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Transcriber's Office

Floor Debate
January 20, 2012

[LB352 LB370 LB415 LB418 LB503 LB536 LB677 LB705 LB706 LB707 LB708 LB709
LB710 LB770 LB771 LB826 LB873 LB998 LB1154]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the eleventh day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Pastor Jim Runnels from Grace Bible Fellowship Church in Stella, Nebraska, Senator Heidemann's district. Would you all please rise.

PASTOR RUNNELS: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Pastor Runnels. I now call to order the eleventh day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: (Read corrections, Legislative Journal page 301.)

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Your Committee on Enrollment and Review reports LB705, LB706, LB707, LB708, LB709, LB710 as correctly engrossed. Enrollment and Review also reports LB370 to Select File with amendments, LB415 Select File, LB503 Select File, and LB352 Select File with E&R amendments attached. Reference report referring LB1040-1097 signed by Senator Wightman as Chair. Confirmation hearing report from Natural Resources signed by Senator Langemeier. And, Mr. President, some reports received in the Clerk's Office from the Department of Motor Vehicles, Department of Revenue, and Department of Roads, all on file available for member review. And finally, the report of registered lobbyists as required by statute. That's all that I have, Mr. President. (Legislative Journal pages 301-305.) [LB705 LB706 LB707 LB708 LB709 LB710 LB370 LB415 LB503 LB352]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. (Doctor of the day introduced.) Mr. Clerk, we will move to the first item under General File, LB418. [LB418]

CLERK: Mr. President, LB418, the bill offered by Senator Nelson, relates to automatic dialing-announcing devices. The bill has been discussed on January 17, 18, and 19. Committee amendments were offered. I do have a priority motion, Mr. President.

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

Floor Debate
January 20, 2012

Senator Mello presented yesterday a motion to bracket LB418 until April 12, 2012. That motion to bracket is pending, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Nelson, would you like to give us a brief summary of LB418. And then, members, we will go directly to floor discussion on the motion to bracket. [LB418]

SENATOR NELSON: Thank you, Mr. President. Members of the body, thank you for getting up and being here on this Friday. Very briefly, I think we're all familiar with LB418, what it does. Under the present law, political discourse and automatic dialing calls come under the jurisdiction of the Public Service Commission which is not the place where it should be, as far as I can discern, because the commission deals with commercial calls, transmissions; they have their hands full there. This is political discourse in sending out political messages and campaign messages. Therefore, LB418 provides that this type of message will be exempt from the jurisdiction of the Public Service Commission and moved over to the NADC, the Accountability Commission, where it should be and where there can be less so-called regulation. I have an amendment that will address what the NADC can do. I hope that we will eventually be able to get to the amendment, but in a nutshell, I encourage that we get to the main point here and discuss the possibilities of the NADC being the sole regulatory commission in this instance. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Nelson. We'll now move to the floor discussion on the motion to bracket. Senator Lathrop. [LB418]

SENATOR LATHROP: Thank you, Mr. President and colleagues, good morning. I wanted to...we ended yesterday on this topic with some remarks by Senator Nelson, and I wanted to respond to those and maybe address three things. One is political speech, the other is the jurisdiction of Accountability and Disclosure, and the third is the renegades who were referred to by Senator Nelson, those people who would use robocalls for dirty tricks. First of all, there is not a thing wrong with regulating robocalls. We cannot regulate their content, but we can regulate the time. And the case that you saw referred to in the Governor's veto message, a document that I handed out two days ago, I believe, suggested that we can regulate robocalls if we regulate them uniformly, which presents two questions for us this morning. One is whether Senator Nelson's approach, which is to provide different treatment of political robocalls from all other robocalls, gets us into constitutionally murky waters and I believe it does. So two points I would make about the constitutionality and the free speech argument. One is that we have every right in the world to regulate the time and to require the registration of these devices, which is the current law, so we're not infringing on political speech according to the Eighth Circuit, which is the federal courts that control Nebraska. The other thing is, and let me talk about the Nebraska Accountability and Disclosure jurisdiction because this is where the hole is being created. Right now anyone who is using the robocall

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

Floor Debate
January 20, 2012

machine has to register it, unless you're a school or someplace like that, someplace where you have a prior relationship or you've otherwise indicated to the caller that you'll accept or welcome these type of calls. And that's certainly not true with the kind of calls that we're talking about today. Under the Public Service Commission or under the system that we have in place right now, all of these calls are subject to regulation. That is, you must file or register your machine and you must also provide a transcript within 24 hours. Here is what is going to happen if LB418 passes. There will be a hole; and I want you to be clear about where this hole in the regulation will be, because that's where the dirty tricks are going to be found, and they're going to land in your race. If you're not term limited, we're talking to you, because this is going to happen to you. That's the hole that we're opening up and it's this: The regulation that will be in place, instead of regulating all of these calls, all robocalls going forward, which is the current system, LB418 will regulate it only if you have to file an Accountability and Disclosure expenditure report. Right? So most of you here understand that that does not mean everybody who engages in political speech, it doesn't. If I wanted to go into Senator Bloomfield's district in the middle of the night, for \$200, I have no requirements. In the middle of the night I can say what I want; I can do what I want; I don't have to register my machine; I don't have to be honest; I don't have to say that it's me or a political committee that's doing it. So when I say we're opening the door to dirty tricks, we are. And there's no need for it. We haven't heard a compelling reason why we should open the door... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR LATHROP: ...to the dirty tricks that will follow. The dirty tricks will be calls in the middle of the night. They'll be repeated calls. They'll be the things that annoy. And it won't be you doing it to promote yourself. It will be the other guy trying to appear to be you annoying people in your district. This is not the direction to go. We've not heard a good reason or a compelling reason to change the system we have and we should view with suspicion efforts to create a hole in this regulation that would allow for the dirty tricks that will most certainly follow if LB418 passes. And Senator Nelson, who I respect, suggests, well, we'll move all this over to Accountability and Disclosure, that's where it belongs. But it will...that movement doesn't change the fact that there's still going to be a hole. And that hole is, if you do not have to file... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR LATHROP: Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Members requesting to speak on the motion to bracket, we have Senator Mello, followed by Senator Nelson and Senator Lathrop. Senator Mello. [LB418]

Floor Debate
January 20, 2012

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. In response to Senator Nelson, who has an amendment on LB418, I was informed this morning that Frank Daley, the executive director of the Nebraska Accountability and Disclosure Commission, was going to be unable to be here today in the Rotunda to be able to provide any feedback or answers to any senators who may have questions regarding Senator Nelson's amendment to LB418, but he did pop in and talk with myself and some other senators involved to provide his feedback on his interpretation of the amendment. And the underlying issue, and Senator Lathrop just mentioned it, is that Senator Nelson's amendment still radically changes the consumer protection regulations we have in place regarding automated dialing devices in the PSC because it segregates political activity away from everything else. As Senator Lathrop mentioned, is by reading the Governor's veto letter in 2007, what Senator Nelson's amendment does only further makes LB418 look like LB198, which was barely passed in this Legislature, but then vetoed because it infringed on political free speech in the eyes of the Governor and the eyes of the Attorney General, citing various court cases. So to one extent, the introducer of this bill stated that part of the reason he has done this is because he wants to ensure that we have unlimited political free speech in regards to utilizing automated dialing devices or robocalls. And by moving it out of the Public Service Commission, in regard to their regulatory framework, which is more comprehensive and more robust than the Accountability and Disclosure Commission, he believes that it will streamline activity and then thus it will ensure that we're not infringing on political free speech. But the underlying reality that Senator Lathrop just mentioned and we've discussed on this floor over the last few days is by moving it to the Accountability and Disclosure Commission, by segregating political speech utilizing these devices, you set yourself up for what is going to be a constitutional challenge, that both Frank Daley, the executive director of the Accountability and Disclosure Commission, discussed in the committee hearing, as well as this Legislature and Governor, when passing LB720, stated on the floor. That if you move this activity anymore to the Accountability and Disclosure Commission, you are segregating political free speech because the existing law as it reads does not make any difference, or does not differentiate between any usage or...whether political speech or business or personal use of these automated dialing devices. Everyone plays by the same rules and regulations. And under LB418 and with Senator Nelson's soon-to-be amendment, that only further segregates political speech away from everything else. Now Director Daley mentioned that the underlying components of what Senator Nelson's amendment he wants to do still complicates the issue of showing that there's not significant transparency over who are utilizing these services because there's not the appropriate enforcement mechanism that currently exists in the PSC transfer over to the Accountability and Disclosure Commission. There are components such as, yes, you have to register your autodialer. But Accountability and Disclosure does not have the capabilities or the legal authority to go after the company who is providing that service. So it doesn't really matter if you register your automated dialing device. [LB418]

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

Floor Debate
January 20, 2012

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: Once again, it's a red herring of trying...it's trying to put lipstick on a pig and at the end of the day it's still a pig. A&D cannot go after the companies that are doing these device...doing these calls, because they don't have the legal authority to do it. So you could have, under Senator Nelson's amendment to LB418, you could register these automated dialing devices in Accountability and Disclosure and it doesn't really matter. Legally they can't do anything about it. They have no legal authority to go after the telecommunications industry. So that, colleagues, is simply a red herring that does nothing to improve the regulatory framework; does nothing to improve the transparency, because there ultimately, at the end of the day, is no enforcement mechanism to be able to go after them. The unique thing of this debate that I found, as the last three days we've discussed it, is the...I would say the movement of arguments or movement of premises... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: ...of why we need to do this bill. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Nelson. [LB418]

SENATOR NELSON: Thank you, Mr. President and members of the body. I want to respond to some of the comments by my respected colleagues, Senator Lathrop and Senator Mello. Let's talk about regulation at this time, which I don't like to talk about, because I think the less regulation that we have of free speech, the better off we are. Both of the commissions that we have here are able to regulate the time. I think we all agree on that. It's from 8:00 in the morning to 9:00 in the morning (sic.) But Senator Lathrop refers to a hole that would be created by LB418. Friends, we already have that hole and there's really nothing we can do about that. You can put all the regulatory powers in the Public Service Commission, add to them, but if somebody decides that they're not going to register their machine, they're going to come out in the middle of the night, just as Senator Lathrop says, and make these obnoxious calls, there's isn't a thing that the Public Service Commission could do about it right now. They may have enforcement policies, but they can't enforce on someone that they don't know, they can't locate, who doesn't identify themselves. I think the press has played up the fact this is going to make it easier to do robocalls. Well, it's easy already and we have to contend with them. And unless we want to ban robocalls altogether, which I'm not sure that we can do, and I certainly know that we shouldn't be able to do that if they want to use them for political speech and expression, then we're stuck with this. So what we're doing here with LB418 is we're wanting to take a limited regulation that might be necessary as far as time, put it over where it should be with the Accountability Commission and, yes, it won't apply to someone who has not filed a committee, but it doesn't apply now, because we have, as I see, these renegades, these abusers that are getting out there

Floor Debate
January 20, 2012

and doing this and they're not being able to be tracked down. I'm not sure that anybody can do that. This is not a radical change. I want to speak to the...it's just placing...taking it out from the jurisdiction or the oversight of two agencies and putting it where it should be. What concerns me about the constitutionality issue is that under the First Amendment, we're not supposed to be regulating free speech, especially of a political nature. We ought to be free to express our thoughts. If you watched the debate at all last night, which I did, I was really impressed, I mean with the thoughts that got out there, and nobody regulated that. These candidates were able to express freely what they wanted to do. When we're going to say, though, that political thought and speech should come under the Public Service Commission and under some regulation, I don't simply comprehend why it has to be uniform with what we do for commercial purposes and people trying to make sales pitches and anything like that. This is a completely different thing. I see no problem with transferring it to an agency where there's less regulation but still some accountability. And under the amendment I have proposed, they aren't going to have to register a machine, they register...they won't register with the Public Service Commission now for their abusive purposes. But they would have to file a statement of intent that they were going to use a machine with Frank Daley's commission and then they would also, under the amendment, have to give a detailed explanation of the intended use, not the script; nobody is going to take a look at the script. That's of a political nature. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR NELSON: And the ultimate judge of what the script says and whether it's going to be effective is the person who receives the call and who is going to say, this is ridiculous, I'm never going to vote for this person; or, this is an absolute lie, and they can report the fact that that was received and it was denigrating some candidate. But nevertheless, there is no way for enforcement as we can see it now. There isn't under the Public Service Commission; there would not be under the NADC. But at least we can protect public speech, political speech, and ideas in a much better way under the NADC. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Lathrop. [LB418]

SENATOR LATHROP: Thank you. And I think we're having a great discussion here, I really do, because it's an important subject. There's obviously interest by Nebraskans in this subject, and we're talking about the law and we're talking about the constitution and we're talking about political speech. And I'd like to clear a few things up. First of all, we are not, under the current system, regulating political speech. We are regulating the telephone line. Okay? And the difference is important, because you may not regulate the content. And as Senator Nelson observed last night, we saw Republican debate among Republican presidential candidates, no one interfered with their ability to say anything they chose to say, and that is content, right? That's content. This is not about

Floor Debate
January 20, 2012

content. This is not about content. And if it were about content, the...moving this over to Accountability and Disclosure would be the same regulation, right? The only thing that's changing is whether or not we're going to remove the requirement that they register these devices and not create a hole. And I want to be clear about what this hole is, because this is the difference between where we're at today and where we'll be under LB418. The Public Service Commission regulates all robocalls, okay? Not just the robocalls that cost you enough money that you have to file a report with Accountability and Disclosure, it regulates them all. It regulates them uniformly, both of which are important to preserving the constitutionality of the approach we've taken. If we adopt LB418, we will go from...with respect to political robocalls, we will go from the current system that would require you register these machines all the time and make the calls between 8:00 and 6:00 in the morning (sic), or whatever the hours are, to only regulating those that require, or are made by somebody who has to file a report with Accountability and Disclosure. Now some of you have been appointed and you haven't been through an election cycle, some of you maybe didn't pay close attention to what the rules are, but we don't have to file a report with Accountability and Disclosure for everything we do. You have to raise and/or spend enough money to trigger the requirement that you file a report with Accountability and Disclosure. And if you don't spend enough money to trigger the requirement that you file a report with Accountability and Disclosure, LB418 will leave that entirely unregulated. Okay? So if you are spending, and I've used this example, if I'm running against Senator Bloomfield up in northeast Nebraska, and I got a friend who wants to spend \$200 on a robocall and say I'm Dave Bloomfield and send it into his district in the middle of the night, there's no regulation. There's nothing stopping him if LB418 passes. That's the hole we're talking about, colleagues. That's the hole that we are creating and the opportunity for mischief and dirty tricks. And you say, well, that will never happen. It did. It did happen. It happened to Scott Kleeb when he ran. People used his voice; they sent messages into his...into the area that he was running. And I don't know if it was his congressional, I think it was his congressional race. They sent voice mails in the middle of the night repeatedly. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR LATHROP: We need to be mindful that we have a sensible and constitutional form of regulating these types of calls. We're not regulating content. And if we pass LB418 and move this over to Accountability and Disclosure, anybody who wants to spend an amount that would not trigger the need to file an Accountability and Disclosure report can do whatever they want, whenever they want, whatever time they want, and that's not where the...the people of this state do not want us to go down that road. They do not want legal calls in the middle of the night saying things that are untrue or representing themselves to be the candidate that's on the other side. And that's where we're going with this. And I, frankly, don't understand why we're doing it, but I can tell you what the net result will be and that is going to be calls in the middle of the night

Floor Debate
January 20, 2012

that are completely legal and unregulated. [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR LATHROP: Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Additional members requesting to speak on the motion to bracket LB418: We have Senator Dubas, followed by Senator Mello, Senator Ashford, and Senator Nelson. Senator Dubas. [LB418]

SENATOR DUBAS: Thank you very much. Good morning, Mr. Lieutenant Governor and colleagues. As with the rest of my colleagues that have spoken this morning, this is a good debate and it's an important one and I am very glad that we are having it and good information has been put into the record. And I think the debate we're having this morning demonstrates why both agencies, both the Public Service Commission and Accountability and Disclosure, are involved with this issue. I think there are different...they are different jurisdictions, definitely. We've got the PSC that can have the oversight over the actual machine that's used; and then we have Accountability and Disclosure who understands all the campaign ins and outs and rules and requirements. I think it supports...this debate supports the concerns that the Governor raised on the original legislation as to the constitutionality and are we putting impediments on free speech, especially political free speech. And because of those concerns, justifiable concerns that were raised in that first go-round, Senator Schimek and others worked very hard to put together a compromise that still tried to achieve what it is we're trying to achieve, putting those parameters around the type...usage of these robocalls, but also addressed the constitutionality that Mr. Daley raised in his testimony. So I think it supports and clarifies the original concerns as to the constitutionality. And again, that's why we went with the two jurisdictions. I think the law, as it stands, has demonstrated that there really isn't any confusion; has not put any undue burdens on any of the parties choosing to use robocalls. And my conversations with the PSC recently, only one formal complaint has been filed, that complaint was worked out between the parties. The PSC does receive calls; most of them are consumer question-type calls: Who is doing this? This is what they're saying, is this what the script says? So I think it's been referred to as a sunshine law, and I would tend to agree with that categorization. And our citizens, our constituents have someplace to call to find out if things are going the way they're supposed to go. And I think I mentioned this yesterday in comments, the people who use these robocalls are very sophisticated, very familiar with the process and how things go. They tend to police each other. And the Public Service Commission, and I know Accountability and Disclosure also works very hard to help the entities that are using these processes be in compliance. And if there have been complaints that have come into the PSC and they've been checked out and there seems to be a problem, they don't go out and automatically slap a big fine or shut them down. They go out and say, you know, you're not in compliance with the law as it stands right now; this

Floor Debate
January 20, 2012

is what you need to do to get there. And to my understanding, it's usually done. So again, I don't think the law, as it stands, is an impediment to free speech. I think it serves both the user, those that want to use the robocalls, as well as those who are receiving the robocalls. I think it's been brought up this morning, the law, as it stands, won't stop those people who want to make the calls at 2:00 in the morning. Nope, there isn't any law we can pass that will completely stop people from doing or not doing the things they're not supposed to. There are always those few bad actors who look for the loopholes, even if there isn't one, they make one. But by and large, they are an exception to the rule. Most people want to follow the law. They want to comply with the rules and regs, as long as they know what they are and they're willing to do that. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR DUBAS: So again, I think the debate we're having this morning stresses the importance of this legislation. If there are changes that need to be made, I think we need to take the time to fully vet those changes and look at them, so that's why I think the bracket motion is appropriate. And I think all I am fairly certain of this morning, as we move forward, is if we do pass this bill in whatever form it ends up in, we will hear from our constituents. But I don't think they'll be very happy. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Mello. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature, and to refute, I guess, or provide another perspective of some of the concerns or issues that Senator Nelson brought up in regards to why LB418 and/or its amendment is not that big of a policy change, the underlying issue that I have yet to hear is why do we need this policy change? Why is there a compromise needed on this when there is no problem? There has been no documented instance of this being a problem either from the Accountability and Disclosure Commission or the Public Service Commission. Both of their testimonies have not...both relayed in the committee that this was not an issue that has been raised to them. The confusion, so to speak, that people may have of having to register their automated dialing device with the Public Service Commission and providing a script if they so choose to use these devices, as well as following the Accountability and Disclosure Act laws that say you can't do this after 9:00 p.m. and you need to tell who it's paid for by. With all due respect to my colleague Senator Nelson, he's not made the public policy argument of why we even need to do this. The argument of streamlining it, to some extent, I gave him a little latitude when we started this debate so we could actually discuss if we wanted to move all of it into one agency, which would be the PSC, since 95 percent of the enforcement and activity falls under that agency. At this point, there is no argument of why we have LB418 in front of us. As Senator Lathrop so eloquently put it, there is no infringement of speech involved with this bill. The Public Service Commission cannot regulate what you can or cannot say. Would

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

Floor Debate
January 20, 2012

Senator Nelson yield to a question? [LB418]

PRESIDENT SHEEHY: Senator Nelson, would you yield to Senator Mello? [LB418]

SENATOR NELSON: Yes, I will yield. [LB418]

SENATOR MELLO: Senator Nelson, under the current law can the Public Service Commission regulate what you put in your robocall as you file a script or register a device? [LB418]

SENATOR NELSON: Senator Mello, they can come very close to it and I'll be glad to read the statute for you. May I? [LB418]

SENATOR MELLO: By all means, please. [LB418]

SENATOR NELSON: Upon receiving an application for a permit, the commission may grant, grant as modified, or deny the application. The commission may modify or deny the permit if the commission determines that the applicant is willing to meet the requirements placed on such operation, rule, etcetera. The device will result in a significant decline in the quality of service or access. I'm just paraphrasing here. The applicant's equipment is unable to meet the requirements of the law, rule, or regulation. So here we have an absolute ability on the part of the Public Service Commission to one way or another restrict what is going to be said; because they can get the script ahead of time. In fact, the statute provides, if I can find it here, that...all right. [LB418]

SENATOR MELLO: Senator Nelson, in sense of what you just read from statute, that is purely about the automated dialing device permit. That has nothing to do with the actual entity that chooses to provide a script or use a service after that permit is granted. Because as Senator Lathrop mentioned earlier, the PSC oversees the technology component because we're utilizing phone lines. Nowhere in that statute that you just read does the Public Service Commission have any authority whatsoever to say what you can or cannot say if you so choose to do a robocall. They're simply saying they put out regulations for automated dialing devices to meet. And if you meet these, you can then do and say whatever you please. Would that be an incorrect assessment of that statute? [LB418]

SENATOR NELSON: I'm not saying, sir, that it's an incorrect assessment, but I would put this question to you: Why do they need a script then? Why do they have to see a script ahead of time if they're not going to have the ability to act on it? [LB418]

SENATOR MELLO: Thank you, Senator Nelson, for the question. And we're on my time, I will answer that question in good faith. [LB418]

Floor Debate
January 20, 2012

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: The reason why is because it's required by all robocall entities or anyone in the state who chooses to utilize these devices have to provide that script. They're not singling out political calls away from anyone else. So if my business wants to do an automated call, they have to follow the same process that a political campaign would as well. But the unique thing under LB418, which was pointed out by Commissioner Tim Schram who testified at your hearing, stated that under your bill, however, quote unquote, the same group or campaign making nonadvocacy calls, for example, Get Out the Vote calls, neutral polling calls, these would still need to be registered dialer, these still would need to be registered dialer and file those scripts with the commission. The result would be strange distinctions that would be difficult for those using autodialers to determine which the commission regulates which calls. [LB418]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Mello. Additional members requesting to speak on the motion to bracket: We have Senator Ashford, followed by Senator Nelson, Senator Schumacher, Senator Wallman, Senator Burke Harr, and others. Senator Ashford. [LB418]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. I...first of all, I think Senator Nelson is attempting to come up with something that will work for us. I agree with Senator Nelson that the NADA (sic) is where this issue ought to be handled, not in the PSC. And I believe that because political speech is somewhat different, PSC is an elected commission, I think it creates a conflict. However, I agree with Senator Mello that we need to move towards a solution that...and Senator Lathrop, that has this script somewhere, somehow recorded with NADC. I don't know exactly how we get there, but it seems to me that NADC...it has been given the statutory responsibility to regulate political campaigns and spending in a variety of ways, and messaging. They have expertise in doing that. They have a board or a commission that is appointed, not elected. They have experience in investigating...may I have a gavel, Mr. Lieutenant Governor? [LB418]

PRESIDENT SHEEHY: (Gavel)

SENATOR ASHFORD: They have experience in investigating these matters, and quite frankly, on balance I think they do a pretty good job. What we're trying to arrive at here is a fair system that is not chilling to the First Amendment, but at the same time sends a message that we want thoughtful discourse. It's really not about the mechanics, necessarily, and I agree that treating different kinds of robocalls differently can create some issue, but I don't think it is the kind of difference that's going to make it constitutionally infirm. If we move this to NADC, as Senator Nelson is suggesting; if we get this bill over to Select File, and we think about how we can better protect the citizens of Nebraska, and though I would suggest that promoting thoughtful discourse is a more

Floor Debate
January 20, 2012

appropriate reason for doing this, because the citizens of Nebraska, I think, can parse through this awful vitriolic stuff that goes out there, I trust them to do that. But at the same time, I think there's a very appropriate and valid reason to have this done by NADC. And I think...I think Senator Nelson is spot-on on that issue. I guess what I would encourage...in summary, I would encourage this body to think seriously about NADC as the appropriate place to regulate, if that be the word, and I'm not sure that's the right word, but to monitor this kind of activity as it does with political campaigns and other political activities in the state. And then think about a way to allow Frank Daley and his team to have access to the script, in some way, so that they can see if the message that's going out there is consistent with what the message is that is being...has been filed with NADC. I just have confidence in this group of people. And I don't, in summary, I don't believe, unless I'm...I haven't seen a case, and I don't believe that there's a constitutional infirmity in moving the political speech issue to NADC and not having it in the same place that other forms of commercial robocalls are regulated. I just don't see that as a constitutional infirmity, though I could be incorrect. I was going to ask Senator Lathrop that question, but he can talk about it later. So I guess what my thought is, let's try to move this bill with an appropriate amendment and work diligently with the committee and I think, you know,... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR ASHFORD: ...the Transportation Committee has done a good job here. They've raised an issue. They've come up with a solution. I don't think they're quite there yet. Their committee counsel is well-versed in this issue. And Deb Fischer, Senator Fischer is thoughtfully bringing this to us. So I don't think we should deal with this bill any differently than any other. Let's do the best we can on General File; between General File and Select File we can think about other changes; but I...that would be my suggestion. Thank you, Mr. Lieutenant. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Nelson. [LB418]

SENATOR NELSON: Thank you, Mr. President, members of the body. And thank you, Senator Ashford, for your comments. I think you are right on there in what we should do and in moving on and addressing the amendment and perhaps some additional things that we can do. But the important thing, in my mind, and also in the mind of the committee, and I want to thank the committee counsel for his help in this matter, is they brought it before us. The statement was made yesterday there were no proponents. Well, I was certainly a proponent. But you ought to be mindful of the fact that in the hearing, there were no opponents. Nobody at that time thought that there was an issue here, apparently, that was worthy of bringing to the committee. And we had very good neutral testimony from Mr. Frank Daley, who I respect very much, and who is one of the most fair-minded persons and reasonable persons, I think, that I have dealt with since my time here in the Legislature. Let me...and I'm sorry Mr. Daley isn't here, but let's

Floor Debate
January 20, 2012

just...just as we're going to talk about the neutral testimony at the time of the hearing, Frank Daley, the executive director of the NADC, said we need to be made aware of the following changes, which would result from LB418: The PSC's jurisdiction would go away and the Accountability Commission would still have authority to regulate the disclaimer by the announcement at the beginning of the call that indicates who is responsible. The Accountability Commission will not register machines or obtain scripts prior to when robocalls are sent out. I think that's very important. And yes, LB418 treats political speech differently than other speech. And political robocalls are treated differently than other robocalls and, therefore, there is some regulation, based in a way on content. However, LB418 would result in less restriction of speech and, therefore, may be easier to pass constitutional muster. And I agree with that completely. I mean, we hear references to what happened with the Governor's comments in the original bill and why he vetoed it, and some of the changes that were made then in LB712. It doesn't get away from the fact that this is in the wrong commission, in the wrong place. We created the NADC to handle this type of discourse, campaign political calls, and that's where any regulation that has to be, should be placed. Now Senator Ashford alluded to the fact that there could be some political concerns here. And I think we know that the Public Service Commission, that commission is based on election and...of a party partisan nature. I think you really ought to know for your own information, the constitution here of the Accountability Commission, and very briefly, it consists of nine members, including the Secretary of State. And the statute goes into great detail as to how they will be appointed. Four members shall be appointed by the Governor in the following manner, and he selects those from names submitted by the Legislature; two members from the citizenry of the state at large. Four members will be appointed by the Secretary of State in the following manner: he has a list of five individuals, I'm just going over this quickly. And they have to pay attention that there's an equal balance of Democrats and Republicans. So it's an evenly balanced commission. I know, as a matter of fact, when I tried to talk to Frank Daley yesterday, he was on the phone for an hour and a half with his commission. They didn't come in here, apparently, to meet and spend money; they talked on a conference call. And I was impressed by that. And I don't think they were talking about LB418 or anything else, I don't know. But at least that's the way it works. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR NELSON: And you have a uniformly, nonpolitical commission that is in charge of calls of this nature. So I think that's an important thing for us to remember. Again, we will be talking further this morning and having more discourse. I really think this is good. But I just...I encourage and I urge you again whatever your vote may be as votes come up, to move in the direction of getting to my amendment so that we can place this oversight with the NADC; we can take it away from the PSC, and let them work on their commercial venue calls and things of that nature. And then we can work with the amendment to the point where we all are satisfied as a body as to the amount

Floor Debate
January 20, 2012

of regulation that would be needed. My amendment doesn't provide for any script. [LB418]

PRESIDENT SHEEHY: Time, Senator. Time Senator. Thank you, Senator Nelson. Senator Schumacher. [LB418]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. A couple of times I've raised the issue of what happens if this system overloads a little phone exchange so you can't make E-911 calls. It occurred to me maybe I should draft an amendment to try to provide for that information so we can build a database. As I sat down to draft that amendment, I began to face reality. And so would Senator Nelson yield to a question? [LB418]

PRESIDENT SHEEHY: Senator Nelson, would you yield to Senator Schumacher? [LB418]

SENATOR NELSON: Yes, I will. [LB418]

SENATOR SCHUMACHER: Thank you, Senator Nelson. Senator Nelson, if there was some little ornery Chinese kid sitting over in China and he decided he was going to try to bring down our E-911 service and the Benkelman phone company and he uses this voice over IP thing where you can place a call on the Internet and ring a phone on the other end and he just did it. And he didn't file any forms anywhere with Nebraska. And he maybe even added a political message of some sort to it, is there anything the Public Service Commission could do to that kid? [LB418]

SENATOR NELSON: Senator, you're off the mike a little bit, I couldn't catch the first part of who was doing what, something about China, and would you just very quickly summarize again. [LB418]

SENATOR SCHUMACHER: Oh, very quickly, if a little Chinese kid decided that he was going to overwhelm one of our little phone companies by sending a political message out and in large volume through the Internet and the way you can call over the Internet now, and didn't file any forms with our Public Service Commission or with our NADC, is there anything we could do about it? [LB418]

SENATOR NELSON: I don't believe so. [LB418]

SENATOR SCHUMACHER: Okay, so if that same little Chinese kid set up a server over there and put on the Internet, upload your message, give me your credit card number, and I'll...and the phone prefix area that you're going to send messages to, is there any way we could enforce that? [LB418]

Floor Debate
January 20, 2012

SENATOR NELSON: Activity from another country of that sort? Maybe diplomatically, but I don't know how we could enforce that, if I understand your question. [LB418]

SENATOR SCHUMACHER: Okay. So is there any way...I mean, what is our practical jurisdiction over somebody sitting on a computer someway in some part of the world, or some part even of this country, and doing this? As a practical matter, are we doing anything with any of these laws? [LB418]

SENATOR NELSON: As far as I know we are not. [LB418]

SENATOR SCHUMACHER: So why have we spent four days on this? Do the people of Nebraska not have a better thing for us to do? Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Senator Wallman. [LB418]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Thank you, Senator Schumacher, for your comment. And I agree. I have never heard anybody complain about the bill. So why do we need to change it? I think we should bracket it and forget about it and go on. And I know this is a passion for some people. Is it a party issue? I don't know. It looks like it. So why do we debate on this issue when we've had all kinds of expert testimony from attorneys in here? And I appreciate their wisdom. And so if they don't like the bill, I didn't like the bill to begin with. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Continuing with discussion on the motion to bracket LB418, members requesting to speak: Senator Burke Harr, followed by Senator Lathrop, Senator Council, and Senator Mello. Senator Harr. [LB418]

SENATOR HARR: Thank you, Mr. Lieutenant Governor. Ladies and gentlemen, words matter. Under this bill we have an issue that you can get around the law if you claim not to advocate for or against a specific candidate, but merely tell about the candidate. And I use quotation marks, about, meaning you can tell lies. You can make up anything you want about a candidate. Say Burke Harr is a lobbyist. Burke Harr has never lobbied in his life. But you could do that, and there would be nothing that would stop it under the current bill as it's written. Because if it's under Accountability and Disclosure, they only have jurisdiction over issues that are for or against a candidate. But if you just tell "information," they don't have jurisdiction over that. We have that problem with mail. I think we all can recall last spring when we were debating that issue where a certain organization that is for the prosperous, they're good Americans, but they were sending out mailings stating truths, half-truths, and nontruths. But there really wasn't a way to regulate that. Right now on robocalls we have a way to regulate that. What this bill would do is not allow us to regulate that. It will create a loophole so large Orson Welles could walk through it. And I understand unintended consequences, but what I don't

Floor Debate
January 20, 2012

understand is intentional unintended consequences, because then they aren't unintentional. They're intentional consequences. And why do we want to encourage half-truths? We want elections to be based on the merits of the issue, not on half-truths and outright lies. That's bad politics. That's bad public policy. And that's not something I think we as a body want to be responsible for. We want to be responsible for increasing the dialogue, not lowering the dialogue. I understand why this bill was brought, and on its face seems like it is a very good bill. But as we start scratching the surface a little bit, there starts...we start running into problems. And we're creating loopholes for no reason. The law as it currently is written is constitutional. No one has challenged it. As a matter of fact, again, we have case law that says this is constitutional. It's not even in a gray area. It's clearly constitutional. The question is, is it too difficult to file in two different offices? And that's a fair question. If we feel that it is too heavy of a burden, that's fine; but let's do it to make sure that all communication is regulated and not create a loophole. And that's what Senator Mello's amendment did. And we voted that down. If anyone thinks this is a partisan Democrat versus Republican or Republican versus Democrat bill, they're not looking and they're underestimating the other party. Because as dirty as one party is, the other party is just as dirty. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: Thank you. We both know there are outside advocacy groups who don't care about us as individuals or our opponent as individuals. They just want to see their issue, and they don't care who it costs. There is a...last night there was a debate where it was talked about that people...does character matter? And I would argue, yes, it does. But at the same time, it has to be character. If it's a character assassination, it had better be based on the facts. It better not be based on a lie. And so I just want to make sure that when we make decisions it's based on truth and not lies and half-truths. Thank you very much. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator Lathrop. This is your third time. [LB418]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I was trying to compare, and I may do a poor job of this while I'm trying to do this and talk at the same time, compare the difference in the regulatory schemes to see what advantage there is in moving this over to Accountability and Disclosure. There are a lot of differences, colleagues, a number of differences. And let me walk through what the Public Service Commission requires. First, the Public Service Commission requires, and Accountability and Disclosure does not, require that you register the device. So LB418 will allow these devices to come from...or these robocalls to come from unregistered devices. Why is that important? What's the problem with registering your device? We've not heard one reason why we should get away from having these folks register their device. That's the only way you can police this. It's the only way you can police this and that will be gone.

Floor Debate
January 20, 2012

Both of them require that the message start out by identifying the person. But the Public Service Commission requires that the telephone number or the address of the person making the robocall be indicated in the call. Accountability and Disclosure requires that if the person receiving the call asks, you have to tell them. And that seems like a completely ineffective process to me because this isn't a dialogue, this is something that's left on your machine. They both require that you restrict the hours. Maybe the most important difference, and I keep coming back to this, the important difference is the Public Service Commission will regulate every single one of these. It will stop people from doing these things because...the dirty tricks, because it will regulate every political robocall in this sense: You have to register the machine; you have to tell them who you are; you have to tell them your phone number or your address. And that won't happen if we send this over to the Public Service Commission (sic.) Senator Ashford, I probably don't have a better friend down here, and you know we've worked on a million things together, but I disagree with him on this. This is not something that we should compromise on; this is not something we should send to Select File to work out an amendment. This is a philosophical problem. We send this from the Public Service Commission over to Accountability and Disclosure and we create a hole. And it's a hole that's intended in this bill. It's intended. You look at why we're doing this, and what we are doing is getting away from registering these machines and creating a hole. It's an invitation to shenanigans, to dirty tricks, and trust me, it will happen to you. It's going to happen to you. Do you want integrity in this process or do you not? We are not regulating content. We are not regulating content. We are just making sure that if somebody does something they're not supposed to be doing, we can find out who they are and come down on them. Anybody that intends to send out a legitimate...a legitimate robocall will not have a problem with the system that we have. Think about that. If you want to send out a message to your constituents about what you've done in the Legislature, this isn't going to cause you a problem. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR LATHROP: I also want to take...since this is my last opportunity to talk on this amendment, or this bracket motion, I do want to talk to Senator Nelson's suggestion that there's prior restraint on political speech, that's not it. That's just plain not the case. If you look at the bill, which has the existing law, in Section 5...or paragraph (5), which would be found on the second page of the bill...or the third page of your bill, pardon me, it says that the duty of the person making the call is to send the transcript within 24 hours. You do not have to get clearance to send a message. You can say whatever you want; you just have to register the machine and send it...the transcript to the Public Service Commission. Now if we're getting rid of those things, you have to ask yourself why. Is there a reason other than somebody wants to create a loophole... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

Floor Debate
January 20, 2012

SENATOR LATHROP: ...so that they can engage in dirty tricks? [LB418]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. [LB418]

SENATOR LATHROP: Thank you. [LB418]

PRESIDENT SHEEHY: Senator Council. [LB418]

SENATOR COUNCIL: Thank you very much, Mr. President. And I guess it's fortuitous because the comments that I was going to make on this bill and the debate we've been having flows logically from what Senator Lathrop was just talking about. And I've listened to the debate and there is nothing in the current law that regulates content. And I think that's significant that what we're looking at here is regulation of the device. Under existing law everyone has to provide a script. And the Public Service Commission, it's my understanding, doesn't dictate what is in that script or dictate whether or not a particular content in a script can be sent out via the device. So I'm having trouble, I'm struggling with what is the problem here? In fact, the problem that is supposedly being addressed by LB418, in my opinion, is created by LB418. And that is the potential to regulate political speech. Under the existing law you submit the script...and I sat back and I'm trying to wonder and understand why would you submit this? Why would the Public Service Commission want the script from a tire store solicitor? I can't think of any reason they want it other than to determine the length of time that the automatic dialing device is going to occupy our telecommunications network. That is the only reason I can think of why the Public Service Commission would want a script from anyone is to be sure that our telecommunications network is not being overly burdened by these automatic dialing devices. So it's not an issue of content. In fact, I think if you move it to the Accountability and Disclosure Commission, it has a greater likelihood of being an issue of content. And because the regulation relates to the device, the device, that it should properly be with the Public Service Commission. And until such time that someone presents evidence that the Public Service Commission is scrutinizing the content of political robocalls, then it should remain with the Public Service Commission. And with that, I don't know whether Senator Lathrop was able to complete his thought on the matter, if not, I'll yield the balance of my time to Senator Mello. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're yielded 2 minutes 10 seconds and then you're next in the queue. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. To clear up a few, I think, maybe misperceptions of what this underlying bill does and the need to move it to the Accountability and Disclosure Commission, both Senator Ashford and Senator Nelson mentioned that it seems just naturally right to put the regulation of political, quote unquote, political calls of this nature under Accountability and Disclosure Commission. Well, first off, the Nebraska Accountability and Disclosure Commission

Floor Debate
January 20, 2012

doesn't regulate anything of the sort already. They don't regulate free speech. They regulate political campaigns and political campaign spending, that is what they regulate. And the underlying issue, and the argument that has been made on behalf of this legislation is that this is a political free speech issue. That they should not be regulated to the same level as everyone else who uses these automated dialing devices. The reality is, when the bill and framework was passed originally, the reason they did this... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...was because you can't segregate political speech. You can't move political robocalls which even the Public Service Commission in their testimony says there is a gigantic loophole between what is in the bill and ultimately who would still have to file with the PSC. Commissioner Schram says it very clear that groups, political groups that do nonadvocacy calls, Get Out the Vote calls, neutral polling calls would still have to follow the existing law which shows, and I beg the question, what are we actually trying to do here then? Senator Nelson has not been able to explain what we are actually trying to accomplish if the Public Service Commission has come in and said the loophole exists where a majority of entities that may do these calls still have to follow our existing process. But there is kind of, I guess, some wiggle room where some potential political candidates or independent committees wouldn't have to. [LB418]

PRESIDENT SHEEHY: You're now on your third time. [LB418]

SENATOR MELLO: Thank you, Mr. President. That alone should cause concern of what we're passing already, because Senator Nelson's amendment in the queue still does not accomplish that, still does not rectify what is in the committee statement. That is a valid concern. The other underlying issue, and Senator Lathrop has had this conversation on the mike, and Senator Ashford posed it again is it seems only commonplace that anything that regulates political activity in the state should all fall under one entity. We should be able to find a way to do this. Colleagues, the Accountability and Disclosure Commission, and Frank Daley who is not here today, but has expressed that, they do not have the legal authority and power to regulate this activity the same way the Public Service Commission does. They don't have it under Senator Nelson's amendment; they don't have it under the committee amendment; they don't have it under the underlying bill, LB418. That is the radical change that we're talking about in regards to what this legislation does. Senator Harr alluded to the fact that there is a gigantic loophole that we create here that, ultimately, you don't have to...if we put this under the Accountability and Disclosure Commission, you don't have to file this information if you do not reach \$5,000 in committee spending. And if you do and they find out, good luck. Because the reality is, if you don't spend the threshold, and there are existing Accountability and Disclosure Commission laws, you don't have to report anything. So why would you have to then report filing who you're using as an

Floor Debate
January 20, 2012

automated dialing device and the scripts or anything of the sort? You wouldn't because you don't have to file any other materials. And you would have a loophole then to be able to go around the law and then you would encourage the Accountability and Disclosure Commission to come find you; to come try to search out who did these calls, because you never registered the automated dial in the first place, you never registered the committee, and you never filed who donated to the committee. This is an underlying loophole that Senator Harr mentioned both yesterday and today that has not been addressed by Senator Nelson or the amendment he has put forward. Simply saying, yes, they can do this, and they can do this now, that's not the truth. Senator Schumacher mentioned earlier that there is a process in place for people to do this and when the Public Service Commission is regulating the phone lines and regulating automated dialing devices, they have the capabilities to go after the telecommunications industry. Complaints can be filed and can be fought and be sought after in regards to who used these lines when. They have the sophisticated abilities to do that. Accountability and Disclosure Commission doesn't have that authority, they don't have the ability, and they don't have the statutory obligation under the law or under LB418 to go do that. Let's talk about the enforcement of what Senator Nelson is saying they can do everything the PSC can do under his amendment, under his bill. They can't. They can't go after the company who is providing these services and remove their ability to do business in Nebraska. They can't do that. You violate the law of this nature when they passed it, the Accountability and Disclosure Commission cannot go after the company and remove their license. It's not laid out in the existing statute, and it's not laid out in the amendment under LB418. That, colleagues, is a significant difference. The issue that seems to be muddying the waters, which is a bit concerning, is wanting to move all of this under one entity, because it seems natural that because it deals with campaigns and politics it should be regulated by that entity. Senator Nelson read the same transcript I've read the last three days that Frank Daley has mentioned the reason that they did this in the first place... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...was to ensure that it was constitutional. To ensure that the Public Service Commission would regulate anyone who uses these technological devices, regardless if it's for a business or it's for politics, they would be regulated the same way, because we would not be infringing on anyone's political free speech. Everyone who uses these devices would be held on a level playing field and everyone would be treated fairly. No one has been found to be denied a permit to do these calls under the existing format. No one has filed a complaint saying that the existing process we have is burdensome or overregulates this process. Colleagues, when we try to solve problems, usually a problem is widely identified by constituents or by the public at large. There has been no problem identified by the public or by constituents of this being a problem of our current... [LB418]

Floor Debate
January 20, 2012

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: ...regulatory framework. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Burke Harr. [LB418]

SENATOR HARR: Thank you. So here is the question on (inaudible). Is this bill a solution looking for a problem, or is it a bill that creates a problem? Is it fixing a hole in the law? I have yet to hear that there is a hole in the law. I've heard it's inconvenient. That's fair. As I've said before, life can be inconvenient at times. And we can't always go running and hide under our mothers' aprons. This bill would allow push polling. It would allow someone to call and say...well, we all know what push polls are. And I think, I hope, everyone agrees push polls are bad; that they don't raise the level of discourse, but rather lower the level of discourse. We have spent an inordinate amount of time debating this issue. And as we debate it, we're delaying talking about more serious issues that concern the citizenry of the state of Nebraska. This bill, while constitutional, does not address an issue where we have unconstitutionality. So let's just eliminate that red herring now. There is not a problem with this current law on a constitutional level. On a public policy level, is there a problem with this law? Meaning, is this law so burdensome that you have to go to two different agencies, that we need to change the law? I would argue no. But if we do go to one agency, what agency should it be? Should it be the one that is allowed to regulate all robocalls? Or do we go to the agency where you're only allowed to regulate communication that is for or against a candidate? So if there is...and I'll use the quotation marks again, air quotation marks, informational robocalls that go out, and/or push polls, that is not regulated. Accountability and Disclosure would not have the ability to control those. We have created a huge problem. I do not want to see my fellow legislators and/or future legislators defeated because of a poor...well, poor would be an improper word, but because of robocalls that were less than truthful. I care about the citizenry. I want to make sure we get good citizen legislators. If we allow this garbage and robocalls to occur, good people will not want to run. They will not want to subject themselves to lies and half-truths. We have a duty to people running after us to make sure that if we were a victim of lies and half-truths, that we can, at the very least, try to prevent it instead of encouraging half-truths. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: This is not a partisan issue. I am willing to say a special interest group is a special interest group is a special interest group. All they want to do is see their side win and they don't care what happens. Scourge earth occurs. I stand for the hardworking middle class and not the special interests. And those of you in this body who are standing up for the special interest, you need to tell me why I should vote for this and why you stand for the special interest and not the hardworking middle class. Thank you. [LB418]

Floor Debate
January 20, 2012

PRESIDENT SHEEHY: Thank you, Senator Harr. Seeing no additional requests to speak, Senator Mello, you're recognized to close on your motion to bracket. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. As I close on this, I pause, because, unfortunately, as I was having a conversation with a friend and colleague of why anyone would see this debate or the press would report on this debate as anything involving partisan politics or have a partisan bent, I've never seen an automated dialing device that registered itself with the Secretary of State as a Democrat or Republican. But I have heard constituents of all political ideologies and all political affiliations who despise these calls, who at the end of the day does not want less regulation over these robocalls; they actually want more. Senator Nelson mentioned it earlier in today's debate, why don't we start discussing potentially banning them? Multiple states have banned these calls, and they found it constitutional. So the question is, we can bracket this bill. If this really is an issue; if there really has been an outpouring and outcry of Nebraskans from Omaha to Scottsbluff saying we want to be able to get more of these calls and we want to make it easier for political candidates to do these calls, let's take an interim study to hear from these people then. Because as Senator Nelson mentioned, yes, there were no opponents of the bill, but there were also no proponents of the bill. And the two neutral testimonies, if you read the committee testimony, laden their testimony with questions, questions in regards to the loopholes that Senator Harr just mentioned regards to LB418 from political campaigns in comparison to people who do other kinds of quasi-political activity. Frank Daley, the Accountability and Disclosure Commission, asked questions in the sense of we put these in two separate agencies for a reason because the Legislature and the Governor wanted to ensure that it was constitutional. And we had to regulate anyone who uses these devices in the same fashion. We couldn't single out political activity away from anyone else. Those two committee statements or those two committee testifiers provided ample questions that this floor should consider. Granted they were in a neutral testimony, but if you read through the entire testimony, they posed more questions than anything else of how will this operate, how will this happen, and there are significant concerns with loopholes that may exist by passing LB418. Colleagues, we debate bills all the time. We all have individual bills where we don't have a lot of opposition to them. But rarely do we ever get bills where no one comes in opposition and support of a bill, which always makes people in this body question the underlying focus of what really is going to happen. What are those unintended consequences? There has been proven examples in this state of people who do these calls in the middle of the night. That's why the bill came about. That was a public policy goal we had to try to solve and rectify it, to be able to try to provide a regulatory outlet for consumers to see who are providing these calls, who are doing these calls, not just the entity that's doing them but the business that's helping these entities do these calls. That was consumer protection. It's only wise for us to take a step back, reconsider this issue. If Senator Nelson wants to work on this issue more over the interim, I would love to sit down, I'll cosponsor his

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Floor Debate
January 20, 2012

legislative resolution, and we'll do it together. But the reality is there's been no complaints made with the existing system. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: There's been nobody, no entity or campaign entity, who's been denied a permit. There's been no political speech that's been censored. No one on the floor who supports this bill has been able to provide that information because it doesn't exist. When situations arise where problems don't exist, we as a Legislature have a tendency to not provide a solution, and that's what we're doing here, trying to provide a solution to a problem that doesn't exist. And we can bracket this bill and if we want to take a thorough look at this issue, we can do that. We can do it over the interim and see if this really is burdensome, if people really have complaints and if there's a way actually to protect consumers instead of deregulate an area that consumers don't want us to do. Thank you, Mr. President. With that, I would like to have a call of the house and a roll call vote, please. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. There has been a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB418]

CLERK: 27 ayes, 0 nays, Mr. President, to place the house under call. [LB418]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. (Visitors introduced.) Senator Pirsch, would you please check in. Senator Nordquist, please check in. Senator Mello, all members are present or accounted for. Members, you have heard the closing on the motion to bracket LB418. Mr. Clerk, there's been a request for a roll call. [LB418]

CLERK: (Roll call vote taken, Legislative Journal pages 305-306.) 17 ayes, 23 nays, Mr. President, on the motion. [LB418]

PRESIDENT SHEEHY: The motion to bracket is not adopted. The call is raised. Mr. Clerk, do you have items for the record? [LB418]

CLERK: I do, Mr. President. Your Committee on Judiciary, chaired by Senator Ashford, reports LB677 to General File with amendments. I have hearing notices from the Agriculture, Appropriations Committees, and Retirement Systems Committee, signed by their respective Chairs. Conflict of interest statements filed by Senator Mello will be on file in the Clerk's Office, and Senator Lathrop would like to withdraw LB1154. That will be laid over. (Legislative Journal pages 306-308.) [LB677 LB1154]

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

Floor Debate
January 20, 2012

Mr. President, the next motion I have with respect to LB418 is by Senator Nelson...no, excuse me, yes, Senator Nelson, and this is an amendment to the committee amendments, Mr. President, AM1717. (Legislative Journal page 298.) [LB418]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Nelson, you're recognized to open on your amendment, AM1717. [LB418]

SENATOR NELSON: Thank you, Mr. President, members of the body. We've had a great deal of discussion already and some testimony previously about what LB...or my amendment does here, rather, and this is AM1717 to the committee amendment. Basically, after we began discussion here, it became apparent to me that perhaps we needed to put a couple more things into amendment...into LB418 rather to make it a little clearer what the authority of the NADC would be and limit it but still give them some authority to track down those calls that they were able to make and force compliance. So what this amendment does, it does not provide for the registration of the automatic telephone dialing machines. It just simply provides that a statement will be filed with the Accountability Commission as to the fact that the person proposing to make the robocalls intends to do that and, therefore, to notify the commission of their intent to do that, and then to provide a name, a telephone number, and an address of the person who is filing this statement with the commission. They also would be required to file a detailed explanation of the intended use, not the script, not the wording, not what they were going to say or what they intend to say, which we don't want to regulate or which we don't want to impinge upon in any way, but at least to give the NADC some point of reference, some idea as to what the direction is going to be that will be taken by the person using the robocalls, whether it would be for a poll or sending out a message of some sort of a political nature. Now I will agree with some of the comments here that it provides for less regulation and that's what we're trying to achieve here. We want a minimum amount of information or sufficient information for the NADC so that if there is a complaint filed about something that has gone out that they can track that down and discover who it was just on the basis of the intended use and determine who made the call and then follow up on that. And we still, on this, are not doing any better than we are with the Public Service Commission in the inability to track down and deal with the abusers of the system who, first of all, have no intention of registering an automatic dialing device or even filing a statement of intent to use with the Accountability Commission in any event. So we're not dealing with that. I'm not certain that we can ever find a way to deal with that other than just banning robocalls altogether, and that would be something we're going to have to look at in the future. But this is what the amendment is about. This is a start. This is a way, in my opinion, that we should go in dealing with this. This is a philosophical debate. It's not going after something to find a solution. In my opinion, it was wrong and a mistake and it was...it had nothing to do with the constitutionality as far as placing the requirement of filing with the Public Service Commission the machine that you intend to use. If there have not been complaints filed,

Floor Debate
January 20, 2012

it's because there was...the things that went out that really offended people were done without any registration with the Public Service Commission. And I think perhaps later on we can get to some of the testimony that Commissioner Schram gave as to the uncertainty and the difficulty that they had in doing anything at all if there were a complaint. I think he made reference to one or two complaints during political campaigns. So this is a fairly simple proposition, LB418. AM1717 makes it better. It may be that we can do even more. But I think now is the time to act on this to pass AM1717, the amendment to the committee's amendment, AM643, and then move on from there. So I urge your support of this amendment, AM1717. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You've heard the opening of the amendment to committee amendment, AM1717. Members requesting to speak: Senator Fischer, followed by Senator Mello. Senator Fischer. [LB418]

SENATOR FISCHER: Thank you, Mr. President and members. I rise in support of AM1717. I thank Senator Nelson for being willing to work on this issue and to make some changes to it. He came to me a couple days ago. We had discussions about it. He worked with the committee counsel. All three of them...or all two of them met with Mr. Frank Daley with Accountability and Disclosure Commission on this amendment, and I would say that Mr. Daley believes that this amendment does improve the bill. So I would urge you to support AM1717 and let's move the bill. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Mello. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. And I believe in truth in advertising, and Senator (sic) Daley also spoke with my office to say that while the bill does...amendment does improve a very bad bill in LB418, underlying the issue still is it makes this process less transparent and there's less enforcement mechanism because we don't change the statutes in regards to the Accountability and Disclosure Commission's ability to be able to enforce this. So I don't disagree that, yes, AM1717 takes a bad bill and makes it slightly better, but I've heard colleagues on the floor who have talked about amendments that other people have brought forward who use that same argument. We don't like to see a bad bill made slightly better because it's still a bad piece of legislation and it's bad public policy. AM1717 is similar to LB198. LB198 was vetoed by the Governor in 2007 because it placed all of the responsibility of political, segregated robocalls in the Accountability and Disclosure Commission. We are revisiting the issue that this Legislature barely passed, and then it was ultimately vetoed by the Governor and not overridden because it infringed on political speech. I don't disagree that this makes this bill look, apparently, slightly better, but still what the underlying issue is it looks to be unconstitutional. We are separating political speech away from all other speech who uses automated dialing devices. That is the underlying foundation of the Governor's veto letter in 2007 and the underlying purpose of why we passed this bill in 2008 which the Governor signed. We can't separate political speech

Floor Debate
January 20, 2012

with these devices from any other kind of speech. That, at the heart, does what Senator Nelson says he didn't want to do in the first place. We shouldn't be separating this. Political speech is sacred; we shouldn't be infringing on it. But the reality is, the way this is done it segregates it, which makes the constitutional argument that we're infringing on it. They have separate rules and separate standards, and by the amendment they follow a different process for political speech using the same devices as businesses do. Colleagues, the underlying issue of this bill, and I've always viewed this as LB418, is in regards to transparency in government, in regards to trying to provide a consumer protection for consumers who don't like these calls. We regulated these calls for a reason. We provided a transparency mechanism for people to be able to see who are doing these calls, the companies doing these calls, and what is the ultimate message that they're using. I don't fault Senator Nelson. I don't fault the Transportation and Telecommunications Committee. The reality is this issue is more complex than what it may seem. And with most of the body or I should say half of the body, who wasn't here in 2007-2008 when these debates were had, this is a new issue to all of us. But I think the underlying premise of what AM1717 still tries to do is it tries to move more activity away from the Public Service Commission, move all of it out of the Public Service Commission and add a little bit more to Accountability and Disclosure. Yes, you have to register your devices, but ultimately it doesn't say if you don't register your device what happens. It doesn't say that. What, ultimately, power does the Accountability and Disclosure Commission have to go after these companies who register devices? None. Senator Harr makes the biggest issue that I think with AM1717 is critical. Under the Accountability and Disclosure Commission laws and rules and regulations, you don't have to report to them political activity... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...until you reach \$5,000 in spending. Senator Lathrop mentioned it the other day. Senator Harr mentioned it this morning. The loophole exists even with AM1717, by moving this over to the NADC, is that you don't have to report any of this stuff, in theory, because they'll never make you because they don't know you exist because you might not spend \$5,000. That is the paradigm we're in. If you don't spend the money and reach a threshold to report, you don't have to report even with AM1717. You can do these calls whenever you want, to whomever you want, with whatever message you want, and there's no repercussions because NADC operates significantly different than the Public Service Commission. The PSC treats everyone equally and you have to file regardless of how much you spend, of how many calls you send to people. And the Accountability and Disclosure Commission says only when you reach a \$5,000 spending limit,... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: ...then do you report. Thank you, Mr. President. [LB418]

Floor Debate
January 20, 2012

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Burke Harr. [LB418]

SENATOR HARR: Thank you very much, Mr. President. Well, maybe I'm young and idealistic, I don't know, but I'm for clean politics. I'm for discussion on the merits of the issue. This bill is an...or this amendment is an improvement, conceded. It's also lipstick on a pig. It doesn't address the underlying issue. A pig is a pig is a pig. If it sounds like a duck and quacks like a duck, it probably is a duck. We want to encourage discourse. This bill encourages discourse on a whole different level though. It is...creates the ability to communicate in a less than accountable manner. It doesn't allow for scripts to be...Senator Mello had some good points but there are other problems and I'm going to address it hopefully with an amendment if this does pass, is why do we need to have the scripts filed with the Accountability and Disclosure? Well, because if there is a violation, hopefully, if a person is honest enough to send dishonest stuff, the assumption is they're honest enough to at least stand behind it. So if they say Burke Harr kills puppies, they'll file the script that says Burke Harr kills puppies so that it's not just written down, when I receive the phone call and I say, it says Burke Harr assassinates puppies. Well, that organization could honestly stand forward, as their defense, and say, we didn't say "assassinate," no, he has it all wrong. Well, now if I say I got this e-mail about a dog, we can go and we can say, oh, here's the script. So when Daley gets that phone call, Frank Daley from Accountability and Disclosure gets that phone call, he can say, hey, yeah, here's the script, here's what it is, and then ask that person, did you say this. Now we have a baseline. We know what this person did or did not do. It holds people accountable. It does not discourage, unless you don't believe in what you're saying, it does not discourage free speech. We have spent a lot of time on this, ladies and gentlemen, defending special interest groups to be able to lie, and I'm not sure why. We don't have a problem with the current law. I have yet to hear anyone say, I had a constituent or I had a hardworking, middle-class citizen who failed to do a robocall because it was too difficult. No, what we're hearing is there was a special interest group and this special interest group didn't like the fact that they had to go to two agencies. I stand for the hardworking, middle-class people who say we want truth, we want discourse on a higher level, we don't want to muddy the waters. Special interest groups do want to muddy the waters. They want to make this about anything. They want to defeat the other person no matter what it takes, and that's not right. Ask yourself this question: If we pass this bill, does it make it easier for special interest groups to avoid the law, to do what shouldn't be done? And the answer is, yes, it does make it easier on special interest groups. And that's why I oppose this amendment. It's nice lipstick. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: I like the lipstick, it's a good color, it complements the bill well, it improves the bill, but, gosh darn it, it's still just a pig. And so I can't support this

Floor Debate
January 20, 2012

amendment. Thank you very much. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Harr. Senator Mello. [LB418]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, I just want to be clear to ensure that I was not misrepresenting any conversation that my office had or misrepresent anything that Senator Fischer or the Transportation and Telecommunications Committee staff...conversations they had with Frank Daley from Accountability and Disclosure where he said that this amendment does improve the bill. He said that to my office. He said it to every office that's been involved with this debate. But he also expressed to my office that this bill ultimately still does two things. It removes the transparency of the existing system and it removes the regulatory enforcement that we hold political calls in the same vein as all other automated dialing device calls, which ultimately deregulates this issue significantly compared to where it currently resides in the Public Service Commission. The reason why is they just have different purposes and different abilities to carry out the acts. So I want to be crystal-clear that I was not misrepresenting or trying to make sure I was not misrepresenting any particular senator or the commission's thoughts in the sense that I thought and I have said this is a bad bill, this is bad public policy. We are deregulating automated dialing devices for political purposes, which consumers despise, pure and simple. The political free-speech argument has been thrown out the window. I know Senator Ashford has been trying to make this argument that because it deals with political free speech we should put it in Accountability and Disclosure Commission. Senator Lathrop so aptly pointed out the reason we didn't do that in the first place in 2008 was because exactly that point. We would be regulating political free speech by putting it in the Accountability and Disclosure Commission. That's why it ended up in the Public Service Commission--all entities needed to be treated equal. The underlying issue still at heart is the deregulation of these robocalls in a process that cannot be tracked in the Accountability and Disclosure Commission laws and statutes. Senator Nelson, I appreciate the fact he brought an amendment to try to make a bad bill better. He tried to add two small components that currently reside in the Public Service Commission into the Accountability and Disclosure Commission. But talking with the Accountability and Disclosure Commission, one, they do not do this now. They don't have a process to do this now. No doubt, this will cost a fiscal note. This will cost money for them to be able to create a mechanism to track automated dialing devices for political purposes. So that's something we should consider with this amendment because no doubt it will add a fiscal note. It's impossible. They've expressed we do not do this now, we have never had this capability and, thus, we're going to have to reevaluate it if this amendment and this bill passes. That's the first step. The second issue still resides with the committee statement that lays out the Public Service Commission's concern. The loophole that is created even with AM1717 and LB418 is that we're regulating certain kinds now of a political speech, depending upon the entity. If the underlying issue that Senator Nelson said after the original intention of the bill was

Floor Debate
January 20, 2012

to ensure that we were not infringing on political speech, you have a constitutional argument on our hands of whether or not, without massive changes to the existing PSC law, that we're regulating certain kinds of political speech depending upon who's making the entity or who the entity is making the call. The Public Service Commission lays out get-out-the-vote calls, nonadvocacy calls, polling, those all need to be regulated still through the PSC. [LB418]

SENATOR COASH PRESIDING

SENATOR COASH: One minute. [LB418]

SENATOR MELLO: And the question is, if those still need to be regulated through the PSC, we're setting ultimately a separate political class for political speech through political campaigns or independent committees. Colleagues, I'm not making this up. This is just in the committee statement. This is what people who testified in neutral capacity stated was their concerns or questions they had with the underlying bill that these issues had to be addressed if this bill was to move forward. So the issues that Senator Ashford and Senator Nelson mentioned about political free speech and this should all fall under Accountability and Disclosure, that argument has already been settled once by a veto by Governor Heineman in 2007 when this proponent or this concept was put forward already in LB198. The other issue is the massive loopholes we're leaving in statute by moving forward with AM1717 and the underlying bill. As I've said before, if we want to dig into this issue, let's do an interim study. Let's see ultimately where the problems... [LB418]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: ...exist. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Ashford. [LB418]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. I think we are, in my view, getting to a disagreement over who should have the jurisdiction over these matters. Again, I don't believe there is a constitutional infirmity, despite what the veto message may have said a couple years ago, in having NADC deal with these kinds of calls. It seems to me, we have an opportunity here, through Senator Nelson's bill, between General File, Select File, and Final Reading, if it gets that far, to develop a constitutionally supportable mechanism to deal with these kinds of calls. And I have confidence that NADC is...has the expertise, it has the background and the focus to tell us, for example, as we move forward with the kinds of information that is disseminated in campaigns as we move forward, what changes in the future would be necessary to

Floor Debate
January 20, 2012

address these problems. I have confidence, like every other sort of issue we deal with here, we give it to a particular agency that is best qualified to deal with it and then we move forward into the future and look at the various issues that come up and address it. Senator Harr has some issues that he's raised; I think can be handled with this bill. The dollar limit, I think, in my view, there should not be a dollar limit. We're dealing here with the filing of information regarding robocalls. That seems to me there's no nexus between any sort of limit of donation limit or expenditure limit that would apply to political campaigns or other efforts that are in current law or current regulation with NADC. Simply put here, it seems to me that if the bill gets to Final Reading or Select File and we have not addressed the issues that need to be addressed to make this the kind of bill that gets 25 votes, so be it. But I do disagree fundamentally that PSC is the only place that this particular type of regulation can go. I don't see that. I don't see the rationale, I don't see the case law that would say that it must be there. I don't think we're creating a special class. If we were creating a special class, we would have already...we already would have created a special class in dealing with political activity. So I really think it is the issue of what is...which commission, which agency of state government can best protect speech; can best regulate, to the degree it can, the information that citizens should have a right to have when they determine these calls are...who they're coming from, what they're saying, so forth and so on. I think we have a mechanism here that, quite frankly, boosts up and solidifies NADC as an important agency of state government. We've had debates here about whether or not NADC should even exist. I think it should. I think it's an important agency and an important commission. Again, I worry about elected...an agency which has elected officials regulating it, no matter who those officials are, I don't have any problem with the people who are commissioners, but where they start to regulate political speech by receiving this information. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR ASHFORD: So I think again that this bill is...and with these amendments and additional amendments that can be developed by the time we get this bill to Select File, it's going to be a better bill, and I don't think bad or good is the right designation anyway, but a bill that...there's nothing bad about Senator Nelson's bill or horrible about Senator Nelson's bill. I think it's a thoughtful effort. But we can improve it and...by utilizing NADC and that's what I suggest we do here and reinforce NADC as an important part of our dialogue, political dialogue in the state. With that, Mr. Lieutenant Governor, I urge the adoption of the amendment with the idea that we'll discuss this matter further. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Members requesting to speak on the amendment to committee amendments, AM1717, we have Senator Mello, followed by Senator Burke Harr, Senator Schumacher. Senator Mello, this is your third time. [LB418]

Floor Debate
January 20, 2012

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, to be correct and to make sure I provide any corrections on the mike that I may have misspoken possibly, with the committee amendment and AM1717 there are components that are left out of both the PSC and Accountability and Disclosure. I mentioned before that polling and nonadvocacy calls there would be a loophole, and the loophole that exists under this bill is nonadvocacy calls, quote unquote, and polling using these devices don't have to report to either the PSC or Accountability and Disclosure Commission. So as Senator Harr mentioned earlier, let's say there's a group that exists that wants to educate voters about a candidate or an elected official, this entity does not, under this committee amendment and under this AM1717, they don't have to report to either the Accountability and Disclosure Commission or the PSC if their calls are nonadvocacy or polling. We dealt with this issue last year, colleagues. Entities that said, quote unquote, they were educating voters, they weren't advocating for or against, they weren't advocating an issue, they were educating voters, this is the loophole that Senator Harr mentioned that's spelled out with AM1717 and the committee amendment. Some of you in this body dealt with that, quote unquote, educational material that was presented by outside entities. This is another way for them not to have to report that. They don't have to register their auto dialing device with Accountability and Disclosure because they're doing nonadvocacy or they're doing polling. Colleagues, this cuts down not just to consumer protection on robocalls. This cuts down to our, obviously, our democratic process in the regulation of our political activity of whether or not we want more transparency or we don't. That's the underlying issue. Commissioner Daley...or Director Daley mentioned that, of being part of the issue still at heart with LB418. Even with the amendment, there is significant transparency that gets taken away from the current process. And when a faceless, nameless group now can do robocalls across the state in the name of nonadvocacy or polling, colleagues, we're deregulating this industry. That's what we're doing. Would Senator Nelson answer a few questions? [LB418]

PRESIDENT SHEEHY: Senator Nelson, would you yield to Senator Mello? [LB418]

SENATOR NELSON: Yes, I will. [LB418]

SENATOR MELLO: Senator Nelson, do you see a problem with, as AM1717 is drafted to the committee amendment, which the committee amendment moves political activity that's regulated under Accountability and Disclosure Commission, that all political activity would fall under...would be regulated through robocalls, and with your amendment do you also see this loophole that exists so that, quote unquote, since nonadvocacy or polling activities not regulated by Accountability and Disclosure, that we now create that loophole since they also would not have to file with the PSC? [LB418]

SENATOR NELSON: Senator Mello, yes, I would agree with that. I see that as a possibility. We're not regulating that. But it's my understanding that the PSC isn't able to

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

Floor Debate
January 20, 2012

regulate it right now. Is that correct? [LB418]

SENATOR MELLO: That is not correct, because anyone who does an automated dialing call, whether it's \$10 or \$1,000 or \$5 million, has to all follow the same process. They all follow the same process in the PSC, whether it's political in nature or whether it's business in nature, so... [LB418]

SENATOR NELSON: Well, that's only if... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR NELSON: ...that's only if they decide to register with the Public Service Commission. I'm talking about the people that don't do that and... [LB418]

SENATOR MELLO: And you're right. If an individual or an entity chooses not to register their automated dialing device and it gets reported and there's a complaint filed, you're absolutely right that the Public Service Commission wouldn't have their records on record because they wouldn't have filed. But that would be the same way under your amendment. Wouldn't that be correct? [LB418]

SENATOR NELSON: That's correct. We don't provide for that because it's just unenforceable. You can't do anything about it so why try? [LB418]

SENATOR MELLO: Is the enforcement mechanism in the current statute, under the Public Service Commission which regulates the telecommunications industry, do they have more authority to be able to go after the telecom companies that are providing these services in comparison to Accountability and Disclosure? [LB418]

SENATOR NELSON: The companies that are providing this? I don't know that they do. I mean if... [LB418]

SENATOR MELLO: Well, does the Accountability and Disclosure Commission regulate the... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: Thank you, Mr. President. [LB418]

SENATOR NELSON: All right. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Schumacher. [LB418]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. I asked

Floor Debate
January 20, 2012

the page to pull the book with the whole regulatory scheme or at least the statutory part of it for automated telecommunications devices to try to get my head around a situation which appears not to make many...much sense in the context of our modern telecommunications. And when I pulled the book, these whole or this whole set of laws appears to go back to 1993, and let's roll back the clock to 1993. It was before the Telecommunications Act of 1996. Long distance rates were high and in order to avoid costs one might want to go into a jurisdiction, get a bank of phones or somebody who had a T1 line with 24 lines on it and connect a box and have that box make telephone calls within a local jurisdiction in order to avoid the cost of long distance calling. And it seems this whole regulatory scheme, which would have worked under those circumstances, says, listen, you know, this has all taken place in a situation in Nebraska, somebody goes into a telephone area, telephone exchange, connects their box. Before you can connect a box in that way to a big multiple line service, you got to register with the Public Service Commission, you got to tell them what you're going to do, and you got to get a permit for it. All kind of makes sense in 1993. Today this whole thing, as I read through it, makes less and less sense because how is it that we in Nebraska in a Public Service Commission or on the floor of this body can tell somebody in Virginia whether they can or cannot connect something to a telephone line? How is it that we can tell somebody in the Cayman Islands or Zurich or Shanghai that they can't connect something to a telephone line? And if they tell us to go fly a kite, because they do, what can we do about it? Well, I guess there's some fines in here that after a notice and hearing and bringing the guy back over from Shanghai we might be able to fine him, but I don't see any jail time or anything real serious. The point of this is, maybe if really this is this big a deal that we should kill four days on it here, that we should back off and look at this entire thing and write a statute that applies to the real world in 2012 where you can make a telephone call from anywhere over the Internet, exchange currency, cause these things to be done without any measurable way of enforcing the rules. This has got off into an Alice-in-Wonderland discussion that probably has no applicability in the real world other than for the academic gratification it gives partisans. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Members requesting to speak on AM1717, we have Senator Burke Harr, followed by Senator Council, Senator Karpisek, and Senator Howard. Senator Harr, this is your third time. [LB418]

SENATOR HARR: Thank you, Mr. President. And thank you, Senator Ashford and Senator Schumacher, for putting some...for adding to the dialogue, and that's what we're trying to have is a debate and a dialogue on this, and so far it's been rather one-sided and I'd like to hear people tell me why special interests should be allowed to call my house at all hours of the night as long as it's before 9:00 and not have to register it and not have to tell the truth, and then make it difficult to prosecute because there's no script. I don't know why we've spent four days defending special interests, but we have, and that's...I hope when we get to the budget we can talk about the hardworking middle

Floor Debate
January 20, 2012

class and not the special interests. This amendment, this bill amends 86-256, a sunshine bill, a sunshine law that says, you know what, maybe what Senator Schumacher says is we can't, in this day and age, regulate as well as we used to be able to. And maybe that's true, but we don't want to make it easier. We don't want that public policy to say, yeah, throw up our hands in the air, we can't do anything. That's not what we want to do. If we're going to change the law, let's do it as Senator Schumacher said and let's have a comprehensive discussion, and it's a difficult one and it's not one just for Nebraska; it's one for the United States, it's one for the world: How do we police all this new technology we have? Should we police all this new technology we have? Who is the filter and why should we allow filtering? I do believe the Internet needs to be policed. I don't want child pornography sent over the Internet. I think it should be illegal. We have antipiracy laws. Just last night a local police officer in New Zealand arrested the founder of MegaDownload.com for a violation of law in the United States, our U.S. copyright law. I think we need to protect our U.S. copyright law. This is a bigger issue than special interests, I would concede, and we need to talk about that. But as this bill is written, the only person that prospers, the only person, entity, although now they are a person, that comes out ahead are the special interests. They are the ones who are going to take advantage of these changes. It's not the hardworking citizenry. It's not the middle class. It's the special interests. And so if you advocate for the special interests, advocate for them. I challenge you, take the mike and say this is why I think special interests have been picked on unfairly; this is why I think we should allow this bill to happen; we should; you know what, if they spend less than \$5,000, we don't need to know what they're saying, doesn't matter if it's true or not. It doesn't make sense, does it? At the end of the day, ask yourself what kind of society do you want to live in. And when you do that, have an answer and defend it. But as this bill is written, it makes it easier to muddy the waters, makes it easier on a special interest to go after individual candidates that they don't like, and not on the issue of why they don't like the person but on something else,... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: ...with the sole purpose of defeating them. I understand what Senator Nelson is trying to do here and I think his reasoning...I think his motives are probably sound, but the result at the end of the day, when all the dust has settled, the only person that comes out ahead are the special interest groups. And if AFP, Americans for the Poor, are going to send out robocalls, we don't want to do that. That already happens to our mail. Why do we want it in our homes on telephone calls that occur while we're trying to eat dinner and while our citizenry are? We already see they don't like it. They don't like it on their cell phones, when Congressman Terry tried to do something. They don't want it in their homes. We saw it in the newspaper yesterday. People don't want robocalls. [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

Floor Debate
January 20, 2012

SENATOR HARR: Thank you. [LB418]

PRESIDENT SHEEHY: Senator Council. [LB418]

SENATOR COUNCIL: Thank you, Mr. Lieutenant Governor. That's shocking. You know, I go back to my recollection of Senator Nelson's opening on LB418 and what I heard at that time, and my recollection may be fuzzy because it's been a long time since that opening, but I recall that one of the concerns purportedly being addressed by LB418 was not so much the regulation of political speech. It was that people had to go to two different entities to register. That's what I understood the issue was. Now in terms of what's being registered, what's being registered is the device, the automatic dialing device. And who have we entrusted with the regulation of automatic dialing devices? We have entrusted that to the Public Service Commission. So it appears to me that that is where regulation of automatic dialing devices, for whatever purpose they're being used, should rest. Now again, I stated the last time I was on the mike the whole issue about the script. If the argument is that there's some constitutional infirmity associated with requiring the script to be delivered to the Public Service Commission if it's political, I understand that we're still talking about submission of a script, or maybe we're not talking about submission of a script. I confess, I'm confused about what we're talking about now, whether it's free speech or regulation. I believe it's regulation and the entity that we have entrusted, we have given authority to, to regulate automatic dialing devices. That's what it's about, automatic dialing devices. The script that a businessperson has to give to the Public Service Commission, at least my understanding, can contain anything. It could contain profanity. It could contain anything it wants to, my understanding, and the Public Service Commission would grant an application because what they're regulating is the device and the use of the device and who's responsible for the use of the device. And because of that, I must concur with my colleague, Senator Burke Harr, in his opinion as to the necessity of LB418 and what AM1717 does to address the infirmity in LB418. And with that, if Senator Mello would like, I would yield the balance of my time. And I would urge my colleagues to defeat AM1717, the committee amendment, and the underlying bill. Thank you. Senator Mello. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're yielded 1 minute 30 seconds. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I was just having a conversation with a colleague off the mike of trying to explain, under this amendment, under the committee amendment, under the bill you don't have to report any of this activity unless you reach a \$5,000 spending limit under Accountability and Disclosure laws. So if Senator Nelson wants to offer another amendment to try to clarify that then, if you spend one penny on robocalls that involve any of this political nature, you need to report or file a committee and report that to NADC,... [LB418]

Floor Debate
January 20, 2012

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...because that's another loophole that is created by this bill and by these amendments, because you're not changing fundamentally accountability and disclosure law. You're simply adding a little section of trying to segregate political candidate or political committee robocalls out. That's the first item. The second item is groups who ultimately do nonadvocacy, quote unquote, education calls or polling, a.k.a. push polling, don't have to file with either entity, and there's no way to trace either entity because there's no legal entity that would have the authority to go after them. Colleagues, that is the other loophole. Neither the NADC nor the Public Service Commission under these amendments would have the authority to go after any entity who makes nonadvocacy or polling calls, which opens a gigantic loophole for anyone to be able to do anything in the name of education, which is a big problem, obviously, with these underlying amendments. [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Council. Thank you, Senator Mello. Senator Karpisek. [LB418]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I'd like to yield my time to Senator Mello, please. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're yielded 4 minutes 55 seconds. [LB418]

SENATOR MELLO: Thank you, Mr. President, and thank you, Senator Karpisek. As I was stating, this essentially means, with the adoption of these amendments, of trying to, quote unquote, streamline this and put it under NADC in the name of political speech or because it seems like it needs to be under there, we've, one, risk it to be unconstitutional. So let's say we follow this. Let's follow this logical path. Senator Nelson and supporters want to pass AM1717, AM643, and LB418. We pass all of these and these become law. It gets challenged that we are segregating political speech the same way Governor Heineman said we were when he vetoed a very similar bill in 2007. The courts rule this is unconstitutional. We go then to no regulations over political robocalls. That, folks, that is the ball game. If that is the end game of this, that is what will happen. We will completely deregulate robocalls for politics and political purposes, which is not what the voters or our constituents want, because we're revisiting an issue that this Legislature purposely did not follow a second time in 2008. As disturbing as that is, it's more disturbing that we know there are loopholes with the amendments as they're drafted, and obviously there is not a meeting of the minds on this issue. As much as I

Floor Debate
January 20, 2012

respect Senator Ashford and Senator Nelson, the compromise is that we shouldn't do anything on this bill. We shouldn't pass this bill because there is no problem at hand. You can only say there's a solution in search of a problem so many times until you research it and find out there were no complaints at the PSC regarding this process. There has been no complaints at Accountability and Disclosure in regards to being confused of what to follow and what not to follow. You can only have, as Senator Schumacher said, an academic debate so long before it starts to sink in that we're changing something for changing something's sake. There is nothing that is wrong with our current system and there's been no one in the proponents who's been able to express that except saying that it should be in this entity instead of another. Well, look, I think we should have massive change in state government. I think we should have a Department of Transportation. I think Motor Vehicles, I think our Department of aviation...in Aeronautics should be under the Department of Roads and we call it Department of Transportation. Are there problems right now with these existing agencies? I'm not saying that, but the reality is I think it should be done that way because we should put anything transportation related all under one entity. Colleagues, if I was to make that argument to you, you would come to me and say that's not a strong argument, Heath; you can do better than that; that's not a reason why we should pass a bill. I'm posing that same question to you. That is the argument we've heard now for almost close to seven hours of why we need to pass this legislation, is because, well, we need to probably put it all in one agency. Colleagues, we're better than that. We may disagree on policy. We may disagree on politics. We may disagree on sometimes the rules of how the Legislature operates. But the one thing we usually always agree on is that we try to work on problems that exist. We try to find solutions that make Nebraskans' lives better or tries to improve our democracy. This is a bill, colleagues, that does neither. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: This is a bill that deregulates political robocalls. And an end game that I painted to you shows that by following the same path that we followed in 2007, logic would assume this would lead us to a court challenge which would deem this unconstitutional because we are regulating political speech away from all other speech who utilizes these automated dialing devices. No matter what we say in Accountability and Disclosure, we could put everything in the PSC in Accountability and Disclosure and it would still make it unconstitutional because we're regulating political speech differently. They are not held to the same standards that everyone else is in regards to utilizing these automated dialing devices. That, colleagues, is the crux of this issue. It's not that I'm not searching for an amendment or an idea. My idea I propose in AM1705 moves it to PSC to keep the even playing field so to make it, quote unquote,... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

Floor Debate
January 20, 2012

SENATOR MELLO: ...less confusing. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Howard. [LB418]

SENATOR HOWARD: Thank you, Mr. Lieutenant Governor. What is there that is good about robocalls? We are spending time discussing something that no one likes. If you were asked how you feel about a robocall, especially robocalls that were used against you, I'm pretty sure that you would say you hate robocalls. When I ran in 2004, robocalls were used by one of my opponents to do a push poll on me. Constituents in District 9 called me to tell me about these robocalls because they were so disgusted about the content and the use of robocalls to attack me. I'm sure they were angry and frustrated by having their own phones accessed to bother them and to discredit me. It's bad enough when they leave a message on an answering machine, but it's even worse when they call in the evening when you're getting dinner on the table or bathing your children. Most people are under enough pressure keeping up day to day and they resent the intrusion and the depersonalization of a robocall, and I believe that most everyone would appreciate simply having them banned. I'm going to offer the remainder of my time to Senator Mello. [LB418]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Senator Mello, 3 minutes 38 seconds. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature, and thank you, Senator Howard. Actually, I do not disagree with Senator Howard's assessment that we should not be looking to deregulate this industry; we should be actually looking to strengthen the regulations because people do not like them. We've gone so far with LB720, when this passed the Legislature 45 to 0 in 2008. My question to those of you who were here: What has changed? What has changed between now and then? There's been no complaints made. No one has been denied the ability to do these calls. No company has had their license taken away or their ability to do business in Nebraska because they follow the law. So the question I pose is what's changed? How is political free speech being censored or infringed upon? If you can provide me that answer, I'll stop talking. I'll stop. I'll pull my amendments. We can go about...we can vote the bill, the bill will pass, it will be voted...it will be deemed unconstitutional by a court of law when it's challenged, and we'll go that path. I have yet to hear anyone make the claim of what has changed. When we regulated this industry we did it for a reason, and no one has been able to provide a reason of why we should deregulate it. There's been no problems. There's been no concerns. There's been no complaints. If that's the underlying issue with this then what are we doing? Why are we here? Why are we debating this issue? There's got to be something deeper than what we're discussing. That's what I want to know. We're willing to pass laws or stand on the floor and defend proposals that create massive loopholes in both our Public Service Commission law and

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

Floor Debate
January 20, 2012

our Accountability and Disclosure Commission law, but yet no one has spoken to those. Would Senator Nelson answer a few questions? [LB418]

SENATOR GLOOR: Senator Nelson, would you yield for questions? [LB418]

SENATOR NELSON: Yes, I will yield. [LB418]

SENATOR MELLO: Senator Nelson, what in your amendments to the committee amendment protects consumers from outside entities who do nonadvocacy, quote unquote, education-related calls or push polling? What does your amendment do to rectify that loophole that exists? [LB418]

SENATOR NELSON: The loophole you're referring to, I've been discussing with other people here, is what Senator Schumacher is referring to,... [LB418]

SENATOR GLOOR: One minute, Senators. [LB418]

SENATOR NELSON: ...people from a distance in other states and other countries? [LB418]

SENATOR MELLO: No, the loophole that currently exists with your amendment to the committee amendment states that political activity governed under Accountability and Disclosure Acts and laws are subject...all political activity is subject under your bill, which nonadvocacy or education-related material and/or phone calls and/or polling is not regulated under that, under the law, under Accountability and Disclosure. So if you were to engage in those two activities, you wouldn't have to follow anything in LB418, the committee amendment, or your amendment. That's the loophole I'm speaking of. [LB418]

SENATOR NELSON: Well, the loophole is there, Senator Mello, but the loophole also exists on the other side with the PSC at this time. [LB418]

SENATOR MELLO: It does not exist actually because anyone who uses an automated dialer, Senator Nelson, whether it's for education purposes, nonadvocacy, or political, all have to follow the same process. [LB418]

SENATOR NELSON: The problem is, Senator Mello, they don't follow it. They don't register and, therefore, the Public Service Commission,... [LB418]

SENATOR GLOOR: Time, Senators. [LB418]

SENATOR NELSON: ...there's a big gapping hole there. [LB418]

Floor Debate
January 20, 2012

SENATOR GLOOR: Thank you, Senator Nelson. Thank you, Senator Mello. Seeing no further senators wishing to speak, Senator Nelson, you're recognized to close on your amendment to the committee amendments. [LB418]

SENATOR NELSON: Thank you, Mr. President. Members of the body, we talked a long time on this and we have these philosophical differences. I will say the opposition keeps pounding away at deficiencies in the amendment, saying that it doesn't go far enough, but if it needs to go farther then we need to pass AM1717 today so that, having used all this time here discussing this, we can work further to perhaps improve the amendment to the point that it will be acceptable to the people that are opposing it at this time. I am agreeable to working with Senator Mello as we move on here. I think he has another amendment after this. But I think we need to get there and so, therefore, it's important at this time, and I will just recount what the amendment does. I mean we have the basic concept here that political activity and discussion is being monitored and overseen by the wrong service commission, and I think, as Senator Brad Ashford said and perhaps Senator Council, and I think she did refer to this, that one of the issues is that it's in two places now and it ought to be in one place under one agency. And it ought to be, as far as I'm concerned, under the one agency, the NADC, that was created for the very purpose of monitoring and working with candidates, political calls of a nature and that type of thing, to the extent that they can regulate it. We have problems down the road with people that are abusing this and are choosing not to register their machines, and all they have to do is find a telephone line that they can plug into. The Public Service Commission has no control over that. They don't know where it's coming from. They might try to find it and they might go to the telephone company, say we're going to hold you liable. Telephone company's response is, this was done with our authority...without our authority; we can't do anything about it. Consequently, we have this situation where we have these offensive calls or these push polls and things that simply can't be regulated on either side. What I'm saying with this amendment here is that at the present time what the amendment calls for is that someone who is going to operate legitimately, and we're assuming that 95 percent of the people with political activity are going to do this, the proper place for them to go is to the Accountability Commission. There's no point in registering a device if you don't have any authority, you know, to crack down on the misuse of the device. You just simply file a state of an intent that you are going to use that device so that the Accountability Commission is aware of the fact. You give them your name, your telephone number, your address. The amendment does not call for a script, and I will say on the floor that's a possibility for further discussion. If the Public Service Commission, as the opposition contends, doesn't have any authority to do anything with the script anyway, although I don't necessarily buy that, I think they certainly could of a political nature if they wanted to find a way to do it, why, then I guess perhaps there's a possibility it's acceptable to me that a script could also be put. But I really don't know what for...purpose. It doesn't serve any purpose. It shouldn't be there. It's just regulation that is unnecessary. One final point about the constitutionality of this: There was a court in Minnesota, a district court, who pronounced that it would be

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

Floor Debate
January 20, 2012

wrong to separate the regulation of political activity from the commercial activity. That was never appealed. [LB418]

SENATOR GLOOR: One minute. [LB418]

SENATOR NELSON: That has never been challenged. That is not the constitutional law. The only way that we find how it's really going to come down is if it gets appealed to the highest court. So we're dealing with that now but that doesn't necessarily say that what we're proposing here is unconstitutional. That would have to be challenged and then we would know, and we'd have to deal with that all the time here in all the things as to whether there's a constitutional issue or not. For our purposes here, I think it's important to move AM1717 on; in light of all the discussion we've had, try and resolve some of these differences with some additional amendments perhaps; and move on so that we in the end, ultimately, we can get this over to the NADC where it properly belongs, because they're the people best qualified. They're absolutely nonpolitical through the way their commission is structured so we don't have to have any concerns... [LB418]

SENATOR GLOOR: Time, Senator. [LB418]

SENATOR NELSON: ...about the wrong thing happening. [LB418]

SENATOR GLOOR: Thank you, Senator Nelson. Members, the question is, shall the amendment to the committee amendment, AM1717, be adopted? All those in favor vote aye...Senator Mello. [LB418]

SENATOR MELLO: Mr. President, I'd like to do a call of the house. [LB418]

SENATOR GLOOR: 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; all those opposed vote nay. The house is under call. Senators, please...record, Mr. Clerk. [LB418]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB418]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber to record your presence. All unauthorized personnel please leave the floor. The house is under call. All members are accounted for. Members, the question is, shall the amendment to the committee amendment to LB418 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB418]

CLERK: 32 ayes, 7 nays, Mr. President, on adoption of Senator Nelson's amendment to

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

Floor Debate
January 20, 2012

the committee amendments. [LB418]

SENATOR GLOOR: The amendment is adopted. Raise the call. Mr. Clerk, items for the record? [LB418]

CLERK: Thank you, Mr. President. Before we proceed to the next motion, your Committee on Natural Resources reports LB873 to General File. Agriculture Committee reports LB770 to General File and LB771 to General File with amendments. (Legislative Journal page 309.) [LB873 LB770 LB771]

Mr. President, the next motion I have with respect to LB418, Senator Mello would move to reconsider the vote taken on AM1717. [LB418]

SENATOR GLOOR: Senator Mello, you're recognized to open on your motion to reconsider. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I thought I provided, I thought, a glimpse a little bit earlier in the morning of where I thought potentially we would go on this issue, and it appears with that vote there, in talking with some colleagues, that enough people felt that AM1717 was the cure-all of what the multiple reasons and debates that many of the opponents of LB418 have provided this body over the last five days of why this is bad public policy. And so I believe it would probably be best, in our best interest to maybe revisit some of those issues and to see if there's...maybe provide Senator Nelson and others more time to be able to provide maybe a bit more on the constitutional end but also the regulatory and enforcement end of what will need to take place to ensure that we close these massive loopholes that are currently under existence under AM1717 and AM643 and the underlying bill. Colleagues, I have yet to hear...and I can appreciate the thought process of wanting to put things that involve politics or political nature under the Nebraska Accountability and Disclosure Commission. That seems logical. It seems reasonable. But the reality is we have to look to the past to understand why we're here at the present. We have to look and see what occurred in the 2007, 2008 Legislative Sessions that brought us to this point. And the reason that we are not...our current law does not have this activity under the Public Service or under the Accountability and Disclosure Commission and has 95 percent of it fall under the PSC is for three main reasons. First main reason is it was thought to be unconstitutional to regulate political speech by separating it separately by utilizing these automated dialing devices. That was the first reason. The second reason, which Senator Nelson alluded to in his closing on AM1717, is that why is the Public Service...they have this enforcement capability. Why would we want them to do this? Colleagues, that's making my argument on this issue that much easier. The reason that it was put in the Public Service Commission is they have that enforcement capability that Accountability and Disclosure does not have. They cannot go after those who make these calls in the same fashion the Public Service Commission can because, as Frank

Floor Debate
January 20, 2012

Daley mentioned, he does not regulate the telecommunications industry. He does not have a division or staff that focuses solely on automatic dialing devices. He does not have staff that focuses purely on understanding the underlying statute, the ADAD, that was passed by the Legislature that regulated automated dialing devices. He has laid out, both in his committee testimony and in meaning, after this bill was introduced, in committee amendments that this weakens the process. Senator Ashford has made the argument we should do this because it seems natural it goes under the A&D Commission. The A&D Commission, unfortunately, makes a counterargument. They don't have the capabilities to do this, they don't have the regulatory powers to do this, and they ultimately don't have the statutory authority to regulate the telecommunications industry the way the Public Service Commission does. They have made those arguments. So while it may seem logical to us, because something falls in a very similar issue area, that it should be overseen or regulated by a certain entity, that's not always the case and we know that as legislators. We deal with it all the time in the bills we introduce when we think a bill that involves municipalities ends up going to another committee that doesn't involve municipalities, or we deal with a bill that deals with tax policy and it goes to the Agriculture Committee. This happens all the time, colleagues, where we think an issue area falls under an agency or under a broad parameter and it goes or it's regulated or directed somewhere else. We see that in our day-to-day lives in this Legislature in regard to the rules that govern us. LB720 that created the regulatory framework to regulate robocalls of all nature did so to ensure that there wouldn't be a piecemeal approach of who regulates what kind of robocall in the future. That is what we're also doing under LB418 in the amendments. We start the process of "piecemealing" who may or may not regulate these robocalls. And when you have piecemeal regulations, we know there are loopholes. We know there are ways to get around them and that's what we're starting to do under LB418. We start to take a good regulatory framework that was created by a Legislature and a Governor in a cooperative manner and we start to turn that into Swiss cheese. We cut loopholes for entities who do education calls but they're not advocacy but they're education calls, and those education calls may involve political candidates. They may involve elected officials. They may involve legislative issues in front of us today, but they don't have to report to the Public Service Commission and they don't have to report to NADC. That, my friends, is one loophole. The other, as Senator Harr mentioned, is the issue of an entity that may wish to do polling. Someone may wish to do a poll in our new colleague Senator Seiler's district. If we pass this legislation, we may never know who even did that poll because they don't have to report who they are, they don't have to report who they're using, they don't have to report the script or anything else that they may be doing in regard to doing this poll in Senator Seiler's district. Colleagues, this affects not just us in this body. It doesn't just affect people who run for public office. Obviously, the underlying people this affects are Nebraska consumers. Senator Howard mentioned it before. People in Nebraska do not want these calls. They would rather see them banned instead of us deregulating them under LB418. Now I can appreciate one's perspective on whether or not government should or should not be regulating these calls. That's a debate we can

Floor Debate
January 20, 2012

have. But the reality is we have reasonable, thoughtful regulations that was created by this Legislature and by the Governor, and the Governor said they were thoughtful regulations. He didn't say they were overburdensome. And I've never met this Governor to come out and say he supports burdensome regulations. So that's another argument that has been used in support of this bill that can be thrown out the window. Colleagues, this is a debate that, one, I didn't anticipate it going eight hours, and it looks like it's going to go eight hours because I have some amendments that try to clarify things, that ultimately we need to discuss those. And I don't draw lines in the sand very often on issues, but the reality is this was never a good public policy in the beginning when it was introduced. You had committee testimony that raised a large number of questions. And ultimately, the introduction of this bill and the debate on the floor regarding this issue has been less than persuasive of why we need to change an existing structure that works. My friend Senator Nelson has not been able to provide one instance of someone who's filed a complaint of saying the process is burdensome and they didn't know what they were doing and, thus, they got fined for it. He's been unable to provide a complaint or a reason that a company has been denied a permit to do this under the Public Service Commission. Colleagues, those are very serious pieces of evidence that you should weigh if you're going to make massive change in regards to who governs or who oversees and regulates these specific devices in this industry. My good friend Senator Ashford shares a thought that most people kind of agreed with: This should go under one agency; if we should do anything, this should go under one agency. No one has been able to provide the reason of why this shouldn't go under the Public Service Commission. The reason it went there in the first place was to ensure it wasn't unconstitutional. We can't separate political robocalls from any other kind of political robocalls, and that's what we're doing under LB418. So to meet Senator Ashford's concerns of wanting to see a compromise, I have amendments that will make that compromise, that puts it all into the Public Service Commission, that ensures we have transparency over these issues. [LB418]

SENATOR GLOOR: One minute. [LB418]

SENATOR MELLO: That ensures that those who do these calls that Nebraska consumers despise, that there is enforcement mechanisms in place that doesn't just hold the entity, the campaign, or the political candidate accountable. It holds the business who ultimately implements the will of the candidate or the committee. It provides the paper trail, colleagues, to be able to enforce our rules and regulations. When there's no script, when there's no way to enforce who these companies are who are doing it, there is no enforcement. And I could appreciate the disagreement that me and Senator Nelson has on this issue. He's a good man who tries to do his best. We just simply, pure and simple, disagree in regards to whether or not political robocalls should be regulated. I think they should be under our current law because the current law works and there's been no complaints. I can appreciate those who disagree with that. [LB418]

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

Floor Debate
January 20, 2012

SENATOR GLOOR: Time, Senator. [LB418]

SENATOR MELLO: Thank you, Mr. President. [LB418]

SENATOR GLOOR: Thank you, Senator Mello. Mr. Clerk, items for the record? [LB418]

CLERK: Thank you, Mr. President. Your Committee on Judiciary reports LB536 to General File with committee amendments attached. Senator Mello has amendments to be printed to LB418 and Senator Burke Harr to LB418. Name adds: Senator Bloomfield to LB826; Senators Hansen, Wallman, Carlson, Schilz, Campbell, and Christensen to LB998. A reminder: Reference Committee will meet upon adjournment. (Legislative Journal pages 310-317.) [LB536 LB418 LB826 LB998]

And a priority motion: Speaker Flood would move to adjourn the body until Monday morning, January 23, at 10:00 a.m.

SENATOR GLOOR: Members, you've heard the motion to adjourn until Monday, January 23. All those in favor say aye. Those opposed say nay. We stand adjourned.