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Government, Military and Veterans Affairs Committee
January 31, 2008

[LB803 LB991 LB1062 LR225CA]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, January 31, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB803, LB991, LB1062, and LR225CA. 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: Welcome to the Government, Military and Veterans Affairs Committee. I'll start off by introducing the senators that are present. On my far left: Senator Kent Rogert, the Vice Chair of the committee from Tekamah, Nebraska; next to him Christy Abraham our legal counsel; my name is Ray Aguilar, I'm from Grand Island, Chair of the committee; next to me, Sherry Shaffer, committee clerk; Senator Mike Friend from Omaha; Senator Rich Pahls from Omaha; Senator Greg Adams from York; and Senator Bill Avery of Lincoln. Our pages today are Ashley McDonald from Rockville, Nebraska, Courtney Ruwe from Herman, Nebraska. The bills will be taken up in the following order that they are...and also as they are posted on the door: LB803 and LB991 will be heard together, but as you use the sign-in sheets, if you're in favor or against one bill in particular, sign it accordingly; followed by LB1062, LR225CA. The sign-in sheets are at both entrances. Sign in only if you're going to testify and put it in the box up 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 an opponent on the bill, there's another sheet that you can fill out and those are at the entrances as well. 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 and try not to be repetitive. If you have a prepared statement or exhibit, give it to the page and they will distribute it to the senators. Please turn off your cell phone and pagers and we'll open up with LB803. Senator Rogert, you get the chair. []

SENATOR ROGERT: Senator Aguilar. []

SENATOR AGUILAR: And would you announce that proponents and opponents won't be able to speak until we're both done? []

SENATOR ROGERT: Okay. And we'll hear from proponents and opponents after the opening of both bills, please. []

SENATOR AGUILAR: Thank you. As I said, my name is Ray Aguilar. I represent District 35 and I'm here to introduce LB803. Earlier this year I was approached by a group of University of Nebraska students about the idea of implementing election day voter

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

registration, EDR, in Nebraska. They made persuasive arguments that college students would register and vote in higher numbers if EDR were available to them. I did some further research on the issue and found that EDR states on average achieved a 10 percent edge in voter turnout over other states. The experience in other states has been an increase in turnout among young adults, which is a group which historically has had very low voter turnout rates. Also young adults move more frequently, making it more difficult for them to keep their voter registration current. Research has shown that allowing young people to register to vote on election day could increase the youth turnout in presidential elections by as much as 14 percent. Nebraska already has a high percentage of citizens who are registered to vote but I believe if there was another tool that could increase those numbers, it should be explored. I am committed to the idea of EDR, but I also understand the concerns raised by election officials. There are legitimate concerns about implementation of EDR, particularly the issues of the number of ballot types in each precinct and the issue of potential error or fraud. LB803 attempts to address a number of these concerns. For example, in my bill voters who register and vote on election day will be required to vote provisionally. This allows the election official time to investigate and determine whether credible evidence exists that the voter was eligible to vote in that precinct. LB803 also applies to statewide general elections only. I appreciate the concerns raised about splits within the precincts. It is my understanding there are more splits in primary election, so I limited my bill to apply only to general elections. Other provisions of the bill include not requiring voters to produce identification since they will already be voting by provisional ballot. Also, LB803 requires that all EDR voters go to the polling place to vote. After speaking with several county clerks and election commissioners, they felt allowing voters to come to their offices and vote on election day would be difficult because their office is already so busy on election days. Thank you for your time on this bill. I am happy to answer any questions you may have. [LB803 LB991]

SENATOR ROBERT: Thank you, Senator Aguilar. Are there any questions for the senator? Seeing none, thank you. Senator Avery would like to open on LB991. [LB803 LB991]

SENATOR AVERY: Thank you, Senator Robert. My name is Bill Avery, A-v-e-r-y. I represent District 28. I'm kind of wondering if there were no questions because you're waiting for me. After yesterday, I don't know. LB991 and Senator Aguilar's LB803 address the same concern that voting should be made as easy as possible for all Nebraskans and that in doing so, we should remove all unnecessary barriers. The standard dictionary definition of democracy is a government that is by the people, especially rule of the majority. A government in which supreme power is vested in the people and exercised by them directly or indirectly through a system of representation, usually involving periodically held elections. It is this principle participation in our representative government that serves as the purpose of this bill. In reviewing LB991 and LB803, it should be noted that there are some differences. I think there's a chart

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

that you have handed out to you that notes what they are. Let me just briefly review them. It's, I think, not a bad idea to have a general debate of alternatives and to have some comparisons and discussion about what they are. LB991, the bill I'm introducing, would allow Nebraskans to register to vote on election day of any election. LB803 limits election day registration to statewide general elections, so LB991 is a bit more inclusive. In LB991, registration may occur at the county election commissioner's office, at the county clerk's office or at the polling booth. LB803 limits election day registration to the polling place only. Under LB991, if a resident is registering in Nebraska for the first time, then he/she would be required to provide some identification. It could be a current, valid photo id, a utility bill, bank statement, government check, paycheck or some other government document that is current, shows the name and address of the elector as they appear on the application and LB803 does not require identification. In LB991, another difference is that ballots of those registering to vote on election day would not be treated as provisional. This reduces the workload on county commissioners. But they would be collected and counted like all other ballots and that provision is not in LB803. Let me just point out that no state with same day voter registration has provisional ballots. Provisional ballots have been shown not to be necessary since there is no evidence in states where they have election day registration of any fraud. There are already penalties for voter fraud. It would be nearly impossible to orchestrate widespread fraud that would swing an election. You would really have to organize a pretty extensive system throughout many precincts if you were going to make it work and of course, provisional ballots do add a lot more work to poll workers and it's time consuming. There was a study done by Demos, which is a public policy group that works on democratic participation, a study of fraud, election fraud in particular and they concluded that the low level of voter fraud in the United States today does not preclude the need for continued vigilance to ensure the integrity of election systems. It does, however, suggest that reforms aimed at simplifying registration and voting can be implemented without risking corruption of elections by fraud. That's their study of states that already have election day registration. What Senator Aguilar indicated is quite true, that is that statistics do show that states with election day registration experienced voter turnout considerably greater than those states that do not have it. More than 787 votes were cast by individuals who registered on election day in six of the states where data are available. That represents 5.5 to 18 percent of the citizens in those states who participated in the 2006 general election. So that's a pretty good increase in turnout, even 5 percent would be an interesting and significant increase. Without election day registration, hundreds of thousands of Americans might have been excluded from exercising the most fundamental right of democratic government. Voter turnout in the seven states that offered election day registration in 2006 on average nearly 10 percent turnout was nearly 10 percent higher than states without election day registration. I think it should be the goal of government to encourage as many citizens as possible to participate in the election process. I know that there are some who will argue that well, if you don't care enough about politics to inform yourself about how to get registered and when and where to vote, perhaps you shouldn't be voting. I disagree with that. I think we

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

ought to make it as easy as possible. We live in a very fast paced world where things intrude into our lives and make it sometimes difficult for us to remember that you've got to get down and get registered on this day at that place. I think we can increase participation and that should be a goal. We can do that by making voting easier and election day registration moves us one step closer to that. With that, I will stop and...I don't know what the procedure is now. [LB803 LB991]

SENATOR ROBERT: Thank you, Senator Avery. Any questions for Senator Avery? Senator Lautenbaugh. [LB803 LB991]

SENATOR LAUTENBAUGH: Thank, Mr. Vice Chair. Senator Avery, we've had chances to discuss this before over the years, I believe, you and I. [LB803 LB991]

SENATOR AVERY: We have and there are other people here today from that same task force. [LB803 LB991]

SENATOR LAUTENBAUGH: I saw them back there. Hello, (laugh) good to see you all again. Senator, you would agree that increasing turnout isn't the only goal of any policy. It shouldn't be the only goal of any policy. [LB803 LB991]

SENATOR AVERY: No, it's not the only goal. It's one of many. [LB803 LB991]

SENATOR LAUTENBAUGH: As I understand our current system, you can register by mail up to ten days before. [LB803 LB991]

SENATOR AVERY: I think that's correct. [LB803 LB991]

SENATOR LAUTENBAUGH: Is that really such an impediment to voter registration that we need to do something additional? [LB803 LB991]

SENATOR AVERY: I think in those states where they have election day registration that the evidence suggests yes, that additional steps do actually improve turnout. [LB803 LB991]

SENATOR LAUTENBAUGH: Once again though, is there something flawed with our system as it is that makes it an impermissible barrier to voter registration or are you just saying we should do everything possible to get people registered? [LB803 LB991]

SENATOR AVERY: The latter. We should do everything possible to make voting as easy as we can. I mean, I think we've done a lot in this state already to do that but I think anything additional that we can do to improve turnout is worth doing. [LB803 LB991]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR LAUTENBAUGH: All other things being equal. [LB803 LB991]

SENATOR AVERY: Not all other things being equal. If you have some serious objections to having election day registration that can't be answered by people who have experience in it, then maybe we shouldn't be doing it but I haven't found any, frankly. [LB803 LB991]

SENATOR LAUTENBAUGH: Thank you. [LB803 LB991]

SENATOR ROBERT: Any other questions? Thank you, Senator Avery. [LB803 LB991]

SENATOR AVERY: Thank you. [LB803 LB991]

SENATOR ROBERT: Can I see a show of hands all who intend to testify on this bill? Okay. Okay, we're going to do proponents first and let's try to keep our comments limited and to no repetition. First proponent. Good afternoon. [LB803 LB991]

JAN ROGERS: Good afternoon, senators. I am Jan Rogers, R-o-g-e-r-s, and I'm speaking for Common Cause Nebraska. And just very briefly, it looks like the people who are attracted to the same day voter registration are the very young who are running around saying oh, I forgot to register, you know, and I want to be a part but I just didn't get it done. There are the young families, the very busy people. Sometimes they just don't get it done either. People who are new to town and then people who have one issue and they just want to vote one time but they want to get their voice heard on that. I think for that reason that this is a really good idea to just make it more possible to vote for this kind of very fast paced society, and I think it also expands the political conversation. Especially if we get more younger voters in, we're going to be talking about issues concerning younger voters. So I just think it's a great idea. So thank you. [LB803 LB991]

SENATOR ROBERT: Thank you. Any questions for Ms. Rogers. Seeing none, thank you. Next proponent, please. Good afternoon. [LB803 LB991]

PEGGY ADAIR: (Exhibit 1) Hello. I'm Peggy Adair with the League of Women Voters, A-d-a-i-r. I'm going to tell a story of--case in point--my son, Ryan was away at college in Oklahoma and registered to vote for the first time. He's, you know, as a Nebraska resident and asked for an absentee ballot. He received his absentee ballot the day after the deadline to send in the absentee ballot to vote. Had this type of a law been in effect, he could have gone to register to vote in Oklahoma on that day and would have been able to vote. He was so disheartened about what happened that he didn't vote for another four years after that, even though I bugged him to. So that's a case in point and Senator Lautenbaugh was talking about how there's only a ten-day period between a time that a person can register and election day. A lot happens on the last day of an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

election, particularly a presidential election like what we have coming up. Huge media blitz, things can happen, things can come up in that last week where people can get excited about the election process and that may be the best time to encourage young voters to register and to vote. And I think we need to keep in mind that people in this room, both you and we who are out here speaking, have been involved in the political process for a long time and to us it's a normal aspect of our lives. But for people who haven't ever been involved, it can be intimidating. They don't understand the process and we have to look at it from their point of view that we have a chance here to help them get on board and help to learn about the political process. And I think that anything that we can do to help young people to learn about the political process is important to democracy. [LB803 LB991]

SENATOR ROBERT: Thank you. [LB803 LB991]

PEGGY ADAIR: You're welcome. [LB803 LB991]

SENATOR ROBERT: Any questions for Ms. Adair? Seeing none, thank you. Next proponent, please. Good afternoon. [LB803 LB991]

DAVID SOLHEIM: (Exhibits 2, 3) Good afternoon. Okay. My name is David Solheim, that's D-a-v-i-d S-o-l-h-e-i-m, and I'm the president of the student body at the University of Nebraska-Lincoln. I'm the student regent. I originated from Norfolk, Nebraska, up there in the fighting 19th District and I'm now in my senior year at UNL. I provided copies of my testimony, which I will kind of loosely follow as we go along here and also some statistics which we've compiled from our office on campus. First of all, I'd like to thank Senator Aguilar and Senator Avery for their groundbreaking work on election day registration. The two measures before you today, LB803 and LB991, represent, I think, two slightly different approaches but with a same common feature, allowing the secure registration of voters up to and on election day. EDR is being employed or pursued in many states around the nation, and most notably in Iowa, where they just successfully implemented it this year. Now, this is an issue which originated among students at the University of Nebraska in the context of our broader efforts to promote and renew civic activism. We believe that there are essentially two paths to increasing activism. One, educational outreach and pursuing...and this is something in which we pursue passionately because we believe it's fundamental to our mission at the university. But two, reducing structural barriers and that is what this piece of legislation addresses. Students are perhaps just the most visible example of a growing cohort of people who are more mobile, busier, and increasingly bombarded with advertising and messaging from all angles. And unfortunate as it is, the reality of today is that the most mobile sectors of our society are unaware of the rules which govern voting behavior in the state of Nebraska. Now this is not to say that people are either uninformed or dismissive of their responsibility as citizens because I believe that they are not. It is simply that the present system of dates and forms gets lost in the shuffle, and that particularly among

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

young and mobile people who are first time or inexperienced voters. Too often by the time young people consider the practical realities of voting, and the fact that they perhaps do not reside in the precinct in which they originally registered, the ten-day deadline has passed, though at this point the media attention is only just beginning to grow for that particular election. And so one of the problems that we run into with EDRs, the perception that it's about, simply about registering more people and it is to some extent. But more importantly it's about turning out more people to vote. In fact, as Secretary of State Gale so eloquently pointed out in the JournalStar just a few weeks ago, Nebraska does a fantastic job of registering voters. Between 80 and 90 percent of eligible voters are registered for any given election. But rather, EDR addresses the paradox of our high registration rate but our relatively low voter turnout. As you will hear and I'm sure in much greater detail in the testimony which follows, EDR has the potential to drive up turnout in Nebraska by over 5 percent overall and importantly to us, it has the capacity to push up turnout among a younger demographic by over 10 percent. That's more than 10,000 young people casting ballots in the Nebraska and tens of thousands overall. Turning to the two pieces of legislation before you, we are, as I said, appreciative of the efforts of both Senator Aguilar and Senator Avery in producing very well reasoned language. Both bills serve the purpose of allowing people to register on election day. But there are for the sake of expediency, three differences, as Senator Avery pointed out: The identification requirements, the method of casting ballots, and the elections in which EDR is utilized. And speaking to these differences, we believe that requiring proof of residency and identification is a prudent and wholly reasonable measure. LB991 requires some form of ID, while LB803 does not. It is our contention that EDR should not be restricted to only general elections, if only for the sake of consistency, although we do understand the rationale for doing so with LB803. But LB991 is not restrictive in that regard. Finally, we believe that after presenting the appropriate proof of residency, such as a utility bill or a photo identification, and swearing your oath before the election worker whose penalty is a felony, the new registrant should cast their ordinary ballot with every other voter. LB991 employs this system, while LB803 relies on the provisional balloting. So before I wrap up my testimony, I want to commend all the folks who have given us guidance over the past months. We have benefited tremendously from discussions with election commissioners and county officials, with Secretary Gale, with many state senators on both sides of this issue, and with many citizens from across Nebraska, some of whom you'll hear from today. We are sensitive--trust me--to the demands that we place on our poll workers and our county officials and we truly believe and truly defer to their expertise. Considering what may be a significant departure from the current process, I would at this time suggest that the resulting legislation--which I think we envision as a marriage between the two proposals--sunrise in 2010 rather than at an earlier date, providing more time to make necessary adjustments in the election offices and to break ground during a nonpresidential election year when turnouts are typically lower. And we have some of the best elected officials in the nation and we truly believe that this is something which is possible for the state of Nebraska by 2010. Now following me,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

expect a couple more students: One from UNL, Adam Morfeld, and one from UNK, Tim Hruza, who can provide first-hand experience with registering young people and turning out civic activism on campus and I expect Mr. Stuart Comstock-Gay. He's a director of Demos, a nonpartisan civic advocacy group and he's an expert on voter registration. So if you have questions pertaining to those areas, I suggest you wait for those folks. But at this point I would ask for your support of election day registration, that you would give your colleagues an opportunity to explore this issue in some depth on the floor of the Legislature. So I'd be open at this point to any questions that you might have of me. [LB803 LB991]

SENATOR ROBERT: Thank you, Mr. Solheim. Any questions? Seeing none, thank you. [LB803 LB991]

DAVID SOLHEIM: Thank you. [LB803 LB991]

SENATOR ROBERT: Next proponent. Good afternoon. [LB803 LB991]

ADAM MORFELD: (Exhibits 4-6) Good afternoon. My name is Adam Morfeld, A-d-a-m M-o-r-f-e-l-d, and I would just like to thank everybody here today for taking the time to discuss election day registration in Nebraska. My name is Adam Morfeld and I'm here on behalf of the Association of Students of the University of Nebraska-Lincoln. I'm a student senator for the College of Arts and Sciences and I chair the Government Liaison Committee. I have some handouts here today. One is just a brief overview of my testimony, another one is the resolution for election day registration that we passed in our student senate, and then the last one is a brief that I prepared on election day registration. The idea to bring election day registration to Nebraska began on election day, November 7, 2006, when as an assistant residence director, I was approached by eight residents who wanted to vote on election day but could not because they were registered anywhere from an hour to seven hours away. Some did not have cars, others had class or work but they all had one thing in common. They were students and unable to vote because of registration deadlines. Since December 2006, myself and my committee have been researching, meeting with local and county election officials, state senators, and contacting election officials who administer elections in election day registration states across the country. During this time, we have met with more than 25 Nebraska senators to advocate on EDR and are proud to say that this is a homegrown effort spearheaded by Nebraska students. Today as David mentioned, we have invited several people--some students, some experts--from around the country to testify on behalf of the benefits and value of EDR. My testimony will focus on the student issues involving EDR and their testimony will focus more on the technical and implementation side of EDR. Many arguments that are made against EDR are centered around student apathy and the uniformed argument often came up when we talked to state senators and election officials. I hope that as students here today we have alleviated the fear to some extent of apathy. I would, however, like to point out that today's student face many

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

different challenges than a student did 20 or 30 years ago. Since the 1990s, tuition has skyrocketed in many cases by tenfold, far surpassing the rate of inflation. This has led to a dramatic increase in the average amount of hours that a student must work while attending a university. Many of the students in my residence hall work two jobs and often this leads to 20 to 30 hour workloads in addition to their full time course load. In a 2005 University of Nebraska-Lincoln omnibus study, UNL students worked an average of 20 hours a week. Often in order to be competitive in graduate school admissions, you must also have a strong extracurricular activity backgrounds that often take up several more hours a week. Just as a personal example, my typical day of classes, studying, extracurricular activities, and work often consists of waking up at 7:30 a.m. and going to bed around 2:00 or 3:00 a.m. To add to the busy schedules, students are increasingly mobile and willing to move farther away from home to seek a higher education. Being as though they're often new voters, many times they are not aware of the registration deadlines for both absentee ballots and regular voting methods. As the media covers the elections more and more and the endorsements are made, students became more aware and informed of the elections. However, because of these election deadlines it is often too late and they are unable to vote. A poll released by the U.S. Census Bureau for the 2004 presidential elections indicates that 24 percent of 18- to 24-year-olds polled were not registered because they did not meet registration deadlines. However, I'd like to be sure to emphasize that I am not trying to make excuses for students, but rather illustrate the obstacles that are becoming an increasing reality in our lives. And with this in mind, many make the connection that because an eligible voter does not register on time, they must therefore be uninformed. I believe that this logic is flawed. How is a voter registered 30 years ago in their precinct and who just shows up on election day to vote anymore informed than a voter who takes the trouble to collect the necessary documents and show up to their polling location with the proper identification and proof of residency? Let me also emphasize that as far as ASUN goes and my association, that EDR is only a part of a larger effort to increase voter turnout among college students. In the past year, we have worked with the Lancaster County Election Commissioner to move our campus polling location from an obscure off-campus polling location to a more central location in the Nebraska Union. In addition, we have dramatically increased the availability of voter registration cards on campus in heavily trafficked student locations and are currently applying for a federal grant to provide funds to train student poll workers. Senators of the committee, elected officials often ask how they can work toward increasing turnout among students and younger adults. The bill before you--which provides for election day registration--will not only increase turnout, but will do so in a manner that is both safe and convenient for voters and election officials alike. I ask for your support of election day registration in Nebraska and would be happy to answer any questions that you may have. Thank you. [LB803 LB991]

SENATOR ROBERT: Thank you, Mr. Morfeld. Any questions from the committee? Seeing none, thank you. Next proponent, please. Good afternoon. [LB803 LB991]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

TIMOTHY HRUZA: (Exhibit 7) Good afternoon. My name is Timothy Hruza, T-i-m-o-t-h-y H-r-u-z-a. Mr. Vice Chairman and distinguished members of the Government, Military and Veterans Affairs Committee, thank you for allowing me the opportunity to come before you this afternoon in support of LB991. I'm here today on behalf of the Associated Students of the University of Nebraska at Kearney. As a student senator from the College of Natural and Social Sciences and the Chair of the Student Senates Government Affairs Committee, it is my privilege to express the interests of over 5,000 students pursuing higher education. UNK students have addressed election day registration through numerous hours of formal discussion culminating in the passage of a student senate resolution detailing the specific benefits EDR would have for the state. I have enclosed a copy of our resolution in my written testimony submitted here to the committee. LB991 would be beneficial to all Nebraskans, especially students. LB991 allows civic-minded citizens a better opportunity to exercise their right to cast a ballot, a right that is essential to protecting the legitimacy and effectiveness of democratic elections. Through a collaborative effort with our colleagues from the University of Nebraska at Lincoln, it has come to our attention that students throughout the state recognize the disadvantage of voter registration deadlines. Voter turnout is comparatively low among young people. Of an estimated 281,000 voters aged 18 to 29, only 82,000 or around 27 percent participated in the 2006 midterm election. Election day registration is an effective tool for increasing voter turnout. As you may know, many EDR states report turnout rates close to 10 percent higher than non-EDR states. We believe that EDR would increase turnout rates among young voters in particular. Nebraskans in the 18- to 29-year-old demographic are much more likely to be harmed by the restrictions of a ten-day registration deadline than those in an older demographic. Many young people find it difficult to register. I will focus the majority of my comments this afternoon on how LB991 would address the two most prominent obstacles, both academic and geographic matters. Due to the academic demands on students' time, many are tuning into the elections at later dates compared to other registered voters causing them to miss the registration deadlines. This is not to say that they are uninformed voters. They are simply civic-minded individuals whose time is not devoted to making an informed decision until very near election day. Their time is spent on many different interests up to the final days before the election. At this time, the election becomes more prevalent in their everyday lives. Students research the candidates, determine their favorites, and become energized and excited about the election process. By the time their interest reaches its peak, many students have missed the registration deadlines. The greatest factor preventing young voters from reaching the polls, aside from their academic demands, is the geographic obstacles students must face. In comparison to the composition of Lincoln's student body, the University of Nebraska at Kearney serves a relatively large number of students who travel great distances to attend college, some traveling from as far west as Scottsbluff or Chadron and from as far east as Wayne or Nebraska City. Students from distant hometowns are unable to travel to their hometown precinct to register or to cast their vote on election day. A student's inability to participate in elections in the traditional

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

manner of going to a polling site and casting their ballot is detrimental to their voting experience and future voting habits. Stephen Wayne, a political scientist from Georgetown University, argues that the act of voting increases the likelihood of doing it again and again. Wayne expands by presenting the fact that individuals who participate in actual elections at the polls are more likely to vote habitually. EDR would permit students to more easily register in the precinct where they reside while attending school. This would make it more possible for young voters to physically go to the polls and cast their ballots, habituating them to continue to participate in elections and be routinely civically engaged. As a resident advisor on campus at UNK, I have yet to speak with a student who has had the opportunity to participate in the traditional electoral process by visiting their precinct's polling place. Of the few residents who have voted, all have voted absentee as opposed to the traditional style of voting. Producing civically engaged individuals is essential to the educational process. And by providing students with the opportunity to develop good voting habits, we can ensure that the youngest generation of voters will uphold the democratic process throughout their lives. Aside from the fact that many students attend school a great distance from their hometown, the mobility of young people contributes to the obstacles they face when registering to vote. Although all Nebraskans have the option of registering to vote in person, by mail or when they obtain their drivers license, students--in fact people who are under 30 in general--are more mobile and move much more frequently, therefore requiring them to update their registration more often. For example, if I were to reregister each and every time I've moved during my college career, I would have registered six times in the past three years. Unlike voters in the 30 and over demographic, many students are not in a stable living situation. It would be highly unreasonable for students to register this often. Therefore many students forego the option of updating their registration and are unable to participate in elections. Opponents of EDR suggest that it is beneficial to require individuals to be responsible by taking the necessary steps to register and participate in elections. They contend that informed voters have plenty of time to register before the deadline and therefore it is unnecessary for EDR to be implemented. One of the major flaws with this way of thinking is its inability to consider the obstacles that contribute to our current problems with low voter turnout among young people and increased voter apathy across the political spectrum. Many of the obstacles placed in front of young people in their quest to participate in elections are difficult to address. Both academic and geographic obstacles are inherent to the youngest generation of eligible voters and will continually affect voter turnout for this demographic. Voter registration should not be a contributing factor to these obstacles. Election day registration is a fully feasible and practical way to aid students in their quest to become civically engaged. By eliminating the voter registration deadline, Nebraska can ensure all its citizens the capacity to cast their vote. A citizens constitutionally guaranteed right to vote hinges on their ability to access ballots and participate in democratic elections. Additional voter registration deadlines simply impede the democratic process, reduce voter turnout, and undermine the legitimacy of the electoral process. LB991 would do a great service to all Nebraskans, especially the student population. On behalf of the Associated Students of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

the University of Nebraska at Kearney, I would like to thank Senator Avery for his sponsorship of this proposal, Senator Aguilar for his work with the election day registration as well, and I thank each of you for your time and consideration of this bill. I'd offer questions. [LB803 LB991]

SENATOR ROBERT: Thank you. Any questions from the committee? Seeing none, thank you. [LB803 LB991]

TIMOTHY HRUZA: Thank you. [LB803 LB991]

SENATOR ROBERT: Next proponent, please. [LB803 LB991]

STUART COMSTOCK-GAY: (Exhibits 8-12) My testimony won't be as long as this. There are various reports here that I was asked to submit so I will hand them in. My name is Stuart Comstock-Gay, last name is C-o-m-s-t-o-c-k-G-a-y. I'm the Director of the Democracy Program at Demos, which is a national policy organization based in New York and Boston, though I live in New Hampshire. We work on a number of issues. Among them are issues about democratic participation and trying to lower barriers and increase participation and find new ways to get people more engaged and one of the issues we work on is election day registration and we work on that in many places. I've spoken about this issue in many places in the country. I will say, it's a particular honor for me to be here since I was born in Nebraska and spent my first few years here and I very much appreciate being back here. I won't read my testimony, but I'll raise three key points from it that I think may be helpful to you all and would be happy to answer any questions. I will state in advance though that I think you all know, there are nine states right now with election day registration in some form. The two most recent ones being Iowa and North Carolina. Other ones, Minnesota, Wisconsin, and Maine, have had it since the 1970s. New Hampshire, Idaho, Wyoming picked it up in the 1990s. Montana picked it up and North Dakota, of course, has no voter registration at all. Points I want to make are these: First, we've commissioned for a number of states and we've commissioned for Nebraska a study about what is the potential impact on voter turnout in Nebraska if you have EDR and you're getting a copy of that. But this research that we've done for a number of states conducted by a couple of political scientists suggests that if there were election day registration, it could--there's no guarantee of course as in any of these things--but it could lead to a turnout increase of a little bit over 5 percent in Nebraska, particularly high turnout increase amongst young people which is typical in other states. The report talks about other groups as well, but that may be something that is useful to you and I think it's encouraging. Second point I want to make is about fraud. Fraud does come up as a concern in EDR and the data that the senator mentioned from some research we've conducted is that it just does not occur in any significant way in EDR states. The state of Maine will testify that for...they've had EDR since 1973. There's never been a single prosecution or conviction for fraud related to EDR in that entire time. The state of New Hampshire did a thorough investigation of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

claims about fraud related to EDR from the 2004 elections. There's a single page summary of that report that they presented which was essentially there is no fraud. There was one case where a 17-year-old did go in and vote in his...he had the exact same name as his father, he knew his father was out of town and he voted in the republican primary that year and that was the only case they've had. And I would point out that in EDR states it's a felony to commit this fraud and the penalties are very stiff, and somebody who speaks a lot about that is Minnesota Secretary of State who talks about how if they get somebody they can be banned from voting forever and what they would get for it is very minimal. Finally, one of the critical issues--and I know it's come up in this group here--is what it does for election administration and what the implications are for election administrations and that's a very real thing. We ask an awful lot of the people who administer elections and we want them done right and they do a good job. We want them to do a lot. We want them to keep changing the rules on election administration and the secretary knows this certainly and we don't want to overburden the people who run the elections and we should be sensitive to that. One of the documents you have in here, this one is...we did a survey of election clerks in EDR states. It's not a scientific study but it's a survey of 49 clerks in different jurisdictions, different size, different population, different voter turnout, and asking them questions about how does this work for you? Is it something you can do and the evidence in here is they said this is workable. It's not something you can do without thinking about it. It's not something you can do without planning it, but with careful consideration with good election workers--and I'm sure you have excellent election people in Nebraska--it's something that can be managed if done carefully and if done right, and it's something that you wouldn't want to introduce this without having serious discussions. I know in Iowa...we did some work in Iowa last year, part of the situation, the new secretary of state there who had been county elections official sat down with all the clerks and said, how are we going to make this happen, how are we going to make it work and it can succeed and it can be a good thing. So election day registration can lower barriers. It can get more people participating and it can be done in a way that's responsible and ethical and increase democratic participation. We think it's a good reform. We have a number of other reports on our Web site, and I'd be happy to answer any questions about it. Thank you for the opportunity. [LB803 LB991]

SENATOR ROBERT: Thank you, Mr. Comstock-Gay. Any questions? Senator Friend. [LB803 LB991]

SENATOR FRIEND: Thank you, thank you, Mr. Vice Chair. Mr. Comstock-Gay, thanks for coming in. I know...I was looking through some of the data that was just... [LB803 LB991]

STUART COMSTOCK-GAY: Yeah. [LB803 LB991]

SENATOR FRIEND: ...passed out and a lot of folks, a lot of states interested in at least

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

addressing this subject matter. That's intriguing to me and positive. The question that I had for you, I guess, I really didn't think of until you started talking about it. With Iowa, Idaho, Wyoming, Montana, Minnesota, Wisconsin, New Hampshire, Maine...North Carolina, Minnesota, and Wisconsin, very interesting. [LB803 LB991]

STUART COMSTOCK-GAY: Yeah. [LB803 LB991]

SENATOR FRIEND: High population states and two of them...well, one of them really a growing state, I mean, population-wise and demographically changing. [LB803 LB991]

STUART COMSTOCK-GAY: Right. [LB803 LB991]

SENATOR FRIEND: The other ones similar to Nebraska probably from a growth standpoint. I mean, I wouldn't say they're the same. My question I guess is with the screams of disenfranchised voters in Florida in 2000 and then '04 and then Ohio...in the general election in Ohio in '04, there were people making noises. It seems like when more people show up at the polls, the more confusion...and maybe that goes without saying...are we in a situation where you're saying that Nebraska is a perfect spot for it because we don't have the type of density that some of those other states have? Why...I mean, I didn't see what Florida saw in here but...is this a better trial balloon than a place like Ohio or Florida I guess is what I'm asking? [LB803 LB991]

STUART COMSTOCK-GAY: Well, let me start...I wouldn't say it's a trial balloon because it's been tested now for a number of years in many states. [LB803 LB991]

SENATOR FRIEND: Well, it has but the test seems to be with the nine states and North Dakota I'm going to set over here for a second. The rest of them it seems like not quite as densely populated and having the problems maybe that Florida and Ohio have expressed. [LB803 LB991]

STUART COMSTOCK-GAY: Right. [LB803 LB991]

SENATOR FRIEND: So to me it would more seem like a trial balloon with all those states. [LB803 LB991]

STUART COMSTOCK-GAY: I'll be...if you go to a place like Ohio or a place like Florida right now, given the challenges they're having getting their elections in order, I don't think introducing a new reform like this right now is a great idea. I think that those states have some real challenges in--and they've got good people working on it--but they've got real challenges in getting their system back in order before they would go to something like this. I think a state where the systems run well, where the systems aren't claims of fraud, where there aren't problems, a place like Nebraska. I think it would be easier in a place like Nebraska than somewhere else and I think...is that responsive?

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

[LB803 LB991]

SENATOR FRIEND: No, that's a good point and you helped me, I guess, get to it because it occurs to me that the other states that are using it and using it in a pretty effective manner share maybe the same type of, you know, voter density that we would have. [LB803 LB991]

STUART COMSTOCK-GAY: Commonality of well-run elections, not a history of fraud, that kind of thing. [LB803 LB991]

SENATOR FRIEND: Sure. [LB803 LB991]

STUART COMSTOCK-GAY: Yeah. I think that's right. Let me make a point though that all of the states represented, there's a great variety. There is from the most rural kinds of places to places like Milwaukee and Minneapolis, even Manchester, New Hampshire, although that's not even as big as Lincoln, so... [LB803 LB991]

SENATOR FRIEND: Can I ask you one more quick--Mr. Vice Chair, if it's okay?--one more quick question. Is there--and this is shifting gears a little bit--is there a responsibility? I mean, we haven't really talked about this yet. It's been touched on by some of the gentlemen earlier. Is there a responsibility...do we as a representative democracy have a responsibility as voters? Do we have a responsibility to take some accountability for what you're going to do before you go into a poll? There's timing, there's planning, there's attitude, sometimes there's study, sometimes there's not. We know that. Where do we draw that line? I think that we're going to run into this in an executive session that just might guess that we start talking about voter responsibility and accountability. [LB803 LB991]

STUART COMSTOCK-GAY: I think that's a fair point and I think in this room we're all going to register to vote because we're all policy people, we're political people in some form or another so it's something we're going to do. It's not necessarily something other people are always thinking about, which doesn't mean I don't think that those people don't care about elections. I'll give the example of my daughter who's a freshman in college, started college in Ohio this year. And in New Hampshire we voted on January 8 as you know and by the time she got home from there and visiting family, she missed the deadline to register to vote. She had been thinking about, talking about, paying attention to elections all along. Well, because we were in New Hampshire, she was able to show up and it was...I don't think it's fair to say that the people who aren't registered don't care about these things. They may not have registered to vote. The procedural step of registering to vote isn't necessarily, I don't believe, related to the act of voting and paying attention and being a civic participant. [LB803 LB991]

SENATOR FRIEND: Yeah. One more quick thing, Senator. Does it trouble you that we

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

have...you know, if you range from 14 to 15 to 12 to 18 percent voter turnout of the registered voters in this state...and I know other states have the same problems. We're talking about something that might not fix...I know, I've seen the statistics. [LB803 LB991]

STUART COMSTOCK-GAY: Great point. [LB803 LB991]

SENATOR FRIEND: You lead the horse to water, as Senator... [LB803 LB991]

STUART COMSTOCK-GAY: Great point. EDR is not the magic Band-aid. EDR is not going to solve the problems of participation. There are any number of other things of encouraging people. You know, frankly the University of Nebraska-Lincoln students who are organizing this...we work with a lot of states. This is the only student group that said hey, we want to move this thing, can you help us with it? Most other places it's a different kind of organization. That's a very impressive kind of work. There are all kinds of things that go into it. Do you have competitive elections? Do you have candidates you like? Do you trust your elected officials? Do you...any number of other factors are involved and this is just one of them. I think we need to...you know, we could have a bigger philosophical question about rebuilding the civic infrastructure in America and rebuilding the sense of participation and ownership and responsibility. This is a reform that can help that, I believe. It's one of many things, but it is one that can help that. [LB803 LB991]

SENATOR FRIEND: Thanks a lot. [LB803 LB991]

STUART COMSTOCK-GAY: Yeah, thank you. [LB803 LB991]

SENATOR ROBERT: Any other questions? Seeing none, thank you. [LB803 LB991]

STUART COMSTOCK-GAY: Thank you. [LB803 LB991]

SENATOR ROBERT: Next proponent, please. [LB803 LB991]

AMY MILLER: (Exhibit 13) Good afternoon. My name is Amy Miller, that's A-m-y M-i-l-l-e-r. I'm legal director with ACLU Nebraska. Pretty much all the statistics and factors that I would have talked about in my written testimony have been covered. So I just want to address one issue that Senator Friend pointed out in his questioning most recently about the responsibility of the voters. Certainly we do talk about voting as part of our civic responsibility, but the reason the ACLU is very interested in this issue is because it's also a right of the voters. Given the fact that out of the Bill of Rights which has 27 amendments, 7 of those 27 amendments specifically talk about our constitutional right to participate in voting. And if you look at the history of voting, everything has been in an effort to broaden the participation of people, starting first with

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

people of color, women, moving to having implementation for people with disabilities. We have all throughout the course of American History moved towards trying to increase peoples participation, not because of the fact that we are trying to encourage the responsibility of voters, but because it is the right enshrined in the constitution. Certainly the larger policy questions about how to get people to do this more effectively is out there, is something that other organizations need to work on. But in the mean time, ACLU is supporting both these bills without taking a position on the implementation mechanics of either bill simply because we think that same day voter registration is so important in order to protect that fundamental constitutional right. I'll stop because you've heard a lot of what other words I would say. Do you have any questions for me? [LB803 LB991]

SENATOR ROBERT: Any questions? Senator Adams. [LB803 LB991]

SENATOR ADAMS: You raise an interesting point. I'm still thinking through it. Those amendments in the constitution that have broadened the franchise. Would I be correct in saying that those have occurred to avoid discrimination and is early voter registration in that same category? [LB803 LB991]

AMY MILLER: I think you can say yes. The statistics and the data that you would have seen from the Demos organization certainly is going to point to the fact--and you had your previous testimony--youth especially are greatly effected by the fact that we don't have same day registration in this state. And then certainly a lot of other statistical studies indicate that people of color or people in low economic social category also are impacted because they simply are not as likely to meet the deadlines ahead of time. So I think you very much could argue that this is another step towards avoiding discrimination, not unlike the step that the Legislature took a couple of years ago with re-enfranchising people of a former felony conviction. Being a former felon is not a protected category under the constitution but the state recognized that this is an important step to move forward on. So I think you very much can frame that says another way to broaden the franchise in order to avoid discrimination. [LB803 LB991]

SENATOR ADAMS: Not to be argumentative, but to take it to this extreme, should we then provide transportation to the polling place for those who can't afford it? [LB803 LB991]

AMY MILLER: I think that that's something that one could start making arguments about in certain places. If you had, for example, an entire district that was all elderly or people with disabilities, would it be wise for that particular community to start thinking about providing transportation? Maybe so. Is it a part of the state government? No. [LB803 LB991]

SENATOR ADAMS: But is there a distinction between...yeah. Okay. Thank you. [LB803

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

LB991]

AMY MILLER: Any other questions? [LB803 LB991]

SENATOR ROBERT: Thank you. Any others? Seeing none, thank you. [LB803 LB991]

AMY MILLER: Thank you. [LB803 LB991]

SENATOR ROBERT: Next proponent. We'll hear from the first opponent. Good afternoon. [LB803 LB991]

JOHN GALE: Mr. Vice Chair. Good afternoon, Mr. Vice Chair and members of the Government, Military and Veterans Affairs Committee. My name is John Gale, G-a-l-e. I'm Nebraska Secretary of State and Chief Election Officer for Nebraska. I am appearing in opposition to both LB803 and LB991. In the course of the seven years that I've been Secretary of State, one of my passions has been indeed to continue to ensure that we have a very accessible, reliable, fair, honest, and accountable election system, and to promote voter registration actively, proactively in every way that we can in partnership with our county election officials and our school system and to also work in every way we can to promote good citizenship, both with students and our adults and voter turnout and participation. There is no magic bullet to solve any of these issues. We have to work in tandem with a lot of partners to try to incrementally improve anything that's done in our election system. Election day registration or EDR involves allowing a person who did not register prior to other deadlines to register and cast a ballot on election day. We need, however, to look at the registration process in the EDR states and how it compares to Nebraska because this is not a simple issue where one shoe fits all. In a federal system we have our 50 states. Each state has its own unique personality and culture and its own somewhat unique election system and way of doing things and that has been true in Nebraska as well. We offer a multitude of convenient opportunities for people to register to vote prior to election day. A potential voter can register up to ten days prior to an election, a relatively short period of time. We have no waiting period for residents. In other words, new citizens move to the state of Nebraska. There are a number of states that require a 20-day, 25-day, 30-day residency period before they can register to vote. Nebraska has no such waiting period. A person can register by mail at Department of Motor Vehicles offices and when applying for public assistance or in the county courthouse or in public libraries. In the field of election administration, there clearly are a variety of statutes, rules, machines, procedures utilized by the various 50 states. For example, Oregon does all mail balloting. They have no voting precincts. They have 85 percent turnout. So if turnout is our sole goal by whatever we do with either this legislation or any other legislation, we would immediately move to what Oregon has because they have the highest turnout in the country. But what Oregon does doesn't necessarily fit what the other 49 states do because none of the other 49 states have followed Oregon. It's unique to Oregon. Washington state, for example, has

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

over 50 percent of people who vote early. We used to call it absentee, now we call it no excuse. But that's the culture in the state of Washington and they have a high percentage of turnout because many people want to vote early. They don't want to go to their precinct to vote. So focusing on EDR to say, well, it helps people vote on election day, I would submit to you that the whole trend nationwide is to find ways to allow voters to vote early and not to have everybody wait for election day. As Senator Friend pointed out, you have problems with weather, you have problems with long lines, you have problems with burgeoning, growing precincts where the poll workers can't accommodate the crowd that day. So many of these states are looking for ways to have multichanneling to have multiple ways to accommodate voters. Even in Nebraska we have a law that you have passed that allows me to work with counties of less than 7,000 people who can designate precincts that are sparsely populated and where it's difficult for them to get to a voting precinct for the county election official to designate those precincts to be an all mail in ballot. Cherry County in 2006 did that for virtually all of their counties. So we have a lot of flexibility in terms of voter turnout and registration. Georgia and Indiana are two other states who were seeking voter ID in their elections. Well, is this an idea that the time has come for every state to do that? Probably not, but it's another issue that's being looked at. Some would say well, that's restricting the opportunity of people to vote, even if you had EDR, if you had voter ID that they're a clashing culture. North Dakota has no voter registration requirements. Is that the way to go? Shall we just eliminate registration altogether to make it infinitely easy for everyone to vote and ignore any possibilities of election administration problems or voter fraud or unexpected turnout. It's the only state that has it. It's like Oregon, no other state has adopted it. But to say one answer fits all states would not be an appropriate comment. The election systems of North Carolina, it's claimed to be an EDR state, but really they don't allow registration and voting on election day. It really doesn't fit the category of EDR. What they allow is voting and registration up until three days before an election and we're ten days. But yet we're not considered EDR even though we have a very liberal system. It's just not as liberal as North Carolina who they want to claim is EDR, which they are not. Under current law, a person can register to vote and cast a no excuse ballot on the same day at a county election office during a period of several weeks prior to an election. For the upcoming May 13 primary, this period runs from April 7 until May 2. In other words, you can go and register and vote at the same time in your county courthouse during that period of time, same day registration and vote. So it's not as if we preclude the possibility of registering and voting at the same day. We're just trying to help make it happen a little sooner rather than forcing everyone into a lockstep where they have to show up on election day at their precinct to vote. So I think we're quite liberal about providing a wide window and abundant convenience for citizens to vote in a variety of different ways and right up close to the election date. Many of the states that have adopted EDR are very distinguishable from Nebraska in several different respects and I think this is really a significant thing to focus on. First, several of those states have residency requirements of anywhere from 20 to 30 days. So in larger states where you have thousands of people being very mobile, moving into those states

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

within 30 days of the election, they are excluded from being able to vote because they don't meet that 30-day or 20-day residency requirement. And so those states have adopted EDR to solve that issue for those new "new citizens." Nebraska does not have that kind of a residency requirement. So that reason for EDR is eliminated in the state of Nebraska. A couple of the states that are claimed to have EDR have very early cutoff for registration, different issue, but a registration deadline of 25 days so that there's a long gap for people to correct their existing registration, existing address registrations or change of names or people getting married. Again, EDR may make some sense for states that have that long period of time that precludes registration before the election. But in Nebraska you can register up to ten days before our elections. We don't have that large span of time that precludes people to register so we have a much more accessible system. In addition, several of these EDR states existed at the time of the National Voter Registration Act which was passed by Congress in 1993, a very significant act as Senator Lautenbaugh is very, very familiar with. These states were therefore exempt from what we call the motor voter law and don't have motor vehicle department registration as we do in Nebraska. It was passed by Congress to make registration extremely easy for any citizen who deals with Department of Motor Vehicles and in Nebraska it will account for several hundred thousand changes of registration every year and that's true in every other state that's subject to the motor voter law. Well, these states that are exempt, by and large don't allow registration through the Department of Motor Vehicles. So one of the most convenient ways for registering in Nebraska and other states under NVRA is through the DMV. But these states don't have to do that. In fact, they don't even require voter registration maintenance, so there's no updating of their voter registration lists. Whether people were moving or changing their name, it doesn't matter to them because under federal law they're exempt from having to do that. As a result as you approach election day in those states, you have a huge backlog of people who need to resolve their registration. They've been registered but they need to resolve registration issues and therefore allowing election day registration allows that large number of people who would otherwise have resolved it in Nebraska to resolve it on election day in those states. In truth and fact, there are states that simply purge voters after four years because they're exempt from the NVRA and they're EDR states. We can't do that in Nebraska. No state subject to NVRA can purge voters that arbitrarily, but EDR states can if they preexisted the motor voter law in 1993. Iowa would probably be one of those states that's subject to the NVRA because they're most recently passed their EDR bill and would probably be quite similar to Nebraska in many ways. But from our point of view I guess in looking at EDR, we think it's a registration issue and not a voter turnout issue. Many of our college students....and I want to commend the students who testified here today. They obviously did a lot of preparation, a lot of thoughtful preparation and we're delighted in our office whenever we see student excitement and interest in our democracy because their generation, the day will come when they're the ones that have sit in the seats you're sitting in and make the decisions. And I do have an appointment with David Solheim, president of the university system of students, to discuss other ways that we can help promote college participation. But

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

when you think of college students, most of them have retained their home address where their parents live and that's done for many different reasons, some so they can be claimed as dependents on tax returns, some because that's where they want to keep their home address, they don't want to be deemed independent. So one of the big problems with college students is not registration because all of our county election officials promote high school registration very actively, proactively, and that's why I think we have such a high registration in Nebraska. We worked very hard with the 17- and 18-year-olds in high school before they leave home, but when they get to college they need to vote absentee if they're hundreds of miles away from home and home is still their residence. One of the big, weak links in the system of promoting college voting is to somehow overcome that handicap of students registered at home and trying to cast a ballot from their school. Obviously if they can get home for a vacation or a short trip, they can vote at the election officials office, but otherwise their parents, the school, someone has to assist them in getting their absentee ballot. That is really the focus of our concern about how we resolve some of the issues that are facing students. We congratulate Dave Shively, Lancaster County Election Official, an outstanding election official, in working with the students at the university to relocate the voting precinct. I think that's an outstanding idea and those kinds of things are what we need to look at in the future in order to help resolve some of the handicaps that preclude the ability of students to vote but we don't really think the EDR will promote voter turnout. What promotes voter turnout is the excitement of the candidates, the excitement of the issues, maybe it's a ballot issue, maybe it's a real contested race, maybe it's a multiple contested race, and the degree of the excitement of the election is what promotes the turnout. In nonpresidential years we run somewhere between 28 and 35 percent turnout. Where in a presidential year we may run 68 to 70 percent turnout. Same registered voters, it's just they're not as excited and so the ability to register is not what makes the difference. It's the ability of interest and enthusiasm for what's going on. So for those reasons I would urge that you indefinitely postpone LB803 and LB991. Thank you. [LB803 LB991]

SENATOR ROBERT: Thank you, Mr. Secretary. Any questions? Senator Lautenbaugh. [LB803 LB991]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Mr. Secretary, thank you for coming. [LB803 LB991]

JOHN GALE: Thank you, Senator. [LB803 LB991]

SENATOR LAUTENBAUGH: Would you agree with the statement that in actual numbers, voter turnout has not declined? [LB803 LB991]

JOHN GALE: In actual numbers that would be correct. [LB803 LB991]

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR LAUTENBAUGH: Is it really the case that because we've been so successful in registering people to vote that our percentages routinely decline because the denominator keeps getting bigger, if you will? [LB803 LB991]

JOHN GALE: That's correct. [LB803 LB991]

SENATOR LAUTENBAUGH: So while turnout might not be all that some of us may hope, it isn't as bad as it's routinely presented if you just look at the percentages, is that correct? [LB803 LB991]

JOHN GALE: That's absolutely correct. The motor voter law in particular makes it so easy for people to register. They register even though they have no intention really of ultimately participating. So that registration number grows pretty dramatically, but the number of turnout is still solid. But percentage-wise the percentage can go down so it's not a very accurate gage. You have to really look at the number of voter turnout rather than a percentage of the registration. [LB803 LB991]

SENATOR LAUTENBAUGH: And we've even stopped doing some voter registration activity because we've been so successful, is that your understanding? [LB803 LB991]

JOHN GALE: Well, it certainly is no longer the focus that it used to be. The NVRA itself was part of a dramatic interest nationally to overcome what they considered to be kind of a dramatic reduction in registered voters. So I think with all the different organizations, League of Women Voters and the county election officials and the schools all driving voter registration. We really have overcome the issue and I think there was an assumption built in that well, if we can get them registered, they'll vote and it's an assumption that has failed. It's not correct. There's another layer of effort that has to be made. [LB803 LB991]

SENATOR LAUTENBAUGH: Thank you. [LB803 LB991]

JOHN GALE: Thank you, Senator. [LB803 LB991]

SENATOR ROBERT: Any other questions? Seeing none, thank you. [LB803 LB991]

JOHN GALE: Okay. Thank you, Mr. Chairman. [LB803 LB991]

SENATOR ROBERT: Next opponent, please. Good afternoon. [LB803 LB991]

DAVID SHIVELY: (Exhibit 14) Good afternoon. Good afternoon, senators. My name is Dave Shively. I'm the Lancaster County Election Commissioner and I am here today in opposition to the two bills on election day registration. [LB803 LB991]

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR ROBERT: Dave, can you spell your last name, please? [LB803 LB991]

DAVID SHIVELY: My last name is S-h-i-v-e-l-y. Don't want to repeat too much of what Secretary Gale said, but I do have some additional things that I would like to visit with you about. He did talk about our easy, early or short-term deadlines and the easy process in registering to vote, which I think are very important here in Nebraska that helps us accomplish what we do. One of the things that we do as election officials and we're required by law to do that, is that we're required to send acknowledgment or a confirmation card--if you would like to call it that--to every voter after they register. So we send that card out to them. It tells them where they go to vote. It tells them their specific subdivisions they may vote in, that type of thing. If that card comes back to us, we're required to send it out a second time to make sure and if it doesn't come back, then we would put that into an inactive status for that voter. But I guess I'm expressing that is that's kind of our confirmation that person does actual reside at that address. And so that's one of the things that we're required to do. One of the things that concerns me about EDR--and it may grow over the years--is...one of the things is that you kind of eliminate any incentive for a voter to meet the deadlines. Even though we're going to maintain the deadlines in law that allows voters to meet certain deadlines, whether it's in person or by mail, those deadlines will still be there. But you kind of eliminate any incentive for a potential voter to update their registration because they can actually do that on election day. One of the things is we have a very...in Nebraska we have a very complicated ballot system with large number of precinct ballot styles, and if I could I'd like to hand a map out here for you to look at. The map I'm going to show you or you're going to be handed out is a precinct here in Lancaster County that's just directly south of the city of Lincoln. We call it Grant 1 precinct. In this precinct we have a variety of different political subdivisions. If you turn the page to the second page, it'll tell you how many different possible ballot styles we could possibly have in that precinct. Now we never have 18 as is listed on here because they may not always...the different political subdivisions may not always be on the ballot at each time. But in the 2006 election we actually had ten different ballot styles that the poll workers had to select the proper ballot to give to that voter. Primarily the splits are school districts and this will show you school districts. This is going to improve a little bit once things are finalized, if that ever happens, with the Class I school districts and they actually get placed officially into a Class III or a high school, this will go down a little bit. But this does show you...and this isn't unique to Lancaster County. This happens all over the state and when a poll worker shows up, they have to determine the correct ballot to give that voter. What we do is we place it in their list of registered voters, it has a ballot style number, they go up and they say this voter has ballot style two, they'll select ballot style two to give to them. One of the concerns is is that when someone comes in with a registration, how is that poll worker going to determine the right ballot to give to that voter? That's a big concern for us as election officials. It's a very complicated process for us to determine that in our office and we've spent all the time verifying that before the poll books go out to the poll worker so it's one of those things. Voting through the process at the polls should be an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

easy process. It should be an easy process to go through. But when you start adding different things for poll workers to remember, that's when errors happen, that's when things happen that are wrong. One of the things that also concerns me that if they would get the wrong ballot, then you may be compromising an election. Specifically, now this may not be a statewide election, but where you have your splits or in some of your smaller political subdivisions such as villages, school districts, things like that. And probably one of the things that we have probably more anything is we do recounts on village board races and on some school districts, and if one voter got the wrong ballot, it could effect that election very easily or if two voters in that precinct got the wrong ballot, it could create it very easily a situation where the election was compromised. One of the things too I think, we talk a lot about people that haven't been registered to vote, but there are those people that have gone through all the proper steps and got everything taken care of. If you start a process where we might have more activity going on that polling site that there's more work that hasn't been done, you're going to backup the process. You could backup that process and you can inconvenience voters who have taken the time to do everything in the suggested deadlines. And one of the things that we do have already in Nebraska is we do allow for provisional voting. Provisional voting does allow a voter who has moved within the jurisdiction, within the county that they can go to their new polling site, cast that ballot at that new polling site. That ballot gets placed in an envelope, it gets sealed up in an envelope, and then we'll process that in the election office afterwards and we can determine whether that voter actually got the proper ballot and we don't have to worry about any potential voter getting the incorrect ballot and that ballot actually getting counted. So we actually do have a process in provisional voting that's already set there for voters who are currently registered within our jurisdiction. With that, I just would encourage you not to support this piece of legislation and I would be happy to answer any questions. [LB803 LB991]

SENATOR ROBERT: Thank you. Senator Friend. [LB803 LB991]

SENATOR FRIEND: Thank you, Mr. Vice Chair. Mr. Shively, do you at Lancaster County have you had difficulty in--just recently, not just in, you know, 2000 or 2004--with the recruitment of poll workers? I mean, is that a constant battle for you here? Because what I always heard in Douglas County was that it's not just recruiting them, I mean, there can be training issues and confusion so it's not something that's very pleasant. It's not a fun job. [LB803 LB991]

DAVID SHIVELY: I've always...I've felt very fortunate since I have been here is that we haven't had a lot of issues in trying to recruit poll workers. It seemed that we have a system in place that we actually recruit people. We do not draft... [LB803 LB991]

SENATOR FRIEND: How do you do that? [LB803 LB991]

DAVID SHIVELY: We do it in a variety of different ways. We go out and talk to civic

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

groups and organizations. We actually ask our current board workers that are active that we always provide them with an application that they can give a poll worker. We have people that actual call in. I've actually gotten on radio programs and done news releases and asked people if they're interested. So we spent that time doing that type of thing. [LB803 LB991]

SENATOR FRIEND: I'll tell you why that's relevant to me because--and the reason that I asked the question--because if I'm recruited to sit at...to go do the poll...and I've seen them enough and I'm kind of an animal. I don't want to send a ballot in. I want to go to the poll. I love those places. So I'm going to work those some day, but if I realize that I'm going to become an enforcement agent, I'm a little concerned. Now maybe that's not the direction that this would take us, but it would occur to me if you're sitting at a poll in the morning and you have same day registration or election day registration, that could become either real or perceived. I mean, that could become a situation for a bunch of volunteers who could hinder a fair election or get in the way of what a lot of people would perceive as a fair election, especially if it was, you know, obviously close. And I'm not saying it would add to a potential fraud problem. I'm saying that you're putting--would you agree with this?--I'm saying you're putting authority in an area where I don't think that that person really necessarily bargained for that authority. [LB803 LB991]

DAVID SHIVELY: Well, you're asking--especially in a precinct where you have more than one ballot style--you're asking that voter to verify or that poll worker to verify they're giving that voter the correct ballot. So you know that does put a situation with the poll worker to guarantee that they're giving them the right ballot and that's always an issue for us, especially in split precincts and primarily for us in Lancaster County, those are precincts that are outside the city of Lincoln. They aren't going to be in your rural precincts, although we do have some precincts in the city that have some splits too. They just aren't as many. [LB803 LB991]

SENATOR FRIEND: To sum it up, I'm concerned about potential chaos because we...I don't know. [LB803 LB991]

DAVID SHIVELY: Well, every time you add an additional responsibility onto a poll worker, there's that ability to create a more chaotic situation at the poll site. When HAVA was passed, now we're required to have an AutoMARK machine that assists someone that's visually or mentally or physically impaired to be able to vote in private and assisted. That was another issue for our poll workers and some of them were scared of that machine so it was another thing that was a concern for them. Most of them have come along pretty well with it, but every time you add another requirement, another thing to a poll worker, it creates a situation that you don't know where it's going to go. [LB803 LB991]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR FRIEND: Thanks. [LB803 LB991]

SENATOR ROBERT: Any other questions? Seeing none, thank you. [LB803 LB991]

DAVID SHIVELY: Thank you. [LB803 LB991]

SENATOR ROBERT: (Exhibits 15, 16) Next opponent. And for the record, I will read in two letters from the Knox County Clerk in opposition, one for each bill. Good afternoon. [LB803 LB991]

NANCY JOSOFF: (Exhibit 17) Good afternoon, Vice Chairman and committee members. My name is Nancy Josoff, the spelling on that is J-o-s-o-f-f. I am the election commissioner down in Cass County, and I'm going to try to touch on a couple of things that I hope will not be redundant later on. One of the things I'd like to mention is voters choice. Voters in California and Colorado have both had the opportunity to actually vote on this measure that would allow EDR in their states and in both cases it was rejected by substantial margins. As far as prosecuting things like this, the opponents of Proposition 52 in California stated that permitting EDR makes it easier for criminals and noncitizens to vote and the talk of tough penalties means nothing if it's impossible to prove that a crime was committed. And I think that that's a point that we need to understand is to be able to prove that this was an intentional fraudulent act. I was visiting with my county attorney and his concern is to obtain a conviction that you would need to stand in court and point at that person and say that this is the individual that I saw sign that document. The precinct workers are the individuals that are out there taking these voter registrations that would need to testify to this, not the election officials, and do you really want to put them in that situation because I guarantee you they won't work again. One of the other things I would like to mention is advocates say that EDR counteract registration problems which are frequently sighted as barriers by participation. And EDR would not make this problem go away because you now have temporary staff registering voters without the tools that are available to the election office to resolve and research these problems. The folks that we have out there at the precincts don't have all the tools that we do have in our election office and it is a fact that many voters do not know what school district they reside in. I know that first hand. I thought when I started working in the election office that people knew their addresses and that they knew where their tax dollars went, but they don't. And in Cass County as in Lancaster County, we do have a lot of those splits that go on and they've had some really nice looking presentations compared to what I have here and I won't dwell on that. But a lot of times what we'll do is you'll have a renter that's out in the rural area renting a farm house and they come in and they'll tell you, okay, I'm in this school district, my kids go to this school district. Well, that's probably true. The problem is is that their tax dollars do not go to that school district. The property's taxes are paid into another school district and that would be real tough to determine. So it's going to be a large volume of phone calls because you're going to have to pretty much have every one of those

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

election day registrations called into the office to actually verify that. I have a couple of scenarios here that I would kind of like to put in perspective here. A voter has recently moved and is not updated their voter registration or drivers license. They go to their old polling place. They are actually in the register. Their photo ID shows their old address so they're allowed to vote. The ballot goes into the ballot box. This is if we're not doing the provisionals here now and actually this is voting in the wrong precinct which is against the law but the ballot is still in the ballot box. Now this voter goes to their new polling location. They show their photo ID that has their old address, but guess what? They show their new lease agreement or a utility bill that has the new address on there. They reregister at that point. It looks like they're good. They're allowed to vote. Their ballot goes in the ballot box. So at this point you have two ballots in the ballot box. Scenario two, the statewide voter registration database gets locked down prior to the election and just a couple days after it because we're so tied in together right now with that. So if you have a voter from Sarpy County...in Cass County and Sarpy County we have people go back and forth kind of like throwing a rubber ball on a brick wall there. But you have a voter from Sarpy County. He goes to his precinct where he was normally registered. His name is still in the roster and he votes. His ballot goes in the ballot box. Everything looks good. This voter actually did move to Cass County and now they go to their new polling place, they show their photo ID that has their new address. They register to vote there. Their ballot goes in the ballot box. When this registration comes back to the election office we can search and we can identify that this voter was registered in Sarpy County. We can't make any changes right yet though because our system is still locked down. But once we are able to go into the system and make those changes in all of these new voter registrations several days later--or depending on the volume which could be large--could be a little bit later than that, when the voter has been counted...okay, we've already tabulated the ballots and everything like that. Okay, now Sarpy County is going to go in and they're going to record the voting history for their voter and we go in and they've signed the little roster book and we're beeping them in to record their voting history because this is done at a later date after everything else is taken care of. When they get to this voter, they go to beep him in and it's not going to accept him because lo and behold Cass County has just pulled that voter registration out of Sarpy County. He's now down here registered in Cass County. Cass County has already entered their voting history for this person so he's showing that he's voted there. Okay. Sure. This is a case of fraud. You can see that it is. And we can go ahead and attempt to prosecute these people, but doesn't this undermine the process that we currently have in place to try to prevent this? And with this being a duplicated voter, being discovered after the fact, both these ballots went in, both of them were counted, don't we start to erode the confidence in our process that we have in place? Another thing that I really need to mention is cost, and the reason I say that is because Mr. Aguilar was quoted in the Omaha World-Herald as stating that this bill would be a savings benefit and this would never be a cost savings. That would, in fact, increase our cost of administering elections. Additional ballots would need to be purchased. Additional deputy registrars would need to be hired and trained to handle the voter

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

registration on election day at the precincts. Additional temporary staff would be needed in each election office to be trained on entering all the voter registrations that would come into the state to be able to get these entered in and we're talking temporary staff under pressure now and that alone raises concerns for me. A couple of the other points that I would like to make after listening to some of the conversation, former Minnesota secretary of state, which has been a long time EDR state and she supported EDR, did say she had a concern for long lines and people getting frustrated and leaving. And there's a lot of statistic numbers out there. But my thought is what are the statistical numbers of those people that have turned around and walked away because they were frustrated? We haven't heard of any of those. You know like Dave said, you're disenfranchising the voters that do have to turn around and leave because of that. And the other thing that I did want to mention, the talk about the constitutional rights. On a joint report from the Office of the Attorney General and the State Administrator of Elections in Maryland, there was a report. It says, noting that the Supreme Court has explicitly and repeatedly upheld state regulations requiring voters to register to vote in advance of general and primary elections, the District Court quoted the clerks holdings that a person does not have a constitutional right to walk up to a voting place on election day and demand a ballot. One other item that I would like to mention is, this case went on here in Connecticut. Despite this precedent, plaintiffs argued that the fully evidentiary record developed a trial required the court to find that Connecticut's registration requirements severely burdens voters rights. The court rejected this claim, finding that while registering in advance is not as convenient as registering on election day. Requiring citizens to take one or two minutes of their time to register to vote seven days before the general election cannot reasonably be characterized as a severe burden on the right to vote. Thank you and if you have any questions... [LB803 LB991]

SENATOR ROBERT: Thank you, Ms. Josoff. Any questions from committee? Seeing none, thank you. Next opponent, please. [LB803 LB991]

DIANE OLMER: Good afternoon. My name is Diane Olmer, O-l-m-e-r, and I am Platte County Election Commissioner from Columbus, Nebraska. I'm here representing the Nebraska Association of County Clerks, Register of Deeds, and Election Commissioners. I'm a chairperson, cochair, of the Election Law Committee and I'm here to oppose both EDR bills and I just want to kind of do a short kind of what it might really mean if one of these bills...one or a combination were passed. I go out to a lot of high schools and grade schools, kindergartens and do voter promotions, try to explain the voting process to students, and one of the main things you always hit on is we talk about voter registration and the thing that we talk about is why do we have to register to vote. And that's probably what a lot of these college students are thinking too and you should have been able to surmise what the real purpose is. First is to prove that you are eligible, you live in the right place, and you know, you're eligible (inaudible) ballot. The other is, I tell them your address tells me everything. It gives me time to prepare for you when you come on election day. I want to make your voting experience at the polls

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

easy, quick and easy. We've been hearing from students that don't have time to register to vote. Now if they have to come to the polls and they're one of those people that register on the day of the election, they're going to be put in a little different area than the other ones that are on the book, registered. I got your number. You go through this line, zip, zip. There's your booth, in and out. We're going to have to take that person out of the line, fill out this form. Now we have to figure out what ballot you get. If there's a set of maps that are easy to figure out, the poll worker can do it. Still going to take them out of the line. Still going to cause more time. If it's a very complicated precinct, like Dave Shively mentioned and I have several of those, it's going to require a call to my office. The voter is going to be waiting. This waiting of the voter that didn't register ahead of time may cause a backup of other voters also. So what proponents are proposing will be convenient for this person who didn't get time to register to vote is not going to be convenient. They are going to probably leave very frustrated. And I guarantee you probably next time they vote, they'll make sure their registration is in order because they probably won't have been in a pleasant experience and it will have caused an unpleasant experience for other people who had to wait on other people waiting on them. I'd like to compare it to that commercial that everybody has seen where you have everybody going through the coffee shop using their credit card and you have one guy that uses cash and like the world stops. Well, our voting places aren't like Wal-Mart. We don't have five other lines you can go to if you've got somebody in line in front of you that's holding up the line. You know, we've got one book. You're going to have to go through that line. I do propose it's going to be inconvenient and it may cause lines. I don't want my name in the paper after the 2008 general election as the county that had the longest lines or have Nebraska have that situation proposed across the nation that well, they tried EDR and well, they got some snags because it sure did cause a lot of lines and I do think it will definitely slow up the process. I tell my students when I'm talking to them, the reason you register to vote is so that I can prepare ahead. Just like a mother preparing a meal for her children. They like it on the table when they come. It is convenience for the voter and the other fact is that you get the right thing. It's not a guesswork thing and so that's my whole idea about it. So, any questions? [LB803 LB991]

SENATOR ROBERT: Thank you. Any questions from the committee? Senator Friend. [LB803 LB991]

SENATOR FRIEND: Ms. Olmer, you made me giggle. I throw the food at my kids. I don't care. [LB803 LB991]

DIANE OLMER: Mine are gone from home now. [LB803 LB991]

SENATOR FRIEND: So shall we just throw this bone to everybody? No, the question I had for you, a legitimate one, do you...and I asked Mr. Shively, I mean, I don't know that you see chaos. I think what you see is an increased--I don't know, maybe it's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

workable--but you see increased responsibility from a poll worker. I haven't talked to enough folks in Douglas County to realize that we have a shortage of poll workers, but I get the feeling...and I talked to enough of the people, if I'm working a poll, I don't want to try to be the poll police. I think we just...there's enough to do there. So do you see--it's not chaos--do you see... [LB803 LB991]

DIANE OLMER: I do see... [LB803 LB991]

SENATOR FRIEND: ...the line goes over here, people walk away, and what you're saying is some guy turns around or some gal turns around and says I'm a disenfranchised voter. That was ridiculous. How do we know? We haven't done that. You're saying in Minnesota, they're already complaining about it. Is that the deal? [LB803 LB991]

DIANE OLMER: And I don't know about Minnesota. I just...I'm predicting and so predictions are predictions, just like the people proposing this bill are also predicting that it's going to be a great thing and bigger turnouts and everything. I do see a problem with me getting poll workers. I do have a problem getting poll workers. I beg and I advertise in the paper. I've got letters going out now asking for friends and everything. But things...when I have changes--like when we talked about the AutoMARKs having them at the polling places--definitely was not something I put in my letter when I asked if they could work. I don't want to warn them ahead of time so they can tell me no. I want to see if we can deal with it when we get there. You know, so we'll deal with what we have to, but it's not something I like to keep piling things on the responsibility of my poll workers because, you know, they only get a training as long as they'll come to a training and we talked about the length of our trainings. It's like attention...what attention span does a poll worker have that comes to a meeting. An hour is good. If you keep them longer than that you lose them and we do keep them longer than that and we try to hit on everything we're supposed to. But the laws right now say that we have to offer training for our poll workers and we do and I put in the letter strongly encourage. Some counties say they won't let them work unless they attend. I know that I wouldn't have enough poll workers if I said that. So I do...I go places. I do about eight or nine different schoolings. I go out to different villages so that I make it so convenient that they'll show up because it does help. If they come to the training, definitely we have better poll workers. But there's truthfully only so much you can expect and I expect if this happens, my last sentence to them is going to be, you know, I don't want you making a mistake, do call me and there's going to be a lot of calls coming in. And not that we can't get more lines or anything, but we still have to have qualified people on the other end too. But it will slow up the process and if they can't get in--and we do have cell phones in all these little areas and everything--the last deal is my inspector is going to have to make the decision and hopefully they're intelligent...you know, make a good guess--guess is the word--that they'll have to use. [LB803 LB991]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR FRIEND: Okay. [LB803 LB991]

DIANE OLMER: And it's not a word we want to hear but... [LB803 LB991]

SENATOR FRIEND: Thanks a lot, Ms. Olmer. [LB803 LB991]

SENATOR ROBERT: Senator Lautenbaugh. [LB803 LB991]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today. How long have you been doing this? [LB803 LB991]

DIANE OLMER: April 1 I'll have been the Election Commissioner for 12 years in Platte County. [LB803 LB991]

SENATOR LAUTENBAUGH: And you're new at testifying here? [LB803 LB991]

DIANE OLMER: No (laugh). [LB803 LB991]

SENATOR LAUTENBAUGH: As a matter of fact, every session there's something that you... [LB803 LB991]

DIANE OLMER: Usually I get here at least once, yes. [LB803 LB991]

SENATOR LAUTENBAUGH: ...draws your attention? Usually it's an idea that is either going to increase turnout or make it easier to vote or both? [LB803 LB991]

DIANE OLMER: Right, and I should say this, you know, I have four young children and they would probably say, mom, get a life. But if they did my job--and some of them do help me in the office--they would back me up more than you think. [LB803 LB991]

SENATOR LAUTENBAUGH: And you do want people to vote obviously? [LB803 LB991]

DIANE OLMER: Yes. [LB803 LB991]

SENATOR LAUTENBAUGH: This is your chosen profession? [LB803 LB991]

DIANE OLMER: Yes. [LB803 LB991]

SENATOR LAUTENBAUGH: If they don't vote, you don't have a job? [LB803 LB991]

DIANE OLMER: That's right. [LB803 LB991]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR LAUTENBAUGH: And you've seen moves come and go, like making election day an hour longer? [LB803 LB991]

DIANE OLMER: Yes. [LB803 LB991]

SENATOR LAUTENBAUGH: You came and testified against that? [LB803 LB991]

DIANE OLMER: Yes. [LB803 LB991]

SENATOR LAUTENBAUGH: And I was here with you and you've seen other things come and go that were designed to increase turnout. Wouldn't we all just be better off if we just listened to you? (Laughter). [LB803 LB991]

DIANE OLMER: Well, now that I'm the election God...(laugh). I do think Secretary of State Gale's comment about what gets people to come to elections, it really isn't the fact that they registered ahead or on the day of, it's what is on the ballot. I mean, what is on there. Like we'll have a good turnout for the presidential general because it's the presidential election. If there was an amendment on there that really tripped everybody's trigger, they would turnout also. It's what is on the ballot that will get people to come out. [LB803 LB991]

SENATOR ROBERT: Senator Friend. [LB803 LB991]

SENATOR FRIEND: Thank you, thank you, Mr. Vice Chair. It's interesting that you point that out. People are talking recently about Barack Obama and the high turnout in the spots where this guy shows up. I just thought you'd find it interesting, the first time I voted--I was a registered democrat--the first time I voted, I voted for Ronald Reagan. I sound like Mitt Romney now, but I wouldn't have voted. I probably would have sat home. So I mean, it's interesting you bring that up. [LB803 LB991]

SENATOR ROBERT: Any other questions? Thank you. Any further opponents? [LB803 LB991]

DAVE PHIPPS: Good afternoon. [LB803 LB991]

SENATOR ROBERT: Good afternoon. [LB803 LB991]

DAVE PHIPPS: (Exhibit 18) Good afternoon, members of the committee, Mr. Vice Chairman. Thank you so much for letting me speak today. My name is Dave Phipps, that's P-h-i-p-p-s. I'm the Douglas County Election Commissioner and I am passing out my written remarks, and they echo I think fairly substantially with what the other folks have said and so I'll just keep it very brief. You know, we were talking about ease of registration. I can't personally remember a time when we've had a Secretary of State

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

who has done more to promote the idea of registering to vote. You can't swing a cat around here without, you know, running into a voter registration form it seems like. We've got two laptops, I see. Anybody wants to go out to the Internet, they can download a form right now. So you know, it's just so very simple to register and so I think the question really becomes, you know, what's our responsibility and, you know, what's reasonable? And I think Senator Adams sort of touched on this earlier. You know, if we're talking about increasing registration and increasing voter turnout, you know, I can knock on everybody's door and wait for them to respond and have them fill out a registration form and on election day I can go pick them up, drive them to the polls, wait for them to vote and take them on home. You know, it's just a matter of what's reasonable. I don't think that's really reasonable. So you know, we have some responsibilities in society. We've set a registration deadline that is incredibly close to election day. Ten days is not a long time and you think well, what do you need ten days for? Believe it or not, we've got a lot going on ten days before an election and we've got to get ballots ready. We've got to get our supplies ready. We've got to get our poll workers set. We've got to get our...everything done in that last ten days. It's a madhouse at my office. And I do want to very much commend the students from the university system. I know that they really believe in this and I know that they've taken a lot of time and I commend them for that. I didn't realize how hard it was. I must be farther removed from college than I seem to remember that there was no time for me to go register to vote, and I must have not been busy enough when I was in college that I wouldn't have had time to register. I can recall my first election was 1992 and I was going out of state for school and I remember driving actually four hours in a blizzard to go vote on election day to come home and do that. But you know, it's also one of those stories I had to walk up hill in the snow, bare feet for ten miles to get to school everyday. So we all have our responsibilities. Ten days, I don't believe is unreasonable to expect for voter registration deadline. Could we make it easier? Sure. Should we? I don't know that the benefit really is there that maybe we all think maybe it is. So with that, I'll leave it up to you to ask any questions and I'd be happy to answer them. [LB803 LB991]

SENATOR ROBERT: Senator Pahls. [LB803 LB991]

SENATOR PAHLS: Dave, thank you for coming. I am reading part of your letter. You say you can register by mail? [LB803 LB991]

DAVE PHIPPS: Yes. [LB803 LB991]

SENATOR PAHLS: Okay. Explain this to me, can I go to the Internet and pull down the application? [LB803 LB991]

DAVE PHIPPS: Yep, you can go to the Internet, fill out the form online, print it out, stick it in the mail, and as long as it reaches us...by mail it has to reach us actually 17 days prior, so it's the 10 day plus 7. But if you miss that deadline, then you still have another

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Government, Military and Veterans Affairs Committee
January 31, 2008

entire week to come to my office and register in person. So that's where the ten-day actually comes in. [LB803 LB991]

SENATOR PAHLS: Okay. But I can't do it on the Internet...I mean I... [LB803 LB991]

DAVE PHIPPS: You cannot submit it electronically and have it come because the way the Nebraska law reads right now with electronic signatures and the like. [LB803 LB991]

SENATOR PAHLS: Okay. And one of the reasons why I'm asking that question is several weeks ago or maybe a month or so ago, I took my son who's 18 years old down to the office to pick up the form, and then we went home and all this kind of stuff and he says, well, dad why don't we just go and pull it off the Internet? Why did we have to run down there? Well, I was trying to get him to know where the office was and all that. So that goes to show you, this 18-year-old is more on top than I was because he says, why don't we just pull it down? Now, just for point of clarification, when he sends in the form, he does have to have a copy, like, of his driver's license or something? [LB803 LB991]

DAVE PHIPPS: If he's never been registered before and he's a first-time mail in registrant than yes, he has to provide some sort of identification. It can be a drivers license number on the form and that's sufficient. He could provide a photocopy of that. He could do a government check, a utility statement, anything with his current name and address on it would work as well. [LB803 LB991]

SENATOR PAHLS: Okay. So basically it's going to the computer, hitting some buttons, printing it out, put it in an envelope, and mailing it. [LB803 LB991]

DAVE PHIPPS: Yep, just that easy. Any time he goes to a library in Douglas County, he can register to vote, you know, the courthouse obviously, our office obviously. But you know we work with, you know, places all the time to try to come up with new ways to get this information out. I know here in Lancaster County they, I mean, they've got voter registrations everywhere. I mean, you go to a bank and you'd probably find one. So I mean, we're always trying to look for new ways to make sure people are registered and we work with the high schools to ensure that they're, you know, letting their 17- and 18-year-olds that are going to be 18 by election day register to vote. We get great cooperation with that. The League of Women Voters works with our office very closely to help us do registration drives. But basically the vast majority of our registrations and changes in registrations either come in by mail or they come through the DMV, and that's just the simple fact of the ease of use is so dramatic and the readily available forms, you just don't have to go out and look for people to register anymore. We used to sit in shopping malls and grocery stores and, you know, get lots and lots of registrations and after the motor voter law passed, we simply don't have to do that anymore. We'll still do it but, you know, I've sat at registrations for three, four, five, six hours and gotten one or two people to register to vote. So I mean really your return on that is pretty

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

insignificant when they could just go to the computer, download the form, and send it in and still be registered. [LB803 LB991]

SENATOR PAHLS: Thank you. [LB803 LB991]

SENATOR ROBERT: Any other questions for Mr. Phipps? Seeing none, thank you. Further opposition? If I can remind everybody not to repeat what's been said ahead of you, we'd be moving right along. Thank you. [LB803 LB991]

SANDRA STELLING: (Exhibit 19) Thank you. Senator Robert and committee, I'm Sandra Stelling, S-t-e-l-l-i-n-g, Jefferson County Clerk and Register of Deeds and Election Commissioner and also the cochair of our legislative committee for our Clerks, Register of Deeds, and the Election Commissioners Association. One thing that I noted through all the testimony--which I'm not going to try to even go over all of it--is the felons. I guess I would have a problem with our election workers knowing whether an individual is a felon or not and if he does confess or they know who the person is, he goes to vote, how are they going to know that he's eligible to vote because after they serve their time and they can show proof, most of the time they won't come in and show the proof even to us, let alone to an election worker. And we talked about registering the students. I did a survey. I registered 51 of our own high school students in Fairbury and we had a school levy override. All but two of them went and voted. About--I don't know--four months later was a primary election. There was not one of them that went and voted. They had not graduated from high school yet. In the general election we had a handful because the parents came in and requested that absentee ballot form and some of them did, I think, probably did ask for them on their own. But we had very, very few that did vote in that general election. But I do want to commend the students for getting behind us and working on it. The handout that I gave you is one of our precincts that I have 14 splits in and it shows the maps, and I've also given you a list of all of the splits within that precinct. These maps are the ones that go out to our poll places. For some people to make sure that they're in the right school district. The one little village has three schools within that village. They have to know their lot and block. They say, well, my kid goes to X school when they actually...the land is in Y school. It is hard for the people to know exactly what their legal description is when they go in on something like this, and I guess I just ask you to oppose both of these bills on all the testimony that's been given. If you've got any questions, I'll be more than willing to answer them. [LB803 LB991]

SENATOR ROBERT: Any questions for Ms. Stelling? Seeing none, thank you. Next opponent. [LB803 LB991]

BETH BAZYN FERRELL: Good afternoon, Senator Robert and members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I won't repeat

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

the testimony that you've heard today about why counties are in opposition to this bill. We are all in favor of getting more voters to vote, getting more registrations. But we don't believe that this is necessarily the most workable idea based on the way the laws are in Nebraska today. Be happy to try to take questions. [LB803 LB991]

SENATOR ROBERT: Questions? Thank you. Next opponent. Good afternoon. [LB803 LB991]

MATT MILTENBERGER: (Exhibit 20) Vice Chairman Robert, members of the Government, Military and Veterans Affairs Committee, my name is Matt Miltenberger, spelled M-i-l-t-e-n-b-e-r-g-e-r, and I am the executive director of the Nebraska Republican Party and I'm here in opposition of LB803 and LB991. The Republican Party's opposition to efforts to change Nebraska's election law to allow for same day voter registration is based on the principle that if something isn't broken, there is no need to fix it. That philosophy is borne out by our nation's judicial system as courts have traditionally endorsed preelection day registration requirements. Preelection day registration requirements do not disenfranchise voters. Indeed, the Supreme Court has explicitly and repeatedly upheld state regulations requiring voters to register in advance of general and primary elections. Federal courts have recognized that preelection day registration requirements serve an important state interest, including minimizing voter fraud, as well as the perception of a vulnerability to fraud, and in avoiding confusion and chaos on election day itself. The system we have works. There's no need to try to fix it, especially in this manner. I appreciate the time and if you have any questions I would be happy to answer them. [LB803 LB991]

SENATOR ROBERT: Any questions? Seeing none, thank you. Further opponents? Is there anybody wishing to testify in a neutral capacity? Senator Aguilar, would you wish to close on LB803? [LB803 LB991]

SENATOR AGUILAR: I would. Thank you. Thank you for your patience. It's been an extremely long afternoon and let me just quickly say thank you to the students for what they attempted to accomplish here today and I have a lot of respect for them in their efforts. Why did I introduce this? Let me just give you a brief scenario as to why. It's been a couple of years now. The United States government come down with an initiative called Help American Vote Act. As the chair of the Government, Military and Veterans Affairs Committee I felt it was my responsibility to do just that. Some of the reasons I heard today could be valid, maybe not. Most of them I would disagree with. The best excuse I heard not to do this is it's inconvenient and there may be long lines. I don't know if that's justified. I really don't know if I would accept that as a good enough excuse. Another excuse, you're going to get criminals and noncitizens voting. Come on. Noncitizens do not want their name on a list anywhere. Okay? We all know that. Criminals. My guess is they would be out committing crimes that may benefit them. How is it going to benefit them to do a voter fraud? I don't think that's going to happen either.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

As far as voter fraud is concerned, to my knowledge there has never been one case of voter fraud prosecuted in the state of Nebraska. So as far as I'm concerned, that's another ludicrous excuse. I wonder does it make sense to accommodate, bend over backwards to help people who wish to vote early, but then turn our backs on the ones who want to vote on election day? I don't know, and why did I choose my version instead of Senator Avery's? I feel it's much less onerous and if you heard a lot of the testimony in opposition today, it talked about the large number of ballots, the large number of things that could be on there. Well, mine's specific to the general election where that's not really a problem and also it's done by provisional ballot, which means you don't have to mess with checking the IDs at the site and have those long lines. Secretary Gale said something that really caught my attention. He said there will come a day when these young people will have to make these decisions. I would submit to you that that day is here if we would just allow them to pull the lever. Thank you. [LB803 LB991]

SENATOR ROBERT: Any follow up questions for Senator Aguilar? Thank you, sir. Senator Avery, would you like to close on LB991? [LB803 LB991]

SENATOR AVERY: Thank you, Senator Rogert. I apologize for leaving and missing some of the testimony, but I had another bill which is still being heard across the hall. [LB803 LB991]

SENATOR ROBERT: We didn't miss you. It's okay. [LB803 LB991]

SENATOR AVERY: You didn't miss me. You were glad to see me leave. [LB803 LB991]

SENATOR FRIEND: I did, (laugh) I missed you. [LB803 LB991]

SENATOR AVERY: I do want to address some of the points that were made that I was here to witness. Senator Lautenbaugh is right. The percentage of voting population is down based upon the number of registered voters. Motor voter was very successful. It got a lot of people registered who were not previously registered, but it didn't change the people, it didn't change their interests in politics or their lack of interest in politics. So the percentage of registered voters went down because the number of registered voters went up and you were actually bringing in a lot of people who weren't that interested in voting anyway. You made it easier for them. What's interesting though, and we need to keep this in mind, that election day registration, you're really dealing with a population that does care, they do want to vote. But for some reason sometimes beyond their control they haven't been able to get registered in time. They care enough to show up on election day and ask to register at the election place and vote. Those are the people that we're really talking about. Another point was raised, I believe, by Senator Friend about chaos problem that might be created at the polls. We're talking about an average of 5 percent turnout increase. That's not a very large number. It hardly rises to the level

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

of chaos unless we have really serious problems with our election system and I don't think we do. If a 5 percent increase in turnout would create the kind of problems I understand we heard about, then maybe we do need to take a better look at our--a very serious look--at our election process and how it's administered. Another point I just heard when I came in because it's one of my favorite quotes, somebody said if it's not broke, don't fix it. That's a Ronald Reagan quote. I love it. And I would suggest that we're not trying to fix a problem so much as it is we're trying to facilitate a group of people who want to vote and for some reason or other they haven't gotten registered. It's not that they don't care. If they didn't care, they wouldn't show up and ask. They're showing up to ask because they do care. So I don't like to fix problems that aren't broken or not there, but I don't think that applies in this case. I'll stop there and answer any questions you might have and if you will permit me, after this I would need to go back across the hall. [LB803 LB991]

SENATOR ROBERT: Senator Pahls. [LB803 LB991]

SENATOR PAHLS: I hear what you're saying and I know the young adults are busy, but my son pointed out to me going to the computer, getting the form, and mailing it...I was naive enough to say gee, I have to run down to the election, but I wanted to do that to show him where that was in Douglas County. But he was smart enough to pick up all I got to do...and most of the young men and women of today are very computer literate. Now, I know there may be some groups that we want to hit that may not have access to the computer. I want to ask you a question. As your life as a college professor, were you ever involved in the student senate? [LB803 LB991]

SENATOR AVERY: Not in any official capacity, but two of the young men that testified today are former students of mine so I kind of feel involved. [LB803 LB991]

SENATOR PAHLS: Yeah, the reason I'm asking that because one time I taught at Wayne State, we would have the young, you know, the body and I found out at that time on the elections of the potential of 4,000 or 5,000 kids to vote... [LB803 LB991]

SENATOR AVERY: I know where you're going. [LB803 LB991]

SENATOR PAHLS: Yes, I mean, I was appalled because I was involved in some of that. Out of a potential several thousand people to vote, some of those offices were won by a handful of votes. [LB803 LB991]

SENATOR AVERY: I think you have to consider what the stakes are in a campus election like that. [LB803 LB991]

SENATOR PAHLS: And I do understand that but it's the same concept on voting. [LB803 LB991]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR AVERY: It is the same activity, same concept... [LB803 LB991]

SENATOR PAHLS: Yeah, and I don't want to... [LB803 LB991]

SENATOR AVERY: But the motivation might be different for a student government election than a presidential. [LB803 LB991]

SENATOR PAHLS: And I agree with that. I was just thinking that...you know, I do want you to really make a look...not you, but to make some effort if you're going to vote. That's just where I'm coming from, you know. [LB803 LB991]

SENATOR AVERY: Well, you know, I think if you show up at the polls, you're not registered, you're making an effort, you're showing an interest, you're ready to vote, you just happen not to be registered. Let's give them the opportunity. [LB803 LB991]

SENATOR PAHLS: Thank you, Senator. [LB803 LB991]

SENATOR AVERY: I like to always ask the question, what do you gain and what do you lose, and the question here is what do you lose by offering this as an option to voters and you gain something. I think clearly you gain something. [LB803 LB991]

SENATOR ROBERT: Any further questions? Thank you, Senator Avery, and that closes the hearings on LB803 and LB991. You have the gavel. [LB803 LB991]

SENATOR AGUILAR: We would ask that if you're leaving you move quickly and quietly to the door so we have two other bills to hear yet today. Thank you. Thank you for that. We're now ready for Senator Karpisek to open on LB1062. Senator Karpisek, enlighten us. [LB803 LB991]

SENATOR KARPISEK: Thank you, Chairman Aguilar and members of the Government, Military and Veterans Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am here today to introduce LB1062 which deals with the election ballot recounts. Current statute 32-1119 allows a candidate that fails to be nominated or elected by a margin of 1 percent of the votes received by the candidate who received the highest number of votes for the office at an election in which more than 500 total votes were cast or 2 percent or less in which 500 or less total votes were cast, then such candidate shall be entitled to a recount. All expenses of a recount under this section shall be paid by those political subdivisions involved in the recount. Sub 7 is the new section in the bill. If a losing candidate submits a written request for a recount at his/her expense under Section 32-1121 and indicates that he/she wants a manual recount, the procedures for the recounting of ballots shall be specified by the Secretary of State to ensure uniformity of standards by all individuals involved in handling the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

ballots to be reviewed. The procedures shall include the location of the recount and the standards for reviewing the ballots to determine the number of valid votes pursuant to Section 32-901. So LB1062 would allow a losing candidate to have a manual recount at their own expense. My main reason for this bill is to make election process more transparent. I am not trying to say that there is some sort of a big fraud going on at all. I just feel that if we have the paper ballots and if the losing candidate would like to have those ballots without getting a court order, that they could be able to go and have those votes manually recounted at their own expense. And if there's any questions, I would be glad to take them. [LB1062]

SENATOR AGUILAR: Questions for the senator? Senator Lautenbaugh. [LB1062]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Senator. Do you know at what point...I mean, how many ballots we're dealing with before the inevitable human error makes a hand recount more inaccurate than the scanners because there's got to be a tipping point in there somewhere? [LB1062]

SENATOR KARPISEK: There has to be. No, I don't know exactly. [LB1062]

SENATOR LAUTENBAUGH: Is your bill designed for races where there's maybe 500 votes cast so that human error might not be egregious or are thinking of a statewide race where we could be trying to match wits with the scanners and rely on hundreds of people throughout the state counting by hand? [LB1062]

SENATOR KARPISEK: Right. It is not, it is all elections and I realize...and I will not try to make the argument that hand counting will be more accurate. I just think that there is growing...I don't want to say distrust, but when we have the ballots and we won't let anyone see them unless they get a court order, just the transparency in the process is what I would like to see. [LB1062]

SENATOR AGUILAR: Further questions? Senator Pahls. [LB1062]

SENATOR PAHLS: Senator, thank you. A question I have is let's say run through and there is a discrepancy...I mean it's a close race. They run the same ballots through. That's what the issue is with you? [LB1062]

SENATOR KARPISEK: Yes, running the same ballots through the same machine without anyone else being able to verify it. [LB1062]

SENATOR PAHLS: Okay, so you're saying the machine is...the error is in the machine. [LB1062]

SENATOR KARPISEK: It could be and I think most of my point is just a matter of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

perception that we right now cannot get at those ballots unless we have a court order. So you would have to, I feel, prove that you would have to be able to get to those ballots because of fraud or something. I don't know how you can prove that. [LB1062]

SENATOR PAHLS: But do you realize that, let's say if we are running these through a second time, and let's say I happen to be involved in the race, I can sit there and watch what they're doing. I mean it's not behind closed doors. [LB1062]

SENATOR KARPISEK: No. [LB1062]

SENATOR PAHLS: I mean it's available for the candidates to sit there and watch. I mean I know they're running boxes through, it's hard to...but I thought that they said for the most part when they run it through the machine, the error rate is so low. I mean if it's 1,000 this time, the odds are it's going to be 1,000 the next time. But you think there's a flaw actually in the machine then apparently. [LB1062]

SENATOR KARPISEK: I think there could be a flaw in the machine. I think that there is just a flaw that all of these ballots are not accessible to the public. I feel that they should be public record, that a losing candidate that pays for it should be able to have access to the ballots. [LB1062]

SENATOR PAHLS: So I look at these ballots and I say, oh, gee, I think...where's my expertise going to be? How am I going to know? Do you just want me to have access to the ballots? [LB1062]

SENATOR KARPISEK: No, there would be a hand recount...still in the, it's in the other section of the bill that I did not read...but let me see here...it would be run through by the Canvassing Board or the Board of State Canvassers at the expense of the...we already have it in statute how a recount goes. Right now you can do it, like you said, and it will be run through the same machines at your expense if it's over the 1 or 2 percent. So this would just include the manual, that you could have the manual recount. [LB1062]

SENATOR PAHLS: Okay. Thank you. [LB1062]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Senator. [LB1062]

SENATOR KARPISEK: Thank you, Senator Aguilar. [LB1062]

SENATOR AGUILAR: First proponent. [LB1062]

JAY STODDARD: (Exhibit 1) Senator Aguilar, Chairman, he's from my district or I'm from his district. [LB1062]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR AGUILAR: Welcome, Mr. Stoddard. [LB1062]

JAY STODDARD: How you doing? Jay Stoddard is my name. My last name is spelled S-t-o-d-d-a-r-d. This will not take very long in testifying for this bill. Senator Ben Nelson would have never been elected Governor of Nebraska if he had not had a manual recount at that time, and from the prime...and this happened in the primary. And so he made it through the primary and into the regular election for Governor and became Governor of the state of Nebraska. I know. I worked on his campaign and he is a personal friend of mine. I do believe that transparency...and there are things that keep software from being inspected. In the state of Maryland...and this answers the gentleman's question who wanted to know about the machines. This is a big national issue at the present time and I want to give you this and you can look it over. I just want you to know that I think we should really count every vote the way it should be counted, and if there is some question, if a person wants to pay for that or if the Election Commissioner...and this is where I'm getting John Gale involved, you should be the final say so in this happening and I think it's important. I've been to the board, the Canvassing Board, and I know they have had things happen. You know, Hastings had their voting machines go bad and there was about a week before the manufacturer of the voting machines came out. In Hall County, we had a delay in the last election and it actually was rather important. Smith was declared the winner for the district but in our area, Scott Kleeb actually won the vote count and so that changed. But the initial report was that Smith had won, but not in Hall County. It was Scott Kleeb that did and, you know, 18,000 votes in Florida they can't find, Maryland, Diebold, they've had a group come in to check to see if it could be hacked and I have documentation on all of this. I'm not just talking through my hat. But I appreciate your work in doing it. There's got to be an...there was a lady here who took the ballots home overnight in the western part of the state. That was unusual but I'm sure she was an honest person and was just trying to do the right thing. But I thank you for allowing me to say something. [LB1062]

SENATOR AGUILAR: Questions for Mr. Stoddard? Seeing none, thank you for coming down today. [LB1062]

JAY STODDARD: All right. Okay. [LB1062]

SENATOR AGUILAR: Welcome. [LB1062]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record, my name is John K. Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union and this is my first time before the Government Committee this year and I've had a very busy week already but this is not a new issue for my organization. We're the second largest general farm organization in the state of Nebraska. We represent 5,000 families across the state and this issue has been apart of our state policy for some time. So we have been supporters of efforts to do bills that would accomplish a similar mission and I will try to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

just highlight the kind of the rationale for why that is. We spend an awful lot of time in our organization encouraging citizenship, participation, telling folks to get educated, to get informed, get involved, and involved in a constructive way. And so we view ourselves very much as a civic organization representing agriculture and in fact, our summer youth program theme this year will be on citizenship and all the responsibilities that go with it. So when we get to this issue, here's the part where the rubber meets the road for our members and our delegates. If there is a flaw in the machine or in the software and you replicate it, so what. So if you just...if there is in fact a problem where a system has been hacked, it's been compromised, where a scanner is inaccurately counting things, where the software programs has been jimmed or accessed in some way and you just do the process over, why would you think that the result would be different? And what they want is they want a physical count of the ballot. They want human beings...all the errors that go with human activity included, but honest folks looking at the ballot to be able to actually count the ballot and decide whether or not in fact that's right. They'll live with that and it speaks to the credibility, it speaks to the integrity, it speaks to the transparency of the process and when folks lose confidence in the process, they are a lot less inclined to play or participate. So when I hear arguments about cost, when I hear arguments about other things, those are never really the primary considerations. The integrity of the actual count is it's got to be right. Right is it. The example I have used in the past is my own internal organizational issues relative to doing membership certification. Five thousand families is a fair amount of folks to make sure everybody's dues are paid and what it is that you have and as you turn in those numbers to national, and I've recounted examples in the past where I've had examples of software problems where my very expensive and sophisticated accounting system has imputed the wrong numbers. And so I've had to go back through our books and go through and figure this out and I would just like to report that this year, as opposed to in previous years where I've had to recertify twice, I am now on my third set of certifications this year and the interesting thing is that our database system and the database system of our national organization, we're both wrong. So it's not like we were the only ones who were wrong this time. They were as well and so in fact the number that we came up with, the third number that we came up with was different than either one of us had logged in and yet we know that when you go through the bookkeeping program that the total number of books that were registered in have to equal the total number of dues paid. And so it is I think that there's a fair amount of logic in the position that says that at the end of the day if there is a lack of confidence in any electronic system whatsoever that we'll all live with an honest physical count, and we've taken away the excuse of expense in this case. If the losing candidate feels strongly enough that he thinks that the results were compromised and is willing to pay for it, I can't see what the public interest downside could be to a physical recount of the ballot. Thank you very much for your committee's time and attention and I would be glad to answer any questions in the off chance that I might be able to. [LB1062]

SENATOR AGUILAR: Thank you, Mr. Hansen. Senator Friend. [LB1062]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR FRIEND: Thank you, Chairman Aguilar. Mr. Hansen, good to see you again. How are you? [LB1062]

JOHN HANSEN: Good to see you. [LB1062]

SENATOR FRIEND: The way I read this bill...try to convince me...the only way I'm going to get a physical...let's say I'm a candidate. I lose by 20 votes. I get an automatic recount paid for by the subdivision, but if I want a physical recount, I need to pay for it. What if I don't have any money? How is that fair socially? [LB1062]

JOHN HANSEN: That is absolutely not fair. [LB1062]

SENATOR FRIEND: Well, the way I read this bill, that's exactly what would happen. [LB1062]

JOHN HANSEN: I think that this bill is perhaps a response to the issue of expense that has been raised in the past and I... [LB1062]

SENATOR FRIEND: I don't recall...I'm asking you. You came in here in a proponent fashion and this bill's...I remember talking to Senator Karpisek about this bill last year on various occasions. That bill was more fair than this one. [LB1062]

JOHN HANSEN: I agree. We're just trying to see how low do you have to go in order to get a physical recount and this is in a way...I would be glad... [LB1062]

SENATOR FRIEND: But Mr. Hansen, that's a little bit...well, I don't have anything further. I understand your point. I just was going to get into it with you, (laugh) but I don't need (inaudible). [LB1062]

JOHN HANSEN: I would prefer that that provision not be in there. [LB1062]

SENATOR FRIEND: I understand. [LB1062]

JOHN HANSEN: I would be more than glad to support an amendment to have either option paid for. [LB1062]

SENATOR FRIEND: I'm not saying I agree with this first one either. What I'm saying is that I just find it odd that this seems more unfair than just about anything I've heard all day and I like Senator Karpisek a lot. As a matter of fact, I would like to help support this but we'll have to talk about that later. It just seems strange to me that the idea of counting physical ballots is a perception and a fairness issue, but yet the one that can least afford to do it doesn't get it. So anyway. [LB1062]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR AGUILAR: Senator Lautenbaugh. [LB1062]

SENATOR LAUTENBAUGH: Sir, I do have a question for you. Thank you. [LB1062]

JOHN HANSEN: Yes, sir. [LB1062]

SENATOR LAUTENBAUGH: So what happens if inevitably the hand recount does come up differently from the scanners? Are we going to presuppose that the hand recount is the accurate one on a statewide basis as compared to the scanners that are tested before election day and frequently tested after election day and maintained and designed for this purpose? I hope that question doesn't lead you towards any particular answer. But my question is if the hand recount does come up with a different result as it inevitably will, which one is right then? [LB1062]

JOHN HANSEN: I think my members if they had to answer that question would say, they would rather take the physical recount and live with that as they have done in the past. They recognize that that's not perfect but that that's preferable and I think that as you think about this, you know, to my mind the goal of the mission is not to design a vote counting system that is 100 percent accurate if it works the way it's supposed to and has the confidence of all election officials, yet lacks the confidence of the folks that it's most critical to have the confidence of, were the voters. And you have to come up with a system that is also enjoys the confidence of the voters and I'll just tell you that our guys...the initial statement that I made about that perception of software problems or any kind of scanning problems, is I think a pretty tough scepticism to get past because based on their understanding of how things work, which is reasonable, they just think that if there's a bug in the system and you replicate it, you've just replicated the count with the bug in the system. And so they think when there is doubt they think that the way that you get at, whether it is or not, is least perceived to be the most accurate way that is beyond any kind of tampering or misguided effort that could possibly happen or unintentional, either one. To just do a physical count of the ballots, that's what a lot of folks I think have done historically and that's where I think that the ultimate confidence level is. [LB1062]

SENATOR LAUTENBAUGH: Would it be wiser just to educate the membership as to the demonstrated accuracy of the machines in election after election after election, as opposed to going this route where we're going to do something to address the perception by going with the demonstrative inaccurate hand count as the final call, if you will? [LB1062]

JOHN HANSEN: I'm the president of 5,000 bunch quitters. They are a very independent group of folks in production agriculture and bunch quitters are--for those of you who aren't familiar with horses or cattle--the critters that when you try put them in a herd and

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

run them in a particular direction are going to go in a different direction; even if it's against their interest, they're going to go in a different direction just out of their sense of independence. So they're a pretty independent group and we've had all those discussions when we get to this issue at convention, and I'll just tell you that the folks that I represent, even though that issue gets brought up they still come down on the side of our policy which they set and by golly, that's what I go by. [LB1062]

SENATOR LAUTENBAUGH: And I understand that, sir, and every day here is an education for me. So I mean, we're all learning every day but I'm just very uncomfortable, as you probably picked up, on acting on the perception to a system that will be less accurate than what we have. And if the perception is out there, I think that it's our obligation to try to change that through whatever we have to do rather than error on the side of inaccuracy. [LB1062]

JOHN HANSEN: I would just tell you that in the weighing of perception as long as we've had this policy and as long as we've raised this issue that I would say the perception that there is a need for a physical--as an option--a physical count of the ballot is stronger today in my organization than it was five years ago. [LB1062]

SENATOR AGUILAR: Further questions? Seeing none, thank you, John. [LB1062]

JOHN HANSEN: Thank you very much, Mr. Chairman and members of the committee. It's been a pleasure. [LB1062]

SENATOR AGUILAR: Next proponent. [LB1062]

JACK GOULD: Senator Aguilar, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I'm here representing Common Cause Nebraska and I just want to touch on some of the things that I've been hearing and maybe raise a few questions that haven't been raised. But one of the problems I think about perception that some of you are facing is that question of do the machines work properly, and I think nationally there have been real concerns that some machines work better than others, and so that has helped to create the feeling among the public that the machines may not be the best way to count. And I think that to the credit of Secretary of State Gale and the election commissioners, I think we have...we're one of the states that has had and continues to have a paper trail, which is important to have in the election process. The second most important thing is that the scanners that we use have to be excellent and I think our scanners are good. I don't think it's a problem. But that question of perception is still there. The public may not trust the machines and we've had a long history of counting manually and a lot of people in rural areas as well as in cities believe that a manual count is a way we always did it and therefore it's the most dependable. I'm not sure that if you put the people, you know, ten people together and had them count the ballots and put them up against the machine, I don't know who's going to win. But I know that the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

public is saying, you know, it would be better for us, we would feel better as a backup system, not as the primary system, not something that we're going to use every time that there's an election or every time that something happens. I would even be in favor of a percentage of difference in the vote that would determine whether you could request the recount. But I mean, for the sake of people feeling secure with the most single important process that we have in a democracy, a manual recount is something that the public trusts. And for that reason, I think that Senator Karpisek deserves a lot of credit because I know it was not easy to bring this bill. It's not always...this is a tough one and I think that he deserves to be commended and I hope that you'll give serious thought to what he's saying and to the concerns that the public have about the machine process. Thank you. [LB1062]

SENATOR AGUILAR: Questions for Mr. Gould? Yes, Senator Adams. [LB1062]

SENATOR ADAMS: Mr. Gould, I don't really know that you have an answer to this, but I have to raise the question anyway for my own sake. Here we are again today talking public perception. [LB1062]

JACK GOULD: Right. [LB1062]

SENATOR ADAMS: And I guess what I'm wrestling with in my own mind, is there truly this ground swell from the public that our election system doesn't work or is it just from those who lost an election and those who worked for them and that work didn't pay off? I guess I'm not hearing the same thing that you are. [LB1062]

JACK GOULD: Well, we are a nonpartisan organization and our involvement in this is not, you know, favoring winners or losers necessarily. Our concern is really how the public, you know, responds to the election process and I know I'm using the word "public" more freely than perhaps you'd like me to use it, but... [LB1062]

SENATOR ADAMS: Now, actually that is what we're talking about and I guess I don't... [LB1062]

JACK GOULD: It is and I can't say that I represent all the people. I represent the people that are in Common Cause and I certainly admit that that's a certain perspective that, you know, we're promoting. But at the same time, if you read the papers, you listen to what's on the news, what there seems to be is a questioning of the machine. And so how do you combat that and it may be that 20 years from now that the machine will be...everybody will have confidence in it, we'll be so computerized that no one will question it. But we're in a transitional period now and there are a lot of people who struggle with machines, period. Those touch screens created a lot of problems for a lot of people and we didn't get into that and we have a better system. But that is what creates the concern now and I'm hoping that what we're saying here, Senator

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

Lautenbaugh, is saying that as time goes on, maybe the confidence will be there. But at this time we might be wise to have that manual recount there so that the public knows that it's not just some machine that decided who was going to be their elected candidate. [LB1062]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Gould. [LB1062]

JACK GOULD: Okay. Thank you. [LB1062]

SENATOR AGUILAR: Next proponent. Okay. [LB1062]

BETH BAZYN FERRELL: Good afternoon, Chairman Aguilar, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I know our position on this bill may be a little bit contradictory in appearance to what our position will be on the constitutional amendment that follows this and what our position has been in the past. The difference this year is our board of directors looked at this bill, looked at the provision that would require the individual, the losing candidate to pay for a manual recount as opposed to the political subdivision and they decided that they could support this bill. Now that's not to say that we didn't have a fairly lengthy discussion about the issues that we've talked about in the past and we've talked about so far today, the accuracy of a hand count versus a scanned count and so on but just from the issue of cost, our board took a position to support this bill. Be happy to try to answer questions. [LB1062]

SENATOR AGUILAR: Thank you. Any question? Seeing none, thank you. Any other proponents? We will go to opponents. Welcome, Mr. Secretary. [LB1062]

JOHN GALE: Mr. Chairman. Mr. Chairman, members of the Government, Military and Veterans Affairs Committee, I am John Gale, G-a-l-e, Nebraska Secretary of State and Chief Elections Officer. I am appearing here in opposition to LB1062. As I reviewed the bill being heard, this bill posed a bit of a conundrum for me. As an attorney I look at it: On one hand, it seems at first flush to be fairly simple expressing kind of an age-old sentiment in our justice system of the right to appeal on a decision and a willingness to pay the cost of such an appeal. On the other hand however, it doesn't deal with the legal decision of a court but rather a decision of the people, those who vote. It doesn't deal with an appeal to just another level of our courts, but rather to a reprocessing of ballots by county clerks in 93 counties for a statewide race. It doesn't just deal with a single document expressing a notice of appeal, but rather hundreds of thousands of documents, each called a ballot. It doesn't impact the business day of just several court personnel, but rather thousands of poll workers across the state, plus county election officials and observers. A couple of comments I'd like to make before I complete the rest of my testimony, in response to some of the thoughts that have been expressed. We

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

have used in Nebraska optical scan equipment, central scan equipment for almost 20 years in approximately 35 of our counties. And that equipment was tested by federal testing laboratories. It was tested by our Secretary of State Office and each new generation of that equipment went through very extensive testing a second time with the federal lab and with the Secretary of State as has been done across the country. This is not brand new technology, this is old technology. When we had to decide in Nebraska how to use our Help America Vote Act federal funds, we could have gone to a newer technology called the DRE, the Direct Response Electronic, which is digital voting and that's the equipment that has caused the immense controversy across the country. It's caused Secretary of State of California to decertify some of its system. It's caused the Ohio Secretary of State to decertify some its system for various reasons, either the equipment didn't have a verifiable voter paper trail and they hadn't resolved in some counties or some states what was the ballot, the digital vote or the paper record, if they did have a paper trail. The controversy swirling in America around elections does not involve optical scan equipment. There has been no demonstrated case anywhere in the country of election fraud due to malicious software in optical scan equipment. Not only has equipment sustained the challenge of tests, but we also have a very secure system surrounding that equipment whereby there are two test decks of paper ballots; one filled out by the county officials, republican and democrat, where they randomly mark a test stack of ballots that are run through the machine and those ballots are hand counted, they have to square exactly. The election equipment company also furnishes a stack deck and it's tested. If that equipment won't square between the electronic count and the hand count, it is not used. That equipment will be replaced with some other piece of equipment. So the standards of a precinct certainty, accuracy, verifiability are very, very high for this equipment in addition to the testing in the testing labs. When we decided to go with optical scanning for the entire state, we also used equipment that had been tested in test labs and that we also verified and it had been approved by an advisory committee of election officials, it had been approved by our State Plan Commission which was required under federal law for us to have one, a broad cross section of people, different interest, my own staff and consultants all unanimously recommended that we stick with the optical scan equipment because it was highly reliable and not subject to controversy. So that's why we have the system we have. We've kept paper ballots and we have optical scan equipment and there is no case in Nebraska or anywhere else that that equipment has been proven subject to fraud. So I want to submit that to you that that system of exhaustive testing and verification is certainly a better standard than the poll workers who are citizen volunteers with minimum training, many of them elderly people who are going to put through an exhausting experience trying to hand count ballots where communication is incredibly important and just the manual manipulation of entering the squares. The question came up, what's the difference then of reliability? Well, according to some studies I had always understood that the percentage of error in hand counting is about 4 percent. The percentage of error in optical scan was less than 2 percent. Studies that I've seen recently show that it's about double but it's about .07 percent for optical scan equipment and about 1.4

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

percent for hand counting, lower than I thought for hand counting but it's still double and you apply that against a large turnout of people in a very close race and it does make a difference which error rate, as Senator Lautenbaugh has mentioned, you're going to rely upon. The heart of this bill allows a losing candidate and one who has lost by more than the automatic recount margin to pay for a hand recount. This has been introduced in this Legislature a number of times now, I think three times. It's never been advanced. My office has been sued on the issue in a court case to require that we allow this and we prevailed and won in that case. Despite our research we can find no reasonable basis for this law. Enabling this bill could indeed bring injustice not justice, uncertainty rather than certainty, and add a serious element of unfairness when we go from a system of extreme certainty using electronic voting in every county so every ballot is counted the same to a system of great uncertainty from county and county, district to district, precinct to precinct. All Nebraska counties conduct and issue counts and recounts using optical scan equipment. A study on recounts conducted through the Caltech/MIT Voting Technology Project is very instructive because it does address the accuracy of hand count versus optical scan equipment. This study found that discrepancies between initial counts and recounts are nearly twice that for hand counted ballots as for machine counted ballots. In other words, hand counts are considerably less reliable than machine counts. In addition, it creates a major imposition on our 93 county election officials and thousands of poll workers to conduct this hand recount of ballots. It may be a candidate loses by 80 percent to 20 percent and if they have the money, they can require a hand count of ballots even though there is no public benefit to that other than the fact that the losing candidate has the money and can demand that everybody go through these hoops simply for their own satisfaction and not for any particular public benefit. It's almost like a system of show me the money. If you've got \$40,000 estimated cost, you can have the hand recount even though there is zero certainty of any change in the outcome. Our election system should be entitled to greater finality than simple whims of losing candidates who have the money to spend to prolong the process. In addition, since an estimate of the cost of the hand recount by my office will cause a deposit of that amount of money by the losing candidate with my office and since the final cost won't really be known until the counties complete the task, another hard question is what if the cost of that hand recount in any one county or in several counties exceeds the estimate so you have an overage and there's no money on deposit to cover? What if it were to be Douglas County or Sarpy County or Lancaster County where there's been a dramatic need to recount the hand count for reasons of error on the part of poll workers? Suddenly you have a cost that exceeds the estimate and who picks up the difference? Does each county have to just get a prorated share and everybody county then shares in that excess? Does the county where the recount error occur that required additional cost, do they absorb it, and why should the counties absorb that cost when we have candidates saying I promise to pay the cost? But how do you recover it once the recount is done and nothing has changed? Is there any way to recover that additional cost? I don't think that's fair to the county tax payers because the bill presumes full cost will be paid but it really is based on estimates without knowing

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

what the final cost will be. So as a result of that I think we need to continue to rely on the system we have of electronic optical scan equipment which has been very fairly tested nationally and in our counties prior to election and rely upon that as the most reliable recount system is simply bad public policy to allow this bill to be adopted, and I urge that it be indefinitely postponed. [LB1062]

SENATOR AGUILAR: Senator Adams. [LB1062]

SENATOR ADAMS: Secretary Gale, I'm still trying to get my hands around how big a problem this is, and the question that I asked of a previous testifier of how...where does it, you know...is there really this public perception that our system doesn't work or that our equipment doesn't work, and you've kind of addressed that to some degree. I guess I have to ask an obvious question that maybe you don't have an answer to. In the last election cycle, how many automatic recounts did we have? Do you know? [LB1062]

JOHN GALE: In Nebraska? [LB1062]

SENATOR ADAMS: Yeah. [LB1062]

JOHN GALE: Frankly I don't remember in 2006 that there were any. There have been a couple since I've been Secretary of State and the machine recounts have come out almost precisely identical. I think there was maybe one vote difference in two different counties where it was a multicounty recount, but we have found it to be incredibly reliable to reaffirm the initial count. [LB1062]

SENATOR ADAMS: And you're saying to the best of your recollection at this point there really haven't even been that many automatic recounts? [LB1062]

JOHN GALE: That would be correct. [LB1062]

SENATOR ADAMS: Okay. Thank you. [LB1062]

SENATOR AGUILAR: Senator Friend. [LB1062]

JOHN GALE: With regard to your other point in terms of public perception, I think in Nebraska the public perception is we have a highly reliable and a highly safe election system. The U.S. Election Assistance Commission came out for our primary in 2006 and said that really Nebraska gets an A plus in terms of the system that we have, the public reliability and perception of the reliability of that system. And in fact, it's now considered to be--not necessarily in Nebraska but states like Nebraska that have our system--it's considered to be the model that other states are looking to to pursue and follow as a safe reliable system that has strong public support. [LB1062]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR AGUILAR: Senator Friend. [LB1062]

SENATOR FRIEND: Thank you, Chairman Aguilar. Mr. Secretary, when all the stuff was going on down in Florida they had the cards and everybody was laughing about the hanging CHADs and everything else...and I thought I asked Neal this and I can't remember what we talked...I mean, what the end result was but those are a different style of optical scan, aren't they? [LB1062]

JOHN GALE: Actually they weren't optical scan. [LB1062]

SENATOR FRIEND: What were those? [LB1062]

JOHN GALE: That system was called a punch card system where you put your ballot into a system and use a stylist to punch out the CHAD. [LB1062]

SENATOR FRIEND: Okay. [LB1062]

JOHN GALE: And in many, many of the machines they either hadn't been maintained very well or the rubber pad had gotten very hard and the voters weren't able to complete the punch so that you had these hanging CHADs or partial CHADs and... [LB1062]

SENATOR FRIEND: So different technology? [LB1062]

JOHN GALE: Totally different technology. [LB1062]

SENATOR FRIEND: Okay, and the technology...we're talking about the optical scans stuff, the stuff I took my old SAT on and ACT where you fill all...I mean, and we still use them to this day. How much has that technology changed? I mean you said it hasn't, you know, in 20 years, but there's got to be new equipment made. They haven't discontinued making optical scan equipment for any particular reason, I don't think. [LB1062]

JOHN GALE: The models have continued to change, that's for sure. When I became Secretary of State, the 35 counties that I was referring to were using what they called model 550s, which were central scan systems that were used in the county office of the county election official and all the ballots came in to that central scanner. Now they have M650s, which are considerably faster than the M550s, much more sophisticated, much more sensitive, and they also have the M100s which are precinct counters so you can have your ballots counted at the precinct or you can have them counted at a central location. But you're right, Senator. The technology continues to change and improve. [LB1062]

SENATOR FRIEND: Is the key to those things...is the key to making sure maintenance,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

the cleanliness of the machine...I mean, making sure that these things statewide...is there some policy and procedure wrapped around this to make sure that these machines are working correctly consistently from the 1st county to the 93rd county? I mean I guess we can go offline and do this. I just think part of the fear maybe is that you're saying we have this old equipment, what if there's a smudge and things on this equipment that just would lead people to think that there's some inaccuracies. [LB1062]

JOHN GALE: And I probably left a false impression. All of the counties got new equipment under the Help America Vote Act... [LB1062]

SENATOR FRIEND: Right. [LB1062]

JOHN GALE: ...even those 35 counties that had been using the model 550s. All the 550s have been replaced with 650s, so everybody started in 2006 with brand new equipment, statewide. [LB1062]

SENATOR FRIEND: Okay. [LB1062]

JOHN GALE: And we do have standards for maintenance because the equipment is owned by the state, it's not owned by the counties. So the federal government gave the state the money and the state government spent the money but we have retained ownership of that equipment, so we do have enforceable standards for maintenance of both our optical scan equipment as well as for our AutoMARK equipment. [LB1062]

SENATOR FRIEND: Okay. Thanks. [LB1062]

SENATOR AGUILAR: Further questions? Senator Lautenbaugh. [LB1062]

SENATOR LAUTENBAUGH: Thank you, Mr. Secretary. Isn't it the case that there was a smudge that would read several erases wrong on the ballot or not read the ballot at all and so it would be kicked out and you'd know right away there was a problem? [LB1062]

JOHN GALE: That's correct. [LB1062]

SENATOR LAUTENBAUGH: I was just responding to something Senator Friend was asking and... [LB1062]

JOHN GALE: Because what will happen is the electronic eye is not reading correctly, it's gotten covered with dust or there's some electronic problem, it will simply stop because it's not reading the ballots and so someone then has to go check and see what the problem is. If a ballot, as Senator Lautenbaugh would know, if it's marked too lightly and it isn't being read, it will also go to the recount board. And so they can check it and they

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

can create a new ballot marked identically with the original ballot and then the new ballot would be fed through, the old ballot would be saved for purposes of audit. [LB1062]

SENATOR LAUTENBAUGH: And in response to a question of Senator Adams, as I read this bill, you could get the manual recount even if there's not an automatic recount if you wanted to pay for it, is that correct because it also amends the provision whereby a losing candidate can request a recount on his own regardless of the margin? Is that your understanding as well. [LB1062]

JOHN GALE: That regardless of the margin... [LB1062]

SENATOR LAUTENBAUGH: Yes. [LB1062]

JOHN GALE: ...that if they have the money they can request a recount. That's my understanding... [LB1062]

SENATOR LAUTENBAUGH: Whether or not there's an automatic... [LB1062]

JOHN GALE: ...that the margin has no relevance and if I understand the bill correctly, it really doesn't impact the certification of the election. The election will be certified based upon the machine recount and because that's what officially comes to the county election official and to the Secretary of State is what's certified by the officials and a requested recount, hand recount I don't understand to be anything other than the basis for a court challenge. I'm not sure that I understand that that would override the machine recount for purposes of a certified election. [LB1062]

SENATOR LAUTENBAUGH: That's a good point. I didn't realize that. [LB1062]

SENATOR AGUILAR: Further questions? Seeing none, thank you, Mr. Secretary. [LB1062]

JOHN GALE: Thank you, Mr. Chairman. [LB1062]

SENATOR AGUILAR: Next opponent. [LB1062]

NANCY JOSOFF: (Exhibit 2) Chairman Aguilar... [LB1062]

SENATOR AGUILAR: Welcome. [LB1062]

NANCY JOSOFF: ...committee members, I just want to make this real brief, but this particular issue has been debated substantially at the federal level. [LB1062]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR AGUILAR: Name? [LB1062]

NANCY JOSOFF: Nancy Josoff, J-o-s-o-f-f, and I just wanted to present to you some testimony by Doug Lewis who is the executive director of the National Association of Election Officials, also known as the Election Center. This was some testimony that he presented to the house administration during an election hearing on HR811 on March 20 of last year. And he states that: In a recount a race has to be close enough to warrant handling the ballots again, but it is also examining the ballots by hand to assure that the equipment has counted legitimate votes and anything a machine can't count is usually processed separately and reexamined by humans to see if they can determine a problem. As Secretary of State Gale mentioned, here in Nebraska we are a reproduction state. We would take that ballot and recreate it so the optical scan machine could count that ballot. Mr. Lewis goes on to say that, there is a rub here. Humans count large number of ballots less accurately than voting equipment does. It is because humans either make a mistake in counting or because a human interprets a ballot differently than the equipment. Humans get tired. Their minds wander when counting large numbers of ballots by hand. Even the same person counting ballots over a long period may count ballots differently during an early part of the audit process than the later part of the process because of mental and visual fatigue. Greater percentages require more and more people and because of the potential for more mistakes, it forces additional counts to resolve the differences caused by human error. The other things that we really need to consider when you're looking at this bill is realistic timetables to be able to complete the counts that starts to become an issue. As we say, if you have to do the manual recounts over and over and over, then we start to have issues with the time and again, voter confidence. We all know that perception is the greatest factor of how voters will review the integrity of an election and needless delays and certifying these numbers and stuff is going to be a negative impact as far as voter perception. And as far as Senator Lautenbaugh, your comment about the testing of the equipment, I think that's a great way to approach this. Instead of having to do this manual recount for anybody who decides that they would like to pay for that, if we can take this individual and show them, take them back in and show them the numbers on the test text that we have created that we know what the numbers are because they've been manually counted, run them through that tabulation machine again so they feel comfortable that those numbers are being correctly counted might be a good approach. If you have any questions? [LB1062]

SENATOR AGUILAR: Questions? Seeing none, thank you, Nancy. [LB1062]

NANCY JOSOFF: Okay. Thank you. [LB1062]

SENATOR AGUILAR: Next opponent. Seeing none, are there any neutral testifiers?
Senator Karpisek to close. [LB1062]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR KARPISEK: Thank you, Senator Aguilar and committee. I, again, want to just reiterate that this is not a conspiracy theory on my part. I think the Secretary of State has done an excellent job of getting the voting machines out and trying to make sure that things are done properly. I will go back to the voter perception and in my mind the voting process is very special to me. This place is very special to me and I go back to what the voters think and what the votes want, and if anyone else doesn't hear complaining, I don't know. I guess I'll hang out a few of your business cards because I hear it a lot. Maybe it's where I hang out. I don't know. [LB1062]

SENATOR AGUILAR: No comment (laughter). [LB1062]

SENATOR KARPISEK: You know, when I take a deposit to the bank or my wife now does, the bank counts the money. They don't take my word for it and they don't take my register receipt and just say, okay, thank you, we'll put that in your bank. I see it as much the same thing as just another verification. They run it through their hands again. We don't know that the machine is always right. Just because you feed it through the same machine again does not mean that it is right. Again, I'm not saying that it is always wrong and maybe it's never been wrong. But the fact that a physical recount is fought against so hard every time this does come up, it does make it look even worse, that we do have something that we don't want people to see. Again, the perception. I'm not saying that it's reality and if we are doing so well--which I do believe that we are--then we have absolutely nothing to hide. Here it is, come in, we'll show you and I agree with Mr. Gould that in a few years, maybe less than 20 years, people will take it for granted and say, sure, that's how it is. I think a lot of it is emotion. A losing candidate, as Senator Adams said, I'm sure if anyone of us would have been in a real tight race and asked for a recount or wanted a recount and we, you know, we have brought up the point or it has been brought up about the manual recount for any spread. I would be more than willing to give on that and say that whatever is in here, the 1 and 2 percent, if we could have a manual recount paid for by the candidate on that, I would be willing to entertain that thought and Senator Friend, the thought of why the paying for it, make okay men and change their idea on it. So again, we're just trying some different ways to I guess have our voices heard that there is a perception out there that I don't like. I don't like the perception in here that things might not be right, so if we can change it, I just want to change it and not pointing fingers, not calling names, just asking that if we can make it as great as we believe it is to everyone. With that, I... [LB1062]

SENATOR AGUILAR: Questions? Senator Lautenbaugh. [LB1062]

SENATOR LAUTENBAUGH: I promise, briefly, Mr. Chairman. I'll take the calls, if you want. I understand you get the complaints and honestly I've heard people question it too and I'll talk people's ear off about it. I mean, I'm so excited we're talking about something I know something about now in my first three weeks that I'm... [LB1062]

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Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR KARPISEK: I wish we would talk about something I know something about. I don't know what it would be. [LB1062]

SENATOR LAUTENBAUGH: In any event, when I spoke about education earlier I meant that because I used to spend a lot of time going around explaining how the system works to people and I would still be willing to do that because, you know, like I said I learn everyday, we all learn everyday and I do have a lot of confidence in this system and rather than perhaps introduce something that might make me have less confidence in the system, I'd rather explain why I have confidence in it if I could. So any way I can help, I'd be happy to. I don't know if it'll extend to this, but... [LB1062]

SENATOR KARPISEK: Well, and I do appreciate that, Senator and again, sometimes bills are just a reason to talk about issues. So I appreciate that. [LB1062]

SENATOR AGUILAR: No further questions, that closes the hearing on LB1062. Senator Karpisek to open on LR225CA. [LB1062 LR225CA]

SENATOR KARPISEK: LR225CA was brought to me by a constituent last year, as we remember--except Senator Lautenbaugh--that I wouldn't have liked...maybe you were here too in testifying for it I'm sure, but to have a manual recount...and the answer at that time was any manual recount or--sorry--any recount will be done by the same means as the first count was. So this bill is in response to that. If we can't recount them manually, let's count them manually the first time. Now I will have to be the first one to say that, again, I think the machines are fine for most of the time. I know that there are some people getting ready to maybe do a petition to get this on the ballot, and why I brought it to your attention is that I feel that if we as a body don't do something to alleviate some of the voter perceptions, that we may have something like this on our plate. And if I don't think that's what we want to have but that is why I brought this, just as I guess I would call it a wake up call to say people are not happy about the way things are and maybe let's try to find some common ground. I'll take any questions, Vice Chair. [LR225CA]

SENATOR ROBERT: Any questions for Senator Karpisek? Seeing none... [LR225CA]

SENATOR KARPISEK: Thank you, Senator Robert. [LR225CA]

SENATOR ROBERT: Are there any proponents testifying for this bill? Good afternoon. [LR225CA]

DON ERET: (Exhibit 1) Good afternoon. Members of the committee, my name is Don Eret, that's spelled E-r-e-t. I support LR225CA because it defines elections as they were conducted before the introduction of electronic election devices. That was an extended historic period when there was transparency in the election process. Transparency is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

the issue. There currently is no transparency to Nebraska's elections. The current recount statutes prevent an inspecting review of ballots. Compounding that shortcoming is the use of vote counting secret software that can be hacked by wireless communication. This leads to suspicion of undetectable vote count manipulation or marginalization. This is the fifth year that a hearing has been held here on this issue with no corrective action taken to restore the elective franchise with the transparency provision. It is not likely that this resolution for a constitutional amendment will advance here either. I want to point out though that the exact text of this resolution can be used in an initiative petition to amend the constitution. In the third congressional district where I reside, I detect a strong support to conduct an initiative petition for election transparency if the Legislature does not enact a transparency provision. There is no doubt how the people statewide will vote if the amendment is placed on the ballot with the ballot language stating, as is on the back of the bill there, a constitutional amendment to require all elections to be conducted with paper ballots manually counted at the precinct by a bipartisan counting board. The U.S. Voting Rights Act of 1965 guarantees that votes will be properly tabulated. This includes the provision that the ballots can be visually verified. At this point, I'm going to comment on some of the comments I've heard from Secretary Gale. He did admit that there are problems with machines, the DR machines are giving problems now nationwide. I'd like to point out though that the same software that's in those machines is also in the optical scanners which are secret, in other words are proprietary source codes put into those. Those machines have to be serviced, not by our election personnel in the state. They have to be contracted to the vender of the machine. The vender programs the counters in all 93 counties under contract. We don't know who the people are that are doing that and we don't know what their technical or what they can do in setting up those secret programs, and there's no end of what can be done with programming as far as flipping votes and all that sort of stuff. So also the machines are advertised by the vender as having modems in it. I guess the modems they advertised it, therefore allowing the media to be able to monitor the progress of the election as it's being counted. However, with the wireless laptop computers, those could be accessed and regardless of the amount of testing that's done on the machines beforehand to make them accurate, they can be invaded through this wireless communication mode and we don't know what goes on there. And then there's the companies...there's only about three companies. We have one company that does all of them in Nebraska but the history of the companies in general is that they're getting sued all over the country for having problems in servicing their states. They change ownership several times. One of them even went into foreign ownership and had to be brought back and while they were in foreign ownership, I understand they conducted the elections in Chicago. And so as I stated, these companies do the programming of our election process. The Secretary stated there's been no proven fraud with the use of optical scanning machines. Well, if the suspicion that there could be something, that there could be undetectable manipulation of the vote count and we can't look at the ballots, well, then there's no way to prove whether there was or was not fraud and it just leads to total question in the minds of people. So I'll

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

conclude on this and state that why do we operate a suspect system of vote counting in Nebraska when the suspicion can be so easily removed with a simple statute amendment? Your committee holds the key on how transparency will be restored to Nebraska's election process. Thank you for your time in hearing me review the important issue of election transparency. [LR225CA]

SENATOR AGUILAR: Questions? Seeing none, thank you. Further proponents? [LR225CA]

JAY STODDARD: This will not take but a moment. Jay Stoddard is my name. I have testified before. Stoddard is spelled S-t-o-d-d-a-r-d and I thank you, Ray, and the rest of the committee for...you know, this has been a long afternoon. This will not take long. I would like to make a statement. I support LR225CA because it states the way that elections should be conducted for believable results. Senator Eret is correct in stating that there is a strong support to conduct an initiative petition for election transparency if the Legislature does not enact a manual recount option. I chaired the Democrat Third Congressional District organization meeting this month where this issue was discussed and was unanimously supported. At this time I would again recommend the enactment this session of LB1062 to change provisions relating to recounts and I support LR225CA. [LR225CA]

SENATOR AGUILAR: Questions for Mr. Stoddard? Seeing none, thank you. [LR225CA]

JAY STODDARD: What? [LR225CA]

SENATOR AGUILAR: Seeing none, thank you. [LR225CA]

JAY STODDARD: Well, that's just a statement. Thank you. [LR225CA]

SENATOR AGUILAR: Further proponents. Are there any opponents? [LR225CA]

SANDRA STELLING: I am Sandra Stelling, Jefferson County Clerk and Register of Deeds and Election Commissioner, cochair of our legislative committee for our association. On behalf of our association, I ask that you oppose LR225CA. Since the Help America Vote Act has put all electronic counting machines within our counties, and to my knowledge most of them have run according to what they were supposed to. We haven't had the opportunity for that many recounts. Coming from a hand count county, I can say these...yes, we've had our problems but I would still trust the machines more than I would an election day worker that has to sit there and count for, say 20 hours. And if you have any questions, I would be glad to answer them. [LR225CA]

SENATOR AGUILAR: Questions from the committee? Seeing none, thank you. Welcome. [LR225CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

DIANE OLMER: Hello, Senators. Diane Olmer from Platte County. I'm the Election Commissioner. My last name is O-l-m-e-r. I just kind of want to...I've been an election commissioner for 12 years. In 2002, the statutes were such that it was up to me on a special election if I wanted to use the machine or do a hand count, and since I'd heard rumors or comments like this I thought, well, this will be...it was a city of Columbus special election. There were just two issues on the ballot and I decided let's do a hand count. Maybe we'll save the county some money or the city some money by doing it...just won't have to pay the company for programming the machine. We can use paper ballots at that time and I'll have enough people come in and we'll be done early that night. So the polls close at eight like any other night and we don't get that job started until about 8:30. And I had about 18 people up there so it wasn't like one group counting all the ballots in the city of Columbus and it got to be ridiculous how tedious and how many times they had to recount things to get them to come out and I had used the machines before that. I had been election commissioner from 1996 and we had scanners and then in 2002, we did this. And at the end of that night, I swore that I would never opt for that option again because it was more inaccurate. As we talked about people losing their train of thought or...you don't get to start this until after 8:30 and the demand for results now is one reason we have machines. They do it faster for us, it doesn't matter to them if it's 8:30 or 10:30 at night, it doesn't matter if they've had a long day, you know, they're programmed to do their task. Another comment or personal experience is my mother was a poll worker for many years and an inspector, and she would work a polling place and take ballots all during the day and during the days when they hand counted everything, when...that was before I took office. And they hand counted paper ballots and she would work from when the polls closed and then she would bring ballots back to Columbus and she wouldn't get home until three or four in the morning. Now this is what you're opting for if you go backwards. We've got a system in place right now that seems to be working. It's HAVA compliant. We get results fast and this day and age, that is one of the demands and the results are accurate. I'm here to say they're more accurate than a hand count and so just because people doubt it, maybe like Mr. Lautenbaugh said, maybe we should do more educating or, you know, promoting our cause. But in my mind, hand counting is a big step backwards.
[LR225CA]

SENATOR AGUILAR: Questions for Diane? Senator Avery. [LR225CA]

SENATOR AVERY: Thank you, Mr. Chair. Welcome. [LR225CA]

DIANE OLMER: Hello. [LR225CA]

SENATOR AVERY: Good to see you again. Do you have in place now any procedures for proof testing your machine count, I mean, where you might pull a sample of votes out, of ballots out, and hand count them just to see how accurate the machine count is?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

[LR225CA]

DIANE OLMER: Well, before each election, like Secretary of State mentioned, we have to test decks and we get the one the company gives us, ES&S gives us, and then we also have to make up our own, a democrat and republican. My assistant in the office is democrat. I'm republican. I make up a set, so I hand mark it and I tally it. She does hers, she tallies it. We send it through and we do pick...we make sure we pick different races so that we're checking each candidates name is checked. And probably our process is more local geared than maybe the test deck that comes from Lincoln because we want to make sure everybody is taken care of. So we do that and then there...nobody has talked about the canvassing process. After the election is over, canvassing goes on and what do we do in a canvassing committee? Well, one of the big things we do is we take the poll workers books, which are hand worked on, names signed in there, ballots given out, and we compare them to the results from the scanner. And we do compare, the poll worker said there's this many voters, the scanner said there were this many. Is there a problem? Is there a reason? And have we ever opened up a ballot box and went through and hand counted pieces of paper? Yes. And to check on the scanner? We have. And have I ever found where the scanner maybe had a ballot go through twice, which wasn't the scanners part, it was the human person taking care of the scanner. Yes, and then at that point we have a process where we can rescan a precinct. So we do do checking as much as we can with the information we have in the canvassing process also. We precheck the machines and then we check the whole process in the canvassing committee. I don't think a lot of people even know the canvassing goes on. It goes on county to county and then those results are taken to the state canvassing committee for the statewide races. But in a Canvassing Board, that Canvassing Board can pretty much do anything they want to and if something doesn't look right, if they want to pull the ballots out for a village or whatever and say we need to hand count them, well then we can. But we don't do it just because we're trying to make the public feel good. We would do it for a reason. There seems to be something wrong here, you know. If something is wrong we're going to try and find the reason and I don't want to let any results out...the results are not certified until the Canvassing Board. So things like that do happen in the Canvassing Board, but only if there's a reason, you know, this doesn't look right, this doesn't match up. [LR225CA]

SENATOR AVERY: This constitutional amendment would apply to all elections across the state. What's your estimate of about how long we would have to wait for results, let's say, in Lincoln? [LR225CA]

DIANE OLMER: Well, just by the way...you know, I wasn't there when that happened as far as working in this office. I would have to go by what my mother said and she didn't get back to Columbus until three, and in those days then they wrote the results on a chalkboard and then tallied them up by hand. And so I definitely don't think...eight in the morning would be the earliest and that's just for littler counties. I don't think Lancaster

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Government, Military and Veterans Affairs Committee
January 31, 2008

and Douglas...of course I shouldn't say that, you know, but definitely wouldn't be until the next day or...and you know, could be longer. [LR225CA]

SENATOR AVERY: Yeah. Thank you. [LR225CA]

SENATOR AGUILAR: Further questions? Seeing none, thank you for being here today. Next and I'm pleading for brevity. It's getting late and Christy has a babysitter (laugh). [LR225CA]

BETH BAZYN FERRELL: I will be brief. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. We are opposed to the bill for the reasons that you've heard so far. We believe that scanners are probably more accurate than hand counts. There would be a cost to all taxpayers under the terms of this constitutional amendment. Be happy to take questions. [LR225CA]

SENATOR AGUILAR: Questions? Seeing none, thank you. Further opponents? Welcome. [LR225CA]

RON MORAVEC: Thank you, Senator. Senator Aguilar, members of the Government, Military and Veterans Affairs Committee, My name is Ron Moravec, M-o-r-a-v-e-c, Chief Deputy Secretary of State. I think I'm in trouble with you, Senator, just...you spoke of brevity. With your consent, Secretary Gale had a prior commitment that he had to go to. He asked if it would be okay if I were to read his statement into the record. [LR225CA]

SENATOR AGUILAR: Is there any way you can just give us the highlights because we can read it as well? [LR225CA]

RON MORAVEC: (Exhibits 2-4) Frankly I would just as soon put it into record then rather than giving the highlights, if that's your wish. We do have some material--two materials--that the page is passing out at this point in time. So with that and your admonition, that would be all that I have, Senator. [LR225CA]

SENATOR AGUILAR: Would anyone have any questions for the Deputy Secretary of State? Seeing none, thank you for being here today. Anyone neutral? Karpisek to close or not? [LR225CA]

SENATOR KARPISEK: Very quickly, Senator. Thank you, Senator Aguilar. I just want to reiterate again, I think the opponents on this bill were proponents for the other bill. I just am afraid that people don't feel they're getting what they would like out of what they think we should be having. This may come down on us as a constitutional amendment and that's all I have to say. Thank you very much. [LR225CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

SENATOR AGUILAR: Questions for the Senator? Seeing none, thank you and that closes the hearing on LR225CA and the hearings for today. Thank you for coming.
[LR225CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Government, Military and Veterans Affairs Committee
January 31, 2008

Disposition of Bills:

LB803 - Held in committee.

LB991 - Held in committee.

LB1062 - Held in committee.

LR225CA - Indefinitely postponed.

Chairperson

Committee Clerk