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Government, Military and Veterans Affairs Committee
February 01, 2012

[LB757 LB934 LB966 LB1035 LB1070]

The Committee on Government, Military and Veterans Affairs met at 1:30 on Wednesday, February 1, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB757, LB1035, LB1070, LB934, and LB966. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Charlie Janssen; Russ Karpisek; Rich Pahls; Les Seiler; Kate Sullivan; and Norm Wallman. Senators absent: None.

SENATOR AVERY: Let me explain why we're late getting started. We have...there is some competition for time of our members. We have two members who are on the Executive Board. They're meeting over the lunch hour, and so we have two senators who will be late because of that. We have two other senators who are late for reasons I have no knowledge of, and I need one more person here to get a quorum; so if you'll be patient with me for another five minutes, maybe one will arrive. Welcome to the...today's hearing of the Government, Military and Veterans Affairs Committee. My name is Bill Avery. I Chair the committee, and I serve the District 28 here in the heart of Lincoln. Before I start, let me introduce the members of the committee. Starting on my right, here at the end, Senator Rich Pahls from Millard. He is seated next to Senator Les Seiler from Hastings, a new member of the Legislature and a new member of this committee. Senator Charlie Janssen, from Fremont, will be here soon I hope. And seated next to him is Senator Scott Price, who is Vice Chair of the committee and will preside when I am presenting my bill, which is the first one up. He is from Bellevue. Seated to my immediate right is Christy Abraham, the legal counsel. Senator Karpisek, I believe, is in another meeting; he'll be here soon enough; and Senator Kate Sullivan from Cedar Rapids; and then Senator Norm Wallman from Cortland. The committee clerk is Sherry Shaffer. She is there to make sure that everything runs on time and that we do everything right. So when you arrive at the table and you wish to testify for or against any of these bills, this form will have to be filled out. Please print clearly the information requested and give this to Sherry. And this allows us to keep a clear and accurate record of who testifies. We also ask that you state your name clearly for the record and spell it so that we can match that up with these sheets. If you are here to...not to testify but you have a desire to record your support for or opposition to any of the bills, you can do so on this sheet of paper. Both of these forms are available at each entrance to the room. The order of business is as posted outside the door. We start with LB757, which is my bill, and we're doing that first because we had...Senator Wightman is probably going to be delayed on another meeting, so we arranged it a little bit differently. If you saw the earlier order of business, you'll see that we did change it a bit. LB1035 will be heard next; LB1070 after that; LB934; and then LB966. You will note that that's a fairly ambitious agenda for today, but we have had over 60 bills referenced to this committee. We only have a certain number of days to get them heard, and so we did some calculations yesterday, and we decided that, wow, we only have seven days to finish, and we had 29 bills remaining. So we're going to have to do five today, and every day

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after we're going to have to do four. So tighten your seat belts, it's going to be a lot of long nights I'm afraid. The rules of the game are if you have any material that you would like for us to see, supporting your testimony or a copy of your testimony, we need 12 copies; and you can give that to the clerk, and she'll make sure they're distributed. The person who will help you if you do not have 12 copies is Catherine Larsen from Omaha, who is our page. She will get copies if you don't have that many. If you have any electronic devices that make noise, we ask that you turn them off so as not to disturb our proceedings. If you are part of the credentialed press, exceptions are made for you. But if you have to take a call, please do leave the room. Okay, I think that covers everything. So I will now turn the chair over to my colleague and Vice Chair of the committee, Senator Price.

SENATOR PRICE: Thank you, Senator Avery.

SENATOR AVERY: Thank you, Senator Price. Good afternoon, Committee. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y, District 28. I am here to present to you LB757, which is a bill that was brought to me by a representative of the Libertarian Party. It is not a complicated bill. It is a bill that, I think, provides fairness in access to the ballot to a minority party. They have expressed concerns over a number of years about the issue of how third-party candidates can gain access to the ballot. Currently, a partisan candidate is allowed on the primary ballot when the candidate belongs to a political party that has ballot status. Political parties with ballot status are those parties that have polled at least 5 percent of the entire vote in the state at the last election. Five percent of the statewide vote is not difficult, of course, for major parties, but it is a whole different matter for third parties. Parties like the Libertarian Party, they have difficulty, sometimes, getting 5 percent of the statewide vote every two years. For example, back in 2008, the Libertarian Party was not able to get 5 percent of the statewide vote because there were only federal races on the ballot. And these are high-profile races for Senate, things of that sort, and it tends to make it difficult for third parties to get the kind of attention and visibility; their candidates usually don't do well in those races. So they did not, in '08, get their 5 percent. However, in 2010, there were five statewide races, and in those races the Libertarian Party candidates were able to receive 5 percent of the statewide vote. And...but they didn't have two consecutive elections in which they had 5 percent, so they would be denied access to the ballot in 2012. What...LB757 changes the law to allow political parties that receive 5 percent of the vote in one of the two immediately-preceding statewide elections to gain ballot status. To illustrate, in a situation I just mentioned, the Libertarian Party would be a recognized party with ballot status for two election cycles once they received the 5 percent of the statewide vote in the 2010 election. This would allow the Libertarian candidates to have ballot status for those two elections without having to go through the petition process to get on the ballot. The bill also eliminates language allowing county, city, and district parties. There has been, in the past, some difficulty with the formation of political parties in the...or at the local level. The Secretary of State's Office is represented here today. They will be

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able to explain in more detail the challenges they face with local political parties. It is my understanding that the Libertarian Party has been successful in the past in getting candidates...or political parties formed in one county and getting their candidate on the ballot in that one county. That means that the ballot has to be structured in such a way as to reflect that eligibility of that eligible candidate from the Libertarian Party. But there may not be eligibility anywhere else; this creates some problems with ballot construction and with administering the elections. So by...the Libertarian Party agreed to eliminate that language; that is a concession they make. We agree to allow them to qualify for ballot status if they have 5 percent in one election in a two-election cycle, and that's our concession; so we do have a compromise here that seems to satisfy all parties. I'd be happy to entertain any questions that you might have, and then I would be happy to defer to Mr. Erickson, who I see is here. [LB757]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions? Senator Sullivan. [LB757]

SENATOR SULLIVAN: Thank you, Senator Price, and thank you, Senator Avery. Short of having this type of legislation in place, you mention that the other option is the petition process. [LB757]

SENATOR AVERY: Right. [LB757]

SENATOR SULLIVAN: Could you elaborate on that in terms of the details? [LB757]

SENATOR AVERY: Well, I don't remember what the actual requirements are to petition onto the ballot, but there is a provision to do that. And, quite frankly, since the major parties write the rules on how to petition onto the ballot, we have a tendency to write them pretty strict and make it difficult. And now you might say, well, 5 percent of the vote is not very difficult. But if you are a third party, it is a little bit difficult sometimes to reach that threshold, and then the option of going to the petition process is probably even more difficult. So why would I want to do this as a member of a major party? I believe in broad participation in the political process. I believe in giving people access to the ballot and making this as generous and as easy to do as possible. I think we ought to be doing that in all kinds of participation in the political process. And you know that I spent a lot of my time in this Legislature promoting those issues; this is one of them. [LB757]

SENATOR SULLIVAN: Thank you. [LB757]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other questions? Seeing none, thank you. [LB757]

SENATOR AVERY: Thank you. [LB757]

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SENATOR PRICE: We will now take the first proponent for LB757. Good afternoon.
[LB757]

RANDY ESHELMAN: (Exhibit 1) Good afternoon, Senator, members of the committee. My name is Randy Eshelman; that's R-a-n-d-y E-s-h-e-l-m-a-n. I serve as the vice chair for the Libertarian Party of Nebraska. And thanks to Senator Avery for bringing this bill forward. We do...as the Libertarian Party, we don't see this as a favor or a benefit, necessarily, to the party. We see this as cost saving to the state, and we see this as a level of effort reduction for the county clerks. What should be coming around to you is a five-chart set of: a "Problem Statement"; "Impacts"; our neighboring states' ballot access laws; drafted language, which I think we'll just breeze over; and "Potential Concerns" of this bill. Understanding your amount of bills you have to look at today, I'll try to be quick. So the basic...the "Problem Statement" with this is: 5 percent of the vote in a statewide race every two years essentially means every two years, Nebraska turns over its party recognition status to the federal election cycle. As the senator related, in 2008, the only two races that qualified a party for ballot access in Nebraska were federal races--that's President of the United States and the U.S. Senate race. The Libertarian Party was not able to meet the requirements. And, frankly, the 5 percent rule, we don't think is...we think that's fair. We think that's a legitimate percentage to attempt for...or for a party to gain. The two-year cycle, however, combined with the number of races that are allowed to qualify a party, makes it extremely difficult for an alternative party. Every 12 years, there is only one race that qualifies a party in this state. To kind of go over what the senator stated as well, in 2010, the Libertarian Party pulled 20...we'll call it 22 percent--21.84 percent--in a statewide race, and that was for Auditor. So that qualified the Libertarian Party through the 2012 election cycle. We are still on the ballot. There will be a LP presidential candidate. We're not sure about senatorial and congressional runs at this point. Essentially, our focus is at the local level. But in order to give folks a home, right...Democrats want to be part of a Democrat Party; Republicans want to be part of the Republican Party; Libertarians want to be part of the Libertarian Party. If we fall off the ballot, it makes us hard to connect with our constituents, our...the folks that think, for lack of a better term, the way we do. So giving those folks a home in a fair way that also saves the state money, we think, is a no-nonsense approach. So the...and one more point before we move past the "Problem Statement." All the offices that qualify a party for statewide recognition are all for your seats. So, essentially, you have a two-year requirement placed on the party but a four-year allotment for the office or the race. So moving on to the "Impacts," we see this again. We see this as a cost to taxpayers. The LP has consistently proven its ability to petition the state to get back on the ballot. And it...and, as the senator related, it is not easy in Nebraska, frankly. But the Libertarian Party has consistently been able to re-petition to be recognized as a party. So, essentially, you could say the Libertarian Party is costing the taxpayers of the state money under the current construct, and we don't like doing that. There's also the costs of resending out, retransmitting voter registration forms, DMVs, things like that. After

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2010, the Libertarian Party petitioned the state and got rerecognized. So this was prior to the 2010 election. After several months had passed, we did spot checking, or spot polling, of several DMVs, governmental offices, things like that, and many of them did not have the updated registration forms. So that...I don't know if you want to...would say, necessarily, a disenfranchisement claim, but there is that lag of catching up to parties that have been recognized. Looking briefly at "Neighbors' Ballot Retention," so this is chart three of this slide deck that I passed out. You can look at that...every one of our neighbors has a much lower percentage requirement to remain on the ballot. Now we're not seeking that. Five percent, we think, is fair. Frankly, if you can't stay on the ballot...or if you can't get 5 percent over two election cycles, maybe your message just doesn't resonate with the voters of the state. And that's okay; we accept that. But only five other states in the country have a higher ballot retention law than Nebraska. So what do we care? Maybe we don't. We're Nebraskans, that's...maybe that's our rules, and that's fine. But that, coupled...I think we can go to the final chart. [LB757]

SENATOR PRICE: Well, your red light is on, so I'll ask you to wrap it up. [LB757]

RANDY ESHELMAN: I'm sorry? [LB757]

SENATOR PRICE: Your red light is on. [LB757]

RANDY ESHELMAN: Oh, okay. Thank you. So potential concerns with this? You know, what's the cost? We see it as a cost savings, frankly. We think that the present law costs the state more money, and it costs county clerks extra workload during busy election cycles. And then we think that the potential other concern is, well, if we keep...if we lower the standard, we're going to have so many political parties we're not going to be able to manage it. History shows us that that's not the case. From 1891 to 1925, Nebraska's ballot retention percentage was 1 percent, and there were never more than six parties on the ballot. There were five parties on the ballot in 2008. And none of our neighbors, all of which have lower percentage requirements, has more than five parties. So I guess I'll wrap it up with that, since I'm out of time, Senator. [LB757]

SENATOR PRICE: Well, thank you very much, sir. Are there any questions from committee? Senator Janssen. [LB757]

SENATOR JANSSEN: Thank you, Vice Chair Price. Thank you for coming today. And I thought it was really creative. You guys, the Libertarian Party, got on the Auditor's ballot, was it? Last time, you got about 20 percent of the vote... [LB757]

RANDY ESHELMAN: Yes. Yes, sir. [LB757]

SENATOR JANSSEN: ...to stay on? You skipped over a page in your testimony. [LB757]

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RANDY ESHELMAN: Um-hum. [LB757]

SENATOR JANSSEN: Do you want to summarize that for me real quick? [LB757]

RANDY ESHELMAN: So I...yeah, I skipped over the language that's in the current law or in the bill. Essentially, as the senator from Lincoln pointed out, we work with the Secretary of State's Office to say, hey, this makes sense. You know, if it's going to be a 5 percent over two election cycles, then perhaps the party gives up that ability to organize by county and districts. And, I would say, that's a commonsense approach as well because then you don't have to...you don't have counties or the Secretary of State's Office trying to delineate, you know, one neighbor from the next. One that person lives on one side of the street can register as a Libertarian. One...the person on the other side of the street can't because of district lines or county line, so on and so forth. So we think it's a great approach, great compromise. [LB757]

SENATOR JANSSEN: Thank you. [LB757]

RANDY ESHELMAN: Yes, Senator. [LB757]

SENATOR PRICE: Thank you. Are there any other questions? Seeing none, thank you for your testimony today, sir. [LB757]

RANDY ESHELMAN: Thank you. Thank you, Senators. [LB757]

SENATOR PRICE: And we'll move on to the next proponent. Welcome. [LB757]

NEAL ERICKSON: Senator Price, members of the committee, for the record, my name is Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n. I'm Deputy Secretary of State for Elections, here on behalf of Secretary of State John Gale, to testify in support of LB757. This is actually kind of a rehash of a couple...or this bill has been before this committee before, in '03 and '05, and I'm thinking Senator Pahls is probably the only one that's heard this one before though. So I think Randy and Senator Avery have done a good job describing it. Basically, it is kind of a two-prong thing. It's got some kind of a trade-off. It gives a new political party or emerging political party a four-year life rather than a two-year life right now. It gives them four years to try and achieve that 5 percent threshold to maintain their party status. And at the same token...or, elsewhere in the bill, removes the ability to organize political parties on city, county, and congressional district basis. So it'd be just a statewide party, and you're either statewide or you're not statewide party. That particular provision is something that we are interested in. I think Randy kind of described the problem a little bit. Since we've had a lot more centralization of some of our functions in terms of printing registrations, etcetera, it becomes very difficult if you have a political party that is on in certain parts of the state

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and not in others; and it becomes difficult to try and explain to people how, you know, this person can be a Libertarian and this person can't, based on their residence. So we consider this a fair trade-off and would urge you to advance it to the floor. [LB757]

SENATOR PRICE: Thank you, Mr. Erickson. Are there any questions from the committee? Seeing none. [LB757]

NEAL ERICKSON: Thank you. [LB757]

SENATOR PRICE: Thank you. Further proponents for LB757? Proponent? We'll move on now to opposition. Is there any opposition to LB757? Seeing none, would anybody like to testify in the neutral? Seeing none, Senator Avery, would you like to close on LB757? [LB757]

SENATOR AVERY: I don't have much more to say. I think this is a question of fairness. The Libertarian Party has significant support in the state. It's not a major party, probably never will be, but they ought to be given the chance to compete and to compete fairly, and I think this does that. [LB757]

SENATOR PRICE: Thank you, Senator Avery. Are there questions? From Senator Pahls. [LB757]

SENATOR PAHLS: Yes, and since this is basically a simple concept, then this could be...because I always like to find out ahead of time. This could be a consent calendar bill? There's no opposition? [LB757]

SENATOR AVERY: Possibly. [LB757]

SENATOR PAHLS: Okay. [LB757]

SENATOR AVERY: Yeah. [LB757]

SENATOR PAHLS: Thank you. [LB757]

SENATOR PRICE: Are there any other questions from the committee? Seeing none. Thank you, Senator Avery. [LB757]

SENATOR AVERY: Thank you. All right, that ends the hearing on LB757, and we'll move now to Senator Sullivan's bill, LB1035. Welcome, Senator Sullivan. [LB757]

SENATOR SULLIVAN: Thank you. Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. I'm Senator Kate Sullivan of Cedar Rapids; that's K-a-t-e S-u-l-l-i-v-a-n, representing the 41st Legislative District.

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LB1035 resulted from a request by a county clerk in my district, and the change was cleared with the Secretary of State's Office before the bill was introduced. LB1035 would allow candidates for airport authority boards to automatically advance to the general election if no more than two candidates file for the office. State statute already allows automatic advancement in many political subdivision elections if there are only two candidates. The change will save county funds when candidate names don't have to be placed on the primary ballot. If more than two candidates file, the primary election proceeds normally with all the candidates on the ballot. This is a simple bill that follows common practice for political subdivision elections. I encourage you to advance LB1035 to General File. [LB1035]

SENATOR AVERY: Thank you. Questions from the committee? Senator Pahls. [LB1035]

SENATOR PAHLS: Yes, Senator...thank you, Chairman. I'm just curious. Would this have any effect on, like, a write-in? [LB1035]

SENATOR SULLIVAN: I knew you were going to ask that. [LB1035]

SENATOR PAHLS: Well, I'll save it for the...but I just...well, just sitting here, I...because I like the idea of just moving on. [LB1035]

SENATOR SULLIVAN: I just...I...it occurred to me as I was giving testimony. I thought, somebody is going to ask me about that and I don't know. [LB1035]

SENATOR PAHLS: Okay. I was just... [LB1035]

SENATOR SULLIVAN: I'm hoping the Secretary of State will clarify that. [LB1035]

SENATOR PAHLS: Sure. Okay, thank you. [LB1035]

SENATOR AVERY: Senator Janssen? [LB1035]

SENATOR JANSSEN: Thank you, Chairman Avery. Senator Sullivan, he actually stole my question and...but that's fine. I'm probably throwing this out, maybe, for Deputy Director Erickson, but the...how...for our elections, being Legislature,... [LB1035]

SENATOR SULLIVAN: Uh-huh. [LB1035]

SENATOR JANSSEN: ...if there's only two of us--and that was the case for me--... [LB1035]

SENATOR SULLIVAN: Uh-huh. [LB1035]

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SENATOR JANSSEN: ...you have to run in the primary. Is that a have to? I'm not certain. And do you have to be on the ballot and it gets voted on, even though two--only two--can advance and it's nonpartisan? [LB1035]

SENATOR SULLIVAN: I think that, in the case of the legislative races, we do have to appear on the primary ballot. But again, I'll defer to the Deputy Secretary to answer that. [LB1035]

SENATOR JANSSEN: But it's an interesting one because I've wondered about it. [LB1035]

SENATOR SULLIVAN: Um-hum, um-hum. [LB1035]

SENATOR JANSSEN: Our election commissioner in Dodge County didn't have the city council ones on there. [LB1035]

SENATOR SULLIVAN: Um-hum, um-hum. [LB1035]

SENATOR JANSSEN: And then mine was on there, of course. [LB1035]

SENATOR SULLIVAN: Right. [LB1035]

SENATOR JANSSEN: It's not inexpensive to run for the seats,... [LB1035]

SENATOR SULLIVAN: Um-hum. [LB1035]

SENATOR JANSSEN: ...and when you do it twice, it kind of gets a little more expensive. [LB1035]

SENATOR SULLIVAN: Point well-taken, um-hum. [LB1035]

SENATOR JANSSEN: Thank you. [LB1035]

SENATOR AVERY: Any other questions? I don't see any. [LB1035]

SENATOR SULLIVAN: Okay. [LB1035]

SENATOR AVERY: We'll move to proponent testimony. We're going to work you hard today, Mr. Erickson. [LB1035]

NEAL ERICKSON: ...lots of little stuff. Chairman Avery, members of the committee, once again, for the record, Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n, Deputy Secretary of

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State, here on behalf of Secretary of State John Gale, in support of LB1035. I think Senator Sullivan succinctly described this bill. It just adds airport authorities to the list of those that automatically advance. This one was a little bit different in that airport authorities, in another part of statute...well...and there's three different types of airport authorities. There's a city airport authority, there's a county airport authority, and there's a joint airport authority. The city airport authority was very clear. You elect the airport authority members the way the city does. Well, the city has automatic advancement, so that just naturally flowed from there. The language for county airport authority said, you conduct it in the way you do a county nonpartisan office, which we don't have, and then for joint, said, you conduct it in a general nonpartisan manner, which also doesn't necessarily automatically make automatic advancement. So what this bill does is add the airport authority specifically to the list of those that are automatically advanced--a very simple concept. The reason it came up was a county airport authority in Antelope County noticed this and wanted to automatically advance the two people running, and the law just really didn't allow it. So this will clean that up. Senator Janssen, to answer your question, yeah, currently...most, if...vast majority, if not all the nonpartisan offices, are automatically advanced. And why we don't do it with the Legislature is because when this concept was first advanced about automatically advancing people in nonpartisan races, it was made very clear to us that the Legislature did not want that. They wanted to have that primary as a dry run, in effect, to see where they were sitting, in effect. And so there has never been, to this point, a suggestion to include them on that automatic advancement. But Senator Sullivan is correct. The automatic advancement provisions do save money on the part of the county and the subdivision, so it has been a very successful program. With that, I'd answer any questions you might have. [LB1035]

SENATOR AVERY: Thank you, sir. Questions from the committee? Yes, Senator Pahls. [LB1035]

SENATOR PAHLS: Thank you, Chairman. Well, then the write-in would occur on the general? [LB1035]

NEAL ERICKSON: Yes, there, and there used to be a little bit of a problem with that. For example, there didn't used to be a write-in line for natural resource districts. That has been changed by recent legislation, and I think right now...I think pretty much every office has that write-in capability. [LB1035]

SENATOR PAHLS: Okay, thank you. [LB1035]

SENATOR AVERY: Any more? [LB1035]

SENATOR SEILER: I have one. [LB1035]

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SENATOR AVERY: Senator Seiler. [LB1035]

SENATOR SEILER: Did you clean up the language on the nonpartisan when you did this bill? [LB1035]

NEAL ERICKSON: No, we tried to...this is going to be as clean and simple a bill as possible. This would've opened up a few more sections, so we took the short route. And I've talked to legal counsel about this. We did a complete recodification about 15 years ago. And it may be getting time that we start going back in and doing another recodification to clean these things up, and that will certainly be on the list of things to address. [LB1035]

SENATOR SEILER: Okay. [LB1035]

SENATOR AVERY: Any more questions? Don't see any. Thank you. [LB1035]

NEAL ERICKSON: Thank you. [LB1035]

SENATOR AVERY: Any other proponent testimony? All right. Any opponent testimony? Any neutral testimony? No more testimony? Then, Senator Sullivan, you...you waive closing. That ends the hearing on LB1035. I don't think Senator Wightman is here, is he? Okay. We'll just stand down for a few minutes. Here he is, the star of the day. [LB1035]

SENATOR WIGHTMAN: Am I early? [LB1035]

SENATOR AVERY: You are just right on time, sir. We would wait indefinitely for you. We like being in this room. Welcome, Senator Wightman. [LB1035]

SENATOR WIGHTMAN: Thank you. Good afternoon, Chairman Avery, members of the committee. For the record, my name is John Wightman, spelled W-i-g-h-t-m-a-n, and I represent District 36. LB1070 was introduced on the behalf of a constituent from District 36. A brief history may be helpful; some of you may remember it from last year. The statutory provision LB1070 seeks to repeal a section that was added to the law only last session by an amendment proposed to LB449 on Select File by Senator Nelson. The amendment was adopted on a 25-5 vote. The restrictions contained in last year's amendment have consequences that we suggest require its appeal--repeal--maybe appeal as well. (Laugh) Under LB1070, what is done is to remove the party of affirmation as a factor in determining the eligibility to place a person's name on the general election ballot by using the petition process. What is not thought to be done under LB1070 is the following: the law continues to disallow a registered voter who was a candidate in the primary election from using the petition process to have his or her name placed on the general election ballot; the law continues to impose the burden on

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the petition candidate to obtain the verifiable signatures of approximately 4,000 registered voters in order to be placed on the general election ballot; and, finally, the law continues to allow the formation of a new political party with approximately 5,000 signatures of registered voters. And this party may place a candidate's name on the general election ballot, but this process places additional burdens on the candidate in a limited amount of time. The current law, as amended, raises fundamental issues of fairness, issues of equal protection of the law, and suspect classification. Also, the courts have said that election laws imposing severe burden on a person's right to associate, protected by the First and Fourteenth Amendment, must be narrowly tailored and advance a compelling state interest. In such cases, the court uses the scheme that has become known, in the law, as the Anderson Burdick Balancing Test. Other testifiers will follow me--one or more--that are more expert than I in this area of the law. They will make their case that the current law imposes a severe burden on a person who changes his party status to use the petition process to place his or her name on the general election ballot for a partisan office, and/or the current law has a suspect classification without a rational basis that denies equal protection under the law. And, finally, any registered voter who is not a candidate in the primary election should have the ability to use the petition process to have his or her name placed on the general election ballot for a partisan office. My purpose of bringing LB1070 to you is to resolve these constitutionality and legal issues by a change in the statutes, not by a court challenge. I would advance...you to advance LB1070 from this committee. Thank you. [LB1070]

SENATOR AVERY: Thank you, Senator Wightman. I remember LB449 from last year very well because this committee took out that provision in committee because we felt it was not constitutional. I am convinced it was not constitutional. I said so on the floor because the State Supreme Court ruled in 1977, and you mentioned that court case, I believe. Maybe it was not the United States Supreme Court. It was 8th Circuit Court ruled in a '77 case that if you're going to restrict access to the ballot and you're going to deny voters the opportunity to express their choice among candidates, you must have a compelling state interest to do so. And I challenged the introducer of this amendment on Select File. It did not...we took it out in committee, and on Select File the introducer tried to get it put back in. And repeatedly I asked, what is the compelling state interest? Never got an answer, and the body decided to approve the amendment anyway. It is, I believe, unconstitutional. I will argue that in Executive Session. And this is not a question, by the way; it's just an opportunity for me to make my case again, so. [LB1070]

SENATOR WIGHTMAN: Thank you. [LB1070]

SENATOR AVERY: Questions from the committee? [LB1070]

SENATOR WIGHTMAN: I might add that I don't...even though I'm an attorney, I don't

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hold myself out to be a constitutional lawyer. I hope I'm serving okay under the Constitution, but I don't... [LB1070]

SENATOR AVERY: The closest I came to that was taking a "Con-Law" class in college, and so I'm not a constitutional scholar either. Any questions? I don't see any. You're going to stay for closing? [LB1070]

SENATOR WIGHTMAN: I probably will stay throughout the testimony. Thank you. [LB1070]

SENATOR AVERY: Okay. All right, we'll move to proponent testimony--no surprise that Mr. Jenkins is here. Welcome. [LB1070]

JIM JENKINS: Do I give this to you? Don't know the protocols too much. I hope I'm signed in correctly. [LB1070]

SENATOR AVERY: Okay, let's go ahead. [LB1070]

JIM JENKINS: (Exhibit 1) Okay. Well, Senator Avery and committee members, I'm grateful to be here. I bring greetings from Independents up in Custer County and look forward to this testimony. I know you have a very busy agenda, and there are a lot of pressing issues that this party has to take up in a very short period of time. But I think this issue, while seemingly rather small, actually gets to the very fundamental values and...that we have in our democratic system. As a guy that believes strongly in the free enterprise system and has gone out and started a half a dozen or more companies--some of them successful, some of them not successful--I understand risk, and I also understand how important it is for us to nurture competition and bring about...bring everybody into the process. Whether you're running a company, an organization, or in this legislative body, we embrace--or should be embracing--the competition of ideas and inviting as many people into our democratic process as possible. This law is fundamentally...the law that we're supporting would appeal a law that absolutely prevents competition. I'm not a constitutional lawyer; I'm not a lawyer. But I've talked to quite a few lawyers over the last several weeks, and I'd note that the Secretary of State's Office opposed this bill last year. They're the ones that actually have jurisdiction over elections, as you folks know. I understand that the Attorney General supported it, so even within our own ranks down here with two major offices...and there appears to be some concern about this bill. I don't know if you know, but right now we have...almost 20 percent of our registered voters in this state are Independents or technically called "nonpartisan." Across the country, we have almost 37 percent of our voters registered as nonpartisan. So while we're sitting here sort of stuck in our two-party rut and watching them war...and clearly most of us believe and understand that the system has gone awry; it's not working. The polemics, the partisanship, the lack of consensus are literally suffocating the democratic ideals in our

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country. And so what I would hope that you would consider as a body is not only supporting LB1070 but taking some additional steps, which is to open up the primary process to all Independents. It's inconceivable to me, especially in a state that has a legislative body such as this, where each one of you ran against--in some cases--five, six, seven opponents. I remember when Deb Fischer ran up in Custer County for the first time, and I supported her. She had six or seven people in the contest against her. We have the premier nonpartisan...and I don't mean to be gratuitous, but we have the premier nonpartisan institution in the land right here in Nebraska. We could be a model as to how to conduct a very open, transparent process. I know that, Senator Sullivan, that you were unsure exactly whether you had to be on a...a member...enter into the primary or not. And, quite frankly, I spent several hours at the Secretary of State's Office trying to find out how as an Independent citizen, a registered nonpartisan, that I could actually access our system. What kind of system is it that throws up barriers at every turn? Is it any wonder we don't have Independents winning office here? We don't have Independents winning office, even though they now represent only...almost 20 percent of the vote, because we have stacked the deck against it. Parties were not a part of the Constitution. Parties were...came afterward. I'm not here...I know each of you probably are either a Republican or Democrat, so I don't mean to step on toes. But the notion that we would put up petition barriers, this sort of barrier that says that I have to decide when I'm going to run, 10 months in advance of election...you know, I'm a rancher and a businessperson. I'm not focused on an election 10 months down the road. Now maybe I should, given the amount of money it's going to take to run for the United States Senate. But the fact of the matter is, I think we all ought to be able to access the democratic process in our state much more conveniently. I don't see how it's defensible. In fact, I would say that it is...if it's not immoral to keep 20 percent off, it's certainly suspect in terms of what I think our Constitution and our general democratic values...I understand my time is up. My last call to action is simply to say that I would like this committee...and, Senator Avery, I appreciate your support and your clear comments. I appreciate Senator Wightman stepping forward and introducing the bill. But I would ask this committee to look at this seriously as a priority bill. And I recognize there are many other bills crowding it out, but I think we need to take this issue up for the good of our state. Thank you very much. [LB1070]

SENATOR AVERY: Thank you. Any questions for Mr. Jenkins? Yes, Senator Wallman. [LB1070]

SENATOR WALLMAN: Chairman Avery. Yeah, thank you, Mr. Jenkins, for coming. I can see why the party system didn't muddy up the primary somewhat, but it is a shame that we can't vote if you're an Independent. And this would fix that, you think? [LB1070]

JIM JENKINS: No, I don't think this would fix it. And the editorial that I gave you is actually an attack on the system. I think this is one small barrier that we should take down. And so when you look at my testimony or the written editorial that goes to the

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Omaha World-Herald, that's more to suggest that we need to move beyond just taking down this barrier, but go forward and take down other barriers. But this is just an example of parties, political people, putting up roadblocks to Independent people like me. [LB1070]

SENATOR WALLMAN: Thank you. [LB1070]

SENATOR AVERY: Any other questions? I don't see any. Thank you for your testimony. [LB1070]

JIM JENKINS: Yeah, thank you. [LB1070]

SENATOR AVERY: Any other proponent testimony? [LB1070]

CHUCK HUBKA: Here, let me swap the mike out real quick. [LB1070]

SENATOR AVERY: Okay. We're going to make sure, Mr. Partington, that you don't have the same problem Mr. Jenkins had. [LB1070]

JIM PARTINGTON: (Exhibit 2) Senator Avery, members of the Government, Military and Veterans Affairs Committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I live at 2600 North 162nd in Lincoln, and I'm testifying today on behalf of myself, not representing any organization. I appreciate the opportunity to testify in support of LB1070. Nebraska has a reputation as a well-governed state. Much of the credit for this has to do with the way we have chosen to organize our state Legislature. The nonpartisan Unicameral Legislature has members of both political parties and at least one Independent, but there are no party caucuses, and members are not bound to conform to rigid party ideologies. They are allowed to vote Independently, in accordance with their best judgment on the issues before them, and this serves the state well. I believe that LB1070, which repeals the provision which makes the person with party affiliation ineligible to participate in a general election under the petition process, is consistent with the political philosophy that is the foundation of the Unicameral Legislature. It brings the process closer to the people; it's open and transparent. The petition process requires that significant numbers of voters sign in support of candidates by petition, which is a hurdle not easily cleared. This ensures that only serious candidates with broad support across their prospective political districts will be allowed to enter the race. I spent most of my adult life as a career military officer and always thought it appropriate to register nonpolitical, even though I did tend to vote conservatively. As I see the political environment that's developed over the past years, I've become very content with my status as an Independent. I've also come to place high value on considering different perspectives when making political decisions affecting large segments of our population. I think that LB1070 will open the political process to more participants from all political persuasions and make for more interesting

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and open political dialogue. It will be an effective way to counter the influence of well-funded campaigns supported by interests outside of our state. The candidate by petition may not win the day, but his or her voice will be heard and considered and become part of the political dialogue. I strongly support the provisions of the bill, and I thank you for the opportunity to testify, and I'm open to any questions you may have. [LB1070]

SENATOR AVERY: Thank you, Mr. Partington. Questions from the committee? I don't see any. Thank you. [LB1070]

JIM PARTINGTON: Thank you very much. [LB1070]

SENATOR AVERY: Any other proponent testimony? Welcome, sir. [LB1070]

BRETT SALLACH: (Exhibit 3) Thank you. Thank you, Senator Avery and members of the Governmental Affairs Committee. My name is Brett Sallach, S-a-l-l-a-c-h. I'm a graduate of the University of Nebraska-College of Engineering and am currently working on my Ph.D. in environmental engineering at UNL. I wanted to take this time to voice my concerns over Nebraska Statute 32-616. I grew up in Charlotte, North Carolina, and moved to Nebraska in 2005 to start my college studies. It is here in Nebraska that my political awareness piqued. And one of the aspects of Nebraska politics that I'm especially proud is the idea behind our Unicameral Legislature, a body that discards the influences of political affiliation and is truly working in accordance with the people it represents. Each member campaigns on his or her ideas and skill sets, and the people of our state determine who represents their personal beliefs best. The results of this type of system speak for itself. We have a stable government that promotes success and opportunity for all of our residents while also able to quickly and effectively deal with issues that face our state as they emerge. We routinely work together to establish budgets and make laws that require tough decisions. The efficacy with which this body operates has set us up with a stable housing market, an impeccable employment rate, and leaves us with discussions about how to best use an emergency cash surplus. This is what makes Nebraska great, but for some reason we discard these beliefs as we seek to nominate and elect our representatives at the national level. We have set in place laws that reject the input of the Independent voters and seek to further the agendas of national political party platforms. We have created obstacles that discourage individuals whose personal beliefs stray from a political party's from engaging in our system. Younger voters of my age have decided that investment in this political system is not a valuable use of time or energy. This is especially troubling when facing the reality that this group of educated citizens will shortly become our future leaders of this state and country. We are left to wonder what has transpired over the years to create this apathetic attitude towards political participation. The most logical answer, the one that I hear most often amongst my peers, is that the system in place today does not promote the ideas and participation of leaders who represent us. Nebraska law has

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established that a person affiliated with a political party is unable to change affiliations and run a campaign Independent of their original party within the same calender year as the election for which they seek office. This implies that a person who disagrees with the party platform does not have the freedom to say that the direction of the party no longer represents his or her beliefs or values and that the voters that agree may not have the opportunity to vote for this person. This provision serves as a lever for use by the two parties to shape candidates as they see fit. This time limit is especially convenient for the parties as the year leading up to an election is the time when political awareness is at its peak. This law limits the exchange of ideas and candidates available for representation. And, most importantly, it alienates voters from engaging in the system. The bottom line is Nebraska Statute 32-616 does not represent the best interest of the people, just the parties. Nebraska deserves the opportunity to have representation from anyone willing to be a civil servant of the people. Nebraskans deserve the opportunity to elect candidates that are shaped by the needs and concerns of the people of this state and not the national parties. In the climate of political posturing that we see today, Nebraska has the potential to serve as a model to the rest of the country on how to successfully legislate through difficult times. We must spread the fundamental ideas that make our state government so effective to the process we use to nominate our representatives nationally. I am sure that by eliminating Nebraska Statute 32-616 we will send a message that this state is more concerned with the voice of the people than the will of a national party. When everyone's beliefs have the ability to be represented, it will promote participation throughout all demographics, and our leaders will represent the true voice of this state. Thank you for your time. [LB1070]

SENATOR AVERY: Thank you, Mr...is it Sallach? [LB1070]

BRETT SALLACH: Sallach. [LB1070]

SENATOR AVERY: Sallach, yeah. Questions from the committee? Senator Karpisek. [LB1070]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Mr. Sallach. You speak of the political posturing, and I couldn't agree with you more. But do you remember or know what brought this about last year? [LB1070]

BRETT SALLACH: I'm not really familiar too much with the history. [LB1070]

SENATOR KARPISEK: Well, it was one person running for...being in one office, in one party, changing parties to run in another party. So kind of the whole thing is the reason, I think, why I probably voted for that was the political posturing that happened in that case, so. [LB1070]

BRETT SALLACH: So I think...with that...or...I'm sorry. [LB1070]

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SENATOR KARPISEK: No, go...but that's kind of what happened, and I'm sure that Mr. Erickson will be able to...no, he's not going to tell us any more about it, but... (Laughter) Maybe we'll call him up. But that was the issue and at the time. It didn't seem right, what happened, so although I think now Mr. Jenkins has been caught in that web--unintended consequences--to me, at the time, someone was doing something that really wasn't right either. So, hence, we are where we are, all right? [LB1070]

BRETT SALLACH: Yeah. [LB1070]

SENATOR KARPISEK: Thank you. [LB1070]

BRETT SALLACH: Okay. [LB1070]

SENATOR KARPISEK: Thank you, Senator Avery. [LB1070]

SENATOR AVERY: There's no particular reason why you should recall that case. It was kind of an "inside the party network" issue. Senator Sullivan has a question. [LB1070]

SENATOR SULLIVAN: Thank you, Senator Avery, and thank you for your testimony. I'm curious. Among your peers, young people your age, are there a growing number that are Independents? [LB1070]

BRETT SALLACH: Oh, I think definitely. I think that when we look at national races and what's going on, it's not an atmosphere that people want to be a part of. And so I think...or the people that I'm surrounded by the most, as we talk more and more about it, we realize that we're not well represented by the divisiveness. And so there definitely is a growing support for some sort of...even if it's not on the basis of ideology, it's just an atmosphere or representation that isn't so divisive that's really helping this process or, I think, encouraging the Independent growth. [LB1070]

SENATOR SULLIVAN: Um-hum. Thank you. [LB1070]

SENATOR AVERY: Any more questions? I don't see any. Thank you very much for your testimony and...more proponent testimony? Welcome, Mr. Otto. [LB1070]

JIM OTTO: Senator Avery. Senator Avery and members of the Government, Military and Veterans Affairs Committee, my name is Jim Otto; that is J-i-m O-t-t-o. I appear before you today in support of LB1070 on my own behalf, and I want to make it very clear that I am not speaking for anyone else. I am only speaking for myself and not for any principal I represent, in any capacity, as a registered lobbyist. I kind of want to share something that's a little bit different than the...just the Independent view, than the view of a registered Democrat or a registered Republican that may or may not agree

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with what their party is doing. The best way I can relate my interest in this issue is with a personal story. Some 30-plus years ago, I lived in North Platte, Nebraska. I was a registered Democrat. I was not a supporter of the candidate who won the Democratic primary in the Lancaster (sic) County Commissioner's race. No one had filed as a Republican for that office, so it appeared that it was going to be a slam dunk for the Democrat even though a significant number of Lincoln County Democrats and Lincoln County Republicans were not his fans. A Republican who I knew and trusted chose to run as a candidate by petition. Several Democrats, including myself, joined with Republicans and went door to door in North Platte gathering petition signatures for his candidacy. The result was that his name was placed on the ballot as a candidate by petition. He won election to the Lincoln County Board of Commissioners. He was so well received that he was elected to a second term completely unopposed. I relate this story to illustrate that Nebraska law does not allow that scenario to happen today and that last year's change to the law does not just impact state races. It also took away significant local control, as it also applies to partisan offices at each level of government in Nebraska. As a result of the changes made by the Legislature last year, no Republican, no Democrat, no one who is a member of any political party can run as a candidate by petition for partisan office at any level of government in Nebraska. Only registered Independents can run as a candidate by petition. Ironically, someone who has never registered to vote in their life could choose to register as an Independent today and, if enough signatures are gathered, be on the general election ballot this November, wherein the same situation, a lifelong registered Republican or Democrat could not do that because they have to have changed to Independent prior to this election year. I've...many feel that leaving their political party is like leaving their church. They don't want to leave the party and register as an Independent because the term "Independent" does not describe who they are. I ask you, if a Democrat is frustrated with the party machine and wishes to challenge it as a Democrat, why do we force the change to Independent, and similarly for Republicans? I submit to you that it is akin to forcing a Lutheran, a Methodist, or a Catholic to become an agnostic in order to challenge their church. The only logical reason I come up with for the present Nebraska law is that it makes it much more difficult for citizens to have alternatives to the candidates nominated by the political parties and, therefore, it strengthens party politics. That seems in direct contradiction to the nonpartisanship principles of the Nebraska Unicameral, which I would argue is the best form of state government in all 50 of these United States. I would also point out that while there are 49 open-minded senators in the nonpartisan Nebraska Unicameral, there is only one registered Independent. And, based on that Independent senator's own words,...he was quoted as saying, "This is where I think I belong," and, based on that, we can logically conclude that he feels that the term "Independent" best defines his political views. I submit that the other 48 senators feel that their party registration better defines their political views than the term "Independent." Why should the candidate-by-petition process force someone to adopt a label they do not feel comfortable with? It could also be argued that the label "Independent" may misrepresent their political views to voters. In closing, I ask you to

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endure one more personal story because it truly describes how most Nebraska citizens view political partisanship. This also took place in North Platte. My Republican friends in North Platte regularly gave me some good-natured ribbing for being a Democrat, and I usually returned the favor. Some 10 years after moving to Lincoln, I was back in North Platte for a meeting and decided to stop at the local watering hole we all frequented to see if some of my old friends were there. To my surprise, several of them were sitting at the same table I many times joined them at 10 years prior. Of the several at the table, there was only one new guy who I did not know. I joined them. I bought a round of beer for the table. We immediately picked up as though no time had gone by, including them ribbing me for being a Democrat. When the round of beer was delivered, the guy I did not know looked me straight in the eye and said, "If I drank a beer bought by a Democrat, my daddy would roll over in his grave." It was a tense situation for only a few seconds because he followed that statement by picking up his mug of beer, and before he took a sip he said, "Daddy, get ready to roll." (Laughter) Now that story is a true story, and it accurately defines how the citizens of Nebraska view political partisanship. I submit to you that the present Nebraska law strengthens political parties to a level that most Nebraskans don't agree with. LB1070 returns a direct democracy tool to the citizens of Nebraska by reopening the candidate-by-petition process to all registered voters, not just Independents. I urge you to advance LB1070, and I would be glad to address any questions. [LB1070]

SENATOR AVERY: I deliberately let you go through the red light because I knew that story would be good. (Laughter)...because your stories usually are. [LB1070]

JIM OTTO: It's a true story though. [LB1070]

SENATOR AVERY: Any questions from the committee? It doesn't matter if it was true; it's still a good story. (Laughter) I don't see any questions. [LB1070]

JIM OTTO: Could I address Senator Karpisek's concern even though it wasn't addressed to me? [LB1070]

SENATOR AVERY: Ask him to ask the question. [LB1070]

SENATOR KARPISEK: Could you please tell us about that? [LB1070]

JIM OTTO: Well, if I recall what you were talking about, it was Kate Witek and switching from Republican to Democrat and the Democratic Party actually nominating her. She never ran by petition. Why did we change the petition? That's my question. I see why it was done in the other part of the bill. I don't understand why we changed the petition process. [LB1070]

SENATOR KARPISEK: Thank you. [LB1070]

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_____: Well said, well said. [LB1070]

SENATOR AVERY: Thank you. Any other proponents? Welcome. [LB1070]

DAN ALBERTS: Hi. Welcome...Senator Avery, thank you and the members of the Governmental Affairs Committee. My name is Dan Alberts, D-a-n A-l-b-e-r-t-s, and I am an attorney that practices here in Lincoln. And whenever I have someone come to me with what they perceive might be a constitutional law issue, I always sort of do what my parents would have done at home and sort of said, is it...is there something that can be done about it, and does it seem unfair? Because fundamentally that's what the Constitution is trying to protect: our amendments are trying to protect general fairness. And when this...when I was confronted with this issue, I thought about the following scenario which I think is a very potentially true scenario. You've got two similarly positioned Nebraska citizens, maybe right after the first of the year, sitting down in their...they have a political discussion, and they disagree about what's being done at the federal level. And they...both of them say, I want to go do something, I want to participate. They want to go do something. It's fundamental. They want to get involved in the system. Now one has always been part of the system. He's been a registered Democrat or a registered Republican. Therefore, he can...he's in that position and he's always participated. The other one has never participated, never registered to vote either, but they're both sitting there in January. Now with the present law--the one that's being asked to be repealed by LB1070, the law that's in place now--the person who's never participated, he can go in, go to the Secretary of State's Office, ask for the petition process and go get his petitions, go get his 4,000 signatures, and he can go run for office. But the person who hasn't, who has always participated as a Republican or a Democrat, goes into the same Secretary of State's Office, goes in to get his petition, and he's denied. That's this law. And if you're looking at it for fairness and from a constitutional...you've got this very fundamental right--the right to participate in our process--and you're denying one person versus another for...and you're right, Senator Avery, that the standard is if you're going to deny that fundamental right, you have to have a compelling interest, and it has to be narrowly tailored for whatever that compelling interest is. And I'd...for the life of me, can't imagine what that compelling interest is with your looking at those two parties, those two people. So that's my argument, and that's what...if I was making a constitutional argument, that's where I would start. If I was then asking for an injunction, that's what I would argue because I can't imagine what the counterargument is. So that's my testimony. [LB1070]

SENATOR AVERY: Well, we...in the floor debate, we were never told what the compelling state interest is and that is fact. It was never put on the record. [LB1070]

DAN ALBERTS: I can see why, really. [LB1070]

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SENATOR AVERY: Well, because you can't come up with one. [LB1070]

DAN ALBERTS: Questions? [LB1070]

SENATOR AVERY: Questions from the committee? Seems to be as many comments today as questions, and I'm just as guilty. [LB1070]

DAN ALBERTS: Thank you. [LB1070]

SENATOR AVERY: Thank you. Any more proponent testimony? Seeing none. Any opponent testimony? Anyone wish to speak in opposition to LB1070? Any neutral testimony? Senator Wightman. [LB1070]

SENATOR WIGHTMAN: I'll waive. [LB1070]

SENATOR AVERY: You're going to waive? Okay, thank you very much for that. And we will now move...that will end the hearing on LB1070, and now we'll turn to Senator Karpisek's LB934. Is Karipsek here? (Laughter) [LB1070]

SENATOR PRICE: Generally speaking? [LB934]

SENATOR AVERY: Generally speaking, Senator Karpisek is here. Welcome, sir. [LB934]

SENATOR KARPISEK: Thank you, Senator Avery, fellow members of the Government, Military and Veterans Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I'm here today to introduce LB934. LB934 would change how election commissioners in counties having a population of more than 100,000 inhabitants are appointed. With this bill, those election commissioners will be appointed by the county board after the expiration of the term of each election commissioner serving on the effective date of this act. Currently election commissioners in counties having a population of more than 100,000 inhabitants are appointed by the Governor. State law requires counties having 100,000 people or more in population to have an election commissioner which is appointed by the Governor. In counties having between 20,000 and 100,000 inhabitants, the county board may create the office of election commissioner and appoint an election commissioner. The reason for me bringing this bill is I see no reason why the state would appoint these county officials. We don't do it for anyone other than the three that are over 100,000 people. I think it goes to the local control issue. Nothing against anyone doing the appointing or the people being appointed, but I don't know why the Governor would appoint. I'd be glad to take any questions. [LB934]

SENATOR AVERY: Let me ask you one. Would this affect in any way the appointment

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of deputies as well? [LB934]

SENATOR KARPISEK: Not that I know, Senator. [LB934]

SENATOR AVERY: Because now you have to have a deputy that's of the other party. [LB934]

SENATOR KARPISEK: Correct, and it...I don't want to say for positive, but that would stay the same as it does in every other case of under 100,000. [LB934]

SENATOR AVERY: So the county board would have to appoint a deputy of the...an opposite party? [LB934]

SENATOR KARPISEK: Yes. [LB934]

SENATOR AVERY: Okay, questions from the committee? Senator Wallman. [LB934]

SENATOR WALLMAN: Thank you, Chairman Avery. Do you have any idea how many counties this would affect? [LB934]

SENATOR KARPISEK: Three. [LB934]

SENATOR WALLMAN: Three? Just three? Thank you. [LB934]

SENATOR KARPISEK: You're welcome. [LB934]

SENATOR AVERY: Douglas, Lancaster, and...? [LB934]

SENATOR PAHLS: Sarpy. [LB934]

SENATOR KARPISEK: Sarpy. [LB934]

SENATOR AVERY: Sarpy. Senator Seiler? [LB934]

SENATOR SEILER: Thank you. Do you have a history on what...how it would create it, or is it just one of those that it's always been done...? [LB934]

SENATOR KARPISEK: I do not. Larry Bare came and asked me if I had any history and I said, well, no, but if...you would probably have more than I do. It just... [LB934]

SENATOR SEILER: I just wondered. Thank you. [LB934]

SENATOR KARPISEK: I...obviously, there's something somewhere. [LB934]

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SENATOR AVERY: Senator Price. [LB934]

SENATOR PRICE: Thank you, Senator Avery. And, Senator Karpisek, I would just offer that...don't we have different rules for cities of metropolitan versus primary, and that that permeates throughout our entire statutory...or the way we set things up? [LB934]

SENATOR KARPISEK: Yes, we do. [LB934]

SENATOR PRICE: And do you believe that the reasons for those are also invalid because it's not really local control? We've decided to say, because you're bigger, we're going to have different sets of rules for you. [LB934]

SENATOR KARPISEK: I usually don't like those bills, Senator Price, but you make a good point. I don't usually like those bills. [LB934]

SENATOR PRICE: Okay. Well, I appreciate that. Thank you. [LB934]

SENATOR AVERY: Are you suggesting that you are being consistent? [LB934]

SENATOR KARPISEK: I try to be. [LB934]

SENATOR AVERY: Any other questions from the...? Senator Sullivan. [LB934]

SENATOR SULLIVAN: Thank you, Senator Avery, and thank you, Senator Karpisek. It appears that both from your standpoint, and then maybe even those that oppose this legislation, that there's concerns of partisanship. How can you get partisanship out of it? [LB934]

SENATOR KARPISEK: How can you? That's a great question, but a board would be the local people elected by the local people. [LB934]

SENATOR SULLIVAN: Um-hum. [LB934]

SENATOR KARPISEK: Of course the Governor is also elected but by the entire state, and then the Governor is making the decision for this small part. I guess I can't think of anything else that this happens in. And maybe someone can correct me, but I've tried to think of something and I haven't. [LB934]

SENATOR SULLIVAN: Okay, thank you. [LB934]

SENATOR AVERY: Senator Wallman? [LB934]

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SENATOR WALLMAN: No. [LB934]

SENATOR AVERY: I thought you had your hand up. I don't see any more questions. [LB934]

SENATOR KARPISEK: Thank you. [LB934]

SENATOR AVERY: Proponent testimony? Proponent testimony? I see no proponents. Opponent testimony? Welcome, Mr. Shively. [LB934]

DAVID SHIVELY: Good afternoon. Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is David Shively, that's D-a-v-i-d S-h-i-v-e-l-y. I am the Lancaster County Election Commissioner, and I am here today in opposition to LB934. To be honest, I debated on whether or not to come down here today to testify in opposition to this legislation because I didn't want it to appear that it was self-serving on my part. However, as the longest-serving election commissioner in Lancaster County and, most likely, the longest-serving election commissioner in any of the three largest counties, I finally came to the conclusion that it is important for me to be here. I have served as election commissioner for almost 12.5 years, have been appointed four times--twice each by two different governors. I believe the system that we have in Nebraska is a solid system. The independence I have from the county board is similar to that of other county-elected officials. While the county board controls my budget, I am able to make procedural and policy decisions for our office, in accordance with state and federal laws, without their input. Never in my 12.5 years as election commissioner have I ever felt pressured to do something differently than what I believed was in the best interest for the voters in my county, and I've been able to do that independently. I can do that without the fear that maybe one or more members of the county board think I should do something differently and try to encourage me to do it that way. I can conduct my office in a manner that provides for the proper conduct of elections in an independent manner. It's my understanding that the Douglas and Sarpy County Election Commissioners have sent or will be sending you correspondence in opposition to this bill as well. I appreciate your time this afternoon and would be willing to answer any questions you may have. [LB934]

SENATOR AVERY: Right. You've been around a long time, as you said. [LB934]

DAVID SHIVELY: Yes. [LB934]

SENATOR AVERY: Why do you think that we have a different process for the three counties than we do for the others? [LB934]

DAVID SHIVELY: I'm not 100 percent sure. I do know that...I believe Douglas County started this process. And I believe it was in 1910, but I don't have that date exactly right.

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Our office was started as a separate office of election commissioner in 1947, and it was in September of 1947. I'm not quite sure why that...it was an odd date. The other ones are all at the end of the year, beginning with a new calendar year. I'm assuming it was probably because that's when maybe the Legislature had been in session. It was 90 days past the legislative session, so that's when the law took effect. I'm assuming that maybe...there might have been some issues in Douglas County on the way elections have been conducted, and this was a way to relieve that by not having it done, having a separate way of it being appointed in a larger county. I don't know that for sure, but that would be my guess. [LB934]

SENATOR AVERY: Is it possible that the rationale might have been that these counties have potentially significant impact on statewide races, that having appointed members of both parties would have established a little bit more confidence that we were not messing around with the vote count and procedures, and it would be more transparent? [LB934]

DAVID SHIVELY: That, yeah, very easily could be the case. And, as was mentioned, the chief deputy is appointed by me. But it comes from a list that we receive from the political party different than my own, and they have to provide us with at least three names. And from those three names then we appoint from that position. And it's not from just the other major party. It says of a different political party. [LB934]

SENATOR AVERY: Um-hum. [LB934]

DAVID SHIVELY: So the other political parties, if they're recognized at the time, could also submit names at that point. [LB934]

SENATOR AVERY: How likely is it that a Libertarian Party person would be appointed? [LB934]

DAVID SHIVELY: Probably not very likely. But, you know,...but we...it could happen. [LB934]

SENATOR AVERY: Yeah. And since Independents are not a...it's not an organized party, they would not...probably not qualify? [LB934]

DAVID SHIVELY: Yeah, that's correct. That's the way we've been...I've understood the law... [LB934]

SENATOR AVERY: Yeah. [LB934]

DAVID SHIVELY: ...because it does say the chief deputy will be of a political party--I can't remember the exact language--a political party different than the election

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commissioner. [LB934]

SENATOR AVERY: Um-hum. Questions from the committee? Thank you. [LB934]

DAVID SHIVELY: Okay, thank you. [LB934]

SENATOR AVERY: Any other opponent testimony? [LB934]

NEAL ERICKSON: Chairman Avery, members of the committee, for the record, Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n, Deputy Secretary of State for Elections, here on behalf of the Secretary of State Gale, in opposition to LB934. I believe Commissioner Shively--as well as I know the Governor sent a letter in opposition as well--have described some of the same reasons we would oppose, and it's an independence issue. This will take some time trying to answer some of your questions about where the election commissioners and the gubernatorial came about. Commissioner Shively was a little bit off, actually. The initial law established the election commissioner appointed by the Governor for counties over 150,000 in 1913. I think the reason for that, if you look at a little bit of the history of Omaha and Douglas County at that point in time, you had situations where ballot boxes were ending up in the river. We had massive petition fraud. There was actually a petition that was tossed out completely because of so much fraud. It was a little bit different system then. There was no voter registration at that point in time. That actually came into being in Douglas County in 1916. The rest of the history of it, Commissioner Shively is right. In 1947, that number was actually lowered to counties with a population of 60,000, and I assume that was to encompass Lancaster County. In 1969, it was dropped once again to 50,000, and I assume that is where Sarpy County came in. In 1994, it was raised to 100,000, and that was because of some concerns that Hall County was going to crack that 50,000 barrier and would have the...a gubernatorial appointment at that level. We...so that's kind of the history, but I don't know if you have any further questions about that. But there is a level of independence there. And even if you look at the, you know, the...what is it, 86 county clerks out there? They have a level of independence as well because they are...those elected county clerks are an elected official just like the county board is. They have their duties and obligations. And while the board does control their budget--and then I'd say personnel policies, things like that--they don't really have the authority to order the county clerks to do much of anything. It is...it maintains an independent relationship from the election official to those local bodies, and so I think that is the rationale for maintaining the gubernatorial appointments. And we would encourage you to indefinitely postpone LB934, and with that, I'd answer any questions you might have. [LB934]

SENATOR AVERY: Thank you. Questions? Senator Janssen. [LB934]

SENATOR JANSSEN: Thank you, Chairman Avery. Thank you, Deputy Erickson. So you're saying in 1913 we started this? Or "we" being...was it the Legislature of reference

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because of vote fraud in Nebraska? [LB934]

NEAL ERICKSON: I assume that's the rationale. It...when you go back in 1913, we don't have legislative histories back that far, so it's hard to see exactly what occurred with that. So...but just in knowing a little bit about Nebraska law, we have had situations in Omaha back in the 19-teens and 1920s where some, oh, questionable election practices were going on. [LB934]

SENATOR JANSSEN: Is there...you said throwing ballots in the river or...? [LB934]

NEAL ERICKSON: Yeah, they've have found...there is an old World-Herald story about...actually, it may have been an Omaha Bee story about ballot boxes floating in the Missouri River. [LB934]

SENATOR JANSSEN: Did they ever catch them and count them? [LB934]

NEAL ERICKSON: That I don't know, so. (Laughter) [LB934]

SENATOR AVERY: They counted them in Kansas. [LB934]

SENATOR JANSSEN: Thank you. [LB934]

SENATOR AVERY: Any other questions? All right, thank you for your testimony. [LB934]

NEAL ERICKSON: Thank you. [LB934]

SENATOR AVERY: Any more opponent testimony? Any neutral testimony? Don't see any. Senator Karpisek. [LB934]

SENATOR KARPISEK: Thank you, Senator Avery and committee. I thought that the deputy director did a great job of being a proponent for the bill when he said they are very independent in every other county in the state. What is the difference here? We had voter fraud in 1913, and so the Governor stepped in. And so now we always hear that we don't have any voter fraud or anything going on, no impropriety, so what is the issue? I just feel that it should be done the same as in every other case. This is not changing the whole world here. This is just the ones between the 5,000--or, sorry, 20,000 and 100,000--to let it be done the same. I did find it a little bit...well, I knew it was going to happen. The three people that it would affect and the Governor who makes the decision are opposed to it. I thought, if anything, they may be neutral. But no, they're opposed. I'd think this is just doing it the same as everyone else does and I don't see why not. Thank you, Senator Avery. [LB934]

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SENATOR AVERY: Thank you. Thank you, Senator. Any questions for him? Senator Janssen. [LB934]

SENATOR JANSSEN: Thank you, Chairman Avery, Senator Karpisek. So you're saying now that we can change this back and...I'm putting this in your mouth so you could say yes or no. [LB934]

SENATOR KARPISEK: Um-hum. [LB934]

SENATOR JANSSEN: Because there's no...this started because there definitely is...there was voter fraud in Nebraska; it's been documented. And now there is no threat of that, so we don't have to do this now, or...? [LB934]

SENATOR KARPISEK: Well, I would say that the voter fraud is just the same amount as it...all the way across the state. And I think we're saying, well, we don't trust maybe the other ones because we don't make sure. You know, we...Mr. Erickson said we've raised it because Hall County was coming close. So why would we raise it to make sure that they don't have to do this? I don't follow the thinking. But it seems to me that we trust the others, but not these, to do it the same way. [LB934]

SENATOR JANSSEN: So on...last year...and you've had this bill. I don't know if you're going to bring it back this year or not. Maybe not. But I think it was your predecessor always brings in the paper ballot because is that...? That always comes up and it actually got to the floor last year and...because they were concerned that not all the votes are being counted, and so there still could be some fraud out there. So I don't know if this runs counter to that or not. I'm trying to grasp where you're going because I... [LB934]

SENATOR KARPISEK: No, this really has nothing to do with that, and that's just more the machines. And Senator Eret is here today. [LB934]

SENATOR AVERY: Any other questions? Senator Seiler. [LB934]

SENATOR SEILER: And I don't know the answer to this--I hope you do. Is there an appeal process that runs through this? If fraud is found, is there any type of an appeal? Does the county attorney act, or do you know of any relief? [LB934]

SENATOR KARPISEK: Well, you can go to the Supreme Court and have the ballots examined, but that goes kind of back to my other bill that Senator Janssen has talked about. [LB934]

SENATOR SEILER: Okay, thank you. [LB934]

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SENATOR AVERY: (Exhibits 1-3) Any other questions? Thank you. I have three letters to be read into the record: one in opposition from the Douglas County Election Commissioner; another in opposition from the Governor; and one neutral from the organization Nebraskans for Civic Reform. That ends the hearing on LB934. And if you will just stay where you are, Senator, we'll move right into your next bill, LB966. [LB934]

SENATOR KARPISEK: (Exhibit 1) Thank you, Senator Avery and members of the Government, Military and Veterans Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB966 is intended to make use of modern technology in preparing permanent election records. Existing law requires county canvassing boards to enter returns into a permanent ledger when the voting records have been determined to be correct. LB966 would give specific authority to allow a computer printout to be used as the permanent record. Some counties already photocopy the printout onto archival-type paper and place it in the ledger. LB966 would make it clear that the process is acceptable. Because there are concerns that the word "attach," in the green copy, may be interpreted to mean putting the records in the permanent ledger with staples or tape, I have brought the amendment to make sure archival specifications are met. I'd be willing to try to answer any questions. There will be people behind me. [LB966]

SENATOR AVERY: I have one. When you see the word "ledger," what mental picture do you get? [LB966]

SENATOR KARPISEK: I guess I think of a book that's bound and probably has some old green duct tape on it and--or red--that's been around forever, that's probably handwritten in. [LB966]

SENATOR AVERY: And would computer printouts meet that? If that were a definition of ledger, would the computer printout meet that definition? [LB966]

SENATOR KARPISEK: I don't think at this...at the time it does, but hence the reason for the bill. [LB966]

SENATOR AVERY: But aren't you...are you changing the word "ledger" to "computer printout?" [LB966]

SENATOR KARPISEK: To be put into that ledger. [LB966]

SENATOR AVERY: Okay. [LB966]

SENATOR KARPISEK: Yes. [LB966]

SENATOR AVERY: Senator Price? [LB966]

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SENATOR PRICE: Thank you, Senator Avery. Senator Karpisek, my question deals with the concept of the medium. Do we know if the computer printouts have a sense of permanency in the ink and the paper? All too often, I'll get a receipt, a thermal printout, put it in my wallet and forget it, go back a week later, and I can't read it because of the thermal sensing technology. Anyway, do you know, do we define...do we need to add a definition so that we understand that when we add the printouts into a permanent record that they're not going to fade away? Do you have any idea besides that? [LB966]

SENATOR KARPISEK: I do not. But I did think about that, too, a little bit with this bill, or that it could be backed up on some sort of technology that you understand more than I do, and probably not thermal paper. And I...the amendment goes a little bit toward that. [LB966]

SENATOR PRICE: Well, I hope that...I'm sure people behind you will pick up on this. I appreciate it. [LB966]

SENATOR KARPISEK: Thank you. [LB966]

SENATOR AVERY: Any other questions? Don't see any. [LB966]

SENATOR KARPISEK: Thank you. [LB966]

SENATOR AVERY: Proponent testimony? Welcome, Mr. Dix. [LB966]

LARRY DIX: Good afternoon, Senator Avery and members of the committee. For the record, my name is Larry Dix, L-a-r-r-y D-i-x, appearing today in support of LB966. First of all, we want to thank Senator Karpisek for introducing it. And, as he described it, it really is a bill that is introduced as we move forward in technology, that at the end of an election, now that all votes are tabulated electronically, there is a computer printout that is produced. And in order to take that printout, which are the official results, those are the printouts that are posted in the courthouse. Those are typically the printouts that are mailed to the newspapers that record the end...the final vote. Our intention is to make that...allow that to be the permanent record. And, of course, as you know, counties, we're always cautious of this because we only have the authority that the Legislature gives us. And so right now the statute says that that information must be entered into a ledger, and so...and the connotation of a ledger is a piece of paper that somebody is going to write in. And actually...you actually run the risk of transposing numbers when you're rewriting what's coming off the computer sheets, so we believe that computer sheet should be allowed as the permanent record. And, in many instances, counties are taking that computer printout and sort of coming over here and attaching it to the ledger, if you will, which is a bound book that stays within the counties. And when the bill was introduced and we'd had...I believe somebody from the Historical Society that said, my

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gosh, I hope they're not stapling that in that book--you know, stapling. And so they were looking for another word for "attach," and so certainly the amendment that Senator Karpisek handed out made very clear it was the computer printout, that the word "attach"...I don't know that we have another definitive word for "attach" that would not bring somebody to think that it was taped or stapled, but that's really what the intention is, is to allow that document to be the permanent record. Now that permanent record, that piece of paper that would have the election results on it, certainly could be scanned, could be microfilmed, which I think, Senator Price, when you get into the number of years that the print is going to stay on that paper, that would certainly obtain or meet the requirements in that way, shape, or form. I don't know that we've come far enough within the history of computers to know if I hand you this sheet of paper that either you or I could decide how long that is going to remain legible on that sheet of paper, if it's this type. If it's thermal, I think we all know if we throw it on windshield of our car, it's not going to last very long and that these records...for the most part, these records are printed, kept, put into a vault. Obviously they're in a controlled environment, so I think they would certainly last much longer. But I think there are ways to do that, to make sure that it meets, you know, the requirement. If that would so be the choice of the committee, I think that we could work through that scenario. But at the end of the day we're really looking to allow that computer printout to become the permanent record. [LB966]

SENATOR AVERY: How does it work now? Are you finished with your testimony?
[LB966]

LARRY DIX: Yes. Yes, I'm sorry. [LB966]

SENATOR AVERY: Yeah, how does it work now? The...you have a permanent ledger which is bound. Do the election workers have to physically enter it by hand, all the returns for each precinct? [LB966]

LARRY DIX: My understanding, that is a...the process is...that they go through. [LB966]

SENATOR AVERY: Okay. So I envision then taking a computer printout of those precincts and just slipping it into the ledger without having to staple it, attach it, tape it, or anything? You can just slip it in and preserve it that way? [LB966]

LARRY DIX: Well, I...you know, and I don't...the ledger itself...I don't know if the ledger, you know...now we're probably getting into a little bit of semantics. I don't know if the ledger itself is like a sleeve or if it's a sheet of paper in a bound book, but I really don't understand why someone would be all that concerned if we would tape that onto that piece of paper. You know, I can understand running a bunch of staples through because if they were to run that then through a machine at some point in time, they're worried about the staples falling out and damaging the machine. But I don't see that with

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tape. [LB966]

SENATOR AVERY: Yeah. Any questions from the committee? Senator Wallman?
[LB966]

SENATOR WALLMAN: Thank you, Chairman. Yeah, thank you, Larry, for coming. Do you know if counties have a backup plan, just randomly check...seeing, once in a while, about how votes come out, you know, if there's any errors? [LB966]

LARRY DIX: Well, the testing on the machine, on the actual ballot machine, when they're...when they go through the initial certification process, it's a fairly rigorous process to get the machines certified. And the manufacturer of the machines, every time there's a software update, will have to go through a process to validate that that software...and they run a specific number of test decks through those machines in a number of different environmental situations. And so then that machine, therefore, is...becomes certified to that accuracy. Then, before an election, a county will take a sampling that they have hand marked and they know what the results of that election is, they will run that through the machine and verify that their...what they call the "test deck," that the results on the test deck equate to what they have handwritten on those ballots, so that process is done. And then, of course, election night ballots are run through, and the machine totals the ballots. [LB966]

SENATOR WALLMAN: And is this always the same company with the software, or do you...? [LB966]

LARRY DIX: Right now, I think the state of Nebraska has a contract with a company that runs all of the ballots in the state of Nebraska. [LB966]

SENATOR WALLMAN: Thank you. [LB966]

SENATOR AVERY: Any other questions? I don't see any. Thank you, sir. [LB966]

LARRY DIX: Thank you. [LB966]

SENATOR AVERY: Any other proponent testimony? [LB966]

NEAL ERICKSON: Chairman Avery and members of the committee, Neal Erickson, N-e-a-l E-r-i-c-k-s-o-n, Deputy Secretary of State for Elections, here on behalf of Secretary Gale, in support of LB966--and we don't always oppose Senator Karpisek's bills. It was a perfect example. When we first looked at this bill, I was hit by the exact same question as you: What's a ledger? You know, is it something that's got a cover and a back and has got a binding? And if that's the case, you know, maybe we could just, in effect, bind the computer printouts and maybe that would be the definition of

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ledger. But the reason we're supporting this is if it does anything to clarify it at all, you know, we'd certainly be in favor of that. And so that's the rationale for our support. To answer a few of...well, I guess some issues were raised when we were talking about...I noticed in there it does say permanent ledger. I mean, if you're talking to our records manager people, any paper copy is not going to be permanent. And, basically, microfilm is the only thing out there that they consider a permanent record. I've tried arguing with them about electronic, you know, CDs or things like that. Well, no, the format can change on that and they're never readable. And so microfilm does eventually become the record of choice--or the format of choice--for permanent records. Senator Wallman, you had asked one thing. I think Mr. Dix gave an accurate description. He did forget one portion, however, is that after the election, we take a random sample of 2 percent of the precincts across the state, and then they go back and audit that as well to make sure that there's a postelection check as well, you know, so. But with that, I'd answer any questions you might have. [LB966]

SENATOR AVERY: You do this for every statewide election, you do 2 percent? [LB966]

NEAL ERICKSON: Uh-huh. [LB966]

SENATOR AVERY: Randomized audit? [LB966]

NEAL ERICKSON: And when we...first time we did it, we did it 1 percent, and then we upped that to 2 percent. [LB966]

SENATOR AVERY: And it's a random sample? [LB966]

NEAL ERICKSON: Right. That's how...yeah, we pull, I think, 2 percent; it ends up being something like 39 precincts. And we pick three races: a statewide race; oh, what I'd call a mid-level state race, like community college or NRD; and then a local race. And they audit all those races, and so... [LB966]

SENATOR AVERY: And do you have confidence that you would catch any irregularities that this... [LB966]

NEAL ERICKSON: We haven't had any irregularities pop up since we've been doing this since, I think...it was either the '06 or '08 election cycle. There are other protections in there as well. Without getting into too much detail about how the equipment works, there is...that their machines actually consist of some firmware and software. There's a firmware that resides on the machine itself and then software that lies on top of it. That's your ballot definition: what oval means what candidate. The firmware, actually, they have a...what they call a "hatch code" of that, a portion of that that is stored with the National Institute of Science and Technology. They have a library of that, so if there was ever any tampering with that firmware code, you could compare. Because even if you

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put in a...at least my understanding is even if you put in some kind of Trojan horse that appears and then disappears, that hatch of that code will not match the original that was out there. While it wouldn't...if you examine the code, you wouldn't see the lines. But it upsets the order enough, of those line codes, that you'd be able to detect that it was altered. So the security on the equipment we take very seriously in making sure that it works correctly. [LB966]

SENATOR AVERY: The company that we contract with is ENS (sic)? [LB966]

NEAL ERICKSON: Election Systems and Software, ES&S. [LB966]

SENATOR AVERY: ES&S. An Omaha company? [LB966]

NEAL ERICKSON: Yes. [LB966]

SENATOR AVERY: Any more questions? Thank you. [LB966]

NEAL ERICKSON: Thank you. [LB966]

SENATOR AVERY: (Exhibits 2-3) Any more proponent testimony on LB966? Okay, seeing none. Any opponent testimony? Any neutral testimony? Senator Karpisek waives. I have two letters of support to read in to the record: one from the Knox County Clerk and Election Commissioner; and one from the Richardson County Clerk and cochair of the Legislative Committee. With that, we end the hearing on LB966, and we end the hearings for today. And I would ask the committee to just remain in the room for a brief Executive Session. Thank you all for coming. [LB966]