

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

BREWER: Good afternoon and welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer, representing the 43rd Legislative District, and also serve as Chair of this committee. The committee will take up bills in the order that are posted on the agenda. The first one up will be LB776. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on proposed legislation before us. Committee members may come and go during the hearing. Just part of the process, they have bills to introduce in other committees. We probably got folks late because we stayed on the floor late, so they're probably eating a sandwich walking down the hall here so don't panic, Senator Bostar, they will be here. Have faith. I ask that you abide by the following procedures to better facilitate today's proceedings. Please silence your phones or any electronic devices you have. Please move to the reserved chairs if you're going to testify on a given bill. Those are the chairs in the front row. The introducing senator will make the initial comments, followed by proponents, opponents, and those testifying in neutral. Closing remarks will be reserved for the introducing senator. If you're planning to testify, please pick up one of the green sheets and fill them out. Please print and make it legible. If you plan to just record your presence, there will be a white sheet, you can fill it out and also put your position of proponent, opponent, or neutral. If you have handouts, we ask for ten copies, give them to the pages when you come up. If you don't have ten copies, let the page know. They can make copies. When you come up to testify, please speak clearly in the microphone and state your name and spell your name. That way we get an accurate record. We will be using the light system today. How many here are to testify on one of the bills? All right, we should be able to do five minutes. OK, so four minutes of green, one minute of yellow, and then we'll have both the light and the alarm to let you know you've gone too long. No displays of support or opposition, support or opposition to the bills vocal or otherwise will be allowed from the audience during the hearing. Committee members with us today, I'll start on my right with Senator Sanders.

SANDERS: Good afternoon. Rita Sanders, representing District 45, which is the Bellevue-Offutt community.

HALLORAN: Good afternoon. Senator Steve Halloran, District 33, which is Adams, Kearney, and Phelps County.

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Government, Military and Veterans Affairs Committee March 2, 2023

BREWER: Senator Sanders is the Vice Chair; Dick Clark, the legal counsel; Julie Condon is our committee clerk. Logan and-- is Audrey here-- yep, she is-- there she is-- will be our pages today. With that, we will open on LB773 [SIC--LB776]. Senator Bostar, welcome to the Government Committee.

BOSTAR: Thank you. Good afternoon, Chairman Brewer and all of the members of the Government, Military and Veterans Affairs Committee. My name is Eliot Bostar. That's E-l-i-o-t B-o-s-t-a-r, and I represent Legislative District 29. I'm here today to introduce LB776, a bill designed to apply the election system we use for our Legislature to all Nebraska elections. This bill would allow all voters to participate in a single nonpartisan primary election for every Nebraska election. The two candidates receiving the most votes, regardless of partisan affiliation, would advance to the general election, where the candidate who then receives the most votes would be elected. Any local or state elections already conducted utilizing a nonpartisan procedure would remain unaffected by this legislation. There are two primary issues that I hope to address with LB776. First, voters are currently unable to freely participate in primary elections of their choosing. Partisan affiliation determines to a large extent what elections a voter is permitted to access. Second, most general elections in Nebraska are wildly uncompetitive. Regularly, our general elections are decided before they even start. This is due to the reality that in these cases, the partisan primary election essentially determines the winner of the general election. We are not giving voters real choices in our general elections, which is when the vast majority of voters participate. As our legislative electoral system demonstrates, we have a proven model for running effective, accessible, and open elections. This bill would bring that model to electoral contests across the state. At the present time, more than one in five Nebraska voters are unaffiliated with a political party. This bill would allow these voters to participate in our primary elections, which often prove decisive. Under this legislation, the two candidates most supported by Nebraska voters would move on to the general election, helping to ensure that the winner receives the support of a clear majority. I believe this system would create more competitive representative elections. As I see it, this isn't a Republican or Democratic issue. It's a way to build on a system we know to be effective. I've introduced this bill to start a conversation about how we can make our elections better for all Nebraskans as I believe a nonpartisan system would do. I look forward

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Government, Military and Veterans Affairs Committee March 2, 2023

to working with all of you on this committee on this issue and I would be happy to answer any questions you have.

BREWER: All right. Thank you for that opening. Questions for Senator Bostar? All right, you're going to stick around for close?

BOSTAR: Absolutely.

BREWER: All right. So now we're looking for proponents to LB776. Welcome to the Government Committee.

JEREMY GRUBER: Thank you. I'm very excited to be here. Mr. Chairman and members of the committee, thank you for the opportunity to speak with you this afternoon. My name is Jeremy Gruber, J-e-r-e-m-y G-r-u-b-e-r, and I'm the SVP of Open Primaries. We are a national nonpartisan organization that conducts research and educates the public about primary election systems. We work with citizens, nonprofits, and legislators across the country on how to improve elections to operate in the best interest of voters and to serve as a resource in these discussions. One hundred years ago, in Nebraska and every other state, the election process excluded voters until the general election. Party leaders worked behind closed doors with special interests to select candidates. Voters found themselves with elected leaders that didn't represent them, weren't accountable to them, and who didn't govern for them. They grew increasingly angry with the political system that shut them out and felt increasingly powerless to change it. Leaders from across the country abolished this corrupt system and created the primary election to put voters in charge of selecting candidates. But while every other state developed a partisan primary, Nebraskans under the leadership of Republican Senator George Norris, created something far more innovative and forward thinking, the nonpartisan primary. Senator Norris was unwilling to stand idly by as Nebraska experienced the massive political and social unrest of the Great Depression so he and other state leaders answered the challenge with a deep faith in the spirit of Nebraskans, respect for the core American values of fairness and competition, and a heavy dose of common sense. A century later, as many states across the country are consumed with partisan bickering, the Nebraska system is proving far more robust by contrast. Nebraska has one of the most productive state legislatures in the country. Senators continue to build an inclusive and productive legislative culture of debate, innovation, transparency, and coalition building. As former Senator Colby Coash told me, and I just confirmed this speaking to him again in the Rotunda, quote, When you're successful in

winning an election where you've had to court all voters, you become a better legislator. End quote. Nebraska also had some of the most competitive elections in the country in the Unicameral. In the 2022 general election, 25 percent of all races were competitive. That's two and a half times the national average. Only 13 percent of races were uncontested. Most states see upwards of 50 percent or more of general election races uncontested. Look no further than your neighbor next door, the Kansas legislature, which uses a closed system to elect its members. By contrast, they had 12 percent competitive elections in the last cycle and 44 percent of races uncontested. That's the key to the Nebraska system, empowering voters and elected leaders to work together by removing the structures that keep them apart. Commonsense decision-making is in short supply in so many other parts of the country. That's why delegations from other states often visit Lincoln to study the Nebraska system. As a non Nebraskan, I urge you not to take this system for granted. It is truly special. As an expert on elections, I've spent much of my career extolling the virtues of the Nebraska system. And as an independent voter and a conservative one at that, quite frankly, I've also spent much of my adult life just being jealous of what you all have built. Unfortunately, the Nebraska system only applies to state legislative offices. Federal and statewide offices are elected using a Washington-style partisan system of closed primaries. You can see the contrast, elected officials representing the same constituents coming to vastly different policy conclusions, highly uncompetitive elections with only 7 percent of statewide elections considered competitive. Most importantly, voters are being shut out. There are close to 300,000 independent and third-party voters in Nebraska. That's as many voters as exist in the entire state of Wyoming by the way. They are the fastest growing group of voters in the state. In 2010, they were 18 percent of all registered voters. Today, they are 22 percent of all registered voters. And at the current rates of growth, we estimate they will be 27 percent of all registered voters within the next few years. Their taxes pay for the primaries, but they are shut out at some of the most important elections in the state. Today, Nebraska is the only state in the country that uses one system to elect state legislators and a completely different system to elect federal and statewide officials. LB776 would extend the same system of nonpartisan primary ballots used for the Unicameral to all statewide and federal offices. As a result, all Nebraskans and especially independents like myself would be able to participate in fair and inclusive elections. I hope you will give this bill serious consideration and the spirit that it embodies. I'm

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Government, Military and Veterans Affairs Committee March 2, 2023

happy to support and be a resource to you and to answer any questions you may have. Thank you.

BREWER: All right. Thank you. Let's see if we have questions. Questions? Questions? All right. Thank you for your testimony.

JEREMY GRUBER: Thank you.

BREWER: I'm going to hand the gavel over and go see if I can get rid of a nosebleed here.

SANDERS: Are there other proponents? Please.

ROBERT BAYNES: Thank you, Chairman Brewer.

AUDREY FLAKUS-MAHONEY: I'll take your green sheet.

ROBERT BAYNES: All right.

AUDREY FLAKUS-MAHONEY: Thank you.

SANDERS: Welcome to the Government Committee.

ROBERT BAYNES: Thank you. My name is Rob Baynes. I live about 45 minutes up the way and I'm here with Veterans for Political Innovation.

SANDERS: Could you spell your first and last name, please?

ROBERT BAYNES: First name is the classic Robert, R-o-b-e-r-t, and Baynes is spelled B-a-y-n-e-s.

SANDERS: Thank you.

ROBERT BAYNES: Members of the Government, Military and Veterans Affairs Committee, thank you for providing me the opportunity to speak about LB776, an issue that's near and dear to my heart. Like so many other veterans and their families, my wife and I chose to settle down here in Nebraska, start a family, and, and live the good life as they say. The people of this great state are humble, hardworking, and have always been kind. And when there's a problem, the members of our community are always there to help and support. I appear before you today because our country is facing a crisis, and although it's not the intention, our political systems seem to be fostering division over dialog and conflict over constructive cooperation and collaboration. And anyone who's been in the military or even a team

dynamic for that matter, knows this is a recipe for disaster. Now more than ever, we need to look at what's causing this division and, and change it. I'm here because my beliefs and values, which I've really examined, you know, since I was in high school and I learned about politics, are encompassed in both parties. And like many veterans, almost half of us who are registered independents skew towards those beliefs and look past partisan labels that exist among us. Right now, many of us are barred from participating in primary elections, which require voters and I have done this to pick a party. In Nebraska where the majority of races are decided in the primary, this often means not having a voice or a vote in the elections that determine who the next elected representative will be. This isn't just a problem for veterans like myself, other nonpartisan citizens and service members face administrative hurdles to their civic participation that make it harder for them to vote. And it doesn't have to be this way. I don't believe anyone should have to swear allegiance to a political party. And whether it's locally here in Lincoln or nationally or abroad out in Washington, D.C., free thinking veterans like myself desire quality, competitive leaders, and more choices in the leaders we elect. Our election system should remove obstacles like having to be registered with a political party that make it harder for current service members and their families to vote in their new community or their future community because as we know we're moving around all over the globe. The top two system you've heard about today will enable and empower more veterans like myself to participate in our elections effectively. Overnight, this system will increase the quality of participation and engagement while dialing down on the polarization of our current political system. And if we want veterans to participate in our elections, we need to update the electoral systems to allow them to share their voices. We need wide participation in every contest from primaries to generals to special elections. Like Mr. Brewer-- Chairman Brewer here is not in the room, hope he is getting that nosebleed taken care of, I'm proud to have served our country in the U.S. Army. As veterans, we literally have more skin in the game than other citizens, and our military service has taken us all over the world. And I believe that no matter where we reside, past, present or future, our values and voices could and should be heard and represented. I firmly believe this top two system will give more veterans like myself the opportunity to exercise our civic responsibility that we fought to protect. And I'm certainly not a political expert. I don't claim to be. I joined VPI, the Veterans for Political Innovation, because I care about this country just like you guys. I want to find solutions to the polarization crisis, and I want

our politics to reflect the good and patriotic people of this country. Thank you for your time this afternoon and I'm happy to answer any questions that any of you have.

SANDERS: First of all, way to go on the light. You just, just made it in there. But thank you very much for your testimony and thank you for your service to our country. Let me check if there are any questions. Senator Halloran.

HALLORAN: Oh, I think I just found it here in your notes. I was going to ask you to rename the group you're with. It's Veterans for Political Innovation?

ROBERT BAYNES: That's correct.

HALLORAN: Is that right? OK. Is that a national group?

ROBERT BAYNES: Yes.

HALLORAN: OK. Thank you.

SANDERS: Thank you. Are there any other questions? Seeing none, thank you for your testimony.

ROBERT BAYNES: Thank you.

SANDERS: Welcome.

DIRK PETERSEN: Good afternoon, members of committee. Thank you for providing me this opportunity to chat with you. My name is Dirk, D-i-r-k, Petersen, P-e-t-e-r-s-e-n. I'm here to talk about competition and the importance of fair competition, why it's so important to business and also our political system. I worked for Nucor for over 38 years. I grew up on a farm in northeast Nebraska, went to the University of Nebraska and got a degree in engineering, and I'm a proud citizen of this state. Through my experience in corporate America, I come to realize that lack of fair competition is one of the greatest roadblocks to the kind of innovation that helps our businesses and communities thrive. Over the past four decades, I was able to serve my customers well by knocking down barriers to competition. It makes everyone work a little bit harder, and in the end we're better for it. As an executive of Nucor, which is now America's largest steel producer, I witnessed firsthand unfair competition from foreign countries who routinely dumped steel and manipulated currency in an effort to destroy our steel industry. And

it almost did when several steel companies across our country went out of business. Steel is critical to defense and well-being of our country. And my company was pivotal in making sure that our steel demand was not in the hands of non-U.S. companies. We did not want to end up like the situation that we currently have in the computer chip industry today. We engaged with our elected officials across the country telling our story and that we, the steel industry, was in peril if the unfair competitive landscape continued. The livelihood of our nearly 30,000 teammates and the very survival of our country was at stake. Fortunately, but gradually, our elected officials supported trade initiatives and policies that helped level the playing field. Now our steel industry is very healthy and we have strong competitors that help us improve as a company as we strive to provide customers the very best quality at a fair price so they can compete in the world market. I believe that the same lesson applies to our political system here in Nebraska, which is one of the least competitive in the country. Typically, over the last 30 years, Nebraska's top races have been most competitive in the primaries. The general elections not so much. As a result, in many cases, I believe interested candidates have been discouraging from throwing their hat in the ring. The Nebraska citizens deserve the best possible elected officials, and we can only have that with the political system that allows the voters competitive elections. Nebraska deserves a fair, open process for electing their political leaders, one that creates fair competition in November and top two is a potential solution to get us there. The top two system proposed here today is not only a better method, but also deeply rooted in the best of Nebraska's traditions. It mimics the style we use to elect you all, members of our esteemed Unicameral Legislature, which is unique to our great state and popular with voters. Right now, our candidates aren't being pushed in healthy nor helpful ways and our general elections feel more like a formality than a contest. Top two will change that. It will bring a sense of competition back to Nebraska and in turn improve the state of our politics. Just like our Nucor customers, our citizens deserve the very best representatives and legislation possible so they can compete in their businesses, communities, and lives. I often hear that the Nebraska people, and I believe this, in our state are the greatest. Let's make it even better by providing a voting system that allows those people to select the best leaders by, by making those leaders fairly compete for their offices. Thank you. I'm willing to take any questions if you have any.

SANDERS: Thank you for your testimony. Let's see if there is any questions. I see none.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

CONRAD: Thank you.

SANDERS: Thank you for your testimony.

DIRK PETERSEN: Thank you.

SANDERS: Welcome.

NATHAN LEACH: Madam Chairman, members of the Government, Military and Veterans Affairs Committee, my name is Nathan Leach. That's N-a-t-h-a-n L-e-a-c-h. I'm a registered nonpartisan voter and from Kearney, Nebraska, speaking in favor of LB776. And I'm speaking on behalf of Nonpartisan Nebraska, a nonprofit organization that seeks to preserve, study, and educate about the nonpartisan structure of the Nebraska Unicameral Legislature. LB776 establishes a statewide, nonpartisan election system that mirrors the process currently used to elect members of the Nebraska Legislature, a reform voters adopted overwhelmingly in 1934. Our state's experiment and nonpartisan government challenges the widespread assumption that state-sanctioned political parties are needed, and indeed essential, instruments for a healthy, representative democracy. LB776 would discontinue the outdated partisan primary system that makes it a practical requirement for nearly all public officials to affiliate with one of two private political parties in order to win election to public office. The current system also requires Nebraska voters to affiliate with these parties, essentially government-sanctioned political clubs in order to vote in taxpayer-funded primary elections. The two major political parties have established a national monopoly on political participation that extends to nearly every facet of political society and every level of U.S. government. LB776 establishes a commonsense alternative that allows political parties to continue to exist, organize and engage, but keeps the government out of the business of funding private, closed partisan primaries. As of February of 2023, one of every five voters in Nebraska was a registered nonpartisan voter. That's over 264,000 voters who have indicated that they want out of a system that seems to only benefit the most politically engaged and often extreme voters in our state. LB776 is a long overdue reform, conforms to Nebraska's long held culture of political innovation and nonpartisan government, and gives all voters an equal voice in the elections they pay for. I ask that the committee advance LB776 and would be happy to answer any questions.

SANDERS: Thank you for your testimony. Let's check if there are any questions. Senator Conrad.

CONRAD: Thank you, Vice Chair Sanders. Good to see you, Mr. Leach, and thank you for your testimony. And I'm glad that you brought up the point, and I'm not sure if Senator Bostar did in his introduction, I was running a few minutes late from another meeting, but one thing that's always been compelling to me about this policy, in addition to some of the pragmatic, I think, results and impacts that would improve our political and public systems in life is really just a, a very base kind of proposition that I've always struggled with when looking at this issue. Why on earth would taxpayers pay for a partisan political activity? I just-- that just doesn't make sense to me. Regardless of where you fall on the political spectrum or what your connection is to any number of political parties, that's just a piece that has never made sense to me. And I'm glad that you raised it, because I think that there's a lot of resonance there perhaps across the political spectrum. I know when I was talking to my constituents about these issues on the campaign trail last year, that was something that, that really was compelling to people who were looking for pragmatic solutions to our, our current divisiveness, so. Are you aware of any other sort of parallel or model in state-- in our state policy or politics where Nebraska taxpayers pay for a closed partisan activity?

NATHAN LEACH: I am not aware of anything, but I do think most people don't quite realize that our state political parties are-- they're government sanctioned, they're created through statute. So you have to go through the Secretary of State to establish this private organization. But for someone who's only, you know, 27 and if I were to be interested in running for public office, you know, you have to face that question while the only, the only real way you can get in political leadership realistically in this country and in Nebraska, with the exception of our Legislature, is by affiliating with one of, of two parties. And I think that that's quite, quite an outdated system that really harms the ability to recruit and maintain a, a diverse set of political leaders in our state.

CONRAD: Yeah, that, that's a fair point. And you're exactly right that there is a statutory framework to work through for recognition and organization of, for example, maybe a new political party. I know in recent years there's been organizing efforts around Libertarian Party and a sensible drug policy party and maybe, maybe some things in that regard. But it still doesn't kind of provide any sort of parallel in terms of where the taxpayers pay for, basically like if it's a closed nominating kind of, kind of party activity, the, the taxpayers don't foot the bill for that, so to speak. So that's one thing I'm thinking of. And then, of course, the other piece being that with 25

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

percent-plus is the electorate outside of any political party, including Libertarian, Marijuana Now, Democrat, Republican, it still doesn't solve the equation for them in terms of, of their ability to participate. So I appreciate that. Thank you so much.

NATHAN LEACH: Thank you, Senator.

SANDERS: Are there others? Seeing none, thank you for your testimony.

NATHAN LEACH: Thank you, Madam Chairman.

SANDERS: Any other proponents? Not--

_____ : He did a good job.

CONRAD: He did, yes. Everybody did a good job.

SANDERS: Welcome.

SCOTT FOSTER: Hello. Thank you. Thank you very much. My name is Scott Foster, S-c-o-t-t F-o-s-t-e-r. Appreciate your time. I'm excited to be here to talk about this. I currently serve as the director of Dawson Area Development in Lexington. I am also workforce development for the city of Lexington, but my career has kind of taken me all over the place. I was a public school educator for 15 years. I was a radio broadcaster at KRVN for eight years. I'm a part-time minister. I'm still trying to find something I'm good at, I guess. My wife and I have lived in Gothenburg for 24 years, and we've built a family that's spread all across the state of Nebraska. I'm no political expert unless you count middle school government as an expert field, but I firmly believe that Nebraska represents what is good about this nation. We know our neighbors, even if we don't always agree with them on everything. We do like our nonpartisan Unicameral Legislature because it centers governance over party politics. The top two proposal before you here today should be seen as the next outgrowth of prairie populism roots by allowing all registered Nebraska voters to participate in the primary. This system would provide the same level playing field that helps us elect you guys. The benefits are clear. Ensuring the winner of the general election has the support of a majority of voters help encourage cooperation and good governance. We've seen how this works in Lincoln. There is no reason this system should stay confined to the Unicameral. One look at Washington should make the need for change clear. Extreme party polarization has threatened to pull all of us into D.C.-style gutter politics. That's not the way we should operate. It's time for Nebraska to build on the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

model we provide for the rest of the nation. Representative government is the bedrock of our great state and country. We're the only state in the nation with a legislature-- Legislature focused on government over politics. We make sure our presidential electors represent the choice of the people across congressional districts. Now I know not everyone in Dawson County will agree with everyone in Douglas County, but top two can create a better, more representative system the Nebraska way. I encourage you to support this commonsense change. My life and my work have shown me everything great about living here. As a workforce developer, I often talk about leadership in the business world and that every business should strive to be a great place to be employed, fostering an atmosphere of creativity, ownership, and caring. It's time to build on that idea and to ensure that Nebraska remains a great place to live, work, and build a family. Thank you.

SANDERS: Thank you for your testimony. Are there any questions?
Senator Halloran.

HALLORAN: Thank you, Vice Chair Sanders. Thanks for being here today. Good to met you earlier.

SCOTT FOSTER: Yes.

HALLORAN: I'm just, I'm just a little curious, after 80-some years of being officially nonpartisan Unicameral, why other states haven't followed our lead, understanding full well that they-- most of the states have the opportunity for initiative petitions or constitutional amendments to amend their constitution in the same fashion we would here and did here. Why haven't other states saw the wisdom of what we--

SCOTT FOSTER: Yeah, I think that's a good question and not one that I'm smart enough to answer, probably, but I think it's curious. I don't know what to tell you on that for sure.

HALLORAN: OK. Well, there's-- OK, let's look at this from a different perspective, then. So maybe two parties is the wrong number. I don't know, maybe three, four, five. Some countries have-- oftentimes some countries will have 14, 15, 16 different parties. That might be a tad bit confusing. But it would certainly give options for anybody to choose from if you like going to Walmart for your political persuasion, you know, you can choose whatever you like, and that's fine. The other extreme is this-- the other extreme is a one-party system.

SCOTT FOSTER: Right.

HALLORAN: What do you think about that?

SCOTT FOSTER: Well, I think that in many ways we have somewhat of a one-party system in Nebraska. And, and I think that, as other folks have testified, we have a lot of people that feel left out of that. And so I, I think that this gives us-- you know, when I was working on the radio station, we would talk about primary election and all the great races and everybody would be involved. And we got to the general and everything stopped because it was just a coronation at that point. So the discussion stopped in May instead of hearing more debate as we went in to the general election, and I-- you know, I feel that that's a disservice to the people.

HALLORAN: OK. I wasn't meaning to try to give you a leading question,--

SCOTT FOSTER: OK.

HALLORAN: --but the leading-- but the answer, the textbook answer to the one-party system is, is that in the world we have experienced countries that have a one-party system.

SCOTT FOSTER: Yeah.

HALLORAN: Right? Russia,--

SCOTT FOSTER: Sure.

HALLORAN: --China.

SCOTT FOSTER: Sure.

HALLORAN: Those systems take away the choices altogether. And we often hear people say, and I'm going to ask you, people will say, well, we just got to maybe looking at this federally, nationally, it's just too partisan. And I question whether or not that isn't a positive thing because it simply says there's room for debate. Right? You know, we choose to debate between opposing views and do you think that's good or bad?

SCOTT FOSTER: Oh, I-- and I think LB776 would allow us to do that in even a better way than we are now, because it would-- let's say two Democrats get into the general or two, two Republicans get into the

general, either way, it's going to continue that debate even more. And they're going to have to, they're going to have to have wide-ranging ideas instead of just one side of the table. So I guess my answer to that, Senator, would be that I think LB776 would actually promote that [INAUDIBLE].

HALLORAN: Would you have any concern in a state that is predominant one party, which the state is--

SCOTT FOSTER: Sure.

HALLORAN: --I mean, it's, it's predominantly Republican, that you wouldn't run the risk of the primary resulting in two Republicans--

SCOTT FOSTER: Oh, I think, yeah.

HALLORAN: --and no Dem-- could, could be the inverse if the roles were reversed--

SCOTT FOSTER: Sure, sure.

HALLORAN: --I understand, but-- so you, you would end up with simply two Republicans and, and, thus, leaving out a lot of people without anything closely resembling what they would-- would be appealing to them.

SCOTT FOSTER: I think it would be my opinion then that those Republicans would then, if it's two Republicans or two Democrats, wouldn't be forced then to appeal to a broader group of people than maybe they would have just by winning the primary. They would have gone to-- they would then have to, have to talk to everybody in the general election rather than just win a primary and then the general election is just coronation.

HALLORAN: So in that process, say I'm one of the two candidates that wins and, and both are at the same party. And in order for me to appeal for more votes, I would, I would have to couch what I say or think in terms of, of the party that was left out so I could attract those members. See what I'm saying? And that--

SCOTT FOSTER: Yeah, I see what you're saying. I, I would, I would, I would hope they wouldn't couch and I'd hope that they would appeal to a broader sense of good.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

HALLORAN: Most of us are politicians, there are some statesmen in the world, but there's-- but most are politicians.

SCOTT FOSTER: That's right.

HALLORAN: But anyway, that's just observation.

SCOTT FOSTER: Sure.

HALLORAN: Thanks for your testimony.

SCOTT FOSTER: Thank you.

SANDERS: Any other questions? Seeing none, thank you very much--

SCOTT FOSTER: Thank you.

SANDERS: --for your testimony. Other proponents? Welcome.

WESLEY DODGE: Thanks for having me. My name is Wesley Dodge, W-e-s-l-e-y D-o-d-g-e. I'm from Omaha and I'm also associated with Represent Us and I'm here to speak in support of LB776. Senator Brewer isn't here right now, but I watched some of his debate from the floor yesterday, and he had mentioned that the Constitution of the United States has guns in it and the Constitution of Nebraska has guns in it. As best I can tell, the Constitution of the United States does not have parties in it. And I went through the Nebraska Constitution today, but I didn't go through the 228 amendments-- maybe Mr. Clark can help me out there-- but I really couldn't find a specific-- I can, I can see nonpartisan, but I don't see specific mentions of it. My, my position is the parties are a negative influence. I've got some quotes in what I've just handed out to you or what's been handed out to you. George Washington, in his farewell address in 1796, said that: The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which is in different ages and countries has perpetrated the most horrid enormities, is itself a frightful deposit-- debit-- it's hard for me on that-- des-- despotism, like despots. Thomas Jefferson, writing to John Adams, said: I never submitted the whole system of my opinion to the creed of any party of men whatever, in religion, in philosophy, in politics, or in anything else where I was capable of thinking for myself. Such an addiction is the last degradation of a free and moral agent. Abraham Lincoln said: We are not enemies, but friends. We must not be enemies. Though passion may have strained, it must not break our bounds of affection. Teddy Roosevelt referred to parties in saying that they

represent spoils not principles. Eisenhower, paraphrasing, said: The middle of the road is where the progress is made. The right and the left is where the gutters are. And Jefferson again said: If I could go to heaven but with a party, I would not go. Norris has been referred to many times here, and it's, it's always nice to refer to him again. I think he's, he's a great person. It's not in my text here, but at some point I hope you could kind of delve into-- at one point, he was supposed to be recognized in the United States Capitol as one of our five greatest legislators, and, and partisanship kept him out of that pantheon if anybody's heard that story. And, and so I consider that to be terrible. He was instrumental in the passage of the 17th Amendment, which led to direct election of senators and took it out of legislators' hands which were in various states controlled by single parties so that they could pick and choose who they wanted. Partisanship can lead to representatives being more interested in opposing the other party than finding common ground that can help the public as a whole. I listed things that I had looked up. A lot of this comes from the John Lewis legislation that I've listed. All of these-- well, I, I found some other things too, but these, these are all things that over 60 percent of the population supports: hard copies for ballots, disclosure of dark money, 70 percent say that we should have national redistricting standard, 60 percent believe we should have vote by mail or multiple ways to register to vote. We, we have all kinds of these common beliefs and common desires that a super majority of the population wants. But we can't get into, we can't get into legislation and the reason we can't do it is because the party problems. I've attached a, a piece of what I use sometimes when I do a presentation where I have the partisanship in Congress and you can see the arrows going back and forth. If it's in color, one side's red, one side's blue. You can see what's happened over the course of time. People can't work back and forth because of the partisanship. I'm running out of time here, but I, I, I appreciate ranked choice voting, too. And I thought if we had to rank our positions as to what we would support the most, where would we rank country, party, our donors, the state, or what's in the best interest of the general population that we represent or that you represent? I'd kind of like to see where people's opinions are as legislators on that. Senator Conrad, you had asked a couple of questions that I'd like to-- I can mention something on. And, Senator Halloran, I've got some-- your questions were interesting, too. But the bottom line is I got the, the list-- the definition of democracy, which in the Oxford Dictionary-- looks like I'm out of time-- says we should represent the whole of the people.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

And our Declaration of Independence says by consent of the governed, which I assume means the majority. Questions?

SANDERS: Thank you for your testimony.

WESLEY DODGE: Sure.

SANDERS: Let's see if we have any questions. See none. Thank you for your testimony. Are there other proponents? Opponents? Proponent? Welcome.

CINDY MAXWELL-OSTDIEK: Thank you. Good afternoon, my name is Cindy Maxwell-Ostdiek. That's C-i-n-d-y M-a-x-w-e-l-l-O-s-t-d-i-e-k. I wanted to thank everyone here as members of the Government, Military and Veterans Affairs Committee to hold this hearing open for all that may come to testify today. It's disappointing that has not happened with all the hearings here in the schedule in the session this year and it is very important that Nebraskans have the opportunity to speak to all the bills before the Legislature. I'm a mother and a small business owner and a volunteer and a registered nonpartisan. I ran for Nebraska Legislature in District 4 this last session, and that was in District 4, which is west Omaha. And I'm here to testify in support of LB776 to provide for nomination and election of candidates on the nonpartisan ballot. Almost 25 percent of us are nonpartisans here in Nebraska or not members of maybe, maybe either major party and we're unable to fully participate in all of our state's primary elections. As a nonpartisan, I can request a ballot for the congressional races in the primaries. And then, of course, I had the opportunity to vote for Legislature and other municipal-elected officials in the primaries, but otherwise I'm shut out. And as a nonpartisan who ran for Legislature, I learned the benefit of being involved in this election and not having people being shut out for voting who they thought would be best to represent our district. And I think that is something that is important for our state and holding us back right now. We would be better served if we could elect the top two to the next general portion of the election and then determine from there. And there are times that we do have two Democrats, we do have two Republicans, we have, you know, an Independent and such. And it is something that I think helps us make sure that we're not just voting based on party. And I am also wanting to mention-- I know I'll run out of time soon-- that I'm president of Rank the Vote Nebraska and we are working to bring ranked choice voting to our state and we believe in open primaries. They work together, those two policies. And we thank Senator Bostar for bringing this important legislation. We do hope you

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

advance it to the floor and that we can have an opportunity to pass it and then make sure we can ensure everybody in Nebraska can participate in all the primaries and that we can elect the best representatives for us. Thank you.

SANDERS: Thank you for your testimony. Are there any questions?
Senator Halloran.

HALLORAN: Thank you, Vice Chair Sanders. And thanks for being here. So in the last election, let's just use the last election, we know the players both in primary and final general elections, so reflecting back on that under the top two who would have been in the general election?

CINDY MAXWELL-OSTDIEK: Are you talking for which--

HALLORAN: Gubernatorial.

CINDY MAXWELL-OSTDIEK: Gubernatorial?

HALLORAN: Governor's race.

CINDY MAXWELL-OSTDIEK: The top two vote getters, I believe, were Pillen and Herbster so those would have been the top two candidates that would have proceeded to the general.

HALLORAN: OK.

CINDY MAXWELL-OSTDIEK: It could have been different had people the opportunity to vote where no matter who was up, whether, you know, we kind of think about the landscape here in Nebraska and how many people are members of the Democratic Party, how many members are Republican, and how many are nonpartisan, that might have changed.

HALLORAN: It might have changed. So let's reflect back on that a little bit. So let's just say it was that way in the primary, right? So it would have been-- and there were some other players here I'll leave out and I'm not trying to offend anybody who was a candidate, but we would have had current Governor Pillen, we would have had Mr. Herbster, we would have had Senator Carol Blood, would have had Senator Lindstrom, right, so out of, out of all those potential groups then, do you think it would have ended up being differently than--

CINDY MAXWELL-OSTDIEK: We'll never know.

HALLORAN: I understand.

CINDY MAXWELL-OSTDIEK: It's, it's, you know, guessing at that-- at this point. But I believe, if I remember correctly, the top two vote getters across all the parties would have been Herbster and Pillen, I believe.

HALLORAN: Do you think that would have kind of disenfranchised Democrats because it is more strongly a Republican state and there would have been two Republicans as the top two vote getters?

CINDY MAXWELL-OSTDIEK: No, I think it would have franchised all of us that we could have voted for the top two candidates, that we, for either candidate, that we would leave to go to the general. And I think that would have made sure that no one was left out of that primary because nonpartisans had no members of other smaller parties in Nebraska. You know, when you think about the medical Marijuana Now or Libertarians, you know, we didn't really have opportunity to participate in that. Um-hum.

HALLORAN: OK. Thank you.

SANDERS: Thank you. Are there-- Senator Conrad.

CONRAD: Thank you so much, Vice Chair Sanders. Thank you, Cindy, for being here. You were with us late last night and here we are again. Gathered--

CINDY MAXWELL-OSTDIEK: Yes, I appreciate all of you so much. Yes.

CONRAD: --gathered together again this afternoon. But I appreciated Senator Halloran kind of working through, you know, just some hypotheticals in regards to our recent primary and general elections and over the last year, which I know that you were actively a part of as a candidate on the campaign trail and I know you knocked on a lot of doors in your district, as I think all of us did who were on the, the ballot that go around. And I actually think that's, like, the coolest thing in politics to be able to open a conversation with so many of your neighbors, whether they're Republicans, Independents, Democrats. I mean, that's the walk list we're using in a legislative race, right, because we're a nonpartisan campaign. And it actually, I think, reaffirmed my faith in humanity and democracy, having many of those conversations with people who had very similar ideas to mine and very divergent views from mine in regards to their political philosophy. But I was just wondering if you could speak to something

that I saw really consistently in those door knocks and those conversations, and it was particularly during the raucous gubernatorial primary that we saw in the spring primary in, in the, the Governor's race. And I talked to so many Republican voters that were disgusted, that were disillusioned, that felt like the tenor and tone of those campaign ads did not speak to them or speak well of who we were as Nebraskans. And they really, they really just threw their hands up. And it was so striking to me, I heard more about that during the primary than I heard about property taxes, schools, pick a perennial issue in Nebraska, any issue, it, it surprised me. It surprised me that the organic way that that bubbled up when I knocked on some of these doors, particularly Republicans. Did you have any of those experiences?

CINDY MAXWELL-OSTDIEK: Yes, District 4 in west Omaha is primarily-- like if you just looked at voter registration, it is majority Republican district. So when I talked with people from-- you know, I talked-- knocked on-- at every house--

CONRAD: Yeah.

CINDY MAXWELL-OSTDIEK: --so I was talking with a lot of Republicans, but everybody was inundated with those ads. So it was something that a lot of Nebraskans were very turned off by and they were discouraged. They thought, well, you know, this is-- those ads reflect on character for the person who's also running and so I think people were really concerned, you know, if this is how they would conduct themselves once they're elected. That was something that was really concerning. And I also talked to a lot of people, as a little bit along this line, that were confused, too, because I would be talking with them about the Nebraska Legislature race and they would say, well, I can't vote for you, I'm a Republican. And then some people would say, well, you know, I, I can't vote for my opponent because I'm a Democrat. And I would always say you can vote for either one of us. It's a nonpartisan race, and I'm actually nonpartisan. So I was really pleased about that and we could actually talk about and do some education about it. I think a lot of voters are really confused sometimes about which race is on their ballot and what, you know, there will be available to vote for. And I think that is something that some people expressed they were unhappy about when they would say, OK, in the primary, maybe I will as a nonpartisan. If I'm talking with someone who's nonpartisan, they say, well, I might look for the Democratic ballot or the Republican ballot because I want to work and choose, you know, my congressional rep in the primary. But then they wouldn't have been allowed to, you

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

know, vote on, on other of those races. So that was something that was a limitation, too. I just feel like the tone and the tenor with some of these elections has really discouraged a lot of people from even voting. Some people actually said they just weren't going to because they didn't feel like that was going to be someone they would want to represent them and this type of open primary would help bring the representation back to who, who would best represent the majority and not trying to really kind of race to the base of a certain party, you know, and so that that would, I think, really improve how we can have more discussion about the actual policies.

CONRAD: Yes. Yes, I agree. Yes.

CINDY MAXWELL-OSTDIEK: The actual, you know, positions that they're taking.

CONRAD: Yes, and thank you for sharing your experience, because I know that you talked to a lot of people in, in your district and I know demographically it's different than my district and politically so that's very, very helpful. But I, I couldn't agree more on just how fresh that experience was and how much it was impressed upon me by primarily Republican voters in my district. You know, it was something I was thinking about when I was preparing for this hearing. And I, I agree with you wholeheartedly. I think that the divisiveness and toxicity in our politics is a form of voter suppression that keeps good people from running and creates a sense of perhaps overwhelming helplessness or disillusionment that voters throw up their hands and devalue the power of their vote and say this isn't for me. And I think we have to embrace any solution to try and improve our public discourse and leadership opportunities and options so I appreciate that.

CINDY MAXWELL-OSTDIEK: There's actual statistics and data to point to open primaries and ranked choice voting as bringing better diversity of candidates and eventually end up with better diverse elected officials.

CONRAD: Very good.

CINDY MAXWELL-OSTDIEK: So I think that would be good for our state.

CONRAD: Thank you. Thank you.

SANDERS: Thank you. Are there-- Senator, Senator Hunt.

HUNT: Thank you, Senator Sanders. Thanks, Cindy, for being here again. I wanted to share a thought too, and maybe get your feedback. As the first testifier talked about, we have kind of an interesting-- because of our nonpartisan Unicameral, we have almost a laboratory here where, you know, it's an experiment because it's different from what happens in the rest of the country. Like, if they're the control we're the experiment, we can see the differences between the way the two systems work. And I was thinking about Senator Halloran's question about disenfranchising the minority party, you know, whatever that may be, by having it be the top two vote getters. My experience with that in the Legislature, you know, running a nonpartisan race for a nonpartisan seat in a body that doesn't have any official party influence in the body. You know, I, I did run a race where the minority party in my district did not have a candidate to vote for. I, I ran in a race where there were two Democrats. And what that forced us to do as candidates is differentiate ourselves from each other. And, you know, it wasn't who's more to the left and who's more moderate, it was a really issue-by-issue thing, like, maybe on gun rights we feel differently and abortion and environmental stuff and regulation and taxation and it really makes voters have the opportunity to take candidates issue by issue instead of just going, here's the elephant, here's the donkey, you know, which team are you on? Because the way the system we have here in Nebraska really allows us to tease out the differences between our, our views on an issue-by-issue basis instead of just a party plank. And ideally that comes out through our work in the Legislature is votes are not on party lines every time because people, you know, issue by issue are allowed to feel different ways because they ran that way. And it sounds like that's what you were describing, too, as an Independent. You know, we've, we've had Ernie Chambers here, who's an Independent, but-- and Laura Ebke was a Libertarian when she was here, but we have not had a lot of breakthrough in the Legislature for people of other parties. And do you think that that was a source of difficulty for you in your campaign or was it an advantage?

CINDY MAXWELL-OSTDIEK: So that's a really good question and I-- that is the thing that I really enjoyed talking with voters during the campaign. We were focused on the issues and the policies. And where I could see it was different for people running in other races that it did get to be more based on, you know, like party and kind of soundbites and those types of things. In my race, I-- when you talk about franchisement or disenfranchisement, I think that it is important to recognize that no matter what party someone belongs in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

people will sometimes align across party lines I feel like really more Nebraskans have in common more than not, actually, is what I found as I was running. And I was very kind of pleased in my race that we-- only two of us were in the race so I did not have that factor where there were maybe, you know, a Republican, Democrat, and me or, you know, any kind of combination like that. I was very proud to, you know, run as someone who's an Independent. I voted for people from all parties and supported policies and, you know, opposed policies from people from all parties.

HUNT: Like most Nebraskans.

CINDY MAXWELL-OSTDIEK: Yeah, really, and that's the thing that when I was talking with voters that would come up so often. And, you know, my favorite Republican is my husband. He's a Republican. So I would talk with a lot of people that would be like, you know, well, I'm interested in such and such party but, you know, I like your ideas. And then I was actually endorsed by the state and the Douglas County Democrats as an Independent. And I was very proud of that because they had supported some of my positions and you know what I would have been trying to accomplish. Getting here, when you're all in this room, you're representing everybody in your district, not just people who voted for you, even, let alone people who supported your candidacy. And I think that that's something that we're really looking for from our elected officials is that, you know, real solemn approach to that responsibility.

HUNT: Thank you.

SANDERS: Are there any other questions? Seeing none, thank you for your--

CINDY MAXWELL-OSTDIEK: Thank you.

SANDERS: --testimony. Are there any other proponents? Welcome.

SHIRLEY NIEMEYER: Hello, honorable senators. My name is Shirley Niemeyer, S-h-i-r-l-e-y N-i-e-m-e-y-e-r. And I am representing myself. And just for the record, I've been a Democrat, a Republican, and an Independent. And it's hard when you're an Independent or nonpartisan to be able to vote for a lot of things. I think it's difficult as it is now. I wanted to mention a couple of things that I had experience with. Sometimes, sometimes on the ballot when it says Republican, Democrat, Independent, if people haven't prepared, if they haven't

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

examined and analyzed who the content-- the candidates are, they don't know what they stand for. And they may think, well, it's the Republican so I know what their platform is, but sometimes I'm not sure what the platform is for the Republicans or the Democrats. What, what is it, because I see such differences from the national to the state. So, you know, if people are doing that sometimes, they're just looking at not the name even, but whether they're Republican, Democrat or Independent. That's just some people. They're not studying the information or looking into the background of other people. I think if you look at some of the things we're voting for, maybe some of the board of directors or the directors or the NRD, State Board of Education, I would like to see that nonpartisan. I really would, because what is their role? It's for the best educational system that we could provide here in Nebraska. And that's what they should be working for, Natural Resources should be working for, in my mind, should be working for preventing, protecting our, our environment as much as possible and helping for it to be even better. So that comes with-- they need education to do that. They need some information in their background to serve on those kinds of committee and not just if they're Republican or a Democrat or an Independent. So I'd like to see some of those if you look at the, the ballots which one of those really should be nonpartisan. And I was-- had some experience with the State Board of Education this year. This is my understanding, I may not know all the information, but this is my understanding, I was supporting a candidate who was an Independent and a phenomenal candidate. Extensive experience in education, worked at a national level with the federal government on one of the President's former committees for early childhood education. I mean, she just, she just, you know, she was so good. But I think money got into the opposing candidates or somebody's marketing processes and they-- I would say it's almost libel of what they sent out with pictures of her giving money to Hillary Clinton, giving money, you know-- and I-- what does that have to do with the State Board of Education? Nothing. And I was so disappointed. She went-- she had groups come together so she could identify what were-- what was her platform. She had a bunch of groups come together-- I don't know how many, 12, to identify what were going to be the issues, local control, "da, da, da", and she still lost. She ran a good campaign. But I just think some of these boards or committees should be nonpro-- nonpartisan, and NRD may be one, State Board of Education. I do understand-- one more thing, that there was a group of three who were candidates and they kind of were a pack, maybe this is wrong, but they kind of got together and so they all three got on. I don't know. I guess I'm an idealist, but I'd like to think that

people are elected for their abilities, their intelligence, their ideas, and not for which party they belong to. So with that, I thank you very much. And I'd ask you to look at marketing against candidate, because I really wonder if some of that wasn't libel.

SANDERS: Thank you for your testimony.

SHIRLEY NIEMEYER: Thank you.

SANDERS: Are there any questions? See none. Thank you.

SHIRLEY NIEMEYER: OK. Thank you.

SANDERS: Are there any other proponents? We'll move on to opponents. Are you an opponent? Please come forward.

AUDREY FLAKUS-MAHONEY: He's a proponent.

LARRY STORER: Proponent.

SANDERS: So you're for the bill?

LARRY STORER: I'm a proponent.

SANDERS: OK.

LARRY STORER: The form says support. Larry Storer, S-t-o-r-e-r, 5015 Lafayette Avenue, Omaha, Nebraska, 68132. I'm going on almost 80 years old and I can't believe what's going on with our elections in the last few years. And I support this because I think every voter should be able to have a nonpartisan ballot. I resent going to a primary and have to select a party in order to vote. I may want to not do that, but I can't vote if I don't vote the way I am registered. I think that disenfranchises a hell of a lot of people and I don't care. I, I get tired of hearing this, Nebraska's nonpartisan, Legislature is nonpartisan. Everybody knows you're partisan. Everything we do is partisan. And it's going to get a lot more partisan. So I think all of us should be able to have one damn ballot, maybe even do away with the primary. Everybody gets the same ballot. No party affiliation whatsoever. We all know over the years that politicians stack the deck against us. This is very evident in Omaha and Douglas County. And it's, it's not the way I was raised. I didn't serve in World War II. I didn't serve in Korea. I didn't serve at all. But I honor all of those that did. And, quite frankly, with partisan, everything in our politics today you are spitting on everybody that ever served in our

armed forces. So it's time to man up, let everybody have the free equal access, as the constitution says, the equality clause. It's not based on Democrat or Republican or Libertarian or whatever. Shouldn't they have to separate us that way. That in itself is discriminatory. But you want to put everything else discriminatory in our laws. You're sneaking in things that aren't even in federal laws in the resolutions, I see it in the documents behind resolutions down in the Civic Center in Omaha. Things that are not in the constitution, not in the equal protection clause, not in the civil rights laws. But you keep sneaking it in the documents, and you're doing it here, too. And we cannot necessarily vote. I can't vote every one of you against or for all of you. I can maybe only vote for one, but there's all of you against me. And probably the one I voted for also. That's really not fair. And our children are going to have a lot more problem with this than we do. So let's clean up all of the election stuff. I didn't have a chance to read all this. And, quite frankly, your little yellow sheet said nothing about all this. But I support Bob Borer, as you can probably tell. He supports this guy that's behind that. And there was millions and millions and millions of people, there were many different rallies that I went to, four. I never saw anybody misbehaving, yet the people that have been elected there in Washington are telling us people like me are the enemy. We are the terrorists and we're letting that happen because I can't vote for somebody else. That's all partisan and it has to stop. Thank you.

SANDERS: Thank you. Hold on. Let's check to see if there are any questions. See none. Thank you for your testimony. Are there any other proponents or those that support the bill? I see none. We'll move on to opponents now. Are there any opponents? Any in the neutral? Welcome.

LAURA EBKE: Thank you, Vice Chair Sanders, members of the committee. My name is Laura Ebke, L-a-u-r-a E-b-k-e. I am the senior fellow at the Platte Institute, and I'm here testifying today in a neutral capacity. Over the last four or five years, this committee has held hearings on bills that have raised questions about both open primaries and ranked choice voting in certain elections. The Platte Institute has never weighed in on these bills. Other states have adopted, in some cases statewide and in some cases in municipalities or for special elections, alternative voting methods. My doctorate is in political science, and 20-some years ago I did quite a lot of work in vote choice. As I-- as we watched how some elections played out around the country this-- the last few years and saw that some of our, our think tank colleagues in other states were weighing in on, on changing

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

the ways that votes were cast in their states, I was asked to take on a study that could serve as an educational foundation should other bills be introduced in Nebraska. The Platte Institute published that white paper on our website at the end of January, and I brought copies for you to look at when insomnia hits sometime late at night. My goal in writing the paper was educational, but it wasn't for advocacy, and to provide a literature review and a brief description of some of the proposed methods that are out there. Regarding how we vote, not when or where we are allowed to vote, as you all discussed yesterday, the looks of-- the look of ballots is changing in some areas around the country. Ranked choice voting, approval voting, range voting are all methods that, that some have suggested. Those methods could be used in primary or general elections or both, but they would also require a different level of engagement by voters were they to be meaningful. The open primaries concept contained in LB776 would apply just to primary elections. Proposals around the country have included things like a top two primary or a top four primary, indicating how many would advance to the general election ballot. For Nebraskans who elect our Legislature through a nonpartisan top two primary, the concept in LB776 really shouldn't be too confusing. No matter how many people filed, filed to be on the ballot with party registration listed or not, voters, including nonpartisan voters, would get the opportunity to vote for one on their ballot, regardless of their partisan preference or the party identification of candidates. Like with our legislative races, that could result in two members of the same party advancing to the general election. This could happen. Again, while the Platte Institute takes no position on this proposal per se, and we do want to provide some additional information that could compare this proposal to other proposals that are made in other states. And if you have any questions or would like me to find other information or do some research for you, let me know. The session, session craziness on my end is getting a little less crazy. I know it's just ramping up for you all, but I'd be happy to do some more research for you.

SANDERS: Thank you.

LAURA EBKE: Um-hum.

SANDERS: Thank you for your testimony. Are there any other questions for Senator? See none.

LAURA EBKE: OK. Thank you.

SANDERS: Thank you. Are there any other in the neutral?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

STEVE DAVIES: I, I have a opposition. I didn't stand quick enough. Sorry, may I come forward?

SANDERS: My fault. I should have slowed down maybe. Come on forward. Come forward, please

STEVE DAVIES: I might be the only one.

SANDERS: Welcome.

STEVE DAVIES: Thank you, Senator Sanders and the other senators on the committee. My name is Steve Davies, S-t-e-v-e D-a-v-i-e-s, and I testify in strong opposition to LB776. The current partisan system is not perfect, but this proposal would remove the single, easily observable description about a candidate's philosophy and policies. In all elections, the more information the electorate has about the candidate allows for more knowledgeable decisions for voting. Especially in down ballot elections, candidates have very limited ability to create the truly informed electorate. The party identification allows the voter a valuable amount of information that would otherwise be masked. And with partisan elections, the political parties are able to greatly help distribute information. And as an extreme example of lack of information, I, I will bring up the Hunter Biden laptop, the FBI had that 11 months before the election. It was brought to the public's mind or actually it was brought forward three weeks before the election but between bureaucracy and the press people didn't hear about it. If people-- after the election, 43 percent of Biden's voters said they would have reconsidered voting for him had they known about it. The success of our republic depends in part on an informed electorate and party identification, although imperfect and limited, is, is a valuable part too important to dismiss. Without it, voters will be more confused and down ballot elections will be decided with a smaller percentage of voters. This proposal was one of a number of proposals that purport to bring a more enlightened, responsive and civil government but in reality deliver much less. For example, from 1967 until 2020, Alaska, which has almost twice as many registered Republicans as Democrats, has elected a U.S.-- a Republican U.S. representative with the exception of one two-year term in the early 1970s. For the most recent elections the state instituted one of the ideas, ranked choice elections, and now have a Democrat as a U.S. representative. If I have more time, I'll challenge myself on that. I've got some more information. There are recent studies that show that winners of nonpartisan elections overrepresent higher socioeconomic classes and nonpartisanship does not necessarily mean

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

there will be less divisiveness. I will point to the Obama/Clinton primaries, Trump's first primary, and our last Republican gubernatorial primary, there was no partisanship in any one of those and there was more divisiveness than one would like to see. I still have time--

SANDERS: You do.

STEVE DAVIES: --so I, I could be challenged some on the Alaska example because there are more Independents and nonpartisans than either Republicans or Democrats in Alaska. There were three strong candidates for Congress, two Republicans and one Democrat. And if the partisan system would have worked, one of the republicans would have come out against the Democrat instead of dividing the vote and with ranked choice with all of the Independents and unaffiliated the Democrat rose to the top. Thank you for your time. I'm open for questions.

SANDERS: Thank you. Let's check to see if there are any questions. See none. Thank you for your testimony.

STEVE DAVIES: Thank you. And I also have an insight, Senator Raybould, you, you were an inspiration for me. Yesterday, it was so warm when I came I left my jacket in my car and towards the evening I saw that you had a jacket available, I brought mine today.

RAYBOULD: Good, it's cold.

CONRAD: You were with us late last night--

RAYBOULD: Last night.

CONRAD: --as well, thank you.

RAYBOULD: It's cold.

SANDERS: Thank you. Are there any other opponents or neutral? I see none. We'll go ahead and close. Senator Bostar is still here. We do have letters for the record: proponents, two; opponents, 68; neutral, one. Welcome back.

BOSTAR: Thank you. Well, thank you all, Vice Chair Sanders and members of the Government, Military and Veterans Affairs Committee. There were a couple of questions that came up through this, and I will in sort of no particular order kind of, I think, talk through some of what came up. This shouldn't be a surprise, mostly from you, Senator Halloran,

with some good questions. You asked why other states haven't done this. I think on one hand, some states are doing things that are sort of evolving their electoral processes. But why doesn't even more than that necessarily? I think that-- I think once political parties have a certain amount of power, it's very hard to get rid of it. I think they hold on to it and I think the incentives are aligned that especially for the folks who are the most political and got where they got within the system, within a partisan system. I don't think there are natural incentives for those individuals to want to change it. You also asked why not more parties? Like, we're talking about choice and options and opportunity. And, you know, that's fundamentally a, a function of how our election system works now. First past the post or whoever gets the most votes in a two-party system. Well, let me put it this way, if you added more parties, inevitably they would reduce themselves to two major parties, right, there's a-- within game theory the solution to a noncooperative game. And if we think of our electoral contests within the system and confines that we operate, but there's something called a Nash equilibrium, and that's the solution to the game. And so if we are positing how many political parties would exist within an electoral system that we currently have the answer is two, not one, not three, it's unsustainable. We're going to have two. And of course, there are places that have one political party and I think you and I would absolutely agree that those are places that are not hospitable to even freedom of thought. Senator Halloran, you brought up, too, the idea of that the-- that partisanship equates sort of this makes available opportunity for debate. I think, I think fundamentally people aren't their party. And, and I know we all have examples of that. Right? So the idea that you can look on a ballot and see, oh, there's a D there, there's an R there, I know what they're about is, of course, incorrect. You know, Senator Halloran, you're not the same as other Republicans in this legislative body. I'm not the same as other Democrats in this legislative body. I know for a fact that last-- during the last Legislature, you were able to accomplish some significant objectives legislatively than you wanted to do because not everyone is the same in a partisan, right, in a partisan environment. So I want people to be able to vote for the individual because I think there are more, there's more uniqueness and there's more differences among members that may share a party registration than we often, I think, instinctively want to recognize. And I think it's a service to voters to encourage them to look for the truth about who we are electing and not rely on a crutch. But mostly what this bill does is it allows participation, because right now we have a lot of voters who cannot effectively and completely participate in our electoral

systems. With that, this was introduced to start a conversation. There are a lot of ways to do essentially this. A lot of decisions that are made along the way when drafting a bill like this and the particulars and the details, you know, I'm not particularly wedded to, it's the concept that I support and I stand behind. And so if it's of interest to members of the committee, I'd be happy to engage in further collaborative effort on those particulars within the bill. And with that, I really genuinely do appreciate all of your time and attention. I'd be happy to answer any questions you may have.

SANDERS: Thank you, Senator Bostar. Are there any questions? Senator Halloran.

HALLORAN: Thank you, Vice Chair. Are you going to take on the George Norris wear out a set a tires routine and do a constitutional amendment for eventually to do that?

BOSTAR: Do you think I should?

HALLORAN: I'm asking you. I'm not saying whether you should or not.

BOSTAR: We could do it together.

HALLORAN: As long as it's not an electric car because we don't have enough charge in this building.

BOSTAR: You know, I've got a hearing on that next week you should come.

HALLORAN: I think it's kind of an interesting concept, although, I will say because you can kind of tell by the nature of some of my questions I'm a little bit skeptical.

BOSTAR: Of course.

HALLORAN: But I don't know how you ultimately or I don't know how the voters ultimately tell how honest the candidate is, whether they declare themselves or, you know, they, they do their palm cards and they make themselves to look at-- look to be something other than they are because they know the district they're in might be predominantly one party or another.

BOSTAR: Sure. Well--

HALLORAN: To me, that's a overriding thing. And I don't know how you cure that or fix that until you elect someone and find out differently, right, but.

BOSTAR: I, I agree that there are-- there's always a risk of dishonesty, especially in an electoral environment. But nothing right now prohibits that same thing from happening. Nothing stops someone out in western Nebraska. Let's say hypothetically, let's say they're very liberal and they're out in western Nebraska, very conservative area, nothing stops them from registering as a Republican, putting out a palm card about how they're the most conservative person to ever set foot in the state of Nebraska and getting elected. It's-- the risk exists. And I don't think, I don't think the risk is, you know, acutely ingrained in, in a system like this. I think it's pervasive of, well, politics, but also human nature.

HALLORAN: I wouldn't start the party or be one to belong to the party, but, but just as a humorous side note, there could be a party someday be the chameleon party. We just don't know what color they are, you know, it's an interesting concept.

BOSTAR: It's a fair recommendation.

SANDERS: Thank you, Senator Halloran. Are there any other questions? Senator Conrad.

CONRAD: Thank you, Vice Chair Sanders. Thank you, Senator Bostar, for bringing the measure forward. And, you know, one thing that occurred to me during the, the course of the hearing this afternoon and that we actually saw play out in recent years was I think Nebraskans were not only telling us at the doorstep they were dissatisfied with this process and why the chance to see all the candidates on their ballot. But we, we saw people trying to effectuate this under the current rules. Right? Senator Hunt was a very high profile, I think, strategist in regard to changing her political party so that she could have an impact in the Republican primary. I know that my husband looked at that strategy. A lot of other neighbors across Nebraska looked at that strategy. I mean, I think we saw, what, maybe like 10,000 people change parties around the, the, the primary deadlines and things like that. So in addition to, you know, the increased rates of folks identifying as nonpartisan, seeing that, you know, sizable numbers of people changing party registrations, basically to accomplish the same thing, you know, it just seems to me like the time is right to really revisit this solution based kind of approach to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

trying to turn down the temperature in our politics and, and find perhaps more moderating candidates to speak to a, a broader swath of voters. And, you know, the last piece I'll just say is I've been involved in politics since before I could vote and definitely since. And, you know, what I see happening right now in our political parties locally, state, nationally, I find it very disenchanting and very disillusioning and it doesn't speak to me and it feels very toxic and very broken. And I think if perhaps I was in another line of work, I might be a nonpartisan, but-- and maybe I still will be, but I, I think that, you know, this is just-- this is a, a recurring theme with an ever louder chorus from more people across the political spectrum that we have to, we have to figure out some way to change things. And so you're welcome to respond to any of that if you wish, but I just wanted to add that to the record.

BOSTAR: I agree with you.

CONRAD: Let the record reflect.

BOSTAR: For the record, I agree with you.

CONRAD: All right. Very good.

SANDERS: Thank you, Senator Conrad.

CONRAD: Thanks.

SANDERS: Are there others? See none. This closes LB684.

BOSTAR: Thank you all.

SANDERS: Thank you very much. And we'll now open on LB-- and we close LB776 and open LB684. No one caught that but us.

Speaker 5: Don't they? Come on very often.

Speaker 2: Well, there goes the room. Where are you from? 830. I watched you guys on the air all night. Well.

Speaker 3: There was a committee, in fact. Yes.

Speaker 7: I think that's. True.

SANDERS: We'll go ahead and open on LB684. Senator Briese, you have the floor.

BRIESE: Thank you and good afternoon, Vice Chairman Sanders and members of the Government, Military and Veterans Affairs Committee. I'm Tom Briese, T-o-m B-r-i-e-s-e, and I'm here today to introduce LB684. LB684 would require an outside review of state government for efficiency. Let me start by saying that the goal here isn't to cut costs by eliminating programs or reducing the services that government in Nebraska is providing to the taxpayers. The core goal of this legislation is to make sure that those programs and services are offering those taxpayers the most bang for their buck. I think we all could agree that we want government programs to do the most possible for the people, and that's at the core of this. Some of us might disagree later when cost savings are found, whether those dollars should go to expanding programs or lowering tax askings. But we can have those conversations another time. This proposal is silent on that issue. As I've stated publicly, publicly in the past, I believe that both Governors Ricketts and Pillen have done an excellent job of identifying many ways to make government run more efficiently. But by the same token, there's always going to be efficiencies that can be found in any organization from the smallest small business to multinational corporations. And I maintain that in order to run government like a business, which is something I believe we should do, it's best to do just what a business would do to identify and eliminate inefficiencies. That's to bring in a fresh pair of eyes, to bring in someone from the outside who knows what needs to be done because he or she has done it before, seen it before, etcetera. So I believe we should always be looking for ways to create efficiencies and save the taxpayers dollars. This belief is buttressed by an examination of our state spending. According to one source, we are 14th highest in state spending per GDP. Our spending per capita is average at best. So there would seem to be room for improvement and this bill addresses that. And that brings me to just what this bill does. As you see, it's a relatively short bill in that aside from listing out all of our state agencies, commissions, boards, associations, and committees, the bill is less than one page long. It simply would have the Department of Administrative Services contract for an efficiency review of all state agencies in order to reduce costs while improving quality. Other states have done similar reviews, and I'm intrigued by the results. I think you have the handouts. I've passed out a handout from Legislative Research that you can review and it indicates several other-- what other states have done. And I believe according to it, Kansas performed something similar in 2015 and it was at a cost of about \$3 million. The study identified areas to save of over \$2 billion, and I think the Kansas 2017 budget assumes

savings of \$47 million. The '19 budget savings were at \$89 million flowing from these recommendations. Louisiana spent \$7 million in 2014 and found potential savings of roughly \$2.7 billion over a five-year period. The governor there attributed savings over \$145 million due to the review. A North Carolina review in '14 and '15 cost \$4 million and resulted in over \$14 million in savings the first year. It further appears that Iowa and Colorado have undertaken similar reviews, and I have information suggesting that Iowa identified five-year savings of as much as \$1.6 billion. I also passed out some pages from the Kansas Statewide Efficiency Review. I have that document here. It's 200-some pages long, and we emailed that to you, but we just passed out a copy of the executive summary and the introduction to give you a feel for what, what this might entail. But anyway, the Kansas portion there, the Kansas document really is an example of what, of what maybe could be done. My staff and I have spoken with some folks involved in the efficiency audit industry. One company identified several other states that have done a similar review, including Wyoming. There the state initially spent \$2 million for their review and identified 200 to \$250 million in biennial savings from a \$2.7 billion budget. The same individuals suggested the average identified savings due to increased efficiencies to average roughly 4 to 6 percent of a state's budget. They further indicated any review could be tailored to the dollars the state is willing to invest in this effort, but suggested the amount spent by some of the states mentioned earlier would seem or appear to be in the ballpark. And as I mentioned earlier, I do think many of our agencies have made some nice strides in the delivery of services and in garnering efficiencies, but there's always room for improvement. When asked a few years ago in an interim study hearing about the current processes being used by Nebraska state agencies, one individual in the industry noted, quote, I just think there are additional ways to find additional savings, unquote. And he added, there are always ways to improve. There's always ways to do things more efficiently. And I cannot disagree with that statement. Again, this bill is not about reducing or eliminating government services. It's simply trying to ensure that we're operating in the most efficient way possible. I believe that we have an obligation to our taxpayers as stewards of their tax dollars to do everything possible to ensure that government programs are run responsibly, efficiently and with as little waste, duplication of cost, or untapped potential as possible. And lastly, I would like to note that this is not an audit. I have great respect for Auditor Foley and the hard work that his office does, and they do great work in making sure that the applicable laws and financial regulations are being carried out with

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

state programs. This review would be concerned with quality outcomes for citizens and ensuring efficient use of our taxpayers' dollars to lower core costs and improve services. Thank you for your time and consideration. I'd be happy to try to answer any questions.

SANDERS: Thank you, Senator Briese. Let me check. Senator Raybould.

RAYBOULD: Thank you, Senator Briese. This is really interesting. But in that report that you have that it goes into greater detail, so they made a recommendation on revenue. We're kind of seeing the same thing with our Internal Revenue Service on the federal side. Says the state should fill 54 revenue officer positions and 14 auditor positions. So can you-- is-- did they actually do that and were they able to rake in \$321 million in new revenue with the additional auditors? I just-- do they tell the outcomes of the recommendations?

BRIESE: Yes. What this review would provide, what this report would provide or recommendation then would be up to us as a body to choose what recommendations to, to go with. And I think the numbers indicated earlier, there was, you know, places they recommended the potential to save \$2 million. And based on what they did, they might have saved 80, 90 or \$150 million, something like that. So it would depend on what we would decide to do. What Kansas actually did there, I'm not sure what aspects of their report they actually adopted. Person could probably find that out. But at this point I'm not sure what they did adopt and how far they took those recommendations. These, again, would be recommendations for our review, consideration, and adoption if we saw fit as a legislative body.

RAYBOULD: Yeah. So that's, that's what I'm really curious in, not, you know, this is a really good example that you gave us. I'd like to dig into like, OK, that was a recommendation this company made. What did Kansas actually do? Did they achieve the savings that were projected if they did what was told to? But it wouldn't be in that report, right?

BRIESE: No, I don't believe that it would.

RAYBOULD: OK.

BRIESE: But one could look into that. Let's see. The data I indicated earlier, you know, Kansas spent \$3 million. They've identified savings of \$2 billion and the 2017 budget assumed savings of \$47 million. The '19 budget assumed savings of \$89 million. And I don't know who

determined those numbers. But so clearly they didn't adopt all recommendations, as I would assume no state would, you know, adopt everything recommended, nor would we [INAUDIBLE]

RAYBOULD: Thank you.

BREWER: All right. Additional questions for Senator Briese? All right. You'll stick around to close?

BRIESE: I certainly will. Thank you, Senator.

BREWER: I feel like I'm trapped in a time warp. I left, go all the way across town, get my nose cauterized and come back and one bill went by.

RAYBOULD: Sorry.

HALLORAN: It was just about as efficient.

BRIESE: Good to see you back, Senator.

CONRAD: Yes. Yes.

BREWER: OK. We will begin with proponents for LB684. All right. Welcome to the Government Committee.

LAURA EBKE: Welcome back, Chairman Brewer and members of the Government Committee. My name is Laura Ebke, L-a-u-r-a E-b-k-e. I'm the senior fellow at the Platte Institute. The Platte Institute wishes to register its support for LB684, a bill that would require the Department of Administrative Services to contract with a nonstate entity to carry out an efficiency review of all state departments, agencies, boards, and councils. We thank Senator Briese for introducing this bill. The goal of the review as created by this bill would be to receive recommendations and strategies for reducing costs and improving the quality of service across state functions. Now, we've all heard about the goal of running government like a business, but the government is not a business. There are a few market forces at play in government. Government services are typically monopolies. We can't get our driver's licenses or occupational licenses from nongovernmental agencies. If a taxpayer doesn't get the kind of service they expect from those agencies, they not only can't go somewhere else, but they can also not withhold funding from the agency through nonpayment of taxes. That's different than in the world of business where consumers get to choose and vote with their pocketbook,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

so to speak. If they get poor service at a restaurant, a grocery store, a bar, a car dealership, a realtor office, or any other place, they have options that aren't available when the government is one of the actors in the transaction. Given the lack of market forces where government entities are concerned, the Platte Institute supports reviews of government departments, agencies, boards, and councils that are not directly subject to the will of the voters. Efficiency reviews and recommendations can provide vital information to elected officials in the Legislature and the executive branch who are accountable to the will of the voters. Elected officials have the responsibility to ensure that nonelected agencies are making the best use of taxpayer funding possible and that they are serving the public well. This committee, this committee is tasked with reviewing boards and commissions every four years, but that review is primarily one of collecting information, much like the quinquennial reviews for the Occupational Board Reform Act have become. Occasionally, something will present itself as being ripe for change, as with the elimination of locksmith licensing a few years ago. Still, usually, we will have just collected information which I guess has its own value, albeit limited from the standpoint of actually changing policy. This bill provides for a more assertive approach with the obligation to develop recommendations and a defined goal of efficiency. And we think it's a good idea and encourage the advancement of LB684 to General File. I'd be happy to take any questions.

BREWER: All right. Thank you, Laura. Let's see if we have any questions. Questions? Questions? All right.

LAURA EBKE: Thank you.

BREWER: Thank you. Next proponent testifier. Welcome to the Government Committee.

DOUG KAGAN: Thank you, Senator. Good afternoon. Doug Kagan, D-o-u-g K-a-g-a-n, representing Nebraska Taxpayers for Freedom. By their nature, government bureaucracies, including state bureaucracies, expand exponentially. Nebraska state government expanded by 10.13 percent between 2009 and 2019. Between fiscal year 2000 and fiscal year 2021, state spending increased by 157 percent. In 2019, state and local employees totaled 15.3 percent of our total state workforce, 14th highest in the nation. New laws passed by the Legislature foster government growth. Senators passed bills with sunset dates, but the sunset dates always seem to disappear. We believe LB684 sorely needed in our state budgeting process. There's continual budget overrides.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

Senators voted last session to override almost all of Governor Ricketts' vetoes, restoring more than \$172 million of expenditures. We need performance audits in all state departments and agencies. Health and Human Services consumes 41.83 percent of our '21-- 2021 budget, the second largest amount per capita. Much of this spending is on autopilot. Nebraska has no tax or expenditure limits. A possible recession is on the horizon, meaning added pressure on the state budget. Federal grants may diminish. Families will face tighter budgets, less money for necessities, working longer hours, and working longer instead of retiring to meet escalating bills. A perfect time to scrutinize our state budget for waste, fraud and duplication. An analysis of current business tax incentives and an examination of competitive contract costs are warranted. A perfect time to implement zero-based budgeting in all departments. Digitalize the workload to increase employee productivity and seek help from the private sector to utilize the latest in technology and management process-- processes to streamline costs. An outside study could focus on these things and maximize state revenue such as licenses and fees, increasing state online transactions, and prioritizing discretionary program funding. If an economic downturn, federal regulations could shift Medicaid costs to states, worsening our budget situation. A private firm could find ways to control costs by scrutinizing benefits, limiting eligibility, and increasing copayments. Such a firm could offer ideas to determine if a large expenditure should move ahead, like the Platte River Lake. Identify needs to transfer funds, or amend the budget. Please advance LB684 for the taxpayers of Nebraska. Thank you.

BREWER: Thank you. All right. Questions for Doug? Questions? All right. Thank you for your testimony.

DOUG KAGAN: You're welcome.

BREWER: All right. We're still on proponents to LB684. Proponents. All right, we'll go to the opponents to LB684. Anybody here in the neutral for LB684? Senator Briese, come on up and close. Oh, we got some letters to read in. Senator Briese, you have four proponents, no opponents and no one in the neutral.

BRIESE: OK. Thank, thank you, Chairman Brewer. And thank you again for hearing my proposal today. You know, if we're going to proceed with something like this, we would probably want to put a maximum price tag in there. We might want to review those agencies, see if it's wise to undertake a review of all of those various agencies. It would likely need to be tweaked some. But I do think it's a-- I think it's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

something we should consider. You know, return on investment in other states has been off the charts on these things. And again, comes up with stuff we don't like, we don't have to do it. And presumably it would come up with a lot of stuff that a lot of us would like, that we could save our taxpayers some money and hopefully improve some services. But anyway, that's all I've got for today. Be happy to answer any questions. And I thank-- I'd like to thank the testifiers who came in.

BREWER: I guess my question as the Chairman, you're one of those guys in a unique position because your bill had no one testify against it or in the neutral. You had no opposition or neutral. Path ahead for the bill because you mentioned some possible changes, which would mean an amendment, wouldn't it? Is-- how you were thinking here?

BRIESE: Yes. I think perhaps we should amend it to put a-- to cap the amount we want to spend on something here. And--

BREWER: So would it be safe to say then that we stand by to Exec on this until we have the verbiage for the amendment?

BRIESE: Yes, please.

BREWER: Questions for Senator Briese for his close? Senator Lowe.

LOWE: I'd just like to thank you for bringing this bill. I think you brought one very similar to this in the past. And I think it's good to keep an eye on government and it's not attacking the agencies, but you're just trying to find efficiency ways to do it.

BRIESE: Yeah. Well, thank you for that.

BREWER: All right. Senator Conrad.

CONRAD: Thank you, Chairman Brewer, and so good to see you back. We're very, very happy to see you back. We all are. Thank you, Senator Briese, for bringing this measure. You know, as I was reading some of the materials that you brought forward in support of the bill, it reminded me of a lot of conversations we've had in this body over the years, particularly when times are bad or tight from a fiscal perspective and we are looking in every corner of the budget to try and figure out how to meet our balanced budget obligations, our core functions of government, not raise taxes, those kinds of considerations. And so, you know, I think there have been similar conversations or efforts around performance-based budgeting or

zero-based budgeting or modified zero-based budgeting, which are supposed to generate some of these kinds of conversations and similar results. I don't think that they've worked to, to a great extent based on kind of how our budgetary system plays out in Nebraska. So I think this is perhaps an interesting and important option to try and accomplish the same. And I think it may be perhaps even smarter to do so at a time of fiscal health, to give us a chance to maybe get ahead of some things. So I'm intrigued by the bill. And I was just wondering if you had any sort of thoughts or responses in regards to, you know, other ways that we go about finding efficiencies or addressing waste, fraud, abuse or budgetary savings.

BRIESE: You know, I appreciate your comments. And, and we're all looking for those solutions. You know, in the executive branch and all agencies, I'm confident they're doing their best to try to find things. But bringing someone from the outside, someone experienced in these endeavors that have done these things for other states, they're going to know where to look, what to look for. And our situation is going to be unique relative to other states. Every state is going to be unique, and I'm sure they would examine things with a fine-tooth comb and identify some things. And again, you know, we can reject any or all of it. But I think I'm confident we would find things that would enable us to save some serious dollars and hopefully improve services. And I think it could be a substantial win for Nebraska-- everyday Nebraskans.

CONRAD: Yeah. I like your approach as well as it's grounded in legislative oversight rather than, you know, just hoping that it might be accomplished perhaps in a similar matter under executive order otherwise. I like the approach in your strategy as well.

BRIESE: Thank you.

BREWER: All right. Additional questions for Senator Briese?

CONRAD: OK. I just try to--

BREWER: Thank you for your close on your bill.

BRIESE: Thank you for your consideration.

RAYBOULD: Nice try, though. Nice try.

BREWER: All right. Now we will transition to LB366.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

CONRAD: OK.

LOGAN BRTEK: Do you have anything?

CONRAD: I don't think so. No, I don't.

_____ : I'm sorry, which one are we on?

CONRAD: We're doing the open records reform, LB366.

BREWER: LB366.

CONRAD: All righty.

BREWER: All right.

CONRAD: Good afternoon.

BREWER: Welcome to your Government--

CONRAD: Hey, yeah. Hey, fun to be a part of this. Yes, thank you. Good afternoon, my name is Danielle Conrad, D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. Maybe, maybe the late night got to me a little bit. Forgot how to spell my name. That won't be embarrassing at all, right? Senator Aguilar's never going to let me forget that. But in all seriousness, Chairman Brewer, members of the committee, definitely proud to bring forward LB366 today. This is an issue that I've been passionate about during my previous term of service as an eight-year director of a civil liberties and government watchdog organization during my period of constitutional retirement over the last eight years and then one that I was eager to take the banner up again when I returned to the body this year. So this is a classic good government bill, this is about strengthening our proud traditions of open government in Nebraska. And those are primarily effectuated through, through two key statutory areas, one being our open meetings laws, which we heard some measures on last week with Senator Albrecht, the other being our sunshine laws or our open records laws or our FOIA laws. This is related to the open records, the public records law. So this measure makes several changes to the Public Records Act. It-- all proposed amendments of the Public Records Act are intended to advance the original intent of this bill-- of the, of the Public Records Act, and that is to provide the public with the greatest access to government records and government activity as possible. There is a disturbing and reoccurring trend across the state, across levels of different governmental entities where we're seeing public agencies

provide either a total refusal to the public and their ability to provide information about the activities being carried out in their name and on their dime or they're demanding exorbitant prepayment costs to effectuate the-- to produce those public records that are the subject of the request or they're providing unreasonable timelines to fulfill those requests or a combination of those different approaches. And before I get into some of the form measures that are specific in this bill, let me give you a couple of real-life recent examples of how-- why this is so important to take this up. And public records in open government, this is, I think, an exciting area to work on because it really brings people together across the political spectrum. This is something that people who are progressive, that are conservative, that are libertarian, really, really care about for a lot of different reasons, as they should. So you might remember a very high profile case a few years ago that went all the way up to the Nebraska Supreme Court where the Department of Corrections just refused to provide information about the supplier of lethal injection drugs. And that went all the way up to the Nebraska Supreme Court. It reaffirmed our strong tradition of open government. And guess who picked up the tab for that costly, lengthy civil rights litigation? Taxpayers of Nebraska. And they wrote a pretty hefty check to my former employer at the ACLU of Nebraska. That's one example. Another example comes from some headlines that we've seen just this year. A new media organization, the Flatwater Free Press, had tried to conduct some investigative reporting about the health of our water and what that was doing to the health of our citizens. And they were met with a steep bill and, and reasonable delay and I think kind of ridiculous tactics from state agencies when they were trying to get basic information about what's happening with our water and our health. That case was also litigated. And very recently, a trial court decision came down, and guess what, the Flatwater Free Press prevailed at that stage. And they also won an award of attorneys' fees. Guess who's going to pay for that? The Nebraska taxpayers. I'm anticipating that it's possible that case will continue to move up through the appellate level, but it's a very recent case that also comes to mind and why it's important to take up this measure. You heard from our colleague, Senator Cavanaugh, about a ridiculous response from the Health-- Department of Health and Human Services that she received, in regards to trying to provide-- get some information to fulfill her government oversight role, legislative oversight role, on some matters before Health and Human Services. And they sent her a bill for \$64,000. That is striking. That is shocking. That is unacceptable. And these three examples and I'm going to give you a couple more, show why we really

need to strengthen our public records law. I'll also tell you, I have seen eye-popping price tags from the city of Lincoln in response to journalists' requests for information about what happened during the racial justice protests in 2020. Absolutely unacceptable responses from the Lincoln city government to members of the Lincoln Journal Star in regards to those investigative reporters trying to do their job. Another area where this pops up and that we've heard a lot about, I can tell you from my seat on the Education Committee and Senator Sanders can, as well, as she has a bill kind of related to some of these public access and transparency issues, as well, is that frustrated parents across the state, state and across the political spectrum have tried to get more information from their kids' schools about different aspects of curriculum that are being taught and they're being hit with the same sort of lengthy denials or delays or price tags. And people don't have thousands of dollars sitting around to write a check to get some of these public records that they should be entitled to anyway, as citizens of our state. And even less people have the time, energy and resources to hire a lawyer to go to court, to litigate each of these issues. And the government-- governmental entities know that. And they're playing games with the statute and it's wrong. So that's why I felt it imperative to pick up the banner from my friend Senator Hansen, who's brought similar measures from this committee, through this committee, over the years. In fact, a bill that Senator Hansen brought, just in the last biennium with many similar components, advanced, I think, 8-0, out of this committee. And then time ran out in legislative floor debate in the last biennium. But that's the background. That's the context. Let me get into some of the specifics. So the bill requires that all estimates of the expected cost of a bill of records request be attested to under oath by the custodian of the public records. The current practice can be informal and nonspecific, with simply an email or a letter from the agency that demand an arbitrary amount of money. So this provides some clarity and formality to that process and that communication back and forth, between the agency and the requester. The current law states that the government agencies cannot charge for the first 4 hours of staff time to comply with the public records request. This bill would make a distinction between residents and nonresidents of Nebraska, which has been a significant part of the dialogue around open records in Nebraska in recent years. And it provides residents of Nebraska, Nebraska taxpayers, which includes news media regardless of location, to not be charged for the first 8 hours of staff time in retrieving public records. And it keeps the four-hour time for nonresidents. This distinction is responsive to agencies' claims that they do receive

requests from out-of-state entities that are collecting data for commercial purposes. So that's why that distinction is in play. Additionally, the bill also broadens the prohibition for legal costs to not be claimed and ensures those that only are, according to an attorney's work. 84-712(3)(c) excludes attorney's services as an available expense, but by any person. Again, in that recent Flatwater case, in the recent public records case that was just litigated, the agency was claiming that part of the reason they ran up the costs on the requester was because they were doing quote unquote, legal research. But the people who were doing that were not attorneys at the agency. And so, this would address that situation that's recently popped up in that case. The bill would also prohibit agencies from charging for copies of records that contain no information or that have meaningful information redacted. And based on models from other states that have similar public records laws, this bill would create a public interest exception, to allow agencies the discretion to provide records to some requesters without charge or at a reduced charge, if the requests are noncommercial in nature and serve the public interests. Other states, such as Oklahoma, have just such a provision in their public records laws. Finally, the last piece of LB366 that I want to raise to your attention is a modification in the Public Records Act related to how the Public Records Act interfaces with footage from police body cams. And really, what this measure, this component of the bill is meant to do is to kind of catch up the law and the technology as it stands today. So-- and what it does is it's a very narrow aspect of this bill, but it doesn't say that we're going to make all police investigatory files subject to public disclosure. It doesn't say we're going to make all body cam footage subject to public disclosure. It looks only at a release of body cam footage for an in-custody death after a grand jury has been conducted, as required under state law. So it's only in those very limited purposes would you have a change in regards to how body cam footage is treated in the public records laws. And that, I think, is an appropriate compromise to ensure that when there is an issue of grave concern, a loss of life and liberty at the hands of a governmental actor after a required grand jury process has taken place, the public has a right to know what happened there. So that's the last piece of the puzzle in regards to LB366. I'm happy to answer questions and I will definitely stay and close.

BREWER: All right.

CONRAD: That's a lot to put on the table. Can you tell I'm passionate about public records laws?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

BREWER: You are. Because you didn't have to read notes, you just [INAUDIBLE].

CONRAD: I got some of it. I got some of it.

BREWER: All right. See if my voice will hold out here. OK. Questions for Senator Conrad?

CONRAD: All right. Well, thank you for your kindness.

SANDERS: For now.

BREWER: OK. We will start with proponents to LB366. Welcome back to the Government Committee.

LARRY STORER: Oh, thank you. I was almost falling asleep earlier.

BREWER: Yeah, me, too.

LARRY STORER: You kept me here pretty late yesterday. Larry Storer, S-t-o-r-e-r. 5015 Lafayette Avenue, Omaha. 68132. I might ramble a little bit here and please don't pull an Omaha City Council on me. I might get a little bit off the exact topic of your language.

BREWER: It's your time.

LARRY STORER: I've written you about some of that, but just to point out about Open Meetings Act. The intent is I think she was talking about the intent. The Attorney General once explained to a group I was at that the intent is basically for the citizens to be able to petition their government and that's the feeling I get out of what she said. However, now let's give you an example. When you read through the law and it talks about reasonable things, like, I would have walked out of here until I heard her say about the Open Meetings Act. It doesn't say that on here and I didn't have time last night to research on your website the whole act. I didn't have time to read the whole act today. And I didn't have time to think-- bring a lawyer with me to interpret. So what I'm saying is, for overall transparency for the citizens, things need to be a little less technical, a little more transparent. And then to move on, as I read through this, I'm not a lawyer, but it looks like there are some amendments on this, amending the bill, the law. Adding something to the law, that's not what that implied. But this brings to mind a situation with our last election and maybe the bill that we were talking about before, we had-- I had a candidate that I liked that was running for, first of all, secretary

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

of state. He lost, so he ran-- he filed the proper affidavit and ran on a write-in-- as a write-in candidate for governor. We couldn't find out if our votes were actually counted because the secretary of state at the time refused to disclose that. Public records request is involved in that and he was refused many public records. I don't know. I'm not a lawyer, but it seemed pretty illegal to me for the secretary of state to say he was refusing, on the basis that he refused. I don't know if this is the same part of that law or not, but this certainly doesn't imply that the secretary of state had to, to do that. And we had a court case, just recently, on a, a citizen newspaper thing that sued for public records and was told, you're going to owe us \$45,000 or something. It had to go to the Supreme Court. How much did that cost? So public records, a little more transparency might, might have saved a lot of people a lot of money and a lot of time. And I'd like to just ask one thing and hopefully, you'll ask me questions instead of say I'm out of order or out of here. But something was said a little earlier that made me think maybe I could slip something in here from the last thing because-- is out-of-home care for disabled or special ed and does that come under HHS? If they have subcontractors doing the care, if it does, then I could have testified earlier. And I'm in the process of talking to somebody about that. But thank you for your time. Hopefully, you will ask me some questions.

BREWER: All right. Larry, thank you for your testimony. Questions, questions. All right.

LARRY STORER: Thank you.

BREWER: OK. Additional proponents for LB366. Welcome to the Government Committee.

ROSE ANN SHANNON: Thank you very much, Chairman Brewer and members of the committee. I am Rose Ann Shannon, R-o-s-e A-n-n S-h-a-n-n-o-n. I'm the president of Media of Nebraska, which represents the state's newspapers, broadcast media and associated digital outlets. Media of Nebraska supports LB366 and we are thankful to Senator Conrad for introducing it. I, too, am very passionate about open meetings and open records. I'm so passionate that I carry a copy of it with me most of the time. The public has a compelling interest in accusations of police misconduct. As the use of body-worn cameras by law enforcement has increased, the videos have repeatedly shown exactly what has happened in these very serious incidents. The videos have been used to both exonerate and convict law enforcement and the public has a right to examine this evidence for itself. I think the incident in Memphis

earlier this year, in which police allegedly beat to death an unarmed man, is fresh in everyone's mind. Body-worn cameras are playing a pivotal role in the investigation of this incident. It's shaping public reaction to how the matter is being handled and has already informed the formulation of policy. Just days after the Memphis body camera video was released to the public, Omaha police were involved in two officer-involved shootings in which two suspects died. Immediately, Omaha police released still photos that gave a pretty good idea of what happened. Release of the entire video is essential to maintaining public trust in law enforcement. The public has come to expect transparency and the timely release of body camera video. Failure to do so results in mistrust of police and government officials. It also allows misinformation to flourish. Another provision of LB366 would clarify the rights of Nebraska residents to examine public records and reduce how much an individual could be charged to produce these records. Government officials have increasingly been using fees as a way to get around providing records that are clearly open to the public. When I first started in news 46 years ago, it was not difficult to get your hands on public records. It is now. Every reporter I know keeps a FOIA form on their computer because they know they will have to use it that often. There was a recent case, in Lancaster County District Court, in which the FlatWater Free Press and Nebraska Journalism Trust sued a state agency over a legitimate public records request. The agency wanted to charge \$44,000. The law allows government entities to offset some reasonable costs for record searches, but \$44,000 is exorbitant and no average citizen could afford that. I ask you, what good are public records if you can't afford to access them? The court apparently agreed with all of us and decided in favor of the Flatwater Free Press. I think most of us would agree that in recent years, many Americans and Nebraskans have become more distrustful of government and our institutions. This is a time for more government transparency, not less. And I would urge you to pass LB366. I'm open for questions, if you have any.

BREWER: All right. Thank you for your testimony. Help us on Flatwater. So they won the lawsuit. Did they then determine that for the records they wanted, there was a, a fair amount that should have been charged or was there no charge then, for the records that they actually received that they wanted originally?

ROSE ANN SHANNON: I, I don't know the exact details of how this is playing out at the end. I know in the beginning they were originally quoted a fee of \$2,000, and I believe that they agreed to pay that. And that's a little bit high, quite frankly, for the average citizens.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

So, I, I mean and I think you have to treat everyone fairly, but I believe that they felt that \$2,000 was reasonable. And in fact, they modified the request that they originally put in to kind of condense-- they, they first went for a wide number of keywords searches and then they narrowed it in response to a negotiation with the State Department. And so, it was reasonable in the beginning and then, all of a sudden they came back with \$44,000.

BREWER: And, and I'm assuming just as a common person looking at this, it would be the cost if you were to take stuff to Kinko's and have it copied and maybe the amount of time and the employees-- cutting me off. [LAUGHTER].

ROSE ANN SHANNON: You're done.

BREWER: And then that employee says he or she spent an hour doing it or 2 hours or whatever. So the, the cost of that employee's time and amount of time to make the copy and then that's probably a reasonable amount to charge for whatever it is you're needing in the way of information. That kind of--

ROSE ANN SHANNON: Right. And, and this bill would increase the amount of time that is free, for example, from 4 to 8, and that's pretty reasonable, as well. It used to be that copy costs were a part of that and now, it's as simple as, as an electronic transfer. So you don't even have the copying costs a lot of times. So the, the fee should not be as high as it is. And it-- and I don't think that there's a journalist out there who's had a public records request that has been taken to this extreme that doesn't realize what's happening. And that is people just don't want to provide what is public record. And, and, you know, journalists have the ability to fight some of these things. The average person does not. And so-- and, and even journalists don't have the time because you're working on a story that you need information for in a timely manner and so, delays are also a part of trying to deny the public record.

BREWER: No. That makes sense. We kind of know what you're talking about because we see the same thing. If an agency doesn't like the bill that you've done, they just slap such a fiscal note on it, it normally kills it and indirectly, they get what they want. So let's see if we have questions for you. Questions? Yes, Senator Sanders.

SANDERS: Welcome. It's good to see you after all these years.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

ROSE ANN SHANNON: Thank you. Nice to see you.

SANDERS: Are you still in Bellevue, in my district?

ROSE ANN SHANNON: I'm not in your district. I'm in Carol Blood's now.

SANDERS: Well, welcome.

ROSE ANN SHANNON: Thank you.

SANDERS: When you or the media submits a request for public information, is there a response of it's going to take me two weeks, three weeks or what the approximate or estimated cost will be for those requests before it's even given?

ROSE ANN SHANNON: Yes.

SANDERS: OK.

ROSE ANN SHANNON: Generally speaking, it is. But there is a certain length of time that the agency has to respond to a public records request and, and that's specified in the, the legislation.

SANDERS: But in the, in the past, if you went in, you just had to ballpark what you think it would cost versus getting a good estimate?

ROSE ANN SHANNON: No, they, they usually would provide it up front. In the past, there were times when I, I do not recall for many, many, many years that we were ever charged a fee because-- and, and computer records have changed that for the better and for the worse, you know. But I remember a time, for example, that I went in for a request on overtime data for the police department in Omaha. And the, the city finance office had that to me in a day. They went in, put in a couple of queries into a computer and had it on, at that time it was on a floppy disk, and hand-- handed that to me-- or maybe it was a CD, but it was within a day or two. Never a question. Never. You know, why do you want it or anything that-- any questions that were inappropriate. It's a public record. You're entitled to it. We give it to you. And there was no fee involved. That's how it used to work. Then at some point when people decided that this was a way to hide information from the public by slapping on big fees, by stretching out the time that it took to get a public record, then that all changed. And then you end up with \$44,000 or what Senator Cavanagh talked about. I didn't realize that one, but, but these exorbitant fees, which, in effect, have a pretty chilling effect on a public records request.

SANDERS: Thank you.

ROSE ANN SHANNON: Um-hum.

BREWER: OK. Any additional questions? All right. Thank you for your testimony,

ROSE ANN SHANNON: Thank you for your time.

BREWER: All right. Still on proponents to LB366. Welcome to the Government Committee.

MAX KAUTSCH: Hello. Thank you for having me. Chairman Brewer, Senators, my name is Max Kautsch, M-a-x K-a-u-t-s-c-h, and I'm legal counsel for Media of Nebraska. I've been in this role for about a little more than two years and I am very pleased to be here today to testify in favor of LB366. Senator Conrad did an excellent job of running through all the aspects of the bill. So I think I want to focus my testimony on why public records are so important-- the-- to the media and to the, and to the public at large. Access to public records is essentially the only meaningful way that members of the public can challenge or verify the things that the government tells us. Without the, without the records to support the statements that are made, there's no reason not to believe that things are, are arbitrary or perhaps, outright false. So the importance of public records is self-evident, in the sense that only by accessing those records will we be able to challenge or verify what the government tells us. Not only that, the access to public records is crucial because if the information in those records is what sheds light on government conduct. Now, there are lots of times, of course, when government conduct, there's nothing wrong with it and everything works out fine. And so then there's no reason to shed light on government conduct. Often, however, there is a reason to shed light on government misconduct. And so, the, the-- what the bill proposes to do here, with respect to body-worn camera footage, is, is, is crucially important because unlike, unlike Kansas, Missouri and Iowa, there aren't mechanisms in the open records law to be able to generally challenge decisions by law enforcement to withhold records. Nebraska doesn't have that in its, in its law. And what it does have is a couple of exceptions for when a criminal investigation, when records relate to criminal investigations, would be available. One of those has to do with blood alcohol content. Those records are available. The second one that's in existence right now is records related to a death of an employee. Those records would be available. And even though-- even if

there would have been a criminal investigation related to that death. And so in a similar vein, the the aspect here of, of LB66 [SIC--LB366], which would amend the-- well, it has to amend two different statutes, one that governs body cameras in general and then the other that, that would amend the public records, the public records law. And so, as Senator Conrad indicated, this would be a very narrow exception. This would be extremely limited circumstances under which the public would, would be entitled to access the video. Not only would the grand jury have to be complete, but it's-- we're talking about a very narrow set of circumstances-- when someone dies. Now, I struggle to imagine what could be more in the public interest than when a person dies at the hand of the state, at the hand of a state actor. And as such, I very much applaud the, you know, the provision here that would, that would allow for access to these important records under these very narrow circumstances. The bill would also, as we-- as the, the witnesses have talked about, in addition to the police misconduct, would be able to have insight on police misconduct. It would also revise various aspects of the Public Records Act, with relation to costs. The Flatwater Free Press case has been brought up a couple of times. You know, the linchpin of that case is that the fees were being assessed to do document review by, by members of the staff. There were-- not attorneys, because the statute prohibits attorneys, but the agency proposed to get around the law by just having the staff basically conduct, conduct the, conduct the research. And that-- and so what the bill would do is make it so that any person would be prohibited from doing that, not just legal counsel. Finally, the last aspect that I want to touch on is this-- is the, is the discretionary waiver that would be available to public agencies that would basically set forth in statutes that they would not have to charge the fees to the requesters. And an important component of that waiver is that the waiver is applicable to agencies or, or individuals who-- or organizations who are not making the request primarily in the commercial interest. I want to be very clear that the United States Supreme Court has held, since 1967, that media outlets are not primarily engaged in trade. They are primarily engaged in First Amendment expression. And as such, the-- and as such, media members who would be asking for a waiver of this fee could not be denied the waiver, based on an allegation that, that being involved in the news media is trade. So therefore, that provision would be applicable to the media. And I'd be happy to stand for any questions. And Senator Brewer, I could also answer your question about the status of the Flatwater case, if you like.

BREWER: Yeah, let's finish up with the Flatwater case since I asked about that.

MAX KAUTSCH: Sure. So what the judge did in that case is very interesting. The judge did not, did not order disclosure of the records. What the judge did do, though, was order the agency to give a better estimate. You need to, you need to go back to the beginning of this process and provide a reasonable estimate. And, and so that's where the agency is now. So that we have the remand, the agency if they choose to follow the directive of the district court, then they will, then they will provide a new estimate to, to the Flatwater Free Press. If they choose to appeal, then they will appeal and that's the status of it.

BREWER: So there was-- and we went from \$44,000 to \$6,000. There's-- it's still in limbo because they got to decide how they're going to handle it.

MAX KAUTSCH: The agency has to, has to do the charges. And I will also say this. The-- I did an open records request just the other day that involved file sharing. We're talking about, oh, you know, megabytes or is it kilobytes? I can't remember. Not gigabytes. The one that's less than that. That involved the transfer of, you know, shared files. They didn't go over email, No charge, you know, no charge. And I got all the records that I wanted. So I know that the, that the, the Open Records Act work-- the public record acts works and, and I did-- wasn't charged. Like I said, I wasn't charged a fee there. And so the, so the law here is good. It will work here. This will make it better. Because if law enforcement is, you know, has-- there's the possibility that accountability could happen in the form of an actual video that must be disclosed by that officer's employment-- employer. I mean, what kind of trickle down is that going to have on the, you know, on the officer's willingness to follow policy?

BREWER: OK. So under the way things are right now, if there is a-- an incident and you need to get that information that was on the body cam, what's the process?

MAX KAUTSCH: Well, right now, without, without LB366, the law enforcement agency has complete, total and 100 percent discretion to deny access to the video. Period. That's the end of the story.

BREWER: OK. So if the law passes, how does that change?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

MAX KAUTSCH: Well, then, if the police department-- if officers with the police department kill someone, the grand jury process concludes, then the records-- then the video would have to be disclosed under this amendment.

BREWER: OK. That's what I thought I heard. OK. Questions. All right. Thank you for your testimony.

MAX KAUTSCH: Thank you.

BREWER: OK. We are still on proponents of LB366. Boy, does this seem like deja vu.

SPIKE EICKHOLT: Just-- it was just like yesterday.

BREWER: Welcome back to the Government Committee.

SPIKE EICKHOLT: Thank you. Good afternoon, Chair Brewer and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska in support of LB366. And we want to thank Senator Conrad for introducing the bill. She summarized what the bill does very well, as did the last two testifiers, so I really don't need to read from my statement or even really repeat what they stated. But this is a good bill and it is responsive, as Senator Conrad mentioned, too, some of the opposition arguments from earlier efforts to address the problem with cost and cost estimates that are being done by some of the different agencies. And then, I just want to highlight that, that distinction between residents of Nebraska and news media not being able to be charged for the first 8 hours of work by a state agency or by a public agency and then, keeping the current standard of 4 hours for non-state, probably commercial interests from outside the state that demand records requests. In my statement, or along with my testimony, I distributed a couple of news articles about the recent Flatwater case that you've heard, but I've also distributed some recent examples or not-so-recent examples, I should say, that the ACLU has gotten in response to some public records requests to different agencies. And if you have a chance to look through it-- I'm just going to kind of hold up so you can see where I'm at. I know we're not supposed to use props, but just so you can see what I'm talking about. The one from Lincoln Public Schools that I think is illustrative. You know, I heard some of the testimony yesterday on the voter ID bill and I think what you have, really, across the state is not necessarily a distrust of government, but at least a frustration, if you will, that government seems to be

inaccessible or not transparent. And you see it in a variety of different ways. And I think some of the people on this committee have introduced bills to address that. I know, Senator Sanders, you have that parental rights bill for transparency in school curriculum side of things and I suspect you did that in response to what some of the people in your district brought to you. And you heard some of the testimony yesterday in support of Senator Erdman, the bills on voter ID, that there is this frustration, whether it's tabulation of votes, whether it's the equipment used for voting, it's whether it's Secretary of State work, that kind of thing. There's this growing sense of frustration. And I think in some respects, that's because of the response of recent years that agencies have and are doing for public records requests. If you look at the Lincoln Public Schools from July 16, 2019, correspondence back to the ACLU office, this is a record requested a few years ago. And at that time, we were asking, really, just for information, including emails from staff members, regarding sex education and human sexuality courses and administrators. That was an issue that was of interest to many people in this state. You remember the Board of Education testimony. Do you remember if many people in your district-- demanding and asking you to do something in response to this issue. If you look at this estimate that they estimated, they estimate \$30,000, almost \$31,000 and prepayment and estimated cost to retrieve what, you can see for yourself, a relatively narrow request of documents. And not only that, the earliest practicable date for fulfilling the request was 20 weeks after we paid the deposit. That's five months. Now, you know, ACLU and the news media, they can-- we can afford to pay some of these and we do. But for your typical citizen, your constituents, the people who just want to have an answer or know what's going on, whether it's in the public schools or what's going on in local government, that's just not attainable. You can't wait five months. You can't pay the money. And I don't know if it's deliberate, I don't know if it's malicious, but it seems to be a recurring trend. And I gave you some other examples as well. And this bill rightly tries to address some of the features of that. And then finally, with respect to the body cam video, this is similar to a bill I think that Senator Matt Hansen did last year, LB557, and that component of the bill was advanced unanimously by this committee. It provides that body cam video for police-involved shootings are to be considered public records and the grand jury laws provide that that won't be released until a grand jury process has completed. It is narrow. It's not all police reports, even though a number of other states do provide. The police reports are public records. It doesn't provide that all body cam videos and any

other kind of case are public. It simply says for in-custody, police deaths that trigger a grand jury, that these things are going to be considered public. You know this and I think your constituents would expect that, as well. If you see of another police shooting across the state and 30 minutes later, it's on CNN video. But in this state, we just don't have that sort of transparency and this is a good bill to address that. I'll answer any questions if anyone has any.

BREWER: All right. Spike, on the example you gave us of the school here, \$30,940.02; 20 weeks to do it. What exactly did you ask for that would--

SPIKE EICKHOLT: If you look up in the, the first paragraph, there were some back and forth because it's a Public Records Act, the law allows, it allows for the agency to correspond with the requester to try to narrow down or negotiate, if you will, what we're asking for. And if you look at the last sentence, that's what we ultimately asked for that triggered the \$31,000 estimate. We asked for information, including emails from staff members, that either teach sexual education or human sexuality courses or are administrators involved in the curriculum update process. I know it's a little bit out of context, but what we were interested at the time in trying to see what and who, if you will, communicated with the development of the sex education health standards for-- ultimately, that Lincoln Public Schools used.

BREWER: So I'm assuming what they would do is some type of a query using, you know, the, the description you gave here or parts of it and then, that should bring up, populate that information and then, you simply copy that into files and send it.

SPIKE EICKHOLT: That's right.

BREWER: All right.

SPIKE EICKHOLT: It takes-- I mean, 20 weeks. I mean, we do this and I think that one of the early testifiers talked about, you know, the computerization of these records makes it sort of easier and sometimes more frustrating to retrieve. But, you do-- if you got Gmail, Google email, you can easily type in someone's name that you remember getting an email from or the subject even, sometimes and you've got that capability and, and many of these records, that's available.

BREWER: All right. Questions for Spike? Senator Halloran.

HALLORAN: Thank you, Chairman Brewer. Thank you, Mr. Eickholt, for being here. And, you know, I'm going to show my ignorance here a little bit, but on the video cam issue, so if the grand jury rules or exonerates the police officer, it's, it's a complete exoneration or does the trial go on from there?

SPIKE EICKHOLT: The grand jury can do one of two things. It can return no bill, which means no charges. And that's another way of saying that the officer or officers are exonerated or it can return a-- what they call a true bill. And that could lead to charges against the officer or officers involved. The grand jury, there's a series of statutes that provide how the grand jury process works. And a number of years ago, the Legislature amended that, that says that there's no true bill of return, then the summary of the grand jury report is public. And if there's a true bill return, which means that the prosecutor may be able to bring charges, there's a process for how those records may be accessible to the parties involved and maybe later on if there's an actual trial, if you go to a public trial, then of course, it's a public, it's a public process there.

HALLORAN: So if they rule-- if they exonerate the officer, there's a true bill. If they exonerate the officer and it doesn't go on to a trial, what's the value of the-- because it's never a pretty picture.

SPIKE EICKHOLT: Sure.

HALLORAN: It's never a pretty picture when a police officer's put in a position where they have to either defend themselves or the public and end up shooting someone--

SPIKE EICKHOLT: Right.

HALLORAN: --OK-- ends up in a death, it's never a pretty picture, but it does make for a wild press. I mean, it makes for giving a ugly picture of law enforcement, no matter-- I mean, even, even if it's, even if it exonerates and shows the police officer did everything correctly, it, it kind of paints that ugly side of what police officers are required to do--

SPIKE EICKHOLT: Right.

HALLORAN: --in protection of themselves or the public. So is it necessary to have, have that access to that video in the case of when, when the, when the grand jury exonerates him?

SPIKE EICKHOLT: I think so, because if the public is going to have faith in law enforcement, if they're going to have faith in the grand jury process, they're going to want to see it themselves. You know, as somebody said earlier, it's-- police reports are discretionary and police reports include body cam videos related to investigations. That's discretionary. In other words, law enforcement can release it if they want to. They are limited somewhat to the grand jury law for what they can release, but they can release it if they want to. And you saw that they did that in the Target shooting and that was reassuring to the public. Right. That comforted them. It gave them confidence in the Omaha Police Department and the individual officers involved. You're right. There may be situations where it's not pretty, but I think the public needs to-- publics are adults. Well, some of them are, I guess. They sort of know that police are forced to do some things, that there are bad people out there and police are there to protect us from those bad people. So I don't see that it's a bad thing for the public to see that.

HALLORAN: OK. Thank you.

BREWER: Do you remember the case, State Patrol incident, western Nebraska, involved, I want to say it was Trooper Bixsby. And it was where there was a pursuit. At the end of the pursuit, I believe the, the trooper's butt stalk and the guy's head had a run-in or something. Anyway, he was-- and he was terminated because I think it was considered excessive force or however, however that ended up. But then it seemed like he, after he was terminated, then came back and was able to-- I don't think he was-- well, I don't know whether he was rehired or whether he was somehow compensated by the Patrol, because it determined that he, he wasn't at fault. In that case, did they use the body cam to sort that out or how did they determine--

SPIKE EICKHOLT: I remember there being a video, because I can remember the video where he struck the person that was in the stop. I think that was actually, maybe, a cruiser video, which may not necessarily be actually addressed by the bill. And if I remember right, I mean, that was-- the State Patrol, on a couple of those things out west were sort of scandalous. And I can't remember all of the underpinning, but I think somebody may have actually deliberately leaked that, but I'm not certain of that.

BREWER: All right. Any other questions for Spike? All right. Thank you. All right. Still on proponents of LB366. All right. Is there

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

anyone here in opposition of LB366? Welcome to the Government Committee.

PATRICK CONDON: Good afternoon, Chairman Brewer, members of the Government, Military and Veterans Affairs Commission [SIC]. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am here on behalf of the Nebraska County Attorneys-- excuse me, Nebraska County Attorneys Association and I speak in opposition of LB366. LB366 provides for recordings created by body-worn cameras that depict or record circumstances in which a person died while being apprehended by or while in custody of law enforcement officers or detention personnel, including duplicates of such recordings to be public records. We are very concerned about the statutory public record designation of evidence in a grand jury investigation, a criminal prosecution or a civil litigation. Body-worn camera, audio and video evidence is essential evidence in many legal proceedings for the fair adjudication involving individuals' rights, particularly in the most serious circumstances of apprehension and in-custody deaths. But it is important to recognize that is the audio and/or video evidence that significantly impacts the fair administration of justice. There currently is prosecutorial and judicial oversight and accountability in officer-involved shootings and in-custody death. Body-worn camera evidence could be evidence in a grand jury proceedings, subsequent criminal case or subsequent civil case or all three. And there are concerns, especially heightened when individual death is involved. Release of evidence at any time before the opportunity for any party to be heard in court, one, raises a serious due process concerns; two, jeopardizes the constitutional guarantees of a fair trial and contributes to implicit jury bias; three, violates ethical rules and duties of attorneys; four, interferes with the administrative rights and guarantees; five, creates the potential for individual employment rights violation; and six, could expose local and county and state government to liability. A strict public record policy gives no consideration to the compassion owed to the families and the individuals involved. Existing state law and local agency policies currently provide for audio and video capture, management retention and disposition of body-worn camera evidence and balance individuals' rights, attorneys' ethical responsibilities and the public interest until final procedure determination of the issue has been completed. From a drafting perspective, it appears that Sections 84-712.05(4) conflicts with the strict creation of body-worn camera evidence as public records and the new Section 84-712.05(5)(c). Additionally, any change to release of grand jury evidence must be synchronized with the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

special protections afforded to the grand jury proceedings outlined in Nebraska Revised Statute Section 29-1407.01. The County Attorneys Association suggests that a possible amendment to LB360-- LB366 to allow for the release of audio or video body-worn camera evidence at any time prior to the completion of an associated grand jury, criminal or civil hearing and litigation could provide for release by a protective court order on the joint request of the parties after hearing and for good cause shown. And with that, I would, again, just say we are in opposition of this bill and I would be happy to answer any questions.

BREWER: Thank you. I try to keep up on notes. Would it be possible to get a copy of your testimony?

PATRICK CONDON: Yes. And I, I apologize, as I, I, I thought we had delivered that and I will get that to you.

BREWER: And we can, we can have a page burn it afterwards here. So we're just-- that way, we've got it to go back and reference as you run through the points to make sure we, we keep it all straight.

PATRICK CONDON: Yes.

BREWER: All right. Questions for Mr. Condon? Yes, Senator Raybould.

RAYBOULD: Thank you, Mr. Condon, for coming down here. You know, I think the public has this expectation when they hear of a death of an individual and I'll give the example of Tyre Nichols in Memphis, Tennessee. It seemed like it was almost immediately that-- I don't know if it was the police chief that released the camera-worn video. And I don't know if it was the police chief that authorized that one camera, posted on a, a lamppost or something like-- that made that decision to immediately release that video, regardless of a grand jury investigation, regardless of any, any litigation at that point in time. So can you help us understand and balance that? Because I know that's what the public expects, particularly in something that seem so egregious.

PATRICK CONDON: And I think, you know, that case was egregious. And regardless of how egregious something is, those individuals, if there was a grand jury or in this case have been charged, they're entitled to a fair trial and they're entitled to a trial not determined in the press. They're entitled to a trial that, that after a determination has been made as to the legitimacy of that evidence coming in at

trial, that-- and, and all those things. And again, you know, as a prosecutor, that's one of the things that we do. I mean, we, we have to look at can we assure a fair trial? And that's one of the reasons why I think, for a prosecutor standpoint, we do not feel it's ethical to release that information, because by releasing that, we're, we're, we're putting out there our case for the public, our case for a potential juror that could be sitting there reading that or watching that, that-- and I just think that is not fair for the defendants of, of these, of these cases. And, and I understand and, and again, I, I, I truly understand, you know, there-- you know, there are things that you need to, to consider. I think what was released, the photos, some of the photos that were released and some of the incidences up in Omaha, I think, you know, those are tough decisions to make. And that was probably made by the, the police department and the police chief and I, I, I understand why that decision was made. I you know, whether or not the appropriateness of it when a later trial comes by or in that case, you know, there could be even in, in-- and I believe that Senator Halloran brought up with Mr. Eickholt, you know, even if there is no true bill that's, that's handed down so no officer is charged, there is the burden of proof in a civil matter is less than the burden of proof in a criminal matter. And so that, again, you could be called to a jury for a civil case on that officer. And now, those potential jurors have all seen that, before it's been in trial, before anybody has got a chance to talk to them about it, they've got to see that video and maybe, made up their decision already.

RAYBOULD: OK. Thank you. I'm just trying to get my handle on it because I think of the, you know, the George Floyd murder. And that was just a, a bystander that captured that video. And that's a private video, but they released it right away. And of course, I think because of the video, that led to the conviction of the officers that were involved. So I think what I'm trying to say is how do we balance the public expectation of seeing the records that may or may not exonerate an officer or an individual involved in a situation like that?

PATRICK CONDON: And, and I think not only just the exoneration, but may lead directly to the conviction of an officer.

RAYBOULD: Correct.

BREWER: OK. Any other questions? All right. Thank you for your testimony.

PATRICK CONDON: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

BREWER: If you want to get that to one of the pages, we'll get copies made for you. All right. We are on opponents to LB366. Welcome to the Government Committee.

CHRISTY ABRAHAM: Hello, Senator Brewer and members of the Government Committee. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities. I want to thank Senator Conrad for introducing this bill. There is actually a provision in this bill that the League is really happy and excited about. Senator Brewer and Senator Blood both introduced similar bills that the League was very supportive of and it was this issue of making a distinction between residents and nonresidents. For the last several years, municipalities have been blanketed with these requests from out of state, large companies, requesting large amounts of data about their bidding processes or their utility customer use information. And after providing all of these large amounts of information to these companies, the companies turn around and sell that data. So I think what we heard from our members was, is it possible, when we get these large requests from out of state companies, that we don't have to give them four free hours of time, that from the beginning of making that request or fulfilling that request, we can just charge them right away for staff time and any costs that we have. And so that's a bill that we have been very supportive of, and those provisions are in this bill. There are a couple of provisions we have concerns about. One is the change from going from 4 hours of free time to 8 hours of free time. In-- it was about 10 years ago, when that was negotiated into state law. I was actually the legal counsel of this committee at the time, and it was a compromise made with media, this Government Committee and political subdivisions. And the 4 hours is sort of what we settled on, as if, for example, the city clerk of Ansley has to spend more than half of her day completing a public records request, that's probably pretty disruptive for her. And so that's why the 4 hours was chosen. We think the 4 hours has worked pretty well, so we would like it to stay at four instead of eight. The other provision that we just wanted to raise some concerns about, Senator Conrad talked about it and I think we want to work with her on it, is this idea that the custodian has to attest under oath the estimate of the public records request. I'm guessing that might mean before a notary or some other way to get that attestation. Again, for our smaller communities, we are sort of concerned about what that oath might look like, particularly for a clerk who maybe works, you know, 5 to 10 hours per week, you know, how that's going to look to do. So with

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

those concerns, I'm happy to answer any questions the committee might have.

BREWER: All right. I did not know that you used to be Dick Clark or in Dick's job.

CHRISTY ABRAHAM: Dick, Dick, Dick Clark does a better job than I did. But yes, I used to be in that job.

BREWER: I think you're just being nice.

CHRISTY ABRAHAM: And I worked for Senator Aguilar.

BREWER: Really? Wow.

CHRISTY ABRAHAM: Um-hum. I did. I did.

BREWER: Like a history lesson.

CHRISTY ABRAHAM: And you'll notice he departed as soon as I got here. So I don't know what that says, Senator Brewer. It's just not good. It's not good.

BREWER: OK. Questions for Christy. All right. Thank you for your testimony.

CHRISTY ABRAHAM: Thanks so much.

BREWER: OK. We are still on opponents to LB366. Welcome to the Government Committee.

WILLIAM RINN: Good afternoon. I'm William Rinn, William, W-i-l-l-i-a-m R-i-n-n, and I'm the chief deputy of administration for the Douglas County Sheriff's Office, representing the Douglas County Sheriff's Office and Sheriff Hanson, who is in the building but otherwise occupied on another committee. I have passed out my talking points here. I will not bore you with trying to read through them, because as they speak for themselves. They speak predominantly to my experience between the United States Air Force and the Sheriff's Office as a, a collective 30 years of experience with regard to conducting investigations, specifically, in the area of in-custody death and officer-involved shootings. So most of my testimony has to do with that. The records portion, fees, pays all that, I would only comment that there's always ample room for reform in those areas. And we've had a pretty good relationship with getting records to people. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

I've been doing it at the Sheriff's Office for 23 years. And we, to, to my recollection, we seldom run into problems with that area. So with regard to body cams, our specific areas of concerns have to do with the science of it. I can tell you that having done these investigations, involving myself in the science of body cams and how they work, I've learned one thing: that we're just scratching the surface about what we know about what things look like. We, as human beings, see with our eyes, with our brain, with our ears, with our feelings. Body cameras and cameras are digital recording and they refer interpretations of what that device sees, not what our eye sees, not what we know. They are a tool for us to conduct those investigations and a very good tool. And they're getting better and better and better. However, they had their limitations, which is why scientists and trained investigators do those investigations and they're put into as evidence, releasing them to the public without a reference even and believe me, we do appreciate the references to them doing-- being put off to the grand jury and after grand jury. That is a, a definite step in the right direction, in, in good spirit and good form for doing so. However, even released after that, the layperson is left to interpret things that I, myself, when first being trained, were like that is so, that is how it happened, only to be shown later in my training that I did not know what I was looking at. So those are our concerns. Not to mention, there is more than one type of in-custody death. This is not-- this does not speak specifically to shootings or chokings or anything. A police pursuit is an in-custody death, after which vehicles become engulfed in flames, bodies become dismembered. We have had in-custody deaths. If we have a deputy speaking to somebody on the edge of a bridge with a noose around their neck and they jump off, which has occurred, that is an in-custody death. These are the areas that cause the Sheriff and myself concern: not being with transparent, not being respondent to the-- what the will of the public is. Because I believe we can get there and balance that, Senator, as you were saying, with closed session reviews such as also Chief Schmaderer does, still videos, so we can get the best picture out there and a balance of, of how we do that without getting misinformation out there to be used by, what I would consider, maybe, the clandestine media, to make a thrill, get a buck, something of that nature. That, that's why we're here today.

BREWER: All right. Thank you. Let's see if we got any questions for you.

WILLIAM RINN: Oh, sorry. I apologize.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

BREWER: Hang on. We've got Senator Lowe with a question for you.

LOWE: Thank you. With AI coming along now, artificial intelligence, is there any concern that if you release this, because they can do it so quickly now, that they may take this and get it out there with something extra in it?

WILLIAM RINN: Well, I see that--

LOWE: Before you have a chance to--

WILLIAM RINN: There is a concern. And I, and I see it every day. We see it several times a day where we're-- not necessarily locally, but where we're reviewing news and terrorist attack cases and things that we're investigating and keeping an eye on with our-- in our intelligence community, where it's like, well, that's, that's not even accurate, because we know where the original videos came from, where the original cameras and then, we spend an inordinate amount of time undoing intelligence that's been put out there, that, that should not have been put out there and causes potential civil unrest, danger to the public and danger to officers unnecessarily, so.

LOWE: OK. Thank you.

BREWER: All right. Any other questions? All right. Thank you for your testimony. Next opponent to LB366. Welcome to the Government Committee.

DAN MARTIN: Thank you, Senator Brewer and members of the Government Committee. My name is Lieutenant Dan Martin. I am an 18-year veteran-- oh, Dan Martin, M-a-r-t-i-n. I'm an 18-year veteran of the Omaha Police Department and currently serve as the vice president of the Omaha Police Officer's Association and I'm here representing the OPOA today. I appear today on behalf of our members of the 900 sworn officers of our department in opposition to LB366. The primary purpose for body-worn camera recordings is to provide additional visual documentation for law enforcement in any public interaction or potentially criminal circumstance. Put simply, these recordings are evidence that are essential to any investigation and we believe strongly in the need to maintain law enforcement custody and discretion regarding the release of evidence. Beyond the potential investigative jeopardy that an untimely release of body-worn camera recordings may have, the public disclosure of this footage, sometimes released with questionable motives or without context, can

irrevocably-- I can't even-- irrevocably prejudicial towards criminal suspects and create genuine concerns of privacy and anonymity for victims and witnesses. We maintain that the perceived public need for transparency in these cases should not supersede the rights of those impacted by criminal acts or the due process rights of criminal suspects. Again, while body-worn camera recordings are essential evidence, the footage is merely one component of the entire investigative-- investigatory process. Arbitrarily requiring that this visual evidence be made public without any context provided by additional evidence, interviews, forensics and so on, will certainly not result in fair or just outcomes in these cases. And so, in consideration of the privacy of victims, the due process rights of the suspects and the essential nature of body-worn camera recordings to the investigatory process, we stand opposed to LB366 and steadfast in our contention that the release of any and all evidence in a criminal investigation remain at the discretion of law enforcement.

BREWER: All right. Thank you for your testimony. Let's see if I have questions for you. Any questions for Lieutenant Martin? All right. Thank you for your--

DAN MARTIN: Thank you, sir.

BREWER: --testimony. Still opponents to LB366. Welcome to the Government Committee.

JIM MAGUIRE: Thank you. Chairman Brewer, Senators of the Government Committee, my name is Jim Maguire, J-i-m M-a-g-u-i-r-e, president of the Nebraska Fraternal Order of Police, here speaking in opposition to LB366. I will try and not repeat some of the previous testimony that has been brought forward, but I just want to make a couple-- bring up a couple of points. When it comes to the fees and everything, I don't-- we-- our organization doesn't have any opinions about that. I, I-- that's something that you all have to sort out what's, what's fair and equitable and everything else. But just to keep in mind that we're-- the majority of this bill talks about body cams. And getting info to the public already occurs, whether or not it's with the body cam, whether or not it's with these camera images or just through a, a simple press conference. Nothing is really secret today with the amount of video that, that, that's available through your own cell phones and everything else. So if there's, if there's misconduct going on with a law enforcement officer on the street, you're going to find out about it pretty soon. One of the biggest issues that I do want to bring up that has-- maybe, maybe you haven't thought about, is its--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

they're, they're talking about-- let's just talk about a police shooting. And let's, let's say, for instance, that it's a drug investigation and now you have an informant. You may inadvertently out an undercover officer who is involved. And you know who'd like to know that information? The cartels. Don't think that they're not here. They are absolutely here in Nebraska. Drugs are thriving. The drug prices are at a, at a ridiculously low price. We've got fentanyl being flooded into our communities. And this is a, this is a very concern for our membership that we just want you to keep in mind. I understand-- I, I understand the concept of transparency and everything else, but certain things have to be kept private and, and confidential, not just for our safety, but for, for the public at large, some of the people that are cooperating with us. So with that, I said I wasn't going to repeat a lot of stuff that was brought up, but I'll just-- I'll leave it at that. Thank you very much.

BREWER: All right. So records part and you feel that, that isn't the issue. The issue is specifically, the body, body-worn camera recordings.

JIM MAGUIRE: Yes.

BREWER: OK. All right. Any questions? Questions. All right. Thank you for your testimony.

JIM MAGUIRE: Thank you very much.

BREWER: OK. We're still on opponents to LB366. Welcome back to the Government Committee.

BETH BAZYN FERRELL: Thank you. Good afternoon, Chairman Brewer, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm appearing in opposition to LB366. A lot of my comments will be the same as you've heard from Ms. Abraham. Obviously, our, our interests are a lot the same in this issue. I think the thing we have to remember is that most records don't trigger any of the things we've talked about today. Most records requests come in, they're very simple, very straightforward, on the side of both the requester and the custodian of the record. But when it comes to the bigger requests or the more complicated requests, then we run into the, the situation with the, the 4 hours. And that can be a problem for some of our smaller counties, where they may only have the official and maybe one part-time person on staff. And so 4 hours

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee March 2, 2023

can be a lot of time for them. I'm sorry, 8 hours can be a lot of time for them, particularly if they're an official that is an ex-officio, for example, their elected clerk and ex-officio register of deeds, election commissioner, assessor and so on. There are times of the year when, you know, 8 hours is really a lot of time to commit to a particular request. So we would prefer to keep that at 4 hours. And I think I would be happy to answer questions.

BREWER: OK. Your focus is primarily on the records part and not on the body-worn camera recordings?

BETH BAZYN FERRELL: Yes.

BREWER: All right. Any questions for Beth? All right. Thank you for your testimony. OK. Any additional opponents to LB366? Anybody here in the neutral on LB366? Senator Conrad, come on back for close.

CONRAD: Thank you so much, Chairman Brewer. Thank you, members of the committee for your time, attention and smart questions. I just wanted to respond to a couple of key points in our closing and so we have time to move to the next bill and of course, any additional questions that you might have. So let me just acknowledge the fact that I really appreciate the professional approach from folks at the League and NACO and the County Attorneys Association, who reached out to me directly, shared their feedback, ideas, concerns. I wasn't afforded the same opportunity from law enforcement, but I heard their concerns today and will continue to work with them in good faith. And I understand and appreciate that each and every one of those folks working in the public interest, whether that's a village clerk or a member of the State Patrol and everybody in between, they're working in public service because they have a calling and they're trying to make a positive difference, just like we all are. And they're doing so, asked to carry a lot with very little resources. So I want to give a shout out to how much I appreciate and understand our-- how-- what our hardworking public employees are doing and how this measure implicates, implicates their work. So the first point that I just want to really put a fine point on that Ms. Shannon brought up, in having done open records work before I was a member of the Legislature, when I was a member of the Legislature over the last eight years, it's hard to describe to somebody who doesn't work in public records law a lot, what an incredible sea change has happened in our state. And it's not one agency and it's not one community. But in previous years you'd say, hey, I'd like to get this information about this matter on your agenda or this matter under public consideration or this expenditure

that this county clerk decided to make. And you could actually get that information pretty readily available in a timely fashion. And we've seen really a tightening and an evisceration of that approach in a really short period of time across all levels of government and across the state. And it's deeply, deeply concerning. I mean, there's so many examples of how this is playing out. Fairly recently, there was an issue pending before a small community in greater Nebraska. And we had called to get some information about what was happening on their public agenda and with an ordinance that they were considering. And we were told that not only we couldn't have access to the public agenda, that we'd need to file an open records request to get that and then went through a lot of headache and heartache just to try and get a copy of the agenda from something that was pending before a village board in, in greater Nebraska. That's just, that's just one example of that. So-- but it, it really is striking how there's been such a sea change in such a short period of time. The other thing that I want to note that Ms. Shannon kind of talked about a little bit and why it's so important to update our laws in this regard. Over the years, I've had some luck and I know other people have utilized this as well. There's a provision in the public records law, in open records law, which says, all right, citizen, maybe you don't want to file a request and wait around for the government to get you the information. You can go down to the county office, you can go down to the city office and you can request access to dig through those files yourself and make your own copies. Now, usually when you threaten to do that or suggest that you might do that, you'll get a response pretty quickly from the government agency. But as you'll see in the fiscal note and, you know, through modern commonsense kind of approaches to our communication, that option's less and less available because everything's moving electronically and online. And it's less and less likely that I, as a citizen, will be able to walk into a county or city or school board office and say, give me access to your computer to start running searches. So it's really important that we think about like how this works out in practice. And that's noted in the fiscal note, as well. So the last point, in regards to some of the concerns from law enforcement around that aspect, I, I want to note a couple of things. And Mr. Eickholt talked a little bit about this in his testimony. So let me kind of break it down how it works in current law. In current law, nobody disagrees that body camera footage is a public record. That's undisputed. Now how it is released is 100 percent permissible by the law enforcement agency. It's up to their discretion whether or not they release it at all, when they release it, whether they release it in part or in whole. That's how the current law works. So keep in

mind what an incredible grant of authority that is. Because whether you're a law enforcement agency or a school superintendent or a village clerk, they are the custodians of these records. These are public records. They hold the record, but they belong to us, as citizens. And we are saying it shouldn't be good enough to say, hey, we're the government, trust us. We shouldn't allow them total and complete discretion, particularly when somebody loses their lives, to say when, if and how. What this measure does is a very, very narrow exception for very, very extraordinary circumstances. And to Mr. Condon's point and some of the law enforcement perspectives that were provided here, of course, everybody wants a fair trial for the officers involved and appreciates that there may be criminal and civil penalties from those actions. However, the way that you ensure a fair trial isn't by subverting the public's right to know. And SCOTUS has been very clear about this, the Supreme Court's been very clear about this. You can utilize change of venue, you can utilize a continuance, you can utilize voir dire, you can utilize sequestration of the jury. You should focus on jury instructions. There's a host of mechanisms to ensure a fair trial for a criminal defendant that are not implicated by this measure. And it is disingenuous to suggest that changing our strong open meeting law somehow is going to implicate additional liability where there would otherwise not be any in a civil or criminal context. Just because there is an in-person death and just because that may result in civil or criminal charges being brought forward, there's not going to be a finding of liability or guilt unless there was wrongdoing. Remember that for a moment. And again, who's picking up the tab for all of that wrongdoing and those litigation costs? The taxpayers. The taxpayers are picking that up. So I also want to acknowledge and give a shout out to-- for example, this isn't necessarily just a straight issue with law enforcement in general. I have worked very closely with Chief Schmaderer over the years in good faith. And to his credit, he has been very responsive to fulfilling open records requests on a host of different issues, not running up the, the price tag, not giving you ridiculous timelines. He's been very, very thoughtful about it. And it's probably a model for how law, law enforcement should act in responding to open records requests. So I'm happy to work with all of the parties to move this forward. But no one can deny that we have an increasing problem with the public being able to have opportunities to ensure the right to know and to provide checks and balances on our government. And these are the people's records. They're not the government. And it's our job to make sure that people have access to them.

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Government, Military and Veterans Affairs Committee March 2, 2023

BREWER: OK.

CONRAD: Thank you.

BREWER: Thank you. And questions for Senator Conrad? All right.

CONRAD: Thank you.

BREWER: Thank you for that close. And we will transition now. Oh, I got to read in letters. On LB366, we've got two proponents, one opponent and two in the neutral. With that, we will transition to LB650, Senator McDonnell. Welcome to the Government Committee.

McDONNELL: Thank you.

BREWER: Remember I told you that I hoped that we'd be able to finish and have a break before you got here? We haven't.

McDONNELL: Do you want to take a break, Senator?

BREWER: No. Please, drive on.

McDONNELL: All right. Thank you, Chairperson Brewer and members of the committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. LB650 amends statutes related to public records to allow the state as political subdivisions to restrict public access to certain records relating to cybersecurity. It instructs the Nebraska Information Technology Commission, NITC, to adopt and promulgate the rules and regulations determining precisely what records and information will be protected. I'd like to be clear. I'm not asking to block all the information technology contracts, only a specific cybersecurity-related ones. I do not feel that we, as a Legislature, have the technical knowledge to develop the guidelines ourselves in the legislation. Those guidelines may need to be changed often with technology advances, so I felt it was the best to let the NITC handle the rules and regulations. If the NITC goes too far with its rules and regulations, we, as a Legislature, have oversight over their appointment to that board and can work to ensure they stay within our approved boundaries. Why should this information be protected? Imagine you are the coach of a Nebraska football team. Now imagine that by law, your playbook is considered a public record that anyone can request at any time to review and analyze. That is what our public sector cybersecurity professionals face every day, because their playbook can be openly requested and exposed by anyone at any time. And it doesn't mean they

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can't still beat their opponents and protect the citizens of Nebraska, but it does put them at a disadvantage against their adversaries can move-- more easily guess the plays that our cybersecurity professionals may run while defending against a cyber attack. We should do all we can to protect the cybersecurity infrastructure and harden our system against the nation: state actors such as Russia and China. LB650 helps ensure our cybersecurity playbook stays safe and away from our opponents and there is no fiscal impact. Here to try to answer your questions. I know you've had a long day.

BREWER: We, we have. This seems logical because if somebody is able to breach your network, they could pretty much bring things to a halt, hold you hostage, in some cases, it becomes how they figure out how to fund their activities by forcing you in a situation, either losing all that data or paying whatever they're asking. So, I mean, there's some logic to this. I, I was looking at there are no opponents and nobody in the neutral. When you were working on the bill, was any-- did you find anyone who found an issue with protecting our, our cybersecurity?

McDONNELL: No. And, and the person and people, I should say, that brought this is of course, this is their-- they're the subject matter experts. And I just felt it was, it was common sense for us to put as many securities in place as possible to make sure that we avoid this kind of attack in the future.

BREWER: OK. Let's see if we've got questions. Senator Halloran.

HALLORAN: Thank you, Mr. Chairman. Thanks for being here, Senator McDonnell. Now, it's no longer a mystery about Nebraska football team's record. Apparently, the playbook has been made public.

McDONNELL: Maybe that was a bad analogy.

BREWER: Senator Raybould.

RAYBOULD: So thank you, Senator McDonnell. I'm a little surprised that there isn't already a policy and practice in place.

McDONNELL: I don't want to say there's, there's not. I just don't know if it's gone to this, this level.

RAYBOULD: OK. All right. Thank you.

BREWER: All right. Any other questions? You'll stick around for close?

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Government, Military and Veterans Affairs Committee March 2, 2023

McDONNELL: Yes. Yes. Thank you.

BREWER: All right. We will begin with proponents to LB650. Welcome back to the Government Committee.

BETH BAZYN FERRELL: Thank you. Good afternoon, Chairman Brewer, members of the-- wow-- members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing in support of LB650. We agree with Senator McDonnell. This is really a common sense bill. If it's-- it's an opportunity to close what might be another loophole in the law and we think it's a good idea. There were two counties that were subject to ransomware attacks in the last couple of years. And so anything we can do to prevent an opportunity for something like that is a good thing. NACO and our partners, we've been working with putting together some best practices for counties to use to protect their cyber assets and work on their cybersecurity. So we are in support of this bill. I'd be happy to answer questions.

BREWER: All right. Thank you, Beth. Questions? All right. I think we got it. We got, we got a winner here. Notice, Christy, that he's back now.

CHRISTY ABRAHAM: I know. My heart is happy.

BREWER: All right. Welcome back.

CHRISTY ABRAHAM: Thank you. Thank you, Senator Brewer and members of the Government Committee. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, here representing the League of Nebraska Municipalities and former legal counsel for Senator Aguilar. Do you see how I got that on the record?

BREWER: Nice.

CHRISTY ABRAHAM: OK. We just want to say as, as with Beth from NACO, we think this is very common sense. We think this is great. This is another tool that we can use to protect our records. Like Beth said, cities have been hit by cyber attacks and other local governments, as well. And Senator Raybould, you are correct. When you look at the green copy of the bill, there are sections, in 84-712.05, as you know, what it says is everything is a public record, but there are some things that you may withhold if you want to. And there's a long list. And some of them do relate to withholding information for the protection of security, of public property, of physical and cyber

aspects, for infrastructure, security standards. There are things in there already that I think sort of dance around this, but this language is so specific for cybersecurity. We think this is a good add-- addition. So with that, I will end. Thank you, Senator Brewer.

BREWER: All right. Let's see if we got any questions for you, Christy. Questions. All right. Thank you.

CHRISTY ABRAHAM: Thanks so much.

BREWER: Any additional proponents to LB650? Anybody here in opposition to LB650? Anybody here in the neutral for LB650? Senator McDonnell.

RAYBOULD: Wow.

SANDERS: Is he going to waive closing?

McDONNELL: I will waive closing unless there's questions.

BREWER: I have a question.

SANDERS: Lightning speed [INAUDIBLE].

RAYBOULD: We'll waive back.

BREWER: OK. Because of the fact that we have no opponents, nobody testifying in opposition, there's no neutral, only proponents, would you like this to be put on a short list for exec and then, ultimately, on a list for a possible consent calendar?

McDONNELL: Yes. Thank you.

BREWER: OK. That's what I needed to know. Thank you.

McDONNELL: Thank you.

HALLORAN: Could you get our playbook back?

McDONNELL: I'll get the playbook back.

BREWER: All right. And-- just a second. Let me read in the letters: two proponents, no opponents, no neutral on LB650. With that, we will clear the room and go into an Exec.