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Government, Military and Veterans Affairs Committee
October 13, 2016

[LR504 LR530]

The Committee on Government, Military and Veterans Affairs met at 10:00 a.m. on Thursday, October 13, 2016, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR530 and LR504. Senators present: John Murante, Chairperson; Dave Bloomfield; Joni Craighead; Matt Hansen; and Tyson Larson. Senators absent: Tommy Garrett, Vice Chairperson; Mike Groene; and Beau McCoy.

SENATOR MURANTE: (Recorder malfunction)...Military and Veterans Affairs Committee. My name is John Murante. I am the state Senator for District 49, which includes Gretna and northwest Sarpy County and the Chairman of this committee. We are here today for the purposes of conducting two interim studies. We will be taking up the interim studies in the order on which they appear on the agenda which is outside of this room. If you are here today to testify on either of these measures, we ask that you fill out one of these green forms. These green forms are located on either side of the room. When you come up to testify, give them to the committee clerk and when you begin testifying, please start your testimony by stating and spelling your name for the record. If you are here and...if you are here and wish to have your presence recorded but do not wish to testify, we have a sign-in sheet, again located on either side of this room. Please feel free to sign in and your attendance will be submitted for the record. If you have any prepared statements, exhibits, anything that you would like distributed to the committee, please provide ten copies to the page and she will have it distributed to the committee members. We do use the light system in the Government Committee so our order of business is a little bit different than public hearings for bills that we conduct during the course of the legislative session. So we'll grant the introducer an opportunity to prepare and give us opening remarks and then we'll open up the floor to anyone who wishes to testify. We won't have proponents, opponents, or neutral testimony. It will just be the first come, first served. For testifiers we will be using the light system. Each testifier is granted five minutes. When the amber light comes on you have one minute remaining and we ask that you begin to close your remarks. When the red light comes on, we ask that you cease your remarks and then we will open the committee up for any questions that they may have of you. That, I think, covers most of the formalities so we'll do some introductions. To my far left is Sherry Shaffer who is the Government Committee clerk; to her right is Senator Joni Craighead who represents Omaha, Nebraska; to my left Senator Matt

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Hansen who represents Lincoln; to my immediate right is Andrew LaGrone who is the committee's legal counsel; we have Senator Dave Bloomfield from Hoskins, Nebraska; I anticipate Senator Larson from O'Neill, Nebraska, joining us shortly; and Senator McCoy and Senator Groene will not be with us today and it appears that Senator Garrett, who is the Vice Chair of this committee, will not be with us, but I can assure you that all information that is received for us today will be disseminated to the entire committee before taking action in the next legislative session. So, with that said, welcome, Senator Howard, back to your committee on Government, Military and Veterans Affairs.

SENATOR HOWARD: Thank you, Chairman Murante. Good morning, Senator Murante and members of the Government, Military and Veterans Affairs Committee. I apologize, I'm getting over a cold right now. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I'm here to talk to you about LR530, a study resolution that examines the procedures and statutes that govern the voting process for citizens who are hospitalized or who reside in nursing homes or extended care facilities. Under current law, local election officials bear primary responsibility for adopting voting procedures for these citizens. This issue was brought to me by constituents who wanted to share their experiences with the voting process through the lens of a family member who resided in an extended care facility. Two of those family members will follow me today to tell their story. It's my hope that through the testifiers today we will receive input on how voting for those who are not able to travel to the polls as easily as most citizens affects the way they vote. I want to thank you all for coming. I'm happy to try to answer any questions. The Douglas County Election Commissioner couldn't be here today but he did send a letter, which I hope you all have a copy of. And while this is an issue that came to me through a personal story, I do think it's...there's merit in reexamining how we support voting for individuals who are hospitalized or in extended care facilities, so I appreciate your time and attention to this issue. [LR530]

SENATOR MURANTE: Thank you, Senator Howard. Thank you for bringing this issue to our attention. Are there any questions for Senator Howard? Seeing none. Thank you very much. We will proceed... [LR530]

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SENATOR HOWARD: And I will waive closing just to make sure everybody has enough time.
[LR530]

SENATOR MURANTE: Okay. Sounds great. Thank you very much. And as I said previously, we'll begin accepting testimony on a first come, first served basis, so I recommend anyone who wishes to testify to take some seats in the front couple of rows. As you can see, we have a lot of open spaces, so if you wish to testify, move forward now. And it looks like we have our first testifier already. Welcome. [LR530]

EMILY WYNN: (Exhibit 1) Thank you. Dear Senator Murante and members of the committee, my name is Emily Wynn, E-m-i-l-y W-y-n-n. I live in Omaha, Nebraska, with my husband Kirk. We have two grown children and four grandchildren all of whom also live in Omaha. I own a successful business that's been in my family since 1972 and I want to thank you for this opportunity to speak on what I and my family now refer to as "Carol's Law." I'm Carol's niece. You begin to realize Carol is different from other adults when you are about seven years old. I think this is when you begin to grow beyond Carol. You notice that she's not interested in the evening news or reading the newspaper. She stumbles over even the little words when she reads you a story. Carol prefers to play with children rather than join the grownups in conversation. Carol could not count change and she loved to color. Carol was this family's forever child and we loved her. When Mary Ellen first told me that Carol had a voting ballot I didn't give it much thought. But when I did begin to think about it, it was as if I pulled a loose string and things began to unravel. Carol voting? How did Carol become a registered voter? How did Carol get a ballot? She certainly would not have any interest or capability of obtaining one for herself. The nursing home where Carol lived for 17 years was very, very good to Carol and this family will forever be grateful for the care and the love they showed her. We have learned through the clerk at the voting commissions office that Carol voted frequently during her 17 years at the nursing home. Knowing Carol, she probably participated in voting every time the opportunity presented itself. And I guarantee you that never once would this have been Carol's vote, but it would have been the person helping her. If anyone of us would have known at any time that Carol was a registered voter we would have taken the necessary legal steps to have her removed from the voting register as this would have been just one more way Carol could have been taken advantage of. I want to make it perfectly clear, and I do not want our mission misinterpreted, we

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are in no way trying to take anyone's precious voting rights away. My hope is that everyone would be competent to vote their entire lives. However, through this experience we have seen that there is an extremely fine line between protecting one's right to vote and protecting our vulnerable citizens from becoming victims of exploitation, voter fraud, and falsification. The current voting arrangements of nursing homes and memory units put the trusted staff members in a very difficult, often impossible position. We had the opportunity to visit with a staff member who was assigned the responsibility of assisting voters in a nursing home. She was very open in sharing with us how difficult a position this often is, often being asked "who would you like, who do you like, who would you vote for?" By the very nature of the relationship, the nursing home staff members are in a position of authority over the residents. I have said kind of tongue-in-cheek that if I were ever in a nursing home I would vote however the person in charge of my pain medicine wanted me to, or in Carol's case, whoever could give her an extra scoop of mashed potatoes. In our case regarding Carol, there was never, ever a time when Carol was competent to vote. In many cases an individual enters a nursing home or memory unit at one level, competent to vote, and then suffers the process of decline. At what point after a medical professional has determined an individual incompetent to manage their own affairs should they be disqualified from receiving a voting ballot? I have no answers, only concerns. We are here to implore you, our elected representatives who understand the law, to consider this issue and reach the best possible solution. How do you make sure that those individuals who are determined truly incompetent to cast their own vote do not receive a voting ballot? And then I also feel strongly that at a certain point we're almost setting them up to be victims of voter fraud if their mental capacity is at such a stage. What responsibility, if any, should nursing homes and memory units have in implementing the voting process for its residents? With 10,000 people turning 65 every day in this country, this is a very timely and salient issue and the potential for impacting elections is huge and distressing. Thank you for your time and this opportunity to express our concerns. Thank you. [LR530]

SENATOR MURANTE: Thank you. Hold on for one second. Let's see if we have some questions because I have at least one. Thank you very much for bringing this to us today. I appreciate it as a person who has had two grandmothers in nursing homes. I sympathize with your position, especially as it relates to, and you're absolutely clear. I had one grandmother who was in the Alzheimer's unit and there was a period of time when she was capable of making

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decisions and after a period of time, she wasn't any more. And that's just a sad reality. Who in your mind, who should be the authority on determining whether a person is competent? Is that a decision for a court, is that a decision for an election officer? [LR530]

EMILY WYNN: Well, I've given it a lot of thought and this probably isn't the legal way to do this. That's more for, you know, you people, but it's very easy to get an absentee ballot. Very easy to fill one out and get...I almost think if somebody is not competent to get an absentee ballot for themselves, they're not...maybe that's the line. Maybe if somebody is assigned a guardian, maybe that's the point. [LR530]

SENATOR MURANTE: Okay, that is an issue that I assure you we will be studying in great detail in the coming months. [LR530]

EMILY WYNN: Thank you. [LR530]

SENATOR MURANTE: Yes. Senator Bloomfield. [LR530]

SENATOR BLOOMFIELD: Thank you, Chairman. Thank you, Ms. Wynn, for bringing this in to us. When I ran four years ago, I was advised to be very, very nice to the staff because they will determine how people in the home vote when they're not capable of making their own decisions. So this is out there and I thank you for bringing it in and I'll not be here to be involved in any solution to it, but this committee will and I know they'll look at it and hopefully they'll find some answers because the problem is real. [LR530]

EMILY WYNN: Thank you. [LR530]

SENATOR BLOOMFIELD: Thank you. [LR530]

SENATOR MURANTE: Thank you, Senator Bloomfield. Any additional questions? Seeing none. Thank you very much for coming down today. Very much appreciate it. [LR530]

EMILY WYNN: Thank you. [LR530]

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SENATOR MURANTE: Additional testimony on LR530. Welcome. [LR530]

MARY ELLEN METCALFE: (Exhibits 2 and 3) Thank you. It's good to be here. So, good morning, Senator Murante, members of the committee. Thank you, Senator Howard for introducing our LR530. My name is Mary Ellen Metcalfe, M-a-r-y E-l-l-e-n M-e-t-c-a-l-f-e. I am the sister and co-guardian of Carol Louise Tritsch. I also am a recently retired nurse of 48 years. So thank you for inviting us to speak to you today. We are here based again on a personal experience. Today, I am going to speak to you from my heart. I would like to tell you briefly what occurred and the reasons I have not been able to let go, and what I discovered by accident. When I arrived at the nursing home on a regular visit, I found my sister Carol nervous and anxious. This behavior was abnormal for her. We continued to talk, she remained nervous. When I asked her what was bothering her, she picked up the ballot in the envelope and said, here, Mary Ellen, take it, take it. I don't know what to do with it. I reassured her that I would take care of it. This situation has continued to be upsetting and haunting. I am still shocked that Carol had a ballot and that I, as her guardian, was unaware. As Carol's guardian I assumed and took my responsibility very seriously. All of our family were involved in Carol's life. I attended every quarterly team conference, worked with the staff to develop nursing care plans, weekly visits along with other members of the family. We made all of her medical decisions and Carol called me every evening to discuss her day. I am surprised that Carol didn't mention something about the voting process. That is a big question mark to me. Our entire family was a very strong and loving presence within that nursing home and in Carol's life. Again we are here today based on this personal story and we believe that other families have similar situations and that change is needed to help other families. We want to ensure them of their role in the nursing home facility and to protect our voting process. Specifically, we are recommending: (1) For those patients in a nursing home memory units that do have families, guardians, and whoever is responsible for that person, to be aware of the voting process, and then I would like to ask that they be given the choice to assist their loved ones along with one other neutral person in the voting process. Included in this process they are aware of how to obtain a court order, if that is appropriate, for ineligibility to vote based on mental incapacity. If a patient is unable to vote without being unduly influenced, the voting process should be terminated and documented by the people that are assisting and then sign the voter assistance oath. (2) A thorough review and a request for correction in the voting registration identification. Identification should be required at the time of

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registration, I believe. Carol and similar people would then have been appropriately protected and would not have become a registered voter. Public awareness and clarity in the laws covering eligibility and ineligibility--examples, all Web sites including Nebraska state Web sites, county election Web sites and other documentation including, I believe, TV and newspaper awareness prior to voting...or when the voting...prior to the voting process. Our understanding is the Nebraska Constitution requires a court order specifically determining that an individual is mentally incompetent to vote. To date, no one in the state of Nebraska has requested this court order, possibly, I think, due to lack of awareness--my opinion. To this day, I do remain sad. I had no knowledge of Carol voting. I was sad because I could have protected her. I would have taken the legal rights. In summary, Carol's Law would preserve the voting rights of every eligible person; protect the integrity of our elections and avoid unintentional voting fraud; reassure family members and their loved ones that they are not struggling with the voting issues above their intellectual capacity; and to put the responsibility in the proper hands. Carol was incredibly special. She taught our family many lessons and I wish you could have met her. Thank you for your time and thoughtful consideration of our story, and going forward we would be honored and happy to assist in whatever way we could to all of you. [LR530]

SENATOR MURANTE: Thank you. Senator Craighead has a question. [LR530]

SENATOR CRAIGHEAD: Yes, Ms. Metcalfe, thank you so much for being here today. Did you...I'm sure you researched this out. Were you ever able to find out how the absentee ballot came to be? [LR530]

MARY ELLEN METCALFE: I will tell you what I think. Carol lived with my...she lived in different facilities, but the last probably 20 years she lived with my mother. Carol loved to shop. She loved to go buy candy. She loved to buy a birthday card for somebody. She was given \$5 a week to spend as she chose and my mother went with her, introduced Carol to Walgreens and one other store that she liked to shop at. So my mother went with her, introduced everybody at Walgreens and this other one, who Carol was. If they had any questions about her being there, because she was alone, to call her. They had my mother's number. I think...it was Woolworths--Walgreens and Woolworths. I think that Carol was out in the mall and went from Walgreens to Woolworths and somewhere in-between there, there was someone registering people to vote.

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Carol had great, amazing social skills. She could sign her name, but to make any other personal decisions for herself, she wasn't capable. There is documentation in your notes in regard to a professional evaluation of Carol, her mental capacity. So we've been very aware of her capacity and her limitations. And we all took full responsibility for Carol at all times. So when...that's why I was so confused and surprised and all of these things in my mind, how did this all happen? My mother would have never allowed Carol to be a voter. That is my belief. [LR530]

SENATOR CRAIGHEAD: Okay. I was just curious of maybe you thought it was someone in the nursing home or how...you know, how, that's... [LR530]

MARY ELLEN METCALFE: Well, and I know how it works, so the commissioner's office has a list of everyone that is registered and then they have a contact person in the nursing home. I will tell you this story when I found out about Carol having a ballot. I have the ballot with me, Exhibit A, but anyway. So I took the ballot, I went to the person that ordered the ballot and I asked him, you know Carol, you know her so well, you know her limitations. How were you going to handle this? And he stated, well, I would have sat down with her and I would have explained things to her. And I said, you...and how would you interpret that? And he remained silent. [LR530]

SENATOR CRAIGHEAD: Okay. [LR530]

MARY ELLEN METCALFE: I drew my conclusion...my assumption. [LR530]

SENATOR MURANTE: Okay. Senator Bloomfield. [LR530]

SENATOR BLOOMFIELD: Thank you. Do you have the feeling that votes were actually cast? [LR530]

MARY ELLEN METCALFE: Oh, I know they were. I called the commissioner's office, they were. She voted every time, city, state, federal, every time during her entire... [LR530]

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SENATOR BLOOMFIELD: Somebody was pulling the strings somewhere along the line to get her vote counted. [LR530]

MARY ELLEN METCALFE: Correct. And she trusted them. Carol was a child who loved everyone and everyone loved Carol, but she trusted anybody that she would meet. She had no filter regarding how much she loved people and Carol made a huge difference in that nursing home. Her presence was amazing. I would push her in her wheelchair all around and so on and so forth and maybe there was someone that was totally unresponsive in a wheelchair, Carol would touch them, pat them and say, I love you. And they kind of perked up a little bit, but she touched everyone's life, everyone. [LR530]

SENATOR BLOOMFIELD: We're treading a very fine line here as you know. We're all aware when we go to infringe on someone's right to vote. It's the most cherished thing we have in the country. [LR530]

MARY ELLEN METCALFE: It is and we are strong citizens. We believe in rules, regulations, and the law, strongly and support. [LR530]

SENATOR BLOOMFIELD: This may be one issue that I'm pleased I'm not going to be here to make the decision. (Laughter) Thank you. [LR530]

MARY ELLEN METCALFE: I think there's a lot to study. I think this is not the end. I would be honored to be part of it. If there is anything I can add, I would love to. All of our family would like to participate going forward. [LR530]

SENATOR MURANTE: All right. Thank you very much. [LR530]

MARY ELLEN METCALFE: No, no, thank you. [LR530]

SENATOR MURANTE: All right. Are there additional individuals wishing to testify? Welcome back. [LR530]

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BRAD MEURENS: (Exhibits 4-6) Thank you. It's good to be here. A little less paper than usual. I'm sure you'll be very happy. Good morning, Senator Murante and members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director with Disability Rights Nebraska, the designated protection and advocacy organization for Nebraskans with disabilities. Under the auspices of the federal Protection and Advocacy for Voting Access Program, we work to educate about the voting rights of people with disabilities and the voting process as well as to ensure that Nebraskans with disabilities have easy access to exercise their right to vote. We thank Senator Howard for allowing an opportunity to discuss this issue today. I have one disclaimer. I do not hold myself out as an expert on the legal, procedural, or technical matters relative to voting in general, or specific applications to people with disabilities. For a fuller understanding of these particular aspects, I would refer you to speak with Tania Diaz, managing attorney in our office, as she manages our voting access program, but I will be able to answer as many questions as there may be to the greatest extent that I can. The statute in question is a clear directive that people who are in these types of facilities should be provided ballots if requested, which is only proper, for who knows why an individual resides there or how long they have been or will be a resident. So perhaps the individual is there for a month's rehabilitation post-surgery just before election day. So we are not sure that further clarification is necessary, but if this body feels the need to insert additional language, perhaps inserting language that clarifies a requested ballot should be given irrespective of one's disability or perceived impairments. However, if the clarification issue is used to restrict the voting rights of residents in these facilities, through such means as cognitive pre-tests, denial due to guardianship status, or guardian permission, we would have deep concerns with such an approach. I have included in my handouts a report from the Bazelon Center for Mental Health Law which is an excellent resource. It clearly states that: Service providers, such as nursing homes, hospitals, assisted living facilities, and group homes, cannot bar residents from voting based on staff or administrators' beliefs that some or all residents are not competent to vote; that if a state does choose to impose a voter competence requirement, that requirement cannot be so broad that it takes away the right to vote of people who are capable of voting. For example, a state generally may not have laws that impose a blanket ban on voting by anyone under guardianship. A voter competence requirement must be applied to all voters. It cannot single out a particular group of voters, such as people who are subjects to guardianship proceedings. And people who have the capacity to vote and meet the age and residency requirements for voting

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cannot be treated differently from other such voters based on whether they have a mental disability, or whether they have a guardian. The report also warns that restrictive means like those mentioned above would likely run afoul of the Equal Protection Clause, the Americans with Disabilities Act, the Help America Vote Act, and the Voting Rights Acts because they set up a structure that imposes additional artificial barriers and differential treatment for people with disabilities and would likely disenfranchise many people with disabilities who do have the capacity to vote. The Bazelon report also addresses the issue of potential voter fraud, whether that is undue influence by caregivers, through coercion, or by providers falsifying ballots. The report recommends that there are better alternatives than erecting restrictions on voting, and that the focus of efforts to combat fraud should be leveled at the perpetrators, not the victims. Their recommendations include: Educating helpers about what types of assistance are and are not permitted; using criminal prosecution to address unscrupulous voter fraud practices; and establishing state law procedures requiring election officials and residential service providers for people with disabilities to assist residents of long-term care facilities and other care settings with registration and voting. I have also included in my handouts--unfortunately I did not provide enough time for myself to make multiple copies for you--of state laws that are affecting the rights to vote for persons with psychological disabilities and a matrix of state laws authorizing challenges to this right. Of particular note, Nebraska law disqualifies an individual from voting if they are deemed non compos mentis, which does not equate with simply having a guardian. Eleven states by the way: Colorado, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, New Hampshire, North Carolina, Pennsylvania and Vermont, have no disability-related restrictions on the right to vote in their state constitutions or election laws. And again, this is a very fine line issue, very complex and very complicated and we would be happy to provide any additional information, or work with this committee to arrive at an amenable situation regarding this issue. That will conclude my comments. If you have any questions, I'd be happy to answer them the best I can. [LR530]

SENATOR MURANTE: All right. Thank you very much. Are there any questions? Seeing none. Thank you very much for coming in. Much appreciate it. [LR530]

BRAD MEURRENS: Thank you. [LR530]

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SENATOR MURANTE: Welcome. [LR530]

SPIKE EICKHOLT: Good morning. It's been a while since I've been here. [LR530]

SENATOR MURANTE: Welcome back. [LR530]

SPIKE EICKHOLT: (Exhibit 7) Good morning, Chairman Murante and members of the committee. My name is Spike Eickholt, first name, S-p-i-k-e, last name, E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska. ACLU supports the principle of voting. Obviously as Senator Bloomfield mentioned, voting is a cornerstone of our democracy and it is a fundamental right upon which all of our basic civil rights and liberties are based. You've got a copy of my testimony. I'm not going to restate though...I'm not going to read it to you, but I would just maybe summarize it. We first would thank Senator Howard for introducing this interim study because this is an important issue to look at. I want to be responsive maybe to what some of the other testifiers said because I think I see maybe what the issue is behind the interim study and that is what to do with residents, the least possible coercion of residents in nursing homes or assisted care living facilities. What Mr. Meurrens said is right. I think that any sort of effort to possibly restrict a person's right to vote, to disenfranchise people based on their diminished capacity either as a group or as an as-applied basis, I think that's just dangerous. It's dangerous for different legal reasons like Mr. Meurrens explained before. In preparation for today's hearing, I looked at what other states have done and a number of other states have sort of faced this issue differently because what you have really nationwide is an increasing voter population that is in elderly or in assisted care living situations. Some states have sort of put more of an affirmative duty on local officials or election officials to provide absentee ballots to nursing care facilities and put more of a duty on the local officials to actually administer the balloting and provide for assistance for filling out absentee ballots. A number of other states...actually three states have created pretty aggressive and pretty sensible limitations on what staff and administrators of nursing homes can do with respect to assisting people with filling out absentee ballots than just simply take them out of the equation. Now frankly, if that is the problem, that would be maybe a little more of a fairer approach. In other words, rather than looking at possibly limiting people's right to vote just because they happen to be in a nursing home or an assisted care facility, it would make maybe more sense to simply take out the

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influence, the official or otherwise, that staff has on those people's exercising the right to vote. And that could be done as Mr. Meurrens said by criminal prosecution or maybe by some sort of administrative sanction. I presume that these places are...entities are licensed by the state somehow and that could be a condition of them operating those facilities that they not somehow influence, assist, or really take any part whatsoever in filling out ballots for the residents. There really is no reason for them to do that and other states have acted similarly. And I think I mentioned the states before that have been pretty...comprehensive reforms and those are Connecticut, Ohio and Rhode Island. Or the other alternative would be and I suppose local governments wouldn't really like it, was to somehow provide for...I mean right now under 32-944, the local election officials or county clerk will provide absentee ballots to nursing homes sort of on request and it's discretionary. But perhaps to have maybe a more duty on the local governments to actually reach out and provide absentee ballots and some assistance in filling them out at the different homes within the counties. Those are the things that we would encourage the committee to look at if the committee is going to be looking at reforms instead of possibly providing for if there's a guardianship, a person has to...might lose a right to vote. I think that's just fraught with legal peril, policy peril, and even creating a procedure where if someone, a family member could request having a family member's right limited is just dangerous to do. We would encourage the body to look somewhere else, or the committee to look somewhere else, if that's what the committee is going to be doing. You've got my statement, you can read it, if you have any questions. [LR530]

SENATOR MURANTE: All right. Thank you very much for your testimony. I'd begin by simply saying as I listened to the initial testifiers, it seems like their recommendation really had nothing to do with the prohibition of individuals voting. Their recommendation is still primarily with people who are incapable of voting themselves and are having other people submit forms on their behalf getting the ballots, having the ballots filled out by that third party, with the person who is purported to vote not even knowing who the candidate's names are. That's the evil that we're trying to address, so to speak. So I appreciate the concern. It's just...it's not a proposal that I have seen raised by anyone, so I can assure you we won't be limiting people's right to vote but at the same time, I think there is a problem to address here. So, that's kind of my point of the statement. So, are there any questions? Seeing none. Thank you very much. And welcome. [LR530]

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BRI McLARTY HUPPERT: I guess I have a cold, too, now. Good morning, members of the Government, Military and Veterans Affairs Committee. My name is Bri McLarty Huppert, that's B-r-i M-c-L-a-r-t-y H-u-p-p-e-r-t. Spike and Brad have already talked about the legal ramifications, so I'm kind of really going to focus just on the statute. So what 32-944 says is that it's up to the counties to kind of create a procedure to actually send out what would be equivalent of an election clerk and an election judge to an individual that has already requested a ballot to then assist them in filling out the ballot. In kind of taking a tour this last summer of a bunch of counties both in central and northeast Nebraska, it seems like a lot of the counties aren't actually utilizing that statute. A lot of them do go out when requested to do voter registration drives at assisted living or nursing facilities on especially in the rural communities that's one of the places that they do...that they're requested to go to a lot. And they do work with the...I think they're called an activities director within these facilities to help assist with requesting absentee ballots, but in doing kind of a quick survey of some the counties, a lot of them didn't have procedures for this. And even in Douglas County in...on its Web site looking at how it's done, it kind of just talks about how to request an early ballot and there's no real procedure for requesting kind of the pair of election clerks and judges to go out. So in looking at ways to clarify the law, possibly adding language that would have required them to submit their procedures, either to the Secretary of State so that it could be posted on his Web site, or perhaps even posted on their own Web site a way for an individual either...the individual trying to vote or the guardian of that individual to kind of request that assistance. I think that might address some of the undue influence issues we're seeing here because it's just not clear about how someone can request this from...can request this assistance. So one of the things I looked at was Title 432, is the Early Voting Locations Act. Right now election officials can actually submit a plan. I think it has to be 75 days in advance to have an alternate early voting site in addition to their office. It's not used very much and I think the 75 days wouldn't provide the flexibility that's needed for this case-by-case basis. But kind of having a little more structure in how it's requested in providing that oversight by the Secretary of State's Office to ensure uniformity, but also to make it more publicized, it sounds like that's one of the issues is that individuals don't know that this is available. The Office of the Public Guardianship were one of the individuals I talked to about this, because they actually instruct the public guardians that guardianship does not mean that they're non compos mentis and that they don't get the right to vote, so they're actually trained on how to deal with this situation. The Office of the Public Guardian is actually now going out to

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the community and training private guardians about this kind of...how to be a private guardian, how to deal with, you know, the trust accounts, the bank statements, how to pay bills. So incorporating this type of education in those private guardianship seminars, for lack of a better term, might be one way we can go about not having to require statutes but working with another state entity to kind of get the information out there in addition to providing additional clarity within the statute or maybe putting a little bit of onerous on the local election commission...commissioners and the Secretary of State to kind of firm up what they are, what's required. Two states I looked at were Idaho and Wisconsin. Idaho actually put it within their administrative code, so it kind of has a set process that's statewide. I know with counties being so different in their resources, I don't know if that's somewhere we want to go. But Wisconsin actually had a really great manual that the Secretary of State posted and had definitions about what is considered a nursing facility, what's considered an assisted living facility. And I think something like that would provide a lot of guidance to local county officials. Just in talking with them, so many of them in the smaller counties wear three to four different hats. I don't know if they would have the capacity to go out as frequently, but perhaps giving them some resources might make it a little easier for them when requested. So those are just some of the things that I have looked at and looked into. I would be happy to share what Idaho and Wisconsin did. They're very large documents so I didn't want to print them off and bring them to you, but I'm happy to share those electronically and the links to those. But those are just some of my suggestions on clarification as well as additional resources for education. [LR530]

SENATOR MURANTE: All right. Thank you very much. Are there any questions? Seeing none. Thank you very much for coming down today. Much appreciated. Are there any additional testifiers on LR530? Welcome. [LR530]

PAM BROWN: Thank you. Good morning, Senator Murante and committee. My name is Pam Brown, B-r-o-w-n. I was Carol's co-guardian. So there's a lot of history. I heard what they said, but there was never a day where Carol was mentally competent. She at the time of birth, her brain was...she had anoxia, so she was always a child, which my sister stated. But her mental age and there's documentation of her testing because she was in the Beatrice home for some time. Okay. So, how many of you have children? You don't have to answer that. Would you ask your second grader to vote? Do you even want them today to listen to what's on TV, but that's another

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issue? But would you ask your second grader to vote? And that's her mental age. So how she got to vote is a real mystery. I worked with the aged, with the office on aging and did home visits, so when you ask, Senator Murante, who should decide who can vote, so when I did home visits we did a 16-page assessment, and it went over cognitive and social and...but it comes down to, you know, we would try to encourage families when they had questions. Like with Alzheimer's if they were needing more assistance or into long-term care, it comes to the doctor. And only the doctor can say...it's not the social worker, it's not me the nurse, it's not the staff at the nursing home as a committee, it's only the doctor who can say, they're mentally incompetent. So I would go with some people with a geriatric assessment which would only take the doctor, the gerontologist eight hours and sit through that, but it's...it falls with the doctor. So I don't know. Asking a second grader to vote is wrong. Thank you. [LR530]

SENATOR MURANTE: Thank you. Hold on one second, we'll see if we have any questions. Do we? We do not. Thank you very much for coming down today. Much appreciated. [LR530]

PAM BROWN: Thank you. [LR530]

SENATOR MURANTE: Are there additional individuals wishing to speak? Welcome. [LR530]

HANNAH McCLAIN: Good morning, Senator Murante and committee. I'm Hannah McClain, H-a-n-n-a-h M-c-C-l-a-i-n. I'm the granddaughter of Mary Ellen. She's in the greenish-blue shirt and great-niece of Emily who spoke as well. I'm only 15 so like, kind of weird, but I'm kind of going along with what Pam just said like, I'm probably closer to second grader and I'm only 15 and I wouldn't ever think of voting at my age, which I'm closer than Carol was, you know. I have a higher mental capacity and she is described as a second grader, that far, and she was a lot older. So it's kind of like...I don't know what to say, I'm just...it's just kind of crazy that she was given a ballot and I can't even like describe how crazy that is and how kind of like disappointing it is that she was given the opportunity to vote. At second grade level you don't even know how to multiply. That's basically all I have to say. [LR530]

SENATOR MURANTE: Okay. Are there any questions? Seeing none. Thank you very much for coming down here. Much appreciate it. Does anyone else wish to testify on LR530? Seeing

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none, Senator Howard waives closing. (Exhibit 8) And we do, as was stated previously, have a letter submitted by Brian Kruse, the Douglas County Election Commissioner on this matter, and that will close the public hearing on LR530. Thank you, everyone, for bringing this to our attention and for coming down today. Appreciate it. And we will proceed...we will probably let the room clear for just a second, unless anyone wants to stick around to talk about election deadlines. Nobody does. Okay. So we'll do LR504 a little bit differently. I will briefly give an opening and then allow anyone who wishes to testify on this. This is an ongoing discussion that we have on an annual basis about various election deadlines that are proposed to change. What I am hoping to do today is begin a discussion where we have a comprehensive look on those deadlines. Part of that discussion entails the fact that not only do we have different deadlines but we have different measures of establishing those deadlines, such as certain deadlines are a date certain, January 1. Certain deadlines are a...the first Friday in December. Certain deadlines are a certain number of weeks before an election day. This is confusing to the public. It is...there are so many different deadlines that they're difficult to follow, difficult to comply with, so it makes a lot of sense for us to begin a conversation about consolidating these to the extent possible, making it more manageable for the people of Nebraska to understand what the deadlines are. And in addition with the statutory election deadlines, we also have quite a few accountability and disclosure deadlines which also run parallel. So establishing some sort of harmony for this is my stated goal rather than changing any specific public policy. And there are some which I think need to be addressed and changed. It is more a manner of harmonizing and streamlining the deadlines that we have in law so the people of Nebraska can much easier follow this, what's going on. So with that said, I know there are a few people here wishing to bring some specific thoughts and concerns and we will open up the floor to them. Welcome back. [LR504]

BRI McLARTY HUPPERT: Thanks. Good morning. My name is Bri McLarty Huppert. That's B-r-i M-c-L-a-r-t-y H-u-p-p-e-r-t. It's a little new, I'm getting used to it. (Laughter) [LR504]

SENATOR MURANTE: And congratulations on the nuptials, by the way. [LR504]

BRI McLARTY HUPPERT: Oh, thanks. Yeah. So just to the things kind of looking at the days, specifically the early voting difference, we had this happen actually just last week. How the...I think it's the 30 days prior to vote in person landed on a Monday, which also landed on a federal

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holiday, of which some counties were open and some counties weren't. So I'm looking at kind of a day versus a set kind of three weeks prior. That's just something, I don't know how we fix it, but it was a very weird thing where Lancaster was open but Douglas and Sarpy and a couple of others were closed. So some were like, yeah, go vote early, and others were like, oh, but my office is closed. So that's just something that we just ran into just in how it happened to be...I mean, I would say I'd like it to be 35 days instead of 30, but we're not talking about policy. But the one thing I really want to talk about was the on-line voter registration. Right now it just says...current statute is 32-808 and it just says close of business. And it's in the statute that's in line with the DMV and the county election officials, so their offices have posted times about when they close. Some are 4:30, some are 5:00, depending on the county. But it's kind of this influx and I think when we asked the Secretary of State when it would close for the general, he said 5-ish. So my suggestion is to change it to a six-o'clock hard deadline, which is what we see when we talk about the last day to register in person at a county election official in statute, it's 6:00 p.m. It's the same thing with deputy registrars for them to also have a deputy registrar collective voter registration. So I just think a hard 6:00 p.m. deadline for an on-line since it's not tied to any office being specifically open, might be kind of a little easier for people when they're planning about registering to vote on-line and updating the registration. Just having a hard 6:00 p.m. to fall in line with what's already set for the last day to register in person, just by making it a little easier for people to kind of plan their day and make sure they get on-line in time. But...it just says close of business, which isn't very helpful. But, I guess, those are the only suggestions I have. I don't touch the NADC stuff, so. [LR504]

SENATOR MURANTE: Okay. All right. Thank you very much. Are there any questions? Seeing none. Thank you very much for coming down today. And our favorite testifier here in the Government, Military and Veterans Affairs Committee. If you wouldn't have been here, we would have subpoenaed you. [LR504]

WAYNE BENA: If I didn't know...you might be on my ballot, I think. (Laughter) Good morning, members of the committee. My name is Wayne Bena, W-a-y-n-e B-e-n-a. I serve as Election Commissioner for Sarpy County and also the legislative co-chair for the Nebraska Association for County Officials and I'm their representative here today as NACO is having their legislative conference in York. They wanted to make sure that the county officials had some representation

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just in case any questions emerged. I'm really here to answer any questions you might have in regards to how a specific deadline might impact other deadlines. There's a couple that have come up in the last few years that I just wanted to bring to your attention of things that can be changed if we're looking at any type of legislation. First is in regards to statute 32-802, which is the notice of election that we are required to post not only in the newspapers, but also to every political subdivision letting them know what races are on the ballot, what issues they ask to be put on the ballot, and also the language. In regards to that, that has to be published within...the deadline is 40 days within the election, and political subdivisions have 10 days to come back to us to say, you misspelled something, a mistake was made, what have you. Unfortunately, if you wait until the last day of that 40 days, the 10 days happens after early voting has already started. So if someone were to come back and say there was a misspelling or there was a mistake, or what have you, there would be...very difficult to put the toothpaste back in the tube when you already have early voting starting. So the thought would be for this is moving that 40 days maybe earlier. Or instead of ten days, make it five days or three days so that we can make sure that we can make any changes and maybe not have ballots printed but we could have ballot proofs, which are, you know, PDFs that we could have available in those first few days of early voting if there were something of that nature occurring. We just, as clerks, found it a little strange that five days after early voting had started a political subdivision could come back and force us to change the ballot. So that was the first one. The second one is in regards to the...how to fill vacancies here in the Legislature. Because of circumstances this year, the statutes in regard to how a legislative race could actually be put on to the ballot in a general election in the year that the senators are running for election, came into question. Right now statute says that if a vacancy occurs more than 60 days before a general election, it goes on to the ballot. This year the election is on November 8, that 60 days would have been on September 8. That date would have been September 8. The deadline to petition on to a ballot is September 1, so not only if a member of the Legislature would have resigned between September 1 and September 8, there would have been on the ballot but no way to access on that ballot except for write-ins. And so for many of you that have multi-county districts, that is a...would be a very arduous process to actually count the write-ins that...and it would be days, weeks, before we could determine who would be the winner in such a race. Also if a person were even to resign on September 30...or excuse me, August 30, there would be no way for a person to be able to petition on to the ballot the day before. There's probably, logistically, no way to do it. So we would propose moving that

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deadline back at least to September 1 so the write-in possibility is taken off the table, but much earlier to allow people to petition on to the ballot. I've heard many different dates that that could be used but we just wanted to bring that to your attention, is that while these races have to go on the ballot, there would be very little way for ballot access towards the end of that period. Since an election will never be within 60 days....since...there's always...depending upon the election, it's the first Tuesday after the first Monday. September 1 will always be before that 60 days and so there would be no way to petition on to the ballot. Finally, I just bring this to your attention only because I hear this from many different election commissioners. And we do not ask for any action in this, but only as a way as this committee and other committees are looking how the voting process is going to be doing moving forward. Being allowed to early vote the day before the election in the office can be burdensome from some election commissioner's standpoints because the books that are already going out the door with the inspectors need to be somehow labeled that the person who came in the day before voted. And so that a person cannot go to the polling site and vote a second ballot. Now this has occurred in the past. Platte County had a prosecution in 2014. Again we're not asking for early voting the day before to be removed, just that it is one of those loopholes that can be addressed depending upon what the method of voting is going forward as these committees are looking...not looking for any action, just one of those concerns that's brought up in many meetings in regards to some of the loopholes we've seen. And with that, I'd be happy to answer any questions. [LR504]

SENATOR MURANTE: Thank you for coming down. I have two. That publication requirement that you had mentioned. What's the cost to Sarpy County on that order for having to print in the papers? [LR504]

WAYNE BENA: A couple hundred dollars. So, I mean, that's not the question. The question is in regards to how we are...what obligation we have once early voting starts to make a change to the ballot. So it's a matter of what can we do about that notice and the notice to the political subdivisions that allows it...a change can happen before early voting starts. [LR504]

SENATOR MURANTE: Okay. And the second is relative to the petitioning on ballots. It was unclear to me as a practical matter, the deadlines were one thing, but as a practical matter, how quickly could...I think you can't just go out and get people to sign a notebook piece of paper and

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submit that notebook piece of paper and have those names be counted. There has to be an official form printed by either you or...I assume it's you, not the Secretary of State's Office. [LR504]

WAYNE BENA: It would be the Secretary of State for Legislature. [LR504]

SENATOR MURANTE: Okay, so the Secretary of State's Office. How quickly can that even be done? [LR504]

WAYNE BENA: That would be a question for the Secretary of State's Office, but, you know, that's why I'm saying 30 days is better than one day. It might take...between some type of filing and a few days to put those things together, that's a question for them. If it would...to be our office, we could probably turn something around in a day, but that's just us. And that's just if there's a few candidates. You don't know how many candidates would be doing it in that regards, so. You know the other thing that is brought up is that in this 60 days, there is no primary. So you could have as many people petition on to that ballot as possible, which is different than what would be occurring in a primary which would be narrowed down to two, so. [LR504]

SENATOR MURANTE: Now a question I have for you is, there are a number of examples in law and I can read some of them off if it's helpful for you, but I know you're going to know them off the top of your head, where the language is set up where a deadline is not less than a certain date. So, it gives you the ability to do more than...gives you as an Election Commissioner the ability to do more than that. As a general rule, and I'm asking you to speak in generalities right now, how often are those not less than statutory framework, how often do we exceed those, or are we as a practical matter if we say that...gosh, let me do this specific example. [LR504]

WAYNE BENA: I've got a couple that I look to. [LR504]

SENATOR MURANTE: Okay. But, so you know what I'm talking about, so not less than two days before the election you have to publish a sample ballot in a newspaper. How often do you go just way beyond that and just say, well, I have to do it not less than, but we're going to do it two weeks...? [LR504]

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WAYNE BENA: As long as I have it ready, I...you know, we put it out. We want to get it close. I mean, I'm not going to...if people are expecting it at a certain time, you know, I...but sometimes it has to do with the...when the paper is published. Many of us have weeklies. I have...I do it in the weekly paper so it's a matter of...I might get it done a week earlier if we have it ready. The ones that we talk about most in regards to early voting. What we always talk about the first day, we can mail the ballots the first day that people can vote in the office if certain things are ready before we can start. However, since it's usually, always usually publicized that these are the start dates, this is the end start dates, the last day we can start. I have in the past...and that has to do with if we can get ballots on time. I have in a few elections when it's been a small amount of ballots going out, and I will say a gubernatorial primary, if I've gotten the ballots a few days early I have sent them out early in the past just to get it done. But most of the time it's for 92 out of the 93 counties we're waiting on third-party vendors to get the stuff that we need. And with some of these deadlines as tight as they are, we're getting ballots. I got ballots the Thursday before I could start mailing them. Some got them the day they could start mailing them. So every deadline depends upon the information that we have and if we're ready we can get it out prior, but it sometimes would be great just to have a start date. But the flexibility is nice if you have the ballots and you want to get them out, you can, so. [LR504]

SENATOR MURANTE: Sure. All right. Any additional...Senator Bloomfield. [LR504]

SENATOR BLOOMFIELD: Thank you. I'm going to step out of line just a little bit here. I was hoping you would come up when we were discussing LR530. Would you care to make any comments on that and if you would rather not say anything, just say no comment and I'm fine with that. [LR504]

WAYNE BENA: You know our job as election officials is to follow the law and we will follow the law as designated by the Legislature. I think, though, there are a few different...a few different things. First is, you have being able to register to vote and at the same time maybe being able to register, you can access a ballot. So, I think there are provisions in place in the law not to allow somebody to register to vote based upon a court ruling that's there. That needs to be expanded. That's this government's role, this committee's role, and the Legislature's role. When you move into accessing of a ballot, it's something that I've had a concern about for some time in

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regards to an agent. And I don't know how you fix it, but it's one of those things that I could request a ballot at every one of your election offices for you without you knowing it. And it...most of the time the people that are requesting it is an agent are husband's for their wives, vice versa, for the kids or what have you. But I once had a gentleman come up and said, I have a good friend up in Washington County who is having surgery, I don't know how he's going to vote. I said, well, you can go up there and pick up a ballot for him because it was after the mail date. And he said, how is that even possible? But I could pick up a ballot for each one of you in your election offices. So you could limit...you could look at who can request a ballot for an individual. I don't want to get into...you know, I know there's a lot of people behind me that will say many different things but you could limit it to just the people that live at the same address as the person requesting it. You could do it if they have a guardianship or a power of attorney. There's many different ways you could limit it, but how you access that ballot is maybe something that you could take a look at because I can go right now and get Senator Murante's ballot for him and he might not know until election day that I requested the ballot so he goes to the polling site and sees that he is listed as early vote, vote provisionally. So the agent process which was probably used in this case, I don't know what happened in that individual case. Someone might have given her the form to sign themselves or it was an agent of either someone at the facility or a family member. There could...many different, but anyone can request a ballot for someone else for up to two people. So maybe it's the looking at the agent process is something that this committee can look at. [LR504]

SENATOR BLOOMFIELD: Thank you. [LR504]

SENATOR MURANTE: It seems to me on that, there were two separate issues which need to be addressed, which do have...new related someway to LR504 as well. The first is the case of someone who is non compos mentis through our constitution who puts a nursing home worker...well, worker in a nursing home in the difficult position of determining whether...this isn't a person who is doing anything wrong. They just have to make a decision for another person whether they're going to help them fill out an absentee ballot form. That's a difficult situation to be in. The other was what Senator Bloomfield sort of alluded to is you have malfeasance involved where you have a worker in a nursing home who just fills out all the Republicans' absentee ballot request forms and none of the Democrats or vice versus, and I'm not seeing a ton

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of protections in law that deal with really either one of those two. So to the extent that we can continue the discussion on that going forward on how to tighten those things up. I'm not even sure I see a criminal offense to that. I mean, it's...so. [LR504]

WAYNE BENA: Yeah, I mean, your catchall is electioneering. I mean at a polling site, you're not supposed to be helping someone else unless you fill out the assistance rendered form. And the assistance rendered form allows us, the election officials if we get a complaint, we know that if...we know why the situation occurred that someone was reading the ballot for an individual or helping them. Election officials, the poll worker can actually render assistance. However, they cannot interpret any language for them. They can only straight read the ballot for the voters. [LR504]

SENATOR MURANTE: And this is in the polling place, though, right? [LR504]

WAYNE BENA: And this is at the polling place or at the early voting site. [LR504]

SENATOR MURANTE: But the issue at hand was, the people who can't leave a nursing home, where there is a ballot mailed to the nursing home and you have a nursing home worker filling out a ballot for someone that...entire family shows up to the Government Committee and says... [LR504]

WAYNE BENA: And that is as hard to regulate as the husband and wife at their kitchen table voting their early ballots talking with each other about what's going on. So, you know we have specific rules at a polling site that don't necessarily apply at the kitchen table. [LR504]

SENATOR MURANTE: Sure. All right. Any additional questions? Seeing none. Thank you very much for coming down today. Does anyone else wish to testify on LR504? Seeing none. We'll close the hearing on LR504 and that ends our hearings for the day. Thank you, everyone. [LR504]