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Floor Debate
May 09, 2011

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SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventy-sixth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Senator Hansen. Please rise.

SENATOR HANSEN: (Prayer offered.)

SENATOR GLOOR: Thank you, Senator Hansen. I call to order the seventy-sixth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

SENATOR GLOOR: (Gavel) Thank you. Are there messages, reports, or announcements?

CLERK: Enrollment and Review reports LB397 to Select File with Enrollment and Review amendments attached. Senator Haar would move that LB283 become law notwithstanding the objections of the Governor. That will be laid over at this time. And study resolutions: Senator Mello, LR205 and LR206. Those will be referred to the board. That's all that I have, Mr. President. (Legislative Journal pages 1473-1475.) [LB397 LB283 LR205 LR206]

SENATOR GLOOR: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda, General File. Mr. Clerk.

CLERK: Mr. President, LB490, a bill by Senator Karpisek. (Read title.) The bill was introduced on January 18 of this year, reported to General File with General Affairs Committee amendments attached. The bill was discussed on March 14, Mr. President. I

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do have committee amendments as well as amendments to committee amendments. (AM595, Legislative Journal page 689.) [LB490]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Karpisek, you're recognized to open on LB490. [LB490]

SENATOR KARPISEK: Thank you, Mr. President. Good morning, Legislature. LB490 eliminates the requirement for an attendant to write a keno ticket. This would likely be accomplished with a kiosk that would allow the player to select his or her numbers and then give the player a paper receipt. The second component, under current law a keno operator must wait at least five minutes after the conclusion of the previous game before the next game can start. LB490 would set the time requirement between games at one minute, but the local political subdivision could increase the time requirement to any time longer than one minute. However, I have an amendment to eliminate this provision, leaving the minimum time required between keno games at five minutes. That is all I have on the bill. Thank you, Mr. President. [LB490]

SENATOR GLOOR: Thank you, Senator Karpisek. As the Clerk stated, there are amendments from the General Affairs Committee. Senator Karpisek, as Chairman of that committee, you're recognized to open on the committee amendment. [LB490]

SENATOR KARPISEK: Thank you, Mr. President. Following the previous floor debate on LB490, I've worked with Senator McCoy and others in order to address their concerns. The sticking point with LB490 appeared to be the horse racing component. My amendment would strike the horse racing component out of LB490. Therefore, all LB490 would do now is allow a player to select his or her own numbers rather than go through a keno attendant which is currently required by law. There have been a few questions about player reward cards or if it could be stored...any information could be stored on these machines. We do not see any reward card at all to be used, no card at all. It would have to be the player would feed a dollar bill or a five dollar bill, much like you would into a pop machine, and it would print their ticket out for them rather than having to go to an attendant. When...if the person would win some money, they would then go to the attendant to have the money given to them. They would not again be able to go to the machine to get the money out of the machine. That would not happen. You would not have a card, have it credit your account because they are not going to be using cards. This also does not speed the game up at all. You do not start the game yourself. All it is, is you go to the kiosk and get your ticket. The keno attendant will still start the keno game with a minimum of five minutes required in between, which is currently in statute since that has been taken out. I'd be glad to answer any other questions. And I'd like to thank Senators McCoy and other that have worked with me on this bill. Thank you, Mr. President. [LB490]

SENATOR GLOOR: Thank you, Senator Karpisek. (Doctor of the day introduced.) Mr.

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Clerk. [LB490]

CLERK: Senator Karpisek, the next item I have, AM760. Senator, I have a note you want to withdraw. [LB490]

SENATOR KARPISEK: Yes, I do. [LB490]

CLERK: Senator Avery, I have AM759. Again, Senator, a note from you indicating you'd like to withdraw it at this time. [LB490]

SENATOR AVERY: That is correct, sir. [LB490]

CLERK: Senator McCoy, AM778. A similar note to withdraw, Senator. [LB490]

SENATOR McCOY: That's correct. [LB490]

CLERK: Mr. President, Senator Karpisek would move to amend the committee amendments with AM840. (Legislative Journal page 1444.) [LB490]

SENATOR GLOOR: Senator Karpisek, you're recognized to open on your amendment to the committee amendment. [LB490]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I will say that I misspoke and I talked about AM840 previously instead of the committee amendment. But again, the sticking point was the horse racing component. That is gone. Right now all this does is leave the kiosk for the operators to use if they would like to. Thank you, Mr. President. [LB490]

SENATOR GLOOR: Thank you, Senator Karpisek. Members, we now move to floor discussion. Senator McCoy, you're recognized. [LB490]

SENATOR McCOY: Thank you, Mr. President and members. I stand in support of AM840. It eliminates what I believed and others believed to be a problematic portion of a combination of this bill, LB490, and an underlying bill, LB681 that was amended in through AM595. Again, this amendment, AM840, eliminates those portions which constitute a live racing...Live Horse Racing Endowment Fund. It is no longer a part of this legislation now. And I stand in support of it. And while I may, I'd like to thank Senator Karpisek and commend him for...a lot of time went in, in the last six weeks or so, on this legislation. There were a great number of concerns that were raised. And I'm happy to report that we were able to work out those concerns off the floor, so that we bring to you legislation this morning that, hopefully, is good legislation that takes care of a good number of valid concerns. Thank you, Mr. President. [LB490 LB681]

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SENATOR GLOOR: Thank you, Senator McCoy. Chair recognizes Senator Harms. [LB490]

SENATOR HARMS: Thank you, Mr. President a colleagues. I rise in support of AM840 to AM559...AM595, excuse me, and also then LB490. I want to thank Senator Karpisek for making the adjustments and the changes so it's easier for us to support. And I would urge all of you to vote in favor of the amendments as well as the underlying bill. Thank you, Mr. President. [LB490]

SENATOR GLOOR: Thank you, Senator Harms. Seeing no senators remaining in the queue, Senator Karpisek, you're recognized to close on your amendment. Senator Karpisek waives. The question is, shall the amendment to the committee amendment to LB490 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB490]

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of Senator Karpisek's amendment to the committee amendments. [LB490]

SENATOR GLOOR: The amendment is adopted. Mr. Clerk. [LB490]

CLERK: Mr. President, back to consideration of AM595, the General Affairs Committee amendments. [LB490]

SENATOR GLOOR: Are there members wishing to speak? Seeing none, Senator Karpisek waives closure. Members, the question is, shall the committee amendments to LB490 be adopted? All in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB490]

CLERK: 31 ayes, 0 nays on adoption of committee amendments. [LB490]

SENATOR GLOOR: The amendment is adopted. Discussion on the advancement of LB490 to E&R Initial? Seeing no members wishing to speak, Senator Karpisek, you're recognized to close on LB490. Senator Karpisek waives. Members, the question is the advancement of LB490 to E&R Initial. All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB490]

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB490. [LB490]

SENATOR GLOOR: The bill advances. We now move to Select File, Mr. Clerk. [LB490]

CLERK: Mr. President, on Select File, no E&Rs. First of all, Senator Karpisek, I have a note, Senator, you'd like to withdraw AM597. [LB256]

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SENATOR KARPISEK: Yes, Mr. Clerk. [LB256]

CLERK: Senator Karpisek, I now have AM1195, Senator. (Legislative Journal page 1444.) [LB256]

SENATOR GLOOR: Senator Karpisek, you're recognized to open on AM1195. [LB256]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I will say a little bit about LB256 to remind you what that is about. LB256 clarifies the State Racing Commissioners' terms. LB1012, in 2010, which was amended into LB861 in 2010, added two members to the commission, and LB256 harmonizes the provisions regarding the lengths of the commissioners' terms and when the terms begin and end. Now AM1195 is essentially LB299, which was heard in committee and advanced to General File with no opposition and one committee member not voting. Currently, there are racetracks that struggle to conduct the number of statutorily required live horse racing meets. AM1195 would allow an existing racetrack licensee to contract with another racetrack licensee to conduct a live horse race on its behalf. The issue for the horse racing industry is that live horse racing is more profitable at some racetracks than others, but all racetracks must have some live horse racing in order to have simulcast, which is more profitable. This bill would allow a racetrack where live horse racing is less profitable to contract with another racetrack where live horse racing is more profitable in order to meet its requirement for live horse racing dates and still be able to conduct simulcast. The difference between AM1195 and LB299 is that AM1195 addresses a number of the concerns that Senator McCoy has expressed to me regarding what was LB299. First, AM1195 would require racetracks to potentially contract all their live race dates except for one. Second, a racetrack facility in a county with a primary-class city, which currently would only be in Lancaster County, would be allowed to transfer all its live race day requirements for 15 years. The reason for this exception is because we are losing the racetrack at the former State Fairgrounds in Lincoln and it will take time and money to construct a new replacement facility. This amendment would give them an opportunity to have an enclosed racetrack facility as required by the Nebraska Constitution, but not have to run any live race days, so they can realize the most simulcast revenue possible in order to get the financing needed to build a top-notch racetrack facility before the 15-year sunset expires. After 15 years, the facility would again be required to have live horse racing. We recently reviewed an Attorney General's Opinion that Senator McCoy requested asking about the constitutionality of the Lancaster racetrack being able to transfer all of its live horse racing days. Regarding this issue, the opinion concludes, "We believe a court may well conclude that such a result cannot be countenanced under Article III, Section 24, as it is questionable whether a racetrack location or a facility that conducts no live racing can constitute a legitimate licensed racetrack enclosure." In other words, the Attorney General can't say one way or another whether this is constitutional or not. The second conclusion in the opinion is the last sentence in the last paragraph which states that the bill with the

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amendment would be unconstitutional if it would allow a licensed racetrack enclosure without an actual racetrack. The constitution clearly requires a licensed racetrack enclosure and it is not the intent of this bill with the amendment to circumvent this requirement, since doing so would clearly be unconstitutional. Therefore, I suggest we pass this bill and let the Racing Commission do its job in determining whether the facility qualifies as a licensed racetrack enclosure. Thank you, and I'd be glad to answer any questions. [LB256 LB299]

SENATOR GLOOR: Thank you, Senator Karpisek. Mr. Clerk. [LB256]

CLERK: Senator McCoy would move to amend Senator Karpisek's amendment with AM1403. (Legislative Journal pages 1476-1477.) [LB256]

SENATOR GLOOR: Senator McCoy, you're recognized to open on AM1403. [LB256]

SENATOR McCOY: Thank you, Mr. President and members. And I appreciate Senator Karpisek's ability and very capably so, in my mind, to outline where this issue is. This is another piece of legislation, those of you who may remember, we talked about briefly here on Select File about six weeks or so ago. And in that intervening time, along with the legislation that we just advanced to Select File a few moments ago, LB490, both of these pieces of legislation were talked about to a very involved degree. And what I offer to you this morning is what I believe to be an amendment that hopefully charts its way around the Attorney General's Opinion that I asked for, which you should have now received as the pages have been handing that out. And what it does, very simply, is it allows tracks to contract away race days down to one, but requires them to still have one day of live racing in order to maintain their simulcast license. Senator Karpisek is correct. It appears from what I've been told--and I've learned quite a bit about or tried to learn as much as I could about this industry as we've talked about this issue--and one of the things I found out is that Senator Karpisek is correct, live racing is more profitable at some tracks than others. This amendment recognizes that. This amendment recognizes that, for instance, the track in Columbus, which now is required to race because it was a track that was built prior to 1988, is required to race a good number of days, but allow them to contract those days away if they would so desire, to say, for instance, Fonner Park in Grand Island. But what this would do, however, is still require them to keep one day of live racing, like you have at Horsemen's Park in Omaha, like you have in South Sioux City, and to chart its way around the constitutional issue of having live horse racing with a simulcast license or, as Senator Karpisek would like to see under AM1195, the ability for specifically a track here in Lincoln to contract away all of their days, still maintain their simulcast license without actually conducting live racing. One of the other questions some folks have had about my amendment is, is this going to change the composition of the total number of race days that are required across the state? And the answer to that is no. If a track contracts to another track for some of their days, the same total number of race days still have to be raced. So hopefully what we have here

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is a position where if Columbus desires to be more profitable by reducing the number of race days, as long as they can contract those days away to one of the other tracks in the state, they can go ahead and keep their simulcast license. I wish, and we went into this discussion, Senator Karpisek and both of us, I believe trying to find a solution for the problem that is the Lincoln community losing its track. I wasn't here in the Legislature for the decision to move the State Fair. Some of you were. But one of the side effects of that, of course, is the Lincoln community losing its track. So throughout the discussion over the last six weeks or so, we really try to determine is there a way to set this up whereby Lincoln can have a new track, if such a track can be built, and maintain their simulcast license at the same time? I fear, however, that that may not be possible under the auspices of AM1195, which is why I bring to you this morning AM1403. It appears through the same AG's Opinion which you have in front of you again and which Senator Karpisek has already referenced, but we can have a difference of opinion on how to interpret the opinion. I think, though, it's pretty clear when the opinion states that the Legislature's power to define terms is limited. And Senator Karpisek is right in that the Racing Commission has to determine whether a track is constitutional as an enclosed licensed track. I would agree with that. But what I think goes beyond what the Racing Commission has the authority to do is to determine whether or not it is appropriate if a track maintains a simulcast license if there is no racing at all. And that truly is the discussion here this morning. It isn't whether the Racing Commission is determining whether a track is enclosed or not, whether that's constitutional; it's whether or not you can keep a simulcast license when you don't actually have any racing at all. And that's what I hope that AM1403 takes care of. And with that I would close, Mr. President. Thank you. [LB256 LB490]

SENATOR GLOOR: Thank you, Senator McCoy. Members, you've heard the opening on AM1403, AM1195, and LB256. We now move to floor discussion. Senator Nordquist, you are recognized. [LB256]

SENATOR NORDQUIST: Thank you, Mr. President and members. I want to, first, acknowledge the work that Senator Karpisek, Senator McCoy have put into this and many of the issues that have been addressed in AM1195. I do have concerns about AM1403 though. I think it's just not practical at this point in time. It was a decision that Senator McCoy said neither he nor I were here when the Legislature made the decision to move the State Fair, but it was a decision that this Legislature made. And I think we need to give the organization in Lincoln and the statewide organization time going forward now to get all the ducks in a row. Obviously, there's issues of financing a new track and they are very committed to that, but it's going to take some time to do that. And I think that AM1195 will give them that purpose that they need. This is an industry we all know that is up against the ropes and it will continue to be unless we move forward and give them this chance to create that new facility. Certainly the Racing Commission will have appropriate oversight of it. And this is an industry that's important to the state of Nebraska. We're talking about 3,000 jobs here that are impacted by this

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industry, and the decision by the Legislature to move the State Fair and, in effect, State Fair Park, affected the second biggest market of this industry. So those are things we need to keep in mind and do what we can. Again, it's a sunsetted time line. It gives them 15 years to get all the pieces in place that they need to move forward with a first-class facility, a racing facility. AM1195, without AM1403, will make it...is more practical for this nonprofit organization to run the live races at tracks that are already in place and move forward with establishing a facility in Lincoln. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Nordquist. Senator Karpisek, you are recognized. [LB256]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I do want to thank Senator McCoy for working with me through all of this. I have to say, if he wouldn't have been a gentleman and a good senator and come to work with me, we probably wouldn't even be here right now. Not to say that there haven't been days that we have disagreed pretty well. I would like to just talk a little bit about the constitutionality again, the AG's Opinion. Keep in mind that there are two conclusions in the opinion, and each conclusion addresses a separate issue, as Senator McCoy has said. As to whether a Lancaster County racetrack could conduct simulcast without hosting a live race meeting, the opinion states in the last sentence on the bottom of page 2, "a court may well conclude that such a result cannot be countenanced under Article III, Section 24, as it is questionable whether a racetrack location or facility that conducts no live racing can constitute a legitimate licensed racetrack enclosure." To me this says the Attorney General doesn't know for sure whether this portion of the bill is unconstitutional, whether the facility constitutes a legitimate licensed racetrack enclosure will be determined by the State Racing Commission and possibly by the courts if the commission's determination is later challenged. That's okay. This is how the process works. Let the commission do its job instead of trying to predict what the commission might do and what a court may hold, when in fact the issue may never even get challenged in court. The second issue found in the last sentence, on page 3, the opinion speculates that if the amendment were to not require a licensed racetrack enclosure, then "we believe it would be unconstitutional as contrary to Article III, Section 24." I agree it would be unconstitutional. However, since the amendment does not eliminate the constitutional requirement for a licensed racetrack enclosure, the Attorney General's concern is a moot point. In the interest of establishing the legislative intent of this bill and amendment, I will say again: This bill and amendment should not be interpreted to somehow allow for simulcast to be conducted at a facility that is not a licensed racetrack enclosure. I do not think I can be any more clear. Therefore, as I have already stated on the first issue, the Attorney General isn't certain of whether that provision is unconstitutional. Additional proof can be found when contrasting the language that the Attorney General used in addressing these two issues. In addressing the first issue, the Attorney General used the word "may," while when reviewing the second issue he said, "we believe it would be unconstitutional as contrary to Article III,

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Section 24." As you can see, the second language is much clearer as to the Attorney General's belief that this aspect of the amendment would be unconstitutional if it were actually contained in the amendment. Therefore, in comparison, using the word "may" in determining whether the first issue is unconstitutional is speculative, at best, and the second issue raised in the opinion is moot. So I strongly encourage you to read the opinion and ask questions. But do not support the bill with the amendment because of the AG's Opinion would be unfair to this important legislation. Again I would like to thank Senator McCoy for his help on this. And he is correct, what we've come down to is, does Lincoln have to run one day or do they not? This would also help Columbus. Either one of these amendments would help Columbus only run one day. Senator McCoy would say... [LB256]

SENATOR GLOOR: One minute. [LB256]

SENATOR KARPISEK: ...Lincoln has to run one day. I say Lincoln does not have to run one day. But I, in my opinion, Lincoln would still have to have a licensed enclosed racetrack. There is no getting around that. That is in the constitution. I do not in any way want to try to end-run that. But it does come down to the one day. The expense of running the one day here and Senator McCoy said that the AG did find a question as could a track be licensed if it didn't have one live race? I conclude that by reading the AG's Opinion, the word "may" and "questionable" leaves a question to whether it would be unconstitutional. I think it would. Senator McCoy disagrees. And I guess that's where we're at on this issue. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Harms, you are recognized. [LB256]

SENATOR HARMS: Thank you, Mr. President and colleagues. First, I want to thank Senator Karpisek in regard to this legislation. Originally, I thought I could really support this, but now with some of the changes that have occurred and with the Attorney General's Opinion, I don't really believe I can do this. I do support AM1403. I think it's the right move to make. I've always had some difficulties, as Senator Karpisek knows, in regard to the horses racing industry. Not that I have any problems with the people who are in it. It's just the fact that any time you start putting state dollars into gambling, I have always objected to this. And if you look at the industry itself, it's just a dying industry. There is no hope. And when you look at the data that we have on this particular legislation over the horse racing in Nebraska, I mean all the charts, they're so low it's hard to even identify what impact it has on our economy. So I just object to it. I don't think it's appropriate. And I would ask you to support AM1403 and then we'll see what happens with the rest of the bill. So thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Harms. Senator McCoy, you're recognized. [LB256]

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SENATOR McCOY: Thank you, Mr. President and members, again. I'd like to clarify, if I could, a little more about what this amendment does and to kind of dovetail into what Senator Karpisek was talking about. You know, I'm very fortunate as a member of the Banking, Commerce, and Insurance Committee, that when this discussion started over how can we help the horse racing industry in the Lincoln area and horse racing as a whole, is there a way to allow them to keep their simulcast license if there isn't a track and if there's no live racing? You know, we went through a whole process whereby the banking industry was brought into the...or I should say several bankers, specifically, were brought into the discussion if financing were to be pursued for such a track facility, what would be the requirements in a general sense, rather than a specific sense? And that is part of the core tenets of what Senator Karpisek brings in AM1195. But what I think we really can't get around again--and I think Senator Karpisek probably hit the nail on the head. We're really very...when you boil it all down, what we're really talking about here is can Lincoln keep their simulcast license if they are not racing any races at all? In other words, zero races; not even one day. And I would agree, constitutionally, with Senator Karpisek that an enclosed track or a track enclosed as it's...or licensed racetrack enclosure, pardon me, that's constitutionally required, would still have to be there. But under AM1195, they could keep that simulcast license with a licensed racetrack enclosure that isn't holding any races. Under my amendment what I believe we charted around the constitutional minefield and said that you can go ahead and keep that simulcast license with one live race day, as Horsemen's Park and others have across the state, but you've got to have at least one live race day, which goes back to statute from 1988 which said that any track built after 1988 could, if they so desired, only race one day a year. Any tracks that are older than that are held to a different formula and have additional days, which brings us to Columbus. Columbus, built prior to 1988, as I mentioned earlier in my opening, would like to go down to one day, possibly, which would be more profitable for them, while keeping their simulcast license. AM1403 would allow that. So in no way, shape, or form is AM1403 intended to be adversarial to the industry at all. You know, Senator Karpisek was right in that we probably wouldn't even be here discussing this issue this morning had there not been a tremendous amount of work that went into this legislation before we ever got here. Do we see eye to eye, completely? No. Which is probably the nature of my amendment versus AM1195. I think in light of the recent Attorney General's Opinion, we really have to take that in consideration, it's my belief. It's incumbent upon us as a Legislature to do that. We might disagree over the "may" or "shall" or whatever the points may be, but I believe it's pretty clear on the last two lines where the Attorney General's Opinion is that, "we believe it would be unconstitutional as contrary to Article III," of the constitution, which talks about a licensed racetrack enclosure. I think that's what is key here. [LB256]

SENATOR GLOOR: One minute. [LB256]

SENATOR McCOY Thank you, Mr. President. I really think that we have to look at how

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we can help the industry but at the same time skirting the constitutional requirements of this issue. Obviously this issue tends to be very divisive, but I think on this we're pretty close to getting this figured out, in my opinion. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator McCoy. Senator Lautenbaugh, you're recognized. [LB256]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I wonder if Senator Harms would yield to a question? [LB256]

SENATOR GLOOR: Senator Harms, would you yield? [LB256]

SENATOR HARMS: I'd be happy to. [LB256]

SENATOR LAUTENBAUGH: Thank you, Senator. And I just wanted to get a clarification on something. You mentioned something about giving state dollars to horse racing. How do you see that transpiring, under this bill or amendment? [LB256]

SENATOR HARMS: I really don't. I'm just saying that's something I've always been against, Senator, and that would... [LB256]

SENATOR LAUTENBAUGH: Okay. So that's not what we're talking about here though. [LB256]

SENATOR HARMS: Yeah. No, I just said I have been against that completely. I've been against the aspect of horse racing, because it's a dying industry, and so I'm saying I don't know if we can bail it out or not. And now with the Attorney General's Opinion, that's where I'm at. [LB256]

SENATOR LAUTENBAUGH: Okay. I understand. Thank you. Senators, I do want to be clear about this, as I've discussed this before in another, less germane setting this session. But this is not us giving the state dollars or state support or tax dollars or anything like that to prop up horse racing. And I can't stress enough, this business does employ thousands in the state of Nebraska when you take into account all of the possible effects of horse racing and everyone involved, on down the line, from race day backwards, about, to the fields. And I don't want to stand here and say that there's no hope for this industry, but it would be helpful if we stopped putting impediments in the way of this industry as well. Or when something comes along that is a reasonable, modest attempt to do something to help this industry, we recoil and say, oh gee, we can't do that, we shouldn't do that, we shouldn't help them, and then in the next breath say, oh, and by the way, for some reason it's dying, we shouldn't help them. There's a point at which it becomes almost circular in that we constantly refuse to do what we can, whether it costs us anything or not, and then we say, but look, the industry is struggling

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so much we might as well just let it go. I'm not willing to do that. We've worked very hard on this, this year...very hard on this topic to try to get a little something for the track, a little accommodation for the tracks to keep them going. And I'm no stranger to this argument. I had a priority bill last year that would have allowed betting on horse racing, but historic ones on machines rather than live racing. My thought was it was the same as what you're doing at the track, only a different technology, basically. And we heard how that was expanded gambling and we were treated to an interesting definition of expanded gambling that said that any time revenue went up, you're expanding gambling--which would mean that advertising is expanded gambling, if you think about it. So we should probably do away with that, because advertising is meant to do one thing if you're a racetrack, and that's bring people to the track. So some said, well, if you're...that would increase revenue then, obviously. And so if there's increased gambling revenue, that must be expanded gambling. So we should probably do away with advertising right now, because that leads to this horrible thing that we want to avoid, which is increased revenue from gambling at the tracks. Leaving aside that cases of problem gambling associated with horse racing are almost nil, by the way. It just isn't happening in that way. And we've set up sort of a preference where we do things for keno; we protect keno. Last year, on my priority bill, there was an argument that we shouldn't do this for the tracks because it might hurt keno revenue. That was a remarkable argument from someone who opposed expanded gambling, however you define it. So we have to protect keno. But now here we are today, talking about something that might do something for the tracks... [LB256]

SENATOR GLOOR: One minute. [LB256]

SENATOR LAUTENBAUGH: Thank you, Mr. President...and again, we're struggling with it and we're being told that because the Attorney General's Office says this may raise a question, that's a long way, by the way, from saying something is unconstitutional. It may raise a question, we should not do this either. And I can't buy that and I don't support that. Everything raises a question. Getting out of bed raises a question when you're in the Legislature as far as constitutionality. Every day is a new day; there's always new questions. But we can't be paralyzed by the threat of a possible question maybe someday being resolved the wrong way. That's not what we do here. I can't support the pending amendment but I do support Senator Karpisek's efforts here. And please do something to help this industry that is so important to so many Nebraskans. Thank you all. [LB256]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senators wishing to be recognized are Wallman, Schumacher, Karpisek, Mello, and Price. Senator Wallman, you're recognized. [LB256]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Constitution issues. And when did we hear that last, Senator Conrad, Senator Council? "Cap"

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Dierks's bill. Did I vote for that bill? Yes, I did. We were warned it would be unconstitutional. Did we pay any attention that time? No, we didn't. Should we have? We paid a legal bill to the Supreme Court to an organization I don't always agree with for sure. It cost us a lot of money. So I like Senator Karpisek's bill and his amendment, but I oppose Senator McCoy's amendment. And it seems awful funny to me that horse racing people in my district are very upset with this legislative body for moving the State Fair, kicking the horse racers in the rear end. And these are good people, folks. They feed the animals. They train them. They employ people. And what are we trying to do? Help them, just give them a sliver of hope here? And we say it's a dying industry? If it is, it's on account of us. We have a choice. It's kind of sad that we are the big bully on the block here, making people do what we say they should do on issues which we already have gambling, we have keno, we have pickle cards, and we go on and on. And do they advertise? Yes, they do. So I appreciate Senator Lautenbaugh's opinions and Senator Karpisek, and I'll listen to the rest of the story. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Wallman. Mr. Clerk for an announcement. [LB256]

CLERK: Mr. President, the Redistricting Committee will meet at 11:00 a.m. underneath the south balcony; Redistricting, 11:00 a.m., south balcony. [LB256]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Schumacher, you're recognized. [LB256]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. The discussion we are having on this bill underscores a much larger issue which eventually will have to be addressed some day. It is the issue of Article III, Section 24 of the constitution. That section of our constitution originally provided that this body was without authority to do two things, only without authority to do two things, and that was: authorize games of chance and divorce. It was off limits to this body. We couldn't regulate those things. Over time, common sense set in and said, look, we have no business in the middle of marital affairs and whether we can or cannot authorize divorce. And so that section of the constitution was, with the approval of the people, taken out. That left us with a section that said we shall not authorize games of chance. And as society developed and moved on, common sense slowly began to set in again, and we said, okay, we're going to create some exceptions. And over time we did, after much debate and controversy. But each one was accompanied by a threat or a prediction that the world would end if we took that additional step. Horse racing was one of them. Lotteries for community betterment was another one. Bingo was another one. Business promotion lotteries was another one. After much controversy in the early '90s, the state lottery was another one. And the list goes on until there are broad-ranging exceptions. However, the language of the constitution still remains there as an impediment to this body's exercise of common sense in the gaming industry. We have

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somewhere between \$60 million and \$120 million a year moving across the border to Iowa in a large subsidy right now. We can't do anything about it but watch the money go. We have this particular little issue in which it seems to be there's a general consensus that although the horse racing industry is probably doomed without slot machines, maybe we should try to help them. But we can't, because we have to split hairs of whether or not the constitution requires a licensed enclosure, and that requires at least a day of racing over some period of time. I think probably our hands are tied, and Senator McCoy is, regrettably, correct on this: our hands are tied. And they're tied by a constitutional provision which direly needs to be examined in the light of modern economics and the modern reality of the huge amount and huge demand in the gambling industry for which there are large amounts of revenue derived, very much of which we need here. So regrettably I think the constitution requires us to go with Senator McCoy's interpretation, and hopefully in the years ahead we can begin to address this issue in a far more rational level for the good of the people of Nebraska than somebody, as it was addressed, in the mind-set that wanted to prohibit divorce and games of chance. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Karpisek, you are recognized. [LB256]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I again just wanted to try to clarify a few things. As soon as the State Fair track is no longer--they will run there in 2012--they will no longer be there. Lincoln will have to have a new licensed racetrack enclosure put up before they can simulcast again. Now when we talk about an enclosure, it just doesn't mean the grandstands. It means the track; it means the whole thing. The reason why I am trying to make it why they would not have to run at least one day is because of the time line involved in one year, or from today forward until 2013, how do they get an up-and-running racetrack? Now I do disagree with the Attorney General's Opinion that...or I don't disagree with it; I just think that the "mays" in there and questions does bring up that it's not set in stone. We work with "mays" and "shalls" all the time in here, and we absolutely know what those means. So when I say that the "may" brings up a big red light for me, it does. Again that is what we are down to. Does Lincoln have to run one day or do they not? I again, though, want to thank Senator McCoy for working with me and the group. I think that this has worked out. This is the way we're supposed to do things. Senator McCoy has definitely got himself up to speed on this, probably, in my opinion, a little too much, might have learned a little too much about it. But instead of always just listening to one side or the other, that may not have their facts straight and play very loose with the facts, he has found things out, asked me things. I've asked him things and I very much appreciate that. Because we all hear, in here, very often, things coming from outside the glass that may or may not be true. What does surprise me is how many times we hear things from the same people that we find out are not true, but we continue to keep listening to them. Burn me once but not twice. And I've heard it and I've heard it and I've heard it--and I hope that we

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remember that. It does come down to, again, the one day. And it does come down, I guess, to the AG's Opinion. Do you feel that we absolutely have to run the one day or do we not? It does have to be a licensed racetrack enclosure; that is constitutional. Do they have to run the one day? In my opinion, no. I am not an attorney, but the attorneys that I have worked with agree with that. We all know how that works. There's attorneys that don't. That's what we're coming down to. I think again, either one of our amendments talk about giving Columbus to go down to one day. Now talking about any of these transfer dates, somebody is going to have to take those days. We're not cutting down the number of days that have to be run. They absolutely have to be run. Will Grand Island pick them all up? Will Omaha pick some up? I don't know. We don't know. The market is going to bear on that. And I'm sure that Lincoln and/or Columbus will have to pay whoever picks them up to do that, because again it is expensive to run a live day. That's why I'm saying Lincoln should not have to run the one day because of the expense. We're saying they have 15 years to come up... [LB256]

SENATOR GLOOR: One minute. [LB256]

SENATOR KARPISEK: ...with a plan and some money to build a track in Lincoln. We've had two banks give a statement saying that they would be willing to loan the money on 15 years--no shorter, because there is just not enough time. So please think for yourself. Look at that opinion. Remember what "may" and question...there may be a question as to the constitutionality. I don't think that that AG's Opinion is as tight fit as maybe Senator McCoy does. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Karpisek. Senators remaining in the queue: Mello, Price, and Lautenbaugh. Senator Mello, you're recognized. [LB256]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. And I don't want to belabor I think some of the points that other colleagues have already made on this issue. And I would like to thank Senator McCoy and Karpisek for trying to find ways to discuss and negotiate what appears to be opposing views on AM1403 and AM1195 and the underlying legislation. Senator Lautenbaugh mentioned something that I was going to clarify, which is AM1195 does not provide state tax dollars or taxpayer money to horse racing, the horse racing industry. It simply clarifies the ability of a track to be able to, in my opinion, responsibly follow what the constitution says but also build for the future. Because it was before my time or Senator McCoy's time in the body that the Legislature voted to essentially eliminate the track in Lincoln at the State Fairgrounds. That was an agreement that was made to give the State Fairgrounds to the University of Nebraska for Innovation Campus. I support Innovation Campus. I think it was a wise decision at the time. But nonetheless, we need to be cognizant of what the city of Lincoln and the horse racing industry in Lincoln are trying to do. Senator Karpisek's amendment wants to give them 15 years to responsibly finance the creation of a new track. That is what his amendment does. Senator McCoy's amendment,

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AM1403, says you need to build that track within nine months, otherwise you will lose your simulcast. I don't feel that's a responsible way, moving forward, when you have partners at the table willing to try to keep what is what we know is a very tenuous situation with the horse racing industry moving forward. It's one thing to say you generally disagree with gaming or you generally disagree with horse racing. But colleagues, this is an industry we've heard, as Senator Lautenbaugh alluded to, on multiple bills, that has a 3,000-plus job impact. Now I think it's rational and I think it's reasonable of what Senator Karpisek is looking to do with his underlying amendment, which is we are going to give 15 years for the city of Lincoln to be able to build a new track--a track that's up to snuff. The reality though is, is that if we adopt AM1403, that won't happen. That essentially is eliminating any possibility to continue horse racing in the city of Lincoln. Now we can have differing opinions on this, and I think Senator McCoy, Senator Karpisek, myself and others, do have differing opinions. But I think what Senator Karpisek is trying to lay out is a reasonable, responsible path for it. It's not expanding gaming. I think he laid out very clearly the Attorney General's Opinion, which I'd like to remind us constantly is only an opinion. It's simply his thoughts. It's not law of the land. That is what is decided either by the Legislature or by the court system. So the Attorney General said it "may" potentially violate. We had a lengthy debate about this last week on Senator Cook's bill where there was an AG's Opinion that said it "may" violate. Colleagues, I urge you to take a step back and consider what we are possibly doing by adopting AM1403, because there's an opportunity for us to move forward in a responsible manner or in a knee-jerk manner. I think asking the city of Lincoln to build a track in nine months is a knee-jerk reaction. If there's other ways that we can move forward, I think Senator Karpisek and McCoy can sit down together and look to solve that. But underlying I believe what Senator Karpisek has laid out as a way for us to continue horse racing, whether or not that's designating Lincoln's one day over the course of 15 years till they build a track to another track, is the responsible way to move forward. It's not expanding gaming. It's not changing the rules of the game, so to speak. It's simply allowing an opportunity for a city to continue to move forward... [LB256]

SENATOR GLOOR: One minute. [LB256]

SENATOR MELLO: ...building a track that the Legislature took away from them a few years ago. With that, I urge you to oppose AM1403 and to support the underlying amendment AM1195. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Mello. Senator Price, you are recognized. [LB256]

SENATOR PRICE: Thank you, Mr. President and members of the body. Here we are again with a gambling bill. And before I make commentary on it, let me preface it with a statement, and I think Senator Lautenbaugh has said many a times: So much of what we do in our state for good purposes is funded through gambling dollars. We've put

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ourselves in a predicament where we've said we'll allow this thing to happen that some people find offensive as long as you send money to something that we approve. Some of us refer to this as a sin tax. And if that sin tax were repealed or people stopped doing it, we wouldn't have the funds to do the things we do. It would all become General Fund obligations, and what of a pickle we would be in then. So that's the very first portion of this. My next point is this: When I was on the General Affairs Committee, we had a bill that said...that had the horse owners and racers pitted against the track owners and the ones who own and run the off-track betting, the simulcast. And what a dilemma that was, because what was happening was, they were trying to do the same thing where we're going to run fewer races. Let me tell you, this is what was told to us then. I don't think it's changed, but this is what the horse owners said: You will be hurting us if we cannot run our horses here; we are good because we are going to have all these people employed--you know, people who run the track and do all the things, the groomers and trainers, etcetera. So within the community of horse racing, there was a schism that was very pronounced. If we allow this simulcast situation to occur to where there need to be no races, be assured...according to what the individuals in the business said, be assured they would be harmed. If there could be a wand that was waved that all we had was simulcast and we didn't force or we didn't demand that there be live racing, there would be no live racing almost at all, because it's an expensive thing to undertake. Which is a perfect segue into the point where we talk about having to build a new horse racetrack and facility, and then over the next 15 years we're going to bond it. There is going to be money lent and there will be bonding that goes on. And it would be going to an industry that even today can't support the tracks they have. Now put that in contrast to perhaps the baseball stadium in Omaha where they have a guaranteed contract, where the NCAA is going to play the College World Series, and they're going to do all these other...there is a vibrant economic understanding of what is going to go on that makes that risk acceptable. But now we're asking people, give us the money to build a track for something that cannot even support itself today. Is it prudent? That's the question we have to ask ourselves. Is it prudent to tell the taxpayers this thing that we want in the future, that you will pay for, we don't know that we can support it? But all around it, wrapped all around it we're still left with the thing that...this thing we call the sin tax that provides for so many things. As a matter of fact, there's a lottery funding mechanism that I'm going to use for a bill of my own. So before we go out there and throw stones and cast aspersions on these industries, let's look very carefully at the bills and the things that we use that money for. If we can make the business case that it makes good business sense to do something, then let it be that. But if we can't even make the business case, then that's where we have to rely on. [LB256]

SENATOR GLOOR: One minute. [LB256]

SENATOR PRICE: Thank you. That's what we have to rely on and not our emotional attachment or detachment to the subject matter. Thank you, Mr. President. [LB256]

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SENATOR GLOOR: Thank you, Senator Price. (Visitors introduced.) Senators in the queue: Fulton, Karpisek, Larson, and Lautenbaugh. Senator Fulton, you are recognized. [LB256]

SENATOR FULTON: Thank you, Mr. President. I'm not going to speak too long on this, as I'm not as familiar with this as I think maybe other senators are. But something Senator Mello said earlier just caused me to perk up, as only Senator Mello can. And I understood him to say that we are not here to change the rules on this issue. And I'm looking at the bill and the amendment, and that's exactly what we're doing here. We are changing the rules. Not that that's good or bad in and of itself; it's neutral. But that's exactly what we're doing. And so the question here is, how are we to go about doing this? I've been able to look at 2-1205 and other statutes that are referenced in AM1403, and it seems to me that what Senator McCoy is trying to do here is to be consistent with existing statute and, after hearing something back from the Attorney General as to the constitutionality of the bill, that that would be his response. Now if I'm reading this incorrectly, then I expect someone will point that out here in debate. But, you know, just my read of it, that's what it looks like we're doing here, and it doesn't seem unreasonable considering what I see in the statute and what I am seeing from the Attorney General. So I want that clarification that if we're trying to say that we're not...that we shouldn't be changing the rules here, indeed that's what we are doing with this bill and amendments. So with that, Mr. President, I'll just yield the remainder of my time to Senator McCoy. [LB256]

SENATOR GLOOR: Senator McCoy, 3 minutes 30 seconds. [LB256]

SENATOR McCOY: Thank you, Mr. President, and thank you, members. Thank you, Senator Fulton. I'd like to go back to, if I could for a moment, just where I think we are in this discussion. You know, it was mentioned earlier and I think Senator Karpisek is one of those who...and I don't want to put any words in his mouth or indicate something that isn't the case, but I believe it to be true that Senator Karpisek did not vote to move the State Fair to Grand Island. I wasn't here for that vote. I wasn't here for that debate. It was while we were in the middle of campaigning to...while I was in the middle of campaigning to arrive here at the Legislature. But really where I think we are this morning is a by-product of that vote. The Legislature made a conscious decision, in my view, to move the state forward by moving the State Fair to Grand Island and creating Innovation Park, Innovation Campus. That discussion has continued this year with the \$25 million in the budget for Innovation Campus in the hopes that it will catapult our state forward with jobs and new opportunities for our kids and grandkids. That's my hope, anyway, and I believe that to be the case. But we're here this morning because of a by-product...in my mind, as a by-product of that decision years ago to move the State Fair and to create Innovation Campus. You know, the track that's there now, that's here in Lincoln, State Fairgrounds, that will be torn down, it's been used for many, many, many years for horse racing. We find ourselves in the position of Lincoln coming up on

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the reality of no racetrack because of those prior decisions that were made, good or bad. It's just a reality. But what I fear is if we don't adopt AM1403, is that we've made a major policy change as a state. We've said if we don't adopt AM1403 and we do adopt AM1195, we've said that we have now determined that it's okay, here in Lincoln,... [LB256]

SENATOR GLOOR: One minute. [LB256]

SENATOR McCOY: ...to conduct racing...or pardon me, to conduct simulcast betting and maintain a simulcast license with no live racing but still having to have a track in the next 15 years...or after 15 years. I just think that's a major policy change that I think we ought to think long and hard about making, because I don't believe it's what the people of Nebraska would wish to have happen. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator McCoy. (Visitors introduced.) Senator Karpisek, you are recognized and this is your third time, Senator. [LB256]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I do want to make clear that I do not support AM1403. I don't think that we can get a track built that fast to be able to run live races. I do not think that it is unconstitutional. Senator McCoy has said...made his points. I'll make mine. I guess my thought is, if we have to, the courts will tell us. I don't like it to go that way, but that's the way it goes. Senator McCoy is also correct in saying that this is a by-product of moving the State Fair. And I know that I get a lot of my things are because of that. Not why I brought the fight on the budget, not why I am bringing this bill either, but it is by-products of that. That track has to move. Had that track not had to move, we wouldn't be here, so that is why this came about. That is not why I have the bill. Why I have the bill is because I'm the Chair of the General Affairs Committee and I also support the horse owners who also own some of the tracks, and all of it is interconnected. I do want to make clear that I support the horse owners. So I would like a track to be up and running in Lincoln as soon as possible--as soon as humanely possible to get it going so the horse owners can have horse races and make some money. Senator Price talked about the tracks and the owners being at odds over the last few years. Very true. Because it is expensive to run the races, but the owners need the races to make money. They don't make any money if their horses aren't running. I think they are all together on this bill. Somebody is going to have to pay for the races to be moved. Somebody is going to have to pay and somebody is going to have to take them. Grand Island again will have to take some if this is going to work. Omaha may have to take some for this to work. Otherwise it's kind of a moot point. Hopefully, Columbus won't have to run the 25 that they do now. Lincoln obviously will not be able to run hardly any, if any. Again we're getting down to Senator McCoy's amendment says they have to run one day. I do not agree with that. I don't see how they can do it, and I hope that...they're at a disadvantage that they did not put themselves in on this one. If I thought it was unconstitutional, I would not have brought

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that. I do not think it is. I think that again the language in the AG's Opinion is not as tight as it could have been. "Mays" and raising questions to me does not constitute saying, "It is, in our opinion, unconstitutional." I hope we can wrap this up fairly quickly, see where we're at on it, and keep moving. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Karpisek. Senators in the queue: Larson, Lautenbaugh, Wallman, Nordquist, Nelson, Schumacher, and Pankonin. Senator Larson, you're recognized. [LB256]

SENATOR LARSON: Thank you, Mr. President and members of the body. I rise in support of Senator Karpisek's AM1195 but opposed to Senator McCoy's AM1403. And earlier in the debate I heard the analogy come up from a colleague that the horse racing is a dying industry and that's why the Legislature should be wary of supporting it moving forward. Well, using that logic, I know my legislative district lost about 5,000 people in the past ten years, and western Nebraska continues to lose more. And a lot of people say western Nebraska is dying, so is it the Legislature's responsibility not to help that too? I mean this is an industry that does add jobs. This is an industry that does help rural Nebraska, that do help other parts of the state. But we don't want to help that? I think Senator Karpisek is being reasonable with his amendment and giving Lincoln time to move forward. I understand where Senator McCoy is coming from. But I think that it's not in the best interests of the horse racing industry and it's not in the best interest of the city of Lincoln or the state of Nebraska, and I'd urge my colleagues to not support AM1403 but support Senator Karpisek. And if he wants it, I would yield the rest of my time to Senator Karpisek. [LB256]

SENATOR GLOOR: Senator Karpisek, 3 minutes 31 seconds. Senator Karpisek waives. Senator Wallman, you are recognized. [LB256]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Again I stand in support of Senator Karpisek's bill and his amendment and against Senator McCoy's. It seems like we're awful concerned about one or two days here and simulcasting horse racing. I don't know how many people in this body have ever been to horse racing. It's an event. It's an event; it brings people. It brings vendors and it brings horses. And as far as attendance at the horse track, maybe some of the track owners made decisions in the past...I remember when Ak-Sar-Ben started going downhill, they started upping their attendance fees. And I think years and years ago it was basically free, and so it made some of the veterans may, I know, because they charge veterans also, disabled vets that time or something. I forget. But Ak-Sar-Ben made a bad mistake and immediately attendance went down. So we do make decisions in here that affect the economy of the state. The horse owners pay taxes. You know, they pay employees. And if you ever go the stables, there are nice men and women working in there with the horses--the trainers, the people that clean the stables. And it's a lot of people. It's a beehive of activity. And who could be against that? And the constitution issue, that

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seems awful iffy too. But we shouldn't be passing laws strictly on constitution, because we should make the laws and then study the laws, like Senator Karpisek has done, and then vote the way we want to vote. And we did choose to move the State Fair, and I was on that committee and I voted to move the State Fair. At that time, I thought we was going to have the State Fair...the horse racing moved over to 84th Street. That didn't happen. The deal fell through. So I feel bad about that vote today, sure I do, because we hurt the horse racers in Lincoln--and they tell me about this too. And so I would encourage you to support this, Senator Karpisek's LB256, and also his amendment AM1195. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Wallman. Senator Nordquist, you are recognized. [LB256]

SENATOR NORDQUIST: Thank you, Mr. President and members. This policy that we're talking about I would contend, you know, is not necessarily a major policy change. We're talking about something very narrow here for a specific purpose. Again this Legislature made a decision a few years back and that decision is having its impact here, and that's what we're looking to address. The decision, whether it's major or not, I think depends on your definition of what major is. We're looking at whether or not one track has to run one day out of 365 days a year. I don't know what that one day, how that one day fundamentally changes what that track is or, you know, makes it any better or worse. Again it's just one day of live racing that we're talking about here. So I think that the underlying amendment AM1195 is a practical way to help an industry that we, this Legislature, those before us, tied one of their hands behind their back. If we move forward with AM1403, we're going to tie the other hand behind their back. We're going to say, as you try to get a new facility off the ground, we're going to make you spend money and resources that don't need to be spent, so you have to have one...for one day of live racing. It's just not practical. It's just not common sense. AM1195 will put this industry...will give this industry at least one hand to work with as they move forward. And I think it's the rational policy here as we move forward. Again it's a minor change to help an industry. And again it's sunsetted; it's very clearly laid out what this...what the purpose is. It's not some slippery slope. It's...again it's a small change to help an industry that has a significant impact in terms of jobs and economic activity throughout the state of Nebraska. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Nordquist. Senator Nelson, the Chair recognizes you. [LB256]

SENATOR NELSON: Thank you, Mr. President and members of the body. I was out at a meeting for part of the discussion, so I hope this is not repetitive, but I stand at this time in support of AM1403 proposed by Senator McCoy. And I have to agree with my colleague Senator Paul Schumacher in his assessment of the Attorney General's Opinion. If you look at that carefully, we have two cases in which the Attorney General

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relies. And we begin with the Stenberg case there in which the court says, "The Constitution plainly states that pari-mutuel wagering is authorized as long as it is, "conducted by licensees within a licensed racetrack." And then it goes on to discuss a second opinion, the "Douglas Racing Corporation...confirm that the Constitution requires that parimutuel wagering on horse races must occur within a licensed racetrack enclosure." So that's where we're talking about here. And yes, the Attorney General does say "may." We believe a court may well conclude that such a result cannot be countenanced under Article III, Section 24." But he goes on to say, or the opinion goes on to say, "as it is questionable whether a racetrack location or facility that conducts no live racing can constitute a legitimate licensed racetrack enclosure." Now I think that's a well-reasoned opinion. We may not like it. It may be necessary whichever way we go here that our Supreme Court is actually going to have to rule on that. But I've read this several times. I think the conclusion here, it's not 100 percent as you sometimes find there's no question you know but what this is unconstitutional, but I think in the reading of those two cases that it's right to say that it's questionable whether a facility can operate under the circumstances that we're talking about in Senator Karpisek's amendment. And therefore I, like Senator Schumacher, I have to stand in support of AM1403. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Nelson. Senator Schumacher, you are recognized. [LB256]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. The law where in 1875 that restricted our authority did not give us the option to be reasonable on matters of games of chance, and we've been shackled by it for well over 125 years. The people have tried to break us out of those shackles on occasion, and one of them was the occasion for horse racing. They said, and they amended their document, the constitution, to say: Nothing in this section shall be construed to prohibit the enactment of laws providing for the licensing and regulation of wagering on results of horseraces, wherever run, either within or without this state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure. We are confined to that language. Now the fact that we are confined to that language does not mean we are at an irrevocable impasse in the two different opinions that are being expressed today represented by Senator McCoy and Senator Karpisek. Remember, it was just a few years ago Ak-Sar-Ben closed. They had a nice big racetrack there. It didn't take them 15 years to move it. They moved it rather quickly and they saved their liquor license and racing license and were able to conduct the off-track betting, the only kind of betting that is really profitable in racing these days. Now there is nothing that prevents us or the Racing Commission or perhaps we need to tweak something on Select File to say, look, horse racing, one day a year, does not mean you need a full-fledged thoroughbred track. You can run two nags around a parking lot and you can suffice the requirement in the constitution. Again it's kind of odd. But we are not in a position to be reasonable, and as such, we probably could authorize that and be

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perfectly okay and bring both sides together. This has been done on a rapid order at Ak-Sar-Ben. We probably have the leeway to define and even override the Racing Commission and the racing industry to define how this one race in this enclosure should be taking place each year. So this is not an impossible impasse. I think if we have fundamental agreement that they should be allowed to farm out their racing days, we can intervene. In fact, we can even reduce the number of racing days required if we wanted to, overriding the racing industry so they wouldn't have to pay a premium in order to get another track to take their particular days. This is not unworkable. But as it stands, we're handcuffed to AM1403. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Pankonin, you are recognized. [LB256]

SENATOR PANKONIN: Thank you, Mr. President. I was out in the aisle, had to get here. Probably no surprise, I'm going to be voting for AM1403. And I do want to say that on our two bills today of Senator Karpisek's, I think it's been a good discussion and good dialogue and we've tried to engage with Senator Karpisek. Senator McCoy has done a lot of work. And so I think it's been a reasonable discussion. I'm still concerned. Obviously, we've had a lot of people weigh in, some of them attorneys, that the Supreme Court Opinion doesn't matter or, excuse me, the Attorney General's Opinion doesn't matter, but when I look at it, to me, it does and it says, we believe it would be unconstitutional, in the last sentence. And Senator Schumacher has talked about maybe there's some things that could be done to make this all work out but we are on Select File, moving down the road. And I...if there isn't support for AM1403, I think the folks that are for AM1195, it is a question, I think it's a legitimate question about whether this is all going to work from a constitutional and just how feasible it is to do what they want to do. So I just want to weigh in very quickly and we'll see where this takes us in the next half-hour. Thank you. [LB256]

SENATOR GLOOR: Thank you, Senator Pankonin. Senator Lautenbaugh, you're recognized. [LB256]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and I would yield my time to Senator Karpisek. [LB256]

SENATOR GLOOR: Senator Karpisek, you are the last speaker in the queue. Do you choose to close? Oh, I'm sorry. You have 4 minutes and 44 seconds. [LB256]

SENATOR KARPISEK: Thank you, Mr. President, and thank you, Senator Lautenbaugh. And I was thinking the same thing, Senator, so...I would just like to go over a couple things that I heard especially Senator Nelson say. I agree, it has to be a licensed horse track enclosure. I absolutely agree, that is the constitution. What I do not agree with him on is...and I'm quoting from the Attorney General's Opinion, again, it's an

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opinion, "We believe a court may well conclude that such a result cannot be countenanced under Article III, Section 24, as it is questionable whether a racetrack location or facility that conducts no live racing can constitute a legitimate 'licensed racetrack enclosure.'" I don't know if something happened over the weekend where "may" and "questionable" changed definitions. "May" and "questionable," in my first five years here, meant it may; may, may not. Further, it says: Indeed, it is not clear whether, under the amendment, a licensee in a county with a city of the primary class would even be required to actually have a racetrack capable of holding live race meets, since it is allowed to contract to have all of its meetings under a licensed racetrack. No, I agree, they would not be able to. It would have to be a licensed track. It's in the constitution that it would have to be a licensed track. And we have a Racing Commission that will say whether it is a licensed track or not. I think that's what we're to right here and, yes, maybe there is a question, and exactly, it is a question, may be a question. I also know in my five years here that we have passed many bills that had an issue of constitutionality and I would have to say it usually brings on the abortion issues. And we've had people stand up and say that it's unconstitutional but we've passed them anyway and it ends up in court. Never seemed to bother the introducers on that whether it was constitutional or not--well, I guess we'll have a court tell us. Well, now we're back, the shoe is on the other foot here a little bit and that's what I'm saying. I don't think that this is an issue. I think "may" and "questionable" really tell the story. I also feel if no one files suit, this won't end up in court. I don't think that it's that big of an issue--one day compared to no days. I think it makes a lot of difference if Lincoln can get a track built in 15 years, the moneywise if they can do it. Again, I would like to tell everyone that I would appreciate their support in voting no on AM1403. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Karpisek. There are no senators remaining in the speaking queue. Senator McCoy, you're recognized to close on your amendment to AM1195. [LB256]

SENATOR McCOY: Thank you, Mr. President. I think we've had a good discussion this morning as relates to this issue and I would follow that up by saying I appreciate your vote yes on AM1403, because I think it's a reasonable solution, I believe, to this problem by not putting into question the constitutionality of what we're passing, while at the same time what I believe to be doing everything we can in our power to help the Lincoln, especially, horse racing community with the loss of their track, which the Legislature had a hand in. You know, we can parse and pick apart, and that's fine, that's what we're here for, an Attorney General's Opinion, but you can't get around the fact that the last line says, "we believe it would be unconstitutional as contrary to Article III." We can say "may" in the previous page, whatever the case may be, but it also says, "we believe it would be unconstitutional." That seems to me to be pretty clear. You know, I guess I would go back to earlier and might have almost been missed in the discussion at the very beginning of this, but the original amendment which constituted LB299,

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which is what AM597 was at the very beginning of this discussion that Senator Karpisek has now withdrawn, I would say if we don't adopt AM1403, I would encourage Senator Karpisek to bring back AM597 which says that any track in the state can contract away their race days in order to be more profitable. What's good for the goose ought to be good for the gander. And why would we restrict this to just Lincoln? Seems to me that's an admission already that this is on shaky ground. Why not have this be so we fully protect the horse racing community across the entire state, not just in Lincoln? So if we don't adopt AM1403, I would believe that we ought to go back to AM597, which was originally the amendment that was introduced here on Select File when we first visited this issue about six weeks ago. I again would reiterate, I think this is a major policy change in our state. To, for the very first time, allow simulcast racing at a facility with a track that's not used, with no live horse racing is a major policy change, and I don't know how you could look at that whether as helping the Lincoln horse racing community or not. I don't know how you couldn't look at that and not say that's expanded gambling. Because what is the next step? Why not allow simulcasting at some other facility: bars, dining establishments, other places other than a licensed racetrack? We're also asking the Racing Commission to license a track, when one is built, or to contemplate licensing a track where no horse racing is conducted. With that, again I would ask for your vote on AM1403. Thank you, Mr. President. [LB256 LB299]

SENATOR GLOOR: Thank you, Senator McCoy. Members, the question is, shall the amendment to AM1195 be adopted? Those in favor vote aye; those opposed vote nay. Senator McCoy, for what purpose do you rise? [LB256]

SENATOR McCOY: Mr. President, I would request a call of the house, please. [LB256]

SENATOR GLOOR: Members, there's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB256]

CLERK: 39 ayes, 0 nays to place the house under call. [LB256]

SENATOR GLOOR: House is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Members, we are waiting for one member who is returning. Senator McCoy, all members are present and accounted for. How would you like to proceed? [LB256]

SENATOR McCOY: Board vote, Mr. President. [LB256]

SENATOR GLOOR: We've already started the board, Senator. Roll call or call-ins? [LB256]

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SENATOR McCOY: Call-ins. [LB256]

CLERK: Senator Fulton voting yes. Senator Ashford--how, Senator--voting no. Senator Howard voting no. Senator Utter voting yes. Senator Hadley, excuse me, Senator Avery voting yes. Senator Schumacher voting yes. Senator Carlson voting yes. Senator Burke Harr voting no. Senator Wightman voting yes. Senator Smith voting yes. Senator Larson voting no. [LB256]

SENATOR GLOOR: Record, Mr. Clerk. [LB256]

CLERK: 18 ayes, 21 nays, Mr. President, on the amendment. [LB256]

SENATOR GLOOR: The amendment fails. Raise the call. We return to AM1195. Senator Price, you are recognized. [LB256]

SENATOR PRICE: Thank you, Mr. President, members. I rise to make sure we clarify in earlier commentary when we talked...when I spoke about there being a sin tax and how that goes to pay for the niceties or the things that we favor. There is, as it was brought to me, there is no portion of the monies received through this form and manner of gambling that goes back to the state to pay for the nice things we want. This is strictly they get their takes, they pay their taxes and they walk away, and the state benefits from whatever tax revenue that is generated. But there's no dedicated pot that would go to it, like we have with lottery dollars to education. And I just want to make sure that was crystal clear. Thank you, Mr. President. [LB256]

SENATOR GLOOR: Thank you, Senator Price. There are no senators in speaking queue. Senator Karpisek, you're recognized to close on AM1195. [LB256]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Once again, I just want to thank Senator McCoy and the other senators that he worked with for working together. Senator Avery often brings up that this body is about compromises and working together and I just really can't say that it has been more true in this situation and I do appreciate it. Again, the horse racing industry is in trouble. There is no two ways about it. The bills that I have brought for them is to try to help the horse owners and, by doing that, to try to help keep the tracks up and going. I do not try to do this by expanded gambling, by any other means other than to try to help them, and I will not make any bones about that I do support expanded gambling. But I understand the feeling of the body and some of the senators on that, so I want to be crystal clear when I say that this is not an attempt to do so. It is just an attempt to try to help the horse owners. This isn't near the attempt to help them that I have done in the past. This is just try to help them keep somewhere in Lincoln that they can have simulcasting going to try to keep money going, to try to build a new facility in Lincoln after theirs has been taken away. So I do appreciate your help on this matter. I appreciate the working together on

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it and I would appreciate your green vote on AM1195. Thank you, Mr. President.
[LB256]

SENATOR GLOOR: Thank you, Senator Karpisek. Members, the question is, shall the amendment to LB256 be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB256]

CLERK: 26 ayes, 8 nays on the adoption of Senator Karpisek's amendment. [LB256]

SENATOR GLOOR: The amendment is adopted. [LB256]

CLERK: I have nothing further on the bill, Mr. President. [LB256]

SENATOR GLOOR: Senator Larson. [LB256]

SENATOR LARSON: Mr. President, I move that LB256 be advanced to E&R for engrossing. [LB256]

SENATOR GLOOR: You've heard the motion. Those in favor say aye. Those opposed say nay. LB256 is advanced. Mr. Clerk. [LB256]

CLERK: Mr. President, I have some items. Enrollment and Review reports LB373, LB374, LB375, LB376, LB377, LB378, LB379, LB380, and LB585 are all reported correctly engrossed. Study resolutions: Senator Dubas offers LR207; Senator McGill, as Chair of Urban Affairs, LR208, LR209; all will be referred to the board. And the Judiciary Committee, chaired by Senator Ashford, reports LB667, LB675 to General File with amendments attached. (Legislative Journal pages 1478-1480.) [LB373 LB374 LB375 LB376 LB377 LB378 LB379 LB380 LB585 LR207 LR208 LB209 LB667 LB675]

SENATOR GLOOR: Speaker Flood, you're recognized.

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. We're going to go ahead and recess at this time. Obviously, when we come back at 1:30, we'll be on Final Reading as relates to LB176. I'm not anticipating a late night this evening, probably an adjournment shortly after 5:00 at this time. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Flood. Mr. Clerk. [LB256]

CLERK: Mr. President, Senator Flood would move to recess the body until 1:30 p.m.

SENATOR GLOOR: Members, you've heard the motion to recess until 1:30 today. Those in favor say aye. Those opposed, nay. We stand recessed.

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RECESS

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Members, if you're in the Chamber, would you please sign in. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR GLOOR: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I do. Enrollment and Review reports LB106, LB252, LB345, LB345A, LB549, LB549A, LB590, and LB590A all reported correctly engrossed. That's all that I had, Mr. President. (Legislative Journal pages 1481-1482.) [LB106 LB252 LB345 LB345A LB549 LB549A LB590 LB590A]

SENATOR GLOOR: Thank you, Mr. Clerk. (Visitors introduced.) We proceed to the first item on this afternoon's agenda. Mr. Clerk.

CLERK: Mr. President, we are on Final Reading. Senator Avery, I have an amendment, Senator, AM1357. I understand you want to withdraw that. [LB176]

SENATOR AVERY: That is correct, sir. [LB176]

CLERK: Mr. President, Senator Avery would move to return LB176 to Select File for a specific amendment, AM1410. [LB176]

SENATOR GLOOR: Senator Avery, you're recognized to open on your motion to return. [LB176]

SENATOR AVERY: Thank you, Mr. President. Good afternoon, colleagues. I am requesting that we return LB176 to Select File for a specific amendment. Let me explain what it is that I am seeking to do. I have an amendment filed, AM1410, that incorporates many of the provisions contained in LB606. You will recall that was a bill that we debated a few weeks ago dealing with electioneering communications, recall that LB606 received more than 30 votes on General File but ran into a number of questions and concerns on Select File and it failed to advance. In the interim I have worked with the various parties that raised those issues and this amendment addresses the concerns raised during that debate on Select File. First, the amendment addresses concerns about voter guides and whether they fit under the definition of electioneering communication. With this amendment, voter guides are specifically excluded from the

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definition of electioneering communications, and altogether we made ten changes and I'll be willing to talk about what those are when we get past this vote and I get a chance to talk about AM1410. Thank you, Mr. President. [LB176 LB606]

SENATOR GLOOR: Thank you, Senator Avery. Members, you have heard the opening on the motion to return. Senator Krist, you are recognized. [LB176]

SENATOR KRIST: Thank you, Mr. President and members. I would hope that you would pay attention to this because it will be brief and it will be to the point. I rise in strong opposition to Senator Avery's motion to return LB176 to Select File for specific amendment. While it is any senator's prerogative and right to amend a bill on Final Reading, I would argue Senator Avery's proposed amendment being offered at this time short-circuits our process or does an end run around the rules this body strictly adheres to. Moreover, I believe AM1357 and/or AM1410, which is up now, is fundamentally flawed. I heard him say that many of the issues had been worked out. I think if we get to that point, if you do vote green on this amendment, which I hope you will not, that we won't have to discuss it, but there still are major issues. To the process, AM1410 and the follow on AM1357, as Senator Avery would readily acknowledge, is an amended version of his personal priority bill for this session, LB606. That bill had serious debate on Select File and failed to advance. LB606 remains, it remains on Select File at this time. The Rules of the Legislature, under Rule 5, Section 5(i) states in part, and I quote, A priority bill which fails to advance after two votes on General File, or after one vote on Select File, shall return to nonpriority status, end quote. Members of the body, serious questions remain about LB606. As you will note, not the least of which is Senator Christensen has filed a reconsideration motion on an amendment I filed on LB606. That amendment garnered 24 votes and has a chance of being adopted. Clearly, there are other members who would feel there's more discussion would be in order should LB606 be debated. Depending on the outcome of the reconsideration motion, I or any other member of the body may offer other amendments to LB606. Taking LB176 off of Final Reading for Senator Avery's specific amendment prevents us from offering those amendments and having a thoughtful, nonrestrictive discussion about LB606. Some might say having LB606 reheard now is like Lazarus being raised from the dead. That analogy is incorrect though because LB606 is not dead. It remains on Select File. When LB606 is revisited by this body, there will be ample opportunity to discuss it as well before its practical impact is felt; that is, 30 days before an election. So I ask you, what's the rush? The election process, it will be there should we decide to bring it back up next year. Rather than associating this with Lazarus' resurrection, I believe it is important to call the filing of this amendment cutting in line. There are a multitude of other priority bills which need to be reconsidered before revisiting LB606, which has lost its priority status at this point. As of our last adjournment on Thursday, there were 58 priority bills, either personal, committee, or Speaker priorities, that have not been passed yet, not including LB606. Of that number, 48 bills have not had a vote on Final Reading. As you know, the two constitutionally mandated tasks we have this session of passing a

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biennium budget...biennial budget and the decennial redistricting plan for a host of various offices have not occurred. With regard to the latter, we have not even... [LB176 LB606]

SENATOR GLOOR: One minute. [LB176]

SENATOR KRIST: ...begun to debate any of the proposed maps on the floor of this Legislature. In closing, I respectfully ask you to oppose Senator Avery's motion to return LB176 for a specific amendment. LB606 remains on Select File and can be discussed and openly debated without restriction at a later time. Thank you, Mr. President and members. [LB176 LB606]

SENATOR GLOOR: Thank you, Senator Krist. Senator Price, you're recognized. [LB176]

SENATOR PRICE: Thank you, Mr. President, members of the body. To echo somewhat of what Senator Krist has outlined, I have questions about exactly what was made better here. In a quick look over the amendment, there has been a change to what constitute...or what happens with voter guides, but in looking at this I still see that we...I see the word "all" used here in the lower part of this reference to a on-line voter guide. Would Senator Avery yield to some questions? [LB176]

SENATOR GLOOR: Senator Avery, would you yield? [LB176]

SENATOR AVERY: I will. [LB176]

SENATOR PRICE: Thank you, Senator Avery. I believe this is Section 4 (sic), I believe, that we're talking about there being...you're describing a voter guide and not having to be considered electioneering if all the members of all candidates have given a chance to respond and all responses have been received. Can you explain why we use "all" candidates in one thing and then "all" received? It doesn't mean...you could conceivably have candidates who did not respond, so it looks like you might have set up a conundrum there. [LB176]

SENATOR AVERY: No, actually I worked very closely with Mr. Jim Cunningham of the Catholic Conference on this. He and other groups were interested in making sure that voter guides would not be classified as electioneering communication and the reason we worded it the way we did was so that all candidates will be given an opportunity to respond to the voter guide and all that responded would be reported. And if somebody decided not to respond, that would not at all affect the voter guide and its status as not an electioneering communication. [LB176]

SENATOR PRICE: Thank you, Senator Avery. Well, the next question I have, further up

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in the bill where you talk about where a candidate is clearly identified, either by name, picture, caricature, but then you use the word and is not (sic) unambiguous, I believe, not (sic) unambiguous. [LB176]

SENATOR AVERY: Uh-huh. [LB176]

SENATOR PRICE: What is not (sic) unambiguous? I mean it's almost like we're trying to nail JELL-O to the wall here with that type of statement and I was wondering could you help me out, because, (inaudible) you use the name, you use a drawing, you use a reference, and then you throw in not (sic) unambiguous. It seems that we're trying to put a catchall in there. [LB176]

SENATOR AVERY: Well, you know what ambiguity means. It means there's some question, it's not quite clear. So if you use the word unambiguous, you are clearing up this language so that a clearly identified candidate is very specific, so we know what a clearly identified candidate is. There can be no question about it. It is unambiguous. [LB176]

SENATOR PRICE: Thank you, Senator Avery. Well, I would harken back to days of working in the weather field when we wanted to describe something, it was basic Met 101. We defined an area of high pressure as that as an area surrounded by lower pressure, and lower pressure by an area surrounded by higher pressure. So what we've done, in effect, is we've defined something by what it is not, and that's what I see here in some of this language. Perhaps others don't, but I see that what we're basically saying is we're going to try to capture everything in a net, we'll put a net out so wide to be that even that which we can't define, we've defined. And with that, there is some challenge for myself. And I'll listen to the debate. I hope the members will get up and have a conversation on this because again, as Senator Krist said, we do see something coming back again. The prerogative is allowed, that's fine, but the question comes to mean is what we're doing with the time here for something we seem to have decided at another juncture. Thank you, Mr. President. [LB176]

SENATOR GLOOR: Thank you, Senator Price. Senator Avery, you're recognized. [LB176]

SENATOR AVERY: Thank you, Mr. President. I want to address the points that were made by Senator Krist, first with respect to procedure, whether or not this is an appropriate procedure. I did clear this with the Speaker. The Speaker agreed with me that what I am proposing to do here is entirely appropriate. You may recall that when the vote occurred on Select File on LB606, several people who supported LB606 were absent that day. I think that it is nothing but fair to give me an opportunity to bring this back by referring LB176 back to Select File for this amendment. I am prepared to discuss the amendment in great detail because we worked very, very hard to make sure

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that all the concerns that were raised on Select File with respect to LB606 were met. They were met with specificity, and we went back to this amendment I think three or four times. In fact, I can tell you that ten separate changes were made in order to meet those concerns. It is better defined now what we mean by a "clearly identified candidate." It is explicitly clear that voter guides are not considered electioneering communication. And if you give me an opportunity to debate this in fuller detail by referring this to Select File for a specific amendment, I will do so. Thank you, Mr. President. [LB176 LB606]

SENATOR GLOOR: Thank you, Senator Avery. Senator Krist, you are recognized. [LB176]

SENATOR KRIST: I would just point out that I have no intent to not have the debate on LB606. LB606 is the bill that we debated and, as Senator Avery amply pointed out, there were a number of members that were absent that day. I want to point out that Senator Avery had 20 votes to pass the bill, only 20. There were 24 votes to pass my amendment onto the bill, which clearly would have changed the language. If we continue down this track, there will not be a clear, unquestionable debate about the subject in LB606. Once again, I would urge you to vote no and not bring this back out. LB606 lives. It will have its day. We will debate it, and the will of the body will go forward. Thank you, Mr. President. [LB176 LB606]

SENATOR GLOOR: Thank you, Senator Krist. No senators wishing to speak, Senator Avery, you're recognized to close on your motion to reconsider. [LB176]

SENATOR AVERY: Thank you, Mr. President. I think that if you've had a chance to look at the amendment that I am proposing, AM1410, it does answer all, not just some but all of the questions that were raised, all the issues of concern that came up on Select File when we debated LB606. This is not an unusual procedure for us to take a bill off Select File...off Final Reading to Select File for a specific amendment. The procedure was approved by the Speaker. I think there is a question of fairness here. If your voters...if a significant number of your supporters were not present, and I am not criticizing them because they were absent for good reasons and I know that, if they were not here and could not lend their support to this, then I think it's fair to give us an opportunity to do it. So I would urge you to vote yes on this motion to return LB176 to Select File for specific amendment. Thank you. [LB176 LB606]

SENATOR GLOOR: Thank you, Senator Avery. Members, the motion is to return LB176 to Select File for amendment. Those in favor vote aye; those opposed vote nay. Senator Avery, for what reason do you rise? [LB176]

SENATOR AVERY: I request a call of the house and a roll call vote in regular order. [LB176]

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SENATOR GLOOR: Senator Avery, we are in Final Reading. Members are/should be in their seats. We can... [LB176]

SENATOR AVERY: All right. I request a roll call vote. [LB176]

SENATOR GLOOR: Mr. Clerk, roll call vote, regular order. I would ask senators not in the Chamber to check in, please. All members, please check in. Mr. Clerk, call the roll. [LB176]

CLERK: (Roll call vote taken, Legislative Journal page 1485.) 21 ayes, 10 nays on the motion to return. [LB176]

SENATOR GLOOR: The motion fails. The bill is not returned. Next agenda item, Mr. Clerk. [LB176]

CLERK: Mr. President, LB289 on Final Reading. Senator Mello...excuse me, Senator Fischer would move to return the bill for specific amendment, AM1376. [LB289]

SENATOR GLOOR: Senator Fischer, you're recognized to open on your amendment or motion. [LB289]

SENATOR FISCHER: Thank you, Mr. President and members. AM1376 is meant to give clarity surrounding the treatment of the alternative fuel fee outlined in LB289. After the bill passed Select File, the Department of Motor Vehicles contacted the Transportation and Telecommunications Committee to express their concern regarding the alternative fuel fee and whether it is to be treated as part of the registration fee and also where the fee is to be directed. The amendment reinserts two provisions relating to the return and proration of registration fees to include the alternative fuel fee. It also inserts new language in Section 22 to ensure that the fee will continue to be deposited into the Highway Trust Fund. This is a technical amendment and Senator Mello has agreed to it, of course. Thank you very much. [LB289]

SENATOR GLOOR: Thank you, Senator Fischer. We move to discussion. Senator Mello, you're recognized. [LB289]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I simply rise, as Senator Fischer just ended her statement that I support the amendment, AM1376, and to return LB289 to Select File. Purely a technical amendment in nature, to make sure that we dot some i's, cross some t's in relation to where the alternative fuel fee will go. I urge the body to return LB289 to Select File for the Fischer amendment. Thank you, Mr. President. [LB289]

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SENATOR GLOOR: Thank you, Senator Mello. There are no senators in the speaking queue. Senator Fischer, you're recognized to close. Senator Fischer waives. Members, the motion is to return LB289 to Select File for amendment. Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB289]

CLERK: 43 ayes, 0 nays, Mr. President, on the motion to return. [LB289]

SENATOR GLOOR: The motion passes. Senator Fischer, you are now recognized to open on your amendment to LB289. (AM1376, Legislative Journal page 1437.) [LB289]

SENATOR FISCHER: Thank you, Mr. President and members. As I said earlier, this is just a technical amendment which clarifies where the registration fees are to be deposited. Thank you. [LB289]

SENATOR GLOOR: Thank you, Senator Fischer. No senators wishing to be recognized. Senator Fischer waives. The question before the body is, shall the amendment to LB289 be adopted? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB289]

CLERK: 42 ayes, 0 nays on adoption of the amendment. [LB289]

SENATOR GLOOR: The amendment is adopted. Senator Larson. [LB289]

SENATOR LARSON: Mr. President, I move that LB289 be advanced to E&R for engrossing. [LB289]

SENATOR GLOOR: Members, you've heard the motion. All in favor say aye. All opposed say nay. LB289 is advanced. Items for the record, Mr. Clerk? [LB289]

CLERK: Mr. President, Enrollment and Review reports LB15, LB17, LB107, LB121, LB155, LB167, LB248, LB261, LB309, LB424, LB453, LB454, LB455, LB458, LB550, and LB573 as correctly engrossed. And LR210 is offered by the Retirement Committee calling for an interim study, will be referred to the Executive Board. That's all that I have, Mr. President. (Legislative Journal pages 1486-1487.) [LB15 LB17 LB107 LB121 LB155 LB167 LB248 LB261 LB309 LB424 LB453 LB454 LB455 LB458 LB550 LB573 LR210]

SENATOR GLOOR: Thank you, Mr. Clerk. Continuing with the agenda, General File, Speaker priority bills.

CLERK: LB669, a bill by Senator Flood. (Read title.) Introduced on January 19, at that time referred to the Judiciary Committee, advanced to General File. There are Judiciary Committee amendments. (AM1342, Legislative Journal page 1399.) [LB669]

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SENATOR GLOOR: Senator Flood, you're recognized to open on LB669. [LB669]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. The provisions of this bill as introduced were amended into another bill, LB463, which passed on Final Reading last week. Because LB669 was no longer needed, the Judiciary Committee is now amending it to include other measures related to the courts. At this point, I intend to allow Senator Ashford to open on the Judiciary Committee amendment and explain what the Judiciary Committee did with this bill. Thank you, Mr. President. [LB669 LB463]

SENATOR GLOOR: Thank you, Senator Flood. As you stated and the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, you're recognized to open on those amendments. [LB669]

SENATOR ASHFORD: Thank you, Mr. President, and thank you, Speaker Flood, for that introduction. Committee amendment, AM1342, would strike the original sections of LB669 inasmuch as those sections were included in LB463. The bill now becomes a series of court bills that we offer to the body each year to deal primarily with suggestions given to us by the Supreme Court and other related offices of state government. The bill, as amended with the amendments, would expand the Supreme Court's options for funding sources from which to compensate interpreters used by the court. We've had many discussions, this body, about the need for interpreters. This section does not require additional funding but does allow the Supreme Court to access existing funds to address those needs. The bill...the amendment provides for clerks and staff of the district courts and the county courts to assist one another in the provision of court services based on agreements with the Supreme Court and State Court Administrator. This actually, I think, is an important initiative and it reflects some of the concerns that many in this body from the rural areas of the state have voiced concerning making certain that we have staffing in the rural courts. Senator Fischer has raised the issue and many others. So this provision does provide some flexibility to the Supreme Court to address the needs of the rural courthouses. The amendments provide for the creation of a position of judicial hearing officer or officers. The Supreme Court would be authorized to appoint judicial hearing officers as needed in county courts, sitting as juvenile courts or separate juvenile courts, to preside in here and determine cases initiated under the Juvenile Code. This change really stems from the work that was done--and I know I've gone over it in detail, in Grand Island and Hastings and in other communities around the state--would allow the Supreme Court to provide for hearing officers in some cases in the schools in dealing with truancy and other related matters. The amendments provide greater flexibility for scheduling the administrative offices of the courts by requiring that court services must be available on all days except weekends, the holidays, as mentioned in statute, and those days specifically designated by the Supreme Court. Again, it's addressing some confusion about court closing days. The amendment allows for a divorce decree to be entered without a hearing if both

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parties waive the hearing requirement, both parties certify in writing that the marriage is irretrievably broken, at least one of the parties certifies that reasonable efforts at reconciliation have been made, and both parties have signed an agreement resolving all issues of the divorce. The amendments also include LB339, which was introduced on behalf...a bill which was introduced on behalf of Department of Health and Human Services. It would repeal current language in 43-258 that authorizes the court to order a juvenile to be placed in one of the facilities or institutions of the state for the completion of a preadjudication evaluation. The state does not operate such a facility, therefore making the existing law impossible to adhere to, to comply with, so this change is technical in nature. And it adds language authorizing the court to order a juvenile to be placed directly with the Department of Health and Human Services for the purpose of obtaining a preadjudication hearing. The department would make arrangements for the evaluation and determination, whether the evaluation is made on a residential or nonresidential basis. Placement with the department for the evaluation would be for a period not to exceed 30 days. If necessary to complete the evaluation the court would be able to extend that time, not to exceed an additional 30 days, so again putting some guidelines specifically in statute on the evaluation process, something we really ran into quite a bit in safe haven when we were addressing the need to get evaluations done quickly. The amendment clarifies the responsibilities of the county and the state for covering costs incurred during the period of detention or evaluation of the juvenile prior to adjudication. The county pays for detention costs incurred before and after evaluation, prior to adjudication, and delivering the juvenile to the evaluation and to the court. The state pays for the costs incurred during evaluation and detention costs incurred after the first ten days from the date the juvenile is placed with the department, again specific guidelines being placed in statute to address those issues. Another bill, LB349, was introduced by Senator Lautenbaugh, is included in this amendment. It would amend 25-2705 and 25-2805 relating to the demand for a jury trial in a county court case and cases transferred from small claims court to the county court. The bill would provide for various deadlines for the filing of a jury demand, depending on the role of each litigant to the matter. The procedure for filing a jury demand in a case that is transferred from small claims court to county court would correspond to the jury demand procedures for other civil cases, as outlined in LB349. Finally, I hope finally, finally, LB476 also introduced by Senator Lautenbaugh would amend a law passed in 2009 in LB35. The bill would clarify the authority for delivery of service by a commercial courier, such as FedEx or UPS, known in the law as a designated delivery service. It would require designated delivery services to be made within ten days of issuance, which is consistent with the certified mail service method. It would require the filing of proof of service with the court, including a copy of the signed delivery receipt, and it would require that the State Administrator maintain a list of designated delivery services on the Supreme Court Web site, and it would provide an emergency clause attached to this particular section of AM1342, as this was a law that came into effect last year or two years ago and these provisions clarify those provisions. So the emergency clause is added. Thank you, Mr. President. [LB669 LB463 LB339 LB349 LB476]

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SENATOR GLOOR: Thank you, Senator Ashford. Members, you've heard the opening on the committee amendment and LB669. There are members wishing to speak: Sullivan, Fulton, Wallman, Campbell, and Pahls. Senator Sullivan, you're recognized. [LB669]

SENATOR SULLIVAN: Thank you, Mr. President. I appreciated Senator Flood's and particularly Senator Ashford's explanation of how we came to see the current contents of LB669, because as I looked at it, it was a little like fitting a piece of a puzzle together, partly because the bills that are now LB669 never made it out of committee so you weren't able to see who testified for or against them. And then I started to get some concerns expressed by some county clerks in my district, so that made me pay a little more attention to it. And so here I am, with some questions, and I wondered if Senator Ashford would yield for some questions. [LB669]

SENATOR GLOOR: Senator Ashford, would you yield? [LB669]

SENATOR ASHFORD: Most definitely. [LB669]

SENATOR SULLIVAN: Thank you, Senator. Okay, I was looking at the committee statement, as amended, and one of the things it says is that there's going to have to be or will be more of a working relationship between the staffs of the district courts and the county courts. How exactly does that play out? I mean you know, for example, the county clerk that contacted me said, well, we already assist each other as needed. But this is going to be, what, a more formal arrangement? [LB669]

SENATOR ASHFORD: There will be an agreement, actual written agreement that will be drafted between the parties and this was requested by the court system generally to make sure we know in each district, in each county how that work is going to be apportioned to ensure that we have coverage, to ensure that if the district court is going to be accepting filings, for example, from the county court, under what conditions that would occur, so that there is...everyone understands clearly what the situation is. [LB669]

SENATOR SULLIVAN: And again, it was indicated by this particular county clerk that sometimes when that assistance takes place, it's done so without any reimbursement. Is there going to have to be a tracking of expenses involved, and will there be some reimbursement? Or will expenses be incurred that aren't now by some county courts or districts courts? [LB669]

SENATOR ASHFORD: There could be. You know, there could be an apportionment of expenses back and forth because we're going to be asking, for example, district courts to accept filings, county court filings, if the county court is not manned on a particular

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day. But that would be something that would have to...we're not telling them what the terms would be but we're asking them to reach an understanding amongst themselves. [LB669]

SENATOR SULLIVAN: And again, the county clerk indicated that in some cases it's potential that maybe they're going to be asked to do something that they're not either qualified or trained to do. Do you see any problems that might arise from those kinds of things, requests for assistance? [LB669]

SENATOR ASHFORD: I think that it is possible that a county court clerk may be asked initially to get into areas that they are not qualified to be involved in, for whatever reason, but they are not required to agree to the apportionment of the work. And if there is a dispute or irreconcilable difference in the discussions, the Supreme Court can intervene and help address those issues. [LB669]

SENATOR SULLIVAN: I know... [LB669]

SENATOR ASHFORD: I can...but you raise a good point and I, you know, we can certainly get some language for the Select File... [LB669]

SENATOR SULLIVAN: Okay. [LB669]

SENATOR ASHFORD: ...stage and address some of those issues. [LB669]

SENATOR SULLIVAN: I know you also mentioned, too, that some of these features of this bill now help deal with some of the problems in rural Nebraska, but I also want to make sure that it doesn't create some. Because in the amended version, it talks about the fact that court services must be available on all days except weekends. Well, again, in some of my counties,... [LB669]

SENATOR GLOOR: One minute. [LB669]

SENATOR SULLIVAN: ...we've got a clerk magistrate that retired and that county is now being covered by a county...by a clerk magistrate from another county two days a week...or one day a week and then from another county another day a week. So I'm wondering to make sure that the court is providing the services all five days, who picks up the tab on that and who provides for that? [LB669]

SENATOR ASHFORD: Well, my...the reason we moved forward with these amendments was to address, you're right, was to address the concerns of some of the rural counties that where even today there are days when there is no...there are no court personnel present. And so we are asking them to get together with the district court and the Supreme Court Administrator to come up with a plan. It may be, Senator

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Sullivan, that we need to have more specific directive in this language to clarify that.
[LB669]

SENATOR GLOOR: Time, Senators. [LB669]

SENATOR SULLIVAN: Thank you. [LB669]

SENATOR GLOOR: Thank you, Senator Sullivan, Senator Ashford. Senator Fulton, you are recognized. [LB669]

SENATOR FULTON: Thank you, Mr. President. Would Senator Ashford yield? [LB669]

SENATOR GLOOR: Senator Ashford, would you yield? [LB669]

SENATOR ASHFORD: Yes. [LB669]

SENATOR FULTON: Okay, Senator, same amendment, different topic. I'm on page 17.
[LB669]

SENATOR ASHFORD: Okay. [LB669]

SENATOR FULTON: This is Section 23 of the bill. This has to do with a subject matter that I brought a bill on. LB408 I believe was the bill that I brought. And I'll just come up and say that I don't know for certain what to make of this amendment just because I haven't really thought about it, but it is of the same subject matter. And so question number one is, what bill was it which precipitated this part of the amendment that is Section 23? [LB669 LB408]

SENATOR ASHFORD: You're going to have to help me, I think, Senator Fulton, and I'm not sure I have...okay, LB451. [LB669 LB451]

SENATOR FULTON: Okay. [LB669]

SENATOR ASHFORD: What page are you on? [LB669]

SENATOR FULTON: Page 17 of the amendment. [LB669]

SENATOR ASHFORD: And page 17 and line? [LB669]

SENATOR FULTON: This is line 21. [LB669]

SENATOR ASHFORD: Okay. All right. [LB669]

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SENATOR FULTON: So Section 23 of the amendment and we get to the point where, "The court may enter a decree of dissolution without a hearing." [LB669]

SENATOR ASHFORD: Oh, you did bring such...yes, you're right. I remember that. Okay. [LB669]

SENATOR FULTON: Indeed. So this is...so I'm hearing this is LB451, so that will at least give me some opportunity to get back and read what LB451 was doing, but I guess can you tell us what occurred in LB451? This is not an insignificant thing we're doing here in this amendment. [LB669 LB451]

SENATOR ASHFORD: It's not insignificant. I can't think of anything in the Judiciary Committee we do that's insignificant, but it is significant, to your point. (Laugh) But it does...and it was brought...and I don't belittle your point, Senator Fulton, at all. It was brought to us by the Bar Association, by litigants in the domestic relations bar, who on many occasions...where it simply provides the authority to do what the courts and the litigants, the attorneys, the bar would like to have done, which is to allow the parties to resolve their decree without a hearing, and that's simply all it does. [LB669]

SENATOR FULTON: Okay. Would it be...let us...let's say that we adopt AM1342 with the current language found on page 18, this new language,... [LB669]

SENATOR ASHFORD: Okay. [LB669]

SENATOR FULTON: ...lines 7 through 19. [LB669]

SENATOR ASHFORD: Okay. [LB669]

SENATOR FULTON: If we were to adopt this new language then it would seem there would be less hearings with respect to dissolutions of marriage... [LB669]

SENATOR ASHFORD: Correct. [LB669]

SENATOR FULTON: ...such that the judges could more aptly spend their time focusing on marriages which indeed might be saved with the intervention of the judge. [LB669]

SENATOR ASHFORD: Right, and a Parenting Act sort of thing, yes. I...actually that's an excellent point, Senator Fulton, and you make what is a critical point. Any time we can relieve the court from what is, in effect, almost a ministerial act in most cases, in 99 percent of the cases, and allow them more time to help resolve cases that are more complicated, that is much better for the system. And I do recall your bill which very rightly was aimed at...is aimed at trying to keep, if possible, marriages together. And so I think it's worthy of discussion. [LB669]

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SENATOR FULTON: Well, I'd ask you to consider this because when I...when this...when the bill that I was talking, LB408, was first brought to me, seemed to me that there's an inconsistency. So for the members who may not be aware, presently, if two people come...if a husband and wife come to a court... [LB669 LB408]

SENATOR GLOOR: One minute. [LB669]

SENATOR FULTON: ...and both are seeking divorce, it is within the court's power to order, what we would call it, classes. [LB669]

SENATOR ASHFORD: They can order...they could order classes. They could have mediation. They do a number of things. [LB669]

SENATOR FULTON: So that's within their power if both parties...but, however, in the case where one of the parties wants to reconcile, the court, specifically by statute, is disallowed from intervening. [LB669]

SENATOR ASHFORD: It doesn't have the direct authority. And your bill is, to your point, is in committee now and it was...quite frankly, it was an excellent discussion on that bill and the committee has not taken any action on it, but next year we can revisit it. I think you raise an excellent point, Senator Fulton. [LB669]

SENATOR FULTON: Well, thank you, Senator Ashford. I just ask members, there are a lot of things compacted into AM1342 and I can tell you, just from experience, this part... [LB669]

SENATOR GLOOR: Time, Senator. [LB669]

SENATOR FULTON: Thank you, Mr. President. [LB669]

SENATOR GLOOR: Thank you, Senator Fulton. Senator Campbell, you're recognized. [LB669]

SENATOR CAMPBELL: Thank you, Mr. President. I would like to know if Senator Ashford would entertain several questions. [LB669]

SENATOR GLOOR: Senator Ashford, would you yield? [LB669]

SENATOR ASHFORD: Sure. [LB669]

SENATOR CAMPBELL: Senator Ashford, I'm trying to catch up on all the inclusions of the bills and I'm assuming that in the amendment you took care of the opposition which

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had originally been addressed by the bar and Judge Gendler in LB669? [LB669]

SENATOR ASHFORD: Yeah. There's nothing in the...it's gone, so yeah. [LB669]

SENATOR CAMPBELL: So we struck all that. [LB669]

SENATOR ASHFORD: Right. [LB669]

SENATOR CAMPBELL: The second, and I'm going to yield to you the rest of the time, could you give us sort of a overview of what you're trying to achieve with the judicial hearing officers, because that was the part I was most interested in. [LB669]

SENATOR ASHFORD: Okay. [LB669]

SENATOR CAMPBELL: And I'll yield you the rest of my time. [LB669]

SENATOR ASHFORD: Thank you,... [LB669]

SENATOR GLOOR: Four minutes. [LB669]

SENATOR ASHFORD: ...Senator Campbell and also Senator Fulton, because two of the issues that we...one of the issues is Senator Fulton's bill that we discussed in LB408 dealing with the issue of dissolution of marriage and what options are available, is an issue that is worthy of in-depth discussion certainly. Also, the judicial hearing officer issue is something that the Chief Justice has advocated for some time and as part of his Through the Eyes of the Child Initiative. Essentially, what he's aiming at is to, I believe, to place individuals who are on...a temporary basis who are not judges but who would serve at the pleasure of the Supreme Court, and they would hear very preliminary matters in the juvenile court. They would...and it is clearly the case that not simply this...we've obviously been talking about truancy in here, but many other situations where there's a very preliminary kind of discussion that needs to take place. These hearing officers would make recommendations, not final decisions to the juvenile judge or county judge in the counties that don't have juvenile...or separate juvenile courts, but they would be fact finders primarily. And they could though, I think, theoretically be involved in school, to the sort of convergence between HHS, the schools, and juvenile justice, in dealing with families that are at the very early stages of contact with the juvenile justice system. It's for early stage intervention issues. Thank you. I'd give the rest of my time back. [LB669 LB408]

SENATOR GLOOR: Thank you, Senator Ashford and Senator Campbell. Senators wishing to be heard: Howard, Sullivan, Fulton, and Ashford. Senator Howard, you are recognized. [LB669]

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SENATOR HOWARD: Thank you, Mr. President, members of the body. If Senator Ashford would yield to a few questions regarding this amendment. [LB669]

SENATOR GLOOR: Senator Ashford, would you yield? [LB669]

SENATOR ASHFORD: Yes. [LB669]

SENATOR HOWARD: Thank you. Senator Ashford, I've read through this amendment and you've packed a whole lot in here. (Laugh) It's really got a lot of reading here. On page 20 in our computer, you've got an amendment that says: Except as provided in subdivision (4)(b) of this section, the county in which the case is pending is responsible for all detention costs incurred before and after an evaluation period prior to an adjudication, the costs of delivering the juvenile to the location of the evaluation, the cost of returning the juvenile to the court for further proceedings. And then it goes on and I will push us a little further, says, "(b) The state is responsible for the costs incurred during an evaluation when the juvenile has been placed with the Department of Health and Human Services unless otherwise ordered by the court pursuant to Section 43-290 and (ii) the preevaluation detention costs for any days over the first ten days from the date the court places the juvenile with the department for evaluation." Now what this sounds like to me is initially a child is not going to be made a state ward. He's going to come in prior to that, but he's going to be the responsibility, at least financially, to the counties that he comes in through, and then, if need be, at some stage, he may become a ward of the state. Now my concern here, and I don't want to make this an overly long question, but my concern here is that we've done so much cutting for our assistance to the counties, I don't know how they're going to take on this additional cost. And I'm wondering if they're going to look at this and they're going to say, well, we'll make this kid a state ward because the state will pay. Can you tell me how that would work? [LB669]

SENATOR ASHFORD: Well, thank you, Senator Howard. And generally it would...how it works now would...is clarified in this amendment generally, but that's why we put it in statute, to make sure that it's followed. These are preadjudication, as you know what those are... [LB669]

SENATOR HOWARD: Right. [LB669]

SENATOR ASHFORD: ...preadjudication hearings, and it delineates when the...or evaluations, when...who pays for what obviously, as you've suggested. I don't think it necessarily directly involves a ward of the court determination. That would come later or maybe they are already wards. [LB669]

SENATOR HOWARD: But if the counties...do you see what I'm saying to you, if the counties are already pressed... [LB669]

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SENATOR ASHFORD: I do, but the counties, I don't think the...yeah, I don't... [LB669]

SENATOR HOWARD: ...that looks to me like...and I'm not saying it's good or bad, but I'm saying if they look at this and say, you know, if this child is a ward of the state then Health and Human Services pays for it, we don't have the money to do that, this is the route we're going to have to take. [LB669]

SENATOR ASHFORD: Okay. I think they would be...they're paying for that now, it's my understanding. The counties are paying for that portion of the cost that is...generally that is in this provision and they don't...the counties don't oppose this clarification. [LB669]

SENATOR HOWARD: So you don't see any potential increased costs to the county if there are additional numbers, say, regarding truancy or things that they're going to have to deal with that they haven't up to this time? [LB669]

SENATOR ASHFORD: Well, that's a great point. I do see, I will tell you this, I cannot sit here and say that because of the increased numbers of filings and in the juvenile courts resulting from the truancy intervention program that goes on in a particular county that there may not be the need for preadjudication evaluations. [LB669]

SENATOR HOWARD: That's really leading to my concern here, is that... [LB669]

SENATOR ASHFORD: Yeah. [LB669]

SENATOR HOWARD: ...and I'm not saying it's right or wrong. I'm not. [LB669]

SENATOR ASHFORD: Right. [LB669]

SENATOR HOWARD: I'm not passing a judgment on this because I think it's important... [LB669]

SENATOR ASHFORD: Right. [LB669]

SENATOR HOWARD: ...that we address it. [LB669]

SENATOR GLOOR: One minute. [LB669]

SENATOR HOWARD: But at the same time, I think we have to be aware that the counties are not going to be in a position to take on an additional cost and this may be the avenue they look at. [LB669]

SENATOR ASHFORD: Thank you. I think it's a great point, Senator Howard, and until

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we can intervene prior to filing of a petition, which we're trying to do in the truancy area, and front load these things, they're always, you're right, there's always going to be the... [LB669]

SENATOR HOWARD: Yeah, and I don't see that the state is going to pick up a cost for a child that's not a ward. [LB669]

SENATOR ASHFORD: Correct. I get it. Thanks. [LB669]

SENATOR HOWARD: Okay. I appreciate that. Thank you. [LB669]

SENATOR GLOOR: Thank you, Senator Howard. Senator Sullivan, you're recognized. [LB669]

SENATOR SULLIVAN: Thank you, Mr. President. And since we ran out of time before, I wondered if Senator Ashford would be willing to just kind of finish up the conversation. [LB669]

SENATOR GLOOR: Senator Ashford. [LB669]

SENATOR ASHFORD: Yes. [LB669]

SENATOR SULLIVAN: Thank you, Senator. So to clarify again, getting back to this sharing of duties and helping out either a clerk magistrate or vice versa, they have to come to some agreement and that agreement is going to be in writing. Is that correct? [LB669]

SENATOR ASHFORD: The difference...you're right. The difference now is because of...basically I think this is where we're at. The Chief Justice would like to make certain that we have coverage in all of these rural courthouses, all the courthouses but clearly in those courthouses where there is a bifurcation of function that is going on now, and that to make certainly that there is coverage, that there is apportionment of costs or whatever is necessary to get to coverage and that there be an agreement, that there be an agreement between the various county court clerks and the district court clerks and it be formalized so that it's not something that is just thrown together, not that it necessarily is, but thrown together on a verbal basis but is actually 93 agreements that one can see and adhere to. It's like an interlocal agreement. I think it's really like an interlocal agreement that they are putting together that will set forth the various jobs and functions that they will have to go through. Am I missing something, Senator? I think I am. [LB669]

SENATOR SULLIVAN: I don't know that you are, Senator Ashford. I just know that I can...because this is probably going to be rather significant and new to these situations

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at the county levels that I'm anticipating even more concern being brought forward by some county clerks. And I know that NACO is listening to them and I guess the other question I just asked to you is if there are some of these concerns that are articulated, would you be willing to take a second look before Select File? [LB669]

SENATOR ASHFORD: Yes. And, Senator Sullivan, I appreciate you bringing this to the attention of the body. We are struggling in the Judiciary Committee, in working with the court, to come up with a way to make sure that these judicial services are made available statewide without having to make drastic, Draconian sorts of cuts. We spent a lot of time last summer working on it. And so in that spirit, I would be very, very happy to review the concerns of the counties and also the concerns that Senator Howard has raised as well, and either on Select File or addressing it in some other way. [LB669]

SENATOR SULLIVAN: It's all I ask at this point. Thank you very much. [LB669]

SENATOR GLOOR: Thank you, Senator Sullivan and Senator Ashford. Senator Ashford, you're now recognized. [LB669]

SENATOR ASHFORD: Well, actually, I don't know if...I'm just going to give my time. I think Senator Fulton would like to chat more about LB408. I'm going to...or anything the likes, but I'm going to ask him if he'd like my time. [LB669 LB408]

SENATOR GLOOR: Four minutes fifty seconds, Senator Fulton. [LB669]

SENATOR FULTON: Thank you, Mr. President. I will, I'll take this opportunity to talk a little bit and Senator Ashford may want to get some thoughts put together here for later. But this is, AM1342, for members who are interested in this, this is...we're talking about marriage and divorce, a pretty significant issue. And I brought forward a bill this year which it was LB408, which for...wasn't accurately reported, for one, and it's something that I recognize there was some work needed to be done to it, but it's the same subject matter that I see here now on this AM1342. Now here, I'll point to where I can have some more specificity for you where my concerns are. If you go to page 18 of this amendment, in line 13, "The parties have certified in writing." So I'll go back a little bit further and start in line 7, "The court may enter a decree of dissolution without a hearing if: (a) Both parties waive the requirement of the hearing and the court has sufficient basis to make a finding that it has subject matter jurisdiction over the dissolution action and personal jurisdiction over both parties; and (b)," and here's where I have a question, "The parties have certified in writing that the marriage is irretrievably broken, at least one of the parties certifies that he or she has made every reasonable effort to effect reconciliation." So the question I ask...and Senator Ashford is back now so maybe I can ask the question, but I'll pose it to the body, then pose it to Senator Ashford. If part of allowing the court to enter a decree of dissolution without a hearing is that both parties, I'll just make this simple English, if both parties want to divorce and have certified in

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writing that the marriage is irretrievably broken, then we come back and say that at least one of the parties certifies that he or she has made every reasonable effort to effect reconciliation, why wouldn't we have both of the parties say that they have made every effort to effect reconciliation? So, Senator Ashford, if you yield to a question. [LB669 LB408]

SENATOR GLOOR: Senator Ashford. [LB669]

SENATOR ASHFORD: Yes. [LB669]

SENATOR FULTON: And, Senator, I'll go ahead and just let you get caught up here. This is page 18. [LB669]

SENATOR ASHFORD: I've got it, Senator Fulton. [LB669]

SENATOR FULTON: Okay. So why wouldn't...if we have the parties, and even before then why wouldn't it be both parties because that's what we have in subsection (a) just above, but let's say, "the parties have certified in writing that the marriage is irretrievably broken," then why do we turn around and say that, "at least one of the parties certifies that he or she has made every reasonable effort to effect reconciliation"? Why wouldn't it be both? [LB669]

SENATOR ASHFORD: It's existing law, Senator Fulton. We're just...what we are doing is taking what is existing, the existing standard for granting a dissolution, which is that one party must, under our law in Nebraska today--obviously LB408 addresses some of those concerns--but under existing law today it is necessary only that one party testify that all efforts at reconciliation have not been...have not proved to be successful. So that's really...we're placing that and that's existing law. [LB669 LB408]

SENATOR FULTON: Okay. And I appreciate that. That's the standard that is in existing law. [LB669]

SENATOR ASHFORD: Correct. [LB669]

SENATOR FULTON: But one of the reasons that I theorized that we had this in existing law in the first place was that if you have a case where one is seeking marriage...or one is seeking divorce, the other is seeking reconciliation,... [LB669]

SENATOR GLOOR: One minute. [LB669]

SENATOR FULTON: ...it's possible that one of them is, I'll just use the colloquial here, if one is a wife beater and says he wants to have reconciliation, then you have to bear in mind that he's not...he shouldn't get the opportunity to continue beating his wife. And so

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that's probably why it exists in the law now, that the judge would not therefore be able to order counseling if only one is requesting reconciliation, yet here we ask that both parties certify in writing that the marriage is irretrievably broken, but then we say that at least one of the parties has made every reasonable effort to effectuate reconciliation. And so that seems to me an inconsistency. I'll...am I up in the queue next, Mr. President? [LB669]

SENATOR GLOOR: No, after that. [LB669]

SENATOR FULTON: Okay. I will stop there and we'll have some more discussions. Thank you, Mr. President. [LB669]

SENATOR GLOOR: Thank you, Senator Fulton. Senator Schumacher, you're recognized. [LB669]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. This amendment certainly lightens up the room. There are a lot of bulbs on this tree. I'm not sure that it's a proper way to do business either by putting a bunch of divisible questions together, all of which have meritorious debate if we had the forum to focus on them, and run them through under one particular bill. And just almost at random, Senator Fulton raises some good questions about one of the bulbs on this particular tree and that bulb is the one that allows basically for decertification of marriage, something that traditionally has been a very progressive kind of idea in limited cases though. Would Senator Ashford yield to a question? [LB669]

SENATOR GLOOR: Senator Ashford, would you yield? [LB669]

SENATOR ASHFORD: Yes. [LB669]

SENATOR SCHUMACHER: Senator Ashford, would this particular procedure apply to all marriages or just ones where there was no money, no kids, and no love? [LB669]

SENATOR ASHFORD: There is no caveat. This would apply to all cases. [LB669]

SENATOR SCHUMACHER: Would it apply to those cases where you had multiple kids and the parents come to some fairly arbitrary agreement off to the side and say to the judge, we've fixed the problem, here's the deal? [LB669]

SENATOR ASHFORD: Yes. Yep. [LB669]

SENATOR SCHUMACHER: Would it apply to a case where one party or the other was...had counsel and the other one did not have counsel in the negotiation of a property settlement agreement? [LB669]

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SENATOR ASHFORD: This applies to all dissolution actions, Senator Schumacher. [LB669]

SENATOR SCHUMACHER: Okay. That being the case, it backs away from a standard of protection that the courts have given to situations where there are children, because the court is going to end up being the grandfather, godfather, whatever, supervisor of those kids and should be in on the approval of the agreement and at least see the parties. It drops the protections that we have for cases where there's complicated property involved, where probably both parties should have counsel or at least a chance to show themselves before the court and not taken advantage of by a domineering party that's seeking to take advantage of the other's weaknesses. This is clearly appropriate. In fact, it's highly desirable for the case of no children, no money, and no love. We certainly want to get those things taken care of before there is either money or children. That's in society's interest. I'd suggest that, just focusing on this one particular bulb in the situation, that we put some restrictions allowing for what I think it's intended for, an ease of divorce in the cases where there really is no practical need for a hearing, and the ones where the judicial system has served a function for the protection of children or the equities in property so that no one is left on the public till or having to come back and trying to argue that they were hoodwinking. On just another one of the bulbs briefly, think it probably is a good idea that we have some mechanism to dispose of juvenile cases with a hearing master, saving money and time for the actual court personnel, and that part of the bill has some real good parts to it. Thank you, Mr. President. [LB669]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Fulton, you are recognized. Senator Fulton waives. Senator Council, you are recognized. [LB669]

SENATOR COUNCIL: Yes, thank you, Mr. President. And just in response, on behalf of the Judiciary Committee, I appreciate my colleague Senator Schumacher's questions and concerns, but I think the tradition of Christmas tree bills finds its genesis in the Judiciary Committee in the Banking and Insurance Committee, who regularly put together, in what is commonly referred to as a Christmas tree fashion, a number of bills that were heard in committee with no opposition. And the committee was in a position and felt that all of the bills needed to be advanced to General File and needed to be addressed during the session, and here, as it's a custom in the Judiciary Committee, to try to get out a court bill, and this is the court bill. In terms of the issues that have been raised by Senator Fulton, what is found in AM1342 is markedly different from what Senator Fulton's bill was seeking to accomplish, and I think that was LB408. And what the difference is, is what is found in AM1342 was a way to address some backlog issues in the domestic relations area where there is no dispute between the parties about the irretrievably broken status of the marriage, that there is no dispute between the parties as to the settlement of any issues, including custody and support. And certainly Senator Schumacher raises the question of, well, what if one or both of the

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parties are unrepresented. Well, certainly the court, while this amendment provides them with the authority to enter an order without a hearing, there's nothing in this provision that requires them to enter an order without a hearing. And there's nothing in this provision...in this amendment that prevents the court from striking or modifying any portion of the party's agreement if it fails to meet the standards. But if you look at what the amendment talks about, it makes reference to the standards, so certainly it's not expected nor is AM1342 designed to accomplish, for example, a parenting plan that the parties agree to that's not in the best interests of the child. It certainly has to be an agreement that's along the lines of the types of agreements that the court, after a hearing, would have the authority to enter into. The distinction between what's found in AM1342 with regard to dissolution of marriage and what is reflected in Senator Fulton's bill is a mandate for counseling, which is a provision that does not currently find itself in Nebraska's marriage dissolution statutes. And in fact, one of the concerns that was raised during the committee's consideration of Senator Fulton's bill was that Senator Fulton's bill would require a court to mandate counseling if only one of the parties to the dissolution... [LB669 LB408]

SENATOR GLOOR: One minute, Senator. [LB669]

SENATOR COUNCIL: ...said that they...did you say time or a minute? [LB669]

SENATOR GLOOR: One minute. [LB669]

SENATOR COUNCIL: ...if only one of the parties believed that there was any likelihood of altering the outcome, and there was a lot of concern. Again, if you look at what the amendment, AM1342, says, beginning at page...at line 12, excuse me, line 13 on page 18, "The parties have certified in writing that the marriage is irretrievably broken," so that's both parties. It's not one party forcing another party into a divorce situation; it's both parties. And the issue about at least one of the parties, under current law at least of the parties has to testify that they've made efforts to reconcile and those efforts have proven unsuccessful. Again, all this amendment does is codify existing legal requirements on dissolution but allows for a court... [LB669]

SENATOR GLOOR: Time, Senator. [LB669]

SENATOR COUNCIL: Excuse me. Thank you very much. [LB669]

SENATOR GLOOR: Thank you, Senator Council. Senator Wightman, you are recognized. [LB669]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do rise...I don't rise, I guess. I enter my support for AM1342 and, particularly, I'd like to address the issues that Senator Fulton has been talking about on page 18. And while I don't

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practice much in dissolution of marriage issues, I used to, and I think much of the law is still the same as when I did practice to a greater extent in that area. But I don't think we're asking for anything beyond what is required to be established at the present time and that is that one party has got to come in and say that the marriage is irretrievably broken and only one party has got to testify that every reasonable effort to affect a reconciliation has been made. And so when there's a stipulation that the marriage is irretrievably broken and one party has certified that, it seems to me that we meet the requirements that are currently required, although at this time a hearing would be required, and that hearing would be waived under AM1342. So it seems to me logical, legitimate, and time saving as far as a court is concerned if the court can dispense with the hearing, and sometimes that will save a lot of time of one of the parties because, particularly in the area where we....I live in Dawson County, we have a lot of marriages in which one of the parties live in United States, one of the parties may live in Central, South America, or Mexico. That's not uncommon at all. And certainly on the parenting issues, you're going to have to meet the court's requirements with regard to the parenting plan. But I don't think we're doing anything here other than giving the court discretion to enter the decree without a hearing because all of the rest of it is required by statute at the current time. So I do support AM1342 and particularly that part dealing with the entry of a decree of dissolution without a hearing. Thank you, Mr. President.
[LB669]

SENATOR GLOOR: Thank you, Senator Wightman. There are no senators remaining in the queue. Senator Ashford, you're recognized to close on the committee amendments.
[LB669]

SENATOR ASHFORD: Thank you, Mr. President. And thank goodness for Senator Wightman. He's able to clarify these procedural matters so well. But I do think the comments made on these measures are appropriate. And Senator Fulton does have a bill, LB408. It is a different policy issue but it does relate tangentially, certainly, to the process of how we enter a decree today, and very possibly we will be having a debate on that in the coming years or next year. Senator Schumacher's point is well taken, I would defer though. I think Senator Wightman is correct. We are requiring in this bill, in this amendment, that the parties...that both parties certify that the marriage is irretrievably broken, whereas in existing law it is necessary that one party would testify to the fact that the marriage is irretrievably broken and it could...the decree could be entered provided that there was not a denial of that allegation or that fact. So it does go a step further and require both parties to agree. But I do understand Senator Schumacher's point, especially as it relates to undue influence over one party or the other, and even though...and certainly even today. And I would argue that even today that one party comes in and testifies to the basic allegations and the decree is entered. You know, we're never sure, never certain that there hasn't been this sort of undue influence enter into that decision. The other point Senator Schumacher brought up, the financial plan, especially if it's a very complex financial arrangement, yes, clearly I

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understand that and maybe there's a way to write it differently. We can think about it. But generally, this amendment is designed to...this portion of the amendment is designed to address those cases where you do have agreement and both parties to the underlying allegations for the dissolution. Also the other points that have been brought up by Senator Sullivan are extremely important points as we move forward into the next year. And I know one of the portions of LB463 that's so important is...I think is that the Supreme Court will, by January 1, issue a report to this body on action steps that should be taken to address some of the concerns that certainly Senator Howard raises, but because of how we deal with juveniles in the court system impacts rural areas and urban areas alike, you know, being able to clearly understand that the access to the court system is there on a consistent basis is a challenge both for juveniles but also for adults. And it is something that we think about a great deal in the Judiciary Committee and will be continuing to think about as we move into the next legislative year. Thank you, Mister...and I would certainly urge the adoption of AM1342. [LB669 LB408 LB463]

SENATOR GLOOR: Thank you, Senator Ashford. The question before the body is, shall the committee amendments to LB669 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB669]

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB669]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB669 to E&R Initial. There are no senators waiting to speak. Senator Flood, you're recognized to close on the advancement of LB669. Senator Flood waives. Members, the question is the advancement of LB669 to E&R Initial. Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB669]

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB669. [LB669]

SENATOR GLOOR: The bill advances. Items for the record, Mr. Clerk? [LB669]

CLERK: Thank you, Mr. President. Senator Howard has an amendment to LB585 to be printed. Enrollment and Review reports LB56, LB73, LB124, LB162, LB234, LB254, LB265, LB277, LB292, LB315, LB394, LB406, LB413, LB423, LB480, LB494, LB502, LB525, LB525A, LB542, LB591, LB641, and LB687, all reported correctly engrossed. Study resolution, LR211 offered by the Education Committee, that will be referred to the Executive Board. That's all that I had, Mr. President. Thank you. (Legislative Journal pages 1487-1489.) [LB585 LB56 LB73 LB124 LB162 LB234 LB254 LB265 LB277 LB292 LB315 LB394 LB406 LB413 LB423 LB480 LB494 LB502 LB525 LB525A LB542 LB591 LB641 LB687 LR211]

SENATOR GLOOR: Thank you, Mr. Clerk. Continuing with General File, senator priority

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bills. Mr. Clerk.

CLERK: LB142, a bill by Senator Lautenbaugh, relates to the political accountability and disclosure. It changes provisions relating to filing campaign statements and reports and repeals the Campaign Finance Limitation Act. Bill was introduced in January, referred to Government, advanced to General File. Senator Lautenbaugh presented his bill on May 3, Mr. President. There are committee amendments pending. (AM934, Legislative Journal page 1307.) [LB142]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Lautenbaugh, you're recognized to open on LB142. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. Nice to be back on this particular topic again. Just sort of a recap as to where we are, the bill I introduced repealed the CFLA outright and included enhanced reporting provisions. The reporting provisions came with a large fiscal note of \$300,000, speaking in round numbers, for some computer upgrades and software upgrades. Accountability and Disclosure would have had to do to comply with the enhanced reporting. I still remain a fan of the enhanced reporting, but I also knew there was a reality about what I needed to do to get the bill out of committee and that included offering an amendment that removed the enhanced reporting. That is the committee amendment that is before you now, so what we have instead is just a straight up repeal of the CFLA, and I think we've discussed the reasons amply and I will not hesitate to do so again. Mr. President, how long do I have to open? [LB142]

SENATOR GLOOR: Eight minutes fifty seconds. [LB142]

SENATOR LAUTENBAUGH: Thank you. I thought this was an update but I guess this is the extended version, so we'll go with that. We already had about an hour of debate on this a few days ago and the CFLA was described by one of its proponents as not perfect. That's not damning with faint praise; that's praising with faint damning. To say that this isn't perfect is a wild understatement as to the problems with the CFLA. It has two alleged purposes: to reduce special interest dollars and to level the playing field among the candidates. We can take this time this afternoon to talk about how it is a spectacular failure in both regards. First, to reduce the special interest dollars, you heard a figure last time we discussed this that campaign spending was spiraling out of control back in the day. From 1978 to 1990, it rose 300 percent, greater than 300 percent. I would suggest to you that those numbers were not adjusted for inflation and that was a period of high inflation. So on the front end we're overstating the nature of the problem the CFLA was meant to address, if you're willing to even concede that's a problem. Common Cause and others say that with the advent of the CFLA campaign spending has dropped 22 percent. This is what I would call charitably as misleading because this is individual spending by candidates. So not surprisingly, when you put

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limits on campaign spending by individual campaigns, then there are limits that come into effect for individual spending on campaigns. And while the limits are voluntary, the amount that can be raised from nonindividuals are not voluntary, so not surprisingly those numbers were limited in recent years because this law limited them. So that's not an argument for success, that's a statement of the obvious. But here's the real problem. To say that this is a success and to make yourself believe that you have to completely ignore what has actually transpired in recent years, and that is the explosion of spending by independent expenditure groups. And this is a period of low inflation, so these are not adjusted for inflation dollars, but inflation is not much of a factor now. And the figures over the last decade are stark, this is just the last decade. One group raised its spending from \$190,000 in 2000 to \$500,000 this last go-around in 2010. Similar groups have raised...a 226 percent increase over that period, 101 percent increase, 91 percent increase, 100 percent increase. Overall, since 2000 spending by these nonindividual groups has gone up 162 percent and that's just the top five, mind you. The top five nonindividuals have increased their spending the last decade 162 percent. And we're calling this a success in some way. And keep in mind this spending is not what you would call transparent or readily identifiable money, this is spending that by and large is filtered through independent expenditure groups. So a citizen gets something in the mail that says, paid for by citizens for a better whatever, better decade, and there's a message on there, more often than not an attack message. And if you want to know who's really spending that you have to go look up the reports, assuming these groups file on time, and there's a severe slap on the wrist if they don't, but assuming they file on time then you can go figure out who's spending the money perhaps. Unless it's one group giving it to another group and then putting it in an independent expenditure group. The obfuscations and the murkiness mounts and mounts and mounts in this area. This is an obvious failure. If we're saying that we're limiting the amount of independent nonindividual money spent on races with the CFLA we need to concede that that has not happened in reality. And this isn't my opinion, this is based upon the numbers as reported with Accountability and Disclosure. So we are limiting what individuals may raise and spend from nonindividuals, if you will. But we are not taking money out of politics with the CFLA. And it is arrogant of us to think that we can do that. Groups are going to spend what they want to spend on a given race. If they can't dial direct and give it to the candidate of their choosing, which I think is infinitely preferable because if that candidate sends something out that's repugnant, you know who it is and the voters can make them pay a price. It says paid for by who paid for it right on the bottom. Instead we've resorted to this pushing the money underground, hiding it in effect, and then patting ourselves on the back and saying we've done a good job here, we've done something important. This is a failure as far as limiting funds go. Now let's look at leveling the playing field. That's one of the stated goals of the CFLA. I would submit to you that the other unstated corollary to this is incumbent protection because that's what we're doing here if we want to acknowledge it, we're protecting incumbents. Once you're in office you have name ID and you can raise money. So the smart play is simply to choose to abide by the spending limits. The challenger has to make up ground against

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the incumbent. The people that we're supposedly concerned with out there with the CFLA they are charged with making up ground against the incumbent. And if the challenger goes past the limit and the incumbent is abiding, even if the challenger goes by with his own dollars, goes by the limit, then matching funds or funds are made available, fair fight funds for the incumbent are available. That's bad enough in my mind because what we're saying is, we don't want someone in the outside world to try to overcome the advantage of incumbency that we all have by spending as much money as he or she chooses. We're troubled by that somehow. And I would say that anything about that that troubles us is more self-interest rather than good public policy. This is incumbent protection and it's worse than you think and here is why because if I've got this right, the period applies to the two years prior to the election. So we all know what a smart incumbent who's familiar with these rules will do to game the system. You raise as much money as you can in the two out-years, that doesn't count towards the two years running up to the election. Better yet you can also spend money in the two out-years, like hiring ahead, contracting for services or whatnot, and whatnot. That doesn't count against your limit in the two election years. And this is not a hypothetical that I'm dreaming up here. This happened. There was a public service race in particular where this very thing happened,... [LB142]

SENATOR GLOOR: One minute. [LB142]

SENATOR LAUTENBAUGH: ...the money was raised more than two years prior to the election. The services were contracted for more than two years prior to the election. That didn't count against that incumbent candidate's spending limit and raising limit. And then the incumbent agreed to abide and, because the challenger spent more than the limit, this incumbent was entitled to public funds, fair fight funds from Accountability and Disclosure to catch up even though, if you look at the aggregate spent, the incumbent spent more because she spent more in the two years prior to when CFLA would apply. I hope you understand what I'm saying here because this is particularly monstrous and it's not a hypothetical, it's not what someone could do if they were particularly savvy. This is what people have already done under our rules to game this system, get access to public funds and outspend their challenger who we're supposed to be leveling the field on behalf of, by the way,... [LB142]

SENATOR GLOOR: Time, Senator. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. (Visitors introduced.) As a reminder, members, there were amendments from the Government, Military and Veterans Affairs Committee. Senator Avery, as Chair of the committee, you're recognized to update us. You also may have ten minutes. [LB142]

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SENATOR AVERY: Thank you, Mr. President. The committee amendment, AM934, removes all provisions from the bill relating to the new reporting requirements under the A&D Act. For example, in the green copy of the bill provisions lowering the reporting thresholds of contributions and expenditures to \$50 are eliminated. Also eliminated are the requirements that reports and statements be filed electronically the very next business day after receipt of a contribution or the making of an expenditure. The provisions repealing the Campaign Finance Limitation Act remain in the bill under the committee amendment. In fact, the repeal of the CFLA is the only thing left in the bill with the committee amendment. I would point out that the Government, Military and Veterans Affairs Committee held three separate Executive Sessions on LB142. And on the third Executive Session we advanced the bill on a vote of 6 to 2. You remember from the previous General File debate that I opposed this bill from its conception and introduction. I continue to do so. I recognize that Senator Lautenbaugh has expressed repeatedly his main concern, and that is a way to find a solution to the problem of independent expenditures. This is a classic look over here strategy. In fact, what is happening with this argument is don't look at the CFLA and evaluate it and judge it on its merits but let's look over here at a problem it doesn't solve. Let's look over here, not where the bill is itself or what the bill tries to do, but let's look over here at what the bill does not try to do and cannot do. Let me tell you what those are. The bill does not and cannot deal with the problem of independent expenditures. In the first place, the Supreme Court has consistently held that independent committees have First Amendment rights to campaign independently and to spend money independently. So our hands are tied. We cannot restrict these independent expenditures. We can make them disclose. You had an opportunity to that with an important bill just a few minutes ago and declined to do so. We can make them disclose what they're doing. We cannot tell them they can't do it. We can't determine the content and we cannot make them stop. That is a constitutional issue, the Supreme Court has spoken clearly on that. Secondly, if Senator Lautenbaugh is worried about independent committees and worried about their campaign activities and electioneering communications, and if he's worried about the money they spend then he should not agree with the voluntary spending limits. The spending limits in the Campaign Finance Limitation Act are voluntary. If you think you're going to have a large expenditure coming from an independent committee and you're going to be hammered by them don't abide, that's volunteering. You say, you can spend all you want to counter the activity if it does come. The limit is not mandatory. So since the spending limit is itself voluntary, I conclude that the only real purpose of LB142 is to get rid of the limits on special interest money. Take the lid off special interest money and open our hands and our pocketbooks to all of the special interest money that's out there, that is unleash the special interest money so that we can flood our campaigns with money from people who want something from you, not the \$10, \$15, \$25, or \$50 individual contributors. When they give you a check they don't have an expectation they're going to get something back. They want to participate in your campaign because they believe in you, they support it. But special interest money is different, it is influence money, it's not campaign contributions, it's influence money

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pure and simple. So this strategy of look over here, don't look at the Campaign Finance Limitation Act and judge it on its merits. Look over here at something it doesn't do. Well, it can't do that, never tried to do that. It's a false argument, folks. Don't be fooled by this, it's a false argument. If we eliminate special interest contributions and we have no limits whatsoever, that is bad policy. It might be convenient for us as candidates because it would alter some of the reporting requirements and you wouldn't have to send back checks if you go over the limit. But is it good policy? No, it is not good policy. There has not been one, single compelling public interest that has been articulated in this body about why we should pass LB142, not one. Oh, we hear a lot of talk about what it can't do and what it hasn't done, but we haven't heard much at all about whether this is good public policy and if it actually serves the public interest. If we remove these limits we can turn this Legislature into an institution that ignores the interests of the public and serves only the interests of the wealthy special groups, that gives control over public policymaking to big-moneyed interest and I don't think we want to do that. There is a real danger that if we pass this bill we will eliminate the citizen candidate in our elections. We don't want to do that. We will replace the citizen candidate with special interest candidates bought and paid for, doing the interests of the companies and the groups out there that only want to serve their interests, not the public interests, but only their interests. It would be possible if we pass this bill for companies and political action groups representing large interests to drop their CEO into a race, give them a large startup PAC donation and virtually ensure their successful candidacy to elected office. That's not good policy. Citizen involvement in campaigns would become irrelevant. You don't need them. You won't need the citizen participant, you won't need those individual contributions anymore because all you have to do is open your account to the big checks. That's influence money, it comes with expectations and we all know it. Local leaders interested in making a difference in their communities would be trampled by heavily financed special interest candidates. No longer would the small farmers, local butchers, main street bankers be financially competitive and running for office. That's one of the great dangers of this is that you can have people out there well qualified for office who want to run and would make great contributions to this body and other offices, but they cannot compete because they are financially noncompetitive because they don't have the money. If they're relying on individual contributors and the incumbents, you're right about that, Senator Lautenbaugh, the incumbents do have an advantage when you have unlimited...no limits on special interest money because the special interests will tell you right now, we support incumbents. I had groups that didn't support me when I first ran in '06, wouldn't even give me an interview. But when I ran for reelection last year they were right there with nice checks. Why? I asked one of them, because you're an incumbent and we support incumbents. And that check, by the way, was a check that came with expectations, I knew it,... [LB142]

SENATOR GLOOR: One minute. [LB142]

SENATOR AVERY: ...we all do. We do not want to say to our citizens, our voters, our

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friends and neighbors that we don't care about you, that we only care about the special interests. If we pass this bill the influence of average voters will be diminished in the political process. Those \$25 and \$50 contributions will mean so little or nothing that they will be ignored if we get them at all. The highly financed special interest candidates, though, they'll do fine. And the special interests that make the contributions they'll do fine. But town hall meetings, you won't need to do that. Constituency meetings in coffee shops, nah, that will be a thing of the past, you won't need it. Go sit down in the back rooms with the special interests and watch them write the checks. I think that this bill if we pass it would create a vast disconnect between the elected citizens... [LB142]

SENATOR GLOOR: Time, Senator. [LB142]

SENATOR AVERY: ...and the electorate. It's a bad bill. Thank you. [LB142]

SENATOR GLOOR: Thank you, Senator Avery. Members, you've heard the opening on AM934 and LB142. Senator Ashford, you're recognized. [LB142]

SENATOR ASHFORD: Thank you, Mr. President. It is with, in fact, a great deal of trepidation that I get into this issue because I try to stay with issues that I've worked with in my committee. But this is a critical issue. And I...in my mind because things have changed so dramatically since I first ran for office in 1986. And certainly as Senator Avery correctly suggests is that my amendment to this bill years ago, I think it was Speaker Baack was introducer of the bill, did put a limit on the campaign...PAC money, campaign contributions into campaigns. If we really want to change the system and get special interest money out of running elections to some degree, certainly I think it's much more of a critical issue on the national level, we ought to have term limits for Congressmen and Congress persons and Senators because obviously what happens in Congress is that special interests do to a great extent dictate those elections. But let me...and people pick sides and take sides and they stay there in perpetuity basically, though this last election indicated that wasn't always the case. But I want to...something Senator Lautenbaugh, and I understand what Senator Avery is saying. And I do wish that we could take special interest money out of campaigns and just have campaigns that are financed by individual contributions that we go out and get ourselves. I don't know if what Senator Lautenbaugh is proposing is the way to do that. And I think...but I think we need to listen to this debate because it is clear to me that what has happened now with third-party expenditures that go directly into, we all know this obviously, that go directly...that goes directly into radio ads or whatever it is, it doesn't pass through the individual candidate is wrong. It's just wrong. It's just wrong. That when you get to your lid you can't take anymore PAC money, then what happens is that if some particular special interest or industry wants you elected they're going to go out and do whatever they do as third-party expenditures. And there is, you know, 30 year, whenever, how long ago was...25 years ago when I first ran that just wasn't a factor, it just wasn't a factor. I mean we went out and we got our campaign contributions. And if you didn't get

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campaign contributions into your campaign you just didn't get them. So today it's a totally different world, it's a scary world to be a part of. It is, as I do believe, Senator Lautenbaugh is right. I do think that what has occurred in the last 25 years has taken the average voter or the average participant in elections out of the deal in many respects. And that is why in 19...I can't remember what year did that...92 that that first bill passed, that's why...and I made Senator Baack, and he was sitting up at the dais and he was so mad that I put that amendment up that limited the PAC contributions to I think \$45,000, I think or whatever it was, he was so mad at that he started, you know, turning red and shutting me off. But he couldn't do it because I still had two minutes left. But anyway it was, in my mind what I was trying to get at was, you know, let's try to make these campaigns about individual contributions from your neighbors and friends. And that's an idealistic, purest, you know, I guess no longer can it happen. [LB142]

SENATOR GLOOR: One minute. [LB142]

SENATOR ASHFORD: How much? [LB142]

SENATOR GLOOR: One minute. [LB142]

SENATOR ASHFORD: Thank you, Mr. President. But this is a very, very important issue. I don't know the answer. And I don't think any of us, well, some of us may, but there is no easy answer to this problem. But my thought is theoretically if you don't have a lid on PAC contributions and you can raise as much money as you want, isn't there going to be at least, at least it's debatable that there's going to be an incentive for those interests to spend that money directly on campaigns. The people involved in the campaign will know how the money is being spent and by whom. And if you enhance those...that process is that not, I asked Senator Avery to answer this because he really does know this issue, is that not a better way to go? Rather than have these third-party things that run around, that are not accountable. And we should identify these contributions, in my view, with the candidates. Thank you, Mr. President. [LB142]

SENATOR GLOOR: Time, Senator. Thank you, Senator Ashford. Senators wishing to be heard: Avery, Price, Lautenbaugh, Larson, and others. Senator Avery, you're recognized. [LB142]

SENATOR AVERY: Thank you, Mr. President. I want to answer a question that was raised by Senator Ashford. He said, as did Senator Lautenbaugh, we have a problem with independent expenditures. We know that, we all know that. But this is not the solution. This is in fact a proposal that would make the situation worse. There are no additional reporting requirements here, those were taken out. So the amendment that you have before you is in many ways making what was a bad bill worse because the public is not going to know any more about what's going on, they will know less. But what's worse is that the influence money will be completely unleashed, no limits

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whatsoever. Senator Lautenbaugh referred in his opening remarks to the two purposes of the Campaign Finance Limitation Act that was passed in 1992, said it was to reduce special interest money and to level the playing field and he's right and I believe it worked. He also referred to the 329 percent increase in spending as somehow not being a good number because it was based on old numbers and we've had a lot of inflation since then. That's the increase that occurred for 1978 and 1990. I had a conversation with former-Senator Dennis Baack just the other day about this very period in the history of this Legislature. And he said the reason why the Campaign Finance Limitation Act came up in the first place was that they had seen an absolutely alarming amount of money coming into campaigns and amount of money being spent and the widespread perception among the public that the special interests were buying seats in this Legislature. And that 329 percent increase in spending over that period, '78 to 1990, those are real numbers. And if you were to use inflationary numbers of today it would be even greater. Now it is true that some cynical candidates will try to find some way to game the system. Because there are cynical candidates that will do that doesn't make the system bad, doesn't make the policy bad because some people don't have good intentions and some people don't intend to abide by the law, they're going to find a way to get around it, I know how that trick is pulled and spending money before the reporting period starts but I don't do it. And I don't think that most of you do either. We did level the playing field in the sense that we made it possible for ordinary candidates to be able to run for office and be financially competitive by putting a limit on what could be spent and putting a limit on how much special interest money could be solicited. We know that incumbents have advantages, you can't eliminate all those advantages. But when you put a spending limit on and a cap on special interest contributions you make it possible for the ordinary citizen who doesn't have the inside connections to compete and they win in many cases. Senator Brasch is an example of that. She was not well-funded. She won because she was willing to work hard and went door to door, and she admitted that when we discussed this in committee hearing. I believe that we need to be concerned about how we are perceived by the outside world, our citizens and our constituents and the voters out there. [LB142]

SENATOR GLOOR: One minute. [LB142]

SENATOR AVERY: We want to be seen as doing the right thing. We need to be seen as trying to improve the political process to make it more competitive, to make it more responsive to individual citizens not to the special interests. You don't want to be seen as a tool of special interests in this body, you do not. That will create distrust of this body and it will create a great deal of antipathy toward the political process. It will undermine confidence in what we do because it will affect how we do our business. It is important that we inspire confidence by doing the people's business in a way that is aboveboard, that serves their interests, that creates legitimacy. And when we have legitimacy in our institutions and our procedures people support what we do. They might not support every issue that we decide or they may not support... [LB142]

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SENATOR GLOOR: Time, Senator. [LB142]

SENATOR AVERY: ...every policy, but they will support how we do it. [LB142]

SENATOR GLOOR: Thank you, Senator Avery. [LB142]

SENATOR AVERY: Thank you, Mr. President. [LB142]

SENATOR GLOOR: Senator Price, you're recognized. [LB142]

SENATOR PRICE: Thank you, Mr. President. Well, here we are again. You know, I'd ask you all the think about, reflect, has there ever been a candidate that ran for office that was well-funded that didn't win? It doesn't take one to look back too far to find a few of those at multiple political levels. There is no guarantee just because you have the financing that you are going to win. As Senator Avery has said, ideals are what is important here, it's about the relationships you build with your constituents or your potential new constituents. Well, they say dollars and doors and that you have to raise dollars for the doors you didn't knock on and the people you didn't get to know. So that's the basis right there of that. There's no guarantee that if you have a lot of money you're going to win and we know to be the truth. We know it takes money to run a campaign but you cannot just make that assumption. Now one of the disturbing tones I'm beginning to hear here is that when we say special interests will win the day, are we saying that the Nebraska voter isn't capable of determining for whom they want to vote for because that's what is being said, that's the undercurrent here. We're saying that they'll throw this money out and all these cards will go out and all these things will happen and the voter won't be able to make a decision. And I don't believe in that because I believe in the voter. I believe in the process. I've come to the process as I believe all but one of you have. And the bottom line there is it doesn't guarantee if you have money or not. And that brings us to the next point. There are a lot of maybe's and what if's being put here. Well, this could happen, this might happen. But it hasn't happened yet. And the question comes down again, who is or what defines a viable candidate? Why are we charged with saying who will be a viable candidate, because with CFLA that's just what we're doing, because again you have individual contributions, other than individual contributions, and a special, super special category government money. We don't really have a place we can put it, it's so special, but it goes on top. And what we are saying and what people are saying today, sometimes they're saying that anything other individual is inherently evil and that is not the case. And then what's happened here, we talk about redirection, they're trying to...you don't want to be the one seen as supporting special interests, trying to scare everybody away. Yet, if an individual wants to give \$1 million that's okay. The common term in here is sauce good for the goose is good for the gander, unless it's something like this because perhaps there's a candidate out there who can't drum up the support because their ideas aren't

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acceptable, their ideas are widely held, but what we're going to do in an interest here is we're going to do everything we can to make that nonviable fringe candidate viable. We're not laying the expectation though that that candidate has to go out and do the work on their own. That's what you have to do. You don't have to go out there and build those relationships. But we're trying to say in this legislation and what we're trying to change here is that we here in the ivory tower in Lincoln will say who is viable and who is not, what money is good and what money is not good. And dare you, dare you, dare you ever question that money and where it came from because you're a scoundrel if you do. And if you found a way around the law... [LB142]

SENATOR GLOOR: One minute. [LB142]

SENATOR PRICE: ...it's a negative, thank you, a negative connotation instead of saying I have worked within the framework of the law. Dare you, dare you, dare you. Thank you, Mr. President. [LB142]

SENATOR GLOOR: Thank you, Senator Price. Senator Lautenbaugh, you're recognized. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I'm going to reiterate a point I previous made just to make sure that it go through. The way the current CFLA law works is that it applies in the two years prior to your election. So you're free to raise and spend in the year prior to your election, prepay for things, and we're sort of fine with that. And that happens in reality, that happened. This was just described by Senator Avery as some cynical politician try to work the system. No, no, no, no. What we have here is an imperfect law, wildly flawed law. And what are we going to do when someone operates within the ambit of the law? Well, that's just cynical. They should have behaved differently somehow. Now understand it's not important enough that any amendment was proposed this year or any bill that was proposed this year would address that obvious loophole to be exploited by what are now called cynical politicians. No, far from it. We have a bill that we have talked about a few times, by gosh, we want to put AFP within the ambit of independent expenditure groups, but we can't close this loophole. It would have been very easy to say the CFLA applied to the full four years. But who wants that? Because the CFLA is incumbent protection, plain and simple. And we can stand here and say that it's about something else or that, well, the senators who were around in '92 were so shocked by the increasing amount of campaign expenditures that they thought they better do something for the public. Uh-huh. Well, regardless of the motives, it didn't work, it hasn't worked. And I don't think complying with a flawed law makes you cynical. I think it means that people who are smart are exploiting their advantages. And the reason that we might denigrate the people who do that and call them cynical is because what we know in our heart of hearts is that every time we try to monkey around in the First Amendment issue things go awry. And this is a classic example of, I guess, what are presented as good

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intentions gone horribly awry. We're now protecting incumbents and financing the campaigns of incumbents with public dollars if they abide. And their challenger who is trying to make up for the advantage of incumbency does not. And that's okay somehow. In what Through the Looking Glass world is that okay with us? This is not about the little guy. This is not about someone challenging us and us wanting to vindicate his or her right to do so. This is a scam. And the fact that some politicians have figured it out and working within the rules have exploited it, more power to them because what they're doing is pointing out the absolute fallacy that is this attempt to regulate speech. And make no mistake, that's what it is. And we've heard this straw man put up there about, well, I haven't heard a public purpose articulated yet; how can we justify this to our voters out there when we speak to them? Why don't you just tell them it was unconstitutional and we finally kicked it to the curb, because that's what it is. At the very basic level this gives public funds that I think in our constitution are supposed to go to the public schools, their fines and whatnot collected by Accountability and Disclosure, it gives public funds to abiding candidates. That, my friends, is an unconstitutional flaw here. But it's worse than you think. We've talked a lot about or heard a lot about how, well, this complies with existing decisions from the seventies, Buckley v. Valeo. A lot has happened since the seventies in this area,... [LB142]

SENATOR GLOOR: One minute. [LB142]

SENATOR LAUTENBAUGH: ...including the millionaire's amendment, which said that if a millionaire spends \$1 million to get elected, an abiding candidate can get public funds and there's different reporting requirements that apply to both. That has been found as unconstitutional because that millionaire spending his million dollars is exercising free speech. And when you say then different and greater reporting rules apply to him and that public funds go to his opponent that has been struck down as unconstitutional and that's exactly what the existing law does. So if you're hunting for a public purpose, why don't you start with what we have is unconstitutional and it's time for it to go. That's a pretty good one for starters leaving aside the flaw that is the bill it's also unconstitutional. That's something I didn't get to in my last opening because I kept getting sidetracked. And I'll come back to it more because I'm running out of time here. But you need to know that. This is a deception on the public, this existing law,... [LB142]

SENATOR GLOOR: Time, Senator. [LB142]

SENATOR LAUTENBAUGH: Thank you. [LB142]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Senators in the queue: Larson, Bloomfield, Carlson, Ken Haar, Avery, Schumacher, and others. Senator Larson, you are recognized. [LB142]

SENATOR LARSON: Thank you, Mr. President and members of the body. If Senator

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Avery would yield to a question. [LB142]

SENATOR GLOOR: Senator Avery, would you yield? [LB142]

SENATOR AVERY: Yes. [LB142]

SENATOR LARSON: Senator Avery, last time we debated this bill we had a short discussion on how we determine spending limits and what's the appropriate amount. And I'm going to kind of follow-up on that question since you've already answered that one for me. Is there...in your mind, you're talking a lot about special interest money corrupting us as politicians and corrupting the process. How much special interest money can a candidate take before he's corrupted in your mind? [LB142]

SENATOR AVERY: Oh, I suspect it's somewhere under 50 percent of the spending limit. [LB142]

SENATOR LARSON: Somewhere under 50 percent of the spending limit? What about like a percentage more than he took from individuals? [LB142]

SENATOR AVERY: You know what I think? I think really it depends on the individual. [LB142]

SENATOR LARSON: Um-hum. [LB142]

SENATOR AVERY: Not everybody is corruptible, obviously. But when you listen carefully...I said potentially corruptible. [LB142]

SENATOR LARSON: Well, (inaudible) taking that point, since everybody is not corrupted, I mean, either you are going to be corrupted or you're not. So if you're arguing that we need the CFLA to stop us from being corrupt, and yet you say each individual is different, some will and some won't, it would, in my logic, say that if you're going to become corrupt you're going to become corrupt. If you're not, you're not. It's up to each individual and their moral values and what they see. And I think at that point it comes back to the fact that do we trust the voters enough to elect us as politicians? It's not special interest groups, it's not corporations, it's not PACs that elect us, it's individuals, it's the citizens of Nebraska, for me it's the citizens of District 40. You know, voters have the ownership. I have to agree with Senator Price, you know, it's the town hall meetings. Senator Avery says, you know, town hall meetings and coffees will become not important. You know what? In District 40 they are very important. I knocked on a lot of doors, I went to a lot of parades, I went to every pancake feed. I don't even like pancakes. (Laugh) I went to every pancake feed I could find and I ate the pancakes because I was expected to eat the pancakes and that's fine. You know what, I enjoy the people and they enjoy us. And that's what gets candidates elected. You know, maybe a

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little bit of name ID helps with the money. I know I was outspent. I think Senator Avery also brought up the point that, you know, the special interest groups they always want something back, and that's why we have to limit it. You know, there's individuals, whether they are around the state or individuals in the lobby that donate to our campaigns as well. Warren Buffett, Dick Holland, Loran Schmit, Bill Mueller, I mean, just name all those individual checks and say that they come from individuals, but trust me, they have an agenda. And I know looking at the reports a lot of us have taken money from a lot of them. There's no difference from them compared to political action committees or independent expenditures. They're just like everybody else. Why don't we make it a little more open and leave it up to the people of Nebraska to decide. Thank you, Mr. President. [LB142]

SENATOR GLOOR: Thank you, Senator Larson. Senator Bloomfield, you are recognized. [LB142]

SENATOR BLOOMFIELD: Thank you, Mr. President. And I'm fortunate, I do like pancakes. And I would yield my time to Senator Lautenbaugh. [LB142]

SENATOR GLOOR: Senator Lautenbaugh, 4 minutes 49 seconds. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Bloomfield. I like pancakes also. Davis v. Federal Election Commission, Supreme Court decision struck down the millionaires amendment. This is a provision that came into play when self-financing candidates, such as millionaires, ran for federal office. The free-spending millionaire candidates faced heightened disclosure requirements so their opponents knew what they were spending, as is the case with the CFLA, and the nonfree-spending opponents benefitted from relaxation of the contribution and expenditure requirements that would otherwise apply. Here we just give them money if they're abiding. The millionaires amendment created what Justice Solito termed an asymmetrical regulatory scheme, meaning different rules apply to one candidate that spends a lot of money. With respect to the different rules that were before the Supreme Court certain candidates, the spenders, faced burdens and other candidates, the nonspenders, obtained advantages solely because of the big spending candidates decision to use money to partake of campaign speech. Understand that does not differ appreciably from what we have in Nebraska under this disastrous law as it exists. We are penalizing people's free speech right. And again, some have touched on this as well, it is so fantastically offensive to say that nonindividual contributions are somehow tainted and that were bought by nonindividual contributions. But when a wealthy individual gives you a contribution, that's just good government. And you're asked, well, how can you look your constituents in the eye? How can you explain this to them? Well, let's assume they're not idiots for starters and explain exactly what our current system fosters. And you've been told that, oh, this isn't the solution to independent expenditures or to nonindividual money because there can't be a solution. But we can stop exacerbating

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the problem, and that is what the CFLA does. It is again a sign of our hubris that we think we can control things like this in the first place. If the chamber of commerce has allocated \$100,000 to spend on the next election, by gosh they're going to spend it. Are they going to give it to their candidates directly, to the extent possible they do. And when that candidate's maxed out we know where the money goes, into independent expenditure groups. And the chamber is not the big spender here, there are others that spend a lot more and we know where that money goes, some directly to the favored candidates, but the bulk of it now goes into independent expenditure groups. This is not a good system. And I'm not asking you to shrink from what this bill does or play hide the ball. What I'm talking about is we introduced a distortion into the market of ideas. We introduced a distortion to the right of free speech when we passed the CFLA. And when you do something like that there's a reaction. And the reaction has been the obvious explosion of independent expenditure groups because that's the only place the money allocated can go once you reach the limit. So not surprisingly, that's where it goes in increasing amounts and with a vengeance. And we all decry the independent expenditure groups. But they're there and with the existing law we're forcing money to them rather than to the candidates. And it is just patently offensive to stand here and say that if you accept nonindividual money there are strings attached. [LB142]

SENATOR GLOOR: One minute. [LB142]

SENATOR LAUTENBAUGH: And there are expectations. Everyone who gives you a donation has an expectation. And we talk about crowding out the individuals and the individuals would no longer have a role if we went back to the way it was before. We're skipping an important step here called the election where the voters do get to be heard in large numbers on one given day. And come on, do we really believe, have you noticed that the Governor just stays here in the Capitol because the spending limits don't apply to him, so he can raise as much as he wants from nonindividuals. So the Governor never has a town hall, he never leaves Lincoln. He just sits there and waits for the new election, that's not reality, that's nonsense. That's not what happens. And there are no spending limits that apply to that office. And it seems to work. And again we don't seem terribly put out by it. And the reason we don't is because if we... [LB142]

SENATOR GLOOR: Time, Senator. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Chair recognizes Senator Carlson. [LB142]

SENATOR CARLSON: Thank you, Mr. President, members of the Legislature. I'm listening to this debate. I'm enjoying the debate. I'm agreeing with many of the things that Senator Lautenbaugh is talking about. I'm agreeing with many of the things that

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Senator Avery is talking about. I do have a question or two, depending on my time, I'd like to address Senator Lautenbaugh, if he would yield. [LB142]

SENATOR GLOOR: Senator Lautenbaugh, would you yield? [LB142]

SENATOR LAUTENBAUGH: Yes, I will. [LB142]

SENATOR CARLSON: Now you've gone over these things. But if in fact this is something that has a possibility of becoming law, I certainly need to thoroughly understand it and so I'm going to ask you some questions. I'll say this, what appeals about what you're talking about is simple, it's really less government. We could say that it's an unlimited freedom of speech and probably less expense for oversight. Now would you agree that third-party expenditures are a problem? [LB142]

SENATOR LAUTENBAUGH: To the extent that they're done through independent expenditure groups and it's difficult for the public to figure out who's actually sending the message, yes, that's a problem. [LB142]

SENATOR CARLSON: How does your bill address that? [LB142]

SENATOR LAUTENBAUGH: It simply stops forcing the amounts that third parties, if you will, have decided to spend into the independent expenditure groups when they could no longer be donated to the candidates directly. [LB142]

SENATOR CARLSON: It doesn't require that they identify who they are as they spend this money, and identify it better than simply the name of a group? [LB142]

SENATOR LAUTENBAUGH: It would not really change at all the reporting requirements for individuals. So if third parties were to send money directly to the campaigns of the candidates, individual candidates, it would be reported as such. [LB142]

SENATOR CARLSON: Okay. Now with no limits, who really had the advantage? I'm not clear on this. Who has the advantage? [LB142]

SENATOR LAUTENBAUGH: Well, I don't know that it's going to actually from a dollar spent standpoint change reality much. I think the public would have a certain advantage in that at least we have fairly stringent reporting requirements and late contributions are disclosed with more frequently than regular, run-of-the-mill contributions. So I don't think there's really...I'm struggling to answer your question in a coherent way because I'm not 100 percent sure what you're getting at. [LB142]

SENATOR CARLSON: Okay. Well, I'll go on to the next thing. You testified that the present system forces this money underground. I'm agreeing with you, I agree with you

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on that. I don't like that it's underground. I don't like that you can't identify who spent it. If it's Republicans that spent it you identify it; if it's Democrats who spent it you identify it. But if it's Americans for Prosperity, who is that? What are the reporting requirements under LB142 for the candidate, for the special interest groups and for the third party? [LB142]

SENATOR LAUTENBAUGH: It really doesn't change the reporting requirements at all as amended. We haven't passed the committee amendment yet. But the original bill that had enhanced reporting for the individuals also came with a large fiscal note, so we took that out. So I would argue that it really doesn't change reporting requirements with the caveat that under the CFLA, a little known fact, that if you agree to abide at some point you have to file an affidavit that discloses all of your contributions to show that you're a bona fide candidate, if you will, so people who may have contributed thinking the \$250 limit applies would then be disclosed on some affidavit for an abiding candidate who wanted to potentially seek potential funds. That would go by the wayside because there would be no source of public funds and no CFLA. But the run-of-the-mill reporting for both individuals and nonindividuals and candidates would all stay the same. [LB142]

SENATOR CARLSON: So other than it brings the third-party expenditures maybe a little bit above ground, it does not really solve that problem, does it, identifying exactly who this money is coming from? [LB142]

SENATOR GLOOR: One minute. [LB142]

SENATOR LAUTENBAUGH: Well, it's...and you're correct in that that's a problem that probably constitutionally isn't solvable because those groups do have a First Amendment right to...for speech, and spending money is a way of exercising that right. So you're correct, this is not something that would solve that particular problem simply because we should probably stop calling it a problem because it's something that's constitutionally protected. So it's part of the life we have to deal with. [LB142]

SENATOR CARLSON: Okay, thank you, Senator Lautenbaugh. I may come back with you at another time. Senator Price talked about that money is helpful but it doesn't guarantee anything. I agree with that. And again, this is good debate. And I'll come back and ask more questions later. Thank you, Mr. President. [LB142]

SENATOR GLOOR: Thank you, Senator Carlson. Members waiting to be heard: Senator Ken Haar, Avery, Schumacher, Fulton, Lautenbaugh, Nelson, and others. Senator Ken Haar, you're recognized. [LB142]

SENATOR HAAR: Mr. President, members of the body, for those who think that money is not an advantage I would certainly disagree. And I agree, because I was one of the cases, where I outworked my opponent even though he spent a lot more money. But

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when you go out to recruit candidates if you know that the opposing candidate is going to have infinite money of his own or her own to spend, it makes a difference, it makes a difference. And had I been in the situation, I think, where I knew that my opponent was going to drop \$100,000 of his own money into the race I would have had second thoughts. So I do believe that money is an advantage. I believe that if we go back to the people and tell them, gee, we've just taken off all spending limits, when probably they think there ought to be spending limits on other races, I think we're going to hear from our constituents it's not the right thing to do. In fact, I think we should hear from our constituents if they think unlimited spending should be the name of the game. If that's the case, I think we're going to ruin the ability to run at this level, for average people to run at this level. And I'm fearful of that. You know, like I said last time, I believe that all the members of Congress, at least in the U.S. Senate are millionaires. That's not the case in here and it shouldn't be. We should have spending limits. It makes sense to me. And I believe the people support that. I would give any remaining time to Senator Avery if he wishes it. [LB142]

SENATOR GLOOR: Senator Avery, 3 minutes and 5 seconds. [LB142]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Haar. I want to talk about the millionaire amendment because this is another classic look over here strategy. It does not apply to the CFLA, it's completely irrelevant to it. In the millionaires amendment the Ninth Circuit held that, and this was the Davis case, unconstitutionally burdened the self-financing candidates exercised First Amendment rights. Quoting the Ninth Circuit, Davis says nothing about public funding schemes and therefore says nothing about their constitutionality. Let me repeat it. Davis says nothing about public funding schemes and therefore says nothing about their constitutionality. The law construed a burden on Davis' speech only because it treated candidates running against each other under the same regulatory framework differently based upon a candidates decision to self-finance his or her campaign. In contrast, the Supreme Court has held that it is constitutional to subject candidates running against each other for the same office to entirely different regulatory schemes when some candidate voluntarily chooses to participate in public financing. This is based upon the Buckley case in 1974. The CFLA is based upon the Buckley case, it has been upheld as constitutional in every challenge. So when Senator Lautenbaugh says, this is not a constitutional law he is wrong, unless he does not believe that the Supreme Court is the final arbiter of disputes over law in this country. I happen to believe it is. It was intended to be as soon as we got Marbury, gee, I can't believe I would forget that one, the Marbury case that established the right of the Supreme Court to overrule and decide the constitutionality of legislative laws. The Davis case does not apply, it does not belong in this discussion, and it's a classic look over here strategy to bring it up. Now Senator Larson said that...a few things about some points I had made. Senator Larson, if you are going to quote me, get it right. I did not say that we should not have coffees. I did not say that we should not have candidate forums and that we should not have town hall meetings. I did not

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say that we could not. What I said was that if we pass this bill there will be less need for these things because we will not need to rely on individual contributors. We will have the resources we need from special interests. And I believe, and I said then that that potentially corrupts the process, it doesn't make everybody here corrupt, I did not say that, I did not imply that. I said it potentially corrupts the process. [LB142]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Time, Senator Avery. [LB142]

SENATOR AVERY: And the courts have upheld that. [LB142]

SENATOR CARLSON: Now you're on your light, you're recognized. [LB142]

SENATOR AVERY: Thank you, Mr. President. I think we need to keep this discussion factual. And it is not a factual discussion when points are raised that are completely irrelevant or when they distort the law or try to use cases that do not apply. It was said that we have a problem because cynical candidates who may try to find loopholes can get around the spending limit by simply spending money before the two-year reporting period kicks in. And it has happened. But that is not a flaw so much in the process as it is a flaw in the character of the individuals. That needs to be distinguished, that needs to be emphasized. And I will tell you that the Government, Military and Veterans Affairs Committee has not ignored the reform of the CFLA. In fact, Senator Pirsch had a bill last year to create a four-year election period where we would start reporting our fund-raising and expenditures at the beginning of the four-year cycle, not at the beginning of the two years. The committee worked on this. We did not report it out of committee, but we do recognize that problem. If you want to close this loophole, let's do it. Put up an amendment, Senator Lautenbaugh, put up an amendment to close the loophole if that's a big issue for you. I think you might find some support for that. We must not take our eye off the ball. The ball here is we must recognize that the CFLA is settled law, it is constitutional, it has worked and it is something that's not new to Nebraska. In fact, only four states have no limits on contributions to candidates, four states. That means 46 states have some limits on contributions. And we want to back out of this. The trend throughout the country is for more requirements for reporting, for more limits on contributions and spending, not less. The state of North Carolina thought they were doing quite fine without any particular laws governing the regulation of money in politics, until their speaker went to federal prison for five years. Then they got really serious about reforming their system. Now they've got some the tightest rules in the country. I'm not say that would ever happened here, I think we're better than that. But I'm telling you, folks, when you listen to these arguments to bring up cases that don't apply and somehow hoping that you'll think they do, that is not helpful to this debate. And it's not a matter of interpretation of these cases. The interpretation is clear. What it is, is a decision to use a case that may sound like it applies, but it doesn't, and it might

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make my case a little better so I'm going to use it. Buckley v. Valeo, not disputed, well established, settled law, ruled that restricting money in campaigns serves a compelling public interest. It is not a restriction on speech, as Senator Lautenbaugh said it is, the court determined this was because money potentially, potentially inserts a corrupting influence on the political process. That's what I said, nothing else, and that's what I continue to say. The courts said that. The courts were very clear when they established that speech can be...that speech is not money and contributions is not speech. [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR AVERY: Special interest money is influence money pure and simple, it's money, as I said, given with expectations. Special interest dollars often provide the funding that pushes out the small contributors. If you're perceived as not needing the money because you've got all this money from special interests, you're not going to be very attractive to \$25 contributors. They have a right to participate in this process and we ought to facilitate that. It is not unreasonable nor is it unconstitutional for us to limit contributions and limit the amount of money we can take from special interests. It serves a compelling public interest, not convenient for us, but it serves a compelling public interest. It inspires confidence in what we do and how we do it. It inspires a support for our process. And when people support... [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR AVERY: ...our process they will believe us. Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Avery. Those still wishing to speak: Senator Schumacher, Fulton, Lautenbaugh, Nelson, and others. Senator Schumacher, you're recognized. [LB142]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. In a pure and simpler age it may have been easy to see the truth. And when an important truth was found it was often carved in stone. Above the main entrance to this building are the words in stone, The salvation of the state is in the watchfulness of the citizen. Fellow colleagues, the citizen cannot see if there is not light. This bill came to us with two elements in the General Affairs or the Government Committee. The elements were a reduction or striking of the finance act. And also a focus on increased and more immediate disclosure. The disclosure mechanism needed some tweaking. For example, one of the things that it required was that contributions be disclosed and listed at the \$50 level. Most of us who deal with common folks and small businesses realize that if you made a disclosure and had to disclose \$50 contributions it would dry a lot of them up because the people that make those kind of contributions often play both sides of the fence. They want a good race, a good, fair opportunity for both candidates to present their piece and they make contributions on both sides of the fence. Some of them

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simply don't want their name in the paper. And certainly nobody expects that they are buying anything or to be bought by 50 bucks. The \$250 suggestion probably a lot better level for that kind of disclosure. The immediacy of the disclosure, an important thing. Little concerned about the fiscal note but not so much because what can we spend money on better than a few thousand dollars to help the democratic process and to help democracy work. And so we ask that the bill be reviewed and brought back to us in a form that Senator Lautenbaugh felt comfortable with and that could be presented to this body. What we got back was half a bill. There are no increased reporting requirements in this bill even though the campaign finance limitation goes away. And I think Senator Lautenbaugh is correct. We're kidding ourselves if you think you can stop money from coming into a campaign, it's going to find a way there because power likes power and money is power. And money wants to control power and wants to be in a position to make us feel guilty if we don't do what the sponsors that paid us to come here want us to do. But the people need to know. We cannot say no to a corrupt system unless in this body, but the people can be behind the curtain. This bill might very well be okay if there were strong reporting requirements that required instantaneous reporting and disclosure of any consequential campaign contribution or sequence leading to them, the taking from a corporate membership to...a corporate association to a PAC, to a middle-man group back to a secret independent expenditure committee that doesn't disclose... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR SCHUMACHER: ...its existence until the very last minute in the campaign and then unleashes all kinds of trash on the radio or in mailings. That's not a happy system we have. But you know who can put an end to it? The people who say this is nonsense, we don't appreciate it, we know who's behind this stuff and we don't want them buying our mayor or our senator or our congress...this is not federal, but our elected officials. We say no. And they have said no in many of our races. They have appreciated that these elected offices belong to the people and not to the special interests. But to make this work there must be full and immediate disclosure that the media can run with as late as a day before the election. Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Schumacher. Senator Fulton, you're recognized. [LB142]

SENATOR FULTON: Thank you, Mr. President, members of the body. The concern that I've had with the Campaign Finance Limitation Act primarily is this provision that government pays for some political campaigns or for...that the public would pay for some political campaigns. There's something about that that causes me trouble. So maybe I just have my own personal position on this. But I'm trying to discern the compelling public policy with that regard. So to that end I'd ask if Senator Avery would

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yield for question. [LB142]

SENATOR CARLSON: Senator Avery, would you yield? [LB142]

SENATOR AVERY: I will. [LB142]

SENATOR FULTON: Senator, if...what I'm trying here to do is to establish where the bookends are. I suspect that the decision for CFLA fell somewhere in between. So I'm going to try to establish bookends here. On the one hand we have the case where the public or, yeah, the public would be paying for a political campaign. So if someone breaks the spending limit then his opponent, his or her opponent, is able to receive public funds. Why wouldn't we or, I guess, what's your position on this, why wouldn't we just say, all campaigns should be paid for with public funds? That way each person has equal standing with respect to money. [LB142]

SENATOR AVERY: There have been a lot of proposals to do that. It's expensive and not...there isn't a whole lot of public support for it. The provision that we have here for fair fight funds is firmly rooted in Supreme Court cases that have said if you're going to put limits on spending, you have to make them voluntary. If you're going to make them voluntary to be constitutional then you have to offer some incentive for candidates to abide by them. That's where the fair fight money comes in. And by the way, this is not tax money, these are fees and fines. [LB142]

SENATOR FULTON: Yeah, understood. Why is it...the necessity to make it fair, is it the idea that having equal money makes for a fair fight? Would you...I guess, would you agree with that? [LB142]

SENATOR AVERY: I think it certainly makes it much more fair. I'm not sure if you can ever have a fair fight. If you are a lousy candidate you're a lousy candidate no matter how much money you have it's not going to change that. You might be able to manipulate the voters in some way to make them believe you're not a lousy candidate. But the truth is that money does make a difference in what you're able to do with your campaign, how you're able to get your message out. We all know that. [LB142]

SENATOR FULTON: It seems to me that the intention behind CFLA is, at least the public funding provision of CFLA is to make for a fair process. [LB142]

SENATOR AVERY: Right. [LB142]

SENATOR FULTON: The definition that we each hold with respect to fair differs. I elucidate or I explained earlier that in my case I went out and hit over, it was something like 1,000 different donors. And the average contribution was something less than \$100. So I worked very hard to go out and get contributions from people who run in my circles,

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you know, not rich people. And then my opponent is rewarded with public dollars for the work that I did. Now I would say that that's unfair. If the intention of CFLA was to provide equal footing, then it seems to me that we should simply say, these two candidates or three or four or however many will be funded with public monies at exactly the same level. What you do after that point is up to you. Now what's wrong with that scenario? [LB142]

SENATOR AVERY: Well, you want to propose that, I'd be happy to look at it. But what happened in your case, as I recall, is that your opponent agreed to abide by the limit and you did not, and once you went over the spending limit fair fight money kicked in to help her catch up. So it was much more a fair campaign. She was underfunded, you were not. If you had abided by the limit, if you had never gone over the limit then she would never have gotten fair fight money. [LB142]

SENATOR FULTON: But it seems to me that... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR FULTON: ...the definition of fair is the impression that fair fight money causes the two sides to be equal. And so why wouldn't we want to fund both candidates equally from the jump? [LB142]

SENATOR AVERY: I'm sorry, was that a question? [LB142]

SENATOR FULTON: Yeah. [LB142]

SENATOR AVERY: Would you restate it, I'm sorry. [LB142]

SENATOR FULTON: Why wouldn't we want to fund both candidates fairly from the jump? [LB142]

SENATOR AVERY: Well, if both candidates were abiding by the limits, there is no reason for fair fight money. [LB142]

SENATOR FULTON: That wasn't my question though, Senator. Why wouldn't we want to fund them equally from the jump regardless of the volition of either candidate? [LB142]

SENATOR AVERY: Well, I explained that on the basis of the expense and the fact that there is not enough public support for that. The Supreme Court has never said that fully funding with public money is unconstitutional. [LB142]

SENATOR FULTON: Yeah. That's...thank you, Senator Avery. I think that the public

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would not be in favor of such a proposal because such a proposal is not fair. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR FULTON: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Fulton and Senator Avery. Senator Nelson, you're recognized. [LB142]

SENATOR NELSON: Thank you, Mr. President, members of the body. I want to stand in support of AM934 as an amendment to LB142. Let's bring it down to the local level here a little bit as far as our Legislature is concerned. Some past experiences, just some comments that I'd like to make in light of some of the arguments that I've heard. In my opinion, it comes down to the candidate, the merit of the candidate and the judgment that the voting public is going to make on whether that's the person they want to serve in this body or they want someone else. Two years from now there aren't going to be any incumbents in the legislative races, there are going to be new people. In four years from now or a little less than that, when the election comes up and the campaigns there are going to be about 20 legislative races where there aren't going to be any incumbents. Parties are going to, not only parties, political parties, but also various interest groups with lots of money are going to be looking into those candidates and decide which ones they want to support. My argument is this. Why isn't it better for them to be able to spend what they want on a particular candidate and advocate and keep it out in the opening because of the reporting requirements? And this goes a little bit to some of the things that Senator Carlson was asking. Why isn't it better to maintain the reporting requirements, see who's actually giving the money, and not restrict the candidates? I harken back to my campaign four years ago, the first time I ran for office, I decided to abide because I thought it was the right thing to do or, I'm sorry, I did not abide because I wasn't certain at that time it was the right thing to do. My opponent did abide, consequently I think the thing to bear in mind is that I was fairly certain that my opponent was going to get a lot of money from special interest groups. And I won't name them at this time. They didn't...they maybe contributed a little bit my opponent for the record, but most of it was spent on behalf of the candidate indirectly in negative public mailings and things of that sort. So what was I forced to do? I could only raise so much money from PACs and from individuals, and I had to spend additional money on my own in order to counteract that. And because I did, because my opponent did fight, she received, I think, upwards of \$10,000 in public funds. She got that in addition to all these indirect expenditures. I don't think that's right. I think that's the reason for doing away with this campaign limitation act and let things run their natural course. We've also heard that there are some lousy candidates. There are also some very good candidates who have not had money to spend but they have won, and that has happened right here in members of this body. They won because they got out and they knocked on doors. And even though they had limited resources they did a good job of marketing

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themselves despite the fact that they might have been outspent by 3 to 1, whether it was directly or indirectly. So there are arguments on both sides. But I think from a practical standpoint I think the better way to go is what Senator Lautenbaugh is espousing. Let's do away with the limits. There still will be indirect spending. But at least we're not going to be limited as candidates in trying to win an election on our own merits and be limited because we can't spend the amount of funds or raise the amount of funds that we ordinarily would under the present system. Thank you, Mr. President.
[LB142]

SENATOR CARLSON: Thank you, Senator Nelson. Senator McGill, you're recognized.
[LB142]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I don't think there's anything we can do to get rid of independent expenditures. As Senator Nelson, I'm kind of almost glad that I followed him because, you know, he talked about how all the negative campaigning comes from the other groups. No matter how much...special interests are still going to want to put money into independent expenditures for that very reason because the candidate themselves isn't going to be the one on the attack out there. And independent expenditures have been used to defend candidates as well for that matter. But they're going to exist, there's nothing we can do about it. It's our freedom of speech. They're out there largely to attack folks. And they're attacking on both sides. We've all seen plenty of it in all of our races. And so if anything, they counteract themselves as long as you have an independent expenditure committee on both sides of an election, sometimes you do and sometimes you don't. But I, personally, liked going into a race knowing that...what the standard of the money raising was generally going to be. You know, as a candidate I want to spend most of my time out talking to people and not raising money. I want to spend more time at the doors and visiting people in their communities and in their businesses. And if I know the cap is \$900,000 then I have an expectation going in or if my opponent chooses not to abide I know what that expectation is, so I can allocate my time to what is more meaningful, which is face-to-face contact with our constituents. So I support having some sort of cap and limitations in place, if nothing else than as a candidate going into a race you have some general expectations for how the campaign is going to go. They are always rougher and tougher than you want them to be. But I like to be able to allocate my time, and I think other candidates would like that as well, especially as you're trying to recruit new candidates into what can be a very daunting experience. It takes a lot of effort to recruit most people to run for office. There are a million reasons why not to, especially when a job like this pays so little. But to have that sort of expectation on what kind of money you can raise, that you have to raise, and to know where the other person is at, generally speaking, I think that does benefit the public. Independent expenditures, they're going to be there, they're going to do their thing. I sigh (laugh) in frustration over that, but it is what it is, folks. So I do not support Senator Lautenbaugh's motion here and would like to, while I think changes can always be made to the system, it's never

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going to be perfect. Every state is different in trying to figure it out. And I just don't feel like gutting our system right now is the way to go. Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator McGill. Senator Bloomfield, you're recognized. [LB142]

SENATOR BLOOMFIELD: Thank you, Mr. President. I hope I'm not misquoting Senator Avery here again, as Senator Larson was accused of. But it's my understanding that he said there were four states that did not have limits and 46 that did. So perhaps we may not want to go there. I would remind the body that we are the one Unicameral. And I would give the rest of my time to Senator Lautenbaugh, if he'd like it. [LB142]

SENATOR CARLSON: Senator Lautenbaugh, 4 minutes and 20 seconds. [LB142]

SENATOR LAUTENBAUGH: Thank you, Senator Bloomfield. Thank you, Mr. President. There are some points that I would like to respond to that have come up here. And I think it is important to not let perhaps misperceptions or worse stand out there. It is correct that the case I cite does not say, and so the Nebraska system is unconstitutional. But there's an Arizona case before the Supreme Court that is going to do, it appears, that very thing. We are treading in an area where we are not competent to tread. And it's not correct to say that the CFLA is without challenge. It's without challenge that was actually taken all the way through to litigation. But there's been litigation filed before, but the candidate who was complaining actually won the race in the end. So that takes away some of your incentive to keep paying your attorney, I would assume, when you actually won as things turn out. And Senator Schumacher makes important points. And it is correct to say that with the committee amendment this does not enhance disclosure. I would argue though that we do have a fairly rigorous system of disclosure currently, especially for individual candidates. And if, as I have argued the practical effect of this bill is to allow more of the money to flow through the individual campaigns, we will by extension know more about those contributions as our current limits would apply. Again, I'm not here to say that the additional reporting set forth in the bill was a bad thing. I mean, it is my bill after all. But it came with a fiscal note and I had to get it out of committee and I understand what that means when someone says, where are we going to find \$300,000 to do what you want to do. Well, I mean, I think the CFLA and the fair fight funds are about \$800,000 give or take currently, so that was an obvious source. But those funds, I believe, would go to education if we pass this bill. That was my intention and I think the amendment still leaves that intention in place. I'm not telling you you're anti-education if you don't support my bill, but you know. Okay, yes I am. But in any event, I do appreciate the support of this bill for a variety of reasons, that not being the least of them. I don't understand for the life of me the argument that special interest or nonindividual money crowds out individual money. I have never had an individual ask me, who was getting ready to give me a \$50 donation, I'm sorry, do you have a lot of money from the

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chamber or do you have a lot of money from the teachers or do you have a lot of money from whomever? That isn't how this works. And this argument that somehow we're crowding the citizens out, again, I can't stress enough the voters are not stupid. And there is a point at which they have their say. And if they're concerned about money, they're going to be educated about the money. And if someone were running against me and he were funded 100 percent by Warren Buffett all through individual contributions, I can guarantee you the voters in my district would know about that because I would tell them about that. [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LAUTENBAUGH: And that's how this system works. We have disclosure now. We somehow sometimes find ourselves in the position of rushing to judgment to do something because, oh my gosh, what would the voters think otherwise. Well, here's a thought. Don't talk down to the voters but explain to them why you did what you did. If anybody ever asks, because I don't think the man on the street is really that into this topic to be honest, but if anyone ever did ask, you have a very good reason for doing this. The system we have is constitutionally suspect, full of holes, and forces money into independent expenditure groups by not allowing it to flow to candidates. That sounds like a pretty good argument. That's sounds like something a voter would say, yeah, I understand that. If the system is bad you should have thrown it out. That's the beauty of the bill as amended, it throws out a bad system. It doesn't crowd anyone out. It doesn't say individuals can't participate in the process... [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Those still wishing to speak include Price, Karpisek, Conrad, Lautenbaugh, and Council. Senator Price, you're recognized. [LB142]

SENATOR PRICE: Thank you, Mr. President, members of the body. I'd remind us all that in January 2010 the Supreme Court made a landmark decision, 54, that basically said that there was no sufficient government interest to justify limits on the political speech of nonprofit and for-profit. That was the U.S. Supreme Court said that in a landmark decision. Now that's probably well over 100 pages of wording in there that I'm sure someone could twist around or make commentary to. But again already in the highest court they said that there was no sufficient government interest to justify limits. And when we get to the aspect of it being constitutional because the individual candidate can choose to abide by limits or not, it is an interesting thing that a candidate can choose to abide, but the people cannot choose to participate at the level they want to if they happen to have an organized group. What our law says right now is,

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individuals unfettered, anybody else other than individuals, you're fettered. So what we really have to say is that an other an individual has the right to participate, just not as much of a right. And doesn't that inherently offend you when you hear this one has a right and this one has kind of, almost some of the right? It doesn't ring true and we know that. You can do that in the commercials, we saw the commercials on the TV, not too long ago, where they had, I wanted to say it was an insurance commercial where they would have one child would come up and ask for something and they'd get this cardboard cutout of a pony and the next child would come and get this huge...the full pony. And it said, basically, the marketing was even children can understand what is inherently not right. And that's what we have here. And with that, I would yield the balance of my time to Senator Lautenbaugh, if he would choose to use it. [LB142]

SENATOR CARLSON: Senator Lautenbaugh, 2 minutes and 35 seconds. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And thank you, Senator Price. And again, we're talking about Supreme Court decisions and what will happen and what will likely happen. And it does no good to say that an existing decision does not specifically come out and say, and so, Nebraska, you must do something different because we don't have that decision, because we don't have the court challenge here yet. But what I am saying is this, decisions work in an incremental way. Courts deal with what's in front of them, they don't make broad, sweeping pronouncements that cover every possible factual scenario. But a lot of time has transpired since the oft cited in this Chamber Buckley v. Valeo, and a lot of developments in the area of free speech have also transpired at the Supreme Court level. So to say that it's absolutely wrong to discuss current precedent, when it clearly seems to be blowing in the direction of restrictions on free speech being bad and actually defining what does and does not constitute that and seemingly getting to a way that strikes at our system of public financing for abiding candidates, as we'll see very soon I believe, that's how you argue what the Supreme Court will do in the absence of a clear decision dealing with your specific fact set. And it is very unusual, considering we have 50 states and 50 or, you know, however many different systems, some maybe equal or the same, I don't know the answer to that, but we're not going to have a Supreme Court decision out of a case from the Eleventh Circuit or the Ninth Circuit, which ever one did it out west, to say, yeah, and so the Nebraska one is bad too. [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. We argue by analogy, that's just how this is done when you're dealing with what the Supreme Court may or may not do. We're talking about how, somehow this was an attempt to fix something that isn't broken. That's what you were told last week. This week you are being told, yeah, it was broken and we've discussed some fixes but they didn't make it out of committee or

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whatever, and it's only the cynical candidates that exploit it. Well, folks, come on. That's really good enough, that's what we're going to say is, okay, maybe it is broken some, and we don't care enough to fix it because we like it, or we're married to it, or we're a part of it when we set it up. But come on, we can't just say, yeah, last week there aren't problems, this week there are problems but they're not big enough problems, and we might fix them. We talked about fixing them last year but we didn't do it. But we might next year. Maybe we should do it now on this bill if you're willing to make legislation on the fly. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh and Senator Price. Senator Karpisek, you're recognized. [LB142]

SENATOR KARPISEK: Thank you, Mr. President. I'd like to yield my time to Senator Avery. [LB142]

SENATOR CARLSON: Senator Avery, 4 minutes and 53 seconds. [LB142]

SENATOR AVERY: Thank you, Mr. President, and thank you, Senator Karpisek. Again I'm going to have to clear up some misconceptions here. I keep hearing arguments that this is not constitutional. The act has been in effect since 1992, and the first election to which it was applied was 1996. No one has seriously challenged the issue of whether this is constitutional in the courts, including the issue of funding of the CFLA. The place to make the constitutional determination is in the courts, and the opponents of this law have not taken that route. There has been one single challenge filed several years ago on the constitutionality of the CFLA. The petitioners requested a temporary restraining order, the judge refused to grant it, and the case was later quietly dismissed. So if it is so blatantly unconstitutional, then why has it not been taken to the courts? The CFLA was carefully crafted based upon existing Supreme Court cases. The basic principle of the CFLA has been upheld in every court case challenging campaign finance laws around the country. The basic principle is that it is permissible to have limits on contributions but not on expenditures. If you're going to limit expenditures you to have to do it by making them voluntary and providing some incentive program like we have with the fair fight money. So let me reiterate. The CFLA does not limit expenditures. If you don't think that you can win without unlimited spending, don't abide by the voluntary limits. But since they have been in place, the record is clear that they have worked. They were successful in holding down spending since 1996. We had, prior to that, a 329 percent increase from 1978 to 1990 in spending and people were alarmed by it. The public was alarmed. People in this body were alarmed. So we passed the law in a bipartisan effort on this floor and it worked. In fact, out of the hundreds of elections since

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1996, there have only been 11 races that have triggered fair fight funds, and 6 of those races involved the University of Nebraska Regents campaigns. So that leaves only five more. I think it's important to comment on the source of fair fight money. In the beginning, the Legislature appropriated \$50,000 and established a state income tax checkoff. That \$50,000 has long been spent. The checkoff produces about \$8,000 to \$12,000 per year in donations of \$1, \$2, or \$3. This means that between 4,000 and 12,000 people, people who are not here today, people who are not on this floor, support the CFLA with their hard-earned money. The majority of funds, however, come from fines and fees generated by... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR AVERY: ...the Accountability and Disclosure Act. The CFLA provides an important benchmark and hope for the average person considering a run for public office. The benchmark is the spending limit itself. When a candidate decides to run for any state office, they have a targeted amount of funds that they may have to raise. And in terms of hope, the abiding candidates know that their opponent, if they choose not to abide by the limit, that they may be entitled to fair fight money amounting to the difference between the limit and the required estimate of the spending filed by their opponent. That's fair. That levels the playing field. The objectives that Senator Lautenbaugh identified early on of the CFLA are correct and they work. And I think you ought to consider this to be a bill worth supporting. Now let me tell you, AM934 is not a good amendment. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR AVERY: I do not support that. Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Avery. Senator Conrad, you're recognized. [LB142]

SENATOR CONRAD: Thank you, Mr. President. I'm happy to yield my time to Senator Avery. [LB142]

SENATOR CARLSON: Senator Avery, 4 minutes and 50 seconds. [LB142]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Conrad. As I was saying that AM934...do not be confused, folks, this may be a committee amendment, but this was the amendment that was requested by Senator Lautenbaugh, the committee agreed to it to get it out, and I can tell you that in the discussion in the Exec Session there was not great enthusiasm for this bill, nor for the amendment. There was, however, some interest in airing this issue and putting it to rest so that Senator Lautenbaugh and Senator Avery would not continue to be picking on each other for the

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rest of this session and the next. (Laughter) I think the arm-wrestling has gotten on everybody's nerves, and it's time to put it to rest and that, I believe, is what motivated some people to vote it out. And I expect that some of those people who voted it out will vote against this amendment. It is, I think, important for me to point out another thing. I want to clear up something that seems to be a little cloudy. Senator Lautenbaugh said that my argument that special interest money crowds out individual money was misstated. I believe that's how it went. I did not say that individuals cannot contribute. I did not say that individuals will not contribute. What I said was that candidates, especially incumbents, don't really need to do the heavy lifting by going to the \$25 and \$50 contributors if we take off all limits on special interest money. Why would you spend the effort, the hard effort of raising individual contributors, or contributions, if all you have to do is sit down in a back room with a couple of high rollers and special interests and get the \$1,000 checks? That makes it easy. But what does it make you? What does it make us, responsive to individuals, responsive to the public, responsive to the public interest, or responsive to special interests? I think this is something you need to seriously think about. If we take off all limits on special interest money, the incentive for you and for me as candidates to go to individuals and to persuade them to participate in your fund-raising effort with the small contributions, that incentive is going to be removed. And since it is such hard work, we are probably going to be less inclined to do it. Oh, you will still get a few individual contributions, but you will be less dependent on voters and more dependent on special, big interest...special interest contributions. That does not serve the public interest, folks. Colleagues, what serves the public interest is when we behave in this body in a way that inspires confidence in the way we go about our business. If we say to the voters out there, I would rather be beholding to big money special interests than to individual voters. You think that inspires confidence? Lifting this restriction on individual...or on special interest money will say to the voters, I'm going to take the easy road, not the hard work that's involved in getting my contributions from individuals, from individual ordinary voters. And when we do that and we undermine the confidence... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR AVERY: ...they have in what we do and how we do it, we diminish this institution. We diminish the political process. People are inspired to believe that what we are doing, right or wrong, is proper because of the way it's done because we believe in the process. We believe that the way we do it is right and proper and, therefore, has legitimacy and, therefore, the system itself can inspire confidence in the voters, even when they disagree with a particular decision we make. The way we made that decision and the process by which we got here is what they believe in and what they will express their confidence in. So I am telling you that AM934 is not something that you should support because it is bad policy. It makes what was already a bad bill even worse. Thank you, Mr. President. [LB142]

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SENATOR CARLSON: Thank you, Senator Avery. Senator Lautenbaugh, you're recognized. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I'm going to ask you how we tarnish ourselves in the eyes of public opinion. Is it when we stand up and say, yes, this is why I did what I did, this is why I voted, there's a problem with the scheme we have, it's forcing money underground, and I can no longer stand up in the body and say, I am striking a blow on behalf of transparency by supporting a system that forces money underground? Or is it when we stand up in here and talk about how we know what the public thinks, and we know what they care about, and we know that they believe that if you take money from nonindividuals that it's somehow corrupting or corrosive and crowds them out? Now what you're being asked to believe is that we will no longer have small dollar fund-raisers and meet the public, and I guess we'll just hope for the best on election day having not actually encountered that rare species we call a voter, if the limits are taken off. Again I would direct you down the hall and around the corner to the Governor's Office where, I believe, campaigning is done everywhere. I believe small contributors contribute. I believe low-dollar fund-raisers are had and it's not because he couldn't simply...or could just...it's not because he's prohibited in any way from taking any amount of nonindividual money. It's because that is part of campaigning and we all know it. But when we stand up here in the body and talk about how corrosive this money is from nonindividuals, and then they look and see how much we all accept from nonindividuals, that causes a problem. So I think we have to be clear that we're not talking about nonindividual money being necessarily corrosive, what we're talking about is someone here saying that it's perceived by the public. The public that is so enamored with our clean CFLA that perhaps a couple thousand of them do their checkoff on the taxes to help fund this system that we otherwise fund unconstitutionally, I believe, with fines. So, yeah, people are really into this topic, and this bill is...this law as it exists is really important to them and their faith in the system. There are lots of special interest, people listen to. Some of them make contributions, some of them don't. Some of them come here and sit in committee day after day and just talk about what good government dictates and what the public is crying out for, but the public doesn't seem to be acting on what we're told the public is crying out for. I don't seem to be hearing a lot about this bill, my priority bill, for crying out loud. You would think that if there was a torch bearing mob forming up in my district to talk about how unacceptable it would be to repeal the CFLA, they may have first dropped me an e-mail to that effect. Hasn't happened yet. I received one from an activist somewhere else, who I know well, who says this would be horrible. Another from a young man down here in Lincoln who set up some sort of a good government citizen's watchdog group, etcetera. So I guess if we're talking about what the public wants, and we know they're hanging on our every word regarding the CFLA, I guess the vast bulk of the voters in my huge, compared to many of yours, huge districts, populationwise, are sort of fine with this repeal because they certainly aren't blanketing me with e-mails and calling my office and talking about what an injustice this would be to kick over an arguably

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unconstitutional system that people aren't even largely aware of until they start running for office and find out what a Rube Goldberg mechanism it really is. [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LAUTENBAUGH: We're deluding ourselves here on so many topics when we say, well, the public demands this, or how will you face the public. First of all, they want to know why we did what we did and you just tell them, and you tell them the truth, and it's pretty simple. But when you stand here and say, how will this look to the public? Well, one good barometer is what we're hearing from the public. And if any of you are hearing a lot from people who aren't the self-appointed heads of organizations regarding this topic, I want to know about it because they're neglecting to write to me, the introducer and prioritizer of this bill, for some reason. Maybe they consider me a lost cause. I don't know. Or maybe, just maybe, the public kind of gets it. And they see what goes on in our campaigns now and they don't see this system, which preserves it, as a good thing regarding the independent expenditure groups. And they're not really thrilled with this system we had despite apparently clamoring for it 30 years ago. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Those still wishing to speak: Council, Bloomfield, and Howard. Senator Council, you're recognized. [LB142]

SENATOR COUNCIL: Yes, thank you, Mr. President. I must, though, begin by addressing a topic other than that which is before us. Currently, I need to preempt my colleague, Senator Pahls, who will make a point when he gets on the mike to correct a statement I made with regard to Christmas treeing bills, and I was advised by my colleague that the Banking and Insurance Committee ceased that practice a couple of years ago. So with all due respect, (laugh) you used to do it, you may not do it now. Now with regard to the topic at hand, and I have sat here and listened intently and I suspect that there are a number of my colleagues who are laboring under the same dilemma that I'm laboring under because I've heard inconsistencies and contradictions on both sides of the argument on this bill. I heard originally when we were talking about why LB142 was introduced, and how CFLA was originally designed to kind of level the playing field between incumbents and newcomers, and then I looked at the original green version of LB142, and looked at these reporting requirements, and I recalled one of my colleagues talking about when they formed their campaign committee and decided to run, you know they asked a friend of theirs to serve as a treasurer and told them, you know, here's the book and, you know, these are the filings you have to do, and I looked at LB142 and it said for every \$50 filing you had to immediately within 24 hours file a disclosure statement on that. And I said, boy, that

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would be tough to get a volunteer campaign treasurer to undertake that kind of activity. I mean, if we're talking about a real grass-roots campaign, and you're out there hustling these \$50, \$60 contributions, I looked at that and I said, well, that's inconsistent with some objective, some noble objective of allowing for nonincumbents to have more of a level playing field. And then I get...I'm troubled by the various suggestions that depending upon who you get the money from and how much money you get from them, we feed into this belief that we're beholden to those contributors. And I think both sides of the argument are guilty at perpetuating that type of myth that the size of the contribution dictates the amount of influence wielded because I'm sure you could check with some of my contributors who contributed what some here would call substantial amounts, I don't know what those are, who would be very displeased with some of the votes I've cast on this body...in this body because when I ran, I ran and let my constituents know that I was going to exercise my best judgment and vote for matters that I believed to be in the best interest of them in particular, and the state in general. Now I'm listening to this, well, if we don't repeal CFLA, we prevent dollars from going directly to the candidate. And I'm trying to understand that, and I guess what I understand that to mean is that with the campaign limits in CFLA with regard to nonindividual contributions, and the cap placed on that, if you agree to abide by the spending limits, then if that's the problem, fix the cap and not eliminate... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR COUNCIL: ...the spending limits. I think there are other ways for us to address what are legitimate concerns on both sides of this argument, but I find it curious that the amendment removes the immediate reporting requirement and lowers the provision that lowered the amount that had to be reported when that was articulated as being one of the ways to improve campaign financing and to even the playing field for nonincumbents. So I think we need to look at this carefully and based on the debate thus far, what may be warranted is a study. I don't know whether one's been conducted before, but I think this issue is too serious an issue and has too many implications for us to rush to judgment. Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Council. Senator Bloomfield, you're recognized. This is your third time. [LB142]

SENATOR BLOOMFIELD: Thank you, Mr. President. And again, I would yield to Senator Lautenbaugh. [LB142]

SENATOR CARLSON: Senator Lautenbaugh, 4 minutes and 53 seconds. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I think with all due respect to Senator Council, one of the funniest phrases I've heard all day is, rush to judgment applied to this issue. (Laugh) We've been done this road for a

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while, and we've been done this road in years gone by and the fight remains the same, and I don't think that we are proceeding hastily, to say the least. If it had been up to me, we would have laid this to rest quite some time ago, but we have yet to. I'd again be remiss if I didn't talk about the fact that there's not a court challenge to this as somehow evidence that it's okay. One of the little known...I'm reminded of an old Saturday Night Live skit where a commercial for attorneys and they're explaining how the law works, and one of the statements is, some of you might be under the impression you actually have to have damages, not so. Well, you have to have standing though. That much is true and who is adversely affected by the CFLA enough that they could file a lawsuit, a lawsuit. Well, first of all, I believe you'd have to be a abiding...or nonabiding candidate who was put out by the fact that an abiding candidate got public funds. Based upon Senator Avery's numbers, that limits us to 11 possible plaintiffs. If you take out the ones who won their races anyway, as happened to the one gentleman who sought the temporary restraining order, the TRO as it was referred to, well, he did win his election. Not only do you look...oh, I won't use that word, you look kind of argumentative if you file a lawsuit when you won anyway. You also may not have a lot to complain about at that point if you actually won anyway. It's kind of hard to prove damages. But the fact that a bill has not been litigated, especially one in this area, does not leave lockstep to the conclusion that it is not constitutionally infirm. Because of that very reason we are limiting the pool. If I wanted to go file a lawsuit today against the CFLA, I don't think I could do it. I'm not sure what I have to complain about that is specific to me enough to give me standing as compared to everybody else in Nebraska and you know, everybody else in Nebraska is in tune to the CFLA because a few thousand of them donate some money on their taxes every years. So this, obviously, means a lot to a lot of people and they'd really file suit if they could. I'm being facetious here, of course. What I'm saying is, is that you do have to actually have standing and be particularly aggrieved by a particular law before you can file suit against it. And I don't know how anyone in the general public would argue that here. That does not mean, by any measure, that this is okay what we're doing here. And I was listening very carefully because I was anxious to hear what Senator Council actually thought about all of this. And I did not want to give the impression that I believe that everybody who takes nonindividual money is somehow tainted by it and the public just understands that. Far from it. What I'm trying to say is, the more that is implied at the mike, that's where we're creating the bad impression, not perhaps by throwing overboard a campaign finance system that has all the many infirmities that we've been discussing for a couple of hours here. So if that was the impression I gave that somehow I was saying, well, we're all sinners because we all took nonindividual money. Far from it, because I don't believe that to be the case. [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. And the argument that somehow we should prefer individual contributions in our campaigns, well, guess who

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doesn't think that's a good idea, I would be willing to wager, the individuals. I know my neighbors and family would be thrilled if someone else was willing to fund my campaign. That doesn't mean that I still wouldn't go door to door, I still wouldn't be responsive to my constituents, etcetera, etcetera, because that's how this works. People don't necessarily enjoy giving money to candidates because there's a lot of other things they could do with their money. So I don't think there's any problem in the mind of the public if you're talking about the general public and not activists with an axe to grind, I don't think there's any real problem out there. People know who we're funded by, because we file reports. It doesn't seem to be terribly off-putting and we all seem to get a lot of nonindividual money. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Howard, you're recognized. [LB142]

SENATOR HOWARD: Thank you, Mr. President and members of the body. The first campaign that I had was in 2004 and one of the things that I found most troubling from the opposition, and I had two opponents in the primary, was something called push poll. I didn't really know what a push poll was or how it worked at that time but I got calls from people in the district that were so offended by this they wanted to let me know it was happening. And we tried to find out who was doing them so we could kind of address the situation. We could never find out. It was an entity, a mysterious unknown and it just...we couldn't get to the bottom of it. It ended up, I think, hurting my opponent, opponents, the opponent that probably did this more than it did me because it's such a despicable way of doing...providing...if you want to call it providing information or campaigning basically. It's a pretty despicable way of campaigning. So I stand opposed to this amendment and this bill. I think we need transparency and disclosure. We need to find out when someone says something about us or makes an accusation or claims something, we need to find out who is doing that. So often these things are not true but they're the most negative that they can possibly conjure up to put together to discredit you, and it really...it does so much harm. If you were an average person in the street and somebody made these accusations about you, you would have some redress. We're just supposed to swallow it and throw something back equally as bad, which I think is a terrible method of campaigning. I'm going to offer the remainder of my time to Senator Avery. [LB142]

SENATOR CARLSON: Thank you, Senator Howard. Senator Avery, 3 minutes. [LB142]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Howard. This is...we're getting to that point in the debate where everything has been said but not

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everybody has said it yet. I am going to make a point that I made before because I believe it is worth repeating. And that is that let there be no doubt about it, when we get large contributions from special interests, it is influence money. It is recognized as that by the people who give it and it is recognized as influence money by the public. They get it, folks. And we do too. We know that there are expectations. I'm not naive. I'm not saying that you can end this all together. All I've asked is that you respect the law that we have as a reasonable limitation in order to try to improve the political process. Yes, it is not perfect. I don't think I have voted on a perfect bill since I have been here. Some are better than others, but to say that because this is not perfect, it is fatally flawed is unfair and is untrue. Perfection is hard to achieve, but when people who are imperfect cease to try to improve, when a process is imperfect and we cease to try to improve it, we have failed. And I ask you not to let that happen. Yes, we have a problem with independent expenditures. This does not solve that. It cannot solve that. What it does, it creates another problem. In fact, a problem that's just as large, if not larger. A problem that erodes confidence in how we do our business, how we conduct our campaigns, and how we go about the process of policymaking. [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR AVERY: This is settled law in Nebraska. It's been in place since 1992. It has worked. There has not been, in my mind, a sufficient argument made on the other side that this law is so flawed and so evil, as it was called the first time we debated it, that it needs to be completely scrapped. It does not. It is a good law. Not perfect, but it has achieved some of the purposes for which it was first created. And I think that ought to be respected. We do not want this institution to lose the confidence of the voters. And believe me that if we say to the voters in this state we don't really care about you, we care about special interest more, that will erode their confidence in what we do. That is not good public policy, that's not good for you... [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR AVERY: ...it's not good for me. Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Avery. Those wishing to speak are Lautenbaugh, Council, Pahls, and Ken Haar. Senator Lautenbaugh, you're recognized. This is your third time. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, members of the body. Again we're just having what I would call a fundamental disagreement here, and we're trying to mask doing what we want to do by saying, well, the public demands it, or the public will be disappointed if we don't. That is utter nonsense and I hope you realize it. The public, I believe, if I've heard anything, it's, who are the people that are sending these things out? Who are the independent expenditure groups? Who is responsible for

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this? I think I pointed out in the last election I was the target of an independent expenditure group that sprung into being the last week of the election and sent out four or five mailings and spent \$35,000 all in the last week. No voter could really figure out who that was that was saying it, the Leadership Committee was what it was called. That's transparent as all get out as you might imagine. And they were late filing their report that last week. So I guess we don't know how much they're going to spend until it's too late, I guess. Certainly, not enough time to go raise funds from the individuals because that's what I was up against at that point to counter what was being said. And the ads were quite remarkable, by the way, the mailings were. It talked about how I was a tool of liberal special interests and the unions. And it had a firefighter carrying me to the Capitol. Now that's a heck of a firefighter. (Laughter) One observation. (Laugh) Yeah, Senator Pahls, said it might have taken three. Thank you, Rich. That's not what the graphic showed anyway. But people were upset by those mailings. And I did hear about that. And these weren't professional activists who populate our committee hearings, and tell us what good government means, and tell us what they think we should do because the public demands it, by gosh. These are actual voters who called me and said, who is responsible for this? Why is this happening? Who is saying this or did you actually do this stuff that they're saying on here? So again, we can talk about what the public thinks about what we do, but honestly you need to actually talk to the public before you say, this is what the public thinks. And the voters in your district, again I would wager, are not clamoring for the preservation of the CFLA. I misspoke earlier when I said that I had not heard from many or any individuals in my district. A woman named Jessica Rathbun just wrote to me and said, hey, I'm a constituent of yours now and I e-mailed you last week. So she did. So I apologize to her for that and she said, you know, don't repeal the CFLA. She told me that when she worked here last year. She told me that the year before. So she's consistent on that topic, and so am I, as it appears. But again, we are deluding ourselves if we think this system that we have is actually increasing public confidence. And if you say that it's not fostering the independent expenditures or that you say somehow repealing it will increase the amount of money available in campaigns as a whole, that's just irrational. That's contrary to what we know and what our experience has been. The outside entities, nonindividuals and individuals, decide what they want to spend on a campaign. And if they can't give it directly to the candidate of their choice, they know what to do with it as we've all seen. And to say that somehow taking those limits off is going to increase the amount of money the third parties want to spend... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR LAUTENBAUGH: ...thank you, Mr. President...there's a logical disconnect there for me. Are they really going to want to write larger checks because they can send them direct or would they rather just spend the same amount but spend it direct because that's the preferable way to do it? We can't control the pool of money, but again as I'm saying, we can stop forcing it underground. And that's what we're doing

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with the CFLA. And to call it a success by any measure is simply delusional. To say that we've improved our system by having the CFLA in place is to ignore the bulk of the problem. And you can throw up your hands and say, well, we can't address that problem of independent expenditures because it's unconstitutional to mess with them, and that's true. But we could stop subsidizing it and encouraging it. That's what my bill is designed to do and I think I've been clear on that throughout. Stop subsidizing the stuff that we all can't stand. [LB142]

SENATOR CARLSON: Time. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Council, you're recognized. [LB142]

SENATOR COUNCIL: Thank you, Mr. President. We used a term delusional, and I think it's delusional to believe that the people who have found advantage in these last minute, what do we call it, special interest or noncandidate political mailings, are going to alter that tactic if CFLA is repealed. I mean, there is nothing about the repeal of CFLA that would dictate that individuals who have found this as a meaningful campaign tactic and have been utilizing it successfully, are going to all of a sudden stop utilizing it because we repeal CFLA and they may be able to donate money directly to the candidate of their choice. Well, directing money to the candidate of their choice, well, presumably the candidates engage in truthful campaigning, they don't delve in the level of dirt and half-truths and mistruths that some of these last minute campaign, these special interests, I don't even know what you call them. Senator Lautenbaugh has a word for them. But I think it's delusional to think that repealing CFLA is going to stop that. I mean, it's working. It's a tactic and they can use it whether you have CFLA, if you don't have CFLA. So, I mean, if we want to talk about being delusional, you know, I think we're being delusional if we think eliminating...repealing CFLA is going to alter that campaign tactic because unfortunately people have utilized it and have utilized it successfully in many instances. So with that, I'll yield the balance of my time to Senator Avery, if he wishes to use it. [LB142]

SENATOR CARLSON: Senator Avery, 2 minutes and 55 seconds. [LB142]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Council. As I have said before, this is an amendment that makes the bill worse. And if you look up any definition of amendment, you'll see that an amendment is an act that is designed to improve, to make better. And this is not an improvement. In fact, what it does, it takes the most onerous part of a bad bill, LB142, and strips out everything that's fairly decent in the bill and leaves the onerous part. There is no public support that I have identified for doing this. There is no public interest that is served. No public purpose is served.

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Our image as a responsible Legislature is diminished if we pass this. The participation of ordinary citizens in our campaigns and in the political process is not improved, it is diminished. We have to continue to ask ourselves, are we behaving in this body in a manner to improve our public image, to improve confidence that people have in what we do and how we do it? And this amendment and this bill do not do that. The public purpose is not served. And why do I say that? I know I've said this before, but I will say it again because we have to be careful in this body that the way we are perceived by the voters inspires confidence in what we do, not... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR AVERY: ...inspire contempt and distrust and animosity. There is enough cynicism in the public already. There is enough apathy out there because people say, it doesn't matter what I do, why should I participate, nobody pays any attention to me anyway. Well, if we do...if we unleash special interest money in campaigns, that sentiment will increase. The process will not be improved. In fact, it will be diminished and it will be diminished significantly. I urge you not to vote for this amendment nor the underlying bill. Thank you, Mr. President. [LB142]

SENATOR CARLSON: Thank you, Senator Avery and Senator Council. Senator Pahls, you're recognized. [LB142]

SENATOR PAHLS: Good afternoon, Mr. President and members of the body. Senator Council, you beat me to the punch because I was going to....(laughter)...she did preempt me, so I have to give her credit for that. I'm not going to talk about it anymore but we no longer do Christmas tree in Banking or we haven't for the last several years, and there are reasons because we went away from that adventure. My intent dealing with this legislation is to find out how this can help that new person who is coming in because as one or two senators have pointed out, in the near future, like in my class there will be about eight of us gone, and that's really going to be fun for you because a lot of us have leadership positions, so it's going to be interesting to see all the tumbling and whatever will go for those positions. But not only that, we will have new people in, in a few years. We'll have a lot of new people in so what I'm sincerely trying to find an approach that will help those new people and a lot of them are going to be naive. They're going to be as naive as Rich Pahls was about eight years ago about this time. I just finished a primary, and I can't believe, I thought here I had been a good person in the public light for 30-some-odd years, and I found out during the election that I had a lot of barnacles that I didn't realize I had. And I probably...some of them were truthful, but some of them were probably enlarged or embellished, but these new people need to know that. And I found out how some of this came about is by groups that were embellishing my attributes, not necessarily in the positive way, but they were doing that. And I didn't realize that until robocalls were calling, and I knew the person running against me did not have that financial, or did not show up in his statements that he was

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spending those types of dollars. Then I did some more investigating and found out quote, certain groups. And not only that, a few days before the election I noticed that there was a flyer telling what a great person I was and I didn't even know that. So there happened to be a group on the other side who were sending out, they're going door-to-door, literature about myself. And I must say, it was well done because I believed everything that the brochure was saying, what a great person I was, etcetera, etcetera. I did believe that one, but again I did not know who was doing that. And I was thankful because this was a close election. So somehow if we can bring more of this to light, I think it would help that new person. And I'm just going to give just sort of a little bit rundown. I see the...the people who lobby me and I don't know if you realize, a lot of times I get the little slip of paper, I don't go outside and necessarily listen to the lobbyist, which probably is irritating to them. But they're various reasons why I do not know that. But as I look at the people who actually are coming to us for money happen to be in the field of...the area of education and health. And we do get lobbied by groups a lot of times when you think of education, you think of teachers. They do come to and lobby on that, and health would be the doctors, the hospitals, etcetera, etcetera. And I have to be honest with you. I'll tell you a little life story. You'd think I'd be the biggest proponent for NSEA, I would be one of their, what you call lead dogs, and I'm not. And if you hear me on the floor, I think we ought to be throwing money at education, legitimate money, but I do think we ought to hold everybody accountable. When we do give the dollars to the schools, there needs to be some accountability, just and say we need that. But so I do get lobbied by those groups. Businesses, of course, we get lobbied by the Farm Bureau, the Chamber of Commerce. Those are two of the larger ones. And the interesting story... [LB142]

SENATOR CARLSON: One minute. [LB142]

SENATOR PAHLS: Thank you. The interesting thing about that, both of those groups actually came out against me when I was running. And I happened to ask one of the people, well, why...because I hadn't been around long enough to make any stupid comments, and he said, well, you...I said what is the red flag? And he said, well, one of the red flags was because you were an educator. And I think it's really ironic. Here I am pushing education and I serve on...I'm the Chairman of Banking, Commerce and Insurance. And I was not endorsed. In fact, the lobbyist for the banking area, they did not support me. So it does go to show you that we need to really be thinking of who supports one person or another person in an election because it may be a total turnaround on the...when they do become part of this body. And here's another thing. I'm not in the person's pocket. Never received any money from him. Have received maybe a few endorsements but I support a lot of things the Governor does. I don't speak to the Governor on a daily basis. [LB142]

SENATOR CARLSON: Time. [LB142]

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SENATOR PAHLS: Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Pahls. Madam Clerk for an amendment. [LB142]

ASSISTANT CLERK: Mr. President, Senator Janssen would move to amend the committee amendments with AM1419. (Legislative Journal page 1489.) [LB142]

SENATOR CARLSON: Senator Janssen, you're recognized to open on your amendment. [LB142]

SENATOR JANSSEN: Thank you, Mr. President and members. The amendment that I put before you is somewhat simple. I hear that all the time but what it does, it does not repeal the CFLA. It keeps it in place and all the reporting requirements and what it would do is raise from...the threshold from 50 percent to 75 percent of what we call nonindividual money that could come from what we talked traditionally would be the PACs or small businesses, in my case could limit up to that 75 percent. The reason I did that, this was something in committee that we were working when we didn't think this bill was going to get out, we threw something out at the time or we thought we would just get rid of that, I guess, differential or difference between one or the other and it could come from one pot. In working with various senators, we thought it would be better off in this case to make it 75-25 and what that does, as Senator Ken Haar was mentioning, it still has that fair fight aspect to it where the individual would still have to go out and raise 25 percent by knocking on doors, going to the pancake feeds, if you will. And Senator Larson, everybody likes pancakes, get on board with it. So that, I believe, is a true compromise and I have spoken to Senator Avery and he's...I know the CFLA is a little bit of his baby. I know that from serving on the committee with him and he was open to this as a compromise. I believe we've got Senator Lautenbaugh. Of course, I think, he would have liked more but I believe he is also on board with this. And we are hopeful that we can get this moved forward today. With that, I will take questions but I do want to yield the balance of my time to Senator Avery, if he would like to say a few words about the amendment. [LB142]

SENATOR CARLSON: Senator Avery, 8 minutes. [LB142]

SENATOR AVERY: Eight minutes. Thank you, Mr. President. Thank you, Senator Janssen. I'm not going to take eight minutes. In fact, I'll take a few minutes and then I'll yield some time to Senator Lautenbaugh. This is classic compromise, giving up something to get something. I have made a big issue of the importance of maintaining limits on nonindividual contributors. This compromise raises that so I don't get everything I want, but I do get something very important to me and I think important to a lot of people in this body, and that is the preservation of the CFLA. As with all compromises, it's not perfect. It would only be perfect if I got everything I wanted and

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that, I think, we all agree to. But this is acceptable to me and I believe acceptable to Senator Lautenbaugh and when we vote on this we can then proceed with other business that is important to this body because I can tell you, I was prepared to take this to 33 votes. So with that, I would yield the remainder of my time to Senator Lautenbaugh. [LB142]

SENATOR CARLSON: Thank you, Senator Avery, and you've been yielded time you cannot yield time, so the floor is now open for debate and those wishing to speak include McCoy, Janssen, and Avery. Senator McCoy, you're recognized. [LB142]

SENATOR MCCOY: Thank you, Mr. President and members, and I stand in support of AM1419. I think it will be a worthwhile and welcome change to CFLA and one that I think is well-reasoned and practical for what we encounter here in our state. And I wish to yield the remainder of my time to Senator Lautenbaugh, if he would so choose. [LB142]

SENATOR CARLSON: Senator Lautenbaugh, 4 minutes and 30 seconds. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator McCoy. Thank you, Senator Janssen. Thank you, Senator Avery. As we just demonstrated with that little exchange of whether or not I was going to get to speak and who could yield time to whom, we found out there's more than one way to skin a cat because here I am speaking just the same even though Senator Avery couldn't give me the time. This is a compromise and it is clearly not perfect. All of you are off the hook so I guess there's an appeal in that way. You'll get to stop hearing about this, this year. That's a joke. So, yes, I did agree to this. I would urge you to support what I'm now calling Jessica's amendment, and I would urge you to accept this compromise and move forward. Thank you. [LB142]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Janssen, you're recognized. You are the last one listed. If you wish, you could use this to close on your amendment. [LB142]

SENATOR JANSSEN: I will in the hopes that we have the votes here on the floor. If people are listening in their office, I really would not like to call the house this late in the evening, so I think...I just told Senator Ashford I think I'm probably known as the great mediator now. I'm taking over his position of working on both sides here to get everything done, but this actually derived also with Senator Nordquist and I were sitting here just talking back and forth when the bill first came out and we first debated it as some options that we could put forward. And I believe Senator Ashford was also included in on those discussions, and we just wanted to see, at least I drew up the amendment, and we wanted to see how the debate went and it was nice I that could work with both Senator Lautenbaugh and Senator Avery, not all that easy of a task and

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hold the trust of both while doing so to get this pushed forward. It simply moves the limit from 50 percent to 75 percent for nonindividual money, and this becomes the bill and I urge your support. [LB142]

SENATOR CARLSON: Thank you, Senator Janssen. Members, you've heard the closing on the amendment. The question is, shall the amendment to the committee amendment to LB142, be adopted? All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB142]

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of the amendment to the committee amendments. [LB142]

SENATOR CARLSON: The amendment is adopted. We return to discussion of AM934. There are no lights on. Senator Avery, you're recognized to close on your amendment. [LB142]

SENATOR AVERY: Thank you, Mr. President. This now is acceptable to me and I believe acceptable to a majority in this body. We have had a vigorous and spirited debate and I believe that we now understand the issues involved in this complex issue of campaign spending and contributions probably better than we did when we started. I believe that the CFLA remains a law that deserves to be preserved. I am convinced that the compromise that is contained in the amendment that we just passed does not do serious harm to the law as it exists, and I would urge that you support AM934 as amended. And in the interest of collegiality, I would yield the remainder of my time to Senator Lautenbaugh so that he can confirm what I just said. Thank you, Mr. President. (Laugh) [LB142]

SENATOR CARLSON: Thank you, Senator Avery. Senator Lautenbaugh, 3 minutes. [LB142]

SENATOR LAUTENBAUGH: Would it be impolite to say I wasn't paying attention, so I don't know if I can confirm what was just said or not? (Laugh) I urge vote for this amendment as amended and I can share that sentiment, I guess. But I apologize, I was doing something else and I missed the statements otherwise that I'm agreeing with. I wish I were more like Senator Ashford and I could just start thanking random people and take up all the closing time but I'm not going to do that. But I'd like to thank the decorating committee and the caterers for our committee hearing, etcetera, etcetera, but that said, please vote green for the amendment. [LB142]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Members, you've heard the closing to AM934. The question before the body is, shall AM934 be adopted? All those in favor vote aye; all those opposed

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vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB142]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB142]

SPEAKER FLOOD: Committee amendments are adopted. We now turn to discussion on LB142. Seeing no lights on, Senator Lautenbaugh, you're recognized to close. Senator Lautenbaugh waives his opportunity. The question before the body is, shall LB142 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB142]

CLERK: 37 ayes, 0 nays on the advancement of LB142. [LB142]

SPEAKER FLOOD: LB142 advances to E&R Initial. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR173, LR175, LR176, LR177, and LR178. Mr. Clerk, items for the record. [LB142 LR173 LR175 LR176 LR177 LR178]

CLERK: Mr. President, I have an amendment from Senator Schilz to LB684 to be printed. And a new resolution, LR212, offered by Senator Gloor calling for an interim study. (Legislative Journal pages 1490-1491.) [LB684 LR212]

And a priority motion. Senator Smith would move to adjourn the body until Tuesday morning at 9:00 a.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)