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Government, Military and Veterans Affairs Committee  
January 21, 2011

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[LB97 LB117 LB161 LB168]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Friday, January 21, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB117, LB161, LB97, and LB168. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Charlie Janssen; Russ Karpisek; Rich Pahls; and Paul Schumacher. Senators absent: Kate Sullivan.

SENATOR AVERY: All right. I'm going to get started. We have five people here now, and I know that at least one person is not going to be able to be there today. But let me start by welcoming you to the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I represent District 28 here in Lincoln. We will follow the order posted outside the room starting with LB117, followed by LB161, LB97, and LB168. Before we talk about the rules and procedures for conducting this hearing, I'm going to introduce the members of the committee starting on my right with Senator Rich Pahls from Millard who is a long-time member of this committee. How many years?

SENATOR PAHLS: Seven.

SENATOR AVERY: Seven years. He is seated next to Senator Lydia Brasch from Bancroft, one of our newest members; Senator Charlie Janssen from Fremont will be here shortly; and seated next to him is Senator Scott Price from Bellevue who is the Vice Chair of the committee. To my immediate right is Christy Abraham who is legal counsel to the committee and knows more about this business than do we. Seated next to me on my left is: Senator Russ Karpisek from Wilber; Senator Sullivan from Cedar Rapids has business in her district and cannot be with us today. Another new member of our Legislature, Senator Paul Schumacher from Columbus is seated on my left, and he is next to Sherry Shaffer, the committee clerk. If you wish to testify, we have a form that we ask you to fill out. This form is available at each door. It is for testifiers only. We ask that you fill it out in clear, bold print, and then when you come to the table to present your testimony, just give a copy to Sherry, the committee clerk. If you do not wish to testify but you would like to be recorded for or against any of these bills, we ask you to sign this piece of paper. It is also available at each entrance to the room, and we will be able to record your opposition or support. We have started using the light system in this hearing room. When you sit down, you will see a green light meaning that you have four minutes, and after four minutes, the amber light comes on that gives you one more minute to wind up your comments. We're not going to jump on you too hard if you run over a minute or two but do try to watch the lights to make sure that you don't go beyond five minutes. We're testing this in this committee. In the past, we've not used the light system, and we think that maybe it might help us get out of here before 5:30 or 6:00 in the evenings if we do this. We're not trying to stifle debate. We are going to do the best we can to give you an opportunity for full and fair discussion of these issues.

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We do appreciate your willingness to come take your time to share with us your opinions on what we are contemplating in this committee. I would ask you when you do testify that you keep your comments as concise as possible, try not to repeat yourself, but more important try not to repeat previous testimony. That doesn't help a whole lot. And please spell your name clearly for the record so that we can know exactly who you are, what your name is, and how it is spelled so that when we transcribe all of this later on in the summer it will be clear. We have two pages who are helping us administer our work. If you have copies of exhibits that you would like for us to look at to accompany your testimony, please give those to one of the pages and they will get them distributed. The pages are: Danielle Henery from Battle Creek, Kyle Johnson from Sutton. And they will be ready to help you. One other item of business. Please, if you have telephones, and most of you do I'm sure, it's better to turn them off, at minimum I would like to have them on vibrate. Some phones are loud on vibrate so it's probably better to put them on silent. I know mine is one of those that's pretty bad on vibrate, so mine is going on silent now. So I'd appreciate if you'd do that. We'll start with LB117. That is my bill, so I will turn this over to the Vice Chair, Senator Scott Price.

SENATOR PRICE: Welcome, Senator Avery. [LB117]

SENATOR AVERY: (Exhibit 1) Thank you, Senator Price. Good afternoon, committee. I am here to introduce to you LB117. You will remember when we were engaged in the LR542 process, the committee looked at a number of ways that we could help the Legislature reach a 10 percent reduction in spending in order to help close the budget gap. And we were charged specifically with coming up with proposals that involved statutory changes rather than simply saying we're going to cut a percentage and a percentage there. And one of the things that we talked about and we agreed to put on our options list was a proposal to change how constitutional amendments are published in newspapers in this state. As you may remember from those discussions, publishing constitutional amendments and initiatives and referendum measures can be very expensive. We took a look at the past ten years and we found that on average we were spending around \$460,000-some a year to pay for publishing constitutional amendments, initiatives, and referenda in newspapers. The manner in which this has been done in the past was to publish in a newspaper in every county three consecutive weeks, and that involved title and verse of those amendments, initiatives, and referenda. What we're proposing here in LB117 changes the publication requirements for constitutional amendments and for referenda and initiatives. The bill does this: It requires notice be placed in newspapers directing citizens to the Secretary of State's Web site where the full text and title of the constitutional amendment or referenda and initiatives can be read. In the Nebraska Constitution, you may recall we discussed this extensively in committee, there is a requirement that constitutional amendments proposed by the Legislature be published in at least one newspaper in each county for those three consecutive weeks I talked about. And we also found that in statute this is repeated, this similar language is repeated in statute involving initiatives and referenda.

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In our discussions of the LR542 process, there was some question raised about whether changing how constitutional amendments are published, whether or not it could be done by statute. And you will hear arguments today that it cannot be done constitutionally, that we have to do title and text. It is our belief that title and text are not required by the constitution but simply that adequate notice be provided, and we think that that can be done simply by putting in these newspapers a small notice that...referring them to the Secretary of State's Web site where they can get the full title and text. If you look at the constitution in Article XVI, Section 1, it states that amendments proposed by the Legislature--and I'm quoting here--shall be published once each week for three consecutive weeks in at least one newspaper in each county where a newspaper is published. It does not specifically mention that we must publish the entire text and title. The next sentence in the constitution of that section states, and I quote, at such election said amendment shall be submitted to the electors for approval or rejection upon a ballot separate from that upon which the names of candidates appear. As you know, the full text and title of amendments do not appear on the ballot. What appears on the ballot is a summary of the amendment, therefore, it could be argued that the constitution does not require the full text and title. With LB117, a notice will still be published in the newspaper, still be published for three consecutive weeks, still be published in every county where a newspaper exists, but not the full text and title. That will help us achieve part of our goal of closing the nearly \$1 billion budget gap. We understand and we talked about this in committee that this will have some negative effects on some small communities, particularly the small newspapers, some of which depend on these notices and payments from the state for up to 10 percent of their entire income. I think one could raise the philosophical argument or question as to whether this is an appropriate expenditure of state tax dollars or state General Fund dollars. Are we in any way required to subsidize newspapers in small towns? We are in extraordinary times, as I said yesterday in testimony before this committee, and extraordinary times call for extraordinary measures. It's time for us all to step up and say, I'm willing to do what I can do to help us get through this crisis. Thank you. [LB117]

SENATOR PRICE: Thank you, Chairman Avery. Are there any questions from the committee? Senator Pahls. [LB117]

SENATOR PAHLS: In other words, I do understand we're looking at it for cost, but I'm also looking at the information you handed to me that the constitution...I see dates of 1875, 1920, 1952, 1968. So some of these things were enacted many, many years ago before we have the modern conveniences like...I mean like... [LB117]

SENATOR AVERY: My good friend Kevin O'Hanlon likes to refer to the Internet as the "electric Internet." This was before the Internet, of course, when the constitution was written and these provisions were put in there. You're quite right. And we have...in this committee, we have been discussing over time, at least in my four years on this committee, we've been talking about the need for this committee to look for

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opportunities to help the state move into the twenty-first century in how we do business, particularly with election law and things of that sort. [LB117]

SENATOR PAHLS: Thank you. [LB117]

SENATOR PRICE: Senator Janssen. [LB117]

SENATOR JANSSEN: Thank you, Vice Chair Price. Chairman Avery, you talked about the constitutionality, there might be a question perhaps if we can do this. Let's assume we can. Yourself, as we know, being a former professor in this area. What are your concerns about transparency of government? [LB117]

SENATOR AVERY: Well, that's really a good question actually because you know I'm a passionate defender of transparency in government. I believe that it's very hard to find communities in the state today, even the remotest communities that we have, where there is no opportunity for people to gain access to the Internet. Libraries have them. Courthouses have them. County offices have computers. I don't know what policies may be in place in some of these communities that would bar a citizen from borrowing a computer for a few moments to look up the Web site of the Secretary of State where these full text can be found. I believe that eventually we are going to continue to move toward a paperless society. I know it has painful implications for print newspaper, for printed media. And I am not eager to see the demise of the printed press in this country. It's already under a great deal of pressure, but I believe that transparency can be preserved with the proposal that we have here before you in LB117. [LB117]

SENATOR JANSSEN: Would we in any way be restricting these same newspapers from providing this public information on their own even with this... [LB117]

SENATOR AVERY: Absolutely not. Another good point. Absolutely not. They can do that and if they're willing to absorb the cost. The state would not be paying for it. We would pay for the initial notice, and... [LB117]

SENATOR JANSSEN: So if their readers or subscribers in this case actually demanded that material or asked for that material, that would be something they would still have full access to? [LB117]

SENATOR AVERY: They could still...absolutely, they'd have it. [LB117]

SENATOR JANSSEN: Thank you, Chairman Avery. [LB117]

SENATOR PRICE: Thank you, Senator Janssen. Are there any other questions? Yes, Senator Schumacher. [LB117]

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SENATOR SCHUMACHER: Thank you, Senator Price. Senator Avery, this might be a dumb question, I'm noted for a few of those. What is a newspaper? [LB117]

SENATOR AVERY: A newspaper is a medium for communicating with subscribers, people who purchase the paper to communicate news, advertisements, notices, things of that sort, things that the public needs to know. [LB117]

SENATOR SCHUMACHER: Do you know of any requirement that that information be communicated on something that's made out of pulp or trees rather than a digital screen? [LB117]

SENATOR AVERY: No. We have various types of news media. Of course, you know there's broadcast media and news media, print media, and now electronic media. Electronic media are in many ways more accessible to more people and more readily accessible and instantly accessible than news that you might get from print or broadcast. You have to wait for the broadcast to be prepared and you have to wait for the time it's scheduled to be aired before you can get it. But you can go on the Web site, whatever media it is--it might be broadcast or it might be print--you can get that news story before it shows up on your door in a printed form. [LB117]

SENATOR SCHUMACHER: So when our constitution refers to a newspaper, it might well be referring to a Web page? [LB117]

SENATOR AVERY: You sound like a lawyer ready to make the case. Thank you. (Laugh) I think you could make that argument because in 1875 when the constitution was written, they were referring to means of communication with the public. Now, obviously, oral communication is one way but only William Jennings Bryan had a voice that could carry more than a few hundred feet. I am told that he could give a speech at the State Fairgrounds and you could hear him on my front porch way over on E Street, word for word. But nobody does that anymore. [LB117]

SENATOR PRICE: Thank you, Senator Schumacher. Are there any further questions? Senator Brasch. [LB117]

SENATOR BRASCH: Senator Price, thank you. Senator Avery, I feel I need to defend our small towns' newspapers. They're... [LB117]

SENATOR AVERY: Allen Beermann is here, don't worry. (Laughter) [LB117]

SENATOR BRASCH: Our district and state is full of many small towns. The weekly papers, they are shared. They're very valuable. They sit in offices. If the information is important, print helps validate it. You know, we're all sitting here with notebooks and paper. We're not sitting here with open iPads. Internet, we're talking about excruciating

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times, that's a subscription to the Internet, you know, whether you're paying, you know, \$30, \$60. You know, people cannot afford to subscribe to everything. In a lot of the small towns, a lot of people, you know, if it's in the information overload that you get off the Internet, you know, will they take the time to, you know, search for these documents? You know, the access is there but there's so much access. You know, I'm just concerned that we will lose...you know, we try to keep our citizens informed, and you are excluding some citizens by asking that they pay another fee to go electronic, where the printed paper is a tradition, it's a part of the culture in many small communities. It seems like we're losing a lot of things in our small communities. It saddens me to think that we would lose our newspapers. [LB117]

SENATOR AVERY: I appreciate that and I don't disagree with you at all except that people who have access to the Internet at home usually are already paying that fee and they're using it for a variety of purposes, and this would just be one purpose. People who don't now subscribe to the Internet would have access to it in libraries, and they would not have to pay a fee for that. [LB117]

SENATOR BRASCH: Thank you, Senator Avery. [LB117]

SENATOR AVERY: I agree with you. I don't know that there's anything we're proposing to do in the LR542 budget review process that we like. As I have said all along, and you've probably heard me say this, the whole...the budget crisis has presented us with some opportunities to rethink how we do business and perhaps modernize bringing us into the twenty-first century and use more technology. And there are always losers and winners when you do things in a different way. And I recognize that and it's not with any pleasure or any delight that I propose this. But it seems to me that a half a million dollars a year on average could be saved to the state is worth doing if we can still meet the constitutional requirement, which I think we can if we provide notice to citizens. [LB117]

SENATOR BRASCH: Thank you, Senator Avery. Senator Price. [LB117]

SENATOR PRICE: Thank you, Senator Avery. Senator Schumacher. [LB117]

SENATOR SCHUMACHER: Thank you, Senator Price. Senator Avery, in order for one to be...have the initiative petitions and the language published in the newspaper, are you aware of any requirement that that newspaper has to distribute itself for free? [LB117]

SENATOR AVERY: I don't think so. [LB117]

SENATOR SCHUMACHER: They can charge a fee just as one would charge an Internet subscription fee. [LB117]

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SENATOR AVERY: They can. Yeah. I think most small-town newspapers do... [LB117]

SENATOR SCHUMACHER: Charge. [LB117]

SENATOR AVERY: ...yeah, charge a subscription fee. And, of course, most of the income comes from advertising, classified ads, or things of that sort, and apparently as much as 10 percent in government subsidies of some sort. [LB117]

SENATOR PRICE: Senator Pahls. [LB117]

SENATOR PAHLS: Thank you, Senator Price. This just brings to me a little bit of humor because in my hometown...I still get my hometown, small-town paper, and there are a lot of editorials and most of them are critical of government spending. So I find it a little bit ironic that we're talking about...and now that just gives me another little stage. I mean, we already exempt \$6 million tax exemptions to newspapers, you know, through our... [LB117]

SENATOR AVERY: Would you...I'm not supposed to ask you a question because I might... [LB117]

SENATOR PAHLS: (Laughter) Go ahead. [LB117]

SENATOR AVERY: One could say that is also a sunset. [LB117]

SENATOR PAHLS: Yes, yes. No, I'm just...this is just...thank you. [LB117]

SENATOR PRICE: Thank you, Senator Pahls. Are there any further questions? [LB117]

SENATOR AVERY: He never misses an opportunity to bring that point up to us. [LB117]

SENATOR PRICE: No, he doesn't. Senator Avery, I take it you will remain out there for... [LB117]

SENATOR AVERY: I will be sitting right here. [LB117]

SENATOR PRICE: Thank you. Okay. Let's go move onto proponents. Could I have the first proponent for this opportunity? Proponent. Kind of light on the proponents today. (Laugh) In that case, we're going to move straight on into opponents. First opponent for this bill please. By the way, how many people are out here are going to testify in opposition? Good. Thank you. And the lights will be kicked on here shortly. [LB117]

JOHN MILES: (Exhibits 2-3) Thank you, Senator Price. Thank you for the opportunity to

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comment on LB117 today. My name is John Miles, that's J-o-h-n M-i-l-e-s. I'm an attorney and partner at Cline Williams Wright Johnson and Oldfather, LLP, and I'm here today as legal counsel to the Nebraska Press Association and the Nebraska Press Advertising Service. I will note that right off the bat our constitution has provided for a publication of constitutional amendments since 1875. My law firm was established in 1857, prior to statehood. Consequently, I think just about every...to our knowledge, every constitutional amendment has been published in a newspaper in the state of Nebraska since that time. My clients requested that our firm review this bill and consider its constitutionality. We have done so and while we appreciate your concern about the cost of publishing the full text of constitutional amendments in newspapers as required by our constitution, we do not believe that this bill is constitutional. To be specific, we believe that LB117 is inconsistent with Article XVI, Section 1 of the constitution and its publication provisions for constitutional amendments to outside the authority of the Unicameral to adopt. Article XVI, Section 1 is clear and unambiguous. It says that: Proposed amendments shall be published once each week for three consecutive weeks in at least one newspaper in each county where a newspaper is published. It says nothing about a notice of such amendments. Based on the case of Swanson v. State, 132 Neb. 82, 1937, the publication requirements set forth in Article XVI, Section 1 apply equally to constitutional amendments proposed by the initiative process as set forth in Article III of the constitution. The publication requirements for constitutional amendments has been part of our constitution since 1875. It is our belief that every constitutional amendment has been published in newspapers since that time. Again, the amendments have been published in full text as required by the constitution and by the provisions of Nebraska Revised Statutes 32-1413 and 49-202. Sections 32-1413 and 49-202, as they presently exist, are entirely consistent with the constitution. LB117 proposes to change these requirements to provide for the publishing of a notice with a reference to a link on a Web site where the amendment can be read. A reader that would want to read the amendment would not be reading the amendment as published in and by a newspaper but rather would need to read the notice, then go to a computer and get on the Internet to do so. This is clearly inconsistent with the plain reading of the constitution. At the 1919 constitutional convention, an attempt was made to amend the constitution to eliminate the publication requirement entirely and permit the Legislature to provide for publication as it might determine to be appropriate. Debate on this evidences a clear and unambiguous concern about delegating to the Legislature the power to adopt procedures for adopting constitutional amendments, and the proposal was defeated. In that debate, the record indicates that one delegate observed: The main purpose for the publication of the proposed amendments is to apprise the people who want to vote on the question of what the proposed amendments are. There is wisdom in the provision which requires that these amendments be published once each week for three months preceding the election. By the way, that was the requirements in those days. By a publication of these amendments in the newspapers, the attention of the voters will be called to the provisions of those amendments. In addition in proposing the proposal to eliminate the requirement, another delegate stated: The constitution

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itself should provide in detail the manner of amending the constitution. Without so doing, the constitution is incomplete in itself and, consequently, the constitution should provide each step and each detail in amending it. And, finally, another delegate and one of the chief drafters of the proposed constitution at that time stated that as to this section: We deem it advisable to have every step specifically stated in the constitution when one undertook to amend it, otherwise the very protection of amendments is gone. If you take away from it its fundamental essentials and leave it to the Legislature to adopt anything it sees fit as to the methods of getting it in front of the people, the very reason for the amendment is gone. So we thought it advisable to leave it as it was so that the elements that entered into the reasons for the amendment would be just as vital as the amendment itself. Further, Article XVI, Section 1 of the constitution was later amended in 1951 by a proposal brought by the Unicameral to limit publication to once each week for three weeks prior to the next election of members of the Legislature. As noted previously, it required publication once a week for three months. The summary of the floor debate clearly indicates that the amendment was proposed to save money, just as we're doing today. When this change was made in 1951, the Unicameral proposed the amendment because it understood it lacked the authority to simply adopt a change in the publication requirement for constitutional amendments by statute. This bill attempts to require publishing of a notice with a reference to a link and a Web site. This is contrary to the plain language of the constitution and, just as was the case in 1951, the Unicameral lacks the authority to make such a change today. Based on the foregoing, we oppose this bill. [LB117]

SENATOR PRICE: Thank you very much, Mr. Miles. Just off the bat then, what you seem to be saying is it's the manner upon which we are asking for the change, i.e., a legislative action versus a constitutional amendment, and if it were a constitutional amendment you'd be less inclined to be in opposition. [LB117]

JOHN MILES: If the legislator chose to pursue a constitutional amendment, that is their clear legal right. [LB117]

SENATOR PRICE: Thank you. Are there any questions? Senator Schumacher? [LB117]

SENATOR SCHUMACHER: Thank you, Senator Price. I'll begin with this one, the same one I asked Senator Avery. What is a newspaper? [LB117]

JOHN MILES: I wasn't asked to come here to opine on what is a newspaper, but I believe a newspaper is protected by our U.S. Constitution as well, and it is a legal entity that publishes news which constitutes information collected by them to the public. [LB117]

SENATOR SCHUMACHER: How is that different from a Web publisher? [LB117]

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JOHN MILES: Again, a Web publisher is on the Web. I can't comment on that. [LB117]

SENATOR SCHUMACHER: Do you know of any requirement the newspaper has got to be printed on pulp? [LB117]

JOHN MILES: They don't. [LB117]

SENATOR SCHUMACHER: ...or some type of plastic or physical thing you can pick up? [LB117]

JOHN MILES: That's not the question. The question is whether it's published in a newspaper. [LB117]

SENATOR SCHUMACHER: Okay. Well, okay, I'm just asking what a newspaper is and how it differs from a Web page. That's all. In some of our laws, we refer to a legal newspaper of general circulation in the county. I notice that language is not in the constitution. What is the difference between one newspaper in a county and a legal newspaper in general circulation? [LB117]

JOHN MILES: I don't have the specific statute in front of me relating to a legal newspaper, so you'd have to refer to that. [LB117]

SENATOR SCHUMACHER: Okay. What is do you take it as the definition of the word "publish" then? [LB117]

JOHN MILES: I think it's plain and unambiguous in our constitution. It's publish the amendment. [LB117]

SENATOR SCHUMACHER: What is it? What is it? What does the word "publish" mean? [LB117]

JOHN MILES: To distribute. [LB117]

SENATOR SCHUMACHER: Okay. So if Secretary of State's Office were to send out a PDF file to automatically print in a library within the county, would that PDF file then be published? [LB117]

JOHN MILES: To my knowledge, the Secretary of State is not a newspaper to begin with, and whether or not it's publishing it or not, I... [LB117]

SENATOR SCHUMACHER: I didn't ask whether it was a newspaper. I would say, would that be published. We're looking at the word "publish" now. [LB117]

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JOHN MILES: Publish is to distribute. [LB117]

SENATOR SCHUMACHER: I don't have any further questions. [LB117]

SENATOR PRICE: Thank you, Senator Schumacher. Senator Karpisek. [LB117]

SENATOR KARPISEK: Thank you, Senator Price. Thank you, Mr. Miles, for coming and giving your opinion on the constitutionality. Could you please go over quickly the every week for three months, is that what it was changed...? [LB117]

JOHN MILES: In 1875 through 1951, it was every week for three months prior to the next general election of which legislators are elected every two years. [LB117]

SENATOR KARPISEK: And that was done through a constitutional amendment. [LB117]

JOHN MILES: Correct, proposed by this Legislature. [LB117]

SENATOR KARPISEK: By the Legislature and then a vote of the people. [LB117]

JOHN MILES: Yes. [LB117]

SENATOR KARPISEK: Do you have any knowledge if it's ever been other...you talked about maybe the...no, I'm sorry, has it ever been trying to just be a one-time publication? [LB117]

JOHN MILES: No, not to my knowledge. [LB117]

SENATOR KARPISEK: Not to your knowledge. Okay. Thank you very much. That's very interesting to know that. I did not know that it was three months. Thank you. Thank you, Senator Price. [LB117]

SENATOR PRICE: Senator Pahls. Thank you, Senator Karpisek. Senator Pahls. [LB117]

JOHN MILES: Thank you, Senator Price. Mr. Miles, I do understand the importance of not playing with the constitution lightly. I mean, that's a point that I think we should take seriously. But I'm also concerned not just for the cost but for some of your past arguments, did it not appear that maybe the Legislatures are trying to play a little hanky-panky because they didn't want things distributed? You know, by listening to your testimony it sounded like the Legislature was trying to do something devious. My listening to you, it appeared that way. [LB117]

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JOHN MILES: At a 1919 convention, one of the delegates proposed that the constitution be amended to eliminate the publication in newspapers. The debate on that at that time clearly went the other way and they decided that they didn't want to go that way because they didn't want to delegate to the Legislature the way to...in the constitution, the way to actually publish notice of the amendments. The amendment of our constitution is central to this issue. It is our supreme document. [LB117]

SENATOR PAHLS: Yeah. And I cannot disagree with you on that because, I mean, I truly believe that. But I'm thinking if I'm going back in 1920, they did not have these other opportunities to provide this information. It was like we're not going to give you the information. If we don't follow the newspaper then, nobody would know about it by, you know, word of mouth or possibly a radio or something like that. But I think now we have more avenues to provide this information, but you still see that as in violation of the constitution. [LB117]

JOHN MILES: Um-hum. [LB117]

SENATOR PAHLS: Okay. Thank you. [LB117]

SENATOR PRICE: Thank you, Senator Pahls. Any further questions? Seeing none, thank you very much for your testimony today, Mr. Miles. [LB117]

JOHN MILES: Thank you very much. [LB117]

SENATOR PRICE: The next opponent, please. [LB117]

ALLEN BEERMANN: (Exhibits 4-5) Mr. Vice Chair, members of this committee, I'm Allen Beermann, A-l-l-e-n B-e-e-r-m-a-n-n. I'm the executive director of the Nebraska Press Association. I appear here today on their behalf. With regard to the question I think that Senator Schumacher brought up twice, there is a statutory definition for newspapers in this and every state. They're basically the same. In our state, it's a newspaper is defined as having a paid subscription of 300 or more, it must be registered with a post office to have a periodicals permit, and they have to publish at least 52 consecutive editions for a year in order to qualify as a newspaper. We oppose LB117 for the basic reason that the bill clearly on its face is unconstitutional. I have researched this over the years, so has the law firm of Cline Williams, and they have stated the reasons why. I want to address the cost factor first. This year, meaning 2010, the election cycle, the cost for publishing all of the amendments, primary and general, was \$86,000. When you divide that number of dollars into the number of voters, it comes out to 9 cents per voter. A piece of bubblegum today costs 10 cents. So in the process of amending your supreme document, the constitution, the voters only spend 9 cents a person in publishing the amendments. We have had a couple of years where

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there was a high figure. Now in terms of saving money for this biennium, it cannot happen. You won't save any money if this bill were in effect because the next payment for constitutional amendments would be made in June of 2013. Nothing would happen in '11 or '12 because the next election is in November of '12, so you're not saving any money for this biennium. I might mention also the Pew Research Center has done extensive surveying and polling, along with the National Public Resource Center. Only 40 percent of Americans over the age of 65 ever used the Internet. Only 15 percent of Americans last year visited a Web site on the average day, and only half of that number ever looked at a government Web site. However, 89 percent of the adult population do read a newspaper every day or every week. And there will be some exhibits with all of these statistics from the Pew Association and from the legal notice foundation. The critical thing I want to mention to you today is the problems you're going to have with putting these on the Internet. We frequently, unfortunately, in Nebraska have ice storms and snow storms and tornados and hurricanes (sic) and whatever else we have. Just recently last year, there was an area in Nebraska that an ice storm and I think in 11 counties for 17 days knocked out the electricity. You're not going to have access to the Internet or any notices or any postings or any publishing, and that has happened in years past right before a general election when we've had an ice storm or a snow storm and electricity was out for 17 and 20 days. The Internet is then down and people will have no chance at having access to the amendments or election materials or any other notices. I might tell you also with regard, Senator Schumacher, to a legal newspaper, they have to also be qualified with the United States Post Office, and also they have to attend to the Audit Bureau of Circulation that certifies their subscriptions and their circulations as well as their mailings through the Post Office. And that's how we keep track of a legal newspaper. I would be delighted to answer questions if there are any. [LB117]

SENATOR PRICE: Thank you very much there, Mr. Beermann. I'll ask a quick question there. Given that there was a constitutional amendment that said that this could happen and it was all passed, would papers no longer publish if they didn't have to? Would they no longer publish them or would they find them newsworthy enough to publish them? [LB117]

ALLEN BEERMANN: I'm glad you asked that. Today currently and for many years, and I've passed out an exhibit, at the newspaper's expense each time we publish the constitutional amendments, we publish an exhibit that explains in brief paragraphs what is the constitutional amendment all about. Whether or not the newspapers could afford to publish, without being paid, the entire text of the amendment and the ballot language, the explanatory statements, how it will appear on the ballot and the sample ballot, that for most weekly papers would be a pretty tough stretch. [LB117]

SENATOR PRICE: Thank you very much. Are there any questions from the...? Thank you, Senator Pahls. [LB117]

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SENATOR PAHLS: Yeah. First of all, Mr. Beermann, I want to thank you for all your...all of what you've done for the state of Nebraska. [LB117]

ALLEN BEERMANN: Thank you. [LB117]

SENATOR PAHLS: And it is sort of a joy to listen to you because, you know, indirectly you can be a walking newspaper because you're providing information to us, especially about what a legal newspaper is... [LB117]

ALLEN BEERMANN: Thank you. [LB117]

SENATOR PAHLS: ...that I a lot of us do not have. And that history is very, very unique. [LB117]

ALLEN BEERMANN: Thank you. [LB117]

SENATOR PAHLS: And I know you talked about ice storms and things like that. I mean, cyberwarfare may be an issue in the future also... [LB117]

ALLEN BEERMANN: Could be. [LB117]

SENATOR PAHLS: ...you know, with...you know, I mean, how they could do that. You truly think...I'm not talking about the constitution right now, you truly think this would be a mistake, let's forget about the constitution, if we would pursue this. [LB117]

ALLEN BEERMANN: I really do. And I might call to your attention that in the last two years, each of the last two years in the states of Missouri, Kansas, Wyoming, Colorado, Wisconsin, South Dakota, North Dakota, and partially in Iowa, theirs was only one shot, every legislature on these identical provisions having to do with public notice have voted all of these bills down for the reasons that we've stated. They never even got out of committee. In one state, it got to the floor and it was defeated overwhelmingly in one house because they have two houses. [LB117]

SENATOR PAHLS: Now you're trying to tell me you're an encyclopedia. (Laughter) Okay. [LB117]

ALLEN BEERMANN: No, no, I'm just the official living state fossil (laughter) and I collect all these things. [LB117]

SENATOR PAHLS: Thank you. I appreciate it. [LB117]

SENATOR PRICE: Thank you, Senator Pahls. Thanks. Yes, Senator Schumacher.

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[LB117]

SENATOR SCHUMACHER: Thank you, Senator Price. Secretary Beermann, the definition that you gave of a legal newspaper is a statutory definition. [LB117]

ALLEN BEERMANN: That is correct. [LB117]

SENATOR SCHUMACHER: It is not a constitutional definition. [LB117]

ALLEN BEERMANN: In our state it's statutory; in some states it is constitutional but not ours. [LB117]

SENATOR SCHUMACHER: Right, but the constitutional issue that has been raised is not regarding the definition that you have because... [LB117]

ALLEN BEERMANN: That's correct. [LB117]

SENATOR SCHUMACHER: ...we do not require it to be a legal newspaper. Now in our laws in many places we require substantial publications in what I'll call just paper pulp newspapers preceding the county boards of city councils, of probates... [LB117]

ALLEN BEERMANN: Minutes. [LB117]

SENATOR SCHUMACHER: ...minutes, all those kind of things, and substantial revenue is derived by the newspapers from those publications. [LB117]

ALLEN BEERMANN: I wouldn't say substantial but some. [LB117]

SENATOR SCHUMACHER: Yup. [LB117]

ALLEN BEERMANN: In some papers the actual cost of publishing all this, they are losing money because of the number of pages they have to print vis-a-vis the revenue. A small weekly wouldn't make a profit. Norfolk Daily News would not. [LB117]

SENATOR SCHUMACHER: So you're saying that they lose money on just publishing the notices? [LB117]

ALLEN BEERMANN: They do. [LB117]

SENATOR SCHUMACHER: Should we maybe eliminate that requirement then that those publications be required? [LB117]

ALLEN BEERMANN: No, I would say no and I'll tell you why. Because it's the

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newspapers for every legal public notice, you receive an affidavit of proof of publication. When it's on the Internet, you get nothing. There's no record that it was ever published or posted. They can be easily hacked. They can be easily changed. In my testimony that I...the rest of my testimony, I have a whole list of "horribles." These are things that are happening every day where they get hacked, they get changed, they get left off, they get evaporated, or the town forgets to renew their URL and suddenly it's not paid for. They pull the plug. They saved all this money by going on the Internet and these two towns, for example, in Vermont today are in a whole bunch of lawsuits because all of their legals evaporated. Nothing was published. They had no affidavits of publication. They lost all of their record and now they're paying for it in lawsuits. [LB117]

SENATOR SCHUMACHER: But we...I mean, just as we can require the newspaper to submit an affidavit of publication, we could require the Web server host to certify that it was, in fact, published and the fact it was not hacked during the period in question. [LB117]

ALLEN BEERMANN: You could but now you're getting into some real money. [LB117]

SENATOR SCHUMACHER: Why do you say that? [LB117]

ALLEN BEERMANN: Well, because the cost of maintaining Web sites and now establishing an outside provider to handle all of these affidavits, to mail them all, there will all be charges for all of those. Some states have tried this. I allude to the fact of what they tried to do in Utah and I cite a clerk in my testimony here of some of the things that are happening. [LB117]

SENATOR SCHUMACHER: What do you estimate the cost of just having a Web page is then? [LB117]

ALLEN BEERMANN: Well, first of all, you've got to set up the Web site, and then somebody has to post it just like you'd send it to the newspaper, and then they have to get notaries public. They have to start setting up affidavit forms. They've got to mail all the affidavit forms, whereas now the newspaper takes care of all of this locally with your law firm or with the city or the county. If you have somebody at the state doing that, it's going to cost money. [LB117]

SENATOR SCHUMACHER: I mean, would it surprise you that many commercial Web sites are available for like \$10 a month? [LB117]

ALLEN BEERMANN: No, I'm sure they are. [LB117]

SENATOR SCHUMACHER: Let me ask just one other question then. If as a condition of getting the...being declared a legal newspaper so all these other statutory

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requirements are published in the newspaper, we added to that the requirement that the newspaper publish the initiative petitions and the legislative constitutional change proposals as a requirement of being a legal newspaper, have any problem with that? [LB117]

ALLEN BEERMANN: You're saying, in other words, if you wanted to qualify to be a...before you could qualify to be a legal newspaper, you had to, free of charge I guess, publish constitutional amendments and other notices, all notices? [LB117]

SENATOR SCHUMACHER: Right. Yeah. Well, not all notices, just these two notices we're talking about here, constitutional amendments... [LB117]

ALLEN BEERMANN: Well, certainly the Legislature could do that, but I don't know how you evaporate the requirement that now is found in the constitution... [LB117]

SENATOR SCHUMACHER: Well, all we're looking for it save whatever it is million dollars here, \$400,000 to go. So is this another way we can save the \$400,000? [LB117]

ALLEN BEERMANN: Yeah. I don't think the \$400,000 is quite accurate for a year. First of all, the elections are every other year. And when you go back...and incidentally, all of the figures, the number of votes cast and what it costs for amendments, referenda, and initiative is all found in the Blue Book going way back to 1919. And...yeah. [LB117]

SENATOR SCHUMACHER: Well, whatever it is. I mean, it would be a way to save it if we put that requirement as a definition of legal newspaper. [LB117]

ALLEN BEERMANN: That is correct. [LB117]

SENATOR SCHUMACHER: Okay. No further questions. [LB117]

SENATOR PRICE: Thank you very much, Senator Schumacher. Are there any other questions? Seeing none, thank you for your testimony, Mr. Beermann. [LB117]

ALLEN BEERMANN: Well, thank you for your courtesy. We appreciate it. [LB117]

SENATOR PRICE: Do we have any further opposition? Seeing none, do we have anybody wishing to testify in the neutral? Okay, we have two of those. As he is coming in and getting ready, we do have a letter from the AARP that comes in in opposition that would like that read into the record, please, from Mr. Intermill. (Exhibit 6) Thank you. Please. [LB117]

JACK GOULD: Members of the committee, my name is Jack Gould. I represent

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Common Cause Nebraska. This has been very interesting to hear the debates that are taking place. I think the constitutional argument is an interesting one. I have no idea whether it would be successful or not. And the argument for finding...saving funds is certainly a serious argument in this day and age. But I think the dominant argument that you all have to look at, and I'm not ready to answer the question for you, but is what serves the public the best. The real key is, how do we educate the public to vote properly or to have their opportunity to vote intelligently? And I think you have to weigh that as your top priority. After that, the other arguments become secondary. And I just wanted...I hadn't heard that argument used so I just wanted to bring that forward. [LB117]

SENATOR PRICE: Thank you, Mr. Gould. Are there any questions? Seeing none, thank you for your testimony, sir. Mr. Secretary. [LB117]

JOHN GALE: Thank you, Mr. Vice Chairman and members of the Government Committee. I'm John Gale, G-a-l-e, Secretary of State, Chief Election Officer for the State of Nebraska. I'm testifying in a neutral capacity because I don't want to focus on the issue of whether this bill would pass muster constitutionally or statutorily. Obviously, it's a matter that this committee and the Legislature need to resolve with the help of your counsel and possibly even the Attorney General's Office. But as Chief Election Officer, I want to emphasize the very point about the importance of public education. That's what this provision and the constitution is all about. It's not just simply what is the cost or how many newspapers are involved. The point of all of this as Chief Election Officer is, is it a successful and efficient and cost-effective method of further educating the public on sometimes very complicated constitutional issues, initiative issues, and referenda issues. For the ten years I've been Secretary of State, we have watched this expense unfold, where some years it will be \$85,000, some years it will be \$1.2 million in terms of cost of publishing in every newspaper. Under the constitution, it's the discretion of the Governor to decide whether it will be a single legal newspaper that will have public notice in each county or every newspaper. And over my ten years, the Governors have generously elected in their discretion to allow it to be published in every newspaper. But in tough budgetary times, that discretion may be exercised differently and you may see choices where publication is in a single legal newspaper in each county. And it's not every county that publishes the constitutional amendment. Douglas County, the largest newspaper, the Omaha World-Herald does not participate because they won't accept the statutory rate for publication of the amendments. And, therefore, it's the daily record which is really a legal newspaper that publishes in Douglas County and, therefore, it's not a real effective measure of means of reaching all the citizens or voters in Douglas County. We have three requirements under that constitutional provision to try to reach the public and educate them. One, is through the publication of the constitutional amendment or an initiative or referendum. For initiatives and referenda, the Secretary of State is also required to go out and have public hearings in each congressional district and have proponents and opponents testify on the record with a transcript in order to

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further enhance and educate the public. Unfortunately, very few members of the public attend. And unfortunately the media is unable to really use the substantive issue that comes from those public hearings to really reach much of the public in terms of giving them a succinct summary of the pros and cons, the benefits or detriments, of those measures. In addition, the Secretary of State's Office is required to publish a brochure and include in that brochure for initiative measures the summary of position of the proponents, the summary of position of the opponents, and the publication of the measure itself, and those are distributed free at the hearings. Any citizen who is interested could get one free. We send quantities of them to the counties to pass out to citizens. But over the ten years, I have to say I don't think any one of those measures or all three of those measures have continued to be an effective means of educating the public on the measures, whether they're constitutional amendments, initiative, or referenda. One issue that you do need to address is the inconsistency between the constitutional amendment provision in the constitution and the statutory provision for initiative and referenda. The Governor has the discretion which he can exercise for reasons of budget or reasons of simplicity or complexity of the measure for constitutional amendments. But for initiatives and referenda, the Governor has no discretion. It's mandated by statute that they will be published in every newspaper in this state. I don't see why there's an inconsistency. The initiative and referenda should reflect the constitutional standard and allow the Governor to have that discretion. If there's going to be some change, that would be one that would be helpful, particularly in tough budgetary times to allow the Governor who drives the budget process to a large degree to have that discretion. But my point is, I think, more fundamentally the issue of how we educate the public. And this measure that has been brought before you by the Chairman of your committee has a lot to be considered. In the time that I've been Secretary of State, I'm chairman of the State Records Board in charge of e-government, and we've gone from virtually zero on-line applications for state agencies to over 200, some 220 on-line applications to give public more access to filing information and applications and to do renewals, and whether it's driver's licenses or their real estate license, and also to research government and find information they're looking for. I think the public is deeply engaged with the Internet and highly sophisticated to an increasing degree of how to find information on the Internet. So this bill was an interesting and intriguing proposal because it allows the continued publication of public notice in the newspapers. It's not eliminating all public notice. It still has to be published, it's just not the full text. And whether or not the full text really serves a useful public purpose anymore as opposed to having it on some Web site, whether it's our Web site or some other Web site that would be assigned where it's available at all times, 24/7, every day for anybody to look up and research and debate and consider. Now the other thing I have to emphasize is our newspapers have done a wonderful job. We're all deeply engaged with them in campaign politics and in election balloting because their editorials and their news coverage is outstanding in helping to engage the public and inform them on the issues at hand, whether it's candidate issues or whether it's ballot issues. But that's on the new side. The question is, how can we better inform the public on the

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substance of ballot issues such as constitutional amendments, initiatives, and referenda? And I think that's the challenge that's before you. Now whether it can be done statutorily or constitutionally, I don't know. But it may be that in addition to a simple statement of the amendment in the public notice, maybe it can be required that there be a summary. There are all kinds of public notices, as you know, and I know as an attorney, that are published for very legal purposes and this is one of them, and it preserves that right of published notices in the newspapers of the state to refer them to some source of deeper information. Excuse me, I know the red light is on. Thank you very much. Appreciate... [LB117]

SENATOR PRICE: Thank you, Mr. Secretary. Do we have questions? Yes, Senator Pahls. [LB117]

SENATOR PAHLS: I just have one because if money is an issue here, if I'm interpreting what you told me that the Governor decides basically if we're going to spend \$400,000 a year---I mean, I'm just using that average--or we could spend less because it depends on the number of newspapers that this goes to, is that what...? [LB117]

JOHN GALE: That's the way the constitution is written for constitutional amendments, correct. [LB117]

SENATOR PAHLS: Right, constitutional amendments. Okay, so we could decrease this part of the budget if the Governor decided to do fewer newspapers. [LB117]

JOHN GALE: It's the Governor's discretion for constitutional amendments. [LB117]

SENATOR PAHLS: Okay. Okay. So it could happen without it...okay. Thank you. [LB117]

JOHN GALE: And I have no idea how that would change because you would have to have one legal newspaper in each county still publishing. The other question is whether or not the full text is required and that's another issue you have to resolve. But my testimony is directed at how can we best inform the public with the dollars that we spend on what we're doing. I don't think my congressional district hearings are very effective. You could eliminate those. If you're going to go with a constitutional amendment, you may want to change that, too. We need a new focus, a new direction, a new dynamic that does engage information technology. [LB117]

SENATOR PRICE: Thank you, Senator Pahls. Senator Brasch. [LB117]

SENATOR BRASCH: Senator Price, thank you. Secretary, thank you. My question is access to the information. The technology is there but, you know, we mentioned where you can find the Internet. My mother-in-law is a resident at an assisted living care

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center. And as I've gone throughout the district and you visit residents, you'll always see a newspaper sitting on their table. You rarely see a laptop computer. I don't know. I think the technology will get there. Maybe in Lancaster County everybody has got a laptop in the assisted living centers or, you know. But I think that these citizens are important and they are very active, they are very engaged. You know, many older Nebraskans take the time to really research their government, the elections, things like that. My concern is limiting that, taking that away, telling them that if you want to learn about your government, you have to find Internet access, you know. It's not convenient for everyone to get to the library or, you know, get on-line. That's my concern is that we should try to be working towards having, you know, more access, not taking access away. Perhaps technology will bring the cost of newspaper publishing down. Maybe that will eventually happen as technology advances. But taking it out of print, I think, is taking some information away from some people. The access isn't there for everyone. [LB117]

JOHN GALE: That's exactly our concern, too. How do we better reach those citizens? What's the most effective way? And maybe there are multiple ways. Most radio stations, television stations, and newspapers have their own Web sites. They'll do a short story and then they'll refer you to their Web site for the fuller details of that story. News is such a dynamically changing industry right now, it's hard to keep up and know for sure where it is going. But we do have to kind of keep our eye on the ball for purposes of what we do in Nebraska. How do we educate people on our constitutional amendments, initiatives, and referenda to the best degree possible and cost-effective way possible? And we're with you. We know not everybody has access. At the same time, we know that there are many citizens that have visual impairment and even a newspaper isn't something they're going to sit down and read the full text of a constitutional amendment in the public notice section of a newspaper. How do we bring that to the front page or how do we get it to them in a brochure? How do we get it to them on television? Those are all questions, and the newspapers are very deeply involved in that process, too. They're very committed through their news and editorial pages to useful information. But in terms of publishing the full text as part of a public notice, that's the question you face. There still has to be public notice because it's legally required. You need that affidavit of publication for legal purposes. And there can be a little or more summary and analysis there. I think summary and analysis comes better on the editorial page or the front page, but we need to consider doing more of that ourselves on our own Web site. This proposal simply links to our Web site. We always place the constitutional amendments, initiatives, and referenda on our Web site. It's always available. It's just most citizens don't know quite how to link to our Web site. Is that the best answer? It may not be, but it is another whole section of our public who wants that kind of access to that kind of information. [LB117]

SENATOR BRASCH: Thank you, Secretary Gale. [LB117]

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JOHN GALE: Thank you, Senator. [LB117]

SENATOR BRASCH: Thank you, Senator Price. [LB117]

SENATOR PRICE: Thank you. Senator Schumacher. [LB117]

SENATOR SCHUMACHER: Thank you, Senator Price. Secretary Gale, a few questions. First of all, with reference to constitutional amendments, there are two mechanisms that they get placed before the voters, is that correct, one by the Legislature and one by the initiative process? [LB117]

JOHN GALE: The initiative and referenda process is strictly statutory and the constitutional amendment only deals...the constitutional provision only deals with constitutional amendments. [LB117]

SENATOR SCHUMACHER: By the Legislature. Proposed by the Legislature. Maybe I didn't make myself clear. [LB117]

JOHN GALE: I guess that would be correct, that would be correct. [LB117]

SENATOR SCHUMACHER: So there's two ways that you can propose...in Nebraska, a constitutional amendment can be proposed: One, the Legislature by 30 votes puts it out there; and the other one is the people go out and get about 110,000 signatures, bring them to your office, and that's how it gets on the ballot. [LB117]

JOHN GALE: Well, I myself consider that an initiative petition. I'd have to consult with my Deputy for Elections to be certain, but that is my understanding as the initiative process is different than legislative constitutional amendments. [LB117]

SENATOR SCHUMACHER: Okay. And this constitutional provision that we're talking about applies only to those proposals for constitutional amendment made by the Legislature, not by the initiative process. [LB117]

JOHN GALE: That is my understanding. Don't take me as a final expert on that... [LB117]

SENATOR SCHUMACHER: Okay. [LB117]

JOHN GALE: ...but that is my understanding. [LB117]

SENATOR SCHUMACHER: But, yeah, we're trying to sort things out. Now there is also another place where the initiative process is used, and that's to propose statutory enactments. Is that correct? [LB117]

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JOHN GALE: Correct. [LB117]

SENATOR SCHUMACHER: Now that isn't covered by any constitutional language anywhere. [LB117]

JOHN GALE: Correct. [LB117]

SENATOR SCHUMACHER: Okay. So we're free to deal with statutory issues as much as we want as far as the constitution is concerned. [LB117]

JOHN GALE: So far as the initiative and the referenda process. [LB117]

SENATOR SCHUMACHER: Right. Okay. So that's a whole class that aren't even addressed by this constitutional thing. That's just whatever policy that the Legislature would want to facilitate it. [LB117]

JOHN GALE: Let me just turn briefly to the left and see if my counsel shakes his head yes or no. [LB117]

NEAL ERICKSON: I'm not sure I understand the question, but... [LB117]

JOHN GALE: Okay. [LB117]

NEAL ERICKSON: ...constitutional amendments have to be published. The initiative measures are done according to (inaudible). [LB117]

JOHN GALE: All right. All right. All right. I'm on the right track then. [LB117]

SENATOR SCHUMACHER: Okay. I think we're on the same particular track then. And in initiative measures, proposals to the constitution, has it been your experience that they are usually much longer because the initiative process has to put so much detail in, where the legislative process can take a short constitutional amendment and then flourish it up later if it passes with an enacting statute so that the text to have to be printed in the newspaper for an initiative constitutional amendment is usually longer, more detailed than something succinct and simple proposed by the Legislature. [LB117]

JOHN GALE: Well, it certainly has been our experience. I guess the year it cost \$1.2 million, there was an initiative measure that would repeal a statute, and part of the high cost of that was that the entire statute being repealed was just shown as stricken. So there wasn't anything to read, it was just pages of stricken information which was part of the initiative to strike that bill. [LB117]

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SENATOR SCHUMACHER: And there were no constitutional requirements that that be printed or printed with strike through because it was initiative by initiative. [LB117]

JOHN GALE: Well, again, it goes back to the statutory definition of whether or not the statutory requirement is that the full text be published, and that's been, I guess I would say, the generous interpretation up until now in terms of how much should be given. You know, 10 or 15 years ago, that was still primarily the source of information for those documents for those amendments to get your paper and cut it out and have it available, and things have changed considerably since then. But the statutory provision is what would be the basis for publishing the full text. [LB117]

SENATOR SCHUMACHER: Now when people go to vote on a proposed constitutional amendment, the whole text isn't on the ballot, just a summary, is that correct? [LB117]

JOHN GALE: Correct. [LB117]

SENATOR SCHUMACHER: Okay. So even on our ballot, we don't get to read the whole text. [LB117]

JOHN GALE: That's correct. [LB117]

SENATOR SCHUMACHER: Okay. Now you mention district hearings and I think I might have been involved in a couple of those. But those are only on legislation proposed by initiative. If the Legislature proposes a constitutional amendment, you don't do a district hearing. [LB117]

JOHN GALE: Correct. [LB117]

SENATOR SCHUMACHER: Okay. Now if I'm a citizen and I hear there's some weird initiative petition out there or even a constitutional amendment proposed by the Legislature and I write your office and I say, can you send me one of those little booklets or a summary or the text of it, does your office typically respond to something like that? [LB117]

JOHN GALE: Absolutely. [LB117]

SENATOR SCHUMACHER: So I've got other ways I can get printed material in my hand if I don't know how to type on an iPad. [LB117]

JOHN GALE: And we make them available at the county election official's office as well without cost. [LB117]

SENATOR SCHUMACHER: Okay. Okay. So giving them the benefit of the doubt that

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this constitutional provision applies to legislative constitutional amendments, we're free...that's the...as far as statutory actions by the initiative process, constitutional amendments by the initiative process, we're free to tinker with that without being hobbled by this constitutional amendment. [LB117]

JOHN GALE: I may be an attorney but I'm not the Attorney General. I think maybe you need to consult with the Attorney General on that question. [LB117]

SENATOR SCHUMACHER: Okay. Yeah. [LB117]

JOHN GALE: I see your point. [LB117]

SENATOR SCHUMACHER: Thank you very much for answering my questions, Mr. Secretary. [LB117]

JOHN GALE: Thank you, Senator. [LB117]

SENATOR PRICE: Thank you, Senator Schumacher. Are there any further questions? Seeing none, thank you very much for your testimony. [LB117]

JOHN GALE: Thank you, Senator. [LB117]

SENATOR PRICE: Are there any other people wishing to testify in the neutral? Seeing none, Senator Avery, you're clear for closing. [LB117]

SENATOR AVERY: I feel like I'm in a college seminar again. Actually, the testimony was, I think, very useful. And I'm going to try to address as much of it as I can and probably will miss some of it. Let me start with the constitutional argument. I was listening very carefully to Mr. Miles to see if he would address the second point that I addressed, and was happy to see Senator Schumacher make the same point just now. And that is that while the constitution says that constitutional amendments are to be "published once each week for three consecutive weeks, in at least one newspaper in each county, where a paper is published," in the next sentence it refers to, "At such elections said amendments shall be submitted to the electors for approval or rejection upon a ballot separate from that upon which the names of candidates appear." And, as Senator Schumacher just pointed out, we do not print on the ballot the entire title and text. That was conveniently omitted from Mr. Miles's comments. He didn't address that, which seems to me to be a very important point. Have we, for the past hundred years or so, have we ignored that part of the constitution while adhering strictly to the earlier part of this language in Article XVI, Section 1? They're in the same section of the constitution. Let's not just focus on one sentence and ignore the next. It seems to me there is an inconsistency there. I would also like to address Mr. Beermann's comments. Nobody knows more about the press perhaps in this state than does Allen Beermann. I

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have great respect for him. But it seems if I am correct in my memory of what he said, he made three main points. One is that publishing these amendments in newspapers is not too costly, and he uses as evidence the \$86,000 that were spent in 2010. And divided that by the number of voters, he came up with 9 cents per voter and he noted that in classic Allen Beermann style, the cost of a piece of bubblegum is 10 cents. Good humor. But if you go back and look at previous years, in 2006, it was over \$1.2 million that we spent to publish these notices. In 2005, it was over \$300,000. In 2001, it was over \$200,000, and in 1999, it was \$669,000. So he picked one of the lowest years in terms of cost. So to get an accurate picture, you've got to go back, if you want to answer the question, is it too costly, you need to go back and look at other years as well. When you do, you come up with an average of about \$500,000 a year. Another point that was made is that newspapers are superior to the Internet for a number of different reasons, and he presents a number of statistics. I would just want to point out to you, if newspapers are superior, why are so many newspapers going broke around the country? I'm talking about the Chicago Tribune and other major landmark newspapers, stolid newspapers that we identify with the culture of this country. Why are they going broke? And so many of them are going out of business. I would also point out that the Public Service Commission here in Nebraska commissioned a study of Internet access in the state of Nebraska. They commissioned the University of Nebraska-Lincoln to do this study. The university worked with the Nebraska Information Technology Commission and the Department of Economic Development to do this, and they found that approximately four out of every five households, that's 81 percent, in Nebraska have Internet service. Now that's pretty high. They did note, however, that it's unevenly distributed; some of the more rural areas don't have as high of access as compared to the cities. They also noted older people tend not to have as much access. They also found that just over three-quarters, 76 percent, of Nebraska households have broadband service, very fast Internet service. It seems to me that's pretty broad coverage. And I can tell you from discussing with my young son and his friends and some of my staff, most young people today do not read newspapers. They get what...all the information comes on-line. They read the newspaper on-line, but they never read the actual printed page which I find interesting. In fact, I can't get my son to answer his voice mail. If I don't send a text, it's not a communication. And I don't get it because he has voice mail. He might know he has a voice mail, but he never listens to it. But if I send him a text, bingo, I get a response. And he doesn't read a newspaper but he reads the paper on-line. I really...I don't think we have perhaps the only answer to this. I do think, though, that these are times that do call for some different ways of looking at things. This is a different way. It can save us some money. It's something I think that we ought to give some serious consideration to, and I appreciate your time and your patience on this. Thank you. [LB117]

SENATOR PRICE: Thank you, Senator Avery. Are there any comments or questions from the committee? Seeing none, that will close the hearing on LB117, and we will be moving on here. Senator Karpisek will be bringing LB161. [LB117]

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SENATOR AVERY: Welcome, Senator Karpisek. [LB161]

SENATOR KARPISEK: Thank you, Senator Avery and members of the Government, Military and Veterans Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. And since we have members of the press here, I am from Wilber, W-i-l-b-e-r, Nebraska; hopefully, we can see a difference in the state's papers on that. (Laughter) As former mayor, that is my pet peeve. I am here today to introduce LB161 that the committee has heard numerous times. I think I've sponsored a similar bill every year that I've been here. LB161 would change provisions relating to recounts of elections by allowing a candidate who fails to be nominated or elected to request a manual recount of such election at his or her own expense. To cut right to the chase, it is a manual recount bill. I do have to say that as we redrafted it from last year, I kind of forgot that we don't have in the bill a narrowing of how much that they could lose by. It just says any candidate who failed to be nominated or elected. I would be more than happy to work with the committee to put a smaller margin in there somewhere as I think we have talked about in the past. Again, to me, this just cuts to the chase of we have to vote on paper, we should be able to use those paper ballots. I know the arguments that we can get a court order to get the ballots. I'm not a lawyer, but in my opinion, without the ballots, how do you get a court order to get the ballots? So to me, it seems like a Catch-22. I would just like to be able to see us, at the candidate's expense, be able to request a manual recount of up to ten election precincts to be recounted first and may waive the balance of the recount after those have been recounted. Again, I think it's just a transparency issue. I think there are--I know there are people out there with conspiracy theories, all sorts of theories. I am not to that point, but I do think that it is a transparency issue. I don't want to say that the machines have been wrong or not. I, again, would just like to see a little more transparency and be able to access those ballots and have them manually recounted. With that, I would answer any questions. [LB161]

SENATOR AVERY: Thank you, Senator. [LB161]

SENATOR KARPISEK: Thank you. [LB161]

SENATOR AVERY: Is it fair to say that you don't subscribe to the conspiracy theories about hacking into the software and rigging the elections but what you're seeking to achieve here, as your overarching public purpose, is to build confidence in our elections? [LB161]

SENATOR KARPISEK: That is part of it, Senator. And I'll be truthful, the more push-back I get on this, I do have to start wondering about conspiracies and why there is so much push-back on this. And I know Secretary Gale has and probably will again say, you know, we've got a very secure system. And I agree. And I think that he's done

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a great job and the election officials have done a great job. However, people do not trust the system as they should. And you're right, it just does make it more transparent. Sometimes I start to wonder. [LB161]

SENATOR AVERY: Could you also say that, what harm is done? And if it can contribute to building greater confidence in the integrity of our electoral process and it's... [LB161]

SENATOR KARPISEK: Yes, absolutely. [LB161]

SENATOR AVERY: And you haven't lost anything, but you might have gained something. [LB161]

SENATOR KARPISEK: Correct. And I know that it would cause the clerks probably more work, and I am not trying to do that. Most election officials are county clerks, and I know that they're busy, and I know that they have a lot to do, especially around election time. And I don't want anyone to think that I'm saying that they're not doing a great job. Not at all. But I do think that voter apathy is at an all-time low. People don't trust anyone who runs for a position, which I think is very sad. I just think this would get us a little bit down the line to trying to turn that back around. [LB161]

SENATOR AVERY: Any questions from the committee? You chased everybody away, Senator. [LB161]

SENATOR KARPISEK: I'm good at that. (Laughter) [LB161]

SENATOR AVERY: Or maybe it was the previous testimony that did that. [LB161]

SENATOR KARPISEK: Thought I'd chased Senator Pahls away. [LB161]

SENATOR AVERY: I see no questions. [LB161]

SENATOR KARPISEK: I will stay to close. [LB161]

SENATOR AVERY: You are? [LB161]

SENATOR KARPISEK: Thank you, Senator. [LB161]

SENATOR AVERY: Okay. Proponent testimony. Anyone here wish to testify on behalf of this? Former Senator Don Eret, we are happy to see you. [LB161]

DON ERET: (Exhibits 1 and 2) Senator Avery and committee members, my name is Don Eret; that's D-o-n E-r-e-t. I reside in Dorchester. I support enactment of LB161. Providing manual recount to candidates, if they will pay for it, is supported by the voting

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public in Nebraska. The statute that prevents this, 32-1119(6), was enacted in 1981 as part of an omnibus bill wherein the imposed denial was not discussed in committee hearing or the three stages of floor debate. Denial of manual recount creates a transparency disconnect between the voters submitting their ballots and the counties tallying the votes with proprietary electronic counters. The result is a total removal of transparency of vote counting that existed when bipartisan vote counting boards at each precinct manually tallied the official vote. This invites the proven ability to remotely hack programmable electronic vote counters at the county level by flipping votes. This would occur undetectably, because manual recount is not allowed. This total disconnect of election transparency discredits election canvassing board certification of election results. Elections are most contentious when electing officeholders for partisan offices. Election fraud can currently also occur undetectably in a Nebraska contested primary election by remotely staging a candidate for the general election. Nebraska violates the federal Help America Vote Act, HAVA, of 2002 that requires that federal candidates shall have access to a manual audit capacity. The Nebraska Legislature should restore some transparency to the election process by enacting LB161 to allow a candidate to pay for a manual recount. Now, LB161 is a copy of LB410 from the previous Legislature. LB410 was advanced to General File late in the 2010 session but did not get scheduled for floor debate. The second paper in my handout is a statement--my statement from two years ago on LB410. It lists ten factors that make the current vote count and recount process in Nebraska nontrustworthy. One must honestly answer the question: Can programmable electronic vote counters be hacked? And then the question: Will they be hacked if manual recount is not allowed? On the back of my printed statement for LB161 is an excerpt from the federal Help America Vote Act on providing manual election audit. Now if you'll look at that: "Requirements--Each voting system used in an election for federal office shall meet the following requirements: Audit Capacity. In general--The voting system shall produce a record with an audit capacity for such system." Well, we're in good shape in Nebraska with that: we have paper ballots. Then on "Manual Audit Capacity"--if you look down, under the third item: "The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used." Now, this is federal law that was enacted in the administration of President George Bush. It's the law of the land. I think it would be appropriate if the Nebraska Legislature would come into compliance with federal law as regards the recount provisions. I have...that will conclude my part of the statement. I have...I'm a member of Nebraska Farmers Union, and our--the president of that organization, John Hansen, asked me to submit the organization's statement for the record of that--of this bill. [LB161]

SENATOR AVERY: Thank you, Senator Eret. Let me ask you, when you refer to public law that was passed in 2002, this was not--was this the HAVA...? [LB161]

DON ERET: The HAVA act, yes. [LB161]

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SENATOR AVERY: Okay. When you refer to audit capacity, the manual audit capacity, that last paragraph there: "The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used." Are you suggesting we do not have those records here in Nebraska? If we do a paper ballot, we don't throw those away, do we? [LB161]

DON ERET: By federal law, those are to be kept for 22 months, by every--at every... [LB161]

SENATOR AVERY: So we do retain those records. [LB161]

DON ERET: You retain them, and it should be available, but I construe that to mean to be available to the candidate. [LB161]

SENATOR AVERY: It says: "shall be available as an official record for any recount conducted." [LB161]

DON ERET: Yeah. Well, if we're conducting a recount in Nebraska, it's not available. [LB161]

SENATOR AVERY: If you did a recount, what would you use to recount? [LB161]

DON ERET: You'd be using the...in Nebraska you would be using paper ballots. But if there's a question about what's on them and you're running them through the same machine, you're not getting any vote of confidence. [LB161]

SENATOR AVERY: I see. So you're saying that if the machine makes an error on the original count, it's probably going to repeat that error in a recount... [LB161]

DON ERET: An error... [LB161]

SENATOR AVERY: ...and that's why you'd think you need a manual recount. [LB161]

DON ERET: An error of what's counted relative to what the people put on their ballots, and that could come up--that would come about as a result of something having been done to the count in the process of it being counted, which is called... [LB161]

SENATOR AVERY: So a machine may not... [LB161]

DON ERET: ...which is called "hacking," where there's a remote communication to the vote-counting machine. [LB161]

SENATOR AVERY: Well, let's assume that that's not the case. Let's assume that...

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[LB161]

DON ERET: Well, that's the case that most people are concerned about. [LB161]

SENATOR AVERY: Some sort of remote tampering by radio wave? [LB161]

DON ERET: Well, yeah, a laptop computer being able to...because these are programmable vote counters. Now, the song and dance that's always given to us is that all these machines are checked out three times, by three different people, for accuracy. That is simply a procedure that's done to check the alignment of the printed paper ballot to the detection units in the optical scanner. [LB161]

SENATOR AVERY: To align the bubble up with the... [LB161]

DON ERET: Yes, right. [LB161]

SENATOR AVERY: ...proper scanner. [LB161]

DON ERET: And after that, anything is possible. Any time you remove our system from what we used to have, you're inviting a magnitude of possibilities that the candidate has no way of having any assurance of what... [LB161]

SENATOR AVERY: Let me explain where I was headed with my--when I started out. A lot of times people will mark the bubble and not mark it completely, and the scanner may not read that as a vote. And you're--I thought you were suggesting that a visual inspection of that ballot could clear up any ambiguity. [LB161]

DON ERET: Well, I think you cover that point, if I'm not mistaken, where you state that the person has to have his mark in the bubble or his vote won't count. I think you're already covered on that point. [LB161]

SENATOR AVERY: Okay. Any questions from the committee? Senator Schumacher. [LB161]

SENATOR SCHUMACHER: Thank you, Senator Avery. Are you familiar with the process of short-penciling? [LB161]

DON ERET: No. [LB161]

SENATOR SCHUMACHER: Okay. It...particularly people who might have longer fingernails put a piece of lead behind their nail, and then as they're recounting the ballots--it used to be done in Chicago, supposedly, a lot--they colored in the bubble to vote ones that weren't voted. The more times you handle ballots manually, isn't there a

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chance that somebody can do something like that? [LB161]

DON ERET: Well, a manual recount would be done, as our bill states, by the county canvassing board, which consists of a bipartisan party of people who are observing what's going on. I mean, there will be people that are reading the ballot, of equal partisan status, and there will be people recording the numbers of the like manner. [LB161]

SENATOR SCHUMACHER: Okay. [LB161]

SENATOR AVERY: Any other questions from the committee? Seeing none, thank you for your testimony. [LB161]

DON ERET: Okay. Thanks a lot, Senator Avery. [LB161]

SENATOR AVERY: All right. Any other proponents? Welcome, Mr. Gould. [LB161]

JACK GOULD: Senator Avery, members of the committee, my name is Jack Gould; I'm here representing Common Cause Nebraska. I want to thank Senator Eret for the perseverance that he's had in bringing this bill as many... [LB161]

SENATOR AVERY: You want to spell your name for us? [LB161]

JACK GOULD: Pardon me? [LB161]

SENATOR AVERY: You want to spell your name for the record? (Laugh) [LB161]

JACK GOULD: Ah. I'm sorry. G-o-u-l-d. Senator Eret has brought this bill a number of times, and it's out of real concern that he has for the electoral process. Our concern from Common Cause's perspective is simply the fact that using the same machine to validate the election over and over again is not necessarily the best way to do it. We're advocating a backup system. The manual system seems to be one of those ways of backing up an electoral process. I know that we have, by national standards, the best machines in the nation, I think, as scanners. And I also know that the people who run those machines are good people, and I'm not advocating that we're having major problems. But the fact that when there is a close election, there is a question of public confidence, as Senator Avery raised. And one way of satisfying that is to have some sort of backup system, rather than running it back through the same machine. And I think that's an area where the public gets concerned. And there still is, despite all the advances in technology, there still is among many people the feeling that having--doing this manually somehow restores public confidence. And I think that, you know, we need to look at this as a possibility of a way to back up the system and to give the public greater confidence in their electoral process. [LB161]

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SENATOR AVERY: Thank you. Questions from the committee? Senator Schumacher. [LB161]

SENATOR SCHUMACHER: Thank you, Senator Avery. In the idea that if a machine is going to be--mess up, it's going to mess up a lot--I mean, it's just not going to mess up every...meaningful--what size sample would you think is a fair sample to say, look, this machine is running just fine? [LB161]

JACK GOULD: And I'm not in a position to, you know, make a judgment as to how big a sample would be needed. I think any mistake that's made doesn't seem to be eliminated by just running it back through the machine again. That's our concern. I--we would say there may be other ways of backing up an election. But the fact that the elections are so important to all the individuals involved, that there ought to be another way of looking at it. And to this point, the manual recount seems...we have the paper ballot...that the manual recount, at the cost of the candidate, not at the cost of the public. And if a candidate feels that this--that somehow it's amiss, this would be one way of restoring his confidence. [LB161]

SENATOR AVERY: Any more questions? Seeing none, thank you for your testimony. Any other proponent testimony? Anybody wish to...you're a proponent? [LB161]

LAURA SCHNEIDER: Yes. Thank you. [LB161]

SENATOR AVERY: Okay. [LB161]

LAURA SCHNEIDER: My name is Laura, L-a-u-r-a, Schneider, S-c-h-n-e-i-d-e-r. I'm currently president of the Nebraska League of Women Voters. The League of Women Voters is a nonpartisan political organization that encourages informed and active participation in government, works to increase the understanding of public policy issues, and influences public policy through citizen education and advocacy. I am here as a representative of the League of Women Voters of Nebraska to testify in support of LB161 to change the recount provisions. We support this bill, as it gives election candidates who failed to be nominated or elected to be able to request a manual vote recount. This provision is important, as oftentimes a vote is miscounted by the original counting device will be consistently miscounted by that same device. A manual recount option enhances a citizen's trust and improves the transparency of our election process. The right of every citizen to vote has been a basic league principle since its origin. Thank you for your time. [LB161]

SENATOR AVERY: Thank you. Let's see if we have questions, okay? Any questions? Senator Pahls. [LB161]

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SENATOR PAHLS: Yes. Thank you for your testimony. And I'm sure you're very familiar--this brought back memories when Jean Stothert and Steve Lathrop ran. And in the initial count, Jean was ahead by a few votes, and then it switched by a few votes. So it's hard for me to believe that running them through the machine again is necessarily bad. [LB161]

LAURA SCHNEIDER: No. And...but having another option, isn't that good? I mean, if you only had one way to count a vote...I like options, and I like the ability of the citizens to have options, to say: I'm not comfortable with this option; please, can we do it this option? And it's a revenue-neutral position. In other words, you're requesting the candidate to finance that manual option too. [LB161]

SENATOR PAHLS: And so you're--just for clarification--you're not thinking conspiracy, like, something out there is happening. It's just--you'd just like to have another check, in a different way... [LB161]

LAURA SCHNEIDER: Yes. [LB161]

SENATOR PAHLS: ...not because somebody is out there manipulating the world. [LB161]

LAURA SCHNEIDER: No. [LB161]

SENATOR PAHLS: Okay, thank you. [LB161]

LAURA SCHNEIDER: Um-hum. Thank you. [LB161]

SENATOR AVERY: Thank you. Any other proponent testimony? All right. We'll now go to opponents. Anybody wish to speak in opposition? Mr. Secretary, you're getting a lot of work today. [LB161]

JOHN GALE: Thank you, Mr. Chairman. I know you have two other election-related bills today. And Mr. Neal Erickson will testify on behalf of our office on those bills. I'm John Gale, Secretary of State for the state of Nebraska--John, J-o-h-n G-a-l-e--and I'm here to testify in opposition to LB161. Before I proceed with my testimony, I would like to clarify several things. Ever since HAVA, there's been kind of a black-box conspiracy theory out there about any kind of electronic equipment. And hearing the testimony concerned me a little, because I need to tell you that each of our pieces of electronic tabulation equipment is a stand-alone piece of equipment. It is not in any way networked with transmission by Internet; it's not networked and somehow wireless transmitted. Either of which could make it subject to potential intrusion. These are stand-alone pieces of equipment that operate independently of each other. Whether your county has one or has ten, they are not in any way connected with the Internet or

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connected with wireless transmission. They're not subject to hacking. I would also say that we spent \$22 million to give us a uniform, safe, accessible, reliable election system, and that meant eliminating hand-counting in 48 counties that could not afford any kind of advanced counting mechanism. The other counties were already using optical scan equipment. And under the Gore v. Bush U.S. Supreme Court case, that was absolutely constitutionally challengeable, because there was not equal protection; they were counted in two different ways. Machine-counting has an accuracy of one-third of one-tenth of 1 percent in terms of the ballot counting. Hand-counting has an error rate that--according to studies, anywhere from 1 percent to 4 percent--a considerable discrepancy and counted in different ways. Our system would not have prevailed constitutionally if we had not made a uniform system. The third thing is that under the law currently, if there is a close election and it falls within the percentage that requires a recount, the recount is by the same means that it was counted the first time to ensure that there is transparency and accountability, so that it's counted the same way the second time as it was the first time. And the machines are indeed tested three times, not just for the coding; they're tested three times by hand-counting versus machine count. So there's a double test there in terms of total ballots: the coding and whether the count is accurate. So that's done before the election, and it's done before a recount. So there's considerable amount of I consider it reliability built into the testing of that equipment. And I think that stays the same. LB161 has been introduced to provide for manual election recounts for losing candidates who wish to pay privately for the process; this has nothing to do with a hand-recount to challenge the outcome of an election. The concept contained in LB161 has been introduced in previous legislative terms and has not been advanced out of committee. I've opposed similar measures in the past, and I must oppose LB161 as well. One change in LB161 from previous versions is that a losing candidate may request a manual recount even if the election is subject to an automatic recount. If this possibility was truly intended, establishing dueling recounts, it is a policy that invites confusion and uncertainty to the counting process and the election as a whole. LB161 also proposes that a losing candidate may select up to ten precincts to be recounted and, once seeing the results of the ten precincts, may waive the recount in the remainder of the county. To me this appears to allow a losing candidate to conduct recounts as a curiosity, as opposed to having a legitimate complaint about the counting process or the outcome. Behind this bill lurks a serious mistrust of electronic voting equipment. Following the presidential election in 2000, there was a rapid growth of distrust and conspiracy theories as to how electronic tabulation was conducted. Thankfully, the volume level from these groups has decreased substantially in the later part of this decade because a considerable part of the nation now uses electronic tabulation without any challenge of inaccuracy due to hacking or intrusive invasion of the code. Part of the reason for the decrease in skepticism on electronic tabulation is the proven accuracy of this equipment: an error rate of less than one-third of one-tenth of 1 percent has been confirmed by postelection audits that we conducted on the equipment in 2008 and 2010. I see my time is up, but I do want to be on record as opposed again to this concept and to LB161, which would

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throw considerable confusion into the election process that has certainty today. Thank you. [LB161]

SENATOR AVERY: Let me ask you, Mr. Secretary...thank you, by the way, for your testimony. You talked about the equipment we use being--each piece of equipment is a stand-alone piece of equipment; it's not connected to any other voting machine. It's not connected through a hard wire, and it's not connected wirelessly, is that right? [LB161]

JOHN GALE: There may be--in the largest two counties there may be a connection in order to interconnect the final tabulation count. But it's not a wireless transmission, and it's not an Internet transmission. There may be a firmware in the larger counties that have numerous of the M600 central scanning systems. I'm not with a certainty that they do use that firmware, but there's a possibility that...the concern with the conspiracy theorists is that if the information is in any way transmitted into the fog, that it's subject to hacking or intrusion, which is true. So whether these are stand-alone in the sense that they're not interconnected by firmware, what I'm saying is they're not interconnected in any kind of wireless or Internet transmission. [LB161]

SENATOR AVERY: Are these machines--or, excuse me, do these machines use software in any form? [LB161]

JOHN GALE: Well, I would say, yes. They have to be coded in every election for the ballot, because ballots in every election are different, and they're different for each county. So the coding on the edge of the ballot has to be programmed, and they're programmed by ES&S in Omaha for each of the counties so they have ballots that can be tabulated by electronic equipment. And that source code is installed; it's part of the electronic equipment. [LB161]

SENATOR AVERY: Now, don't get me wrong; I'm not suggesting this would happen. But is it possible that that software could be tampered with and any way altered to influence the outcome of a count? [LB161]

JOHN GALE: I would say no. If you just said as a matter of theory, I suppose you could say yes. But because it's subject to so much election administration management and testing--testing by both political parties--that testing mechanism provides that extra element of security. As well as the protection of the equipment during storage: it's not accessible to anybody; it's in locked storage between elections; it's only removed under the supervision of election commissioners. And then it's tested before the election to ensure the accuracy. And it's tested more than once; there are several test decks that are used. So I would tell you, under the system of election administration we have in Nebraska, there is no possibility of the source code of our tabulation equipment being tampered with to in any way affect the outcome of the election. Now, it does happen, if the high-intensity light develops dust on it, it can misread and miss ballots, but the

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election commissioners know about that. I think Platte County had 400 ballots that didn't get read because of the fact that the coding was off, and so the machine just spit them through. And then they had to be sent to the county board, the resolution board, to be converted to a ballot that would accurately count in the machine. So there are some errors that occur, but that's... [LB161]

SENATOR AVERY: And they were not hand-counted? They were reconfigured and put back into the... [LB161]

JOHN GALE: The resolution board--yes--would... [LB161]

SENATOR AVERY: ...back into the machines? [LB161]

JOHN GALE: Correct. [LB161]

SENATOR AVERY: I see. Do these machines have modems? [LB161]

JOHN GALE: Do they have modems? I'm not enough of a wizard to tell you. I presume they probably do. I don't know. [LB161]

SENATOR AVERY: I'm wondering, though, if they have modems, could that in any way provide a port for access, wireless access? [LB161]

JOHN GALE: Well, we have, of course, our election night counting system, in which information is transmitted to us from the county election commission offices. And that--I suppose you could say that is a modem process that allows the collection of the tabulated results, the transmission to our machines, and the automatic electronic updating, refreshing of that information. But that's all postelection. That is not in any way connected with the processing of the ballots by the electronic tabulating equipment. That's all over and done before the final result is transmitted. [LB161]

SENATOR AVERY: If you did have a recount that would be paid for by the candidate requesting it, which would be the official count? The original count or the recount? [LB161]

JOHN GALE: My understanding of the law and of LB161 is that the official recount would still be the second recount by the tabulation equipment. But if there was a hand-recount paid for privately by the losing candidate and it came out significantly differently to change the result of the election, obviously it's going to throw a wrench in the certification of that election until it goes to a court. The court remedy is available today: anybody who has any question about the validity of the results of an election can go to court, and the court will order an appropriate recount. So that remedy is true today, and that's the remedy you would have then. That hand-count, if it turned out

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significantly different than the two electronic counts, wouldn't change the election, under this bill; it simply would cause somebody to go to court and require a fourth recount. [LB161]

SENATOR AVERY: Any questions from the other members of the committee? Senator Schumacher. [LB161]

SENATOR SCHUMACHER: Thank you, Senator Avery. Couple different things here. In your testimony you said that Nebraska had to reconcile the fact that it had some counties doing manual stuff and some counties doing electronic stuff, and there would have been a problem under the federal Constitution by having two different methods of counting. Now, am I to understand, then, that--is there an issue if the candidate chooses the other method of counting, as would be the case here? Or did I not understand that right? [LB161]

JOHN GALE: Well, state law mandates that this is the method by which Nebraska will conduct its elections. Are you saying that can a county election official elect to do a hand-count as opposed to electronic tabulation? [LB161]

SENATOR SCHUMACHER: Can the...well, I guess, the original count as it's zapped through the machine... [LB161]

JOHN GALE: Correct. [LB161]

SENATOR SCHUMACHER: ...is the count. And then if the candidate would come in and say: Gee, I'm not trusting this count; can I count it manually? It would still be the original count--there was a count--unless it went to court and was changed. [LB161]

JOHN GALE: Well, the original count plus the second count by...because if it's within the margin of error to require a recount--and it doesn't happen regularly; it did happen in that election--then it's counted again with the tabulation equipment. And that's the point at which a candidate who is still losing, and unhappy, thinks it's too close, wants the assurance of a hand-count, can pay for it under this bill. [LB161]

SENATOR SCHUMACHER: And then would that hand-count be the official count... [LB161]

JOHN GALE: No. [LB161]

SENATOR SCHUMACHER: ...or still one of the early ones? [LB161]

JOHN GALE: No. It still would be the electronic result. [LB161]

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SENATOR SCHUMACHER: So that hand-count would be just an excuse to go to court. [LB161]

JOHN GALE: Correct. [LB161]

SENATOR SCHUMACHER: Okay. Then the next question is, while these machines are not connected to the Internet or not through wireless things, they obviously have a program chip in them that tells them what to do. [LB161]

JOHN GALE: Correct. [LB161]

SENATOR SCHUMACHER: Okay. Is there--before the run of the machine, is there a checksum done on that chip inside that program to make sure that there's been no monkeying with the program or no chip change? And is there a checksum run after the running of the election so that we know that that is the chip that--some way the guy carting it into the courthouse didn't open up the thing and stick a different chip in and run it and then put a different chip back in after it was all over? [LB161]

JOHN GALE: Well, my understanding is that ES&S prepares...I don't know if they're thumb drives or how that information is communicated from ES&S, but it's delivered by ES&S to the county official. The county official then has the chain of custody of that device--and we'll call it a thumb drive. And then when the equipment is taken out and is set up on Election Day to be used for counting, that is in the possession and control of the election official, who installs it on the machines. And then her staff, Republican and Democrat, then prepare their random test decks, and the random test decks are run through the machine. They're also hand-counted and the results compared twice to ensure that this programming that was installed is accurately counting the ballots. [LB161]

SENATOR SCHUMACHER: So the program that counts the ballots is transferred by thumb drive? [LB161]

JOHN GALE: Well, I'm...I don't know what the device is; I'm thinking that it's something similar to that. I can get that information to you... [LB161]

SENATOR SCHUMACHER: Okay. [LB161]

JOHN GALE: ...from my staff, but... [LB161]

SENATOR SCHUMACHER: Yeah. [LB161]

JOHN GALE: ...it's required to be... [LB161]

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SENATOR SCHUMACHER: I would be interested in knowing whether there's a checksum run on it once it's installed, to make sure that that thumb--whatever mechanism, installed program matches some magical checksum that's been certified. And also after the election run is done, whether again that's been checksummed, that we know that during the time that program was running, that little--cute little chip in there that has the instructions on it is the legitimate set of instructions. Because no matter if it comes through the airwaves or if it comes through the Internet or if it comes through messing with the thumb drive or other medium, if that program that's riding inside that machine isn't right, then the result isn't going to be right, and we need... [LB161]

JOHN GALE: I agree. [LB161]

SENATOR SCHUMACHER: Okay. And then... [LB161]

JOHN GALE: We haven't had an example of that in 25 years in the use of... [LB161]

SENATOR SCHUMACHER: Right. [LB161]

JOHN GALE: ...our optical scan equipment in Nebraska. [LB161]

SENATOR SCHUMACHER: But you wouldn't know. [LB161]

JOHN GALE: Pardon? [LB161]

SENATOR SCHUMACHER: You wouldn't know. [LB161]

JOHN GALE: I just know from having been told, because it's all been ES&S for that period of years. They have supplied the tabulation equipment to the counties that have used it. We have not ever had that type of fraud involved. So I'm going to say I have great confidence in the chain of custody of that software and the testing of that machine before it ever tabulates any ballots for the election. So I have complete confidence in it. But your question--theoretically, I would say, if you had a dishonest or fraudulent county election commissioner who found somebody to tamper with it and try to change it could probably change the software. But whether that software would then not--would not be reflected as in error when all the test decks are fed through it, I think it would be caught at that point. [LB161]

SENATOR SCHUMACHER: And finally, even though there's testing on the computer mechanism itself, the physical paper ballots that are run through it--I understand there's a homing mechanism on it or that sets home base, and then as they roll through, the counting happens. [LB161]

JOHN GALE: It's the coding along the edge of the ballot. [LB161]

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SENATOR SCHUMACHER: Okay. [LB161]

JOHN GALE: Um-hum. [LB161]

SENATOR SCHUMACHER: Is...are...how is that coding tested? I mean, it's my understanding that counties may select different vendors for that particular ballot, and if those little guys are off, then it could cause difficulty in reading the ballot? [LB161]

JOHN GALE: Absolutely could. What would happen is the machine wouldn't read them. And that's what happened in Platte County. [LB161]

SENATOR SCHUMACHER: Okay. [LB161]

SENATOR AVERY: Thank you, Senator. Any more questions for Secretary Gale? Thank you for... [LB161]

JOHN GALE: Thank you, Mr. Chairman. [LB161]

SENATOR AVERY: ...your perseverance, sir. (Laugh) [LB161]

JOHN GALE: Thank you. [LB161]

SENATOR AVERY: You have earned your salary today. [LB161]

JOHN GALE: (Laugh) Thank you. [LB161]

SENATOR AVERY: Any other opponent testimony? Welcome, Mr. Shively. [LB161]

DAVID SHIVELY: (Exhibit 3) Hello. Good afternoon, Senator Avery and members of the Government Committee. My name is David Shively, S-h-i-v-e-l-y. I am the Lancaster County Election Commissioner. I'm here today in opposition to LB161, which would allow any candidate to request that a manual recount be conducted if the candidate pays for such a recount. Many counties in Nebraska, including mine, Lancaster County, were among the first to use optical scan counting machines back in the mid-1980s. The machines were selected then and are continued to be used because of their accuracy. Nebraska law currently requires an automatic recount when a race is 1 percent or less of the votes received by the candidate who received the highest number of votes in a race where more than 500 votes were cast. The same is true if--for--a race is 2 percent or less of the votes received by a candidate if the race was 500 or fewer ballots cast. This proposed bill ignores the testing which we do of the counting machines that Nebraska law requires before they are used prior to each election. Tests of the machines are required by the vendor, by the chief election official of the county, and by

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the chief deputy election official or by a member of the political party which is different than the chief election official. In addition, this bill also ignores the manual postelection audits which are now required by the Secretary of State and are conducted in 2 percent of the precincts in Nebraska. The audits which have been conducted during the last two statewide election cycles have proven that there are no issues with our counting machines. My experience is that hand-counting of ballots is never as accurate as the machine count. Each election, I count--hand-count--my test ballots. Usually it'll range somewhere in the neighborhood of 2,000 to 3,000 ballots, before they are run through the counting machines. In my comparison after these ballots have been counted by the machines, if the totals don't match, it's never been the machine's error, it's always been my error, that I have miscounted those ballots. I would challenge you to take 1,000 ballots and work in teams of two and try to do a manual count. I would bet you at least two of you would come up with different numbers. The accuracy of the machines cannot be overlooked. And I encourage you not to advance LB161 to General File. Thanks. I'd be happy to answer any questions. [LB161]

SENATOR AVERY: Thank you, Mr. Shively. Would your deputy make the same statement you just made? [LB161]

DAVID SHIVELY: I believe she would. [LB161]

SENATOR AVERY: (Laugh) [LB161]

DAVID SHIVELY: She's here. [LB161]

SENATOR AVERY: I saw her nodding her head while you were...any questions from the committee? Senator Schumacher. [LB161]

SENATOR SCHUMACHER: Thank you, Senator Avery. Do you run a checksum of the controlling program before and after the run of ballots? [LB161]

DAVID SHIVELY: We run...the testing is all done beforehand, of course. We do it right before--on Election Day, the first thing we do before we start running the ballots is we run a test deck through the ballots, and we have... [LB161]

SENATOR SCHUMACHER: What is a test deck? [LB161]

DAVID SHIVELY: A test deck is ballots from each precinct that have been premarked and have been hand-counted, and you'd run that through the machine to make sure that your numbers are matching what your hand-count was. [LB161]

SENATOR SCHUMACHER: But you don't run a checksum to make sure the program inside that computer matches the approved, super-duper, tested, certified program that

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originally was intended to be... [LB161]

DAVID SHIVELY: Well, I think that's what I would refer to as running the test deck would be. [LB161]

SENATOR SCHUMACHER: But that--you're just running ballots through to see if they come out. [LB161]

DAVID SHIVELY: Right. [LB161]

SENATOR SCHUMACHER: But if I had gotten into that chip and I had said: Behave yourself, dear chip, until you hit the 10,000th ballot, then start doing some funky things--you wouldn't know. [LB161]

DAVID SHIVELY: Probably not. But that's why we've had our audits done after the election, to verify that the audits were conducted...the audits that the Secretary of State now are requiring us to do is an audit where we take a sampling of about 2 percent of the precincts statewide, and we're doing an audit on those ballots and looking at two or three races on that to see if our numbers are matching--the hand-counts matching at that point of what our results were on election night. [LB161]

SENATOR SCHUMACHER: So there is a subsequent procedure, randomly pulled out of the--where you physically then hand-count the ballots to make sure that they're in line. [LB161]

DAVID SHIVELY: That's correct. [LB161]

SENATOR SCHUMACHER: Okay. That's useful information. [LB161]

DAVID SHIVELY: Now--and if I could answer a question that you asked... [LB161]

SENATOR SCHUMACHER: Sure. [LB161]

DAVID SHIVELY: ...Secretary Gale, is that our--it doesn't come on a thumb--it comes on a zip disk, is what we get to load the programming into our machines. It's on a zip disk; it's a zip drive that's in the machines. That's what we use. [LB161]

SENATOR SCHUMACHER: Anybody could screw with the zip drive; they can screw with a thumb drive too. [LB161]

SENATOR AVERY: You mentioned audits. How often do you audit elections? [LB161]

DAVID SHIVELY: Well, we've had to do at least two precincts--in Lancaster County, we

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do precincts every election, from the Secretary of State's Office. It's 2 percent of the precincts statewide, and we've done at least two. This last election we actually were selected to do three precincts, and our numbers on the races that they asked us to check all matched. [LB161]

SENATOR AVERY: Yeah. Do...how long have you been doing these audits? [LB161]

DAVID SHIVELY: That's been the last two statewide elections--so in 2008 and 2010. [LB161]

SENATOR AVERY: So it's a relatively new practice. [LB161]

DAVID SHIVELY: That's correct. [LB161]

SENATOR AVERY: Oh, good. Any other questions? Thank you, Mr. Shively. [LB161]

DAVID SHIVELY: Thank you. [LB161]

SENATOR AVERY: Anyone else wish to testify in opposition to LB161? I think I've been around too long when I know everybody that testifies. (Laugh) [LB161]

DIANE OLMER: (Exhibit 4) (Laugh) Good afternoon, Government Committee--Senator Avery, Senator Schumacher, and everyone else. I've been here quite often testifying against this same bill in essence. I do oppose this LB161. And I don't want to repeat a lot of what's been said already, but it was brought up about what happened in Platte County at this election. That's actually what I was going to testify about anyway. And I'm sorry, my name is Diane Olmer, D-i-a-n-e... [LB161]

SENATOR AVERY: See, I knew that, (laughter) but not everybody did. [LB161]

DIANE OLMER: Oh, yeah (laugh)...O-l-m-e-r. And I am the Platte County Election Commissioner; I've been the election commissioner for almost 15 years now. So sorry for not mentioning that. Anyway, we did have an instance in Platte County where we did our regular test decks and we did the test deck from ES&S, which is the first one we do; and then we actually make up our own: one by a Republican, myself, and one by a Democrat--so it's my other full-time person in the office. We actually mark the ballots, hand-count them, and then send them through the machine to see if it matches up with our hand-count. And as Mr. Shively said, if there is an error and we go back and check, it's usually an error that we made. The machine is often--as long as I've been here--and we check it for this or that or something that doesn't make sense--has always been the one that's been right, and it's usually the humans that are making the error. This election we had a very close Legislative 22 race, Mr. Schumacher's race. And, lo and behold, on election night we were scanning ballots, and all of a sudden...when a ballot

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isn't printed correctly and the coding along the side isn't where it's supposed to be, the scanner stops, and it says, I can't scan that ballot. It doesn't send it through at all; it stops. You have to take it out, and then you put another one in and go from there. And it kicked out one whole voting precinct in Columbus and half of another precinct, which ended up to be about 455 ballots; and at that point I was not a happy camper. And I called ES&S first and asked what we could do about this situation and is there something that the machine is doing wrong or whatever. And it wasn't hard to figure out what was wrong. When...I used to have a local printer print my ballots, and within the last year we've gone to ES&S. And when I worked with the local printer, he really pretty much taught me what they look for with printing. Otherwise I wouldn't know quite as much about this as maybe some people. But one of the things that's on a ballot...when it goes through and they print it, it's just a white piece of paper with a little square on each corner on the front and back. And then when they print it--they call it a cross-hair; it's kind of like a mark like this--it's supposed to register right in the middle of that little square, if it's printed correctly. And that's a way to visually see that it's printed squarely on the ballot, so that it, when it goes through the scanner...and the scanner has these light--I don't know what you call them--that look for these marks in certain places on the scanner. It's programmed to look for this candidate on this ballot in this very certain spot. And if the marks along the side are off, it just won't read it at all. Well, when it was getting evident that we had a problem, we started looking at the ballots, and here was the little square and here is this cross-hair down here--they weren't even touching. So they were printed skewed, so the scanner wouldn't take them. And the ES&S says: Well, there's nothing we can do for you tonight. And so then I called Secretary of State's Office, and we stopped scanning at that point. I was just hoping it wasn't...and we had just started. We have 30 precincts, and we probably got 2 or 3 through, got to the 2 that caused us problems and then stopped. And I did...we were getting calls from the candidates, and we did put something on the Internet that just flat-out told everybody we were having troubles, instead of trying to hide it. And I called Secretary of State's office and asked them what were my options, and they thought about it and called me back. And I'm not trying to say anything wrong about what the Secretary of State said, but he said one wrong thing. They gave me two options. One was to have ballots reprinted, because I really don't know that I had any good ballots there; I'm assuming maybe all the rest of them that were at the polling places that came back later would have been skewed also. Or we could opt to do a hand-count. And so on election night there's many times that we have to...the first option would have been get the ballots reprinted and then have two people copy each ballot to a blank ballot and then after that scan them. That process isn't short either. On election night when there's a ballot that--one ballot--that gets kicked out because maybe there's an extra mark or they spilled coffee on it at the polling place and it won't read, we have a resolution board that actually has to sit down, get a new ballot, and copy the one ballot to the other--two people: one reads, one marks, you switch positions and vice versa. That is not a short process either. And so my thinking of how much time it would take to do 455 ballots--first we would have to wait to get the ballots printed, then do that process where we copy them

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to new ballots, and then rescan them--was going to take, I'd say, weeks. And it all depended on how fast we got ballots back printed. The other option of me lining up registered voters and having them hand-count, which--I've testified here so often against it--definitely isn't my first option, but it seemed like a more viable option at that point. My emphasis in this whole testimony is that should be your last option or your last choice, a last resort. But anyway, we did that. And so it was, like, 10:30, 11:00 that night. Well, I couldn't be calling up people to have them come in and be my hand-count board until the next day. And I had a little time to think during the night, because we had ballots that weren't counted and we actually stayed in the courthouse that night to make sure nobody tampered with those ballots. In the morning I got on the phone and lined up four groups of two people each to do the hand-counting. And a lot of people say: Well, why didn't you line up, like, 20 or 30 or whatever? There is only so much space that I have to work with; and I am in charge of it, and I have to be able to control what's going on. And that was a workable number, and with the room we have in the back, that worked out. So at 1:00 that next day they started, and we did officially get done the day after that at 1:00. So it took a good working day to get that done. And I've witnessed hand-count votes before, in other elections earlier, where it was my option if we wanted to hand-count or whatever. It's just a shame you couldn't all have been there. It is such an imperfect process. They take 25 ballots--each group. And one counts and reads to the other; then you switch jobs. And then you see, did it match up? No; do it again. No; do it again. You talk about the machine--I also had at that same election automatic recount that we did by machine, and it involved Ward 4 of the city of Columbus. And we did a recount, and that came out exactly the same. And you of you in the audience that think, well, how else could it come out? It can come out different, but it's very rare. It's usually checking for human errors, like, you know, there's two people that run my scanner on election night. And when it kicks out a ballot, if you have the button on for blanks or overvotes, it kicks out a ballot, you put it over here, you turn the button off, you put it through again. So there's a lot of human contact with that ballot; there are errors that can be made with the machine that actually are caused by humans. So I'm not saying that every time I put those ballots through the scanner, again for that recount, it's always going to be the same. But it's much more reliable than human hand-counting. The other thing that really hasn't been brought up here is--too much about--is us depending on our canvass board. Now, the canvass board has a lot of leeway in whatever they do, you know. The election is over; they get the numbers from the polls, as far as how many people voted; and then they get the numbers from the scanner, as far as how many pieces of paper you got. You had 500 voters at this precinct, and we had 501 ballots. That's a problem. The canvass board goes through and tries to figure out why that is. And so things like that. And they have the right to have ballots rescanned. They can go to the ballot box; they can look at the ballots; they can count--whatever. And so where we talked about that instance where we'd scan something and it came out and then the hand-count was different and my canvass board was taking care of it, at that point we would have said: Okay, we're going to figure out why it's different; if we end up going through two ballots at a time, we're going

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to...you know, there's a process where the canvass board is responsible for certifying that election, and they can take any means they want to get to that point. And that does happen. [LB161]

SENATOR AVERY: Can we conclude from your comments that you have full, complete confidence in the procedures that are currently available to you in your county... [LB161]

DIANE OLMER: Yes. [LB161]

SENATOR AVERY: ...that these are clean, honest, accurate counts? [LB161]

DIANE OLMER: They are. You know, people I hire, you know, you could have, like Paul mentioned, dishonest people too. It's usually human error that the scanner catches. I would conclude with saying, I consider this a change in the rules, when all of a sudden you decide to either use a machine or do the hand-counting of the same pieces of paper. I think hand-counting should be a last resort. I think it's like playing a game with my little 5-year-old grandchild: He loses, and he says, okay, Grandma, let's change the rules, and let's see if I can win that way. And that's kind of what's going on here. Another thing about... [LB161]

SENATOR AVERY: Well, let me ask you this. What do you think we lose in the state of Nebraska, in terms of confidence in the electoral process--or, perhaps, what do we gain--by adopting this bill? You are simply saying that the candidate, if they're willing to pay for a recount, can request and get a manual recount. [LB161]

DIANE OLMER: I think we're creating more distrust in the system, not alleviating it. As the person who hears about this, and it's in the paper: The candidate requested a hand-count vote--okay, that's the big news; it's not that it came out the same. And if this keeps going on, it makes it look like there's a reason for this hand-count vote, that there was some suspicion of fraud or whatever. I think we're increasing notice of fraud or thinking that it's fraudulent by doing this oftener than...I'm saying, if there was a good reason and you came to my canvass board, we would do it. But just because you think it's a good idea and it would make me feel good, I just don't think that's reason enough. [LB161]

SENATOR AVERY: Thank you for your testimony. Questions from the committee?  
Senator Schumacher. [LB161]

SENATOR SCHUMACHER: Thank you, Senator Avery. Let's suppose in a county the size of Platte--and how many registered voters are in Platte County? [LB161]

DIANE OLMER: We just did another count. It was about 19,000; now it's 18,400. We did a purge. [LB161]

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SENATOR SCHUMACHER: And if half of them vote, there's 9,000 votes out there. If a candidate wanted to do a recount and you had to do it manually, how long would it take? How much would it cost? [LB161]

DIANE OLMER: That I'd have to put some dollars and cents to. Because we're talking--it'd just be one issue; that's a good thing. But still, they have to...I would say it would take, for sure, three days and maybe with, for sure, maybe four groups of people and where we don't pay them too much (laugh)--120, 240--at least \$500 a day. It wouldn't be expensive; I'm not saying it would be that expensive to the county--or to the candidate. If, you know, if they've been running a campaign, this would definitely be like peanuts. We would not overcharge you; those workers only get minimum wage. I'm not saying it would be that expensive. I just think it's, truthfully, a big waste of time, to make somebody feel good. [LB161]

SENATOR SCHUMACHER: Well, thank you for staying up overnight and guarding those ballots. (Laughter) [LB161]

DIANE OLMER: Thanks to you. (Laugh) [LB161]

SENATOR AVERY: I don't see any more questions. Thank you for your testimony. [LB161]

DIANE OLMER: Okay. [LB161]

SENATOR AVERY: Any more opponent testimony? Anybody wish to testify in a neutral position? Good afternoon. [LB161]

BETH BAZYN FERRELL: Good afternoon, Chairman Avery, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l; I'm representing the Nebraska Association of County Officials today. Typically we testify in opposition to this bill, but our board elected to take a neutral position this year. We have no problem with the whole issue of having a recount; we would just prefer that it would be a scanned recount. We also had some questions when we discussed the bill about the margin issue that Senator Karpisek mentioned that sort of leads to the potential for a dueling process between triggering an automatic recount and then allowing an individual to request a recount as well. I'd be happy to try to answer questions. [LB161]

SENATOR AVERY: Thank you. Questions from the committee? I don't see any. Thank you. Any other neutral testimony? I don't see any. Senator Karpisek, come up here and tie this thing together. [LB161]

SENATOR KARPISEK: Thank you, Senator Avery and committee, for sitting through

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this again. Senator Pahls, the Lathrop issue--I don't know if provisional ballots were at all... [LB161]

SENATOR PAHLS: Yeah, that could have been it. Yeah. [LB161]

SENATOR KARPISEK: ...in there. If not... [LB161]

SENATOR PAHLS: It was, yeah. [LB161]

SENATOR KARPISEK: ...and if not, if it swung that much, only makes my point more clear. If they work so well, how did it swing? Secretary...I always get upset on this bill, for some reason; I start out not too wound up, and I end up very wound up. (Laughter) LB410, Secretary of State Gale said, has never come out of committee. I have to say that he is incorrect. LB410 last year was advanced out of committee with a vote of 5 ayes, 1 nay, 1 absent, and 1 present, not voting. It did not make it to the floor. We talk about the court, that you can go to a court to request a recount. I don't know if the court could turn that down or not. In my thinking, they could. Say, you have no evidence. Why is that? Because the evidence is all locked up; you can't get to them. Senator Schumacher, I think I heard you say: Hand-counting, then, is only an excuse to go to court. I very much disagree, and I even take some exception at that. It is not an excuse to go to court. It is a transparency issue and is a voter confidence issue and is a candidate confidence issue. We do not ignore the testing that happens, at all. And I have to give the Secretary of State kudos in doing the 2 percent audits that he has implemented lately. And I think that they're doing a great job at that, and I appreciate that, and I think it does help. I don't feel that it goes far enough; 2 percent is 2 percent, not a lot. LB161 does not cost any money to the county, to the state; it costs money to the candidate. It does not change the outcome; it just brings some transparency and shines a light on what could be happening here. We talk about how long it would take and how much money it would cost, that sort of thing. And it would take some time, and I don't disagree. What in the heck did they do before we had these machines? I think that's how they did it. I would also like to point out, if hand-counting is so bad, how do they do this testing? They hand-count. Just a thought. This is one issue and up to ten precincts to start. I don't think that that is an excessive amount to ask. Now, I will say what got me fired up, because, if nothing, I am honest: that it's a waste of time and it's like a 5-year-old wanting their way. After I've run a year and a half to try to get into this position and the amount of time and money that I've spent and if I can't have transparency to see what happened in the race, I do not feel that it's a waste of time nor money. I think when the shoe goes on the other foot, it's a little bit different. And I realize that there are many pitfalls in hand-counting. I understand that, and I will say that the machines will be more accurate. I will admit that; I'll agree to that. I'm asking for a little transparency, a little voter and candidate confidence. If there's any questions, I'd be glad to try. [LB161]

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SENATOR AVERY: Yes, Senator Pahls. [LB161]

SENATOR PAHLS: I do want you to leave with a smile since you're... [LB161]

SENATOR KARPISEK: I've got it in the next bill up. [LB161]

SENATOR PAHLS: Okay. [LB161]

SENATOR KARPISEK: I don't want to smile yet. (Laughter) [LB161]

SENATOR PAHLS: Okay. When I think of you as--I think of all those chads in Florida. (Laughter) And that person tried to make that election even clearer or cleaner and, by doing so, messed things up. And I personally know what's it's like to have a recount. But on a total recount after mine, it was--I gained 2 more votes. I didn't gain 100,000 votes or--it was 2, after the machine went through it. So it wasn't like we're jumping an unbelievable amount. But I do appreciate your tenacity. Thank you. [LB161]

SENATOR KARPISEK: Thank you, Senator Pahls. [LB161]

SENATOR AVERY: (Exhibit 5) Any other questions from the committee? Before we close the hearing on LB161, I do want to read into the record an e-mail in opposition to this bill from Sandra Stelling, Jefferson County Clerk and Election Commissioner. (See also Exhibit 5.) With that we will end the hearing on LB161. And we will open the hearing on LB97, and Senator Karpisek, you are recognized to open on this. [LB161]

SENATOR KARPISEK: Thank you, members of the committee, Senator Avery. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I am going to present LB97 this year, which last year we came to come by as calling it the "Giese Guide." I'd like to rename it the "Karpi-Chronicle" this year. LB97 would require the Secretary of State's Office to publish a uniform statewide election guide for election workers at the precinct level that would be published on the Secretary of State's Web site. The primary purpose of this bill is to assist county clerks and election commissioners with the complicated process that is conducting an election. As elected officials, we all know that election laws are constantly changing and sometimes it can be difficult for our county officials to keep track of the many rules and deadlines their offices are charged with enforcing. The Secretary of State's Office is already required by law to provide training for election officials. A comprehensive guide would provide county clerks and election commissioners with yet another tool to ensure that elections in Nebraska are run fairly and efficiently. New election officials are often unfamiliar with election law and literally have no idea where to begin when training election workers. Without a comprehensive guide from the Secretary of State, these new officials must rely on whatever resources have been left by their predecessors. In many cases, these materials are seriously outdated, which leads to different counties applying different rules. In Nebraska's

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smaller counties, elections make up only a fraction of the duties of the county clerk, so these offices simply do not have the time to develop their own guidelines. Publication of a statewide election guide by the Secretary of State's Office is by no means a new development among states. The nearby states of Iowa, Kansas, South Dakota, and Minnesota all currently publish uniform election guides, and Wyoming and North Dakota have both taken at least the minimum step of creating a guide for their election laws. It is important to note that nothing in the language of LB97 would require strict adherence to the election guide by local officials. I have seen in one of the letters that we receive in opposition, it says, one size does not fit all. I could not agree more. The election guide is designed to be a resource, not a rule book. In fact, the bill's language is specifically drafted to account for variations among counties of different sizes. What works in Douglas County may not work in Saline County or Jefferson County, and LB97 does not discourage deviation from the statewide guidelines. Local officials would be free to create their own guidelines for election workers either based on or independent of the Secretary of State's guide. Publishing a statewide elections guide simply makes sense and would be a useful tool for county officials, election workers, and most importantly, the Nebraska voters. One thing that helped me support this bill last year and to bring it this year with the absence of Senator Giese was, four years ago when I first ran, the election workers did not know what a provisional ballot was. I had an employee go up to vote, they did not know. Now nothing...no harm, no foul, I understand. These people are doing a tough job. But I think that there does need to be something like this put out, now we're talking on the Web, not a paper copy, to help. This is not a, "this is how you're going to do it." I think just to quickly look it up to see what could be/should be done would just be helpful. I'd be glad to take any questions. [LB97]

SENATOR PAHLS: Thank you, Senator. Do we have any questions? Seeing none, you going to stick around for closing? [LB97]

SENATOR KARPISEK: I will. [LB97]

SENATOR PAHLS: (Laugh) Now if I go into Banking, Commerce and Insurance mode, it's just because that's the...that I usually chair. Proponents? How many proponents do we have? I see three proponents. How many opponents? Three opponents. How many neutral? So that's a total of six people. Proponents may begin. [LB97]

ADAM MORFELD: Thank you, Senator Pahls, members of the committee. My name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d, and I am the executive director of Nebraskans for Civic Reform. We are an organization that advocates for election and civic education reform. Our members are almost exclusively law students who are young Nebraskans that are dedicated to improving our civic institutions. I'd like to thank Senator Karpisek for introducing this legislation and for the county clerks that suggested that we actually pursue this legislation. If there's a page, I'd just like to kind of pass these around. These are two election guides. They're kind of long and I don't have big

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printing or copy budget so I thought I'd just pass them around for you guys to check out while I talk here. First off, the idea for an election guide for poll workers arose out of an election observation trip that Nebraskans for Civic Reform organized and hosted during the 2008 Minnesota primary. Several Nebraska county election officials that attended the trip and while questioning Minnesota election officials found that the Minnesota's uniform election guides for poll workers to be extremely useful. In addition, we also had a trip that a larger amount of election officials came to, to look at and observe Iowa's elections, and Iowa also has a guide that they found to be extremely useful. Upon further research, we found that neighboring states, South Dakota, Kansas, Iowa, Minnesota, which also have decentralized elections systems similar to Nebraska, also provide voluntary comprehensive uniform election guides for poll workers and county clerks. After conducting a nationwide search, we found that voluntary and uniform election guides for poll workers and county officials is more the norm than the anomaly. The county clerks that attended the trip stated that many new...excuse me, the Nebraskan county clerks that attended the Minnesota trip say that many new county clerks that are not familiar with the election laws, they maybe should be, and in some cases lack adequate or outdated resources from their predecessor upon assuming their new role. In addition, elections from many clerks compose only a fraction of their overall responsibilities and oftentimes their newfound election responsibilities can be overwhelming at first and particularly when the resources from their predecessors are inadequate or outdated. A voluntary uniform election guide for poll workers would streamline and provide uniformity in poll worker training, and also provide a foundation from which county clerks can build upon as they implement their own county-specific rules and guidelines. This also further decreases the possibility of election officials using outdated election materials no longer...that correctly reflect current statute. The purpose of the uniform poll worker guide is not to mandate specific regulations, as Senator Karpisek said, thus the use of the term guide, but rather it is to provide a voluntary but uniform guide to county clerks and poll workers that currently does not exist. When this legislation was being drafted about two years ago, originally it contained a clause that mandated that they must use the guide. That was not the purpose so we took that out before it was submitted because we also know that the autonomy and the flexibility of the county clerks to adapt to their unique demographics is also important. This legislation mandates the creation of the guide but does not compel that it's used by county officials. However, I do think that they will use it if it is available. It is also important to note that we are not asking the Secretary of State's Office to reinvent the wheel. The guides that I passed around...well, the Lancaster County guide is one that they currently use and it's a great extensive resource, and that could be definitely a starting point for the uniform statewide guide. In addition, I believe Douglas County has one and a few of the other smaller counties have developed their own as well. I guess I just want to make a few notes also on the wording of the bill because some questions have come up when I met with some senators about that as well. The first sentence states that the Secretary of State shall develop uniform guidelines for election workers and that they shall be published on the Secretary of State's Web site. First, some have

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noted that this bill has provided for poll workers, and perhaps the intent of the bill would be clear if we amended it to say "poll workers" instead of "election officials." That's a fair point. I think that would be an easy change; it's just one word. I don't know if Senator Karpisek is open to that, but that may clarify it a little bit more. In addition, we also amended the legislation from the "Guise Guide" to provide that it would be provided on the Secretary of State's Web site. This was because the fiscal note that came out on the original bill last session included printing costs, and I think that it could be streamlined or we could get rid of the printing cost by simply posting it on-line and making it available for the election officials. If they want to use it, they can print it out. So that's the reason why we wanted to make it public. Also, because I think there's a transparency issue. The public should see certain guidelines on how elections are ran. Finally, several election officials have noted that elections are conducted a bit differently in rural counties than urban counties and that the legislation should reflect that, thus, the language in the last sentence of the bill accounting for the variation in regard to county size. It should be noted that this legislation is not necessarily intended to greatly benefit counties that already have election guides but rather counties that don't have election guides and have fewer resources. I think it can benefit larger counties if they want to use it, but that's not the main intent of the bill, I believe. On another note, I served as an election judge in 2010, and I just kind of kept a quiet note in the back of my head how often the people that I was working with used the Lancaster guide. It was used on several different occasions to clarify or make sure that they're following the correct procedure, and I thought that the election officials at the precinct that I was working at found it to be useful. I guess in conclusion, a uniform election guide in Nebraska would create consistency and uniformity in our election system while simultaneously providing a valuable resource to election officials, something they currently do not have and have requested in the past. Uniformity and consistency in our elections is something that we should always strive for, and LB97 is a step in that direction, and I would urge the committee to support the legislation. I'd be happy to address any comments or questions and I apologize for being over. I'm not used to the light system yet. [LB97]

SENATOR AVERY: Thank you. Thank you. You're not the first one to go over today. (Laughter) [LB97]

ADAM MORFELD: That's good to know. [LB97]

SENATOR AVERY: Questions from the committee for Mr. Morfeld? Seeing none, thank you. [LB97]

ADAM MORFELD: Thank you. [LB97]

SENATOR AVERY: Any other proponent testimony? [LB97]

LAURA SCHNEIDER: Good afternoon. My name is Laura, L-a-u-r-a, Schneider,

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S-c-h-n-e-i-d-e-r. I'm currently president of the League of Women Voters of Nebraska. And as you know, the League of Women Voters is a nonpartisan organization, and we've strove since 1920 to improve our election system and impact public policies. I am here as a representative to testify in support of LB97 which will require the Secretary of State to provide uniform guidelines for election workers. And we support this bill as it gives the voter a consistent experience in every precinct which will improve voter competence in election process. And we're proponents of this provision to establish a free access system so that any voter who casts a provisional ballot can track their vote and discover the reason if it were not counted. It is the right of every citizen to vote and it has been a basic league principle since its origin, and we support efforts to increase voter registration and voter participation. Thank you for your time and I'd be happy to answer any questions. [LB97]

SENATOR AVERY: Thank you. Questions from the committee? I see none. [LB97]

LAURA SCHNEIDER: Thank you. [LB97]

SENATOR AVERY: Thank you for your testimony. Any other proponent testimony? [LB97]

JACK GOULD: Senator Avery, members of the committee, my name is Jack Gould, that's G-o-u-l-d, and I'm representing Common Cause Nebraska. I don't have a lot to add to this except for the fact that, you know, we see that many different occupations, teachers have curriculum to follow, many professions have guides for the people that are coming in as new people trying to learn systems. It would appear that this is a very reasonable request, something that everyone should have and should be able to get to. And I'm kind of anxious to hear the opposition because I can't exactly come up with a reason why this wouldn't be something that would be advantageous to the Secretary of State. Thank you. [LB97]

SENATOR AVERY: Thank you. Questions for the witness? Seeing none, thanks. Any other proponent testimony? All right. Is there anyone here who wishes to speak in opposition to this, LB97? Welcome, Mr. Erickson, Neal Erickson. (Laugh) [LB97]

NEAL ERICKSON: Yes, thank you. Oh, and, Sherry, I have your sheet for you here someplace. Well, for the record, Mr. Chairman, members of the committee, my name is Neal Erickson. I'm Deputy Secretary of State for Elections here on behalf of the Secretary of State to testify in opposition to LB97. To answer Mr. Gould's question as to why we'd oppose this, and it is just the uniform guide is something that is basically, I think, would be used as a training tool and assistance to them. We have used a different system of training for the 15 years I've been in this job. We train the local election officials. We provide materials for them to utilize in training their poll workers. These materials have taken a wide variety of formats: DVDs on disabled voters, flip charts on

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M100 tabulation machines, pamphlets on how to do brochure...or provisional voting, a wide variety of things that I think we have introduced as exhibits in previous hearings on this idea. We didn't include them this time just because of...you've seen them all before with the exception of Senator Schumacher and Senator Brasch. This piece of legislation calls for a uniform guideline book in the first sentence. In the third sentence of it, of the meat of it, it says, but we can vary. And we recognize that and that is what we have always recognized is that local officials have the ability to train their workers in a mechanism or in a method that fits their county best as long as it follows the law. We provide every county all the changes to the law every year. We provide them with additional materials on whether it be, like I said, flip charts on how this equipment works, how to get it started, etcetera. If the goal of this is to provide kind of a bible out there that a poll worker can look at and solve every problem, you're never going to get that. In fact, actually, I would think that would be rather dangerous in some respects where something that is in that guideline might be interpreting law and they misinterpret that and misapply the law, and we've had that situation occur. The results of those are uncounted provisional ballots because that process has been screwed up. We have had people that have been denied the ability to vote because of poll workers interpreting the law, and this is with guidelines out there. Now what we do instead is provide the tools out there to the local officials to train their people. I think we do a very good job of that and I think that's evident...I think evidence of that is that you don't have county clerks here or election commissioner up here saying, we really need you to produce a guide. If we were hearing that kind of feedback from our partners in this election process, we would do that. Instead, what we're hearing from is people that haven't been involved in the process that are saying, well, we need this guide. In fact, even the piece of legislation itself says we're supposed to provide or, excuse me, develop a guideline for election workers that's made available to the public. It's not to the workers themselves; it appears that it's going to the public itself. Now we have taken a lot of pride in establishing relationships with our local election officials. We have developed training methods to train them and to assist them in training their poll workers. You know, if...you know, I'm not going to contend that...if you want to put together a guide and we thought it would be effective, it'd be very easy for us to do, but I don't think it would be particularly effective. And we have to oppose pieces of legislation that ask us to do these additional duties that really aren't helping the process at all but are more to just eschew somebody's feeling about something. And so with that, my lights are up. I'll take any questions you might have. [LB97]

SENATOR AVERY: Thank you, Mr. Erickson. Questions from the committee? You're not saying that you don't want to do this because you've never done it, right? [LB97]

NEAL ERICKSON: No. In fact, actually to comply to law, what I could do is take the law changes we give to every election official, put that on our Web site, and I think that complies with the statute. But that's not what we're trying to do here. We're trying to train our local election officials in the best possible manner and have them pass that

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knowledge onto their election workers in the format they see fits best for them. [LB97]

SENATOR AVERY: Okay. Thank you. I don't see any more questions. Thank you. I presume you're going to stay to testify against my bill, right? [LB97]

NEAL ERICKSON: (Laughter) Yeah, right. [LB97]

SENATOR KARPISEK: (Inaudible) favorite today. [LB97]

SENATOR AVERY: Any other opponent testimony? [LB97]

DAVE SHIVELY: I'm back as well. [LB97]

SENATOR AVERY: Okay. [LB97]

DAVID SHIVELY: (Exhibits 1 and 2) Good afternoon, again. My name is David Shively, S-h-i-v-e-l-y, and I'm the Lancaster County Election Commissioner, and I'm here today in opposition to LB97 which would require the Secretary of State to provide written, uniform guidelines for election workers. As you are well aware, a similar bill was defeated on the floor of the Legislature last year. I really don't see the need or purpose of this bill. I would simply see this more as a duplication of services already provided by the Secretary of State. It is important to remember that county election officials are either appointed or elected to do their jobs. The Secretary of State is the state's chief election official but does not have any direct supervision over county election officials. As an appointed election official myself, it's my responsibility to review statutes and to guarantee that I train my staff and my poll workers to conduct elections in accordance with both state and federal law. For your reference, I will provide you with a copy of our Lancaster County's poll worker manual, which I think Adam passed an earlier one out that we had around for you. We update this prior to each two-year election cycle, and I think other counties probably have something very similar to this. I feel the Secretary of State's Office is there as a resource for us and for advice for county election officials. Let me outline some of the things that they currently do. They provide biennial election training for all election commissioners and county clerks and their staff. They distribute a monthly question and answer bulletin that includes frequently asked questions that have been brought to the election division's attention. They produced a poll worker training DVD which many of the smaller counties have used for their poll worker training. They are given time out on the agendas for the clerks and election commissioner summer workshop and at their annual convention. In addition, the staff at the state elections office is only a phone call away if we have any questions or we need advice. Kind of (inaudible) procedures, uniform procedures just doesn't work when you have 93 different county election officials in counties with populations ranging from 340 in Arthur County to over half a million voters in Douglas County. I would truly encourage you to not advance LB161 (sic) to General File. [LB97]

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SENATOR AVERY: Thank you, Mr. Shively. Questions from the committee? I think we're worn out. [LB97]

DAVE SHIVELY: Yeah. [LB97]

SENATOR AVERY: Thank you. Any other opponent testimony? [LB97]

BETH BAZYN FERRELL: Good afternoon, Chairman Avery, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm appearing on behalf of the Nebraska Association of County Officials. I won't repeat the testimony that you heard from Mr. Shively. We think that this would be a duplication of services. When our board discussed this issue, we had nothing but kudos for the Secretary of State's Office for the training that they provide, for their willingness to come to our conferences, to come to our workshops and provide training at every opportunity when we've asked them. So with that, I would be happy to try to answer questions. [LB97]

SENATOR AVERY: So you see no particular value to having such a guide. [LB97]

BETH BAZYN FERRELL: No, sir. The information that the Secretary of State's Office provides now has been adequate for our needs. [LB97]

SENATOR AVERY: Okay. Any questions from the committee? I think you're right. Thank you for your testimony. Anybody else wish to oppose LB97? Anyone wish to testify in a neutral position? Seeing none, Senator Karpisek, you're recognized to close. [LB97]

SENATOR KARPISEK: Thank you, Senator Avery, members of the committee. I do know...if you recall, this did make it to the floor last year and it was defeated. One reason it was defeated was the fiscal note, and I'm not saying that was the only reason but that was a reason. And I do not want to say that the Secretary of State doesn't do a great job of getting material out. I just don't see the harm in this to putting it out on the Web site for someone to be able to access. Again, I know Mr. Erickson said he just doesn't really see the point, and he made good points and I do appreciate his testimony. I don't see the harm in doing it, putting things out there for the public and poll workers. With that, I would take any questions. Thank you. [LB97]

SENATOR AVERY: Questions? Senator Schumacher. [LB97]

SENATOR SCHUMACHER: Thank you, Senator Avery. Senator Karpisek, to the extent we write down guidelines, and even though we all know the guidelines and, you know, you can follow them or not but they're just there, do you foresee a situation where somebody who's disgruntled with the way an election went saying, look at all...you

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know, kind of messing up the system and saying, look, the guidelines weren't followed, and doing something like that to, you know, cast more dispersions on our electoral process? [LB97]

SENATOR KARPISEK: Well, and anything can happen and people do do some crazy things. However, I think when it's just a guideline and not a rule or a law or a statute, again, I'm not an attorney but people could do something like that. I don't see that it would carry...hold much water, but. [LB97]

SENATOR SCHUMACHER: Are there any instance, specific instances where things got really messed up under the way we're just doing now? [LB97]

SENATOR KARPISEK: Oh, I think we hear of little things that go afoul all the time and I don't know that they change any elections or not. But I guess my thought, one reason I wouldn't want to be a poll worker because I wouldn't know a lot of the things that come up, and if you could quickly look to check something out, it would be a help. And that's all this is, is just something to reference to try to help those poll workers and the election officials. [LB97]

SENATOR SCHUMACHER: No further questions. [LB97]

SENATOR AVERY: Thank you. [LB97]

SENATOR KARPISEK: Thank you, Senator Avery. [LB97]

SENATOR AVERY: (Exhibit 3) All right. Before we close the hearing on LB97, I have here a letter in opposition from Jefferson County Election Commissioner, Sandra Stelling. Read that into the record. Now I'm going to ask you if you will take over for me. [LB97]

SENATOR KARPISEK: What about him?

SENATOR AVERY: Because he says...(Laughter) We're running out of workers here.

SENATOR KARPISEK: You might need a guide on how to run a committee. You want me to run it like I run mine? Welcome, Senator Avery. Senator Avery is going to introduce LB168. [LB168]

SENATOR AVERY: (Exhibit 1) Thank you, Senator Karpisek. I am here to introduce LB168, electronic voter registration. Most of you who know me know that I am a long-time advocate for making the voting process as easy and as accessible for people as we can possibly make it. In a democracy, it's essential that as many as you can get to vote are there to vote. And making it easier for them to register, easier for them to get

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to the polls, and easier to vote, I believe, is a laudable goal in any democracy. I believe that voting is more than a privilege; it is a right, and because of that, I think it's entirely appropriate that we do everything that we can to make it easier for people to exercise their right to vote. Allowing people to register to vote, allowing people to update their voter registration on-line will make the process easier and more convenient, and will work toward the goals that I have just mentioned. According to the National Conference of State Legislatures, there are nine states that now have passed laws and implemented on-line registration. These states are: Arizona, California, Colorado, Indiana, Kansas, Louisiana, Oregon, Utah, and Washington. Arizona was the first state to do this. And, by the way, I have a handout here that will summarize some of this information for you, if the page will come and take that and distribute it. Arizona was the first state to do this in 2003. You will see on that handout 2002 is the starting date, but you will also see 2003. I chose 2003 because my counsel here agrees that 2003 is correct. They have had success with this program, including an increase in voter registrations and a cost savings by eliminating the data entry process for state and local employees. LB168 requires the Secretary of State to develop a Web site to allow for electronic voter registration and updating of voter registration records. The way it would work is that an applicant would have to have a valid Nebraska motor vehicle operator's license or a state identification card and could use this on the Web site to register to vote or to update the registration materials. The Secretary of State obtains a copy of the applicant's digital signature from the Department of Motor Vehicle records for the purposes of this registration. The bill amends the motor vehicle operators license provisions to prohibit any official or employee of the Secretary of State's Office from releasing the digital signature, except in some special circumstances such as law enforcement requests, things of that sort. The bill has an operative date of January 2012. You may recall that this bill was introduced last year by Senator Giese. And we also had in this committee an interim study on electronic voter registration, and during those hearings there were some questions raised about the cost and the security of the system. I believe the Secretary of State will have something to say about this. Probably someone is here to...I think I've seen her in the audience from the Department of Motor Vehicles who will address the concerns about this legislation. The fiscal note is \$100,000. Frankly, I have never liked a fiscal note that I've seen since I've been here for four years. Most of them, in my opinion, when they're on my bills are wrong and this one is. Thank you. [LB168]

SENATOR KARPISEK: Thank you, Senator Avery. Any questions for Senator Avery? Senator, you did say that it increases voter registration. Do you know if it's...I know you can't tell, but do you think it's helped voter turnout? [LB168]

SENATOR AVERY: You know, that's a good question because we used to think that if you improved voter registration, it would lead to almost a one-for-one increase in voter turnout. That has not happened. I haven't researched that issue thoroughly. I do know that voter turnout has gone down in proportion to the number of people who are

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registered. We, some years ago, passed motor-voter, you may remember. That's been immensely successful in getting more people registered. It has not appreciably increased turnout, hence the...with more people registered than the proportion of those turning out has gone down, although the number of people turning out hasn't changed that much but the percentage. This may not be the answer to turnout, but it certainly is not inappropriate in a democracy to make it easier for the people in that democracy to participate in it, and that's what this does. [LB168]

SENATOR KARPISEK: Thank you, Senator Avery. Senator Schumacher. [LB168]

SENATOR SCHUMACHER: (Laugh) Getting tongue-tied. [LB168]

SENATOR KARPISEK: That's a "tongue-tier." [LB168]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. Senator Avery, as I read the fiscal note--and it apparently is the Secretary of State's estimate rather than the folks in the audit department that are coming up with that \$100,000 number--is it the intent of this that once somebody registers by over the Internet that it create the record in the Secretary of State's database and also the county database without future manual work on the part of them converting to the paper record? [LB168]

SENATOR AVERY: That is my understanding, yes. [LB168]

SENATOR SCHUMACHER: So there would be substantial savings because they would not have to go through that. [LB168]

SENATOR AVERY: Which is not reflected in that fiscal note. [LB168]

SENATOR SCHUMACHER: Right. [LB168]

SENATOR AVERY: Thank you for observing that. [LB168]

SENATOR SCHUMACHER: Nothing else. [LB168]

SENATOR KARPISEK: Thank you, Senator Schumacher. Senator Brasch. No? All right. Thank you, (laughter) Senator Avery. Do we have any proponents? Mr. Morfeld. [LB168]

ADAM MORFELD: Senator Karpisek. [LB168]

SENATOR KARPISEK: Do we have any other proponents? Two. And how about opponents? Three. Any neutrals? One. Okay. Thank you. Mr. Morfeld. [LB168]

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ADAM MORFELD: Not too bad. [LB168]

SENATOR KARPISEK: No, not bad. [LB168]

ADAM MORFELD: (Exhibit 2) Good afternoon. My name is Adam Morfeld, that's A-d-a-m M-o-r-f-e-l-d, and I am here testifying on behalf of Nebraskans for Civic Reform in support of LB168 which would allow electronic on-line voter registration. I'd like to thank Senator Avery for introducing on-line voter registration legislation. Nebraskans for Civic Reform's interest in promoting on-line registration began with a desire to reduce administrative costs and increase the accessibility of our civic institutions while simultaneously maintaining security of the registration process. On-line registration does all three of these. A recent study in Arizona found that the cost of processing a voter registration went down from 83 cents per registration to 3 cents per registration with on-line voter registration. On-line registration has become so popular in Arizona that 60 to 70 percent of all registrations are now being conducted on-line. Besides the obvious benefits of cost savings and increased efficiencies, on-line registration is also more secure in that one must have a Nebraska driver's license or Nebraska identification card issued by the DMV in order to be allowed to register on the Secretary of State's Web site. This is something that's not currently required to register except in limited circumstances. It should also be noted that on-line registration is nothing new. Arizona, Washington, and Kansas have implemented on-line registration, and another six states have passed legislation authorizing the implementation of it. Arizona implemented on-line registration in 2002, and just recently Kansas implemented in 2009. I have talked to administrators in both states and both report that there have been no major problems and the system has been successful and cost-effective. In addition, I also handed out a memo that I had my legal clerk prepare for you with some common questions about implementation of on-line registration in Arizona. She was formerly from Arizona and knew many of the election officials down there and did some extensive research in that regard. Over the past several years, I had the opportunity to talk with various election officials from around the state. One of their overriding concerns is the shrinking elections budgets and increasing costs. On-line voter registration has proven to be cost-effective and a secure way of registration. For many years now, state and federal agencies have allowed the submission of various documents. More recently during last year's State of the State Address, Governor Heineman encouraged and listed several examples of state agencies using technology to save money to minimize the fiscal impact on the state budget. This is one of those opportunities. It should also be noted that on-line voter registration also increases the accuracy of the voter registration records in that the user enters all the information themselves and leaves little room for administrative error. In addition, like any service that is made more convenient, on-line voter registration increases the likelihood that voters will utilize it and update their registrations more often, reducing the need for time-consuming provisional ballots filled out at the polls and reviewed after the election. Finally, it is my understanding that the DMV has some privacy concerns with

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on-line...electronic signatures that would be transposed from the DMV record onto the electronic voter registration card that would be generated. This was a concern that came up two years ago. I'm not quite sure if it's a concern that came up in the last interim hearing. However, in the states that have on-line voter registration, each county clerk does not have access to the electronic signature database. And as Senator Avery stated that there is certain provisions in there that would limit and restrict who can get those signatures to law enforcement or in other unique situations. That being said, even access to the Secretary of State could most likely be restricted by the DMV, as one of the Arizona officials noted to me. The program automatically generates the card through a secure DMV database, and the Secretary of State does not necessarily have to have access to their signature or information database. Obviously, this can be programmed and made to work in various different ways, but this is some of the ways that it's currently done in other states. One thing that I wanted to note that Senator Karpisek brought up is that, does this lead to increased voter turnout. It may not lead to increase voter turnout but it will lead to the increase of accuracy in the voter registration rules. I believe that if something is made more convenient, someone is more likely to go up and update their registration on-line quick if they move or do something like that. Oftentimes you'd be surprised what voters don't know about having to have to reregister when they move across town or across the county. And so that's a problem and that creates provisional ballots and it consumes time at the polls as well. I guess in conclusion, I believe on-line voter registration has a proven record of increasing administrative efficiencies, saving money, and increasing the security of our voter registration process. I would be more than happy to answer any questions that you may have about on-line registration and how it's being conducted and implemented in other states. [LB168]

SENATOR KARPISEK: Thank you, Mr. Morfeld. Any questions from the committee?  
Senator Schumacher. [LB168]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. Mr. Morfeld, I thought I had this in my head right as to how this worked. This would be a neat, clean submission by a Web page, but then I read this paragraph and maybe you can explain it to me to the extent you have been involved with drafting it: If an application is submitted electronically--so I'm sitting at my computer, I'm doing this--and the applicant is registering in the state for the first time and has not previously voted within the state, that applicant must submit a copy of photo identification which is current and a valid or copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and shows the name and address of the applicant as they appear on the application. How do I get this stuff submitted? I mean, what do I do? I've typed in everything and now I've got my utility bill and my picture in my hand. Do I go to mail it someplace? [LB168]

ADAM MORFELD: That would not be the preferred mode of doing that. And the way that it works in other states and what makes it so convenient is that as long as the

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information, your driver's license number, the address, all that on your card matches up with the on-line database, then your voter registration would be accepted. [LB168]

SENATOR SCHUMACHER: Where does it say that in the language, though? [LB168]

ADAM MORFELD: I don't have the bill in front of me. I'm sorry. I have it in my computer. I generally don't print things out anymore, (laugh) so. [LB168]

SENATOR SCHUMACHER: Well, that's part of the...maybe why you should...maybe newspapers. [LB168]

ADAM MORFELD: I should have brought my computer up here. No, that's not the preferred method of conducting on-line voter registration. I mean, currently--and maybe Neal Erickson can attest to this--one of the instances where you have to mail in a registration form and show ID when you go to the polls is when you mail it in and when you don't do it through motor-voter or something like that. So, I mean, that's a portion of the bill that I think could be amended and should be amended. [LB168]

SENATOR SCHUMACHER: Okay. Because I'm concerned about...a second thing, I mean, it seems so much harder. I mean, assuming there's a quick and easy answer to this question I just raised, this electronic business of putting all this information in there and correlating it with the driver's license seems so much harder and...than our present system. All you got to do is fill out a form and somebody carries it down to the election commissioner, and you can write Mickey Mouse or Donald Duck on the form and as long as you put an address in, (laughter) I mean, it gets down there and you're registered. Why do we have to go through all this extra security under this way? [LB168]

ADAM MORFELD: I don't think that you should have to and I think that the method that we should follow is the method that Arizona, Kansas, and Washington currently follow where as long as your information checks out with the information that you have on your driver's license, then that voter registration will be processed. [LB168]

SENATOR SCHUMACHER: Well, currently, when you just...when somebody is circulating an initiative petition and you say, well, I can't sign the initiative petition, I'm not registered... [LB168]

ADAM MORFELD: Um-hum. Yeah. [LB168]

SENATOR SCHUMACHER: ...and they pull out a card and you write down your name, and then somebody takes it and takes it up to the election commissioner's office or you drop it in the mail, you don't have to show a driver's license. Why would you have to go through all that extra security work for this thing? [LB168]

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ADAM MORFELD: I don't think that you should have to, Senator. That's what I'm saying, is I don't think that that's necessary. It's not how you do it in other states for on-line voter registration. [LB168]

SENATOR SCHUMACHER: Okay. So this is being overly cautious by requiring correlation. [LB168]

ADAM MORFELD: I think this is being overly cautious. Yeah. I think that provision is being overly cautious. I think that it should be conducted how it is in Arizona, Kansas, and Washington where as long as it matches up...I mean, that's a more secure form the way that they do it in Arizona where the information you type in the computer based off your driver's license is a more secure form than our current form of registration. It doesn't require the extra legwork that's needed in this bill. [LB168]

SENATOR SCHUMACHER: Are you familiar with our current form of registration? [LB168]

ADAM MORFELD: Yes, I am. [LB168]

SENATOR SCHUMACHER: Could you describe that for the record as to how easy it is for somebody just to throw in a registration now? [LB168]

ADAM MORFELD: Certainly. I could fill out a registration right here, fill out Senator Avery's name, probably find his signature from some public document that he signed, and turn it in. It'd obviously probably be, I think, a Class IV felony. I could be wrong on that. [LB168]

SENATOR SCHUMACHER: Why would you even need to find his signature? Why couldn't you just scribble out something like a lawyer or doctor does? [LB168]

ADAM MORFELD: Well, I'm not exactly sure about the process in the election commissioner's office, but they may if it's a reregistration or update of registration, they may check the signature but they may not either. I'm not sure. [LB168]

SENATOR SCHUMACHER: Okay. No further questions. [LB168]

SENATOR KARPSEK: Thank you, Senator Schumacher. Seeing no other questions, thank you, Mr. Morfeld. [LB168]

ADAM MORFELD: Thank you. [LB168]

SENATOR KARPSEK: Further proponents of LB168. Welcome back. [LB168]

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LAURA SCHNEIDER: (Laugh) Seem to be quite consistent, aren't we? [LB168]

SENATOR KARPISEK: Yeah. [LB168]

LAURA SCHNEIDER: Thank you for having this hearing today. My name is Laura, L-a-u-r-a, Schneider, S-c-h-n-e-i-d-e-r. I am currently president of the League of Women Voters, and I'm here as a representative of the League of Women Voters to testify in support of LB168 requiring the Secretary of State to develop a Web site to allow electronic voter registration and updating of voter registration records. And we support this bill as it gives citizens one more opportunity to register to vote. Conducting business on-line is a very common, everyday experience for most of our citizens, particularly those younger than 30. Most of these citizens have embraced the electronic way of life so thoroughly that few even have paper checks, receive paper bills, or have landlines for phone services. This on-line access would enhance the reputation of our great state of Nebraska. Traditional voter registration is perceived as stodgy by this group and just often too much of a bother to do so by person or by postal service. I have assisted in voter registrations for over ten years, and in the last five years have been consistently asked, what is the Web address and can't I register on-line or update my information on-line? A great example of how Nebraskans are using electronics to be more available to its citizens is the live streaming of Unicameral proceedings and committee hearings on the Internet. It seems odd that a government that advanced in its efforts to be more accessible, transparent, and citizen-friendly still does not have an electronic voter registration system in place. We can no longer ignore the Internet and its power to reach more of our citizens. We need to embrace electronic registration option. Thank you. Do you have any questions? [LB168]

SENATOR KARPISEK: Thank you, Ms. Schneider. Any questions? Seeing none, thank you. [LB168]

LAURA SCHNEIDER: You're welcome. [LB168]

SENATOR KARPISEK: Further proponents. Welcome, Mr. Gould. [LB168]

JACK GOULD: I'm finally getting it down. I'm starting to get me... [LB168]

SENATOR KARPISEK: Ah, well it's a new year. (Laughter) It takes a while again. [LB168]

JACK GOULD: I appreciate it. It's been a while here. [LB168]

SENATOR KARPISEK: I understand. You should have seen us the first day. [LB168]

JACK GOULD: My name is Jack Gould, that's G-o-u-l-d, and I'm here representing

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Common Cause Nebraska. And I just want to reiterate what Senator Avery said at the beginning. I mean, it's all about trying to make it easier for people. It's not taking away any of the options that are already out there. It's just giving the public another way to register. And I think some of the reasons that so many security issues have been brought into this is because when this bill came up before, the arguments have all been about security, that we don't have a secure system. And so I know that Mr. Morfeld has been working feverishly to try to make it more secure. But I think it's kind of interesting that we've heard arguments on the first bill about how secure and how effective electronic things are, that this is the wave of the future, we're going to depend more and more on the electronic systems, and here we have a very up-front, it seems simple way for people to register to vote. It relies on electronics and there is a certain element of security necessary, but in the end, it does just what the senator would like it to do, which is to give another opportunity to the public to register and vote. [LB168]

SENATOR KARPISEK: Thank you, Mr. Gould. Any questions? I would just ask, so you don't see...I would think of anyone being concerned about voter fraud, it would be you. [LB168]

JACK GOULD: Well, I think we're...you know, we're all concerned about voter fraud. No one wants to see people registering illegally. But I think there is enough security in what we're proposing that it's not the great risk that others may say it is going to be. And I think if you trigger this is connected to the...in a driver's license, if it's connected to other things that are already on-line, there are crosschecks that...to ensure that the security factor is there. [LB168]

SENATOR KARPISEK: Thank you. Senator Schumacher. [LB168]

SENATOR SCHUMACHER: One quick question. Thank you, Senator Karpisek. One quick question. Of the other states that have done this, has there been any disasters, any boondoggles, big problems, more or less problematic than the old sign-up card and send it in method? [LB168]

JACK GOULD: I know of none and our national organization is very much behind this system that we're going to and I think it's the wave of the future. Whether we do it now or later, it really depends on the Legislature. But I think as time goes by, this is going to be what the public will rely on. [LB168]

SENATOR KARPISEK: Thank you, Senator Schumacher. Any further questions? Thank you, Mr. Gould. [LB168]

JACK GOULD: Thank you. [LB168]

SENATOR KARPISEK: Any further proponents? Okay. Opponents. Okay. Neutral.

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[LB168]

NEAL ERICKSON: You've been waiting here all afternoon. [LB168]

SENATOR KARPISEK: Oh, did we go too... (laughter) [LB168]

NEAL ERICKSON: Are you sure (inaudible)? [LB168]

\_\_\_\_\_: No. [LB168]

SENATOR KARPISEK: Mr. Erickson is a gentleman. [LB168]

NEAL ERICKSON: Well, she's been sitting here all afternoon waiting on this. I understand. Senator Karpisek, members of the committee, for the record, my name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n. I'm Deputy Secretary of State for Elections here on behalf of the Secretary of State in opposition to LB168. And, Senator Avery, I will tell you that this is actually one concept that we think has some potential. Unfortunately, the timing is just not correct at this point. I know Senator Avery had three basic points that we would oppose this bill at this time. Number one is the fiscal note on it. And where that fiscal note came from, we have been asked three times over the past year-and-a-half to do a fiscal note or an estimate on this. DMV, the IT people in DMV have estimated \$80,000 to \$100,000 to reformat their signatures so it'll be accepted by our system. We also anticipate another \$20,000 to \$40,000 to adjust the programming in our system to be able to functionally use those signatures. We took the low ends of both those and came to the \$100,000. So that's where that came from. The second item that raised some concern is the quality of the signatures. We use signatures for...in a couple of major ways. Number one is verifying early voting ballots and the other one is verifying petition signatures. And there is some concern at this point in time with the quality of the DMV signatures that we will actually be able to utilize those signatures for those purposes. I think eventually this can be corrected as well as the quality of the signature pads that DMV utilizes increases and we get a higher grade, I guess for lack of a better term, signature that can be transferred to our database. The third item that is...that we just don't have an answer to at this point in time, and we have asked the Department of Justice U.S. Attorney's Office, is in a case of where a voter registration is fraudulently entered, are we going to be able to get a prosecution for election falsification, which is what the penalty or the crime of falsely submitting a registration, on an on-line form that the individual did not sign? I mean, we have specific penalties there. It is five years in jail, \$10,000, or both. And are we going to be able to successfully prosecute that without them actually signing that oath that says everything on here was correct? And we just simply have not gotten an answer from even the U.S. Attorney's Office on whether that prosecution is even viable. I know other people have brought up the point, well, you see these software agreements where you just click "agree" and, yeah, they have been enforced, but those have generally been in a civil

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situation as opposed to a criminal situation. And so those are the three basic reasons we oppose the bill at this time. This is one concept that does have some potential but probably just not right at this time because of those factors. Senator Schumacher had asked why that language was in that bill. And I don't mean to sound like the old crow, but it's actually probably because the Bill Drafter who drafted that understood federal law a little bit better than maybe somebody...that is actually required by federal law by the Help America Vote Act. Any time...and it actually applies to first-time voters who register by mail, and the federal law requires that a photo ID or one of those other types of ID be presented either at the time of registration or prior to getting a ballot. The idea...the concept behind it was you had to, in effect, appear before some kind of public official to be able to do that. Now there is an exception to this rule, and Adam to a degree is right why it doesn't really apply in Arizona. And the exception to that is if we can match that information with another state database, and usually that is we work closely with DMV. We match them against driver's license records. We also go through DMV to match them through Social Security records. If we're able to get a match on those, then we don't have to require ID anymore. So that's the answer to that question. It is...I don't think...you probably would have to include that in the language to not be in violation of Help America Vote Act. So with that, I'd answer any questions you might have. [LB168]

SENATOR KARPISEK: All right. Thank you, Mr. Erickson. Senator Schumacher. [LB168]

SENATOR SCHUMACHER: I've got a few questions for you, Neal. First of all, who are the IT people with the Department of Motor Vehicles that says they'd have to reformat the pictures? [LB168]

NEAL ERICKSON: The gentleman's name is Keith Dey. [LB168]

SENATOR SCHUMACHER: Keith Dey? [LB168]

NEAL ERICKSON: Um-hum. [LB168]

SENATOR SCHUMACHER: And what format would they have to take them from or to? [LB168]

NEAL ERICKSON: That I do not know. [LB168]

SENATOR SCHUMACHER: And when you estimate \$20,000 to \$40,000 to do what to your records? [LB168]

NEAL ERICKSON: To be able to use those signatures in the manner that we use them. Right now the way we use signatures is we actually, what we do is scan them in, create

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a PDF, and then clip the signature from that. Now we have a new type of signature coming in. We'd have to adjust that to be able to pull up on our petition verification subprograms, things like that. [LB168]

SENATOR SCHUMACHER: Twenty thousand dollars to forty thousand dollars to do that? [LB168]

NEAL ERICKSON: Yeah, I'll tell you what. [LB168]

SENATOR SCHUMACHER: Who gave you that estimate? [LB168]

NEAL ERICKSON: Well, that's Elections System&Software. They are the one who wrote our... [LB168]

SENATOR SCHUMACHER: Do you have some... [LB168]

NEAL ERICKSON: ...and give you an idea. I mean, it's...that system was a bargain at \$4.5 million. Most days we're paying \$8 million for it. The program is not cheap anymore. [LB168]

SENATOR SCHUMACHER: I'm not talking about the program. I'm talking about the cost of just reformatting a signature from one type of format to another. I mean... [LB168]

NEAL ERICKSON: Well, and that...like I said, we were asked during the interim study to check again, and we checked and it was the same thing we got from them when this bill was originally introduced. And, you know, I'm not completely familiar with DMV's system and what their programming is, but I have no choice but to accept that. I mean, that's what they're going to charge us if we grab those. [LB168]

SENATOR SCHUMACHER: So this is an internal state charge. [LB168]

NEAL ERICKSON: Oh, yeah. [LB168]

SENATOR SCHUMACHER: Oh, so it doesn't cost the state anything because money taken from your budget goes into their budget. [LB168]

NEAL ERICKSON: Well, yeah, but you have to understand that we're (laugh) not...the DMV is cash funded. [LB168]

SENATOR SCHUMACHER: But, nevertheless, the taxpayers don't have to dig in their pocket for any extra money here. [LB168]

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NEAL ERICKSON: Oh, well, I think you can look at it that way. On the other hand, if they are incurring costs that are not covered by some other source, then they end up having...because they're cash funded, having to raise their rates to cover their budget. If we ask them to do something that they haven't done in the past and it costs them resources, they have to pay those resources somehow. [LB168]

SENATOR SCHUMACHER: Was there any kind of specification document or something that we can go back to and double-check? Having been in the computer business for 20 years, that thing just looks like an astronomical number for what you're describing as being done. Was there any kind of specifications that was set out so that we can go look at that and we cross price that? [LB168]

NEAL ERICKSON: We simply asked what it would cost to be able to grab their signatures. [LB168]

SENATOR SCHUMACHER: And that was the question phrased that way. [LB168]

NEAL ERICKSON: And the question was raised that way. And in order to get it into a format that our system could accept was going to run \$80,000 to \$100,000. [LB168]

SENATOR SCHUMACHER: And that's just one quote from the vendor that you have there. [LB168]

NEAL ERICKSON: No, that's from DMV. [LB168]

SENATOR SCHUMACHER: From DMV. Oh, DMV was going to charge you that. [LB168]

NEAL ERICKSON: Right. [LB168]

SENATOR SCHUMACHER: Okay. But that's an internal thing. [LB168]

NEAL ERICKSON: We pay them for a variety of things. [LB168]

SENATOR SCHUMACHER: Okay. So if we want to find out if it would have any cost to the taxpayers, we have to ask DMV rather than you because they're the one billing you. [LB168]

NEAL ERICKSON: Right. Yeah. [LB168]

SENATOR SCHUMACHER: Okay. All right. Can you describe, I know on some of the...there's a thing called the electronic signature act, where there really is no signature in pixels, what that does and why it works so swell with commercial transactions of

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millions of dollars and we can't...and if there was somebody forged a large commercial transaction using the electronic signature act, they'd go to jail, I mean, why that wouldn't still work here. [LB168]

NEAL ERICKSON: They may go to jail when there's something like fraud or whatever. I'm not necessarily sure they're going to be going to jail under forgery. And that is what are elections falsification in our case. [LB168]

SENATOR SCHUMACHER: But we could change the elements of the crime of forgery for electronics. I mean, that's not a technical problem. That's just a language change. [LB168]

NEAL ERICKSON: Well, and here would be the example I would give. If somehow...and the one key thing I would have to have from you is a driver's license number. [LB168]

SENATOR SCHUMACHER: Okay. [LB168]

NEAL ERICKSON: But let's say I had that and I went to a public library and I entered your name on there and entered a false address on there to put you in a different legislative district or whatever and submitted that. As long as that driver's license is valid, what we're going to do is we're going to grab that signature and attribute that registration to you. If it turns out to be false, we're going to come to you first. Well, you're going to say, well, I didn't do that. And we're going to say, well, now wait a second, I've got your signature here. Now we could trace the IP address but we're going to end up going to, let's say, a public library. We're not going to be able to find anybody there. [LB168]

SENATOR SCHUMACHER: Okay. So I grab a card under the present system and I do the same thing and send it in and, you know, a lot of people's signatures are on checks, credit card stubs, every place, easy to get. I practice my handwriting a little bit and I do the same thing and you don't know me from Adam either. [LB168]

NEAL ERICKSON: Actually that's not true. What we do is we send an acknowledgement to that address that you provided and if it happened to be your home address, you would get this and go what the heck is this. And that is why we actually have a gentleman in Douglas County right at this point in time that is being prosecuted for forging approximately 400 signatures or 400 registration cards. [LB168]

SENATOR SCHUMACHER: So then in order to perfect this system, we need to add a provision in here that says something like you will send out or the county election commissioner will send out a postcard just like the ones sent now? [LB168]

NEAL ERICKSON: No, actually that is required by federal law. [LB168]

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SENATOR SCHUMACHER: Okay. Should we... [LB168]

NEAL ERICKSON: And that is why we kind of doubt some of the numbers you get from Arizona that say they do it 3 cents per resignation because any registration, whether it be a change or a new registration, under federal law is required...that individual is required to receive a notice, first class, nonforwardable from the election official saying what is the status of that application, whether it was accepted, it was deficient, how it was deficient, and how it can be corrected. [LB168]

SENATOR SCHUMACHER: Okay. Well, two questions then. I mean, suppose it costs 27 cents then to mail, would that cure the problem here? And then the second question is, if I give you a...I'm John Doe and I give you my correct address, but I sign up as Jim Pete and I get a letter with my address in to Jim Pete. I've got it at that address, how do you...you know, I'd say, yeah...? [LB168]

NEAL ERICKSON: Well, and do we...is that possible? Yeah, that's possible. Now we try and, you know, catch as many as we can and we have, over the years, have been able to do that. There is one individual who in Douglas County earlier...well, early 2000s forged about 500 registrations during a petition drive. We were able to find those. We pulled them out. We had State Patrol handwriting experts say these were all written by the same hand. We knew that. We knew who the individual was. Unfortunately, he was now out of state, and according to the Patrol the only way we could really prosecute him is if we got him to voluntarily return and submit a handwriting sample and be able to compare that. And, like I said, I've raised this question with the Department of Justice. I have not gotten an answer yet, but they have similar concerns about, can you prosecute without them actually taking that oath? [LB168]

SENATOR SCHUMACHER: I don't have any further questions. [LB168]

SENATOR KARPISEK: Okay. Thank you, Senator Schumacher. Thank you, Mr. Erickson. Next opponent. Here comes the DMV answers. Welcome. [LB168]

BEVERLY NETH: (Exhibit 3) Thank you. Senator Karpisek, members of the committee, I'm Beverly Neth, B-e-v-e-r-l-y N-e-t-h, Director of the Department of Motor Vehicles, appearing today in opposition to LB168 as the department has some concerns with the use of DMV data in the bill and I want to address those concerns. LB168 adds the Secretary of State to the list of entities with access to digital signatures. The bill states that the digital signature may be used for purposes of carrying out the functions of the agency without limitation. The Secretary of State has broad areas of responsibility and function. As written, the office could use the digital signatures for any purpose of that office, not just for voter registration. LB168 does not require the Secretary of State to have a secure system. It says that the Secretary of State "may" deploy additional

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security measures. I'm concerned about this permissive language in the bill. The Department of Motor Vehicles takes very seriously its responsibility to protect Nebraska's citizens' data. We adhere to the Uniform Motor Vehicle Records Disclosure Act and other statutes regarding the release of data, and we strive to employ the highest level of security possible relating to the information, particularly the personal information, images, and signatures of Nebraskans' data stored and contained in our databases. I want to thank you for the opportunity to testify today and listening to my concerns. I'd be happy to answer any questions that you have. [LB168]

SENATOR KARPISEK: Thank you, Director Neth. Any questions? Senator Schumacher. [LB168]

SENATOR SCHUMACHER: (Laugh) I'll try and keep it...we're at 5:00, so I know I'm going (inaudible). A couple of things. This very important data, personal information, height, weight, whatever, they have those at most stores now and you check out at the counter with alcohol and things like that. [LB168]

BEVERLY NETH: Well, you're really talking about a couple of different things. DMV data is protected data. So information contained in our databases is protected under the Uniform Motor Vehicle Records Disclosure Act. We're not allowed to redisclose that information except for the statutorily permitted purposes of which there are now 15 purposes in Nebraska. [LB168]

SENATOR SCHUMACHER: And there could be 16 if this passes. [LB168]

BEVERLY NETH: Well, no. This isn't actually a disclosure of data. It pertains to one specific thing which is the signature which is oddly enough in Nebraska statutes, signatures and digital images have their own statutory protection within our driver's licensing statutes. Signatures and photos are only used and released by the DMV and to law enforcement currently for investigative purposes. Other data which is personal information that's contained, demographic data that's contained in our database really is contained under the Uniform Motor Vehicle Records Disclosure Act. Those are the 15 uses. [LB168]

SENATOR SCHUMACHER: So some of this data is at every grocery store where you check out and buy a bottle of wine. [LB168]

BEVERLY NETH: No. DMV data is not there. [LB168]

SENATOR SCHUMACHER: Okay. But the personal information, my height... [LB168]

BEVERLY NETH: If you give them your driver license, they can now under the changes to the laws last year, they can store it, they can store some of that information from your

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driver license. It's a limited amount of information. But there's no interface to DMV data at grocery stores. There's nothing there that gives anyone direct access to our information and to our data in our databases. You physically would have to give them your driver license in order for them to either scan the barcode that's on the back or take a photo of it for them to have your demographic and personal information. [LB168]

SENATOR SCHUMACHER: And their equipment doesn't correlate with anything that you have then. [LB168]

BEVERLY NETH: No, it does not. [LB168]

SENATOR SCHUMACHER: Okay. Now when you go and get your mug shot taken for your driver's license, there's a picture generated. And I suspect when you sign the little thing, there's a digital file generated. [LB168]

BEVERLY NETH: Yes. [LB168]

SENATOR SCHUMACHER: So there's two little computer files there that are identified with the person's birthday and name and Social Security number. [LB168]

BEVERLY NETH: Well, they are not little computer files. That is, I think, a mischaracterization of the type of system the Department of Motor Vehicles uses. We have a very sophisticated system in that the technology we currently have deployed within our driver licensing system has the capability for facial recognition, it has...the photo complies to an IKO standard. There are just a number of things that are in place within the system that make sure that we're capturing the best photo that we can capture for purposes of mitigating fraud, for protecting against identify theft, and doing a number of things that we currently do that we have authority to do under a bill that was passed a couple of years ago, the department. So it's a sophisticated, highly sophisticated system that we're using. We do, in fact, take your photo and we also capture your signature using a signature capture pad that is stored as a part of your record. [LB168]

SENATOR SCHUMACHER: Okay. But, nevertheless, those are in a computer file, for lack of a better word, a sophisticated JPEG, let's just say. [LB168]

BEVERLY NETH: Right. Yes, you're right. The signature is captured as a JPEG. [LB168]

SENATOR SCHUMACHER: Okay. [LB168]

BEVERLY NETH: Some of the issues we have with our signatures, I think that Neal is alluding to, is the fact that we converted a Legacy system. We converted our first

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generation digital driver license system to our most recent version, just within the last 18 months we did this conversion. We took all of the Legacy signatures, which were TIFF signatures at that time, and our vendor converted those to the JPEG images. We have found over the course of the last 12 months of using the system that there are some conversion issues with our signatures in that there have been some compression. There was some compression of some of the TIFF images when they were converted to the JPEG, so they're small. They are sometimes less than half the size of what the signature should normally be. So even within our own system, we're trying to overcome some of those issues that occurred with that conversion. [LB168]

SENATOR SCHUMACHER: Do you have the original TIFF files? [LB168]

BEVERLY NETH: You know, I suspect they would be stored somewhere but I believe those...either our vendor would have those or those would have been overwritten. [LB168]

SENATOR SCHUMACHER: Okay. So they're still in existence, these better quality files are still in existence somewhere. [LB168]

BEVERLY NETH: But they're not existence in...actively within our system currently. So the current system, the current signature that rests with your record would be the converted JPEG or a new signature we would capture. [LB168]

SENATOR SCHUMACHER: Right. But somewhere there's a cute little hard drive spinning that has this information on it, and that if I type in my name or I have a query against that database, it will produce a high grade TIFF signature. [LB168]

BEVERLY NETH: Not if it's integrated into our system anymore. [LB168]

SENATOR SCHUMACHER: Not integrating it but it exists somewhere. [LB168]

BEVERLY NETH: It is possible that our vendor still has those TIFF images. We don't have them anymore in our system. They were all converted into the JPEG image. [LB168]

SENATOR SCHUMACHER: Okay. I don't think I have any further questions right now. [LB168]

SENATOR KARPSEK: Thank you, Senator Schumacher. Any further questions? [LB168]

BEVERLY NETH: Senator, I wanted to just address a little bit. There was some discussion of some savings in that there would be an elimination of data entry, and I

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think...and there's been discussion of Arizona and Kansas. I did have the opportunity to discuss Kansas system with the secretary of elections there. And I think when you talk about the data entry associated with driver licensing and when I look at the numbers, anywhere from...historically it's been about 80 percent of individuals who are registering or vote are coming through that process through the DMV, doing a motor-voter process. I think those numbers went down a little bit last year, maybe about 64 percent of the people were registered through us. That process, even with an on-line system the way it's discussed in the bill, would remain data entry. You're not...the bill does not focus on or does not look at making that motor-voter process an electronic process. So currently when you fill out your application and you say you want to register to vote, that's done with a piece of paper. That piece of paper is transmitted from the DMV staff to the elections commissioner who then does the data entry. In my discussions with the Kansas secretary of elections, he was clear to me that they approach their on-line process really in two phases. First, they took that motor-voter process and they made an electronic process out of it, so they did programming and changed that process. So all of the data entry that was being done was simply being done at the point of the DMV. The DMV would have to capture a few more data fields. That information then would be transmitted electronically. That's where I think states have gotten this savings because they take the point of entry where your largest percent of individuals are completing their voter registration and they're making that an electronic process. So to say that there could be savings enough without looking at the front end of the piece, I am not sure that there would be enough savings to offset the fiscal notes as they currently exist. [LB168]

SENATOR KARPISEK: Okay. Senator Brasch. [LB168]

SENATOR BRASCH: Sorry. [LB168]

SENATOR KARPISEK: That's all right. [LB168]

SENATOR BRASH: I was trying not to ask any more. [LB168]

SENATOR KARPISEK: (Laughter) You just had to. [LB168]

SENATOR BRASCH: But I'm a little bit intrigued right now on the security of our images... [LB168]

BEVERLY NETH: Um-hum. [LB168]

SENATOR BRASCH: ...as far as like with the vendor because driver's licenses are extremely secure. You would think there would be something in specifications on the archiving or destruction of our signatures and photos that you have the JPEG but you're not sure where the TIFF is or what, you know, the... [LB168]

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BEVERLY NETH: Well, let me address that. That really is a conversion issue. Our signatures, our photos, your data is all very secure,... [LB168]

SENATOR BRASCH: Right. [LB168]

BEVERLY NETH: ...even the backup servers that our vendor has for us, very secure. We do everything through secure encrypted tunnels. We don't send anything without it having some kind of encryption or secure...my answer is that I honestly have not asked the vendor if those TIFF images exist within their system still or if they've all been converted and those TIFF images were purged. We don't have those TIFF images within our DMV database anymore. All of those old images were converted. So they're not...they wouldn't be easily scraped and taken over to the Secretary of State's Web site. It may be that we would have to recreate whatever would be there or simply look at how we can use the existing JPEG images if those could be used or through the process of renewal of driver license and new applicants you capture a clean signature that would be, I think, usable for the kinds of things such as on-line voter registration. [LB168]

SENATOR BRASCH: Thank you. Thank you. [LB168]

SENATOR KARPISEK: Thank you, Senator Brasch. Yes, Senator Schumacher. [LB168]

SENATOR SCHUMACHER: One quick question. Where are these servers located? [LB168]

BEVERLY NETH: Well, we have servers within the DMV that are located...we have backup servers within CJIS, our Criminal Justice Information System has some backup server. And the other servers are located within our vendor who has...our vendor is...we are one of 36 states that the vendor does business for. They're a, once again, highly sophisticated IT company that does do some backup of our database as a disaster recovery database. [LB168]

SENATOR SCHUMACHER: I mean, is your data...your servers... [LB168]

BEVERLY NETH: Um-hum. [LB168]

SENATOR SCHUMACHER: ...here in Lincoln? [LB168]

BEVERLY NETH: Yes. [LB168]

SENATOR SCHUMACHER: Okay. [LB168]

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SENATOR KARPISEK: Thank you, Director Neth. [LB168]

BEVERLY NETH: Thank you. [LB168]

SENATOR KARPISEK: Next opponent. Welcome. [LB168]

JORDAN McGRAIN: Thank you. Thank you, Senator Karpisek, members of the committee. My name is Jordan McGrain, M-c-G-r-a-i-n. I'm the executive director of the Nebraska Republican Party here today to sit in opposition to LB168 for many of the same reasons that the earlier opponents shared, the cost benefit, the potential for fraud, the personal data. I would also add that per Secretary Gale, a conversation I had with him this morning, between 80 and 85 percent of eligible Nebraskans who are eligible to vote are already registered. This would, to me, indicate that we don't necessarily have a registration crisis, we have a participation crisis. And just wanted our opposition to the bill noted for the record. [LB168]

SENATOR KARPISEK: Thank you, Mr. McGrain. Any questions? Seeing none, thank you. [LB168]

JORDAN McGRAIN: Thank you. [LB168]

SENATOR KARPISEK: Any further opponents? Anyone neutral? Welcome back. [LB168]

BETH BAZYN FERRELL: Thank you. Good afternoon, Senator Karpisek, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm appearing for the Nebraska Association of County Officials. Our position is neutral on this bill. We think that it's coming. We think it's a good idea that it is coming, but we want to make sure that it is right when it is implemented. We have some other concerns that were expressed by the Secretary of State's Office and by DMV. We do support the single entry feature so that election commissioners wouldn't have to reenter any data that would be entered electronically. And we think that that would be helpful to them. I'd be happy to try to answer questions. [LB168]

SENATOR KARPISEK: Thank you. Any questions? Seeing none, thank you. Any other neutral testimony? Seeing none, Senator Avery, you're recognized to close. [LB168]

SENATOR AVERY: Well, I know you're all tired and ready to go home, as am I. Vote by mail. Motor-voter. Ex-felon voter rights restoration. Provisional voting. All of these are accepted, normal, regular parts of our voting system today, and every one of them had the same kind of arguments brought against them when they were proposed by the same people that came up here today. Now I'm not going to bore you and waste your

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time going through a point-by-point rebuttal on all of that. But let me tell you this. There is an old rule of politics: We've never done it that way and we've always done it this way, so we can't do it that way. We can do it that way. It's coming. Let's get it done. Thank you. [LB168]

SENATOR KARPISEK: Thank you, Senator Avery. That will close the hearing on LB168 and close the hearings for today. Thank you for your participation. [LB168]