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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 30, 2008

[LB720 LB817 LB870 LB981]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, January 30, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB720, LB817, LB870, and LB981. Senators present: Ray Aguilar, Chairperson; Kent Rogert, Vice Chairperson, Greg Adams; Bill Avery; Mike Friend; Russ Karpisek; Scott Lautenbaugh; and Rich Pahls. Senators absent: None. []

SENATOR AGUILAR: I'd like to welcome everyone to the Government, Military and Veterans Affairs Committee hearing. I'll start off by introducing the senators that are present. On my far right: Senator Scott Lautenbaugh of Omaha; next to him Senator Russ Karpisek of Wilber, Nebraska, who's absent; who's here, Senator Kent Rogert, our Vice Chair from Tekamah, Nebraska; next to him is Christy Abraham, our legal counsel; my name is Ray Aguilar, I'm from Grand Island. Next to me on my left: Sherry Shaffer, our committee clerk; Senator Mike Friend of Omaha; Senator Greg Adams of York; and Senator Bill Avery of Lincoln. Our pages today are Ashley McDonald of Rockville, Nebraska, and Courtney Ruwe of Herman, Nebraska. The bills will be taken up in the following order: LB720, LB817, LB870 and LB981. We've been joined by Senator Rich Pahls of Omaha. There are sign-in sheets by both doors. Sign in only if you're going to testify, and then put the paper on the box here in front of me. If you're not going to testify but would like to be on the record either as a proponent or opponent on the bill, there's another sheet you can fill out and those are also at the tables by the entrances. Print your name and indicate who you are representing. Before testifying, please spell your name for the record, even if it's a simple name. Introducers will make initial statements, followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing Senator only. Listen carefully to the testimony ahead of you and try not to be repetitive. If you have a prepared statement or exhibit, give it to the pages and they will distribute it or make copies. Please turn off your cell phones and pagers and we're ready to begin with LB720. Senator Schimek, please. Senator Schimek, please. Welcome. There's one of those cell phones we need shut off. (Laugh). []

_____: It's off. []

SENATOR AGUILAR: Thank you. []

SENATOR SCHIMEK: I'm glad it wasn't mine, Senator. []

SENATOR AGUILAR: Our legal counsel would have thrown you out of here. []

SENATOR SCHIMEK: I had the real embarrassing situation of one time chairing an interim hearing and telling everybody in the audience that they had to turn off their cell

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phones, and in the middle of everything, a cell phone went off and pretty soon I said, is that my phone? And it was. So sometimes you don't realize. Mr. Chairman and members of the Government, Military and Veterans Affairs Committee, it's always a pleasure to be here. You all, I'm certain, except perhaps for Senator Lautenbaugh, remember this issue from last year. It was the robo-call bill which the Legislature actually passed with 30 votes, as I recall, and then the Governor vetoed. And I chose not to try to override the veto because the Governor also said that he was in favor of the basic idea and that maybe we could come back with a better version. This, LB720, is that attempt to make a better version. So let me tell you a little bit about it. Both LB198, which was the bill last year, and LB720 are responses to the public outcry that prerecorded campaign telecommunications, also known as robo-calls, which were used during this 2006 election. Several stories were reported in the press, as you remember, about possible abuses of current state law and robo-calls which border on harassment. LB720 limits the time of day that...oh, did I say my name? I just thought of that. For the record, my name is DiAnna Schimek. I represent the 27 Legislative District here in Lincoln. [LB720]

SENATOR AGUILAR: I guess I didn't worry about it because I figured Sherry knew you. (Laugh). [LB720]

SENATOR SCHIMEK: (Exhibit 1) I apologize. LB720 limits the time of day that any prerecorded telecommunication message may be made to a household requires that the identity of the person on whose behalf the message is being transmitted be stated at the beginning of the message, and requires that the person using the device and the person on whose behalf the device is being used to include his/her contact information within the message. LB720 also states that the person contracting with the third party to operate an automatic dialing announcing device for solicitations shall be jointly and severally liable with the third party for violations of this ADAD Act. The person contracting with the third part shall file a script to be used to comply with Nebraska Revised Statute 86-247 with the Public Service Commission, and I'm going to go back to that particular section in a moment. Furthermore, a party contracting with the third party to operate an automatic dialing announcing device for purposes other than solicitation shall be jointly and severally liable with third said party for violating the act. The person contracting with the third party shall file a script to be used to comply with the 86-247. These provisions dealing with the filing of scripts were added to the bill by request of the Public Service Commission. They feel as though these requirements will help them prosecute violators. The language of this bill was based on the Governor's recommendation, as well as input from the staff of your committee, and the Public Service Commission. At the time we did not foresee any potential issues with the language. We were, however, contacted by the Lincoln Public Schools and notified that they used robo-calls for all kinds of things, but mainly to notify parents of school closings due to weather conditions. Upon learning this, LPS suggested that we take a look at some of the language from the Minnesota statute which was upheld by then

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VanBergen v. Minnesota. I have had an amendment drafted that would exempt messages from schools, messages to subscribers with whom the caller has a current business or personal relationship, and messages advising employees of work schedules. This, I am told, is very similar to what the state of Wisconsin does. As far as I know, LB720 with this proposed amendment contains provisions that appease all parties involved with maybe a little bit of exception which I want to go into. The bill aims to treat all phone calls more equally, yet also contains exemptions that will enable our school systems and businesses that use these devices for communication purposes with employees to continue what they're doing without complication. And so with that, I would like to go to some specific language in the bill that a couple of people have raised questions about with me, and it may be fine the way it is. But it also raised questions in my mind, and since the Public Service Commission is here, maybe they can help address those questions. It's on page 8 of the bill and in paragraph 6 that's the language that says that that person contracting with the third party shall file with the commission the script to be used to comply with the requirements of Section 86-247. Such person shall file any subsequent change to the script with the commission within five days after the change. Well, the first question that arose in my mind and going back in looking at this more carefully is when does that script have to be filed? It doesn't really say, and secondly, what do they mean by script? Is that the actual word-by-word script that you're going to put on the robo-call itself? And then of course I understand the next sentence which talks about any change to that script you have to file within five days. Well, it's been a busy morning and so I didn't talk directly to the commission, but my staffer did, and apparently there's an application form that you fill out when you want to make these robo-calls. And question eight says, describe the content of the message to be transmitted by device, and to me that's not the same thing as script. To me that's probably saying, well, our message is going to be in favor of our candidate. Our message is going to be trying to educate the public about our candidate, whatever. So I'm not sure that what this says comports with exactly with the language, and I will be interested to hear what the commission says and you may want to ask them further questions about this. I think it would be okay, and this is just my own off the top of my head suggestion, I think it might be okay to just say that the third party would have to file the script within five days of the recording so that the Public Service Commission would have that script on file, and the people I talked with who were raising these questions I don't think had any problem with that. The problem with the political campaign, of course, is you're often responding very quickly to a changing circumstance, and you might be writing that script at 4:00 or 5:00 in the afternoon to be on the air the next morning...or not on the air but to be on the robo-call the next morning. And so it seems to me there should be a little flex time there to allow the script to be filed. Maybe I'm totally misunderstanding it and I'm sorry I'm raising this at the last minute, and I'm sorry that I haven't been able to get the whole thing straightened out in my own mind. But I think maybe the Public Service Commission can help us. With that, Mr. Chairman, thank you for your indulgence. [LB720]

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SENATOR AGUILAR: Thank you. Are there questions for Senator Schimek? Senator Avery. [LB720]

SENATOR AVERY: Thank you, Mr. Chair. Senator Schimek, what would be the purpose of filing a script? [LB720]

SENATOR SCHIMEK: Well, I'm not quite sure that I know for certain. I'm assuming that if there are questions raised about calls that have been made, afterwards the Public Service Commission would be able to at least look at the script and know exactly what the message was, and be able to compare that with the recollection of the person who's making the complaint. [LB720]

SENATOR AVERY: There's no intent here to approve the script in advance? [LB720]

SENATOR SCHIMEK: That's not my impression. [LB720]

SENATOR AVERY: Is there any need to file this before the actual call takes place? I think that's something you were addressing that's unclear. [LB720]

SENATOR SCHIMEK: That's what I'm trying to figure out. I'm not sure in my own mind that that's necessary. [LB720]

SENATOR AVERY: Yeah, I know that these calls, sometimes the script is written and the next hour the call is made. [LB720]

SENATOR SCHIMEK: Right. Well, that's probably true. [LB720]

SENATOR AVERY: I know it's true. We did it. [LB720]

SENATOR SCHIMEK: So maybe...please address that question to the Public Service Commission. [LB720]

SENATOR AVERY: Okay. [LB720]

SENATOR SCHIMEK: Yes. [LB720]

SENATOR AGUILAR: Further questions? Senator Lautenbaugh. [LB720]

SENATOR LAUTENBAUGH: Thank you, Senator. Whether the script is filed prior to the making of the calls or afterwards, are you concerned at all that we're creating some sort of oversight role for speech for the Public Service Commission? [LB720]

SENATOR SCHIMEK: Well, I don't think so, Senator, because it doesn't say anywhere

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in here that you're going to deny the person the ability to make that call. It doesn't say anywhere in here that there's any penalties for a particular script. I don't think so. That would be my take on it. But, again, I'm going to stick around because I want to hear some of these answers myself. [LB720]

SENATOR LAUTENBAUGH: And with your prior comments, were you saying you personally could be content with an identification of the purpose of the call rather than of the verbatim script to be read? [LB720]

SENATOR SCHIMEK: In the application, yes. The general purpose, the reason that you're wanting to contract with this company to make these calls. But I don't really have any problem with asking that campaign to file that script afterwards within five days. You could even make it a shorter amount of time if you wanted to because with faxes and e-mails and all of the electronic equipment we have now, it could be done within 24 hours. But I don't know if there's a necessity for making it that quick. [LB720]

SENATOR AGUILAR: Further questions? Senator Adams. [LB720]

SENATOR ADAMS: I'm wondering if in light of the dialog here if the intention is to be able to identify and not to regulate the content of speech or even go anywhere near an accusation of regulating. Then, and after the fact, you know, allowing three days or five days rather than you must turn in your script prior to making the call. That might get a little muddied. [LB720]

SENATOR SCHIMEK: Right. [LB720]

SENATOR ADAMS: Whereas if you said three to five days, then you're...to me it would seem that you're really intending then to have an identifier and not to regulate the content of speech. [LB720]

SENATOR SCHIMEK: I absolutely think that is the purpose here, and to be able to get anyone who's filing a complaint to see the actual script, that kind of thing. That's my take on it and I may be totally misunderstanding what my bill is trying to do. [LB720]

SENATOR ADAMS: Okay. [LB720]

SENATOR SCHIMEK: Okay. [LB720]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator. [LB720]

SENATOR SCHIMEK: Thank you. [LB720]

SENATOR AGUILAR: Will you be around to close? [LB720]

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SENATOR SCHIMEK: Well, I don't know. I do want to hear some of it. I will stick around for a while. Thank you. [LB720]

SENATOR AGUILAR: All right. May we have the first proponent of the bill? May I see a show of hands of how many plan on testifying on this? I see four, five. Thank you. Welcome. [LB720]

ANNE BOYLE: (Exhibit 2) Good afternoon, Senator, and there is a copy of the testimony here for your review. My name is Anne Boyle and I'm chair of the Nebraska Public Service Commission. Thank you for the opportunity to be here this afternoon. [LB720]

SENATOR AGUILAR: Spell your last name, Anne. [LB720]

ANNE BOYLE: Pardon me? [LB720]

SENATOR AGUILAR: Spell your last name. [LB720]

ANNE BOYLE: Sorry. My last name is Boyle, B-o-y-l-e. I'm here today to support LB720 and the amendment offered by Senator Schimek. As you've heard from Senator Schimek, LB720 puts additional specific requirements on the use of auto-dialers for noncommercial solicitation purposes, such as campaigning or fund raising for nonprofit organizations. The bill further makes both the party placing the calls and the party on whose behalf the calls are made responsible for complying with the provisions of law. The commission finds these additions to the act are reasonable and sensible. The commission also supports the amendment that Senator Schimek has offered to LB720. The limited exceptions to the provisions of LB720 for schools, businesses or personal relationships, and for work schedule information are important and practical. Many schools in Nebraska are using auto-dialer calls to contact student families, faculty, and staff. These systems allow the schools to send calls district-wide to notify families of school cancellations or delays, school activities, busing schedules, and other important information. These are just a few examples of the many uses of such a system making it a valuable tool to reach students, parent, faculty members, and staff in a short period of time. Other exceptions would cover situations such as pharmacists calling customers to pick up prescriptions, doctors or dentists offices reminding their patients of appointments, or businesses reminding customers of home repair visits or purchase arrival. The use of auto-dialers in these limited cases is for the convenience of the customer, patient or employee and not unsolicited calls as the restriction under LB720 contemplates. And with that, I thank you for your attention this afternoon and urge you to support LB720 and Senator Schimek's amendment. I would be happy to answer any questions you may have and you have several. [LB720]

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SENATOR AGUILAR: Thank you, Anne. Are there questions for Ms. Boyle? Senator Avery. [LB720]

SENATOR AVERY: Would you mind addressing the question I raised with Senator Schimek about the purpose of the script being filed? Did she have that right? [LB720]

ANNE BOYLE: That we ask that it be refiled? [LB720]

SENATOR AVERY: Yeah, but the purpose of it. She suggested that it might be so that you would just have a record in the event that sometime in the future you might need to go back and refer to that. But it was not intended to prove the script or the content. [LB720]

ANNE BOYLE: Senator Adams was correct. [LB720]

SENATOR AVERY: Yeah. [LB720]

ANNE BOYLE: There is no intent to...we have no authority to look at a script and to say or to edit it or to call anybody back and say you may or may not use this. And if I may refresh your memory, you may recall the election a couple of years ago, maybe it was the last election. I think two state senators had complaints about what was taking place and of opposite parties not running against one another, about some of the scripts that were being used in their campaigns. And so...but and you mentioned it, Senator Avery. Some of those scripts...a robo-call can be created and...on the telephone systems within minutes. So it would be difficult for us to say that you must have a prearrangement and file those with us. We don't expect that, but our rules ask that the...not only that they give us a general purpose, but file a script and these don't apply to just these calls. That is the general rule for anybody who uses any kind of an automatic dialer, and those are longstanding rules with the commission. And so to make an exception for these types of calls that we apply to others seems like we would be out of sync with our own rules. [LB720]

SENATOR AVERY: Do you find it difficult to enforce that existing rule? [LB720]

ANNE BOYLE: It's only difficult to enforce because many people are unaware of it. And so we have limited resources to let people know that if they want to use a robo-call or auto-dialers that they must make an application with the Public Service Commission. But people do call and make complaints about them and in that case we do find out about it, and part of the bill that Senator Schimek addressed was third party calling. We had a case where an applicant had filed, but then they weren't the ones who were making the calls and they contracted with someone else who then subcontracted to somebody else. And so as a contractor went to contractor to contractor, it became difficult to find who was responsible for making those calls. So we're just trying to tighten

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up the process and to...because the public can sometimes feel like they're being victims and we can't do anything about it as people who they...and they expect that of us. [LB720]

SENATOR AVERY: Yeah, I know people complain about these but the truth is, and you know this, these are very, very cheap way and very rapid ways to contact voters, particularly when you're in a fast-moving campaign and maybe you've been hit with a negative attack and you need to respond right away. [LB720]

ANNE BOYLE: I do know that, and sometimes those ads...I shouldn't say ads, but robo-calls become vicious and the fact that the script is filed does give, as Senator Adams pointed out, I think, that it is a way to go back and see who's responsible, what was said, because oftentimes when somebody hears a call, they don't have anything on their phone to capture that call so it is what they think they heard. And this is just a way to say this is exactly what was said and who's responsible for it, and then we are out of it. We don't take it from there. That is for the party who has been harmed for them to deal with it. [LB720]

SENATOR AVERY: Thank you. [LB720]

SENATOR AGUILAR: Further questions? Senator Adams. [LB720]

SENATOR ADAMS: A moment ago I think you used the word "exactly what they said." So are you suggesting then that the commission would want a script or just a definition of purpose of the call? [LB720]

ANNE BOYLE: We ask for both. We ask for the general purpose of the call and a script, and we have done that consistently for any kind of an automatic phone call. [LB720]

SENATOR ADAMS: Okay. [LB720]

SENATOR AGUILAR: Senator Rogert. [LB720]

SENATOR ROBERT: Ms. Boyle, I may be straying a little bit. What if an instance occurs where what was turned into you as a script is not what was said? What happens? [LB720]

ANNE BOYLE: Well, that is something that I've not discussed because we expect it to be as... [LB720]

SENATOR ROBERT: I know. What if it happens? [LB720]

ANNE BOYLE: ...because the law is that they will identify themselves and that is what

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we have. And that's...the question is a good one. I will go back to my staff and we will bring that and discuss that. [LB720]

SENATOR ROBERT: Thank you. [LB720]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Anne. [LB720]

ANNE BOYLE: Thank you for your time and by the way, Senator Aguilar, as I look around this table I think all of you will be back next year. But I would like to thank you personally and on behalf of the commission for the very fine relationship we have had with you over your term of office. You've always been very helpful and we truly appreciate the wonderful relationship we've had with you. So thank you. [LB720]

SENATOR AGUILAR: Thank you so much. Next proponent. Welcome, Jack. [LB720]

JACK GOULD: Thank you. Senator Aguilar, members of the committee, my name is Jack Gould, G-o-u-l-d, and I am here representing Common Cause. We view LB720 as simply a good government bill aimed to protect the election process and the public. I'm not going to deal with a lot of it. I think our primary concern is the fact that free speech is also something that people are held responsible for. And the thing that we feel is most important in Senator Schimek's bill is that the public has a clear knowledge of who is providing the message, and then they can sort out the messes on its own. If we have a situation where the person who is providing the message is able to keep their names out of the ad, then the potential for negative campaigning is much stronger. And we want to see a clean political landscape and we feel very strongly that this is an important part of it. [LB720]

SENATOR AGUILAR: Thank you. Any questions for Mr. Gould? Seeing none, thank you. [LB720]

JACK GOULD: Thank you. [LB720]

SENATOR AGUILAR: Next proponent. Welcome. [LB720]

FRANK DALEY: Thank you, Senator Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission and I'm here today to express the commissions' support of LB720. Current law right now requires automated calls relating to candidates and committees to include the name of the person or entity that's essentially paying for the call. LB720 simply requires that that disclaimer appear at the front of the message and perhaps that gives the recipient of the call a little bit more warning of what's to follow. But we think it's a good bill and would appreciate your support. [LB720]

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SENATOR AGUILAR: Thank you. [LB720]

FRANK DALEY: Thank you very much. [LB720]

SENATOR AGUILAR: Questions for Mr. Daley? Seeing none, thank you very much. [LB720]

FRANK DALEY: Thank you. [LB720]

SENATOR AGUILAR: Welcome. [LB720]

VIRGIL HORNE: Thank you, Senator. Senator, members of the committee, my name is Virgil Horne, H-o-r-n-e, representing the Lincoln Public Schools. That's all been said very well. We are very interested in the amendment because otherwise the bill would curtail our operations to the point where we couldn't use the service at all or render it useless because of the time restrictions of calls and things of that nature. Thank you. [LB720]

SENATOR AGUILAR: Thank you. Are there any questions for Mr. Horne? Seeing none. Any other proponents? Are there any opponents? Welcome. [LB720]

LARRY RUTH: Senator Aguilar and members of the committee, my name is Larry Ruth, R-u-t-h. I have a rather limited reason for opposing this and I wanted to explain that to you. I am appearing on behalf of First Data Resources in Omaha, a company that does extensive third party work for banks around the world and in particular in the United States. First Data Resources embosses cards, credit cards for banks, it sends out notices, including even invoices for the credit card purchases. What it also does is, as I understand it, it uses...it also communicates with clients or with customers of banks in dealing with notices to be sure and activate their card that might be sent to them, notices of unusual purchases outside of the country, for example, to let them know that there might be a security reason. In other words, it has extensive communications on behalf of a bank with the banks customer. So First Data Resources is a third party contractor for banks to do credit card work. Now with that much said, let me just say that our interest is primarily in the way that this is broadened. The requirement of identifying who is doing the calling and just a little bit of a direct reading of the bill I think is important. If you would turn to--if you're interested--turn to LB720 and page 3, it sets forth right now on page three current law, line 9, it defines what a telephone solicitation is. And this act that was passed several years ago designed primarily--but not entirely--but primarily to regulate telephone solicitations. A telephone solicitation is a message that's for the purchase or rental investment in property, goods, and so on. So it's basically for that kind of a purpose. Telephone solicitation does not include--and this is line 9--does not include if a person is given prior express invitation or permission to

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be solicited. It does not include a person with whom the caller has an established business relationship. And then there are several other ones, including a tax exempt nonprofit organization, other types of organizations that maybe make a...do not make the call for a commercial purpose. Now go on down then to the new language on line 20 of page 3 and it strikes the term "telephone solicitation message" and just says on line 21 "any person using ADAD to transmit a recorded message." So now we're not allowing those exemptions, if you will, and what I understand the amendment to do is to look to schools, which is certainly a valid reason to use an ADAD. I haven't seen the amendment, but if I see the material from which it was fashioned, it also, I think, allows for a current business or personal relationship. Is that what the amendment does? Does it say "subscriber" in that amendment incidentally? Okay. I don't know what a "subscriber" is incidentally. There is no such thing as a "subscriber" in the business relationship that we work with. Maybe within the context was looking at a different use of the word. So what we're doing with the requirement of stating who is making the call...we're not using the language. It was pretty well worked out several years ago up above in the exemptions, if you want to call it exemptions and I think having the word "subscriber" is problematic. I'm not sure what that means. That should hopefully be corrected. But what that would mean is that then we're very careful about the language that sets up the question of the prior relationship and that's why I'm here today as opposing as introduced. The amendment may take care of it, but I'd like to look at it a little more carefully. Without it, we would have to call up a client or a customer of a bank and say this is First Data Resources calling on behalf of First of Omaha rather than First of New York. And you're going to have a lot of confusion in there when typically we do not announce who we're calling on behalf of, and I don't think the bank wants us to particularly and I'm not sure the customer cares that First Data is calling. The other language back on joint and several liability, and I just have to say that I don't understand it completely and so I'm going to reserve comment, but back on page 8 with the joint and several liability, when you're working with using ADADs where there is...where it's other than for a telephone solicitation and then having some joint...several liability there, I just have to do further analysis with that. So perhaps after I've seen the amendment and have an opportunity to discuss further with counsel and with proponents, I'll be able to say we don't have opposition. But right now for the record I would like to state opposition. [LB720]

SENATOR AGUILAR: Very good. Questions for Mr. Ruth? Seeing none, just one quick one, Larry. Did you oppose this bill last time it was introduced? [LB720]

LARRY RUTH: I don't recall. I just don't recall. I'm not sure that I analyzed with the same way. I know if it was the same language last time, was it? [LB720]

SENATOR AGUILAR: Except for the amendment. [LB720]

LARRY RUTH: The same bill? No. See the bill last time would not have tried...see what

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I understand you're doing because of the way that the Governor vetoed the bill, you're trying to avoid the problem of political speech being treated differently from commercial speech. You're now putting the same restrictions on commercial speech or maybe I'm wrong on this, that you want political speech. I could be wrong on this, but in any event there's some leveling out so that we don't have the constitutional problem. In any event, those are my comments. Thank you. [LB720]

SENATOR AGUILAR: Okay. Thank you. Further questions? Seeing none. [LB720]

LARRY RUTH: Thank you. [LB720]

SENATOR AGUILAR: Are there any other opponents? Welcome. [LB720]

PHILIP YOUNG: My name is Philip Young and last name is Y-o-u-n-g. I'm a public relations and government affairs and sometimes campaign consultant and I'm here representing myself today. I'm not sure I'm opposed to the concept of the bill and, if fact, I'm not. I've always been supportive, whether it's accountability and disclosure issues for full accountability, whether it's tracking money or tracking message and those type of things. And I'm not opposed to having to say, you know, this message paid for by. My concern is experts have told me...and I've used these calls before, never in a negative, always in a positive, please, you know, support candidate A, B, C or issue A, B, C, or D. My concern is if you require a disclaimer at the beginning of a phone call that is going to take a significant amount of time, you're basically rendering this medium useless. Experts, people that do this around the country tell me you need to have a script that's about 15 to 20 seconds long because after that period of time people will drop off, they'll fall off, your effective rate really is decreased. And most people who use these, whether it's a candidate committee, have to go through a third party because most people don't have this kind of technology on their home phone or in their home. So if you have to say at the beginning, this message is paid for by "Young for Legislature," and is originated by ABC Corporation through whatever, by the time you get through a disclosure and you list a phone number, whatever my concern is the purpose of the call is completely wasted and you've basically rendered a medium of speech useless. And so from a practical matter, one of the things, for instance, in a radio ad, you don't have to say, this message paid for by "Young for Legislature Committee," so-and-so treasurer, address, address, address, like you do on printed material. But in order to run that ad, you have to have that information on file with the radio station, so if somebody does call and want to know how to reach who's paying for this ad, you know, that's there. I would suggest that instead of it being in the content of the call, perhaps having that information be on file with the Public Service Commission or on file with some organization that that might be an alternative way of looking at this. But I'm not in opposition of the intent of the bill as far as determining who's responsible and who's paying and who's bringing this message to people. It's just that I don't want to add so much to it that you've rendered the medium useless for political and campaign purposes. [LB720]

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SENATOR AGUILAR: You have a definite point there because I think one of the other reasons of being up front it gives people the opportunity to hang up if they don't want to listen to that particular candidate or proposal. [LB720]

PHILIP YOUNG: And the way I've used them...and some people don't, I'm very well aware that people use them for very negative purposes. But you say, hi, I'm Philip Young and I'm running for legislature because I want to do this and do that and do this and do that and do this, and at the end, this message paid for by or even if you have to say at the beginning, this message paid for by whatever candidate, committee, or entity. I'm not sure what benefit it is to list the company that's originating it or those types of things in that call unless you want to require that that information be on file with a certain commission, I don't see any problem with that. I don't have any problem, you know, saying which vender I used for it. That wouldn't bother me. [LB720]

SENATOR AGUILAR: Questions for Mr. Young? Seeing none, thank you. [LB720]

PHILIP YOUNG: Thank you. [LB720]

SENATOR AGUILAR: Further opponents? Would there be any neutral testimony? Come on down. [LB720]

JUSTIN BRADY: Senator Aguilar and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I'm breaking one of my rules coming up here in a neutral capacity. I usually always tell my clients they have to pick one side or the other or they don't get to come here. But with the amendment that Senator Schimek talked about with the prior business relationship is really the concerns that multiple clients of ours have, including Alltel, Financial Services. They make, you know, they may make calls to customers to remind them that their bills are paid or that they've got a past due. Currently, they can do that because of the prior business exemption that's in the law. As I understand, I haven't been able to see it, but as I understand from Senator Schimek putting that back in would alleviate their concerns. But I did want to come up here and say that to you all and try to answer any questions if you had. [LB720]

SENATOR AGUILAR: Thank you. Are there questions for Mr. Brady? Seeing none, thank you. [LB720]

JUSTIN BRADY: Thank you. [LB720]

SENATOR AGUILAR: Any other neutral testimony? Welcome. [LB720]

NICHOLE UNDERHILL: Hello. My name is Nichole Underhill, U-n-d-e-r-h-i-l-l. I'm an attorney with the Public Service Commission. And I just thought I would give the

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committee some general information about autodialer applications and what the commission does with those and how the process works, and try to answer any questions that you may have that I can help you with. We have the application, like Senator Schimek talked to you about, and we ask that they give us a general idea of what the script they're planning on running, what the general purpose or intent of that script is, and we also ask them to give us a template or a word-for-word script. They can either do a tape or a written out transcribed version of that, and if they tell us that...like if a campaign...which we do have campaigns that are on file with us. If they say they don't know for sure what we're going to be doing yet, then we ask them to give us a general idea what their scripts could look like. And then they have within...when they run the script, they have five days after that script runs to just inform us what it was that was sent. So there's not any requirement that they get preapproval for any script to be played. We don't have any approval of what the script says or the content of the speech that's included in that script. We just simply ask them to either e-mail us with it or they can fax it or simple drop it in the mail to us just to let us know. So if someone calls to complain about a script that they received or wants information about the call they received and they didn't get the number written down, we can say, yes, by what they're describing the call says, we can find who it was that was sending it and get them in touch with the right people. So that...and then like, I think, Senator Rogert, you had a question about if they don't have scripts that are on file with us. Well, if there's a violation of any of the rules or the law we would probably take out a complaint and ask that...have a hearing and ask that applicant or the permit holder to come in and explain to the commission what's been going on, and we would have the option to revoke their permit or registration if they don't comply with the rules or the law. [LB720]

SENATOR AGUILAR: Thank you. Are there any other questions from the committee? Seeing none, thank you. Any other neutral testimony? Seeing none, Senator Schimek to close. [LB720]

SENATOR SCHIMEK: Thank you, Mr. Chairman and members of the committee. I'd just like to say that I think we're getting really close here to what kind of language would work to do what we want to do. I would like to have the opportunity maybe to see if there's just a little bit of tweaking that still needs to be done before the committee would advance something like this to the floor. But I think I heard that everybody is pretty much in agreement with the amendment that I actually had committee counsel take hold of and we'd be happy to work with you in any way. [LB720]

SENATOR AGUILAR: Yes, Senator. [LB720]

SENATOR ROGERT: Senator Schimek, Mr. Young's comments kind of interested me. Do you have any... [LB720]

SENATOR SCHIMEK: Thoughts on that? [LB720]

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SENATOR ROBERT: Yeah. [LB720]

SENATOR SCHIMEK: In my own mind I'm not sure that you need that whole rigmarole right at the beginning. I think it would be perhaps good to say that it's on behalf of such-and-such candidate. But I would like to talk with the Public Service Commission a little bit more on that specific point and see if there's...I mean, as long as it is on file and we know how to get in touch, I understand the question about using up too much time, although I think you could say that all pretty fast. But if it's only a 20-second call, that takes considerable time out of that call. So I'd be happy to continue to think about that. [LB720]

SENATOR ROBERT: Or maybe the fact of just if some of the information was in the message, but maybe not necessarily up front, but if it was contained it might be possible to... [LB720]

SENATOR SCHIMEK: Right, right. We'll think about that a little bit longer. I'd like a few days or a week maybe to try to pull this all together. [LB720]

SENATOR AGUILAR: Thank you. Senator Pahls. [LB720]

SENATOR PAHLS: Thank you, Senator. Senator Schimek, I just want to make sure I'm clear on this. Some of the issue that the business world has raised, that's going to be corrected? [LB720]

SENATOR SCHIMEK: I believe so, with the amendment that actually Virgil Horne helped us put together. [LB720]

SENATOR PAHLS: Not just the schools, but I mean... [LB720]

SENATOR SCHIMEK: Yeah, but it's broader than that. [LB720]

SENATOR PAHLS: Okay, because I prefer not to hear one of our lobbyist always has to be up here in a neutral position. (Laugh). Thank you. [LB720]

SENATOR SCHIMEK: I'm sorry. I have no control over that lobbyist. [LB720]

SENATOR AGUILAR: Thank you. Senator Lautenbaugh. [LB720]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Senator Schimek, just briefly you touched on something exactly as I was thinking it. You talked about how you... [LB720]

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SENATOR SCHIMEK: Oh, that's scary. [LB720]

SENATOR LAUTENBAUGH: I know, isn't it? For both of us maybe. [LB720]

SENATOR SCHIMEK: Yeah, right. [LB720]

SENATOR LAUTENBAUGH: You mentioned that the disclaimer was up in front, it could be said very fast. I'm thinking of the auto ads I hear on the radio all the time where the disclaimer is said so fast that it's utterly meaningless because I don't know what they're saying and then you hear the ad and you know you were supposed to listen to what went before. If that's permissible, is it really important to have this up front at all if you could just say it real fast and get it out of the way and no one knows what you say anyway? Say, well, I had a script, but I was talking real fast. It seems to me if we're willing to put up with we should be happy to tack it onto the end. If someone's interested enough, they're going to listen to the whole thing and get to it eventually. [LB720]

SENATOR SCHIMEK: I suspect that's not going to happen very much. I mean how would you say your name so fast that...I mean your name is going to take more time than mine is probably. But I don't foresee that as being a huge problem. [LB720]

SENATOR LAUTENBAUGH: I'm just thinking out loud and if it's going to be meaningful and someone really wants to know what is being said, they're going to listen to the end anyway would be my supposition. So if it's at the end, so be it. [LB720]

SENATOR SCHIMEK: Well, all I know, Senator, is that there are quite a few states that do ask for that up-front message. This is not an unusual suggestion. In fact, in some states they actually require a live person to come on and say, this is a message from Senator Lautenbaugh, would you like to take this message, or something like that. So it's not unusual. I shouldn't say most states, some states, at least, I know do this. [LB720]

SENATOR AGUILAR: Thank you. Further questions? Senator Avery. [LB720]

SENATOR AVERY: Thank you, Mr. Chair. What did you think of Mr. Young's recommendation or suggestion that maybe you could have the disclaimer and the company information, like the phone number and address and all that, on file with the Public Service Commission and available? [LB720]

SENATOR SCHIMEK: I don't think I have a problem with that, Senator Avery, but I think I would like to discuss it a little bit more with the commission. They might see something that I'm not seeing, but I think we should at least consider that. [LB720]

SENATOR AVERY: I think Philip identified a real problem in that...because the value of

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these, not only are they inexpensive, but you get a pretty quick hit with the message; it's short and if you have to add a lot of stuff on it, particularly if it's at the beginning, you're going to lose a lot of those calls. [LB720]

SENATOR SCHIMEK: Right, and we don't want to hinder candidates. Although secretly maybe I would like to hinder them from making all these calls, but... [LB720]

SENATOR AVERY: Depends on whether you're the recipient, on the receiving end or the giving. [LB720]

SENATOR SCHIMEK: But no, we're not trying to make this so difficult that people feel like they're being thwarted from getting their message out, and that indeed would probably be an argument that you could use that free speech is being violated. [LB720]

SENATOR AVERY: And you could have the disclaimer at the end: "This ad was paid for by Bill Avery for Legislature." [LB720]

SENATOR SCHIMEK: Well, I think that it's kind of good to have something at the beginning. This... [LB720]

SENATOR AVERY: Yeah, vote for...(laughter). [LB720]

SENATOR SCHIMEK: "This ad is on behalf of Senator Bill Avery" or "this ad is on behalf of Candidate X." But let us talk about that a little while and try to come back with maybe a little variation, if we can agree. [LB720]

SENATOR AVERY: So you're open to a lot of changes. [LB720]

SENATOR SCHIMEK: Well, not major but yeah, some tweaking certainly. [LB720]

SENATOR AGUILAR: Thank you, Senator Avery. Yes, I'll encourage you to work with this commission and possibly get back with legal counsel and we'll know how to proceed from that point. [LB720]

SENATOR SCHIMEK: I appreciate your time very much. [LB720]

SENATOR AGUILAR: Thank you. [LB720]

SENATOR SCHIMEK: Thank you. [LB720]

SENATOR AGUILAR: And that closes the hearing on LB720. We're now ready to open on LB817. Senator Avery, what legislative gem are you bringing us today? That was being facetious, by the way. [LB720]

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SENATOR AVERY: Mr. Chair, I thought today I would try not to be controversial.
[LB817]

SENATOR AGUILAR: Too late, you're here. [LB817]

SENATOR ROBERT: Making this long for the task force. [LB817]

SENATOR AVERY: This is not a task force. My name is Bill Avery, spelled A-v-e-r-y. I represent District 28. The bill that is before you, LB817, requires all constitutional officers to devote full time to the duties of their offices. This means removing themselves from a direct decision making role in outside business interests. These officers would be prohibited from outside employment for financial gain during the term of their office. The bill does not--let me repeat--it does not prohibit the officeholder from receiving financial benefits from business interests and investments, but simply addresses the issue of time typically involved in managing those activities. The green copy in your folders contains language requiring outside investments to be placed in blind trusts. After discussing this with representatives of the Governor's Office, I have given the committee legal counsel an amendment that removes this provision. You do have that, right? The Governor has expressed publicly his support for the intent of this bill, although he did not ask me to bring this bill forward. We all know the circumstances that prompted this proposal, and I have met with the State Treasurer to let him know what I was planning to do and suggested that this legislation probably was needed, even if his situation had not become known. Citizens of the state of Nebraska, I think, have a right to expect that the people they elect to public office, those who are elected to full time public offices with full time pay should devote full time to the duties of the office without outside employment commitments and distractions. This Legislature just recently raised salaries to very respectable levels that are reasonable compensation for the level of work required by the office. I have heard from constituents who expressed displeasure that \$85,000 salaries apparently are not enough and that outside employment is seen as necessary. I want to emphasize that I am not accusing anyone or alleging any illegal activity. But I do think we need to remember that what is not illegal is not always proper. The appearance of impropriety can undermine trust in government because many times people tend to allow appearances and their perceptions, those appearances, to define reality for them. And even though their perceptions might be based on faulty information, it may be based upon biased information, it may be based on limited information. It is reality for them and for them, that becomes truth. So whether or not impropriety is occurring or whether or not any illegal activities occurring, that is probably not so important as how people perceive things. We have to be constantly doing everything possible to protect public trust in government. If we do not, public confidence and support for what we do and how we do it will erode. So I urge you to advance this bill to General File. I believe it is important for us to have this discussion. Most municipal governments already around the country have such statutes in place

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and so do many states. Perhaps now is the time to set this standards in our laws. Thank you and with that, I'd be willing to take questions. [LB817]

SENATOR AGUILAR: Thank you, Senator Avery. I'll take the first shot at this. [LB817]

SENATOR AVERY: Shot at me? (Laugh) [LB817]

SENATOR AGUILAR: Evidently you must consider us part time. [LB817]

SENATOR AVERY: Pardon? [LB817]

SENATOR AGUILAR: You must consider state senators part time [LB817]

SENATOR AVERY: Yes, I do. [LB817]

SENATOR AGUILAR: Okay. Thank you. Questions? [LB817]

SENATOR AVERY: I expect you do too, right? Although sometimes it...yeah. [LB817]

SENATOR AGUILAR: Well, if I look at the wages, yes. [LB817]

SENATOR AVERY: Sometimes it seems like it's full time. But we are citizen legislators, never intended to be full time by Senator Norris when he first got this established. [LB817]

SENATOR AGUILAR: Senator Lautenbaugh. [LB817]

SENATOR LAUTENBAUGH: Thank you, Mr. Chair. What do you say to the people who say, isn't this really something for the voters to sort out if they're put out by someone's employment arrangement? Don't they have a remedy? [LB817]

SENATOR AVERY: They do but that remedy doesn't occur until election time. There is another way to approach this and the committee may want to do that and that is to require full disclosure at the time you file for elections. Say I have outside employment and I continue to pursue that outside employment and the outside employment is worth this much. I mean that would be another way to go. [LB817]

SENATOR AGUILAR: Senator Rogert. [LB817]

SENATOR ROBERT: Senator Avery, I see your amendment here takes out a few words, but you still would require one of these officials who owns their own business and they own it. They may have family or employees working at this business. This requires them to sell that. [LB817]

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SENATOR AVERY: No. It does not require divestment. It simply requires that they remove themselves from the day-to-day decision making. [LB817]

SENATOR ROBERT: I read, "shall place all ownership interest in an entity in which he/she has no decision making authority." [LB817]

SENATOR AVERY: That...if you remember in the fourth comment, we have an amendment to take that out. That refers to investments, not business activities or ownership of a business. If you have a portfolio of stocks, the way that reads now you would have to turn that over to a blind trust. We're taking that out or at least we're purposing to do. [LB817]

SENATOR ROBERT: Okay, but it doesn't answer the question. If he owns those business, you're not saying he has to sell it... [LB817]

SENATOR AVERY: No. [LB817]

SENATOR LAUTENBAUGH: ...but he cannot make any decisions in the business. [LB817]

SENATOR AVERY: No. I think what would happen typically is you would turn the day-to-day operation of the business over to your vice president or somebody like that. [LB817]

SENATOR ROBERT: My vice president is also me. What if I am a one-man show? [LB817]

SENATOR AVERY: Your secretary. Your corporate secretary. [LB817]

SENATOR ROBERT: That would also be me. [LB817]

SENATOR AVERY: But you're not... [LB817]

SENATOR ROBERT: It may be a business that I own on my own. [LB817]

SENATOR AVERY: But you're not in one of these offices though, Senator. [LB817]

SENATOR ROBERT: No, I'm not but I might want to be. But I really don't think somebody should tell me I have to stop working or something I've built up that I couldn't keep that. [LB817]

SENATOR AVERY: Well, you could. Nobody says you have to divest. [LB817]

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SENATOR ROBERT: When I'm a one-man show, I would not be able to give that. I would have to hire somebody at that point to take care of business. [LB817]

SENATOR AVERY: Yes. You would have to hire somebody to make the day-to-day business decisions. [LB817]

SENATOR ROBERT: I just don't think I'm replaceable, Bill. (Laughter). Thank you. [LB817]

SENATOR AGUILAR: Further questions? Senator Adams, please. [LB817]

SENATOR ADAMS: Senator Avery, let me give you a hypothetical and stop me right off the bat if I'm headed in the wrong direction. Let's say that--pick an office here--Secretary of State, and I've become very noted for my expertise in election law and all kinds of things and so I'm being contacted by a number of organizations to speak and I'm Secretary of State. I'm a constitutional officer. I'm receiving X number of dollars, but once or twice a week I'm flying off to here or there and I'm receiving an honorarium to speak and motel room and all of that. Am I in trouble? [LB817]

SENATOR AVERY: The easy answer is that would be a decision for Frank Daley and the commission. (Laughter). [LB817]

SENATOR AGUILAR: Frank Daley is saying no. [LB817]

SENATOR ADAMS: I mean, but I would have to disclose that. But does that get me in trouble? [LB817]

SENATOR AVERY: Well, if I were in that position, I would not necessarily decline the opportunity to speak. I would make a decision, though, about how much time am I taking away from my job that the people voted me to do or elected me to do. And I would probably take the expense money, but forgo the honorarium which would be income. And that's how I would handle it because I think that would be the right thing to do. [LB817]

SENATOR ADAMS: But your bill doesn't broach that. [LB817]

SENATOR AVERY: It does but it...I mean, you could come up with a number of examples where there would have to be an interpretation made by the A&D Commission. But one can get those opinions from Mr. Daley in advance and you'll know whether you're on good ground or not. If you had a situation like that arise, you go with the Secretary of State and you had all these invitations, simply ask for an opinion from the commissioner. Formal opinions usually hold up. [LB817]

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SENATOR AGUILAR: Senator Pahls. [LB817]

SENATOR PAHLS: Senator Aguilar. Senator Avery, here's a question. Just a few minutes ago you said there was another route that we could go. [LB817]

SENATOR AVERY: There may be. Um-hum. [LB817]

SENATOR PAHLS: And that would be full... [LB817]

SENATOR AVERY: Full disclosure. Full disclosure...and I would say if we decide to do that, full disclosure of the nature of the reemployment, full disclosure of the amount of time spent away from your elected job to fulfill those duties, and the amount of compensation. [LB817]

SENATOR PAHLS: So in other words, if I were...I know the only one right now Attorney General can't do that. Let's say that I would be the auditor. If I had a job blah blah blah, I would disclose all and that would be...and then the voter could say, hey, this person is or is not going to give enough time to that office. [LB817]

SENATOR AVERY: Yeah. That's another way to handle it, but I would like to do it also not just for people who currently hold the offices, but for people who would file to run for the offices, that would be a part of their filing. [LB817]

SENATOR PAHLS: Right. Yes. So let the public know that if I'm going to run... [LB817]

SENATOR AVERY: Yeah, they know in advance. Senator Friend [LB817]

SENATOR AGUILAR: Further questions. Senator Lautenbaugh. [LB817]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Senator Avery, actually Senator Rogert's questions raised some questions in my own mind and I can't believe this is your intent. But do you see how what you're proposing might make it very easy for someone like the chairman of ConAgra, let's say, to step down for a few years and serve. But for a small businessman like Senator Rogert would not be able to for the very reason that he does not have a vice president or someone to hang onto. The service would be much more onerous for someone like him than for some exceptional wealthy person. [LB817]

SENATOR AVERY: Things are often more...less difficult, I should say, for people in those high positions where you've got a lot of staff. [LB817]

SENATOR LAUTENBAUGH: I would agree, but I don't think you're...it's not your

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intention to add an additional hurdle to the small businessman, is it? [LB817]

SENATOR AVERY: No, I'm not. It's not my intent. [LB817]

SENATOR LAUTENBAUGH: But do you see how that might come about? [LB817]

SENATOR AVERY: I can see how it might come about if you really are a one-man operation, a one-person operation. But my honest answer would be do you...if you need that income, then perhaps you should not run to serve in public office. [LB817]

SENATOR AGUILAR: Further questions? Senator Rogert. [LB817]

SENATOR ROBERT: I'm not even going with that one. [LB817]

SENATOR AVERY: No, don't look at it as what this means to you as a state senator. We're talking about constitutional officers getting \$85,000 plus a year. [LB817]

SENATOR ROBERT: But you don't have any provision in here for if they violate this bill, this law. [LB817]

SENATOR AVERY: That's right, because when you take office, you take an oath. The oath is to uphold the constitution and the laws of the state. [LB817]

SENATOR ROBERT: Okay. Well, we know that's not always true. [LB817]

SENATOR AVERY: And if that doesn't happen, what happens is there are remedies. I mean, this body has remedies for such instances. If people do not fulfill the oath of office, the constitution is pretty clear. [LB817]

SENATOR ROBERT: Okay. [LB817]

SENATOR AGUILAR: Senator Friend. [LB817]

SENATOR FRIEND: Thank you, Chairman Aguilar. Senator Avery, it's not like you baited me in. You just kind of gave me a wink. [LB817]

SENATOR AVERY: I was surprised you hadn't already gotten it. [LB817]

SENATOR FRIEND: Well, you know, I don't know really how I feel about this except that I would ask you isn't it...let me give you a quick feeling about what I have right now and then I'd like a response, I guess. To me it's a numbers game. I mean, you've heard from constituents where \$85,000 is a tremendous amount of money. Let's say a guy or a gal had four kids at home...five kids at home and they're all approaching the age where

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they're either, you know, getting ready to leave high school or their heading to college, you know. There are expenses, there are costs. It's a numbers game. \$85,000 with three or four or five kids, that's peanuts. I know that sounds crazy, but you know what a college education is worth. You know how much it costs you. You know what books are worth. I guess I would point this out and I'd like your response, I couldn't...I may have opportunities. I have a really, really generous employer. They're very good people and they're civic...they have a civic responsibility in Omaha and they've done some great things. I hope to move into areas with that employer that will benefit me. But quite frankly for the last five years, I haven't been able to do that. There's no value ad that I can give them within that bank, and quite honestly \$85,000 a year...if somebody said, Friend, we think you would be a great Secretary of State and I had all these people patting me on the back, I couldn't do it, Bill. It's not going to happen. The numbers don't add up because the guy...the analogy that I gave you of the guy who's got all the expenses coming up, that's me. The numbers don't add up. So in other words, let's say I had a real estate license, on the other hand, and then somebody came out and told me not only can you be Secretary of State so they have that \$85,000 salary but you can also continue your work in a profession that you chose, maybe it's feasible then. But, Senator Avery, we may be in a situation here where we're...there's no win. What you're proposing to me, there's no win here. I've had people come up and tell me that they can't afford--accountants, whoever--we can't afford to run for one of these offices. That ain't enough money. I'd take a pay cut, a huge pay cut, even after the increases that we gave them. So I'd like your response to that... [LB817]

SENATOR AVERY: I'd like your job. [LB817]

SENATOR FRIEND: ...I mean, you're telling me you would cap me...you're telling me you would cap my potential earnings in a country where nobody told John Adams or Alexander Hamilton they couldn't practice law anymore, and now we've come, you know, 200 and some years later and the scope has changed and the meaning is changed. [LB817]

SENATOR AVERY: Well, my answer to that is, no, I'm not telling you that there is a cap. I'm not telling you there's a prohibition on you earning money outside. I'm saying that...the question is the amount of time. What you can do under this bill, you can still earn income from outside business, but you can't be involved in the day-to-day operations. [LB817]

SENATOR FRIEND: Sorry Senator, but let's quickly use that real estate license, for example. Let's say I had that and I was Secretary of State. Wouldn't happen, that would never happen, you know that. But let's say it did happen. I could still go out and sell houses at night? [LB817]

SENATOR AVERY: I think that real...the realty business is unusual in that this does

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raise a problem for this particular legislation, but from what I know of the real estate business, if you were a broker you could still reap the benefits of the real estate business of your brokerage without being involved in the day-to-day operation. Now if you were just a, you know, on the street salesperson, then that would be much more difficult. But a broker gets a percentage of all the business in the brokerage and you could still collect your share of that. [LB817]

SENATOR FRIEND: And then that's a good answer. That helps, but that's where maybe our divide is a little bit, where we're talking about...I know I've had constituents, too, that say, you know what...and I live with folks...and \$85,000 is more than I make, so that would be an increase. [LB817]

SENATOR AVERY: Well, I thought you were saying you made more. [LB817]

SENATOR FRIEND: No, I'm saying that the... [LB817]

SENATOR AVERY: That's why I wanted to trade jobs with you. [LB817]

SENATOR FRIEND: ...the potential to make more maybe someday for a guy like me would be there. [LB817]

SENATOR AVERY: Yeah. [LB817]

SENATOR FRIEND: But the problem is if you stick a person either with that potential or that's making more money into that position, they're shot, they're done. [LB817]

SENATOR AVERY: It's not really saying you can't earn the outside income. It's just saying how do you earn it? Do you take your time distracting from your public office to devote how much time, I don't know, 20 hours, 30, 40 hours a week to an outside job? Then are you really doing what the...or can you do what the voters elected you to do? You can still enjoy the income if you're not involved in the day-to-day operation. [LB817]

SENATOR FRIEND: I think...and let me just finally say this...sorry, Senator, can I continue? [LB817]

SENATOR AGUILAR: You're fine. [LB817]

SENATOR FRIEND: Let me just finally say this, I wasn't taken aback or surprised by what you said about maybe that you shouldn't have approached it this way if you couldn't have afforded it. I understood what you meant, but the spirit of it...and when I brought up Alexander Hamilton and John Adams, I think it would have applied today. I don't think gentlemen like that or people like that anticipated...I think accountability would have been their worry as opposed to the fact that they couldn't practice law

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anymore. I would guess that Alexander Hamilton wouldn't have done the things that he did if somebody had told him that he couldn't practice law anymore because that was part of who he was. So I mean, I understood what you said, but I don't think that spirit has died in the 200 and some years. I think it's still there. I think the accountability that you brought up is the key and the... [LB817]

SENATOR AVERY: Well, I have...this is the Iowa law; it's two pages. I mean it's much more extensive than anything I'm proposing and this is not atypical of what other states do. Now I don't often like the argument, oh, other states do this so we have to do it too. I mean, I just think we need to understand this is not so unusual in other jurisdictions. [LB817]

SENATOR FRIEND: Thank you, Senator. [LB817]

SENATOR AGUILAR: Senator Pahls. [LB817]

SENATOR PAHLS: You know, just recently I'm beginning to read more about the federalist because I've been listening so much to you about Hamilton and all that papers. So just to let you know, you are educating me. I like the idea of letting the voter make a decision. Vocal, you know... [LB817]

SENATOR AVERY: So you would support disclosure? [LB817]

SENATOR PAHLS: Well, I think if I'm going to say I'm going to be doing this, this, and this, I think the voter would have a chance to recognize or whatever if I were capable of doing... [LB817]

SENATOR AVERY: As I said, I think this is a discussion that we need to have. If we want to do something other than what I'm proposing, perhaps disclosure, I'm open to that. [LB817]

SENATOR AGUILAR: Thank you. Further questions for Senator Avery? Seeing none, thank you. [LB817]

SENATOR AVERY: Thank you. [LB817]

SENATOR AGUILAR: First proponent, please. Welcome. [LB817]

DICK HERMAN: Thank you, sir. Senator Aguilar and members of the Government Committee, my name is Dick Herman, H-e-r-m-a-n. I live here in Lincoln and I've lived here for a long time. I'm speaking not only for myself but for Common Cause Nebraska. We held a meeting Sunday to discuss this bill and some others and there was unanimity in support of the bill as it was written. Now the landscape is changed. I heard Senator

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Avery say this part of the bill dealing with blind trusts is offensive to the Governor, so it has to go. This was the most important part of the bill as far as I'm concerned. What members of the executive branch do in terms of their activities is often become public. What they do financially does not become public which is the reason that the Congress of the United States has blind trust requirements when members go into the Senate and to the House and the violations of blind trusts...I shouldn't even discuss this anymore because this obviously will not be part of the bill, so I won't do that. The general philosophy that, as Senator Avery talked about, was dealing with ethics and trusts in government so the citizen could have trusts in government. Disclosure is a wonderful thing if we had it and we don't have it in terms of time. It has an effect when things are disclosed. A recent election in Lincoln, Nebraska, for city council had a gentleman running for mayor who had an outside business which brought him some umbrage and he was favored to win. He didn't win and I think that part of the reason was his outside employment had some effect. The suggestion made by Senator Avery that when you file for an office...and in this case, you're only talking about five constitutional officers. There are more constitutional officers: Board of Regents, the Public Service Commission. They're constitutional as well and they are not in this bill, so it's only these top five. When Senator Avery talked about disclosure through the Accountability and Disclosure Commission at the time people file so you give the voter some opportunity to know what's going on. I think when Senator Karpisek ran for office, his constituents knew what his business was and he would continue his business while he was in the Legislature. I may be wrong, but I've seen some press accounts of you in your business doing so. I didn't know about your business. It may be selling swimming pools for all I know. [LB817]

SENATOR AGUILAR: That's because Karpisek is more famous than all of us.
(Laughter). [LB817]

DICK HERMAN: But people knew about it. They could vote against him if they wanted to because they knew where he was coming from. So the disclosure that went with his running for office as a member of the Legislature was quite clear. When you're talking about the Governor, Lieutenant Governor, Secretary of State, Auditor, and Account Treasurer, and Attorney General, if there was some disclosure if they had--and I'm not talking now about their ownership of General Motors or some stocks, although that would be interesting in terms of public information--I think that would be beneficial to the public understanding and support. You can't serve two masters is ultimately what it comes down to in terms of your time in your office if you're a full-time office. The Legislature has never been a full-time office. Over the years, it's become burdensome. Anybody that's been in the Legislature with clients or constituents calling you all the time day and night it has become, but officially you are not full time. So I guess I would say this bill as...it's been crippled up in my judgment because you have to play along with the Governor and take out the blind trust. Now, it's still a good bill and if you can get disclosure it would make it a better bill. We've got a good government. Things like this

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make it a better government, a more ethical government. [LB817]

SENATOR AGUILAR: Thank you, Mr. Herman. Are there any questions from the senators? Seeing none, thank you. [LB817]

DICK HERMAN: Thanks. Sure. [LB817]

SENATOR AGUILAR: Next proponent. Are there any opponents? Is there any neutral testimony? [LB817]

FRANK DALEY: Senator Aguilar and members of the committee, my name is Frank Daley, D-a-l-e-y, of the Nebraska Accountability and Disclosure Commission. I appear in a neutral capacity and the only reason is to explain why I was so vigorously shaking my head and that in the current state of the bill does not place this within the Accountability and Disclosure Act. So I'm not sure the commission has any responsibility here under the current bill. Thank you. [LB817]

SENATOR AGUILAR: Senator Rogert. [LB817]

SENATOR ROBERT: Thanks, Mr. Daley. I had a question. I think I recall when I file for office that every source of income over \$1,000 I had to publicly disclose the source of. Is that true? [LB817]

FRANK DALEY: Correct. [LB817]

SENATOR ROBERT: Thank you. [LB817]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB817]

FRANK DALEY: Thank you very much. [LB817]

SENATOR AGUILAR: Did you want to...any other neutral testimony? Senator Avery to close. [LB817]

SENATOR AVERY: I was intending to waive my closing but not after I heard Senator Rogert's comment. That is true. We do have to disclose the nature of our income, but we don't have to disclose the amount and we do not have to disclose the number of hours that we commit to the producing of that income. That's what I would like to see if we decide to go to the full disclosure route, so it's a bit different. But it would only be for those four constitutional offices. [LB817]

SENATOR AGUILAR: Senator Friend. [LB817]

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SENATOR FRIEND: Thank you, Senator Aguilar. Senator Avery, we get wound up in the conversation and I enjoy it and I made the comment that...you know, and it sticks to me how somebody could actually sit here and think that \$85...and I think that I made the comment that \$85,000 was peanuts. That's not what I meant. It's not peanuts. \$85,000 a year is a lot of money, but the interesting part about it is what I said earlier is that we have already filtered...I mean, haven't you heard this bill? We've already filtered people out. \$85,000 isn't enough for them. If you have an accountant...we all know accountants, if you have an accountant out there making \$200,000 a year and why are they going to do this? Why would they want to? Are we narrowing our pool enough and now that we have bills like this, Senator, do we run the risk of narrowing it even more? I mean, we complain that we don't have enough people to run for these offices or that we have the same choices over and over again, right? Do you see my concern? [LB817]

SENATOR AVERY: I can see the potential problem, but I don't think we have that problem in Nebraska, pomposity of candidates for these offices. And as I think you pointed out or hinted at, the Attorney General is already restricted from practicing law outside the Office of the Attorney General. So there's a precedent in our own government for this. The accountant, though, that's making \$200,000 a year, if the accountant decides, okay, I want to run for Secretary of State. I know it only pays X amount, it's less than I'm making now, but I'm willing to do that because all of us in public service make some sacrifices and we do so willingly. We may regret it later but we do so willingly. [LB817]

SENATOR FRIEND: I'm regretting it right now (laughter). [LB817]

SENATOR AVERY: When you have to deal with me, you regret it. [LB817]

SENATOR FRIEND: Continue, I'm sorry. [LB817]

SENATOR AVERY: But the CPA probably--I mean, it's very likely if he's making that kind of money--works in a firm and would probably continue to be a partner in that firm and can still reap some of the benefits of the profits that are generated by partners. It would be similar to a law firm or a realtors brokerage. There's no prohibition on earning outside income. The question is: How much are you going to take away from your public role to do employment on the side to earn income? So it's not really missing words really. It's a clear distinction. You can still earn income from the business activity. What you cannot do is spend time in day-to-day management of the business. [LB817]

SENATOR FRIEND: Thanks. [LB817]

SENATOR AGUILAR: Further questions? Seeing none, that closes the hearing on LB817. [LB817]

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SENATOR AVERY: All right. Thank you. [LB817]

SENATOR AGUILAR: We are ready to proceed to LB870. Welcome back, Senator Avery. [LB817]

SENATOR AVERY: (Exhibits 1-4) Thank you, again, Mr. Chair. My name is Bill Avery, spelled A-v-e-r-y. I represent District 28. I have here some handouts, if the pages would please help me. This bill, LB870, is being introduced at the request of the Governor and I understand he has submitted a letter of support to the committee addressed to you, Senator Aguilar, and C.C.ed to the rest of the committee. This bill would prohibit state officeholders from becoming a lobbyist until two years have passed after the officeholder has left office. This is commonly known as a "cooling off period" to allow personal connections to pass offices and personal connections to pass colleagues a little bit of time to loosen up a bit before lobbying activities begin. It's not a prohibition to lobby. It is simply a waiting period. The public officeholders effected by this bill would be the Governor, Lieutenant Governor, the Attorney General, Treasurer, Secretary of State, Auditor of Public Accounts, members of the Legislature, members of the Public Service Commission, State Board of Education members, and members of the Board of Regents. This proposal is not directed at any individual or particular institution of government. It is designed to prevent special interest groups from gaining an advantage in governmental affairs. It is, I think, important that the public interest be protected. Special interests have the means to hire former officeholders who then are able to use their personal relationships to their former colleagues and in their former offices to the advantage of their clients. My concern is that the public interest gets lost in this process. Sometimes I'm struck by...when I go out into the lobby and I look at how many lobbyists there are and how many special interests are represented, I'm thinking who is here to represent the public? Everybody's organized but the public. You know, I know that that might sound a little bit naive and perhaps a little bit too Polly Ann-ish, but don't we care about the public? And are we always doing everything we can to make sure the public interest is protected? The U.S. Congress passed a cooling off period last year, but only after the scandals involving the lobbyists Jack Abramoff and this pushed public confidence and Congress to new lows. In Nebraska, are we immune from such crisis of confidence in our institutions? Probably not. So let's take action now so we don't have to face a problem later. The motive behind this bill is nothing more than to preserve integrity and legitimacy of our government and its institutions. What happens, for example, when regulators become advocates? Nothing in current law prevents Public Service Commission members from leaving office today, then immediately signing a contract to lobby on behalf of the industries that are directly regulated by the commission. There's nothing to stop that. Now I ask you, whose interest will be served if a Public Service Commissioner can leave office, go immediately into lobbying for the industries? Is your interest being served, and yours and mine and the public? The interest of the industry is being served and the context that that former member of the commission has, those contacts will serve that person well in representing that client.

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So I think that we have to ask the question: How is the public interest being served by such situations? It is true this bill holds public officials to a high standard of conduct? It builds trust, I think though, between the people and their government. This contributes to the overall legitimacy--I use that word again--that people render to their government. Legitimacy is important because if people perceive that their institutions of government are appropriate and that the people that are in those offices are behaving properly, then people are going to render automatically almost a certain amount of compliance with what government is doing and what government is asking of us. If, however, voters perceive that government is not behaving properly, that undermines their confidence and they're less likely to give automatic acquiescence to what government is doing and automatic support for it. And in many countries around the world where legitimacy has been undermined sufficiently, the government has to resort to force to get compliance. In this country we do enjoy a lot of...broad sense of legitimacy of the institutions of procedures of our government and because of that we don't resort to force because we don't have to. People trust...I don't mean that the politicians are necessarily popular, but people do in fact put a lot of trust in the institutions we represent. So if we don't have this level of trust, then citizens become cynical, suspicious and much less likely to be supportive of our institutions. So what I'm asking in this bill is that this committee take action now to preserve public trust in the institutions of our government because in a democracy this is essential. It's essential that citizens believe their government and its leaders are behaving properly. I have copies of editorial endorsements of this legislation. Have to come back...did you distribute all of these? I have more copies than I needed. The Omaha World-Herald in February of last year had an editorial that was a strong endorsement of this legislation. Lincoln JournalStar had one a couple of days ago. The Grand Island Independent has written two; one back in 2001, and the other one just the other day. I might add that more than one-half of other states have some form of cooling off period in statute, although this alone is not sufficient justification for us to advance this bill. However, I do believe that our concern for preserving public trust in our government certainly should be sufficient. With that, I will stop and take questions. [LB870]

SENATOR AGUILAR: Senator Pahls. [LB870]

SENATOR PAHLS: Thank you, Chairman. Senator, I'm reading some of the information you handed out to me. It says the primary purpose of the lobbyist is to persuade, and right now do you believe that we have pretty strict rules with lobbyists? Is it pretty open what they can do and cannot do for us? [LB870]

SENATOR AVERY: We have restrictions on gifts. We require reporting disclosure, but we just got a D rating from an important national group on our accountability and disclosure procedures. But it had to do not so much with the laws as it is the manner in which you access the information. You can't file right now, Senator. You cannot file your reports electronically. You have to hand carry them or mail them. You cannot access

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the A&D Web site. You can't go there and find out contributions by individual or contributions by company or by lobbyists. You have to go to each committee. That's very cumbersome and difficult to do. So we're not doing a perfect job, really, on our disclosure. [LB870]

SENATOR PAHLS: You're saying that the information is there, just getting to it is difficult. [LB870]

SENATOR AVERY: It's very difficult, yeah. [LB870]

SENATOR PAHLS: Okay. Here's the...and I'm just reading again, which it says some of the watchdog groups are saying that the average citizen is powerless to suggest new legislation to the representatives in Lincoln. Right now I'm currently having three bills that my constituents came to me and said, you know, Rich, would you think about this? Now, I don't know how those bills will end up. [LB870]

SENATOR AVERY: Yeah. Well, I have some like that too. [LB870]

SENATOR PAHLS: Well, that's what I'm saying. [LB870]

SENATOR AVERY: But I didn't write that editorial. [LB870]

SENATOR PAHLS: No, I'm just... [LB870]

SENATOR AVERY: And I may not agree with everything in all those editorials. I simply give you that as evidence that there is editorial support in our major media for the content intent of this legislation. [LB870]

SENATOR PAHLS: Okay, okay. Thank you. [LB870]

SENATOR AGUILAR: Senator Adams. [LB870]

SENATOR ADAMS: Senator, I haven't taken a position on this yet. You and I have talked about this in private. So for the sake of just creating some more discussion, you've used the word several times in your testimony "perception" and that is important. What I'm wondering about is if we were to pass legislation like this, have we done nothing more than create a piece of feel good legislation when in reality we really haven't gotten at anything and frankly I don't know that we can get at anything. My point there is, lobbying...you used the word "persuasion." So if I were to leave this body tomorrow and there was legislation that said that I couldn't become a lobbyist for two years, then are we saying that I can't pick up the phone and call a senator, that I can't meet a senator out on the sidewalk and say, hey, LB870 is coming up tomorrow and boy, my former experience on the Government Committee and as a elected person

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says don't go that way. Now, I'm officially not a lobbyist, all right. [LB870]

SENATOR AVERY: No, that would not be prohibited, Senator. [LB870]

SENATOR ADAMS: I haven't registered, I'm not on anybody's... [LB870]

SENATOR AVERY: That would not be prohibited by this legislation. This is... [LB870]

SENATOR ADAMS: And it wouldn't be, that's my point. [LB870]

SENATOR AVERY: Yeah, it's registered lobbyists. [LB870]

SENATOR ADAMS: Right. [LB870]

SENATOR AVERY: With or without compensation. [LB870]

SENATOR ADAMS: Gotcha. But what I'm saying here is so then really if you haven't stopped me from lobbying other than registering and being compensated, I'm still using my contacts, I'm still using my influence, I'm still using what I know. [LB870]

SENATOR AVERY: But at some point the extent of your contacts with your former colleagues...and whether it be the Legislature or whether it be some other agency of government... [LB870]

SENATOR ADAMS: Right. [LB870]

SENATOR AVERY: ...I don't want this to be a debate about us. [LB870]

SENATOR ADAMS: Um-hum. [LB870]

SENATOR AVERY: And it's broader than that. But at some point when your contacts become extensive enough, you are then crossing a line that's been established by the A&D Commission whereby casual contacts and casual encounters where you talk about legislation become more than just casual contacts. [LB870]

SENATOR ADAMS: Right. [LB870]

SENATOR AVERY: And therefore you're required to register. There are rules on that and people who lobby on behalf of groups that don't pay them would be covered by this as well because the issue is not compensation so much as it is the lobbying. Usually your special contacts and special knowledge and special relationships with people in the office where you formerly served to give your client an edge, and I'm questioning whether that serves the public interest. [LB870]

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SENATOR AGUILAR: Further questions? Senator Rogert. [LB870]

SENATOR ROBERT: Well, I just have some comments. Senator Avery, thanks for bringing this up. In my opinion, if some people want the idea of the concept of term limits to fail, this is a good way to do it. I think the institutional memory that is contained within this body will be damaged the further we get down the term limits line of succession. By prohibiting those who have that wealth of knowledge from helping those of us who are new to the situation every four years or eight years is a detriment to the system. I was involved in a very difficult bill discussion that took several months last session and it would not...it was necessary legislation that would not have been fulfilled if had it not been for the help of a former senator that came back due to his knowledge of the situation in his previous life as a senator and that was very valuable. And we would still be working on it if he had not come in to broker the situation. I have comments about...I know you say you don't believe or agree with everything that editorials have to say, but in my opinion editorials are just like lobbyists. They're hired to persuade and sell papers and they never necessarily tell the whole story. So that's my idea on editorial support. That's just depending on the mood of the editor that day and what their circulation happens to be doing. [LB870]

SENATOR AVERY: That's a pretty cynical view of the newspapers. May I respond? [LB870]

SENATOR ROBERT: Please. [LB870]

SENATOR AVERY: I think that first thing you have to understand is that what the knowledge that people have of how the system works. That's valuable, yes. But there are other people out there who are already in the lobby who have that knowledge as well, and staff people have that knowledge as well. The impact of term limits, I would argue the opposite. The impact of term limits really makes this even more necessary because there is much more turnover now in the Legislature--and we already have some term limits in the other offices--that this might create a greater need because of the number of people who will be involuntarily removed from office by the new law and that might then lead to a faster turning revolving door. That's the term used often to describe this kind of legislation. I believe the JournalStar said let's slow down the revolving door. Now, nobody is prohibited from lobbying. We're asking for a cooling off period. I had a lobbyist say to me the other day, he said, you know--speaking about a particular individual said--that person had a lot of clients the first year after leaving office, but that number of clients diminished over time. And I saw that as evidence that perhaps a cooling off period was good because those ties that one has to your former colleagues, whether it be the Public Service Commission or wherever, they loosen a bit over time. And a year or two...I'd be willing to talk to you about an amendment to reduce it to a one-year waiting period rather than two, and the Governor would too. [LB870]

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SENATOR AGUILAR: Thank you. Senator Pahls. [LB870]

SENATOR PAHLS: I have just a couple of comments. I mean, I see the rationale behind what you're proposing, but also...because this has just been recent and I'll admit to his name because I think he's a very highly respected individual, former Speaker Kermit Brashear. I think he was very instrumental in getting one of the biggest issues that has happened here for the last I don't know how many years, the school situation in the Omaha area. I think he played probably a pretty good role in that after he had left this institution, and I don't know how...if he were a lobbyist. I have a feeling he is because he is right now. So there are individuals out there that are respected, you know, and I'd hate to lose that. That's one reason. But here's another thing I'm going to ask you. Are you not surprised...let's say a lobbyist, you will be talking to a particular lobbyist and he will have...just for...let's say he/she represents the trial attorneys and then he/she also may represent insurance or banking or whatever. See, I see as lobbyists, you know, giving some of that information because at times you look at their list of clients, to me, some it is almost as though they are at odds with each other. [LB870]

SENATOR AVERY: It depends on when you're talking to them who they're actually talking for. Yeah, I see that too. [LB870]

SENATOR PAHLS: Well, I truly believe that they, for the most part...if we find them to be dishonest with us on the information that next time they come around we won't listen. So I think that's the, you know, keeps everything in balance. [LB870]

SENATOR AVERY: Yeah, I'm not talking about the manner in which people lobby. In fact, I went to lunch with Speaker Brashear. Call him up, said I'd like to have lunch with you, and he volunteered to come to Lincoln to have lunch, we did, hit it off immediately and I told him what I was going to do. I said this is not directed at you particularly and he understood and he had seen this legislation before. I mean, it was no surprise. [LB870]

SENATOR PAHLS: And I don't mean to... [LB870]

SENATOR AVERY: And I can tell you having been involved in that legislation, LB641, one of the reasons I wanted to go to lunch with him was to thank him for the role he played because I know he played a constructive role. I also, as you may remember reading in the press, took a swipe at the process and compared Senator Brashear to Moses coming down from the mountain to deliver the law. As I remember his role was, despite the fact that he was getting paid \$20,000, his role was not so much active lobbying. His role was more a mediator between certain members of the committee, mostly the chair, and Senator Chambers because Senator Brashear has a special relationship with Senator Chambers that a lot of people don't know or understand, and a lot of people that know about it still don't understand it but it's there. They've served

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together for a long time on the Judiciary Committee and have great respect for each other. I'm convinced that Senator Brashear did play an important role there. But that doesn't change the overall argument I'm making. [LB870]

SENATOR PAHLS: I'm not trying to just pinpoint on this particular senator. I think there are senators out there who probably would have something really truly to give back. [LB870]

SENATOR AVERY: I think that the fact is that if you get a phone call from a former colleague, I want to sit down and talk with you about...you're going to say, yeah sure, John, come on in. And you've got a personal relationship that you've had for a long, long time and my guess is that you're going to listen more carefully and perhaps be predisposed to help out if you can. And now where's the public interest there? [LB870]

SENATOR AGUILAR: Senator Lautenbaugh and then Senator Adams. [LB870]

SENATOR LAUTENBAUGH: Are you concerned at all, Senator, that this might be supported heavily by the existing lobbyist? [LB870]

SENATOR AVERY: No. [LB870]

SENATOR LAUTENBAUGH: As a limitation on where future competition would come from for them? [LB870]

SENATOR AVERY: I doubt if there will be any lobbyists to show up to testify on behalf of this. [LB870]

SENATOR LAUTENBAUGH: Just looking around the room. It seems to me we're limiting competition in some way. [LB870]

SENATOR AVERY: Well, I'm sure that everybody looks to protect their self interest. I mean, that's human nature. Maybe they are quietly applauding and hoping that we pass this onto the floor, but I haven't heard anybody say that to me. I don't have a cheerleading group out there saying, go to it, Bill. [LB870]

SENATOR LAUTENBAUGH: I don't mean to suggest they put you up to it. I'm just saying do you think that might be... [LB870]

SENATOR AVERY: No, no, no. This actually...I was asked to do this by the Governor. [LB870]

SENATOR LAUTENBAUGH: I understand, but I'm saying that don't you see that could be an unintended consequence of increasing the, well, profitability? [LB870]

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SENATOR AVERY: Well, you mean diminishing the competition? Probably. But it would only be for a period of time. It wouldn't be a permanent restriction. [LB870]

SENATOR AGUILAR: Senator Adams. [LB870]

SENATOR ADAMS: Senator Avery, I'm still trying to draw the line here in my mind. Is the real distinction here compensation? For instance, if I leave the Legislature tomorrow, I can be in the Rotunda. This is an open building. I'm a citizen of the state of Nebraska. I can be in the Rotunda. I can be in the hallways. I can be on the phone. I can be writing letters to any of you, my colleagues. So if what we're saying here is that in effect there really is no legislation that can stop me from using my connections, who I know, where I've been, what I know, my skills as an orator or my skills as a writer. It can't stop me from doing that. But you could stop me from taking compensation for doing it. [LB870]

SENATOR AVERY: It's not about compensation. It's not... [LB870]

SENATOR ADAMS: All right. Tell me then. What am I missing? [LB870]

SENATOR AVERY: It is not...this came up in conversations with the Governor's Office. I insisted that it apply to registered lobbyists whether compensated or not because the issue is not the compensation. The issue is the advantage that your clients have over those people out there who are not organized, the general public, those people who don't have a lobbyist. [LB870]

SENATOR ADAMS: So I don't... [LB870]

SENATOR AVERY: And so you use your special connections to advance the interests of a special interest and I think that that can undermine the public interest. [LB870]

SENATOR ADAMS: Okay, so let's take compensation out and let's use registration. So I don't register as a lobbyist for two years if this bill passes, but during that two-year period of time I still have the right to be in the Rotunda, to be in the hallways, to be in senators offices... [LB870]

SENATOR AVERY: Yeah. [LB870]

SENATOR ADAMS: ...to write editorials, to call on the phone, to use my connections, to use my skills, so what do we accomplish? [LB870]

SENATOR AVERY: Yeah, this is similar to the point you raised earlier and my response then is the same one now. There is--I believe and if Mr. Daley is still here he might want

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to elaborate on this--I believe that there are rules now that actually define when ones informal contacts, I presume that would be an accurate description of what you're talking about? [LB870]

SENATOR ADAMS: Yeah. [LB870]

SENATOR AVERY: Informal contacts become extensive enough where they then constitute lobbying and that person is required to register as a lobbyist. [LB870]

SENATOR ADAMS: Okay. Thank you. [LB870]

SENATOR AGUILAR: Senator Avery, first of all, let me make this disclosure. I have no intention of becoming a lobbyist. Okay? [LB870]

SENATOR AVERY: Neither do I. [LB870]

SENATOR AGUILAR: But when I was elected to an office, there was specific restrictions that I had to adhere to. This wasn't one of them. Why would it be fair to initiate this at this late stage of the game? [LB870]

SENATOR AVERY: What kind of restrictions are you talking about? [LB870]

SENATOR AGUILAR: Well, as Senator Rogert pointed out, some of the things that you have to do to apply to, you know, adhere to. [LB870]

SENATOR AVERY: You have to report income. Those are disclosure requirements, but there are not any restrictions really. No restrictions on outside work or income. [LB870]

SENATOR AGUILAR: Okay, but the question is, you know, why is it fair now at this late stage in the game? [LB870]

SENATOR AVERY: Well, because of the public policy interest here and you will always have, you will always have, anytime you pass the law you will always have instances where someone is already in office and they say, oh, but this is not...these weren't the rules when I got elected. So I don't think you should...I should have to... [LB870]

SENATOR AGUILAR: Yeah, and my point being, I may be a little more receptive to it if a person were just coming into office and knew this up front that's what was coming down the line. Anyway, you know, that's... [LB870]

SENATOR AVERY: Well, I mean there is an amendment process whereby you could exempt people who took office prior to this and that I believe though that the law now as proposed would have an emergency clause to make it take effect immediately. [LB870]

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SENATOR AGUILAR: Thank you. Why not agency head director, state agency head directors, assistant directors, why not them? [LB870]

SENATOR AVERY: Good question. That's a good question. I believe there is probably... [LB870]

SENATOR AGUILAR: Because they make more money? [LB870]

SENATOR AVERY: Yeah. No, I think there probably be a need for this and in my first version of the bill they were included, agency heads and deputies and executive directors. [LB870]

SENATOR AGUILAR: Okay, now... [LB870]

SENATOR AVERY: But now...here, let me tell you why it's not there now. As I've said many times that what we do in this body is really a game of margins. We win marginal victories, we have marginal loses, and you never quite get everything you want. Compromise is the art of giving up something to get something. The Governor thought that if we included agency heads that it would make it more difficult to recruit good people to government positions. Now, I disagreed. I disagreed with that but I'm a realist. I know that one good bite out of the apple is better than none and we were able to agree on a number of things. I started out with a broader bill. He started out with a much more restricted bill. He accepted the inclusion of other offices. He accepted a two year cooling off period and a number of things like that. I think we had two or three different items that we worked on before we finally came to agreement. [LB870]

SENATOR AGUILAR: Thank you. One more, Senator Pahls kind of touched on this but I want to follow-up a little bit. Kermit Brashear, Curt Bromm, Ron Withem, Denny Baack, all former speakers, people that were elected by their constituency and then in turn elected by the legislative body to be the leader, to be the most trusted person in that member of the Legislature. They're all on the other side of the glass now. I don't see that as a bad thing. We've watched Kermit Brashear and some of the others create wonderful public policy from the other side of the glass and we're willing to give that up. Those are people that I have nothing but the highest respect for. Somebody I would heartily compare to, Jack Abramoff, and you said on last bill...you made a statement... [LB870]

SENATOR AVERY: I didn't compare Abramoff to any these people. No. [LB870]

SENATOR AGUILAR: No, I didn't say you did. You said on the last bill in the testimony, you said something that I wrote down. We don't have that problem in Nebraska. I think that applies to this as well. [LB870]

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SENATOR AVERY: Thank God. Let me say this, every person you mentioned I think are honorable people. I know them personally and I would even count some of them as my personal friend. I've known Dennis Baack since when he first entered the Legislature. I've know Ron Withem probably 20 years or more. I knew, was it Rupp who left the position, chair of this committee and went to become the lobbyist for the Legislature? What they were doing was not illegal. I'm not looking back and trying to cast any dispersions on people who have done, participated in what I am trying to prevent when it was not impermissible. It was legal. But you cannot deny that their clients didn't have an advantage and that's really where the attention needs to remain focused is on what does this do to protect the public interest? If a client is able to hire someone...people of integrity, people of honor, people with great skill, but nonetheless keep your eye on the main objective here, and that is not to give special interests even more of an advantage than they already have, at least for one year or two, let the cooling off period take place. [LB870]

SENATOR AGUILAR: Senator Flood...Friend, I'm sorry. (Laugh). [LB870]

SENATOR FRIEND: Thank you, Chairman Aguilar. [LB870]

SENATOR AGUILAR: I was going to make a statement about Senator Flood. [LB870]

SENATOR FRIEND: You scared me for a second. [LB870]

SENATOR AGUILAR: When did he come in. [LB870]

SENATOR FRIEND: Senator Avery, just a quick note, I can deny what you just said. All of those people...the majority of those people I know...as a matter of fact I also know former speaker Christensen. I don't know him very well and I know he's the chancellor at the University of Nebraska-Kearney. I've been here five years. Nothing, nothing that Curt Bromm, Kermit Brashear, any of those other fine gentleman--including Chris Beutler who is mayor of Lincoln right now--nothing any of those people have ever done have totally convinced me one way or the other to do something in here that I didn't feel was right. And their influence plays absolutely no part with me. None. [LB870]

SENATOR AVERY: My guess is nobody could do that with you, Senator. [LB870]

SENATOR FRIEND: Well, I'm giving everybody, not only on this panel, but also in the Legislature the benefit of the doubt. Those people didn't push the buttons. We show either courage or--and I've done it myself--failure to show courage on a daily basis by pushing those buttons. Kermit Brashear didn't push one button last year, not one. He might have masterminded some things, but I could have stood up and said, you know, I don't like the way he's masterminding these things. I don't believe the statement that

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you made is accurate. Not only... [LB870]

SENATOR AVERY: Would you explain which statement that was? [LB870]

SENATOR FRIEND: The statement where you said that you cannot deny that these people has undue influence or... [LB870]

SENATOR AVERY: No, special access. [LB870]

SENATOR FRIEND: Special access? [LB870]

SENATOR AVERY: I don't know if that's exactly what I said, but... [LB870]

SENATOR FRIEND: Any more special access than--and pardon me for picking on certain lobbyists--than Mike Hybl or Walt Radcliffe or Larry Ruth or go down the list. They had no more special access than any of those other people. I fail to find any value in this bill at all, Senator Avery. I fail to find any. I'm trying to identify a problem and I haven't identified one yet, so... [LB870]

SENATOR AVERY: You don't see that when people perceive that we're not acting properly... [LB870]

SENATOR FRIEND: People? What people? You mean constituents, citizens? [LB870]

SENATOR AVERY: The people. Yeah, the people we represent. [LB870]

SENATOR FRIEND: I haven't heard that. I haven't even heard that there's a problem here. [LB870]

SENATOR AVERY: So you don't believe that there is perception out there that maybe sometimes we're not behaving as we should? [LB870]

SENATOR FRIEND: Nobody shared it with me. [LB870]

SENATOR AVERY: Well, why is it... [LB870]

SENATOR FRIEND: Honest to goodness... [LB870]

SENATOR AVERY: I was just part... [LB870]

SENATOR FRIEND: Nobody has questioned...nobody has said that to me where they've come out, called me on the phone, sent me an e-mail, done anything where they've said, you know what, you are acting inappropriately because...I have not

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identified a problem here, Senator Avery. I have not. [LB870]

SENATOR AVERY: Well, the respect that voters, citizens have for this institution is among the lowest of all the institutions of government in the state. [LB870]

SENATOR FRIEND: I would disagree with that. [LB870]

SENATOR AVERY: Well, I just did a poll for Amendment 1. [LB870]

SENATOR FRIEND: I don't care. I would disagree with that because...do you think...they polled... [LB870]

SENATOR AVERY: Look, you don't believe in polls? [LB870]

SENATOR FRIEND: Senator Avery, they polled down in Florida and they had Romney winning up until the end, right? Polls are worth about that much. The point I'm making is do you really think that people are respecting us any less than they would respect Jon Bruning or David Heineman? There may be a perception problem with... [LB870]

SENATOR AVERY: They do. [LB870]

SENATOR FRIEND: ...there may be a perception problem with all of them. [LB870]

SENATOR AVERY: They do. The Governor's approval rating is close to 80 percent and ours is somewhere around 60. [LB870]

SENATOR FRIEND: I disagree. [LB870]

SENATOR AGUILAR: I'm going to interrupt here because we're kind of getting into a back-and-forth situation and ask for one more question and then we're going to wrap this up and go onto the first testifier, and Senator Pahls had his hand up first so we'll go there. [LB870]

SENATOR PAHLS: And I'll make this short. The only reason why I raised my hand right away because it almost...I was almost feeling like we are so vulnerable. I mean, I understand the public's perception of the lobbyists. But by listening to the conversation that as senators, we are so vulnerable to their lobbying ability that I was struck to pick it up and that was the part that frustrated me a little bit, to be honest with you. [LB870]

SENATOR AVERY: Yeah, I don't know if we're so vulnerable to their lobbying ability as we are certainly privileged access. [LB870]

SENATOR PAHLS: I think about every lobbyist has access to all of us about any day

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they want, don't you? [LB870]

SENATOR AVERY: But I said privileged access and that's really a difference. [LB870]

SENATOR PAHLS: Thank you. [LB870]

SENATOR AGUILAR: Okay. I think we'll move on and have the first testifier. You're still welcome to close, Senator Avery. [LB870]

SENATOR AVERY: Okay. [LB870]

SENATOR AGUILAR: How many are planning on testifying on this bill? I need a show of hands, please. I see two. Thank you. [LB870]

PEGGY ADAIR: (Exhibit 5) My name is Peggy Adair, A-d-a-i-r. I am a registered lobbyist representing the League of Women Voters of Nebraska. The league supports LB870 in the interest of promoting good government. The league believes government should be open, responsive to the will of the people, and devoid of undue influence. When a former elected official immediately proceeds to becoming a lobbyist it can give the appearance of using insider knowledge to push a project through the Legislature that may not be in the best interests of the citizenry. We have a history in Nebraska, particularly in the Legislature, of providing and promoting open and accessible government, and LB870 allows us to build upon that history of good government. With term limits in place and the consequential loss of institutional memory for state legislators, it is even more important that we protect the integrity of the political process through means such as limiting the appearance of impropriety and undue influence. The League of Woman Voters urges this committee and this Legislature to support the passage of LB870. And I would also like to answer a couple of questions that were brought up in that a person can come back, Senator Adams. You can come back and stand in the Rotunda and you can lobby on behalf of yourself all you want to and that would not affect you as far as this legislation goes. What we're trying to control is the fact that you could come back and you could represent the League of Women Voters and you could lobby on our behalf. And that's where the undue influence comes in is because you could lobby for us with your knowledge and your insider knowledge of the Legislature and that gives you a leg up on any other person who would be lobbying. The other thing was talking about agency heads and why would they not be included in this. They're not elected and this is simply looking at elected officials and the concern with the citizenry of having their vote matter and having their vote count. [LB870]

SENATOR AGUILAR: Questions? Senator Lautenbaugh. [LB870]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. How is your concern about the loss of institutional memory addressed by keeping those with the memory at arms

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length? [LB870]

PEGGY ADAIR: The institutional memory should be the institutional memory of the senators, of you who are here and who are working on behalf the public. The institutional memory should not be on lobbyists who are working on behalf of a special interest. [LB870]

SENATOR LAUTENBAUGH: But aren't we talking about the senators who have been here for years and are lobbying or whatever? [LB870]

PEGGY ADAIR: Yes, exactly, and that's what I'm saying is they can use that institutional memory against the public will if they become a lobbyist for a special interest. [LB870]

SENATOR LAUTENBAUGH: You're not concerned that we're being deprived of the benefit of their experience? [LB870]

PEGGY ADAIR: No. Again, Senator Adams can come to you if he so desires and can talk about how he worked in the Senate (sic) and some of the insider things that he did as long as he is talking on his own behalf. And he's coming to you and you say, okay, well, when I was here, this is what we did and this is how we did it, and help you on his own behalf, but not help you on behalf of the Public Service Commission. [LB870]

SENATOR LAUTENBAUGH: So it's okay as long as he doesn't make a living at it? [LB870]

PEGGY ADAIR: No. It has nothing to do with money and it has nothing to do with compensation, and that's why I said...you know, the League of Women Voters does not compensate their lobbyists. If Senator Adams were to come to us and say, I would like to be your lobbyist, and we say, well, we can't pay you. This still would not be allowed under this bill. We could not take him on. [LB870]

SENATOR LAUTENBAUGH: Now what is the difference between elected officials and department heads in your mind? You did point out that elected officials are elected. I would agree but... [LB870]

PEGGY ADAIR: Yes, and again because we're looking at the voting public. You know, people have voted to get you guys into office and you have a responsibility to those voters. So what we're looking at in this bill is simply elected offices and not appointed offices or you know, offices that haven't been brought in there by the electors. [LB870]

SENATOR LAUTENBAUGH: So you're not saying the risk is any different, you're just saying it's because some individuals are elected and some aren't that we should ban

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their future activities. [LB870]

PEGGY ADAIR: We're not banning their future activities at all. [LB870]

SENATOR LAUTENBAUGH: Well, prohibiting them from certain things for two years. [LB870]

PEGGY ADAIR: Yes. [LB870]

SENATOR LAUTENBAUGH: But that same concern doesn't exist regarding the department heads. [LB870]

PEGGY ADAIR: I'm not saying that that same concern doesn't exist. I'm saying that for purposes of this bill, this is where we are at this moment. [LB870]

SENATOR LAUTENBAUGH: Okay. [LB870]

SENATOR AGUILAR: Senator Adams. [LB870]

SENATOR ADAMS: Okay. To follow-up on what you were saying just to make sure I'm clear. So I could be out in the Rotunda or walking the hallways advocating on behalf of the passage of LB870, which you would favor, and the League of Women Voters would favor that. [LB870]

PEGGY ADAIR: Um-hum. [LB870]

SENATOR ADAMS: And I can do that just as long as I haven't said I'm doing it for you guys or I haven't registered as doing it for you guys, compensation or not. [LB870]

PEGGY ADAIR: Yeah, as long as you aren't doing it, I mean, you can not say it. What you need to do is say, I'm speaking on my own behalf today. I want to propose this legislation and I would like to see it pass. If you... [LB870]

SENATOR ADAMS: So my effectiveness in lobbying hasn't been taken away. All we really accomplished with LB870 is to improve the perception of what's going on. [LB870]

PEGGY ADAIR: I would disagree. Yes, your effectiveness would be the same. However, you're speaking on your own behalf... [LB870]

SENATOR ADAMS: Right. [LB870]

PEGGY ADAIR: ...and not on the behalf of a special interest and that's where the difference lies. [LB870]

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SENATOR ADAMS: Gotcha. [LB870]

SENATOR AGUILAR: Further questions? Seeing none, thank you for coming down today. [LB870]

PEGGY ADAIR: You're welcome. [LB870]

SENATOR AGUILAR: (Exhibit 6) Next proponent. While she's coming up, I would say we do have that letter of support from Governor Heineman for this bill for on the record. Welcome. [LB870]

JAN ROGERS: Senator Aguilar and members of the committee, I'm Jan Rogers, R-o-g-e-r-s, and I'm representing Common Cause and I'm a retired history teacher. And so when things come up and I read a bill, sometimes it just clicks with a historical figure, and this one was George Norris. This is a George Norris bill all the way. Talking about perception, he defined what a public servant or what a legislator is in Nebraska. He took away the partisan floor fighting. That was one thing that we wanted as far as open legislation. You guys are supposed to represent your district, not your party. So that was an interesting concept. He got rid of the conference committees because of a bicameral where you have the back door kind of handshake kind of deals. He wanted everything to be transparent as you were making your laws. So that's what this bill also fits into. How does it look if you're a citizen...we know that salary is part of the issue in some ways. Although not in this bill, but if you look at it, you guys make \$12,000 a year. And then we see you leave office and all of a sudden you're making \$12,000 a week for somebody else. That's part of the perception that we're talking about here. And so I think that that is an issue, the compensation issue, even though, you know, it's also the idea that you have secret powers. You know how things get done. And so I think that that's what we're talking about here. It's that special access that we want to cool down a little bit. That doesn't mean that a person couldn't call an ex-member of the Legislature and ask for help or advice. It's just a matter of is this person really...does he have a special way of getting this done? And so that's what we're talking about. [LB870]

SENATOR ROBERT: Thank you. Are there any questions? Seeing none, thank you. Next proponent? [LB870]

JACK GOULD: Senator Rogert, members of the committee, my name is Jack Gould. I represent Common Cause. You spell my name G-o-u-l-d. I was not going to testify for a variety of reasons, but I have often been the one who has been cited in the paper for Common Cause as the critic of the revolving door. And so it would be rather cowardly of me not to come up here and suffer the slings and arrows of outrageous fortune, so I am here to do that. But really the question is a philosophical one and I think our founding fathers and John Locke and many others who wrote about democracy saw that when

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we have an election, it means two things. It means that an individual has stepped up and said, I choose to serve, and it says that the public has said that I choose you to serve us, and that is a sacred contract. That's something that you live with every day. Every bill that comes up, you stand up and say am I doing the right thing for the people of this state, not for any private interests, but for the people of the state of Nebraska, I am casting this vote. The problem comes when that contract suddenly comes to an end and there are private interests out there who see tremendous value in the abilities that you've developed here. I mean just coming in here and sitting under the lights here is a kind of scary thing for the public. You're doing it every day every time you bring in a bill, you know. You have great confidence. When you leave here after eight years, you know, you can come down here with real confidence, speak to real issues. The public often feels intimidated. But for you to take that social contract that you have made with the public and then to put it on the auction block, which is the kind of thing that happens, you're putting a price tag on the service that you have given the public and saying, okay, I served you this long, but now, you know, I'm going to capitalize on that and that wasn't the intent of the democracy. That isn't the intent of the contract with the public. The deal that's made is that I choose to serve and you have chosen me to serve you, not to serve a special interest. If you said to the public when you were running for office that I'm going to do this and serve you for eight years, but when those eight years are up, I plan to sell my abilities to the highest bidder, I don't think that the public would vote for you. I think the public recognizes the agreement. And I want to say this, the term "senator" is a term of great respect that the public has given you and it's your job to respect that and to also protect that so that the public doesn't see that position that you hold as something that will eventually be bought and sold. They see it as something that you have served, and then you go back to your job, you go back to what you did before because that's what public service is. You sacrificed for the good of the public and there's no question that it's a sacrifice, but you've done that for the public good and in the end, that's what gains the respect for this body, and if you cheapen it, you cheapen it for everybody. And so, you know, I don't think this bill should be taken lightly and I really think you need to seriously talk about the values involved here and the nobility of the office and not get caught up in dollars and cents and how much I can earn. That's not what service is about. That's all I have to say. [LB870]

SENATOR AGUILAR: Questions for Mr. Gould? Senator Adams. [LB870]

SENATOR ADAMS: Jack, I appreciate your comments. They're very compelling. Do we have a definition problem here? That is, when we use the word "public" versus "private interest," is the League of Women Voters a private interest? Is the Nebraska Trial Lawyers a private interest? Is Common Cause a private interest? If a florist in my district walks up to me and said, hey, I'm just average Joe Public, but I belong to the Nebraska Nursery Association along with a lot of other citizens. I guess where I'm headed here is we're drawing this line--and I'm trying to figure it out myself--we're drawing this line between the public interest and private interest and the florist in associating with other

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florists, isn't that still the public and doing the public good as we listen and represent those people? [LB870]

JACK GOULD: I think it is. I mean, I know what you're struggling with. You're trying to draw the line between...when you raised the question about finance. Is that the line that you would like to see drawn? If you're being paid, then you should be excluded and if you're not being paid, you shouldn't. But what Peggy Adair mentioned earlier is Senator Avery is trying to be fair to everybody because if we use that as a dividing line, then organizations like Common Cause and the League of Women Voters who don't have paid lobbyists, who rely on the public, those organizations could take advantage of that. I mean, we could go and get you to be our spokesman, and I think that's why that line is so hard to draw. If we did it strictly for the amount of money you're being paid...I would certainly go along with that. I mean, I think that's a great step forward and say we don't want senators to be paid to come back as lobbyists. But I think Bill Avery's point is we want to make it fair for everybody so that nobody can actually draw on that experience, that trust between the public and the elected candidate. Does that help you at all? [LB870]

SENATOR ADAMS: Well, I'm still struggling but thank you. [LB870]

JACK GOULD: Okay. [LB870]

SENATOR AGUILAR: Senator Friend. [LB870]

SENATOR FRIEND: Thank you, Chairman Aguilar. Hi, Mr. Gould. Quick question, do you think Chris Beutler is violating his contract right now? [LB870]

JACK GOULD: As mayor? [LB870]

SENATOR FRIEND: Yes. He was in the lobby last week, I had a long conversation with him. [LB870]

JACK GOULD: He's a public servant. [LB870]

SENATOR FRIEND: How about Bill? [LB870]

JACK GOULD: He's also a public servant trying to represent the public. [LB870]

SENATOR FRIEND: He's got awful good connections in here. [LB870]

JACK GOULD: Well, he does. He's an elected official that the public chose to come and represent them as a mayor. [LB870]

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SENATOR FRIEND: Do you think I'm violating my contract talking to him? [LB870]

JACK GOULD: You're violating your contract, your social contract? [LB870]

SENATOR FRIEND: He's a very influential person. I like him a lot. He's very influential and had he not been in this body... [LB870]

JACK GOULD: I don't want to get into personalities. I mean, all you're asking me is should the mayor of Lincoln come forward and speak to this body... [LB870]

SENATOR FRIEND: Jack, I'm drawing a distinction and bringing up a problem. Chris Beutler does not have any more pull with me than...name another lobbyist. I have...when my eight years is up and the people tell me to leave, you're saying my contracts should last for two years and then it's up. My contract to the people...I have a problem with your testimony because you're saying I signed this mysterious blood-spiritual contract with the people and that I have to wait two years after my eight year, you know, time is up to be freed of that. Why the two year time frame? Why don't we just make it a lifetime? I'd live that sacrifice for eight years, if I did. I mean, Mick Mines is lobbying right now. Mick Mines doesn't... [LB870]

JACK GOULD: This would prevent that. [LB870]

SENATOR FRIEND: Mick Mines doesn't have anymore pull with me than any lobbyist had before this. That's where my problem comes in with this bill. [LB870]

JACK GOULD: Sure. [LB870]

SENATOR FRIEND: Can you free me up with this? Should Mick have been banned for two years and then maybe should he have been banned for the rest of his life? Why two years? [LB870]

JACK GOULD: Well, I don't want to get into, you know, the individual cases. I'll do that if you drag me that far, but I don't want to do that. [LB870]

SENATOR FRIEND: Well, I asked you a specific question. [LB870]

JACK GOULD: Okay. [LB870]

SENATOR FRIEND: I mean, Chris Beutler has a lot of pull. [LB870]

JACK GOULD: And as a mayor of... [LB870]

SENATOR FRIEND: He's a very influential guy. [LB870]

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JACK GOULD: That's true. [LB870]

SENATOR FRIEND: Why is it any different with him as mayor of Lincoln than Kermit Brashear? [LB870]

JACK GOULD: Well, let me answer your question, let me answer your question. He is also... [LB870]

SENATOR FRIEND: No, I asked you a question and I'd like an answer. [LB870]

JACK GOULD: Yeah, and I said to you he is an elected official. When he comes here as the mayor of Lincoln, he is representing the people of Lincoln. He has a contract with them as well. And so... [LB870]

SENATOR FRIEND: So it would be totally different if Kermit Brashear would have run for mayor of Omaha, and then he can come down and stand in the lobby and use those connections at that point. [LB870]

JACK GOULD: If he was mayor coming here to represent the people of Omaha, I would say he has a right to do that. He's an elected official. [LB870]

SENATOR FRIEND: That's an interesting distinction. Thanks. [LB870]

JACK GOULD: Yeah. [LB870]

SENATOR FRIEND: Thanks for the time. [LB870]

JACK GOULD: Yeah. [LB870]

SENATOR AGUILAR: Further questions? [LB870]

JACK GOULD: Just to clarify one point. [LB870]

SENATOR FRIEND: We're done. We can move on. [LB870]

JACK GOULD: You don't want anymore? Okay. [LB870]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Jack. [LB870]

JACK GOULD: Okay. Thank you. [LB870]

SENATOR AGUILAR: Are there any opponents to the bill? Are there any neutral

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testimony? Seeing none, Senator Avery to close. And time is short. [LB870]

SENATOR AVERY: I know, ordinarily I don't like to close, but I just have a couple of comments. One, there has been far too much discussion about this institution that I revere, the Legislature. It's a special place. I want to keep it that way. This bill is much broader than just what happens to people in the Legislature. Keep that in mind. It's much broader than that. It's not about whether you make money. It's about the public interest and Senator Adams asked a very good question about the difference between public interests and private. Let me give you my personal distinction. A public interest is one that contributes to the good of all the citizens, everyone benefits, for example, from accountability in government, from open government, from integrity, and fairness in government. Everybody benefits from that. It is a benefit that everybody participates in no matter what their contribution might be to creating that benefit. That's a public good. Now a private interest is different. A private interest is much more narrowly focused and it affects a very, very much more limited number of people, and it may give a benefit to one group at the expense of another. So what we have to keep in mind here is that the public interest is a special interest, yes, because it is an interest that all of us share. I would be surprised if somebody stood up and said, you know, I'm not for accountable government or I'm not for integrity in government. Now, one other thing, the discussion has gotten off track too many times. This is not a total prohibition. It is a cooling off period. You are not prohibited for life. You're simply asked to take off a couple of years to let the ties you have, the special interests, the special ties you have to your former colleagues, let that cool off a bit before you go out and lobby for special interests. That's all I have. [LB870]

SENATOR AGUILAR: Questions? Senator Pahls. [LB870]

SENATOR PAHLS: I just have one thing. Since these past senator's names have been brought up, Brashear and Mines, and currently they are lobbyists, I can assure you on the floor I voted against some of their major legislation and they voted against mine. So what I'm saying is this special vulnerability, I'm feeling that we're going to feel from these individuals because we knew them on the floor. I mean, there were times Mines voted against a very important piece of legislation that I thought the world should stop for. So this idea of all of a sudden that there's this tight bound... [LB870]

SENATOR AVERY: There will be varying, different reactions from different people. [LB870]

SENATOR PAHLS: And I mean by those comments. I do respect those individuals. I mean this is the way this is and we know that. [LB870]

SENATOR AVERY: Yeah, and if you have a stack of phone messages at the end of the day and you see that one of them is Mick Mines, your friend, are you going to call him

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back? You bet. [LB870]

SENATOR PAHLS: Well, to be honest with you, intent in my office is we answer them all. [LB870]

SENATOR AVERY: So do we. [LB870]

SENATOR PAHLS: Yeah, thank you. [LB870]

SENATOR AVERY: But I mean often you have an order in which you do that. [LB870]

SENATOR PAHLS: Yeah, I understand. [LB870]

SENATOR AVERY: Yeah. [LB870]

SENATOR PAHLS: Thank you. [LB870]

SENATOR AGUILAR: Senator Lautenbaugh. [LB870]

SENATOR LAUTENBAUGH: Just briefly, I'm going to sound like a broken record, but there's a theme here on both of these bills we've just covered. We're talking about...we're not saying you can't lobby, just put it on hold for a couple of years. We're not saying you can't be a small businessman and have a state office, just put it on hold and give it to someone else for a few years. Well, things have a way of going away when you put them on hold for a few years. That's the way business works and that's the way opportunities work. Things are fleeting in that way and I feel like we are impermissibly...now, I don't plan on being a lobbyist ever. It doesn't look a good job to me. That said, I have a hard time telling some of my colleagues that they shouldn't do it or they should wait a couple of years. [LB870]

SENATOR AVERY: Well, you just defined the intent of the bill we're talking about now. If waiting a period of time means that some of the advantages you have actually recede and diminish in value, that's exactly what I'm trying to do. [LB870]

SENATOR LAUTENBAUGH: But my problem, Senator, is that they have to do something else in that time. They do have to eat in the interim and... [LB870]

SENATOR AVERY: Now, you're not arguing for cashing in, are you? [LB870]

SENATOR LAUTENBAUGH: No, I'm saying that they have to do something in that two-year waiting period. They don't go off... [LB870]

SENATOR AVERY: And lobbying is the only thing they can do? [LB870]

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SENATOR LAUTENBAUGH: I'm not saying that's the only thing they can do. I'm saying you're telling them they can't do the one thing they may want to do, they have to go do something else for two years. [LB870]

SENATOR AVERY: In the interest of a larger interest, the public interest. That's what it's about. Let's not talk about things that are not the center piece of the legislation. The intent of this legislation is to promote the public interest. [LB870]

SENATOR LAUTENBAUGH: And I'm dwelling on the effect, I realize. [LB870]

SENATOR AVERY: But you lose sight of the public interest when you make that argument. [LB870]

SENATOR LAUTENBAUGH: Oh, I see. [LB870]

SENATOR AGUILAR: Further questions? Seeing none, that closes the hearing on LB870. Senator Pirsch, are you still awake? (Laugh). Please join us. [LB870]

SENATOR PIRSCH: (Exhibit 1) And thank you. [LB981]

SENATOR AGUILAR: Welcome. [LB981]

SENATOR PIRSCH: Thank you very much. In the words of Monty Python's Flying Circus, "and now for something completely different." [LB981]

SENATOR AGUILAR: We're ready. [LB981]

SENATOR PIRSCH: Yeah. Chairman Aguilar, members of the Government, Military and Veterans Affairs Committee, I appreciate the opportunity to appear before you here today. My name is state Senator Pete Pirsch. I represent the 4th District in Omaha. I am the sponsor of LB981. This is a good government bill, a bill based on the belief that we want the people of Nebraska to have faith in the integrity of their government, and LB981, in a nutshell one-liner prohibits nepotism and supervisory relationships of family members in state government. LB981 is a priority for the administration due to the ambiguity of our statutes and the challenges encountered during this recent interim. Additionally, LB981 makes it easy for state employees to comply. With respect to what LB981 does: The bill defines family members, defines nepotism, and supervisor, those terms; requires that a state employer or a state official must disclose any family member employed or serving in state government to the Accountability and Disclosure Commission; requires that an applicant to state government who is granted an interview must disclose any family member employed or serving in the same agency of state of government to the head of the agency; but it also allows for the head of the agency to

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grant an exception to the nepotism and supervisor prohibitions upon written showing of a good cause, which shall be filed with the Accountability and Disclosure Commission and considered a public record. And I think that's pretty important in some counties out in Nebraska where there may be a good reason why you have to employ people who are related who would ordinarily not...who would be prohibited. So there is an amendment that is recommended by the NADC and that's Amendment 1717, which further defines state employing for greater clarity and defines state official for greater clarity, and I don't know if that's been handed out quite yet, but we'll pass that around. But I do appreciate your attention and I anticipate a number of individuals...one in particular from Department Administrative Services who can help flush out any questions in specific that you may have and I appreciate your time. [LB981]

SENATOR AGUILAR: Are there questions for Senator Pirsch? Seeing none, first proponent, please. [LB981]

MIKE McCRORY: (Exhibit 2) Good afternoon, Senator Aguilar and members of the Government, Military and Veterans Affairs Committee. My name is Mike McCrory, M-c-C-r-o-r-y. I'm the Director of State Personnel and I am appearing today on behalf of the administration in support of LB981. LB981 clarifies that nepotism and supervisory relationships of family members in state government are prohibited for all state employees. It eliminates the two current but separate prohibitions against nepotism--one for state employees and one for directors of state agencies--in favor of one act applicable to all. During the interim, a few state agencies faced some challenges in their hiring processes under the nepotism laws. In response to this, the Department of Administrative Services contacted representatives from the courts, the Legislature, the State Auditor's Office, the Attorney General's Office, our employees two largest representative groups, that being NAPE and (inaudible), and various agencies in state government to address ambiguity in state law relative to nepotism and family relationships. Our objective was to understand the challenges faced by state agencies with recruiting, the differing standards on nepotism that now apply to employees and agency directors, a limited definition of immediate family, the limited scope of the nepotism laws applying only to the executive branch, and confusion with state employees trying to interpret the nepotism statutes. The administration is attempting to make a uniform law regarding family and supervisory relationships in state government with an eye toward state employees and officials so that it is easy to understand and easy to follow. The bill clarifies the definition of family members so it is no longer limited to family members residing in the same household. The bill creates two reporting requirements: First, a state employee or state official must disclose any family member employed or serving in state government to the Accountability and Disclosure Commission and such reports shall be deemed to be a public record. Second, an applicant to state government who is granted an interview must disclose any family member employed or serving in the same agency to the head of the agency. The way we envision this working is that there will be a one-time disclosure on a form that we will

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develop for all state employees and officials of any family relationships in state government as defined under the bill. Additionally, a disclosure will be required when any new family relationships occur due to change in circumstance, such as marriage or adoption and a disclosure will be included in the hiring process. Finally, the bill allows for the head of an agency to grant an exception to the nepotism and supervisor provisions upon written showing of good cause which shall be filed with the Accountability and Disclosure Commission and considered a public record. This exception is in response to instances where the best qualified candidates for a position are related to another state employee. While we want to prohibit nepotism, we also want to continue to encourage people to work for state through recruitment and retention efforts. We do not wish to limit the talent pool on which we can draw, especially in areas where the labor pool may be smaller. Our job is to hire the best candidates for the state. This concludes my testimony and I would be happy to try to answer any of your questions. [LB981]

SENATOR AGUILAR: Thank you. Questions for Mr. McCrory? Seeing none, thank you. Next proponent. [LB981]

FRANK DALEY: Senator Aguilar, members of the committee, my name is Frank Daley, D-a-l-e-y, and I'm here to express the Nebraska Accountability and Disclosure Commission's support of LB981. LB981, I think, as a whole strengthens and clarifies the state's nepotism law. I do also support the amendments proposed by Senator Pirsch and thank him for his cooperation in this process. I do want to bring four things to the attention of the committee, if I may. First of all, it would be worthwhile to consider an additional amendment to LB981 and I'll provide this information, the language, to your committee counsel. But specifically on page 6, line 3, it would be well to add a cross reference, something to the effect the addition of a sentence that would say, "matters involving the hiring, recommending the hiring of or supervising a family member by a state official or state employee are governed by Section 2." In other words, what we're trying to do is ensure that if there's a situation covered by the new nepotism law that everyone understands, it's not also covered by the conflict of interest law that would handle something else. There are also three things that I would like to bring to your attention just for the purpose of making a clear record of the effect of the bill with the proposed amendments. First of all, the bill leaves it to an agency head to determine if there's good cause to grant a waiver and there's a requirement that a document attesting to that be filed with the Accountability and Disclosure Commission. The law does not provide that the Accountability and Disclosure Commission will review and determine if that good cause shown is actually good cause shown. For that purpose we are simply the filing agency. We have no decision to make in that process and we simply want to ensure that the committee understands that as well. Secondly, the bill does not provide for any sort of penalty other than a reference that someone who violates this law may be subject to some form of discipline. Presumably that means under either the classified personnel rules or under one of the labor contracts. However,

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any provision within the Accountability and Disclosure Act is subject to the general penalty provisions so that a person violating the provisions of LB981 would be subject to a civil penalty of up to \$2,000 pursuant to the general provisions of the Accountability Act. Finally, I think the committee needs to be aware of the fact that this bill expands the definition of who is covered by the nepotism statute. It expands it from simply the executive branch to other branches of state government. It also expands the definition of who within your family is subject to the provision. Under current law, the term "immediate family member" is used. An immediate family member is a spouse, a child living within your household or someone claimed as a dependant for federal income tax purposes. So it's a very, very narrow definition. The bill uses the term "family member" and provides a definition which makes it clear it applies to a greater number of relatives, and so that's a public policy change. But what you may find is that there may be state agencies in which there are people who are not immediate family members that may have worked in the same agency for a number of years, but would fall within the definition of family member such that upon this bill taking effect, you would suddenly find people that may have worked for state agencies for decades that are suddenly in violation. And so certainly the heads of agencies may decide that's good cause and we're going to grant a waiver as to that, but understand that there's no transitional provision in this bill currently that would exempt the application of portions of this bill to people in that sort of situation. So again, the commission expresses its support of LB981 and the proposed amendments to LB981 and we appreciate the opportunity to testify today. [LB981]

SENATOR AGUILAR: Thank you, Mr. Daley. Questions for Mr. Daley? Senator Lautenbaugh. [LB981]

SENATOR LAUTENBAUGH: Mr. Daley, did I hear you volunteer your agency to take over the oversight of this? [LB981]

FRANK DALEY: You did not. [LB981]

SENATOR LAUTENBAUGH: Okay. [LB981]

FRANK DALEY: But thanks for the question. [LB981]

SENATOR AGUILAR: Senator Avery. [LB981]

SENATOR AVERY: Mr. Daley, if my son, who is now 16, were to want to be a page in the Legislature, he would get paid, I don't know what he'd get paid, but he'd get paid for it. Would that be nepotism? [LB981]

FRANK DALEY: Under the bill, I believe the answer is yes. [LB981]

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SENATOR AVERY: So he would be barred from serving as a page under this bill?
[LB981]

FRANK DALEY: I believe that's correct. I believe pages are considered employees.
[LB981]

SENATOR AVERY: Yeah. So would this be an unintended consequence of this bill?
[LB981]

FRANK DALEY: Well, that requires me, I guess, to figure out the intent of the folks that drafted and introduced the bill, but it would be...intended or unintended it... [LB981]

SENATOR AVERY: He wouldn't be under my supervision. He would be under the supervision of Kitty Kearns and the Clerk. [LB981]

FRANK DALEY: Well, let me back up a little bit. [LB981]

SENATOR AGUILAR: Let me interject here. That's against the Clerk's rules. [LB981]

SENATOR AVERY: It is? [LB981]

SENATOR AGUILAR: Yeah. [LB981]

SENATOR AVERY: Already? He's going to be disappointed. (Laugh). [LB981]

SENATOR AGUILAR: As was my daughter. Further questions? Senator Adams.
[LB981]

SENATOR ADAMS: Following along those same lines, Frank, and I'm wondering on this expanded definition of "family." So a cousin, one that I don't claim, goes to work at Fort Robinson. Now, do we have an issue? [LB981]

FRANK DALEY: A cousin is not included within the definition of family member. [LB981]

SENATOR ADAMS: Okay, okay. [LB981]

SENATOR AGUILAR: Further questions? Senator Karpisek. [LB981]

SENATOR KARPISEK: Thank you, Senator Aguilar. Okay, Frank, your son, my son, wants to get a mowing job with the state. He couldn't do that? [LB981]

FRANK DALEY: The answer is it depends, and here's what it depends upon as I read the bill. Number one, you could not recommend the hiring of your son. If your son is in,

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for example, an executive branch agency that is not subject to your supervision, I'm not sure that under the bill that would be prohibited. [LB981]

SENATOR KARPISEK: Okay. Thank you. [LB981]

FRANK DALEY: On the other hand, if you worked for the Department of Roads and he were going to work for the Department of Roads and somehow in the scheme of supervision he was subject to your supervision, perhaps even a few levels down, I believe the bill would prohibit that. [LB981]

SENATOR KARPISEK: Okay. Thank you, Frank. [LB981]

SENATOR AGUILAR: Seeing no more, thank you. [LB981]

FRANK DALEY: Thank you very much, Senator. [LB981]

SENATOR AGUILAR: Next proponent. [LB981]

JACK GOULD: My name is Jack Gould. I'm here representing Common Cause Nebraska. My name is G-o-u-l-d, and we are in support of the bill and I'm not going to be repetitious. I know we've been here quite a while today. We think it's an excellent bill. Expanding the nepotism provisions is a good idea. Defining what a "family member" is, is a good idea. Putting the burden of reporting on the person it is applying is a good idea. The only thing that I didn't see in the bill, and we didn't see in the bill, is whether it needs a grandfather clause and that's I'm sure the intent of it. I would assume that you would except all the people that are already here. But that might be something that would need to be added just to make sure that we're starting off at the same point. That's all I'm going to say. [LB981]

SENATOR AGUILAR: Questions for Mr. Gould? Seeing none, thank you. Are there any other proponents to the bill? Any opponents to the bill? Welcome. [LB981]

BETTY JOHNSON: (Exhibit 3) Thank you. Chairman Aguilar, members of the committee, I am Betty Johnson, J-o-h-n-s-o-n, and I appear before you today to testify in opposition of LB981. I have been an employee of the Department of Motor Vehicles for 25 years, the past 18 years serving in managerial positions. I want to make it clear that I am here today testifying as a member of the public, not in representation of the Department of Motor Vehicles. I also want to make it clear that I did take vacation time to leave the department today to come over and testify. Also that I'm not a lobbyist nor will I ever be a lobbyist after hearing the testimony in the previous bills. I am here because I have had the unfortunate distinction of being the first state employee charged and fined for violating the nepotism statutes. So I am very passionate about this issue as you can well understand, I hope. Since the nepotism issue was raised this last

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summer, those involved have tried to claim that the issue is a difficulty in understanding the law in its current form. I disagree. The issue is the lack of knowledge of the law by key state agency personnel. I don't for one moment doubt that there are a rampant number of cases of nepotism in state government where the citizens of this state have been taken advantage of. However, that was not the case in my situation. My daughter applied for and was placed into the state's temporary employment pool through the personnel division of DAS, the Department of Administrative Services. She was placed in that pool on her own merit without any action on my part. At all times through their employment she was employed by DAS. After she became part of the temporary pool, DMV had a need for a temporary employee. I asked the DMV personnel manager if there was any reason that my daughter could not be assigned to the DMV. Her response to me was, no, as long as I was not her direct supervisor. She also indicated that this was something that DMV had done numerous times in the past. So when the DMV personnel manager requested the temporary employee from DAS, she specifically requested that my daughter be assigned to DMV. Prior to this and after this time I had nothing to do with my daughter being employed by DAS or being assigned to DMV as a temporary employee. Unfortunately for me, it was shortly after this that the nepotism issues at the Department of Labor became a public issue. Once this happened, my daughter's assignment at the DMV was brought to the attention of the State Auditor. From this point forward is when, after all of my years of being a part of state government, that I truly learned what bureaucracy is and what it feels like to be a number instead of considered a valuable member of the team. The State Auditor took advantage of an area where a lack of knowledge existed and exploited it. In my case he initially failed to gather all of the facts and what few facts he did gather, he did not provide as part of his complaint to the Accountability and Disclosure Commission. During this time, I also felt that the Governor's administration had an opportunity to step in and take responsibility for the lack of knowledge and training that was pervasive throughout the agencies, but this also did not happen. Instead of all of the cases of nepotism reported to the Auditor, he chose to report three to the commission. The commission then notified me that I was being charged with violating the nepotism law and I was left to defend myself. I opted to hire an attorney for this defense which has cost me \$4,620. I found the process of dealing with the commission extremely interesting. Here was the body that was investigating and judging me for my actions and yet the mistakes that they made through the process were preposterous. I received seven formal notices from the commission, six of those notices contained errors. Some of those errors were as minor as my address being incorrect. However, my name appeared incorrect on the final order telling me that I'd been found guilty, and something as important as the charges contained on the notice of hearing were also not complete. I had said many times through this process that if I did my job this poorly, I still wouldn't have a job. At my hearing, the DMV personnel manager did testify to her role in requesting my daughter's assignment to DMV. She also testified that she was not aware of the fact that there was a prohibition on someone recommending a family member for hire. In our agency, we would consider the personnel manager to be the expert in this

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area. In addition, at this same hearing, the two individuals who manage the DAS division of personnel SOS program, which is the temporary employee pool for the state, testified that they had no knowledge or understanding that a family member could not recommend for employment another family member. They also testified that they routinely received these types of recommendations. Further, they testified that they were aware of the fact that my daughter was being placed in the same agency where I was employed and they were aware of no issues with doing so. These three testimonies are examples of the lack of knowledge of the nepotism law that exists within state government. After the conclusion of my hearing, I received notice from the commission that I was found in violation of the nepotism statute and was being fined \$200. As part of this notice, the hearing officer stated in his recommendation that the evidence was clear that I was not aware of the prohibition against the recommendation. He further stated, however, "ignorance of the law and incorrect advice from others is no excuse for the violation." He recommended to the commission that they take my lack of intent into consideration when imposing the fine or penalty. As you have heard from other testifiers today, this legislation expands the definition of family member which will expand the scope of the duties of the commission which I don't have an issue with as long as the individuals who are charged with offenses are the individuals who are intentionally and blatantly causing harm to the citizens of the state of Nebraska. But I do have an issue with this expansion if individuals, like the State Auditor, can come along and cherry pick cases without regard for the true facts of the case or without applying the investigation principles across all state agencies. This legislation also mandates disciplinary action for any person violating the nepotism statutes. But I would ask: What disciplinary action was taken against those individuals who mislead me through the hiring process of my daughter? I can answer that for you because none was taken. So in my particular case, I was left to pay the price, but those experts that failed to do their job have been left unscathed. I do firmly believe that this piece of legislation does not resolve the underlying issues of nepotism in state government. In my opinion, if you want to fix this problem first you need to define the term "recommend," and then more importantly, you need to place responsibility with the administration by mandating that a training program be implemented. All state agency managers need to be thoroughly trained in areas where the commission can charge us as individuals for violations. After the last changes were made to the nepotism laws in 2001, as managers we received no notification of the changes. I think you will find as you work with the state agencies the majority of us want to do things right, but without the proper tools and training we cannot know everything we need to know to do our jobs right. If you are interested in moving this bill out of committee, I ask that you consider amending it to require only what is appropriate and necessary in any place of business--training for its managers. Thank you for your time, and I will be happy to answer any questions that you may have. [LB981]

SENATOR AGUILAR: Thank you. Questions? Seeing none...excuse me, Senator Adams. [LB981]

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SENATOR ADAMS: So did I hear you say that one of the things that is problematic to you is the definition in the bill of "recommending"? [LB981]

BETTY JOHNSON: As far as I know, I don't think that there is a definition of "recommend" in the statute. [LB981]

SENATOR ADAMS: Yeah or the lack of a definition is problematic. [LB981]

BETTY JOHNSON: Um-hum. I have an issue with that because I simply asked our personnel manager if there was an issue with placing my daughter in our agency and she said, no. And so she moved forward with that and she requested that my daughter be placed with our agency and from that, I was found guilty of recommending my daughter for the position. [LB981]

SENATOR ADAMS: Okay. Thank you. [LB981]

SENATOR AGUILAR: Senator Pahls. [LB981]

SENATOR PAHLS: Yes, Senator. I have a question. You work with the Department of Motor Vehicles, am I correct? [LB981]

BETTY JOHNSON: Yes. [LB981]

SENATOR PAHLS: Is this typical or is this one of those weird things that happened of not being trained in all aspects of the jobs that go on? I'm just curious. Is training an issue not in just this area, but in everything? [LB981]

BETTY JOHNSON: I can tell you I'm thoroughly trained in all motor vehicle laws. As far as in personnel issues, accountability and disclosure issues, and all of those things, this is very typical. [LB981]

SENATOR PAHLS: Okay. Thank you. [LB981]

SENATOR AGUILAR: Further questions? Seeing none, thank you. [LB981]

BETTY JOHNSON: Thank you. [LB981]

SENATOR AGUILAR: Any other opponents to the bill? Any neutral testimony? Welcome. [LB981]

JUDY BEUTLER: Thank you. My name is Judy Beutler. I'm deputy court administrator in the State Court Administrator's Office. That's B-e-u-t-l-e-r. I'm here in a neutral capacity in regard to LB981. The judicial branch was invited and participated in the Governor's

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task force on nepotism, and we appreciated that opportunity, learned a lot, it was a very interesting process. The State Court Administrator's Office is in support of attempts to eliminate unfair employment practices. The Supreme Court employees...the Supreme Court of course is not an agency. It is a separate branch, as you all know, and we have separate personnel rules, separate classification systems, and we currently have antinepotism provisions in the judicial code of conduct, and that applies to all judges and most of our managers in the county court system. We're also in the process of possibly proposing some amendments to our personnel rules that would strengthen our hiring practices and address nepotism. [LB981]

SENATOR AGUILAR: Thank you. Are there questions for Ms. Beutler? Seeing none, thank you. [LB981]

JUDY BEUTLER: Thank you. [LB981]

SENATOR AGUILAR: Any other neutral testimony? Senator Pirsch, would you like to close? [LB981]

SENATOR PIRSCH: Well, Chairman Aguilar, members of the committee, I appreciate the opportunity to testify here today and I'll tell you, I think the more you know about the provisions and how they would actually be implemented, I think the more comfortable you're going to feel. I had something that deals with employment type of relationships is just by its very nature a touchy subject, but I think when you look at where we're coming from to what's being proposed now, it clearly makes sense. And I appreciate those who have testified here today, Betty Johnson in particular who came down as an opponent. I think that that is actually an example that richly illustrates part of the problem. As she was relating part of the problem, she indicated that the publication or general knowledge of nepotism laws is an important facet, and I agree with that and we can certainly work on that too. But as she was describing the negative things that occurred to her also, she also...keep in mind, this all occurred to her under the current structure, the current bill. And as she related part of the problem, the reason why we are going forward with this bill, which is my supervisors weren't...there was ambiguity and misunderstanding about what the standard is and they gave me bad advice and that clearly exists and it's not just in Ms. Johnson's department, I think it's widespread. This bill will help make uniform one standard instead of differing standards so that there is a greater clarity as to the requirements, and specificity as to what is to be expected so we don't have these managers and department heads...and I certainly understand her concerns. Hey, I was trying to do what I think was right. I was given bad information by a manager who didn't understand what the current law expects of me. And so we want to clear that up, have one uniform standard. And I agree with her that we can also look at, in addition, her concern, too, which is I think warranted, and once we have that uniform one standard, publicizing that in a greater manner in making sure that the department heads are aware of that and I think having one standard will help aid that too so you don't have to

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remember different standards. And so I think that that is something that does illustrate the need for this. In addition, someone such as Ms. Johnson, who obviously was trying--as she described--to do her best, under the current law faces actually criminal charges under the current law. And so I think for people who are trying to do what's right, getting bad advice, not clear because of the ambiguity of the law, this change would allow for...first of all, she wouldn't face those criminal charges and situations where there are a need for, I think somebody had expressed, existing...say the existing state of things where there might be the status quo, some familial relationships that currently exist rather than a grandfather clause you can address that with the safety valve that is built right into this law in all cases which just says all you have to do is disclose it. There's no hard, firm rule that you cannot in every case, in any case, have a familial relationship. It merely says that...and those cases sometimes it will make sense and in those cases you should reveal it so that it sees the light of day and that we're transparent with this and that we're not hiding it and I think that's appropriate. Sometimes you don't want to ban those type of things, but you just reveal it so that you let everybody know you're on the level and nothing shady is going on. And so I think that the more you...and certainly we'd be interested in working with the committee. But I think that the more that you learn about where the law is currently and what this actually does to the law to make it more uniform, to make the definitions more clear...and then I think the definitions which were commented on are clear. Right now, if your son lives in your house, you can't hire him. If your son lives across the street, you can hire him. Very unclear under law, so this, I think, will put us all in a better position to understand that, and I thank you for your time. [LB981]

SENATOR AGUILAR: Senator Adams, start at the end. [LB981]

SENATOR ADAMS: Senator Pirsch, I think you probably heard the testimony. Would you agree that potentially we ought to look at clarifying the word "recommending"? [LB981]

SENATOR PIRSCH: Oh, you know I'd be willing to work with the committee in any capacity as far as further clarifying language that maybe you'd consider problematic. [LB981]

SENATOR ADAMS: Thank you. [LB981]

SENATOR PIRSCH: Sure. [LB981]

SENATOR AGUILAR: Senator Pahls. [LB981]

SENATOR PAHLS: Thank you, Chairman. Senator Pirsch, I just have a question, and I may have missed this because I was out earlier. Are you sponsoring this bill for anyone? Is this your bill or are you carrying this for somebody? [LB981]

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SENATOR PIRSCH: Well, I tell you, there was a lot of activity that took place over the interim between the administration, as the last testifier had indicated, that the input from all three branches were solicited to make sure that the final end product was in the best shape and that all possible types of situations were, you know, kind of in countenance during... [LB981]

SENATOR PAHLS: But you're not carrying this for any department or anything? This is your bill? [LB981]

SENATOR PIRSCH: Well, yeah. I mean I've introduced this bill. It is something that the administration has evidence...a very strong passion for. Just wanted to clarify another thing with respect to the, I think, the situation that you had brought up about the son or whatnot working, that it requires that to be the supervisory capacity and, again, there is that safety belt. So if you are, with respect to, say, bringing in somebody in your office to work for you, well, you would be the head of your aid and so your authorization to do it would be, you know, as far as your interns would be--as long as you reveal that--would be just fine. [LB981]

SENATOR AGUILAR: Further questions? Seeing none, thank you. That closes the hearing on LB981 and the hearings for today. [LB981]

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Disposition of Bills:

LB720 - Advanced to General File, as amended.

LB817 - Held in committee.

LB870 - Indefinitely postponed.

LB981 - Held in committee.

Chairperson

Committee Clerk