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Government, Military and Veterans Affairs Committee
March 16, 2011

[LB142 LB175 LB292 LB568]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Wednesday, March 16, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB142, LB175, LB292, and LB568. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Charlie Janssen; Russ Karpisek; Rich Pahls; Paul Schumacher; and Kate Sullivan. Senators absent: None.

SENATOR AVERY: Welcome to the last hearing of the season for the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I chair the committee, and I represent District 28 here in Lincoln. Before we go any farther, let me introduce the members of the committee: Senator Rich Pahls, who is sitting over here on the right, from Millard; and seated next to him is Senator Lydia Brasch from Bancroft; and there is Charlie Janssen, on time, from Fremont (laugh); and seated next to him is Senator Scott Price, the Vice Chairman of the committee, from Bellevue. To my immediate right is Christy Abraham; she is the legal counsel for the committee. And I believe Senator Karpisek will be joining us in a few minutes; he is from Wilber. Next to him is Senator Kate Sullivan from Cedar Rapids. And next to her is Senator Paul Schumacher from Columbus. The clerk of the committee is Sherry Shaffer; she will make sure that the light system is operating. And for those of you who plan to testify for or against any of the bills that we will be hearing today, you will give her this sheet after you fill it out. This is information we need for the record; please print your name clearly. If you wish to be recorded for or against any of these bills but do not wish to testify, we ask that you sign this sheet, indicating which bill you are registering for or against. These two forms are available at the entrance--both entrances to the room. The agenda is posted outside the room at each door, and we will follow the agenda as it is printed. Before we start, let me ask you if you have any cell phones or computer, anything that makes noise--please put them on silent. And if you are going to testify, do not bring electronic material to the table. We will be using the light system. The green light means you have four minutes. When the green light goes off and the amber light comes on, you have one more minute to finish up your remarks. When the red light comes on, you should be finished. We've found that five minutes usually is enough to say what needs to be said. We do not apply that rule, however, to introducers. And--but introducers usually are accustomed to five minutes since that's what we get on the floor--except for Senator Lautenbaugh, who likes to go longer. The--this committee deals with interesting and, often, controversial issues. And I like to remind the audience that we are the only legislature in the country that requires that every bill have a public hearing. We take that very seriously, and we want all of you to have ample opportunity to say what you have come here to say. And we will respect your right to do that. And we do appreciate when people take the time to come in, share their views on our bills. We have a--one intern helping us today--or page, I should say: Kyle Johnson from Sutton. If you have any materials you would like to distribute to the committee, give them to the clerk; she will have the page distribute

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them for you. We need 12 copies. If you don't have 12 copies, let us know now, and we can have the page run some extra copies. So with that, we will start our hearings today with LB142, Senator Scott Lautenbaugh. Welcome back to your former home.

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And thank you, members of the committee. There are many of you who...thank you, Senator Price. There are many of you who have heard this before, either on the floor...some of you may be new to the committee. But in any event, my opening comments will be relatively brief and I hope relatively clear. This bill is brought for the second time--this is my priority bill this year for the first time--to eliminate the CFLA. The CFLA was passed in 1992 to regulate campaign spending. And, again, this debate is not new. One of the justifications given for the CFLA was to get big money out of politics, limit the influence--limit the influence of big money in politics. If that is the standard by which we are to judge the CFLA, it has been a failure of historic magnitude and should be done away with. Simply put--and all of you are very familiar with the CFLA, as we are all bound by it--it puts limits on what we as candidates, and other candidates, can accept from nonindividuals. There is a regime by which people can choose to abide or not abide by the spending limits. And those who agree to abide can get what are known as "fair fight" funds, which is a--money from a fund that is set up out of, I believe, campaign fines--not tax dollars but campaign fines, to be clear--to level the playing field, supposedly, for a candidate who might not be as well funded. But there is a problem here. And I don't know if my solution will eliminate the problem, but at least it'll give some redress. And here's the issue we have. In the last several years we've seen an exponential growth, I believe, of independent expenditure groups--nameless, faceless groups which aggregate money from various interests. And sometimes they're supportive; in the worst of circumstances they go on the attack, sending out negative pieces about candidates. Those groups do have some reporting requirements, but they can spend unlimited amounts of money, virtually. What we find ourselves in as candidates--in the position of being forced at the end of a campaign to try to raise money from the most difficult of donors, the individual donors, to try to match an attack that comes at the eleventh hour from these independent expenditure groups. Now, I believe that if we eliminate the CFLA, that a lot of that money that was formerly forced underground will flow to candidates again, not all of it, certainly, but some of it. I believe it'll enable candidates to more effectively meet challenges that come up from these independent groups at the end of the campaign cycle and throughout the campaign cycle. And I do want to be clear, this bill does not eliminate Accountability and Disclosure. And it does not eliminate disclosure in the sense that we have to disclose our campaign contributions. Actually, it would increase disclosure, making us disclose campaign contributions of \$50 and above relatively quickly, not waiting for the usual reporting periods that we have now. So the public will be able to see where we get our money very clearly and more swiftly than they do currently. The trade-off for that would be that we would be able to continue to raise funds from nonindividuals beyond whatever limits are set forth. We'd still be able to raise from individuals--that much is certain. But we would also be raising from

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nonindividuals, without the current limits in place. On the one hand, as I indicated, this might force--or allow some of this money to flow back into campaigns above the board, where you know who is sending out the mailing and what it is--where they're coming from, I guess is the best way to put it--even if it does not eliminate the independent expenditure groups. And the problem is, constitutionally, I don't think we can do much to limit the independent expenditure groups. I think we've lost that ability through various Supreme Court decisions. So if we cannot apply limits to the independent expenditure groups, the only thing that we can do, in my estimation, is cease fighting these campaigns with one arm tied behind our back while these other groups are out there with unlimited resources. I'll be very honest, I will never be a beneficiary of this repeal. I am term limited, and that is that. I don't have any more races to run. But I think it's important to illustrate exactly what I'm talking about. In my last race, in the last week of my campaign, a new group sprung up and spent \$30,000, in the last week, against me. There was no way, first of all, that I could marshal the resources to respond that, from private donors. And I was maxed out on nonindividuals. So what do you do? You hope for the best; you try to send out cheap robocalls to counter the onslaught of four or five mailings the last week. That's what you're left with. Now, some may say: Well, you're here; you must have been successful. But I don't think that's the standard. And some have not been successful against the negative onslaught that comes at the end. And I think we are fooling ourselves if we pretend that this act has had any practical effect of cleaning up our campaign system--I think, far from it. It has provided the incentive to do exactly what all of us seem to appreciate the least, which is go underground, go on the attack, hide the ball. I mean, in my case, how do you find out who the "Leadership Committee" was? Well, for days nobody even knew who it was who was sending out the mailings against me. They just said on the bottom: "Paid for by the Leadership Committee." When this group belatedly filed their disclosures, which I think would garner them a fine of \$100...if they're willing to spend \$30,000, they're willing to get a fine of \$100, I would argue pretty readily. The public has a right to know who is saying what. And we can't stop people from hiding behind these independent expenditure groups, but we should also stop limiting our ability to respond. And with this current law, that's what we do. We have not accomplished the purpose of the CFLA as stated. What we have done instead is foster the thing that we find most objectionable. This act would, again, not do away--my bill would not do away with Accountability and Disclosure. They'll still be monitoring their filings; they'd still be, you know, maintaining the online version of the filings so people can find out that much more quickly what it is we're doing and who we're getting money from. And I think that's a good thing. But I challenge anyone to say there has been a good result from the CFLA. That was intended when we passed this thing back in 1992. We have perverted the process, stifled free speech; and it's time for this thing to go. I'd be happy to answer any questions you might have. [LB142]

SENATOR AVERY: Questions? Start with Senator Price. [LB142]

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SENATOR PRICE: Thank you, Chairman Avery. Senator Lautenbaugh, thank you. Have you seen the fiscal note on this? [LB142]

SENATOR LAUTENBAUGH: I know I have, but you might have to refresh my recollection, because I don't have it with... [LB142]

SENATOR PRICE: Well, that fiscal note is, I believe, fairly large--for bringing in a whole new system. I see here we're looking around \$300,000-plus dollars. I didn't know if you were aware of that. And \$600,000--yeah, about \$300,000. [LB142]

SENATOR LAUTENBAUGH: I think what we'll find is that the system is already under way, because we're going to on-line reporting anyway. So I question that we would need to do that much more. If we're reporting more often on-line, I don't think that requires that much more effort to set up a system that we are already transitioning to anyway. Additionally, if we needed to offset that expenditure, there are substantial funds sitting in the CFLA--whatever we call the account, "fair fight" funds--sitting there that could be applied to any sort of reporting enhancements that could offset that, by amendment or otherwise. [LB142]

SENATOR PRICE: Right. Thank you. [LB142]

SENATOR AVERY: Senator Pahls. [LB142]

SENATOR PAHLS: I commend you for trying to make things a little clearer, because I understand, when you have people coming through the back door, it is a little bit frustrating. But we know who these groups are; we truly do. And as the politicians (inaudible), we know, right now, there are four or five what I call the big dogs. They're willing...I'm not talking about individuals who may want to do that. But by...I know, as a person running, we cannot know who that group is, because then we become part of that group. But I think, overall, if we'd ask everybody around this table: Okay, who are the five big dogs who are doing this to us, or to the citizens? We could probably--it wouldn't take long but we'd know that. So somehow if--if we can't get what you're looking for, then somehow we're going to have to call them out. [LB142]

SENATOR LAUTENBAUGH: Well--and you're correct, Senator. There are certainly, I mean, there are some minor players, but there are certainly some major donors as well that go with the independent expenditure route. The problem is, while we know who they are, the public doesn't know who they are. Because it does--just a casual perusal of the Accountability and Disclosure Web site will reveal that there's--these groups spring into existence and go away; and another beneficial name is thought of, and then it goes away. The rub is that we can't do anything about that from a practical matter. These groups do have, I believe, a First Amendment right to go form these independent expenditure groups and do what they do. We can either untie our own hands so that we

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can adequately respond or, after the election, sure, we can call them out and say, well, this is who did it. But, well, if you've lost, so what? [LB142]

SENATOR PAHLS: Yeah. [LB142]

SENATOR LAUTENBAUGH: And if you've won, so what?--is the response. [LB142]

SENATOR PAHLS: And I understand, I mean, we need to find a way to untie our hands, because it--but even if we can't do that, right now, even after--because you're finished, and I'm finished, basically, running--maybe we need to stand up as individuals and say: This is what's happening, public. I mean, because we know who they are; and these are respected organizations, but they're doing it through the back door, I believe. [LB142]

SENATOR LAUTENBAUGH: Well--and I think there's certainly a value in that. And if memory serves, I actually did that during floor debate last year, to a certain extent. [LB142]

SENATOR PAHLS: Yes, you did. [LB142]

SENATOR LAUTENBAUGH: I don't know where that got us. You know, if you're watching the Legislature, you know what I said; and if we do a press release, there will be a one-day story. But when it comes time for elections again, somebody is going to get a piece attacking them sent by "Citizens for a Responsible Tomorrow" or whatever--I just made that name up, but it'll surely be used, as we just seem to reshuffle the same words and, you know, use them over and over in the group names. You know, and by the time you expose who they are, it's too late, usually. [LB142]

SENATOR PAHLS: Okay. Thank you. [LB142]

SENATOR AVERY: Senator Sullivan. [LB142]

SENATOR SULLIVAN: Thank you, Senator Avery. Thank you, Senator Lautenbaugh. Is it safe to say that your proposed legislation will not stop independent expenditures? [LB142]

SENATOR LAUTENBAUGH: We cannot stop independent expenditures. We can remove the incentive to go that route, which is what I hope to do, but it will never do away. [LB142]

SENATOR SULLIVAN: Why do you think your legislation removes that incentive? [LB142]

SENATOR LAUTENBAUGH: Because...and, again, I'm not starry eyed about this; I

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believe people will still go that route. But I believe that by putting the limits we've put in place, the same amount--the same aggregate amount of money to be spent on campaigns exists. People set budgets--these entities do--and they're going to spend what they're going to spend. We have made it impossible for them to dial direct--by putting spending limits, if you will--and actually give money directly to campaigns. I think by taking these limits off, they will go more often than they are now--because they can't--to individual campaigns, so that people can...when you see a mailing that says, "Paid for by Scott Lautenbaugh," if it makes you mad, you know who to call. Now, there will still be independent expenditures, because we cannot do away with that, I mean, constitutionally. We just can't do anything about it, I believe. And I may be wrong, but I believe that's the case. But right now, with the limits we place on ourselves but with the universe of money staying the same, we're forcing it into the least-favored, I would say, way of influencing campaigns. It'll never be completely eliminated; that much is certain. If my bill eliminated half of what goes to independent expenditure groups, I would say it is a much more rousing success than the CFLA has been. [LB142]

SENATOR SULLIVAN: Do you think that some of these independent expenditures, though, like...just the name they're given--they like to be independent; they don't like to be beholden or even let the candidate know, perhaps even the one that they're supporting, who they are. [LB142]

SENATOR LAUTENBAUGH: Undoubtedly. I think that we can't put that genie in the bottle, 100 percent, again, okay? Put the toothpaste back in the tube, to use another cliché--I can probably come up with a third one if we wanted. But you're right; there are certain people who, when they're sending out a particularly vile piece, are going to want to hide behind that anonymity. And there's not a lot of candidates who want to send out particularly vile pieces with their own name at the bottom of them. We will never do away with that; that's just the nature of the beast. [LB142]

SENATOR SULLIVAN: On the other end of the spectrum, I'm curious about the--why you are wanting to change the thresholds for reporting to as low as \$50. What's your rationale? [LB142]

SENATOR LAUTENBAUGH: It just seemed to me that with the system that we were looking at, as far as doing it on-line and doing it much more quickly, there aren't--there should not be that much more of a burden for greater disclosure. And it just seems to me if we are going the route of taking away the limitations on who to contribute, I think it's also helpful to know more fully who's actually contributing. And I think, honestly, some people probably do game the system a little bit. When you have reports that say, oh, this last quarter I raised \$12,000 from people that were \$250 and under, so I don't have to report them--that's very hard to do. And sometimes it probably isn't true, but it's also very hard to prove. If the disclosure limit were \$50, it would be very difficult to say: I raised \$12,500 this last period, and, by the way, no check exceeded \$50. No one is

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going to believe that. So it's just greater disclosure, and I think that's a good thing.
[LB142]

SENATOR SULLIVAN: And then you've got that window of time: from when it's they may do the reporting to the mandatory reporting in 2014. Again, what's your rationale in giving that amount of time? [LB142]

SENATOR LAUTENBAUGH: Just to give people time to ramp up to it. I mean, we didn't want to suddenly transition from one system to another and say, okay, now you must do this, now you're doing this and, depending on when the bill becomes effective, things are already under way. I mean, the campaign cycle never seems to stop, for some people. I mean, the way I came in, especially--I was appointed, so I had to run immediately for the remaining two years. And then I had to run again for the next four years. Ironically, one of the rules I ran afoul of early on, in what I believe to be the flawed CFLA, is immediately at the start of your two-year cycle you have to decide if you're going to abide or not abide or estimate how much you're going to spend on a hypothetical campaign two years down the road. I completely blew that deadline because I was just reelected; what do I need to decide? And then when I inquired--well, how am I supposed to know? Well, just put out a number; nobody is going to hold you to it anyway. Well, what are we doing here? We're...it's another, I think, mechanism under the existing law by which we're kind of deluding ourselves. This gives the appearance of doing something without actually doing things that are meaningful as far as disclosure.
[LB142]

SENATOR SULLIVAN: Okay, thank you. [LB142]

SENATOR AVERY: Any other questions? Senator Schumacher. [LB142]

SENATOR SCHUMACHER: Thank you, Senator Avery. Senator Lautenbaugh, if I can kind of explore some issues with you--a lot of these independent expenditure things are--you have a corporation gives to an association, who then gives to the association's PAC, who then gives to the independent expenditure committee, who then lies in wait and pops out of the woodwork in the last ten days. In your research, is there--you have several tiers of people hiding--is there any way that, while we can't stop a corporation from donating money, we can stop them from going through the tiers? They've got to--if they're going to support a person, they've got to declare that right up-front that it's XYZ Corp, instead of hiding behind those tiers? [LB142]

SENATOR LAUTENBAUGH: I don't know the answer to that; my bill does not address that, I believe. I think there would be a problem with, you know, what if a corporation decided--if the election was November 2, say, what if a corporation decided on October 20, all right, now we'll support so-and-so. Is...even if that's not when the decision is made, that would be when the decision is... [LB142]

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SENATOR SCHUMACHER: Announced. [LB142]

SENATOR LAUTENBAUGH: Yeah, whatever, however you want to put it. I understand the concern you're trying to address, but I see a lot of ways to circumvent that. And that's really--comes back again to, I believe--the problem with the CFLA is that there are a lot of ways to circumvent what, you know, limitations the CFLA and other reporting requirements supposedly put in place...unless you're one of us, unless you're an individual running for office, and then the requirements are pretty strict. Now, here's why we struggle to limit these--try to get greater disclosure and whatnot from these corporate entities and whatnot: because we're struggling to do something that we shouldn't and probably can't do. They do have a First Amendment right, and we're trying to think of ways to limit it and fancy it up. It's hard to do something that you shouldn't do and can't do. And that's what we tried to do with this act, I think, was try to do something we couldn't do, which was take money out of politics. That's why I think just full and fair and swift disclosure is the best possible thing we can do as candidates. [LB142]

SENATOR SCHUMACHER: I'm not sure there's a, you know, a constitutional right on the part of the corporation to anonymity in political activities. But, you know, that's one of the things that this kind of addresses. Now, in your research, when a corporation gives money to a trade association, or pays trade association dues, that's normally deductible--as dues to a trade association. [LB142]

SENATOR LAUTENBAUGH: I don't know that, but I'll accept that. So... [LB142]

SENATOR SCHUMACHER: I'm pretty sure. Then is there a way that we can get it, when they convert--that trade association diverts that money to a PAC that will go to an independent expenditure committee as they hide--that we undo the deductibility, at least for state tax purposes? [LB142]

SENATOR LAUTENBAUGH: I honestly don't know the answer to that. I have to respond to part of your premise there--and you keep talking about the research I've done. My staff asked me if I needed some talking points for this, and I said my whole political career has been a talking point for CFLA repeal. I'm well versed on the issue, but I don't know the answer to your particular question. [LB142]

SENATOR SCHUMACHER: And finally, whose--when you bring down the limit of \$50--that is actually something that you can raise in most rural communities--\$50. It's the stuff over \$500 that's tough to come by. Whose responsibility is it to log that in and keep up with that bookwork? [LB142]

SENATOR LAUTENBAUGH: I would want that to be on the candidate. I don't want the \$50 contributors to have to fill out a special form like some of the other entities, larger

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contributors, do. I wasn't trying to make this more burdensome for the individual contributors, certainly. That would be up to the candidate to report. [LB142]

SENATOR SCHUMACHER: Thank you, Senator. [LB142]

SENATOR AVERY: Let me ask you a question about the elimination of the limit on how much nonindividual money a candidate can accept. Right now it's half of the spending limit. [LB142]

SENATOR LAUTENBAUGH: That's correct. [LB142]

SENATOR AVERY: The spending limit, I think, is \$94,000? [LB142]

SENATOR LAUTENBAUGH: That sounds approximately correct. [LB142]

SENATOR AVERY: Yeah. So that's quite a bit of money that you can take from special interests. And if you remove that, then there would be no limit to how much special interest money candidates could receive. As I recall, one of the objectives of the CFLA in the first place was not to eliminate the influence of money, because you can't do that, but it was to reduce the influence of money. And having been involved in that early legislation, from the outside, I remember trying to get a lid on what an individual PAC could contribute. We failed in that effort but did manage to get the aggregate limit. And that has been effective in reducing the influence of special interest money in--at least in the candidate's campaign. What you want to do is remove that and unleash all that special interest money going directly to the candidate. [LB142]

SENATOR LAUTENBAUGH: Yes. [LB142]

SENATOR AVERY: And the courts have ruled that money actually, potentially, can corrupt candidates, that it...well, the Supreme Court has said that in Buckley v. Valeo. [LB142]

SENATOR LAUTENBAUGH: Is that a ruling or dicta? I would question because... [LB142]

SENATOR AVERY: (Laugh) So is there a compelling public purpose that your bill would serve if you do unleash the--what lids we do have on special interest money? [LB142]

SENATOR LAUTENBAUGH: I believe yes, because I don't know that the court has ever held that money corrupts or they just worry that money corrupts. I mean, that's really two different things in... [LB142]

SENATOR AVERY: They've said that potentially money does corrupt. [LB142]

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SENATOR LAUTENBAUGH: Right. [LB142]

SENATOR AVERY: Yeah. [LB142]

SENATOR LAUTENBAUGH: Well, they're entitled to that opinion. I mean, lots of things potentially could, I suppose. Yes, I do see a compelling purpose in this. And that is, I think the voters--we don't need to insult the intelligence of the voters, which I think we currently do with money being shoved underground, as it is currently. If I were--if my bill passed and I were to run a race in 2012 and I received \$100,000 from ConAgra and nothing from no one else, I know how I would run against me in that race--by saying: Look, he's just the guy from ConAgra. What is wrong with having that debate in public and saying: Look, he got all of his money from special interest groups? Then we can have the discussion that we've had before about, well, isn't everything a special interest group when you get right down to it--some just write bigger checks than others? And that's certainly true. But I feel like with what we're doing we aren't really removing the influence of that nonindividual money; we're just forcing it and freeing it up to be much more insidious than it was before. And once again, in responding to Senator Sullivan's questions, I conceded that we're never going to completely undo that and the impetus to go negative and go anonymous. But I think that it is kind of a fool's errand to say we must say that you can only get half of your funds from nonindividuals. Why not 75 percent? Why not 25 percent? Why not all of it? Isn't that something for the voters to decide? And if you're running opposed, someone will surely bring it to light. And if you're not running opposed, you're not going to spend the money anyway, all other things being equal. So I don't see our system as improving the level of public knowledge in any appreciable way currently. [LB142]

SENATOR AVERY: You said that the CFLA has been an utter failure--but only if you view the CFLA as you define it in its purposes. Its purpose was never to find a way to eliminate the influence of independent expenditures. You can't do that; you're right, the Constitution doesn't allow it. That was never the intent of the CFLA. The CFLA's intent was to reduce the influence of money in campaigns. And if you look at the number of candidates who actually do abide by the spending limit, they far outweigh the ones who don't. I mean, it's probably 90 percent of the candidates abide with the spending limit at \$94,000. If you can't win a legislative race with that amount of money, you probably shouldn't be running. [LB142]

SENATOR LAUTENBAUGH: Yeah, and I think that's where we simply disagree philosophically, Senator--is that I don't think that's our call to make. If I wanted to spend \$200,000 from ConAgra, the voters will know about it, and that would be that. I don't see how it is our business; and it may, I think, come to pass that what we're actually doing now, currently, may be found to be unconstitutional. Because I believe money is speech, and limiting the amount of it that can go to individuals is limiting it, I think,

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probably impermissibly. So I don't know that our current system will survive direct attack, which seems to be...the existing law of campaign finance seems to be developing at the federal level, and there's nibbling away here and there at various bits and pieces of it. I don't know how much of it can survive; I don't know how much of our current system is actually constitutional. I do think, and I wish I...I would quote Kermit Brashear from the floor debate on this when he fought against it and tried to repeal it, and--but I'll butcher it, but: It's flawed legally, morally, and conceptually; this is just not the business we should be in. And I agree with him on that. [LB142]

SENATOR AVERY: Well, that's a philosophical argument, not a legal one. [LB142]

SENATOR LAUTENBAUGH: Agreed. [LB142]

SENATOR AVERY: Yeah. Because I--I mean, the Supreme Court has been pretty clear in their rulings, particularly Buckley v. Valeo. That if it's a voluntary limit--or if the limit is voluntary and you provide incentives for candidates to abide, then that is, in fact, not an unlawful restriction of speech. [LB142]

SENATOR LAUTENBAUGH: And even if the Supreme Court said tomorrow our system is entirely, 100 percent permissible, saying we can do a thing, that doesn't lead lockstep to we should do a thing. And, again, I think what we're doing is just indefensible from a free speech standpoint. [LB142]

SENATOR AVERY: But that's a philosophical argument, yeah. [LB142]

SENATOR LAUTENBAUGH: Admittedly, it is. [LB142]

SENATOR AVERY: Yeah. Senator Schumacher has another question. [LB142]

SENATOR SCHUMACHER: Thank you, Senator Avery. Senator Lautenbaugh, if I'm understanding it right, the problem that you're trying to address here is the reality that right now these independent expenditure committees that have unlimited ability to spend money--the candidates don't. [LB142]

SENATOR LAUTENBAUGH: That's correct, in a nutshell. [LB142]

SENATOR SCHUMACHER: And that they can lie in wait to the last minute like a bunch of cowards and then jump out. [LB142]

SENATOR LAUTENBAUGH: Those are your words, but yes. [LB142]

SENATOR SCHUMACHER: Okay. I got a grin, though. [LB142]

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SENATOR LAUTENBAUGH: (Laugh) [LB142]

SENATOR SCHUMACHER: And that if we took this limitation off, some of them, at least, would behave in a more up-front way and run it through the candidate committee rather than run it through the secret, covert operation. [LB142]

SENATOR LAUTENBAUGH: Yes. [LB142]

SENATOR SCHUMACHER: Okay. Thank you. [LB142]

SENATOR AVERY: Any more questions? Senator Janssen. [LB142]

SENATOR JANSSEN: Thank you, Chairman Avery. I thought, since I got here on time today, I should ask Senator Lautenbaugh a question. [LB142]

SENATOR AVERY: (Laugh) [LB142]

SENATOR JANSSEN: You touched on a point, and I wanted to bring it out just a little bit more. You talked about--transparency seems to be the issue here. And then I hear: money leads to corruption. But with the--what you're proposing, if we could take...and I'll always use Common Cause, because they don't donate money, as far as I'm aware of. I've asked them for a campaign donation; they said no. So (laughter) so I'll use them. But in this case, let's play the scenario that they do donate to me above the board. And they donate whatever, \$40,000, to me, which is within the limits. And then all of a sudden I'm supporting every possible bill. The public now knows that they gave me that money. So in my case, I guess that makes it more transparent or more--it would show that, well, maybe he was bought off by this campaign contribution. On the other side, they could decide, well, we're going to give him \$50, and then we're going to give to Citizens for Responsible Government \$30,000. And the people...unless it's really brought out--maybe it gets a headline, like you talked, maybe one news story, and I'm supporting every Common Cause bill--it probably wouldn't be as transparent. And maybe that's my own deduction, I don't know. I'm just kind of...I don't even know if there's a response in there; I just got that between your and Senator Avery's kind of discussion back and forth. [LB142]

SENATOR LAUTENBAUGH: Actually, I think you're dead on. With just full and fair disclosure and removing the limits, I think it's a lot easier to connect the dots between who is doing what and make the case that they are being influenced or not being influenced. While I say it is difficult for the general public to know what some of these new groups that spring up and do their belated disclosures--who's actually bankrolling them, I don't believe that a lot of the candidates that are benefiting from it are in the dark as to who's making the big expenditures on their behalf through these independent expenditure groups. The only people who are in the dark are the public, I believe, and

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the person who's being attacked, for a little while. So... [LB142]

SENATOR JANSSEN: Right. And that's what I was contending as well. Thank you, Senator Lautenbaugh. [LB142]

SENATOR AVERY: Senator Pahls. [LB142]

SENATOR PAHLS: You know, if we're looking at that way, we all know...and those of you new have not received this yet--by the end of the year, we will receive something from the chamber of commerce. And all the bills that we have voted on that they have been in support of--it shows you whether you're 100 percent or 90 percent. And as I can recall, very few people are below 70 percent. I mean--and I know they don't support all those candidates. [LB142]

SENATOR LAUTENBAUGH: Right. [LB142]

SENATOR PAHLS: But their rating of almost every one...you know, if they say this is not a business-friendly state, then I say people ought to be taking a look at the bills that they want and that are passed. You know, I'm just saying that there's money being tossed out there. And would you say the chamber is involved in some of this? [LB142]

SENATOR LAUTENBAUGH: To my knowledge, the chamber has participated in independent expenditures but only to the extent of advocating for a candidate, not attacking another one. [LB142]

SENATOR PAHLS: Oh, okay. [LB142]

SENATOR LAUTENBAUGH: That doesn't excuse it, but it is a distinction. [LB142]

SENATOR PAHLS: Okay. Yeah, right, I understand what you're saying. And by the way, I gave a bill in front of the Judiciary Committee; and you're a part of that committee, and they told me you could stay here as long as you wanted to. [LB142]

SENATOR LAUTENBAUGH: (Laughter) It's nice to be missed. [LB142]

SENATOR AVERY: Senator Price. [LB142]

SENATOR PRICE: Thank you, Chairman Avery. [LB142]

SENATOR LAUTENBAUGH: It's nice to be here, actually. [LB142]

SENATOR PRICE: Senator Lautenbaugh, in listening to all the conversation we've had here in the questions, who do you think is served by candidates having their proverbial

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arm tied behind their back? Who's served by this type of policy? [LB142]

SENATOR LAUTENBAUGH: I would say the people that Senator Schumacher referred to as "cowardly." Because they can hide, and they've got every incentive to hide, and they can masquerade as whatever they want to be, and they can go on the attack, and we're none the wiser. [LB142]

SENATOR PRICE: So it'd be fair to say that's actually injurious to the public. [LB142]

SENATOR LAUTENBAUGH: The current system, I believe, is. [LB142]

SENATOR PRICE: All right, thank you. [LB142]

SENATOR AVERY: I don't see any more questions. You going to stay to close? [LB142]

SENATOR LAUTENBAUGH: Yes. [LB142]

SENATOR AVERY: Okay. All right, we'll move to proponent testimony. Anyone wish to speak on behalf of LB142? I don't see any, Senator Lautenbaugh. All right, we'll now go to opponent testimony. Good afternoon. [LB142]

JACK GOULD: (Exhibit 1) Good afternoon. Senator Avery, members of the committee, my name is Jack Gould; that's J-a-c-k G-o-u-l-d. And I'm here representing Common Cause Nebraska. And I just want to start out by saying that Common Cause doesn't even have \$40,000 to give Senator Janssen, so this is not even up for discussion. The Campaign Finance Act has served Nebraska well. In the 20 years prior to the act, Nebraska saw a 376 percent increase in campaign spending for state offices. In the first two elections following the 1996 implementation of the CFLA, campaign spending dropped 22 percent. Since that time, most candidates have either accepted the spending limit or estimated at the limit. Indeed, out of the hundreds of elections for state offices since 1996, there have been only 11 races that have triggered "fair fight" funds, and 6 of those races involved the University of Nebraska Regents. I might add that those regents when they ran a second time became abiding candidates. And I think it also should be noted that two of the sitting senators, presently, received "fair fight" funds in the process, and they have, I think, benefited from the help. It's important to recognize the sources of "fair fight" funds. Originally, the Legislature designated \$50,000 and established a tax income checkoff. The checkoff produces between \$8,000 and \$12,000 per year in donations of \$1, \$2, or \$3. This means that between 4,000 and 12,000 people who probably are not here today support the CFLA with their hard-earned money. The majority of the funds come from fine money generated by the Accountability and Disclosure Commission, and they are largely late-filing fees, in some cases lobbying violations; there are no tax dollars involved with the fund. The CFLA provides both a benchmark and hope for the average person considering to run for

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public office. The benchmark is the spending limit itself. When candidates decide to run for any state office, they have a target amount of funds that they may have to raise. In terms of hope, the abiding candidates know, if the opponent chooses not to abide by the limit, they will be entitled to "fair fight" funds amounting to the difference between the limit and the required estimate of spending filed by the opponent. And I should note, I know this has sort of come up already in the discussion, but there are opportunities during the campaign at which the candidate who estimated at the limit can raise that estimate. It's not a fixed figure, and you're not locked in. If you expect to be attacked, there are opportunities to raise the estimate. Several key improvements to the CFLA came in 2006. "Fair fight" funds are now triggered when nonabiding candidates exceed the spending limit or when they exceed 40 percent of their estimate. The spending limits are also adjusted each year based on the cost of living. This was a result of much debate between Senator Beutler and Senator Brashear. He's been mentioned earlier. This was a key decision that came along in 2006. Over the years, some of those who opposed the CFLA have pointed to the First Amendment, saying the spending limits infringe on an individual's right to freedom of speech. There has been one court case in Nebraska raising that argument, but the case was dropped when both parties recognized the voluntary features of the act. I would also say that Common Cause very much agrees with Senator Lautenbaugh's position on independent committees. And I hear that from all of you. We all are concerned about the independent committees. But this bill doesn't really deal with the independent committees; it just opens the floodgates. And I think we have in the past encouraged legislation that would force greater disclosure of the independent committees, like identifying individuals on the committees that produce those attack ads. And so far we haven't been able to get those passed. But the disclaimers are important. I mean, that does tell the public who these people are, and they can connect with the causes that are out there. Another point that I think needs to be raised is the fact that, you know, you do not have to abide. I mean, it's simply open. If you choose not to abide, then you do have the opportunity to estimate high and spend high. Thank you very much. [LB142]

SENATOR AVERY: Thank you. Question from Senator Price. [LB142]

SENATOR PRICE: Thank you, Chairman Avery. Thank you, Mr. Gould. I have a question about your numbers. [LB142]

JACK GOULD: Okay. [LB142]

SENATOR PRICE: You say that there's been a 22 percent drop in the two elections following '96. So that would be '98 and 2000, correct? That would be two elections, give or take--plus or minus. [LB142]

JACK GOULD: I think that's correct. [LB142]

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SENATOR PRICE: Okay. [LB142]

JACK GOULD: Now, I'd have to check. I have acquired my statistics from Mr. Daley, who will be... [LB142]

SENATOR PRICE: Oh, okay. [LB142]

JACK GOULD: ...speaking later. [LB142]

SENATOR PRICE: Because... [LB142]

JACK GOULD: But I think I'm correct. [LB142]

SENATOR PRICE: Okay, great. We'll keep that--we'll set the table, then--now. [LB142]

JACK GOULD: (Laugh) Okay. [LB142]

SENATOR PRICE: Because we've had ten years since that we don't have statistics for; we have a big hole there. And then the next question would be: You say there was an increase in campaign spending, then a decrease. Was that in a decrease of campaign spending by candidates or a total that was spent within a race? Because if we've done a shell game here, that we have more money being spent on a race...I would say that with certain--certainty, more money is being spent today than was in 1992, '94, '96 in these races. I mean, I just saw some of the projections there. So I'll be interested in hearing those numbers broken down to represent, okay, what candidates are spending and what independent expenditures are being made in relationship to... [LB142]

JACK GOULD: Yeah. [LB142]

SENATOR PRICE: ...that time frame. [LB142]

JACK GOULD: Let me at least answer part of your question, okay? [LB142]

SENATOR PRICE: Sure. [LB142]

JACK GOULD: One of the facts is, prior to '92, when--that's when the bill was actually passed... [LB142]

SENATOR PRICE: Um-hum. [LB142]

JACK GOULD: ...we didn't have the funding, but it was actually passed--there were any number of elections, particularly in Omaha, that were in excess of \$100,000. Okay. So that--and that's what triggered everybody's concern, that we saw it going up

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dramatically and it was going to continue. So that inspired this bill. I think it also should be noted that the limits have been raised considerably over the years. The cost of printing, the cost of advertising, I mean, everything goes up. At first we did it by simply, you know, bringing legislation each time to raise the limit. Now we have the cost of living attached to the bill, and so that enables it to kind of keep pace. But that--I don't know that I have fully answered your question. But I don't have the statistics in front of me, but I think Frank Daley will probably be able to give you a little bit better--he's not going to have the statistics in front of him either, but I think he'll be able to give you a little bit better picture of that. [LB142]

SENATOR PRICE: Well, I appreciate that. Are there other questions? Senator Sullivan. [LB142]

SENATOR SULLIVAN: Thank you, Senator Price. And thank you, Mr. Gould. Just wanted to ask you if you are opposed to all parts of this proposed legislation. What about the reporting--lowering the thresholds of reporting? [LB142]

JACK GOULD: I think we'd be very much in favor of lowering it. It does become a practical issue, to a certain extent. But I think, you know, full disclosure would be the final goal, from our perspective. You have to look at it from a practical side as to what can be done with the resources that we have. [LB142]

SENATOR SULLIVAN: Thank you. [LB142]

SENATOR PRICE: Senator Janssen. [LB142]

SENATOR JANSSEN: Thank you, Senator Price. Mr. Gould, you'd mentioned in your opening that this would open the floodgates for independent expenditures. I think... [LB142]

JACK GOULD: Well, (inaudible) independent. I said it would open the floodgates to campaign expenditures in general. [LB142]

SENATOR JANSSEN: So... [LB142]

JACK GOULD: It wouldn't be just independent... [LB142]

SENATOR JANSSEN: Okay, and that's--which independent expenditures are part of, I suppose. If I look at independent expenditures, though, is it your opinion that if I put a limit on the--if we enact this, that all of a sudden these groups will use...Common Cause has a PAC fund; it's going to be \$40,000 that you're going to spend on all legislative campaigns...that you're going to go back to your group and say: Wow, we don't have this limit we can donate anymore, so now we're going to put \$80,000 into it? Or do

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you...it almost seems like you think there's a bottomless pit of money out there to go to these Nebraska state legislative races. And I don't...my theory is that the same amount of money is going to be spent; it's just going to be spent through a different means and sometimes a darker way almost. [LB142]

JACK GOULD: Well, you know, I would disagree with that. I mean, I think if you take the limits off, it suddenly becomes a race between the candidates: How much can I raise? How much can he raise? And so we're outcompeting...and it's going to be on-line. I mean, we're going to see what one guy has and what the other guy hasn't. So everybody is going to want to get as much as they can and at whatever source possible. And I--as I pointed out earlier, we don't have \$40,000--just want to keep you posted on that. [LB142]

SENATOR JANSSEN: Well, I'll keep asking. [LB142]

JACK GOULD: (Laugh) I appreciate it. [LB142]

SENATOR JANSSEN: Thank you. [LB142]

SENATOR PRICE: Thank you, Senator Janssen. Are there any other questions? Seeing none, thank you for your testimony today, sir. [LB142]

JACK GOULD: Thank you. [LB142]

SENATOR PRICE: Can we have the next opponent, if there is one? Next opponent? Seeing no other opponents, we'll go to neutral testimony. Good afternoon, sir. [LB142]

JOHN GALE: (Exhibit 2) Good afternoon, Mr. Vice Chairman, members of the committee. I'm John Gale, J-o-h-n G-a-l-e, Secretary of State for the state of Nebraska. I'm appearing to testify in a neutral capacity with regard to LB142. As Secretary of State, I serve as a permanent member of the Nebraska Accountability and Disclosure Commission. It's a very unique body of nine people. Governor appoints four; I appoint four, and I serve as a permanent member. So I've been on this particular commission for ten years. And we meet every six to eight weeks on a pretty regular basis and have a pretty full agenda, some of it on the public calendar and some of it on the closed calendar, and always have very, very vigorous and interesting discussions. Of all the various boards and commissions I've served on or been connected with over ten years, I hold this one in probably the highest esteem, in terms of the quality of the people who serve, their dedication, the bipartisan spirit in which they approach things, their intelligence, and their preparation on the matters that they consider. So we're dealing with a commission that I think does an outstanding job of carrying forth and serving the public interest that you embody in that commission. I have no opinion on the portion of LB142 that would repeal the Campaign Finance Limitation Act. Senator Lautenbaugh is

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a senator with vast experience, as a former election commissioner for Douglas County and having dealt with a number of election bills, and obviously very knowledgeable on that particular act. But I would say that while I have no opinion on that issue, I would be concerned that the Campaign Finance Limitation Act Cash Fund should remain intact for the deposit of fines that are assessed by the commission under the Political Accountability and Disclosure Act. And those fines arise from a variety of things in terms of nonreporting, missing of deadlines, nonreporting of a conflict of interest. And, of course, it's not just state officials that it deals with; it deals with all 93 counties and elected officials and--statewide, from local to the state. But the cash fund, the CFLA Cash Fund, is going to be of significant importance when you hear testimony on LB175. I think that cash fund needs to remain intact, because if LB175 were to be forwarded by this committee and adopted by the Legislature, it would allow the commission to use 6 percent of the cash fund annually for operational costs. And if the Campaign Finance Limitation Act were to be eliminated, the continuation of that cash fund serves a very good purpose in terms of having funding that's potentially available to the commission to use for operations but also as a place to place those fines when they're assessed by the commission under the disclosure act. As far as the amendments to the Nebraska Political Accountability and Disclosure Act, I do have concern over the viability of some of the amendments. Disclosing contributions and expenditures over \$50 rather than over \$250, as is the present law, I think doesn't serve anything of value in terms of disclosure. Having run for state office three times and having been involved in statewide contributions from the smallest to larger, it seems that the trend has been to advance that minimum amount from \$50, \$100, now to \$250. I think it's going backwards to go back to \$50, because that is not what you would call an amount that is a significant influence on a candidate. Those who contribute \$50 are generally citizens; they're probably average people who are giving out of their own pocketbook. They're not political action committees; they're not corporations; they're not political parties. They're individuals, and they're greatly appreciated when they make that type of contribution--but individually, from \$50 to \$50 contribution. When you're talking about disclosure, you're talking about significant sums that make significant influence and serve an extremely valuable purpose to be disclosed to the public and to the media. So I think you would be going backwards. The other problem with this bill in that respect is the requirement of daily electronic filing requirements for expenditures and contributions. In my campaign, going around the state, I always have someone with me, and we go to many, many small functions to raise money, and those checks are collected there. Meanwhile you have direct mail pieces. And it's impossible to get those deposited and reported on the same day. I think it makes it utterly impossible unless you're going to have a highly, highly expensive campaign to raise the people to do that. The third thing is this issue of the \$300,000 that the commission doesn't have to pay for the software program that would need to be implemented for them to receive and distribute contributions on a daily basis. So those are my concerns. Thank you, Mr. Chairman. [LB142]

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SENATOR AVERY: Thank you, Mr. Secretary. Any questions from the committee?
Senator Schumacher. [LB142]

SENATOR SCHUMACHER: Thank you, Senator Avery. Secretary Gale, on the \$50-\$250 spread deal, whether it's reported: do you see lowering that number to, say, \$100 or \$150 as having a deterrent effect on small contributions, particularly in community-based races, where people really don't want to get the guys that they do business with and shake hands on the street every day mad because they gave \$50 to one guy and didn't give it to the other guy, and so actually they just won't give anything at all and force a higher--people to look for the big money and--because there isn't--there's less little money? [LB142]

JOHN GALE: Senator Schumacher, I would agree with you. That's my anecdotal experience as well, that there are people who will give up to a limit and don't want to be disclosed, don't want to be involved in disclosure--so giving \$50 or \$100 or \$150 they're comfortable with. But if they hit that limit, they know it'll be part of a report. So if you reduce it to \$50, Senator Schumacher, you would have some inhibition of people to contribute the smaller amounts. [LB142]

SENATOR SCHUMACHER: Thank you, Mr. Secretary. [LB142]

SENATOR AVERY: Any other questions? Don't see any. Thank you very much for your testimony. [LB142]

JOHN GALE: Thank you, Mr. Chairman. [LB142]

SENATOR AVERY: Any other neutral testimony? Welcome, Mr. Daley. [LB142]

FRANK DALEY: Thank you, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission, and I'm here appearing in a neutral capacity today just to provide some explanations. First of all, the main point of Senator Lautenbaugh's bill is whether there should or should not be a Campaign Finance Limitation Act. I want you to know that the commission as a body has never taken a position on the CFLA. It considers it a pure public policy question which should be left to the Legislature. Those of you that have been on the committee for a while know that the commission regularly makes appearances with regard to the CFLA, but those tend to be appearances in connection with bills that will either improve the CFLA or tighten up some loopholes or things of that nature. The second part of Senator Lautenbaugh's bill, LB142, changes substantially the way that campaigns report their receipts and expenditures. Among the changes would be the requirement that contributions and expenditures in many cases would be reported the next business day after receipt, and they would be reported electronically. Now, I will tell you that the

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commission really loves the idea of electronic filing. As of this year, candidates; PACs; corporations; unions; industry, trade, and professional associations are all in a position to file reports electronically. So we've moved in that direction substantially; we continue to move in that direction. However, I will tell you that I'm not sure that LB142--the requirements of LB142, as currently drafted, are all that adaptable to the current system we have in place. Obviously, we're going to need some expert consultation to determine this, but it may very well be that we would have to have an entire new electronic system put in place, which brings up a final point, and that is that our fiscal note is pretty significant. And one of the things I wanted to assure you of is that that's not thrown out for the point of trying to kill the bill or create death by fiscal note or anything of that nature. That really is, in our mind, a conservative estimate as to what it would take. And that's based upon the experiences we've had with the other electronic filing projects we've had over the years, which, fortunately, we've been able to get grants to mostly do. So thank you for the opportunity to testify with regard to LB142. [LB142]

SENATOR AVERY: Thank you. Let me ask you about the \$637,000--that's currently in the cash fund? [LB142]

FRANK DALEY: It is actually approximately \$810,000. [LB142]

SENATOR AVERY: Okay. And where would that go? It would move from the cash fund--in this bill, it would go into another fund. But would that not then be a fund that would go to fund schools? [LB142]

FRANK DALEY: Well, there's a reference in the bill to a section of the state constitution. And I think what it does, it moves the bulk of the money into the permanent school fund... [LB142]

SENATOR AVERY: Um-hum. [LB142]

FRANK DALEY: ...or one of the funds that benefit schools. There's also an additional provision that that money which is attributable to checkoffs on your individual income tax form would be moved to the Accountability and Disclosure Cash Fund, a separate cash fund. [LB142]

SENATOR AVERY: And what would the purpose of that fund be? [LB142]

FRANK DALEY: That's an operational fund. [LB142]

SENATOR AVERY: It's an operational fund. [LB142]

FRANK DALEY: We fund our operations out of that. [LB142]

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SENATOR AVERY: I see. Okay. Questions from the committee? Senator Price. [LB142]

SENATOR PRICE: Chairman Avery, thank you. Mr. Daley, welcome. And you heard the questions earlier where we were setting the table on the percentages. And I understand you don't have all the numbers, perhaps, with you, but we've heard that there's a small, relative to the change, decrease in campaign expenditures. Was that on the part of the candidates or in total of that race? [LB142]

FRANK DALEY: Okay. The measurements, the statistics, are based upon spending by candidates. [LB142]

SENATOR PRICE: Okay, so then it's--then we really don't know. We could have an exorbitant amount of money being spent in a race, except the candidates aren't spending because the independent expenditures are coming in. So I just want to make sure we understood exactly how that works. Thank you very much. [LB142]

FRANK DALEY: Certainly. [LB142]

SENATOR AVERY: Now, let me clarify that a bit. Is that exactly what you meant to say, that the 22 percent decrease in spending was because of independent committee spending or not? [LB142]

FRANK DALEY: No. What I can...and the 22 percent I'm not sure I can attest to... [LB142]

SENATOR AVERY: Um-hum. [LB142]

FRANK DALEY: ...because I haven't looked at those statistics in a long time. But I can tell you that we had a trend-line chart... [LB142]

SENATOR AVERY: Um-hum. [LB142]

FRANK DALEY: ...that showed over a number of years a continual increase in spending by candidates, and it was the candidates themselves, by office. [LB142]

SENATOR AVERY: Um-hum. [LB142]

FRANK DALEY: So with legislative races, you'd see a continuous increase. And then in 1996, which was the first year the CFLA was in place, it dropped... [LB142]

SENATOR AVERY: Um-hum. [LB142]

FRANK DALEY: ...and--significantly. Now, I'm not sure that current statistics would be

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all that viable, because several things have taken place. First of all, the amount that can be spent by candidates for the Legislature has increased twice... [LB142]

SENATOR AVERY: Um-hum. [LB142]

FRANK DALEY: ...so there is that. And I guess another factor is that the...anecdotally, I can tell you that the amount of independent expenditures have probably increased over the years. And that's because the way of campaigning has changed significantly on the national level. [LB142]

SENATOR AVERY: Okay. That comports with what I was thinking. Senator Schumacher. [LB142]

SENATOR SCHUMACHER: Thank you, Senator Avery. Mr. Daley, two different lines of questions here. The first: one of the evils that we've heard about--and it seems to be kind of in the back of everybody's mind--are these independent expenditure committees. And I think if you look at your records, you may see that a candidate receives "above the table" money from XYZ Organization. And then, lo and behold, XYZ Organization also is part of the independent expenditure outfit. Now, it kind of stretches the imagination to think that there's absolutely no communication between the two in all those cases, that there's--that it's totally uncoordinated and it's--you know, one hand does not at least have a hint, a pretty good hint, of what the other one might be doing, particularly when the cards and stuff they mail out look a whole lot alike. To what extent has the Accountability Commission looked at and investigated those possible links and possible violations of the law? [LB142]

FRANK DALEY: We have in the past where we thought that there was a link that wasn't being properly reported. Because understand that the expenditures are not impermissible; it's a matter of who has to report it and whether it's attributable to a candidate or really independent. I have to tell you that, as a practical matter, there are a lot of groups out there that don't really care whether the candidate they're supporting like what they're doing or not. Because they have a philosophical approach to things, and what they want to do is they want to get that candidate out of the race, as opposed to helping that particular candidate. [LB142]

SENATOR SCHUMACHER: But if the candidate knows or there's any coordination or middleman between the organization, then all of a sudden these independent expenditures are attributed to the candidate committee, is that right? [LB142]

FRANK DALEY: Correct. [LB142]

SENATOR SCHUMACHER: Correct? [LB142]

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FRANK DALEY: They no longer are considered independent expenditures; they are considered in-kind contributions to the candidate's campaign. [LB142]

SENATOR SCHUMACHER: And so I guess that was my question: To what extent is that linkage ever put under a microscope? [LB142]

FRANK DALEY: To the extent that we have a basis for believing that there is a coordination rather than a true independent expenditure. We've looked at those. In very few cases have we found that there was actually a link. Though, I will tell you, because of the nature of independent expenditures, often we can't get back to the entity making the independent expenditure. It's not uncommon these days that the independent expenditures may be made by some group with a post office box in Lincoln, Nebraska, but the money is really coming from an entity in another state, in which case, getting back to that is virtually impossible. That is probably the most difficult thing that people in my business across the nation, whether on the federal level or the state level, are dealing with--are that increasingly campaign contributions and expenditures originate from outside of the jurisdiction. [LB142]

SENATOR SCHUMACHER: My second line of questioning is: this carries a six-figure fiscal note on it, as do some other good suggestions that the committee has heard in the last year, and we're in an age of death by fiscal note. And this sounds like a pretty nifty kind of program in computer-interaction reporting, if we could just figure out a way to pay for it. This morning we advanced a bill that puts about \$7 million a year into nifty businesses. Now, if one of those nifty businesses--would they be able to work with your organization and put this \$300,000 to work? [LB142]

FRANK DALEY: Potentially. Hopefully. [LB142]

SENATOR SCHUMACHER: Thank you. No further questions. [LB142]

SENATOR AVERY: Any other questions? Thank you, Mr. Daley, for your testimony. [LB142]

FRANK DALEY: Thank you very much. [LB142]

SENATOR AVERY: Any other neutral testimony? Okay, Senator Lautenbaugh. [LB142]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. I think this was an exceptionally good discussion and hearing, and I look forward to continuing the discussion on the floor. I would like to point out, at a very basic level, if you read all the provisions of my bill, if you don't advance this, you're obviously against children, because (laughter) the funds would not go into the education fund we discussed. But I don't want to be remiss in discussing that. And to be perfectly clear, I

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have always found Accountability and Disclosure to be very helpful, very above board, and just interested in doing the right job without a philosophical bent or an ax to grind regarding this particular issue. If there is a way to limit the fiscal impact--of course, the one approach would be to pay for it out of the fund instead of letting it go to the other sources that we sent it to. If we left the bill 100 percent as is, I would agree that the instantaneous nature of the reporting might be a little onerous. If you had to do it every couple days or something, that might change both what Accountability and Disclosure would have to program to accommodate and relieve the burden on smaller campaigns who might not have a staff to enter every single check, from places where you may or may not have Web access as you're tooling around your district. This debate brings to mind another bill of mine that some of you liked and some of you didn't, but it dealt with cigar bars. And we had a protracted discussion over, well, if you put this bill out there, there will be a proliferation of cigar bars. And the argument I tried to explain at the time was: We need to be cognizant of our limitations; we can't create a demand for something simply by allowing it. When it existed before, we can stop from destroying it, hopefully. But we cannot create a demand. If memory serves, I think we had a half dozen of what would qualify as cigar bars before the ban; we have a half dozen now with the exception. We cannot, again, create a demand for something that isn't there. The mirror image of that, I think, is this bill, where we're talking about creating a supply of money or limiting the supply of money based upon what we do here. I think the shell game comment by--that either Senator Janssen or Senator Price made was absolutely on point. Because we know that the independent expenditure groups have expanded. We know that campaigns...it's not surprising to say we've put limits on campaign spending and so they're spending less, per the limits. Admittedly, they're voluntary, but they're not 100 percent voluntary. Because we all know, as we've gone through this process, that individual dollars are more difficult to raise than nonindividual dollars. So when you put a limit on the amount of nonindividual dollars you could raise, there is no surprise there that fewer individual dollars are raised directly by the candidate. But we did not hear from Common Cause what the aggregate spending on these various races has undergone these last few years. But even that's not the point, really. And I think we'd find that the spending has increased and that the portion that didn't go to the direct increase went to the independent expenditure increase. The better question, I think, is, who are we to say? If there's a race in District 4 in Omaha, whoever that is, and those two candidates want to spend \$200,000 each to get elected here, should we really be put out by that? Who do we think we are that we should pass on whether or not that's right or wrong? With disclosure, that's for the voters to decide; it shouldn't be for us to decide. If, you know, Warren Buffet wanted to give me \$100,000 for my next race, he could. If Berkshire Hathaway wanted to give me \$100,000 for my next race, they couldn't. Who are we to decide that? We've done that; we've made that decision. But I don't think that's our place, just from a philosophical standpoint--I'll admit that's not a legal argument; that's a philosophical argument. And we've talked about how we want to tamp down the amount of money the individuals raise so that they're not as beholden, because there's a voiced concern that cash can corrupt. Well, who among us does not

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finish a race and receive something from a group saying: Hey, you know, we were part of this group, and this is the stuff we did on your behalf. Who are we fooling here? We're trying to fool someone, I believe, with the system we currently have--the public. I mean, I had an issue come up--and this, again, is the arbitrariness of our system--I knew the state chamber backed me in my last race; they contributed to me--that's fine. I was maxed out on nonindividuals. I heard from Accountability and Disclosure a few weeks ago: Wait a minute, they've reported that an in-kind expenditure on your behalf of another \$2,500 or something for e-mailing, and so you have to report that, so now you're over the limit. Well, it turned out that I didn't know about the e-mailing. I found out about it after the fact. I think I got one of the e-mails, actually. But it was not something that I knew of ahead of time. So then I didn't have to report it; someone else had to report it in a slightly different way. It's the same money; it's the same activity; and I'm now just as aware that the chamber did it as I would have been if I'd learned it in October before the election. We are setting up a ridiculous Rube Goldberg mechanism to try to do something we can't do. I should say, we have set up a ridiculous mechanism to try to do something we can't do, which is limit money in politics. And we can brew up distracting figures that say, well, look, independent expenditures are--individual expenditures by campaigns have not gone up as much as they would have otherwise. I don't know how we know that, but we do somehow. And, you know, there's not as much nonindividual money in these individual campaigns as there used to be, because you're limited. But we're deluding ourselves if we think we've done anything other than foster a system that we all find objectionable. And that's why I bring this bill. I brought it before; I bring it again this year. And I'd ask for your support, and I'll answer any questions you have, happily. [LB142]

SENATOR AVERY: Any--Senator Pahls has a question. [LB142]

SENATOR PAHLS: Senator, I was just joking when they said that you could stay down here forever. (Laughter) Thank you. [LB142]

SENATOR LAUTENBAUGH: And I apologize to everyone behind me who's on--who are here on other bills, you know. [LB142]

SENATOR AVERY: Any other comments or questions? Senator Brasch. [LB142]

SENATOR BRASCH: Senator Lautenbaugh, it's all excellent, and I think, you know, commentary has been made by every senator here. And I do like children, (laugh) just so you know. But I also have the greatest confidence in the people and our houses and our districts and our state. And as some people have said, you know, you can build and mail and this and that. And I think, at the end of the day, it's how many hands you shake, every door, you know, every...and I think that's a process; it's not just a campaign symptom of it. It's just something that you do or you don't do, or you get it or you don't get it. In the district last week, you know, I kidded with the people starting at

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6:00 in the morning--is, don't say: I don't write, I don't call, I don't love you anymore. (Laugh) You know. It's because I do love the people--and we all love our people--that, you know, let them write; let them do whatever they need to do. And I was hoping, initially, the average person here that--and I see this in Jack--is that all of these rules are to help the average person, to level the playing field. Now, that's, you know, maybe naive or...and then at the same time, in other meetings we've had here we've had people come and say, well, campaign is big business; it's an economy--you know, that this has rented so many buildings in this city, that city, Omaha, you know. But there are people out there that are all volunteer, you know, door to door, grass roots. They continue every day, very ordinary, where \$50 is a lot of money for a lot of people in our district; you know, that is the high end. But I see what you're doing. It's a noble battle, but, again, at the same time, if there's going to be ways to get around it, as many have said, it will be. But if it's a do-good, feel-good, you know, effort to make a statement, definitely. But at the same time, I think, again, it's, you know: How many times, you know, do you shake hands, do you talk to your people? You know, when does it start? When does it stop? Does it continue? That--that's part of the privilege, you know, of being a part of this process, just...but, yes, we love children. (Laugh) [LB142]

SENATOR LAUTENBAUGH: Yep. [LB142]

SENATOR BRASCH: And thank you. [LB142]

SENATOR LAUTENBAUGH: I--and I understand exactly what you're saying. And the purpose of my bill is not to create a system that gets around anything. I believe we have inadvertently or otherwise created a system where we get around greater knowledge on behalf of the public as to who's supporting us. I believe my bill would shine some sunshine on exactly what goes on and increase what people know. I think the current system is what's subject to abuse, not by design but by practical effect. [LB142]

SENATOR BRASCH: Thank you. Thank you, Chairman Avery. [LB142]

SENATOR AVERY: Thank you. Any other questions? I don't see any. Thank you, Senator. [LB142]

SENATOR LAUTENBAUGH: I have to go back to my committee now. [LB142]

SENATOR AVERY: Yes, you may go back to your committee now. [LB142]

SENATOR LAUTENBAUGH: Okay. [LB142]

SENATOR PRICE: You don't have to. [LB142]

SENATOR AVERY: That ends the hearing on LB142. We'll now move to LB175. I'll turn

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over the chair to Senator Price. [LB142]

SENATOR PRICE: Thank you. Welcome to your committee, Chairman Avery. [LB142]

SENATOR AVERY: Thank you. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I am bringing you LB175, which involves the transfer of CFLA funds. This bill is actually part of a series of bills that I've sponsored that seek to decrease dependency of some departments, agencies, and commissions on General Fund dollars. In this particular case, it involves the Accountability and Disclosure Commission. LB175 allows the transfer of funds from the CFLA to the Accountability and Disclosure cash funds at the direction of the Legislature. The purpose of the CFLA--we have been talking about that. That particular fund involves what we refer to as "fair fight" funds to qualified candidates for certain offices. When this act was first enacted in 1992, the CFLA Cash Fund was also created. The Legislature appropriated an initial \$50,000 to the fund as seed money. Since then, over time, the fund has increased by the accumulation of late-filing fees, civil penalties, donations, tax write-offs and interest. So currently, as we heard in previous testimony, the fund now has \$810,000 in it. It's important, I think, to point out that none of these funds that are now there are tax dollars. This is not really public money; this is all money accumulated in fines and penalties, etcetera. The Accountability and Disclosure Commission staff administers the CFLA. But the money from the cash fund itself is only appropriated for candidates, to be used in their campaigns. And I think the previous testimony indicated that only 11 candidates had actually used "fair fight" money over the course of the years. So, in other words, the staff of the A. and D. Commission administers the responsibilities of the CFLA, but they receive no money from the cash fund for doing so. All the administrative costs come from General Fund allocations to the commission. So the staff collects the late-filing fees; they collect the civil penalties; and they deposit these in the CFLA Cash Fund. They develop and distribute instructional materials on the act, and they audit the applications for public funds. So it seems to me reasonable to, in a sense, assess a charge against the funds of the CFLA that are being administered by the staff of the commission. And that's what this bill would do. The State Treasurer would be directed to transfer 6 percent of the amount of the cash fund on July 1 of every year, beginning in 2011, to the Nebraska Accountability and Disclosure Commission Cash Fund for the costs of the commission in administering the CFLA. This is a modest proposal that can aid the commission in the administration of what I think is an important program established by the Legislature nearly 20 years ago. So with that, I would ask you to give serious consideration to advancing this to General File. [LB175]

SENATOR PRICE: Thank you very much, Senator Avery. Are there questions from the committee? Senator Janssen. [LB175]

SENATOR JANSSEN: Thank you, Vice Chair Price, Chairman Avery. This--I guess we

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wouldn't need this if we passed that last bill, but... [LB175]

SENATOR AVERY: Well, I...the money would go to... [LB175]

SENATOR JANSSEN: Sure. [LB175]

SENATOR AVERY: ...another fund... [LB175]

SENATOR JANSSEN: Right. [LB175]

SENATOR AVERY: ...yeah. [LB175]

SENATOR JANSSEN: That's not my question, but the...in this case--I'm trying to read this--the NADC is one that levies the fines or decides if there's going to be a fine that's put into this cash fund. [LB175]

SENATOR AVERY: Right. [LB175]

SENATOR JANSSEN: And in this scenario they would also be the ones benefiting from that fund, because the money would--6 percent a year would come back to them. It's almost like a police officer getting paid to pull people over on the side of the road. And the more tickets they write...and if 6 percent is--of what their number is... [LB175]

SENATOR AVERY: You have a devious mind, don't you? (Laugh) [LB175]

SENATOR JANSSEN: In some--somewhat. It kind of is a little bit worrisome, though, what the motivation would be. And I have nothing but respect for the people that sit on that commission. That said--but, I mean, it... [LB175]

SENATOR AVERY: Yeah, I get your point. I have confidence that that would not happen. And the way the act is written, it's--and the way the commission operates is--you...it's pretty much a matter of if you fail to file on time, there's an automatic fine of so much a day. So it's not that the commission has discretion there; it's--the commission, actually, I think, has discretion when you have some pretty egregious violations and perhaps the person involved is contesting it. So I'm not...I think Mr. Daley will probably testify on this bill. And if he does, then you'd have an opportunity to ask him whether there is this kind of opportunity to pad the fund to get more money. [LB175]

SENATOR JANSSEN: And I agree. I don't think that would happen. [LB175]

SENATOR AVERY: Yeah. [LB175]

SENATOR JANSSEN: I'm just saying it could be sent out to the public like, oh, yeah,

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sure, they're doing this, or--nobody is getting "fair fight" funds because it's 6 percent of now \$1.5 million or \$2 million or whatever. Publicly, that--they could see it perception-wise. And that's--that's all I was trying to get at. [LB175]

SENATOR AVERY: For a long time, there were no claims against the fund. And they--it was allowed--and it did grow. Six percent is not very much. I think it would be somewhere around \$48,000. It's not a lot. But that would cover their administrative costs, I am told. [LB175]

SENATOR JANSSEN: I'd like to point out that's my salary for my entire four years of service down in the Legislature. (Laughter) So \$48,000. [LB175]

SENATOR AVERY: Don't forget your per diem. [LB175]

SENATOR PRICE: Thank you, Senator Janssen. Senator Avery, along those lines, do we do this anywhere else, where we take a pool of money that was created by fines and then take that to become operational costs for a governmental entity? [LB175]

SENATOR AVERY: I don't know. What I'm suggesting here is that you have a cash fund--it does not involve tax money; in a sense, you might call it a user fee. But it's not General Fund money. And there is a cost associated with administering that fund. And right now the commission has to pay for that out of their General Fund allocation, which has been cut like everybody else's. [LB175]

SENATOR PRICE: The follow-up, then...and I'm glad I heard some of the numbers earlier. If we're talking about 6 percent of the \$800,000 we have now, then we have \$48,000. But let's just say that we have a lot of challenges, and people with fines across the state are up, and no one--we have so few people taking advantage of the "fair fight" funds, the number goes up to \$2 million sitting in the fund; and we've told them now you can have \$120,000, and they only need \$45,000; so we don't have a regulator in there, a ceiling. In other words, we could be committing...it says, "shall transfer 6 percent." I mean, at least in (inaudible). So the question is, should we perhaps have language in there saying, "not to exceed operational budget costs"? [LB175]

SENATOR AVERY: If we could know what that number was, that might be... [LB175]

SENATOR PRICE: No, no (inaudible), you just put in, "not to exceed whatever the operational costs are," rather than put in a budget requirement. I mean, it's just an idea to think about, that as we look at--not something meant to harm your... [LB175]

SENATOR AVERY: Yeah. [LB175]

SENATOR PRICE: ...concept here, just to make it better. [LB175]

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SENATOR AVERY: And we certainly have the ability to amend in committee. [LB175]

SENATOR PRICE: All right, thank you. Are there any other questions, comments, queries? Seeing none, thank you, Senator Avery. [LB175]

SENATOR AVERY: I'll stick around. [LB175]

SENATOR PRICE: I was assuming you would. Thank you. We will now move on to proponents for LB175. Welcome back, Mr. Daley. [LB175]

FRANK DALEY: Thank you, sir. Vice Chairman Price and members of the Government, Military and Veterans Affairs Committee, my name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission, and I'm here today to express the commission's support for LB175. And I particularly want to thank Senator Avery for agreeing to introduce LB175. The bill does a simple but significant thing. It simply permits that--or it simply allows that on July 1 of each year, 6 percent of the balance of the fund would be transferred from the CFLA fund to the Accountability and Disclosure Cash Fund. Understand that the CFLA is in Program 95; the general operations of the commission are in Program 94. Since the CFLA was put into place in 1992, all of the administrative costs of running that program and administering that program have come out of Program 94, the commission's general budget and operational budget. And that's because, by law, all of the funds going into the CFLA Cash Fund were limited to use for awards to qualified candidates, under the provisions of the Campaign Finance Limitation Act. So what you have is a situation that, since 1992, the commission staff, under Program 94, has been developing the instructional materials and the forms and auditing the applications for public funds to determine qualification, setting up the process for distributing the public funds, auditing the public funds for use to see that they were properly used, and taking steps to ensure that any residual funds are returned to the state. In addition, the commission, under Program 94, has taken the steps to collect late-filing fees and civil penalties and that entire process. Now, I will tell you that over the past 20 years that hasn't been that difficult to do out of Program 94. However, as I'm sure you know, a variety of things have taken place over the last few years in which our General Fund appropriation has been cut, money has been removed from the Accountability and Disclosure Cash Fund and placed into the General Fund to assist with the budget process. And we're simply at the point where we're looking at these things very closely and saying, you know, we've got this program that is a cash--should be a cash-funded program, and maybe we ought to see if there's a way to do that. Now, I will tell you that one of the philosophical hurdles I had to get over was the one that Senator Janssen mentioned. I've always taken great comfort in the fact that when someone is screaming at me: You're just doing this--you're assessing this just so you can get all this money for yourself. I've always been able to say with a great deal of comfort: Gee, sorry, we don't get any benefit out of that

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whatsoever. I hate to lose that. On the other hand, we, frankly, need money. And I'm comforted by the fact, as Senator Avery alluded to, that most of the money that goes into the CFLA Cash Fund consists of late-filing fees. And those late-filing fees aren't assessed by the commission; they are assessed by operation of law, such that if your campaign statement is three days late, the law says it's \$25 per day, not to exceed \$750. And virtually every other filing that is subject to a late-filing fee has the same sort of situation, where there's a daily rate with a maximum cap. And so the commission doesn't assess those fees; it merely calculates those fees. And that perhaps provides some line of comfort. So at any rate, I do ask that you give some consideration to LB175, and I do thank Senator Avery for bringing the bill. And I thank you for the opportunity to testify. [LB175]

SENATOR PRICE: Well, thank you very much, Mr. Daley. Are there questions? Senator Schumacher. [LB175]

SENATOR SCHUMACHER: Thank you, Senator Price. Mr. Daley, is this \$800,000 or whatever that's lying there--is that drawing interest? And how much... [LB175]

FRANK DALEY: Yes, it's... [LB175]

SENATOR SCHUMACHER: ...interest does it draw a year? Do you have any idea? [LB175]

FRANK DALEY: I'm not sure I can tell you off the top of my head; it's held by the State Treasurer's office. And so whatever the interest is, it is. [LB175]

SENATOR SCHUMACHER: So some of this actually--the money that we'd be transferring--actually might offset some of the interest. I... [LB175]

FRANK DALEY: Could, yes, absolutely. Absolutely. [LB175]

SENATOR SCHUMACHER: I have no further questions. [LB175]

SENATOR PRICE: Thank you, Senator Schumacher. Mr. Daley, may I ask you this question--the converse of my previous question: Is there a concern that maybe everybody is so good at filing and does everything appropriately that you would maybe see a depletion in the funds and then 6 percent...I mean, you eventually get to the point of diminishing returns. Six percent--when does it become not worth the time? [LB175]

FRANK DALEY: I have great confidence in the good intentions of mankind; I have not a lot of confidence in the new folks that come into the campaign system at every election cycle. [LB175]

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SENATOR PRICE: I can understand. Okay, thank you very much, Mr. Daley. We'll let that lie there. Any other questions? Seeing none, again thank you for your testimony, sir. [LB175]

FRANK DALEY: Thank you very much. [LB175]

SENATOR PRICE: Do we have another proponent for this bill? Any other proponents? I could throw a quick opposition in there, but... [LB175]

JOHN GALE: I finally decided which side I was on here. [LB175]

SENATOR PRICE: (Inaudible). [LB175]

JOHN GALE: (Exhibit 1) Mr. Vice Chairman and members of the Government, Military and Veterans Affairs Committee, I'm John Gale, J-o-h-n G-a-l-e, Secretary of State for the state of Nebraska. I testified earlier that I do serve as a permanent member of the Accountability and Disclosure Commission. And as Secretary of State I appoint four of each of the remaining eight members of the commission; the Governor appoints the other four--each for one, single six-year term. I'm here to testify on behalf of LB175 for a number of reasons. This commission is, I think, an extremely important leg in our system of democracy. We have our campaign system, we have our election system, but this disclosure system is significantly important to the media and to the public to know where contributions are coming from and who's responsible for those contributions in getting them reported according to the time lines that have been set by this Legislature so they're disclosed in a meaningful way prior to the election so that the public has an opportunity to be aware of them. As a result, there's a considerable amount of staff work that needs to be done. There's a full-time counsel that has to do all of the investigation on all the complaints that come in to that commission. Frank Daley himself as director is an attorney and lends considerable weight and wisdom to the proceedings that we hold. We have a number of hearings. We never can estimate how many hearings we're going to have, and so that's kind of an unknown expense that comes up on a regular basis. And we're moving deeper and deeper into information technology in order for things to be on-line. This commission, because they were general-funded for most of its life, has not had the ability to go on-line without getting grants from the Nebraska State Records Board. As chairman of the Nebraska State Records Board, I know the committee was very committed to what this commission does and made two grants of \$25,000, but that's a fairly small amount of money. But the money just isn't there for this commission to have to advance its needs for information technology. This cash fund that comes from the CFLA would be a cash fund, of course, that would be available for technology needs, in order to enhance and advance the technology of that commission, including some of the things that Senator Lautenbaugh talked about. So it would be available for more than just the 6 percent operational expenses. But that 6 percent would make a significant difference in the ability of this commission to keep its staff and to enhance its

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hardware and software as needed and in order to pay the very high-quality people that they have doing their accounting work, doing their audit work, and doing their legal work. We just can't function as a commission without a strong supporting staff, and this 6 percent would make an enormous difference in the ability of the commission to operate on the level that it has been operating. Now, with regard to percentages, as chairman of the State Records Board, we do have a revolving fund, Senator Janssen, with regard to your point. And we approve transactional on-line agreements for state agencies. We have 220 transactional on-line applications we've approved. And we get 10 percent of each transaction fee--comes right to the board to help pay for staffing and other expenses of that board. So I don't know how many others there might be out there, but it's not totally unknown that the boards do receive a percentage of what they approve in advance. So there is, you know, the question of a conflict of interest there, but it is not an unusual situation. And with regard to the fund remaining as a fund, the Legislature, of course, regularly sweeps cash funds if they feel that they're excessive. I have the UCC Cash Fund, the Corporate Cash Fund, Collection Cash Fund, Records Management Cash Fund, Administration Cash Fund. I serve as chairman of the Real Estate Commission; it has a cash fund. It cannot receive general funds, but its cash fund has been swept as well. So the Legislature has that authority and can take those funds for General Fund purposes, if necessary, so it's not sitting out there unused. But with regard to our various cash funds, we always try to ensure that we have not just operating but that we have a reserve for enhanced technology, which changes so rapidly. In order to keep up with the needs of the banks and the lawyers and the businesses, you have to have a reserve for that. So keeping that fund intact, allowing the 6 percent for operation costs, and having that available to be allocated by the Legislature for technology would give this commission a considerable step forward in enhancement to serve the public and to serve our purposes in our democracy. Thank you. [LB175]

SENATOR PRICE: Thank you very much, sir. Are there any questions? Seeing none, again thank you. [LB175]

JOHN GALE: Thank you, Mr. Chairman. [LB175]

SENATOR PRICE: Is there anybody else who would like to testify in--as a proponent, or in support thereof? Seeing none, any opposition? Anybody who'd like to testify in the neutral? Seeing none, Senator Avery, would you like to close? [LB175]

SENATOR AVERY: I'm going to be here for the next bill anyway. I just want to thank the people who testified in support of this. And if you should decide to advance it to General File, I think we would consider this a good candidate, possibly, for consent calendar. If not this one, certainly the next one. [LB175]

SENATOR PRICE: Thank you very much, Senator Avery. And with that, I'm going to

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close...are there? There's no comments, correct? With that, we'll close the hearing on LB175 and move into LB292. [LB175]

SENATOR AVERY: Thank you, Senator Price. My name is Bill Avery--for the record, B-i-l A-v-e-r-y--representing District 28 here in Lincoln. This bill, LB292, is a part of what this committee did under the LR542 process. One of this committee's recommendations in that list of 16 options that we came up with to help balance the budget was to eliminate per diems for the commissioners on the Accountability and Disclosure Commission. Under this bill, the per diems would be eliminated, but the members would continue to be reimbursed for actual and necessary expenses. This is in line with what a lot of boards and commissions are doing. I know that we have made recommendations in other areas to end per diems. The commission members currently, other than the Secretary of State, are paid a per diem of \$50 for each day engaged in the performance of their duties. The estimate that the commission provided us shows that the bill would save about \$4,400 in this fiscal year, and in the next fiscal year it would be about \$3,850. This bill has an emergency clause, so it would become operative on July 1, 2011. And I urge that you advance this to General File. Thank you. [LB292]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions? [LB292]

SENATOR JANSSEN: Just got a clarification. [LB292]

SENATOR PRICE: Please, Senator Janssen. [LB292]

SENATOR JANSSEN: Just a clarification, Chairman. With the actual expenses--and I remember this from LR542--but would that...are you talking mileage, meals, or...? [LB292]

SENATOR AVERY: No. They get a per diem plus actual expenses... [LB292]

SENATOR JANSSEN: Okay. [LB292]

SENATOR AVERY: ...actual and necessary expenses. We would--we'd preserve that but just end the... [LB292]

SENATOR JANSSEN: Okay. That's... [LB292]

SENATOR AVERY: ...\$50 a day. [LB292]

SENATOR JANSSEN: I just needed clarification on that... [LB292]

SENATOR AVERY: Yeah. [LB292]

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SENATOR JANSSEN: ...because it wasn't--the numbers weren't balancing with me under that scenario. Thank you. [LB292]

SENATOR PRICE: Thank you, Senator Janssen. Senator Avery, I would just say that, in light of seeing what we heard on LB175, I'd almost be more inclined to say sweep the Campaign Finance Limitation Cash Fund for the \$4,400 and let them keep their per diem. But that's just, you know, obviously that could be something we can do with the 6 percent thing. But that's just a comment; that's nothing more than that. Are there any other questions for Senator Avery? Seeing none, thank you. [LB292]

SENATOR AVERY: Okay. [LB292]

SENATOR PRICE: Can we have our first proponent, please, for LB292? All right. Can we move to opposition? Would anybody even care to take a neutral stab at this? Again, sir. [LB292]

FRANK DALEY: Vice Chairman Price and members of the committee, my name is Frank Daley, D-a-l-e-y; I serve as the executive director of the Nebraska Accountability and Disclosure Commission. And I'm here in a neutral capacity today as to LB292. I simply wanted to advise you that the members of the commission understand the state's situation and understand that they may need to do their part as well, and so they wanted to convey their thought that they do not object to LB292. Certainly, members of the commission do not serve for the per diem; they serve in the spirit of good government. So thanks for the opportunity to testify today. [LB292]

SENATOR PRICE: Thank you very much, Mr. Daley. And it warms the cockles of my heart to hear as much. (Laughter) Are there any other people who would like to have a question--any of the members? Seeing none, thank you, sir. [LB292]

FRANK DALEY: And thank you very much, committee members, for your patience with all of the Accountability and Disclosure bills this year. [LB292]

SENATOR PRICE: Are there any other people wishing to testify in the neutral? Seeing none, Senator Avery, you're... [LB292]

SENATOR AVERY: Just one comment. I didn't know your heart had cockles. [LB292]

SENATOR PRICE: Thank you very much. [LB292]

SENATOR AVERY: (Laugh) [LB292]

SENATOR SULLIVAN: Yes, cockles and mussels, alive, alive, oh. (Laugh) [LB292]

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SENATOR PRICE: And seeing that there's no other testifiers then we will close the hearing on LB292 and the Chairman will probably take over again for LB568 and Senator Schumacher. [LB292]

SENATOR AVERY: Welcome, Senator Schumacher. [LB568]

SENATOR SCHUMACHER: Thank you, Senator Avery. Members of the committee, my name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature. This is a reasonably simple bill. It's less than a sentence. It was brought at the request of the State Auditor's Office. When the State Auditor asked me to introduce the bill, we said that it was part of an ongoing audit and I basically introduced it on faith. The audit was released just a few days ago. You may have seen some of it on television or heard about it on the news. Basically, what was involved is a situation where the state was making payments that were withheld from various state employees' paychecks, and that were intended to be used for health insurance, and making payments to a organization called SLEBC, which had an account. One would think one would use such an account for health insurance but there apparently is a building that cost \$1.2 million to build that is now on the market for \$800,000 and some and it was very nicely equipped in some of the rooms, at least according to what the reports of this audit seem to indicate. Since then, as I understand it, there has been a series of negotiations, reviews by the State Treasurer's Office, the State Auditor's Office and in an attempt to resolve it and move those funds back to under control of the State Treasurer, who thinks without this legislation he has the authority to require those funds to be moved back. However, as all wrinkles are in all negotiations, I've been told today that basically, you know, it's not a done deal and it is not completely clear that everybody is going to be agreeable and life will go on happily ever after. So this bill would say specifically, in the event the parties aren't able to come to this conclusion voluntarily, that he would have authority to require those funds to be moved back. And so the request of the committee is that this bill be held pending an outcome of those talks, pending the parties ironing it out. I understand there's a 30-some-page lawsuit that apparently is either in the works or filed, so it's a long way from a cleaned up mess. And so if we can hold a broom in reserve, that's what the request to the committee is. And I'd answer any questions. [LB568]

SENATOR AVERY: Thank you. Any questions from the committee? Don't see any. [LB568]

SENATOR SCHUMACHER: Thank you. [LB568]

SENATOR AVERY: Proponent testimony? Anyone wish to speak in support of LB568? Opponent testimony? Welcome. [LB568]

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DAVID DOMINA: (Exhibit 1) Mr. Chairman, I have Dave Domina, D-o-m-i-n-a. I'm a lawyer. I represent the State Law Enforcement Bargaining Council. Its president, Brian Petersen, is passing out some materials. I guess we appear in opposition to this bill but neutral might be more accurate. What we want to do is give you a little bit of information about what happened, a little bit of information about where we are, perhaps some cautions about why it might be a little bit more complicated to fix than first appeared to be the case, and to reassure you that we have no hesitation about oversight by the Treasurer. There is a concern about whether titling the money to the Treasurer is what is really ultimately best for the state or for the state troopers, the conservation officers, and the game wardens or not because of a federal legal issue that I'll highlight very briefly and quickly. The materials being handed out to you, first of all, are a relatively lengthy response written ultimately by me for the State Law Enforcement Bargaining Council in response to the preliminary draft of the Auditor's report. You'll see as you read that document that much of what was in the Auditor's report was not disputed at all, and what was disagreed was disagreed about on technical legal grounds, not political or philosophical grounds really. You'll also note as you go through that material--and this is very important to the law enforcement officers of the state--you'll note that the reason that the Auditor conducted the audit is that the current officers and directors of SLEBC requested it. In June of 2009, when the current officers took over, they discerned serious problems with the health and dental insurance plan that covers the state's officials with powers of arrest. That's who SLEBC is. A moment of history: SLEBC was created by a predecessor Legislature to allow the state's law enforcement officers with powers of arrest--84 percent are state patrolmen, the rest are about equally conservation officers and state fire marshals, each of whom have limited powers of arrest in limited areas of law enforcement--to combine together for collective bargaining purposes. They're 1 of 13 collective bargaining units under a statute that you enacted. SLEBC has functioned for that purpose. Along the way, in the negotiations, which I've had nothing to do with so I report only history here for their plans for their employment agreements from time to time, they negotiated for and got the right to separate out from the state employees' health and dental insurance program to create their own risk pool and to manage that risk pool with a funding criteria that provides that 79 percent of the premium is from the state, 21 percent is from direct payroll deductions from the officers, with the caveat that if there is an increase in demand for money in the pool resulting in an increase in premium, that increase is maxed out for the state. So if the costs go too high, there's an additional burden to the law enforcement officers and the state is exempt from it. So there's an incentive to manage it well. When the new group of people took over in the summer of 2009, they discerned serious problems with the administration of the plan. It wouldn't be appropriate for me to detail those now. They are the subject of a lawsuit. I'll tell you that the litigation was withheld from filing so the Auditor could conduct his work without the auspices of litigation hanging over it, hoping that would free up some communications for him. And frankly, we hope that helped. I can tell you that, since 2009, the people who are operating the State Law Enforcement Bargaining Council now, all of whom are full-time law enforcement officers contributing

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part-time to operate the organization, have replaced their general counsel--that's not now with me, I am just involved in this for a limited purpose--their accountant; their auditor, that's an outside third-party auditor; their insurance agent of record for their stop-loss insurance; their labor negotiator; their insurance consultant, who was primarily responsible as liaison between them and their third-party administrator; their third-party administrator has also been replaced; and they've replaced their office manager. The only continuity in the organization are the directors and officers who are in office, a few of whom had terms overlapping before 2009. There's no reason for me today to expend energy talking about errors or omissions or oversights or neglect or mistakes or misplaced confidence by predecessor boards. That would not serve a useful purpose because we have a problem now, we're trying to fix it. The current group of people operating SLEBC thinks that it speaks for all of SLEBC's members to say that oversight is welcome. Here is the problem with eventually just moving the money back to the state, as we see it, and I think that Senator Schumacher's let's wait and see what we need to do bill is a good idea. We've only had a chance so far with the Treasurer for a few telephone conversations to agree in principle. We haven't even had a chance to meet face to face yet, but we certainly will. If the health insurance plan turns out to be what is called a government plan, as opposed to an ERISA plan for federal legal purposes, having the State Treasurer hold the money poses no problem. If the plan turns out to be an ERISA plan, a federal statute and a whole series of pretty complicated federal regulations would make the State Treasurer a fiduciary with some responsibilities for the money under federal law that might not be supplied with Twelfth Amendment immunity and might not be within the State Tort Claims Act's limitations. We want to work that out to be sure that that issue is decided. I'll tell you that the United States Department of Labor has a submission procedure that everybody involved in this agrees should have been used years ago to submit the question, what kind of plan is this, and get a federal ruling so we'll know the answer to that and we'll have a reliable answer and then know how to fix it. Between then and now, the money that is in the plan and is used to fund it is at U.S. Bank. It is entrusted money. There was a huge expenditure of money to buy a building, much in the news recently. The building is for sale. There appears to be a loss. It appears as though, and I underscore "appears as though," the discussion, the decision at the time the building was built may have been that the plan was perceived as overfunded and that buying a capital asset, like a building, would solve an overfunding problem while not depriving the fund of an asset. Well, unfortunately, this kind of money has to be income generating. The building did not have a revenue-generating business plan associated with it at all and it was not a good idea. The people in place recognize that. We're doing our best to get it fixed. There is...I want to be sure that while I appear in the opposition spot you recognize there's a spirit of complete cooperation about this. Law enforcement wants to have a good discussion with the Treasurer. It wants to be sure the right decision is made. It wants the benefit, if there is one, of a younger, generally less risky insurance pool that might be a premium advantage and recognizes that that might have to be sacrificed to fix this problem. [LB568]

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SENATOR AVERY: Thank you. Thank you. Now just let's clarify. You think that what Senator Schumacher suggested, that the committee hold this bill, is a good idea. [LB568]

DAVID DOMINA: Yes, I think so. I think that that will allow us to figure out, with the State Treasurer, whether the bill is needed, whether we have a disagreement and, if the bill is needed, exactly what it should say. [LB568]

SENATOR AVERY: Okay. Thank you, Mr. Domina. Any questions from the committee? Thank you for appearing. [LB568]

DAVID DOMINA: Thank you for allowing me to appear. [LB568]

SENATOR AVERY: Any other opposition testimony? [LB568]

BRIAN PETERSON: Mr. Chairman, thank you. Ladies and gentlemen of the committee, thank you. Brian Petersen, B-r-i-a-n P-e-t-e-r-s-e-n. I'm the president of SLEBC, the current president who's held office since July of 2009. Shortly after my arrival into SLEBC and also the shared office of the State Troopers Association of Nebraska, I started to take a long, hard look at our insurance program. Specifically, I wanted to find out how it operated. We're self-insured. We've held a position of being self-insured since 2002. Our holdings, if you will, essentially left the state of Nebraska in 2002, are in a trust that we have with a local banking institute right here in Lincoln. It's had a great return on investment. The investment performance is exceptional, even in light of the last couple years. It's been a difficult time. Mr. Domina has done a great job of representing our need and our opposition to this bill with yet my shared concern or my shared perspective of somewhat of a neutral position because of the seriousness and the gravity of where we're at today. It's an embarrassment that we had to undergo the view of the public as we did over the last couple weeks in the media, and this program is one that is efficient. It's one that is, on average, \$300 per month per plan participant cheaper than a state program. I point out that we are self-funded in the fact that we have our holdings and we have our own third-party administrator to pay our bills when it comes to health insurance. So unlike the majority of the other employees of the state of Nebraska, we are self-funded. The efficiency of that program has allowed us to have cheaper rates. If we change that particular relationship and we go back to a funding within the state, that's about \$2 million more in costs for our particular...our lives in our plan. So there is a significant potential there that our program would be costly for the state of Nebraska if we fall back underneath the governmental exception. The situation that took place basically upon my discovery, and I reserve further comment in terms of the pending litigation, was a perspective that I had to come in and get a real understanding as far as what our plan did and what made it most efficient. Along those lines, in doing so, I found out some of what could be viewed as the impropriety of an

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investment in a building. The building is what I would be concerned about. The posture being utilized is lavish or overwhelming. It's a standard frame, brick and mortar, stick construction building, but it is 7,100 square feet for a couple full-time employees and that, to us, is not fiscally responsible. The \$850,000 is where the building sits on the market, the reason being is because of the economy, the location and such. There was a couple different real estate firms that took time to look at this building and that's where we arrived at the price, realizing that we do have a potential for a loss and with the follow on litigation that's pending. So any questions? [LB568]

SENATOR AVERY: Thank you. Thank you for your testimony. Senator Pahls, did you have a question? [LB568]

SENATOR PAHLS: No. [LB568]

SENATOR AVERY: Anyone? I see no questions. Thank you. [LB568]

BRIAN PETERSEN: Okay. [LB568]

SENATOR AVERY: Any other opposition testimony? All right. Any neutral testimony? Good afternoon. [LB568]

MIKE FOLEY: Good afternoon, Senators. First, let me...first, Mike Foley, F-o-l-e-y, State Auditor, and I apologize for corporate casual. I had no intention of appearing before the committee today but I had it on upstairs and felt compelled to come down and clear the record up on a couple of points. Mr. Domina made the statement, and this won't be an absolute correct quote, but something to the effect that the only reason the State Auditor conducted this audit was because SLEBC came forward to us and asked us to do that audit. That's absolutely not true. This audit was initiated in April of last year when my office went to the Performance Audit Committee and received specific permission, which we must get, to do a performance audit of all the state's healthcare plans. There are four major plans. After we had secured that permission and initiated the work on the audit, then SLEBC came forward and said, we've got a problem here and here's our problem. Also, the suggestion made by Mr. Petersen and Mr. Domina that there had been full cooperation throughout the audit is absolute nonsense. This was the most difficult audit we've ever conducted in the four and a half years that I've held this office, extremely difficult with all kinds of evasions. Also, the suggestion that the SLEBC plan is a unique plan because it's self-funded is not true. All of the state plans are self-funded. With the exception of the State College Plan, all the other plans are self-funded plans. That concludes my testimony. Thank you. [LB568]

SENATOR AVERY: Thank you, Mr. Auditor. Any questions from the committee? I don't see any. Thank you for coming down. [LB568]

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MIKE FOLEY: Thank you. [LB568]

SENATOR AVERY: Any other neutral testimony? Okay, seeing none, Senator Schumacher. [LB568]

SENATOR SCHUMACHER: Thank you, Senator Avery and members of the committee. As they were testifying about that \$300 a month insurance, I wondered if we could maybe get the members of the Legislature power of arrest so we could get in on that deal. (Laughter) Seriously, I think that this matter is in good hands now. I can think of no better people to try to work this out than Mr. Stenberg and Mr. Foley and Mr. Domina, and I think there's probably going to be a real good effort made to work it out. In the event that effort fizzles out, as sometimes maybe can happen, or that there is a need for some legislation in order to clear up odds and ends in this investigation, I think this bill provides a vehicle to do it, and having it rest with the committee over the summer and into next year is probably a way that we can facilitate the process and give everybody a little encouragement to do the give and take necessary to get it resolved and our law enforcement people back on track with their insurance program. I have nothing further. [LB568]

SENATOR AVERY: Thank you. Any questions? [LB568]

SENATOR SCHUMACHER: Thank you. [LB568]

SENATOR AVERY: All right. Thank you. That ends the hearing on LB568 and that ends the hearings for today. Thank you for coming. [LB568]