

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

Floor Debate
January 18, 2012

[LB418 LB836 LB1040 LB1041 LB1042 LB1043 LB1044 LB1045 LB1046 LB1047
LB1048 LB1049 LB1050 LB1051 LB1052 LB1053 LB1054 LB1055 LB1056 LB1057
LB1058 LB1059 LB1060 LB1061 LB1062 LB1063 LB1064 LB1065 LB1066 LB1067
LB1068 LB1069 LB1070 LB1071 LB1072 LB1073 LB1074 LB1075 LB1076 LB1077
LB1078 LB1079 LB1080 LB1081 LB1082 LB1083 LB1084 LB1085 LB1086 LB1087
LB1088 LB1089 LB1090 LB1091 LB1092 LB1093 LB1094 LB1095 LB1096 LB1097
LR377CA]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the ninth day of the One Hundred Second Legislature, Second Session. Our chaplain for today is Senator Carlson. Would you all please rise.

SENATOR CARLSON: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Carlson. I now call to order the ninth 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: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK I have notice of hearings from the Government, Military and Veterans Affairs, and the Health and Human Services Committee, signed by the respective Chairs. Also a communication from the Secretary of State's Office regarding the oath of office of Senator Seiler. Mr. President, an announcement: Committee on Committees will meet this morning at 10:15; Committee on Committees at 10:15 this morning in Room 2022. That's all that I have, Mr. President. (Legislative Journal pages 251-252.)

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now proceed to introduction of new bills.

CLERK: (Read LB1040-1044 by title for the first time.) That's all that I have at this time, Mr. President. (Legislative Journal page 253.) [LB1040 LB1041 LB1042 LB1043 LB1044]

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

Floor Debate
January 18, 2012

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

CLERK: Mr. President, LB418, a bill by Senator Nelson. (Read title.) [LB418]

PRESIDENT SHEEHY: (Gavel) [LB418]

CLERK: The bill was introduced on January 13 last year, referred to Transportation, advanced to General File. Committee amendments were offered and explained yesterday. Senator Nelson presented his bill, Mr. President. I do have amendments to the committee amendments. (AM643, Legislative Journal page 801, First Session, 2011.) [LB418]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Nelson, would you like to give us a brief summary of LB418? [LB418]

SENATOR NELSON: Thank you, Mr. President and members of the body. Very briefly, LB418 refers to robocalls or communications, automatic communications, of that nature that are presently under the jurisdiction of two agencies--the Public Service Commission and the NADC. I see no need for that. And because of First Amendment issues and things of that sort, I'm proposing here in LB418 that that jurisdiction, which the Public Service Commission has, be removed and that it be held solely by the NADC and under their rules and enforcement procedures. So that's what we're talking about today, the reasons for that and the, I think, good rationale for it. And I will ask for support of LB418 and the amendment. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Fischer, you're recognized to give us a brief summary of AM643 from the Transportation and Telecommunications Committee. [LB418]

SENATOR FISCHER: Thank you, Mr. President and members of the body. As I said yesterday, the committee amendment was just to clarify the introducer's intent on the bill. We felt the small word change in the amendment did help relay what Senator Nelson was trying to do with the bill. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Mr. Clerk, there's an amendment to the committee amendment. [LB418]

CLERK: Mr. President, Senator Mello would move to amend the committee amendments with AM1705. (Legislative Journal pages 253-255.) [LB418]

PRESIDENT SHEEHY: Senator Mello, you're recognized to open your amendment to committee amendment, AM1705. [LB418]

Floor Debate
January 18, 2012

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. In continuing the conversation we started yesterday on LB418, a few colleagues approached me at the end of the day to see, one, some of the points of contention I have with LB418. Colleagues asked isn't there a way to do what Senator Nelson wants to do of streamlining the process so that you would only have to go through one state agency to deal with using automated calls. And so my office worked with Bill Drafters, and what you have in front of you is AM1705, which AM1705 accomplishes what is Senator Nelson's underlying issue with why he put forward LB418, was a way to streamline the process, knowing that it's confusing for entities to have to go through two separate agencies, so to speak, to deal with this one issue. And so what AM1705 is, is a very simple amendment that takes the two components that are located in the Nebraska Accountability and Disclosure Commission and moves those two aspects into the Public Service Commission. Those two aspects, I should remind you, is the timing in which these calls cannot...the timing which these calls are permitted, which is 9:00 a.m. to 8:00 p.m., as well as...ultimately it doesn't just deal, I should say, with just the calling, the time frame, so to speak, because it also deals with an issue that, while I'm thinking it through in my head, I may want to revisit myself on another day which deals with the paid for by, the disclosure aspect. It moves the disclosure components that are currently in the Accountability and Disclosure Commission, it moves those also over to the Public Service Commission. I had some people ask and raise an issue which currently kind of the way it's drafted under the Accountability and Disclosure Commission law says that you have to do the paid for by or the disclosure at the...essentially people do it at the end of the call instead of at the beginning of the call, which leads for a significant loophole, as I see it, in our current statute. Where right now you could do, under Senator Nelson's bill if we adopt it, we would be able to do an automated call, and at the end of the call leave a blank period of time, 30 seconds, 45 seconds and then say paid for by blank, paid for by X committee, which in my view is a significant loophole that we have currently in the law without putting that paid for disclosure by at the beginning of the call. So AM1705 looks to remedy that issue. But more importantly it seeks to remedy what Senator Nelson sees as a significant hurdle or burden on anyone who wants to utilize these services. I want to bring up two points. One, my good friend and colleague, Senator Lautenbaugh, yesterday argued the need for LB418 was a freedom of speech right, a First Amendment right that people have to be able to put out information and not be held accountable, essentially, for what they put out because it's political speech. I'd remind colleagues--and I have this copy and I'll make a copy and get it put out to everyone's desks--when LB720 was passed, it was passed unanimously--45 to 0 with 1 senator present and not voting. Both Senator Lautenbaugh and Senator Nelson both voted for this bill. That ultimately, at the crux of their argument, is why they want to repeal the bill is it's a freedom of speech issue. I have to assume when the conversation was had on the floor when LB720 was created and debated initially that the whole issue of freedom of speech and regulating political speech was debated, and it was. Actually I'd like to read through a little bit of the transcripts of then

Floor Debate
January 18, 2012

State Senator DiAnna Schimek, who represented Legislative District 27 who put forward LB720. When this Legislature passed that bill, Senator Schimek said, quote unquote: And as you may all recall, last year there was an Attorney General's Opinion issued that said, well, you know, this particular bill, and that was LB198 last year, might be constitutional or it might not, because you have the free speech argument as compared to...constitutional, or it might not because you have the free speech argument compared to residential privacy argument, and nobody knows what the courts would say on balancing this, end quote. The point is this, that issue was raised when this Legislature passed the initial bill. And those who are now trying to make the argument against it did not make that argument on the floor and did not make the argument when they passed to vote this bill originally. Ultimately in the three years since this has been state law, there has been no one who challenged this constitutionally, either the State Supreme Court or any court, for that matter. So I'd like to remind my friends in the body here, as our good friend and my good friend and colleague, Senator Lautenbaugh, likes to use this argument: We like to use arguments when it fits our purpose. I think using a free speech argument in this case is trying to use an argument to fit a purpose where those who are making the argument wholeheartedly supported it when they voted for it unanimously in 2008. And that free speech argument was debated on the floor. It was widely accepted that this was not an infringement on free speech. Now the underlying issue still at the heart of AM1705 deals with I'm trying to provide assistance of what Senator Nelson said his underlying purpose and focus of his bill was. Two agencies shouldn't regulate this process. It's confusing and it's burdensome. AM1705 streamlines that. It solves the problem that Senator Nelson says he believes exists. It moves everything to the Public Service Commission, which keeps intact our legal regulatory framework to provide consumer protection and oversight over automated dialing and automated calls--pure and simple. An issue that was raised also yesterday, which I hope...and I might on the mike ask a few questions of those who are a little bit more familiar with the telecommunications infrastructure in this state. Without making changes to LB418, by removing the regulatory body, the PSC who has oversight over our telecommunications infrastructure, we would allow businesses located outside of Nebraska with no regulatory oversight over what they do with these automated calls in Nebraska, they could single-handedly send out 500,000 automated calls to a portion of the state. Let's pick northeast Nebraska for an example. They could do an automated dial to 500,000 individual phone numbers in northeast Nebraska and no one would know who was making the call because the Public Service Commission ultimately would be taken out of the regulatory framework to know who is the company doing this work, what is the script that they're using, and what purpose are they doing it for. You could have one community, one whole community, but one whole part of the state of Nebraska lose its telecommunication infrastructure. It could be shut down because no one knew a company located in California or New York was doing an automated dial program to every phone number in northeast Nebraska, thus shutting down not just the telecommunications infrastructure, possibly being able to shut down the 911 infrastructure. These are potentially the unintended consequences that come when you

Floor Debate
January 18, 2012

remove thoughtful regulations that have a consumer protection focus that does not impede the business to be able to do the work. There are regulations that do impede businesses being able to compete or be competitive. We will have those conversations and debate in this session as well. But being able to provide consumers a reasonable consumer protection over knowing what is the company that's providing this service, understanding that if the company does provide this service, what are they providing it for. And they have to follow guidelines that are reasonable for private residential Nebraskans, which was the full intent of LB720. Colleagues, I hope that you take AM1705 as a legitimate, thoughtful solution to what Senator Nelson said he thought the problem was. There's nothing wrong with our existing process, in my mind. But his argument to be able to say that you have to go to two agencies, I will give him credit for that argument. We should try to streamline it and go to one agency. The Nebraska Accountability and Disclosure Commission has nowhere near the authority, nowhere near the capacity, and nowhere near the enforcement mechanisms in place to provide consumer protection to Nebraskans. That is not their job. As a separate branch of government, the Public Service Commission, an elected board who sets policies, they provide the consumer protections, they oversee our telecommunications industry and our telecommunications infrastructure in this state. It only seems fitting, it only seems logical to move anything that would result in regulating any autodialing or telecommunications autodialing devices to the Public Service Commission instead of an entity that has no authority, no ability, and no general knowledge of how the telecommunications industry works. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Mello. You have heard the opening to AM1705, the amendment to committee amendment. (Visitors introduced.) Continuing with floor discussion on AM1705, members requesting to speak: Senator Nelson, followed by Senator Burke Harr and Senator Louden. Senator Nelson. [LB418]

SENATOR NELSON: Thank you, Mr. President and members of the body. I will address my opposition to Senator Mello's amendment here in just a moment. But I first would like to correct the record and explain something I said yesterday in that I stated Mr. Frank Daley testified for LB418, and that was not correct. And the misstep was that originally the statement, committee statement, that came out showed him as one of the proponents, and then when he saw that, he asked them to correct that. So there was a corrected copy that came out that showed him that he was neutral testimony, which is correct. And that never surfaced in my file I guess, so I apologize for that. And I also apologize to Mr. Daley for categorizing him as a proponent when it was neutral testimony. But I would like at this time, as part of his neutral testimony from the hearing that was held before the Transportation Committee, here are the things that Mr. Daley, as executive director of the NADC, said, and I'm paraphrasing of course. But we need to be aware of the following changes. He said that the Public Service Commission's jurisdiction would go away and the Accountability Commission would still have authority to regulate the disclaimer, which is the announcement at the beginning. He further

Floor Debate
January 18, 2012

added that Accountability Commission will not register machines or obtain scripts prior to when robocalls are sent out. And that's exactly one of the things that I'm driving at here. And the reason the jurisdiction should be removed from the Public Service Commission is that they have the authority to do that and there's no place for that when we're talking about political dialogue and political discussion and information. Finally, he said LB418 treats political speech differently than other speech. And political robocalls are treated differently from other robocalls and, therefore, regulation is based on content. However, LB418 would result in less restriction of speech and, therefore, may be easier to pass constitutional muster. And I think those remarks and that testimony is well taken, because I remember when Senator Schimek here...and we had a long discussion and debate on the floor, and, yes, a number of us voted for the bill, but it was after some compromises. And that doesn't mean that we necessarily agreed that there was a violation of free speech when it comes to the area of political dialogue. As I said, I'm not in support of the amendment and I appreciate Senator Mello for bringing this and for moving it in the other direction. But I just think that's wrong because let's talk about the Public Service Commission. It's there primarily to regulate commerce and to regulate solicitations and communications all having to do with consumers. And that's well and good and we need to do that. But those things do not involve political speech and political content. And, therefore, the place that we should be then is with the Accountability Commission because we're dealing with political dialogue, which is their area of expertise. I just...I don't see any point in leaving it with the Public Service Commission because we still have the same problems with that as far as First Amendment rights. And just because nobody has sued... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR NELSON: ...or brought an issue of this, as to whether that can be done, doesn't mean that it's correct and that it should be there. The statute for the...placing it in the Public Service Commission has a number of exemptions and which we can understand, in other words: political subdivisions that are disseminating information to their employees; employers doing the same thing with their employees; school districts. These are all exceptions there or rather exemptions, as I should say, and therefore that seemed the logical place to put in here an exemption that...under LB418 that they would not be included in the jurisdiction of the Public Service Commission. I think that is all that I will say at this time and I will come back again. [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR NELSON: Thank you. [LB418]

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

SENATOR HARR: Thank you very much, Mr. President. So it seems like we're now

Floor Debate
January 18, 2012

back down to this is a First Amendment issue. Okay. Well, then let's talk about the First Amendment and let's talk about the case law around the First Amendment and whether this is constitutional or nonconstitutional. That's a pretty serious argument. I have not heard one case, I have not heard one fact scenario where we say this is a violation of the First Amendment. We just throw it out there. I'll throw it out there. It's a violation of the 28th Amendment. All right. Great. It's out there. It's a violation of the 102nd Amendment of the constitution. When you bring an argument, bring an argument. And what I mean by that is give me case law, give me an introduction, reasoning, analysis of the law, and a conclusion. Don't just bring a conclusion because I can't figure out what you're saying then, other than your conclusion is it's a violation, but I need to know more than that. This bill is a very good...let me restate this. The underlying law around this bill that we're trying to amend is a very good law. It's a sunshine law. It holds people accountable. It doesn't say you can't talk. It says if you're going to talk, you better be careful about what you say because we're watching you. And that's not a bad thing. In this day and age, where everyone says, well, I read that somewhere or I heard that somewhere, we need to go back and say, okay, what is basis in fact for this statement? You can't just throw out: Senator John Nelson is trying to violate the First Amendment or someone else is trying to throw out, violate the First Amendment. Well, now we have a script under the law. We can look at that script and say...and go to a third party. Senator Lautenbaugh mentioned it the other day, Politico has one. It holds people accountable and says: You know what? Senator Nelson isn't trying to violate the First Amendment. Here's what the First Amendment is. And then they give a reasoning behind it. This bill sets reasonable standards with Senator Mello's amendment, it sets reasonable standards. The underlying bill doesn't violate the First Amendment, but what this does is sets reasonable standards and keeps it under the Public Service Commission. Now I don't know, maybe I'm just a rugged individualist, but when I want to say something, the fact that I have to file with two different offices, if that's enough to make me not say something I probably shouldn't be saying it in the first place. These are sophisticated parties that do robocalls, ladies and gentlemen. These aren't average Joes just deciding, you know what, I'm going to do a robocall. No, these are sophisticated people with an intent, and often that intent is not...well, let me restate that, sometimes that intent can be nefarious. And so I think it's important when people are trying to mislead, intentionally mislead, we hold them accountable. Now when this...again, the underlying bill was...or law was originally passed, it was a compromise bill, and that meant each side gave a little. And now here we are three years later and we decide, you know what, I don't like the compromise anymore, I didn't get everything I wanted. Well, now you're going back against the terms of the compromise. And it would be one thing if it were a senator who wasn't in there at the time and didn't vote for it. But this is a senator who agreed to the compromise, and now he wants to change the rules, two, three years later. If that's it, we're going to be constantly relitigating every single bill, and that's a waste of our time; it's a waste of the taxpayer's money. When there's a compromise, those who vote on a compromise must honor that compromise. If it's later determined to be unconstitutional then, fine, let that be determined unconstitutional. But to say it's

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

Floor Debate
January 18, 2012

unconstitutional and then not give a reason or any case law that says it's unconstitutional, that's not what we should be doing as a body and that's not a proper use of our time. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: Thank you. The purpose of this bill, ladies and gentlemen, of the underlying bill, of Senator Mello's amendment, is to make sure that people when they speak are held accountable so that we avoid dirty politics. I have no problem with disagreements. That's fine. That happens all the time. But that disagreement has to be based on fact. And then at the end of the day, let the voters decide. But when you mislead, intentionally mislead, somebody else with the intent to ruin someone else's career or who they are or what they are or what they believe in, that's wrong and you need to be held accountable. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Harr. Members requesting to speak on AM1705 are Senator Dubas, followed by Senator Mello, Senator Schumacher, Senator Lathrop. Senator Dubas. [LB418]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor. Good morning, colleagues. I rise in support of AM1705. I think it's a good approach to this particular piece of legislation. The underlying...the statutes that are already in place have not been in place a long time, but I think again they were a compromise. They were...that came about after a great deal of work and effort. I think if you ask the average person on the street what they thought about robocalls, you wouldn't get very many people who say they like them. In fact, I've had many people say we should outlaw them, but we can't and really we probably shouldn't. I think the question we're looking at today is it's a philosophical question in what it is we believe as far as free speech. Free speech is one of our most basic rights. But yet I don't have the right to yell fire in the middle of a crowded room, and I don't think a robocall should have the right to come into my home or anyone's home in the middle of the night. Yes, they have the right to that free speech, but there should be some parameters, there should be some boundaries. We shouldn't be restrictive on making it more difficult, but there should be some guidelines for what has to be done. And I think that the statute that's in place puts some very clear guidelines in place. So we walk a fine line when we attempt to place any kind of restrictions on free speech. But, again, I do believe that our citizens do want some kind of parameters or boundaries on that speech, especially when it intrudes into the privacy of their home. And a phone is that intrusion, and especially if it's going to come in the middle of the night, during someone's supper. I mean, TV, radio, you can shut them off. But a telephone, that's a different instrument and it does come into the privacy of our home. I think having a script submitted by all types of robocalls ensures that the calls...I think it protects those who are making the calls, as well as those who are receiving the calls. Currently now, citizens can call the Public Service Commission with questions

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

Floor Debate
January 18, 2012

after they've received those calls. And because that script is on file, the Public Service Commission can answer those questions. I have visited with the Public Service Commission. In fact, I raised this question during the hearing last year. Unfortunately I didn't follow through to make sure that I had the answer to it. But they have, the Public Service Commission has received phone calls, a lot of them with just those basic types of questions. You know, who made these calls? This is what I heard. Is this what's in the script? So as Senator Burke Harr stated, this is that sunshine law. This is that consumer protection. The Public Service Commission, just like Accountability and Disclosure, is not out there to play gotcha with any of these people. I had some additional conversations with the Public Service Commission over the last several days. They work really hard to help these different entities understand what the law is. They'll hold informal workshops with them. They outline what it is that they have to do. And, again, as Senator Harr said, most of these people are very sophisticated and they understand what the rules are and how they have to make things work. I don't think the existing statutes are onerous by any stretch of the imagination. We all have to jump through hoops and we don't like to have to jump through those hoops but oftentimes they're in place for a very legitimate reason. Again, I think this existing statute has some very legitimate reasons for being in place. You know, the Public Service Commission has the ability to enforce the laws. There's only been one formal complaint filed since this statute was put in place. That was settled between the two parties so there were never any fines inflicted by the Public Service Commission. So I think what Senator Mello has done with his amendment... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR DUBAS: ...is try to address some of those concerns that have been raised about multiple jurisdictions and confusion. I think he's tried to address those in a very responsible manner. I do, again, believe that the Public Service Commission should be able to register these devices. Again, we're talking about sophisticated parties who are involved with this. These robocall devices don't even have to be located within the United States. They can be located anywhere in the world to be used. So I think our consumers deserve to have an agency that's looking out for their best interest. [LB418]

PRESIDENT SHEEHY: (Gavel) [LB418]

SENATOR DUBAS: Yes, we protect political speech, but our consumers deserve that same type of protection. So I think this amendment does what Senator Nelson is trying to do, but I think it does it in a little better fashion. And so I would encourage my colleagues to give this very careful consideration and support. Thank you. [LB418]

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

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I appreciate

Floor Debate
January 18, 2012

Senator Harr's focus on some of the underlying arguments that have been used in support of this bill in regards to this being a freedom of speech or a constitutional rights issue, where under the current law that was passed by this Legislature 45 to 0 and signed by Governor Heineman, this issue was discussed. And ultimately the underlying regulatory framework that was created and what Senator Dubas just walked us partially through was found to be constitutional in the eyes of this Legislature because it does not impede one's ability to exercise free political speech. There's been no...and Senator Harr alluded to it, provide case law where a regulatory body asks, before you do something or say something using telecommunications infrastructure, you provide who's going to help you execute that, the company, and provide a script of what you're going to say. It doesn't...they're not saying you can't say certain things. The Public Service Commission is not dictating what you can or cannot do. Literally all they're saying is, tell us who you're working with, give us the script that you're going to use, and the purpose that you're going to do this for. We're moving it and making it more efficient to say, all right, Accountability and Disclosure Commission says you can't make these calls after 8:00 p.m. and you have to put a paid for disclosure on it. None of that in any of the arguments or rationale behind LB418 that we've heard from any of the proponents infringes on free political speech. Not one person in Nebraska, their speech is not fringed upon by the current process. That was agreed upon by this Legislature and Governor Heineman when the original bill was passed. Now if we pass LB418 without my amendment, essentially what we're doing is were removing any and all investigatory power that the Public Service Commission has, as well as any of the registration power they have over the companies that are providing these services. We're moving that out of statute. We're taking that out of the process so that if we pass LB418, you as a political candidate or a committee or a business, all you have to do is provide a script to the Accountability and Disclosure Commission within a day after you do your call and that's all you got to do. That's it. We take a good, regulatory framework that protects consumers, that looks out for their best interest, that does not impede a business to conduct business in Nebraska. It purely means they have to register their company. Doesn't cost money to do that, just says who you're doing your business with and provide the information of what you're putting in front of consumers. By adopting LB418, we're scrapping all of that. We're completely eliminating that and we are opening up the door to unlimited automated calls from whoever. Senator Lautenbaugh has made the argument in the last three years I've been here in regards to wanting to crack down or to shine light on nameless, faceless independent committees, groups that are able to act in the shadows without people knowing who they are, who's funding them until after the fact. What we're doing in LB418 is using his same logic with independent committees and applying it to automated dialing calls, because if we adopt this bill you may never know who ultimately is doing this work. You will never know what the company who has been hired to do this work. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

Floor Debate
January 18, 2012

SENATOR MELLO: You may never know who ultimately has financed or funded these automated calls because they might not reach an Accountability and Disclosure threshold to even do them, which means you could legitimately have thousands and thousands of calls being made on behalf of hundreds and hundreds of groups. And no one would ever know who's financing them, who essentially is funding the groups, and who are the companies that are being used to do this potential work. Colleagues, this takes away the bright light of transparency in regards to not just our elections, but the thoughtful regulation of an activity that incorporates our telecommunications industry. Rarely do I always wholeheartedly agree with Senator Lautenbaugh, but his arguments on issues of shining light on what groups can do under our current Accountability and Disclosure laws applies to LB418. And that's why underlying bill LB720 passed... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

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

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

SENATOR SCHUMACHER: Thank you, Mr. President. Irrespective of the First Amendment and the political implications of this particular piece of legislation, it strikes me that under the present rule we at least have some involvement with the Public Service Commission. And I think there may be a reason why it's necessary to have the Public Service Commission involved in this procedure. Let's think about what's going on here irrespective of who's making the calls. We know there are facilities probably located on the coast which have a capacity to make thousands of phone calls simultaneously, huge computers funded by unlimited money that can just bark those things out at an enormous rate. And that's probably going to increase as political efforts have more and more unlimited funding and as that capacity to bark those calls out from either side exists. Those calls are directed at little, tiny Nebraska phone exchanges in western Nebraska. They, I think, have the capacity to take long-distance calls only in certain measures. They can't take 1,000 calls simultaneously to each of their customers even though somebody on the other end may be able to dial a thousand calls. I think those little phone companies probably don't have an E-911 service in-house. They probably sub that out, at least some of them I'm pretty sure do, sub that out to a central E-911 service. And they use those same long-distance trunks in order to get to that E-911. And before I can vote for this proposition, I'd certainly want some assurances that the capacity at our local phone companies is so great that they can swallow all those phone calls simultaneously without impairing the service to their local people who might want to get on the telephone and call out and for E-911 services. I think the fact that it's registered gives the Public Service Commission some idea of the volume of these things, whether the volume of these things are growing, whether there's need to rate regulate how many calls can be made into an exchange per second, whether to

Floor Debate
January 18, 2012

warn the local little phone company that it better double its capacity in election time so that it can get...take...swallow all these calls. I think that this is telecommunications and we have only a limited telecommunications infrastructure, particularly under our design in the state, which was...harkens from the 1920s and is kept in existence only by massive subsidies. So I would really, before I want to take authority and at least some information away from the Public Service Commission on how and when and who and how many, know that we have the capacity to swallow all the stuff that can be spit out from some massive server farm with an unlimited budget on the coast. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Schumacher. Members requesting to speak on AM1705, we have Senator Lathrop, followed by Senator Nelson, Senator Mello, and Senator Lautenbaugh. Senator Lathrop. [LB418]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I want to help the news media out this morning. I'm going to give them a headline if LB418 passes first round debate: Legislature gives approval to measure that would allow robocalls in the middle of the night; Legislature relaxes the requirements on political robocalls. Colleagues, this issue does not have to do with partisan politics. It's not a Republican or a Democratic issue. It is an issue regarding the integrity of campaigns. We have a system in place that was negotiated by Senator Schimek with the Governor before this became the law. And it has in place and we will give up four important protections if this measure passes. There is real enforcement in the Public Service Commission and that will be gone. Those who make robocalls will no longer be required to register their machines so they...think about that one. You can now make robocalls, if this bill passes, and no one can tell where they came from. You will no longer have to submit your transcript to the Public Service Commission. And you should know that the requirement that you make these calls between 8:00 in the morning and 9:00 at night will be gone. You can now make, if this passes, political robocalls in the middle of the night from a machine that's not registered, and there's no or very little enforcement after this is done. This is not about Republican politics or Democratic politics. It's about dirty tricks and whether we're going to open the door to what has happened that led to this measure in the first place. This is also not about political speech. I agree with Senator Lautenbaugh. Political speech should be protected at the highest order. We're not regulating content. We're not regulating content. We're keeping track of the dirty tricksters. This isn't about some confusion between two statutes. If you read them, anybody old enough to vote would not be confused by the two statutory processes. This is about opening the door to calls in the middle of the night. It's about opening the door to calls from unregistered machines so that we can't trace where the calls are coming from. And it's about relaxing the enforcement to the point where it is meaningless. This is a bad measure. And if you advance LB418, the headline tomorrow is going to be: The Legislature just opened the door to political calls in the middle of the night. That's what we're talking about here. We have in place a statutory process that has some

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

Floor Debate
January 18, 2012

enforcement. It has reasonable regulations on time. I don't think these calls ought to be coming past 9:00 and I think that we as policymakers can say that without interfering with political speech. But, you know, there's a little history here and there were calls in the middle of the night and they were attributed to somebody else's campaign. And if we can do that, if it's not against the law to send a call to somebody's home at 1:00 in the morning on a machine that's not registered and blame your opponent's campaign for it, we're headed in the wrong direction. And it's not the direction the people in this state want us to go. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR LATHROP: There is no reason for LB418. I'll support AM1705 as an improvement over LB418, but I think the whole thing ought to just be IPPed, in my judgment. Thank you. [LB418]

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

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to ask a question of Senator Lathrop, if he will yield. [LB418]

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

SENATOR NELSON: Senator Lathrop, what's your definition of "middle of the night"? [LB418]

SENATOR LATHROP: Well, I would say at this point it can't be after 9:00, so something after 9:00, but 11:00, 12:00, 1:00, anything before 6:00 probably. [LB418]

SENATOR NELSON: Well, thank you. But the present statute under NADC provides the same thing, that the Public Service Commission...such messages shall be disseminated only between the hours of 8:00 a.m. and 9:00 p.m. at the location of the person receiving the message. So what you're saying is absolutely wrong. They're not going to get messages in the middle of the night or they're going to be in violation of the NADC rules just as they would be of the Public Service Commission. [LB418]

SENATOR LATHROP: But all that assumes that we know who's doing it. [LB418]

SENATOR NELSON: Well, but we know. Let me read on. If you've taken a look at 49-1474.02 prior, "shall, immediately upon the request of the recipient of the message, disclose the name of the person making the expenditure." And if it goes through an employee...why, this is (2) of 49-1474.02 under the NADC which covers this automatically. We know who is making the call. If we don't know who is making the call, then we have enforcement rules here under statute 49 here. And if you take a look at

Floor Debate
January 18, 2012

that...I'll just read them: Commission--this is the NADC Commission--upon finding there's been a violation of the Accountability and Disclosure Act, may issue an order requiring the violator to do one or more of the following: Cease and desist; file any reports, statements, or information required; pay a civil penalty of not more than \$2,000 for each violation; pay the cost of the hearing. And it goes on. And there was a statement made yesterday that there's no enforcement under the NADC. Well, absolutely there is enforcement. I think that we have to...all I can say is that we're going in the wrong direction here. Again, I just want to emphasize...thank you, Senator Lathrop. I want to emphasize the point that the Public Service Commission is basically set up for solicitations. All of the statutes pretty much are talking about solicitations and business work and things like that. And I'm just going to assume that in 2008 there, as part of the compromise then that was left alone. And that it just added to that that communications by automatic transmission of this sort of a political nature would also be covered and regulated in both spots. We are talking here about a subject that raises a lot of consternation on the part of the public. And I will grant you that, that nobody wants to get robocalls. And certainly if they're getting robocalls of solicitations and things of that sort, then that's the proper place under the Public Service Commission to handle that. But we're not talking about consumers here when I'm talking about LB418. We are talking about the public. And if someone wants to make a robocall, yes, they may not register their machine under the bill that I have here, but there are ways of finding out who has made that robocall if they have done... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR NELSON: ...something wrong. And, therefore, if we've got the enforcement there and we can protect political speech to a greater extent and not have to be involved in a lawsuit about the constitutionality of what's in the Public Service Commission there where they have to file a script and somebody can step up and say, you better not put this out over the phone, then we've got regulation that is constitutionally unacceptable. So let me repeat, I am not in support of Senator Mello's bill (sic). It's well-intentioned. I just don't see that we're improving anything by going in that direction. I think the direction we should go is to eliminate their responsibilities there as an exemption and place it in the power, as it should be, of the NADC for their regulation because that's their field of expertise. [LB418]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Nelson. Members requesting to speak on AM1705, Senator Mello, followed by Senator Lautenbaugh. Senator Mello, this is your third time. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Would Senator Nelson yield to a question? [LB418]

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

Floor Debate
January 18, 2012

SENATOR NELSON: Yes. [LB418]

SENATOR MELLO: Senator Nelson, hearing kind of your dialogue between Senator Lathrop, it made me consider kind of the underlying...some of the underlying arguments of this whole issue, which the question I would ask you is, how would you enforce LB418 if you don't know who did the robocall in the first place because a company was never registered with NADC as well as the committee who maybe did it never registered with NADC because they didn't meet the reporting threshold to even report? So how would you enforce that if you had no idea the company involved, the committee involved, or even any of the entities remotely attached to those involved? [LB418]

SENATOR NELSON: The NAD, Senator Mello, statute provides that at the beginning of the message, the person sending the robocall will state on whose behalf the expenditure was made. [LB418]

SENATOR MELLO: So, Senator Nelson, I will give you a hypothetical example for conversation purposes. "People Who Don't Like Dogs" send a message. Who are "People Who Don't Like Dogs" if they do not have to file any reporting requirements with NADC and they don't have to file a company's name of who they're doing their calls with? How does NADC enforce something against them even though they know a call was made on behalf of "People Who Don't Like Dogs"? [LB418]

SENATOR NELSON: Well, the best kind of enforcement that I can say is for the recipient of the call just to hang up if they don't like the message there if it's a matter of political content. If the person or the business or whatever has made the call and they have not complied with the NADC rules here, then I am sure through our advanced system of technology we can trace the call and find out where it was made from. [LB418]

SENATOR MELLO: Thank you, Senator Nelson, for that dialogue. Colleagues, unfortunately I don't buy that argument that maybe NADC will be able to find out somehow who is doing this activity. There is no enforcement mechanism in LB418 to identify the company involved in doing this activity, the entity who's doing the activity, because of our Accountability and Disclosure laws. If that's the case, if you spend a dollar in this state or a penny on any political speech, under the same arguments we've heard over the last three years of why we need to change our laws, in theory everyone should report everything then because, Senator Nelson alluded to, you can't find out and enforce something against someone you don't know who's doing it. Under the current law, we know who the companies who are doing this work, we know the scripts that they're using and the purpose they're doing it for because they have to do it proactively. They have to go before they do it and provide a script. Also, they have to say who's paying for this call in advance at the beginning of an automated call. We have

Floor Debate
January 18, 2012

a very proactive process to ensure that Nebraskans know that there's appropriate oversight regulation and consumer protection against companies and entities that want to do this. Senator Lathrop's point was exactly right, and unfortunately those who disagree with it are trying to muddy the waters. Robocalls can be made at 3:00 a.m. if we pass LB418. I'll tell you how it can be made. Because Senator Nelson just said if you do that, if you hire a company to make a robocall and harass voters at 3:00 a.m., there's no way to find out who does it. There's no way under Accountability and Disclosure law and there's no way under PSC because we're removing them from this bill. That is how you do robocalls at 3:00 a.m. That is what we're doing under LB418. The law says you can't do it, but there's no enforcement mechanism on it. There's no enforcement mechanism on it if you don't know the company involved and the committee involved. "People Who Hate Dogs" could send calls to all of us in this body and we would never know who they are. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: We would never know the company they used. The reason why? Because they wouldn't have to file with Accountability and Disclosure Commission. That does not happen under LB418. My amendment tries to ensure that the regulatory process we have now, which has worked in the three years it's been in law, we consolidate anything in NADC and move it over to the Public Service Commission. Why? Because they have the regulatory oversight over the telecommunications industry and they have the ability to do the investigations and fine those who are breaking the law. NADC does not have that power and the ability besides a \$25-day late fee or fine that do on most fines in our state. Thank you, Mr. President. [LB418]

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

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. I am going to support AM1705 and here is why. It seems to me that this amendment does what Senator Nelson stated he wanted to do, and that is to combine the enforcement of robocalls in one agency. This amendment, however, retains the robust enforcement of robocalls with the PSC. As has been stated here before and as I said yesterday, the PSC has the experience, it has the enforcement infrastructure, and the means to effectively enforce the current law. This, it seems to me, is where the administration of regulation of robocalls ought to be. It ought to be where we have in place already an agency with a robust enforcement capability. This legislation ought not to be messing with and messing up legislation that had overwhelming support in this body when it was originally passed. Someone just passed out the vote roster on that bill and no one voted against it. There was only one present and not voting. That's overwhelming support. So we ought not to be messing with legislation that this Legislature overwhelmingly supported when we originally passed it. It seems to me that if we're going to do something like that, we have to have a compelling public purpose for doing so, and I

Floor Debate
January 18, 2012

have not heard so...anyone make that argument. If we have to have LB418, then I see no reason why we would want to transfer the administration of this important regulatory function to an agency that would have difficulty overseeing the effective enforcement of the law. What is wrong with placing enforcement with the agency that has the experience in this area? It seems to me that nothing is wrong with that. So if the public purpose is to consolidate enforcement in a single agency, and I believe that's what Senator Nelson said yesterday in response to a question I posed to him about that, that it was primarily an interest in bringing together enforcement functions in one agency rather than having it split between two. If the public purpose is that, consolidation, and perhaps streamlining inefficiency, then why not put the enforcement where it can be effectively enforced? Put it where it ought to be. And I think that AM1705 does that. So I'm going to urge you to support this amendment. It does not in any way change the essential purpose of LB418. It seems to me that it is entirely consistent with the stated purposes of that proposal. Thank you, Mr. President. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Avery. Members requesting to speak on AM1705, we have Senator Lathrop, followed by Senator Price and Senator Lautenbaugh. Senator Lathrop. [LB418]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I just want to clarify something. Right now if you make a robocall, one of these political robocalls, you're regulated by the time, the manner, not the content but the time would be regulated by the Public Service Commission. What we would do, and the reason this can create mischief, particularly in this time of politics, is that all of the regulation that will be left in LB418, all that will be left is regulating those who are subject to a report of the Accountability and Disclosure. All right? Not everybody has to. So let me give you a hypothetical that I don't think is a stretch. Somebody is running in a legislative race, and an individual on the other side, somebody supporting the opponent, hires a robocall company and gives them \$200 to robocall an entire legislative district. And they say, at 2:00 in the morning, this is the other guy's campaign. And they do it over and over and over and over. Right? You can have several people make \$200 expenditures to do that, misidentify themselves and they're not subject to any regulation. Okay. So in order to be regulated going forward if LB418 passes in any respect, it has to be an expenditure that would trigger the requirement that you report to Accountability and Disclosure, and not every expenditure is. And a \$200 expenditure to robocall somebody's district would not be, which means it is effectively...not effectively, it is literally unregulated. That's not the direction people want us to go in. As Senator Avery indicated, the legislative process that we have in place was passed by this Legislature just a few years ago. It passed nearly unanimously, and there's no compelling reason to change. Now Senator Nelson, when he introduced LB418, told us there was some confusion. I think if you read the two sections, the Accountability and Disclosure and the Public Service Commission, you're not going to be confused. This isn't about confusion. It's going to open the door to dirty tricks by people who will be unaccountable from a machine no one can identify, and

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

Floor Debate
January 18, 2012

that's not what we want. And I can tell you it isn't an R or a D issue; it's are we going to open the door to some dirty tricks or not? And I stand against that stuff. I haven't heard one example of anyone who has been limited in any respect with their effort to robocall a political message into the state of Nebraska. Have we heard of some harm that we're trying to remedy with LB418? No, other than Senator Nelson represented that there might be some confusion, and I haven't heard an example of anyone who's tried to robocall that's been confused by the two statutory schemes. We are opening the door to calls in the middle of the night that will be completely unregulated by those who manage to get below, in expenditures, the requirements of Accountability and Disclosure. And that is the wrong direction to go in, colleagues. It's the wrong direction to go in and you must consider this, that these calls that will go unregulated might be used against you. They're not going to get me, I'm term limited. They're going to get you and they're going to come in the middle of the night by somebody who doesn't have to file a report... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR LATHROP: ...and they can say that it came from you, from a machine no one can identify. Now I appeal to your sense of fairness, your sense of the way and the direction we want to go with the people of the state of Nebraska in communicating political ideas. This is not the direction to go in. The regulations that we have in place were passed by this Legislature nearly unanimously, they are reasonable, and they do not affect content. They do not affect content. I would suggest that you support AM1705; in the absence of that, that you oppose LB418. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Mr. Clerk, items for the record and new bills for introduction. [LB418]

CLERK: Mr. President, thank you. An announcement, first of all: Committees on Committees will meet now in Room 2022, Committee on Committees in Room 2022. I do have hearing notices, Mr. President, from Judiciary, from Appropriations Committee, Natural Resources Committee, and Revenue Committee, all signed by the respective Chairs. New bills. (Read LB1045-1086 by title for the first time.) That's all that I have at this time, Mr. President. (Legislative Journal pages 255-264.) [LB1045 LB1046 LB1047 LB1048 LB1049 LB1050 LB1051 LB1052 LB1053 LB1054 LB1055 LB1056 LB1057 LB1058 LB1059 LB1060 LB1061 LB1062 LB1063 LB1064 LB1065 LB1066 LB1067 LB1068 LB1069 LB1070 LB1071 LB1072 LB1073 LB1074 LB1075 LB1076 LB1077 LB1078 LB1079 LB1080 LB1081 LB1082 LB1083 LB1084 LB1085 LB1086]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will return to floor discussion of AM1705. Members requesting to speak, Senator Price, followed by Senator Burke Harr, Senator Carlson, Senator Lautenbaugh, Senator Council. Senator Price. [LB418]

Floor Debate
January 18, 2012

SENATOR PRICE: Thank you, Mr. President, members of the body. Good morning. In sitting here and listening to the debate, I think we can all agree that sometimes these robocalls are something to be endured. We don't like them, generally speaking, unless we're the ones sending them out. We don't like receiving lots of them. We screen our phones. We have our answering machines try to answer for us. But in listening to the debate, I had to think this out in a linear and logical process. Somebody files with some agency to send out a robocall. The robocall is made. Somebody doesn't like it. They go ahead and try to find out who did it, who was responsible for it. At that point in time perhaps some punishment is meted out. The question I have, did this stop the robocall? No. It's a horse-and-a-cart thing. The robocall has already occurred. The punishment part and the finding out seems to me, how can you go and perhaps seek redress or how you go about getting them to stop doing it? But it didn't stop the initial robocall. Whether they file with one agency or file with another or didn't file at all, there's no burden that I understand on the part of robocalling companies and entities to seek a permit from the individual asking for the robocall. They take your script, they take your money, and it's on the way. So again, in a logical progression, if the argument is a robocall will come at an inappropriate time or have inappropriate or nonfactual information that you want to take issue with, that is then after it's already happened. Secondly, can we honestly say, are there members in this body who can honestly say that the NADC is a toothless entity? Are they so incapable in performing the duties they have prescribed to them now and an inability through statutory language to facilitate their mission? I don't think so. And, third, no ability to identify. I won't say that all phones are digital. I will not say that all phones switches are digital. I'd like to think they are. I'd like to think that in the high 99 percent they are. And that if you're going to do a forensic search, you're going to find out the originator, you're going to find information. I believe the courts are very, very capable in issuing their instruments and asking for...and putting out court orders for people to comply. I think that's very possible. The point is that I want to say that in this debate I haven't heard where a robocall is stopped before it is done. I have heard that we are addressing how do we go after people we don't agree with what they said, or if in fact they did something wrong how do we go after that and take care of that? It didn't stop the robocall. Senator Nelson's bills says... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR PRICE: ...and what he wants to do--thank you--to bring everything into one agency. Senator Mello says, hey, that's a good idea, it should be in one agency. Now we're trying to say which one should be...which one should house it. But to sit and...or stand and speak and say that the NADC is ineffectual and toothless, I find that difficult. I will be listening to debate to figure out exactly where we're going with this. With that, I appreciate your time. Thank you, Mr. President. [LB418]

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

Floor Debate
January 18, 2012

SENATOR HARR: Thank you, Mr. Lieutenant Governor. I've said it before, I'll say it again, this is a solution looking for a problem. I haven't heard any testimony or read any testimony or heard any on the debate saying I was going to do a robocall but this was too difficult. There is no harm that has occurred here. Is it difficult? Yes. It is maybe a little difficult. Ladies and gentlemen, fellow senators, life is difficult. If we are such namby-pambies that filing with two different agencies is enough for you not to do your robocall, I question how dedicated you are to that call. Now Senator Mello has introduced a bill to...or an amendment to clarify that somewhat and to keep it under one agency for those namby-pambies who can't go to two agencies. And so I thank Senator Mello for that, helping those individuals out. Now the purpose of this bill has been because there's a First Amendment. We've heard two reasons: (1) to help the namby-pambies, (2) is because the First Amendment issue. Well, we've taken care of one. Now we have to address the second--First Amendment issue. And I've been listening to debate and I have yet to hear how this violates the First Amendment right. What I've heard is...I've not heard anyone say they can't say anything; it's just that you have to do a script. Now that's not limiting your First Amendment right, ladies and gentlemen. I don't mind us having a disagreement on the merits of the...facts of the case, or in this case the bill, that's what we should be, but it needs to be a discussion on the merits, and that means we have to have facts. And we're sorely missing facts as to why this bill is itself necessary. I listened to Senator Price and I appreciate that he is also listening to debate. And he made the statement that punishment doesn't work, that the act already occurred, and so it's...the horse is out of the barn, nothing we can do. Well, I think that's the argument...and no offense, but that's the argument literally I think two nights ago my three-year-old used against me with, Dad, milk spilled; don't worry about it. The purpose of the punishment is to make sure that person doesn't do the act again. If someone murdered another person, murder already occurred, guys, nothing to do about it, go ahead and let that murderer free. That's not how we act as a society. No. You need that...it's carrot and the stick, you need that stick so that person knows if they do something they shouldn't, if they make meritless claims, they will be held accountable. There was a statement that they take the script and they take the money and they go, some agency goes on its way. Well, there is no money taken. There is a script taken, and that script is important. That script says what we're saying. So if there is a question down the road, that person, entity A, said whatever it is, think of the worst thing they could say--Burke Harr is a liberal--if they said that, that's accountable. We can point to it and say, this is what they said they were going to say. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: Otherwise, it comes down to, well, I didn't say that; that's not what our robocall says. Now that person is held accountable because that's what they said they would say. Finally, this bill is...there's been an argument about toothlessness. Under this bill, no longer would the company be held accountable. If it went to...the Accountability and Disclosure does not have the ability to go after the company; the

Floor Debate
January 18, 2012

Public Service Commission does. So it adds teeth. This amendment takes away the teeth; the original bill, underlying law, does have teeth. Ladies and gentlemen, if you want lies to be spread about you, vote for this bill. If you want people to be held accountable and you want truth and you want debate to be based on merit and not some exploitation, then you've got to vote the right way. You have to pay attention to what we do. What we do has consequences. Thank you very much. [LB418]

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

SENATOR CARLSON: Mr. President and members of the Legislature, I wasn't going to speak on this bill, but comments made by Senator Avery and Senator Lathrop have kind of spoken to me and I do want to speak on this bill. They referred to LB720 that was in either 2007 or 2008, and the vote on LB720 was 45 to 0. And not in exact words, but I think I heard them say: We spoke once; that's enough; we shouldn't address it again. And I don't agree. Things change. Times change. Attitudes change. New information becomes available, and with that we should debate and react accordingly. There are many bills that we debate that deal with subject matter that's been debated in the past, but that new debate is appropriate and necessary. Now the hearing on LB418 was held on February 7, 2011. The vote to advance the bill was 8 to 0 in the committee. So far I've listened to committee members, Senator Dubas, Senator Lautenbaugh, Senator Price, and I'm listening but tending not to agree with AM1705. I'm not convinced about the Public Service Commission being a police agency. Why not the NADC? To me, that makes more sense. I'm listening. Let's get this bill right. It is important. It's okay to readdress subject matter. That's our responsibility. But I do support AM643 and, so far, the underlying bill LB418. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Lautenbaugh. [LB418]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Members of the body, I've turned my light on and shut it off I think a half-dozen times this morning. I'm sure some of you would prefer if I had settled on one choice rather than this choice, but here we are. It is true, I was here in 2008 when we passed this bill. But to quote that great thinker, Rocky Balboa: I can change, you can change, maybe we all can change. I remain uncomfortable with us having...or with robocallers having to file scripts with a government agency ahead of making the calls. And I think that is chilling and that is disturbing to me. And I heard earlier I was being chastised because I didn't bring any case law to support my vague constitutional concerns about this. I was told we have an obligation to bring case law. Apparently that senator wasn't here during redistricting or what I called "constitutional open mike night," because that rule didn't apply then. But here we are. I don't think it's fair to say that people are namby-pambies (laugh), as they were just called, incredibly, if they're put off by having two different entities regulating them. I don't think we should have two different entities regulating them, and I don't think...we're minimizing the difficulty of having to be cognizant of the need to deal with

Floor Debate
January 18, 2012

two different government entities on this topic. It doesn't make a lot of sense. And I do like what Senator Carlson said. I think the NADC should be looking at this, because this is political speech. But sometimes the things that we've said in the course of this debate have disturbed me. Senator Harr said this morning: Be careful what you say; we're watching. Woo, who wants to hear that in this country? Be careful what you say; we're watching. I was going to give Senator Lathrop a hard time when he was telling us what the press headline was going to be. Why don't we just tell the press what the headline will be? That would be easier. Then we'd be sure they get it right because we're going to tell them what it should be. That's not how we do business. I talked to one of my other colleagues who has been very vocal about this, and I'm speaking on his amendment, I guess, as we speak. And he said, yeah, you supported this before, and what's the harm with having that script filed? I said, well, why don't we make people send in the mailings that they're going to send out? That wouldn't be harder than sending in the script, and we can review them ahead of time for accuracy. In the last election cycle there was a mailing sent out about me that said that I passed a bill for the firefighters and that caused the restaurant tax in Omaha to go up. Now, the bill I passed has never been used; I mean it was just a lie. And the mailing carried a picture of a firefighter carrying me to the Capitol, which you can imagine would take a heck of a firefighter. But it was false. Where do I go to redress that? The answer is nowhere, maybe here, maybe door-to-door, maybe with my own mailing. But I sure don't think we should have people file all the mailings they send out ahead of time. (Laugh) That would be a little chilling, I hope, for all of you to contemplate. And I can't state enough how much I don't like the requirement that we passed--again, I apparently voted for--that requires these scripts to be filed. I think that's a huge step in the wrong direction. Nobody here is saying that we should go back to having calls in the middle of the night, and I don't think the underlying bill allows that, despite what's been said. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR LAUTENBAUGH: But I do worry when we go down this road of saying file what you're going to say with the government ahead of time. It just rubs me the wrong way. And if you want me to cite a case, no, there's no case that says, well, this is why Senator Lautenbaugh is being rubbed the wrong way with this topic; this is why he has a vague concern. But it's concerning and I hope you see why. And we all make the slippery slope argument when it suits our purposes, but I see this measure we took in 2008 to be a step in the wrong direction in this way. And I do have confidence in the NADC to effectively carry out whatever we ultimately pass here. I'm comfortable with them having the authority. Again, I'm not comfortable with them being able to review the script ahead of time, or anyone else, for that matter, in the government reviewing it ahead of time. But I do believe the NADC can do the job if we choose to give them any additional authority. [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

Floor Debate
January 18, 2012

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

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

SENATOR COUNCIL: Yes, thank you, Mr. President. I, like others of my colleagues, have sat and listened to the debate on LB418. I wasn't here in 2008 so I don't know what the compelling reasons were for enactment of the bill that is sought to be amended by LB418. And as Senator Carlson said, this body always has the right and the authority to revisit prior legislation. But it has been my experience that when prior legislation has been changed, there have been compelling reasons for that change. And the one thing that has been absent for me during this debate are those compelling reasons for changing the legislation that was passed in 2008. I have heard no such compelling reasons, and in light of that, looking at the vote that was cast in 2008, this body as then comprised believed that that legislation was appropriate to address this issue. Now being a consumer and a member of the public, and they can be one and the same, there is a fundamental difference between receiving some unsolicited mail in my mailbox and receiving an unsolicited telephone call that interrupts the privacy of my home. There is a fundamental difference. And the issue is, how do you regulate that? I appreciate the concern about having to disclose the contents prior to receiving the authority to conduct the robocalls, but it's my understanding that the intent of that is for purposes of the Public Service Commission being able to carry out its regulatory functions; that if a consumer/member of the public calls in and complains about a particular robocall they received and then relates to the Public Service Commission officials what was stated in that call, one of the things the Public Service Commission could do is then go to see what the person or persons who requested the authority said they were going to say during that call. With that, my preference is to IPP LB418. But short of that, I think AM1705 is a reasonable compromise on the issue in terms of providing one point for the regulation of this type of activity. And with that, I would yield the balance of my time to Senator Mello. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're yielded 2 minutes. [LB418]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, a couple points I guess to refute and/or to discuss. Senator Lautenbaugh, we were discussing this issue a little yesterday, and he made the analogy of, well, why wouldn't we then want to just require anyone who does any mail related to campaigns, to have them submit that in advance so that they could be overseen and sought? And I think the underlying issue is, once again, the Public Service Commission under our current process does not regulate free speech. There is no regulation of whatever may be put forward. If I want to do an automated call on any subject matter whatsoever, all I have to do is submit the script. They have no ability to say what can be in that script. They can't do anything except hold it for public record so that you as the public and you as

Floor Debate
January 18, 2012

consumers can come to the PSC to see what is being put on our telecommunications infrastructure. Senator Carlson, always adept, always eloquent in making I think a very thoughtful argument,... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...the consideration of where should this go; where should this issue rest; what agency? Unfortunately, to make sometimes arguments, we take people's opinions out of context, and another senator in this debate today said, toothless; I called NADC toothless. No. I distinctly remember I described that under LB418 the NADC would be toothless in regards to regulating independent entities or businesses, because it's not clearly spelled out in the bill; it's not. In the PSC statute we passed in 2008 it is clearly laid out. The PSC has the ability and must regulate the businesses that provide these services as well as those who purchase those services from that company. So NADC is not on trial here in regards to whether or not they can carry forward... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

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

PRESIDENT SHEEHY: Thank you, Senator Mello. Are there additional members requesting to speak? Seeing none, Senator Mello, you're recognized to close on AM1705. [LB418]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, I'll continue my train of thought here. The reality is, no one has put NADC on trial. And those who support LB418 are trying to use the confidence they have in the commission, who testified neutral, as the PSC did, in this debate, where at times they have questioned their ability to carry out policy. We have a tendency to have debates in this body and utilize facts and figures to fit our arguments. This issue right now, as Senator Harr mentioned, is a solution in search of a problem. There has been no outcry from candidates or political entities saying the process for us to file or utilize automated dialing services in Nebraska is too onerous; we can't do this; it impedes in our free speech. We have not heard that from anyone publicly nor have constituents have raised that issue. But what we are debating today under LB418 is a complete rewrite of a thoughtful regulatory process that incorporated not just the political entity that chooses to utilize this service but also the business that ultimately implements it, because Senator Lautenbaugh mentioned he doesn't believe LB418 opens the door for unlimited automated calls in the middle of the night. Under NADC law, if we pass LB418, anyone can do that, and it's up to the NADC to try to figure out, without the ability to indict or investigate a business, to figure out who was the company who is doing these calls. So in that sense, they are toothless in their ability to be able to prosecute or go after a

Floor Debate
January 18, 2012

company who is illegally doing this work. Senator Price mentioned the toothless argument, he doesn't believe it. They are toothless under LB418. Yes, they will carry out whatever we pass as a body, but we're passing bad legislation, bad public policy to solve a problem, colleagues, that does not exist. I mentioned yesterday, this by far looks to appear to be the biggest anticonsumer piece of legislation we may debate this session. Nebraskans do not like these calls. They do not like receiving these calls in the middle of the night. They like to know who are paying for these calls and who ultimately are behind this, because they see them as burdensome. They see them as an annoyance. And what we want to do under LB418 is to scrap a system that provides the public the ability to come in and see who is annoying them, who is causing them this headache of getting these calls. But LB418 simply says, we'll allow the Accountability and Disclosure Commission to figure it out on their own. We may be able to find out who "People Who Hate Dogs" are; we may not. Senator Lathrop mentioned you can give \$250 to a group, do 50,000 calls, and no one will know who financed it, who's behind the committee, and ultimately won't even know who the company who did the call is. Senator Price mentioned we should be able to figure this out; technology should help us. Technology also is able to mask who is behind this, colleagues. The process we have now is transparent. AM1705 ensures the underlying purpose that Senator Nelson mentioned yesterday on the floor and in the committee. The two reasons he said he did this bill was to make it more efficient, to go to one agency. We've heard multiple arguments now in the last day and a half of multiple new arguments of why we should do this, but the underlying argument was to keep it in one agency, not have someone be confused. Keeping it all in the Public Service Commission where 95 percent of the regulatory process of this issue falls under... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...not only is logical but it's good for Nebraska consumers. It's good for those people who don't want to see these calls being made, because they can then go find out who are making these calls by contacting the Public Service Commission. You can't get that under LB418 in the Accountability and Disclosure Commission. The reality is, some may say we shouldn't be providing government entities any of our documents in advance; that's a free speech violation. Colleagues, that's a red herring and I appreciate Senator Lautenbaugh raising that issue, but in the underlying issue of AM1705 that's a red herring; that's not the issue. It's to be able to assure that if a company says they're doing this call, that you can trace that call with the script that they gave you. That is the underlying issue. This is about consumers, this is about integrity, and this is about transparency in our election process. AM1705 keeps a good process in place and it solves the problem... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR MELLO: ...Senator Nelson looks to solve. Thank you, Mr. President. [LB418]

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

Floor Debate
January 18, 2012

PRESIDENT SHEEHY: Thank you, Senator Mello. You have heard the closing. Senator Mello. [LB418]

SENATOR MELLO: I'd like to request a call of the house. [LB418]

PRESIDENT SHEEHY: 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: 30 ayes, 1 nay, 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. Senator McCoy, Senator Ashford, would you check in? Senator Krist, Senator Council, the house is under call. Senator Mello, all members are present or accounted for. How would you like to proceed? [LB418]

SENATOR MELLO: I'd like a roll call vote in reverse order, please. [LB418]

PRESIDENT SHEEHY: Members, you have heard the closing of AM1705 to AM643 to LB418. Mr. Clerk, roll call in reverse order. [LB418]

CLERK: (Roll call vote taken, Legislative Journal pages 264-265.) 16 ayes, 25 nays, Mr. President, on the amendment. [LB418]

PRESIDENT SHEEHY: AM1705 is not adopted. The call is raised. Speaker Flood, you are recognized for an announcement. [LB418]

SPEAKER FLOOD: Good morning, members. A reminder that tomorrow we are going to begin check-in at 9:45 a.m., and at 10:00 a.m. we will hear from the Nebraska Supreme Court and its Chief Justice, Michael Heavican, for the annual State of the Judiciary Address. Again tomorrow, just a reminder, a 9:45 check-in; 10:00 a.m., State of the Judiciary Address, with an adjournment around noon. We're going to continue on today until about 11:45. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, you have a motion on your desk. [LB418]

CLERK: Mr. President, a priority motion: Senator Mello would move to reconsider the vote just taken in consideration of AM1705 as an amendment to LB418. [LB418]

Floor Debate
January 18, 2012

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

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, as I want to look through the vote count a little bit more, I'm sure I'll be talking with you individually to kind of find out a little bit more of your rationale and thoughts behind the PSC versus the NADC debacle and debate we've been having on this. But unfortunately, it looks like there was not near enough votes to even pass what I thought was a helpful amendment of trying to solve what Senator Nelson said both in the hearing and on the floor yesterday when he introduced the bill. So if that was not the intention of his bill, was to make it more efficient more than anything else, not so much of where it needs to go, I look forward probably to having a much longer debate on this issue, probably six hours' worth, because this is bad public policy. And no one who has spoke in support of this bill has been able to give a rationale of why it is good public policy, of why this is good. Why are we turning our backs on Nebraska consumers? AM1705 was a simple amendment that said that 5 percent of this bill...or 5 percent of this process that rests in the Accountability and Disclosure Commission and the 95 percent that rests in the Public Service Commission, we'll combine those. We will add the 5 percent in NADC and move it over to PSC. Why? Because the introducer of this legislation in the committee testimony said it was confusing to have to go through two agencies to deal with this issue; we need to make it to go to one agency. And that was his underlying argument yesterday in the floor testimony and in the committee introduction. AM1705 accomplishes what Senator Nelson wanted to do in that regard. The only other aspect that someone could contemplate is that you don't want to regulate this at all, because the way LB418 is drafted, the regulatory process into the Accountability and Disclosure Commission is minimal. You file a script is all you have to do, 24 hours after a call may be made. But the underlying issue I raised in AM1705, Senator Lathrop mentioned it, Senator Dubas mentioned it, other senators have mentioned this, is that we may never know who are making these calls if you move it to the Accountability and Disclosure Commission. Senator Nelson and Senator Lautenbaugh both agreed on the floor that it may be tough to find out who ultimately are doing...who ultimately are responsible for this, because our NADC laws say you don't have to file reports until you reach a \$5,000 spending limit or a contribution limit. Colleagues, we heard arguments, I think thoughtful arguments today, in regards to the myriad of examples or rationales of why we need this. Senator Harr made I think very pointed arguments going after the freedom of speech issue, the political speech issue. No one sees this...when this bill was debated on this floor and those issues were raised, no one stood up and said we are infringing on political free speech. Why? Because they voted for the bill. Yet, in the three years since that became law, we have not had anyone come to the Supreme Court or the Attorney General's Office saying this is an infringement on free speech, by me having to show you this is what I'm going to say in advance, this is an infringement on my free speech. Because ultimately you can't, as a Public Service Commission, change what I want to say; you can't limit what I want to say; and you can't fine me for what I want to

Floor Debate
January 18, 2012

say. It's purely letting you know so we can track the automated call which goes through our telecommunications infrastructure across the state, so we can track that call with the purpose it stated. That is it. Now if people just generally want to get rid of the regulations for the sake of regulations, then make that argument. That will be the argument we will have on the floor today, because I'm willing to bet you every Nebraskan I talk to does not like these automated calls. I bet the constituents you represent do not like these automated calls. And Senator Lathrop's point earlier is exactly right, the headline tomorrow if we pass LB418 is: Legislature eases regulations on robocalls. That is the headline, colleagues: We want to allow them to happen more often with no one to be able to track who's doing them. And if that's really what we think is good public policy, then let's have that debate. But so far we've had a myriad of, well, they would be still regulated but kind of not really. I mean, you're right, the Accountability and Disclosure Commission, ultimately they have to file something with them, but they can't go after the company. They can't fine them. They can't go take away their license if they're found guilty of breaking the law, which the Public Service Commission can do. If you have an automated dialer and you break the law under LB720 that was passed in 2008, you knowingly violate the laws, a company who does this, you could lose your license. Which shows that we don't want companies to try to break the law, in the middle of the night, doing these calls, is what Senator Lathrop and others have mentioned, tries to suppress voters by trying to harass them. That essentially is what we're debating. And this is not a partisan issue. It sure seems like it feels it's taken on a partisan tone, unfortunately, because there are some who would just rather not have anyone regulate our political activity. I think we've seen how well that's working at the national level. The reality is, this doesn't regulate free speech; it doesn't regulate what you can spend on elections. This regulates a process and a product that consumers are using against other consumers, and we're looking out for Nebraskans' best interest. Consumers want us to look out for them in situations like this. That is the reason we have a Public Service Commission. There is a reason they put regulations in place. Colleagues, I'm still looking for the rationale behind this bill, beyond wanting to move it to the NADC. I've given rationale on AM1705 that accomplishes what Senator Nelson wants and what he said his underlying intention was for his bill. If now he's saying the Public Service Commission shouldn't be regulating this, then I want to hear why they shouldn't be regulating it. Because I don't see anywhere in statute the Nebraska Accountability and Disclosure Commission regulating any business in regards to the products they sell, the process they go through in regards to utilizing our infrastructure in this state, because that's not what they do. They regulate political campaigns. And this is not purely a political campaign issue. Senator Schumacher made an argument earlier on the floor that said we could see an entire power out in a part of this state if we pass LB418 and we would never know who was responsible for it. Why? Because under LB418 we don't require anyone to file in advance the robocall services they're using, or file in advance the company that they are hiring. So a company, an unnamed company in an unnamed committee could shut down our telecommunications infrastructure in a part of this state, and no one would ever know

Floor Debate
January 18, 2012

who's behind it, purely for political purposes, to try to say a great thing about someone or a bad thing about someone. Colleagues, that should be concern for all of us. Even if we don't vote to reconsider AM1705, that should be pause, everyone in this body, to say maybe we should look at the underlying issue in LB418, because there are unintended consequences that can come in regards to our technologies, and we understand that. As a believer in technology, I understand there are always unintended consequences that come with the adoption of new technologies. We have other issues under the surface here that we should be exploring. Senator Schumacher mentioned I think a valid one that no one has...no one has counteracted that. So I appreciate the work our committee process does and I talked with Senator Fischer, and in theory that could occur now and I agree. She said that could occur now; you know that. And I said, absolutely, a company could come in and do that using political robocalls and shut down an entire part of our state's telecommunication infrastructure. But under current state law we would know who that is. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: We would know the company who's doing it. We would see the script of why they did it. They would be held accountable for what happened. Under LB418, there is no accountability. There is no way to track who it is. There is no repercussions. And to say we're doing this in the vein of political free speech, colleagues, we had that debate three years ago and this body overwhelmingly agreed that was not the case, bipartisan, in conjunction with a letter from the Governor saying why he vetoed the first bill on this issue. Read the letter. This is significant public policy changes we're making today, colleagues. It's not just moving around some things for political campaigns. We're dealing with consumers and consumer rights. We're dealing with what our consumers tells us, as voters and as taxpayers, that they don't like this nuisance. [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

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

PRESIDENT SHEEHY: Thank you, Senator Mello. You have heard the opening of motion 69 for a reconsideration. Members requesting to speak: Senator Burke Harr, followed by Senator Lathrop, Senator Nordquist, Senator Wallman, and Senator Lautenbaugh. Senator Burke Harr. [LB418]

SENATOR HARR: Thank you, Mr. President. And thank you, Senator Mello, for allowing us reconsider this issue. This is a public policy debate. We are defining who and what we are, and how we think campaigns ought to be run. And I use the word "ought" because it's a moral responsibility, not "should" but ought to be run. Our constituents do not like robocalls. We all know that. Go home this weekend, talk to your constituents

Floor Debate
January 18, 2012

and ask them, do you like robocalls? And the answer is no. We saw that when Congressman Terry tried to introduce a bill to allow robocalls on our cell phones. And the resounding...whether it was good policy or not on that, people said do not open that gate, we do not want more robocalls. Well, that's what we're doing here today if this passes. Now, if we are going to allow more robocalls, we really need to look at the amendments. And so let's look at AM1705. The underlying public policy argument for it is it's simpler because we only have to deal with one agency, and that agency has more policing authority. If we're going to allow more robocalls, doesn't it seem like we'd want more policing to make sure that they're done in a just and proper manner; that someone isn't calling allegedly on my behalf at 2:00 a.m. saying tomorrow morning please vote for Burke Harr? Because I know that's going to upset people and they won't vote for me. But guess what? That doesn't get filed until after the election, so no one knows who it is. That's wrong. Or they might be saying something worse. Now the argument for this bill has been twofold, that I've heard. Number one, it is a constitutional issue, a violation of the First Amendment. Well, I don't want to steal anyone's thunder, but if this is a partisan issue, fellow members, the Governor is not with you. He does not believe this is a constitutional issue and he has said as much. And other courts have ruled that way too. I've asked constantly for case law. Well, I think we're going to hear case law pretty soon that says this is not a constitutional issue. So it really comes down to do we want more robocalls; and if we want more robocalls, do we want more or less accountability for those people who call? Do we want to muddy the waters more or do we want clarification? If I right now, if this bill passed, and the next morning I said, hey, I got a call last night, 2:00 in the morning, they called saying vote for Burke Harr--and I call and complain about it--there's nothing the Accountability and Disclosure could do. They could say prove it; prove you got the call, prove there was a script, prove what they say. And I would sit there unable to make a case because you wouldn't have to file anything. I stand for sunshine laws. I stand for if someone does something and they believe in it strongly enough, why are they trying to hide? You should want to file your script with anyone and everyone possible. I believe Burke Harr is such a bad person, I want it on file that I said it. I don't want it hidden and hide behind the law... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR HARR: ...and say, no, Burke Harr is a bad guy. Who said that? Did someone in the back of the room say that? Because there is no script. We don't know who says it; we don't know where it came from. You need to have...we need to hold these people who do robocalls accountable. We need to make sure they have integrity. If they don't have the integrity to stand behind what they're saying, why are we encouraging them? And this is a bipartisan issue, ladies and gentlemen, because guess what? Both sides really want to win and both sides really want to win badly. And as much as I don't condone it, both sides do things that we would not like. And if you know you're not going to be held accountable, you do a lot more worse stuff than if you know you're held accountable. I know if there is an ability to get away with something... [LB418]

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

Floor Debate
January 18, 2012

PRESIDENT SHEEHY: Time, Senator. [LB418]

SENATOR HARR: Thank you. [LB418]

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

SENATOR LATHROP: Thank you, Mr. President and colleagues. I passed out a letter from the Governor dated May 21, 2007, and I had a reason for that. You will see in the letter the Governor is vetoing a bill dealing with robocalls. It was LB198. And he gave his logic when he vetoed that bill. And just to give you some historical perspective, LB198 passed, I think in 2007, and it was vetoed. It was not overridden. That was I believe Senator Schimek's bill, and she went and met with the Governor, and said, what do you need? And we came up with the statutory process we now have which was passed as indicated with 48 votes and signed by the Governor. And I think it's instructive to look at what happened with LB198 because we're going down that path again. As the Governor indicated, his logic for vetoing LB198 again I think is instructive in our debate today, and he indicates, and I'm just going to quote a little bit from the letter: However, in Van Bergen v. State of Minnesota, a decision from the Eighth Circuit Court of Appeals, it upheld a state statute that included political calls within the category of automated dialing device restrictions only because the court found that the political calls were regulated in the same manner as all other automatic device calls. And he goes on to say: I would support legislation that would limit these types of calls so long as the restrictions were made applicable equally to all automated devices...device calls. That's what's happened. That's what's going on right now. We've satisfied that requirement. We've done what the Eighth Circuit said we must with respect to these calls. But if we pass LB418...if we pass LB418, we are going to treat political calls differently than the other calls, the commercial calls, the calls if someone is trying to sell you something. And then I think we venture into an area, first of all, that likely would be vetoed by the Governor if he remains consistent in his logic, but also create a constitutionally suspect category of legislation in the area of political speech. I think we are, as Senator Harr has indicated, we have a solution in search of a problem. I have not heard a logic to why we would pass LB418. I'm a little concerned about the vote and how it was cast and who voted for and against, but that's entirely up to you. We're all elected the same, one as another, and...but this bill, this bill we are going to carve out political speech in the form of robocalls and treat it differently, and then I think we weigh in or get into a place where we now have constitutionally suspect regulation, besides being ineffective. I would encourage you to read that letter from the Governor, appreciate his logic, and appreciate that if we pass LB418 we are going down a road where we treat political speech different than other speech; we put it into a category by itself. And that I believe is constitutionally suspect under the case that the Governor referred to in his veto message, May 21, 2007. So again I would support AM1705 because I think it's consistent and constitutionally appropriate, but LB418, if you're not

Floor Debate
January 18, 2012

inclined to reconsider Senator Mello's amendment, LB418 is taking us down a road of constitutionally suspect regulation of political speech. Thank you. [LB418]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. (Visitors introduced.) Returning to floor discussion of the motion to reconsider the previous vote, members requesting to speak: Senator Wallman, followed by Senator Mello. Senator Wallman. [LB418]

SENATOR WALLMAN: Good morning, colleagues, members of the body. Thank you, Mr. President. I supported Senator Mello's amendment the first time. And if you've ever had robocalls used against you...and Congressman Terry found this out pretty quick, he pulled his legislation. So whether it was constitutional or not, I do not know, but I think it was quite obvious in the committee statements there were only two people neutral and the introducer of the bill was for the bill, which was quite...it made sense. But I have trouble making it easier with these super PACs coming on board for the presidential candidates and all these things. They could lock up our system. And we're so dependent on Internet or cell phone things through the various agencies, whether it be the power companies or whether it be this and that as we seen the power outage out East once. So I would encourage you to consider Senator Mello's amendment here and I would vote for that; without voting for that, I will vote against the bill. Thank you, Mr. President. [LB418]

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

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, in talking with a few colleagues, it's unfortunate (laugh) this whole...I don't know. Thinking through and listening to the rationale or lack thereof on this bill and this amendment, it's caused me some pause and concern. You can only say so many times that I don't know how automated calls or automated dialers is a partisan issue, because it's not. (Laugh) This has nothing to do with any being affiliated with one political party or another, and it's unfortunate that some in this body see it as, by challenging the relaxation of rules and regulations over political activity, that you're drawing a partisan line in the sand. Because I'm looking at the letter that was sent out by the Governor of why he vetoed the original concept, laying out court decisions and laying out some of the free speech arguments that we have heard today from other colleagues, and which this Legislature then rectified that by passing LB720. Now we're discussing LB418, where there has been no solution...or no problem that's been identified by anyone on the floor today or yesterday on this issue. I mean if this is a solution in search of a problem, and now looking at this vote count I've started to talk to some of you about why did you...why do you not think the Public Service Commission would be a better regulatory body than the Accountability and Disclosure Commission? By reviewing the state statutes, NADC is limited in what it can do over the crux of the issue, which was regulating the automated dialing companies who were hired to do this work. It wasn't about the political committees as much as it was being able to provide a regulatory process over the

Floor Debate
January 18, 2012

companies that these political committees hire. That's not a partisan issue. That's nothing to do with whether or not you're affiliated with a political group or not. That's on whether or not you think the public has a right to know who are making these calls and the companies involved in doing this. I mean we can all agree on some basic tenets today. People don't like these calls, yet political candidates and campaigns do them anyway. That's something we can all agree on. But it seems that we were stuck as a body in regards to whether or not one regulatory body which is purely regulatory in its nature--the Public Service Commission, which has broader, more significant power and enforcement mechanisms--of whether or not they should be the appropriate entity to regulate this kind of activity that predominantly evokes political campaigns, which traditional political campaign activity is regulated by the Nebraska Accountability and Disclosure Commission. That's a legitimate policy debate. That's a legitimate policy debate that I'm sure was had within the committee, and we're having it today on the floor. That's something that...that's why we're here; that's why we do what we do. But I have yet to be able to get my hands wrapped around of why we want to dilute a process now so much under LB418, but no one can give the reasons why. That's the issue that I'm hoping we could reconsider. AM1705 I think is a good policy option for us. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: It accomplishes what people wanted to see in the committee, what the bill introducer wanted to accomplish, and what those of us on the floor have talked about. We would like to see one entity oversee automated dialers and automated dialing companies. That is the underlying issue, colleagues. It's the automated dialing companies that are doing the work. They're not going to be regulated by the Accountability and Disclosure Commission because it's nowhere laid out in the bill or existing statute. And that is the question that I pose is, how do we regulate them then? I'm open for ideas, for efficiency and to ensure that we can make this work, but also I want to ensure we keep the same consumer protections that we have already put in place protecting Nebraskans against this process and these companies. I'm open for ideas. I think AM1705 is the better idea right now, but if someone has a better option... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

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

PRESIDENT SHEEHY: Thank you, Senator Mello. Additional members requesting to speak on motion 69: Senator Dubas, followed by Senator Howard and Senator Mello. Senator Dubas. [LB418]

SENATOR DUBAS: Thank you very much, Mr. Lieutenant Governor, colleagues. This is an important policy discussion and I would tend to agree with Senator Carlson. I don't

Floor Debate
January 18, 2012

see any problem with us having this discussion again, because it probably will be an ongoing discussion for many years. It's unfortunate that those who are interested in this issue, no matter what side you are on, did not avail themselves of the committee process and come in and share their views with us, because I think it would have given the committee more food for thought. But I did raise some questions with the Public Service Commission when they came in and gave their testimony, and my questions were related to how is the process working; you know, what's going on? Do they receive calls? How do they handle them? But unfortunately, for me, I didn't follow up with those questions and ask more in-depth questions and get answers before we had to make the decision as a committee. If I had, you know, it likely would have changed my committee vote, but it is what it is. But I did now follow up with the Public Service Commission so that I could understand the process and how it works and if it is causing problems. And it's still relatively in its infancy, but so far it doesn't seem to be causing any problems. Based on the current experiences, it's not an onerous process. They do not play gotcha. Just like the Accountability and Disclosure, these agencies are in place to help people so that they remain in compliance with the law. It's not their job or their duty or their mission to go out and try to catch people after the fact and slap fines on them or do anything like that. They want people...they want the process to work. So as I...in my conversations with the PSC, they do the informal workshops, they do a lot of things to help these entities stay in compliance with the law. If they get calls, when they get calls into the PSC, questions are raised, they'll go out and say, you know, this is the way the law is supposed to work, it appears you may have some problems here; and apparently receive a great deal of cooperation in getting that entity back into compliance. So I think the fact that these robocall devices can be anywhere in the world--they don't have to be in our state or our community or our country. They can be anywhere. By registering those devices and the scripts, we are providing a public service. This is not an infringement on free speech. The Public Service Commission in no way, shape, or form edits or changes these scripts. They are simply on file for the public to have access to. So again I would agree with Senator Carlson, that this...we revisit a lot of issues in this body and it's right that we do this. It's an important policy debate. Our citizens need to hear this debate and be engaged. But I feel that if we pass Senator Nelson's bill, we will be debating this issue again and it will be because our citizens are not happy when they are receiving those calls at 3:00 in the morning into the privacy of their home. Thank you very much, Mr. Lieutenant Governor. [LB418]

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

SENATOR HOWARD: Thank you, Mr. President. Frankly, politics has gotten too ugly. You can say anything you can think up to use against an opponent. It's no holds barred. If this message can be hidden behind an automated call, the vitriolic language can be even worse. I doubt if many households have the equipment to do research to determine the origin or the author of the phone call. I think we as a legislative body have the responsibility to recognize the harm this bill can do in terms of opening the

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

Floor Debate
January 18, 2012

floodgates to these damaging calls. Anyone will tell you that they hate the negativity engaged in politically, and they hate it even worse when it comes to their homes via the phone, their own phone. I support AM1705. I stand in opposition to LB418. I offer the remainder of my time to Senator Mello if he would like to use it. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're yielded 3 minutes 55 seconds, and then your time. [LB418]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Would Senator Nelson yield to some questions? [LB418]

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

SENATOR NELSON: Yes, I will. [LB418]

SENATOR MELLO: Thank you, Senator Nelson. I want to be able to provide you, I think, a venue to be able to kind of explain how you see the Accountability and Disclosure Commission regulating this process if we pass LB418, because obviously we're moving 95 percent of the regulatory process that currently resides of this whole issue out of the Public Service Commission, putting it into the Accountability and Disclosure Commission. How would the Accountability and Disclosure Commission operate then if we adopted LB418 in regards to following up, or how in general would they go about regulating this whole issue? [LB418]

SENATOR NELSON: I will have to say that as LB418 is constituted, the only thing that they would require, Senator Mello, is that the person at the beginning of the message that's with the automatic dialing machine would have to state the name of the person who is financing it or the expenditure. [LB418]

SENATOR MELLO: Okay. When Senator...or when the Accountability and Disclosure Commission came to the Transportation and Telecommunications Committee on this bill as a neutral, Frank Daley, the executive director, in his testimony mentioned two issues to the committee and to you that he saw were issues that people needed to be aware of before we move the bill forward. And he said, "First of all, under the current law, the automated dialing machines are registered with the Public Service Commission and the script of the so-called robocalls are filed with the Public Service Commission." Under your bill, would that same process follow to the Accountability and Disclosure Commission? [LB418]

SENATOR NELSON: Not under the current version of the bill. [LB418]

SENATOR MELLO: So under even the committee, if we adopt AM643 to LB418, that main component of registering the automated dialing company to use, that would not fall

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

Floor Debate
January 18, 2012

then to the Accountability and Disclosure Commission? [LB418]

SENATOR NELSON: That would be correct, Senator. [LB418]

SENATOR MELLO: So that no company would have to file or be filed with any regulatory body in this state under LB418. [LB418]

SENATOR NELSON: For purposes... [LB418]

SENATOR MELLO: Political purposes, I mean. Political calls as... [LB418]

SENATOR NELSON: For a political...political robocalls. That's correct. [LB418]

SENATOR MELLO: Okay. Now what about the second component of that regarding the scripts? That was the other aspect he mentioned of that sentence. Robocall machines or automated dialers would not be registered, neither would so-called scripts. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: How does the scripts...how does the issue of providing script materials to the Accountability and Disclosure Commission work under your bill? [LB418]

SENATOR NELSON: Well, there's no requirement under my bill that they do that, if I understand your question. [LB418]

SENATOR MELLO: So...okay, well, so what you're saying is that as an entity you no longer have to provide a script or you do not have to register the company that's doing the work for you, either before or after, to the Accountability and Disclosure Commission under LB418. [LB418]

SENATOR NELSON: That's correct. [LB418]

SENATOR MELLO: What ultimately does an entity, whether it's an established campaign committee that people know, such as, you know, such as John Nelson for Legislature, what does a committee like that or an unnamed, faceless, independent committee of "People Who Hate Dogs," what ultimately then do they have to provide the Accountability and Disclosure Commission in regards to this issue under LB418? What ultimately do these committees have to provide to the commission? [LB418]

PRESIDENT SHEEHY: Senator, you're now on your time. This is your third time. [LB418]

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

Floor Debate
January 18, 2012

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

SENATOR NELSON: I'm just...I don't have the bill in front of me at the present time. [LB418]

SENATOR MELLO: Well, I mean the underlying issue is if we transfer this responsibility from one agency to another, what ultimately does a committee or someone who is doing these calls, what do they ultimately have to provide to the Accountability and Disclosure Commission? What do they report? What is it they give them, if anything? [LB418]

SENATOR NELSON: Nothing. They just simply follow the requirement of the present statute under Section 49 there, saying that they have to provide the name at the beginning of the message as who is making this expenditure. [LB418]

SENATOR MELLO: And they can't do it after 8:00 p.m. [LB418]

SENATOR NELSON: I'm sorry? [LB418]

SENATOR MELLO: And they can't do it after 8:00 p.m. is the second component, right? [LB418]

SENATOR NELSON: That's correct--well, after 9:00 p.m. [LB418]

SENATOR MELLO: After 9:00 p.m. [LB418]

SENATOR NELSON: It's from 8:00 till 9:00 p.m. Yes. [LB418]

SENATOR MELLO: Okay. Thank you, Senator Nelson. I'm sure I'll have some more questions as I dig through more specifically what Frank Daley, the executive director of the Nebraska Accountability and Disclosure Commission, mentioned in his committee testimony. But I think it was just...it's a good understanding of how big of a leap we're taking with LB418 of essentially no regulations whatsoever, with the exception you can't do your call after 9:00 p.m. That's essentially it. Every...pretty much every political activity we do under our Accountability and Disclosure Commission Acts requires you have to say who it's paid for by, with the exception of small things such as a sticker or an emery board. But this is...colleagues, I guess I was...maybe I was even misinterpreting it a little bit. I thought some more components of the Public Service Commission regulations followed to the Accountability and Disclosure Commission. So that pretty much means there is no regulation. We're just eliminating the regulation outright, if I'm understanding Senator Nelson. And if I am, Senator Nelson, I will give you...I can yield you some time to clarify that. But if we're eliminating the regulation of the autodialer, we're eliminating the script, not just the script in advance but we're not even providing them the script in it afterwards, apparently, that is a point of concern. I

Floor Debate
January 18, 2012

mean this is just such a significant shift in public policy, and that may be, I should say, to answer Senator Price, Senator Lautenbaugh, and Senator Nelson's points they made when were debating AM1705, that they feel the Accountability and Disclosure Commission can regulate this. They have...they're not toothless. Again, you know what? I just pieced it together. Then can do that; they can regulate the activity we're asking them to do because we're not asking them to do anything. (Laugh) It's that simple, colleagues. Senator Nelson just said we're not asking them to regulate any of this stuff, so it shouldn't be a problem for them to do any of the regulatory process involved. I now understand. I am...I have misspoken in the sense of they're toothless, because they're not really regulating anything in the first place, so they're not really toothless in that example. I can appreciate that, and I will apologize to Frank Daley and the commission in the sense of calling them that in that context, because if you don't give them regulations to regulate or enforce, then they should be able to do the work. And I think an underlying issue still that I'm intrigued more about is this is a bill that had no opposition and no supporters. I usually, colleagues, always dig into bills when there's no opposition or no supporters. One way or another, that raises a red flag in regards to our legislative process,... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: ...because there is someone who in theory would support what we're trying to do in changing law. And this is a big change in law, colleagues. And the fact that there was not one person supporting it or opposing it, that should also raise red flags to all of us. We do this all the time on other senators' bills when there is no one who supports or opposes bills. I've had bills where I haven't had someone oppose or support it, and committees and senators have questioned that: What are you really trying to get at? So if that's the norm that we have a tendency to operate in, I think we should take a step back; we should reconsider my amendment, AM1705, which I think accomplishes what Senator Nelson wants to accomplish by providing a transparent regulatory process for automated dialing in our state, and they do it all through one state agency, an agency that has the power to enforce it. [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

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

PRESIDENT SHEEHY: Thank you, Senator Mello. (Visitors introduced.) Continuing with floor discussion on the motion to reconsider, we have Senator McGill, followed by Senator Ken Haar and Senator Smith. Senator McGill. [LB418]

SENATOR MCGILL: I yield my time to Senator Mello. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're yielded 5 minutes. [LB418]

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

Floor Debate
January 18, 2012

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. Would Senator Nelson yield to a few more questions? [LB418]

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

SENATOR NELSON: Yes, I will. [LB418]

SENATOR MELLO: Senator Nelson, looking a little bit more through the committee testimony it was mentioned, it looked like extensively, that Frank Daley provided I think a good, thorough explanation of some of the political free speech issues. What was your interpretation, I should say, of his explanation in regards to saying that what we currently have right now is not unconstitutional, that it doesn't infringe on political free speech, which he mentioned in the committee testimony utilizing not just the Governor's initial veto of LB198 but also some of the Attorney General Opinions provided before that? Was that discussed extensively afterwards, or did you choose to address an issue after he raised that in the committee? [LB418]

SENATOR NELSON: After the committee hearing? No. No, we didn't. [LB418]

SENATOR MELLO: Did you choose to bring it up at all in regards to after the...at the end of your closing, at all, in the sense of it being an infringement on political free speech? [LB418]

SENATOR NELSON: Senator Mello, I...you have the transcript in front of you, do you, of Mr. Daley's testimony? [LB418]

SENATOR MELLO: I do. [LB418]

SENATOR NELSON: I do not. Now would you just read again what it is, his statement was, from the transcript so that I'm sure about what we're talking about? [LB418]

SENATOR MELLO: It would say: Now under the bill, political free speech would be treated differently than a lot of other political...than a lot of other speech and robocalls because it is being (inaudible), change is being made to the way it is being regulated based on the content. Now I'm not saying that makes it unconstitutional. In fact, the fact that it appears to be less restriction may actually help the...may be able to help the change to make it...help it pass any potential constitutional muster. But I guess what I'm suggesting is that as you move forward, that you do so keeping in mind constantly that because this involves political speech, you always have to keep in mind the various court cases and so forth on political speech that may apply here. And in fact, that brings up the response to Senator Dubas' question. The reason it's in the jurisdiction of both

Floor Debate
January 18, 2012

agencies was that several years ago there was an attempt to regulate robocalls and place the entire authority with the Accountability Commission and it was the opinion of a number of folks, I believe the Attorney General's Office included, that because it regulated just political speech it was potentially unconstitutional. And so the Legislature came back and redid the legislation so that it included the Public Service Commission and all types of speech that was being transmitted via robocalls and not sectioning out political speech. So that was the rationale for that. Rereading that transcript, that makes me pause to think that if we even moved this all to the Accountability and Disclosure Commission we would be making this unconstitutional, which is the very argument, Senator Nelson, that Senator Lautenbaugh, yourself, and others have made of why we want to do this in the first place. [LB418]

SENATOR NELSON: May I respond, Senator Mello? [LB418]

SENATOR MELLO: Yes. Yes, please. [LB418]

SENATOR NELSON: All right. We jumped from what Mr. Frank Daley said in his testimony to something beyond that. Were you're going back to a testimony or considerations at the time that Senator Schimek's bill was up? Is that what you did? [LB418]

SENATOR MELLO: Well, this...no, this was the testimony on LB418 that he provided. This was the testimony on your bill that he provided. [LB418]

SENATOR NELSON: Well, my answer is that...my response is that I endorse what Frank Daley said there, wholeheartedly, that we were moving toward more constitutionality... [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR NELSON: ...by eliminating the things that currently are required in the Public Service Commission, either a script and registering the machine, and that we're going to be safer. And he went on to say, you know, there are always court cases. So far I haven't heard of any court case, you know, that's going to modify that. [LB418]

SENATOR MELLO: Senator Nelson, I think...I think...and maybe I can get you a copy of the transcript just to make sure I'm being correct and clear. I think you may have confused what I said when rereading Frank Daley's testimony where he says by moving it to the Accountability and Disclosure Commission it may make it more unconstitutional. It does not make it more constitutional in regards to moving it to the Accountability and Disclosure Commission because it looks like you're purely trying to regulate free speech, political free speech, where the reason they created it in the first place and put it in the Public Service Commission, as well as had a tweak of law that dealt with

Floor Debate
January 18, 2012

regulations in regard to the timing of it and who pays for it... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

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

PRESIDENT SHEEHY: Thank you, Senator Mello. (Visitors introduced.) Resuming floor discussion on the motion to reconsider, members requesting to speak: Senator Ken Haar, Senator Smith. Senator Haar. [LB418]

SENATOR HAAR: Mr. President, members of the body, since I'm losing my voice, I'm going to give the rest of my time to Senator Mello should he wish. [LB418]

PRESIDENT SHEEHY: Senator Mello, you're yielded 4 minutes 50 seconds. [LB418]

SENATOR MELLO: Thank you, Mr. President. Thank you, Senator Haar. Myself, I am falling ill as well and losing my voice, so I'm hopeful that I can rest it as we continue to go another five hours on this issue. As I was trying to finish my dialogue with Senator Nelson, Frank Daley, the executive director of the Accountability and Disclosure Commission, in the committee testimony said that by moving it to the Public...the Accountability and Disclosure Commission, when they originally discussed this issue, they felt it would make the bill and the idea unconstitutional. That was the underlying issue. That's why they split it 95 percent into the Public Service Commission and 5 percent to Accountability and Disclosure. So the reality is, I appreciate the political free speech arguments that have been made, and while I disagree because the committee transcript and the bill transcripts of why this was passed shows that's not the case, even when we discussed this bill, the committee did, in the committee testimony it showed by doing this we may invalidate the entire issue of being unconstitutional. It may become unconstitutional to regulate any of this if we segregate political robocalls away from other automated dialing calls, which I'm not an attorney, but those of you who are attorneys, even my new colleague, my new "rowmate" here, Senator Seiler, you know more about constitutional law than I do. The reality is the NADC said this puts us ripe for a court case. This makes it unconstitutional to try to regulate free political speech by moving it into an entity that its pure job is to regulate that political speech. So I raise the question, do we really, by passing LB418, just want to make the law unconstitutional? Because we have a state agency director saying that makes it more unconstitutional by putting it in his commission, understanding that under the current law not just political calls are regulated, but anyone who wants to use an automated dialer is regulated, which means it's not infringing upon political free speech. Colleagues, this is...I did a little bit of research, a little homework last night, and I missed that component until I re-went through it this morning of what the actual Accountability and Disclosure Commission discussed and what they saw this issue, because they came in, in a neutral capacity, as did the PSC, which I think is an issue, another issue, to talk about

Floor Debate
January 18, 2012

another day in regards to whether or not we provide independent entities like both of those commissions more authority to come in opposition or support of our legislation. But the issue at hand is, by passing LB418, we're setting ourselves up for a constitutional challenge to just scrap the whole regulatory issues or any issues at all involving political robocalls, which was the reason it was created, the process was created, in the first place to put primarily a majority of it in the Public Service Commission. That was why we made this decision. And ultimately, we haven't heard complaints about that decision. We haven't heard...we haven't had people file complaints with us saying the current process is broken, the current process doesn't work; I can't do these calls because of the process that you the Legislature and you the Governor worked together to create and sign and pass into law. We haven't heard those arguments because it was a thoughtful deliberation on behalf of the executive branch and the legislative branch to provide some necessary regulation to protect consumers. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR MELLO: So as we continue to debate this, I mean it's unfortunate, I know a lot of the body is not here right now and it appears that we'll bring people in as we continue to make votes on whether or not just this reconsideration but other amendments, is that I now question the underlying focus and purpose of this bill. If the bill is going to be unconstitutional if we pass it and someone files a court case, then we need to have that debate on this floor that we know we're passing a bill that is more than likely viewed as unconstitutional, because it purely regulates free political speech, which was the whole argument of why those who support the bill say we need to do it, so we don't regulate political free speech, we have less regulations. Colleagues, I'm interested. I'll continue to dig through this testimony, as well as probably the testimony that the Legislature went through when passing LB720, so we can provide some recollection, because I know more than half the Legislature... [LB418]

PRESIDENT SHEEHY: Time, Senator. [LB418]

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

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

SENATOR SMITH: Thank you, Mr. President. I just wanted to stand up and clarify my opposition to AM1705 whenever that last vote came up, and I am in opposition to seeing this reconsidered, but I'm also in opposition to AM643 in its current form. And I'm going to go back to the transcript from the Transportation and Telecommunications meeting that occurred on February 7, and this was an exchange between Mr. Daley from the Accountability and Disclosure Commission with Senator Lautenbaugh, and I kind of jump into the middle of an exchange. But Mr. Daley states that the reason that

Floor Debate
January 18, 2012

this was originally in the jurisdiction of both agencies was that several years ago there was an attempt to regulate robocalls and place the entire authority with the Accountability Commission and it was the opinion of a number of folks--and this is him quoting...me quoting him--that I believe the Attorney General's Office was also included, that because it regulated just political speech that it was potentially unconstitutional. "And so the Legislature came back and redid the legislation so that it included the Public Service Commission and all types of speech that was being transmitted via robocalls and not sectioning out political speech." A little bit further down, Senator Lautenbaugh asks Mr. Daley, "So what you're saying is, political speech is the most protected kind of free speech. I think the court decisions are clear on that." Mr. Daley replies yes. Senator Lautenbaugh continues, "This move from where it is now, with some responsibilities from the Public Service Commission, over to Accountability and Disclosure while you have to be careful because this is the area where we're supposed to be most hands-off, the move will also end in less regulation of political speech?" And that was a question. And Mr. Daley replies, "I think it will, yes, because there would be no longer the obligation, as I read the law, to register the automatic dialing machine if all you're doing is political speech." So, you know, there's that exchange, and I hold Mr. Daley in very high regards and he did testify in a neutral capacity, but he also makes note that it is...it better protects freedom of speech under AM643 than under the current law. However, then the...you have to also consider that under Public Service Commission, that is an elected body--that is, could potentially be more political--there is some concern there that they...that you have to register your machine with them and also you have to submit your script. So I can understand where proponents of AM643 and opponents of AM1705 are concerned about this whole measure of having to register and to submit script to a body that is potentially political, that they are elected, as opposed to it falling under Accountability and Disclosure Commission. So, you know, I'm racking my brain here to try to figure out how can we get at what both sides are wanting to accomplish. We have a very unpopular topic. The general public doesn't want to have robocalls extended, but we also have to be very, very careful to protect political speech as the most protected kind of free speech. [LB418]

PRESIDENT SHEEHY: One minute. [LB418]

SENATOR SMITH: So I would ask if there could be potential to add language to register the device and to provide detailed explanation of use, not the script under AM643, and I'm going to ask that of Senator Nelson. [LB418]

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

SENATOR NELSON: Yes, I will. [LB418]

SENATOR SMITH: Senator Nelson, just asking, could we add language in AM643 that would allow some type of registering of the machine and the intended use, not the

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

Floor Debate
January 18, 2012

scripting? [LB418]

SENATOR NELSON: Well, thank you, Senator Smith. First of all, AM643 is the province of the Transportation Committee and I would have to run that by them and see what their position would be on that. And I'm sorry I was distracted, but your precise question is, what could we do... [LB418]

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

SENATOR NELSON: Thank you. [LB418]

PRESIDENT SHEEHY: Mr. Clerk, do you have items for the record? New bills for introduction. [LB418]

CLERK: I do, Mr. President. Thank you. New bills. (Read LB1087-1097 by title for the first time.) Mr. President, in addition, a new constitutional amendment proposal from Senator Avery (Re LR377CA). It would propose an amendment to Article III, Sections 7 and 19 of the state constitution. I have conflict of interest statements filed by Senator Campbell to be acknowledged. A report from the Committee on Committees regarding the appointments of Senator Seiler to the Education and Government Committees, and the reassignments of Senator Brasch to Revenue, and Senator Schilz to Banking. Banking Committee, chaired by Senator Pahls, reports LB836 to General File with committee amendments attached; that signed by Senator Pahls. Mr. President, an announcement that the Exec Board Reference Committee will meet upon adjournment; Reference Committee upon adjournment. And I have a motion to be printed to LB418. (Legislative Journal pages 265-269.) [LB1087 LB1088 LB1089 LB1090 LB1091 LB1092 LB1093 LB1094 LB1095 LB1096 LB1097 LR377CA LB836 LB418]

Priority motion, Mr. President: Senator Karpisek would move to adjourn the body until January 19, 2012, at 9:45 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Thursday, January 19, at 9:45 a.m. All those in favor say aye. Opposed, nay. We are adjourned.