ballot remains protected. Ballot selfies is also not electioneering. While electioneering is prohibited in the polling place, this generally is taken to mean visible candidate endorsements likes buttons, signs, t-shirts, or speech. I urge your support of LB787, would be happy to answer any questions from the committee. Thank you. [LB787]

SENATOR MURANTE: Thank you, Senator Morfeld. Are there any questions? Senator Bloomfield. [LB787]

SENATOR BLOOMFIELD: You knew it was coming. [LB787]

SENATOR MORFELD: I knew it was coming (inaudible). [LB787]

SENATOR BLOOMFIELD: I'm not totally opposed to the idea that it's your ballot, you ought to be able to take a picture of it if you want to. My bigger concern is them taking a picture of

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something else within the room, that you would step out of the ballot (booth) and take a picture of me going in. What safeguards do we have against that, because then you are infringing upon my right as soon as you take that picture. [LB787]

SENATOR MORFELD: Well, actually, Senator, right now cameras are allowed in polling places,... [LB787]

SENATOR BLOOMFIELD: I'm aware of that. [LB787]

SENATOR MORFELD: ...so this doesn't...that would I think be a different law. I guess it could do that. I mean, usually...with my phone, for instances, it was very hard for me to get anything in there other than just me and maybe one or two of you, but you really have to push back. So if you've got your ballot in your hand and you've got your face in the picture too, it's going to be really hard to even try to get anybody else in there because you can only do it so far back with your hand or your arm. And so... [LB787]

SENATOR BLOOMFIELD: And my concern isn't necessarily with you trying to get somebody in there. In my polling place, you have a little curtain about this high. Your head is up above that. If you take your selfie you may inadvertently get the voter next to you on either side. Therein would be my issue is a possibility (inaudible). [LB787]

SENATOR MORFELD: Certainly, Senator, and I can see your concern. I guess my only counter to that is that currently cameras and news crews are allowed to go into polling locations, including election observers and other folks, as long as they're not disturbing anybody. So that's something that's currently already happening and that this bill doesn't address or change really. But I see where you're coming from, Senator, yeah. [LB787]

SENATOR BLOOMFIELD: Thank you. [LB787]

SENATOR MURANTE: Thank you, Senator Bloomfield. Senator Groene. [LB787]

SENATOR GROENE: Thank you, Chairman. It's the first time I read this. In the newspaper article was somebody taking a picture of "themselves" to show that they're voting and the ballot happened to be in the background. This doesn't say that at all. This says you're taking a picture--right here--you're taking this and you're taking a picture of the ballot. It doesn't say any...you in it. [LB787]

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SENATOR MORFELD: Yeah, I mean we can certainly look at other language. This is copying language from other states, but... [LB787]

SENATOR GROENE: I was all for, you know, if you want to take a picture and you're in the ballot voter booth and you want to text it out to your friends and it encourages other 18-year-olds to vote. By the way, I'm going to vote three times, because I'm three times 18 when you pass that and I can vote three times. But anyway...but, no, that's what concerns me. I thought it was just by happenstance you were taking a picture of yourself and the ballot was in the background. [LB787]

SENATOR MORFELD: So, Senator, you would be more comfortable if we had something in there saying that a person can take a picture of their ballot and themselves. That would be a little bit more (inaudible)? [LB787]

SENATOR GROENE: Yeah, but I mean, but...I mean, that's what I thought this was about. [LB787]

SENATOR MORFELD: Certainly. And that's what it is about. What we were doing is just, without being that explicit, allowing somebody to take a picture for purposes of sharing it for themselves voluntarily. And this is language that we used from other states, but we can do it a Nebraska way and look at that, too. [LB787]

SENATOR GROENE: I thought you were just trying to get around the coincidence that you were taking a picture of yourself and the ballot happened to be there and somebody would say, you shouldn't be doing that if part of the ballot is showing. That's what I thought you were doing. [LB787]

SENATOR MORFELD: Certainly, Senator. And I guess what we're trying to do is acknowledge that it is actually intentional, that it's somebody who's holding up a picture. And there was a great story in the World-Herald (inaudible). [LB787]

SENATOR GROENE: That's the one I seen. [LB787]

SENATOR MORFELD: Yeah, where they're holding it up and they're smiling and (inaudible). [LB787]

SENATOR GROENE: The intent was, look, I'm a voter. [LB787]

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SENATOR MORFELD: Yep. Look, I'm a voter and here's my ballot. [LB787]

SENATOR GROENE: So you (inaudible). [LB787]

SENATOR MORFELD: Yep, and that's the intent of this legislation. [LB787]

SENATOR GROENE: So you should vote, too. That's what I thought, yeah. Thank you. [LB787]

SENATOR MURANTE: Thank you. Senator McCoy. [LB787]

SENATOR McCOY: Senator Morfeld, can you walk me through, please, you mentioned mirroring language from other states. What states would you be referring to? [LB787]

SENATOR MORFELD: Oh, I would have to pull that up. It's been a while since we've drafted this, but I can get back to you. [LB787]

SENATOR McCOY: Because it's my understanding this has not been passed in any other state. Correct? [LB787]

SENATOR MORFELD: No. I believe it's been passed in a few other states. And I think there's some people behind me... [LB787]

SENATOR McCOY: By the ACLU's own admission, I don't believe it's been passed in any other state. The only two states--unless I'm reading this incorrectly--that have addressed this would be New Hampshire, which you talked about, which the state is appealing that... [LB787]

SENATOR MORFELD: Yes, they are. [LB787]

SENATOR McCOY: ...judge's decision on that issue. And in the state of Indiana, where that trial and decision hasn't even taken place yet. So I guess my question back to you is, where has...in what state has such a bill as you're bringing to us today in LB787, in what state has this been passed...is this law? [LB787]

SENATOR MORFELD: And there's somebody behind me that will be able to answer that question. We were looking at legislation from other states. So it could have just been legislation and I confused it for their law, but I believe that there are other states. I know that I looked at Utah, personally, and Utah was one of the states I thought it was passed, but perhaps it wasn't.

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There's some people that can clarify behind me. And if they can't clarify, I'd be more than happy to get back to the committee on that question. [LB787]

SENATOR McCOY: Because the reason I asked that question is I--and I appreciate that acknowledgment--I believe we would be in unplowed ground, if you will. [LB787]

SENATOR MORFELD: Okay. [LB787]

SENATOR McCOY: In order to...by passing this legislation, if that were to happen, unless I'm mistaken in the research I've done, we'd be the first state to actually have done this, other than New Hampshire, which is now in a legal challenge. [LB787]

SENATOR MORFELD: Certainly. [LB787]

SENATOR McCOY: So I guess, first state if this were to stand without a challenge. [LB787]

SENATOR MORFELD: Well, and if I misstated, I apologize, Senator. It may have been when I was looking at it a few weeks ago that it was states that introduced the legislation. I thought a few states, at least, had passed it though, too. [LB787]

SENATOR McCOY: Thank you. [LB787]

SENATOR MORFELD: Yeah. No problem. [LB787]

SENATOR MURANTE: Senator Morfeld, there's been a lot of discussion about taking pictures within polling places, but is it your belief that this statute as it currently exists, exists exclusively in polling places or is it true that the 25 percent to 30 percent of Nebraskans who vote early at home, get a ballot mailed to them, would also be prohibited from taking a selfie with the ballot and posting it on social media? [LB787]

SENATOR MORFELD: Well, for me, this covers both in the polling place and if you're voting from home or wherever the case may be, because right now the statute is fairly broad in the sense of any ballot. And so I think that, my intent anyway, is that this would cover both at home and then also in the polling place. [LB787]

SENATOR MURANTE: Okay. And in your observation, have there been prosecutions that you're aware of, of where this law is actually being enforced? [LB787]

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SENATOR MORFELD: None that I'm aware of. Perhaps the Secretary of State's Office can talk about that. But I do know what brought this to my attention was an article in which the Secretary of State noted the statute and noted that ballot selfies is, under their interpretation of the statute, a violation of it and telling people not to do it, so. [LB787]

SENATOR MURANTE: Senator Bloomfield. [LB787]

SENATOR BLOOMFIELD: Thank you, Chairman Murante. And you brought up my next question here, thank you. If you are allowed and do take a picture of yourself voting at home two weeks early, how would you view somebody blowing that photo up into a 8-foot poster and posting it outside...200 feet away from the ballot place and saying, I voted this way, you should too, where you would be using that very photo for campaigning? [LB787]

SENATOR MORFELD: Well, I don't think that's...first, I think that's unlikely. But second,... [LB787]

SENATOR BLOOMFIELD: Not impossible. [LB787]

SENATOR MORFELD: Not impossible. I say it's unlikely, not impossible. I'll acknowledge that. But I would also say that, what's the difference in putting out ten yard signs of all the people that you support? It's really no different. And the other thing that's important is that it's your choice, that you have a right to express yourself under the First Amendment however you would like. As long as you're not violating the 200-foot rule, I believe it's your right to put that on there. [LB787]

SENATOR BLOOMFIELD: Would you not be utilizing a true copy of the ballot? [LB787]

SENATOR MORFELD: Pardon? [LB787]

SENATOR BLOOMFIELD: I believe you might run into some issues with using the true copy of the ballot. [LB787]

SENATOR MORFELD: How so? [LB787]

SENATOR BLOOMFIELD: You can't post a ballot outside, say vote this way on it. You can put it inside without any markings on it to explain the positions or to give people a sample, but you, I

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don't believe, can put a real ballot outside and say, you should vote this way on it. And that's what this would be doing. [LB787]

SENATOR MORFELD: I don't believe there's any prohibition against that. I mean,... [LB787]

SENATOR BLOOMFIELD: Perhaps not. [LB787]

SENATOR MORFELD: ...and, in fact, right now we have sample ballots. Obviously, it says sample ballot, that are posted on-line, they're posted right outside. [LB787]

SENATOR BLOOMFIELD: But they're not marked. [LB787]

SENATOR MORFELD: They're not marked, but that being said, as long as you're within the 200-foot or outside the 200-foot radius, you can really post whatever you want in any yard or any private property. [LB787]

SENATOR BLOOMFIELD: That's something I'll have to look at. [LB787]

SENATOR MORFELD: Yeah. And we can talk more about it, too, Senator. [LB787]

SENATOR BLOOMFIELD: (Inaudible). Thank you. [LB787]

SENATOR MORFELD: Yeah, I'd be more than happy to. [LB787]

SENATOR MURANTE: Okay. Any final questions for Senator Morfeld? Seeing none, thank you for your opening. [LB787]

SENATOR MORFELD: Thank you very much. [LB787]

SENATOR MURANTE: And we'll proceed to proponent testimony on LB787. Welcome back. [LB787]

BRI McLARTY: Thank you. Thanks for having me. All right. Good afternoon, members of the Government, Military and Veterans Affairs Committee. My name is Bri McLarty, that's spelled B-r-i M-c-L-a-r-t-y, and I'm here in my capacity as the director of voting rights with Nebraskans for Civic Reform, a nonpartisan, nonprofit, advocacy organization dedicated to making elections

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more accessible and advocating for voters' rights. The issue of the ballot selfie first came to our attention last fall when an article was published in the Lincoln Journal Star about a recent New Hampshire court case and the Secretary of State's interpretation of Nebraska statute concerning the same issue. The statute in question was passed in the mid-1990s, decades before the dawn of the ballot selfie. And in reading the article, we became concerned with the interpretation and subsequent penalty for a violation, which is a misdemeanor and \$100 fine. As a frequent user of social media, Instagram, Snapchat, and Facebook, I have seen countless selfies, both with the I Voted sticker, some with the ballot, so we did want to address the issue. Nebraskans for Civic Reform decided to look into the matter and found that other states had similar statutes on the book, those that are currently that we have right now with 32-1527(4). And they were all passed around the same time with the similar intent of deterring voter coercion and vote selling by prohibiting the most common method of proving such an agreement, which would be a picture of a marked ballot. And likewise, many of these states are starting to look into and address the new issue of ballot selfies; one state being, Senator McCoy, Utah, which has introduced legislation and it was subsequently signed by the governor March 27 of last year. So we do have one state that has addressed this issue and that is the language that we based this off of. So, Utah, like I said, being the one that passed it last year. What it is, is carving out a specific exemption. So talking about some of your issues, Senator Bloomfield, is it really just exempts the person taking the picture of their ballot and posting it for another to see, like a social media. If someone were to, I don't know, say, take that picture off of Facebook and then make a big poster and post it outside, that would be a violation of a picture of a ballot. We're carving a very specific exemption for an individual who takes a picture of their own ballot--only their ballot, no one else's--and then posts it in such a way or manner that another may see it. It could be me showing you my phone saying, hey, look, I voted. It could be me posting it on Snapchat for my friends to open and have it deleted. It could be me putting it on Instagram. It's very, very narrow, what we're trying to do, specifically to avoid \$100 fine and a misdemeanor for a kid who's excited about voting on election day. So like I said, LB787 mirrors Utah's approach, carves the specific exemption. And we made sure to include the words, voluntarily photographs. So that once again reinforces any voter coercion or vote selling prohibition. The person has to voluntarily do it; it's their choice whether they want to take a picture or not. And we made sure to include that it's that voter's ballot to again readdress the issue of privacy concerns. So really, in short, to make it about a voter taking a picture of their marked ballot and putting it out on social media. The language is clear that the picture (inaudible) on the ballot. We feel this is a good balance between the First Amendment freedom of speech issues that we saw in the Rideout v. Gardner decision in New Hampshire and the balance of privacy concerns of other voters in their polling place. Addressing the issue of Senator Murante about at home versus in the polling place, right now--and this is probably one of the biggest concerns we saw in the article with the Secretary of State saying that it could address those ballots that someone takes in their home of their own marked ballot--really no privacy concerns there of other voters, because it's their kitchen probably. So we wanted to make sure that we carve this exemption for those individuals that want to take their picture at

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home where there's no privacy concern. So like mirroring what Senator Morfeld said, LB787 provides the necessary clarification to fall in line with the First Amendment freedom of speech rights of the individual voter, while retaining the original intent of the statute and the privacy concerns of those in the polling place. And I'd be happy to answer any questions. [LB787]

SENATOR MURANTE: Thank you very much for your testimony. Are there any questions? Seeing Senator Bloomfield raise his hand, Senator Bloomfield. [LB787]

SENATOR BLOOMFIELD: I'm going to go down a nefarious trail here (inaudible). Senator Garrett and I are both running for mayor of the town of "Smallville." [LB787]

BRI McLARTY: Okay. [LB787]

SENATOR BLOOMFIELD: It's a very close race. I offer you \$50 if you promise to vote for me,... [LB787]

BRI McLARTY: Okay. [LB787]

SENATOR BLOOMFIELD: ...but you're going to have to show them the picture of this marked ballot. Is there an issue there besides the fact that I broke the law by offering you the 50 bucks? [LB787]

BRI McLARTY: Yes. The language as proposed in LB787 specifically prohibits you soliciting me. So the second you offered me 50 bucks, we're in trouble. [LB787]

SENATOR BLOOMFIELD: I'm aware of that. [LB787]

BRI McLARTY: And then going on, where voluntarily...that's where we start seeing that. Voluntarily...this is a solicitation, it's a transaction. I would argue that that's not voluntary. I am doing it in exchange for \$50, so that's why we made sure to keep that language in there. [LB787]

SENATOR BLOOMFIELD: How do you enforce it, because if you took the \$50 you're not going to tell anybody I gave it to you. You've got the picture showing me, yeah, here's my marked ballot. You and I have both broken the law but there's no way to prove it. [LB787]

BRI McLARTY: That's the issue we have right now. I mean, we have a prohibition on vote selling and voter coercion and the language right now prohibits that. And you're right, there is no

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way to prove it. What we're...we've made sure to keep the language that if I told Senator Hansen that I did it, then he could go and tell Secretary of State, local enforcements about it. And then all of a sudden, what was supposed to be an exemption to protect me for taking a picture of my ballot and showing it to whoever I wanted is no longer an exemption. I violated that, so now I get put back into the voter coercion and vote selling prohibition, that 1527 language we're keeping. So then I don't get the special treatment, I don't get to kind of, oh, it's a kid sharing on social media. I don't get that; I now get penalized. And that's with the language we kept in there, so. [LB787]

SENATOR BLOOMFIELD: The other side of that very same coin is, you post this picture of yourself and I say, Garrett, he gave you 50 bucks to do that. How do you prove he didn't? [LB787]

BRI McLARTY: I would give you...feel free to subpoena my bank statements. [LB787]

SENATOR BLOOMFIELD: What's that? [LB787]

BRI McLARTY: I said, feel free to subpoena my bank statements on that one. [LB787]

SENATOR BLOOMFIELD: Thank you. [LB787]

BRI McLARTY: You're welcome. [LB787]

SENATOR MURANTE: Do you think...this scenario has been brought up before. Attempting to buy someone's vote is a felony, which is punishable potentially by time in prison. Do you think that someone who is undeterred by being willing to offer someone money for their vote, if they're undeterred by the felony that would potentially land them in prison will change their mind because of this ballot selfie law which the maximum punishment is a \$100 fine? [LB787]

BRI McLARTY: No, I'm thinking if you're willing to take the main heat, I think the \$100 doesn't seem as scary as a felony. [LB787]

SENATOR MURANTE: I suspect it won't deter many people either. Any...Senator Groene. [LB787]

SENATOR GROENE: Thank you, Chairman. What about the strong personality that's the head of a gang or the head of a sorority or a fraternity and he... [LB787]

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BRI McLARTY: Both those in the same sentence are very strange. I feel a lot better about never rushing. [LB787]

SENATOR GROENE: (Inaudible) my opinion, when I went to college, my opinion of those folks. (Inaudible). But anyway, I'm sending that out, Facebook and said, this is the way we should vote as our fraternal order, as I voted here. And I want you to be part of this fraternal order, that you will verify that you voted that way by sending me a text back. [LB787]

BRI McLARTY: Sounds like a two-part question, so I'm going to answer the first part about someone sending it out on Facebook or e-mail or text, hey, you should vote this way. Right now they can do that, no picture is required. They can say, I'm the chair or I'm the president of your sorority, you need to vote for this person. They can do that right now, there's nothing stopping them. [LB787]

SENATOR GROENE: But there's no way to make the person prove they did it. [LB787]

BRI McLARTY: And that's where...the solicitation is the second part, and that language is still in here. [LB787]

SENATOR GROENE: Well, there isn't no money changing hands or nothing. There's just that authoritative figure over the top of you saying, this is the way I voted. [LB787]

BRI McLARTY: I'd have to look at case law about solicitation. I'm not sure if money is required. I think solicitation is asking, so that's my general interpretation. I'd be happy to look into it. And stronger language could be used where we're not talking about just solicitation, but we're talking about intimidation. So, and I know that's kind of... [LB787]

SENATOR GROENE: That's a better term probably. [LB787]

BRI McLARTY: Yeah, intimidation. I can look in and see if there's a way to... [LB787]

SENATOR GROENE: If you want to be a part of this group, you will prove that you belong here. [LB787]

BRI McLARTY: Yeah. Yeah. I will just see if solicitation would incorporate intimidation, but I know we do have...like, that's what the basic electioneering kind of restrictions of 200 feet within

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the polling place are to diminish it and reduce the ability of someone to intimidate another voter. So I'll have to look into that, but I feel like solicitation would cover that. [LB787]

SENATOR GROENE: I just don't see why this needs to be. I always thought it was about, here is a picture of me I'm holding. I don't know why the language has to be so strong that you're actually taking a picture of the ballot. I thought the whole meaning of this one was, I'm having fun, I'm 18 years old, I'm voting, I'm going to show you that I'm voting, here's a picture of me in the voting booth. [LB787]

BRI McLARTY: The original language, the current language right now of 1527(4) says that you cannot take a picture of a marked ballot. And so that's where we're specifically addressing the ballot selfie, because if you were to just take a selfie in the polling booth with no ballot in the background and you're just, I don't know, that's hidden or it's down or maybe you're above the little thingy, you just hang out, that's not an issue right now. But the ballot selfie, the specific marked ballot, I mean, right now I think I'd have to look at the statutes again, but someone could hold up an empty ballot and say, getting ready to vote, and that would be fine. We're specifically addressing the issue of a marked ballot where someone is excited about voting, possibly for a specific candidate, and they feel the need to take a picture with their marked ballot. [LB787]

SENATOR GROENE: That's the first time you've said for a specific candidate. Before it was all the subject was about me voting. [LB787]

BRI McLARTY: Oh. I was more, I guess, just giving maybe a little more context as to why someone would be so excited about showing a marked ballot, because an unmarked ballot is still, I voted, but I mean, most of the ballot selfies I've seen have been marked ballots, so. [LB787]

SENATOR GROENE: Thank you. [LB787]

SENATOR MURANTE: Seeing no additional...do you have...? [LB787]

SENATOR HANSEN: Yes. Thank you, Chairman. Ms. McLarty, I'm going to share my interpretation and in order to make this a question, I'll ask if you will grade this. [LB787]

BRI McLARTY: Let me get my language. [LB787]

SENATOR HANSEN: So it says, no person shall solicit a voter to show his or her ballot after it is marked to any person, to reveal its contents, and so on. So the main thing is, no person shall solicit a voter to show a marked ballot. And if we interpret soliciting to mean asking, does the

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sheer fact of anybody asking for someone to show them a marked ballot, even just the fact that they asked the question, not that it eventually happens, is that the misdemeanor? [LB787]

BRI McLARTY: Yes, I believe that would be the misdemeanor. [LB787]

SENATOR HANSEN: Okay. I would agree with that interpretation. Thank you, Chair. [LB787]

SENATOR MURANTE: Are there any remaining questions? [LB787]

SENATOR BLOOMFIELD: There's another one just snuck in. This is my third time. [LB787]

BRI McLARTY: Does that mean you're done after that? [LB787]

SENATOR BLOOMFIELD: Probably. Under Senator Hansen's question, you have this picture on your cell phone. I say, hey, let me see that picture of you voting. Did I just commit a law or break a law? [LB787]

BRI McLARTY: That is an interesting question and, yes. But I don't think it would go to the heart of the matter, which is soliciting to them to be to show as like proof for voting a certain way. If you want to get into an original intent argument, I'll see you afterward, but a... [LB787]

SENATOR BLOOMFIELD: Just saying. [LB787]

SENATOR MURANTE: Are there any final questions? Seeing none, thank you very much for your testimony. Is there additional proponent testimony on LB787? Is there any opposition testimony to LB787? Welcome back to the Government Committee. [LB787]

NEAL ERICKSON: (Exhibit 1) Thank you, Senator Murante, members of the committee. For the record, my name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n, Deputy Secretary of State for Elections and I'm here to testify on behalf of Secretary of State John Gale in opposition to LB787. A letter from Secretary Gale is being distributed. As the letter is lengthy, I would like to just highlight some of the points in opposition to the bill made in the letter. LB787 would amend 32-1524 to allow a voter's marked ballot to be photographed and distributed to others. Secretary Gale believes that this change is bad public policy and is prompted by a federal court decision from New Hampshire that is in its initial stages of appeal. As the policy considerations when talking about preserving the integrity of the voting process, what we're really addressing is the issue of fraud. Preventing fraud at the voting booth has always been a major public concern.

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Ballot selfies at polling places are not likely to be just private acts. The express intent seems to be the use of social media to display the voter and the marked ballot to others on social media sites. The image may go to one person or it may go to 100 other people. The image doesn't just represent an anonymous marked ballot, but rather is a clear picture showing the voter and the voter's ballot. The effect is to tell other people how they voted and, intended or not, may well influence how others will vote. Such unregulated ballot selfies would create an atmosphere ripe for electioneering by those who deliberately wish to influence others. Selfies could be taken by partisan activists and shared just as frequently as by young college students voting for the first time. Regarding the federal court decision in New Hampshire, which appears to be the impetus for this proposal, it is important to note the district court decision is on appeal to the First Circuit Court of Appeals. Keep in mind, there are 94 federal district courts in the United States and several district court judges in each district and over 300 district court judges. In addition, there are 12 Circuit Courts of Appeal. Judges from the Nebraska U.S. District (Courts) have not ruled yet on this issue. Each federal district court is entitled to its own opinion on the constitutionality of law and any decision is only binding in the district where the decision was rendered. The New Hampshire court ruling has no impact on Nebraska. The Circuit Court of Appeals may agree or disagree with the New Hampshire district judge. I would encourage you to review Secretary Gale's letter. It provides additional detail on the reasons for opposing LB787. We would encourage the committee not to advance LB787. I will try to answer any questions you might have. [LB787]

SENATOR MURANTE: Thank you, Mr. Erickson. I do have a couple of questions. So you would acknowledge that, whether we pass this bill or not, regardless of the amount of education that's going to happen in the state of Nebraska in 2016, a Presidential general election, there are going to be citizens of this state who take pictures of their marked ballots and post it on social media. Is that... [LB787]

NEAL ERICKSON: We would hope not, but it's quite possible there will be. [LB787]

SENATOR MURANTE: And there has been in the past, so there's no reason to believe that that won't continue. [LB787]

NEAL ERICKSON: We've heard of a few. And when it goes to taking pictures, we don't know, we don't necessarily hear about those. But in terms of placing them on social media sites, we do hear occasionally of that. [LB787]

SENATOR MURANTE: And we're not going to be prosecuting any of these people, is it fair to say? [LB787]

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NEAL ERICKSON: No. Typically what we do is we contact them and say, you know, this is in violation of the law. And they were not aware of that in the few cases we had, and they removed them. [LB787]

SENATOR MURANTE: So we have a law on the books that we are acknowledging we are not going to enforce? [LB787]

NEAL ERICKSON: I would disagree with that interpretation of that statement. I think if this rose to a level where people would not remove them if asked, yes, I think there may be some prosecutions. [LB787]

SENATOR MURANTE: You think the state of Nebraska, if a 21-year-old kid took a picture of themselves, innocuously put it on their Facebook page, that we would prosecute that person? [LB787]

NEAL ERICKSON: That is going to be up to the local law enforcement whether they choose to do that or not. And I think part of it might depend on if it was a case of, oh, I didn't realize that was illegal or if they can...but...or via counter situation where, I'm not taking it down, I'm going to continue to do this no matter what. And I think that could make a difference as to whether an individual is prosecuted for it or not. [LB787]

SENATOR MURANTE: Okay. Okay, but in the past it's happened. We know it's happened and they haven't been prosecuted in the state. [LB787]

NEAL ERICKSON: Yeah. A few times I think in the probably '14 cycle, maybe two and maybe a couple in 2012 that we heard about. [LB787]

SENATOR MURANTE: That you heard about. Okay. [LB787]

NEAL ERICKSON: Right. [LB787]

SENATOR MURANTE: Okay. Well, apparently I have a more active Facebook feed than you, because I got a few myself. I've got to imagine the other 1.8 million Nebraskans have seen a couple themselves. In the letter you say something interesting. You say, the effect is to tell other people how they voted, intended or not, and that may well influence how other people vote. That is sort of the fundamental basis of political speech, right? I mean, if there are people who are out campaigning every single day, the purpose is to influence how people vote. That is a fundamental basic right of the citizens of Nebraska. Why should we be deterring Nebraskans

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from going door to door and soliciting other people to join their cause or to support their candidate? [LB787]

NEAL ERICKSON: Well, and I think it has been mentioned previously that it's not a case of just telling them at this point, this is now a case of proving to how it has been done by showing a marked official ballot. [LB787]

SENATOR MURANTE: So when I go door to door and tell someone, I suggest that you vote for a candidate, we're really raising the bar if I bring my ballot with them and show the filled in circle saying that (inaudible). [LB787]

NEAL ERICKSON: Yeah. Under current law, that is illegal. [LB787]

SENATOR MURANTE: Well, I realize it's illegal. The question is...well, no, I don't think it's... [LB787]

NEAL ERICKSON: If you display a marked ballot to another person... [LB787]

SENATOR MURANTE: Sure, but the question is, we are...your stated intention, your concern is that people will go to other people and attempt to influence how they vote in an election, which is a fundamental First Amendment political speech. That's why we are...that's one of the great parts of this country. There are nations where you do not have that luxury. Why are we constraining that? Why is that something we're afraid of? [LB787]

NEAL ERICKSON: Well, and in terms of...I think there's kind of two points to the opposition. And that would be the electioneering aspect and also prevention of fraud. Now the electioneering can be done in other means as well. You can tell somebody to vote it that way. What this does is provide proof. And the proof aspect of it makes it a little bit difficult, because at that point in time it can be used to commit election fraud. [LB787]

SENATOR MURANTE: How can me showing someone else my ballot be used to... [LB787]

NEAL ERICKSON: Depending on the arrangement you might have with the other person. [LB787]

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SENATOR MURANTE: But that's already illegal. All we're doing is adding another...you're adding a law that doesn't need to exist, based on something that is already illegal. Voter fraud is illegal, so. [LB787]

NEAL ERICKSON: Right. And what I would suggest is that this is a mechanism to make sure that doesn't occur. [LB787]

SENATOR MURANTE: And is there any evidence that this has helped deter voter fraud? [LB787]

NEAL ERICKSON: At this point in time and if you look at the New Hampshire court decision, what the judge there said is basically, vote buying is pretty much dead. And it may be dead and it may be because of provisions just like this one. Now if you start... [LB787]

SENATOR MURANTE: And is there any evidence to support that claim? [LB787]

NEAL ERICKSON: Pardon me? [LB787]

SENATOR MURANTE: Is there any evidence to support that? [LB787]

NEAL ERICKSON: No. [LB787]

SENATOR MURANTE: It may be this statute...this has never been enforced. [LB787]

NEAL ERICKSON: As times change...I mean if you open this up, there is potential to come up with schemes that might be able to use this mechanism to buy votes. And that was kind of one of the issues that was in the New Hampshire case. [LB787]

SENATOR MURANTE: And I can't help but observe that...well, I'll bypass that point. Maybe we'll talk off the microphone, but we'll talk about that. So I understand the prohibition against...your statement in here about campaign buttons, signs, advocacy, electioneering within a polling place, because it attempts to influence someone within that, I think you call it the cone of silence or whatever. What I don't understand is how someone taking a picture of themselves, simply that act, could influence someone within the polling place. [LB787]

NEAL ERICKSON: With the electronic transmission, you don't know where that's going. If you put it on a social media site, it could be somebody that's in the next booth. You post it on

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Facebook right away and if somebody next to you is a Facebook friend it could be right there. [LB787]

SENATOR MURANTE: But if a person is looking at their Facebook page on election day, there's not a person with a Facebook account in America who is not going to see some sort of electioneering on their Facebook page, whether it's (inaudible)... [LB787]

NEAL ERICKSON: Right. And electioneering within that influence-free zone we have made illegal, so we don't want that to occur there. Similarly with this issue, we don't want pictures of official marked ballots being distributed to others because of the potential that could occur to commit what we term now as voter fraud, buying an election. [LB787]

SENATOR MURANTE: So I'll ask you the same question I asked the previous. So in order to believe that, in order to believe that this is the deterrent, one has to believe that someone is not deterred by a felony that will land them in prison, but what's really scaring them off is that Class V misdemeanor that is maximum punishable by \$100. [LB787]

NEAL ERICKSON: Well, if you'd like to raise the penalty, I suppose you could do that under the current law. [LB787]

SENATOR MURANTE: Well, that...making this more of a deterrent isn't the question. My point is that it's not a deterrent at all, so I still...I don't even understand what we're talking about here. We have a law that doesn't deter anything that we don't...that we've never enforced before that we're protecting people from attempting to influence how another person votes, which is probably something we should be encouraging, not castigating. [LB787]

NEAL ERICKSON: Well, and I certainly think there are other ways to encourage that. You know, if taking a picture of someone with their I Voted today sticker, it's not a problem. What the problem is, is the marked ballot. And if they want to use a sample ballot, fine. But the marked ballot, that is an official vote that is cast. And if there is somebody that wants to design a vote-buying scheme, most probably they're going to say, look, I want some kind of proof as to that. [LB787]

SENATOR MURANTE: And if they did that, they would still be violating the statute as it would be amended under this, you would agree? [LB787]

NEAL ERICKSON: Yes. [LB787]

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SENATOR MURANTE: Okay. So kind of that's a moot point. [LB787]

NEAL ERICKSON: Well, a moot point to the extent that it becomes much more difficult to prove because if you have...everybody has marked ballots out there, how do you distinguish between those that are involved in a vote-buying scheme and those that are not? By restricting it totally you don't have that problem. If you start seeing people distributing, this is my marked ballot to other people, then you've got a little more impetus to indicate that, yeah, maybe there is something going on here. [LB787]

SENATOR MURANTE: Okay. Senator Groene. [LB787]

SENATOR GROENE: Question. As a candidate I'm running for office. Once I walk into a precinct, I'm just a citizen. Right? [LB787]

NEAL ERICKSON: Yes. [LB787]

SENATOR GROENE: Well, let's say I go to the courthouse two weeks early. And in my district, I got weed districts, I got county commissioners, I've got sanitation districts and I'm in there two weeks early and I take a picture of my ballot and send it out to my account, my campaign account. And I say, see, I voted this way. And these people are going, I don't know who to vote for weed district. I see Mike voted for "Joe Blow" for weed district and I trust Mike because I'm going to vote for him for Legislature. So I'm going to vote for "Joe" for weed district. Am I soliciting? Am I campaigning? Is that a candidate? I did it two weeks early at the courthouse, I voted. [LB787]

NEAL ERICKSON: Under the new statute...under this proposal, I don't know whether that would be considered solicitation or whether that would be a suggestion. That is going to be kind of, I think, an open-ended question at this point in time. [LB787]

SENATOR GROENE: It's something for somebody to pick the phone up and say, Senator Groene, who do you think I should vote for, for weed district? Who do you think I should vote for, for county commissioner? It's another thing if I had sent him a picture of my ballot and I broadcast it out there to all my supporters. [LB787]

NEAL ERICKSON: Right. [LB787]

SENATOR GROENE: And then I become a political machine in my county, because now I'm affecting all the elections in my county. Right? [LB787]

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NEAL ERICKSON: That is potentially a concern, yes. [LB787]

SENATOR MURANTE: Okay. Any additional questions? Senator Hansen. [LB787]

SENATOR HANSEN: Thank you, Senator Murante. Mr. Erickson, I've got a couple because I want to run through some scenarios. If I'm voting in person in a polling location and I make a mistake, is it possible for me to get a new ballot at that time? [LB787]

NEAL ERICKSON: Yes. [LB787]

SENATOR HANSEN: So in the situation where we have both sample ballots, we have the opportunity for an individual voter to have in their hand multiple single ballots, is there...I mean, going with these hypotheticals, there might be a vote-buying scheme. Isn't there a possibility that I could get my hand on a--not I, because I'm an upstanding citizen--an individual could get their hands on a sample ballot, their first ballot, and their real ballot and show it to three different candidates who all paid for their vote and they get \$150 rather than \$50? [LB787]

NEAL ERICKSON: The sample ballot, it occurs outside the system and that is not an official ballot. The law does not regulate that at this point in time. The official ballot you spoil has to be returned to the election official and then a new one is issued and there is a limitation on how many you can have. [LB787]

SENATOR HANSEN: Okay. Well, I guess I was just...more to my point was, I'm still trying to see that if we're worried about...like with Senator Murante's point of if paying for votes is already a felony, this seems a little superfluous. But if we already have things that look like ballots and you can have your hand on more than one ballot and, frankly, fill out ballots with pencil and paper that have erasers on them, I don't necessarily know if I understand the Secretary of State's concerns with how easy this would impact the voting system. [LB787]

NEAL ERICKSON: Well, and once again, the provision that is prohibited under current law is not necessarily disclosing how you vote. It is...disclosing it to others is what the crime is, showing a picture or a copy of that voted ballot. Now in your situation you're talking about, I don't know if you'd have the opportunity to be able to do both the spoiled and unspoiled, but I suppose theoretically you could. And if you're engaged in a vote-buying scheme, yeah, you've ripped off the vote buyers. But what we're trying to avoid is the vote buying scheme to begin with. [LB787]

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SENATOR HANSEN: Well, yes, I understand. I think that's it. It's everybody's concern and that's why it's still a felony. So...but I guess...so you said you have no problem with...that there's no problem with sharing how you vote on a particular issue or for a particular candidate. [LB787]

NEAL ERICKSON: True. [LB787]

SENATOR HANSEN: I'm guessing I'm missing the distinction of where--and this maybe goes to Senator Groene's questions as well is--what's the difference between I put up a slate card of...and I have a slate card and I circle everybody I voted for and I have a picture of my ballot and it's everybody I voted for. Where's the material distinction between the two of those? [LB787]

NEAL ERICKSON: On that slate card you have not voted and you cannot use that slate card to vote. It has to be an official ballot on which you vote. And this, actually if you go back in history of voting in the United States--and I think it's laid out in the New Hampshire case--that was kind of the way it worked. What you did--and I don't know if it was because of the literacy rates or whatever--but what you did was you carried a colored card in as to what party it was and you cast all those votes for that and that was very visible. And even in the New Hampshire decision, he mentions that the adoption of the Australian ballot system, which occurred in the late 19th century, was something that curtailed the vote-buying schemes to a great degree. And this...we view this provision as just another tool in that to prevent those kind of vote-buying schemes. Now, the judge said, well, you know, we haven't had a whole lot of vote buying in the past few years, and certainly since the technology has existed there hasn't been rampant vote buying. There have been a few cases. But that doesn't mean if you just eliminate this that we're past that day of vote buying. And we can remove all these restrictions that we've had in the past to kind of curtail this process, that it's not going to pop up again. [LB787]

SENATOR HANSEN: Okay. I appreciate the history lesson. I know that's also where party tickets come from because they used to be literally tickets from your party you turned in. All right. My second question stems to kind of the law as it currently is, being a prohibition on showing anybody a marked ballot. I'm thinking of the situation...and I know people who do this, it's a husband and wife who both vote by mail and they both fill out the ballots sitting next to each other at the kitchen table and they can both see each other's ballot. Are they both, under our current statute, committing misdemeanors? [LB787]

NEAL ERICKSON: Technically, if they are voting it and then showing someone else, yes. [LB787]

SENATOR HANSEN: Does that seem like our current statute is unreasonably restrictive then? [LB787]

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NEAL ERICKSON: You know, if the purpose is to prevent vote purchasing, no, I don't think it is. [LB787]

SENATOR HANSEN: Okay. And then...I would disagree with that characterization, but I'll try not to...I guess I'll just move onto my final question then. It was both in the Secretary's letter and you referenced it in your opening, but you're talking about these potential ballot selfies could be taken both by partisan activists and shared just as frequently...let me use your language. Selfies could be taken by partisan activists and shared just as frequently as by young college students voting for the first time. Do partisan activists and excited college students have different constitutional rights to political speech? [LB787]

NEAL ERICKSON: No, they have the same. But the question is, if the purpose is if, when we're talking about political activists, people that might be interested in circumventing the law, purchasing votes, committing voter fraud, whatever, and the young college students may not have the same intent. [LB787]

SENATOR HANSEN: All right. Thank you. [LB787]

SENATOR MURANTE: Seeing no additional questions, thank you very much for your testimony. [LB787]

NEAL ERICKSON: Thank you. [LB787]

SENATOR MURANTE: Is there additional opposition testimony to LB787? Is there any neutral testimony? Seeing none, Senator Morfeld you are recognized to close. [LB787]

SENATOR MORFELD: Thank you, members of the committee, for the questions. It's hard to know where to begin here. First, while we don't have...obviously, I wasn't claiming that the federal district court in New Hampshire's ruling was binding, but I do appreciate the Secretary of State explaining that process to us. But what I was trying to do was show that federal district court has found that this is a violation of free speech, that these types of statutes are overly broad, which Mr. Erickson actually stated that this statute may actually be broad, it's not nearly tailored to the specific purpose to restrict a certain fundamental right for a certain compelling state interest. We also have a case, Moats v. Republican Party of Nebraska, not right on point but still dealing with free speech and some of the other things. But Moats v. Republican Party of Nebraska in the Nebraska Supreme Court in 2011 held that: publications prepared and distributed by the Nebraska Republican Party opposing a political candidate were protected speech. I think that the Supreme Court would probably look at this and understand that...and find

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the same way that New Hampshire would or that the federal district court in New Hampshire found, that this isn't a narrowly tailored statute to a specific compelling state interest. That somebody taking a ballot selfie, excited to vote and trying to tell other people about their excitement to vote, isn't stopping that type of speech, really isn't furthering a compelling state interest. And that's the analysis that we need to look at. As far as the evidentiary issue of whether or not somebody would be soliciting a ballot or something like that, we would have to prove the same things in this as we'd have to prove if somebody was soliciting somebody from a ballot selfie under this proposed statute. There's an evidentiary basis that any prosecutor has to provide and show some kind of evidence. In terms of the word "solicit," I just looked at the plain meaning of the definition while I was behind here, Senator Groene. Solicit can be a financial transaction or a different...or a nonfinancial transaction. But again, that's just the plain meaning in Webster's Dictionary. I didn't have a Black's Law Dictionary available to me behind here. But the other thing, too, is you can already send out who you voted for. I can get done voting and immediately as I'm walking out to my car say, I voted for all these people, I hope that you will too. And I often do that. There are certain candidates that I support that I highly encourage people to go out and vote for. It's no different. And if people are concerned about an actual ballot and the picture of it being out there, we already have sample ballots. Anybody with an hour of photoshop experience could take a sample ballot PDF and potentially turn it into a real ballot. It's not protecting the integrity or the sanctity of anything. We already have sample ballots out there. In addition, I think that this notion that, well, you could be putting this ballot selfie out there and somebody in the polling booth next to you could be seeing that you're voting next to you and somehow that influenced the way that you're going to be voting, it's no different than me getting on my phone. I often bring my phone now into a polling booth because if there's a candidate or a race on the ballot that I forgot about or didn't think about before hand, sometimes I will take out my phone and I'll look up some of the candidates, do some quick education on the issue, and see who I'm going to vote for. It's actually a valuable tool to be an informed voter. And, yes, I may see who somebody else is supporting, because there's certain people I trust and I trust their opinion on who would be a good candidate. So the bottom line is, is that freedom of expression and the ability to express yourself is a protected fundamental right. And we have left in all of the protections to protect against vote buying and soliciting. That's still in there. It's not going away. Now there may be some people, like Secretary of State, who probably wouldn't do a ballot selfie from what I can tell. But that doesn't mean that we should prevent everybody from being able to exercise their fundamental constitutional right. And with that, I'd be happy to answer any questions. Thank you. [LB787]

SENATOR MURANTE: Any final...Senator Bloomfield. [LB787]

SENATOR BLOOMFIELD: Senator Morfeld, is this going to have a priority, as far as you know, LB787? [LB787]

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SENATOR MORFELD: Not yet, but who knows. I mean, Senator Bloomfield, if you're looking for one... [LB787]

SENATOR BLOOMFIELD: Already have one. [LB787]

SENATOR MORFELD: I'm not aware of that, but who knows what will happen. It could also be amended onto another bill, perhaps. [LB787]

SENATOR BLOOMFIELD: Yeah. [LB787]

SENATOR MURANTE: Senator Groene. [LB787]

SENATOR GROENE: Thank you. Would this cover our secret ballots for chairmanships that I could take to make...tell people I want you to take a picture if you said you'd vote for me and I want you to...would I be soliciting? [LB787]

SENATOR MORFELD: Well, you would be soliciting...if you were asking me for my secret ballot vote, yes. But I don't think secret ballot votes in the Legislature are covered under the current statute. [LB787]

SENATOR GROENE: All right. So what's the difference between this and people...some people want to start telling everybody who they voted for and show them their ballots, why don't we just say everybody has to sign their ballot so that everybody knows who you voted for? [LB787]

SENATOR MORFELD: Well, because that's a choice. Number one, the secret ballot is protected under our constitution. Number two, I think that there would probably be problems with signing a ballot for the skating equipment, some of the other things, but it's your choice. I mean, if you want...it doesn't need to be a secret ballot. You can go out and say, I voted for all these people. [LB787]

SENATOR GROENE: You said it's mandated in our constitution it has to be a secret ballot (inaudible). [LB787]

SENATOR MORFELD: If you choose. If you choose. The ballot will always be secret, but whether or not you want to tell people about how you voted, that's not mandated in the constitution. [LB787]

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SENATOR GROENE: Tell and show is two different things, because I can lie when I tell. I can't lie when I show. That's the whole thing about... [LB787]

SENATOR MORFELD: Yeah, the secret ballot protection is really more of a protection that protects the rights of the individual voter to have a secret ballot. Now, if that individual voter decides, listen, I don't want who I voted for to be secret, then they should have the right to allow people to know who they voted for. And people already do this, this is just another form of doing that. [LB787]

SENATOR GROENE: Thank you. [LB787]

SENATOR MORFELD: Thank you. [LB787]

SENATOR MURANTE: Is there anything in this bill that would prohibit someone who had some burning desire of going around and lying to people about who they voted for? Can they still do that if we pass your bill? [LB787]

SENATOR MORFELD: No. Lying is still permissible under the... [LB787]

SENATOR MURANTE: (Exhibit 2) Well, as long as we've covered the Groene exception we should be okay. All right. All right, I see no other questions. So before we close the hearing, I have a letter of support of LB787 from Amy Miller of the ACLU. [LB787]

SENATOR MORFELD: Thank you very much. [LB787]

SENATOR MURANTE: Thank you. So you've got that going for you. All right. That closes the hearing on LB787. We have a couple more bills that I'll turn over to Senator Garrett. [LB787]

SENATOR GROENE: They don't get it today. They don't get it, the younger generation. [LB787]

SENATOR GARRETT: Well, welcome, Senator Murante, to your Government, Military and Government Affairs Committee. [LB874]

SENATOR MURANTE: Thank you, Senator Garrett. Now that we've cleared the room, we can talk about the appointment of school board members and how to fill vacancies. So my name is John Murante, J-o-h-n M-u-r-a-n-t-e, I am the state senator for District 49, which encompasses Gretna and northwest Sarpy County, and I'm here today for the purposes of introducing LB874.

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This bill was introduced on behalf of the Nebraska Association of School Boards and what we're really trying to do is create one harmonized standard for how vacancies on school boards are filled and it's about as simple as it can be. What we're saying is, for any school board of any class, any size school district, the appointee shall serve the remainder of the term for which they were appointed. As you can see, there are a number of different statutes which deal with the different ways and when an appointee has to run for reelection. It seems to me that one harmonized standard is the way to go. I don't really see a fundamental principle difference why the school districts...why the appointments...admittedly they're all different, but the appointments themselves seem to be a pretty across-the-board standard, so one harmonized vacancy provision will add to simplicity and it will just make it easier for the entire state of Nebraska to know what we're doing here. So I encourage your support of LB874. [LB874]

SENATOR GARRETT: Thank you, Senator Murante. Are there questions from the committee? I learned long ago never to say, this is a no-brainer. Senator Bloomfield taught me that lesson. Thank you, Senator Murante. [LB874]

SENATOR MURANTE: Thank you. [LB874]

SENATOR GARRETT: Are there any proponents? Welcome. [LB874]

JENNIFER JORGENSEN: Thank you very much. Thank you, Chairman Garrett, and members of the committee. My name is J-e-n-n-i-f-e-r J-o-r-g-e-n-s-e-n. I wouldn't think spelling my name would be the hardest part of this testimony. Thank you to Senator Murante for introducing us for this. And as he's already stated, the purpose of this bill is to really simplify the process of filling vacancies for school boards, school boards of different classes, depending on the size of the board. And if you look at the current law, currently certain classes, their vacancies are filled by date. So if a vacancy happens at a certain date, then the position is filled until the next general or primary election. If the vacancy is after a certain date, then it's filled for the remainder of the term. Class V school districts in the current law actually are until the end of the term no matter when that vacancy occurs. And other elected positions, such as cities, counties, those kind of entities are also until the end of the term. So, again, this really is going to clarify and simplify the process of filling vacancies for school board members. They don't have questions of which one of these do I fall into, depending on the date? And it would also bring the consistency with all classes of school boards, so Class V districts aren't different than Class I, II, III, and IV. So, again, we're asking for you to support this bill, and any questions that you may have. [LB874]

SENATOR GARRETT: Thank you, Ms. Jorgensen. Questions? Senator Groene. [LB874]

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SENATOR GROENE: Thank you, Mr. Chairman. What is Class V? Is that the bigger ones or... [LB874]

JENNIFER JORGENSEN: It is. Omaha is the Class V district that we have. [LB874]

SENATOR GROENE: So it's the opposite of athletics. [LB874]

JENNIFER JORGENSEN: Yes, it is. [LB874]

SENATOR GROENE: All right. So then all the smaller ones have to do it different. [LB874]

JENNIFER JORGENSEN: According to the way the law is currently written, yes. [LB874]

SENATOR GROENE: And what is the term on those school boards? [LB874]

JENNIFER JORGENSEN: Four-year term. [LB874]

SENATOR GROENE: Thanks. [LB874]

SENATOR GARRETT: Any other questions? Thank you for your testimony. [LB874]

JENNIFER JORGENSEN: Thank you very much. [LB874]

SENATOR GARRETT: Any other proponents? Any opponents? Anybody in a neutral capacity? Okay, and Senator Murante waives closing. This concludes the hearing on LB874. And we welcome Senator Murante back for LB879. [LB874 LB879]

SENATOR GROENE: He's got another one, huh? [LB879]

SENATOR MURANTE: As we have cleared the room further, it just keeps getting more exciting as the afternoon goes along. Good afternoon, members. My name is John Murante, spelled J-o-h-n M-u-r-a-n-t-e, I am the state senator for District 49 and I'm here today to introduce LB879. LB879 pertains to how individuals can petition on a general election ballot. I want to be clear about this. We're not talking about primary elections and we are talking exclusively about partisan offices. The means by which a person can petition on a general election ballot in a nonpartisan race is covered in a different section of statute and doesn't apply to this. It is actually

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more restrictive than the partisan offices in many ways. For the partisan office, as you can see right now in the statute, the standard for getting on the ballot in a general election by petition is remarkably low. So the number of votes it takes for an individual, for example on a statewide level, to get the Republican or the Democratic nomination for any statewide partisan office, you're in the hundreds of thousands to be on the general election ballot and get the nomination. To get on the general election ballot by petition is 4,000. It is a remarkable contrast. I don't see any public policy reason for it to be that way, so to make it 10 percent of the registered voters entitled to vote for that office ends up being roughly comparable numbers, depending on the district and so forth. So it's as simple as it comes. We've dealt with the by-petition candidacies in years past and this is just a continuation of that discussion in the Government Committee. And I would be happy to answer any questions that you might have. [LB879]

SENATOR GARRETT: Thank you, Senator Murante. Questions from the committee? Seeing none, thank you, Senator Murante. Are there any proponents... [LB879]

SENATOR GROENE: I don't understand this one. [LB879]

SENATOR GARRETT: ...who care to testify? Any opponents? Anybody in a neutral capacity? Senator Murante waives closing. This concludes the hearing on LB879 and today's Government, Military and Veterans affairs Committee meeting. Thank you all. [LB879]